

LEGISLATIVE COUNCIL BRIEF

Securities and Futures Ordinance
(Chapter 571)

SECURITIES AND FUTURES (AMENDMENT) BILL 2011

INTRODUCTION

A At the meeting of the Executive Council on 21 June 2011, the Council ADVISED and the Chief Executive ORDERED that the Securities and Futures (Amendment) Bill 2011 (“the Bill”), at Annex A, should be introduced into the Legislative Council to –

- (a) statutorily oblige listed corporations to disclose price sensitive information (“PSI”) in a timely manner;
- (b) enable the Securities and Futures Commission (“SFC”) to institute proceedings before the Market Misconduct Tribunal (“MMT”);
- (c) enable the SFC to establish a cross-sectoral Investor Education Council ; and
- (d) make certain technical amendments to the Securities and Futures Ordinance (“SFO”).

JUSTIFICATIONS

Statutory Obligation for Listed Corporations to Disclose PSI

2. A statutory PSI disclosure regime is necessary to enhance market transparency and quality, to bring our regulatory regime for listed corporations more in line with those of overseas jurisdictions, and to sustain Hong Kong’s position as a premier capital formation centre. At present, the requirement for listed corporations to disclose PSI is set out

in the Listing Rules of the Stock Exchange of Hong Kong Limited (“SEHK”), not in the law. The lack of regulatory teeth in the Listing Rules has been an issue of concern. In devising the statutory regime, we strive to promote effective compliance with, and allow effective enforcement of, the disclosure obligations.

Major Features of the Statutory Regime

Disclosure Requirement and Definition of PSI

3. Under the Bill, a listed corporation must disclose a piece of PSI as soon as reasonably practicable when the information has, or ought reasonably to have, come to the knowledge of an “officer”¹ of the listed corporation in the course of performing his functions. If a listed corporation has breached the disclosure requirement, an “officer” will also be in breach if (a) the corporation’s breach is a result of his intentional, reckless or negligent conduct; or (b) he has not taken all reasonable measures to ensure that proper safeguards exist to prevent the breach.

4. The Bill proposes borrowing the concept of “relevant information” currently used in the “insider dealing” regime in the SFO to define PSI². As such, PSI will be the same set of information currently prohibited from being used for dealing in the securities of the listed corporation concerned, and such information would be renamed as “inside information”. This is the same as the approach adopted in the United Kingdom and the European Union.

¹ The term “officer”, in relation to a corporation, is already defined in Part 1 of Schedule 1 to the SFO to mean “a director, manager or secretary of, or any other person involved in the management of, the corporation”. Our intention is to catch directors and high-level individuals responsible for managing the listed corporation, not middle management or low-ranked staff.

² PSI in relation to a listed corporation, is defined to mean specific information that –

- (a) is about –
 - (i) the corporation;
 - (ii) a shareholder or “officer” of the corporation; or
 - (iii) the listed securities of the corporation or their derivatives; and
- (b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities.

5. To strike a reasonable balance between ensuring market transparency and safeguarding the legitimate interests of listed corporations in preserving certain information in confidence to facilitate their operation and business development, the Bill will provide safe harbours, as set out at Annex B. To facilitate compliance, the SFC would promulgate guidelines on what constitutes “inside information” and when the safe harbours would be applicable. The SFC would also provide an informal consultation service, initially for 24 months, on the disclosure requirements.

Civil Sanctions

6. Throughout our consultation exercise, we have pledged to focus on civil sanctions against non-disclosure of PSI by listed corporations. The respondents generally support a civil regime. As such, the Bill proposes imposing civil sanctions on listed corporations and their “officers” breaching the statutory PSI disclosure requirements, and that alleged breaches be handled by the MMT. The MMT may impose the following civil sanctions –

- (a) disqualification of the “officer” from being a director or otherwise involved in the management of a listed corporation for up to five years;
- (b) a “cold shoulder” order on the “officer” (i.e. the person is deprived of access to market facilities) for up to five years;
- (c) a “cease and desist” order on the listed corporation or “officer” (i.e. an order not to breach the statutory disclosure requirements again);
- (d) a regulatory fine up to \$8 million on the listed corporation, each of the directors and/or the chief executive³ respectively;⁴

³ Chief executive is defined under s.308(1) of SFO as “the person employed or otherwise engaged by a corporation who, either alone or together with one or more persons, is or will be responsible under the immediate authority of the board of directors for the conduct of the business of the corporation”.

⁴ The Bill proposes requiring the MMT to comply with the principle of proportionality when determining the amount of regulatory fines to be imposed by reference to the facts and circumstances in a particular case.

- (e) an order that any body of which the “officer” is a member be recommended to take disciplinary action against him;
- (f) payment of costs of the civil inquiry and/or the SFC investigation by the listed corporation or “officer”;
- (g) such order as is necessary to ensure that the listed corporation takes appropriate action to prevent a similar breach of the disclosure requirement. This includes-
 - i. ordering an “officer” to undergo training;
 - ii. ordering a listed corporation to appoint an independent professional adviser to review its compliance procedure; and
 - iii. ordering a listed corporation to appoint an independent professional adviser to advise on compliance matters.

7. Compared with our consultation proposals in 2010, the Bill has extended the regulatory fine to cover chief executive as well, in light of the consideration that like directors, chief executive plays a much more prominent role than other “officers” who are not directors in a listed corporation, and that he is head of the staff of the corporation. Both directors and the chief executives have already been subject to specific statutory requirements under the SFO which do not apply to other “officers”⁵.

Enforcement

8. The SFC will enforce the statutory regime with its existing investigatory powers. On enactment of the statutory disclosure regime, the intention is for SEHK to delete those Listing Rules which closely mirror the proposed statutory PSI disclosure obligation.

⁵ For example, “chief executive” is subject to the same statutory disclosure of interests regime as directors under Part XV of the SFO.

Direct institution of MMT proceedings by SFC

9. Currently under the SFO, MMT proceedings can only be instituted by the Financial Secretary (“FS”), and the presenting officer is appointed by the Secretary for Justice (“SJ”) to conduct the proceedings. To allow for a streamlined process to enforce the statutory PSI disclosure requirement and to deal with the existing six types of market misconduct stipulated in the SFO⁶, the Bill proposes empowering the SFC to institute proceedings before the MMT direct, without having to first refer the case to FS for his decision to do so. The Bill will also provide for the SFC to be responsible for appointing the Presenting Officer in MMT proceedings in place of SJ.

10. Under the current SFO, market misconduct is regulated by two alternative and mutually exclusive means: criminal prosecution under Part XIV of SFO and civil proceedings before the MMT under Part XIII of SFO. To ensure the primacy of criminal prosecution, the Bill will provide that the SFC must not institute any MMT proceedings for market misconduct unless it has obtained consent from SJ. SJ may withhold the giving of consent to MMT proceedings in respect of any conduct only if and so long as proceedings for an offence under Part XIV of SFO are contemplated; or proceedings for an indictable offence (other than an offence under Part XIV of SFO) are contemplated, or have been instituted, and institution of MMT proceedings would be likely to cause serious prejudice to the investigation or prosecution of that offence. SJ’s consent to institute MMT proceedings is however not applicable to cases of breaches of PSI disclosure requirement which will not give rise to any criminal liability.

Establishment of Investor Education Council

11. Over the past years, we have witnessed the launch of more complex and varied financial products that cut across traditional boundaries of banking, insurance and securities markets. We have also seen more retail investors entering the markets. We propose to enable the SFC to establish a cross-sectoral Investor Education Council (“IEC”)

⁶ These are insider dealing, false trading, price rigging, disclosure of information about prohibited transactions, disclosure of false or misleading information inducing transactions, and stock market manipulation.

to holistically oversee the needs of investor education and delivery of related initiatives. The IEC aims to influence the financial attitude and behaviour of the general public by improving their financial literacy and capability. The SFC's proposal is supported by the other financial regulators, namely the Hong Kong Monetary Authority, the Mandatory Provident Fund Schemes Authority and the Commissioner of Insurance, and well-received by the public.

12. International experience has shown that it is more cost effective and creates the most synergy for an investor education body to be set up as part of the regulatory community. Among the financial regulators in Hong Kong, only the SFC has an explicit statutory remit to pursue investor education in the securities and futures sector. We therefore support the SFC's proposal to establish the IEC as its wholly owned subsidiary with essential features set out at Annex C.

C

Technical Amendments to the SFO

13. We propose to make use of this opportunity to introduce several technical amendments to update the SFO. Details are set out in paragraph 17 below.

THE BILL

14. The main provisions are set out below. Part 2 of the Bill establishes the statutory regime to oblige listed corporations to disclose PSI -

- (a) clause 3 adds a new Part XIVA into the SFO to oblige listed corporations to disclose PSI. Division 2 of the new Part XIVA prescribes the disclosure requirements while Divisions 3 and 4 of it prescribe the proceedings, sanctions and civil liability for breaches of the disclosure requirements;
- (b) clause 4 amends section 182 of the SFO to empower the SFC to investigate alleged breaches of the PSI disclosure requirement;

- (c) clauses 5 –14 amend relevant provisions in Parts XIII and XIV and Schedules 1, 2 and 9 to the SFO to enable certain MMT arrangements to be applicable to cases of breaching the PSI disclosure requirement and to make consequential amendments; and
- (d) clauses 15 and 16 amend the Securities and Futures (Fees) Rules (Cap. 571 sub. leg. AF) to prescribe the fee payable to the SFC for an application for a disclosure waiver.

15. Part 3 of the Bill implements the proposal for the SFC to institute MMT proceedings direct for market misconduct cases -

- (a) clauses 18 - 23 enable the SFC to institute MMT proceedings direct for market misconduct cases when it has obtained SJ's consent and to appoint Presenting Officers in MMT proceedings, and enable the SFC to apply to the Court of First Instance without having first to consult FS under section 214 of the SFO for remedies in case of unfair prejudice, etc. to the interests of members of listed corporations; and
- (b) clauses 24 - 28 provide for consequential amendments to Parts XIII and XIV and Schedules 2 and 9 to the SFO, and for the SFC to withdraw or discontinue MMT proceedings before hearings are conducted.

16. Part 4 of the Bill amends the SFO in relation to investor education –

- (a) Clauses 30, 31(1), 31(2) and 31(3) broaden the investor education remit of the SFC to cover financial services and products other than those in the securities and futures sector;
- (b) Clause 31(4) empowers the SFC to establish an IEC as its wholly owned subsidiary to facilitate the performance of its investor education functions, but this power is non-delegable pursuant to Clause 33; and

- (c) Clause 32 enables the SFC to delegate any of its investor education functions to the IEC.

17. Part 5 of the Bill makes various miscellaneous amendments to the SFO and its subsidiary legislation –

- (a) Clauses 35 and 43 enable the SFC to delegate certain investment functions to consultants, agents or advisers engaged by the SFC;
- (b) Clause 36 substitutes “另一人” by “某人” in the Chinese text of section 109 of SFO for consistency with the English text;
- (c) Clause 37 provides for the SFC to publish notice of modifications or waivers of licensing conditions or requirements by the use of an on-line medium rather than in the Gazette;
- (d) Clause 38 provides for the SFC, rather than an authorized person or investigator, to apply to the Court of First Instance in respect of non-compliance with requirements related to regulatory supervision or investigations. Clause 44(16) contains savings and transitional provisions relating to this amendment;
- (e) Clauses 39 to 41 clarify that the SFC may publish details of disciplinary action taken against regulated persons under sections 194 and 196 of the SFO;
- (f) Clause 42 clarifies that the SFC may bring civil proceedings under the SFO by a solicitor or otherwise;
- (g) Clause 44 amends Schedule 10 to the SFO to rectify an anomaly with respect to transitional arrangements for the Deposit Scheme for Securities Margin Financiers, enabling the winding up of that Scheme, and add a transition provision to ensure the continuity of MMT proceedings instituted under

the existing arrangement; and

- (h) Clauses 46 to 49 provide that Saturdays are not business days for the purposes of the SFO and its subsidiary legislation, which conforms with existing practice in the industry.

 D

The existing provisions in the SFO being amended are at Annex D.

LEGISLATIVE TIMETABLE

18. The legislative timetable is -

Publication in the Gazette	24 June 2011
First Reading and commencement of Second Reading debate	29 June 2011
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

19. The proposals in the Bill are in conformity with the Basic Law, including the provisions concerning human rights. They do not affect the current binding effect of the existing provisions of the SFO and its subsidiary legislation. There are no productivity, environmental or sustainability implications. As the SFC will be responsible for performing the proposed functions, there are no financial and civil service implications to the Government in respect of the proposals other than enlarging the remit of the MMT to cover PSI cases. The MMT may incur additional expenses in handling new PSI cases, but these may be partially offset by savings from fees payable to Presenting Officers, which will be borne by the SFC under the new arrangement. The MMT Secretariat, staffed by civil servants, will absorb the additional workload arising from the handling of new PSI cases. The Administration does not see the need for additional resources at this juncture but would keep in view MMT's expenditure and caseload. Additional resources, if required, will be sought in accordance with the established resource allocation mechanism.

20. As for economic implications, the proposed statutory PSI disclosure regime would help promote a continuous disclosure culture, but would also entail an increase in compliance costs of listed corporations. The listed corporations are expected to give more effort and resources to ensure compliance as compared with those under the existing non-statutory regime. The SFC would issue guidelines and provide informal consultation service to facilitate compliance. The SFC would also liaise with professional institutions and trade bodies to provide training to listed corporations and their “officers” to familiarize them with the statutory disclosure requirement. The proposed establishment of an IEC will enhance investor protection.

PUBLIC CONSULTATION

21. We consulted the public on the proposed statutory obligation to disclose PSI (including the institution of MMT proceedings direct by the SFC) in March – June 2010, and published the consultation conclusions in February 2011. The respondents generally supported the objective of the legislative proposal of cultivating a continuous disclosure culture among listed corporations. We consulted the Legislative Council Panel on Financial Affairs (“FA Panel”) on 3 May 2010 and 21 February 2011. Members of the Panel supported the proposal in general.

22. We consulted the public on the proposed establishment of an IEC in February – May 2010. The proposal had received support from a vast majority of respondents. We also consulted the FA Panel on this proposal on 1 March 2010 and briefed the Panel on the consultation outcome on 3 January 2011. Members of the Panel supported the proposal in general. The proposed technical amendments to the SFO and its subsidiary legislation are straightforward and carry no controversy. Public consultation and submission to the FA Panel are considered not necessary.

PUBLICITY

23. A press release will be issued on 22 June 2011. A spokesman will be available to handle media enquiries.

ENQUIRIES

24. Any enquiries on this brief may be addressed to Mr Anthony Li, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) (2), at telephone number 2527 0534.

Financial Services Branch
Financial Services and the Treasury Bureau
22 June 2011

Securities and Futures (Amendment) Bill 2011

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A BILL To

Amend the Securities and Futures Ordinance to require listed corporations to disclose inside information to the public and impose civil sanctions for breach of the requirement, to provide the Securities and Futures Commission with direct access to the Market Misconduct Tribunal, to strengthen the Commission's investor education role and to make miscellaneous minor amendments, and to make consequential amendments to subsidiary legislation under that Ordinance.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Securities and Futures (Amendment) Ordinance 2011.
 - (2) This Ordinance (except Part 2) comes into operation on the day on which it is published in the Gazette.
 - (3) Part 2 comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.
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Part 2

Disclosure of Inside Information

Division 1

Amendments to Securities and Futures Ordinance

Subdivision 1

Enactment Amended

2. Securities and Futures Ordinance amended

The Securities and Futures Ordinance (Cap. 571) is amended as set out in Subdivisions 2 and 3.

Subdivision 2

Part XIVA Added

3. Part XIVA added

After Part XIV—

Add

“Part XIVA**Disclosure of Inside Information****Division 1****Interpretation****307A. Interpretation of Part XIVA**

(1) In this Part—

breach of a disclosure requirement (違反披露規定)—see subsection (2) and section 307G(2);

derivatives (衍生工具), in relation to listed securities, means any of the following (whether or not they are listed and regardless of who issued or made them)—

- (a) rights, options or interests (whether described as units or otherwise) in, or in respect of, the listed securities;
- (b) contracts, the purpose or pretended purpose of which is to secure or increase a profit or avoid or reduce a loss, wholly or partly by reference to the price or value, or a change in the price or value, of—
 - (i) the listed securities; or
 - (ii) any rights, options or interests referred to in paragraph (a);
- (c) rights, options or interests (whether described as units or otherwise) in, or in respect of—
 - (i) any rights, options or interests referred to in paragraph (a); or
 - (ii) any contracts referred to in paragraph (b);

(d) instruments or other documents creating, acknowledging or evidencing any rights, options or interests or any contracts referred to in paragraph (a), (b) or (c), including certificates of interest or participation in, temporary or interim certificates for, receipts (including depository receipts) in respect of, or warrants to subscribe for or purchase—

- (i) the listed securities; or
- (ii) the rights, options or interests or the contracts;

inside information (內幕消息), in relation to a listed corporation, means specific information that—

- (a) is about—
 - (i) the corporation;
 - (ii) a shareholder or officer of the corporation; or
 - (iii) the listed securities of the corporation or their derivatives; and
- (b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities;

listed (上市) means listed on a recognized stock market—see also subsection (3);

listed corporation (上市法團) means a corporation which has issued securities that are, at the time of the breach of a disclosure requirement in relation to the corporation, listed;

listed securities (上市證券) means—

- (a) securities which, at the time of a breach of a disclosure requirement in relation to a corporation, have been issued by the corporation and are listed;
- (b) securities which, at the time of a breach of a disclosure requirement in relation to a corporation, have been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently listed; or
- (c) securities which, at the time of a breach of a disclosure requirement in relation to a corporation, have not been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently so issued and listed;

securities (證券) means—

- (a) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, or which it is reasonably foreseeable will be issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority;
- (b) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
- (c) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
- (d) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities; or
- (e) interests, rights or property, whether in the form of an instrument or otherwise, prescribed by notice

under section 392 as being regarded as securities in accordance with the terms of the notice;

Tribunal (審裁處) means the Market Misconduct Tribunal established by section 251.

- (2) For the purposes of this Part—
 - (a) a breach of a disclosure requirement takes place if any of the requirements in section 307B or 307C is contravened in relation to a listed corporation; and
 - (b) in those circumstances, the listed corporation is in breach of the disclosure requirement.

Note—

Section 307G(2) provides that, in certain circumstances, an officer of a listed corporation may also be in breach of a disclosure requirement.

- (3) For the purposes of this Part, securities listed on a recognized stock market are to continue to be regarded as listed during any period of suspension of dealings in those securities on that market.

Division 2

Disclosure of Inside Information

307B. Requirement for listed corporations to disclose inside information

- (1) A listed corporation must, as soon as reasonably practicable after any inside information has come to its knowledge, disclose the information to the public.
- (2) For the purposes of subsection (1), inside information has come to the knowledge of a listed corporation if—
 - (a) information has, or ought reasonably to have, come to the knowledge of an officer of the corporation in

- the course of performing functions as an officer of the corporation; and
- (b) a reasonable person, acting as an officer of the corporation, would consider that the information is inside information in relation to the corporation.
- (3) Without limiting subsection (1), a listed corporation fails to disclose the inside information required under that subsection if—
- (a) the information disclosed is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and
- (b) an officer of the corporation knows or ought reasonably to have known that, or is reckless or negligent as to whether, the information disclosed is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.
- (4) This section is subject to sections 307C, 307D, 307E and 307F.

307C. Manner of disclosure

- (1) A disclosure under section 307B must be made in a manner that can provide for equal, timely and effective access by the public to the inside information disclosed.
- (2) Without limiting the manner of disclosure permitted under subsection (1), a listed corporation complies with that subsection if it has disseminated the inside information required to be disclosed under section 307B through an electronic publication system operated by a recognized exchange company for disseminating information to the public.

307D. Exceptions to disclosure requirement

- (1) A listed corporation is not required to disclose any inside information under section 307B if and so long as the disclosure is prohibited under, or would constitute a contravention of a restriction imposed by, an enactment or an order of a court.
- (2) A listed corporation is not required to disclose any inside information under section 307B if and so long as—
- (a) the corporation takes reasonable precautions for preserving the confidentiality of the information;
- (b) the confidentiality of the information is preserved; and
- (c) one or more of the following applies—
- (i) the information concerns an incomplete proposal or negotiation;
- (ii) the information is a trade secret;
- (iii) the information concerns the provision of liquidity support from the Exchange Fund established by the Exchange Fund Ordinance (Cap. 66) or from an institution which performs the functions of a central bank (including such an institution of a place outside Hong Kong) to the corporation or, if the corporation is a member of a group of companies, to any other member of the group;
- (iv) the disclosure is waived by the Commission under section 307E(1), and any condition imposed under section 307E(2) in relation to the waiver is complied with.
- (3) For the purposes of subsection (2)—
- (a) a listed corporation has not failed to take reasonable precautions for preserving the confidentiality of any inside information only

- because the corporation has, in the ordinary course of business, disclosed the information to any person who—
- (i) requires the information to perform the person's functions in relation to the corporation; and
 - (ii) by virtue of any enactment, rule of law, contract, or the articles of association of the corporation, is under a duty to the corporation not to disclose the information to any other person; and
- (b) in those circumstances, the confidentiality of the information is to be regarded as having been preserved.
- (4) Despite subsection (2)(b), a listed corporation is not in breach of a disclosure requirement in respect of inside information the confidentiality of which is not preserved if—
- (a) the corporation has taken reasonable measures to monitor the confidentiality of the information; and
 - (b) the corporation discloses the information in accordance with section 307C as soon as reasonably practicable after the corporation becomes aware that the confidentiality of the information has not been preserved.

307E. Waiver

- (1) The Commission may, on an application by a listed corporation, grant a waiver in relation to the disclosure of any inside information required to be disclosed under section 307B if the Commission is satisfied that the disclosure—

- (a) is prohibited under, or would constitute a contravention of a restriction imposed by, the legislation of a place outside Hong Kong;
 - (b) is prohibited under, or would constitute a contravention of a restriction imposed by, an order of a court exercising jurisdiction under the law of a place outside Hong Kong;
 - (c) would constitute a contravention of a restriction imposed by a law enforcement agency of a place outside Hong Kong; or
 - (d) would constitute a contravention of a restriction imposed by a government authority of a place outside Hong Kong in the exercise of a power conferred by the legislation of that place.
- (2) The Commission may grant a waiver under subsection (1) subject to any condition that it considers appropriate to impose.

307F. Commission may make rules to prescribe circumstances in which disclosure requirement does not apply

- (1) The Commission may, if it considers it is in the public interest to do so, make rules to prescribe the circumstances in which a listed corporation is not required to disclose any inside information under section 307B.
- (2) The Commission must consult the Financial Secretary before making rules under subsection (1).
- (3) Section 307B does not apply in the circumstances prescribed by rules made under subsection (1).

307G. Duty of officers of listed corporations

- (1) Every officer of a listed corporation must take all reasonable measures from time to time to ensure that

proper safeguards exist to prevent a breach of a disclosure requirement in relation to the corporation.

- (2) If a listed corporation is in breach of a disclosure requirement, an officer of the corporation—
- (a) whose intentional, reckless or negligent conduct has resulted in the breach; or
 - (b) who has not taken all reasonable measures from time to time to ensure that proper safeguards exist to prevent the breach,

is also in breach of the disclosure requirement.

Division 3

Disclosure Proceedings in Market Misconduct Tribunal

307H. Jurisdiction of Tribunal under this Part

The Tribunal has jurisdiction to hear and determine in accordance with this Part, Part XIII and Schedule 9 any question or issue arising out of or in connection with any proceedings instituted under section 307I.

307I. Institution of disclosure proceedings

- (1) If it appears to the Commission that a breach of a disclosure requirement has or may have taken place, the Commission may institute proceedings (*disclosure proceedings*) in the Tribunal concerning the matter.
- (2) The Commission institutes disclosure proceedings by giving the Tribunal a notice in writing containing a statement specifying the matters prescribed in Schedule 9.

307J. Object and conduct of disclosure proceedings

- (1) Without limiting section 307H, the object of disclosure proceedings is for the Tribunal to determine—
 - (a) whether a breach of a disclosure requirement has taken place; and
 - (b) the identity of any person who is in breach of the disclosure requirement.
- (2) Subject to section 261(3), the standard of proof required to determine any question or issue before the Tribunal in disclosure proceedings is the standard of proof applicable to civil proceedings in a court of law.
- (3) Sections 253 and 254 apply to disclosure proceedings as if a reference in those sections to proceedings instituted under section 252 were a reference to disclosure proceedings.

307K. Right to be heard

Before the Tribunal—

- (a) identifies a person under section 307J(1)(b); or
- (b) makes an order under section 307N(1) in respect of a person,

the Tribunal must give the person a reasonable opportunity of being heard.

307L. Use of evidence received for purposes of disclosure proceedings

- (1) Despite any other provision of this Ordinance, evidence given by any person at or for the purposes of any disclosure proceedings (including any material, record or document received by the Tribunal from the person or produced to the Tribunal by the person under section 253, and any record or document or information given,

- provided, produced or disclosed to the Tribunal by the person under section 254)—
- (a) is admissible in evidence for all the purposes of this Part, including in the disclosure proceedings, any proceedings (civil or criminal) arising out of the disclosure proceedings and any action brought under section 307Z(1); but
 - (b) subject to subsection (2), is not admissible in evidence against the person for any other purposes in any other proceedings (civil or criminal) in a court of law brought by or against the person.
- (2) Evidence referred to in subsection (1) is admissible in evidence against the person—
- (a) in civil proceedings instituted under or pursuant to Part XI;
 - (b) in civil proceedings in a court of law arising out of the giving of evidence at or for the purposes of the disclosure proceedings; or
 - (c) in criminal proceedings where the person is charged with an offence under section 219(2)(a), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of answers given by the person to questions put to the person at or for the purposes of the disclosure proceedings.

307M. Privileged information

Nothing in this Part, Part XIII or Schedule 9 requires an authorized financial institution, acting as the banker or financial adviser of a person whose conduct is the subject, whether wholly or in part, of any disclosure proceedings, to disclose information as to the affairs of any of its customers other than that person.

307N. Orders of Tribunal

- (1) Subject to section 307K, at the conclusion of any disclosure proceedings the Tribunal may make one or more of the following orders in respect of a person identified under section 307J(1)(b) as being in breach of a disclosure requirement—
- (a) an order that, for the period (not exceeding 5 years) specified in the order, the person must not, without the leave of the Court of First Instance—
 - (i) be or continue to be a director, liquidator, or receiver or manager of the property or business, of a listed corporation or any other specified corporation; or
 - (ii) in any way, whether directly or indirectly, be concerned or take part in the management of a listed corporation or any other specified corporation;
 - (b) an order that, for the period (not exceeding 5 years) specified in the order, the person must not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities, futures contract or leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme;
 - (c) an order that the person must not again perpetrate any conduct that constitutes a breach of a disclosure requirement;
 - (d) if the person is a listed corporation or is in breach of the disclosure requirement as a director or chief executive of a listed corporation, an order that the person pay to the Government a regulatory fine not exceeding \$8,000,000;

- (e) without prejudice to any power of the Tribunal under section 307P, an order that the person pay to the Government the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Government in relation or incidental to the proceedings;
- (f) without prejudice to any power of the Tribunal under section 307P, an order that the person pay to the Commission the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Commission, whether in relation or incidental to—
 - (i) the proceedings;
 - (ii) any investigation of the person's conduct or affairs carried out before the proceedings were instituted; or
 - (iii) any investigation of the person's conduct or affairs carried out for the purposes of the proceedings;
- (g) an order that any body which may take disciplinary action against the person as one of its members be recommended to take disciplinary action against the person;
- (h) if the person is a listed corporation, any order that the Tribunal considers necessary to ensure that a breach of a disclosure requirement does not again take place in respect of the corporation including, but not limited to, an order that the corporation appoint an independent professional adviser approved by the Commission to review the corporation's procedure for compliance with this Part or to advise the corporation on matters relating to compliance with this Part;

- (i) if the person is an officer of a listed corporation, any order that the Tribunal considers necessary to ensure that the officer does not again perpetrate any conduct that constitutes a breach of a disclosure requirement including, but not limited to, an order that the officer undergo a training program approved by the Commission on compliance with this Part, directors' duties and corporate governance.
- (2) When making an order in respect of a person under subsection (1), the Tribunal may take into account any conduct by the person which—
 - (a) previously resulted in the person being convicted of an offence in Hong Kong;
 - (b) previously resulted in the person being identified by the Tribunal—
 - (i) under section 252(3)(b) as having engaged in any market misconduct; or
 - (ii) under section 307J(1)(b) as being in breach of a disclosure requirement; or
 - (c) at any time before the commencement of Part XIII resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.
- (3) The Tribunal must not impose a regulatory fine on a person under subsection (1)(d) unless, in all the circumstances of the case, the fine is proportionate and reasonable in relation to the breach of the disclosure requirement. For that purpose, the Tribunal may take into account, in addition to any conduct referred to in subsection (2), any of the following matters—

- (a) the seriousness of the conduct that resulted in the person being in breach of the disclosure requirement;
 - (b) whether or not that conduct was intentional, reckless or negligent;
 - (c) whether that conduct may have damaged the integrity of the securities and futures market;
 - (d) whether that conduct may have damaged the interest of the investing public;
 - (e) whether that conduct resulted in any benefit to the person or any other person, including any profit gained or loss avoided;
 - (f) the person's financial resources.
- (4) An order made under subsection (1)(a) may specify a corporation by name or by reference to a relationship with any other corporation.
- (5) Subject to any rules made by the Chief Justice under section 307X, Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the taxation of any sum ordered under subsection (1)(e) or (f) for costs reasonably incurred in relation or incidental to the proceedings.
- (6) In this section—
chief executive (最高行政人員) has the meaning given by section 308(1).

307O. Notice and effect of orders of Tribunal

- (1) The Tribunal must by notice in writing notify a person of an order made in respect of the person under section 307N(1).
- (2) The order takes effect at the time when it is notified to the person or at the time specified in the notice, whichever is the later.

- (3) If the Tribunal makes an order under section 307N(1)(b), the Commission may notify any licensed person or registered institution of the order in any manner the Commission considers appropriate.
- (4) A person who fails to comply with an order made under section 307N(1)(a), (b) or (c) commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

307P. Costs

- (1) Subject to subsection (4), at the conclusion of any disclosure proceedings, or as soon as reasonably practicable after the conclusion of the proceedings, the Tribunal may by order award to any of the following persons a sum it considers appropriate in respect of the costs reasonably incurred by the person in relation to the proceedings—
 - (a) a person whose attendance, whether as a witness or otherwise, has been necessary or required for the purposes of the proceedings;
 - (b) a person whose conduct is the subject, whether wholly or in part, of the proceedings.
- (2) Any costs awarded under this section are a charge on the general revenue.
- (3) Subject to any rules made by the Chief Justice under section 307X, Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the award of costs, and to the taxation of any costs awarded, by the Tribunal under this section.
- (4) Subsection (1)(a) and (b) does not apply to—

- (a) a person who has been identified under section 307J(1)(b) as being in breach of a disclosure requirement;
- (b) a person whose conduct the Tribunal considers has caused, whether wholly or in part, the Tribunal to investigate or consider the person's conduct during the course of the disclosure proceedings; or
- (c) a person whom the Tribunal considers has by the person's conduct caused, whether wholly or in part, the institution of the disclosure proceedings.

307Q. Report of Tribunal

- (1) After the conduct of any disclosure proceedings, the Tribunal must prepare a written report of the proceedings, which must contain—
 - (a) any determinations under section 307J(1) and orders under section 307N, and the reasons for making the determinations and orders; and
 - (b) any order under section 307P and the reasons for making the order.
- (2) The Tribunal must issue the report prepared under subsection (1)—
 - (a) first by giving a copy of the report to the Commission;
 - (b) then, except where the Tribunal sat in private for the whole or any part of its proceedings, by—
 - (i) publishing the report so that copies of the report are available to the public;
 - (ii) giving a copy of the report, so far as reasonably practicable, to any person whose conduct was directly in question in the proceedings;

- (iii) where the Tribunal considers appropriate, giving a copy of the report to any body which may take disciplinary action against a person who is a member of the body and who is identified under section 307J(1)(b) as being in breach of a disclosure requirement.
- (3) Where the Tribunal sat in private for the whole or any part of its proceedings, the Commission may, if the Commission is of the opinion that it is in the public interest to do so, cause the whole or any part of the report to be made available to the public or to a particular person or body in the manner the Commission directs.
- (4) A person is not liable to civil or criminal proceedings for publishing a true and accurate account or a fair and accurate summary of a report of the Tribunal issued or made available under subsection (2)(b) or (3).

307R. Form and proof of orders of Tribunal

Section 263 applies to an order of the Tribunal in disclosure proceedings.

307S. Registration and filing of orders of Tribunal

- (1) Section 264(1) applies to an order of the Tribunal in disclosure proceedings.
- (2) The Tribunal must file an order made under section 307N(1)(a) with the Registrar of Companies as soon as reasonably practicable after it is made.

307T. Stay of execution of orders of Tribunal

On application by a person in respect of whom an order has been made under section 307N or 307P, the Tribunal may by order grant a stay of execution of the order, subject to any

conditions as to costs, payment of money into the Tribunal or otherwise, as the Tribunal considers appropriate.

307U. Appeal to Court of Appeal

- (1) If the Tribunal has made any finding or determination for the purposes of any disclosure proceedings and the Commission, or a person identified under section 307J(1)(b) as being in breach of a disclosure requirement, is dissatisfied with the finding or determination, the Commission or the person may, after the Tribunal has made orders (if any) under section 307N or 307P for the purposes of the proceedings, appeal to the Court of Appeal against the finding or determination—
 - (a) on a point of law; or
 - (b) with the leave of the Court of Appeal, on a question of fact.
- (2) A person in respect of whom an order has been made under section 307N or 307P may appeal to the Court of Appeal against the order.

307V. Powers of Court of Appeal on appeal

- (1) In an appeal under section 307U(1), the Court of Appeal may—
 - (a) allow the appeal;
 - (b) dismiss the appeal;
 - (c) vary or set aside the finding or determination and, if the finding or determination is set aside, substitute for the finding or determination any other finding or determination it considers appropriate; or
 - (d) remit the matter in question to the Tribunal with the directions it considers appropriate, which may

include a direction to the Tribunal to conduct the proceedings afresh for the purpose of determining any question specified by the Court of Appeal.

- (2) In an appeal under section 307U(2), the Court of Appeal may—
 - (a) confirm, vary or set aside the order appealed against; and
 - (b) if the order is set aside, substitute for the order any other order it considers appropriate.
- (3) If the Court of Appeal varies, or substitutes any other finding, determination or order for a finding, determination or order under subsection (1)(c) or (2)(a) or (b), the finding, determination or order as varied or the other finding, determination or order substituting for the finding, determination or order may be—
 - (a) in the case of subsection (1)(c), any finding or determination (whether more or less onerous) that the Tribunal had power to make for the purposes of the proceedings in question; or
 - (b) in the case of subsection (2)(a) or (b), any order (whether more or less onerous) that the Tribunal had power to make in respect of the appellant, whether or not under the same provision as that under which the finding, determination or order has been made.
- (4) If the Court of Appeal remits a matter to the Tribunal under subsection (1)(d), the Tribunal may be constituted by the same members as, or different members from, those that originally dealt with the matter, unless the Court of Appeal otherwise directs.
- (5) In an appeal under section 307U, the Court of Appeal may make any order as to costs that it considers appropriate.

307W. No stay of execution on appeal

- (1) Without prejudice to section 307T, neither the lodging of an appeal nor the filing of an application for leave to appeal under section 307U by itself operates as a stay of execution of a finding, determination or order of the Tribunal unless the Court of Appeal otherwise orders.
- (2) A stay of execution ordered under subsection (1) may be subject to any conditions as to costs, payment of money into the Tribunal or otherwise, as the Court of Appeal considers appropriate.

307X. Rules by Chief Justice

The Chief Justice may make rules—

- (a) providing for the taxation of costs required to be paid under an order referred to in section 307N(1)(e) or (f) and for the award of costs under section 307P and the taxation of those costs;
- (b) regulating the procedure for—
 - (i) applying for leave to appeal, and the hearing of applications for leave to appeal, under section 307U; and
 - (ii) the hearing of appeals under that section;
- (c) requiring the payment of the fees specified in the rules for any matter relating to disclosure proceedings;
- (d) providing for matters of procedure or other matters relating to disclosure proceedings which are not provided for in this Part, Part XIII or Schedule 9;
- (e) providing for the issue or service of any document (however described) for the purposes of this Part or Schedule 9; and

- (f) prescribing any matter which this Part provides is, or may be, prescribed by rules made by the Chief Justice.

Division 4**Civil Liability for Breach of a Disclosure Requirement****307Y. Interpretation and application**

- (1) In this Division—
transaction (交易) includes an offer and an invitation (however expressed).
- (2) Nothing in this Division 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.

307Z. Civil liability for breach of a disclosure requirement

- (1) Subject to subsection (2), a person who is in breach of a disclosure requirement is liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of the breach.
- (2) A person is not liable to pay compensation under subsection (1) unless it is fair, just and reasonable in the circumstances of the case that the person should be so liable.
- (3) Subsection (1) applies—
 - (a) whether or not the loss arises from the other person having entered into a transaction or dealing at a price affected by the breach of the disclosure requirement; and

- (b) whether or not the person who is in breach of the disclosure requirement incurs any other liability (under this Part or otherwise).
- (4) To avoid doubt, a court that has jurisdiction to determine an action brought under subsection (1) may grant an injunction in addition to, or in substitution for, damages, on any terms and conditions that it considers appropriate, if apart from this section the court has jurisdiction to grant an injunction.

307ZA. Evidentiary provisions

- (1) In an action brought under section 307Z(1)—
 - (a) the fact that there is a determination by the Tribunal under section 307J(1)(a) that a breach of a disclosure requirement has taken place is admissible in evidence for the purpose of proving that a breach of a disclosure requirement has taken place; and
 - (b) the fact that there is a determination by the Tribunal under section 307J(1)(b) identifying a person as being in breach of a disclosure requirement is admissible in evidence for the purpose of proving that the person is in breach of a disclosure requirement.
- (2) In an action brought under section 307Z(1), if the fact that there is a determination referred to in subsection (1) is admissible in evidence under that subsection—
 - (a) then—
 - (i) in the case of a determination referred to in subsection (1)(a), the breach that is the subject of the determination is to be taken, unless the contrary is proved, to have taken place; and

- (ii) in the case of a determination referred to in subsection (1)(b), the person who is the subject of the determination is to be taken, unless the contrary is proved, to be in breach of the disclosure requirement; and
- (b) the contents of either of the following are admissible in evidence for the purpose of identifying the facts on which the determination was based—
 - (i) a report of the Tribunal containing the determination and published under section 307Q(2)(b)(i); or
 - (ii) a copy of a report of the Tribunal containing the determination and made available under subsection (4).
- (3) Subsection (2)(b) is without prejudice to the reception of any other admissible evidence as evidence of the determination or for the purpose of identifying the facts on which the determination was based.
- (4) If, in an action brought under section 307Z(1)—
 - (a) the fact that there is a determination referred to in subsection (1) is admissible in evidence under that subsection; and
 - (b) a report of the Tribunal containing the determination has not been published under section 307Q(2)(b)(i),
 the court may require that a copy of the report be made available to the court to enable it to be used for the purposes of subsection (2)(b) and the Tribunal must cause a copy of the report to be made available to the court accordingly.
- (5) Nothing in this section limits section 62 of the Evidence Ordinance (Cap. 8).”

Subdivision 3**Consequential Amendments****4. Section 182 amended (Investigations)**

After section 182(1)(c)—

Add

“(ca) the Commission has reasonable cause to believe that a breach of a disclosure requirement may have taken place under Part XIVA;”.

5. Section 245 amended (Interpretation of Part XIII)

(1) Section 245(1), definition of *Presenting Officer*, after “section 252”—

Add

“or any disclosure proceedings”.

(2) Section 245(2)—

Repeal the definition of *relevant information*.

(3) Section 245(2)—

Add in alphabetical order

“*inside information* (内幕消息), in relation to a corporation, means specific information that—

(a) is about—

(i) the corporation;

(ii) a shareholder or officer of the corporation; or

(iii) the listed securities of the corporation or their derivatives; and

(b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally

known to them be likely to materially affect the price of the listed securities;”.

6. Section 251 amended (Market Misconduct Tribunal)

(1) Section 251(1)—

Repeal

“section 252.”

Substitute

“section 252.

Note—

The Tribunal also has jurisdiction under Part XIVA—see section 307H.”.

(2) Section 251(4), after “section 252”—

Add

“or any disclosure proceedings”.

(3) Section 251(7), after “section 252”—

Add

“or any disclosure proceedings”.

7. Section 257 amended (Orders, etc. of Tribunal)

Section 257(2)—

Repeal paragraph (b)**Substitute**

“(b) previously resulted in the person being identified by the Tribunal—

(i) under section 252(3)(b) as having engaged in any market misconduct; or

(ii) under section 307J(1)(b) as being in breach of a disclosure requirement; or”.

8. Section 258 amended (Further orders in respect of officers of corporation)

Section 258(2)—

Repeal paragraph (b)**Substitute**

- “(b) previously resulted in the person being identified by the Tribunal—
- (i) under section 252(3)(b) as having engaged in any market misconduct; or
 - (ii) under section 307J(1)(b) as being in breach of a disclosure requirement; or”.

9. Section 285 amended (Interpretation of Part XIV)

(1) Section 285(2)—

Repeal the definition of *relevant information*.

(2) Section 285(2)—

Add in alphabetical order

“*inside information* (內幕消息), in relation to a corporation, means specific information that—

- (a) is about—
 - (i) the corporation;
 - (ii) a shareholder or officer of the corporation; or
 - (iii) the listed securities of the corporation or their derivatives; and
- (b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities;”.

10. Section 303 amended (Penalties)

Section 303(3)—

Repeal paragraph (b)**Substitute**

- “(b) previously resulted in the person being identified by the Tribunal—
- (i) under section 252(3)(b) as having engaged in any market misconduct; or
 - (ii) under section 307J(1)(b) as being in breach of a disclosure requirement; or”.

11. Schedule 1 amended (Interpretation and general provisions)

Schedule 1, Part 1, section 1—

Add in alphabetical order

“*disclosure proceedings* (關於披露的研訊程序) has the meaning given by section 307I(1) of this Ordinance;”.

12. Schedule 2 amended (Non-delegable functions of Commission)

Schedule 2, Part 2, after section 2(81)—

Add

“(81A) to institute disclosure proceedings under section 307I(1) of this Ordinance;”.

13. Schedule 9 amended (Market Misconduct Tribunal)

(1) Schedule 9—

Repeal

“& 269]”

Substitute

“, 269, 307H, 307I, 307M & 307X]”.

(2) Schedule 9, section 1, definition of *party*—

Repeal paragraph (b)**Substitute**

“(b) any identified person for the proceedings;”.

- (3) Schedule 9, section 1, definition of *proceedings*, after “Ordinance”—

Add

“or disclosure proceedings”.

- (4) Schedule 9, section 1—

Add in alphabetical order

“*identified person* (被識辨的人) means—

- (a) for proceedings instituted under section 252 of this Ordinance, a person whose identity is specified under section 13(b) in the statement for the proceedings as described in section 13;
- (b) for disclosure proceedings, a person whose identity is specified under section 14A(b) in the statement for the proceedings as described in section 14A;”.

- (5) Schedule 9, section 11(b)—

Repeal subparagraph (i)**Substitute**

“(i) any identified person for the proceedings; and”.

- (6) Schedule 9, after section 14—

Add

- “14A. The statement required to be contained in a notice given by the Commission under section 307I(2) of this Ordinance must specify—

- (a) the provision or provisions of Part XIVA of this Ordinance by reference to which a person appears to be in breach of a disclosure requirement; and

- (b) the identity of the person, and brief particulars that are sufficient to disclose reasonable information concerning the nature and essential elements of the breach.”.

- (7) Schedule 9—

Repeal section 15**Substitute**

- “15. At any time during the conduct of proceedings instituted under section 252 of this Ordinance, the Tribunal may order the Presenting Officer to amend the statement for the proceedings as described in section 13 in any manner the Tribunal considers appropriate, except that—

- (a) there must be no amendment to the identity of the identified person for the proceedings; and
- (b) after the amendment the financial product which is the subject of any market misconduct specified in the statement must remain the same as the financial product which is the subject of the market misconduct originally specified in the statement.

- 15A. At any time during the conduct of disclosure proceedings, the Tribunal may order the Presenting Officer to amend the statement for the proceedings as described in section 14A in any manner the Tribunal considers appropriate, except that there must be no amendment to the identity of the identified person for the proceedings.”.

- (8) Schedule 9—

Repeal sections 16, 17 and 18**Substitute**

- “16. To avoid doubt—

- (a) the Tribunal has jurisdiction exercisable by reference to a statement as amended under section 15 in the same manner as it has jurisdiction exercisable by reference to a statement described in section 13; and
 - (b) the Tribunal has jurisdiction exercisable by reference to a statement as amended under section 15A in the same manner as it has jurisdiction exercisable by reference to a statement described in section 14A.
17. Despite anything in Part XIII or XIVA of this Ordinance—
- (a) unless the identity of a person is specified under section 13(b) in a statement as described in section 13 for any proceedings instituted under section 252 of this Ordinance—
 - (i) the person must not be identified in those proceedings under section 252(3)(b) of this Ordinance as having engaged in market misconduct; and
 - (ii) an order must not be made in those proceedings under section 257 or 258 of this Ordinance in respect of the person; and
 - (b) unless the identity of a person is specified under section 14A(b) in a statement as described in section 14A for any disclosure proceedings—
 - (i) the person must not be identified in those proceedings under section 307J(1)(b) of this Ordinance as being in breach of a disclosure requirement; and
 - (ii) an order must not be made in those proceedings under section 307N of this Ordinance in respect of the person.

- 18. Any identified person for proceedings is to be provided with a copy of the statement identifying them as described in section 13 or 14A (as the case may be) and, if the statement has been amended under section 15 or 15A, of the statement as so amended, in the manner directed by the Tribunal.”.
- (9) Schedule 9, after section 19—
Add
- “19A. After the conduct of any disclosure proceedings, where it appears to the Tribunal that a breach of a disclosure requirement has or may have taken place by reference to the conduct of any person, it may, where it considers appropriate, include in the report prepared by it in respect of the proceedings under section 307Q(1) of this Ordinance, a recommendation to the Commission to institute disclosure proceedings concerning the matter.”.
- (10) Schedule 9, section 21, after “proceedings”—
Add
“instituted under section 252 of this Ordinance”.
- (11) Schedule 9, after section 21—
Add
- “21A. Without prejudice to a Presenting Officer’s powers and functions under Part XIII or XIVA of this Ordinance, in any disclosure proceedings, the Presenting Officer—
 - (a) represents the Commission; and
 - (b) must present to the Tribunal any evidence available to the Commission, including any evidence that the Tribunal requests the Presenting Officer to present, and make any submissions, that will enable the Tribunal to reach an informed decision as to whether a breach of a disclosure requirement has taken place and, if so, the nature of the breach.”.

- (12) Schedule 9, section 26(b)—
Repeal subparagraph (i)
Substitute
“(i) any identified person for the proceedings; or”.
- (13) Schedule 9, section 28—
Repeal
everything from “a person” to “shall be”
Substitute
“an identified person for the proceedings is”.
- (14) Schedule 9, section 30—
Repeal
“under section 252 of this Ordinance”.
- (15) Schedule 9, section 30(a)—
Repeal subparagraph (i)
Substitute
“(i) any identified person for the proceedings; or”.
- (16) Schedule 9, section 32A—
Repeal
“under section 252 of this Ordinance”.
- (17) Schedule 9, section 33—
Repeal
“under section 252 of this Ordinance”.
- (18) Schedule 9, section 34, after “Part XIII”—
Add
“or XIVA”.
- (19) Schedule 9, section 36—
Repeal

- “under section 252 of this Ordinance”.
- (20) Schedule 9, after section 39—
Add
“40. The Tribunal may, at any time—
(a) consolidate proceedings; or
(b) order that proceedings be heard together.”.

14. “Inside information” substituted for “relevant information”

- (1) The following provisions—
(a) section 247(1);
(b) section 248(1);
(c) section 270(1) and (2);
(d) section 271(2), (3), (4), (5) and (8);
(e) section 273(b);
(f) section 287(1);
(g) section 288(1);
(h) section 291(1), (2), (3), (4), (5), (6) and (7);
(i) section 292(2), (3), (4), (5) and (8);
(j) section 294(b)—
Repeal
“relevant information” (wherever appearing)
Substitute
“inside information”.
- (2) The following provisions—
(a) section 248, heading;
(b) section 288, heading—
Repeal

“relevant information” (wherever appearing)

Substitute

“inside information”.

Division 2

Amendment to Securities and Futures (Fees) Rules

- 15. Securities and Futures (Fees) Rules amended**
The Securities and Futures (Fees) Rules (Cap. 571 sub. leg. AF) are amended as set out in section 16.
- 16. Schedule 1 amended (Fees prescribed for purposes of section 395(1)(a)(i), (iii) and (iv) of Ordinance)**
Schedule 1, immediately after item 13—
- Add**
- “Fees relating to Part XIVA of Ordinance**
- 13A. Fee payable on an application for a waiver \$24,000”.
under section 307E(1) of the Ordinance
-

Part 3

Direct Access to Market Misconduct Tribunal

- 17. Securities and Futures Ordinance amended**
The Securities and Futures Ordinance (Cap. 571) is amended as set out in this Part.
- 18. Section 214 amended (Remedies in cases of unfair prejudice, etc. to interests of members of listed corporations, etc.)**
Section 214(3)—
- Repeal paragraph (a).**
- 19. Section 251 amended (Market Misconduct Tribunal)**
- (1) Section 251(4)—
- Repeal**
“Secretary for Justice”
- Substitute**
“Commission”.
- (2) Section 251(5)—
- Repeal**
“legal officer,”.
- (3) Section 251—
- Repeal subsection (8)**
- Substitute**
- “(8) There may be paid to a member of the Tribunal (other than the chairman if he or she is a judge within the meaning of paragraph (a) of the definition of *judge* in section 245(1)) an amount, as a fee for the member’s services, that the Financial Secretary considers

appropriate, and that amount is a charge on the general revenue.

- (8A) There may be paid by the Commission to a Presenting Officer and to a person appointed to assist a Presenting Officer an amount, as a fee for his or her services, that the Commission considers appropriate.”.

20. Section 252 amended (Market misconduct proceedings)

- (1) Section 252—

Repeal subsections (1) and (2)

Substitute

“(1) Subject to section 252A, if it appears to the Commission that market misconduct has or may have taken place, the Commission may institute proceedings in the Tribunal concerning the matter.

(2) The Commission institutes proceedings under this section by giving the Tribunal a notice in writing containing a statement specifying the matters prescribed in Schedule 9.”.

- (2) Section 252(3)—

Repeal

“subsection (1)”

Substitute

“this section”.

- (3) Section 252—

Repeal subsections (8), (9) and (10).

21. Section 252A added

After section 252—

Add

“252A. Consent of Secretary for Justice for market misconduct proceedings

(1) The Commission must not institute proceedings under section 252 unless it has obtained the consent of the Secretary for Justice.

(2) The Secretary for Justice may withhold the giving of consent under subsection (1) to proceedings under section 252 in respect of any conduct only if and so long as—

(a) proceedings for an offence under Part XIV are contemplated in respect of the same conduct; or

(b) proceedings for an indictable offence (other than an offence under Part XIV) are contemplated, or have been instituted, in respect of the same conduct and the institution of proceedings under section 252 would be likely to cause serious prejudice to the investigation or prosecution of that offence.

(3) To avoid doubt, the consent of the Secretary for Justice under subsection (1) does not preclude proceedings for any offence (other than an offence under Part XIV) in respect of the same conduct.

(4) Nothing in this section derogates from the powers of the Secretary for Justice in respect of the prosecution of criminal offences.”.

22. Section 257 amended (Orders, etc. of Tribunal)

- (1) Section 257(1)(e)—

Repeal

everything after “by the Government”

Substitute

“in relation or incidental to the proceedings;”.

- (2) Section 257(1)—

Repeal paragraph (f)**Substitute**

- “(f) without prejudice to any power of the Tribunal under section 260, an order that the person pay to the Commission the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Commission, whether in relation or incidental to—
- (i) the proceedings;
 - (ii) any investigation of the person’s conduct or affairs carried out before the proceedings were instituted; or
 - (iii) any investigation of the person’s conduct or affairs carried out for the purposes of the proceedings;”.

23. Section 261 amended (Contempt dealt with by Tribunal)

- (1) Section 261(2)(a), after “or (f);”—

Add

“or”.

- (2) Section 261(2)(b)—

Repeal

“; or”

Substitute a full stop.

- (3) Section 261(2)—

Repeal paragraph (c).

- (4) Section 261(4)(a)(i)—

Repeal

“, 254(6), 257(10) or 258(10)”

Substitute

“or 254(6)”.

- (5) Section 261(4)(b)—

Repeal

“, 254(6), 257(10) or 258(10)”

Substitute

“or 254(6)”.

24. Section 262 amended (Report of Tribunal)

- (1) Section 262(2)(a)—

Repeal

“Financial Secretary”

Substitute

“Commission”.

- (2) Section 262(2)(b)(ii), after “proceedings;”—

Add

“and”.

- (3) Section 262(2)(b)—

Repeal subparagraphs (iii) and (iv).

- (4) Section 262(3)—

Repeal

“Financial Secretary may, where he”

Substitute

“Commission may, if the Commission”.

- (5) Section 262(3)—

Repeal

“he directs”

Substitute

“it directs”.

25. **Section 266 amended (Appeal to Court of Appeal)**
Section 266(1)—
Repeal
“Secretary for Justice” (wherever appearing)
Substitute
“Commission”.
26. **Section 307 amended (No further proceedings after Part XIII market misconduct proceedings)**
(1) Section 307—
Renumber the section as section 307(1).
(2) After section 307(1)—
Add
“(2) Subsection (1) does not apply in relation to any proceedings instituted under section 252 without the consent of the Secretary for Justice under section 252A(1).”.
27. **Schedule 2 amended (Non-delegable functions of Commission)**
Schedule 2, Part 2, section 2—
Repeal paragraph (81)
Substitute
“(81) to institute proceedings in the Market Misconduct Tribunal under section 252(1) of this Ordinance;”.
28. **Schedule 9 amended (Market Misconduct Tribunal)**
(1) Schedule 9, section 1—
Add in alphabetical order
“*party* (各方), in relation to proceedings, means—
(a) the Commission; or

- (b) any person whose identity is specified pursuant to section 13(b) in the statement for the proceedings as described in section 13;”.
- (2) Schedule 9, section 13—
Repeal
“Financial Secretary”
Substitute
“Commission”.
- (3) Schedule 9, section 14—
Repeal
“Financial Secretary”
Substitute
“Commission”.
- (4) Schedule 9, section 19—
Repeal
“Financial Secretary”
Substitute
“Commission”.
- (5) Schedule 9—
Repeal section 21
Substitute
“21. Without prejudice to a Presenting Officer’s powers and functions under Part XIII of this Ordinance, in any proceedings, the Presenting Officer—
(a) represents the Commission; and
(b) must present to the Tribunal any evidence available to the Commission, including any evidence that the Tribunal requests the Presenting Officer to present, and make any submissions, that will enable the

Tribunal to reach an informed decision as to whether market misconduct has taken place and, if so, the nature of the market misconduct.”.

- (6) Schedule 9, section 22—

Repeal

“Secretary for Justice”

Substitute

“Commission”.

- (7) Schedule 9, after section 32—

Add

“32A. At any time after proceedings have been instituted under section 252 of this Ordinance but before any sitting of the Tribunal is held to hear and determine any question or issue arising out of or in connection with the proceedings (other than a conference held in accordance with a direction of the chairman under section 30), the Commission may withdraw or discontinue the proceedings, or any part of them, by serving written notice of withdrawal or discontinuance on—

- (a) the party in respect of whom the proceedings or part are being withdrawn or discontinued; and
- (b) the Tribunal.”.

Part 4

Investor Education

29. Securities and Futures Ordinance amended

The Securities and Futures Ordinance (Cap. 571) is amended as set out in this Part.

30. Section 4 amended (Regulatory objectives of Commission)

Section 4—

Repeal paragraph (b)

Substitute

“(b) to promote understanding by the public of financial services including the operation and functioning of the securities and futures industry;”.

31. Section 5 amended (Functions and powers of Commission)

(1) Section 5(1)—

Repeal paragraph (i)

Substitute

“(i) to enhance the understanding and knowledge of members of the public of financial services including—

- (i) the operation and functioning of the securities and futures industry; and
- (ii) the benefits, risks and liabilities associated with purchasing financial services including investing in financial products;”.

(2) Section 5(1)(j), after “benefits of”—

Add

“purchasing different types of financial services including”.

(3) Section 5(1)—

Repeal paragraph (k)

Substitute

“(k) to promote understanding by the public of the importance of—

- (i) making informed decisions regarding the purchasing of financial services and transactions and activities related to financial products; and
- (ii) taking responsibility for those decisions;”.

(4) After section 5(4)(d)—

Add

“(da) establish a wholly owned subsidiary of the Commission to facilitate the performance of functions under subsection (1)(i), (j) and (k);”.

32. Section 10 amended (Delegation and sub-delegation of Commission’s functions)

After section 10(1)—

Add

“(1A) The Commission may delegate any of its functions under section 5(1)(i), (j) or (k) to a wholly owned subsidiary established under section 5(4)(da).”.

33. Schedule 2 amended (Non-delegable functions of Commission)

Schedule 2, Part 2, after section 2(1)—

Add

“(1A) to establish a wholly owned subsidiary, under section 5(4)(da) of this Ordinance;”.

Part 5

Miscellaneous Amendments

Division 1

Miscellaneous Amendments to Securities and Futures Ordinance

34. Securities and Futures Ordinance amended

The Securities and Futures Ordinance (Cap. 571) is amended as set out in this Division.

35. Section 10 amended (Delegation and sub-delegation of Commission’s functions)

After section 10(2)—

Add

“(2A) The Commission may delegate any of its functions under section 17 (investment of funds) or 241 (investment of money forming part of the compensation fund) to a consultant, agent or adviser engaged by the Commission under section 9(3).”.

36. Section 109 amended (Offence to issue advertisements relating to carrying on of regulated activities, etc.)

(1) Section 109(1), Chinese text, before “作出”—

Add

“(該人)”.

(2) Section 109(1)(a)(i), Chinese text—

Repeal

“另一人”

Substitute

“某人”。

- (3) Section 109(1)(a)(ii), Chinese text—

Repeal

“另一人”

Substitute

“第(i)節所指的人”。

37. Section 134 amended (Modification or waiver of requirements)

- (1) Section 134(6)—

Repeal

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

Substitute

“subject to subsection (7), publish, by the use of an on-line medium, notice of”.

- (2) Section 134(7)—

Repeal

“specifying” (wherever appearing)

Substitute

“publishing notice of”.

38. Section 185 amended (Application to Court of First Instance relating to non-compliance with requirements under section 179, 180, 181 or 183)

Section 185(1)—

Repeal

“authorized person or the investigator (as the case may be)”

Substitute

“Commission”.

39. Section 194 amended (Disciplinary action in respect of licensed persons, etc.)

After section 194(6)—

Add

“(6A) Where the Commission exercises its power under subsection (1) or (2) against a regulated person, the Commission may disclose to the public details of the decision including the reasons for it and any material facts relating to the case.”.

40. Section 196 amended (Disciplinary action in respect of registered institutions, etc.)

After section 196(6)—

Add

“(6A) Where the Commission exercises its power under subsection (1) or (2) against a regulated person, the Commission may disclose to the public details of the decision including the reasons for it and any material facts relating to the case.”.

41. Section 378 amended (Preservation of secrecy, etc.)

Section 378—

Repeal subsection (14).**42. Section 387A added**

After section 387—

Add**“387A. Civil proceedings by Commission**

The Commission may begin or carry on any civil proceedings by a solicitor or otherwise.”.

43. Schedule 2 amended (Non-delegable functions of Commission)

Schedule 2, Part 2, section 2—

Repeal paragraphs (11) and (80).**44. Schedule 10 amended (Savings, transitional, consequential and related provisions, etc.)**

(1) Schedule 10, Part 1, section 76(1)—

Repeal paragraph (b)**Substitute**

“(b) rules 2, 4, 5, 6 (other than rule 6(4)), 6B, 6C, 6D, 6E, 6F and 6G (other than rule 6G(4)) of the repealed Securities Rules;”.

(2) Schedule 10, Part 1, section 76—

Repeal subsection (2)**Substitute**

“(2) Where, prior to the appointed day—

(a) there arises any of the circumstances described in section 52(2) or (11) of the repealed Securities Ordinance, section 33(1) or (11) of the repealed Commodities Trading Ordinance or rule 6D(1), 6E or 6G(1) of the repealed Securities Rules; and

(b) no transfer, payment, forfeiture or application for release of the deposit or security (as the case may be) paid, deposited or lodged by the dealer or the registered financier concerned has been made under any of those sections or rules,

then a transfer, payment, forfeiture or application for release and any subsequent application of the deposit or security may be made under the applicable provisions specified in subsection (1).”.

(3) Schedule 10, Part 1, section 76(4), after “repealed Commodities Trading Ordinance”—

Add

“or the security lodged under section 121K(1) of the repealed Securities Ordinance”.

(4) Schedule 10, Part 1, section 76(5), after “deposit”—

Add

“or security”.

(5) Schedule 10, Part 1, section 76(6), after “rule 6(5)—

Add

“or 6G(5)”.

(6) Schedule 10, Part 1, section 76(8)—

(a) After “deposit” (wherever appearing)—

Add

“or the security”;

(b) After “dealer”—

Add

“or the registered financier”.

(7) Schedule 10, Part 1, section 76(9)(a), after “repealed Commodities Trading Ordinance”—

Add

“or a security lodged under section 121K(1) of the repealed Securities Ordinance”.

(8) Schedule 10, Part 1, section 76(9)(b), after “the deposit”—

Add

“or the security”.

(9) Schedule 10, Part 1, section 76(9)—

Repeal

“deposit to the dealer”

Substitute

- “deposit or the security to the dealer or the registered financier”.
- (10) Schedule 10, Part 1, section 76(10), after “dealer”—
Add
“or the registered financier”.
- (11) Schedule 10, Part 1, section 76(11)(a)—
(a) After “a deposit”—
Add
“or a security”;
- (b) After “a dealer” (wherever appearing)—
Add
“or a registered financier”.
- (12) Schedule 10, Part 1, section 76(11)(b), after “the dealer”—
Add
“or the registered financier”.
- (13) Schedule 10, Part 1, section 76(11), after “the deposit”—
Add
“or the security”.
- (14) Schedule 10, Part 1, section 76(12), after “repealed Commodities Trading Ordinance”—
Add
“or against any security lodged under section 121K(1) of the repealed Securities Ordinance”.
- (15) Schedule 10, Part 1, section 76(14), definition of *default*, after “rule 6(2)”—
Add
“or 6G(2)”.
- (16) Schedule 10, after Part 3—

Add**“Part 4****Savings and Transitional Provisions relating to Securities and Futures (Amendment) Ordinance 2011**

1. Any application made under section 185 of this Ordinance that was pending or otherwise not finally determined before the date of commencement of section 38 of the Securities and Futures (Amendment) Ordinance 2011 (of 2011) may be continued and determined on or after that date as if section 38 of the Securities and Futures (Amendment) Ordinance 2011 (of 2011) had not been enacted.
2. The Commission may make an application under section 185 of this Ordinance on or after the date of commencement of section 38 of the Securities and Futures (Amendment) Ordinance 2011 (of 2011) whether the subject matter of the application arose before, on or after that date, unless an application had been made under section 185 of this Ordinance in relation to the same subject matter before that date.
3. Any proceedings instituted under section 252 of this Ordinance that were pending or otherwise not finally determined before the date of commencement of Part 3 of the Securities and Futures (Amendment) Ordinance 2011 (of 2011) may be continued and determined on or after that date as if Part 3 of the Securities and Futures (Amendment) Ordinance 2011 (of 2011) had not been enacted.
4. The Commission may institute proceedings under section 252 of this Ordinance on or after the date of commencement of

Part 3 of the Securities and Futures (Amendment) Ordinance 2011 (of 2011) whether the subject matter of the proceedings arose before, on or after that date, unless proceedings had been instituted under section 252 of this Ordinance in relation to the same subject matter before that date.”.

Division 2

Business Day Amendments

Subdivision 1

Enactments Amended

45. Enactments amended

The enactments specified in Subdivisions 2, 3 and 4 are amended as set out in those Subdivisions.

Subdivision 2

Securities and Futures Ordinance (Cap. 571)

46. Schedule 1 amended (Interpretation and general provisions)

(1) Schedule 1, English text, Part 1, section 1, definition of *business day*, paragraph (a)—

Repeal

“and”.

(2) Schedule 1, Part 1, section 1, definition of *business day*, after paragraph (a)—

Add

“(ab) a Saturday; and”.

Subdivision 3

Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H)

47. Section 8A amended (Repledging Limit)

Section 8A(4)—

Repeal the definition of *business day*.

Subdivision 4

Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap. 571 sub. leg. Y)

48. Section 2 amended (Interpretation)

(1) Section 2(1), English text, definition of *reportable position*, paragraph (b)—

Repeal the semicolon

Substitute a full stop.

(2) Section 2(1)—

Repeal the definition of *reporting day*.

49. Section 6 amended (Notice of reportable positions)

Section 6(1)—

Repeal

“reporting day”

Substitute

“business day”.

Explanatory Memorandum

The object of this Bill is to amend the Securities and Futures Ordinance (Cap. 571) (**Ordinance**) to require listed corporations to disclose inside information to the public and impose civil sanctions for breach of the requirement, to give the Securities and Futures Commission (**Commission**) direct access to the Market Misconduct Tribunal (**Tribunal**), to strengthen the Commission's investor education role and to make miscellaneous amendments.

2. Part 2 of the Bill deals with the disclosure of inside information by listed corporations.
3. Clause 3 adds a new Part XIVA to the Ordinance imposing disclosure requirements on listed corporations. Part XIVA consists of sections 307A to 307ZA.
4. Section 307A sets out definitions for the purposes of Part XIVA. The most important definition is that of *inside information*, which is defined in the same way as *relevant information* in Part XIII of the Ordinance (which deals with market misconduct).
5. Section 307B requires listed corporations to disclose inside information to the public, subject to certain exceptions set out in section 307D and rules made by the Commission under section 307F.
6. Section 307C sets out the required manner of disclosure of inside information by a listed corporation.
7. Section 307D sets out exceptions to the disclosure requirement (also known as safe harbours). These include where disclosure of the inside information is prohibited by an enactment or court order, or where the information is confidential and it concerns an incomplete proposal or negotiation, is a trade secret or concerns the provision of liquidity support by a central bank, or disclosure is waived under section 307E.

8. Section 307E empowers the Commission to waive the disclosure requirement in certain specified circumstances.
9. Section 307F is a rule-making power for the Commission to prescribe circumstances in which the requirement to disclose inside information does not apply.
10. Section 307G imposes duties on officers of listed corporations in relation to the disclosure of inside information.
11. Section 307H invests jurisdiction in the Tribunal in relation to disclosure of inside information.
12. Section 307I provides for the institution of proceedings (*disclosure proceedings*) in the Tribunal for a breach of the requirement to disclose inside information.
13. Section 307J sets out the object of disclosure proceedings, which is for the Tribunal to determine if there has been a breach of a disclosure requirement and the identity of any person in breach, and specifies that the civil standard of proof applies to the proceedings. The section also applies the Tribunal's procedural powers under sections 253 and 254 of the Ordinance to disclosure proceedings.
14. Section 307K requires the Tribunal to give a person a reasonable opportunity to be heard before identifying them as being in breach of a disclosure requirement or making an order in respect of them.
15. Section 307L restricts the use in other proceedings of evidence given in disclosure proceedings. The restrictions are similar to those in section 255 of the Ordinance for market misconduct proceedings.
16. Section 307M protects information about customers of an authorized financial institution from disclosure in disclosure proceedings. This is similar to the protection in section 256 of the Ordinance that applies to market misconduct proceedings.
17. Section 307N empowers the Tribunal to make orders in respect of a person it has identified as being in breach of a disclosure requirement. These orders are broadly similar to those the Tribunal may make under section 257 or 258 of the Ordinance in market

misconduct proceedings, except that there would be no order for disgorgement of profits (see section 257(1)(d) of the Ordinance), and that the Tribunal may order a listed corporation or a person who is in breach of a disclosure requirement as a director or chief executive of a listed corporation to pay a regulatory fine not exceeding \$8,000,000. Additionally, the Tribunal may order a listed corporation to appoint an independent professional adviser, and order an officer of a listed corporation to undergo training.

18. Section 307O requires the Tribunal to notify a person in writing of an order made in respect of them in disclosure proceedings. The section also creates an offence for non-compliance with certain Tribunal orders in disclosure proceedings. This is similar to the offence for non-compliance with orders in market misconduct proceedings (see section 257(10) of the Ordinance).
19. Section 307P provides for the Tribunal to make costs orders in disclosure proceedings. These orders are similar to those the Tribunal may make under section 260 of the Ordinance in market misconduct proceedings.
20. Section 307Q requires the Tribunal to prepare a written report of disclosure proceedings and provides for the report's publication. The procedures and requirements are similar to those in section 262 of the Ordinance for market misconduct proceedings.
21. Section 307R applies section 263 of the Ordinance, regarding the form and proof of Tribunal orders, to disclosure proceedings.
22. Section 307S applies section 264(1) of the Ordinance, regarding registration of Tribunal orders in the Court of First Instance, to disclosure proceedings. The section also provides for certain orders to be filed with the Registrar of Companies.
23. Section 307T empowers the Tribunal to order a stay of execution of any of its orders in disclosure proceedings. This is similar to the Tribunal's power under section 265 of the Ordinance in market misconduct proceedings.

24. Section 307U provides for appeals from the Tribunal to the Court of Appeal in disclosure proceedings. The rights of appeal are similar to those in section 266 of the Ordinance in market misconduct proceedings.
25. Section 307V sets out the Court of Appeal's powers on an appeal under section 307U in disclosure proceedings. These powers are similar to those on an appeal under section 266 of the Ordinance in market misconduct proceedings.
26. Section 307W provides that the institution of an appeal does not stay the finding, determination or order appealed against unless the Court of Appeal orders a stay. This is similar to the position under section 268 of the Ordinance in market misconduct proceedings.
27. Section 307X empowers the Chief Justice to make rules for disclosure proceedings, similar to the rule-making power under section 269 of the Ordinance for market misconduct proceedings.
28. Division 4 of Part XIVA deals with civil liability for breach of a disclosure requirement. Section 307Y sets out a definition for the purposes of the Division, and provides that the Division is in addition to any rights or liabilities under the common law or any other enactment. Section 307Z imposes a statutory civil liability on a person who is in breach of a disclosure requirement, which is similar to the liability of a person under section 281 of the Ordinance for market misconduct. Section 307ZA contains evidentiary provisions that apply in an action brought under section 307Z, similar to those that apply in an action brought under section 281 of the Ordinance.
29. Clause 4 amends section 182(1) of the Ordinance to empower the Commission to investigate a suspected breach of a disclosure requirement.
30. Clause 5 replaces the concept of *relevant information* in section 245(2) of the Ordinance with *inside information*, for consistency with the new Part XIVA. The substance of the concept remains the

- same. Clause 5 also makes a consequential amendment to the definition of **Presenting Officer** in section 245(1) of the Ordinance.
31. Clause 6 adds a note to section 251(1) of the Ordinance to alert readers to the Tribunal's jurisdiction under Part XIVA and makes other consequential amendments to section 251 of the Ordinance as a result of that new jurisdiction.
32. Clauses 7 and 8 amend sections 257(2) and 258(2) of the Ordinance to provide that, when making an order in respect of a person in market misconduct proceedings, the Tribunal may take into account any conduct that previously resulted in the person being identified by the Tribunal as being in breach of a disclosure requirement.
33. Clause 9 replaces the concept of **relevant information** in section 285(2) of the Ordinance with **inside information**, for consistency with the new Part XIVA. The substance of the concept remains the same.
34. Clause 10 amends section 303(3) of the Ordinance to provide that, when making an order in respect of a person under section 303(2) of the Ordinance, the court may take into account any conduct that previously resulted in the person being identified by the Tribunal as being in breach of a disclosure requirement.
35. Clause 11 adds a definition of **disclosure proceedings** to Schedule 1 to the Ordinance.
36. Clause 12 amends Schedule 2 to the Ordinance to provide that the Commission's function of instituting disclosure proceedings is non-delegable.
37. Clause 13 amends Schedule 9 to the Ordinance to include procedural provisions for the Tribunal in disclosure proceedings.
38. Clause 14 replaces the concept of **relevant information** in various sections of Parts XIII and XIV of the Ordinance with **inside information**, for consistency with the new Part XIVA. The substance of the concept remains the same.

39. Clause 16 amends the Securities and Futures (Fees) Rules (Cap. 571 sub. leg. AF) to prescribe a fee of \$24,000 for an application to the Commission for waiver of a disclosure requirement under section 307E.
40. Part 3 of the Bill amends the Ordinance to provide the Commission with direct access to the Tribunal. Currently, proceedings in the Tribunal are instituted by the Financial Secretary.
41. Clause 18 amends section 214 of the Ordinance to remove the requirement for the Commission to consult the Financial Secretary before making an application to the Court of First Instance under that section.
42. Clause 19 amends section 251 of the Ordinance so that the Commission, rather than the Secretary for Justice, will appoint the Presenting Officer in Tribunal proceedings.
43. Clause 20 amends section 252 of the Ordinance so that the Commission, rather than the Financial Secretary, may institute market misconduct proceedings in the Tribunal.
44. Clause 21 adds section 252A to the Ordinance to require the consent of the Secretary for Justice before proceedings are instituted under section 252 of the Ordinance and to provide limited grounds for withholding that consent.
45. Clause 22 amends section 257 of the Ordinance to change the scope of orders the Tribunal may make as to costs and expenses of the Government and of the Commission as a consequence of the new role of the Commission in relation to market misconduct proceedings.
46. Clause 23 amends section 261 of the Ordinance to remove the Tribunal's specific power to punish for contempt a person who fails to comply with certain orders of the Tribunal under section 257 or 258 of the Ordinance (such as cold shoulder orders and cease and desist orders). Failure to comply with those orders remains an offence under section 257(10) or 258(10) of the Ordinance.

47. Clauses 24 to 28 contain consequential amendments to various sections of Parts XIII and XIV of and Schedules 2 and 9 to the Ordinance because of the amendments made by clauses 19, 20 and 21.
48. Part 4 of the Bill amends the Ordinance to strengthen the Commission's investor education role.
49. Clause 30 substitutes section 4(b) of the Ordinance to widen the regulatory objectives of the Commission in relation to investor education.
50. Clause 31 amends section 5 of the Ordinance which sets out functions and powers of the Commission. Subclauses (1), (2) and (3) amend section 5(1) of the Ordinance to widen the Commission's functions in relation to investor education. Subclause (4) amends section 5(4) of the Ordinance to enable the Commission to establish a wholly owned subsidiary to facilitate the performance of its investor education functions.
51. Clause 32 amends section 10 of the Ordinance to enable the Commission to delegate any of its investor education functions to a wholly owned subsidiary established under the new section 5(4)(da) of the Ordinance, which is added by clause 31(4).
52. Clause 33 amends Part 2 of Schedule 2 to the Ordinance to provide that the Commission's power to establish a wholly owned subsidiary to facilitate the performance of its investor education functions is non-delegable.
53. Part 5 of the Bill contains miscellaneous amendments to the Ordinance and consequential amendments to subsidiary legislation made under the Ordinance.
54. Clause 35 amends section 10 of the Ordinance to enable the Commission to delegate certain investment functions to consultants, agents or advisers engaged by the Commission under section 9(3) of the Ordinance. See also the amendment to Schedule 2 to the Ordinance made by clause 43.

55. Clause 36 amends the Chinese text of section 109 of the Ordinance for greater consistency with the English text.
56. Clause 37 amends section 134 of the Ordinance to provide for the Commission to publish notice of modifications or waivers of licensing conditions or requirements by the use of an on-line medium rather than in the Gazette.
57. Clause 38 amends section 185 of the Ordinance to provide for the Commission, rather than an authorized person or investigator, to apply to the Court of First Instance in respect of non-compliance with requirements related to regulatory supervision or investigations. See also clause 44(16), which contains savings and transitional provisions relating to this amendment.
58. Clause 39 amends section 194 of the Ordinance to clarify that the Commission may publish details of disciplinary action taken against regulated persons under that section.
59. Clause 40 amends section 196 of the Ordinance to clarify that the Commission may publish details of disciplinary action taken against regulated persons under that section.
60. Clause 41 repeals section 378(14) of the Ordinance as a consequence of the amendments made to sections 194 and 196 of the Ordinance by clauses 39 and 40.
61. Clause 42 adds a new section 387A to the Ordinance to clarify that the Commission may bring civil proceedings under the Ordinance by a solicitor or otherwise. This will ensure that the Commission may bring civil proceedings in its own name.
62. Clause 43 repeals section 2(11) and (80) of Part 2 of Schedule 2 to the Ordinance. This has the effect of enabling the Commission to delegate certain investment powers under section 10(1) of the Ordinance, and is related to the amendment made to section 10 of the Ordinance by clause 35.
63. Clause 44 amends Schedule 10 to the Ordinance with respect to transitional arrangements for the Deposit Scheme for Securities

Margin Financiers. The effect of the amendments is to enable the winding up of that Scheme. Clause 44 also adds a new Part 4 to Schedule 10 to the Ordinance, to provide savings and transitional provisions for the Bill. In particular, those provisions ensure the continuity of proceedings instituted under section 185 or 252 of the Ordinance before the amendments made by clause 38 and Part 3 respectively.

64. Clauses 46 to 49 amend the Ordinance and subsidiary legislation made under it to provide that Saturdays are not business days for the purposes of the Ordinance and subsidiary legislation, which conforms with existing practice in the industry.

Safe Harbours in the Statutory Disclosure Regime for Price Sensitive Information

The four safe harbours cover –

- (a) information prohibited from being disclosed by a Hong Kong court or under Hong Kong statutes;
- (b) information concerning an incomplete negotiation or proposal, which is consistent with the existing approach under Stock Exchange of Hong Kong Limited's Listing Rules and the takeovers regime administered by the Securities and Futures Commission ("SFC");
- (c) information which is a trade secret. A trade secret generally refers to proprietary information owned by a corporation used in the trade or business in which the corporation operates. This may concern inventions, manufacturing processes or customer lists;
- (d) very rare circumstances when the need to maintain and safeguard financial stability overrides the benefit of making public a given piece of information. One example would be the provision to listed banking institutions of liquidity support by Government or central banks in times of financial crisis, immediate disclosure of which could lead to a loss of confidence in the institution, which might in turn adversely affect the banking system as a whole. The United Kingdom has added this safe harbour into its price sensitive information ("PSI") disclosure regime after the Northern Rock crisis in 2007.

2. Apart from the above safe harbours, there may be circumstances that a disclosure of PSI would mean a contravention against legal prohibition in other jurisdictions, especially if the concerned listed corporation has major business activities outside Hong Kong. To cater for the practical needs of such corporations, the Bill will empower

the SFC to grant waivers to listed corporations on a case-by-case basis, if the disclosure is prohibited by legislation or a court outside Hong Kong, or if the prohibition is made by a law enforcement agency outside Hong Kong or a government authority outside Hong Kong exercising a statutory power of that place.

3. The use of the safe harbours at paragraph 1(b) to (d) and the waiver at paragraph 2 above would be subject to the prerequisite that the information must be kept in confidence. These safe harbours or waiver will fall away when there is a leakage of the PSI and hence the listed corporation must make a disclosure as soon as reasonably practicable. To address the concern that the listed corporation might breach the law when it is not aware of a leakage, the Bill proposes providing a defence for the relevant listed corporation if it can prove that it has taken reasonable measures to monitor the confidentiality of the information and it has made disclosure as soon as reasonably practicable when it became aware of the leakage.

Essential Features of the Investor Education Council

The Investor Education Council (“IEC”) as a dedicated educational body will holistically oversee the needs of investor education and delivery of related initiatives in respect of the entire financial sector in Hong Kong. The IEC will implement a balanced and pragmatic strategy appealing to the public through a mixture of mass media campaigns, online resources and tailored outreach programmes for different sectors of the community, etc. The aim is to improve the financial literacy and capability of the general public.

2. The IEC will not give any investment advice directly or indirectly by rating and reviewing investment products. It will collaborate and co-ordinate with industry bodies and financial services providers with a view to bridging any gap and avoiding any overlap. It will also review the education programme from time to time to gauge its effectiveness.

3. The Securities and Futures Commission (“SFC”) will set up the IEC as a wholly owned subsidiary company. The IEC will leverage and enhance the current investor education initiatives undertaken by the SFC, and on that basis offer expanded education programmes across the financial services industry. The SFC will bring in the other financial regulators in formulating its action plans to promote coordination and minimize duplication. The SFC will also provide full funding to the IEC. The estimated annual operating cost of IEC is expected to be about HK\$50 million. No extra levies and charges will be imposed on investors. The IEC budget will form part of the SFC’s budget, which is subject to Financial Secretary (“FS”)’s approval¹ and tabled before the Legislative Council according to the Securities and Futures Ordinance.

4. An SFC-appointed Board of Directors will be set up to govern the IEC. Relevant financial regulators, Government bureaux and industry experts will be represented on the IEC Board. The SFC Board will recommend an SFC Non-Executive Director to be the Chairman of the IEC Board for endorsement by the FS.

¹ under delegated authority from the Chief Executive

5. On establishment of the IEC, we shall make the necessary legislative amendments to bring the IEC into the oversight of the Independent Commission Against Corruption and the Ombudsman.

6. The IEC is expected to come into operation as soon as the legislative amendment has been passed.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
Section 182	Investigations	8 of 2011	13/05/2011

- (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 structured product, leveraged foreign exchange contract or collective investment scheme; (Amended 8 of 2011 s. 9)
 - (iv) giving advice in relation to the allotment of securities, or the acquisition or disposal of, or investment in, any securities, structured product, futures contract, leveraged foreign exchange contract, or an interest in any securities, structured product, futures contract, leveraged foreign exchange contract or collective investment scheme; or (Amended 8 of 2011 s. 9)
 - (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 (Amended 8 of 2011 s. 9)
 - (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.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
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Section 245	Interpretation of Part XIII	L.N. 12 of 2003	01/04/2003
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Expanded Cross Reference:
246, 247, 248, 249

(1) In this Part, unless the context otherwise requires-
"associate" (有聯繫者), in relation to a person, means-

- (a) the person's spouse or reputed spouse, any person cohabiting with the person as a spouse, the person's brother, sister, parent, step-parent, child (natural or adopted) or step-child;
- (b) any corporation of which the person is a director;
- (c) any employee or partner of the person;
- (d) where the person is a corporation, each of its directors and its related corporations and each director or employee of any of its related corporations;
- (e) without limiting the circumstances in which paragraphs (a) to (d) apply, in circumstances concerning the securities of or other interest in a corporation, or rights arising out of the holding of such securities or such interest, any other person with whom the person has an agreement or arrangement-
 - (i) with respect to the acquisition, holding or disposal of such securities or such interest; or
 - (ii) under which they undertake to act together in exercising their voting power at general meetings of the corporation;

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

- (a) in accordance with whose directions or instructions the directors of the corporation or of another corporation of which it is a subsidiary are accustomed or obliged to act; or
- (b) who, either alone or with any of his associates, is entitled to exercise or control the exercise of more than 33% of the voting power at general meetings of the corporation or of another corporation of which it is a subsidiary;

"insider dealing" (內幕交易) means insider dealing within the meaning of section 270;

"judge" (法官) means-

- (a) a judge or a deputy judge of the Court of First Instance;
- (b) a former Justice of Appeal of the Court of Appeal;
- (c) a former judge or a former deputy judge of the Court of First Instance;

"market misconduct" (市場失當行為) means-

- (a) insider dealing;
- (b) false trading within the meaning of section 274;
- (c) price rigging within the meaning of section 275;
- (d) disclosure of information about prohibited transactions within the meaning of section 276;
- (e) disclosure of false or misleading information inducing transactions within the meaning of section 277; or
- (f) stock market manipulation within the meaning of section 278,

and includes attempting to engage in, or assisting, counselling or procuring another person to engage in, any of the conduct referred to in paragraphs (a) to (f);

"Presenting Officer" (提控官), in relation to any proceedings instituted under section 252, means the person appointed under section 251(4) to conduct the proceedings;

"relevant overseas market" (有關境外市場)-

- (a) in relation to securities, means a stock market outside Hong Kong; or
- (b) in relation to futures contracts, means a futures market outside Hong Kong;

"relevant recognized market" (有關認可市場)-

- (a) in relation to securities, means a recognized stock market; or
- (b) in relation to futures contracts, means a recognized futures market;

"Tribunal" (審裁處) means the Market Misconduct Tribunal established by section 251.

(2) In this subsection and sections 246 to 249 and Division 4, unless the context otherwise requires- <* Note - Exp. X-Ref.: Sections 246, 247, 248, 249 *>

"derivatives" (衍生工具), in relation to listed securities, means-

- (a) rights, options or interests (whether described as units or otherwise) in, or in respect of, the listed securities;
- (b) contracts, the purpose or pretended purpose of which is to secure or increase a profit or avoid or reduce a loss, wholly or partly by reference to the price or value, or a change in the price or value, of-
 - (i) the listed securities; or
 - (ii) any rights, options or interests referred to in paragraph (a);
- (c) rights, options or interests (whether described as units or otherwise) in, or in respect of-
 - (i) any rights, options or interests referred to in paragraph (a); or
 - (ii) any contracts referred to in paragraph (b);
- (d) instruments or other documents creating, acknowledging or evidencing any rights, options or interests or any contracts referred to in paragraph (a), (b) or (c), including certificates of interest or participation in, temporary or interim certificates for, receipts (including depositary receipts) in respect of, or warrants to subscribe for or purchase-
 - (i) the listed securities; or
 - (ii) the rights, options or interests or the contracts,

whether or not the derivatives are listed and regardless of who issued or made them;

"listed" (上市) means listed on a recognized stock market, and for the purposes of this definition, securities shall continue to be regarded as listed during a period of suspension of dealings in those securities on the recognized stock market;

"listed corporation" (上市法團) means a corporation which has issued securities that are, at the time of any insider dealing in relation to the corporation, listed;

"listed securities" (上市證券) means-

- (a) securities which, at the time of any insider dealing in relation to a corporation, have been issued by the corporation and are listed;
- (b) securities which, at the time of any insider dealing in relation to a corporation, have been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently listed;
- (c) securities which, at the time of any insider dealing in relation to a corporation, have not been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently so issued and listed;

"relevant information" (有關消息), in relation to a corporation, means specific information about-

- (a) the corporation;
- (b) a shareholder or officer of the corporation; or
- (c) the listed securities of the corporation or their derivatives,

which is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but which would if it were generally known to them be likely to materially affect the price of the listed securities;

"securities" (證券) means-

- (a) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, or which it is reasonably foreseeable will be issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority;

- (b) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
- (c) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
- (d) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;
- (e) interests, rights or property, whether in the form of an instrument or otherwise, prescribed by notice under section 392 as being regarded as securities in accordance with the terms of the notice.

(3) For the purposes of the definition of "controller" in subsection (1), where a person is entitled to exercise or control the exercise of more than 33% of the voting power at general meetings of a corporation and the corporation is entitled to exercise or control the exercise of any of the voting power at general meetings of another corporation ("the effective voting power"), then the effective voting power at general meetings of the other corporation shall be regarded as exercisable by the person.

(4) For the purposes of this Part, a person shall not be regarded as a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act by reason only that the directors of the corporation act on advice given by him in a professional capacity.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
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Section 251	Market Misconduct Tribunal	L.N. 12 of 2003	01/04/2003
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(1) There is established a Tribunal to be known as the Market Misconduct Tribunal which shall have jurisdiction to hear and determine in accordance with this Part and Schedule 9 any question or issue arising out of or in connection with the proceedings instituted under section 252.

- (2) Except as otherwise provided in this Part or in Schedule 9, the Tribunal-
 - (a) shall consist of a chairman and 2 other members; and
 - (b) shall be presided over by the chairman who shall sit with the 2 other members.

(3) The chairman of the Tribunal shall be a judge and the 2 other members of the Tribunal shall not be public officers.

(4) The Secretary for Justice shall, in respect of any proceedings instituted under section 252, appoint a person as the Presenting Officer to conduct the proceedings, and may appoint one or more persons to assist the Presenting Officer.

(5) A Presenting Officer shall be a legal officer, counsel or solicitor.

(6) Schedule 9 shall have effect in relation to the appointment of members of the Tribunal, the appointment and the role of Presenting Officers and of persons appointed to assist Presenting Officers, and to the proceedings and sittings of, and procedural and other matters concerning, the Tribunal.

(7) Where the Chief Executive considers appropriate, additional Tribunals may be established for the purposes of any proceedings instituted under section 252, whereupon the provisions of this or any other Ordinance shall apply, subject to necessary modifications, to each of such additional Tribunals (including appointment of the chairman and other members of, and all matters concerning, each of such additional Tribunals) as they apply to the Tribunal.

- (8) There may be paid to-
 - (a) a member of the Tribunal (other than the chairman of the Tribunal who is a judge within the meaning of paragraph (a) of the definition of "judge" in section 245(1));
 - (b) a Presenting Officer (other than a Presenting Officer who is a legal officer);
 - (c) any person appointed to assist a Presenting Officer (other than any such person who is a legal officer or a public officer),

such amount, as a fee for his services, as the Financial Secretary considers appropriate, and that amount shall be a charge on the general revenue.

(9) Where a person who is a judge within the meaning of paragraph (a) of the definition of "judge" in section 245(1) is appointed as the chairman of the Tribunal, neither the appointment nor the

service or removal of the person as the chairman affects-

- (a) the tenure of office of, and the exercise of powers by, the person as a judge within the meaning of that paragraph;
- (b) the person's rank, title, status, precedence, salary or other rights or privileges as a holder of that office;
- (c) the terms and conditions to which the person is subject as a holder of that office.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
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Section 257	Orders, etc. of Tribunal	L.N. 104 of 2007	16/07/2007
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(1) Subject to subsection (3), the Tribunal may at the conclusion of any proceedings instituted under section 252 make one or more of the following orders in respect of a person identified as having engaged in market misconduct pursuant to section 252(3)(b)-

- (a) an order that the person shall not, without the leave of the Court of First Instance, be or continue to be a director, liquidator, or receiver or manager of the property or business, of a listed corporation or any other specified corporation or in any way, whether directly or indirectly, be concerned or take part in the management of a listed corporation or any other specified corporation for the period (not exceeding 5 years) specified in the order;
- (b) an order that the person shall not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities, futures contract or leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme for the period (not exceeding 5 years) specified in the order;
- (c) an order that the person shall not again perpetrate any conduct which constitutes such market misconduct as is specified in the order (whether the same as the market misconduct in question or not);
- (d) an order that the person pay to the Government an amount not exceeding the amount of any profit gained or loss avoided by the person as a result of the market misconduct in question;
- (e) without prejudice to any power of the Tribunal under section 260, an order that the person pay to the Government the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Government, whether in relation or incidental to the proceedings or in relation or incidental to any investigation of his conduct or affairs carried out for the purposes of the proceedings;
- (f) without prejudice to any power of the Tribunal under section 260, an order that the person pay to the Commission the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Commission, whether in relation or incidental to any investigation of his conduct or affairs carried out before the matter was referred to the Tribunal by the Financial Secretary or in relation or incidental to the proceedings;
- (fa) where the proceedings were instituted as a result of an investigation under the Financial Reporting Council Ordinance (Cap 588), an order that the person pay to the Financial Reporting Council established by section 6(1) of that Ordinance the sum the Tribunal considers appropriate for the costs and expenses in relation or incidental to the investigation reasonably incurred by the Council; (Added 18 of 2006 s. 85)
- (g) an order that any body which may take disciplinary action against the person as one of its members be recommended to take disciplinary action against him.

(2) When making any order in respect of a person under subsection (1), the Tribunal may take into account any conduct by the person which-

- (a) previously resulted in the person being convicted of an offence in Hong Kong;
- (b) previously resulted in the person being identified by the Tribunal as having engaged in any market misconduct pursuant to section 252(3)(b); or

(c) at any time before the commencement of this Part resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.

(3) The Tribunal shall not make an order in respect of a person under subsection (1) without first giving the person a reasonable opportunity of being heard.

(4) Where the Tribunal makes an order under subsection (1)(a), the Tribunal may specify a corporation by name or by reference to a relationship with any other corporation.

(5) The Tribunal may, in relation to any person, specify any market misconduct in an order under subsection (1)(c), whether or not there is, at the time when the order is made, likelihood that the person would perpetrate any conduct which constitutes the market misconduct.

(6) Where the Tribunal makes an order under subsection (1)(e) or (f) requiring the payment of costs as costs reasonably incurred in relation or incidental to any proceedings instituted under section 252, subject to any rules made by the Chief Justice under section 269, Order 62 of the Rules of the High Court (Cap 4 sub. leg. A) applies to the taxation of the costs.

(7) The Tribunal shall by notice in writing notify a person of an order made in respect of him under subsection (1).

(8) An order made in respect of a person under subsection (1) takes effect at the time when it is notified to the person or at the time specified in the notice, whichever is the later.

(9) Where the Tribunal makes an order under subsection (1)(b), the Commission may notify any licensed person or registered institution of the order in such manner as it considers appropriate.

(10) A person commits an offence if he fails to comply with an order made under subsection (1)(a), (b) or (c) and is liable-

- (a) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
Section 258	Further orders in respect of officers of corporation	L.N. 12 of 2003	01/04/2003

(1) Subject to subsection (3), where a corporation has been identified as having engaged in market misconduct pursuant to section 252(3)(b) and the market misconduct is directly or indirectly attributable to a breach by any person as an officer of the corporation of the duty imposed on him by section 279, the Tribunal may make one or more of the orders referred to in section 257(1)(a) to (g) in respect of the person even if the person has not been identified as having engaged in market misconduct pursuant to section 252(3)(b).

(2) When making any order in respect of a person under subsection (1), the Tribunal may take into account any conduct by the person which-

- (a) previously resulted in the person being convicted of an offence in Hong Kong;
- (b) previously resulted in the person being identified by the Tribunal as having engaged in any market misconduct pursuant to section 252(3)(b); or
- (c) at any time before the commencement of this Part resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.

(3) The Tribunal shall not make an order in respect of a person under subsection (1) without first giving the person a reasonable opportunity of being heard.

(4) Where the Tribunal makes under subsection (1) an order referred to in section 257(1)(a), the Tribunal may specify a corporation by name or by reference to a relationship with any other corporation.

(5) Where the Tribunal, in relation to any person, makes under subsection (1) an order referred to in section 257(1)(c), the Tribunal may specify any market misconduct in the order, whether or not there is, at the time when the order is made, likelihood that the person would perpetrate any conduct which constitutes the market misconduct.

(6) Where the Tribunal makes under subsection (1) an order referred to in section 257(1)(e) or (f) requiring the payment of costs as costs reasonably incurred in relation or incidental to any proceedings instituted under section 252, subject to any rules made by the Chief Justice under section 269, Order 62 of the Rules of the High Court (Cap 4 sub. leg. A) applies to the taxation of the costs.

(7) The Tribunal shall by notice in writing notify a person of an order made in respect of him under subsection (1).

(8) An order made in respect of a person under subsection (1) takes effect at the time when it is notified to the person or at the time specified in the notice, whichever is the later.

(9) Where the Tribunal makes under subsection (1) an order referred to in section 257(1)(b), the Commission may notify any licensed person or registered institution of the order in such manner as it considers appropriate.

(10) Where an order referred to in section 257(1)(a), (b) or (c) is made in respect of a person under subsection (1), the person commits an offence if he fails to comply with the order 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.

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Section 285	Interpretation of Part XIV	L.N. 12 of 2003	01/04/2003
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Expanded Cross Reference:

286, 287, 288, 289

(1) In this Part, unless the context otherwise requires-
"associate" (有聯繫者), in relation to a person, means-

- (a) the person's spouse or reputed spouse, any person cohabiting with the person as a spouse, the person's brother, sister, parent, step-parent, child (natural or adopted) or step-child;
- (b) any corporation of which the person is a director;
- (c) any employee or partner of the person;
- (d) where the person is a corporation, each of its directors and its related corporations and each director or employee of any of its related corporations;
- (e) without limiting the circumstances in which paragraphs (a) to (d) apply, in circumstances concerning the securities of or other interest in a corporation, or rights arising out of the holding of such securities or such interest, any other person with whom the person has an agreement or arrangement-
 - (i) with respect to the acquisition, holding or disposal of such securities or such interest; or
 - (ii) under which they undertake to act together in exercising their voting power at general meetings of the corporation;

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

- (a) in accordance with whose directions or instructions the directors of the corporation or of another corporation of which it is a subsidiary are accustomed or obliged to act; or
- (b) who, either alone or with any of his associates, is entitled to exercise or control the exercise of more than 33% of the voting power at general meetings of the corporation or of another corporation of which it is a subsidiary;

"relevant overseas market" (有關境外市場)-

- (a) in relation to securities, means a stock market outside Hong Kong; or
- (b) in relation to futures contracts, means a futures market outside Hong Kong;

"relevant recognized market" (有關認可市場)-

- (a) in relation to securities, means a recognized stock market; or
- (b) in relation to futures contracts, means a recognized futures market.

(2) In this subsection and sections 286 to 289 and Division 2, unless the context otherwise

requires- <* Note - Exp. X-Ref.: Sections 286, 287, 288, 289 *>

"derivatives" (衍生工具), in relation to listed securities, means-

- (a) rights, options or interests (whether described as units or otherwise) in, or in respect of, the listed securities;
- (b) contracts, the purpose or pretended purpose of which is to secure or increase a profit or avoid or reduce a loss, wholly or partly by reference to the price or value, or a change in the price or value, of-
 - (i) the listed securities; or
 - (ii) any rights, options or interests referred to in paragraph (a);
- (c) rights, options or interests (whether described as units or otherwise) in, or in respect of-
 - (i) any rights, options or interests referred to in paragraph (a); or
 - (ii) any contracts referred to in paragraph (b);
- (d) instruments or other documents creating, acknowledging or evidencing any rights, options or interests or any contracts referred to in paragraph (a), (b) or (c), including certificates of interest or participation in, temporary or interim certificates for, receipts (including depositary receipts) in respect of, or warrants to subscribe for or purchase-
 - (i) the listed securities; or
 - (ii) the rights, options or interests or the contracts,

whether or not the derivatives are listed and regardless of who issued or made them;

"listed" (上市) means listed on a recognized stock market, and for the purposes of this definition, securities shall continue to be regarded as listed during a period of suspension of dealings in those securities on the recognized stock market;

"listed corporation" (上市法團) means a corporation which has issued securities that are, at the time of the relevant contravention in relation to the corporation, listed;

"listed securities" (上市證券) means-

- (a) securities which, at the time of the relevant contravention in relation to a corporation, have been issued by the corporation and are listed;
- (b) securities which, at the time of the relevant contravention in relation to a corporation, have been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently listed;
- (c) securities which, at the time of the relevant contravention in relation to a corporation, have not been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently so issued and listed;

"relevant contravention" (違例事件) means a contravention of any of the provisions of Division 2;

"relevant information" (有關消息), in relation to a corporation, means specific information about-

- (a) the corporation;
- (b) a shareholder or officer of the corporation; or
- (c) the listed securities of the corporation or their derivatives,

which is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but which would if it were generally known to them be likely to materially affect the price of the listed securities;

"securities" (證券) means-

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

(3) For the purposes of the definition of "controller" in subsection (1), where a person is entitled to exercise or control the exercise of more than 33% of the voting power at general meetings of a corporation and the corporation is entitled to exercise or control the exercise of any of the voting power at general meetings of another corporation ("the effective voting power"), then the effective voting power at general meetings of the other corporation shall be regarded as exercisable by the person.

(4) For the purposes of this Part, a person shall not be regarded as a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act by reason only that the directors of the corporation act on advice given by him in a professional capacity.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
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Section 303	Penalties	L.N. 12 of 2003	01/04/2003
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- (1) A person who commits an offence under this Part is liable-
 - (a) on conviction on indictment to a fine of \$1000000 and to imprisonment for 10 years; or
 - (b) on summary conviction to a fine of \$1000000 and to imprisonment for 3 years.
- (2) Where a person is convicted of an offence under this Part, the court before which the person is so convicted may, in addition to any penalty specified in subsection (1), make one or more of the following orders in respect of the person-
 - (a) an order that the person shall not, without the leave of the court, be or continue to be a director, liquidator, or receiver or manager of the property or business, of a listed corporation or any other specified corporation or in any way, whether directly or indirectly, be concerned or take part in the management of a listed corporation or any other specified corporation for the period (not exceeding 5 years) specified in the order;
 - (b) an order that the person shall not, without the leave of the court, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities, futures contract or leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme for the period (not exceeding 5 years) specified in the order;
 - (c) an order that any body which may take disciplinary action against the person as one of its members be recommended to take disciplinary action against him.
- (3) When making any order in respect of a person under subsection (2), the court may take into account any conduct by the person which-
 - (a) previously resulted in the person being convicted of an offence in Hong Kong;
 - (b) previously resulted in the person being identified by the Market Misconduct Tribunal as having engaged in any market misconduct pursuant to section 252(3)(b); or
 - (c) at any time before the commencement of Part XIII resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.
- (4) Where the court makes an order under subsection (2)(a), the court may specify a corporation by name or by reference to a relationship with any other corporation.
- (5) Where the court makes an order under subsection (2)(a), the order shall be filed by the court with the Registrar of Companies, as soon as reasonably practicable after it is made.
- (6) Where the court makes an order under subsection (2)(b), the Commission may notify any licensed person or registered institution of the order in such manner as it considers appropriate.
- (7) A person commits an offence if he fails to comply with an order made under subsection (2)(a) or (b) and is liable-
 - (a) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
Schedule 1	INTERPRETATION AND GENERAL PROVISIONS	8 of 2011	13/05/2011

[sections 2, 19, 66, 102, 164, 171, 174, 175, 202 & 406 & Schs. 9 & 10]
(Amended 8 of 2011 s. 14)

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

- interest; or
- (ii) under which they undertake to act together in exercising their voting power at general meetings of the corporation;
- "associated entity" (有聯繫實體), in relation to an intermediary, means a company, or 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" (行為) 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 and interest rate-linked instrument" (貨幣及利率掛鈎票據) means-

- (a) an instrument that is a structured product only because some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to a combination of-
 - (i) changes in the value or level (or a range within the value or level) of any one or more currency exchange rates or currency exchange rate indices or the occurrence or non-occurrence of any specified event or events relating to any one or more currency exchange rates or currency exchange rate indices; and
 - (ii) changes in the value or level (or a range within the value or level) of any one or more interest rates or interest rate indices or the occurrence or non-occurrence of any specified event or events relating to any one or more interest rates or interest rate indices; or
- (b) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as currency and interest rate-linked instruments in accordance with the notice,

but does not include any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as currency and interest rate-linked instruments in accordance with the notice; (Added 8 of 2011 s. 14)

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

- (a) an instrument that is a structured product only because some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to one or more of-
 - (i) changes in the value or level (or a range within the value or level) of any one or more currency exchange rates or currency exchange rate indices; or
 - (ii) the occurrence or non-occurrence of any specified event or events relating to any one or more currency exchange rates or currency exchange rate indices; or
- (b) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as currency-linked instruments in accordance with the notice,

but does not include any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as currency-linked instruments in accordance with the notice; (Added 8 of 2011 s. 14)

"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; (Amended 8 of 2011 s. 14)
- "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;
 - (e) any structured product; (Added 8 of 2011 s. 14)
- "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;

"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);
- "interest rate-linked instrument" (利率掛鈎票據) means-
- (a) an instrument that is a structured product only because some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to one or more of-
 - (i) changes in the value or level (or a range within the value or level) of any one or more interest rates or interest rate indices; or
 - (ii) the occurrence or non-occurrence of any specified event or events relating to any one or more interest rates or interest rate indices; or
 - (b) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as interest rate-linked instruments in accordance with the notice,
- but does not include any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as interest rate-linked instruments in accordance with the notice; (Added 8 of 2011 s. 14)
- "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" (市場失當行為) has the meaning assigned to it by section 245(1) of this Ordinance;

"Market Misconduct Tribunal" (市場失當行為審裁處) 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;

"misfeasance" (不當行為) 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;

"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 non-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)

"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; or
 - (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, loan stocks, funds, bonds or notes of, or issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority;
- (b) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
- (c) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
- (d) interests in any collective investment scheme;
- (e) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;
- (f) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as being regarded as securities in accordance with the terms of the notice; (Amended 8 of 2011 s. 14)
- (g) a structured product that does not come within any of paragraphs (a) to (f) but in respect of which the issue of any advertisement, invitation or document that is or contains an invitation to the public to do any act referred to in section 103(1)(a) of this Ordinance is authorized, or required to be authorized, under section 105(1) of this Ordinance, (Added 8 of 2011 s. 14)

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 that specifically provides that it is not negotiable or transferable (excluding a debenture that is a structured product in respect of which the issue of any advertisement, invitation or document that is or contains an invitation to the public to do any act referred to in section 103(1)(a) of this Ordinance is authorized, or required to be authorized, under section 105(1) of this Ordinance); (Amended 8 of 2011 s. 14)
- (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) has the meaning given by section 1A of this Part; (Added 8 of 2011 s. 14)

"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)

1A. Meaning of "structured product"

- (1) In this Ordinance, subject to subsection (2), "structured product" (結構性產品) means-
 - (a) an instrument under which some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to one or more of-
 - (i) changes in the price, value or level (or a range within the price, value or level) of any type or combination of types of securities, commodity, index, property, interest rate, currency exchange rate or futures contract;
 - (ii) changes in the price, value or level (or a range within the price, value or level) of any basket of more than one type, or any combination of types, of securities, commodity, index, property, interest rate, currency exchange rate or futures contract; or
 - (iii) the occurrence or non-occurrence of any specified event or events (excluding an event or events relating only to the issuer or guarantor of the instrument or to both the issuer and the guarantor);
 - (b) a regulated investment agreement; or
 - (c) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as structured products in accordance with the notice.
- (2) A "structured product" does not include-
 - (a) a debenture issued for capital fund raising purposes that is convertible into or exchangeable for shares (whether issued or unissued) of the issuer of the debenture or of a related corporation of the issuer;
 - (b) a subscription warrant issued for capital fund raising purposes that entitles the holder to subscribe for shares (whether issued or unissued) of the issuer of the warrant or of a related corporation of the issuer;
 - (c) a collective investment scheme;
 - (d) a depositary receipt;
 - (e) a debenture that would come within subsection (1)(a) only because it has a variable interest rate that is reset periodically to equate to a money market or interbank reference interest rate that is widely quoted (whether or not subject to a predetermined maximum or minimum rate) plus or minus a specified rate (if any);
 - (f) a product under which some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to securities of a corporation, or of a related corporation of the corporation, and that is issued by the corporation only to a person who is-
 - (i) a bona fide employee or former employee of the corporation or of a related corporation of the corporation; or
 - (ii) a spouse, widow, widower, minor child (natural or adopted) or minor step-child of a person referred to in subparagraph (i);
 - (g) a product that may be possessed, promoted, offered, sold, printed or published only-
 - (i) under a licence, permission or other authorization under the Betting Duty Ordinance (Cap 108) or the Gambling Ordinance (Cap 148); or
 - (ii) under the Government Lotteries Ordinance (Cap 334);
 - (h) an instrument issued in relation to-
 - (i) a contest authorized by section 37 of the Broadcasting Ordinance (Cap 562); or
 - (ii) a contest included in a service licensed under Part IIIA of the Telecommunications Ordinance (Cap 106);

- (i) a contract of insurance in relation to any class of insurance business specified in the First Schedule to the Insurance Companies Ordinance (Cap 41); or
- (j) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as structured products in accordance with the notice.

(Added 8 of 2011 s. 14)

2. References to subsidiary

(1) For the purposes of this Ordinance, a corporation shall be regarded as a subsidiary of another corporation if-

- (a) the other corporation-
 - (i) controls the composition of its board of directors;
 - (ii) controls more than half of its voting power at general meetings; or
 - (iii) holds more than half of its issued share capital (which issued share capital, for the purposes of this subparagraph, excludes any part thereof which carries no right to participate beyond a specified amount on a distribution of either profits or capital); or
- (b) it is a subsidiary of a corporation which is the other corporation's subsidiary.

(2) For the purposes of subsection (1), in determining whether a corporation is a subsidiary of another corporation-

- (a) any shares held or power exercisable by the other corporation in a fiduciary capacity shall be regarded as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable-
 - (i) by a nominee for the other corporation (except where the other corporation is concerned only in a fiduciary capacity); or
 - (ii) by, or by a nominee for, a subsidiary of the other corporation, not being a subsidiary which is concerned only in a fiduciary capacity, shall be regarded as held or exercisable by the other corporation;
- (c) any shares held or power exercisable by a person under a debenture of the corporation or under a trust deed for securing the issue of the debenture shall be disregarded; and
- (d) any shares held or power exercisable by, or by a nominee for, the other corporation or its subsidiary, not being held or exercisable as mentioned in paragraph (c), shall be regarded as not held or exercisable by the other corporation if the ordinary business of the other corporation or its subsidiary (as the case may be) includes the lending of money and the shares are held or power is exercisable by way of security only for a transaction entered into in the ordinary course of that business.

3. References to related corporation

For the purposes of this Ordinance-

- (a) 2 or more corporations shall be regarded as related corporations of each other if one of them is-
 - (i) the holding company of the other;
 - (ii) a subsidiary of the other; or
 - (iii) a subsidiary of the holding company of the other;
- (b) when an individual-
 - (i) controls the composition of the board of directors of one or more corporations;
 - (ii) controls more than half of the voting power at general meetings of one or more corporations; or
 - (iii) holds more than half of the issued share capital (which issued share capital, for the purposes of this subparagraph, excludes any part thereof which carries no right to participate beyond a specified amount on a distribution of either profits or capital) of one or more corporations,
 each of the corporations referred to in subparagraph (i), (ii) or (iii), and each of their subsidiaries, shall be regarded as related corporations of each other.

4. References to controlling the composition of a corporation's board of directors

(1) For the purposes of this Ordinance, the composition of a corporation's board of directors shall be regarded as controlled by another corporation if the other corporation, by the exercise of some power exercisable by it, can, without the consent or concurrence of any other person, appoint or remove all or a majority of the directors of the corporation.

(2) For the purposes of subsection (1), a corporation shall be regarded as being able to appoint or remove a director of another corporation if-

- (a) the appointment or removal cannot occur without the corporation exercising a power; or
- (b) the appointment of a person as a director of the other corporation follows necessarily from his being a director or other officer of the corporation.

(3) For the purposes of this Ordinance, the composition of a corporation's board of directors shall be regarded as controlled by an individual if the individual, by the exercise of some power exercisable by him, can, without the consent or concurrence of any other person, appoint or remove all or a majority of the directors of the corporation.

(4) For the purposes of subsection (3), an individual shall be regarded as being able to appoint or remove a director of a corporation if-

- (a) the appointment or removal cannot occur without the individual exercising a power; or
- (b) the appointment of a person as a director of the corporation follows necessarily from his being a director or other officer of another corporation and his appointment as a director or other officer of the other corporation cannot occur without the individual exercising a power.

5. References to wholly owned subsidiary

For the purposes of this Ordinance, a body corporate shall be regarded as the wholly owned subsidiary of another body corporate if it has no members except that other, that other's nominee, that other's wholly owned subsidiary (as construed in accordance with this section), such wholly owned subsidiary's nominee, or any combination thereof.

6. References to substantial shareholder

(1) For the purposes of this Ordinance, a person shall, in relation to a corporation, be regarded as a substantial shareholder of the corporation if he, either alone or with any of his associates-

- (a) has an interest in shares in the corporation-
 - (i) the nominal value of which shares is equal to more than the nominal value of 10% of the issued share capital of the corporation; or
 - (ii) which entitles the person, either alone or with any of his associates and either directly or indirectly, to exercise or control the exercise of more than 10% of the voting power at general meetings of the corporation; or
- (b) holds shares in any other corporation which entitles him, either alone or with any of his associates and either directly or indirectly, to exercise or control the exercise of 35% or more of the voting power at general meetings of the other corporation, or of a further corporation, which is itself entitled, either alone or with any of its associates and either directly or indirectly, to exercise or control the exercise of more than 10% of the voting power at general meetings of the corporation.

(2) For the purposes of subsection (1), a person shall be regarded as being entitled to exercise or control the exercise of 35% or more of the voting power at general meetings of a corporation indirectly if he, either alone or with any of his associates, has an interest in shares in a further corporation which entitles him, either alone or with any of his associates, to exercise or control the exercise of 35% or more of the voting power at general meetings of the further corporation which is itself entitled, either alone or with any of its associates, to exercise or control the exercise of 35% or more of the voting power at general meetings of the first-mentioned corporation.

7. References to securities of a corporation

In this Ordinance, a reference to securities (however described) as those of a corporation shall, unless the context otherwise requires, be construed as a reference to securities (having the applicable meaning, whether under section 1 or otherwise) which are-

- (a) issued, made available or granted by the corporation;
- (b) proposed to be issued, made available or granted by the corporation; or
- (c) proposed to be issued, made available or granted by the corporation when it is incorporated.

8. References to interest of investing public

In this Ordinance, a reference to the interest of the investing public does not include any interest the taking into consideration of which is or is likely to be contrary to the public interest.

9. References to conditions

In this Ordinance, unless the context otherwise requires, a reference to any condition imposed under or pursuant to any provision of this Ordinance shall, in any case where the condition has been amended (however described) under or pursuant to any provision of this Ordinance, be construed as a reference to the condition as so amended.

10. References relating to regulated activity

In this Ordinance-

- (a) unless otherwise defined or excluded or the context otherwise requires, a person shall be regarded as carrying on a regulated activity if-
 - (i) he carries on a business in a regulated activity; or
 - (ii) he performs for or on behalf of or by arrangement with a person carrying on a business in a regulated activity, any regulated function (as defined in section 113(1) of this Ordinance) in relation to the regulated activity;
- (b) a person shall be regarded as carrying on a regulated activity for an intermediary if he performs for or on behalf of or by arrangement with the intermediary any regulated function (as defined in section 113(1) of this Ordinance) in relation to the regulated activity;
- (c)
 - (i) a corporation licensed under section 116 or 117 of this Ordinance to carry on a regulated activity shall be regarded as being licensed for that regulated activity;
 - (ii) an individual licensed under section 120 or 121 of this Ordinance to carry on a regulated activity for a licensed corporation shall be regarded as being licensed for that regulated activity.

11. References to contravention, etc.

In this Ordinance, unless the context otherwise requires-

- (a) a reference to contravention shall-
 - (i) be construed as including a reference to failure to comply; and
 - (ii) in relation to any provision of any Ordinance, be construed as including a reference to the commission of an offence under the provision;
- (b) a reference to failure to comply shall-
 - (i) be construed as including a reference to contravention; and
 - (ii) in relation to any provision of any Ordinance, be construed as including a reference to the commission of an offence under the provision.

12. References to Ordinance

For the avoidance of doubt, in this Ordinance, a reference to this or any other Ordinance, whether generally or specifically and whether by reference to the short title of the Ordinance or otherwise, shall, unless the context otherwise requires, be construed as including any subsidiary legislation made under this or that other Ordinance (as the case may be).

PART 2

SPECIFIED FUTURES EXCHANGES

1. Australian Stock Exchange
2. Bourse de Montreal Inc.
3. Chicago Board of Trade
4. Chicago Board Options Exchange
5. Chicago Mercantile Exchange Inc.
6. Commodity Exchange, Inc. (New York)
7. Eurex
8. Euronext Amsterdam
9. Hong Kong Futures Exchange Limited
10. Korea Stock Exchange
11. London International Financial Futures and Options Exchange
12. London Metal Exchange
13. Marche a Terme International de France
14. Marche des Options Negociables de Paris
15. New York Cotton Exchange, Inc.
16. New York Futures Exchange
17. New York Mercantile Exchange
18. New Zealand Futures and Options Exchange
19. Osaka Securities Exchange
20. Pacific Exchange
21. Philadelphia Stock Exchange
22. Singapore Exchange Derivatives Trading Limited
23. Stockholmsborsen
24. Sydney Futures Exchange, Ltd.
25. Tokyo Grain Exchange
26. Tokyo International Financial Futures Exchange
27. Tokyo Stock Exchange
28. Winnipeg Commodities Exchange Inc.

PART 3

SPECIFIED STOCK EXCHANGES

1. American Stock Exchange
2. Australian Stock Exchange
3. Bolsa de Madrid
4. Borsa Italiana S.p.A.
5. Bourse de Montreal Inc.
6. Copenhagen Stock Exchange
7. Deutsche Borse AG
8. Euronext Amsterdam
9. Euronext Brussels
10. Euronext Paris
11. Helsinki Exchanges
12. Japanese Association of Securities Dealers Automated Quotations
13. Korea Stock Exchange
14. Kuala Lumpur Stock Exchange

15. London Stock Exchange
16. Luxembourg Stock Exchange
17. Nagoya Stock Exchange
18. National Association of Securities Dealers Automated Quotations
19. New York Stock Exchange
20. New Zealand Stock Exchange
21. Osaka Securities Exchange
22. Oslo Bors
23. Philippine Stock Exchange Inc.
24. Singapore Exchange Securities Trading Limited
25. The Stock Exchange of Hong Kong Limited
26. Stock Exchange of Thailand
27. Stockholmsborsen
28. SWX Swiss Exchange
29. Tokyo Stock Exchange
30. Toronto Stock Exchange
31. Wiener Borse AG

PART 4

MULTILATERAL AGENCIES

1. The African Development Bank
2. The Asian Development Bank
3. The European Bank for Reconstruction and Development
4. The European Investment Bank
5. The Inter-American Development Bank
6. The International Bank for Reconstruction and Development (commonly known as the World Bank)
7. The International Finance Corporation (an affiliate of the World Bank)

PART 5

QUALIFYING CREDIT RATING

1. A Moody's Investors Service rating of-
 - (a) A3 or above for long term debt; or
 - (b) Prime-3 or above for short term debt.
2. A Standard & Poor's Corporation rating of-
 - (a) A or above for long term debt; or
 - (b) A-3 or above for short term debt.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
Schedule 2	SECURITIES AND FUTURES COMMISSION	15 of 2006	23/06/2006

[sections 3, 7 & 10 &
Schedules 1 & 10]

PART 1

CONSTITUTION AND PROCEEDINGS OF COMMISSION, ETC.

Chairman, chief executive officer and other members of Commission

(Amended 15 of 2006 s. 6)

1. The Commission shall consist of a chairman, a chief executive officer and such number of other executive directors and non-executive directors as is determined by the Chief Executive, all of whom shall be appointed by the Chief Executive as follows- (Amended 15 of 2006 s. 6)
 - (a) the number of members of the Commission shall not be less than 8; and
 - (b) the number of non-executive directors of the Commission shall exceed the number of executive directors of the Commission. (Replaced 15 of 2006 s. 6)
2. (Repealed 15 of 2006 s. 6)
3. When the membership of the Commission ceases to comply with the requirements of section 1, the Chief Executive shall as soon as reasonably practicable thereafter make the necessary appointment to ensure that the requirements are complied with.

**Deputy chairman and vacancies in office of
chairman or deputy chairman**

4. The Chief Executive may appoint an executive director or non-executive director of the Commission to be the deputy chairman of the Commission. (Amended 15 of 2006 s. 6)
5. If the office of chairman of the Commission is vacant or the chairman of the Commission is unable to act as chairman due to illness, absence from Hong Kong or any other cause, the deputy chairman appointed under section 4 shall act as chairman in his place.
6. Notwithstanding that a deputy chairman has been appointed under section 4, the chairman of the Commission may, where there is no designation under section 7, designate an executive director or non-executive director of the Commission to act as chairman of the Commission for any period during which both he and the deputy chairman are unable to act as chairman due to illness, absence from Hong Kong or any other cause, and may at any time revoke any such designation. (Amended 15 of 2006 s. 6)
7. If-
 - (a) no deputy chairman has been appointed under section 4 or the office of deputy chairman of the Commission is vacant; or
 - (b) the deputy chairman appointed under section 4 is unable to act as chairman due to illness, absence from Hong Kong or any other cause, and there is no designation under section 6,the Financial Secretary may designate an executive director or non-executive director of the Commission to act as chairman of the Commission for any period during which the chairman of the Commission is unable to act as chairman due to illness, absence from Hong Kong or any other cause. (Amended 15 of 2006 s. 6)
8. A designation under section 7 ceases to have effect when-
 - (a) it is revoked by the Financial Secretary;
 - (b) where the designation is under section 7(a), an appointment is made under section 4; or
 - (c) where the designation is under section 7(b), the deputy chairman appointed under section 4 is able to act as chairman,whichever is the earlier.
9. A deputy chairman of the Commission who acts as chairman of the Commission under section 5, or an executive director or non-executive director of the Commission who acts as chairman of the Commission in accordance with a designation under section 6 or 7, shall be deemed for all purposes to be the chairman of the Commission. (Replaced 15 of 2006 s. 6)

9A. Notwithstanding section 9-

- (a) an executive director of the Commission shall not cease to be regarded as such only because of his acting as chairman of the Commission; and
- (b) a non-executive director of the Commission shall not cease to be regarded as such only because of his acting as chairman of the Commission. (Added 15 of 2006 s. 6)

Vacancy in office of chief executive officer

(Added 15 of 2006 s. 6)

9B. The Chief Executive may designate an executive director of the Commission to act as chief executive officer of the Commission for any period during which the chief executive officer of the Commission is unable to act as chief executive officer due to illness, absence from Hong Kong or any other cause, and may at any time revoke any such designation. (Added 15 of 2006 s. 6)

9C. An executive director of the Commission who acts as chief executive officer of the Commission shall be deemed for all purposes to be the chief executive officer of the Commission. (Added 15 of 2006 s. 6)

Functions and office of members, etc.

(Amended 15 of 2006 s. 6)

9D. Subject to the other provisions of this Ordinance, the chairman, deputy chairman and chief executive officer of the Commission shall have such functions as are assigned to them by the Commission. (Added 15 of 2006 s. 6)

10. The terms and conditions of the office of a member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) shall be determined by the Chief Executive. (Amended 15 of 2006 s. 6)

11. A member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) may at any time resign his office by notice in writing to the Chief Executive. (Amended 15 of 2006 s. 6)

12. A member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) shall be paid by the Commission such remuneration, allowances or expenses as the Chief Executive may determine. (Amended 15 of 2006 s. 6)

13. The Chief Executive may by notice in writing remove from office any member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) whose removal appears to him to be desirable for the effective performance by the Commission of its functions. (Amended 15 of 2006 s. 6)

Meetings

14. Meetings of the Commission shall be held as often as may be necessary for the performance of its functions, and may be convened by the chairman, deputy chairman, chief executive officer, or any 2 other members, of the Commission. (Amended 15 of 2006 s. 6)

15. At a meeting of the Commission-

- (a) if the chairman of the Commission is present, he shall be the chairman of the meeting;
- (b) if the chairman of the Commission is not present but the deputy chairman of the Commission is present, the deputy chairman shall be the chairman of the meeting; or
- (c) if neither the chairman nor the deputy chairman of the Commission is present, the members of the Commission present shall choose one of their number to be the chairman of the meeting.

16. The quorum for a meeting of the Commission is not less than one third of the executive directors

of the Commission and not less than one third of the non-executive directors of the Commission.

16A. For the purpose of forming a quorum under section 16-

- (a) subject to paragraph (b), the chairman of the Commission shall be counted as a non-executive director of the Commission; and
- (b) notwithstanding sections 9 and 9A-
 - (i) an executive director of the Commission who acts as chairman of the Commission shall only be counted as an executive director of the Commission; and
 - (ii) a non-executive director of the Commission who acts as chairman of the Commission shall only be counted as a non-executive director of the Commission. (Added 15 of 2006 s. 6)

17. A member of the Commission shall be regarded as being present at a meeting of the Commission if he participates in the meeting by telephone, video conferencing or other electronic means, provided he is able to hear the other members present at the meeting and they are able to hear him.

18. Each member of the Commission present at a meeting of the Commission has one vote.

19. Every question for decision at a meeting of the Commission shall be determined by a majority of votes of its members present and, in the event that voting is equally divided, the chairman of the meeting shall, subject to section 20, have a casting vote.

20. The chairman of a meeting of the Commission shall not exercise a casting vote in respect of any question for decision at the meeting until after he has consulted the Financial Secretary on the question.

Written resolution

21. Where a resolution-

- (a) is in writing; and
- (b) is signed by such number of members of the Commission as-
 - (i) would include all of the members of the Commission who are, at any time when the resolution is made available for signature, present in Hong Kong and capable of signing the resolution; and
 - (ii) is also not less than one third of the executive directors of the Commission and not less than one third of the non-executive directors of the Commission,

the resolution shall be as valid and effectual as if it had been passed at a meeting of the Commission convened and conducted in accordance with this Ordinance.

22. For the purposes of section 21, a resolution to which that section applies may be-

- (a) in the form of one document; or
- (b) in the form of more than one document, each in the like form and signed by one or more members of the Commission.

23. Where a resolution is in the form of more than one document as described in section 22(b), the requirement under section 21(b) shall be regarded as having been satisfied if the documents together bear the signatures of such number of members of the Commission as is specified in section 21(b)(i) and (ii).

24. For the purposes of sections 21 to 23-

- (a) a document shall be regarded as having been signed by a member of the Commission if a telex, cable, facsimile or electronic transmission of a document bears the signature of the member; and
- (b) a resolution to which section 21 applies shall be regarded as made on the date on which the resolution is signed by the last person signing as a member of the Commission for

the purposes of that section.

Seal, and regulation of administration, etc.

25. The Commission shall have a seal, the affixing of which shall be authenticated by the signature of the chairman or the deputy chairman of the Commission, or by the signature of such other member of the Commission as is authorized by it to act in that behalf.

26. The Commission shall organize and regulate its administration, procedure and business in such manner as it considers will, subject to the requirements of this Ordinance, best ensure the performance of its functions.

Advisory Committee

27. The Advisory Committee shall consist of-

- (a) the chairman of the Commission;
- (aa) the chief executive officer of the Commission; (Added 15 of 2006 s. 6)
- (b) not more than 2 other executive directors of the Commission who shall be appointed by the Commission;
- (c) not less than 8 (but not more than 12) other members who shall be appointed by the Chief Executive after consultation with the Commission.

28. A meeting of the Advisory Committee may be convened by-

- (a) the chairman of the Commission; (Amended 15 of 2006 s. 6)
- (aa) the chief executive officer of the Commission; or (Added 15 of 2006 s. 6)
- (b) any 3 other members of the Advisory Committee.

29. At a meeting of the Advisory Committee-

- (a) if the chairman of the Commission is present, he shall be the chairman of the meeting;
or
- (b) if the chairman of the Commission is not present, the members of the Advisory Committee present shall choose one of their number to be the chairman of the meeting.

30. Where a member of the Advisory Committee appointed under section 27(b) ceases to be an executive director of the Commission, he ceases to be a member of the Advisory Committee.

31. A member of the Advisory Committee appointed under section 27(b) or (c) may at any time resign his office by notice in writing to-

- (a) where he has been appointed under section 27(b), the Commission; or
- (b) where he has been appointed under section 27(c), the Chief Executive.

32. The Chief Executive may by notice in writing remove from office any member of the Advisory Committee appointed under section 27(c).

PART 2

NON-DELEGABLE FUNCTIONS OF COMMISSION

1. Any function of the Commission to make subsidiary legislation under or pursuant to any Ordinance.

2. The following functions of the Commission-

- (1) to borrow money, under section 5(4)(d) of this Ordinance;
- (2) to publish or otherwise make available materials, under section 5(4)(e) of this Ordinance;
- (3) to establish any committee, under section 8(1) of this Ordinance;

- (4) to refer any matter to a committee, under section 8(2) of this Ordinance;
- (5) to appoint a person to be a member or chairman of a committee, under section 8(3) of this Ordinance;
- (6) to withdraw a reference from a committee, or to revoke an appointment of a member or chairman of a committee, under section 8(5) of this Ordinance;
- (7) to submit to the Chief Executive estimates, under section 13(2) of this Ordinance;
- (8) to prepare any financial statements, under section 15(2) of this Ordinance;
- (9) to prepare any report, under section 15(3) of this Ordinance;
- (10) to appoint auditors, under section 16(1) of this Ordinance;
- (11) to invest funds, under section 17 of this Ordinance;
- (12) to recognize a company as an exchange company under, or to impose conditions pursuant to, section 19(2) of this Ordinance;
- (13) to amend or revoke conditions, or impose new conditions, under section 19(3) of this Ordinance;
- (14) to give a company a reasonable opportunity of being heard, under section 19(7) of this Ordinance;
- (15) to request a recognized exchange company to make or amend rules, under section 23(3) of this Ordinance;
- (16) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 24(3) of this Ordinance;
- (17) to advise the Financial Secretary to extend time, pursuant to section 24(6) of this Ordinance;
- (18) to declare any class of rules to be a class of rules which are not required to be approved, under section 24(7) of this Ordinance;
- (19) to request the Chief Executive in Council to transfer any function of the Commission, under section 25(1) of this Ordinance;
- (20) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 25(7) of this Ordinance;
- (21) to approve the appointment of a person as chief executive, pursuant to section 26 of this Ordinance;
- (22) to withdraw recognition of a recognized exchange company, under section 28(1)(a) of this Ordinance;
- (23) to direct a recognized exchange company to cease to provide or operate facilities or to cease to provide services, under section 28(1)(b) of this Ordinance;
- (24) to direct a recognized exchange company to cease to provide or operate facilities or to cease to provide services, under section 29(1) of this Ordinance;
- (25) to extend a direction, under section 29(3) of this Ordinance;
- (26) to recognize a company as a clearing house under, or to impose conditions pursuant to, section 37(1) of this Ordinance;
- (27) to amend or revoke conditions, or impose new conditions, under section 37(2) of this Ordinance;
- (28) to give a company a reasonable opportunity of being heard, under section 37(5) of this Ordinance;
- (29) to request a recognized clearing house to make or amend rules, under section 40(4) of this Ordinance;
- (30) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 41(3) of this Ordinance;
- (31) to advise the Financial Secretary to extend time, pursuant to section 41(6) of this Ordinance;
- (32) to declare any class of rules to be a class of rules which are not required to be approved, under section 41(7) of this Ordinance;
- (33) to withdraw recognition of a recognized clearing house, under section 43(1)(a) of this Ordinance;
- (34) to direct a recognized clearing house to cease to provide or operate facilities, under section 43(1)(b) of this Ordinance;
- (35) to recognize a company as an exchange controller under, or to impose conditions

- pursuant to, section 59(2) of this Ordinance;
- (36) to amend or revoke conditions, or impose new conditions, under section 59(3) of this Ordinance;
 - (37) to direct a person to take specified steps, under section 59(9)(c) of this Ordinance;
 - (38) to give a company a reasonable opportunity of being heard, under section 59(18) of this Ordinance;
 - (39) to approve the increase or decrease of any interest a recognized exchange controller has in a recognized exchange company or recognized clearing house, pursuant to section 60(a) of this Ordinance;
 - (40) to approve a person for becoming a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house, pursuant to section 61(1) of this Ordinance;
 - (41) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 67(3) of this Ordinance;
 - (42) to advise the Financial Secretary to extend time, pursuant to section 67(6) of this Ordinance;
 - (43) to declare any class of rules to be a class of rules which are not required to be approved, under section 67(7) of this Ordinance;
 - (44) to request the Chief Executive in Council to transfer any function of the Commission, under section 68(1) of this Ordinance;
 - (45) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 68(7) of this Ordinance;
 - (46) to approve the appointment of a person as chief executive or chief operating officer, pursuant to section 70(1) of this Ordinance;
 - (47) to remove a person from the office of a chief executive or chief operating officer, under section 70(2) of this Ordinance;
 - (48) to withdraw recognition of a recognized exchange controller, under section 72(1)(i) of this Ordinance;
 - (49) to direct a company to take specified steps, under section 72(1)(ii) of this Ordinance;
 - (50) to give a recognized exchange controller a reasonable opportunity of being heard, pursuant to section 72(2) of this Ordinance;
 - (51) to make statement in writing, pursuant to section 74(1) of this Ordinance;
 - (52) to direct a recognized exchange controller or a relevant corporation to take specified steps, under section 75(1) of this Ordinance;
 - (53) to approve a fee, pursuant to section 76(1) of this Ordinance;
 - (54) to recognize a company as an investor compensation company under, or to impose conditions pursuant to, section 79(1) of this Ordinance;
 - (55) to amend or revoke conditions, or impose new conditions, under section 79(2) of this Ordinance;
 - (56) to give a company a reasonable opportunity of being heard, under section 79(5) of this Ordinance;
 - (57) to request the Chief Executive in Council to transfer any function of the Commission, under section 80(1) of this Ordinance;
 - (58) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 80(7) of this Ordinance;
 - (59) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 83(3) of this Ordinance;
 - (60) to advise the Financial Secretary to extend time, pursuant to section 83(6) of this Ordinance;
 - (61) to declare any class of rules to be a class of rules which are not required to be approved, under section 83(7) of this Ordinance;
 - (62) to withdraw recognition of a recognized investor compensation company, under section 85(1) of this Ordinance;
 - (63) to approve the conduct of activities or businesses, pursuant to section 90(1) of this Ordinance;
 - (64) to serve a notice, under section 92(1) of this Ordinance;

- (65) to extend the period during which a restriction notice is to remain in force, under section 92(7) of this Ordinance;
- (66) to apply to the Court of First Instance, pursuant to section 92(9) of this Ordinance;
- (67) to make a suspension order, under section 93(1) of this Ordinance;
- (68) to extend the period during which a suspension order is to remain in force, under section 93(9) of this Ordinance;
- (69) to appoint any person, other than an employee of the Commission, to investigate any of the matters referred to in section 182(1)(a) to (g) of this Ordinance, under section 182(1) of this Ordinance;
- (70) to cause a report to be published, under section 183(6) of this Ordinance;
- (71) to impose a prohibition or requirement, under section 204, 205 or 206 of this Ordinance;
- (72) to withdraw, substitute or vary a prohibition or requirement, under section 208(1) of this Ordinance;
- (73) to present a petition, under section 212 of this Ordinance;
- (74) to apply to the Court of First Instance, pursuant to section 213(1) of this Ordinance;
- (75) to apply to the Court of First Instance, under section 214(1) of this Ordinance;
- (76) to specify the time at which a specified decision is to take effect, under section 232(3) of this Ordinance;
- (77) to establish a compensation fund, under section 236 of this Ordinance;
- (78) to borrow, or to charge any investments by way of security, under section 237(2)(a) of this Ordinance;
- (79) to appoint an auditor, under section 240(5) of this Ordinance;
- (80) to invest money, under section 241(1) of this Ordinance;
- (81) to make report to the Financial Secretary, under section 252(8) of this Ordinance;
- (82) to publish guidelines, under section 309(1) of this Ordinance;
- (83) to make an application, pursuant to section 385(1) of this Ordinance;
- (84) to consult the Financial Secretary, under section 396(1) of this Ordinance;
- (85) to make recommendation to the Chief Executive in Council, under section 396(2) of this Ordinance;
- (86) to appoint members of the Advisory Committee, under section 27(b) of Part 1;
- (87) to direct any specified securities to be subject to restrictions, under section 1(2) of Part 6 of Schedule 3 to this Ordinance;
- (88) to apply to the Court of First Instance, pursuant to section 1(6)(a) of Part 6 of Schedule 3 to this Ordinance;
- (89) to apply to the Court of First Instance, pursuant to section 1(7) of Part 6 of Schedule 3 to this Ordinance.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
Schedule 9	MARKET MISCONDUCT TRIBUNAL	L.N. 12 of 2003	01/04/2003

[sections 251, 252, 253,
256 & 269]

1. In this Schedule, unless the context otherwise requires-
 - "chairman" (主席) means the chairman of the Tribunal;
 - "judge" (法官) has the meaning assigned to it by section 245(1) of this Ordinance;
 - "member" (成員) means a member of the Tribunal;
 - "ordinary member" (普通成員) means a member other than the chairman;
 - "Presenting Officer" (提控官) has the meaning assigned to it by section 245(1) of this Ordinance;
 - "proceedings" (研訊程序) means proceedings instituted under section 252 of this Ordinance;

"Tribunal" (審裁處) has the meaning assigned to it by section 245(1) of this Ordinance.

Appointment of members

2. The chairman shall be appointed by the Chief Executive on the recommendation of the Chief Justice.
3. Subject to sections 6, 7 and 9, the chairman shall be appointed for a term of 3 years or appointed to act in relation to any specified proceedings, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.
4. The ordinary members shall be appointed by the Chief Executive.
5. Subject to sections 6 and 8, an ordinary member shall be appointed to act in relation to any specified proceedings, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.
6. A member may at any time resign his office by notice in writing to the Chief Executive.
7. The Chief Executive, after consultation with the Chief Justice, may by notice in writing remove the chairman from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.
8. The Chief Executive may by notice in writing remove an ordinary member from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.
9. If any proceedings have been commenced by the Tribunal but not completed before the expiry of the chairman's term of office, the Chief Executive may authorize the chairman to continue to act as the chairman for the purpose of completing the proceedings.

Appointment of persons to replace ordinary members

10. Subject to section 11, the Chief Executive may appoint a person, who is not a public officer, to replace an ordinary member if the ordinary member has died, or has resigned from office under section 6 or has been removed from office under section 8, and the person may, subject to the other provisions of this Ordinance, from time to time be reappointed.
11. The Chief Executive shall not appoint a person to replace an ordinary member of the Tribunal under section 10 unless the chairman of the Tribunal-
 - (a) has recommended that a person should be so appointed having regard to the interests of justice; and
 - (b) has given a reasonable opportunity of being heard to-
 - (i) any person whose identity is specified pursuant to section 13(b) in the statement for the proceedings as described in section 13; and
 - (ii) the Presenting Officer appointed for the proceedings.
12. A person appointed to replace an ordinary member under section 10 shall be deemed for all purposes to be the ordinary member.

Statements for institution of proceedings

13. The statement required to be contained in a notice given by the Financial Secretary under section 252(2) of this Ordinance shall specify-
 - (a) the provision or provisions of Part XIII of this Ordinance by reference to which any person appears to have perpetrated any conduct which constitutes market misconduct;

and

- (b) the identity of the person, and such brief particulars as are sufficient to disclose reasonable information concerning the nature and essential elements of the market misconduct.

14. Where it appears to the Financial Secretary that a person may have perpetrated any conduct which constitutes market misconduct by reference to more than one provision of Part XIII of this Ordinance, the statement described in section 13 may specify separately or in the alternative the market misconduct by reference to those provisions.

15. The Tribunal may at any time during the course of any proceedings order the Presenting Officer appointed for the proceedings to amend the statement for the proceedings as described in section 13 in such manner as it considers appropriate, except that-

- (a) there shall be no amendment to the identity of the person originally specified pursuant to section 13(b) in the statement; and
- (b) after the amendment the financial product which is the subject of any market misconduct specified in the statement shall remain the same as the financial product which is the subject of the market misconduct originally specified in the statement.

16. For the avoidance of doubt, the Tribunal shall have jurisdiction exercisable by reference to a statement as amended under section 15 in the same manner as it has jurisdiction exercisable by reference to a statement described in section 13.

17. Notwithstanding anything in Part XIII of this Ordinance, unless the identity of a person is specified pursuant to section 13(b) in a statement described in section 13-

- (a) he shall not be identified as having engaged in market misconduct pursuant to section 252(3)(b) of this Ordinance; and
- (b) no order shall be made in respect of him under section 257 or 258 of this Ordinance.

18. Any person whose identity is specified pursuant to section 13(b) in a statement described in section 13 shall be provided with a copy of the statement and, where the statement is amended under section 15, of the statement as so amended, in such manner as the Tribunal may direct.

19. After the conduct of any proceedings instituted under section 252 of this Ordinance, where it appears to the Tribunal that market misconduct has or may have taken place by reference to the conduct of any person, it may, where it considers appropriate, include in the report prepared by it in respect of the proceedings under section 262(1) of this Ordinance a recommendation to the Financial Secretary to institute proceedings under section 252 of this Ordinance concerning the matter.

20. In section 15, "financial product" (金融產品) means-

- (a) where the market misconduct in question is an insider dealing, listed securities or derivatives of listed securities as defined in section 245(2) of this Ordinance; or
- (b) where the market misconduct in question is any other market misconduct, securities or futures contracts as defined in Schedule 1 to this Ordinance.

Presenting Officer

21. Without prejudice to any powers and functions of a Presenting Officer under Part XIII of this Ordinance, a Presenting Officer shall, in respect of the proceedings for which he is appointed, present to the Tribunal such available evidence, including any evidence which the Tribunal requests him to present to it, as shall enable the Tribunal to reach an informed decision as to whether market misconduct has taken place and, if so, the nature of the market misconduct.

22. The Secretary for Justice may at any time replace a Presenting Officer or any person appointed to assist a Presenting Officer.

Sittings

23. The chairman shall convene such sittings of the Tribunal as are necessary to hear and determine any question or issue arising out of or in connection with the proceedings.
24. Subject to section 25, at any sitting of the Tribunal-
- (a) the chairman and 2 ordinary members shall be present;
 - (b) the chairman shall preside; and
 - (c) every question before the Tribunal shall be determined by the opinion of the majority of the members except a question of law which shall be determined by the chairman alone.
25. At any sitting of the Tribunal held in respect of any matter which is determined by the chairman alone as the sole member of the Tribunal under section 36, the chairman only shall be present, and every question before the Tribunal shall be determined by him.
26. Every sitting of the Tribunal shall be held in public unless the Tribunal-
- (a) on its own motion; or
 - (b) on the application of-
 - (i) any person whose identity is specified pursuant to section 13(b) in the statement for the proceedings as described in section 13; or
 - (ii) the Presenting Officer appointed for the proceedings,
- determines that in the interests of justice a sitting or any part thereof shall not be held in public in which case it may hold the sitting or the part thereof (as the case may be) in private.
27. Where an application is made pursuant to section 26 for a determination that a sitting or any part thereof shall not be held in public, any hearing of the application shall be held in private.
28. At any sitting of the Tribunal relating to any proceedings, a person whose identity is specified pursuant to section 13(b) in the statement for the proceedings as described in section 13 shall be entitled to be heard-
- (a) in person or, in the case of a corporation, through an officer or employee of the corporation; and
 - (b) through counsel or a solicitor or, with the leave of the Tribunal, through any other person.
29. The chairman shall prepare or cause to be prepared a record of the proceedings at any sitting of the Tribunal, which shall contain such particulars relating to the proceedings as he considers appropriate.

Preliminary conferences and consent orders

30. At any time after any proceedings have been instituted under section 252 of this Ordinance, the chairman may-
- (a) on his own motion or on the application of-
 - (i) any person whose identity is specified pursuant to section 13(b) in the statement for the proceedings as described in section 13; or
 - (ii) the Presenting Officer appointed for the proceedings;
 - (b) if he considers it appropriate to do so, after consideration of any material that has been submitted to the Tribunal in relation to the proceedings by any person who is entitled to make an application pursuant to paragraph (a)(i) or (ii); and
 - (c) if all persons who are entitled to make, but have not made, an application pursuant to paragraph (a)(i) or (ii) agree,
- direct that a conference, to be attended by the parties to the proceedings or their representatives and presided over by the chairman, shall be held for the purposes of-
- (i) enabling the parties to prepare for the conduct of the proceedings;

- (ii) assisting the Tribunal to determine issues for the purposes of the proceedings; and
- (iii) generally securing the just, expeditious and economical conduct of the proceedings.

31. At a conference held in accordance with a direction of the chairman under section 30, the chairman may-

- (a) give any direction he considers necessary or desirable for securing the just, expeditious and economical conduct of the proceedings; and
- (b) endeavour to secure that the parties to the proceedings make all agreements as they ought reasonably to have made in relation to the proceedings.

32. After a conference has been held in accordance with a direction of the chairman under section 30, the chairman shall report to the Tribunal on such matters relating to the conference as he considers appropriate.

33. At any time after any proceedings have been instituted under section 252 of this Ordinance, the Tribunal or the chairman may make any order which it or he is entitled to make under any provision of this Ordinance, whether or not the requirements otherwise applicable to the making of the order have been complied with, if-

- (a) the parties to the proceedings request, and agree to, the making of the order under this section by the Tribunal or the chairman (as the case may be); and
- (b) the parties consent to all of the terms of the order.

34. Notwithstanding Part XIII of this Ordinance or any other provisions of this Schedule, where under section 33 the Tribunal or the chairman makes any order, the order shall, for all purposes, be regarded as an order made by the Tribunal or the chairman (as the case may be) under the provision in question in compliance with the requirements otherwise applicable to the making of the order.

35. In sections 33 and 34, "order" (命令) includes any finding, determination and any other decision.

Chairman as sole member of Tribunal

36. Where, at any time after any proceedings have been instituted under section 252 of this Ordinance but before any sitting of the Tribunal is held to hear and determine any question or issue arising out of or in connection with the proceedings, the parties to the proceedings have, by notice in writing given to the Tribunal, informed the Tribunal that they have agreed that any such question or issue may be determined by the chairman alone as the sole member of the Tribunal, the chairman may determine the question or issue as the sole member of the Tribunal.

37. Where section 36 applies, the Tribunal constituted by the chairman as the sole member of the Tribunal shall, for all purposes, be regarded as the Tribunal constituted also by 2 ordinary members.

38. After the chairman has made any determination under section 36, the chairman shall report to the Tribunal the making of the determination and the reasons therefor and such other matters relating to the determination as he considers appropriate.

Miscellaneous

39. Except as otherwise provided in this Ordinance, the Tribunal and its members, any Presenting Officer, and any party, witness, counsel, solicitor, or any other person involved, in any proceedings, shall have the same privileges and immunities in respect of the proceedings as they would have if the proceedings were civil proceedings before the Court of First Instance.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
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Section 247	Connected with a corporation (insider dealing)	L.N. 12 of 2003	01/04/2003
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(1) For the purposes of Division 4, a person shall be regarded as connected with a corporation if, being an individual-

- (a) he is a director or employee of the corporation or a related corporation of the corporation;
- (b) he is a substantial shareholder of the corporation or a related corporation of the corporation;
- (c) he occupies a position which may reasonably be expected to give him access to relevant information in relation to the corporation by reason of-
 - (i) a professional or business relationship existing between-
 - (A) himself, or his employer, or a corporation of which he is a director, or a firm of which he is a partner; and
 - (B) the corporation, a related corporation of the corporation, or an officer or substantial shareholder of either corporation; or
 - (ii) his being a director, employee or partner of a substantial shareholder of the corporation or a related corporation of the corporation;
- (d) he has access to relevant information in relation to the corporation and-
 - (i) he has such access by reason of his being in such a position that he would be regarded as connected with another corporation by virtue of paragraph (a), (b) or (c); and
 - (ii) the relevant information relates to a transaction (actual or contemplated) involving both those corporations or involving one of them and the listed securities of the other or their derivatives, or to the fact that the transaction is no longer contemplated; or
- (e) he was, at any time within the 6 months preceding any insider dealing in relation to the corporation, a person who would be regarded as connected with the corporation by virtue of paragraph (a), (b), (c) or (d).

(2) For the purposes of Division 4, a corporation shall be regarded as a person connected with another corporation so long as any of its directors or employees is a person who would be regarded as connected with that other corporation by virtue of subsection (1).

(3) In subsection (1), notwithstanding any other provisions of this Ordinance, "substantial shareholder" (大股東), in relation to a corporation, means a person who has an interest in the relevant share capital of the corporation, the nominal value of which is equal to or more than 5% of the nominal value of the relevant share capital of the corporation.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
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Section 248	Connected with a corporation-possession of relevant information obtained in privileged capacity (insider dealing)	L.N. 12 of 2003	01/04/2003
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(1) For the purposes of Division 4, where a public officer or a specified person in that capacity receives relevant information in relation to a corporation, he shall be regarded as a person connected with the corporation.

- (2) In subsection (1), a reference to a specified person means a person who is-
- (a) a member of the Executive Council;
 - (b) a member of the Legislative Council;
 - (c) a member of a board, commission, committee or other body appointed by or on behalf of the Chief Executive or the Chief Executive in Council under an Ordinance;

- (d) an officer or employee of a recognized exchange company, a recognized clearing house or a recognized exchange controller;
- (e) an exchange participant;
- (f) an officer or employee of an exchange participant;
- (g) an officer or employee of a body corporate incorporated by an Ordinance; or
- (h) an officer or employee of a body corporate specified by the Financial Secretary under subsection (3),

whether, in the case of paragraph (a), (b), (c), (d), (f), (g) or (h), the person is such a member, officer or employee (as the case may be) on a temporary or permanent basis, and whether he is paid or unpaid.

(3) The Financial Secretary may, by notice published in the Gazette, specify any body corporate for the purposes of subsection (2)(h).

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
Section 270	Insider dealing	L.N. 12 of 2003	01/04/2003

- (1) Insider dealing in relation to a listed corporation takes place-
 - (a) when a person connected with the corporation and having information which he knows is relevant information in relation to the corporation-
 - (i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or
 - (ii) counsels or procures another person to deal in such listed securities or derivatives, knowing or having reasonable cause to believe that the other person will deal in them;
 - (b) when a person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for the corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to the corporation-
 - (i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, otherwise than for the purpose of the take-over; or
 - (ii) counsels or procures another person to deal in such listed securities or derivatives, otherwise than for the purpose of the take-over;
 - (c) when a person connected with the corporation and knowing that any information is relevant information in relation to the corporation, discloses the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives;
 - (d) when a person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for the corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to the corporation, discloses the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives;
 - (e) when a person who has information which he knows is relevant information in relation to the corporation and which he received, directly or indirectly, from a person whom he knows is connected with the corporation and whom he knows or has reasonable cause to believe held the information as a result of being connected with the corporation-

- (i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or
 - (ii) counsels or procures another person to deal in such listed securities or derivatives; or
- or
- (f) when a person having received, directly or indirectly, from a person whom he knows or has reasonable cause to believe is contemplating or is no longer contemplating making a take-over offer for the corporation, information to that effect which he knows is relevant information in relation to the corporation-
 - (i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or
 - (ii) counsels or procures another person to deal in such listed securities or derivatives.

(2) Insider dealing in relation to a listed corporation also takes place when a person who knowingly has relevant information in relation to the corporation in any of the circumstances described in subsection (1)-

- (a) counsels or procures another person to deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, knowing or having reasonable cause to believe that the other person will deal in such listed securities or derivatives outside Hong Kong on a stock market other than a recognized stock market; or
- (b) discloses the relevant information to another person knowing or having reasonable cause to believe that the other person or some other person will make use of the relevant information for the purpose of dealing, or of counselling or procuring any other person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, outside Hong Kong on a stock market other than a recognized stock market.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
Section 271	Insider dealing-certain persons not to be regarded as having engaged in market misconduct	L.N. 12 of 2003	01/04/2003

(1) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question (as the case may be)-

- (a) for the sole purpose of acquiring shares required for his being qualified as a director or intending director of a corporation;
- (b) in the performance in good faith of an underwriting agreement for the listed securities or derivatives in question; or
- (c) in the performance in good faith of his functions as a liquidator, receiver or trustee in bankruptcy.

(2) A corporation shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through its dealing in or counselling or procuring another person to deal in listed securities or derivatives if it establishes that-

- (a) although one or more of its directors or employees had the relevant information in relation to the corporation the listed securities of which were, or the derivatives of the listed securities of which were, the listed securities or derivatives in question, each person who took the decision for it to deal in or counsel or procure the other person to deal in such listed securities or derivatives (as the case may be) did not have the relevant information up to (and including) the time when it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be);
- (b) arrangements then existed to secure that-

- (i) the relevant information was, up to (and including) the time when it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be), not communicated to any person who took the decision; and
- (ii) none of its directors or employees who had the relevant information gave advice concerning the decision to any person who took the decision at any time before it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be); and
- (c) the relevant information was in fact not so communicated to any person who took the decision and none of its directors or employees who had the relevant information in fact so gave the advice to any person who took the decision.

(3) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives or his disclosure of information if he establishes that the purpose for which he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question or disclosed the information in question (as the case may be) was not, or, where there was more than one purpose, the purposes for which he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question or disclosed the information in question (as the case may be) did not include, the purpose of securing or increasing a profit or avoiding or reducing a loss, whether for himself or another, by using relevant information.

(4) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that-

- (a) he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question (as the case may be) as agent;
- (b) he did not select or advise on the selection of such listed securities or derivatives; and
- (c) he-
 - (i) did not know that the person for whom he acted as agent was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives; or
 - (ii) did not know that the person for whom he acted as agent had the relevant information in question.

(5) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that-

- (a) at the time when he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question, the dealing in question was not required to be recorded on a recognized stock market or to be notified to a recognized exchange company under its rules; and
- (b) (i) where the insider dealing took place through his dealing in listed securities or derivatives-
 - (A) he and the other party to the dealing in question entered into the dealing directly with each other; and
 - (B) at the time when he entered into the dealing, the other party to the dealing knew, or ought reasonably to have known, of the relevant information in question; or
- (ii) where the insider dealing took place through his counselling or procuring another person to deal in listed securities or derivatives-
 - (A) he counselled or procured the other party to the dealing in question to enter into the dealing directly with him; and
 - (B) at the time when he counselled or procured the other party to enter into the dealing, the other party knew, or ought reasonably to have known, of the relevant information in question.

(6) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in listed securities or derivatives if he establishes that-

- (a) he entered into the dealing in question, otherwise than as a person who has counselled

or procured the other party to the dealing to deal in listed securities or their derivatives; and

- (b) at the time when he entered into the dealing, the other party to the dealing knew, or ought reasonably to have known, that he was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, the listed securities or derivatives in question.

(7) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his counselling or procuring another person to deal in listed securities or derivatives if he establishes that-

- (a) the other person did not counsel or procure the other party to the dealing in question to deal in listed securities or their derivatives; and
- (b) at the time when he counselled or procured the other person to deal in the listed securities or derivatives in question, the other party to the dealing in question knew, or ought reasonably to have known, that the other person was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives.

(8) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that-

- (a) he acted-
- (i) in connection with any dealing in listed securities or their derivatives (whether by himself or another person) which was under consideration or was the subject of negotiation, or in the course of a series of such dealings; and
- (ii) with a view to facilitating the accomplishment of the dealing or the series of dealings; and
- (b) the relevant information in question was market information arising directly out of his involvement in the dealing or the series of dealings.

(9) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that the dealing in question is a market contract.

(10) For the purposes of subsection (8), "market information" (市場消息) means information consisting of one or more of the following facts-

- (a) that there has been or is to be any dealing in listed securities or derivatives of listed securities of a particular kind, or that any such dealing is under consideration or is the subject of negotiation;
- (b) that there has not been or is not to be any dealing in listed securities or derivatives of listed securities of a particular kind;
- (c) the quantity of listed securities or derivatives of listed securities in which there is or is to be any dealing, or in which any dealing is under consideration or is the subject of negotiation;
- (d) the price (or range of prices) at which listed securities or derivatives of listed securities have been or are to be dealt in, or the price (or range of prices) at which listed securities or derivatives of listed securities in which any dealing is under consideration or is the subject of negotiation may be dealt in;
- (e) the identity of the persons involved or likely to be involved in any capacity in any dealing in listed securities or derivatives of listed securities.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
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Section 273	Insider dealing-certain persons exercising right to subscribe for or acquire securities or derivatives not to be regarded as having engaged in market misconduct	L.N. 12 of 2003	01/04/2003
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A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in listed securities or derivatives if he establishes that-

- (a) he dealt in the listed securities or derivatives in question by way of his exercise of a right to subscribe for or otherwise acquire such listed securities or derivatives; and
- (b) the right was granted to him or was derived from securities or their derivatives that were held by him before he became aware of any relevant information in relation to the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
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Section 287	Connected with a corporation (insider dealing offence)	L.N. 12 of 2003	01/04/2003
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(1) For the purposes of Division 2, a person shall be regarded as connected with a corporation if, being an individual-

- (a) he is a director or employee of the corporation or a related corporation of the corporation;
- (b) he is a substantial shareholder of the corporation or a related corporation of the corporation;
- (c) he occupies a position which may reasonably be expected to give him access to relevant information in relation to the corporation by reason of-
 - (i) a professional or business relationship existing between-
 - (A) himself, or his employer, or a corporation of which he is a director, or a firm of which he is a partner; and
 - (B) the corporation, a related corporation of the corporation, or an officer or substantial shareholder of either corporation; or
 - (ii) his being a director, employee or partner of a substantial shareholder of the corporation or a related corporation of the corporation;
- (d) he has access to relevant information in relation to the corporation and-
 - (i) he has such access by reason of his being in such a position that he would be regarded as connected with another corporation by virtue of paragraph (a), (b) or (c); and
 - (ii) the relevant information relates to a transaction (actual or contemplated) involving both those corporations or involving one of them and the listed securities of the other or their derivatives, or to the fact that the transaction is no longer contemplated; or
- (e) he was, at any time within the 6 months preceding the relevant contravention in relation to the corporation, a person who would be regarded as connected with the corporation by virtue of paragraph (a), (b), (c) or (d).

(2) For the purposes of Division 2, a corporation shall be regarded as a person connected with another corporation so long as any of its directors or employees is a person who would be regarded as connected with that other corporation by virtue of subsection (1).

(3) In subsection (1), notwithstanding any other provisions of this Ordinance, "substantial shareholder" (大股東), in relation to a corporation, means a person who has an interest in the relevant share capital of the corporation, the nominal value of which is equal to or more than 5% of the nominal value of the relevant share capital of the corporation.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
Section 288	Connected with a corporation-possession of relevant information obtained in privileged capacity (insider dealing offence)	L.N. 12 of 2003	01/04/2003

(1) For the purposes of Division 2, where a public officer or a specified person in that capacity receives relevant information in relation to a corporation, he shall be regarded as a person connected with the corporation.

(2) In subsection (1), a reference to a specified person means a person who is-

- (a) a member of the Executive Council;
- (b) a member of the Legislative Council;
- (c) a member of a board, commission, committee or other body appointed by or on behalf of the Chief Executive or the Chief Executive in Council under an Ordinance;
- (d) an officer or employee of a recognized exchange company, a recognized clearing house or a recognized exchange controller;
- (e) an exchange participant;
- (f) an officer or employee of an exchange participant;
- (g) an officer or employee of a body corporate incorporated by an Ordinance; or
- (h) an officer or employee of a body corporate specified by the Financial Secretary under subsection (3),

whether, in the case of paragraph (a), (b), (c), (d), (f), (g) or (h), the person is such a member, officer or employee (as the case may be) on a temporary or permanent basis, and whether he is paid or unpaid.

(3) The Financial Secretary may, by notice published in the Gazette, specify any body corporate for the purposes of subsection (2)(h).

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
Section 291	Offence of insider dealing	L.N. 12 of 2003	01/04/2003

(1) A person connected with a listed corporation and having information which he knows is relevant information in relation to the corporation shall not-

- (a) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or
- (b) counsel or procure another person to deal in such listed securities or derivatives, knowing or having reasonable cause to believe that the other person will deal in them.

(2) A person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for a listed corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to the corporation shall not-

- (a) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, otherwise than for the purpose of the take-over; or
- (b) counsel or procure another person to deal in such listed securities or derivatives, otherwise than for the purpose of the take-over.

(3) A person connected with a listed corporation and knowing that any information is relevant information in relation to the corporation shall not disclose the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives.

(4) A person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for a listed corporation and who knows that the information that the

offer is contemplated or is no longer contemplated is relevant information in relation to the corporation shall not disclose the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives.

(5) A person who has information which he knows is relevant information in relation to a listed corporation and which he received, directly or indirectly, from a person whom he knows is connected with the corporation and whom he knows or has reasonable cause to believe held the information as a result of being connected with the corporation shall not-

- (a) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or
- (b) counsel or procure another person to deal in such listed securities or derivatives.

(6) A person who has received, directly or indirectly, from a person whom he knows or has reasonable cause to believe is contemplating or is no longer contemplating making a take-over offer for a listed corporation, information to that effect which he knows is relevant information in relation to the corporation shall not-

- (a) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or
- (b) counsel or procure another person to deal in such listed securities or derivatives.

(7) A person who knowingly has relevant information in relation to a listed corporation in any of the circumstances described in subsection (1), (2), (3), (4), (5) or (6) shall not-

- (a) counsel or procure another person to deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, knowing or having reasonable cause to believe that the other person will deal in such listed securities or derivatives outside Hong Kong on a stock market other than a recognized stock market; or
- (b) disclose the relevant information to another person knowing or having reasonable cause to believe that the other person or some other person will make use of the relevant information for the purpose of dealing, or of counselling or procuring any other person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, outside Hong Kong on a stock market other than a recognized stock market.

(8) Subject to sections 292, 293 and 294, a person who contravenes subsection (1), (2), (3), (4), (5), (6) or (7) commits an offence.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
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Section 292	Insider dealing offence-general defences	L.N. 12 of 2003	01/04/2003
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(1) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question (as the case may be)-

- (a) for the sole purpose of acquiring shares required for his being qualified as a director or intending director of a corporation;
- (b) in the performance in good faith of an underwriting agreement for the listed securities or derivatives in question; or
- (c) in the performance in good faith of his functions as a liquidator, receiver or trustee in bankruptcy.

(2) Where a corporation is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through its dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the corporation to

prove that-

- (a) although one or more of its directors or employees had the relevant information in relation to the corporation the listed securities of which were, or the derivatives of the listed securities of which were, the listed securities or derivatives in question, each person who took the decision for it to deal in or counsel or procure the other person to deal in such listed securities or derivatives (as the case may be) did not have the relevant information up to (and including) the time when it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be);
- (b) arrangements then existed to secure that-
 - (i) the relevant information was, up to (and including) the time when it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be), not communicated to any person who took the decision; and
 - (ii) none of its directors or employees who had the relevant information gave advice concerning the decision to any person who took the decision at any time before it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be); and
- (c) the relevant information was in fact not so communicated to any person who took the decision and none of its directors or employees who had the relevant information in fact so gave the advice to any person who took the decision.

(3) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives or his disclosure of information, it is a defence to the charge for the person to prove that the purpose for which he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question or disclosed the information in question (as the case may be) was not, or, where there was more than one purpose, the purposes for which he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question or disclosed the information in question (as the case may be) did not include, the purpose of securing or increasing a profit or avoiding or reducing a loss, whether for himself or another, by using relevant information.

(4) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that-

- (a) he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question (as the case may be) as agent;
- (b) he did not select or advise on the selection of such listed securities or derivatives; and
- (c) he-
 - (i) did not know that the person for whom he acted as agent was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives; or
 - (ii) did not know that the person for whom he acted as agent had the relevant information in question.

(5) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that-

- (a) at the time when he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question, the dealing in question was not required to be recorded on a recognized stock market or to be notified to a recognized exchange company under its rules; and
- (b) (i) where the contravention took place through his dealing in listed securities or derivatives-
 - (A) he and the other party to the dealing in question entered into the dealing directly with each other; and

- (B) at the time when he entered into the dealing, the other party to the dealing knew, or ought reasonably to have known, of the relevant information in question; or
- (ii) where the contravention took place through his counselling or procuring another person to deal in listed securities or derivatives-
 - (A) he counselled or procured the other party to the dealing in question to enter into the dealing directly with him; and
 - (B) at the time when he counselled or procured the other party to enter into the dealing, the other party knew, or ought reasonably to have known, of the relevant information in question.

(6) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in listed securities or derivatives, it is a defence to the charge for the person to prove that-

- (a) he entered into the dealing in question, otherwise than as a person who has counselled or procured the other party to the dealing to deal in listed securities or their derivatives; and
- (b) at the time when he entered into the dealing, the other party to the dealing knew, or ought reasonably to have known, that he was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, the listed securities or derivatives in question.

(7) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that-

- (a) the other person did not counsel or procure the other party to the dealing in question to deal in listed securities or their derivatives; and
- (b) at the time when he counselled or procured the other person to deal in the listed securities or derivatives in question, the other party to the dealing in question knew, or ought reasonably to have known, that the other person was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives.

(8) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that-

- (a) he acted-
 - (i) in connection with any dealing in listed securities or their derivatives (whether by himself or another person) which was under consideration or was the subject of negotiation, or in the course of a series of such dealings; and
 - (ii) with a view to facilitating the accomplishment of the dealing or the series of dealings; and
- (b) the relevant information in question was market information arising directly out of his involvement in the dealing or the series of dealings.

(9) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that the dealing in question is a market contract.

(10) For the purposes of subsection (8), "market information" (市場消息) means information consisting of one or more of the following facts-

- (a) that there has been or is to be any dealing in listed securities or derivatives of listed securities of a particular kind, or that any such dealing is under consideration or is the subject of negotiation;
- (b) that there has not been or is not to be any dealing in listed securities or derivatives of listed securities of a particular kind;
- (c) the quantity of listed securities or derivatives of listed securities in which there is or is to be any dealing, or in which any dealing is under consideration or is the subject of negotiation;

- (d) the price (or range of prices) at which listed securities or derivatives of listed securities have been or are to be dealt in, or the price (or range of prices) at which listed securities or derivatives of listed securities in which any dealing is under consideration or is the subject of negotiation may be dealt in;
- (e) the identity of the persons involved or likely to be involved in any capacity in any dealing in listed securities or derivatives of listed securities.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
Section 294	Insider dealing offence-defences for certain persons exercising right to subscribe for or acquire securities or derivatives	L.N. 12 of 2003	01/04/2003

Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in listed securities or derivatives, it is a defence to the charge for the person to prove that-

- (a) he dealt in the listed securities or derivatives in question by way of his exercise of a right to subscribe for or otherwise acquire such listed securities or derivatives; and
- (b) the right was granted to him or was derived from securities or their derivatives that were held by him before he became aware of any relevant information in relation to the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives.

Chapter 571AF	SECURITIES AND FUTURES (FEES) RULES	Gazette Number	Version Date
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Schedule 1	FEES PRESCRIBED FOR PURPOSES OF SECTION 395(1)(a)(i), (iii) AND (iv) OF ORDINANCE	8 of 2011	13/05/2011
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[sections 2, 3 & 11]

Item	Description	Amount
Fees relating to Part III of Ordinance		
1.	Annual fee payable in respect of authorization of the provision of automated trading services under section 95(2) of the Ordinance	\$10000
Fees relating to Part IV of Ordinance		
2.	Fee payable on an application under section 104(1) of the Ordinance for-	
	(a) authorization of a collective investment scheme-	\$40000, plus \$5000 for each
	(i) within which there is, or could be, more than one fund; or	such fund (excluding any such fund which is already within or maintained by another collective investment scheme which has been authorized under section 104 of the Ordinance)
	(ii) which maintains, or is capable of maintaining, more than one fund	
	(b) authorization of any other collective investment scheme	\$20000
	(c) extension of authorization of a collective investment scheme to cover an additional fund	\$5000 (excluding any such fund which is already within or maintained by another collective investment scheme which has been authorized under section 104 of the Ordinance)
3.	Fee payable in respect of-	
	(a) authorization of a collective investment scheme under section 104 of the Ordinance-	\$20000, plus \$2500 for each
	(i) within which there is, or could be, more than one fund; or	such fund (excluding any such fund which is already within or maintained by another collective investment scheme which has been authorized under section 104 of the Ordinance)
	(ii) which maintains, or is capable of maintaining, more than one fund	
	(b) authorization of any other collective investment scheme under section 104 of the Ordinance	\$10000

	(c) extension of authorization of a collective investment scheme under section 104 of the Ordinance to cover an additional fund	\$2500 (excluding any such fund which is already within or maintained by another collective investment scheme which has been authorized under section 104 of the Ordinance)
4.	Annual fee payable in respect of authorization of a collective investment scheme under section 104 of the Ordinance which is not limited to a period of less than 12 months-	
	(a) in the case of a collective investment scheme-	\$7500, plus \$4500 for each such fund (excluding any such fund which is already within or maintained by another collective investment scheme which has been authorized under section 104 of the Ordinance)
	(i) within which there is, or could be, more than one fund; or	
	(ii) which maintains, or is capable of maintaining, more than one fund	
	(b) in the case of any other collective investment scheme	\$600
5.	Fee payable on an application for extension of the period of authorization of any collective investment scheme under section 104 of the Ordinance which authorization is limited to a period of less than 12 months	\$200
5A.	Fee payable on an application under section 104A(1) of the Ordinance for authorization of a structured product (Added 8 of 2011 s. 29)	\$200
5B.	Fee payable in respect of authorization of a structured product under section 104A of the Ordinance (Added 8 of 2011 s. 29)	\$100
6.	Fee payable on an application under section 105(1) of the Ordinance for authorization of the issue of an advertisement, invitation or document other than that in respect of any collective investment scheme which is authorized under section 104 of the Ordinance	\$200
7.	Fee payable in respect of authorization of the issue of an advertisement, invitation or document under section 105 of the Ordinance other than that in respect of any collective investment scheme which is authorized under section 104 of the Ordinance	\$100
8.	Fee payable on an application to modify a previous authorization under section 105 of the Ordinance of the issue of an advertisement, invitation or document in respect of-	
	(a) any instrument specified in Part 2 of Schedule 4 to the Ordinance	\$300
	(b) any certificate of deposit	\$300
	(c) any securities other than interests in a collective investment scheme	\$300
	(d) any structured product (Added 8 of 2011 s. 29)	\$300

Fees relating to Part V of Ordinance

9.	Fee payable on an application-	
	(a) for the grant of a licence under section 116, 117, 120 or 121 of the Ordinance where a licensed corporation or licensed representative has substantially changed its or his particulars since the grant of the existing licence	\$20 0
	(b) for the grant of a certificate of registration under section 119 of the Ordinance where a registered institution has substantially changed its particulars since the grant of the existing certificate of registration	\$20 0
10.	Fee payable for renewal of a modification or waiver referred to in item 16(e), (f), (g), (h), (i) or (j) of Schedule 3	\$40 00
11.	Fee payable pursuant to section 136(6)(b) of the Ordinance for certification of a copy of a document as a true copy	\$20 0

Fees relating to Part VI of Ordinance

12.	Fee payable-	
	(a) (subject to paragraph (c)) on an application under section 155(3)(a) of the Ordinance for approval in respect of an alteration of date on which the financial year ends	\$20 00
	(b) (subject to paragraph (c)) on an application under section 155(3)(b) of the Ordinance for approval in respect of the adoption of a period which exceeds 12 months as the financial year	\$20 00
	(c) on an application for approval in respect of both of the matters referred to in paragraphs (a) and (b) respectively	\$20 00
13.	Fee payable on an application under section 156(4) of the Ordinance for extension of the period within which financial statements and other documents, and any auditor's report, are required to be submitted under section 156(1) or (2) of the Ordinance	\$20 00

Fees relating to Part XV of Ordinance

14.	Fee payable on an application under section 309(2) or (3) of the Ordinance for exemption from all or any of the provisions of Part XV of the Ordinance	\$24 000
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Miscellaneous fees

15.	Fee payable on submission of any information or document to the Commission requiring its consideration and advice (including any advice relating to the application of Part IV of the Ordinance and any advice relating to the authorization for registration of a prospectus under section 38D or 342C of the Companies Ordinance (Cap 32))	\$10 000
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16.	Fee payable on an application pursuant to section 11 of the Securities and Futures (Client Securities) Rules (Cap 571 sub. leg. H) for any approval	\$60 00	
17.	Fee payable for renewal of an approval referred to in item 16	\$40 00	
18.	Fee payable on an application pursuant to section 4(2)(b) of the Securities and Futures (Client Money) Rules (Cap 571 sub. leg. I) for any approval	\$60 00	
19.	Fee payable for renewal of an approval referred to in item 18	\$40 00	
20.	Fee payable for renewal of an approval referred to in item 19 of Schedule 3	\$40 00	
21.	Fee payable on an application under section 38D or 342C of the Companies Ordinance (Cap 32) for authorization for registration of a prospectus under that Ordinance-		
	(a) in the case of rights issue prospectus	\$15	
	(b) in the case of Eurobond issue prospectus	000	
	(c) in the case of warrant issue prospectus	\$15	
	(d) in the case of any prospectus relating to interests in a collective investment scheme	000 \$10	
	(e) in the case of any prospectus, not referred to in paragraph (a), (b), (c) or (d), which offers any shares in or debentures of a corporation that have been approved by a recognized exchange company for listing on a recognized stock market	000 \$30 000	
	(f) in the case of any other prospectus	\$30 000	
22.	Fee payable for a copy of a document provided by the Commission in the performance of a function under any of the relevant provisions for which no fee is otherwise prescribed in this Schedule		\$9 per page

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
Section 214	Remedies in cases of unfair prejudice, etc. to interests of members of listed corporations, etc.	L.N. 12 of 2003	01/04/2003

(1) Where, in relation to a corporation which is or was listed, it appears to the Commission that at any relevant time the business or affairs of the corporation have been conducted in a manner-

- (a) oppressive to its members or any part of its members;
- (b) involving defalcation, fraud, misfeasance or other misconduct towards it or its members or any part of its members;
- (c) resulting in its members or any part of its members not having been given all the information with respect to its business or affairs that they might reasonably expect; or
- (d) unfairly prejudicial to its members or any part of its members,

the Commission may, subject to subsection (3), by petition apply to the Court of First Instance for an order under this section.

(2) If, on an application under this section, the Court of First Instance is of the opinion that the business or affairs of a corporation have been conducted in a manner described in subsection (1)(a), (b), (c) or (d), whether through conduct consisting of an isolated act or a series of acts or any failure to act, the Court may-

- (a) make an order restraining the carrying out, or requiring the carrying out, of any act or acts;
- (b) order that the corporation shall bring in its name such proceedings as the Court considers appropriate against such persons, and on such terms, as may be specified in the order;
- (c) unless the corporation is an authorized financial institution, appoint a receiver or manager of the whole or any part of the property or business of the corporation and may specify the powers and duties of the receiver or manager and fix his remuneration;
- (d) order that a person wholly or partly responsible for the business or affairs of the corporation having been so conducted shall not, without the leave of the Court-
 - (i) be, or continue to be, a director, liquidator, or receiver or manager of the property or business, of the corporation or any other corporation; or
 - (ii) in any way, whether directly or indirectly, be concerned, or take part, in the management of the corporation or any other corporation,
for such period (not exceeding 15 years) as may be specified in the order;
- (e) make any other order it considers appropriate, whether for regulating the conduct of the business or affairs of the corporation in future, or for the purchase of the shares of any members of the corporation by other members of the corporation or by the corporation (and, in the case of a purchase by the corporation, for the reduction accordingly of the corporation's capital), or otherwise.

(3) The Commission shall not make an application under this section unless it has first consulted-

- (a) the Financial Secretary; and
- (b) where the corporation in question is an authorized financial institution or a corporation which, to the knowledge of the Commission, is a controller of an authorized financial institution, or has as its controller an authorized financial institution, or has a controller that is also a controller of an authorized financial institution, the Monetary Authority.

(4) Where the Court of First Instance makes an order under subsection (2)(d), the order shall be filed by the Court with the Registrar of Companies, as soon as reasonably practicable after it is made.

(5) Where an order under this section makes an alteration in or addition to the constitution of a company, notwithstanding any other provisions of the Companies Ordinance (Cap 32) but subject to the provisions of the order, the company shall not have the power, without the leave of the Court of First Instance, to make any further alteration in or addition to the constitution inconsistent with the order.

(6) Where any alteration in or addition to the constitution of a company is made by an order

under this section, the alteration or addition (as the case may be) has the same effect as if duly made by a resolution of the company, and the Companies Ordinance (Cap 32) applies to the constitution as altered or added to accordingly.

(7) An office copy of an order of the Court of First Instance altering or adding to, or of the leave of the Court to alter or add to, the constitution of a company shall, within 14 days after the order is made or the leave is given, be delivered by the company to the Registrar of Companies for registration.

(8) A company which contravenes subsection (7) commits an offence and is liable on conviction to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for every day during which the offence continues.

(9) In this section-
 "controller" (控制人) means a person who is an indirect controller or a majority shareholder controller as defined in section 2(1) of the Banking Ordinance (Cap 155);

"relevant time" (有關時間)-
 (a) in relation to a corporation which is listed, means any time since the formation of the corporation; or
 (b) in relation to a corporation which was listed, means any time since the formation of the corporation but before the corporation ceased to remain listed.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
Section 252	Market misconduct proceedings	L.N. 12 of 2003	01/04/2003

(1) If it appears to the Financial Secretary, whether or not following any report by the Commission under subsection (8) or any notification by the Secretary for Justice under subsection (9), that market misconduct has or may have taken place, he may institute proceedings before the Tribunal concerning the matter.

(2) The Financial Secretary shall institute proceedings before the Tribunal by giving the Tribunal a notice in writing which shall contain a statement specifying such matters as are prescribed in Schedule 9.

(3) Without limiting the generality of section 251(1), the object of the proceedings instituted under subsection (1) is for the Tribunal to determine-

- (a) whether any market misconduct has taken place;
- (b) the identity of any person who has engaged in the market misconduct; and
- (c) the amount of any profit gained or loss avoided as a result of the market misconduct.

(4) Subject to subsections (5) and (6), the Tribunal may identify a person as having engaged in market misconduct pursuant to subsection (3)(b) if-

- (a) he has perpetrated any conduct which constitutes the market misconduct;
- (b) notwithstanding that he has not perpetrated any conduct which constitutes the market misconduct-
 - (i) the Tribunal identifies another person which is a corporation as having engaged in market misconduct pursuant to subsection (3)(b); and
 - (ii) the market misconduct occurred with his consent or connivance as an officer of the corporation; or
- (c) notwithstanding that he has not perpetrated any conduct which constitutes the market misconduct-
 - (i) the Tribunal identifies any other person as having engaged in market misconduct pursuant to subsection (3)(b); and
 - (ii) he assisted or connived with that other person in the perpetration of any conduct which constitutes the market misconduct, with the knowledge that such conduct constitutes or might constitute market misconduct.

(5) The Tribunal shall not identify a person as having engaged in market misconduct pursuant to subsection (3)(b) if it is provided under any provision of this Part that the person shall not by reason

of that market misconduct be regarded as having engaged in market misconduct.

(6) The Tribunal shall not identify a person as having engaged in market misconduct pursuant to subsection (3)(b) without first giving the person a reasonable opportunity of being heard.

(7) Subject to section 261(3), the standard of proof required to determine any question or issue before the Tribunal shall be the standard of proof applicable to civil proceedings in a court of law.

(8) The Commission may report to the Financial Secretary the occurrence of any event which the Commission reasonably believes or suspects constitutes market misconduct.

(9) The Secretary for Justice may notify the Financial Secretary of the occurrence of any event which the Secretary for Justice reasonably believes or suspects constitutes market misconduct.

(10) Nothing in subsection (1) prevents the Financial Secretary from referring any matter to the Secretary for Justice, if it appears to the Financial Secretary, whether or not following any report by the Commission under subsection (8) or any notification by the Secretary for Justice under subsection (9), that an offence under Part XIV has or may have been committed.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
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Section 261	Contempt dealt with by Tribunal	L.N. 12 of 2003	01/04/2003
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(1) The Tribunal shall have the same powers as the Court of First Instance to punish for contempt.

(2) Without limiting the generality of the powers of the Tribunal under subsection (1), the Tribunal shall have the same powers as the Court of First Instance to punish for contempt, as if it were contempt of court, a person who-

- (a) without reasonable excuse, commits any conduct falling within the description of section 253(2)(a), (b), (c), (d), (e) or (f);
- (b) commits any conduct falling within the description of section 254(6)(a), (b), (c) or (d); or
- (c) fails to comply with an order of the Tribunal referred to in section 257(10) or 258(10).

(3) The Tribunal shall, in the exercise of its powers to punish for contempt under this section, adopt the same standard of proof as the Court of First Instance in the exercise of the same powers to punish for contempt.

(4) Notwithstanding anything in this section and any other provisions of this Ordinance-

- (a) no power may be exercised under or pursuant to this section to determine whether to punish any person for contempt in respect of any conduct if-
 - (i) criminal proceedings have previously been instituted against the person under section 253(2), 254(6), 257(10) or 258(10) in respect of the same conduct; and
 - (ii) (A) those criminal proceedings remain pending; or
(B) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under such section in respect of the same conduct;
- (b) no criminal proceedings may be instituted against any person under section 253(2), 254(6), 257(10) or 258(10) in respect of any conduct if-
 - (i) any power has previously been exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct; and
 - (ii) (A) proceedings arising from the exercise of such power remain pending; or
(B) by reason of the previous exercise of such power, no power may again be lawfully exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
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Section 262	Report of Tribunal	L.N. 12 of 2003	01/04/2003
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- (1) The Tribunal shall, after the conduct of any proceedings instituted under section 252, prepare a written report in respect of the proceedings, which shall contain-
- (a) any of its determinations made pursuant to section 252(3) and any order made under section 257 or 258, and the reasons for making such determinations and order; and
 - (b) any order made under section 259 or 260, and the reasons for making such order.
- (2) The Tribunal shall issue the report prepared under subsection (1)-
- (a) first, by giving a copy of the report to the Financial Secretary; and
 - (b) then, except where the Tribunal sat in private for the whole or any part of its proceedings, by-
 - (i) publishing the report so that copies of the report are available to the public;
 - (ii) giving a copy of the report, so far as reasonably practicable, to any person whose conduct was directly in question in the proceedings;
 - (iii) giving a copy of the report to the Secretary for Justice;
 - (iv) giving a copy of the report to the Commission; and
 - (v) where the Tribunal considers appropriate, giving a copy of the report to any body which may take disciplinary action against the person identified as having engaged in market misconduct pursuant to section 252(3)(b), as one of its members.
- (3) Where the Tribunal sat in private for the whole or any part of its proceedings, the Financial Secretary may, where he is of the opinion that it is in the public interest to do so, cause the whole or any part of the report to be made available to the public or to a particular person or body in the manner he directs.
- (4) A person is not liable to civil or criminal proceedings for publishing a true and accurate account or a fair and accurate summary of a report of the Tribunal issued or made available under subsection (2)(b) or (3).

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
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Section 266	Appeal to Court of Appeal	L.N. 12 of 2003	01/04/2003
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- (1) Where the Tribunal has made any finding or determination for the purposes of any proceedings instituted under section 252, and the Secretary for Justice, or a person identified as having engaged in market misconduct pursuant to section 252(3)(b), is dissatisfied with the finding or determination, the Secretary for Justice or the person (as the case may be) may, after the Tribunal has made orders (if any) under section 257, 258, 259 or 260 for the purposes of the proceedings, appeal to the Court of Appeal against the finding or determination-
- (a) on a point of law; or
 - (b) with the leave of the Court of Appeal, on a question of fact.
- (2) A person in respect of whom an order has been made under section 257, 258, 259, 260 or 265 may appeal to the Court of Appeal against the order.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
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Section 307	No further proceedings after Part XIII market misconduct proceedings	L.N. 12 of 2003	01/04/2003
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- Notwithstanding anything in this Part, no criminal proceedings may be instituted against any person under this Part in respect of any conduct if-
- (a) proceedings have previously been instituted against the person under section 252 in respect of the same conduct; and

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

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
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Section 4	Regulatory objectives of Commission	L.N. 12 of 2003	01/04/2003
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The regulatory objectives of the Commission are-

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

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
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Section 5	Functions and powers of Commission	L.N. 12 of 2003	01/04/2003
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- (1) The functions of the Commission are, so far as reasonably practicable-
 - (a) to take such steps as it considers appropriate to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
 - (b) to supervise, monitor and regulate-
 - (i) the activities carried on by recognized exchange companies, recognized clearing houses, recognized exchange controllers or recognized investor compensation companies, or by persons carrying on activities regulated by the Commission under any of the relevant provisions, other than registered institutions; and
 - (ii) such of the activities carried on by registered institutions as are required to be regulated by the Commission under any of the relevant provisions;
 - (c) to promote and develop an appropriate degree of self-regulation in the securities and futures industry;
 - (d) to promote, encourage and enforce the proper conduct, competence and integrity of persons carrying on activities regulated by the Commission under any of the relevant provisions in the conduct of such activities;
 - (e) to encourage the provision of sound, balanced and informed advice regarding transactions or activities related to financial products;
 - (f) to take such steps as it considers appropriate to ensure that the relevant provisions are complied with;
 - (g) to maintain and promote confidence in the securities and futures industry in such manner as it considers appropriate, including by the exercise of its discretion to disclose to the public any matter relating or incidental to the performance of any of its functions;
 - (h) to co-operate with and provide assistance to regulatory authorities or organizations, whether formed or established in Hong Kong or elsewhere;
 - (i) to promote understanding by the public of the securities and futures industry and of the benefits, risks and liabilities associated with investing in financial products;

- (j) to encourage the public to appreciate the relative benefits of investing in financial products through persons carrying on activities regulated by the Commission under any of the relevant provisions;
 - (k) to promote understanding by the public of the importance of making informed decisions regarding transactions or activities related to financial products and of taking responsibility therefor;
 - (l) to secure an appropriate degree of protection for members of the public investing in or holding financial products, having regard to their degree of understanding and expertise in respect of investing in or holding financial products;
 - (m) to promote, encourage and enforce-
 - (i) the adoption of appropriate internal controls and risk management systems by persons carrying on activities regulated by the Commission under any of the relevant provisions, other than registered institutions; and
 - (ii) the adoption of appropriate internal controls and risk management systems by registered institutions in the conduct of activities regulated by the Commission under any of the relevant provisions;
 - (n) to suppress illegal, dishonourable and improper practices in the securities and futures industry;
 - (o) to take appropriate steps in relation to the securities and futures industry further to any requirement of the Financial Secretary for the purpose of providing assistance in maintaining the financial stability of Hong Kong;
 - (p) to recommend reforms of the law relating to the securities and futures industry;
 - (q) to advise the Financial Secretary on matters relating to the securities and futures industry and provide him with such information in relation thereto as it considers appropriate; and
 - (r) to perform functions conferred or imposed on it by or under this or any other Ordinance.
- (2) Subsection (1)(c) does not limit or otherwise affect any other function of the Commission.
- (3) The Commission, in performing any of its functions in relation to-
- (a) any authorized financial institution as a registered institution or as an associated entity of an intermediary; or
 - (b) any person as an associated entity of an authorized financial institution that is a registered institution,
- may rely, in whole or in part, on the supervision of such authorized financial institution or person (as the case may be) by the Monetary Authority.
- (4) For the purposes of this Ordinance, the Commission may-
- (a) acquire, hold and dispose of property of any description;
 - (b) make contracts or other agreements;
 - (c) receive and expend moneys;
 - (d) with the approval of the Financial Secretary, borrow money on security or other conditions;
 - (e) publish or otherwise make available materials (however described) indicating to persons who are, or who carry on activities, regulated by the Commission under any of the relevant provisions and, where the Commission considers appropriate, to any other persons the manner in which, in the absence of any particular consideration or circumstance, the Commission proposes to perform any of its functions; and
 - (f) publish or otherwise make available materials (however described) indicating to the public any matter relating or incidental to the performance of any of the functions of the Commission.
- (5) Materials published or otherwise made available under subsection (4)(e) or (f) are not subsidiary legislation.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
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Section 10	Delegation and sub-delegation of Commission's functions	L.N. 12 of 2003	01/04/2003
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- (1) Subject to subsection (2), the Commission may delegate any of its functions to-
 - (a) a member of the Commission;
 - (b) a committee established under section 8; or
 - (c) an employee of the Commission, whether by reference to his name or to the office held by him.
- (2) No delegation shall be made under subsection (1) in respect of-
 - (a) the power of the Commission to delegate under this section; or
 - (b) a function specified in Part 2 of Schedule 2.
- (3) Where the Commission delegates a function under this section, it may at the same time authorize the delegate to sub-delegate the function and the authorization may contain restrictions or conditions on the exercise of the power to sub-delegate.
- (4) A delegation or sub-delegation under this section does not prevent the Commission or its delegate from concurrently performing the function delegated or sub-delegated.
- (5) The Commission may-
 - (a) revoke a delegation under this section;
 - (b) revoke an authorization in respect of a sub-delegation under this section,
 whereupon the delegation or sub-delegation (as the case may be) shall cease to have effect.
- (6) Where a person or committee purports to act pursuant to a delegation or sub-delegation under this section, he or it shall be presumed, unless the contrary is proved, to be acting in accordance with the terms of the delegation or sub-delegation.
- (7) Without prejudice to subsection (4), where there is a delegation or sub-delegation under this section in respect of a function of the Commission, any reference in this or any other Ordinance to the Commission in connection with the performance of the function shall, unless the context otherwise requires, be construed accordingly.
- (8) The Legislative Council may by resolution amend Part 2 of Schedule 2.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
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Section 109	Offence to issue advertisements relating to carrying on of regulated activities, etc.	L.N. 12 of 2003	01/04/2003
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- (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.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
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Section 134	Modification or waiver of requirements	L.N. 12 of 2003	01/04/2003
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(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee by-

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

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

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

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

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

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

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

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

amend such modification or waiver, or amend or revoke any such condition or impose new conditions

as may be reasonable in the circumstances.

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

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

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

- (a) on the grant of the modification or waiver;
- (b) on its amendment or an amendment or revocation of its conditions or the imposition of any new condition on it under subsection (4); or
- (c) on its revocation under subsection (5)(b),

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

- (i) the name of the person;
- (ii) the event referred to in paragraph (a), (b) or (c) (as the case may be) and the reasons for the event;
- (iii) any condition imposed on the modification or waiver on its grant, or the condition amended or revoked or newly imposed subsequently under subsection (4) (as the case may be); and
- (iv) (if applicable) the period for which the grant or amendment or the condition so imposed is valid.

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

- (a) a brief account of its reasons for not specifying the condition; and
- (b) such appropriate information on the condition as the Commission considers incapable of prejudicing, to an unreasonable degree, the commercial interests of the applicant.

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

(9) The Commission shall not make any rules under subsection (8) to grant a modification or waiver referred to in that subsection unless the Commission is satisfied that to do so will not prejudice the interest of the investing public.

(10) The Commission may specify in the rules referred to in subsection (8) the conditions subject to which the modification or waiver is granted and the rules may provide that a person who fails to comply with such a condition commits an offence and is liable on conviction to a fine not exceeding level 6.

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

- (a) revoke a modification or waiver granted under subsection (8); or
- (b) amend, revoke or add to, any condition subject to which such modification or waiver is granted.

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

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

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
Section 185	Application to Court of First Instance relating to non-compliance with requirements under section 179, 180, 181 or 183	L.N. 12 of 2003	01/04/2003

(1) If a person fails to do anything upon being required to do so by an authorized person under section 179, 180 or 181, or to do anything upon being required to do so by an investigator under section 183(1), (2) or (3), the authorized person or the investigator (as the case may be) may, by originating summons or originating motion, make an application to the Court of First Instance in respect of the failure, and the Court may inquire into the case and-

- (a) if the Court is satisfied that there is no reasonable excuse for the person not to comply with the requirement, order the person to comply with the requirement within the period specified by the Court; and
- (b) if the Court is satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if he and, where applicable, that other person had been guilty of contempt of court.

(2) An originating summons under subsection (1) shall be in Form No. 10 in Appendix A to the Rules of the High Court (Cap 4 sub. leg. A).

(3) Notwithstanding anything in this section and any other provisions of this Ordinance-

- (a) no proceedings may be instituted against any person for the purposes of subsection (1)(b) in respect of any conduct if-
 - (i) criminal proceedings have previously been instituted against the person under section 179, 180, 181 or 184 in respect of the same conduct; and
 - (ii) (A) those criminal proceedings remain pending; or
(B) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under such section in respect of the same conduct;
- (b) no criminal proceedings may be instituted against any person under section 179, 180, 181 or 184 in respect of any conduct if-
 - (i) proceedings have previously been instituted against the person for the purposes of subsection (1)(b) in respect of the same conduct; and
 - (ii) (A) those proceedings remain pending; or
(B) by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted against that person for the purposes of such subsection in respect of the same conduct.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
Section 194	Disciplinary action in respect of licensed persons, etc.	L.N. 12 of 2003	01/04/2003

(1) Subject to section 198, where-

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

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

- (i) where the regulated person is a licensed person-
 - (A) revoke his licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed; or
 - (B) suspend his licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed for such period or until the

- occurrence of such event as the Commission may specify;
- (ii) where the regulated person is a responsible officer of a licensed corporation-
 - (A) revoke the approval granted under section 126(1) in respect of him as such a responsible officer; or
 - (B) suspend such approval for such period or until the occurrence of such event as the Commission may specify;
 - (iii) publicly or privately reprimand the regulated person;
 - (iv) prohibit the regulated person from doing all or any of the following in relation to such regulated activity or regulated activities, and for such period or until the occurrence of such event, as the Commission may specify-
 - (A) applying to be licensed or registered;
 - (B) applying to be approved under section 126(1) as a responsible officer of a licensed corporation;
 - (C) applying to be given consent to act or continue to act as an executive officer of a registered institution under section 71C of the Banking Ordinance (Cap 155);
 - (D) seeking through a registered institution to have his name entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as that of a person engaged by the registered institution in respect of a regulated activity.
- (2) Subject to sections 198 and 199, where-
- (a) a regulated person is, or was at any time, guilty of misconduct; or
 - (b) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,
- the Commission may, separately or in addition to any power exercisable under subsection (1), order the regulated person to pay a pecuniary penalty not exceeding the amount which is the greater of-
- (i) \$10000000; or
 - (ii) 3 times the amount of the profit gained or loss avoided by the regulated person as a result of his misconduct, or of his other conduct which leads the Commission to form the opinion (as the case may be).
- (3) The Commission, in determining whether a regulated person is a fit and proper person within the meaning of subsection (1)(b) or (2)(b), may, among other matters (including those specified in section 129), take into account such present or past conduct of the regulated person as it considers appropriate in the circumstances of the case.
- (4) A regulated person ordered to pay a pecuniary penalty under subsection (2) shall pay the penalty to the Commission within 30 days, or such further period as the Commission may specify by notice under section 198(3), after the order has taken effect as a specified decision under section 232.
- (5) The Court of First Instance may, on an application of the Commission made in the manner prescribed by rules made under section 397 for the purposes of this subsection, register an order made under subsection (2) in the Court of First Instance and the order shall, on registration, be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.
- (6) Any pecuniary penalty paid to or recovered by the Commission pursuant to an order made under subsection (2) shall be paid by the Commission into the general revenue.
- (7) In this section-
- "regulated person" (受規管人士) means a person who is or at the relevant time was any of the following types of person-
- (a) a licensed person;
 - (b) a responsible officer of a licensed corporation; or
 - (c) a person involved in the management of the business of a licensed corporation;
- "relevant time" (有關時間), in relation to a person, means-
- (a) where subsection (1)(a) or (2)(a) applies, the time when the person is, or was, guilty of misconduct; or
 - (b) where subsection (1)(b) or (2)(b) applies, the time of occurrence of any matter which, whether with any other matter or not, leads the Commission to form the opinion that the person is not a fit and proper person within the meaning of such subsection.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
Section 196	Disciplinary action in respect of registered institutions, etc.	L.N. 12 of 2003	01/04/2003

- (1) Subject to section 198, where-
- (a) a regulated person is, or was at any time, guilty of misconduct; or
 - (b) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,
- the Commission may exercise such of the following powers as it considers appropriate in the circumstances of the case-
- (i) where the regulated person is a registered institution-
 - (A) revoke its registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered; or
 - (B) suspend its registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered for such period or until the occurrence of such event as the Commission may specify;
 - (ii) publicly or privately reprimand the regulated person;
 - (iii) prohibit the regulated person from doing all or any of the following in relation to such regulated activity or regulated activities, and for such period or until the occurrence of such event, as the Commission may specify-
 - (A) applying to be licensed or registered;
 - (B) applying to be approved under section 126(1) as a responsible officer of a licensed corporation;
 - (C) applying to be given consent to act or continue to act as an executive officer of a registered institution under section 71C of the Banking Ordinance (Cap 155);
 - (D) seeking through a registered institution to have his name entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as that of a person engaged by the registered institution in respect of a regulated activity.
- (2) Subject to sections 198 and 199, where-
- (a) a regulated person is, or was at any time, guilty of misconduct; or
 - (b) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,
- the Commission may, separately or in addition to any power exercisable under subsection (1), order the regulated person to pay a pecuniary penalty not exceeding the amount which is the greater of-
- (i) \$10000000; or
 - (ii) 3 times the amount of the profit gained or loss avoided by the regulated person as a result of his misconduct, or of his other conduct which leads the Commission to form the opinion (as the case may be).
- (3) The Commission, in determining whether a regulated person is a fit and proper person within the meaning of subsection (1)(b) or (2)(b), may, among other matters (including those specified in section 129), take into account such present or past conduct of the regulated person as it considers appropriate in the circumstances of the case.
- (4) A regulated person ordered to pay a pecuniary penalty under subsection (2) shall pay the penalty to the Commission within 30 days, or such further period as the Commission may specify by notice under section 198(3), after the order has taken effect as a specified decision under section 232.
- (5) The Court of First Instance may, on an application of the Commission made in the manner prescribed by rules made under section 397 for the purposes of this subsection, register an order made under subsection (2) in the Court of First Instance and the order shall, on registration, be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.
- (6) Any pecuniary penalty paid to or recovered by the Commission pursuant to an order made under subsection (2) shall be paid by the Commission into the general revenue.

(7) Without prejudice to the exercise by the Monetary Authority of any powers under the Banking Ordinance (Cap 155), the Commission may make such recommendations to the Monetary Authority in respect of the exercise by the Monetary Authority of any of his powers under sections 58A(1) and 71C(4) of that Ordinance as the Commission considers appropriate.

(8) In this section-

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

- (a) a registered institution;
- (b) an executive officer of a registered institution;
- (c) a person involved in the management of the business constituting any regulated activity for which a registered institution is or was (as the case may be) registered; or
- (d) an individual whose name is or was (as the case may be) entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as that of a person engaged by a registered institution in respect of a regulated activity;

"relevant time" (有關時間), in relation to a person, means-

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

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
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Section 378	Preservation of secrecy, etc.	L.N. 204 of 2006	01/12/2006
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(1) Except in the performance of a function under, or for the purpose of carrying into effect or doing anything required or authorized under, any of the relevant provisions, a specified person-

- (a) shall preserve and aid in preserving secrecy with regard to any matter coming to his knowledge by virtue of his appointment under any of the relevant provisions, or in the performance of any function under or in carrying into effect any of the relevant provisions, or in the course of assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions;
- (b) shall not communicate any such matter to any other person; and
- (c) shall not suffer or permit any other person to have access to any record or document which is in his possession by virtue of the appointment, or the performance of any such function under or the carrying into effect of any such provisions, or the assistance to the other person in the performance of any such function under or in carrying into effect any such provisions.

(2) Nothing in subsection (1) applies to-

- (a) the disclosure of information which has already been made available to the public;
- (b) the disclosure of information with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, or any investigation carried out under the laws of Hong Kong, in Hong Kong;
- (c) the disclosure of information for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;
- (d) the disclosure of information by a person in connection with any judicial or other proceedings to which the person is a party;
- (e) the disclosure of information in accordance with an order of a court, or in accordance with a law or a requirement made under a law;
- (ea) the disclosure of information to the Hong Kong Deposit Protection Board established

- by section 3 of the Deposit Protection Scheme Ordinance (Cap 581) for the purpose of enabling or assisting the Board to perform its functions under section 5(a), (d) and (e) of that Ordinance; (Added 7 of 2004 s. 55)
- (f) the communication of any information or opinion to which section 381(1) applies (whether with or without reference to section 381(2))-
 - (i) to the Commission in the manner described in section 381(1);
 - (ii) where section 381(4) applies, to the Insurance Authority or the Monetary Authority (as the case may be) in the manner described in section 381(4).
- (3) Notwithstanding subsection (1), the Commission may disclose information-
- (a) in the form of a summary compiled from any information in the possession of the Commission, including information provided by persons under any of the relevant provisions, if the summary is so compiled as to prevent particulars relating to the business or identity, or the trading particulars, of any person from being ascertained from it;
 - (b) to a person who is a liquidator appointed under the Companies Ordinance (Cap 32);
 - (c) to the Market Misconduct Tribunal;
 - (d) to the Securities and Futures Appeals Tribunal;
 - (e) to the Monetary Authority, if-
 - (i) the information relates to-
 - (A) any business of a registered institution which constitutes a regulated activity for which the registered institution is registered; or
 - (B) any business of an associated entity that is an authorized financial institution, which is that of receiving or holding client assets of the intermediary of which the associated entity is an associated entity; or
 - (ii) in the opinion of the Commission the condition specified in subsection (5) is satisfied;
 - (f) if in the opinion of the Commission the condition specified in subsection (5) is satisfied, to-
 - (i) the Chief Executive;
 - (ii) the Financial Secretary;
 - (iii) the Secretary for Justice;
 - (iv) (Repealed L.N. 106 of 2002);
 - (v) the Insurance Authority;
 - (vi) the Registrar of Companies;
 - (vii) the Official Receiver;
 - (viii) the Mandatory Provident Fund Schemes Authority;
 - (ix) the Privacy Commissioner for Personal Data;
 - (x) the Ombudsman;
 - (xi) a public officer authorized by the Financial Secretary under subsection (12);
 - (xia) the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (Cap 588); (Added 18 of 2006 s. 86)
 - (xii) an inspector appointed by the Financial Secretary to investigate the affairs of a corporation;
 - (xiii) a recognized exchange company;
 - (xiv) a recognized clearing house;
 - (xv) a recognized exchange controller;
 - (xvi) a recognized investor compensation company;
 - (xvii) a person authorized to provide authorized automated trading services under section 95(2);
 - (g) if in the opinion of the Commission the condition specified in subsection (5) is satisfied-
 - (i) to an authority or regulatory organization outside Hong Kong which, or to a companies inspector outside Hong Kong who, in the opinion of the Commission satisfies the requirements referred to in subsection (6)(a) and (b);
 - (ii) to-
 - (A) the Hong Kong Institute of Certified Public Accountants; (Amended 23

of 2004 s. 56)

(B) any other body prescribed by rules made under section 397 for the purposes of this subparagraph,

with a view to its taking of, or otherwise for the purposes of, any disciplinary action against any of its members;

- (h) to a person who is or was an auditor appointed under any provision of this Ordinance, for the purpose of enabling or assisting the Commission to perform its functions under any of the relevant provisions;
- (i) where the information is obtained by an investigator under section 183, to-
 - (i) the Financial Secretary;
 - (ii) the Secretary for Justice;
 - (iii) the Commissioner of Police;
 - (iv) the Commissioner of the Independent Commission Against Corruption;
 - (v) the Market Misconduct Tribunal;
 - (vi) the Securities and Futures Appeals Tribunal;
- (j) for the purpose of, or otherwise in connection with, an audit required by section 16;
- (k) with the consent of the person from whom the information was obtained or received and, if the information relates to a different person, also with the consent of the person to whom the information relates.

(4) Notwithstanding subsection (1), a person who is or was an auditor appointed in relation to a licensed corporation or an associated entity of a licensed corporation under section 159 or 160, and a person who is or was an employee or agent of such auditor, may disclose information obtained or received by him in the course of performing his duties as such auditor or as an employee or agent of such auditor (as the case may be)-

- (a) for the purposes of any judicial or other proceedings arising out of the performance of his duties as such auditor or as an employee or agent of such auditor (as the case may be);
 - (b) in the case of a person who is or was an employee or agent of an auditor, to the auditor.
- (5) The condition referred to in subsection (3)(e), (f) and (g) is that-
- (a) it is desirable or expedient that the information should be disclosed pursuant to subsection (3)(e), (f) or (g) (as the case may be) in the interest of the investing public or in the public interest; or
 - (b) the disclosure will enable or assist the recipient of the information to perform its or his functions and it is not contrary to the interest of the investing public or to the public interest that the information should be so disclosed.

(6) Where the Commission is satisfied, for the purposes of subsection (3)(g)(i), that an authority, regulatory organization or companies inspector outside Hong Kong-

- (a) performs any function similar to a function of the Commission or the Registrar of Companies, or regulates, supervises or investigates banking, insurance or other financial services or the affairs of corporations; and
- (b) is subject to adequate secrecy provisions,

the Commission shall as soon as reasonably practicable thereafter cause the name of the authority, regulatory organization or companies inspector (as the case may be) to be published in the Gazette.

(7) Where information is disclosed pursuant to subsection (1), or in any of the circumstances described in subsection (2), (3) or (4) (other than subsections (2)(a), (3)(a), (g)(i) and (k) and (4)(b))-

- (a) the person to whom that information is so disclosed; or
- (b) any other person obtaining or receiving the information, whether directly or indirectly, from the person referred to in paragraph (a),

shall not disclose the information, or any part thereof, to any other person, unless-

- (i) the Commission consents to the disclosure;
- (ii) the information or the part thereof (as the case may be) has already been made available to the public;
- (iii) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;
- (iv) the disclosure is in connection with any judicial or other proceedings to which the

person or the other person referred to in paragraph (a) or (b) (as the case may be) is a party; or

- (v) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law.

(8) Where information is disclosed to an auditor in the circumstances described in subsection (4)(b)-

- (a) the auditor; or
- (b) any other person obtaining or receiving the information, whether directly or indirectly, from the auditor,

shall not disclose the information, or any part thereof, to any other person, unless-

- (i) in the case of the auditor, the disclosure is for the purpose described in subsection (4)(a);
- (ii) the Commission consents to the disclosure;
- (iii) the information or the part thereof (as the case may be) has already been made available to the public;
- (iv) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;
- (v) the disclosure is in connection with any judicial or other proceedings to which the auditor or the other person referred to in paragraph (a) or (b) (as the case may be) is a party; or
- (vi) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law.

(9) The Commission, in disclosing any information in any of the circumstances described in subsection (3) or in granting any consent pursuant to subsection (7)(i) or (8)(ii), may impose such conditions as it considers appropriate.

(10) A person who contravenes subsection (1) 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.

(11) Where a person discloses any information in contravention of subsection (7) or (8) and, at the time of the disclosure-

- (a) in the case of a contravention of subsection (7), he-
 - (i) knew or ought reasonably to have known that the information was previously disclosed to him or any other person (as the case may be) pursuant to subsection (1), or in any of the circumstances described in subsection (2), (3) or (4) (other than subsections (2)(a), (3)(a), (g)(i) and (k) and (4)(b)); and
 - (ii) had no reasonable grounds to believe that subsection (7)(i), (ii), (iii), (iv) or (v) applies to the disclosure of the information by him; or
- (b) in the case of a contravention of subsection (8), he-
 - (i) knew or ought reasonably to have known that the information was previously disclosed to him or an auditor (as the case may be) in the circumstances described in subsection (4)(b); and
 - (ii) had no reasonable grounds to believe that subsection (8)(i), (ii), (iii), (iv), (v) or (vi) applies to the disclosure of the information by him,

he commits an offence and is liable-

- (i) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(12) The Financial Secretary may authorize any public officer as a person to whom information may be disclosed under subsection (3)(f)(xi).

(13) Any matter published under subsection (6) is not subsidiary legislation.

(14) For the avoidance of doubt, it is hereby declared that subsection (1) does not preclude the disclosure of information under a reprimand under section 194(1)(iii) or 196(1)(ii).

(15) In this section-

"companies inspector" (公司審查員), in relation to a place outside Hong Kong, means a person whose functions under the laws of that place include the investigation of the affairs of a corporation carrying on business in that place;

"specified person" (指明人士) means-

- (a) the Commission;
- (b) any person who is or was a member, an employee, or a consultant, agent or adviser, of the Commission; or
- (c) any person who is or was-
 - (i) a person appointed under any of the relevant provisions;
 - (ii) a person performing any function under or carrying into effect any of the relevant provisions; or
 - (iii) a person assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions.

Chapter 571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
Schedule 10	SAVINGS, TRANSITIONAL, CONSEQUENTIAL AND RELATED PROVISIONS, ETC.	8 of 2011	13/05/2011

[sections 237, 240, 242, 406, 407, 408 & 409]

PART 1

SAVINGS, TRANSITIONAL AND SUPPLEMENTAL ARRANGEMENTS

Interpretation of Part 1

1. In this Part, a heading to any provision of this Part shall not have legislative effect and shall not in any way vary, limit or extend the interpretation of any provision of this Part.

Part II of this Ordinance (Securities and Futures Commission)

2. Without prejudice to section 3 of this Ordinance-

- (a) anything done under or by virtue of the repealed Securities and Futures Commission Ordinance before the commencement of Part II of this Ordinance by or in relation to the Commission and having effect immediately before such commencement shall, in so far as it could upon such commencement have been done under or by virtue of any provision in that Part, upon such commencement continue to have effect and be deemed to have been done under or by virtue of that provision;
- (b) anything which immediately before the commencement of Part II of this Ordinance is in the process of being done under or by virtue of the repealed Securities and Futures Commission Ordinance by or in relation to the Commission may, in so far as it could upon such commencement have been done under or by virtue of any provision in that Part, be continued upon such commencement under or by virtue of that provision;
- (c) any person holding office as the chairman or deputy chairman, or as an executive director or non-executive director, of the Commission immediately before the commencement of Part II of this Ordinance shall upon such commencement continue to hold the corresponding office under that Part and Schedule 2 to this Ordinance and be deemed to have been appointed, on the same terms and conditions as were applicable had this Ordinance not been enacted, to the corresponding office under that Part and Schedule 2 to this Ordinance;
- (d) the Advisory Committee constituted under section 10 of the repealed Securities and Futures Commission Ordinance immediately before the commencement of Part II of this Ordinance shall upon such commencement continue in existence and be deemed to have been constituted under section 7 of and Schedule 2 to this Ordinance;

- (e) any committee which has been established under section 6 of the repealed Securities and Futures Commission Ordinance and which is in existence immediately before the commencement of Part II of this Ordinance shall upon such commencement continue in existence and be deemed to have been established under section 8 of this Ordinance;
- (f) any person holding office as a member of the Advisory Committee referred to in paragraph (d), or as a member of a committee referred to in paragraph (e), immediately before the commencement of Part II of this Ordinance shall upon such commencement continue to hold the corresponding office under that Part and Schedule 2 to this Ordinance and be deemed to have been appointed, on the same terms and conditions as were applicable had this Ordinance not been enacted, to the corresponding office under that Part and Schedule 2 to this Ordinance;
- (g) any person employed or engaged in any office, other than that referred to in paragraph (c) or (f), by the Commission under or pursuant to any provision of the repealed Securities and Futures Commission Ordinance immediately before the commencement of Part II of this Ordinance shall upon such commencement continue to be employed or engaged in the same office under or pursuant to that Part and be deemed to have been employed or engaged in the same office, on the same terms and conditions as were applicable had this Ordinance not been enacted, under or pursuant to that Part.

**Part III of this Ordinance (Exchanges, Clearing Houses
and Investor Compensation Companies)**

3. In sections 6 and 9-

"HKFECC" (期貨結算公司) means the company incorporated under the Companies Ordinance (Cap 32) and registered under that Ordinance by the name HKFE Clearing Corporation Limited;

"HKSCC" (香港結算公司) means the company incorporated under the Companies Ordinance (Cap 32) and registered under that Ordinance by the name Hong Kong Securities Clearing Company Limited;

"SEOCH" (期權結算公司) means the company incorporated under the Companies Ordinance (Cap 32) and registered under that Ordinance by the name The SEHK Options Clearing House Limited.

4. In sections 10 and 13-

"HKEC" (交易結算公司) means the company incorporated under the Companies Ordinance (Cap 32) and registered under that Ordinance by the name Hong Kong Exchanges and Clearing Limited.

5. On the commencement of Division 2 of Part III of this Ordinance-

(a) the Stock Exchange Company and the Futures Exchange Company shall each be deemed to have been recognized as an exchange company under section 19(2) of this Ordinance;

(b) the rules of-

(i) the Stock Exchange Company made under section 34 (except subsection (1)(b)) of the repealed Stock Exchanges Unification Ordinance and approved under section 35 of that Ordinance; and

(ii) the Futures Exchange Company approved under section 14 of the repealed Commodities Trading Ordinance,

which are in effect immediately before such commencement shall upon such commencement continue to have effect and be deemed to have been made under section 23 of this Ordinance and approved under section 24(3) of this Ordinance;

(c) the respective constitutions of the Stock Exchange Company and the Futures Exchange Company which are in effect immediately before such commencement shall upon such commencement continue to have effect and be deemed to have been approved under section 24(3) of this Ordinance; and

(d) any appointment of a person as chief executive of the Stock Exchange Company or the Futures Exchange Company which is in effect immediately before such

commencement shall upon such commencement continue to have effect and be deemed to have been approved under section 26 of this Ordinance.

6. On the commencement of Division 3 of Part III of this Ordinance, the HKSCC, HKFECC and SEOCH shall each be deemed to have been recognized as a clearing house under section 37(1) of this Ordinance.

7. Anything done under or by virtue of the repealed Securities and Futures (Clearing Houses) Ordinance before the commencement of Division 3 of Part III of this Ordinance and having effect immediately before such commencement shall, in so far as it could upon such commencement have been done under or by virtue of any provision in that Division, upon such commencement continue to have effect and be deemed to have been done under or by virtue of that provision.

8. Anything which immediately before the commencement of Division 3 of Part III of this Ordinance is in the process of being done under or by virtue of the repealed Securities and Futures (Clearing Houses) Ordinance may, in so far as it could upon such commencement have been done under or by virtue of any provision in that Division, be continued upon such commencement under or by virtue of that provision.

9. Without limiting the generality of section 7-

- (a) a notice which is published under section 4(4) of the repealed Securities and Futures (Clearing Houses) Ordinance and which is in effect immediately before the commencement of Division 3 of Part III of this Ordinance shall upon such commencement continue to have effect and be deemed to have been published under section 41(7) of this Ordinance; and
- (b) the rules of the HKSCC, HKFECC and SEOCH which-
 - (i) have been approved under section 4(7) of the repealed Securities and Futures (Clearing Houses) Ordinance; or
 - (ii) have been submitted or cause to be submitted under section 4(5) of that Ordinance,
and which are in effect immediately before the commencement of Division 3 of Part III of this Ordinance shall upon such commencement continue to have effect and be deemed to have been-
 - (A) in the case of subparagraph (i), approved under section 41(3) of this Ordinance;
or
 - (B) in the case of subparagraph (ii), submitted or caused to be submitted under section 41(2)(b) of this Ordinance.

10. On the commencement of Division 4 of Part III of this Ordinance, the HKEC shall be deemed to have been recognized as an exchange controller under section 59(2) of this Ordinance.

11. Anything done under or by virtue of the repealed Exchanges and Clearing Houses (Merger) Ordinance before the commencement of Division 4 of Part III of this Ordinance and having effect immediately before such commencement shall, in so far as it could upon such commencement have been done under or by virtue of any provision in that Division, upon such commencement continue to have effect and be deemed to have been done under or by virtue of that provision.

12. Anything which immediately before the commencement of Division 4 of Part III of this Ordinance is in the process of being done under or by virtue of the repealed Exchanges and Clearing Houses (Merger) Ordinance may, in so far as it could upon such commencement have been done under or by virtue of any provision in that Division, be continued upon such commencement under or by virtue of that provision.

13. Without limiting the generality of section 11-

- (a) a notice which is published under section 10(6) of the repealed Exchanges and Clearing Houses (Merger) Ordinance and which is in effect immediately before the

commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue to have effect and be deemed to have been published under section 67(7) of this Ordinance;

- (b) the rules of the HKEC which have been approved under section 10(3) of the repealed Exchanges and Clearing Houses (Merger) Ordinance and which are in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue to have effect and be deemed to have been approved under section 67(3) of this Ordinance;
- (c) any approval which is given under section 6(2) of the repealed Exchanges and Clearing Houses (Merger) Ordinance and which is in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue to have effect and be deemed to have been given under section 61(1) of this Ordinance;
- (d) any approval in writing of the Chief Executive for a person to hold the office of the chairman of a recognized exchange controller which is in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue to have effect and be deemed to have been given under section 69 of this Ordinance;
- (e) any appointment of a person as chief executive or chief operating officer of a recognized exchange controller which is in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue to have effect and be deemed to have been approved under section 70 of this Ordinance; and
- (f) the Risk Management Committee established under section 9 of the repealed Exchanges and Clearing Houses (Merger) Ordinance shall upon the commencement of Division 4 of Part III of this Ordinance continue in existence and be deemed to have been established under section 65 of this Ordinance.

14. Anything done under or by virtue of-

- (a) section 50 of the repealed Securities and Futures Commission Ordinance before the commencement of section 92 of this Ordinance; or
- (b) section 51 of the repealed Securities and Futures Commission Ordinance before the commencement of section 93 of this Ordinance,

and having effect immediately before such commencement shall, in so far as it could upon such commencement have been done under or by virtue of section 92 or 93 of this Ordinance, upon such commencement continue to have effect and be deemed to have been done under or by virtue of that section 92 or 93 (as the case may be).

15. Anything which immediately before the commencement of-

- (a) section 92 of this Ordinance is in the process of being done under or by virtue of section 50 of the repealed Securities and Futures Commission Ordinance; or
- (b) section 93 of this Ordinance is in the process of being done under or by virtue of section 51 of the repealed Securities and Futures Commission Ordinance,

may, in so far as it could upon such commencement have been done under or by virtue of section 92 or 93 of this Ordinance, be continued upon such commencement under or by virtue of that section 92 or 93 (as the case may be).

Part IV of this Ordinance (Offers of investments)

16. Subject to sections 18 and 19-

- (a) any corporation or arrangement that is immediately before the commencement of Part IV of this Ordinance authorized under section 15 of the repealed Securities Ordinance as a mutual fund corporation or a unit trust; or
- (b) any matter in respect of which the issue of an advertisement, invitation or document is immediately before the commencement of Part IV of this Ordinance authorized pursuant to section 4(2)(g) of the repealed Protection of Investors Ordinance,

shall, where its name appears in a list published by the Commission for the purposes of this section on the date of commencement of Part IV of this Ordinance, upon such commencement be deemed to have been authorized under section 104 of this Ordinance as a collective investment scheme, subject to the same conditions as were applicable had this Ordinance not been enacted.

17. Subject to sections 18 and 19, the issue of an advertisement, invitation or document that is immediately before the commencement of Part IV of this Ordinance authorized pursuant to section 4(2)(g) of the repealed Protection of Investors Ordinance shall upon such commencement be deemed to have been authorized under section 105 of this Ordinance, subject to the same conditions as were applicable had this Ordinance not been enacted.

18. Where no individual has been nominated pursuant to section 104(3) or 105(3) of this Ordinance before the expiration of 6 months from the commencement of Part IV of this Ordinance, any authorization otherwise having effect by virtue of section 16 or 17 shall thereupon cease to have effect.

19. Where an individual has been nominated pursuant to section 104(3) or 105(3) of this Ordinance before the expiration of 6 months from the commencement of Part IV of this Ordinance, any authorization otherwise having effect by virtue of section 16 or 17 shall continue to have effect until the Commission decides otherwise.

20. Where an application for-

- (a) authorization of any corporation or arrangement under section 15 of the repealed Securities Ordinance as a mutual fund corporation or a unit trust; or
- (b) authorization of the issue of an advertisement, invitation or document pursuant to section 4(2)(g) of the repealed Protection of Investors Ordinance,

has been made before the commencement of Part IV of this Ordinance but has not been finally determined by the Commission before such commencement, the application shall upon such commencement be deemed to be-

- (i) in the case of paragraph (a), an application for authorization of a collective investment scheme under section 104 of this Ordinance; or
- (ii) in the case of paragraph (b), an application for authorization of a collective investment scheme under section 104 of this Ordinance, or an application for authorization of the issue of an advertisement, invitation or document under section 105 of this Ordinance, as the Commission considers appropriate.

21. A list published pursuant to section 16 is not subsidiary legislation.

Part V of this Ordinance (Licensing and registration)

Corporations other than exempt dealers and exempt investment advisers

22. Subject to section 55, a corporation which immediately before the commencement of Part V of this Ordinance is-

- (a) registered under the repealed Securities Ordinance as a dealer shall, upon such commencement, be deemed to have been licensed under section 116(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;
- (b) registered under the repealed Securities Ordinance as an investment adviser shall, upon such commencement, be deemed to have been licensed under section 116(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;
- (c) registered under the repealed Securities Ordinance as a securities margin financier shall, upon such commencement, be deemed to have been licensed under section 116(1) of this Ordinance for Type 8 regulated activity;
- (d) registered under the repealed Commodities Trading Ordinance as a dealer shall, upon

such commencement, be deemed to have been licensed under section 116(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities;

- (e) registered under the repealed Commodities Trading Ordinance as a commodity trading adviser shall, upon such commencement, be deemed to have been licensed under section 116(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities;
- (f) licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a leveraged foreign exchange trader shall, upon such commencement, be deemed to have been licensed under section 116(1) of this Ordinance for Type 3 regulated activity,

and to have complied with the requirement of section 125(1)(a) and (b) of this Ordinance, and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

23. Subject to section 55, where a corporation is deemed under section 22 to have been licensed, any director of that corporation who is an individual and immediately before the commencement of Part V of this Ordinance is-

- (a) registered under the repealed Securities Ordinance as a dealer of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that corporation;
- (b) registered under the repealed Securities Ordinance as an investment adviser of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that corporation;
- (c) registered under the repealed Securities Ordinance as a securities margin financier's representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 8 regulated activity and accredited to that corporation;
- (d) registered under the repealed Commodities Trading Ordinance as a dealer of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that corporation;
- (e) registered under the repealed Commodities Trading Ordinance as a commodity trading adviser of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that corporation;
- (f) licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 3 regulated activity and accredited to that corporation,

and approved under section 126(1) of this Ordinance as a responsible officer of that corporation, and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

24. Subject to section 55, where a corporation is deemed under section 22 to have been licensed, any individual not being a director of that corporation who immediately before the commencement of Part V of this Ordinance is-

- (a) registered under the repealed Securities Ordinance as a dealer's representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that corporation;
- (b) registered under the repealed Securities Ordinance as an investment representative of

that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that corporation;

- (c) registered under the repealed Securities Ordinance as a securities margin financier's representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 8 regulated activity and accredited to that corporation;
- (d) registered under the repealed Commodities Trading Ordinance as a dealer's representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that corporation;
- (e) registered under the repealed Commodities Trading Ordinance as a commodity trading adviser's representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that corporation;
- (f) licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 3 regulated activity and accredited to that corporation,

and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

Persons who are exempt dealers or
exempt investment advisers

25. Subject to section 55-

- (a) an authorized financial institution which immediately before the commencement of Part V of this Ordinance is-
 - (i) an exempt dealer within the meaning of the repealed Securities Ordinance shall, upon such commencement, be deemed to have been registered under section 119(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;
 - (ii) an exempt investment adviser within the meaning of the repealed Securities Ordinance shall, upon such commencement, be deemed to have been registered under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities,
- (b) a corporation (other than an authorized financial institution), partnership or individual who immediately before the commencement of Part V of this Ordinance is-
 - (i) an exempt dealer within the meaning of the repealed Securities Ordinance shall, upon such commencement, be deemed to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;
 - (ii) an exempt investment adviser within the meaning of the repealed Securities Ordinance shall, upon such commencement, be deemed to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities,

and, subject to section 53, shall be so deemed for a period of 2 years from such commencement, and for so long as such corporation, partnership or individual is so deemed, the requirements of sections 125(1)(a) and (b) and 131(1) of this Ordinance shall not apply to it.

26. Where immediately before the commencement of Part V of this Ordinance an individual is engaged-

- (a) by an authorized financial institution; or
- (b) by a corporation (other than an authorized financial institution), partnership or individual,

to perform any act which, after such commencement, would constitute a regulated function in relation to a regulated activity for which the institution is deemed under section 25(a) to have been registered or the corporation, partnership or individual is deemed under section 25(b) to have been licensed (as the case may be), the first-mentioned individual shall, upon such commencement, be deemed-

- (i) (if paragraph (a) applies to the first-mentioned individual) to be a person whose name has been entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as engaged by the institution in respect of that regulated activity;
- (ii) (if paragraph (b) applies to the first-mentioned individual) to have been licensed as a licensed representative under section 120(1) of this Ordinance for that regulated activity (subject to the condition specified in section 51) and accredited to the corporation, partnership or individual (in its capacity as a licensed corporation by virtue of section 25(b)),

and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

Partnerships

27. Subject to section 55, a partnership which immediately before the commencement of Part V of this Ordinance is registered-

- (a) under the repealed Securities Ordinance as a dealer shall, upon such commencement, be deemed to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;
- (b) under the repealed Securities Ordinance as an investment adviser shall, upon such commencement, be deemed to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;
- (c) under the repealed Commodities Trading Ordinance as a dealer shall, upon such commencement, be deemed to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities;
- (d) under the repealed Commodities Trading Ordinance as a commodity trading adviser shall, upon such commencement, be deemed to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities,

and to have complied with the requirement of section 125(1)(a) and (b) of this Ordinance, and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

28. Subject to section 55, where a partnership is deemed under section 27 to be a licensed corporation, any partner of that partnership who immediately before the commencement of Part V of this Ordinance is registered-

- (a) under the repealed Securities Ordinance as a dealer of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation;
- (b) under the repealed Securities Ordinance as an investment adviser of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation;

- (c) under the repealed Commodities Trading Ordinance as a dealer of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation;
- (d) under the repealed Commodities Trading Ordinance as a commodity trading adviser of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation,

and approved under section 126(1) of this Ordinance as a responsible officer of that licensed corporation, and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

29. Subject to section 55, where a partnership is deemed under section 27 to be a licensed corporation, any individual who immediately before the commencement of Part V of this Ordinance is registered-

- (a) under the repealed Securities Ordinance as a dealer's representative of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation;
- (b) under the repealed Securities Ordinance as an investment representative of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation;
- (c) under the repealed Commodities Trading Ordinance as a dealer's representative of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation;
- (d) under the repealed Commodities Trading Ordinance as a commodity trading adviser's representative of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation,

and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

Sole-proprietorships

30. Subject to section 55, an individual who immediately before the commencement of Part V of this Ordinance is registered-

- (a) under the repealed Securities Ordinance as a dealer shall, upon such commencement, be deemed-
 - (i) to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;
 - (ii) to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation; and
 - (iii) to have been approved under section 126(1) of this Ordinance as a responsible officer of that licensed corporation;
- (b) under the repealed Securities Ordinance as an investment adviser shall, upon such commencement, be deemed-

- (i) to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;
 - (ii) to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation; and
 - (iii) to have been approved under section 126(1) of this Ordinance as a responsible officer of that licensed corporation;
- (c) under the repealed Commodities Trading Ordinance as a dealer shall, upon such commencement, be deemed-
- (i) to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities;
 - (ii) to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation; and
 - (iii) to have been approved under section 126(1) of this Ordinance as a responsible officer of that licensed corporation;
- (d) under the repealed Commodities Trading Ordinance as a commodity trading adviser shall, upon such commencement, be deemed-
- (i) to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities;
 - (ii) to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation; and
 - (iii) to have been approved under section 126(1) of this Ordinance as a responsible officer of that licensed corporation,

and to have complied with the requirement of section 125(1)(a) and (b) of this Ordinance, and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

31. Subject to section 55, where an individual is deemed under section 30 to be a licensed corporation, any other individual who immediately before the commencement of Part V of this Ordinance is registered-

- (a) under the repealed Securities Ordinance as a dealer's representative of the first-mentioned individual shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation;
- (b) under the repealed Securities Ordinance as an investment representative of the first-mentioned individual shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation;
- (c) under the repealed Commodities Trading Ordinance as a dealer's representative of the first-mentioned individual shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation;
- (d) under the repealed Commodities Trading Ordinance as a commodity trading adviser's representative of the first-mentioned individual shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation,

and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

Licensed banks

32. Where immediately before the commencement of Part V of this Ordinance, a licensed bank would have fallen within the meaning of the definition of "investment adviser" in section 2(1) of the repealed Securities Ordinance but for paragraph (i) of that definition, it shall, upon such commencement, be deemed to have been registered under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities, and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

33. Where immediately before the commencement of Part V of this Ordinance an individual is engaged by a licensed bank to perform any act which, after such commencement, would constitute a regulated function in relation to a regulated activity for which the bank is deemed under section 32 to have been registered, that individual shall, upon such commencement, be deemed to be a person whose name has been entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as engaged by the bank in respect of that regulated activity, and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

Persons providing automated trading services

34. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in providing automated trading services, and the person is-

- (a) a corporation to which section 22(a) or (d) or 25(b)(i) applies;
- (b) a partnership to which section 25(b)(i) or 27(a) or (c) applies; or
- (c) an individual to whom section 25(b)(i) or 30(a) or (c) applies,

then in relation to the person, any of those sections that applies to the person as such corporation, partnership or individual (as the case may be) shall be read and construed as if Type 7 regulated activity were added as a regulated activity for which the person is deemed to have been licensed (in its capacity as a licensed corporation by virtue of that section), and the provisions of sections 22 to 60 shall be construed accordingly.

35. Where section 34 is applicable to a corporation, partnership or individual ("the first-mentioned individual"), then in relation to-

- (a) a director of the corporation to whom section 23(a) or (d) applies;
- (b) an individual (not being a director) of the corporation to whom section 24(a) or (d) applies;
- (c) a partner of the partnership to whom section 28(a) or (c) applies;
- (d) an individual (not being a partner) of the partnership to whom section 29(a) or (c) applies;
- (e) the first-mentioned individual, to whom section 30(a)(ii) and (iii) or (c)(ii) and (iii) applies;
- (f) an individual to whom section 31(a) or (c) applies in relation to the first-mentioned individual; or
- (g) an individual to whom section 26(ii) applies in relation to the corporation, partnership or first-mentioned individual,

any of those sections that applies to such director, partner or individual (including the first-mentioned individual) (as the case may be) shall be read and construed as if Type 7 regulated activity were added as a regulated activity for which such director, partner or individual is deemed to have been licensed (in his capacity as a licensed representative by virtue of that section) or approved (in his capacity as a responsible officer by virtue of that section) and the provisions of sections 22 to 60 shall be construed accordingly.

36. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in providing automated trading services, and the person is an authorized financial institution to which section 25(a)(i) applies, then in relation to the institution, that section shall be read and construed as if Type 7 regulated activity were added as a regulated activity for which the institution is deemed to have been registered and the provisions of sections 22 to 60 shall be construed

accordingly.

37. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in providing automated trading services and none of sections 34, 35 and 36 is applicable in relation to the person, then the person may continue carrying on the business for a period of 6 months from such commencement, and for such continuation of the business, this Ordinance shall not apply to-

- (a) the person; and
- (b) any individual engaged by the person to perform any act in providing automated trading services in the business,

until the expiration of that period.

Persons dealing in certain interests
in collective investment scheme

38. For the purposes of sections 39, 40, 41, 42, 43 and 44, "excluded interests" (豁除權益) means interests in a collective investment scheme, where such interest does not fall within the meaning of "securities" as defined in section 2(1) of the repealed Securities Ordinance.

39. Where immediately before the commencement of Part V of this Ordinance, a person-

- (a) is carrying on a business in dealing in excluded interests; and
- (b) is registered under the repealed Commodities Trading Ordinance as a dealer, other than as such dealer in the capacity of-
 - (i) a director of a corporation; or
 - (ii) a partner of a partnership,that is registered as such dealer,

then the person may continue carrying on the business referred to in paragraph (a) for a period of 2 years from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to the person until the expiration of that period.

40. Where section 39 is applicable to a person, and immediately before the commencement of Part V of this Ordinance-

- (a) (if the person is a corporation) a director of the person is registered as a dealer;
- (b) (if the person is a partnership) a partner of the person is registered as a dealer;
- (c) an individual is registered as a dealer's representative,

of the person under the repealed Commodities Trading Ordinance, then the director, partner or individual may deal in excluded interests in the business carried on by the person for a period of 2 years from such commencement, and solely for the purposes of dealing in excluded interests in such business, this Ordinance shall not apply to such director, partner or individual until the expiration of that period.

41. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in dealing in excluded interests, and neither section 39 nor 40 is applicable to the person, then the person may continue carrying on the business in dealing in excluded interests for a period of 6 months from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to-

- (a) the person; and
- (b) any individual engaged in the business by the person to deal in excluded interests,

until the expiration of that period.

Persons advising on certain interests
in collective investment scheme

42. Where immediately before the commencement of Part V of this Ordinance, a person-

- (a) is carrying on a business in advising on excluded interests (as defined in section 38); and

- (b) is registered under the repealed Commodities Trading Ordinance as a commodity trading adviser, other than as such adviser in the capacity of-
 - (i) a director of a corporation; or
 - (ii) a partner of a partnership,that is registered as such adviser,

then the person may continue carrying on the business referred to in paragraph (a) for a period of 2 years from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to the person until the expiration of that period.

43. Where section 42 is applicable to a person, and immediately before the commencement of Part V of this Ordinance-

- (a) (if the person is a corporation) a director of the person is registered as a commodity trading adviser;
- (b) (if the person is a partnership) a partner of the person is registered as a commodity trading adviser;
- (c) an individual is registered as a commodity trading adviser's representative,

of the person under the repealed Commodities Trading Ordinance, then the director, partner or individual may advise on excluded interests in the business carried on by the person for a period of 2 years from such commencement, and solely for the purposes of advising on excluded interests in such business, this Ordinance shall not apply to such director, partner or individual until the expiration of that period.

44. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in advising on excluded interests, and neither section 42 nor 43 is applicable to the person, then the person may continue carrying on the business in advising on excluded interests for a period of 6 months from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to-

- (a) the person; and
- (b) any individual engaged in the business by the person to advise on excluded interests,

until the expiration of that period.

Persons dealing in futures contracts solely with persons outside Hong Kong

45. For the purposes of sections 47, 48, 49 and 50, "excluded clients" (豁除客戶) means persons outside Hong Kong.

46. For the purposes of sections 48, 49 and 50, "dealing in futures contracts" (期貨合約交易) has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance.

47. Where immediately before the commencement of Part V of this Ordinance, a person-

- (a) is carrying on a business which does not fall within the meaning of "trading in commodity futures contracts", as defined in section 2(1) of the repealed Commodities Trading Ordinance, solely because the person while engaging in such trading only deals with excluded clients; and
- (b) (i) is registered under the repealed Securities Ordinance as a dealer, other than as such dealer in the capacity of-
 - (A) a director of a corporation; or
 - (B) a partner of a partnership,that is registered as such dealer; or
- (ii) is declared under the repealed Securities Ordinance as an exempt dealer,

then the person may continue carrying on the business referred to in paragraph (a) for a period of 2 years from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to the person until the expiration of that period.

48. Where section 47 is applicable to a person who falls within the description of section 47(b)(i),

and immediately before the commencement of Part V of this Ordinance-

- (a) (if the person is a corporation) a director of the person is registered as a dealer;
- (b) (if the person is a partnership) a partner of the person is registered as a dealer;
- (c) an individual is registered as a dealer's representative,

of the person under the repealed Securities Ordinance, then the director, partner or individual may deal in futures contracts solely with excluded clients in the business carried on by the person for a period of 2 years from such commencement, and solely for the purposes of dealing in futures contracts solely with excluded clients in such business, this Ordinance shall not apply to the director, partner or individual until the expiration of that period.

49. Where section 47 is applicable to a person who falls within the description of section 47(b)(ii), and immediately before the commencement of Part V of this Ordinance, an individual is engaged by the person to deal solely with excluded clients in the person's business referred to in section 47(a), then the individual may deal in futures contracts solely with excluded clients in such business for a period of 2 years from such commencement, and solely for the purposes of dealing in futures contracts solely with excluded clients in such business, this Ordinance shall not apply to the person until the expiration of that period.

50. Where immediately before the commencement of Part V of this Ordinance, a person-

- (a) is carrying on a business which does not fall within the meaning of "trading in commodity futures contracts", as defined in section 2(1) of the repealed Commodities Trading Ordinance, solely because the person while engaging in such trading only deals with excluded clients; and
- (b) none of sections 47, 48 and 49 is applicable to the person,

then the person may continue carrying on the business referred to in paragraph (a) for a period of 6 months from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to-

- (i) the person; and
- (ii) any individual engaged in the business by the person to deal in futures contracts solely with excluded clients,

until the expiration of that period.

Deemed condition for Type 9 regulated activity

51. Where a person is-

- (a) immediately before the commencement of Part V of this Ordinance-
 - (i) registered under the repealed Securities Ordinance as a dealer, investment adviser, dealer's representative or investment representative;
 - (ii) declared under the repealed Securities Ordinance as an exempt dealer or an exempt investment adviser; or
 - (iii) a licensed bank referred to in section 32; and
- (b) deemed under section 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 or 32 to have been licensed or registered for Type 9 regulated activity under Part V of this Ordinance,

then without prejudice to section 55, such licence or registration referred to in paragraph (b) shall be subject to a condition that the person shall not provide a service of managing a portfolio of futures contracts for another person.

52. Where a person is-

- (a) immediately before the commencement of Part V of this Ordinance registered under the repealed Commodities Trading Ordinance as a dealer, commodity trading adviser, dealer's representative or commodity trading adviser's representative; and
- (b) deemed under section 22, 23, 24, 27, 28, 29, 30 or 31 to have been licensed for Type 9 regulated activity under Part V of this Ordinance,

then without prejudice to section 55, such licence referred to in paragraph (b) shall be subject to a condition that the person shall not provide a service of managing a portfolio of securities for another person.

Further provisions on transitional period

53. (1) Where, within 2 years from the commencement of Part V of this Ordinance-
- (a) a corporation deemed under section 22 or 25(b) to have been licensed for a regulated activity applies to be licensed for that regulated activity under section 116(1) of this Ordinance, then without prejudice to subsection (3)(C), it shall be deemed-
 - (i) to have been so licensed; and
 - (ii) (in the case of a corporation deemed under section 22 to have been licensed) to have complied with the requirement of section 125(1)(a) and (b) of this Ordinance in relation to that regulated activity,
until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 232 of this Ordinance (as the case may be);
 - (b) a company, or a non-Hong Kong company that has complied with the provisions of Part XI of the Companies Ordinance (Cap 32) for the registration of documents, applies to be licensed under section 116(1) of this Ordinance for a regulated activity and- (Amended 30 of 2004 s. 3)
 - (i) all the partners of a partnership deemed under section 25(b) or 27 to have been licensed for that regulated activity are shareholders of the applicant;
 - (ii) the collective shareholdings of such partners would have made them a majority shareholder of the applicant if they were one single shareholder of the applicant; and
 - (iii) the applicant satisfies the Commission that-
 - (A) it is incorporated for the purposes of taking over the business carried on by that partnership in that regulated activity; and
 - (B) sufficient arrangements have been or will be made to effect the transfer of such business from that partnership to the applicant,then without prejudice to subsection (3)(C), that partnership shall be deemed-
 - (A) to have been so licensed; and
 - (B) (in the case of a partnership deemed under section 27 to have been licensed) to have complied with the requirement of section 125(1)(a) and (b) of this Ordinance in relation to that regulated activity,
until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 232 of this Ordinance (as the case may be);
 - (c) a company, or a non-Hong Kong company that has complied with the provisions of Part XI of the Companies Ordinance (Cap 32) for the registration of documents, applies to be licensed under section 116(1) of this Ordinance for a regulated activity and- (Amended 30 of 2004 s. 3)
 - (i) an individual deemed under section 25(b) or 30 to have been licensed for that regulated activity is a majority shareholder of the applicant; and
 - (ii) the applicant satisfies the Commission that-
 - (A) it is incorporated for the purposes of taking over the business carried on by that individual in that regulated activity; and
 - (B) sufficient arrangements have been or will be made to effect the transfer of such business from that individual to the applicant,then without prejudice to subsection (3)(C), that individual shall be deemed-
 - (A) to have been so licensed;
 - (B) (in the case of an individual deemed under section 30 to have been licensed) to have complied with the requirement of section 125(1)(a) and (b) of this Ordinance in relation to that regulated activity; and
 - (C) (in the case of an individual deemed under section 30 to have been licensed) to have been approved under section 126(1) of this Ordinance as a responsible officer in relation to that licensed corporation,
until the licence applied for is granted or the Commission's refusal to grant the licence

takes effect as a specified decision under section 232 of this Ordinance (as the case may be);

- (d) a director deemed under section 23, or a partner deemed under section 28-
 - (i) to have been licensed for a regulated activity and accredited to a corporation; and
 - (ii) to have been approved as a responsible officer of that corporation,applies to be licensed for the regulated activity under section 120(1) of this Ordinance, he shall, subject to subsection (6), be so deemed until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 232 of this Ordinance (as the case may be);
- (e) an individual deemed under section 24, 26(ii), 29 or 31 to have been licensed for a regulated activity and accredited to a corporation applies to be licensed for the regulated activity under section 120(1) of this Ordinance, he shall, subject to subsection (6), be so deemed until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 232 of this Ordinance (as the case may be).

(2) Where, within 2 years from the commencement of Part V of this Ordinance, an authorized financial institution deemed under section 25(a) to have been registered, or a licensed bank deemed under section 32 to have been registered, for a regulated activity, applies to be registered for that regulated activity under section 119(1) of this Ordinance, then without prejudice to subsection (3)(C)-

- (a) it shall be deemed to have been so registered; and
- (b) an individual deemed under section 26(i) or 33 to be a person whose name has been entered in the register referred to in that section as engaged by the institution or licensed bank (as the case may be) in that regulated activity shall, subject to subsection (6), be so deemed,

until the applicant is registered pursuant to the application or the Commission's refusal to register the applicant takes effect as a specified decision under section 232 of this Ordinance (as the case may be).

(3) Where-

- (a) an application referred to in subsection (1)(a), (b) or (c) or (2) in relation to a regulated activity is refused; or
- (b) such an application is refused and the applicant applies for review of the refusal under section 217 of this Ordinance, and the refusal is confirmed by the Securities and Futures Appeals Tribunal,

then-

- (i) in the case of an application referred to in subsection (1)(a) or (2), the applicant;
- (ii) in the case of an application referred to in subsection (1)(b), the partnership from which the applicant intends to take over the business in that regulated activity; or
- (iii) in the case of an application referred to in subsection (1)(c), the individual from whom the applicant intends to take over the business in that regulated activity,

shall-

- (A) cease to carry on that regulated activity within 21 days of the refusal or the confirmation (as the case may be) or within such further period as the Commission notifies the applicant, partnership or individual (as the case may be) in writing;
- (B) comply with such reasonable conditions as the Commission may impose for such cessation; and
- (C) before such cessation but in any event not later than the 21 days or further period referred to in paragraph (A) and solely for the purpose of winding up its business in that regulated activity, continue to be deemed to have been licensed or registered or to have complied with the requirement of section 125(1)(a) and (b) of this Ordinance or to have been approved as a responsible officer for or in relation to that regulated activity, as may be applicable,

and may be subject to the exercise of the power of the Commission under section 201 of this Ordinance as if the licence or registration referred to in paragraph (C) in respect of the applicant, partnership or individual (as the case may be) had been revoked on the occurrence of the circumstances specified in paragraphs (a) and (b) (whichever is applicable).

(4) Where a person is deemed under section 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 or 32 to have been licensed or registered for a regulated activity or approved as a responsible officer, the provisions

of this Ordinance shall-

- (a) apply to or in relation to the person as they apply to or in relation to a person who is licensed or registered for that regulated activity or approved as a responsible officer (as the case may be); and
 - (b) in case the person is a partnership or an individual (as the case may be) carrying on a business in that regulated activity, so apply with such modifications under section 134 of this Ordinance as may be necessary.
- (5) Where an individual's name is deemed-
- (a) under section 26(i); or
 - (b) under section 33,

to have been entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as engaged by the institution concerned or the bank concerned in respect of a regulated activity, the provisions of this Ordinance shall apply to or in relation to the individual as they apply to or in relation to an individual whose name is entered in such register in respect of that regulated activity with such modifications under section 134 of this Ordinance as may be necessary.

- (6) If-
- (a) a director of a corporation who is deemed under section 23-
 - (i) to have been licensed as a licensed representative and accredited to that corporation; and
 - (ii) to have been approved under section 126(1) of this Ordinance as a responsible officer of that corporation,ceases to be a director of that corporation, he shall upon such cessation cease to be so deemed;
 - (b) a partner of a partnership who is deemed under section 28-
 - (i) to have been licensed as a licensed representative and accredited to that partnership (deemed under section 27 to be a licensed corporation); and
 - (ii) to have been approved under section 126(1) of this Ordinance as a responsible officer of that corporation,ceases to be a partner of that partnership, he shall upon such cessation cease to be so deemed;
 - (c) an individual who is deemed under section 24, 26(ii), 29 or 31 to have been licensed as a licensed representative and accredited to a licensed person ceases to act for or on behalf of that licensed person in relation to the regulated activity for which he is so deemed, he shall upon such cessation cease to be so deemed;
 - (d) an individual who is deemed under section 26(i) or 33 to be a person whose name has been entered in the register referred to in that section ceases to be engaged by the institution concerned or the bank concerned to perform any act which constitutes a regulated function in relation to the relevant regulated activity, he shall upon such cessation cease to be so deemed.

Certain unregistered persons to be permitted
to carry on limited business

54. A person who-

- (a) immediately before the commencement of Part XA of the repealed Securities Ordinance, carried on a business of securities margin financing; and
- (b) continues to collect interest accrued or accruing on sums already advanced under financial accommodation granted before the commencement of that Part,

is deemed not to be carrying on a business in Type 8 regulated activity for the purposes of section 114(1) of this Ordinance, but only if the person does not carry on, or hold itself out as carrying on, any business in securities margin financing other than that as referred to in paragraph (b).

Miscellaneous

55. Where a person is-

- (a) immediately before the commencement of Part V of this Ordinance-
 - (i) registered under the repealed Securities Ordinance as a dealer, investment adviser, securities margin financier, dealer's representative, investment representative or securities margin financier's representative;
 - (ii) declared under the repealed Securities Ordinance as an exempt dealer or an exempt investment adviser;
 - (iii) registered under the repealed Commodities Trading Ordinance as a dealer, commodity trading adviser, dealer's representative or commodity trading adviser's representative; or
 - (iv) licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a leveraged foreign exchange trader or representative; and
- (b) deemed under section 22, 23, 24, 25, 27, 28, 29, 30, 31 or 32 to have been licensed or registered under Part V of this Ordinance,

any condition that has been attached or imposed by the Commission to the registration, exemption or licence referred to in paragraph (a) which is in force immediately before such commencement shall, upon such commencement, be deemed to have been imposed in respect of the licence or registration referred to in paragraph (b).

56. Where-

- (a) approval for premises to be used for keeping records or documents has been given by the Commission under the repealed Securities and Futures Commission Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance; and
- (b) the approval subsists immediately before the commencement of Part V of this Ordinance,

the approval shall, upon such commencement, be deemed to have been granted under section 130(1) of this Ordinance.

57. Where-

- (a) approval for a subordinated loan has been given by the Commission under the Financial Resources Rules (Cap 24 sub. leg. D) repealed under section 406 of this Ordinance or the Leveraged Foreign Exchange Trading (Financial Resources) Rules (Cap 451 sub. leg. G) repealed under section 406 of this Ordinance; and
- (b) the approval subsists immediately before the commencement of Part V of this Ordinance,

the approval shall, upon such commencement, be deemed to have been granted under this Ordinance.

58. Where-

- (a) approval to be a substantial shareholder has been given by the Commission under the repealed Securities and Futures Commission Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance; and
- (b) the approval subsists immediately before the commencement of Part V of this Ordinance,

the approval shall, upon such commencement, be deemed to have been granted under section 132 of this Ordinance.

59. Where-

- (a) an application is made before the commencement of Part V of this Ordinance for approval to be a substantial shareholder under section 26A of the repealed Securities and Futures Commission Ordinance or section 14A of the repealed Leveraged Foreign Exchange Trading Ordinance; and
- (b) immediately before such commencement the application has not been granted, refused or withdrawn,

the application shall, upon such commencement, be treated as an application to become a substantial shareholder under section 132 of this Ordinance.

60. (1) Where-

- (a) an application is made before the commencement of Part V of this Ordinance for-
 - (i) registration; or
 - (ii) a licence,
 in any capacity specified in column 2 of the Table; and
- (b) immediately before such commencement the application has not been granted, refused or withdrawn,

the application shall, upon such commencement, be treated as an application for a licence as specified opposite thereto in column 3 of the Table, and the Commission shall be entitled to determine the application accordingly.

TABLE

Item	Application pending at commencement of Part V of this Ordinance	To be treated as application for a licence
1	For registration as a dealer under the repealed Securities Ordinance, by- <ul style="list-style-type: none"> (a) a corporation (b) an individual 	<ul style="list-style-type: none"> (a) Under section 116(1) of this Ordinance for Type 1, Type 4, Type 6, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable (b) Under section 120(1) of this Ordinance for Type 1, Type 4, Type 6, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
2	For registration as an investment adviser under the repealed Securities Ordinance, by- <ul style="list-style-type: none"> (a) a corporation (b) an individual 	<ul style="list-style-type: none"> (a) Under section 116(1) of this Ordinance for Type 4, Type 6 and Type 9 regulated activities, or any one or more of them, as may be applicable (b) Under section 120(1) of this Ordinance for Type 4, Type 6 and Type 9 regulated activities, or any one or more of them, as may be applicable
3	For registration as a dealer's representative under the repealed Securities Ordinance	Under section 120(1) of this Ordinance for Type 1, Type 4, Type 6, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
4	For registration as an investment representative under the repealed Securities Ordinance	Under section 120(1) of this Ordinance for Type 4, Type 6 and Type 9 regulated activities, or any one or more of them, as may be applicable
5	For registration as a dealer under the repealed Commodities Trading Ordinance, by- <ul style="list-style-type: none"> (a) a corporation (b) an individual 	<ul style="list-style-type: none"> (a) Under section 116(1) of this Ordinance for Type 2, Type 5, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable (b) Under section 120(1) of this Ordinance for Type 2, Type 5, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
6	For registration as a commodity	

.	trading adviser under the repealed Commodities Trading Ordinance, by-	
	(a) a corporation	(a) Under section 116(1) of this Ordinance for Type 5 and Type 9 regulated activities, or any one of them, as may be applicable
	(b) an individual	(b) Under section 120(1) of this Ordinance for Type 5 and Type 9 regulated activities, or any one of them, as may be applicable
7	For registration as a dealer's representative under the repealed Commodities Trading Ordinance	Under section 120(1) of this Ordinance for Type 2, Type 5, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
8	For registration as a commodity trading adviser's representative under the repealed Commodities Trading Ordinance	Under section 120(1) of this Ordinance for Type 5 and Type 9 regulated activities, or any one of them, as may be applicable
9	For a licence as a leveraged foreign exchange trader under the repealed Leveraged Foreign Exchange Trading Ordinance	Under section 116(1) of this Ordinance for Type 3 regulated activity
10	For a licence as a representative under the repealed Leveraged Foreign Exchange Trading Ordinance	Under section 120(1) of this Ordinance for Type 3 regulated activity
11	For registration as a securities margin financier under the repealed Securities Ordinance	Under section 116(1) of this Ordinance for Type 8 regulated activity
12	For registration as a securities margin financier's representative under the repealed Securities Ordinance	Under section 120(1) of this Ordinance for Type 8 regulated activity

(2) Where-

- (a) an application is made before the commencement of Part V of this Ordinance for a declaration as an exempt dealer under the repealed Securities Ordinance; and
- (b) immediately before such commencement the application has not been granted, refused or withdrawn,

the application shall, upon such commencement-

- (i) where the applicant is an authorized financial institution, be treated as an application under section 119(1) of this Ordinance for registration for Type 1, Type 4, Type 6 and Type 9 regulated activities; or
- (ii) where the applicant is not an authorized financial institution, be treated as an application under section 116(1) of this Ordinance for Type 1, Type 4, Type 6 and Type 9 regulated activities.

(3) Where-

- (a) an application is made before the commencement of Part V of this Ordinance for a declaration as an exempt investment adviser under the repealed Securities Ordinance; and
- (b) immediately before such commencement the application has not been granted, refused or withdrawn,

the application shall, upon such commencement-

- (i) where the applicant is an authorized financial institution, be treated as an application under section 119(1) of this Ordinance for registration for Type 4, Type 6 and Type 9

- regulated activities; or
- (ii) where the applicant is not an authorized financial institution, be treated as an application under section 116(1) of this Ordinance for Type 4, Type 6 and Type 9 regulated activities.

**Part VI of this Ordinance (Capital requirements,
client assets, records and audit relating
to intermediaries)**

61. Where-

- (a) before the commencement of Part VI of this Ordinance, any power could have been, but was not, exercised under-
 - (i) section 52 or 53 of the repealed Commodities Trading Ordinance;
 - (ii) section 90, 91, 121AW or 121AX of the repealed Securities Ordinance; or
 - (iii) section 33 or 34 of the repealed Leveraged Foreign Exchange Trading Ordinance;or
- (b) before such commencement any power has been exercised under any of the provisions referred to in paragraph (a)(i), (ii) and (iii), and the exercise of the power would, but for the enactment of this Ordinance, continue to have force and effect on or after such commencement,

then-

- (i) (A) where paragraph (a) applies, the power may be exercised; or
(B) where paragraph (b) applies, the exercise of the power shall continue to have force and effect,
as if this Ordinance had not been enacted; and
- (ii) the provisions of the repealed Commodities Trading Ordinance, the repealed Securities Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance (as the case may be) shall continue to apply to the exercise of the power and to any matters relating thereto (including any further exercise of power) as if this Ordinance had not been enacted.

Part VIII of this Ordinance (Supervision and investigations)

62. Where-

- (a) before the commencement of Part VIII of this Ordinance, any power could have been, but was not, exercised under-
 - (i) section 29A, 30, 31, 33 or 36 of the repealed Securities and Futures Commission Ordinance; or
 - (ii) section 12, 41, 42, 44 or 47 of the repealed Leveraged Foreign Exchange Trading Ordinance; or
- (b) before such commencement any power has been exercised under any of the provisions referred to in paragraph (a)(i) and (ii), and the exercise of the power would, but for the enactment of this Ordinance, continue to have force and effect on or after such commencement,

then-

- (i) (A) where paragraph (a) applies, the power may be exercised; or
(B) where paragraph (b) applies, the exercise of the power shall continue to have force and effect,
as if this Ordinance had not been enacted; and
- (ii) the provisions of the repealed Securities and Futures Commission Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance (as the case may be) shall continue to apply to the exercise of the power and to any matters relating thereto (including any further exercise of power) as if this Ordinance had not been enacted.

63. Without prejudice to section 62, section 179 of this Ordinance applies even if-

- (a) in the case of subsection (1)(a), (b), (c), (d) or (e) of that section 179, the matter

- described in such subsection as being suggested by the circumstances referred to in such subsection has occurred, or appears to the Commission as occurring, before the commencement of Part VIII of this Ordinance; or
- (b) in the case of subsection (1)(f) of that section 179, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186 of this Ordinance has occurred, or appears to the Commission as occurring, before such commencement.

Part IX of this Ordinance (Discipline, etc.)

64. Where-

- (a) before the commencement of Part IX of this Ordinance, any power could have been, but was not, exercised under-
- (i) section 35 or 36 of the repealed Commodities Trading Ordinance;
- (ii) section 55, 56, 60(5), 61(2), 121R, 121S, 121T, 121U, 121V or 121X of the repealed Securities Ordinance; or
- (iii) section 11 or 12 of the repealed Leveraged Foreign Exchange Trading Ordinance;
- or
- (b) before such commencement any power has been exercised under any of the provisions referred to in paragraph (a)(i), (ii) and (iii), and the exercise of the power would, but for the enactment of this Ordinance, continue to have force and effect on or after such commencement,

then-

- (i) (A) where paragraph (a) applies, the power may be exercised; or
- (B) where paragraph (b) applies, the exercise of the power shall continue to have force and effect,
- as if this Ordinance had not been enacted; and
- (ii) subject to section 66, the provisions of the repealed Commodities Trading Ordinance, the repealed Securities Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance (as the case may be) and the repealed Securities and Futures Commission Ordinance (where applicable) shall continue to apply to the exercise of the power and to any appeals and other matters relating thereto (including any further exercise of power) as if this Ordinance had not been enacted.

65. Where-

- (a) the exercise of any power under section 64 results in the revocation of any declaration of exemption or the revocation or suspension of any registration or licence of any person, or the suspension of any such registration or licence continues to have force and effect by virtue of that section; and
- (b) the person has, by reason of the declaration or registration or licence referred to in paragraph (a), been deemed under any of the provisions of sections 22 to 37 to have been registered or licensed under this Ordinance,

the registration or licence of the person under this Ordinance shall, notwithstanding sections 22 to 37, be regarded as having been revoked or suspended (as the case may be) on the same terms and conditions on which the declaration or registration or licence referred to in paragraph (a) is revoked or suspended, and sections 200(1) to (3), 201(2) and (5), 202 and 203 of this Ordinance shall apply, with necessary modifications, in relation to the revocation or suspension as if it were a revocation or suspension under Part IX of this Ordinance.

66. Where, but for this section, the exercise of any power under section 64 would have been subject to appeal to the Securities and Futures Appeals Panel established by section 18 of the repealed Securities and Futures Commission Ordinance, an application for review to the Securities and Futures Appeals Tribunal, but not such appeal to the Securities and Futures Appeals Panel, may be made in respect of the exercise of the power and disposed of in all respects as if the exercise of the power were a specified decision as defined in section 215 of and section 1 of Schedule 8 to this Ordinance, and the other provisions of this Ordinance shall, with necessary modifications, apply accordingly.

**Part X of this Ordinance (Powers of intervention
and proceedings)**

67. Where-

- (a) before the commencement of Part X of this Ordinance, any power could have been, but was not, exercised under-
 - (i) section 39, 40, 41 or 43 of the repealed Securities and Futures Commission Ordinance; or
 - (ii) section 50, 51, 52 or 54 of the repealed Leveraged Foreign Exchange Trading Ordinance; or
- (b) before such commencement any power has been exercised under any of the provisions referred to in paragraph (a)(i) and (ii), and the exercise of the power would, but for the enactment of this Ordinance, continue to have force and effect on or after such commencement,

then-

- (i) (A) where paragraph (a) applies, the power may be exercised; or
(B) where paragraph (b) applies, the exercise of the power shall continue to have force and effect,
as if this Ordinance had not been enacted; and
- (ii) subject to section 68, the provisions of the repealed Securities and Futures Commission Ordinance or both the repealed Securities and Futures Commission Ordinance and the repealed Leveraged Foreign Exchange Trading Ordinance (as the case may be) shall continue to apply to the exercise of the power and to any appeals and other matters relating thereto (including any further exercise of power) as if this Ordinance had not been enacted.

68. Where, but for this section, the exercise of any power under section 67 would have been subject to appeal to the Securities and Futures Appeals Panel established by section 18 of the repealed Securities and Futures Commission Ordinance, an application for review to the Securities and Futures Appeals Tribunal, but not such appeal to the Securities and Futures Appeals Panel, may be made in respect of the exercise of the power and disposed of in all respects as if the exercise of the power were a specified decision as defined in section 215 of and section 1 of Schedule 8 to this Ordinance, and the other provisions of this Ordinance shall, with necessary modifications, apply accordingly.

69. Section 214 of this Ordinance applies even if the conduct of business or affairs in question has occurred, or appears to the Commission as occurring, before the commencement of Part X of this Ordinance.

**Part XI of this Ordinance (Securities and
Futures Appeals Tribunal)**

70. Where a person has made an appeal to the Securities and Futures Appeals Panel before the commencement of Part XI of this Ordinance under-

- (a) Part III of the repealed Securities and Futures Commission Ordinance; or
- (b) Part IX of the repealed Leveraged Foreign Exchange Trading Ordinance,

and the appeal has not been finally determined before such commencement, the appeal may be continued and disposed of in all respects (and, without limiting the generality of the foregoing, any power to appoint any person as a member (whether as the chairman, deputy chairman or other member) of the Securities and Futures Appeals Panel or as a member of a tribunal appointed under any of the provisions referred to in paragraphs (a) and (b) may be exercised for the purposes of the appeal) as if this Ordinance had not been enacted.

71. Where-

- (a) before the commencement of Part XI of this Ordinance an appeal has not been made to the Securities and Futures Appeals Panel under-

- (i) Part III of the repealed Securities and Futures Commission Ordinance; or
- (ii) Part IX of the repealed Leveraged Foreign Exchange Trading Ordinance; and
- (b) the time within which the appeal may be made under such Part is running and has not expired upon such commencement,

the appeal may be made to the Securities and Futures Appeals Panel and disposed of in all respects (and, without limiting the generality of the foregoing, any power to appoint any person as a member (whether as the chairman, deputy chairman or other member) of the Securities and Futures Appeals Panel or as a member of a tribunal appointed under any of the provisions referred to in paragraph (a)(i) and (ii) may be exercised for the purposes of the appeal) as if this Ordinance had not been enacted.

72. Where, by virtue of section 70 or 71, any appeal is or is to be made or continued, and disposed of, under-

- (a) Part III of the repealed Securities and Futures Commission Ordinance; or
- (b) Part IX of the repealed Leveraged Foreign Exchange Trading Ordinance,

then, without limiting the generality of sections 70 and 71 (including the exercise of the power to appoint any person as a member (whether as the chairman, deputy chairman or other member) of the Securities and Futures Appeals Panel established by section 18 of the repealed Securities and Futures Commission Ordinance or as a member of a tribunal appointed under any of the provisions referred to in paragraphs (a) and (b))-

- (i) any person who immediately before the commencement of Part XI of this Ordinance holds any office as a member (whether as the chairman, deputy chairman or other member) of the Securities and Futures Appeals Panel or as a member of the tribunal to determine the appeal shall, for the purposes of the appeal, continue to hold the same office on the same terms and conditions as if this Ordinance had not been enacted; and
- (ii) the Securities and Futures Appeals Panel and the tribunal shall, for the purposes of the appeal, continue in existence as if this Ordinance had not been enacted.

Part XII of this Ordinance (Investor compensation)

73. (1) In sections 74 to 76-

"Futures Exchange Compensation Fund" (期交所賠償基金) and "Unified Exchange Compensation Fund" (聯交所賠償基金) have the meanings respectively assigned to them in section 235 of this Ordinance;

"repealed Commodities Trading Rules" (已廢除的《商品交易規則》) means the Commodities Trading (Dealers, Commodity Trading Advisers and Representatives) Rules (Cap 250 sub. leg. A) repealed under section 406 of this Ordinance;

"repealed Contract Levy Rules" (已廢除的《合約徵費規則》) means the Commodities Trading (Contract Levy) Rules (Cap 250 sub. leg. C) repealed under section 406 of this Ordinance;

"repealed Securities Rules" (已廢除的《證券規則》) means the Securities (Miscellaneous) Rules (Cap 333 sub. leg. A) repealed under section 406 of this Ordinance.

(2) For the avoidance of doubt, it is hereby declared that nothing in sections 74 to 76 shall be construed as enabling a claim to be made which is barred under any enactment or rule of law.

Unified Exchange Compensation Fund

74. (1) Despite the repeals effected by section 406 of this Ordinance, Part X of the repealed Securities Ordinance shall, subject to this section, continue to apply to and in relation to-

- (a) any claim for compensation from the Unified Exchange Compensation Fund made under that Part before the appointed day; or
- (b) any default occurring before the appointed day,

as if that section had not been enacted, subject to the following modifications-

- (i) section 112 of that Part X shall cease to apply as from the appointed day;
- (ii) for any reference to the Unified Exchange, there shall be substituted a reference to a recognized stock market within the meaning of this Ordinance;
- (iii) for any reference to the Exchange Company, there shall be substituted a reference to

- the Stock Exchange Company within the meaning of this Ordinance;
- (iv) the expression "dealing in securities" shall be construed in accordance with Part 2 of Schedule 5 to this Ordinance; and
 - (v) the expressions "exchange participant", "listed", "securities" and "trading right" shall respectively be construed in accordance with this Ordinance.
- (2) The Commission may after the appointed day pay into the compensation fund such sum of money from the Unified Exchange Compensation Fund as it considers appropriate, having regard to-
- (a) the amounts which the Commission considers to be necessary to meet any claims or likely claims against the Unified Exchange Compensation Fund; and
 - (b) the amounts deposited in cash under section 104 of the repealed Securities Ordinance, which have not previously been reimbursed under this section.
- (3) Where the Commission considers that the amount at credit in the Unified Exchange Compensation Fund exceeds the total amount which the Commission considers to be necessary to meet any claims or likely claims against the Unified Exchange Compensation Fund, the Commission may after the appointed day apply the excess to reimburse the Stock Exchange Company or, if the Stock Exchange Company is in liquidation, the liquidator of the Stock Exchange Company, for the amounts deposited in cash under section 104 of the repealed Securities Ordinance.
- (4) As soon as reasonably practicable after the appointed day, the Stock Exchange Company shall publish in one or more English language newspapers and one or more Chinese language newspapers, published daily and circulating generally in Hong Kong, a notice specifying a date, not being earlier than 3 months after the publication of the notice, on or before which a claim for compensation from the Unified Exchange Compensation Fund may be made by any person.
- (5) Where, in respect of a default occurring prior to the appointed day, a person wishes to start a claim for compensation from the Unified Exchange Compensation Fund, he shall lodge his claim in writing with the Stock Exchange Company-
- (a) if a notice under subsection (4) has been published, on or before the date specified in the notice; or
 - (b) if no such notice has been published, within 6 months after he became aware of the default giving rise to the claim.
- (6) A claim made under subsection (5) shall be regarded as a claim made under section 109 of the repealed Securities Ordinance and other provisions of Part X of that Ordinance shall apply accordingly.
- (7) A claim that is not made within the time limited by subsection (5) shall, unless the Stock Exchange Company otherwise determines, be barred.
- (8) After-
- (a) all claims made or continued under this section have been disposed of; and
 - (b) all outstanding liabilities against the Unified Exchange Compensation Fund have been satisfied,
- the Commission shall apply any balance remaining in the Fund in accordance with subsection (9).
- (9) Any balance mentioned in subsection (8) shall-
- (a) be used to reimburse the Stock Exchange Company or, if the Stock Exchange Company is in liquidation, the liquidator of the Stock Exchange Company, for the amounts deposited in cash under section 104 of the repealed Securities Ordinance, which have not previously been reimbursed under this section; and
 - (b) if there is any remaining balance, be paid into the compensation fund.
- (10) Upon any reimbursement referred to in subsection (3) or (9)(a), the amount of the reimbursement shall form part of the assets of the Stock Exchange Company and, if it is in liquidation, shall be available to the liquidator for distribution in accordance with the Companies Ordinance (Cap 32).
- (11) Where a claim for compensation from the Unified Exchange Compensation Fund is allowed (whether in full or in part) but the amount allowed cannot be paid to the claimant because the Commission is unable to locate the claimant, then the Commission shall hold for the claimant the amount allowed for 3 years beginning with the date on which the claim is allowed, after which time the Commission shall apply the amount in accordance with subsection (9).
- (12) Except as provided in this section, no claim for compensation from the Unified Exchange Compensation Fund may be made after the appointed day.

*(13)The Secretary for Financial Services and the Treasury may by notice published in the Gazette appoint a date as the appointed day for the purposes of this section. (Amended L.N. 106 of 2002) * [Note: 1 April 2003 was the day appointed under this subsection - see L.N. 14 of 2003.]

(14) In this section-

"appointed day" (指定日期) means the date appointed under subsection (13);

"default" (違責) means an act referred to in section 109(1) of the repealed Securities Ordinance.

Futures Exchange Compensation Fund

75. (1) Despite the repeals effected by section 406 of this Ordinance, Part VIII of the repealed Commodities Trading Ordinance and the repealed Contract Levy Rules shall, subject to this section, continue to apply to and in relation to-

- (a) any claim for compensation from the Futures Exchange Compensation Fund made under that Part before the appointed day; or
- (b) any default occurring before the appointed day,

as if that section had not been enacted, subject to the following modifications-

- (i) section 89 of that Part VIII shall cease to apply as from the appointed day;
- (ii) for any reference to the Commodity Exchange, there shall be substituted a reference to a recognized futures market within the meaning of this Ordinance;
- (iii) for any reference to the Exchange Company, there shall be substituted a reference to the Futures Exchange Company within the meaning of this Ordinance; and
- (iv) the expressions "exchange participant", "futures contracts" and "trading right" shall respectively be construed in accordance with this Ordinance.

(2) The Commission may after the appointed day pay into the compensation fund such sum of money from the Futures Exchange Compensation Fund as it considers appropriate, having regard to-

- (a) the amounts which the Commission considers to be necessary to meet any claims or likely claims against the Futures Exchange Compensation Fund; and
- (b) the amounts deposited in cash under section 82 of the repealed Commodities Trading Ordinance, which have not previously been reimbursed under this section.

(3) Where the Commission considers that the amount at credit in the Futures Exchange Compensation Fund exceeds the total amount which the Commission considers to be necessary to meet any claims or likely claims against the Futures Exchange Compensation Fund, the Commission may after the appointed day apply the excess to reimburse the Futures Exchange Company or, if the Futures Exchange Company is in liquidation, the liquidator of the Futures Exchange Company, for the amounts deposited in cash under section 82 of the repealed Commodities Trading Ordinance.

(4) As soon as reasonably practicable after the appointed day, the Futures Exchange Company shall publish in one or more English language newspapers and one or more Chinese language newspapers, published daily and circulating generally in Hong Kong, a notice specifying a date, not being earlier than 3 months after the publication of the notice, on or before which a claim for compensation from the Futures Exchange Compensation Fund may be made by any person.

(5) Where, in respect of a default occurring prior to the appointed day, a person wishes to start a claim for compensation from the Futures Exchange Compensation Fund, he shall lodge his claim in writing with the Futures Exchange Company-

- (a) if a notice under subsection (4) has been published, on or before the date specified in the notice; or
- (b) if no such notice has been published, within 6 months after he became aware of the default giving rise to the claim.

(6) A claim made under subsection (5) shall be regarded as a claim made under section 87 of the repealed Commodities Trading Ordinance and other provisions of Part VIII of that Ordinance shall apply accordingly.

(7) A claim that is not made within the time limited by subsection (5) shall, unless the Futures Exchange Company otherwise determines, be barred.

(8) After-

- (a) all claims made or continued under this section have been disposed of; and
- (b) all outstanding liabilities against the Futures Exchange Compensation Fund have been satisfied,

the Commission shall apply any balance remaining in the Fund in accordance with subsection (9).

(9) Any balance mentioned in subsection (8) shall-

- (a) be used to reimburse the Futures Exchange Company or, if the Futures Exchange Company is in liquidation, the liquidator of the Futures Exchange Company, for the amounts deposited in cash under section 82 of the repealed Commodities Trading Ordinance, which have not previously been reimbursed under this section; and
- (b) if there is any remaining balance, be paid into the compensation fund.

(10) Upon any reimbursement referred to in subsection (3) or (9)(a), the amount of the reimbursement shall form part of the assets of the Futures Exchange Company and, if it is in liquidation, shall be available to the liquidator for distribution in accordance with the Companies Ordinance (Cap 32).

(11) Where a claim for compensation from the Futures Exchange Compensation Fund is allowed (whether in full or in part) but the amount allowed cannot be paid to the claimant because the Commission is unable to locate the claimant, then the Commission shall hold for the claimant the amount allowed for 3 years beginning with the date on which the claim is allowed, after which time the Commission shall apply the amount in accordance with subsection (9).

(12) Except as provided in this section, no claim for compensation from the Futures Exchange Compensation Fund may be made after the appointed day.

*(13) The Secretary for Financial Services and the Treasury may by notice published in the Gazette appoint a date as the appointed day for the purposes of this section. (Amended L.N. 106 of 2002) * [Note: 1 April 2003 was the day appointed under this subsection - see L.N. 15 of 2003.]

(14) In this section-

"appointed day" (指定日期) means the date appointed under subsection (13);

"default" (違責) means a default referred to in section 87(1) of the repealed Commodities Trading Ordinance.

Dealers Deposit Scheme

76. (1) Despite the repeals effected by section 406 of this Ordinance-

- (a) sections 52 (except subsections (1), (1A) and (6)) and 52A of the repealed Securities Ordinance;
- (b) rules 2, 4, 5 and 6 (other than rule 6(4)) of the repealed Securities Rules;
- (c) section 33 of the repealed Commodities Trading Ordinance; and
- (d) Part III (other than rule 15(5)) of the repealed Commodities Trading Rules,

shall, subject to this section, continue to apply for the purposes of this section as if that section 406 had not been enacted.

(2) Where, prior to the appointed day-

- (a) there arises any of the circumstances described in section 52(2) or (11) of the repealed Securities Ordinance or section 33(1) or (11) of the repealed Commodities Trading Ordinance; and
- (b) no transfer, payment, forfeiture or application for release of the deposit (as the case may be) paid or deposited by the dealer concerned has been made pursuant to either of those sections,

then such transfer, payment, forfeiture or application for release and any subsequent application of such deposit may be made under the applicable provisions specified in subsection (1).

(3) A claim for compensation made before the appointed day in respect of a default occurring prior to that day that has not been disposed of may be continued and disposed of under subsection (1).

(4) As soon as reasonably practicable after the appointed day, the Commission shall publish in one or more English language newspapers and one or more Chinese language newspapers, published daily and circulating generally in Hong Kong, a notice specifying a date, not being earlier than 3 months after the publication of the notice, on or before which a claim for compensation against the deposit forfeited under section 52(2)(c) of the repealed Securities Ordinance or section 33(1)(c) of the repealed Commodities Trading Ordinance may be made.

(5) Where, in respect of a default occurring prior to the appointed day, a person wishes to start a claim for compensation against any deposit referred to in subsection (4), he shall lodge his claim in writing with the Commission-

- (a) if a notice under subsection (4) has been published, on or before the date specified in the notice; or
- (b) if no such notice has been published, within 6 months after he became aware of the default giving rise to the claim.

(6) A claim made under subsection (5) shall be regarded as a claim made under rule 6(5) of the repealed Securities Rules or rule 15(6) of the repealed Commodities Trading Rules (as the case may be), and other provisions of the Rules shall apply accordingly.

(7) A claim that is not made within the time limited by subsection (5) shall, unless the Commission otherwise determines, be barred.

(8) Where a claim made or continued under this section is not allowed or the amount or amounts determined to be payable as compensation do not exceed the amount of the deposit, the Commission shall repay the deposit to which the claim relates or the remaining balance of the deposit (as the case may be) to the dealer concerned.

(9) Where-

- (a) a deposit made under section 52 of the repealed Securities Ordinance or section 31 of the repealed Commodities Trading Ordinance has not been or is not required to be disposed of under the Ordinance; and
- (b) the deposit is not required to be disposed of under this section,

the Commission shall repay the deposit to the dealer concerned.

(10) Where a claim made or continued under this section is allowed (whether in full or in part) but the amount allowed cannot be paid to the claimant because the Commission is unable to locate the claimant, then the Commission shall hold for the claimant the amount allowed for 3 years beginning with the date on which the claim is allowed, after which time the Commission shall repay the amount to the dealer concerned.

(11) Where-

- (a) a deposit or its remaining balance is required to be repaid to a dealer under subsection (8) or (9) or any amount is required to be repaid to a dealer under subsection (10); but
- (b) the Commission is unable to locate the dealer for the purpose of repayment during the period of 3 years beginning with-
 - (i) in the case of subsection (8), the date of the determination of the claim;
 - (ii) in the case of subsection (9), the appointed day; or
 - (iii) in the case of subsection (10), the end of the 3-year period referred to in that subsection,

the Commission shall pay the deposit or the remaining balance or the amount (as the case may be) to the compensation fund.

(12) Except as provided in this section, no claim for compensation may be made against any deposit forfeited under section 52(2)(c) of the repealed Securities Ordinance or section 33(1)(c) of the repealed Commodities Trading Ordinance after the appointed day.

(13) The Secretary for Financial Services and the Treasury may by notice published in the Gazette appoint a date as the appointed day for the purposes of this section. (Amended L.N. 106 of 2002)

(14) In this section-

"appointed day" (指定日期) means the date appointed under subsection (13);

"default" (違責) means a default referred to in rule 6(2) of the repealed Securities Rules or rule 15(2) of the repealed Commodities Trading Rules.

Part XIII of this Ordinance (Market Misconduct Tribunal)

77. Where-

- (a) the repealed Securities (Insider Dealing) Ordinance would but for the enactment of this Ordinance have effect with respect to an insider dealing within the meaning of the repealed Securities (Insider Dealing) Ordinance; and
- (b) the insider dealing has taken place before the commencement of Part XIII of this Ordinance,

and the Financial Secretary has before the commencement of Part XIII of this Ordinance instituted an inquiry with reference to the insider dealing under section 16(2) of the repealed Securities (Insider

Dealing) Ordinance, then the repealed Securities (Insider Dealing) Ordinance shall continue to have application in connection with the insider dealing and with any inquiry, appeal, and other matters relating thereto (including, without limiting the generality of the foregoing, the exercise of any power to appoint any person as a member (whether as the chairman or other member) or as a temporary member of the Insider Dealing Tribunal referred to in section 15 of that Ordinance for the purposes of any inquiry relating thereto) as if this Ordinance had not been enacted.

78. Where-

- (a) the repealed Securities (Insider Dealing) Ordinance would but for the enactment of this Ordinance have effect with respect to an insider dealing within the meaning of the repealed Securities (Insider Dealing) Ordinance; and
- (b) the insider dealing has in whole or in part taken place before the commencement of Part XIII of this Ordinance,

but the Financial Secretary has not before the commencement of Part XIII of this Ordinance instituted an inquiry with reference to the insider dealing under section 16(2) of the repealed Securities (Insider Dealing) Ordinance, then the repealed Securities (Insider Dealing) Ordinance shall continue to have application in connection with the insider dealing and with any inquiry, appeal, and other matters relating thereto (including, without limiting the generality of the foregoing, the exercise of any power to appoint any person as a member (whether as the chairman or other member) or as a temporary member of the Insider Dealing Tribunal referred to in section 15 of that Ordinance for the purposes of any inquiry relating thereto) as if-

- (i) this Ordinance had not been enacted; and
- (ii) the repealed Securities (Insider Dealing) Ordinance had been amended in the manner described in section 80.

79. For the purposes of section 78, where-

- (a) a series of conduct has taken place, partly before the commencement of Part XIII of this Ordinance, and partly on or after such commencement;
- (b) apart from this section, such series of conduct-
 - (i) by reason of the part that has taken place before the commencement of Part XIII of this Ordinance, would constitute one or more insider dealing taking place under the repealed Securities (Insider Dealing) Ordinance by reference to information which constitutes relevant information within the meaning of section 9(1)(a), (b), (c), (d), (e) or (f) or (2) of the repealed Securities (Insider Dealing) Ordinance; and
 - (ii) by reason of the part that has taken place on or after the commencement of Part XIII of this Ordinance, would but for the enactment of this Ordinance also constitute one or more insider dealing taking place under the repealed Securities (Insider Dealing) Ordinance by reference to information which constitutes relevant information within the meaning of section 9(1)(a), (b), (c), (d), (e) or (f) or (2) of the repealed Securities (Insider Dealing) Ordinance; and
- (c) the information referred to in paragraph (b)(i) and (ii) is the same or substantially the same information,

the series of conduct shall be regarded as constituting an insider dealing within the meaning of section 78 which has in part taken place before the commencement of Part XIII of this Ordinance.

80. Where section 78 applies, the repealed Securities (Insider Dealing) Ordinance shall apply as if it had been amended-

- (a) by adding-

"27A. Recommendations to Financial Secretary to institute inquiry

At the conclusion of any inquiry or as soon as is reasonably practicable thereafter, where it appears to the Tribunal that insider dealing has taken place or may have taken place by reference to the conduct of any person, it may, where it considers appropriate, recommend the Financial Secretary to institute an inquiry

- under section 16 to inquire into the matter.";
- (b) in the Schedule, in paragraph 17, by adding ", at the first sitting of the Tribunal relating to the inquiry," after "shall determine".

81. Where, by virtue of section 77 or 78, any inquiry is or is to be instituted or continued, and disposed of, under the repealed Securities (Insider Dealing) Ordinance, then, without limiting the generality of sections 77 and 78 (including the exercise of the power to appoint any person as a member (whether as the chairman or other member) or as a temporary member of the Insider Dealing Tribunal referred to in section 15 of that Ordinance)-

- (a) any person who immediately before the commencement of Part XIII of this Ordinance holds any office as a member (whether as the chairman or other member) or as a temporary member of the Insider Dealing Tribunal shall, for the purposes of the inquiry, continue to hold the same office on the same terms and conditions as if this Ordinance had not been enacted; and
- (b) the Insider Dealing Tribunal shall, for the purposes of the inquiry, continue in existence as if this Ordinance had not been enacted.

Part XV of this Ordinance (Disclosure of Interests)

82. The repeal of the Securities (Disclosure of Interests) Ordinance (Cap 396) shall not affect any duty of disclosure or duty to give notification that has arisen under that Ordinance, and such duty shall be performed in accordance with that Ordinance as if this Ordinance had not been enacted, whether or not-

- (a) a duty of disclosure or duty to give notification in respect of the same subject matter (or part thereof) has arisen under this Ordinance; or
- (b) the duty referred to in paragraph (a) has been performed in accordance with this Ordinance.

83. Any exemption that is granted under section 2A of the repealed Securities (Disclosure of Interests) Ordinance and is in effect immediately before the commencement of Part XV of this Ordinance shall, upon such commencement, continue to have effect and be deemed to have been granted, subject to the same conditions as were applicable had this Ordinance not been enacted, under section 309 of this Ordinance.

84. Where an application has been made under the repealed Securities (Disclosure of Interests) Ordinance but has not been finally determined before the commencement of Part XV of this Ordinance, the application shall, upon such commencement, continue to be dealt with in accordance with that Ordinance as if this Ordinance had not been enacted.

85. Any restrictions imposed, or any orders made, by the court or the Financial Secretary (as the case may be) under the repealed Securities (Disclosure of Interests) Ordinance and are in effect immediately before the commencement of Part XV of this Ordinance shall, upon such commencement, continue to have effect as if this Ordinance had not been enacted.

86. Where an investigation is carried out under the repealed Securities (Disclosure of Interests) Ordinance but has not been concluded before the commencement of Part XV of this Ordinance-

- (a) any power that is exercisable under that Ordinance for the purposes of the investigation shall, upon such commencement, remain exercisable as if this Ordinance had not been enacted; and
- (b) the provisions of the repealed Securities (Disclosure of Interests) Ordinance shall continue to apply to the exercise of the power and to any other matters relating thereto as if this Ordinance had not been enacted.

87. Any register (including any part of it and any index) or report that is kept or maintained under the repealed Securities (Disclosure of Interests) Ordinance immediately before the commencement of Part XV of this Ordinance shall, upon such commencement, be regarded as kept under this Ordinance

and, subject to section 88, the relevant provisions of this Ordinance relating to the keeping and inspection of such register or report (as the case may be) shall apply, and the penalty for non-compliance with such provisions may be imposed, accordingly.

88. Where a register (including any part of it and any index) or report is kept or maintained under the repealed Securities (Disclosure of Interests) Ordinance immediately before the commencement of Part XV of this Ordinance, and such register or report is required to be kept, or any entry of such register is not to be removed, under that Ordinance until the elapse of 6 years, the 6-year period shall be computed in accordance with the relevant provisions of that Ordinance as if this Ordinance had not been enacted.

General

89. Where any rules have been published in the Gazette for the purposes of section 28(2) of the Interpretation and General Clauses Ordinance (Cap 1), as rules made by the Commission under any provision of this Ordinance, after the enactment of this Ordinance but before the commencement of Part XVI of this Ordinance, section 398(1) to (3) of this Ordinance shall for all purposes be deemed to have been complied with in relation to those rules.

90. For the purposes of section 399 of this Ordinance-

- (a) the code published by the Commission as the Code on Takeovers and Mergers and in use immediately before the commencement of Part XVI of this Ordinance; and
- (b) the code published by the Commission as the Code on Share Repurchases and in use immediately before such commencement,

shall upon such commencement be regarded as the codes published under section 399(2)(a) and (b) respectively of this Ordinance, and the provisions of this Ordinance shall apply to the codes accordingly.

91. Where-

- (a) any provision of an Ordinance repealed under section 406 of this Ordinance provides for the issue, giving or service to, on or by the Commission of any document (whether described as a notice or otherwise) or information;
- (b) the document or information has been issued, given or served to, on or by the Commission under or pursuant to the provision; and
- (c) any provision in this Ordinance also provides for the issue, giving or service to, on or by the Commission of the document or information,

the document or information shall be deemed to have been issued, given or served to, on or by the Commission under or pursuant to such provision in this Ordinance.

92. Where-

- (a) any period of time specified for the purposes of any provision ("repealed provision") of an Ordinance repealed under section 406 of this Ordinance is running at the time of the repeal of the repealed provision; and
- (b) there is a provision ("corresponding provision") in this Ordinance which in the opinion of the Commission corresponds to the repealed provision,

then, in reckoning the period of time for the purposes of the corresponding provision, this Ordinance shall have effect on the basis that-

- (i) the period of time specified for the purposes of the repealed provision is to apply, whether or not any other period of time is specified for the purposes of the corresponding provision; and
- (ii) subject to paragraph (i), the corresponding provision had come into operation when the period of time, which is to apply under paragraph (i), began to run.

93. Except as otherwise provided in this Part, any judicial proceedings commenced under, or by virtue of the performance of any function conferred by, any provision of an Ordinance repealed under section 406 of this Ordinance, and pending or otherwise not finally determined at the time of the

repeal of the provision may after the repeal be continued and disposed of in all respects as if this Ordinance had not been enacted.

PART 2

CONSEQUENTIAL AND SUPPLEMENTAL AMENDMENTS

(Omitted as spent)

PART 3

SAVINGS AND TRANSITIONAL PROVISIONS RELATING TO SECURITIES AND FUTURES AND COMPANIES LEGISLATION (STRUCTURED PRODUCTS AMENDMENT) ORDINANCE 2011

1. Section 103(1) of this Ordinance does not apply in relation to a structured product that is the subject of-
 - (a) a programme prospectus and its addenda, if any, and an issue prospectus and its addenda, if any, that, before the date of commencement of section 18 of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2011 (8 of 2011), were authorized and registered under section 38D of the Companies Ordinance (Cap 32); or
 - (b) in the case of a company incorporated outside Hong Kong, a programme prospectus and its addenda, if any, and an issue prospectus and its addenda, if any, that, before the date of commencement of section 19 of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2011 (8 of 2011), were authorized and registered under section 342C of the Companies Ordinance (Cap 32).
2. Section 1(a) ceases to have effect in relation to a structured product on the earlier of-
 - (a) the earliest of the dates specified in section 8 of Part 1 of the Twenty-first Schedule to the Companies Ordinance (Cap 32); or
 - (b) the day after the last date of the period specified in the issue prospectus as being the period during which the structured product is offered to the public.
3. Section 1(b) ceases to have effect in relation to a structured product on the earlier of-
 - (a) the earliest of the dates specified in section 8 of Part 2 of the Twenty-first Schedule to the Companies Ordinance (Cap 32); or
 - (b) the day after the last date of the period specified in the issue prospectus as being the period during which the structured product is offered to the public.
4. For the period of 6 months beginning on the date of commencement of section 14(5) of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2011 (8 of 2011), Part V of this Ordinance does not apply in relation to the carrying on of a business in a regulated activity if-
 - (a) the business was carried on immediately before that date; and
 - (b) the activity is a regulated activity only because of paragraph (g) of the definition of “securities” in section 1 of Part 1 of Schedule 1 to this Ordinance (as added by section 14(5) of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2011 (8 of 2011)).

(Part 3 added 8 of 2011 s. 16)

Chapter 571H	SECURITIES AND FUTURES (CLIENT SECURITIES) RULES	Gazette Number	Version Date
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Section 8A	Repledging Limit	L.N. 118 of 2006	01/10/2006
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(1) This section applies to—

- (a) an intermediary licensed for dealing in securities; and
- (b) an intermediary licensed for securities margin financing,

where the intermediary or an associated entity of such intermediary repledges securities collateral of the intermediary.

(2) On each business day, the intermediary to which this section applies shall ascertain the aggregate market value of the repledged securities collateral, which shall be calculated by reference to the respective closing prices of the collateral on that business day.

(3) If the aggregate market value of the repledged securities collateral calculated pursuant to subsection (2) exceeds 140% of the intermediary's aggregate margin loans on the same business day ("relevant day"), the intermediary shall by the close of business on the next business day following the relevant day ("specified time") withdraw, or cause to be withdrawn, from deposit an amount of repledged securities collateral such that the aggregate market value of the repledged securities collateral at the specified time, which is calculated by reference to the respective closing prices on the relevant day, does not exceed 140% of the intermediary's aggregate margin loans as at the close of business on the relevant day.

(4) In this section—

"aggregate margin loans" (保證金貸款總額), in relation to an intermediary, means the sum of margin loans owed to the intermediary by its margin clients as at the close of business on the relevant business day;

"business day" (營業日) means a day other than—

- (a) a Saturday;
- (b) a public holiday; and
- (c) a gale warning day or black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap 1);

"margin client" (保證金客戶) has the meaning assigned to it by section 2(1) of the Securities and Futures (Financial Resources) Rules (Cap 571 sub. leg. N);

"margin loan" (保證金貸款), in relation to a margin client of an intermediary, means the net amount owed to the intermediary by the margin client arising from the provision of securities margin financing by the intermediary to the margin client, excluding any amount added to or deducted from such net amount in respect of dealing in securities by or for the margin client which are not yet due for settlement according to the settlement date;

"repledge" (再質押), in relation to an intermediary or an associated entity of an intermediary, means an act by which the intermediary or the associated entity deposits securities collateral of the intermediary as collateral for financial accommodation provided to the intermediary;

"repledged securities collateral" (被再質押的證券抵押品) means any securities collateral which is on deposit as collateral for financial accommodation provided to an intermediary, whether repledged by the intermediary or an associated entity of such intermediary;

"settlement date" (交收日期) means the date on which payment for any dealing in securities is first due as agreed between the parties to the transaction.

(5) In subsection (4), "securities margin financing" (證券保證金融資) has the meaning assigned to it by section 2(1) of the Securities and Futures (Financial Resources) Rules (Cap 571 sub. leg. N).

(L.N. 118 of 2006)

Chapter 571Y	SECURITIES AND FUTURES (CONTRACTS LIMITS AND REPORTABLE POSITIONS) RULES	Gazette Number	Version Date
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Section 2	Interpretation	L.N. 220 of 2002; L.N. 12 of 2003	01/04/2003
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- (1) In these Rules, unless the context otherwise requires-
- "Listing Rules" (《上市規則》) means the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited made by the Stock Exchange Company;
- "prescribed limit" (訂明上限), in relation to a futures contract or a stock options contract, means the limit on the number of contracts prescribed for it under section 5;
- "reportable position" (須申報的持倉量) means an open position in futures contracts or stock options contracts the number of which is-
- (a) in the case of a futures contract specified in column 2 of Schedule 1, in excess of that specified opposite to it in column 4 of that Schedule; and
 - (b) in the case of a stock options contract specified in column 2 of Schedule 2, in excess of that specified opposite to it in column 4 of that Schedule;
- "reporting day" (申報日) means a day other than-
- (a) a public holiday;
 - (b) a Saturday; and
 - (c) 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).
- (2) For the purposes of these Rules, a reference to control, in relation to futures contracts or stock options contracts, shall be construed as a reference to control of such futures contracts or stock options contracts, either directly or indirectly.

Chapter 571Y	SECURITIES AND FUTURES (CONTRACTS LIMITS AND REPORTABLE POSITIONS) RULES	Gazette Number	Version Date
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Section 6	Notice of reportable positions	L.N. 35 of 2004	30/04/2004
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- (1) Any person who holds or controls a reportable position shall lodge a notice in writing of that reportable position with the recognized exchange company concerned within one reporting day following-
- (a) the day on which the person first holds or controls that reportable position; and
 - (b) each succeeding day on which the person continues to hold or control that reportable position.
- (2) A notice referred to in subsection (1) shall be accompanied by the following information-
- (a) the number of futures contracts or stock options contracts held or controlled by the person in respect of the reportable position in each relevant contract month; and
 - (b) if the reportable position is held or controlled for another person—
 - (i) the identity of that person; and
 - (ii) the number of futures contracts or stock options contracts held or controlled for such person in respect of the reportable position in each relevant contract month. (L.N. 35 of 2004)