



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

**Consultation Paper on Possible Reforms to the
Prospectus Regime in the Companies Ordinance
and the Offers of Investments Regime in the
Securities and Futures Ordinance**

October 2009



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Foreword

The Securities and Futures Commission (**SFC**) invites market participants and interested parties to submit written comments on the proposals discussed in this consultation paper or to comment on related matters that might have a significant impact upon the proposals **no later than 31 December 2009**. Any person wishing to comment on the proposals should provide details of any organization whose views they represent.

Please note that the names of the commentators and the contents of their submissions may be published on the SFC's website and in other documents to be published by the SFC. In this connection, please read the Personal Information Collection Statement attached to this consultation paper.

You may not wish your name and/or submission to be published by the SFC. If this is the case, please state that you wish your name and/or submission to be withheld from publication when you make your submission.

Written comments may be sent

by mail to: Securities and Futures Commission
8th Floor, Chater House
8 Connaught Road Central
Hong Kong

Re: Consultation on Possible Reforms to the Prospectus
Regime in the Companies Ordinance and the Offers of
Investments Regime in the Securities and Futures
Ordinance

by fax to: (852) 2810 5385

by on-line submission: <http://www.sfc.hk/sfc/html/EN/speeches/consult/consult.html>
(or, enter into the subsection "Consultation papers and
Conclusions" under the section "Speeches & Publications"
on the SFC's website at <http://www.sfc.hk>)

by e-mail to: lawreform@sfc.hk

Additional copies of the consultation paper may be obtained from the above address of the SFC.
A copy of this paper can also be found on the SFC's website at <http://www.sfc.hk>.

Securities and Futures Commission
Hong Kong

30 October 2009



Personal Information Collection Statement

1. This Personal Information Collection Statement (**PICS**) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data¹ will be used following collection, what you are agreeing to with respect to the SFC's use of your Personal Data and your rights under the Personal Data (Privacy) Ordinance, Cap. 486 (**PDPO**).

Purpose of Collection

2. The Personal Data provided in your submission to the SFC in response to this Consultation Paper may be used by the SFC for one or more of the following purposes:
 - to administer the relevant provisions² and codes and guidelines published pursuant to the powers vested in the SFC;
 - in performing the SFC's statutory functions under the relevant provisions;
 - for research and statistical purposes;
 - for other purposes permitted by law.

Transfer of Personal Data

3. Personal Data may be disclosed by the SFC to members of the public in Hong Kong and elsewhere, as part of the public consultation on this Consultation Paper. The names of persons who submit comments on this Consultation Paper together with the whole or part of their submission may be disclosed to members of the public. This will be done by publishing this information on the SFC's website and in documents to be published by the SFC during the consultation period or at its conclusion.

Access to Data

4. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your Personal Data provided in your submission on this Consultation Paper. The SFC has the right to charge a reasonable fee for processing any data access request.

Retention

5. Personal Data provided to the SFC in response to this Consultation Paper will be retained for such period as may be necessary for the proper discharge of the SFC's functions.

¹ Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance.

² Defined in Schedule 1 to the SFO to mean provisions of the SFO and subsidiary legislation made under it; and provisions of Parts II and XII of the Companies Ordinance (Cap. 32) so far as those Parts relate directly or indirectly, to the performance of functions relating to: prospectuses; the purchase by a corporation of its own shares; a corporation giving financial assistance for the acquisition of its own shares etc.



Enquiries

6. Any enquiries regarding the Personal Data provided in your submission on this Consultation Paper, or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

The Data Privacy Officer
The Securities and Futures Commission
8th Floor Chater House
8 Connaught Road Central
Hong Kong

A copy of the Privacy Policy Statement adopted by the SFC is available upon request.



Consultation Paper on Possible Reforms to the Prospectus Regime in the Companies Ordinance and the Offers of Investments Regime in the Securities and Futures Ordinance

Introduction

1. The SFC invites comments on the proposals described in this Consultation Paper including the proposed amendments to the Companies Ordinance (Cap. 32)(**CO**) and the Securities and Futures Ordinance (Cap. 571)(**SFO**). Indicative drafts of these proposed amendments are set out in Appendix A and Appendix B to facilitate market comments. The proposals are to enhance the regulatory regime governing offers of structured products to the public in Hong Kong. Regulatory reform on conduct regulation of intermediaries and other areas are addressed in other consultation papers.
2. A consultation conclusions paper will be published after the end of the consultation period and careful consideration of all public comments received. Revisions reflecting comments taken on board will be incorporated into the draft Bills to be tabled before the Legislative Council.

Background

3. As part of a comprehensive review of the CO prospectus regime designed to bring Hong Kong's laws in this area up to date, the SFC published a concept consultation paper in August 2005 entitled "Consultation Paper on Possible Reforms to the Prospectus Regime in the Companies Ordinance" (**CO Phase 3 Consultation Paper**). The CO Phase 3 Consultation Paper noted the inclusive nature of the definition of "debenture" in section 2 of the CO, particularly the reference to "any other securities" (rather than, for instance, "any other debt securities") in the definition may cause difficulty for market practitioners³. It also pointed out that case law offers limited assistance on the interpretation of "debenture" as a wide range of instruments creating or acknowledging a debt have been held to be debentures.
4. CO Phase 3 involves a package of law reform proposals to modernize the public offering regime for shares and debentures in Hong Kong, one of which is to transfer the regulation of public offers of structured notes to Part IV of the SFO. The "Consultation Conclusions on the Consultation Paper on Possible Reforms to the Prospectus Regime in the Companies Ordinance" published by the SFC in September 2006 (**CO Phase 3 Consultation Conclusions**) proposed to achieve this by carving out structured products from the definition of "debenture". In view of the global financial crisis and its effects on structured products offered to the public, the SFC believes there is merit to take forward this initiative separately and ahead of the other CO Phase 3 initiatives. In addition, the SFC submitted a report to the Financial Secretary in December 2008 (**FS Report**) recommending a host of measures to restore investor confidence in the financial market, including the reconsideration of whether Hong Kong should retain two public offering regimes in the CO and the SFO and whether the existing exemptions from the requirement for SFC authorisation of offering documents are too broad.
5. After careful consideration, the SFC believes that Hong Kong should retain two public offering regimes but the regimes should be rationalised such that public offerings of all structured products should be regulated under the offers of investments regime in Part

³ Paragraphs 9.3 and 9.11 of the CO Phase 3 Consultation Paper.



IV of the SFO and public offerings of shares and plain-vanilla debentures (generally for fund-raising purposes) should continue to be regulated under the CO prospectus regime⁴. The investment arrangements and instruments for which the CO prospectus regime and the SFO Part IV offers of investments regime, respectively, are designed to govern give rise to different risk and reward exposure for an investor. In the case of equity or debt capital-raising, the investor's exposure is to the financial performance and prospects of the company issuing the shares or the plain-vanilla debentures. As for other investment products, in addition to the issuer (or the guarantor's) creditworthiness, the investor may also be exposed to the performance of the reference assets. The different characteristics of investment arrangements and instruments justify the existence (and, in SFC's view, the retention) of the two regimes. This approach is also in line with the CO Phase 3 Consultation Conclusions⁵.

6. The aim of this reform initiative is to transfer the regulation of the public offering of structured products in the form of debentures from the CO prospectus regime to the offers of investments regime in Part IV of the SFO, under which the SFC would publish codes and guidelines setting out our regulatory policy on such products. It has been proposed that the SFC would issue a new SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Products (**Handbook**) that would contain a new Code on Unlisted Structured Products. The Handbook will set out the criteria that the SFC would normally consider before exercising its power to authorise the issue of offering documents or advertisements for unlisted structured products with a view to enhancing product transparency and disclosure. The Handbook is the subject of a separate consultation⁶.
7. In considering the existing exemptions from the requirement for SFC authorisation of offering documents in the CO in the context of structured products, the SFC is of the view that the safe harbours which are more commonly relied on are:
 - (a) an offer in respect of which the minimum denomination of, or the minimum consideration payable by any person for, the shares or debentures is not less than HK\$500,000 (paragraph 4 of Part 1 of the Seventeenth Schedule to the CO);
 - (b) an offer to not more than 50 persons (paragraph 2 of Part 1 of the Seventeenth Schedule to the CO);and
 - (c) an offer to professional investors (paragraph 1 of Part 1 of the Seventeenth Schedule to the CO).
8. If the proposal to move the regulation of public offers of all structured products to the offers of investments regime in Part IV of the SFO were to be implemented, the safe harbours in the Seventeenth Schedule to the CO, including the minimum HK\$500,000 safe harbour, will no longer be applicable to offers of structured products.

⁴ Pursuant to the CO Phase 3 Consultation Conclusions, the CO prospectus regime for shares and plain-vanilla debentures will be transferred to a separate and discrete part of the SFO when those initiatives are implemented. Accordingly two public offering regimes will be retained – one for structured products and collective investment schemes in Part IV of the SFO and the other for shares and plain-vanilla debentures in the CO prospectus regime. In the long term, both regimes will be homed in (separate parts of) the SFO.

⁵ See page 17 of the CO Phase 3 Consultation Conclusions published on the SFC's website www.sfc.hk.

⁶ See the Consultation Paper on Proposals to Enhance Protection for the Investing Public published by the SFC on 25 September 2009 on the SFC's website www.sfc.hk.



9. In Phase 2 of the review and reform exercise of the CO in 2004, safe harbours were created to provide clarity on the types of offers of shares and debentures that can be made without authorisation of a prospectus under the CO. These included the minimum HK\$500,000 safe harbour and the “no more than 50 persons” private placement safe harbour. At present, these safe harbours apply to offers of structured products which are in the form of debentures. Offers of structured products not in the form of debentures are typically regulated under the SFO. Accordingly, the relevant exemptions in the SFO (but not the CO safe harbours) apply to these non-debenture structured products. The proposal to transfer regulation of structured products in the form of debentures from the CO prospectus regime to Part IV of the SFO aligns the regulatory regimes of structured products (irrespective of their legal form). With the proposed transfer, the “minimum HK\$500,000” and “no more than 50 persons” provisions will remain in the CO as safe harbours for the offers of shares and plain-vanilla debentures. The offering of structured products (regardless of their legal form) will be subject to the relevant exemptions under Part IV of the SFO, including the offers to professional investors exemption. In addition, the private placement exemption is retained in concept in the SFO albeit not in the form of the CO bright line definition since offers that are not made to the public will not be subject to the prohibition in section 103 of the SFO.
10. The “professional investor” regime is the subject of a separate consultation published by the SFC in September 2009⁷.
11. The SFC will consider as part of the CO Phase 3 law reform exercise⁸ whether any elements of the statutory requirements and liability provisions in the CO prospectus regime should appropriately be aligned with those in the offers of investments regime in Part IV of the SFO (or vice versa).
12. The purpose of this Consultation Paper is to solicit public comments on the proposed amendments to the CO and the SFO set out in indicative drafts in Appendix A and Appendix B, respectively, to rationalise the public offering regimes and thereby enhance the legal and regulatory framework governing public offers of structured products in Hong Kong. It is worth emphasising that the introduction of the proposals in this Consultation Paper would not alter the regulatory philosophy of disclosure-based approach coupled with conduct regulation of intermediaries⁹. The key proposed amendments are described briefly in paragraphs 13 to 35 below.

⁷ See the Consultation Paper on Proposals to Enhance Protection for the Investing Public published by the SFC on 25 September 2009 on the SFC’s website www.sfc.hk.

⁸ See the CO Phase 3 Consultation Paper and the CO Phase 3 Consultation Conclusions published by the SFC in August 2005 and September 2006, respectively on the SFC’s website: www.sfc.hk. Also see paragraphs 37 to 38 of this Consultation Paper.

⁹ Please see paragraph 24.9.1 of the FS Report where the SFC stated its recommendation that “*Hong Kong maintains the regulatory philosophy of disclosure coupled with conduct regulation of intermediaries rather than merit regulation; ...*”.



Summary of key proposed amendments

Aim of the proposed amendments

13. The aim of the proposed amendments is to enhance the regulatory regime governing public offers of structured products. Under the existing legal framework, depending on the legal form of the product, public offers of structured products may be regulated under the CO prospectus regime (where the structured product is in the form of a debenture – such as equity-linked notes and credit-linked notes) or the offers of investments regime in Part IV of the SFO (where the structured product is in a legal form other than a debenture – for example, as a hybrid of securities and regulated investment agreement such as equity-linked instruments). The aim of this reform initiative is to transfer the regulation of the public offering of structured products in the form of debentures from the CO prospectus regime to the offers of investments regime in the SFO such that public offers of all structured products (regardless of their legal form) would be regulated under the offers of investments regime in the SFO, under which the SFC would publish codes and guidelines setting out our regulatory policy on such products. Currently the SFC has applied administrative measures to require issuers or guarantors to satisfy eligibility requirements similar to those in the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (**Listing Rules**) for listed structured products.
14. All structured products, whether listed or unlisted and regardless of their legal form, will constitute “securities” as defined in Part 1 of Schedule 1 to the SFO. Where the structured product is in the form of a debenture, in addition to the requirements applicable to “securities” in the SFO, requirements in the CO (other than the prospectus provisions) in relation to debentures (for example, the requirement for a register of debenture holders) will continue to apply to Hong Kong incorporated companies.

Disapply the CO prospectus provisions to structured products in the form of debentures

15. Currently offers of structured products in the form of debentures are regulated under the CO prospectus regime, whilst offers of structured products which are not debentures are regulated under the SFO regime. The SFC proposes to disapply the CO prospectus regime (including the safe harbours in the Seventeenth Schedule to the CO) with respect to structured products in the form of debentures so that all structured products will be regulated in the same SFO regime. Specifically, it is proposed that sections 37 to 44B and section 48A, sections 342 to 343 of the CO, the Third, Seventeenth to Twenty-second Schedules to the CO be disapplied with respect to structured products (please refer to the proposed definition of “structured product” set out in paragraph 23 below). Please refer to sections 38AA and 342AA in the indicative draft of the CO at Appendix A to this Consultation Paper.
16. This would mean that public offers of structured products in the form of debentures will no longer be regulated under the CO prospectus regime and accordingly, the exemptions in section 103(2)(ga), section 103(3)(a), (b) and (c) of the SFO will not apply. Therefore, public offers of structured products in the form of debentures (along with structured products in other legal forms) will be regulated under the offers of investments regime in Part IV of the SFO.



17. As the CO prospectus regime differs from the offers of investments regime in Part IV of the SFO in various respects (including, for example – the liability regime, the need for prospectus registration at the Companies Registry of Hong Kong, the requirement for experts' consents for inclusion of experts' reports in the prospectus), the transfer of the regulation of public offers of structured products in the form of debentures from the CO to Part IV of the SFO may have implications for the interests of all stakeholders including issuers, issuers' directors, experts and investors.
18. One of the implications of the transfer is that prospectus liability under sections 40, 40A, 342E and 342F of the CO will no longer apply to offer documents and marketing materials relating to structured products in the form of debentures. Instead, similar to other structured products that are not debentures, the criminal and civil liabilities in sections 107 and 108 of the SFO will apply. There are differences in the liability provisions between the two regimes – for example, “promoters”¹⁰ is a category of persons who may be held liable to pay compensation for losses sustained as a result of untrue statements in prospectuses under the CO prospectus regime but “promoters” is not a category of persons identified in Part IV of the SFO as being liable for misrepresentations in offering documents. The SFC will consider as part of the CO Phase 3 law reform exercise¹¹ whether any elements of the statutory requirements and liability provisions in the CO prospectus regime should appropriately be aligned with those in the offers of investments regime in Part IV of the SFO (or vice versa).
19. Offers to the public of shares (including preference shares) and depositary receipts over or in respect of shares will continue to be regulated under the CO prospectus regime. Accordingly, rights issues to existing shareholders (whether renounceable in favour of other persons or not) will continue to be regulated under the CO prospectus regime.

Q1: Do you agree with the disapplication of the CO prospectus regime to public offers of structured products in the form of debentures and that public offers of structured products (regardless of their legal form) should be regulated under the Part IV offers of investments regime in the SFO? If not, why not?

Q2: Do you agree with the list of prospectus provisions to be disappplied with respect to structured products in paragraph 15 above? If not, which definition or section in, or schedule to, the CO do you suggest should be added to or removed from the list or otherwise amended?

Q3: Are there any provisions or requirements in the CO prospectus regime which you believe must be replicated in the offers of investments regime in Part IV of the SFO before the regulation of public offers of structured products in the form of debentures is transferred to Part IV of the SFO? If so, please identify these and explain why.

¹⁰ See section 40 of the CO.

¹¹ See the CO Phase 3 Consultation Paper and the CO Phase 3 Consultation Conclusions published by the SFC in August 2005 and September 2006, respectively on the SFC's website: www.sfc.hk. Also see paragraphs 37 to 38 of this Consultation Paper.



Q4: Do you agree that rights issues, offers to the public of depositary receipts and preference shares should continue to be regulated under the CO prospectus regime? If not, why not?

20. After implementation of the proposals in this Consultation Paper, structured notes would continue to fall within the definition of a “debenture” in section 2 of the CO and Part 1 of Schedule 1 to the SFO.
21. Market practitioners should note that where a Hong Kong company issues structured products in the form of debentures after the proposed amendment, the offer of such structured products to the public will be regulated under the offers of investments regime in Part IV of the SFO. However, given that such structured products would remain within the scope of the definition of “debenture” in section 2 of the CO, the company would still need to comply with the provisions relating to debentures in the CO (including sections 74A to 79 regarding register of debenture holders, meetings of debenture holders and liability of trustees for debenture holders etc.). This does not represent a change for issuers because under the existing legal framework, Hong Kong companies which issue structured notes to the public also need to comply with the debenture provisions in the CO in addition to the prospectus regime.

Introduce definition of “structured product”

22. Once public offerings of structured products are carved-out from the CO prospectus regime, amendments need to be made to the SFO to ensure that public offerings of structured products are regulated under the Part IV SFO regime. The proposed rationalisation of the public offering regimes in Hong Kong relies upon a sufficiently flexible definition of “structured product” in order to accommodate, to the extent possible, financial innovation and product evolution. If the term “structured product” is narrowly defined, it may be possible to design new products which legally fall outside the narrow definition but in reality embed derivatives or have similar economic risk and return profiles as other investment products which do fall within the scope of the definition. To address this potential concern, it is recommended that the existing section 392 in the SFO (the Financial Secretary’s power to prescribe interests etc. by notice published in the Gazette as securities or futures contracts and the power to prescribe interests etc. as not being regarded as securities or futures contracts) be amended to include structured products – see paragraph 23(c) below and Appendix B to this Consultation Paper. Public offers of instruments prescribed as “structured product” pursuant to such notice would therefore fall outside the scope of the CO prospectus regime and be caught by Part IV of the SFO.
23. It is proposed that “structured product” will be defined in the CO and the SFO to mean any:
- (a) instrument under which either or both of
 - (i) some or all of the returns or any other amounts due, or both, are payable or purport to be payable; and
 - (ii) the method of settlement, whether by payment of cash or by delivery of any type of securities, commodity, property, futures contract or otherwise, is determined or purports to be determined; by reference to one or more of the following:



- (A) changes in the value or level (as the case may be) of any type of securities, commodity, index, property, interest rate, currency exchange rate or futures contract;
 - (B) changes in the value or level (as the case may be) of a basket of more than one type of securities, commodities, indices, properties, interest rates, currency exchange rates or futures contracts; or
 - (C) the occurrence or non-occurrence of an event or events specified in the instrument;
- (b) regulated investment agreement; or
 - (c) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance¹² as being regarded as a structured product in accordance with the terms of the notice, whether or not falling within subparagraphs (i) to (iv) below,
- but does not include-
- (i) a direct interest in any collective investment scheme;
 - (ii) depositary receipts;
 - (iii) preference shares;
 - (iv) a floating rate note¹³; and
 - (v) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance¹⁴ as not being regarded as a structured product in accordance with the terms of the notice.

24. The SFC notes that the scope of the definition of “structured product” may catch convertible bonds, exchangeable bonds and subscription warrants. In view of the potential for issuers to use different legal forms such as convertible bonds and exchangeable bonds to issue structured products, the SFC does not intend to specifically exclude these from the definition of “structured product”. Accordingly, where the features of the particular convertible or exchangeable bond fall within the proposed definition of “structured product”, public offers of such convertible or exchangeable bond will be regulated under the offers of investments regime in Part IV of the SFO. In reviewing “traditional” convertible bonds, the SFC will draw reference from the disclosure requirements in the Third Schedule to the CO.

Q5: Do you agree with the proposed definition of “structured product”? If not, what are your suggestions?

Q6: Do you agree that certain instruments should be excluded from the definition of “structured product” (even though they may, from a literal interpretation, fall within the proposed definition of “structured product”)? If so, do you agree with the proposed exclusions (including for example, the proposed definition of “floating rate note”)? If not, why not and what are your suggestions (bearing in mind that suggested exclusions should be capable of being clearly defined in statute to ensure clarity)?

¹² The SFO.

¹³ See proposed definition of “floating rate note” in Appendix B to this Consultation Paper.

¹⁴ The SFO.



Q7: Do you agree that the Financial Secretary should be empowered to prescribe any interests, rights or property whether in the form of an instrument or otherwise as “structured product” or as not being regarded as “structured product”, respectively, by notice published in the Gazette? If not, why not?

Amending the definition of “securities” in section 1 of Part 1 of Schedule 1 to the SFO to include structured products

25. In order to ensure that the regulatory requirements in the SFO (and not only the disclosure requirements) will apply to all structured products regardless of their legal form, it is proposed that the definition of “securities” in section 1 of Part 1 of Schedule 1 to the SFO will be amended to include structured products or any rights, options or interests (whether described as units or otherwise) in, or in respect of, such structured products. Please see the proposed amendments to the definition of “securities” in the indicative draft of the SFO at Appendix B to this Consultation Paper.

Q8: Do you agree that structured products should be classified as “securities” and hence, all other provisions in the SFO (and not just Part IV) in relation to securities will apply? If not, why not?

26. In order to avoid issuers circumventing the regulatory requirements in the SFO by creating structured products in the form of debentures and specifically providing that such debentures are “not negotiable or transferable” so as to fall within the exclusion in paragraph (vi) of the definition of “securities” in section 1 of Part 1 of Schedule 1 to the SFO, the SFC proposes to amend the exclusion in paragraph (vi) so that structured products in the form of debentures cannot make use of that exclusion. See the proposed amendment in the indicative draft of the SFO at Appendix B to this Consultation Paper.

Q9: Do you agree with the proposed amendment to the exclusion in paragraph (vi) of the definition of “securities”? If not, why not?

Subsume “regulated investment agreement” into the definition of “structured product” and repeal references to “regulated investment agreement” in the SFO

27. The SFC believes that the proposed definition of “structured product” encompasses “regulated investment agreement” (as defined in section 1 of Part 1 of Schedule 1 to the SFO). For the avoidance of doubt that regulated investment agreements are structured products, it is proposed that “regulated investment agreement” is subsumed in its entirety into the proposed definition of “structured product”. As it is proposed that structured products will be included in the definition of “securities”, the SFC proposes to repeal references to “regulated investment agreement” in the substantive provisions of the SFO¹⁵ although the definition of “regulated investment agreement” will be retained.

¹⁵ Sections 103(1)(a), 103(3)(j) and (k), 107(1)(a), 108(1)(a) and 379(3)(a) will be amended so as to remove references to “regulated investment agreement”.



Q10: Do you agree that “regulated investment agreement” should be subsumed into the definition of “structured product” and references to it in the substantive provisions of the SFO (other than the definition of “regulated investment agreement”) can be repealed? If not, why not? Please advise if you consider that there would be unintended consequences arising from the repeal?

Currency and money market instruments issued by authorised financial institutions

28. At present, there are various exemptions in Part IV of the SFO in respect of currency and interest rate products issued by banks¹⁶ as these products are generally regarded as banking transactions or treasury instruments of banks. These products are therefore typically not regulated by the SFO.
29. In line with this regulatory intent and in view of the proposed new definition of “structured product”, the SFC proposes to introduce a specific exemption in the SFO in respect of “currency linked instrument” and “money market instrument” issued by an authorised financial institution - see the proposed section 103(3)(ea) and the proposed definitions of “currency linked instrument” and “money market instrument” in Part 1 of Schedule 1 in the indicative draft of the SFO at Appendix B to this Consultation Paper. The proposed exemption is intended to ensure that the common types of currency linked and interest rate linked products issued by banks will not be caught under the prohibition in section 103(1) of the SFO as a result of the introduction of the definition of “structured product”.

Q11: Do you have any comments on the proposed exemption set out in section 103(3)(ea) of the indicative draft of the SFO ? Please explain your view.

Q12: Do you agree with the proposed definitions of “currency linked instrument” and “money market instrument”? If not, what are your suggestions?

Block / Disapply the exemptions in sections 103(2)(a) and 103(5)(a) of the SFO to unlisted structured products

30. The issue of offer documents and marketing materials relating to structured products may fall within a number of exemptions under the SFO¹⁷. In particular, given that all structured products will fall within the proposed amended definition of “securities” in section 1 of Part 1 of Schedule 1 to the SFO, intermediaries licensed or registered for Type 1, Type 4 or Type 6 regulated activity (whether acting as principal or agent) would be able to distribute offer documents and marketing materials in respect of securities without seeking prior SFC authorisation, although their sales conduct would be regulated by the SFC Code of Conduct and they would be subject to the documentary requirements under section 175 (unless an exemption applies).

¹⁶ For example, section 103(2)(c) contains an exemption for any advertisement, invitation or document made by or on behalf of an authorised financial institution in respect of leveraged foreign exchange contracts. Section 103(3)(e) also contains an exemption for any advertisement, invitation or document made in respect of the issue of a certificate of deposit by an authorised financial institution.

¹⁷ It is expected that the “professional investors” exemption under section 103(3)(k) of the SFO will continue to be used in respect of structured products. However, the “safe harbours” under the Seventeenth Schedule to the CO will no longer be applicable to offers of structured products (please see paragraph 8 above). The definition of “professional investor” is the subject of a separate consultation conducted by the SFC in September 2009.



31. The SFC's policy intention is that The Stock Exchange of Hong Kong Limited (**SEHK**) will remain the frontline regulator responsible for reviewing and approving listing documents for listed structured products after the implementation of the law reform proposals set out in this Consultation Paper. Under the current regulatory framework, listed structured product issuers generally issue marketing materials via their related licensed entities in reliance upon the exemption in section 103(2)(a) of the SFO for Type 1, Type 4 and Type 6 licensed intermediaries without having to seek SFC's prior authorisation. These licensed intermediaries must, however, abide by the Guidelines on marketing materials for listed structured products published by the SFC in September 2006. The SFC does not intend to change the existing framework for listed structured products and accordingly, listed structured product issuers (or their related licensed entities) can continue to rely upon the exemption in section 103(2)(a) of the SFO to issue marketing documents.
32. In order to bring offer documents and marketing materials relating to unlisted structured products within the requirement to seek prior SFC authorisation, the SFC proposes to exclude unlisted structured products from section 103(2)(a) and section 103(5)(a) of the SFO such that the exemption in section 103(2)(a) and section 103(5)(a) for Type 1, Type 4 or Type 6 intermediaries will not apply to offer documents and marketing materials relating to unlisted structured products – see proposed section 103(11A) in the indicative draft of the SFO at Appendix B to this Consultation Paper. Thus the issue of offer documents and marketing materials relating to unlisted structured products would require prior SFC authorisation and authorisation will depend on compliance with provisions of the Handbook, unless it falls within another exemption under the SFO such as offers to professional investors.

Q13: Do you agree that intermediaries licensed or registered for Type 1, Type 4 or Type 6 regulated activity (whether acting as principal or agent) should not be able to distribute offer documents and marketing materials in relation to unlisted structured products without seeking prior SFC authorisation (unless another exemption in section 103 applies)? If not, why not?

Q14: Do you agree that the current regulatory framework for listed structured products should remain unchanged? If not, why not?

Introduce new section 104A in the SFO

33. The SFC proposes to replicate section 104 of the SFO for structured products by introducing a new section 104A in the SFO. The new section 104A will subject structured products to an authorisation process similar to section 104 for collective investment schemes. SFC authorisation will depend upon compliance with the codes and guidelines to be published by the SFC. The Handbook setting out, among other things, certain basic structural requirements and disclosure benchmarks for unlisted structured products, has been published for public consultation¹⁸. Notwithstanding the requirement to comply with the basic structural requirements prescribed in the Handbook, the regulatory regime will continue to be disclosure-based.

¹⁸ See the Consultation Paper on Proposals to Enhance Protection for the Investing Public published by the SFC on 25 September 2009 on the SFC's website www.sfc.hk.



34. As a corollary to the introduction of a power to authorise structured products, section 106 of the SFO will need to be extended to allow the SFC to withdraw or modify authorisation of a structured product granted under the proposed section 104A.

Q15: Do you agree that unlisted structured products offered to the public should require prior SFC authorisation, the grant of which depends upon compliance with the Handbook to be published by the SFC? If not, why not?

Q16: Please provide comments on section 104A in the indicative draft of the SFO at Appendix B to this Consultation Paper.

35. In order to avoid regulatory duplication, the SEHK will remain the primary regulator for the regulation of listed structured products under the Listing Rules. If the issue of offering documents and marketing materials of listed structured products is exempt under section 103(3)(h) or section 103(2)(a)¹⁹ of the SFO from the prohibition in section 103(1), the SFC takes the view that there would be no need for the issuer to apply for SFC authorisation of the product itself under the proposed new section 104A. Hence, the Handbook will not apply to listed structured products.

¹⁹ See paragraph 31 above.



Seeking Comments

36. The SFC welcomes any comments from the public and the industry on the proposals made in this Consultation Paper and the indicative drafts of the legislative amendments in Appendix A and Appendix B to this Consultation Paper. Please submit comments to us in writing by no later than 31 December 2009.
37. Prior to the financial crisis the SFC consulted the public on various concept proposals to modernise the regime governing the public offering of shares and debentures in the CO. One of the proposals included in the CO Phase 3 Consultation Paper was to transfer the provisions in the CO relating to public offering of shares and debentures to the SFO as a discrete part separate from the offers of investments regime in Part IV of the SFO²⁰. The SFC indicated in the CO Phase 3 Consultation Conclusions that further consultation paper(s) would be published setting out the proposed amendments to the relevant provisions of the CO and the SFO and invite public comments on the draft statutory provisions concerning the proposals which the SFC has decided to pursue²¹.
38. The CO Phase 3 law reform exercise is a substantial overhaul of the prospectus regime which entails many controversial issues (for example, change the focus of the prospectus regime from a “document-based” approach to a “transaction-based” approach and a revamp of the list of matters to be disclosed in a prospectus currently prescribed in the Third Schedule to the CO). Given the vast number of proposals involved in the CO Phase 3 law reform exercise, it would be a complex task to take forward all proposals at the same time. In view of the financial crisis, the SFC believes that there is merit to take forward the reform initiatives in relation to the public offering of unlisted structured products separately and ahead of the other CO Phase 3 law reform initiatives. The other reform initiatives proposed in the CO Phase 3 law reform exercise will be the subject of further consultation papers to be published in due course. Furthermore, the SFC will consider as part of the CO Phase 3 law reform exercise whether any elements of the statutory requirements and liability provisions in the CO prospectus regime should appropriately be aligned with those in the offers of investments regime in Part IV of the SFO (or vice versa).

²⁰ See Proposal 1 in the CO Phase 3 Consultation Paper.

²¹ See paragraph 79 on page 51 of the CO Phase 3 Consultation Conclusions.



Appendix A

Indicative draft of amendments to the CO

[Note: Proposed amendments are marked up]

2. Interpretation

Interpretation and Specification of Forms

(Amended 3 of 1997 s. 2)

- (1) In this Ordinance, unless the context otherwise requires-
- "accounts" (帳目) includes a company's group accounts, whether prepared in the form of accounts or not; (Added 80 of 1974 s. 2)
- "agent" (代理人) does not include a person's counsel acting as such; (Added 6 of 1984 s. 2)
- "amend" (修訂) includes delete, add to or vary and the doing of all or any of such things simultaneously; (Added 30 of 2004 s. 2)
- "annual return" (周年申報表) means the return required to be made under section 107; (Amended 28 of 2003 s. 2)
- "articles" (章程細則) means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained in Table A in the First Schedule annexed to the Companies Ordinance 1865 (1 of 1865), or in that table as altered in pursuance of powers given under that Ordinance, or in Table A in the First Schedule to the Companies Ordinance 1911 (58 of 1911), or in that table as altered in pursuance of section 117 of the last mentioned Ordinance, or in Table A in the First Schedule to this Ordinance;
- "authorized financial institution" (認可財務機構) means an authorized institution within the meaning of section 2 of the Banking Ordinance (Cap 155); (Added 12 of 1998 s. 2. Amended 49 of 1995 s. 53)
- "book and paper" (簿冊及文據) and "book or paper" (簿冊或文據) include accounts, deeds, writings, and documents;
- "certificate of solvency" (有償債能力證明書) means a certificate issued under section 233; (Added 28 of 2003 s. 2)
- "Commission" (監察委員會) means-
- (a) subject to paragraphs (b) and (c), the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap 571);
 - (b) where any relevant transfer order made under section 25 of that Ordinance is in force, the recognized exchange company concerned or both the Securities and Futures Commission and the recognized exchange company concerned, in accordance with the provisions of that order; or
 - (c) where any relevant transfer order made under section 68 of that Ordinance is in force, the recognized exchange controller concerned or both the Securities and Futures Commission and the recognized exchange controller concerned, in accordance with the provisions of that order; (Replaced 5 of 2002 s. 407)
- "company" (公司) means a company formed and registered under this Ordinance or an existing company;
- "company limited by guarantee" (擔保有限公司) and "company limited by shares" (股份有限公司) have the meanings assigned to them respectively by section 4(2); (Added 6 of 1984 s. 2)
- "contributory" (分擔人) has the meaning assigned to it by section 171; (Added 6 of 1984 s. 2)
- "court" (法院、法庭) means the Court of First Instance; (Replaced 6 of 1984 s. 2. Amended 25 of 1998 s. 2)



- "creditors' voluntary winding up" (債權人自動清盤) has the meaning assigned to it by section 233(4); (Added 6 of 1984 s. 2)
- "debenture" (債權證) includes debenture stock, bonds and any other debt securities of a company whether constituting a charge on the assets of the company or not;
- "default fine" (失責罰款) has the meaning assigned to it by section 351(1A)(d); (Added 6 of 1984 s. 2. Amended 75 of 1993 s. 2)
- "director" (董事) includes any person occupying the position of director by whatever name called;
- "document" (文件) includes summons, notice, order, and other legal process, and registers;
- "electronic record" (電子紀錄) has the meaning assigned to it by section 2(1) of the Electronic Transactions Ordinance (Cap 553); (Added 30 of 2004 s. 2)
- "entitled person" (有權利的人), in relation to a listed company, means a person who under section 129G(1) as read with the proviso thereto is entitled to be sent copies of the documents mentioned in that section; (Added 27 of 2001 s. 2)
- "existing company" (現有公司) means a company formed and registered under the Companies Ordinance 1865 (1 of 1865), or the Companies Ordinance 1911 (58 of 1911);
- "financial year" (財政年度), in relation to any body corporate, means the period in respect of which any profit and loss account of the body corporate laid before it in general meeting is made up, whether that period is a year or not; (Added 80 of 1974 s. 2)
- "founder member" (創辦成員) means a person who has signed his name on a memorandum in accordance with section 4(1); (Added 30 of 2004 s. 2)
- "general rules" (一般規則) means general rules made under section 296 and includes forms;
- "group accounts" (集團帳目) has the meaning assigned to it by section 124(1); (Added 80 of 1974 s. 2)
- "group of companies" (公司集團) means any 2 or more companies or bodies corporate one of which is the holding company of the other or others; (Added 6 of 1984 s. 2)
- "image record" (影像紀錄) means a record produced using the imaging method and, where the context permits, includes a record in a legible form; (Added 28 of 2003 s. 2)
- "imaging method" (影像處理方法) means a method by which documents in a legible form or in the form of microfilm are scanned by a scanner and the information recorded therein is converted into electronic images, which are then stored on electronic storage media capable of being retrieved and reproduced in a legible form; (Added 28 of 2003 s. 2)
- "incorporation form" (法團成立表格) has the meaning assigned to it by section 14A(1); (Added 30 of 2004 s. 2)
- "issued generally" (公開發出), in relation to a prospectus, means issued to persons who are not existing members or debenture holders of the company; (Added 78 of 1972 s. 2)
- "liquidator" (清盤人) includes a provisional liquidator holding such office by virtue of section 194; (Added 46 of 2000 s. 2)
- "listed company" (上市公司) means a company which has any of its shares listed on a recognized stock market; (Added 77 of 1991 s. 2. Amended 5 of 2002 s. 407)
- "manager" (經理), in relation to a company, means a person who, under the immediate authority of the board of directors, exercises managerial functions but does not include-
- (a) a receiver or manager of the property of the company; or
 - (b) a special manager of the estate or business of the company appointed under section 216; (Added 28 of 2003 s. 2)
- "members' voluntary winding up" (成員自動清盤) has the meaning assigned to it by section 233(4); (Added 6 of 1984 s. 2)
- "memorandum" (章程大綱) means the memorandum of association of a company, as originally framed or as altered in pursuance of any enactment;
- "the minimum subscription" (最低認購額) has the meaning assigned to it by section 42(2); (Added 6 of 1984 s. 2)



- "non-Hong Kong company" (非香港公司) has the meaning assigned to it by section 332; (Added 30 of 2004 s. 2)
- "notice of intent" (意願通知書) means a notice of intent referred to in regulations made under section 359A(2); (Added 27 of 2001 s. 2)
- "offer to sell" (售賣要約), in relation to any shares or debentures, includes-
- (a) any act or omission or other thing calculated to invite offers to purchase the shares or debentures;
 - (b) any reference to offer for sale; (Added 30 of 2004 s. 2)
- "officer" (高級人員), in relation to a body corporate, includes a director, manager or secretary; (Added 80 of 1974 s. 2)
- "officer who is in default" (失責高級人員) has the meaning assigned to it by section 351(2); (Added 6 of 1984 s. 2)
- "Official Receiver" (破產管理署署長) means the Official Receiver appointed under the Bankruptcy Ordinance (Cap 6); (Added 30 of 1999 s. 2)
- "place of business" (營業地點), in relation to a non-Hong Kong company, has the meaning assigned to it by section 341(1); (Added 30 of 2004 s. 2)
- "prescribed" (訂明) means as respects the provisions of this Ordinance relating to the winding-up of companies, prescribed by general rules, and as respects the other provisions of this Ordinance, prescribed by the Chief Executive in Council; (Amended 23 of 1999 s. 3)
- "printed" (印刷、印製) means produced by ordinary letterpress or lithography or by such other process as the Registrar in his discretion may accept; (Added 4 of 1963 s. 2)
- "private company" (私人公司) has the meaning assigned to it by section 29; (Added 6 of 1984 s. 2)
- "prospectus" (招股章程)-
- (a) subject to paragraph (b), means any prospectus, notice, circular, brochure, advertisement, or other document-
 - (i) offering any shares in or debentures of a company (including a company incorporated outside Hong Kong, and whether or not it has established a place of business in Hong Kong) to the public for subscription or purchase for cash or other consideration; or
 - (ii) calculated to invite offers by the public to subscribe for or purchase for cash or other consideration any shares in or debentures of a company (including a company incorporated outside Hong Kong, and whether or not it has established a place of business in Hong Kong);
 - (b) does not include any prospectus, notice, circular, brochure, advertisement, or other document-
 - (i) to the extent that it is a publication falling within section 38B(2); or
 - (ii) to the extent that it contains or relates to an offer specified in Part 1 of the Seventeenth Schedule as read with the other Parts of that Schedule; (Replaced 30 of 2004 s. 2)
- "recognized exchange company" (認可交易所) means a company recognized under section 19(2) of the Securities and Futures Ordinance (Cap 571) as an exchange company for operating a stock market; (Added 5 of 2002 s. 407)
- "recognized exchange controller" (認可控制人) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571); (Added 5 of 2002 s. 407)
- "recognized stock market" (認可證券市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571); (Added 5 of 2002 s. 407)
- "record" (紀錄) includes not only a written record but any record conveying information or instructions by any other means whatsoever; (Added 28 of 2003 s. 2)
- "Registrar" (處長) means the Registrar of Companies appointed under section 303; (Replaced 6 of 1984 s. 2)



- "Registrar's index of company names" (處長公司名稱索引) means the index of names kept by the Registrar under section 22C; (Added 60 of 1990 s. 2)
- "relevant financial documents" (有關財務文件), in relation to a listed company, means the documents required to be sent under section 129G(1) in respect of the company; (Added 27 of 2001 s. 2)
- "reserve director" (備任董事) means a person nominated as a reserve director of a private company under section 153A(6); (Added 28 of 2003 s. 2)
- "resolution for reducing share capital" (股本減少決議) has the meaning assigned to it by section 58(2); (Added 6 of 1984 s. 2)
- "a resolution for voluntary winding up" (自動清盤決議) has the meaning assigned to it by section 228(2); (Added 6 of 1984 s. 2)
- "shadow director" (影子董事), in relation to a company, means a person in accordance with whose directions or instructions the directors or a majority of the directors of the company are accustomed to act; (Added 28 of 2003 s. 2)
- "share" (股、股份) means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied;
- "share warrant" (認股權證) has the meaning assigned to it by section 73; (Added 6 of 1984 s. 2)
- "specified corporation" (指明法團) means a company or a non-Hong Kong company; (Added 30 of 2004 s. 2)
- "specified form" (指明格式), in relation to a particular provision of this Ordinance, means the appropriate form specified for the time being under section 2A, for the purposes of that provision; (Added 3 of 1997 s. 3)
- "structured product" (結構性產品) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571);
- "summary financial report" (財務摘要報告), in relation to a listed company, means a summary financial report of the company which complies with section 141CF(1); (Added 27 of 2001 s. 2)
- "Table A" (A表) means Table A in the First Schedule;
- "the time of the opening of the subscription lists" (開立認購名單的時間) has the meaning assigned to it by section 44A(1); (Added 6 of 1984 s. 2)
- "unlimited company" (無限公司) has the meaning assigned to it by section 4(2); (Added 6 of 1984 s. 2. Amended 77 of 1991 s. 2)
- "unlisted company" (非上市公司) means a company which does not have any of its shares listed on a recognized stock market. (Added 77 of 1991 s. 2. Amended 5 of 2002 s. 407)
- (Amended 1 of 1949 s. 22; 10 of 1987 s. 2; 86 of 1992 s. 2; 5 of 2002 s. 407; 30 of 2004 s. 2)

(2) A person...



PART II

SHARE CAPITAL AND DEBENTURES

37 Dating of prospectus

38 Specific requirements as to particulars in prospectus

38A Exemption of certain persons and prospectuses from compliance with certain requirements

38AA. Provisions which do not apply to offers of structured products

Where it is proposed to offer any shares in or debentures of a company which are structured products –

(a) sections 37, 38, 38A, 38B, 38BA, 38C, 38D, 39A, 39B, 39C, 40, 40A, 40B, 41, 41A, 42, 43, 44, 44A, 44B and 48A;

(b) the Third Schedule; and

(c) the Seventeenth to the Twenty-second Schedules,

shall not apply in relation to the offer.

38B Advertisements concerning prospectuses

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PART XII

RESTRICTIONS ON SALE OF SHARES AND OFFERS OF SHARES FOR SALE

342 Dating of prospectus and particulars to be contained therein

342A Exemption of certain persons and prospectuses from compliance with certain requirements

342AA. Provisions which do not apply to offers of structured products

Where it is proposed to offer any shares in or debentures of a company which are structured products –

(a) this Part;



(b) the Third Schedule; and

(c) the Seventeenth to the Twenty-second Schedules,

shall not apply in relation to the offer.

342B Provisions as to expert's consent, and allotment



Indicative draft of amendments to the SFO

[Note: Proposed amendments are marked up]

PART IV

OFFERS OF INVESTMENTS

Division 1 - Interpretation

102 Interpretation of Part IV

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

"advertisement" (廣告) includes every form of advertising, whether made orally or produced mechanically, electronically, magnetically, optically, manually or by any other means;

"approved person" (核准人士)-

(a) in relation to a collective investment scheme, means an individual approved by the Commission under section 104(3);

(aa) in relation to a structured product, means an individual approved by the Commission under section 104A(3); or

(b) in relation to the issue of an advertisement, invitation or document, means an individual approved by the Commission under section 105(3);

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

(a) directed at, or the contents of which are likely to be accessed or read (whether concurrently or otherwise) by, the public; and

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

"exempted body" (獲豁免團體) means a body specified in Part 3 of Schedule 4;

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

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

(a) by any visit in person;

(b) in a newspaper, magazine, journal or other publication;



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

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

"relevant authority" (監管當局), in relation to a place outside Hong Kong, means an authority which the Monetary Authority is satisfied is a recognized banking supervisory authority of that place;

"representative" (代表)-

- (a) in relation to a licensed corporation, means an individual-
 - (i) who is licensed as a licensed representative for a regulated activity; and
 - (ii) who carries on that regulated activity for the licensed corporation as a licensed corporation to which he is accredited; or
- (b) in relation to 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.

(2) For the purposes of this Part-

- (a) an advertisement, invitation or document issued by a person shall be regarded as being issued by him on every day on which he causes or authorizes it to be so issued;
- (b) an advertisement, invitation or document issued by one person on behalf of another shall be regarded as an advertisement, invitation or document (as the case may be) issued by both persons.



Division 2 - Regulation of offers of investments, etc.

103 Offence to issue advertisements, invitations or documents relating to investments in certain cases

- (1) Subject to subsections (2), (3) and (5) to (9), a person commits an offence if he issues, or has in his possession for the purposes of issue, whether in Hong Kong or elsewhere, an advertisement, invitation or document which to his knowledge is or contains an invitation to the public-
- (a) to enter into or offer to enter into-
 - ~~(i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or~~
 - ~~(ii) a regulated investment agreement; or~~
 - (b) to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme,

unless the issue is authorized by the Commission under section 105(1).

- (2) Subsection (1) does not apply to the issue, or the possession for the purposes of issue, of any advertisement, invitation or document-
- (a) made by or on behalf of an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity (whether acting as principal or agent) in respect of securities;
 - (b) made by or on behalf of an intermediary licensed or registered for Type 2 or Type 5 regulated activity (whether acting as principal or agent) in respect of futures contracts;
 - (c) made by or on behalf of-
 - (i) an authorized financial institution (whether acting as principal or agent); or
 - (ii) an intermediary licensed for Type 3 regulated activity (whether acting as principal or agent),in respect of leveraged foreign exchange contracts;
 - (d) made by or on behalf of a recognized exchange company or recognized clearing house in respect of the provision of services by such recognized exchange company or recognized clearing house (as the case may be);
 - (e) made by or on behalf of a corporation to holders of securities or creditors of, or employees employed by or agents acting in a professional capacity on behalf of, that corporation, or a related corporation of that corporation, in respect of securities of that corporation or that related corporation;
 - (f) made by or on behalf of the Government in respect of securities issued by it;
 - (g) made by or on behalf of a credit union in respect of shares in the credit union;
 - (ga) to the extent that the advertisement, invitation or document relates to an offer falling within paragraph (b)(ii) of the definition of "prospectus" in section 2(1) of the Companies Ordinance (Cap 32); (Added 30 of 2004 s. 3)



- (h) made by or on behalf of a person acting as a trustee of a trust, not being a collective investment scheme, to beneficiaries under the trust; or
 - (i) made by or on behalf of a person who is engaged in the business of selling and purchasing property other than securities (whether acting as principal or agent) in the ordinary course of that business.
- (3) Subsection (1) does not apply to the issue, or the possession for the purposes of issue-
- (a) of-
 - (i) a prospectus which complies with or is exempt from compliance with Part II of the Companies Ordinance (Cap 32);
 - (ii) in the case of a corporation incorporated outside Hong Kong, a prospectus which complies with or is exempt from compliance with Part XII of that Ordinance;
 - (iii) a publication falling within section 38B(2) of the Companies Ordinance (Cap 32); (Replaced 30 of 2004 s. 3)
 - (b) of a document relating to the securities of a body corporate incorporated in Hong Kong that is not a registered company, being a document which
 - (i) would, if the body corporate were a registered company, be a prospectus to which section 38 of the Companies Ordinance (Cap 32) applies, or would apply if not excluded by section 38(5)(b) or 38A of that Ordinance; and
 - (ii) contains all the matters which, by virtue of Part XII of that Ordinance, it would be required to contain if the body corporate were a corporation incorporated outside Hong Kong and the document were a prospectus issued by that corporation;
 - (c) of a form of application for the shares or debentures of a corporation, where it is issued, or the possession is for the purposes of issue, together with-
 - (i) a prospectus with respect to those shares or debentures which complies with or is exempt from compliance with Part II of the Companies Ordinance (Cap 32) or, in the case of a corporation incorporated outside Hong Kong, complies with or is exempt from compliance with Part XII of that Ordinance; or
 - (ii) in the case of a body corporate incorporated in Hong Kong that is not a registered company, a document containing all the matters which, by virtue of Part XII of that Ordinance, it would be required to contain if the body corporate were a corporation incorporated outside Hong Kong and the document were a prospectus issued by that corporation with respect to those shares or debentures;
 - (d) of a form of application for the securities of a corporation, where it is issued, or the possession is for the purposes of issue, in connection with an invitation made in good faith to a person to enter into an underwriting agreement with respect to those securities;
 - (e) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a certificate of deposit by an authorized financial institution;
 - (ea) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a currency linked instrument or a money market instrument by an authorized financial institution;



- (f) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a certificate of deposit-
- (i) the amount or denomination of which is not less than the sum specified in Part 1 of Schedule 4; and
 - (ii) by-
 - (A) a multilateral agency; or
 - (B) a bank incorporated outside Hong Kong and having no place of business in Hong Kong, where the Monetary Authority has declared in writing that he is satisfied that the bank is likely to be adequately supervised by the relevant authority of any place in which it is incorporated or has its principal place of business;
- (g) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of any instrument specified in Part 2 of Schedule 4 (other than a certificate of deposit), where the amount or denomination of the instrument is not less than the sum specified in Part 1 of Schedule 4 and the instrument-
- (i) is issued by an authorized financial institution or a multilateral agency, or by an exempted body which, if it is a corporation or a wholly owned subsidiary specified in item 11 of Part 3 of Schedule 4, complies with the relevant condition;
 - (ii) is issued by a corporation which complies with the relevant condition, and is guaranteed by an authorized financial institution or a multilateral agency, or by an exempted body (other than a corporation specified in item 11 of Part 3 of Schedule 4 which does not comply with the relevant condition, or a wholly owned subsidiary of the corporation); or
 - (iii) is issued by a wholly owned subsidiary specified in item 11 of Part 3 of Schedule 4 and is guaranteed by the corporation of which it is such a subsidiary and which complies with the relevant condition;
- (h) of any advertisement, invitation or document made in respect of the issue of securities the listing of which on a recognized stock market has been approved by the recognized exchange company by which the recognized stock market is operated, where the advertisement, invitation or document complies with the rules made under section 23 or 36 governing the listing of securities, except to the extent that compliance is, in accordance with those rules, waived, modified or not required;
- (i) of any advertisement, invitation or document made in respect of securities regulated in a jurisdiction outside Hong Kong which have been admitted to trading on a recognized stock market under or pursuant to rules made under section 23 or 36;
- (j) of any advertisement, invitation or document made in respect of securities, or interests in any collective investment scheme ~~or regulated investment agreement~~, which are or are intended to be disposed of only to persons outside Hong Kong;
- (k) of any advertisement, invitation or document made in respect of securities, or interests in any collective investment scheme ~~or regulated investment agreement~~, which are or are intended to be disposed of only to professional investors.



- (4) A person who commits an offence under subsection (1) is liable-
- (a) on conviction on indictment to a fine of \$500000 and to imprisonment for 3 years and, in the case of a continuing offence, to a further fine of \$20000 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 \$10000 for every day during which the offence continues.
- (5) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues, or has in his possession for the purposes of issue-
- (a) as or on behalf of an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity (whether acting as principal or agent), any advertisement, invitation or document made in respect of securities;
 - (b) as or on behalf of an intermediary licensed or registered for Type 2 or Type 5 regulated activity (whether acting as principal or agent), any advertisement, invitation or document made in respect of futures contracts;
 - (c) as or on behalf of-
 - (i) an authorized financial institution (whether acting as principal or agent); or
 - (ii) an intermediary licensed for Type 3 regulated activity (whether acting as principal or agent),any advertisement, invitation or document made in respect of leveraged foreign exchange contracts.
- (6) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues any advertisement, invitation or document, or has any advertisement, invitation or document in his possession for the purposes of issue-
- (a) in the case of any advertisement, invitation or document made in respect of securities, to an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary;
 - (b) in the case of any advertisement, invitation or document made in respect of futures contracts, to an intermediary licensed or registered for Type 2 or Type 5 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary; or
 - (c) in the case of any advertisement, invitation or document made in respect of leveraged foreign exchange contracts, to-
 - (i) an authorized financial institution; or
 - (ii) an intermediary licensed for Type 3 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary.



- (7) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues, or has in his possession for the purposes of issue, any advertisement, invitation or document if-
- (a) the advertisement, invitation or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was receiving and issuing materials provided by others;
 - (b) the contents of the advertisement, invitation or document (as the case may be) were not, wholly or partly, devised-
 - (i) where the business was carried on by him, by himself or any officer, employee or agent of his; or
 - (ii) where the business was not carried on by him, by himself; and
 - (c) for the purposes of the issue-
 - (i) where the business was carried on by him, he or any officer, employee or agent of his; or
 - (ii) where the business was not carried on by him, he,did not select, add to, modify or otherwise exercise control over the contents of the advertisement, invitation or document (as the case may be).
- (8) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues by way of live broadcast, or has in his possession for the purposes of issue by way of live broadcast, any advertisement, invitation or document if-
- (a) the advertisement, invitation or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);
 - (b) the contents of the advertisement, invitation or document (as the case may be) were not, wholly or partly, devised-
 - (i) where he was the broadcaster, by himself or any officer, employee or agent of his; or
 - (ii) where he was not the broadcaster, by himself;
 - (c) or the purposes of the issue-
 - (i) where he was the broadcaster, he or any officer, employee or agent of his; or
 - (ii) where he was not the broadcaster, he,did not select, add to, modify or otherwise exercise control over the contents of the advertisement, invitation or document (as the case may be); and
 - (d) in relation to the broadcast-
 - (i) where he was the broadcaster, he; or
 - (ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster,



acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap 106) or the Broadcasting Ordinance (Cap 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster.

- (9) It is a defence to a charge for an offence under subsection (1) for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence with which he is charged.
- (10) For the purposes of any proceedings under this section-
- (a) an advertisement, invitation or document which consists of or contains information likely to lead, directly or indirectly, to the doing of any act referred to in subsection (1)(a) or (b) shall be regarded as an advertisement, invitation or document (as the case may be) which is or contains an invitation to do such act;
 - (b) an advertisement, invitation or document which is or contains an invitation directed at, or the contents of which are likely to be accessed or read (whether concurrently or otherwise) by, the public shall be regarded as an advertisement, invitation or document (as the case may be) which is or contains an invitation to the public.
- (11) Nothing in subsection (2)(a), (b), (c) or (i) or (5)(a), (b) or (c) applies to anything done by any person in respect of any interest in a collective investment scheme that is not authorized by the Commission under section 104.

(11A) Nothing in subsection (2)(a) or (5)(a) applies to anything done by any person in respect of any interest in a structured product other than a listed structured product.

- (12) In this section-

"guaranteed" (作出擔保) means guaranteed fully, unconditionally, irrevocably and in writing;

"registered company" (註冊公司) means a company registered under the Companies Ordinance (Cap 32);

"relevant condition" (有關條件), in relation to a corporation (including a wholly owned subsidiary of any other corporation), means a condition that the amount by which the aggregate of the corporation's assets exceeds the aggregate of its liabilities, as calculated in accordance with generally accepted accounting principles, is not less than the sum specified in Part 4 of Schedule 4.

104 Commission may authorize collective investment schemes

- (1) On an application to the Commission, the Commission may, where it considers appropriate, authorize any collective investment scheme, subject to the condition specified in subsection (2) and to any other conditions it considers appropriate.
- (2) It shall be a condition of authorization of a collective investment scheme under subsection (1) that at any time when the scheme is authorized-



- (a) there is an individual approved by the Commission under subsection (3) as an approved person for the purpose of being served by the Commission with notices and decisions for the scheme; and
- (b) the Commission is informed of particulars-
 - (i) subject to subparagraph (ii), of the current contact details of the approved person referred to in paragraph (a), including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address of the approved person;
 - (ii) where there is any change in the contact details referred to in subparagraph (i), of the change, within 14 days after the change takes place.
- (3) For the purposes of subsection (2)(a), on an application by any person to the Commission, the Commission may, where it considers appropriate, approve any individual nominated in the application in respect of a collective investment scheme as an approved person for the purpose of being served by the Commission with notices and decisions for the scheme, and may, by notice in writing served on the person, withdraw the approval.
- (4) The Commission may at any time, by notice in writing served on the approved person for a collective investment scheme, amend or revoke any of the conditions (other than the condition specified in subsection (2)) imposed, or impose new conditions, in respect of the authorization granted under subsection (1) in respect of the scheme.
- (5) Without limiting any other ground on which the Commission may refuse to authorize any collective investment scheme under subsection (1), the Commission may refuse to do so where it is not satisfied that the authorization is in the interest of the investing public.
- (6) An application made pursuant to subsection (1) or (3) shall be accompanied by such information and documents as the Commission requires.
- (7) Where the Commission refuses to authorize a collective investment scheme, or to approve an individual as an approved person, pursuant to subsection (1) or (3), it shall by notice in writing notify the person making the application in question of the decision and the reasons for which it is made.
- (8) The Commission may publish in such manner as it considers appropriate particulars of any collective investment scheme authorized under subsection (1).
- (9) Particulars published under subsection (8) are not subsidiary legislation.

104A. Commission may authorize structured products

- (1) On an application to the Commission, the Commission may, where it considers appropriate, authorize any structured product, subject to the condition specified in subsection (2) and to any other conditions it considers appropriate.
- (2) It shall be a condition of authorization of a structured product under subsection (1) that at any time when the product is authorized-



- (a) there is an individual approved by the Commission under subsection (3) as an approved person for the purpose of being served by the Commission with notices and decisions for the product; and
- (b) the Commission is informed of particulars-
 - (i) subject to subparagraph (ii), of the current contact details of the approved person referred to in paragraph (a), including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address of the approved person;
 - (ii) where there is any change in the contact details referred to in subparagraph (i), of the change, within 14 days after the change takes place.
- (3) For the purposes of subsection (2)(a), on an application by any person to the Commission, the Commission may, where it considers appropriate, approve any individual nominated in the application in respect of a structured product as an approved person for the purpose of being served by the Commission with notices and decisions for the product, and may, by notice in writing served on the person, withdraw the approval.
- (4) The Commission may at any time, by notice in writing served on the approved person for a structured product, amend or revoke any of the conditions (other than the condition specified in subsection (2)) imposed, or impose new conditions, in respect of the authorization granted under subsection (1) in respect of the product.
- (5) Without limiting any other ground on which the Commission may refuse to authorize any structured product under subsection (1), the Commission may refuse to do so where it is not satisfied that the authorization is in the interest of the investing public.
- (6) An application made pursuant to subsection (1) or (3) shall be accompanied by such information and documents as the Commission requires.
- (7) Where the Commission refuses to authorize a structured product, or to approve an individual as an approved person, pursuant to subsection (1) or (3), it shall by notice in writing notify the person making the application in question of the decision and the reasons for which it is made.
- (8) The Commission may publish in such manner as it considers appropriate particulars of any structured product authorized under subsection (1).
- (9) Particulars published under subsection (8) are not subsidiary legislation.

105 Commission may authorize issue of advertisements, invitations or documents

- (1) On an application to the Commission, the Commission may, where it considers appropriate, authorize the issue of any advertisement, invitation or document which is or contains an invitation to do any act referred to in section 103(1)(a) or (b), subject to the condition specified in subsection (2) and to any other conditions it considers appropriate, including conditions on the matter to which the advertisement, invitation or document relates.
- (2) It shall be a condition of authorization of the issue of any advertisement, invitation or document under subsection (1) that at any time when the issue is authorized-



- (a) there is an individual approved by the Commission under subsection (3) as an approved person for the purpose of being served by the Commission with notices and decisions for the issue; and
- (b) the Commission is informed of particulars-
 - (i) subject to subparagraph (ii), of the current contact details of the approved person referred to in paragraph (a), including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address of the approved person;
 - (ii) where there is any change in the contact details referred to in subparagraph (i), of the change, within 14 days after the change takes place.
- (3) For the purposes of subsection (2)(a), on an application by any person to the Commission, the Commission may, where it considers appropriate, approve any individual nominated in the application in respect of the issue of any advertisement, invitation or document as an approved person for the purpose of being served by the Commission with notices and decisions for the issue, and may, by notice in writing served on the person, withdraw the approval.
- (4) The Commission may at any time, by notice in writing served on the approved person for the issue of any advertisement, invitation or document, amend or revoke any of the conditions (other than the condition specified in subsection (2)) imposed, or impose new conditions, in respect of the authorization granted under subsection (1) in respect of the issue.
- (5) Without limiting any other ground on which the Commission may refuse to authorize the issue of any advertisement, invitation or document under subsection (1), the Commission may refuse to do so where it is not satisfied that the matter to which the advertisement, invitation or document relates is in the interest of the investing public.
- (6) An application made pursuant to subsection (1) or (3) shall be accompanied by such information and documents as the Commission requires.
- (7) Where the Commission refuses to authorize the issue of any advertisement, invitation or document, or to approve an individual as an approved person, pursuant to subsection (1) or (3), it shall by notice in writing notify the person making the application in question of the decision and the reasons for which it is made.

106 Withdrawal of authorization under section 104, [104A](#) or 105, etc

- (1) Subject to subsection (5), where, in relation to an authorization of a collective investment scheme under section 104, [an authorization of a structured product under section 104A](#) or an authorization of the issue of an advertisement, invitation or document under section 105, the Commission decides that-
 - (a) any information provided to the Commission pursuant to section 104(6), [104A\(6\)](#) or 105(6) (as the case may be) was at the time when it was provided false or misleading in a material particular;
 - (b) any of the conditions imposed in respect of the authorization under section 104, [104A](#) or 105 (as the case may be) are not being complied with;



- (c) any information provided to the Commission in purported compliance with any of the conditions imposed in respect of the authorization under section 104, 104A or 105 (as the case may be) was at the time when it was provided false or misleading in a material particular; or
- (d) it is desirable to withdraw the authorization in order to protect the interest of the investing public,

the Commission may withdraw the authorization.

- (2) Subject to subsection (3), the Commission shall, upon a request in writing made by an approved person for a collective investment scheme, a structured product or the issue of an advertisement, invitation or document to withdraw the authorization of the scheme, product or of the issue (as the case may be), withdraw the authorization.
- (3) Subject to subsection (5), the Commission may refuse to withdraw an authorization of a collective investment scheme, a structured product or of the issue of an advertisement, invitation or document under subsection (2) where it considers that-
 - (a) in the case of an authorization of a collective investment scheme or a structured product, it is in the public interest that any matter concerning the scheme or product should be investigated before the authorization is withdrawn under subsection (2); or
 - (b) the withdrawal of the authorization would not be in the interest of the investing public.
- (4) Subject to subsection (5), where the Commission withdraws an authorization under subsection (1) or (2), it may impose such conditions on the withdrawal of the authorization as it considers appropriate.
- (5) The Commission shall not-
 - (a) withdraw an authorization of a collective investment scheme, a structured product or of the issue of an advertisement, invitation or document under subsection (1);
 - (b) refuse to withdraw an authorization of a collective investment scheme, a structured product or of the issue of an advertisement, invitation or document under subsection (3); or
 - (c) impose any conditions on the withdrawal of an authorization of a collective investment scheme, a structured product or of the issue of an advertisement, invitation or document under subsection (4),

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

- (6) Where the Commission-
 - (a) withdraws an authorization of a collective investment scheme, a structured product or of the issue of an advertisement, invitation or document under subsection (1);
 - (b) withdraws an authorization of a collective investment scheme, a structured product or of the issue of an advertisement, invitation or document under subsection (2);



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

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

- (7) Where the Commission withdraws an authorization under subsection (1) or (2), it may publish notice of the withdrawal and the reasons therefor in such manner as it considers appropriate.
- (8) A notice or any other matter published under subsection (7) is not subsidiary legislation.

107 Offence to fraudulently or recklessly induce others to invest money

- (1) A person commits an offence if he makes any fraudulent misrepresentation or reckless misrepresentation for the purpose of inducing another person-
 - (a) to enter into or offer to enter into-
 - ~~(i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or~~
 - ~~(ii) a regulated investment agreement; or~~
 - (b) to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme.
- (2) A person who commits an offence under subsection (1) is liable-
 - (a) on conviction on indictment to a fine of \$1000000 and to imprisonment for 7 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (3) For the purposes of this section-
 - (a) "fraudulent misrepresentation" (欺詐的失實陳述) means-
 - (i) any statement which, at the time when it is made, is to the knowledge of its maker false, misleading or deceptive;
 - (ii) any promise which, at the time when it is made, its maker has no intention of fulfilling, or is to the knowledge of its maker not capable of being fulfilled;
 - (iii) any forecast which, at the time when it is made, is to the knowledge of its maker not justified on the facts then known to him; or
 - (iv) any statement or forecast from which, at the time when it is made, its maker intentionally omits a material fact, with the result that-
 - (A) in the case of the statement, the statement is rendered false, misleading or deceptive; or



- (B) in the case of the forecast, the forecast is rendered misleading or deceptive;
- (b) "reckless misrepresentation" (罔顧實情的失實陳述) means-
 - (i) any statement which, at the time when it is made, is false, misleading or deceptive and is made recklessly;
 - (ii) any promise which, at the time when it is made, is not capable of being fulfilled and is made recklessly;
 - (iii) any forecast which, at the time when it is made, is not justified on the facts then known to its maker and is made recklessly; or
 - (iv) any statement or forecast from which, at the time when it is made, its maker recklessly omits a material fact, with the result that-
 - (A) in the case of the statement, the statement is rendered false, misleading or deceptive; or
 - (B) in the case of the forecast, the forecast is rendered misleading or deceptive.

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

- (1) Where a person makes any fraudulent misrepresentation, reckless misrepresentation or negligent misrepresentation by which another person is induced-
 - (a) to enter into or offer to enter into-
 - ~~(i) — an agreement to acquire, dispose of, subscribe for or underwrite securities; or~~
 - ~~(ii) — a regulated investment agreement; or~~
 - (b) to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme,

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

- (2) For the purposes of this section, where a company or other body corporate has made any fraudulent misrepresentation, reckless misrepresentation or negligent misrepresentation by which another person is induced to do any act referred to in subsection (1)(a) or (b), any person who was a director of the company or body corporate at the time when the misrepresentation was made shall, unless it is proved that he did not authorize the making of the misrepresentation, be presumed also to have made the misrepresentation.
- (3) For the avoidance of doubt, where a court has jurisdiction to determine an action brought under subsection (1), it may, where it is, apart from this section, within its jurisdiction to entertain an application for an injunction, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.



- (4) This section does not confer a right of action in any case to which section 40 of the Companies Ordinance (Cap 32) (whether with or without reference to section 342E of that Ordinance) applies.
- (5) A person may bring an action under subsection (1) even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of a contravention of this Part.
- (6) Nothing in this section affects, limits or diminishes any rights conferred on a person, or any liabilities a person may incur, under the common law or any other enactment.
- (7) For the purposes of this section-
- (a) "fraudulent misrepresentation" (欺詐的失實陳述) means-
- (i) any statement which, at the time when it is made, is to the knowledge of its maker false, misleading or deceptive;
 - (ii) any promise which, at the time when it is made, its maker has no intention of fulfilling, or is to the knowledge of its maker not capable of being fulfilled;
 - (iii) any forecast which, at the time when it is made, is to the knowledge of its maker not justified on the facts then known to him; or
 - (iv) any statement or forecast from which, at the time when it is made, its maker intentionally omits a material fact, with the result that-
 - (A) in the case of the statement, the statement is rendered false, misleading or deceptive; or
 - (B) in the case of the forecast, the forecast is rendered misleading or deceptive;
- (b) "reckless misrepresentation" (罔顧實情的失實陳述) means-
- (i) any statement which, at the time when it is made, is false, misleading or deceptive and is made recklessly;
 - (ii) any promise which, at the time when it is made, is not capable of being fulfilled and is made recklessly;
 - (iii) any forecast which, at the time when it is made, is not justified on the facts then known to its maker and is made recklessly; or
 - (iv) any statement or forecast from which, at the time when it is made, its maker recklessly omits a material fact, with the result that-
 - (A) in the case of the statement, the statement is rendered false, misleading or deceptive; or
 - (B) in the case of the forecast, the forecast is rendered misleading or deceptive;
- (c) "negligent misrepresentation" (疏忽的失實陳述) means-
- (i) any statement which, at the time when it is made, is false, misleading or deceptive and is made without reasonable care having been taken to ensure its accuracy;



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

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

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



- (d) in the case of an advertisement in which a person holds himself out as being prepared to carry on Type 9 regulated activity, to an intermediary licensed or registered for Type 9 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary.
- (4) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues, or has in his possession for the purposes of issue, any advertisement or document if-
- (a) the advertisement or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was receiving and issuing materials provided by others;
 - (b) the contents of the advertisement or document (as the case may be) were not, wholly or partly, devised-
 - (i) where the business was carried on by him, by himself or any officer, employee or agent of his; or
 - (ii) where the business was not carried on by him, by himself; and
 - (c) for the purposes of the issue-
 - (i) where the business was carried on by him, he or any officer, employee or agent of his; or
 - (ii) where the business was not carried on by him, he,did not select, add to, modify or otherwise exercise control over the contents of the advertisement or document (as the case may be).
- (5) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues by way of live broadcast, or has in his possession for the purposes of issue by way of live broadcast, any advertisement or document if-
- (a) the advertisement or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);
 - (b) the contents of the advertisement or document (as the case may be) were not, wholly or partly, devised-
 - (i) where he was the broadcaster, by himself or any officer, employee or agent of his; or
 - (ii) where he was not the broadcaster, by himself;
 - (c) for the purposes of the issue-
 - (i) where he was the broadcaster, he or any officer, employee or agent of his; or
 - (ii) where he was not the broadcaster, he,did not select, add to, modify or otherwise exercise control over the contents of the advertisement or document (as the case may be); and
 - (d) in relation to the broadcast-



- (i) where he was the broadcaster, he; or
- (ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster,

acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap 106) or the Broadcasting Ordinance (Cap 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster.

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

Division 3-Miscellaneous

110 Submission of information to Commission

- (1) A person that is-
 - (a) an authorized financial institution;
 - (b) an exempted body or, in the case of a wholly owned subsidiary specified in item 11 of Part 3 of Schedule 4 but incorporated outside Hong Kong, an authorized representative of that subsidiary;
 - (c) a multilateral agency or an authorized representative of that agency; or
 - (d) a bank incorporated outside Hong Kong or an authorized representative of that bank,commits an offence if he fails, within 10 business days, or such longer period as is prescribed by rules made under section 397 for the purposes of this subsection, after the issue of any advertisement, invitation or document referred to in section 103(3)(e), (ea), (f) or (g) by the authorized financial institution, the exempted body or the wholly owned subsidiary, the multilateral agency or the bank (as the case may be), to submit to the Commission such information in respect of the advertisement, invitation or document as is prescribed by the rules.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$5000 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), [104A\(2\)\(b\)](#) 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;
 - (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

PART VIII

SUPERVISION AND INVESTIGATIONS

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) 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, [104A](#) 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.

PART XVI

MISCELLANEOUS

Division 1 - Secrecy, conflict of interests, and immunity

378 Preservation of secrecy, etc.

379 Avoidance of conflict of interests

- (1) Subject to subsection (2), any member of the Commission or any person performing any function under any of the relevant provisions shall not directly or indirectly effect or cause to be effected, on his own account or for the benefit of any other person, a transaction regarding any securities, futures contract, leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme-
 - (a) which transaction he knows is or is connected with a transaction or a person that is the subject of any investigation or proceedings by the Commission under any of the relevant provisions or the subject of other proceedings under any provision of this Ordinance; or
 - (b) which transaction he knows is otherwise being considered by the Commission.
- (2) Subsection (1) does not apply to any transaction which a holder of securities effects or causes to be effected by reference to any of his rights as such holder-
 - (a) to exchange the securities or convert them to another form of securities;
 - (b) to participate in a scheme of arrangement sanctioned by the Court of First Instance under the Companies Ordinance (Cap 32);
 - (c) to subscribe for other securities or dispose of a right to subscribe for other securities;
 - (d) to charge or pledge the securities to secure the repayment of money;
 - (e) to realize the securities for the purpose of repaying money secured under paragraph (d);
or



- (f) to realize the securities in the course of performing a duty imposed by law.
- (3) Any member of the Commission or any person performing any function under any of the relevant provisions shall forthwith inform the Commission if, in the course of performing any function under any such provisions, he is required to consider any matter relating to-
- (a) any securities, futures contract, leveraged foreign exchange contract, ~~regulated investment agreement~~, or an interest in any securities, futures contract, leveraged foreign exchange contract, ~~or~~ collective investment scheme ~~or regulated investment agreement~~
- (i) in which he has an interest;
- (ii) in which a corporation, in the shares of which he has an interest, has an interest; or
- (iii) which-
- (A) in the case of securities, is of or issued by the same issuer, and of the same class, as those in which he has an interest; or
- (B) in the case of a futures contract, is interests, rights or property based upon securities of or issued by the same issuer, and of the same class, as those in which he has an interest; or
- (b) a person-
- (i) by whom he is or was employed;
- (ii) of whom he is or was a client;
- (iii) who is or was his associate; or
- (iv) whom he knows is or was a client of a person with whom he is or was employed or who is or was his associate.
- (4) A person who, without reasonable excuse, contravenes subsection (1) or (3) commits an offence and is liable-
- (a) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

[380 TO 391 – NO CHANGE]

...

Division 3 - Power to make rules, and codes or guidelines, etc.

392 Financial Secretary to prescribe interests, etc. as securities, ~~and~~ futures contracts etc.

- (1) For the purposes of this Ordinance, the Financial Secretary may by notice published in the Gazette prescribe, either generally or in a particular case, that-
- (a) any interests, rights or property, whether in the form of an instrument or otherwise, or any class or description of any such interests, rights or property, is to be regarded as securities, ~~or~~ futures contracts, a currency linked instrument, a floating rate note, a money market instrument or a structured product (as the case may be);



- (b) any interests, rights or property, whether in the form of an instrument or otherwise, or any class or description of any such interests, rights or property, is not to be regarded as securities, ~~or~~ futures contracts, a currency linked instrument, a floating rate note, a money market instrument or a structured product (as the case may be).
- (2) Without limiting the generality of subsection (1), a notice under that subsection may prescribe the circumstances under which or the purposes for which any interests, rights or property, or any class or description of interests, rights or property, referred to in the notice is to be regarded, or not to be regarded, as securities, ~~or~~ futures contracts, a currency linked instrument, a floating rate note, a money market instrument or a structured product (as the case may be).

393 Financial Secretary to prescribe arrangements as collective investment schemes

[NO CHANGE TO REMAINDER OF PART XVI]



SCHEDULE 1 TO THE SFO

INTERPRETATION AND GENERAL PROVISIONS

[sections 2, 19, 66, 164, 171,
174, 175, 202 & 406 &
Schedule 9]

PART 1

INTERPRETATION

1. Interpretation of this Ordinance

In this Ordinance, unless otherwise defined or excluded or the context otherwise requires-
"accredited" (隸屬) means accredited to a licensed corporation with the Commission's approval under section 122 of this Ordinance;

"Advisory Committee" (諮詢委員會) means the Advisory Committee referred to in section 7 of this Ordinance;

"articles" (章程細則), in relation to a company, means its articles as defined in section 2(1) of the Companies Ordinance (Cap 32);

"associate" (有聯繫者), in relation to a person, means-

- (a) the spouse, or any minor child (natural or adopted) or minor step-child, of the person;
- (b) any corporation of which the person is a director;
- (c) any employee or partner of the person;
- (d) the trustee of a trust of which the person, his spouse, minor child (natural or adopted) or minor stepchild, is a beneficiary or a discretionary object;
- (e) another person in accordance with whose directions or instructions the person is accustomed or obliged to act;
- (f) another person accustomed or obliged to act in accordance with the directions or instructions of the person;
- (g) a corporation in accordance with the directions or instructions of which, or the directions or instructions of the directors of which, the person is accustomed or obliged to act;
- (h) a corporation which is, or the directors of which are, accustomed or obliged to act in accordance with the directions or instructions of the person;
- (i) a corporation at general meetings of which the person, either alone or together with another, is directly or indirectly entitled to exercise or control the exercise of 33% or more of the voting power;
- (j) a corporation of which the person controls the composition of the board of directors;
- (k) where the person is a corporation-
 - (i) each of its directors and its related corporations and each director or employee of any of its related corporations; and
 - (ii) a pension fund, provident fund or employee share scheme of the corporation or of a related corporation of the corporation;
- (l) without limiting the circumstances in which paragraphs (a) to (k) apply, in circumstances concerning the securities of or other interest in a corporation, or rights arising out of the holding of such securities or such interest, any other person with whom the person has an agreement or arrangement-
 - (i) with respect to the acquisition, holding or disposal of such securities or such interest; or
 - (ii) under which they undertake to act together in exercising their voting power at general meetings of the corporation;



- "associated entity" (有聯繫實體), in relation to an intermediary, means a company, or a non-Hong Kong company complying with the provisions of Part XI of the Companies Ordinance (Cap 32) relating to the registration of documents, which-
- (a) is in a controlling entity relationship with the intermediary; and
 - (b) receives or holds in Hong Kong client assets of the intermediary;
- "auditor" (核數師) means a certified public accountant (practising) as defined in the Professional Accountants Ordinance (Cap 50), or such other person as is prescribed by rules made under section 397 of this Ordinance for the purposes of this definition; (Amended 23 of 2004 s. 56)
- "authorized automated trading services" (認可自動化交易服務) means automated trading services which a person is authorized to provide under section 95(2) of this Ordinance;
- "authorized financial institution" (認可財務機構) means an authorized institution as defined in section 2(1) of the Banking Ordinance (Cap 155);
- "automated trading services" (自動化交易服務) has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance;
- "bank" (銀行) means any institution carrying on business similar to-
- (a) the banking business within the meaning of the Banking Ordinance (Cap 155) as carried on by an authorized financial institution; or
 - (b) the business of taking deposits within the meaning of that Ordinance as carried on by an authorized financial institution,
- whether it is an authorized financial institution or not, and "banker" (銀行) shall be construed accordingly;
- "bank incorporated outside Hong Kong" (在香港以外地方成立為法團的銀行) means a bank incorporated outside Hong Kong that is not an authorized financial institution;
- "banker's books" (銀行簿冊) includes-
- (a) books of a banker;
 - (b) cheques, orders for the payment of money, bills of exchange and promissory notes in the possession of a banker;
 - (c) securities in the possession of a banker, whether as a pledge or otherwise; and
 - (d) any material in which information is recorded (however compiled or stored, and whether recorded in a legible form or recorded otherwise than in a legible form but is capable of being reproduced in a legible form) and which is used in the ordinary course of business of a bank;
- "books" (簿冊) includes-
- (a) accounts and any accounting information; and
 - (b) in the case of a banker, any banker's books,
- however compiled or stored, and whether recorded in a legible form or recorded otherwise than in a legible form but is capable of being reproduced in a legible form;
- "broadcast" (廣播), in relation to any material (however described), includes having the information contained in the material broadcast;
- "broadcaster" (廣播業者) means a person who lawfully-
- (a) establishes and maintains a broadcasting service within the meaning of Part IIIA of the Telecommunications Ordinance (Cap 106); or
 - (b) provides a broadcasting service as defined in section 2(1) of the Broadcasting Ordinance (Cap 562);
- "business day" (營業日) means a day other than-
- (a) a public holiday; and
 - (b) a gale warning day or a black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap 1);
- "certificate of deposit" (存款證) means a document relating to money, in any currency, which has been deposited with the issuer or some other person, being a document which recognizes an obligation to pay a stated amount to bearer or to order, with or without interest, and being a document by the



delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable (and, in the case of any such document which is a prescribed instrument by virtue of paragraph (a) of the definition of "prescribed instrument" in section 137B(1) of the Banking Ordinance (Cap 155), such document includes any right or interest referred to in paragraph (b) of that definition in respect of such document);

"certified public accountant" (會計師) means a certified public accountant as defined in section 2 of the Professional Accountants Ordinance (Cap 50); (Replaced 23 of 2004 s. 56)

"charge" (押記) includes any form of security, including a mortgage;

"clearing house" (結算所) means a person-

- (a) whose activities or objects include the provision of services for the clearing and settlement of transactions in securities effected on a recognized stock market or subject to the rules of a recognized exchange company;
- (b) whose activities or objects include the provision of services for-
 - (i) the clearing and settlement of transactions in futures contracts; or
 - (ii) the day-to-day adjustment of the financial position of futures contracts, effected on a recognized futures market or subject to the rules of a recognized exchange company; or
- (c) who guarantees the settlement of any such transactions as are referred to in paragraph (a) or (b),

but does not include a corporation operated by or on behalf of the Government;

"clearing participant" (結算所參與者) means a person

- (a) who, in accordance with the rules of a recognized clearing house, may participate in one or more of the services provided by the clearing house in its capacity as a clearing house; and
- (b) whose name is entered in a list, roll or register kept by that recognized clearing house as a person who may participate in one or more of the services provided by that clearing house;

"client" (客戶), in relation to an intermediary, means a person for whom the intermediary provides a service the provision of which constitutes a regulated activity, and-

- (a) includes another intermediary that-
 - (i) deposits securities;
 - (ii) deposits money; or
 - (iii) deposits any property as collateral, with the first-mentioned intermediary;
- (b) in connection with a leveraged foreign exchange contract, does not include a recognized counterparty;

"client assets" (客戶資產) means-

- (a) client securities and collateral; and
- (b) client money;

"client collateral" (客戶抵押品) means-

- (a) securities collateral; and
- (b) other collateral;

"client money" (客戶款項)-

- (a) in relation to a licensed corporation, means any money-
 - (i) received or held by or on behalf of the licensed corporation; or
 - (ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the licensed corporation, which is so received or held on behalf of a client of the licensed corporation or in which a client of the licensed corporation has a legal or equitable interest, and includes any accretions thereto whether as capital or income; or
- (b) in relation to a registered institution, means any money-



- (i) received or held by or on behalf of the registered institution, in the course of the conduct of any regulated activity for which the registered institution is registered; or
 - (ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the registered institution, in relation to such conduct of the regulated activity,
- which is so received or held on behalf of a client of the registered institution or in which a client of the registered institution has a legal or equitable interest, and includes any accretions thereto whether as capital or income;

"client securities" (客戶證券)-

- (a) in relation to a licensed corporation, means any securities (other than securities collateral)-
 - (i) received or held by or on behalf of the licensed corporation; or
 - (ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the licensed corporation,which are so received or held on behalf of a client of the licensed corporation or in which a client of the licensed corporation has a legal or equitable interest; or
- (b) in relation to a registered institution, means any securities (other than securities collateral)-
 - (i) received or held by or on behalf of the registered institution, in the course of the conduct of any regulated activity for which the registered institution is registered; or
 - (ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the registered institution, in relation to such conduct of the regulated activity,which are so received or held on behalf of a client of the registered institution or in which a client of the registered institution has a legal or equitable interest;

"client securities and collateral" (客戶證券及抵押品) means-

- (a) client securities; and
- (b) client collateral;

"collective investment scheme" (集體投資計劃) means-

- (a) arrangements in respect of any property
 - (i) under which the participating persons do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management;
 - (ii) under which-
 - (A) the property is managed as a whole by or on behalf of the person operating the arrangements;
 - (B) the contributions of the participating persons and the profits or income from which payments are made to them are pooled; or
 - (C) the property is managed as a whole by or on behalf of the person operating the arrangements, and the contributions of the participating persons and the profits or income from which payments are made to them are pooled; and
 - (iii) the purpose or effect, or pretended purpose or effect, of which is to enable the participating persons, whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise, to participate in or receive-
 - (A) profits, income or other returns represented to arise or to be likely to arise from the acquisition, holding, management or disposal of the property or any part of the property, or sums represented to be paid or to be likely to be paid out of any such profits, income or other returns; or



- (B) a payment or other returns arising from the acquisition, holding or disposal of, the exercise of any right in, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property; or
- (b) arrangements which are arrangements, or are of a class or description of arrangements, prescribed by notice under section 393 of this Ordinance as being regarded as collective investment schemes in accordance with the terms of the notice,
- but does not include-
- (i) arrangements operated by a person otherwise than by way of business;
 - (ii) arrangements under which each of the participating persons is a corporation in the same group of companies as the person operating the arrangements;
 - (iii) arrangements under which each of the participating persons is a bona fide employee or former employee of a corporation in the same group of companies as the person operating the arrangements, or a spouse, widow, widower, minor child (natural or adopted) or minor step-child of such employee or former employee;
 - (iv) franchise arrangements under which the franchisor or franchisee earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the goodwill attached to it;
 - (v) arrangements under which money is taken by a solicitor from his client, or as a stakeholder, acting in his professional capacity in the ordinary course of his practice;
 - (vi) arrangements made for the purposes of any fund or scheme maintained by the Commission, or by a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, under any provision of this Ordinance for the purpose of providing compensation in the event of default by an exchange participant or a clearing participant;
 - (vii) arrangements made by any credit union in accordance with the objects thereof;
 - (viii) arrangements made for the purposes of any chit-fund permitted to operate under the Chit-Fund Businesses (Prohibition) Ordinance (Cap 262);
 - (ix) arrangements made for the purposes of the Exchange Fund established by the Exchange Fund Ordinance (Cap 66);
 - (x) arrangements which are arrangements, or are of a class or description of arrangements, prescribed by notice under section 393 of this Ordinance as not being regarded as collective investment schemes in accordance with the terms of the notice;

"Commission" (證監會) means the Securities and Futures Commission referred to in section 3(1) of this Ordinance;

"Commissioner of the Independent Commission Against Corruption" (廉政專員) means the person who holds the office of the Commissioner of the Independent Commission Against Corruption pursuant to section 5 of the Independent Commission Against Corruption Ordinance (Cap 204); (Amended 14 of 2003 s. 24)

"company" (公司) means a company as defined in section 2(1) of the Companies Ordinance (Cap 32);

"compensation fund" (賠償基金) means the Investor Compensation Fund established under section 236 of this Ordinance;

"conduct" (行爲) includes any act or omission, and any series of acts or omissions;

"constitution" (章程), in relation to a corporation, including a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, means-

- (a) where the corporation is a company, the memorandum and articles of the corporation; or
- (b) in any other case, any other instrument providing for the constitution of the corporation;

"controlling entity" (控權實體), in relation to a corporation, means a person who, either alone or with any of his associates-

- (a) is entitled to exercise or control the exercise of not less than-
 - (i) subject to subparagraph (ii), 20%; or



- (ii) where any other percentage is prescribed by rules made under section 397 of this Ordinance for the purposes of this definition, such other percentage, of the voting power at general meetings of the corporation;
- (b) has the right to nominate any of the directors of the corporation; or
- (c) has an interest in shares carrying the right to-
 - (i) veto any resolution; or
 - (ii) amend, modify, limit or add conditions to any resolution, at general meetings of the corporation;

"controlling entity relationship" (控權實體關係), in relation to a corporation, means its relationship with an intermediary by virtue of-

- (a) the intermediary being a controlling entity of the corporation;
- (b) the corporation being a controlling entity of the intermediary; or
- (c) another person, who is a controlling entity of the corporation, being also a controlling entity of the intermediary;

"corporation" (法團) means a company or other body corporate incorporated either in Hong Kong or elsewhere, but does not include a company or other body corporate which is prescribed by rules made under section 397 of this Ordinance for the purposes of this definition as being exempted from the provisions of this Ordinance, or to the extent that it is prescribed by rules so made as being exempted from any provision of this Ordinance;

"court" (法庭、法院) includes a magistrate and a tribunal;

"credit union" (儲蓄互助社) means a credit union registered under the Credit Unions Ordinance (Cap 119);

"currency linked instrument" (貨幣掛鈎票據) means -

- (a) any instrument where all of the amount due under the instrument is payable by reference to changes in the level of any currency exchange rate, or basket of currency exchange rates; or
- (b) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as being regarded as a currency linked instrument in accordance with the terms of the notice,

but does not include interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as not being regarded as a currency linked instrument in accordance with the terms of the notice;

"data material" (數據材料) means a document or other material used with or produced by any information system;

"dealing" (交易) -

- (a) in relation to securities, means, whether as principal or agent, making or offering to make an agreement with another person, or inducing or attempting to induce another person, to enter into or to offer to enter into an agreement-
 - (i) for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or
 - (ii) the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or
- (b) in relation to futures contracts, means, whether as principal or agent-
 - (i) making or offering to make an agreement with another person to enter into, or to acquire or dispose of, a futures contract;
 - (ii) inducing or attempting to induce another person to enter into, or to offer to enter into, a futures contract; or
 - (iii) inducing or attempting to induce another person to acquire or dispose of a futures contract;



"debenture" (債權證) includes debenture stocks, bonds, and other debt securities of a corporation, whether constituting a charge on the assets of the corporation or not;

"defalcation" (虧空) means misapplication, including misappropriation, of any property;

"director" (董事) includes a shadow director and any person occupying the position of director by whatever name called;

"document" (文件) includes any register and books, any tape recording and any form of input or output into or from an information system, and any other document or similar material (whether produced mechanically, electronically, magnetically, optically, manually or by any other means);

"exchange participant" (交易所參與者) means a person-

- (a) who, in accordance with the rules of a recognized exchange company, may trade through that exchange company or on a recognized stock market or a recognized futures market operated by that exchange company; and
- (b) whose name is entered in a list, roll or register kept by that recognized exchange company as a person who may trade through that exchange company or on a recognized stock market or a recognized futures market operated by that exchange company;

"executive director" (執行董事), in relation to the Commission, means the chief executive officer of the Commission or any other person who is appointed as an executive director of the Commission under section 1 of Part 1 of Schedule 2 to this Ordinance (whether or not acting in any other capacity under that Part); (Amended 15 of 2006 s. 5)

"executive officer" (主管人員)-

- (a) in relation to a licensed corporation, means a responsible officer of the licensed corporation;
- (b) in relation to a registered institution, means a person who is an executive officer of the registered institution under the Banking Ordinance (Cap 155); or
- (c) in relation to an associated entity of an intermediary, means any director of the associated entity who is responsible for directly supervising the receiving or holding by the associated entity of client assets of the intermediary;

"fee" (費用) includes a charge;

"financial accommodation" (財務通融) means a loan or other arrangement under which a person is or is to be provided with credit, whether directly or through a third party, and in particular includes an overdraft, a discounted negotiable instrument, a guarantee, a forbearance from enforcing any debt that in substance is a loan, and also includes an agreement to secure the payment or repayment of any such accommodation;

"financial product" (金融產品) means-

- (a) any securities;
- (b) any futures contract;
- (c) any collective investment scheme;
- (d) any leveraged foreign exchange contract;

"financial resources rules" (財政資源規則) means rules made under section 145 of this Ordinance;

"financial year" (財政年度)-

- (a) in relation to the Commission, means the financial year referred to in section 13(1) of this Ordinance; or
- (b) in relation to an intermediary, or an associated entity of an intermediary, means-
 - (i) the financial year in respect of which notification is given to the Commission under section 155(1) of this Ordinance or, where an approval is granted under section 155(3)(a) of this Ordinance, the financial year in respect of which the approval is granted;
 - (ii) the financial year in respect of which notification is given to the Monetary Authority under section 59B(1) of the Banking Ordinance (Cap 155) or, where an approval is granted under section 59B(3)(a) of that Ordinance, the financial year in respect of which the approval is granted; or



- (iii) in any other case, a period of 12 consecutive months ending on 31 March in a calendar year;

"floating rate note" (浮息票據) means –

- (a) debt securities under which the holder is paid interest at pre-determined intervals at a rate equal to –
 - (i) a money market reference rate that is widely quoted; and
 - (ii) a fixed amount;
- (b) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as being regarded as a floating rate note in accordance with the terms of the notice,

but does not include interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as not being regarded as a floating rate note in accordance with the terms of the notice;

"function" (職能) includes power and duty;

"futures contract" (期貨合約) means-

- (a) a contract or an option on a contract made under the rules or conventions of a futures market;
- (b) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as being regarded as futures contracts in accordance with the terms of the notice,

but does not include interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as not being regarded as futures contracts in accordance with the terms of the notice;

"Futures Exchange Company" (期交所) means the company incorporated under the Companies Ordinance (Cap 32) and registered under that Ordinance by the name Hong Kong Futures Exchange Limited;

"futures market" (期貨市場) means a place at which facilities are provided for persons to negotiate or conclude sales and purchases of, or for bringing together on a regular basis sellers and purchasers of-

- (a) contracts the effect of which is-
 - (i) that one party agrees to deliver to the other party at an agreed future time an agreed property, or an agreed quantity of a property, at an agreed price; or
 - (ii) that the parties will make an adjustment between them at an agreed future time according to whether at that time an agreed property is worth more or less or an index or other factor stands at a higher or lower level than a value or level agreed at the time of making of the contract; or
- (b) options on contracts of the kind described in paragraph (a),

where-

- (i) the contracts or options of the kind described in paragraph (a) or (b) are novated or guaranteed by a central counterparty under the rules or conventions of the market on which they are traded; or
- (ii) the contractual obligations under the contracts or options of the kind described in paragraph (a) or (b) are normally discharged before the contractual expiry date under the rules or conventions of the market on which they are traded,

but does not include the office of a recognized clearing house;

"group of companies" (公司集團) means any 2 or more corporations one of which is the holding company of the other or others (as the case may be);

"hold" (持有), in relation to any property, includes-

- (a) possession of the property;



- (b) being registered or otherwise recorded, as having title to or being entitled to receive the property, in any register or other record (however compiled or stored) which is established or created for the purpose of identifying persons having title to or being entitled to receive any property; and
- (c) in the case of a person carrying on business, the person being in a position to transfer the property to himself or otherwise receive the benefit of the property-
 - (i) where another person has a legal or equitable interest in the property;
 - (ii) where there is a connection between the property and the business which is carried on by the person; and
 - (iii) regardless of whether it would be lawful or unlawful for the person to transfer the property to himself or otherwise receive the benefit of the property,

but does not include, in the case of a cheque or other order made payable to any person, the possession of the cheque or other order during the course of dispatching or delivering it to that person or any other person on behalf of that person;

"holding company" (控股公司), in relation to a corporation, means any other corporation of which it is a subsidiary;

"incorporated" (成立、成立為法團) includes formed or established, by whatever means;

"information" (資訊、資料、消息) includes data, text, images, sound codes, computer programmes, software and databases, and any combination thereof;

"information system" (資訊系統) means an information system as defined in section 2(1) of the Electronic Transactions Ordinance (Cap 553);

"Insurance Authority" (保險業監督) means the Insurance Authority appointed under section 4 of the Insurance Companies Ordinance (Cap 41);

"insurer" (保險人) means an insurer as defined in section 2(1) of the Insurance Companies Ordinance (Cap 41);

"intermediary" (中介人) means a licensed corporation or a registered institution;

"judicial or other proceedings" (司法或其他法律程序) means any legal proceedings, whether in the nature of judicial proceedings or otherwise;

"legal officer" (律政人員) means a legal officer as defined in section 2 of the Legal Officers Ordinance (Cap 87);

"leveraged foreign exchange contract" (槓桿式外匯交易合約) has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance;

"leveraged foreign exchange trading" (槓桿式外匯交易) has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance;

"licence" (牌、牌照) means a licence granted under section 116, 117, 120 or 121 of this Ordinance, and

"licensed" (獲發牌、持牌) shall be construed accordingly;

"licensed corporation" (持牌法團) means a corporation which is granted a licence under section 116 or 117 of this Ordinance;

"licensed person" (持牌人) means a licensed corporation or a licensed representative;

"licensed representative" (持牌代表) means an individual who is granted a licence under section 120 or 121 of this Ordinance;

"liquidator" (清盤人) includes a provisional liquidator;

"listed" (上市) means listed on a recognized stock market, and for the purposes of this definition-

- (a) a corporation shall be regarded as listed if any of its securities are listed;
- (b) securities shall be regarded as listed when a recognized exchange company has, on the application of the corporation which issued them, or on the application of a holder of them, agreed to allow, subject to the requirements of this Ordinance, dealings in those securities to take place on a recognized stock market, and shall continue to be so regarded during a period of suspension of dealings in those securities on the recognized stock market;



- "listing" (上市), in relation to securities, means the process by which the securities are listed;
- "live broadcast" (直播), in relation to any material (however described), means having the material broadcast without its being recorded in advance;
- "Mandatory Provident Fund Schemes Authority" (積金局) means the Mandatory Provident Fund Schemes Authority established under section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap 485);
- "market contract" (市場合約) means a contract subject to the rules of a recognized clearing house entered into by the clearing house with a clearing participant pursuant to a novation which is both in accordance with those rules and for the purposes of the clearing and settlement of transactions in securities or futures contracts effected on a recognized stock market or a recognized futures market or subject to the rules of a recognized exchange company;
- "market misconduct" (市場失當行爲) has the meaning assigned to it by section 245(1) of this Ordinance;
- "Market Misconduct Tribunal" (市場失當行爲審裁處) means the Market Misconduct Tribunal established by section 251 of this Ordinance;
- "member" (成員), in relation to the Commission, means- (Amended 15 of 2006 s. 5)
- (a) the chairman of the Commission; or
 - (b) the chief executive officer or any other executive director or non-executive director of the Commission (whether or not acting in any other capacity under Part 1 of Schedule 2 to this Ordinance); (Amended 15 of 2006 s. 5)
- "memorandum" (章程大綱), in relation to a company, means its memorandum as defined in section 2(1) of the Companies Ordinance (Cap 32);
- "minor" (未成年), in relation to a person, means not having attained the age of 18 years;
- "mifeasance" (不當行爲) means the performance of an otherwise lawful act in a wrongful manner;
- "Monetary Authority" (金融管理專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap 66);
- "money laundering activities" (洗錢活動) means activities intended to have the effect of making any property-
- (a) which is the proceeds obtained from the commission of an offence under the laws of Hong Kong, or of any conduct which if occurred in Hong Kong would constitute an offence under the laws of Hong Kong; or
 - (b) which in whole or in part, directly or indirectly, represents such proceeds, not to appear to be or so represent such proceeds;
- "money market instrument" (貨幣市場票據) means -
- (a) any instrument where all of the amount due under the instrument is payable by reference to changes in the level of any interest rate, or a basket of interest rates; or
 - (b) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as being regarded as a money market instrument in accordance with the terms of the notice.
- but does not include interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as not being regarded as a money market instrument in accordance with the terms of the notice;
- "multilateral agency" (多邊機構) means a body specified in Part 4;
- "non-executive director" (非執行董事), in relation to the Commission, means a person who is appointed as a nonexecutive director of the Commission under section 1 of Part 1 of Schedule 2 to this Ordinance (whether or not acting in any other capacity under that Part); (Amended 15 of 2006 s. 5)
- "non-Hong Kong company" (非香港公司) has the meaning assigned to it by section 332 of the Companies Ordinance (Cap 32); (Added 30 of 2004 s. 3)



"number" (數目), in relation to shares which in the context can be construed to include stock, includes amount;

"officer" (高級人員)-

- (a) in relation to a corporation, means a director, manager or secretary of, or any other person involved in the management of, the corporation; or
- (b) in relation to an unincorporated body, means any member of the governing body of the unincorporated body;

"Official Receiver" (破產管理署署長) means the Official Receiver appointed under section 75 of the Bankruptcy Ordinance (Cap 6);

"Ombudsman" (申訴專員) means The Ombudsman referred to in section 3(1) of The Ombudsman Ordinance (Cap 397);

"other collateral" (其他抵押品)-

- (a) in relation to a licensed corporation, means any property (other than securities or money)-
 - (i) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, the licensed corporation; or
 - (ii) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, any other intermediary or person, which is so deposited or provided-
 - (A) as security for the provision by the licensed corporation of financial accommodation; or
 - (B) to facilitate the provision by the licensed corporation of financial accommodation under an arrangement that confers on the licensed corporation a collateral interest in the property; or
- (b) in relation to a registered institution, means any property (other than securities or money)-
 - (i) deposited with, or otherwise provided by or on behalf of a client of the registered institution to, the registered institution, in the course of the conduct of any regulated activity for which the registered institution is registered; or
 - (ii) deposited with, or otherwise provided by or on behalf of a client of the registered institution to, any other intermediary or person, in relation to such conduct of the regulated activity, which is so deposited or provided-
 - (A) as security for the provision by the registered institution of financial accommodation; or
 - (B) to facilitate the provision by the registered institution of financial accommodation under an arrangement that confers on the registered institution a collateral interest in the property;

"performance" (執行), in relation to a function, includes discharge and exercise;

"possession" (管有), in relation to any matter, includes custody, control and power of or over the matter;

"Privacy Commissioner for Personal Data" (私隱專員) means the Privacy Commissioner for Personal Data established under section 5(1) of the Personal Data (Privacy) Ordinance (Cap 486);

"professional investor" (專業投資者) means-

- (a) any recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, or any person authorized to provide automated trading services under section 95(2) of this Ordinance;
- (b) any intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong;
- (c) any authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;



- (d) any insurer authorized under the Insurance Companies Ordinance (Cap 41), or any other person carrying on insurance business and regulated under the law of any place outside Hong Kong;
- (e) any scheme which-
 - (i) is a collective investment scheme authorized under section 104 of this Ordinance; or
 - (ii) is similarly constituted under the law of any place outside Hong Kong and, if it is regulated under the law of such place, is permitted to be operated under the law of such place, or any person by whom any such scheme is operated;
- (f) any registered scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap 485), or its constituent fund as defined in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap 485 sub. leg. A), or any person who, in relation to any such registered scheme, is an approved trustee or service provider as defined in section 2(1) of that Ordinance or who is an investment manager of any such registered scheme or constituent fund;
- (g) any scheme which-
 - (i) is a registered scheme as defined in section 2(1) of the Occupational Retirement Schemes Ordinance (Cap 426); or
 - (ii) is an offshore scheme as defined in section 2(1) of that Ordinance and, if it is regulated under the law of the place in which it is domiciled, is permitted to be operated under the law of such place, or any person who, in relation to any such scheme, is an administrator as defined in section 2(1) of that Ordinance;
- (h) any government (other than a municipal government authority), any institution which performs the functions of a central bank, or any multilateral agency;
- (i) except for the purposes of Schedule 5 to this Ordinance, any corporation which is-
 - (i) a wholly owned subsidiary of-
 - (A) an intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong; or
 - (B) an authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;
 - (ii) a holding company which holds all the issued share capital of-
 - (A) an intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong; or
 - (B) an authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;
 - (iii) any other wholly owned subsidiary of a holding company referred to in subparagraph (ii); or
- (j) any person of a class which is prescribed by rules made under section 397 of this Ordinance for the purposes of this paragraph as within the meaning of this definition for the purposes of the provisions of this Ordinance, or to the extent that it is prescribed by rules so made as within the meaning of this definition for the purposes of any provision of this Ordinance;

"property" (財產) includes-

- (a) money, goods, choses in action and land, whether in Hong Kong or elsewhere; and



- (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a);

"prospectus" (招股章程) means prospectus as defined in section 2(1) of the Companies Ordinance (Cap 32); (Replaced 30 of 2004 s. 3)

"public" (公眾、大眾) means the public of Hong Kong, and includes any class of that public;

"purchase" (買、購買), in relation to securities, includes subscribing for or acquiring the securities, in whatever form the consideration may be;

"qualifying credit rating" (合資格信貸評級) means-

- (a) a credit rating specified in Part 5; or
- (b) any credit rating which, in the opinion of the Commission, is equivalent to a credit rating specified in Part 5;

"recognized clearing house" (認可結算所) means a company recognized as a clearing house under section 37(1) of this Ordinance;

"recognized counterparty" (認可對手方) means-

- (a) an authorized financial institution;
- (b) in relation to a particular transaction conducted by a corporation licensed for Type 3 regulated activity, another corporation which is also so licensed; or
- (c) an institution prescribed by rules made under section 397 of this Ordinance for the purposes of this definition as a recognized counterparty;

"recognized exchange company" (認可交易所) means a company recognized as an exchange company under section 19(2) of this Ordinance;

"recognized exchange controller" (認可控制人) means a company recognized as an exchange controller under section 59(2) of this Ordinance;

"recognized futures market" (認可期貨市場) means a futures market operated by a recognized exchange company;

"recognized investor compensation company" (認可投資者賠償公司) means a company recognized as an investor compensation company under section 79(1) of this Ordinance;

"recognized stock market" (認可證券市場) means a stock market operated by a recognized exchange company;

"record" (紀錄) means any record of information (however compiled or stored) and includes-

- (a) any books, deeds, contract or agreement, voucher, receipt or data material, or information which is recorded otherwise than in a legible form but is capable of being reproduced in a legible form; and
- (b) any document, disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of other equipment) of being reproduced, and any film (including a microfilm), tape or other device in which visual images are embodied so as to be capable (with or without the aid of other equipment) of being reproduced;

"registered" (註冊) means registered under section 119 of this Ordinance, and "registration" (註冊) shall be construed accordingly;

"registered institution" (註冊機構) means an authorized financial institution which is registered under section 119 of this Ordinance;

"Registrar of Companies" (公司註冊處處長) means the Registrar of Companies appointed under section 303 of the Companies Ordinance (Cap 32);

"regulated activity" (受規管活動) means any of the regulated activities specified in Part 1 of Schedule 5 to this Ordinance, and a reference to a type of regulated activity by number shall be construed as a reference to the type of regulated activity of that number as specified in that Part;

"regulated investment agreement" (受規管投資協議) means an agreement the purpose or effect, or pretended purpose or effect, of which is to provide, whether conditionally or unconditionally, to any



party to the agreement a profit, income or other returns calculated by reference to changes in the value of any property, but does not include an interest in a collective investment scheme;

"relevant provisions" (有關條文) means the provisions of-

- (a) this Ordinance;
- (b) Parts II and XII of the Companies Ordinance (Cap 32), so far as those Parts relate, directly or indirectly, to the performance of functions relating to
 - (i) prospectuses;
 - (ii) the purchase by a corporation of its own shares;
 - (iii) a corporation giving financial assistance for the acquisition of its own shares, whether or not such functions have been made the subject of a transfer order under section 25 or 68 of this Ordinance;
- (c) Parts II and XII of the Companies Ordinance (Cap 32), for the purposes only of section 213 of this Ordinance, and so far as those Parts relate, directly or indirectly, to an advertisement mentioned in section 38B(1) of that Ordinance; (Added 30 of 2004 s. 3)

"relevant share capital" (有關股本) means the issued share capital of a corporation which is of a class carrying rights to vote in all circumstances at general meetings of the corporation;

"remuneration" (報酬) includes money, any consideration, financial accommodation or benefit, whether paid, provided or supplied directly or indirectly;

"repealed Commodities Trading Ordinance" (已廢除的《商品交易條例》) means the Commodities Trading Ordinance (Cap 250) repealed under section 406 of this Ordinance;

"repealed Exchanges and Clearing Houses (Merger) Ordinance" (已廢除的《交易所及結算所(合併)條例》) means the Exchanges and Clearing Houses (Merger) Ordinance (Cap 555) repealed under section 406 of this Ordinance;

"repealed Leveraged Foreign Exchange Trading Ordinance" (已廢除的《槓桿式外匯買賣條例》) means the Leveraged Foreign Exchange Trading Ordinance (Cap 451) repealed under section 406 of this Ordinance;

"repealed Protection of Investors Ordinance" (已廢除的《保障投資者條例》) means the Protection of Investors Ordinance (Cap 335) repealed under section 406 of this Ordinance;

"repealed Securities and Futures (Clearing Houses) Ordinance" (已廢除的《證券及期貨(結算所)條例》) means the Securities and Futures (Clearing Houses) Ordinance (Cap 420) repealed under section 406 of this Ordinance;

"repealed Securities and Futures Commission Ordinance" (已廢除的《證券及期貨事務監察委員會條例》) means the Securities and Futures Commission Ordinance (Cap 24) repealed under section 406 of this Ordinance;

"repealed Securities (Disclosure of Interests) Ordinance" (已廢除的《證券(披露權益)條例》) means the Securities (Disclosure of Interests) Ordinance (Cap 396) repealed under section 406 of this Ordinance;

"repealed Securities (Insider Dealing) Ordinance" (已廢除的《證券(內幕交易)條例》) means the Securities (Insider Dealing) Ordinance (Cap 395) repealed under section 406 of this Ordinance;

"repealed Securities Ordinance" (已廢除的《證券條例》) means the Securities Ordinance (Cap 333) repealed under section 406 of this Ordinance;

"repealed Stock Exchanges Unification Ordinance" (已廢除的《證券交易所合併條例》) means the Stock Exchanges Unification Ordinance (Cap 361) repealed under section 406 of this Ordinance;

"responsible officer" (負責人員) means an individual who is approved by the Commission under section 126(1) of this Ordinance as a responsible officer of a licensed corporation;

"Risk Management Committee" (風險管理委員會), in relation to a recognized exchange controller, means the committee of that name established under section 65(1) of this Ordinance by the controller;



"rules" (規章)-

- (a) in relation to a recognized exchange company, means the rules, regulations and directions, by whatever name they may be called and wherever contained, governing-
 - (i) its exchange participants;
 - (ii) the persons who may participate in any of the services it provides;
 - (iii) the setting and levying of fees;
 - (iv) the listing of securities;
 - (v) the trading of securities or futures contracts;
 - (vi) the provision of other services; or
 - (vii) generally, its management, operations or procedures,and includes, in respect of sections 24 and 92 of this Ordinance, its constitution;
- (b) in relation to a recognized clearing house, means the rules, regulations and directions, by whatever name they may be called and wherever contained, governing-
 - (i) its clearing participants;
 - (ii) the persons who may participate in any of the services it provides;
 - (iii) the setting and levying of fees;
 - (iv) the provision of clearing and settlement services, and the suspension or withdrawal of such services;
 - (v) the provision of other services; or
 - (vi) generally, its management, operations or procedures,and includes, in respect of sections 41 and 92 of this Ordinance, its constitution;
- (c) in relation to a recognized exchange controller, means-
 - (i) its constitution; or
 - (ii) the rules, regulations and directions, by whatever name they may be called and wherever contained, governing the conduct or procedures of-
 - (A) the recognized exchange controller;
 - (B) the Risk Management Committee; or
 - (C) any person or body of persons declared in a notice under section 66(2) of this Ordinance to be a person or body of persons (as the case may be) to which this sub-subparagraph shall apply; or
- (d) in relation to a recognized investor compensation company, means-
 - (i) its constitution; or
 - (ii) the rules, regulations and directions, by whatever name they may be called and wherever contained, governing its management, operations or procedures, or its provision of services;

"securities" (證券) means-

- (a) shares, stocks, debentures, structured products, loan stocks, funds, bonds or notes of, or issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority;
- (b) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, structured products, loan stocks, funds, bonds or notes;
- (c) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
- (d) interests in any collective investment scheme;
- (e) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;
- (f) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as being regarded as securities in accordance with the terms of the notice,



but does not include-

- (i) shares or debentures of a company that is a private company within the meaning of section 29 of the Companies Ordinance (Cap 32);
- (ii) any interest in any collective investment scheme that is-
 - (A) a registered scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap 485), or its constituent fund as defined in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap 485 sub. leg. A);
 - (B) an occupational retirement scheme as defined in section 2(1) of the Occupational Retirement Schemes Ordinance (Cap 426); or
 - (C) a contract of insurance in relation to any class of insurance business specified in the First Schedule to the Insurance Companies Ordinance (Cap 41);
- (iii) any interest arising under a general partnership agreement or proposed general partnership agreement unless the agreement or proposed agreement relates to an undertaking, scheme, enterprise or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts (whether or not that person is, or is to become, a party to the agreement or proposed agreement);
- (iv) any negotiable receipt or other negotiable certificate or document evidencing the deposit of a sum of money, or any rights or interest arising under the receipt, certificate or document;
- (v) any bill of exchange within the meaning of section 3 of the Bills of Exchange Ordinance (Cap 19) and any promissory note within the meaning of section 89 of that Ordinance;
- (vi) any debenture (other than a structured product) that specifically provides that it is not negotiable or transferable;
- (vii) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as not being regarded as securities in accordance with the terms of the notice;

"Securities and Futures Appeals Tribunal" (上訴審裁處) means the Securities and Futures Appeals Tribunal established by section 216 of this Ordinance;

"securities and futures industry" (證券期貨業) means the securities and futures market and participants (other than investors) therein (including recognized exchange companies, recognized clearing houses, recognized exchange controllers, recognized investor compensation companies and persons carrying on any regulated activity), and any activities related to financial products that are carried on in such securities and futures market or by such participants;

"securities and futures market" (證券期貨市場) means any market, exchange, place or service which facilitates the bringing together on a regular basis persons who are parties to transactions related to financial products;

"securities borrowing and lending agreement" (證券借貸協議) means an agreement whereby a person borrows or lends securities pursuant to an arrangement where the borrower undertakes to return securities of the same description, or pay the equivalent value of the securities, to the lender, and includes a stock borrowing within the meaning of section 19(16) of the Stamp Duty Ordinance (Cap 117);

"securities collateral" (證券抵押品)-

- (a) in relation to a licensed corporation, means any securities-
 - (i) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, the licensed corporation; or
 - (ii) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, any other intermediary or person, which are so deposited or provided-
 - (A) as security for the provision by the licensed corporation of financial accommodation; or



- (B) to facilitate the provision by the licensed corporation of financial accommodation under an arrangement that confers on the licensed corporation a collateral interest in the securities; or
- (b) in relation to a registered institution, means any securities-
 - (i) deposited with, or otherwise provided by or on behalf of a client of the registered institution to, the registered institution, in the course of the conduct of any regulated activity for which the registered institution is registered; or
 - (ii) deposited with, or otherwise provided by or on behalf of a client of the registered institution to, any other intermediary or person, in relation to such conduct of the regulated activity,
which are so deposited or provided-
 - (A) as security for the provision by the registered institution of financial accommodation; or
 - (B) to facilitate the provision by the registered institution of financial accommodation under an arrangement that confers on the registered institution a collateral interest in the securities;

"securities margin financing" (證券保證金融資) has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance;

"served" (送達) includes given;

"shadow director" (幕後董事) means a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act, but a person shall not be regarded as a shadow director by reason only of the fact that the directors act on advice given by him in a professional capacity;

"share" (股份) means any share in the share capital of a corporation, and, except where a distinction between stock and shares is express or implied, includes stock;

"short selling order" (賣空指示)-

- (a) subject to paragraph (b), means an order to sell securities in respect of which the seller, or the person for whose benefit or on whose behalf the order is made, has a presently exercisable and unconditional right to vest the securities in the purchaser of them by virtue of having-
 - (i) under a securities borrowing and lending agreement-
 - (A) borrowed the securities; or
 - (B) obtained a confirmation from the counterparty to the agreement that the counterparty has the securities available to lend to him;
 - (ii) a title to other securities which are convertible into or exchangeable for the securities to which the order relates;
 - (iii) an option to acquire the securities to which the order relates;
 - (iv) rights or warrants to subscribe for and to receive the securities to which the order relates; or
 - (v) entered into with any other person an agreement or arrangement of a description prescribed by rules made under section 397 of this Ordinance for the purposes of this subparagraph;
- (b) in relation to paragraph (a)(ii), (iii), (iv) or (v), does not include an order where the seller, or the person for whose benefit or on whose behalf the order is made, has, at the time of placing the order, issued unconditional instructions to obtain the securities to which the order relates;

"specified debt securities" (指明債務證券) means debenture stocks, loan stocks, debentures, bonds, notes, indexed bonds, convertible debt securities, bonds with warrants, non-interest bearing debt securities and other securities or instruments acknowledging, evidencing or creating indebtedness-

- (a) which are issued or guaranteed by the Government;
- (b) which are issued by an issuer that has a qualifying credit rating for any of its debt instruments; or



(c) which are issued by any other issuer as may be approved by the Commission in writing in a particular case;

"specified futures exchange" (指明期貨交易所) means a futures exchange specified in Part 2;

"specified stock exchange" (指明證券交易所) means a stock exchange specified in Part 3;

"Stock Exchange Company" (聯交所) means the company incorporated under the Companies Ordinance (Cap 32) and registered under that Ordinance by the name The Stock Exchange of Hong Kong Limited;

"stock market" (證券市場) means a place where persons regularly meet together to negotiate sales and purchases of securities (including prices), or a place at which facilities are provided for bringing together sellers and purchasers of securities; but does not include the office of-

- (a) an exchange participant of a recognized exchange company which may operate a stock market; or
- (b) a recognized clearing house;

"structured product" (結構性產品) means any -

(a) instrument under which either or both of-

- (i) some or all of the returns or any other amounts due, or both, are payable or purport to be payable; and
- (ii) the method of settlement, whether by payment of cash or by delivery of any type of securities, commodity, property, futures contract or otherwise, is determined or purports to be determined;

by reference to one or more of the following:

- (A) changes in the value or level (as the case may be) of any type of securities, commodity, index, property, interest rate, currency exchange rate or futures contract;
- (B) changes in the value or level (as the case may be) of a basket of more than one type of securities, commodities, indices, properties, interest rates, currency exchange rates or futures contracts; or
- (C) the occurrence or non-occurrence of an event or events specified in the instrument;

(b) regulated investment agreement; or

(c) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as being regarded as a structured product in accordance with the terms of the notice, whether or not falling within subparagraphs (i) to (iv) below,

but does not include-

(i) a direct interest in any collective investment scheme;

(ii) depositary receipts;

(iii) preference shares;

(iv) a floating rate note; and

(v) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as not being regarded as a structured product in accordance with the terms of the notice;

"take-over offer" (收購要約), in relation to a corporation, means an offer made to all the holders (or all the holders other than the person making the offer and his nominees) of the shares in the corporation to acquire the shares or a specified proportion of them, or to all the holders (or all the holders other than the person making the offer and his nominees) of a particular class of the shares to acquire the shares of the class or a specified proportion of them;

"title" (稱銜) includes name or description;

"trading right" (交易權), in relation to a recognized exchange company, means a right to be eligible to trade through that exchange company or on a recognized stock market or a recognized futures



market operated by that exchange company and entered as such a right in a list, roll or register kept by that exchange company. (Amended 30 of 2004 s. 3)

2. References to subsidiary

[NO CHANGE TO REMAINDER OF SCHEDULE 1]



SCHEDULE 8

SECURITIES AND FUTURES APPEALS TRIBUNAL

[sections 215, 216, 217, 218,
219, 222, 232, 233 &
234 & Schedule 10]

PART 1

APPOINTMENT OF MEMBERS AND PROCEEDINGS OF TRIBUNAL, ETC.

PART 2

SPECIFIED DECISIONS

Division 1 - Specified decisions made by Commission

Item	Provision	Description of decision
1.	Section 93(12) of this Ordinance	Requirement to pay costs or expenses.
2.	Section 95(2) of this Ordinance	Refusal to grant an authorization, or imposition of any condition.
3.	Section 97(1) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
4.	Section 98(1) of this Ordinance	Withdrawal of an authorization.
5.	Section 104(1) of this Ordinance	Refusal to authorize a collective investment scheme, or imposition of any condition.
6.	Section 104(3) of this Ordinance	Refusal to approve an individual nominated in respect of a collective investment scheme.
7.	Section 104(3) of this Ordinance	Withdrawal of approval of an individual nominated in respect of a collective investment scheme.
8.	Section 104(4) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
<u>8a.</u>	<u>Section 104A(1) of this Ordinance</u>	<u>Refusal to authorize a structured product, or imposition of any condition.</u>
<u>8b.</u>	<u>Section 104A(3) of this Ordinance</u>	<u>Refusal to approve an individual nominated in respect of a structured product.</u>



<u>8c.</u>	<u>Section 104A(3) of this Ordinance</u>	<u>Withdrawal of approval of an individual nominated in respect of a structured product.</u>
<u>8d.</u>	<u>Section 104A(4) of this Ordinance</u>	<u>Amendment or revocation of any condition, or imposition of any new condition.</u>
9.	Section 105(1) of this Ordinance	Refusal to authorize the issue of any advertisement, invitation or document, or imposition of any condition.
10.	Section 105(3) of this Ordinance	Refusal to approve an individual nominated in respect of the issue of any advertisement, invitation or document.
11.	Section 105(3) of this Ordinance	Withdrawal of approval of an individual nominated in respect of the issue of any advertisement, invitation or document.
12.	Section 105(4) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
13.	Section 106(1) of this Ordinance	Withdrawal of an authorization.
14.	Section 106(3) of this Ordinance	Refusal to withdraw an authorization.
15.	Section 106(4) of this Ordinance	Imposition of any condition.
16.	Section 116(1) of this Ordinance	Refusal to grant a licence.
17.	Section 116(6) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
18.	Section 117(1) of this Ordinance	Refusal to grant a licence for a period not exceeding 3 months.
19.	Section 117(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
20.	Section 119(1) of this Ordinance	Refusal to grant registration.
21.	Section 119(5) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
22.	Section 120(1) of this Ordinance	Refusal to grant a licence.
23.	Section 120(5) of this Ordinance	Imposition of any condition.
24.	Section 120(7) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
25.	Section 121(1) of this Ordinance	Refusal to grant a licence for a period not exceeding 3 months.



26.	Section 121(3) of this Ordinance	Imposition of any condition.
27.	Section 121(5) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
28.	Section 122(1) of this Ordinance	Refusal to approve an accreditation.
29.	Section 122(2) of this Ordinance	Refusal to approve a transfer of an accreditation.
30.	Section 124(1) of this Ordinance	Refusal to issue a duplicate licence or certificate of registration.
31.	Section 126(1) of this Ordinance	Refusal to approve a person as a responsible officer.
32.	Section 126(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
33.	Section 127(1) of this Ordinance	Refusal to vary any regulated activity.
34.	Section 130(1) of this Ordinance	Refusal to approve premises.
35.	Section 132(1) of this Ordinance	Refusal to approve a person to become or continue to be a substantial shareholder.
36.	Section 132(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
37.	Section 133(1) of this Ordinance	Direction to a licensed corporation.
38.	Section 133(2) of this Ordinance	Direction to a person.
39.	Section 134(1)(a), (b), (c), (d), (e), (f), (g), (h), (i) or (j) of this Ordinance	Refusal to grant a modification or waiver.
40.	Section 134(4) of this Ordinance	Amendment of a modification or waiver, imposition, amendment or revocation of any condition, or imposition of any new condition.
41.	Section 146(2) or (5)(b) of this Ordinance	Imposition of any condition.
42.	Section 146(5)(a) of this Ordinance	Suspension of a licence.
43.	Section 146(6) or (7) of this Ordinance	Amendment of any condition.
44.	Section 147(3)(a) of this Ordinance	Suspension of a licence.
45.	Section 147(3)(b) of this Ordinance	Imposition of any condition.
46.	Section 147(4) or (5) of this Ordinance	Amendment of any condition.
47.	Section 159(1) of this Ordinance	Appointment of an auditor.



48.	Section 159(4) of this Ordinance	Direction to pay any of the costs and expenses of any examination and audit.
49.	Section 160(1) of this Ordinance	Appointment of an auditor.
50.	Section 160(8) of this Ordinance	Direction to pay any of the costs and expenses of any examination and audit.
51.	Section 194(1)(i), (ii), (iii) or (iv) of this Ordinance	Exercise of power to revoke or suspend a licence or the approval of a person as a responsible officer, to publicly or privately reprimand a person, or to impose a prohibition on a person.
52.	Section 194(2) of this Ordinance	Order to pay a pecuniary penalty.
53.	Section 195(1)(a), (b) or (c) of this Ordinance	Revocation or suspension of a licence.
54.	Section 195(2) of this Ordinance	Revocation of a licence.
55.	Section 195(7) of this Ordinance	Revocation or suspension of the approval of a person as a responsible officer.
56.	Section 196(1)(i), (ii) or (iii) of this Ordinance	Exercise of power to revoke or suspend any registration, to publicly or privately reprimand a person, or to impose a prohibition on a person.
57.	Section 196(2) of this Ordinance	Order to pay a pecuniary penalty.
58.	Section 197(1)(a) or (b) of this Ordinance	Revocation or suspension of any registration.
59.	Section 197(2) of this Ordinance	Revocation of any registration.
60.	Section 202(1) of this Ordinance	Requirement to transfer records.
61.	Section 203(1) of this Ordinance	Imposition of any condition.
62.	Section 204(1)(a) or (b) of this Ordinance	Prohibition or requirement imposed on a licensed corporation concerning transactions, etc.
63.	Section 205(1)(a) or (b) of this Ordinance	Prohibition or requirement imposed on a licensed corporation concerning relevant property.
64.	Section 206(1) of this Ordinance	Requirement imposed on a licensed corporation to maintain property.
65.	Section 208(1)(b) of this Ordinance	Substitution or variation of a prohibition or requirement under section 204, 205 or 206 of this Ordinance.
66.	Section 208(1) of this Ordinance	Refusal to withdraw, substitute or vary a prohibition or requirement under section 204, 205 or 206 of this



		Ordinance.
67.	Section 309(2) of this Ordinance	Refusal to grant an exemption, or imposition of any condition.
68.	Section 309(3) of this Ordinance	Refusal to grant an exemption, or imposition of any condition.
69.	Section 309(4)(a) or (b) of this Ordinance	Suspension or withdrawal of an exemption, or amendment of any condition.
70.	Section 403 of this Ordinance	Imposition of any condition.
71.	Section 38A(1) of the Companies Ordinance (Cap 32)	Refusal to issue a certificate of exemption, or imposition of any condition.
72.	Section 342A(1) of the Companies Ordinance (Cap 32)	Refusal to issue a certificate of exemption, or imposition of any condition.
73.	Section 6(2) of the Securities and Futures (Stock Market Listing) Rules (Cap 571 sub. leg. V)	Objection to a listing of securities. (Added L.N. 231 of 2002)
74.	Section 6(3)(b) of the Securities and Futures (Stock Market Listing) Rules (Cap 571 sub. leg. V)	Imposition of any condition. (Added L.N. 231 of 2002)
75.	Section 8(3) of the Securities and Futures (Disclosure of Interests-Securities Borrowing and Lending) Rules (Cap 571 sub. leg. X)	Refusal to approve a corporation as an approved lending agent. (Added L.N. 231 of 2002)
76.	Section 8(4) of the Securities and Futures (Disclosure of Interests-Securities Borrowing and Lending) Rules (Cap 571 sub. leg. X)	Imposition of any condition. (Added L.N. 231 of 2002)
77.	Section 8(6) of the Securities and Futures (Disclosure of Interests-Securities Borrowing and Lending) Rules (Cap 571 sub. leg. X)	Withdrawal of an approval. (Added L.N. 231 of 2002)
78.	Section 4(4)(c) of the Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap 571 sub. leg. Y)	Refusal to give notice. (Added L.N. 231 of 2002)

Division 2 - Specified decisions made by Monetary Authority

[NO FURTHER CHANGES TO SCHEDULE 8]