

## **LEGISLATIVE COUNCIL BRIEF**

Securities and Futures Ordinance  
(Chapter 571)

### **Securities and Futures (Amendment) Bill 2013**

#### **INTRODUCTION**

A At the meeting of the Executive Council on 25 June 2013, the Council **ADVISED** and the Chief Executive **ORDERED** that the Securities and Futures (Amendment) Bill 2013 (“the Bill”), at **Annex A**, should be introduced into the Legislative Council (“LegCo”) to provide for a regulatory framework for the over-the-counter (“OTC”) derivative market in Hong Kong and incorporate other technical improvements to the regulation of the financial market.

#### **JUSTIFICATIONS**

##### **2008 Global Financial Crisis**

2. The global financial crisis of 2008 revealed structural deficiencies in the OTC derivative market. The absence of regulation and the bilateral nature of OTC derivative transactions rendered it difficult for regulators to assess OTC derivative positions held by market players in order to monitor the build-up of exposures that might threaten the market or the wider economy. The global nature of the transactions also contributed to the interconnectedness of market players in different jurisdictions, thus creating the potential for contagion risk.

##### **G20 Commitments**

3. In September 2009, the Group of Twenty (“G20”) Leaders committed to reforms that would require (a) the mandatory reporting of OTC derivative transactions to trade repositories (“TRs”); (b) the mandatory clearing of standardised OTC derivative transactions through

central counterparties (“CCPs”); (c) the mandatory trading of standardised OTC derivative transactions on exchanges or electronic trading platforms; and (d) the imposition of higher capital requirements in respect of OTC derivative transactions not centrally cleared.<sup>1</sup> Given the global nature of the OTC derivative market, we need to ensure that our regime is in line with those of other major financial centres in order to facilitate compliance and avoid regulatory arbitrage.

## **International Developments**

4. Market players in all major markets are gearing up for the implementation of the new regulatory requirements. In the United States, the Dodd-Frank Wall Street Reform and Consumer Protection Act enacted on 21 July 2010 mandates central clearing and trade reporting of OTC derivatives. In Europe, the European Union (“EU”) adopted the European Market Infrastructure Regulation, which is one of EU’s key legislation for the OTC derivative reform, in July 2012, to mandate central clearing of standardised derivatives and reporting to TRs. In Japan, amendment to the Financial Instruments and Exchange Act was passed to make central clearing and trade reporting mandatory, and the relevant requirements have commenced in phases since November 2012. In Singapore, the enabling legislation on the regulation of the OTC derivative market was passed in November 2012. The Financial Stability Board (“FSB”) has urged its member jurisdictions to complete the OTC reforms rapidly, accord higher priority to trade reporting and report progress to the FSB by July 2013. The FSB will report on the implementation to the G20.

## **Legislative and Regulatory Framework**

5. The proposed regime for Hong Kong will be set out in the Securities and Futures Ordinance (“SFO”). It will comprise three key aspects -

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<sup>1</sup> For banks, higher capital requirements for OTC derivative transactions that are not cleared through a CCP have been introduced in January 2013 as part of Basel III implementation in Hong Kong. We are also closely monitoring the deliberation of the Basel Committee on Banking Supervision and the International Organization of Securities Commissions Joint Working Group on Margining Requirements on the guidance to develop margining requirements for non-centrally cleared OTC derivative transactions, upon finalisation of which we will take steps to develop legislation and a regulatory framework to implement the relevant requirements in Hong Kong in line with the recommended timeline.

- (a) to introduce mandatory reporting, clearing and trading obligations in line with the G20 commitments as appropriate;
- (b) to provide for the establishment and regulation of the necessary infrastructure through which the mandatory obligations must be fulfilled, i.e. the CCPs and trading platforms; and
- (c) to provide for the regulation and oversight of key players in the OTC derivative market.

6. A broad regulatory framework for the regulation of the OTC derivative market will be set out in primary legislation while details will be set out in rules (i.e. subsidiary legislation)<sup>2</sup> to be made by the Securities and Futures Commission (“SFC”) with the consent of the Hong Kong Monetary Authority (“HKMA”), and after consultation with the Financial Secretary (“FS”).

7. The proposed regime will be jointly overseen and regulated by the HKMA and SFC, with the HKMA regulating the OTC derivative activities of authorized institutions (“AIs”) and approved money brokers (“AMBs”), and the SFC regulating such activities of licensed corporations (“LCs”) and other prescribed persons (such persons to be prescribed by subsidiary legislation)<sup>3</sup>. To ensure that the HKMA and SFC have the relevant powers to do so, we propose to extend the SFC’s existing investigation and disciplinary powers under the SFO, and to confer new investigation and disciplinary powers on the HKMA as appropriate.

### *Mandatory Obligations*

8. The Bill will introduce mandatory reporting, clearing and trading obligations. These obligations will only apply to “prescribed

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<sup>2</sup> The HKMA and SFC aim to conduct a public consultation on the draft subsidiary legislation later in 2013 to take into account the relevant international standards as well as the progress of reform initiatives in other major jurisdictions like the United States and EU.

<sup>3</sup> AIs refer to authorized institutions as defined in the Banking Ordinance (“BO”), AMBs refer to money brokers approved under section 118C of the BO, and LCs refer to corporations licensed by the SFC under the SFO. AIs, AMBs and LCs are the main players in the OTC derivative markets and so they are referred to expressly in the Bill.

persons”, i.e. AIs, AMBs, LCs and others that are prescribed by subsidiary legislation. They will only apply in respect of those OTC derivative transactions that are specified in subsidiary legislation. Initially, only certain types of interest rate swaps and non-deliverable forwards will be specified as these are the major types of OTC derivative transactions conducted in Hong Kong and are capable of standardisation. Any subsequent extension to cover other types of OTC derivative transactions will be determined jointly by the HKMA and SFC in the form of subsidiary legislation after public consultation and consultation with the FS. A detailed explanation of these is set out in paragraphs 9 and 11 below. As for the mandatory trading obligation, this will not be implemented at the outset pending further study of local market conditions, in particular the liquidity level and number of trading venues in our market.

### *Mandatory Reporting*

9. The proposed regime regarding mandatory reporting has the following key features -

- (a) AIs, AMBs, LCs and other prescribed persons will be required to report certain OTC derivative transactions (as specified in the rules, “reportable transactions”) to the HKMA;
- (b) the reporting obligation will apply irrespective of whether the reportable transaction is centrally cleared or not, and may be fulfilled either directly or indirectly, i.e. through an agent<sup>4</sup>;
- (c) in the light of their predominant role in the OTC derivative market, AIs, AMBs and LCs will be subject to more stringent mandatory reporting requirements than other prescribed persons. In particular, the latter will only have to report if their OTC derivative positions exceed certain reporting thresholds (to be specified by the SFC in subsidiary legislation), but no such thresholds will be applied to AIs, AMBs and LCs; and

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<sup>4</sup> The reporting agent may be a trade matching and confirmation platform or an overseas TR.

- (d) other prescribed persons will essentially cover persons other than AIs, AMBs and LCs that are based in or operate from Hong Kong. Overseas persons with no presence or operation here will not be subject to any mandatory reporting obligation under Hong Kong law.

10. The HKMA will develop and operate a TR for the purpose of the mandatory reporting obligation. Given the global nature of the OTC derivative market, the HKMA will endeavour to ensure that the reporting standards and specifications adopted by the TR are in line with those set by international standard-setting bodies and major industry platforms. The HKMA will also work with other jurisdictions to facilitate the sharing of data.

### *Mandatory Clearing*

11. The proposed regime regarding mandatory clearing has the following key features -

- (a) AIs, AMBs, LCs and other prescribed persons will be required to clear certain OTC derivative transactions (as specified in the rules, “clearing eligible transactions”) through a designated CCP<sup>5</sup>, and they may do this either directly (i.e. as a member of the designated CCP) or indirectly (i.e. through a third party that is a member of the designated CCP);
- (b) as with the reporting obligation, the clearing obligation will only apply to AIs, AMBs, LCs and other prescribed persons that are based in or operate from Hong Kong, i.e. it will not apply to overseas persons that have no presence or operation in Hong Kong. However, such persons may nevertheless be affected if they have entered into a clearing eligible transaction and their counterparty is an AI, AMB, LC or other prescribed person. This is because the clearing obligation can only be fulfilled if both counterparties clear through a designated CCP; and

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<sup>5</sup> A designated CCP refers to a CCP that has been designated by the SFC (with the consent of the HKMA) for the purposes of the mandatory clearing requirement.

- (c) regarding indirect clearing mentioned in paragraph (a) above, transactions cleared through a CCP may be cleared indirectly through, or as a client of, another person that is a member of the CCP. We propose to introduce amendments that will offer insolvency override protections for indirect clearing that are comparable to those provided for direct clearing, i.e. those contained in the existing SFO which essentially prevent transactions cleared through a CCP from being unravelled by the application of insolvency law in the event of a default by any of the members of the CCP.

### *Penalty for Breaches of Mandatory Obligations*

12. Fines will be imposed for breaches of the mandatory obligations. The Court of First Instance will be empowered to impose civil fines of up to \$5 million on any person who breaches these obligations. For breaches by AIs, AMBs or LCs, the HKMA and SFC will also be empowered to take disciplinary actions<sup>6</sup> against them, including imposing disciplinary fines of up to an amount that is the greater of (a) \$10 million or (b) three times the amount of the profit gained, or loss avoided, by the person as a result of the contravention, making public or private reprimand and prohibiting them from carrying on OTC derivatives business.

### *Regulation of Intermediaries*

13. AIs and AMBs who serve as intermediaries in the OTC derivative market will continue to be overseen and regulated by the HKMA. Entities that are not AIs and AMBs and that engage in dealing in, advising on or providing clearing agency services in OTC derivatives as a business (other than as end users) will be required to be licensed by the SFC under the SFO and new regulated activities will be introduced under the SFO for this purpose.

14. Two new regulated activities (“RAs”) in relation to OTC derivatives will be introduced under Schedule 5 to the SFO, namely (a) a new Type 11 RA to cover the activities of dealers and advisers, and (b) a new Type 12 RA to cover the activities of clearing agents. In addition, the existing Type 9 RA (asset management) and Type 7 RA (provision of automated trading services (“ATS”)) will be expanded to cover OTC

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<sup>6</sup> In line with existing disciplinary sanctions against misconduct by intermediaries under the SFO.

derivative portfolios and transactions respectively. As AIs and AMBs which serve as intermediaries in the OTC derivative market will continue to be overseen and regulated by the HKMA as they are today, they will not need to be licensed for the new Type 11 or Type 12 RAs. However, to the extent that their OTC derivative activities also constitute the carrying on of an existing RA, they will continue to have to be licensed or registered with the SFC, as they are today. To minimise disruption to the market, transitional arrangements<sup>7</sup> will be introduced for the new and expanded RAs, so that persons who are already serving as intermediaries in the OTC derivative market may continue to do so for a limited period of time while their application to be licensed or registered for the new or expanded RAs is being considered.

### *Regulation of Systemically Important Participants*

15. The major market players in the OTC derivative market in Hong Kong are expected to be intermediaries that are licensed or registered with either the HKMA or SFC (i.e. AIs, LCs and AMBs). However, there may be others who are not licensed or registered with either the HKMA or SFC, but whose positions and activities in the OTC derivative market are so large that they may nevertheless raise concerns of potential systemic risks. (This could include commercial entities and financial institutions who do not act as intermediaries but who are essentially price takers and end users.) To ensure that the HKMA and SFC have an effective regulatory handle over such persons (referred to as systemically important participants, “SIPs”), the proposed regime will include the following key features –

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<sup>7</sup> The transitional arrangements will comprise (a) an application period (which will last three months from the date of implementation of the new RAs and during which persons must submit their application to be licensed for the new RAs if they wish to benefit from the transitional arrangements) and (b) a no-action period (which will last six months from the date of implementation, and during which anyone may carry on the new RAs without being licensed to do so.) A person who submits an application to be licensed for any of the new RAs during the application period and meets certain qualification criteria, will be deemed to be licensed for the relevant new RAs with effect from the expiry of the no-action period. Similarly, persons seeking to be licensed/registered for the expanded Type 7/Type 9 RA, and who are not already licensed for such RAs will need to apply within the aforesaid 3-month application period and meet certain qualification criteria in order to be deemed to be licensed/registered for the expanded RAs with respect to OTC derivatives. For persons who are already licensed/registered for Type 9 RA, and who wish to engage in the expanded Type 9 RA, they will only need to submit a notification and confirmation to the SFC within the application period that they have fulfilled the relevant criteria.

- (a) any person whose OTC derivative positions exceed certain specified thresholds<sup>8</sup> (“SIP thresholds”) should notify the SFC. Failure to give such notification to the SFC within a specified period, without reasonable excuse, will constitute a criminal offence and be subject to a fine up to \$5 million and seven years’ imprisonment;
- (b) given that the objective is to address concerns of potential systemic risks, the SIP thresholds will be set at fairly high levels such that only a handful of market players, if any, may be caught. There will be unlikely any SIPs, at least at the initial stage of implementation of the proposed regime. Also the possibility of an individual entering into an OTC derivative transaction and becoming an SIP will be very slim;
- (c) the SFC will keep a register of persons –
  - (i) who have notified the SFC that they have exceeded any SIP thresholds, or
  - (ii) whom the HKMA or SFC has reasonable cause to believe have exceeded any SIP thresholds.

This register (“SIP register”) will set out the name of such persons, and the class(es) of OTC derivative transactions in respect of which the SIP has exceeded the threshold. The SIP register will be open for public inspection, and thus enable market participants to ascertain if they are dealing with a registered SIP, and consequently, better manage risks arising from or associated with their OTC derivative positions. Such disclosure is also in line with the purpose of the proposed regime which includes improving transparency and mitigating systemic risk; and

- (d) the HKMA and SFC will be empowered to require registered SIPs to provide information and they may apply to the Court of First Instance for an inquiry into a failure to give the required information. In addition, the SFC may require registered SIPs to take certain action in

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<sup>8</sup> Different thresholds will be specified in respect of different classes of OTC derivative transactions.

respect of their OTC derivative positions and transactions under certain circumstances. Persons who fail to take the specified acts may be subject to disciplinary action by the SFC, and the sanctions that may be imposed will include reprimand and disciplinary fines up to an amount that is the higher of HK\$10 million or three times the gain or loss avoided as a result of failing to comply with the requirements.

### *Regulation of Market Infrastructure*

16. The proposed regime will also provide for the regulation of the market infrastructure through which any mandatory obligations must be fulfilled, i.e. CCPs and trading platforms –

- (a) the SFC will be empowered to designate CCPs for the purpose of the mandatory clearing obligation, and both local and overseas CCPs may be designated.<sup>9</sup> As a pre-requisite to such a designation, a CCP will first need to be either a recognized clearing house or an authorised ATS provider under the SFO;
- (b) the SFC will be empowered to designate trading platforms for the purpose of the mandatory trading obligation. The operator of the trading platform must be a recognized exchange company or an authorised ATS provider under the SFO;
- (c) the SFC will be empowered to make rules to specify the requirements and procedures for the designation of CCPs and trading platforms; and
- (d) the SFC may only exercise the powers to designate and to make rules with the consent of the HKMA and after consultation with the FS.

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<sup>9</sup> The Hong Kong Exchanges and Clearing Limited aims to commence operation of the local CCP by the third quarter of 2013, subject to the approval of the SFC after consultation with the Financial Secretary and market readiness.

### *Appeal Channels*

17. Relevant regulatory decisions made by the HKMA and SFC under the proposed regime will be made appealable to the Securities and Futures Appeals Tribunal to provide checks and balances against the proposed powers for the HKMA and SFC.

### **Other Technical Improvements to the Regulation of the Financial Market**

18. We propose to take this opportunity to incorporate other technical amendments to the SFO and the Organized and Serious Crimes Ordinance (“OSCO”) into the Bill with a view to improving financial market regulation, namely—

- (a) to amend the SFO to require notifications and reports under Part XV “Disclosure of Interests” of the Ordinance to be filed electronically with a view to improving the timeliness of publication of potentially market sensitive Disclosure of Interests notices; and
- (b) to amend the SFO and the OSCO to enhance SFC’s enforcement regime regarding market misconduct offences under the SFO so that illegal gains from committing an offence can be recouped with a view to better complying with the recommendations on the effectiveness of the confiscation regime made by the Financial Action Task Force on Money Laundering, which is the international standard setter on anti-money laundering and counter terrorism financing. Criminal courts will also be enabled to make disgorgement orders similar to the Market Misconduct Tribunal for the purpose of recouping illegal gains from committing a market misconduct offence.

### **THE BILL**

19. The main provisions of the Bill are as follows -

- (a) **Clause 9** adds a new Part IIIA of the SFO on OTC derivative transactions and the obligations and

requirements relating to them. That Part has five divisions.

- (i) Division 1 contains the definitions for the interpretation of that Part.
- (ii) Division 2 adds new provisions to impose the reporting obligation (obligation to report certain OTC derivative transactions to the HKMA), the clearing obligation (obligation to clear them with a designated CCP) and the trading obligation (obligation to trade the transactions only on a designated trading platform). Each obligation applies only to OTC derivative transactions specified by rules made under Division 4, and these may differ in respect of each obligation.
- (iii) Division 3 empowers the SFC to designate CCPs and trading platforms. The SFC can make designations only with the consent of the HKMA and after consulting the FS.
- (iv) Division 4 contains the rule-making powers relating to obligations and to designations. The rules may be made by the SFC with the consent of the HKMA and after consulting the FS.
- (v) Division 5 has provisions relating to SIPs. The provisions require an SIP to notify the SFC if the SIP's position in a class or description of OTC derivative transactions reaches the threshold prescribed by rules made under Division 5; to empower the SFC to maintain a register of SIPs, to require information from a registered SIP, to require an SIP to take action specified by the SFC regarding OTC derivative transactions, to make rules to prescribe the details of the matters dealt with in the Division; and to allow the SFC and HKMA to apply to the Court of First Instance for the enforcement of requirements imposed on SIPs.

- (b) **Clauses 15 to 37** amend Part VIII and Part IX of the SFO to ensure that both the HKMA and SFC have the necessary investigatory and disciplinary powers to oversee and regulate activities in the OTC derivative market.
- (c) **Clause 40** adds a new Division 1A to Part XVI of the SFO to impose a confidentiality requirement on the HKMA and other persons involved in carrying out the HKMA's functions under the proposed regime, and to create exceptions to the requirement in specified situations.
- (d) **Clause 53** amends Schedule 5 to the SFO to include new Type 11 RA and Type 12 RA that are subject to regulation by the Ordinance; and to define the two new RAs and new components of the expanded Type 7 RA and Type 9 RA.
- (e) **Clause 55** adds a new Schedule 11 to the SFO to provide transitional arrangements for activities that fall within Type 11 RA and Type 12 RA and the new components of Type 7 RA and Type 9 RA.

B The existing provisions being amended are at **Annex B**.

## LEGISLATIVE TIMETABLE

20. The legislative timetable will be –

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| Publication in the Gazette   | 28 June 2013   |
| First Reading and commencement of Second Reading debate                | 10 July 2013   |
| Resumption of Second Reading debate, committee stage and Third Reading | to be notified |

## IMPLICATIONS OF THE PROPOSAL

21. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. The amendments proposed in the

Bill will not affect the current binding effect of the SFO and the OSCO. It has no productivity, environmental, sustainability or family implications. As the HKMA and SFC will be responsible for enforcing the proposed regulatory regime for the OTC derivative market, there are no financial and civil service implications to the Government. As for economic implications, the proposed regulatory regime for the OTC derivative market will reduce counterparty risk, improve overall transparency, protect against market abuse, and ultimately enable regulators to better assess, mitigate and manage systemic risk in the OTC derivative market in Hong Kong, thereby helping to reinforce its role as an international financial centre. The proposed regime would entail compliance costs to relevant market participants, though the significance of the impact would vary among different participants.

## **PUBLIC CONSULTATION**

22. The HKMA and SFC conducted a joint consultation on the proposed regulatory regime for the OTC derivative market in October 2011 and published joint consultation conclusions together with a supplemental public consultation on the proposed licensing regime for the new RAs and the oversight on SIPs in July 2012. The supplemental consultation ended in August 2012. Respondents generally supported the proposed regulatory regime and recognized the need for Hong Kong to develop and implement measures in line with G20 commitments of reforming the OTC derivative market. They supported the proposed division of regulatory responsibilities between the HKMA and SFC. There was also general support for not imposing the mandatory trading requirement at the outset but according priority to efforts on the mandatory reporting and clearing obligations at the initial stage.

23. We briefed the Legislative Council Panel on Financial Affairs on our regulatory proposal at its meetings on 3 January 2011, 2 April 2012 and 4 March 2013. Members generally supported the introduction of a Bill to regulate the OTC derivative market.

## **PUBLICITY**

24. A press release will be issued on 28 June 2013 when the Bill is gazetted. A spokesperson will be available to answer media enquiries.

## **ENQUIRIES**

25. Enquiries relating to this brief can be directed to Miss Ada Chan, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) at 2810 2056.

**Financial Services Branch  
Financial Services and the Treasury Bureau  
26 June 2013**

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# A BILL To

Amend the Securities and Futures Ordinance to provide for the regulation of activities and other matters connected with over-the-counter derivative products; to clarify and extend the protections given by Part III of the Ordinance; to require certain notifications and reports to be filed electronically; to provide for disgorgement orders for market misconduct offences; to make amendments to the Organized and Serious Crimes Ordinance concerning orders for market misconduct offences; and to provide for related matters.

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 2013.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

## Part 2

### Amendments to Securities and Futures Ordinance for Regulation of OTC Derivative Transactions

#### 2. Securities and Futures Ordinance amended

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

#### 3. Section 21 amended (duties of recognized exchange company)

- (1) Section 21(1)(a)(i)—

**Repeal**

“; or”

**Substitute a semicolon.**

- (2) Section 21(1)(a)(ii)—

**Repeal**

“and”

**Substitute**

“or”.

- (3) After section 21(1)(a)(ii)—

**Add**

“(iii) in OTC derivative products that are traded through the facilities of the recognized exchange company; and”.

#### 4. Section 27 amended (production of records, etc. by recognized exchange company)

- (1) Section 27(1)(a)—

**Repeal**

“or futures contracts”

**Substitute**

“, futures contracts or OTC derivative products”.

- (2) Section 27(1)(b)—

**Repeal**

“or futures contracts”

**Substitute**

“, futures contracts or OTC derivative products”.

**5. Section 38 amended (duties of recognized clearing house)**

Section 38(1)(a)—

**Repeal**

“or futures contracts”

**Substitute**

“, futures contracts or OTC derivative products”.

**6. Section 42 amended (production of records, etc. by recognized clearing house)**

- (1) Section 42(1)(a)—

**Repeal**

“or futures contracts”

**Substitute**

“, futures contracts or OTC derivative products”.

- (2) Section 42(1)(b)—

**Repeal**

“or futures contracts”

**Substitute**

“, futures contracts or OTC derivative products”.

**7. Section 63 amended (duties of recognized exchange controller)**

- (1) After section 63(1)(a)—

**Add**

“(ab) an orderly, informed and fair market in OTC derivative products traded through the facilities of the recognized exchange company;”.

- (2) Section 63(1)(b)—

**Repeal**

“or futures contracts”

**Substitute**

“, futures contracts or OTC derivative products”.

**8. Section 71 amended (production of records, etc. by recognized exchange controller)**

- (1) Section 71(1)(a)(ii)—

**Repeal**

“; or”

**Substitute a semicolon.**

- (2) After section 71(1)(a)(ii)—

**Add**

“(iia) in respect of any trading in OTC derivative products traded through the facilities of the recognized exchange company of which it is a controller; or”.

- (3) Section 71(1)(a)(iii)—

**Repeal**

“or futures contracts”

**Substitute**

“, futures contracts or OTC derivative products”.

**9. Part IIIA added**

After Part III—

**Add****“Part IIIA****OTC Derivative Transactions****Division 1—Interpretation****101A. Interpretation of Part IIIA**

In this Part—

**clearing obligation** (結算責任)—

- (a) in relation to a prescribed person that is an authorized financial institution incorporated in Hong Kong, means—
  - (i) an obligation imposed by section 101C(1); or
  - (ii) an obligation imposed by section 101C(3); and
- (b) in relation to any other prescribed person, means an obligation imposed by section 101C(1);

**clearing rules** (《結算規則》) means rules made under section 101L;

**deregistration** (撤銷登記), in relation to a specific class, means the removal of—

- (a) a name under section 101S(1); or
- (b) an entry under section 101S(2);

**designated CCP** (指定中央對手方), in relation to a class or description of specified OTC derivative transactions, means a person designated as a central counterparty under section 101I for that class or description;

**designated trading platform** (指定交易平台), in relation to a class or description of specified OTC derivative transactions, means a person designated as a trading platform under section 101J for that class or description;

**designation rules** (《指定規則》) means rules made under section 101N;

**notification** (具報) means a notification required to be given for the purposes of section 101O(2);

**notification level** (具報水平), in relation to a specific class, means the threshold prescribed—

- (a) for that specific class; and
- (b) by rules made under section 101W(a)(i);

**notification requirement** (具報規定) means the requirement imposed by section 101O(2);

**notification rules** (《具報規則》) means rules made under section 101W;

**prescribed fee** (訂明費用) means a fee prescribed by rules made under section 395;

**prescribed manner** (訂明方式)—

- (a) in relation to an application for designation as a central counterparty, means in the manner prescribed by rules made under section 101N(a)(i); and
- (b) in relation to an application for designation as a trading platform, means in the manner prescribed by rules made under section 101N(a)(ii);

**prescribed person** (訂明人士)—

- (a) in relation to the reporting obligation, means—
  - (i) an authorized financial institution;
  - (ii) an approved money broker;
  - (iii) a licensed corporation; or
  - (iv) a person of a class or description specified in the reporting rules as being subject to the reporting obligation;
- (b) in relation to the clearing obligation, means—
  - (i) an authorized financial institution;
  - (ii) an approved money broker;
  - (iii) a licensed corporation; or
  - (iv) a person of a class or description specified in the clearing rules as being subject to the clearing obligation; and
- (c) in relation to the trading obligation, means—
  - (i) an authorized financial institution;
  - (ii) an approved money broker;
  - (iii) a licensed corporation; or
  - (iv) a person of a class or description specified in the trading rules as being subject to the trading obligation;

**registered SIP** (已登記系統重要參與者) means a person whose name appears on the SIP register;

**reporting obligation** (匯報責任)—

- (a) in relation to a prescribed person that is an authorized financial institution incorporated in Hong Kong, means—

- (i) an obligation imposed by section 101B(1); or
- (ii) an obligation imposed by section 101B(3); and
- (b) in relation to any other prescribed person, means an obligation imposed by section 101B(1);

**reporting rules** (《匯報規則》) means rules made under section 101K;

**SIP register** (系統重要參與者登記冊) means the register maintained under section 101P(1);

**specific class** (特定類別) means a particular class or description of OTC derivative transactions;

**specified OTC derivative transaction** (指明場外衍生工具交易)—

- (a) in relation to the reporting obligation, means a transaction specified in the reporting rules for the purposes of that obligation;
- (b) in relation to the clearing obligation, means a transaction specified in the clearing rules for the purposes of that obligation; and
- (c) in relation to the trading obligation, means a transaction specified in the trading rules for the purposes of that obligation;

**systemically important participant** (系統重要參與者) means a person—

- (a) to whom section 101O(1) applies; and
- (b) whose position in respect of a specific class has reached the notification level;

**trading obligation** (交易責任)—

- (a) in relation to a prescribed person that is an authorized financial institution incorporated in Hong Kong, means—
  - (i) an obligation imposed by section 101D(1); or
  - (ii) an obligation imposed by section 101D(3); and
- (b) in relation to any other prescribed person, means an obligation imposed by section 101D(1);

**trading rules** (《交易規則》) means rules made under section 101M;

**underlying subject matter** (標的項目)—

- (a) in relation to a transaction in an OTC derivative product that falls within subsection (1)(a)(i) of section 1A of Part 1 of Schedule 1, means any type or combination of types of securities, commodity, index, property, interest rate, currency exchange rate or futures contract;
- (b) in relation to a transaction in an OTC derivative product that falls within subsection (1)(a)(ii) of section 1A of Part 1 of Schedule 1, means 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; and
- (c) in relation to a transaction in an OTC derivative product that falls within subsection (1)(a)(iii) of section 1A of Part 1 of Schedule 1, means 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).

## Division 2—Reporting, Clearing and Trading Obligations

### 101B. Reporting obligation

- (1) A prescribed person must report an OTC derivative transaction to which subsection (2) applies—
  - (a) to the Monetary Authority; and
  - (b) in accordance with the reporting rules.
- (2) This subsection applies to an OTC derivative transaction that—
  - (a) is specified in the reporting rules—
    - (i) in relation to the prescribed person; and
    - (ii) as a transaction that is required to be reported to the Monetary Authority;
  - (b) falls within the circumstances and the criteria specified in those rules—
    - (i) in relation to the prescribed person; and
    - (ii) for the application of the requirement to report referred to in paragraph (a)(ii); and
  - (c) does not fall within the circumstances specified in those rules—
    - (i) in relation to the prescribed person; and
    - (ii) as circumstances in which the requirement to report is taken to have been complied with.
- (3) In addition, a prescribed person that is an authorized financial institution incorporated in Hong Kong must ensure that a subsidiary of that institution specified under subsection (5) complies in relation to an OTC

- derivative transaction with the requirement set out in subsection (4).
- (4) The requirement is that the subsidiary reports to the Monetary Authority, in accordance with the reporting rules, an OTC derivative transaction—
    - (a) to which the subsidiary is a counterparty; and
    - (b) that is specified in those rules as a transaction to which subsection (3) applies.
  - (5) The Monetary Authority may, by a written notice given to an authorized financial institution incorporated in Hong Kong, specify for the purposes of subsection (3)—
    - (a) a particular subsidiary;
    - (b) more than one subsidiary; or
    - (c) subsidiaries generally.
  - (6) The Monetary Authority may specify under subsection (5) a subsidiary incorporated outside Hong Kong or a subsidiary incorporated in Hong Kong.

**101C. Clearing obligation**

- (1) A prescribed person must clear an OTC derivative transaction to which subsection (2) applies—
  - (a) with a designated CCP; and
  - (b) in accordance with the clearing rules.
- (2) This subsection applies to an OTC derivative transaction that—
  - (a) is specified in the clearing rules—
    - (i) in relation to the prescribed person; and
    - (ii) as a transaction that is required to be cleared with a designated CCP;

- (b) falls within the circumstances and the criteria specified in those rules—
  - (i) in relation to the prescribed person; and
  - (ii) for the application of the requirement to clear referred to in paragraph (a)(ii); and
- (c) does not fall within the circumstances specified in those rules—
  - (i) in relation to the prescribed person; and
  - (ii) as circumstances in which the requirement to clear is taken to have been complied with.
- (3) In addition, a prescribed person that is an authorized financial institution incorporated in Hong Kong must ensure that a subsidiary of that institution specified under subsection (5) complies in relation to an OTC derivative transaction with the requirement set out in subsection (4).
- (4) The requirement is that the subsidiary clears with a designated CCP, in accordance with the clearing rules, an OTC derivative transaction—
  - (a) to which the subsidiary is a counterparty; and
  - (b) that is specified in those rules as a transaction to which subsection (3) applies.
- (5) The Monetary Authority may, by a written notice given to an authorized financial institution incorporated in Hong Kong, specify for the purposes of subsection (3)—
  - (a) a particular subsidiary;
  - (b) more than one subsidiary; or
  - (c) subsidiaries generally.

- (6) The Monetary Authority may specify under subsection (5) a subsidiary incorporated outside Hong Kong or a subsidiary incorporated in Hong Kong.

**101D. Trading obligation**

- (1) A prescribed person must execute an OTC derivative transaction to which subsection (2) applies—
- (a) only on a designated trading platform; and
  - (b) in accordance with the trading rules.
- (2) This subsection applies to an OTC derivative transaction that—
- (a) is specified in the trading rules—
    - (i) in relation to the prescribed person; and
    - (ii) as a transaction that is required to be executed only on a designated trading platform;
  - (b) falls within the circumstances and the criteria specified in those rules—
    - (i) in relation to the prescribed person; and
    - (ii) for the application of the requirement to execute as described in paragraph (a)(ii); and
  - (c) does not fall within the circumstances specified in those rules—
    - (i) in relation to the prescribed person; and
    - (ii) as circumstances in which the requirement to execute as described in subsection (1) is taken to have been complied with.
- (3) In addition, a prescribed person that is an authorized financial institution incorporated in Hong Kong must ensure that a subsidiary of that institution specified under subsection (5) complies in relation to an OTC

derivative transaction with the requirement set out in subsection (4).

- (4) The requirement is that the subsidiary executes only on a designated trading platform and in accordance with the trading rules an OTC derivative transaction—
- (a) to which the subsidiary is a counterparty; and
  - (b) that is specified in those rules as a transaction to which subsection (3) applies.
- (5) The Monetary Authority may, by a written notice given to an authorized financial institution incorporated in Hong Kong, specify for the purposes of subsection (3)—
- (a) a particular subsidiary;
  - (b) more than one subsidiary; or
  - (c) subsidiaries generally.
- (6) The Monetary Authority may specify under subsection (5) a subsidiary incorporated outside Hong Kong or a subsidiary incorporated in Hong Kong.

**101E. Application by Commission to Court of First Instance for contravention of obligations**

- (1) If a prescribed person that is not an authorized financial institution or an approved money broker contravenes the reporting obligation, clearing obligation or trading obligation, the Commission may apply to the Court of First Instance in respect of the contravention.
- (2) The application must be made by originating summons that is in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).
- (3) The Court of First Instance may inquire into the case and, if satisfied that there is no reasonable excuse for the

contravention, impose a financial penalty not exceeding \$5,000,000 on the prescribed person.

**101F. Application by Monetary Authority to Court of First Instance for contravention of obligations**

- (1) If a prescribed person that is an authorized financial institution or an approved money broker contravenes the reporting obligation, clearing obligation or trading obligation, the Monetary Authority may apply to the Court of First Instance in respect of the contravention.
- (2) The application must be made by originating summons that is in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).
- (3) The Court of First Instance may inquire into the case and, if satisfied that there is no reasonable excuse for the contravention, impose a financial penalty not exceeding \$5,000,000 on the prescribed person.

**101G. Exemptions from obligations**

- (1) On application by a prescribed person and on payment of the prescribed fee, the Commission may, with the consent of the Monetary Authority—
  - (a) exempt the person from one or more of the following—
    - (i) the reporting obligation;
    - (ii) the clearing obligation;
    - (iii) the trading obligation; and
  - (b) on granting the exemption, impose conditions.
- (2) The Commission may, with the consent of the Monetary Authority—
  - (a) suspend or withdraw an exemption on—

- (i) the ground that a condition has not been complied with; or
- (ii) any other ground that the Commission considers appropriate; or

(b) amend any condition.

- (3) The Commission must publish on the Internet particulars that it considers appropriate of an exemption granted, suspended or withdrawn under this section.

**101H. Guidelines on exemptions**

- (1) The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, publish guidelines for granting exemptions from the reporting obligation, clearing obligation or trading obligation.
- (2) The Commission—
  - (a) may exercise its powers under section 101G only after guidelines have been published; and
  - (b) must have regard to the published guidelines when exercising its powers under section 101G.
- (3) Guidelines published under subsection (1) are not subsidiary legislation.

**Division 3—Designation of Central Counterparties and Trading Platforms**

**101I. Designation of central counterparties**

- (1) On application by a person in the prescribed manner and on payment of the prescribed fee, the Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary—

- (a) designate the person, in accordance with the designation rules and by a written notice served on the person, as a central counterparty for the purposes of this Part; or
  - (b) refuse, in accordance with the designation rules, to designate the person.
- (2) A person may be designated only if—
- (a) at the time of designation, the person—
    - (i) is a recognized clearing house; or
    - (ii) is a person authorized under section 95(2) to provide automated trading services; and
  - (b) the requirements prescribed by the designation rules have been met.
- (3) A designation may be for—
- (a) OTC derivative transactions generally; or
  - (b) a class or description of OTC derivative transactions specified in the designation.
- (4) A person outside Hong Kong or in Hong Kong may be designated under this section.
- (5) The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, in accordance with the designation rules and by a written notice served on a person, do the following with regard to a designation—
- (a) impose conditions;
  - (b) amend or revoke a condition;
  - (c) impose additional conditions;
  - (d) revoke the designation.

- (6) Before exercising a power under subsection (1)(b) or (5)(d), the Commission must give the person concerned a reasonable opportunity of being heard.
- (7) If the Commission amends or revokes a condition or imposes an additional condition under subsection (5)(b) or (c), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.
- (8) If the Commission revokes a designation under subsection (5)(d), the revocation takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.
- (9) If, under this section, a person is designated or a designation is revoked, the Commission must publish notice of that fact in the Gazette.
- (10) A notice published under subsection (9) is not subsidiary legislation.

**101J. Designation of trading platforms**

- (1) On application by a person in the prescribed manner and on payment of the prescribed fee, the Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary—
  - (a) designate the person, in accordance with the designation rules and by a written notice served on the person, as a trading platform for the purposes of this Part; or
  - (b) refuse, in accordance with the designation rules, to designate the person.
- (2) A person may be designated only if—
  - (a) at the time of designation, the person—

- (i) is a recognized exchange company; or
  - (ii) is a person authorized under section 95(2) to provide automated trading services; and
- (b) the requirements prescribed by the designation rules have been met.
- (3) A designation may be for—
  - (a) OTC derivative transactions generally; or
  - (b) a class or description of OTC derivative transactions specified in the designation.
- (4) A person outside Hong Kong or in Hong Kong may be designated under this section.
- (5) The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, in accordance with the designation rules and by a written notice served on a person, do the following with regard to a designation—
  - (a) impose conditions;
  - (b) amend or revoke a condition;
  - (c) impose additional conditions;
  - (d) revoke the designation.
- (6) Before exercising a power under subsection (1)(b) or (5)(d), the Commission must give the person concerned a reasonable opportunity of being heard.
- (7) If the Commission amends or revokes a condition or imposes an additional condition under subsection (5)(b) or (c), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.
- (8) If the Commission revokes a designation under subsection (5)(d), the revocation takes effect at the time

- of the service of the notice or at the time specified in the notice, whichever is the later.
- (9) If, under this section, a person is designated or a designation is revoked, the Commission must publish notice of that fact in the Gazette.
- (10) A notice published under subsection (9) is not subsidiary legislation.

#### **Division 4—Rule Making Powers on Obligations and Designations**

##### **101K. Rule making power—reporting obligation**

- (1) The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, make rules—
  - (a) generally for the purposes of the reporting obligation; and
  - (b) without limiting paragraph (a), to prescribe the particular matters set out in this section.
- (2) Rules made under this section—
  - (a) may specify for the purposes of paragraph (a)(iv) of the definition of *prescribed person* in section 101A, a class or description of persons; and
  - (b) must provide in relation to a person of such a class or description that the person is subject to the reporting obligation only if the person is a counterparty to a specified OTC derivative transaction.
- (3) Rules made under this section—
  - (a) may specify generally, or with reference to a class or description of transactions, the OTC derivative

- transactions that are subject to the reporting obligation; and
- (b) without limiting paragraph (a), may provide that an OTC derivative transaction is subject to the reporting obligation—
  - (i) even if a counterparty or more than one counterparty is a person outside Hong Kong;
  - (ii) except in relation to a person of a class or description specified under subsection (2), even if a prescribed person is not a counterparty to the transaction; or
  - (iii) even if the transaction is entered into or conducted wholly or partially outside Hong Kong.
- (4) Without limiting subsection (3), OTC derivative transactions may be specified under that subsection with reference to any factor relating to an OTC derivative transaction, including—
  - (a) the underlying subject matter of the transaction;
  - (b) the features or characteristics of the transaction; and
  - (c) the persons involved in the transaction.
- (5) Rules made under this section may specify—
  - (a) the circumstances relating to a specified OTC derivative transaction in which the reporting obligation—
    - (i) applies;
    - (ii) does not apply; or
    - (iii) is taken to have been complied with;

- (b) the criteria (including thresholds) for the application of the reporting obligation; and
- (c) different circumstances and criteria for different prescribed persons or different OTC derivative transactions.
- (6) Rules made under this section may provide that a prescribed person is subject to the reporting obligation—
  - (a) in relation to OTC derivative transactions entered into before the date on which the reporting obligation started to apply—
    - (i) to the class or description of persons to which the person belongs; or
    - (ii) in relation to the class or description of OTC derivative transactions to which the transaction belongs; and
  - (b) if the OTC derivative transaction referred to in paragraph (a)—
    - (i) belongs to a class or description of transactions that is specified by rules made under this section for the purposes of the reporting obligation; and
    - (ii) if at the time the reporting obligation started to apply to the person or the transaction, the transaction is still outstanding within the meaning given by rules made under this subsection.
- (7) Rules made under this section may specify—
  - (a) the form and manner in which a specified OTC derivative transaction is to be reported to the Monetary Authority;

- (b) without limiting paragraph (a), that any requirement as to the form and manner of reporting is complied with if the specified OTC derivative transaction is reported by means of an electronic system operated by the Monetary Authority for submitting and receiving reports on OTC derivative transactions for the purposes of section 101B;
  - (c) any documents, information or particulars that must be submitted for complying with the reporting obligation;
  - (d) the period within which the reporting obligation must be complied with; and
  - (e) any other matter relating to the procedure for complying with the reporting obligation.
- (8) Rules made under this section may specify—
- (a) that a prescribed person may report a specified OTC derivative transaction to the Monetary Authority directly or through a third party;
  - (b) that a subsidiary specified under section 101B(5) that is a counterparty to a specified OTC derivative transaction may report the transaction to the Monetary Authority directly or through a third party; and
  - (c) where a specified OTC derivative transaction is reported through a third party, the circumstances in which a prescribed person is liable for a failure to comply with the reporting obligation.

**101L. Rule making power—clearing obligation**

- (1) The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, make rules—

- (a) generally for the purposes of the clearing obligation; and
  - (b) without limiting paragraph (a), to prescribe the particular matters set out in this section.
- (2) Rules made under this section—
- (a) may specify for the purposes of paragraph (b)(iv) of the definition of *prescribed person* in section 101A, a class or description of persons; and
  - (b) must provide in relation to a person of such a class or description that the person is subject to the clearing obligation only if the person is a counterparty to a specified OTC derivative transaction.
- (3) Rules made under this section—
- (a) may specify generally, or with reference to a class or description of transactions, the OTC derivative transactions that are subject to the clearing obligation; and
  - (b) without limiting paragraph (a), may provide that an OTC derivative transaction is subject to the clearing obligation—
    - (i) even if a counterparty or more than one counterparty is a person outside Hong Kong;
    - (ii) except in relation to a person of a class or description specified under subsection (2), even if a prescribed person is not a counterparty to the transaction; or
    - (iii) even if the transaction is entered into or conducted wholly or partially outside Hong Kong.

- (4) Without limiting subsection (3), OTC derivative transactions may be specified under that subsection with reference to any factor relating to an OTC derivative transaction, including—
  - (a) the underlying subject matter of the transaction;
  - (b) the features or characteristics of the transaction; and
  - (c) the persons involved in the transaction.
- (5) Rules made under this section may specify—
  - (a) the circumstances relating to a specified OTC derivative transaction in which the clearing obligation—
    - (i) applies;
    - (ii) does not apply; or
    - (iii) is taken to have been complied with;
  - (b) the criteria (including thresholds) for the application of the clearing obligation; and
  - (c) different circumstances and criteria for different prescribed persons or different OTC derivative transactions.
- (6) Rules made under this section may specify—
  - (a) the manner in which a specified OTC derivative transaction is to be cleared with a designated CCP;
  - (b) the period within which the clearing obligation must be complied with;
  - (c) the circumstances in which a specified OTC derivative transaction that is cleared otherwise than with a designated CCP is treated, for the purposes of the clearing obligation, as having been cleared with a designated CCP;

- (d) that a prescribed person may clear a specified OTC derivative transaction with a designated CCP directly or through a third party;
- (e) that a subsidiary specified under section 101C(5) that is a counterparty to a specified OTC derivative transaction may clear the transaction with a designated CCP directly or through a third party; and
- (f) where a specified OTC derivative transaction is cleared with a designated CCP through a third party, the circumstances in which a prescribed person is liable for a failure to comply with the clearing obligation.

#### **101M. Rule making power—trading obligation**

- (1) The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, make rules—
  - (a) generally for the purposes of the trading obligation; and
  - (b) without limiting paragraph (a), to prescribe the particular matters set out in this section.
- (2) Rules made under this section—
  - (a) may specify for the purposes of paragraph (c)(iv) of the definition of *prescribed person* in section 101A, a class or description of persons; and
  - (b) must provide in relation to a person of such a class or description that the person is subject to the trading obligation only if the person is a counterparty to a specified OTC derivative transaction.

- (3) Rules made under this section—
- (a) may specify generally, or with reference to a class or description of transactions, the OTC derivative transactions that are subject to the trading obligation; and
  - (b) without limiting paragraph (a), may provide that an OTC derivative transaction is subject to the trading obligation—
    - (i) even if a counterparty or more than one counterparty is a person outside Hong Kong;
    - (ii) except in relation to a person of a class or description specified under subsection (2), even if a prescribed person is not a counterparty to the transaction; or
    - (iii) even if the transaction is entered into or conducted wholly or partially outside Hong Kong.
- (4) Without limiting subsection (3), OTC derivative transactions may be specified under that subsection with reference to any factor relating to an OTC derivative transaction, including—
- (a) the underlying subject matter of the transaction;
  - (b) the features or characteristics of the transaction; and
  - (c) the persons involved in the transaction.
- (5) Rules made under this section may specify—
- (a) the circumstances relating to a specified OTC derivative transaction in which the trading obligation—
    - (i) applies;

- (ii) does not apply; or
    - (iii) is taken to have been complied with;
  - (b) the criteria (including thresholds) for the application of the trading obligation; and
  - (c) different circumstances and criteria for different prescribed persons or different OTC derivative transactions.
- (6) Rules made under this section may specify—
- (a) the manner in which a specified OTC derivative transaction is to be executed on a designated trading platform;
  - (b) the circumstances in which a specified OTC derivative transaction that is executed otherwise than on a designated trading platform is treated, for the purposes of the trading obligation, as having been executed on a designated trading platform;
  - (c) that a prescribed person may execute a specified OTC derivative transaction on a designated trading platform directly or through a third party;
  - (d) that a subsidiary specified under section 101D(5) that is a counterparty to a specified OTC derivative transaction may execute the transaction on a designated trading platform directly or through a third party; and
  - (e) where a specified OTC derivative transaction is executed on a designated trading platform through a third party, the circumstances in which a prescribed person is liable for a failure to comply with the trading obligation.

**101N. Rule making power—designations**

The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, make rules to prescribe—

- (a) the application procedure for designation—
  - (i) as a central counterparty, including the documents and information to be provided by the applicant; or
  - (ii) as a trading platform, including the documents and information to be provided by the applicant;
- (b) other requirements to be complied with by an applicant for designation;
- (c) any matter that may be taken into account when considering an application;
- (d) the grounds on which designation may be refused or revoked;
- (e) the procedure for exercising a power under section 101I(1) or (5) or 101J(1) or (5); or
- (f) any other matter relating to the process of or procedure for a designation or revocation under section 101I or 101J.

**Division 5—Systemically Important Participants****101O. Persons who must notify positions in OTC derivative transactions**

- (1) This section applies to a person who—
  - (a) is not—
    - (i) an authorized financial institution;

- (ii) an approved money broker; or
- (iii) a licensed corporation; and

(b) engages in OTC derivative transactions.

- (2) A person to whom this section applies must notify the Commission in accordance with subsection (3) if the person's position in a specific class reaches the notification level.
- (3) A notification must be given—
  - (a) in writing and within the period prescribed by the notification rules; and
  - (b) in accordance with subsection (4).
- (4) A notification must contain—
  - (a) sufficient information—
    - (i) to identify the systemically important participant;
    - (ii) to identify the specific class to which the notification relates; and
    - (iii) to show that the notification level has been reached; and
  - (b) any information prescribed by the notification rules (including additional information so prescribed, relating to the matters referred to in paragraph (a)).
- (5) A person who without reasonable excuse fails to comply with subsection (2) commits an offence.
- (6) A person who commits an offence under subsection (5) is liable—
  - (a) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years; or

- (b) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years.

**101P. Commission to maintain register**

- (1) The Commission must maintain a register, in a form that it considers appropriate, to record information under section 101Q.
- (2) The SIP register may be maintained—
  - (a) in a documentary form; or
  - (b) by recording information otherwise than in a documentary form, so long as the information is capable of being reproduced in a legible form.
- (3) At all reasonable times, the SIP register must be made available to the public for the purpose of enabling a person who is a member of the public to ascertain—
  - (a) whether the person is dealing with a registered SIP; and
  - (b) the particulars of registration of a registered SIP the person is dealing with.
- (4) At all reasonable times, a member of the public may—
  - (a) inspect the SIP register, or if it is maintained otherwise than in a documentary form, a reproduction of the information or the relevant part of it in a legible form; and
  - (b) on payment of the prescribed fee, obtain a copy of—
    - (i) an entry in the SIP register; or
    - (ii) an extract of the SIP register.
- (5) A document purporting to be—

- (a) a copy of an entry in or extract of the SIP register; and
- (b) certified by an authorized officer of the Commission as a true copy of the entry or extract, is admissible as evidence of its contents in any legal proceedings.
- (6) Without derogating from the other provisions of this section, the Commission must, in addition, make the SIP register available to the public in the form of an online record.

**101Q. Registration in SIP register**

- (1) The Commission may enter in the SIP register in respect of a person who has complied with the notification requirement—
  - (a) the name of the person; and
  - (b) the specific class in respect of which the notification level has been reached.
- (2) The Commission may enter in the SIP register in respect of a person who has purportedly given a notification, but not in accordance with section 101O(3)—
  - (a) the name of the person; and
  - (b) the specific class in respect of which the notification level has been reached.
- (3) If the conditions in subsection (6) are satisfied in relation to a person, the Commission may enter in the SIP register—
  - (a) the name of the person; and
  - (b) the specific class referred to in subsection (6)(b).

- (4) Before making an entry in the SIP register under subsection (3)(a) or (b) in respect of a person, the Commission must—
  - (a) inform the Monetary Authority; and
  - (b) give the person concerned a reasonable opportunity of being heard in respect of the proposed entry.
- (5) The Commission must inform the person concerned by a written notice as soon as practicable after making an entry in the SIP register under subsection (1)(a) or (b), (2)(a) or (b) or (3)(a) or (b).
- (6) The conditions referred to in subsection (3) are that—
  - (a) section 101O(1) applies to the person; and
  - (b) either—
    - (i) the Commission has reasonable cause to believe that the person's position in a specific class has reached the notification level but the person has not given a notification in respect of the specific class; or
    - (ii) the Monetary Authority informs the Commission that the Monetary Authority has reasonable cause to believe that the person's position in a specific class has reached the notification level but the person has not given a notification in respect of the specific class.
- (7) A decision to make an entry in the SIP register under subsection (1), (2) or (3) takes effect at the time of the service of the notice under subsection (5) on the person or at the time specified in the notice, whichever is the later.

#### **101R. Notification not required after registration for specific class**

- (1) If a person is registered for a specific class, as long as the name of the person remains on the SIP register for that specific class, the person is not required to comply with the notification requirement in respect of that specific class.
- (2) Subsection (1) does not affect any liability incurred for a failure by a person who is registered for a specific class under section 101Q(2) or (3) to comply with the notification requirement in respect of that specific class.
- (3) Also, subsection (1) does not affect the application of section 101O(2) to a person whose position in a specific class reaches the notification level after the first or any subsequent deregistration for that specific class.
- (4) For the purposes of this section, a person is taken to be registered for a specific class if the SIP register shows that the person's position in that specific class has reached the notification level.

#### **101S. Deregistration**

- (1) The Commission must remove from the SIP register the name of a person, if the Commission is satisfied that the relevant conditions, circumstances and criteria prescribed by the notification rules for removing a person's name from the SIP register have been met.
- (2) The Commission must remove from the SIP register a specific class entered in respect of a person's name, if the Commission is satisfied that the relevant conditions, circumstances and criteria prescribed by the notification rules for removing the specific class from the SIP register have been met.

- (3) A deregistration may be effected—
  - (a) by the Commission on its own initiative; or
  - (b) on application by a registered SIP.
- (4) The Commission must give the person concerned a reasonable opportunity of being heard before refusing an application for deregistration.
- (5) The Commission must consult the Monetary Authority before effecting a deregistration.
- (6) The Commission must inform the person concerned of a deregistration or a refusal to deregister by a written notice as soon as practicable after a deregistration or a refusal to deregister.
- (7) This section does not prevent the Commission from amending the SIP register to give effect to a decision of the Securities and Futures Appeals Tribunal under Part XI on a review by that Tribunal of a decision of the Commission under section 101Q(3).

**101T. Power to require information from registered SIPs**

- (1) The Commission may, by a written notice, require a registered SIP to give to the Commission, in the form and manner set out in the notice, information required by the notice, regarding one or more of the following—
  - (a) the registered SIP's activities and transactions in OTC derivative products;
  - (b) the risk management systems and policies established in respect of the registered SIP's transactions in OTC derivative products;
  - (c) any other matter prescribed by the notification rules.

- (2) The Monetary Authority may, by a written notice, require a registered SIP to give to the Monetary Authority, in the form and manner set out in the notice, information required by the notice, regarding one or more of the following—
  - (a) the registered SIP's activities and transactions in OTC derivative products;
  - (b) the risk management systems and policies established in respect of the registered SIP's transactions in OTC derivative products;
  - (c) any other matter prescribed by the notification rules.
- (3) The registered SIP must give any information required to be given under subsection (1) or (2) within the period specified in the notice.

**101U. Power to require registered SIPs to take certain action**

- (1) The Commission may, with the consent, or at the request, of the Monetary Authority, take the action specified in subsection (2), if the Commission has reasonable cause to believe that the registered SIP's activities or transactions in OTC derivative products pose, or may pose, a systemic risk—
  - (a) in the securities and futures industry; or
  - (b) to the financial stability of Hong Kong.
- (2) The action the Commission may take is to require, by a written notice, the registered SIP to do one or more of the following acts specified in the notice—
  - (a) to refrain from increasing, or to reduce, the registered SIP's positions in one or more specific classes;

- (b) to collect collateral or to increase the amount of collateral collected;
  - (c) to post collateral or to increase the amount of collateral posted;
  - (d) to restrict the use of collateral as specified in the notice;
  - (e) to take any other action prescribed by the notification rules.
- (3) A requirement in a notice served under this section takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

**101V. Application to Court of First Instance**

- (1) If a registered SIP fails to comply with a requirement made under section 101T(1) or 101U, the Commission may apply to the Court of First Instance for an inquiry into the failure.
- (2) If a registered SIP fails to comply with a requirement made under section 101T(2), the Monetary Authority may apply to the Court of First Instance for an inquiry into the failure.
- (3) The Court of First Instance may inquire into the case and if satisfied that—
  - (a) there is no reasonable excuse for the registered SIP not to comply with the requirement, order the registered SIP to comply with the requirement within the period specified by the Court; and
  - (b) the failure was without reasonable excuse, punish the registered SIP in the same manner as if the registered SIP had been guilty of contempt of court.

- (4) If there is a reasonable likelihood that a registered SIP will fail to comply with a requirement referred to in subsection (1), the Commission may apply to the Court of First Instance for an order that the registered SIP take such action or refrain from taking such action as the Court directs.
- (5) If there is a reasonable likelihood that a registered SIP will fail to comply with a requirement referred to in subsection (2), the Monetary Authority may apply to the Court of First Instance for an order that the registered SIP take such action or refrain from taking such action as the Court directs.
- (6) An application under subsection (1), (2), (4) or (5) must be made by originating summons that is in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

**101W. Rule making power—notifications etc.**

The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, make rules to prescribe—

- (a) in relation to a specific class—
  - (i) the threshold for the application of the notification requirement;
  - (ii) the period within which the notification requirement must be complied with; and
  - (iii) the conditions, circumstances and criteria for deregistration;
- (b) additional information to be given by a person under section 101O(4)(b);

- (c) matters on which information may be required to be given under section 101T(1)(c) and (2)(c);
- (d) action a registered SIP may be required to take under section 101U(2)(e); and
- (e) generally for better carrying out the purposes of this Division.”.

**10. Section 109 amended (offence to issue advertisements relating to carrying on of regulated activities, etc.)**

- (1) Section 109(1)(a)(i)—

**Repeal**

“Type 6 or Type 9”

**Substitute**

“Type 6, Type 9 or Type 11”.

- (2) Section 109(3)(c)—

**Repeal**

“; or”

**Substitute a semicolon.**

- (3) Section 109(3)(d)—

**Repeal the full stop**

**Substitute**

“; or”.

- (4) After section 109(3)(d)—

**Add**

- “(e) in the case of an advertisement in which a person holds themselves out as being prepared to carry on Type 11 regulated activity—

- (i) to an authorized financial institution or an approved money broker;
- (ii) to a person acting in their capacity as an officer or employee of such an authorized financial institution or approved money broker; or
- (iii) to an intermediary licensed for Type 11 regulated activity or a representative of such an intermediary who carries on that regulated activity for the intermediary.”.

**11. Section 116 amended (corporations to be licensed for carrying on regulated activities)**

Section 116(9)—

**Repeal**

“Part IX”

**Substitute**

“Divisions 2 and 3 of Part IX”.

**12. Section 119 amended (registered institutions)**

- (1) Section 119(1)—

**Repeal**

“and Type 8”

**Substitute**

“, Type 8, Type 11 and Type 12”.

- (2) Section 119(7)—

**Repeal**

“Part IX”

**Substitute**

“Divisions 2 and 3 of Part IX”.

**13. Section 120 amended (representatives to be licensed)**

Section 120(10)—

**Repeal**

“Part IX”

**Substitute**

“Divisions 2 and 3 of Part IX”.

**14. Section 145A added**

After section 145—

**Add****“145A. Commission may vary financial resources rules for particular licensed corporations**

- (1) The Commission may, by a written notice served on a licensed corporation that engages in OTC derivative transactions, vary any financial resources rule applicable to the corporation, if satisfied, on reasonable grounds, that it is prudent to make the variation, taking into account risks associated with the corporation.
- (2) If the Commission proposes to serve a notice under subsection (1) on a licensed corporation, it must serve a draft of the notice (*draft notice*) on the corporation.
- (3) A draft notice must—
  - (a) specify—
    - (i) the financial resources rule proposed to be varied;
    - (ii) the manner in which that rule is proposed to be varied; and
    - (iii) the grounds for the proposed variation; and

- (b) include a statement that the corporation may, within 14 days, or a longer period the Commission allows in a particular case, from the date of service of the draft notice, make written representations to the Commission on any or all of the matters specified in the draft notice.
- (4) If representations are made in accordance with subsection (3)(b) on a draft notice served on a licensed corporation, the Commission may, after considering the representations—
  - (a) serve a notice on the corporation under subsection (1) in substantially the same terms as the draft notice;
  - (b) serve a notice on the corporation under subsection (1) in terms modified to take account of any one or more of those representations that satisfy the Commission that the modification ought to be made; or
  - (c) elect not to serve a notice on the corporation under subsection (1) because one or more of those representations satisfy the Commission that it should neither take the action mentioned in paragraph (a) nor take the action mentioned in paragraph (b).
- (5) If no representations are made in accordance with subsection (3)(b) on a draft notice served on a licensed corporation, the Commission may serve a notice on the corporation under subsection (1) in substantially the same terms as the draft notice.
- (6) If a financial resources rule applicable to a licensed corporation that engages in OTC derivative transactions is varied under this section, this Part (including rules

made under section 145) applies, in relation to that corporation, with all necessary modifications to take account of the financial resources rule so varied.

(7) To avoid doubt—

- (a) the Commission may serve a draft notice on a licensed corporation in substitution for an earlier draft notice served on the corporation; and
- (b) the reference to substantially the same terms as the draft notice in subsections (4)(a) and (5) is not to be construed to include the statement required to be included in a draft notice under subsection (3)(b).

(8) The variation of a financial resources rule under subsection (1) takes effect at the time of the service of the written notice of the variation on the licensed corporation under that subsection or at the time specified in the notice, whichever is the later.”

**15. Section 178 amended (interpretation of Part VIII)**

(1) Section 178, definition of *investigator*, after “means”—

**Add**

“(except in the definition of *MA investigator* in this section)”.

(2) Section 178—

**Repeal the definition of *person under investigation***

**Substitute**

“*person under investigation* (受調查人) means—

- (a) in section 183, a person in relation to whom an investigator is directed or appointed to investigate any matter under section 182(1); and

- (b) in section 184B, a person in relation to whom an MA investigator is directed or appointed to investigate any matter under section 184A(1).”.

(3) Section 178—

**Add in alphabetical order**

“*MA investigator* (金管局調查員) means a person directed or appointed to investigate any matter under section 184A;”.

**16. Section 181 amended (information relating to transactions)**

(1) Section 181(1)(b)—

**Repeal**

“contract, or an”

**Substitute**

“contract, OTC derivative product, or an”.

(2) Section 181(1)(b)—

**Repeal**

“contract or collective”

**Substitute**

“contract, OTC derivative product or collective”.

(3) Section 181(1)(c)—

**Repeal**

“contract, or an”

**Substitute**

“contract, OTC derivative product, or an”.

(4) Section 181(1)(c)—

**Repeal**

“contract or collective”

**Substitute**

“contract, OTC derivative product or collective”.

- (5) Section 181(1)(d)—

**Repeal**

“contract, or an”

**Substitute**

“contract, OTC derivative product, or an”.

- (6) Section 181(1)(d)—

**Repeal**

“contract or collective”

**Substitute**

“contract, OTC derivative product or collective”.

- (7) Section 181(2)(a)—

**Repeal**

“contract, or the”

**Substitute**

“contract, OTC derivative product, or the”.

- (8) Section 181(2)(a)—

**Repeal**

“contract or collective”

**Substitute**

“contract, OTC derivative product or collective”.

- (9) Section 181(2)(b)—

**Repeal**

“contract, or the”

**Substitute**

“contract, OTC derivative product, or the”.

- (10) Section 181(2)(b)—

**Repeal**

“contract or collective”

**Substitute**

“contract, OTC derivative product or collective”.

- (11) Section 181(2)(c)—

**Repeal**

“contract, or the”

**Substitute**

“contract, OTC derivative product, or the”.

- (12) Section 181(2)(c)—

**Repeal**

“contract or collective”

**Substitute**

“contract, OTC derivative product or collective”.

**17. Part VIII, Division 3 heading amended (powers of investigations)**

Part VIII, Division 3, heading—

**Repeal**

“Powers of investigations”

**Substitute**

“Commission’s Powers of Investigation”.

**18. Section 182 amended (investigations)**

- (1) Section 182, heading—

**Repeal****“Investigations”****Substitute****“Investigations by Commission”.**

- (2) Section 182(1)(b)(iv)—

**Repeal****“; or”****Substitute a semicolon.**

- (3) After section 182(1)(b)(v)—

**Add****“(vi) dealing in OTC derivative products or advising on OTC derivative products; or****(vii) providing clearing agency services for OTC derivative transactions;”.**

- (4) Section 182(1)(d)—

**Repeal****“(v)”****Substitute****“(vii)”.**

- (5) After section 182(1)(d)—

**Add****“(da) the Commission has reasonable cause to believe that a prescribed person other than an authorized financial institution or an approved money broker may have contravened the reporting obligation, clearing obligation or trading obligation;**

(db) the Commission has reasonable cause to believe that a registered SIP may have failed to comply with a requirement made under section 101U;”.

- (6) Section 182(1)(g)—

**Repeal****“(d),”****Substitute****“(d), (da), (db),”.****19. Section 184 amended (offences in relation to investigations)**

- (1) Section 184(3)(a)(i), English text—

**Repeal****“as”.**

- (2) Section 184(3)(b)(i), English text—

**Repeal****“as”.****20. Part VIII, Division 3A added**

Part VIII, after Division 3—

**Add****“Division 3A—Monetary Authority’s Powers of Investigation****184A. Investigations by Monetary Authority**

- (1) If the Monetary Authority has reasonable cause to believe that an authorized financial institution or an approved money broker may have contravened the reporting obligation, clearing obligation or trading obligation, the Monetary Authority may—

- (a) direct in writing one or more persons appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to investigate the matter; or
  - (b) with the consent of the Financial Secretary, appoint in writing one or more other persons to investigate the matter.
- (2) The Monetary Authority must give an MA investigator a copy of—
- (a) the direction, if the MA investigator is directed under subsection (1)(a); and
  - (b) the appointment, if the MA investigator is appointed under subsection (1)(b).
- (3) The MA investigator must, before first imposing a requirement on a person under section 184B(1), (2) or (3), produce a copy of the direction or appointment for inspection by the person.

**184B. Conduct of investigations**

- (1) A person under investigation or a person whom the MA investigator has reasonable cause to believe to be in possession of any record or document that contains, or that is likely to contain, information relevant to an investigation under section 184A, or whom the MA investigator has reasonable cause to believe to be otherwise in possession of such information, must—
- (a) produce to the MA investigator, within the time and at a place the MA investigator reasonably requires in writing, a record or document specified by the MA investigator—
    - (i) that is, or may be, relevant to the investigation; and

- (ii) that is in the person's possession;
  - (b) if required by the MA investigator, give the MA investigator an explanation or further particulars in respect of a record or document produced under paragraph (a);
  - (c) attend before the MA investigator at a time and place the MA investigator reasonably requires in writing, and answer any question relating to a matter under investigation raised by the MA investigator; and
  - (d) give the MA investigator all assistance in connection with the investigation that the person is reasonably able to give, including responding to any written question raised by the MA investigator.
- (2) An MA investigator may require, in writing, a person who makes or gives an explanation, particulars, answer or statement under this section to verify, by statutory declaration, within a reasonable period specified in the requirement, the explanation, particulars, answer or statement.
- (3) If a person does not make or give an explanation, particulars, answer or statement in accordance with a requirement under this section for the reason that the explanation, particulars, answer or statement was not within the person's knowledge or in the person's possession, an MA investigator may require, in writing, the person to verify by statutory declaration—
- (a) that the person was unable to comply or fully comply (as the case may be) with the requirement for that reason; and
  - (b) within a reasonable period specified in the requirement.

- (4) A statutory declaration under this section may be made before the MA investigator.

#### **184C. Investigation reports**

- (1) An MA investigator—
- (a) may make interim reports on the investigation conducted under this Division to the Monetary Authority;
  - (b) must make interim reports on the investigation to the Monetary Authority if directed by the Monetary Authority; and
  - (c) must, after the completion of the investigation, make a final report on the investigation to the Monetary Authority.
- (2) The Monetary Authority may, with the consent of the Secretary for Justice, publish any report made under subsection (1).

#### **184D. Offences relating to investigations**

- (1) A person commits an offence if the person, without reasonable excuse—
- (a) fails to produce a record or document required to be produced under section 184B(1)(a);
  - (b) fails to give an explanation or further particulars required under section 184B(1)(b);
  - (c) fails to attend before the MA investigator as required under section 184B(1)(c);
  - (d) fails to answer a question raised by the MA investigator under section 184B(1)(c);
  - (e) fails to comply with section 184B(1)(d); or

- (f) fails to comply with a requirement under section 184B(2) or (3).
- (2) A person who commits an offence under subsection (1) is liable—
- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
  - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (3) A person commits an offence if—
- (a) the person—
    - (i) in purportedly complying with a requirement imposed by the MA investigator under section 184B(1)(a), produces a record or document that is false or misleading in a material particular;
    - (ii) in purportedly complying with a requirement imposed by the MA investigator under section 184B(1)(b), gives an explanation or further particulars that are false or misleading in a material particular;
    - (iii) in purportedly answering a question raised by the MA investigator under section 184B(1)(c), says anything that is false or misleading in a material particular; or
    - (iv) in purportedly responding to a written question raised by the MA investigator under section 184B(1)(d), states anything that is false or misleading in a material particular; and
  - (b) the person knows that, or is reckless as to whether, the record or document, the explanation or further

- particulars, the thing said or statement is false or misleading in a material particular.
- (4) A person who commits an offence under subsection (3) 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.
- (5) A person commits an offence if the person with intent to defraud—
- (a) fails to do anything described in subsection (1)(a), (b), (c), (d), (e) or (f);
  - (b) in purportedly complying with a requirement imposed by the MA investigator under section 184B(1)(a), produces a record or document that is false or misleading in a material particular;
  - (c) in purportedly complying with a requirement imposed by the MA investigator under section 184B(1)(b), gives an explanation or further particulars that are false or misleading in a material particular;
  - (d) in purportedly answering a question raised by the MA investigator under section 184B(1)(c), says anything that is false or misleading in a material particular; or
  - (e) in purportedly responding to a written question raised by the MA investigator under section 184B(1)(d), states anything that is false or misleading in a material particular.

- (6) An officer or employee of a corporation commits an offence if the officer or employee, with intent to defraud, causes or allows the corporation to—
- (a) fail to do anything described in subsection (1)(a), (b), (c), (d), (e) or (f);
  - (b) in purportedly complying with a requirement imposed by the MA investigator under section 184B(1)(a), produce a record or document that is false or misleading in a material particular;
  - (c) in purportedly complying with a requirement imposed by the MA investigator under section 184B(1)(b), give an explanation or further particulars that are false or misleading in a material particular;
  - (d) in purportedly answering a question raised by the MA investigator under section 184B(1)(c), say anything that is false or misleading in a material particular; or
  - (e) in purportedly responding to a written question raised by the MA investigator under section 184B(1)(d), state anything that is false or misleading in a material particular.
- (7) A person is not excused from complying with a requirement imposed under section 184B(1), (2) or (3) only on the ground that to do so might tend to incriminate the person.
- (8) A person who commits an offence under subsection (5) or (6) is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or

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

**184E. Recovery of costs of investigation**

- (1) If a person is convicted by a court on a prosecution instituted as a result of an investigation under this Division, the court may order the person to pay to the Monetary Authority the whole or a part of the costs and expenses of the investigation.
- (2) The Monetary Authority may recover, as a civil debt due to the Monetary Authority, the whole or the part (as the case may be) of the costs and expenses ordered under subsection (1).
- (3) The Monetary Authority must pay into the Exchange Fund any costs and expenses recovered under subsection (2)."

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

- (1) Section 185, heading—

**Repeal**

**"or 183"**

**Substitute**

**", 183 or 184B".**

- (2) After section 185(1)—

**Add**

- "(1A) If a person fails to do anything on being required to do so by an MA investigator under section 184B(1), (2) or (3), the Monetary Authority may, by originating

summons, make an application to the Court of First Instance in respect of the failure.

- (1B) The Court of First Instance may inquire into the case and if satisfied that—

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

- (3) Section 185(2), after "(1)"—

**Add**

**"or (1A)".**

- (4) Section 185(3)(a), after "(1)(b)"—

**Add**

**"or (1B)(b)".**

- (5) Section 185(3)(a)(i)—

**Repeal**

**"or 184"**

**Substitute**

**", 184 or 184D".**

- (6) Section 185(3)(b)—

**Repeal**

**"or 184"**

**Substitute**

“, 184 or 184D”.

- (7) Section 185(3)(b)(i), after “(1)(b)” —

**Add**

“or (1B)(b)”.

**22. Section 186 amended (assistance to regulators outside Hong Kong)**

- (1) Section 186, heading —

**Repeal**

“Assistance”

**Substitute**

“Commission’s assistance”.

- (2) Section 186(1)(b) —

**Repeal**

“contract, collective”

**Substitute**

“contract, OTC derivative product, collective”.

- (3) Section 186(2) —

**Repeal**

“contract, collective”

**Substitute**

“contract, OTC derivative product, collective”.

**23. Section 186A added**

After section 186 —

**Add**

**“186A. Monetary Authority’s assistance to regulators outside Hong Kong**

- (1) If the Monetary Authority receives from an overseas entity a request for assistance described in subsection (2), the Monetary Authority may give the requested assistance by exercising the powers under sections 184A and 184B if, in the opinion of the Monetary Authority —
  - (a) the overseas entity satisfies the requirements referred to in subsection (5); and
  - (b) the condition in subsection (7) is satisfied.
- (2) A request for assistance referred to in subsection (1) is a request for assistance to investigate whether a person specified by the overseas entity has contravened or is contravening legal or regulatory requirements that —
  - (a) the overseas entity enforces or administers; and
  - (b) relate to —
    - (i) transactions regarding OTC derivative products regulated by the overseas entity; or
    - (ii) other similar transactions regulated by the overseas entity.
- (3) If the Monetary Authority receives from a companies inspector outside Hong Kong a request for assistance described in subsection (4), the Monetary Authority may give the requested assistance by exercising the powers under sections 184A and 184B if, in the opinion of the Monetary Authority —
  - (a) the companies inspector satisfies the requirements referred to in subsection (6); and
  - (b) the condition in subsection (7) is satisfied.

- (4) A request for assistance referred to in subsection (3) is a request for assistance to investigate whether a person specified by the companies inspector outside Hong Kong has contravened or is contravening legal or regulatory requirements that relate to transactions regarding OTC derivative products or other similar transactions.
- (5) The requirements referred to in subsection (1)(a) are that the overseas entity—
  - (a) performs functions similar to the functions of the Monetary Authority or regulates, supervises or investigates banking, insurance or other financial services; and
  - (b) is subject to adequate secrecy provisions.
- (6) The requirements referred to in subsection (3)(a) are that the companies inspector outside Hong Kong—
  - (a) performs functions similar to the functions of the Registrar of Companies or regulates, supervises or investigates the affairs of corporations; and
  - (b) is subject to adequate secrecy provisions.
- (7) The condition referred to in subsections (1)(b) and (3)(b) is that—
  - (a) it is desirable or expedient that the assistance should be given in the interests of the investing public or in the public interest; or
  - (b) the assistance will enable or assist the recipient of the assistance to perform the recipient's functions and it is not contrary to the interests of the investing public or to the public interest that the assistance should be given.

- (8) In deciding whether the condition set out in subsection (7) is satisfied in a particular case, the Monetary Authority must take into account—
  - (a) if the recipient of the assistance is an overseas entity, whether the overseas entity will—
    - (i) pay to the Monetary Authority any of the costs and expenses incurred in giving the assistance; and
    - (ii) be able and willing to give reciprocal assistance within its jurisdiction in response to a comparable request for assistance from Hong Kong; or
  - (b) if the recipient of the assistance is a companies inspector outside Hong Kong, whether—
    - (i) the companies inspector will pay to the Monetary Authority any of the costs and expenses incurred in giving the assistance; and
    - (ii) under the laws of the country or territory in which the companies inspector is appointed, reciprocal assistance will be given in response to a comparable request for assistance from Hong Kong.
- (9) If the Monetary Authority is satisfied of the matters referred to in subsection (5)(a) and (b) or (6)(a) and (b), the Monetary Authority must, as soon as reasonably practicable after being so satisfied, publish in the Gazette, the name of the overseas entity or the companies inspector outside Hong Kong.
- (10) Subsection (11) applies if a person is required to give an explanation or further particulars as required by, or to

give an answer to a question raised by, an MA investigator exercising under subsection (1) or (3), a power under section 184B, and the explanation, further particulars or the answer might tend to incriminate the person and the person so claims before giving it.

- (11) Without limiting section 187, the MA investigator must not provide to an overseas entity or a companies inspector outside Hong Kong for use in criminal proceedings against the person in the jurisdiction of the overseas entity or the companies inspector—

- (a) evidence of the requirement;
- (b) evidence of the question and answer; or
- (c) evidence of the explanation or further particulars.

- (12) The Monetary Authority must pay into the Exchange Fund any amount received from an overseas entity or a companies inspector outside Hong Kong in respect of costs and expenses incurred by the Monetary Authority in giving assistance under this section.

- (13) A matter published under subsection (9) is not subsidiary legislation.

- (14) In this section—

*companies inspector* (公司審查員), in relation to a place outside Hong Kong, has the meaning given by section 186(9);

*overseas entity* (海外實體) means an authority or regulatory organization outside Hong Kong.”.

## 24. Section 187 amended (use of incriminating evidence in proceedings)

- (1) Section 187(1)(a)—

**Repeal**

“; or”

**Substitute a semicolon.**

- (2) Section 187(1)(b)—

**Repeal the comma**

**Substitute**

“; or”.

- (3) After section 187(1)(b)—

**Add**

“(c) an MA investigator requires a person to give an explanation or further particulars or give an answer to a question under section 184B,”.

- (4) Section 187(2)(a)—

**Repeal**

“; or”

**Substitute a semicolon.**

- (5) Section 187(2)(b)—

**Repeal the comma**

**Substitute**

“; or”.

- (6) After section 187(2)(b)—

**Add**

“(c) an MA investigator requires a person to give an explanation or further particulars or give an answer to a question under section 184B,”.

- (7) Section 187(2)—

**Repeal**

“or 184”

**Substitute**

“, 184 or 184D”.

**25. Section 190 amended (inspection of records or documents seized, etc.)**

(1) Section 190, after “an investigator”—

**Add**

“or MA investigator”.

(2) Section 190, after “the investigator”—

**Add**

“or MA investigator”.

**26. Section 191 amended (Magistrate’s warrants)**

(1) Section 191(1)(b), after “investigator”—

**Add**

“or MA investigator”.

(2) Section 191(5), after “Commission”—

**Add**

“or the Monetary Authority”.

**27. Section 193 amended (interpretation of Part IX)**

(1) Section 193(1), Chinese text, definition of 失當行為—

**Repeal the full stop****Substitute a semicolon.**

(2) Section 193(1)—

**Add in alphabetical order**

“disciplinary power (紀律懲處權) means—

(a) in section 197A, a power that may be exercised by the Commission under section 197A(1); and

(b) in Divisions 4 and 5, a power that may be exercised by the Monetary Authority under section 203A(1);”.

**28. Part IX, Division 2 heading amended (discipline, etc.)**

Part IX, Division 2, heading—

**Repeal**

“Discipline, etc.”

**Substitute**

“Disciplinary Action by Commission”.

**29. Section 197A added**

Part IX, Division 2, after section 197—

**Add**

**“197A. Disciplinary action for non-compliance by registered SIPs**

(1) If a registered SIP fails to comply with a requirement made under section 101U, the Commission may exercise, either or both of the following powers as the Commission considers appropriate in the circumstances of the case—

(a) publicly or privately reprimand the registered SIP;

(b) order the registered SIP to pay a pecuniary penalty not exceeding the amount that is the greater of the following—

(i) \$10,000,000;

- (ii) 3 times the amount of the profit gained, or loss avoided, by the registered SIP as a result of the failure to comply with the requirement.
- (2) The exercise of the disciplinary power—
  - (a) under subsection (1)(a) is subject to section 198; and
  - (b) under subsection (1)(b) is subject to sections 198 and 199.
- (3) If the Commission exercises a disciplinary power, it may disclose to the public details of the decision including the reasons for it and any material facts relating to the case.
- (4) A person who is ordered to pay a pecuniary penalty must pay it to the Commission within—
  - (a) 30 days after the order has taken effect as a specified decision under section 232; or
  - (b) a longer period specified in the notice referred to in 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 made by the Commission, register the order in the Court of First Instance.
- (6) An application must be made in the manner prescribed by rules made under section 397 for the purposes of subsection (5).
- (7) On registration, the order is to be regarded for all purposes as an order of the Court of First Instance made within its civil jurisdiction for the payment of money.
- (8) The Commission must pay a pecuniary penalty paid to or recovered by it under an order made under this section into the general revenue.

- (9) A disciplinary power may be exercised against a person whether or not the person is a registered SIP at the time of the exercise of the power, and the references to registered SIP in this section (except the reference in subsection (1) in relation to the failure to comply with a requirement) must be construed accordingly.”.

**30. Part IX, Division 3 heading amended (miscellaneous)**

Part IX, Division 3, heading, after “**Miscellaneous**”—

**Add**

**“Provisions Relating to Division 2”.**

**31. Section 198 amended (procedural requirements in respect of exercise of powers under Part IX)**

- (1) Section 198, heading—

**Repeal**

**“Part IX”**

**Substitute**

**“Division 2”.**

- (2) Section 198(1)—

**Repeal**

**“or 197(1)(a) or (b) or (2)”**

**Substitute**

**“, 197(1)(a) or (b) or (2) or 197A(1)”.**

- (3) Section 198(2)—

**Repeal**

**“or 197(1) or (2)”**

**Substitute**

**“, 197(1) or (2) or 197A(1)”.**

- (4) Section 198(3)—

**Repeal**

“or 197(1) or (2)”

**Substitute**

“, 197(1) or (2) or 197A(1)”.

**32. Section 199 amended (guidelines for performance of functions under section 194(2) or 196(2))**

- (1) Section 199, heading—

**Repeal**

“or 196(2)”

**Substitute**

“, 196(2) or 197A(1)(b)”.

- (2) Section 199(1), English text—

**Repeal**

“shall”

**Substitute**

“must”.

- (3) Section 199(1)—

**Repeal**

“or 196(2)”

**Substitute**

“, 196(2) or 197A(1)(b)”.

- (4) Section 199(2), English text—

**Repeal**

“shall” (wherever appearing)

**Substitute**

“must”.

- (5) After section 199(2)—

**Add**

“(2A) Without limiting subsection (1), guidelines published under that subsection in respect of the exercise of the Commission’s power under section 197A(1)(b)—

- (a) may include any factor that the Commission considers relevant to the exercise of that power; and
- (b) must include the following as factors that the Commission must take into account when exercising that power—
  - (i) whether the conduct of the person in respect of whom the power is being exercised was intentional, reckless or negligent;
  - (ii) whether the conduct of that person damaged the integrity of the securities and futures market or was potentially damaging or detrimental to the integrity of the securities and futures market or the financial stability of Hong Kong;
  - (iii) whether the conduct of that person caused loss to, or imposed costs on, any other person; and
  - (iv) whether the conduct of that person resulted in a benefit to that person or any other person.”.

**33. Section 200 heading amended (effect of suspension under Part IX)**

Section 200, heading—

**Repeal**

**“Part IX”****Substitute****“Division 2 or 3”.****34. Section 201 amended (general provisions relating to exercise of powers under Part IX)**

(1) Section 201, heading—

**Repeal****“Part IX”****Substitute****“Division 2 or 3”.**

(2) Section 201(1)—

**Repeal****“or 197(1) or (2)”****Substitute****“, 197(1) or (2) or 197A(1)”.**

(3) Section 201(2)—

**Repeal****“this Part”****Substitute****“Division 2 or 3”.**

(4) Section 201(3)—

**Repeal****“or 197(1)(a) or (b) or (2)”****Substitute****“, 197(1)(a) or (b) or (2) or 197A(1)”.**

(5) Section 201(5)—

**Repeal****“211”****Substitute****“101E, 101V, 211”.****35. Section 202 amended (requirement to transfer records upon revocation or suspension of licence or registration)**

Section 202(1)—

**Repeal****“this Part”****Substitute****“Division 2 or 3”.****36. Section 203 amended (permission to carry on business operations upon revocation or suspension of licence or registration)**

Section 203(1)—

**Repeal****“this Part”****Substitute****“Division 2 or 3”.****37. Part IX, Divisions 4 and 5 added**

Part IX, after Division 3—

**Add**

### **“Division 4—Disciplinary Action by Monetary Authority**

#### **203A. Disciplinary action by Monetary Authority**

- (1) If an authorized financial institution or an approved money broker contravenes an obligation, the Monetary Authority may exercise, in respect of a person who is subject to disciplinary action, one or more of the following powers as the Monetary Authority considers appropriate in the circumstances of the case—
  - (a) publicly or privately reprimand the person;
  - (b) prohibit the person, for a period, or until the occurrence of an event, specified by the Monetary Authority—
    - (i) from continuing to carry on the business of OTC derivative transactions, if at the time the power is exercised the person is carrying on that business; or
    - (ii) from carrying on the business of OTC derivative transactions, if at that time the person is not carrying on that business;
  - (c) order the person to pay a pecuniary penalty not exceeding the amount that is the greater of the following—
    - (i) \$10,000,000;
    - (ii) 3 times the amount of the profit gained, or loss avoided, by the person as a result of the contravention.
- (2) The exercise of the disciplinary power—
  - (a) under subsection (1)(a) and (b) is subject to section 203B; and

- (b) under subsection (1)(c) is subject to sections 203B and 203C.
- (3) If the Monetary Authority exercises a disciplinary power, the Monetary Authority may disclose to the public details of the decision including the reasons for it and any material facts relating to the case.
- (4) The Monetary Authority may, in reaching a decision to exercise a disciplinary power, have regard to any information or material in the Monetary Authority's possession that is relevant to the decision, regardless of how it came into the Monetary Authority's possession.
- (5) For the purposes of subsection (1), the persons who are subject to disciplinary action are—
  - (a) a person that is, or was, an authorized financial institution at the time of a contravention;
  - (b) in relation to a contravention by a person referred to in paragraph (a), a person who is, or was, involved in the management of the business of OTC derivative transactions of the authorized financial institution at the time of the contravention;
  - (c) a person that is, or was, an approved money broker at the time of a contravention; and
  - (d) in relation to a contravention by a person referred to in paragraph (c), a person who is, or was, involved in the management of the business of OTC derivative transactions of the approved money broker at the time of the contravention.
- (6) In this section—  
**contravention** (違責) means a contravention of an obligation;

*obligation* (責任) means the reporting obligation, clearing obligation or trading obligation.

## **Division 5—Miscellaneous Provisions Relating to Division 4**

### **203B. Procedural requirements for exercise of disciplinary powers**

- (1) The Monetary Authority must not exercise a disciplinary power without first giving the person who is proposed to be disciplined a reasonable opportunity of being heard.
- (2) If the Monetary Authority decides to exercise a disciplinary power, the Monetary Authority must inform the person who is to be disciplined of the decision by a written notice.
- (3) The notice must state—
  - (a) the reasons for the decision;
  - (b) when the decision is to take effect;
  - (c) in relation to a decision to reprimand, the terms in which the person is to be reprimanded;
  - (d) in relation to a decision to prohibit a person from continuing to carry on, or carrying on, the business of OTC derivative transactions, the duration and other terms of the prohibition; and
  - (e) in relation to a decision to impose a pecuniary penalty—
    - (i) the amount of the penalty; and
    - (ii) the period after the decision has taken effect as a specified decision under section 232 within which it is required to be paid.

### **203C. Guidelines for performance of functions under section 203A(1)(c)**

- (1) The Monetary Authority must publish guidelines indicating the manner in which the Monetary Authority proposes to exercise the disciplinary power to order a pecuniary penalty.
- (2) The guidelines must be published—
  - (a) in the Gazette; and
  - (b) in any other manner that the Monetary Authority considers appropriate.
- (3) Without limiting subsection (1), guidelines published under subsection (2)—
  - (a) may include any factor that the Monetary Authority considers relevant to the exercise of the disciplinary power to order a pecuniary penalty; and
  - (b) must include the following as factors that the Monetary Authority must take into account when exercising that power—
    - (i) whether the conduct of the person in respect of whom the power is being exercised was intentional, reckless or negligent;
    - (ii) whether the conduct of that person damaged the integrity of the securities and futures market or was potentially damaging or detrimental to the integrity of the securities and futures market or the financial stability of Hong Kong;
    - (iii) whether the conduct of that person caused loss to, or imposed costs on, any other person;

- (iv) whether the conduct of that person resulted in a benefit to that person or any other person.

(4) The Monetary Authority—

- (a) may exercise the disciplinary power to order a pecuniary penalty only after guidelines have been published; and
  - (b) must have regard to the published guidelines when exercising a disciplinary power to order a pecuniary penalty.
- (5) The Monetary Authority may amend any guideline published under this section in a manner consistent with the power to publish guidelines and the other provisions of this section apply to any such amendment as they apply to the guideline.
- (6) A failure on the part of a person to comply with a guideline does not by itself render that person liable to any judicial or other proceedings, but in any proceedings under this Ordinance before a court—
- (a) the guideline is admissible in evidence; and
  - (b) if any guideline appears to the court to be relevant to a question arising in any proceedings, it must be taken into account in determining that question.
- (7) Guidelines published under this section are not subsidiary legislation.
- (8) A reference to a guideline is a reference to that guideline as amended from time to time under this section.

**203D. General provisions relating to exercise of powers under Division 4**

- (1) If the Monetary Authority is contemplating the exercise of a disciplinary power, the Monetary Authority may, if

the Monetary Authority considers it appropriate to do so in the interests of the investing public or in the public interest, with the agreement of the person proposed to be disciplined—

- (a) exercise a disciplinary power (not necessarily the disciplinary power that was contemplated); and
  - (b) take any other action the Monetary Authority considers appropriate in the circumstances of the case (*additional action*).
- (2) If the Monetary Authority exercises a disciplinary power or takes any additional action under subsection (1), the Monetary Authority—
- (a) must comply with section 203B(2) and (3) as if section 203B(2) and (3) applied, with necessary modifications, to the taking of additional action; and
  - (b) subject to the agreement of the person proposed to be disciplined, is not obliged to comply with section 203B(1).
- (3) Nothing in this Division or Division 4 affects the power of the Court of First Instance to make an order or exercise any other power under or pursuant to section 101F, 101V or 203F.

**203E. Recovery and payment of pecuniary penalty**

- (1) If a person is ordered to pay a pecuniary penalty in the exercise of a disciplinary power, the person must pay it to the Monetary Authority within—
- (a) 30 days after the order has taken effect as a specified decision under section 232; or

- (b) a longer period specified in the notice referred to in section 203B(2), after the order has taken effect as a specified decision under section 232.
- (2) The Court of First Instance may, on an application made by the Monetary Authority, register the order in the Court of First Instance.
- (3) An application under subsection (2) must be made by producing to the Registrar of the High Court a notice in writing requesting that the order be registered, together with the order and a copy of the order.
- (4) On registration, the order is to be regarded for all purposes as an order of the Court of First Instance made within its civil jurisdiction for the payment of money.
- (5) The Monetary Authority must pay a pecuniary penalty paid to or recovered by the Monetary Authority under an order made under this section into the general revenue.

**203F. Application to Court of First Instance relating to non-compliance with prohibition under section 203A**

- (1) If a person fails to comply with a prohibition in force in respect of the person as a result of the exercise of a power under section 203A(1)(b), the Monetary Authority may, by originating summons, make an application to the Court of First Instance in respect of the failure.
- (2) The Court of First Instance may inquire into the case and if satisfied that—
  - (a) there is no reasonable excuse for the person not to comply with the prohibition, order the person to comply with the prohibition within the period specified by the Court; and

- (b) the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if the person and, if applicable, the other person, had been guilty of contempt of court.
- (3) If there is a reasonable likelihood that a person will fail to comply with a prohibition in force in respect of the person as a result of the exercise of a power under section 203A(1)(b), the Monetary Authority may, by originating summons, apply to the Court of First Instance for an order that—
  - (a) the person take such action or refrain from taking such action as the Court directs; and
  - (b) any other person whom the Court is satisfied is able to procure the person to comply with the prohibition, take such action or refrain from taking such action as the Court directs.
- (4) An originating summons under this section must be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A)."

**38. Part XVI, Division 1 heading amended (secrecy, conflict of interests, and immunity)**

Part XVI, Division 1, heading, after "Secrecy"—

**Add**

**"(general)".**

**39. Section 378 amended (preservation of secrecy, etc.)**

- (1) Section 378(1)—

**Repeal**

**"Except"**

**Substitute**

“Subject to subsection (13A), except”.

- (2) Section 378(2)(b)—

**Repeal**

“laws of Hong Kong”

**Substitute**

“relevant provisions or otherwise”.

- (3) Section 378(11)—

**Repeal**

everything from “at the time of disclosure” to “he commits”

**Substitute**

“at the time of disclosure—

- (a) in the case of a contravention of subsection (7), the person knew or ought reasonably to have known that the information was previously disclosed to the person or to 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)), unless the person proves that the person had reasonable grounds to believe that subsection (7)(i), (ii), (iii), (iv) or (v) applied to the disclosure of the information by the person; or
- (b) in the case of a contravention of subsection (8), the person knew or ought reasonably to have known that the information was previously disclosed to the person or an auditor (as the case may be) in the circumstances described in subsection (4)(b), unless the person proves that the person had reasonable grounds to believe that subsection

(8)(i), (ii), (iii), (iv), (v) or (vi) applied to the disclosure of the information by the person, the person commits”.

- (4) After section 378(13)—

**Add**

“(13A) This section does not apply to a person referred to in section 381A(1) in respect of—

- (a) a matter that comes to the person’s knowledge—
  - (i) because of a reason referred to in section 381A(2)(a)(i); or
  - (ii) as described in section 381A(2)(a)(ii) or (iii); or
- (b) a record or document that is in the person’s possession because of a reason referred to in section 381A(2)(c)(i), (ii) or (iii).”.

**40. Part XVI, Division 1A added**

Part XVI, after Division 1—

**Add**

**“Division 1A—Secrecy, etc. Relating to Monetary Authority’s Functions under Specified Provisions**

**381A. Preservation of secrecy**

- (1) This section applies to—
  - (a) the Monetary Authority and a person who was the Monetary Authority; and
  - (b) a person who is or was—
    - (i) a consultant, agent or adviser of the Monetary Authority;

- (ii) a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66);
  - (iii) a person appointed by the Monetary Authority under a specified provision; or
  - (iv) a person assisting the Monetary Authority in the performance of a function under a specified provision or in carrying into effect a specified provision.
- (2) Except in the performance of a function under a specified provision, or for the purpose of carrying into effect or doing anything required or authorized under a specified provision, a person to whom this section applies—
- (a) must preserve and aid in preserving secrecy with regard to any matter that comes to the person's knowledge—
    - (i) because of the person's appointment under a specified provision;
    - (ii) in the performance of a function under a specified provision or in carrying into effect a specified provision; or
    - (iii) in the course of assisting another person in the performance of a function under a specified provision or in carrying into effect a specified provision;
  - (b) must not communicate any matter referred to in paragraph (a) to another person; and
  - (c) must not suffer or permit another person to have access to any record or document that is in the person's possession because of—

- (i) the person's appointment under a specified provision;
  - (ii) the performance of a function under a specified provision or the carrying into effect of a specified provision; or
  - (iii) the assistance to the other person in the performance of a function under a specified provision or in carrying into effect a specified provision.
- (3) Subsection (2) does not apply to disclosure of information that has already been made available to the public.
- (4) Subsection (2) does not apply to disclosure of information—
- (a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings in Hong Kong;
  - (b) with a view to the commencement of, or otherwise for the purposes of, an investigation carried out in Hong Kong under a specified provision or otherwise;
  - (c) 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 a matter arising under a specified provision;
  - (d) in connection with any judicial or other proceedings to which the person is a party;
  - (e) in accordance with an order of a court, or in accordance with a law or a requirement made under a law;

- (f) to a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66), if the disclosure will enable or assist the person to assist the Monetary Authority in performing a function referred to in that section; or
  - (g) 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 that Ordinance.
- (5) A person who contravenes subsection (2) 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.
- (6) In this section—
- information** (資料) means a matter referred to in subsection (2)(a) or a record or document referred to in subsection (2)(c).

### 381B. Disclosure by Monetary Authority

- (1) Despite section 381A(2), the Monetary Authority may disclose information—
- (a) in the performance of a function under, or for the purpose of carrying into effect or doing anything required or authorized under, any Ordinance (other than this Ordinance);
  - (b) to a person who is a liquidator appointed under the Companies Ordinance (Cap. 32);
  - (c) to the Securities and Futures Appeals Tribunal;

- (d) to the Market Misconduct Tribunal;
  - (e) to the Banking Review Tribunal established under section 101A of the Banking Ordinance (Cap. 155);
  - (f) to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal established under section 55 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615); or
  - (g) for the purpose of enabling or assisting the Monetary Authority to perform the Monetary Authority's functions under a specified provision, to an auditor or a former auditor of—
    - (i) an authorized financial institution or a former authorized financial institution; or
    - (ii) an approved money broker or a former approved money broker.
- (2) Despite section 381A(2), the Monetary Authority may disclose information obtained by an MA investigator under section 184B to—
- (a) the Financial Secretary; or
  - (b) the Secretary for Justice.
- (3) Despite section 381A(2), but subject to section 381E(1), the Monetary Authority may disclose to the Commission—
- (a) information relating to a person other than an authorized financial institution or an approved money broker; and
  - (b) information relating to an authorized financial institution or an approved money broker if the Monetary Authority is of the opinion that—

- (i) it is desirable or expedient that the information should be disclosed to the Commission in the interests of the investing public or in the public interest; or
  - (ii) the disclosure will enable or assist the Commission to perform its functions and it is not contrary to the interests of the investing public or to the public interest.
- (4) Despite section 381A(2), the Monetary Authority may disclose information in the form of a summary compiled from any information in the Monetary Authority's possession, including information provided by a person under a specified provision, 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.
- (5) Despite section 381A(2), the Monetary Authority may disclose information with the consent of the person from whom the information was obtained or received, and if the information relates to a different person, with the consent also of that person.
- (6) The Monetary Authority may, in disclosing information under this section, impose any condition that the Monetary Authority considers appropriate.
- (7) In this section—  
**information** (資料) means a matter referred to in section 381A(2)(a) or a record or document referred to in section 381A(2)(c).

**381C. Disclosure if Monetary Authority considers condition satisfied**

- (1) Despite section 381A(2), if in the opinion of the Monetary Authority, the condition in subsection (3) is satisfied, the Monetary Authority may disclose information—
  - (a) to the Chief Executive;
  - (b) to the Financial Secretary;
  - (c) to the Secretary for Justice;
  - (d) to the Commissioner of Police;
  - (e) to the Commissioner of the Independent Commission Against Corruption;
  - (f) to the Insurance Authority;
  - (g) to the Registrar of Companies;
  - (h) to the Official Receiver;
  - (i) to the Mandatory Provident Fund Schemes Authority;
  - (j) to the Privacy Commissioner for Personal Data;
  - (k) to the Ombudsman;
  - (l) to a public officer authorized under subsection (8);
  - (m) to the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (Cap. 588);
  - (n) to an inspector appointed by the Financial Secretary to investigate the affairs of a corporation;
  - (o) to a recognized exchange company;
  - (p) to a recognized clearing house;
  - (q) to a recognized exchange controller;

- (r) to a recognized investor compensation company;
  - (s) to a person authorized under section 95(2) to provide authorized automated trading services; or
  - (t) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the performance of professional duties by an auditor or a former auditor of an authorized financial institution or a former authorized financial institution.
- (2) Despite section 381A(2), if in the opinion of the Monetary Authority, the condition in subsection (3) is satisfied, the Monetary Authority may also disclose information to—
- (a) an authority or regulatory organization outside Hong Kong which, in the opinion of the Monetary Authority, satisfies the requirements referred to in subsection (4); or
  - (b) a companies inspector outside Hong Kong who, in the opinion of the Monetary Authority, satisfies the requirements referred to in subsection (5).
- (3) The condition referred to in subsections (1) and (2) is that—
- (a) it is desirable or expedient that the information should be disclosed in the interests of the investing public or in the public interest; or
  - (b) the disclosure of the information will enable or assist the recipient of the information to perform the recipient's functions and it is not contrary to the interests of the investing public or to the public interest.

- (4) The requirements referred to in subsection (2)(a) are that the authority or regulatory organization outside Hong Kong—
- (a) performs functions similar to the functions of the Monetary Authority or regulates, supervises or investigates banking, insurance or other financial services; and
  - (b) is subject to adequate secrecy provisions.
- (5) The requirements referred to in subsection (2)(b) are that the companies inspector outside Hong Kong—
- (a) performs functions similar to the functions of the Registrar of Companies or regulates, supervises or investigates the affairs of corporations; and
  - (b) is subject to adequate secrecy provisions.
- (6) If the Monetary Authority is satisfied of the matters referred to in subsection (4)(a) and (b) or (5)(a) and (b), the Monetary Authority must, as soon as reasonably practicable after being so satisfied, publish in the Gazette, the name of the authority, regulatory organization or companies inspector.
- (7) The Monetary Authority may, in disclosing information under this section, impose any condition that the Monetary Authority considers appropriate.
- (8) The Financial Secretary may authorize a public officer as a person to whom information may be disclosed under subsection (1)(l).
- (9) A matter published under subsection (6) is not subsidiary legislation.
- (10) In this section—

*companies inspector* (公司審查員), in relation to a place outside Hong Kong, has the meaning given by section 378(15);

*information* (資料) has the meaning given by section 381B(7).

**381D. Restrictions on disclosure by persons to whom information is disclosed**

(1) If information is disclosed pursuant to section 381A(2) or in any of the circumstances described in section 381A(4), 381B(1) or (2) or 381C(1), unless subsection (2) applies—

- (a) the person to whom the information is disclosed; and
- (b) any other person obtaining or receiving the information from the person to whom the information is disclosed, either directly or indirectly,

must not disclose the information or any part of it to any other person.

(2) Information disclosed as described in subsection (1) may be disclosed to any other person if—

- (a) the Monetary Authority consents to the disclosure;
- (b) the information has already been made available to the public;
- (c) the disclosure is of a part that has already been made available to the public;
- (d) 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 a matter arising under a specified provision;

- (e) the disclosure is in connection with any judicial or other proceedings to which the person or other person referred to in subsection (1)(a) or (b) is a party; or
- (f) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law.

(3) The Monetary Authority may, in giving any consent under subsection (2)(a), impose any condition that the Monetary Authority considers appropriate.

(4) A person referred to in subsection (1)(a) to whom information is disclosed commits an offence if the person—

- (a) discloses information in contravention of that subsection; and
- (b) at the time of the disclosure knew or ought reasonably to have known that the information was previously disclosed to the person pursuant to section 381A(2) or in any of the circumstances described in section 381A(4), 381B(1) or (2) or 381C(1),

unless the person proves that the person had reasonable grounds to believe that subsection (2) applied to the disclosure by the person.

(5) A person referred to in subsection (1)(b) who obtains or receives information commits an offence if the person—

- (a) discloses information in contravention of that subsection; and

- (b) at the time of the disclosure knew or ought reasonably to have known that the information was previously disclosed to the person referred to in subsection (1)(a) under section 381A(2) or in any of the circumstances described in section 381A(4), 381B(1) or (2) or 381C(1),

unless the person proves that the person had reasonable grounds to believe that subsection (2) applied to the disclosure by the person.

- (6) A person who commits an offence under subsection (4) or (5) 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.
- (7) To avoid doubt—
- (a) this section does not apply to information disclosed to the Commission under this Division; and
  - (b) section 378 applies to information disclosed to the Commission under this Division.
- (8) In this section—

**information** (資料) has the meaning given by section 381B(7).

### 381E. Certain information to be given to Commission

- (1) Despite section 381A(2), if requested by the Commission, the Monetary Authority must give to the Commission any information received or obtained by the Monetary Authority that relates to—
- (a) an OTC derivative transaction that is reported (whether directly or indirectly) under section

101B(1) by a prescribed person that is not an authorized financial institution or an approved money broker;

- (b) an OTC derivative transaction that—
  - (i) is reported (whether directly or indirectly) under section 101B(1) or (3) by an authorized financial institution or an approved money broker; and
  - (ii) is a transaction to which a prescribed person other than an authorized financial institution or an approved money broker is a counterparty; or
- (c) an OTC derivative transaction that is reported (whether directly or indirectly) under section 101B(1) or (3) by an authorized financial institution or an approved money broker and is a transaction—
  - (i) in an OTC derivative product of which the underlying subject matter includes securities, futures contracts, indices of securities or futures contracts or any combination of those; or
  - (ii) in an OTC derivative product that falls within subsection (1)(a)(iii) of section 1A of Part 1 of Schedule 1 and the underlying subject matter is a credit event.

- (2) In this section—

**credit event** (信用事件), in relation to a transaction in an OTC derivative product that—

- (a) falls within subsection (1)(a)(iii) of section 1A of Part 1 of Schedule 1; and

(b) transfers credit risk in relation to a reference obligation from one party to the other party,

means an event, which, if it occurs, obliges one party to make payment to the other party;

**credit risk** (信用風險) means the risk of loss from default by a party in a contract of indebtedness;

**reference obligation** (參照義務), in relation to an OTC derivative transaction, means the obligation specified in the transaction of an entity specified in the transaction, pursuant to which the basis for the settlement of the transaction is determined.

**381F. Disclosure of information to overseas persons with similar functions**

- (1) Despite section 381A(2), the Monetary Authority may disclose information received or obtained by the Monetary Authority because of the reporting obligation to a person in a place outside Hong Kong (**overseas person**) who, in the opinion of the Monetary Authority, satisfies the requirements specified in subsection (2).
- (2) The requirements are that the overseas person—
  - (a) performs a function similar to that of the Monetary Authority in collecting and maintaining records for the purposes of the reporting obligation;
  - (b) is subject to adequate regulation and supervision (including adequate requirements to preserve secrecy) under the law of the place in which the overseas person operates; and
  - (c) operates in accordance with international standards that are acceptable to the Monetary Authority.

(3) When disclosing any information to an overseas person, the Monetary Authority may consent to the information being disclosed by the overseas person to any other person subject to conditions imposed by the Monetary Authority.

(4) If the Monetary Authority is satisfied of the matters referred to in subsection (2) regarding an overseas person, the Monetary Authority must, as soon as practicable, publish in the Gazette the name of the overseas person.”.

**41. Section 385A added**

After section 385—

**Add**

**“385A. Power of Monetary Authority to intervene in proceedings**

- (1) The Monetary Authority may, after consultation with the Financial Secretary, make an application to intervene in and be heard in any judicial or other proceedings, other than criminal proceedings, if—
  - (a) the proceedings concern a matter provided for in a specified provision or the Monetary Authority has an interest in the proceedings because of the Monetary Authority’s functions under a specified provision; and
  - (b) the Monetary Authority is satisfied that it is in the public interest for the Monetary Authority to intervene in and be heard in the proceedings.
- (2) The following applies in respect of an application made for the purposes of subsection (1)—

- (a) the application must be made to the court hearing the proceedings or which otherwise has jurisdiction to hear the proceedings;
  - (b) the application must—
    - (i) be made in writing; and
    - (ii) be supported by an affidavit showing that the conditions set out in subsection (1)(a) and (b) are satisfied; and
  - (c) a copy of the application must be served on each party to the proceedings as soon as reasonably practicable after the application is made.
- (3) The court to which the application is made—
- (a) may by order—
    - (i) allow the application subject to any terms that it considers just; or
    - (ii) refuse the application; and
  - (b) may not make an order under paragraph (a) without first giving the Monetary Authority, and each party to the proceedings, a reasonable opportunity of being heard.
- (4) If the application is allowed, the Monetary Authority, subject to the terms referred to in subsection (3)(a)(i)—
- (a) may intervene in and be heard in the proceedings;
  - (b) is to be regarded for all purposes as a party to the proceedings; and
  - (c) has all the rights, duties and liabilities of a party to the proceedings.
- (5) This section does not affect Order 15, rule 6 of the Rules of the High Court (Cap. 4 sub. leg. A).

- (6) In this section—
- court** (法院) includes a magistrate and a tribunal other than the Market Misconduct Tribunal and the Securities and Futures Appeals Tribunal.”.

**42. Section 388 amended (prosecution of certain offences by Commission)**

After section 388(3)—

**Add**

- “(4) This section does not apply to an offence referred to in section 388A(1) or conspiracy to commit such an offence.”.

**43. Section 388A added**

After section 388—

**Add**

**“388A. Prosecution of offences by Monetary Authority**

- (1) This section applies to an offence committed—
- (a) under section 184D;
  - (b) under section 191(6) in relation to the execution of a warrant issued on information on oath laid by an MA investigator; or
  - (c) under section 381D.
- (2) The Monetary Authority may prosecute an offence to which this section applies or an offence of conspiracy to commit such an offence, in the name of the Monetary Authority.

- (3) Any offence prosecuted under subsection (2) must be tried before a magistrate as an offence that is triable summarily.
- (4) For prosecuting an offence referred to in subsection (1) or (2) only, a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66), even if he or she is not qualified to practise as a barrister or to act as a solicitor under the Legal Practitioners Ordinance (Cap. 159)—
  - (a) may appear and plead before a magistrate in any case of which that person has charge; and
  - (b) has, in relation to the prosecution, all the other rights of a person qualified to practise as a barrister or to act as a solicitor under that Ordinance.
- (5) This section does not derogate from the powers of the Secretary for Justice in respect of the prosecution of criminal offences.”.

**44. Section 389 amended (limitation on commencement of proceedings)**

Section 389(2), after “388(1)”—

**Add**

“or 388A(3)”.

**45. Section 392 amended (Financial Secretary to prescribe interests, etc. as securities, etc.)**

(1) Section 392(1)(a)(v)—

**Repeal**

“; or”

**Substitute a semicolon.**

(2) After section 392(1)(a)(vi)—

**Add**

“(vii) OTC derivative products; or”.

(3) Section 392(1)(b)(v)—

**Repeal**

“or”.

(4) Section 392(1)(b)(vi)—

**Repeal the full stop**

**Substitute**

“; or”.

(5) After section 392(1)(b)(vi)—

**Add**

“(vii) OTC derivative products.”.

(6) Section 392(2)(e)—

**Repeal**

“; or”

**Substitute a semicolon.**

(7) Section 392(2)(f)—

**Repeal the full stop**

**Substitute**

“; or”.

(8) After section 392(2)(f)—

**Add**

“(g) OTC derivative products.”.

**46. Section 392A added**

After section 392—

**Add****“392A. Financial Secretary to prescribe markets, instruments etc.**

The Financial Secretary may, by notice published in the Gazette, prescribe—

- (a) any stock market, futures market, or clearing house for the purpose of section 1B(2)(c) of Part 1 of Schedule 1; or
- (b) any type of instrument for the purpose of section 1B(2)(f)(i) of Part 1 of Schedule 1.”.

**47. Section 398 amended (general provisions for rules by Commission)**

Section 398(4)—

**Repeal**

“provision of this Ordinance”

**Substitute**

“provision of this Ordinance, other than a provision that requires the consent of the Monetary Authority.”.

**48. Section 399 amended (codes or guidelines by Commission)**

- (1) Section 399(5)—

**Repeal**

“section in”

**Substitute**

“section or any other provision of this Ordinance in”.

- (2) Section 399(5)—

**Repeal**

“guideline under this section”

**Substitute**

“guideline under this section or that other provision”.

- (3) Section 399(5)(a)—

**Repeal**

“provisions of this section”

**Substitute**

“provisions of this section or the provision concerned”.

- (4) Section 399(6), after “section”—

**Add**

“or any other provision of this Ordinance”.

- (5) Section 399(7), after “section”—

**Add**

“or any other provision of this Ordinance”.

**49. Section 407 amended (savings, transitional, consequential and related provisions, etc.)**

At the end of section 407—

**Add**

- “(6) Schedule 11 provides for the savings and transitional arrangements that apply on, or relate to, the commencement of the Securities and Futures (Amendment) Ordinance 2013 ( of 2013) or any part of that Ordinance.”.

**50. Section 408 amended (provisions of Part XVII, etc. not to derogate from section 23 of Interpretation and General Clauses Ordinance)**

- (1) Section 408—

**Repeal**

“or Schedule 10”

**Substitute**

“or Schedule 10 or 11”.

- (2) Section 408—

**Repeal**

“of Schedule 10”

**Substitute**

“of Schedules 10 and 11”.

**51. Section 409 amended (amendment of Schedule 10)**

- (1) Section 409, heading—

**Repeal**

“Schedule 10”

**Substitute**

“Schedules 10 and 11”.

- (2) Section 409—

**Repeal**

“Schedule 10”

**Substitute**

“Schedules 10 and 11”.

**52. Schedule 1 amended (interpretation and general provisions)**

- (1) Schedule 1—

**Repeal**

“[ss. 2, 19, 66, 102, 164, 171, 174, 175, 202”

**Substitute**

“[ss. 2, 19, 66, 101A, 102, 164, 171, 174, 175, 202, 381E, 392A”.

- (2) Schedule 1, Part 1, section 1—

**Repeal the definition of *market contract***

**Substitute**

“*market contract* (市場合約) means—

- (a) a contract that is subject to the rules of a recognized clearing house, entered into by the clearing house with a clearing participant pursuant to a novation—
  - (i) that is in accordance with those rules; and
  - (ii) which is for the purpose of the clearing and settlement of a transaction in securities and futures contracts effected on a recognized stock market or a recognized futures market or which is subject to the rules of a recognized exchange company; or
- (b) an OTC derivative transaction cleared through—
  - (i) a recognized clearing house; or
  - (ii) a designated CCP (as defined by section 101A of this Ordinance) that is a provider of authorized automated trading services and specified by the Commission by notice published in the Gazette under section 1C;”.

- (3) Schedule 1, Part 1, section 1—

**Add in alphabetical order**

“*advising on OTC derivative products* (就場外衍生工具產品提供意見) has the meaning given by Part 2 of Schedule 5;

- approved money broker** (核准貨幣經紀) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155);
- clearing obligation** (結算責任) has the meaning given by section 101A of this Ordinance;
- dealing in OTC derivative products** (場外衍生工具產品交易) has the meaning given by Part 2 of Schedule 5;
- MA investigator** (金管局調查員) has the meaning given by section 178 of this Ordinance;
- OTC derivative product** (場外衍生工具產品) has the meaning given by section 1B;
- OTC derivative transaction** (場外衍生工具交易) means a transaction in an OTC derivative product;
- prescribed person** (訂明人士) has the meaning given by section 101A of this Ordinance;
- providing clearing agency services for OTC derivative transactions** (為場外衍生工具交易提供結算代理人服務) has the meaning given by Part 2 of Schedule 5;
- registered SIP** (已登記系統重要參與者) has the meaning given by section 101A of this Ordinance;
- reporting obligation** (匯報責任) has the meaning given by section 101A of this Ordinance;
- SIP register** (系統重要參與者登記冊) has the meaning given by section 101A of this Ordinance;
- specified provision** (指明條文) means each of the following—
- (a) Part IIIA of this Ordinance and subsidiary legislation made under it;
  - (b) Division 3A of Part VIII of this Ordinance;

- (c) sections 185, 187, 190 and 191 of this Ordinance to the extent to which they relate to an investigation of any matter under section 184A of this Ordinance;
  - (d) sections 186A, 385A and 388A of this Ordinance;
  - (e) Divisions 4 and 5 of Part IX of this Ordinance;
  - (f) Division 1A of Part XVI of this Ordinance;
- trading obligation** (交易責任) has the meaning given by section 101A of this Ordinance;”.
- (4) Schedule 1, Part 1, after section 1A—
- Add**
- “1B. Meaning of OTC derivative product**
- (1) In this Ordinance, subject to subsections (2) and (3)—  
**OTC derivative product** (場外衍生工具產品) means a structured product.
  - (2) An **OTC derivative product** does not include—
    - (a) securities that are traded on a recognized stock market;
    - (b) a futures contract that is traded on a recognized futures market;
    - (c) a securities or futures contract that is—
      - (i) traded on a stock market or futures market prescribed under section 392A of this Ordinance; and
      - (ii) cleared through a clearing house prescribed under that section;
    - (d) a structured product that is offered to the public, the issue of any advertisement, invitation or

- document relating to which is authorized under section 105(1) of this Ordinance;
- (e) a structured product in the form of debt security the payment under which is derived from cash flows generated by an underlying pool of assets;
  - (f) an instrument that—
    - (i) is in the form of shares, stocks, debentures, loan stocks, funds, bonds, notes, deposits or certificates of deposits or in the form of any other type of instrument prescribed under section 392A of this Ordinance; and
    - (ii) has an embedded feature that makes it a structured product;
  - (g) a spot contract;
  - (h) a structured product that is offered—
    - (i) within an offer period that is not more than 2 weeks; and
    - (ii) to multiple persons on identical terms, other than the consideration to be paid for the product; or
  - (i) a structured product, or a structured product of a class or description, prescribed under section 392(1)(b)(vii) of this Ordinance as a product that is not to be regarded as an OTC derivative product in accordance with the notice.
- (3) An OTC derivative product also includes a product prescribed by notice under section 392(1)(a)(vii) of this Ordinance as a product that is to be regarded as an OTC derivative product in accordance with the notice.
- (4) In this section—

**spot contract** (現貨合約) means a contract for the sale of any type or combination of types of securities, commodity, index, property, interest rate or currency exchange rate under the terms of which the settlement of the contract is scheduled to be made within the longest of the following periods—

- (a) if the contract is—
  - (i) entered into in Hong Kong, 2 business days after the date of entering into the contract; or
  - (ii) settled outside Hong Kong, 2 days on which each settlement facility necessary to settle the transaction is open for business, after the date of entering into the contract;
- (b) the period generally accepted in the market for that type or combination of types of securities, commodity, index, property, interest rate or currency exchange rate as the standard delivery period.”.

- (5) Schedule 1, Part 1, before section 2—

**Add**

**“1C. Specification of designated CCPs**

- (1) The Commission may, by notice published in the Gazette, specify a designated CCP (as defined by section 101A of this Ordinance) for the purposes of paragraph (b)(ii) of the definition of **market contract** in section 1.
- (2) A notice published under subsection (1) is not subsidiary legislation.”.

**53. Schedule 5 amended (regulated activities)**

- (1) Schedule 5, Part 1, entry relating to Type 10—

**Repeal the full stop****Substitute a semicolon.**

- (2) Schedule 5, Part 1, after entry relating to Type 10—

**Add**

“Type 11 : dealing in OTC derivative products or advising on OTC derivative products;

Type 12 : providing clearing agency services for OTC derivative transactions.”.

- (3) Schedule 5, Part 2, definition of
- advising on futures contracts*
- , after paragraph (ii)—

**Add**

“(iia) a person who is licensed for Type 11 regulated activity, if the giving of the advice, or the issuing of the analyses or reports, by the person constitutes advising on OTC derivative products;”.

- (4) Schedule 5, Part 2, definition of
- advising on futures contracts*
- , paragraph (iva)(B), after “person”—

**Add**

“that the person is permitted to provide under that licence or registration”.

- (5) Schedule 5, Part 2, definition of
- advising on securities*
- , after paragraph (ii)—

**Add**

“(iia) a person who is licensed for Type 11 regulated activity, if the giving of the advice, or the issuing of the analyses or reports, by the person constitutes advising on OTC derivative products;”.

- (6) Schedule 5, Part 2, definition of
- advising on securities*
- , paragraph (iva)(B), after “person”—

**Add**

“that the person is permitted to provide under that licence or registration”.

- (7) Schedule 5, Part 2, definition of
- asset management*
- 

- (a) paragraph (a)—

**Repeal**

“; or”

**Substitute a semicolon;**

- (b) paragraph (b)—

**Repeal the semicolon****Substitute**

“; or”;

- (c) after paragraph (b)—

**Add**

“(c) OTC derivative products management;”.

- (8) Schedule 5, Part 2, definition of
- automated trading services*
- , after paragraph (a)—

**Add**

“(ab) offers to enter into OTC derivative transactions are regularly made or accepted in a way that forms or results in a binding transaction in accordance with established methods;”.

- (9) Schedule 5, Part 2, definition of
- automated trading services*
- , paragraph (b)—

**Repeal**

“; or”

**Substitute a semicolon.**

- (10) Schedule 5, Part 2, definition of *automated trading services*, after paragraph (b)—

**Add**

“(ba) persons are regularly introduced, or identified to other persons—

- (i) in order that they may negotiate or conclude OTC derivative transactions in a way that forms or results in a binding transaction in accordance with established methods; or
- (ii) with the reasonable expectation that they will negotiate or conclude OTC derivative transactions in such a way;”.

- (11) Schedule 5, Part 2, definition of *automated trading services*, paragraph (c)—

**Repeal**

“guaranteed,”

**Substitute**

“guaranteed; or”.

- (12) Schedule 5, Part 2, definition of *automated trading services*, after paragraph (c)—

**Add**

“(d) transactions—

- (i) referred to in paragraph (ab); or
  - (ii) resulting from the activities referred to in paragraph (ba),
- may be novated, cleared, settled or guaranteed.”.

- (13) Schedule 5, Part 2, definition of *automated trading services*, after “Government”—

**Add**

“or any excluded services”.

- (14) Schedule 5, Part 2, definition of *dealing in futures contracts*, after paragraph (iii)—

**Add**

- “(iia) is licensed for Type 11 regulated activity and the act also constitutes dealing in OTC derivative products;
- (iib) is licensed for Type 12 regulated activity and the act is carried out wholly incidentally to the carrying on of that regulated activity;”.

- (15) Schedule 5, Part 2, definition of *dealing in securities*, after paragraph (iii)—

**Add**

- “(iia) is licensed for Type 11 regulated activity and the act also constitutes dealing in OTC derivative products;
- (iib) is licensed for Type 12 regulated activity and the act is carried out wholly incidentally to the carrying on of that regulated activity;”.

- (16) Schedule 5, Part 2, definition of *dealing in securities*, paragraph (xv)—

**Repeal**

“within the meaning of section 2(1) of the Banking Ordinance (Cap. 155)”.

- (17) Schedule 5, Part 2, definition of *leveraged foreign exchange trading*, after paragraph (i)—

**Add**

“(ia) by a person for the purpose of performing the person’s functions as a recognized clearing house;”.

- (18) Schedule 5, Part 2, definition of *leveraged foreign exchange trading*, paragraph (iv)—

**Repeal**

“within the meaning of section 2(1) of the Banking Ordinance (Cap. 155)”.

- (19) Schedule 5, Part 2, definition of *leveraged foreign exchange trading*, after paragraph (v)—

**Add**

“(va) if it is performed by a person who is licensed for Type 11 regulated activity and the act also constitutes dealing in OTC derivative products;”.

- (20) Schedule 5, Part 2, definition of *leveraged foreign exchange trading*, after paragraph (xi)—

**Add**

“(xia) that is an OTC derivative dealing act carried out by a person who is licensed for Type 12 regulated activity and is carried out wholly incidentally to the carrying on of that regulated activity;”.

- (21) Schedule 5, Part 2—

**Add in alphabetical order**

“*advising on OTC derivative products* (就場外衍生工具產品提供意見), subject to Part 2A, means—

- (a) giving advice on whether an OTC derivative transaction should be entered into, which transaction should be entered into, the time at which or the terms and conditions on which a transaction should be entered into; or
- (b) issuing analyses or reports, for the purpose of facilitating the recipients to make decisions on whether an OTC derivative transaction should be entered into, which transaction should be entered

into, the time at which or the terms and conditions on which a transaction should be entered into,

but does not include the giving of such advice that falls within the meaning of *advising on corporate finance or providing credit rating services*;

*dealing in OTC derivative products* (場外衍生工具產品交易), in relation to a person and subject to Part 2A, means—

- (a) entering into or offering to enter into an OTC derivative transaction;
- (b) inducing or attempting to induce another person to enter into or to offer to enter into an OTC derivative transaction;
- (c) entering into or offering to enter into an arrangement with another person, on a discretionary basis or otherwise, to facilitate an act referred to in paragraph (a) or (b); or
- (d) inducing or attempting to induce a person to enter into an arrangement with another person, on a discretionary basis or otherwise, to facilitate an act referred to in paragraph (a) or (b);

*excluded services* (豁除服務) means—

- (a) services for trading in OTC derivative products that do not fall within paragraph (a), (b) or (c) of the definition of *automated trading services* and which are provided—
  - (i) by an authorized financial institution or an approved money broker;
  - (ii) by means of electronic facilities; and
  - (iii) wholly incidentally in carrying out an act that would constitute dealing in OTC derivative

- products but for the exclusion under section 2(f) of Part 2A;
- (b) services for clearing OTC derivative products that—
- (i) also constitute Type 12 regulated activity; and
  - (ii) are provided by a person licensed for that regulated activity; and
- (c) services for clearing OTC derivative products that—
- (i) would constitute Type 12 regulated activity but for the exclusion under section 4(b) of Part 2A; and
  - (ii) are provided by an authorized financial institution or an approved money broker;

**OTC derivative advising act** (就場外衍生工具提供意見作為) means an act referred to in paragraph (a) or (b) of the definition of *advising on OTC derivative products*;

**OTC derivative dealing act** (場外衍生工具交易作為) means an act referred to in paragraph (a) or (b) of the definition of *dealing in OTC derivative products*;

**OTC derivative products management** (場外衍生工具產品管理) means providing the service of managing a portfolio of OTC derivative products for another person but does not include—

- (a) such a service provided by an authorized financial institution or an approved money broker wholly incidentally in carrying out an act that would constitute dealing in OTC derivative products but for the exclusion under section 2(f) of Part 2A;
- (b) such a service provided by a person who—

- (i) is licensed for Type 11 regulated activity; and
  - (ii) provides such service wholly incidentally in carrying on that regulated activity;
- (c) the provision of a service that would constitute securities or futures contracts management but for the exclusions under paragraphs (a), (b), (c), (d), (e), (f), (g) and (h) of the definition of *securities or futures contracts management*;

**providing clearing agency services for OTC derivative transactions** (為場外衍生工具交易提供結算代理人服務), in relation to a person and subject to Part 2A, means providing clearing and settlement services in respect of OTC derivative transactions—

- (a) through a central counterparty (whether located in Hong Kong or elsewhere);
- (b) directly as a member of the central counterparty or indirectly through another person that is such a member; and
- (c) on behalf of another person;”.

(22) Schedule 5, after Part 2—

**Add**

## “Part 2A

1. In Part 2, *advising on OTC derivative products* does not include the following—
  - (a) an act that falls within—
    - (i) Type 4 regulated activity, carried out by a person licensed to carry on that regulated activity; or

- (ii) Type 5 regulated activity, carried out by a person licensed to carry on that regulated activity;
- (b) an act that is excluded from the definition of *advising on futures contracts* in Part 2 under paragraph (ii) of that definition;
- (c) an act that is excluded from the definition of *advising on securities* in Part 2 under paragraph (ii) of that definition;
- (d) an OTC derivative advising act carried out in the ordinary course of business by—
  - (i) an authorized financial institution; or
  - (ii) an approved money broker;
- (e) an OTC derivative advising act carried out by a person licensed for Type 9 regulated activity who—
  - (i) provides a service of OTC derivative products management that the person is permitted to provide under that licence; and
  - (ii) carries out the act solely for the purpose of providing that service;
- (f) an OTC derivative advising act carried out by a person who—
  - (i) falls within a class prescribed by rules made under section 397 of this Ordinance for the purposes of this paragraph; or
  - (ii) carries on a type or description of business so prescribed;
- (g) an OTC derivative advising act carried out by a corporation, if the giving of the advice or issuing of

- the analyses or reports constituting the act is solely to—
  - (i) any of its wholly owned subsidiaries; or
  - (ii) a holding company that holds all its issued shares or to other wholly owned subsidiaries of that holding company;
- (h) an OTC derivative advising act carried out by—
  - (i) a solicitor, if carrying out that act is wholly incidental to his or her practice as a solicitor in a Hong Kong firm or foreign firm (both as defined by section 2(1) of the Legal Practitioners Ordinance (Cap. 159));
  - (ii) counsel, if carrying out that act is wholly incidental to his or her practice as counsel;
  - (iii) a certified public accountant, if carrying out that act is wholly incidental to his or her practice as a certified public accountant in a practice unit (as defined by section 2(1) of the Professional Accountants Ordinance (Cap. 50)); or
  - (iv) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29), if carrying out that act is wholly incidental to the discharge of its duties as such a trust company;
- (i) an OTC derivative advising act carried out by a person through—
  - (i) a newspaper, magazine, book or other publication that is made generally available to the public; or

- (ii) a television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise.
- 2. In Part 2, *dealing in OTC derivative products* does not include the following—
  - (a) an act that falls within—
    - (i) Type 1 regulated activity, carried out by a person licensed to carry on that regulated activity;
    - (ii) Type 2 regulated activity, carried out by a person licensed to carry on that regulated activity; or
    - (iii) Type 3 regulated activity, carried out by a person licensed to carry on that regulated activity;
  - (b) an act that is excluded from the definition of *dealing in securities* in Part 2 under paragraph (iv) or (xiii) of that definition;
  - (c) an act that is excluded from the definition of *dealing in futures contracts* in Part 2 under paragraph (ii) of that definition;
  - (d) an act that is excluded from the definition of *leveraged foreign exchange trading* in Part 2 under paragraph (i), (iii), (vii) or (xiv) of that definition;
  - (e) an act carried out by a person for the purpose of performing the person's functions as—
    - (i) a recognized clearing house;
    - (ii) a recognized exchange company; or

- (iii) a provider of automated trading services authorized under section 95(2) of this Ordinance;
- (f) an act carried out in the ordinary course of business by—
  - (i) an authorized financial institution; or
  - (ii) an approved money broker;
- (g) an OTC derivative dealing act carried out by a person who is a price taker;
- (h) an OTC derivative dealing act carried out by a person licensed for Type 9 regulated activity who—
  - (i) provides a service of managing a portfolio of OTC derivative products for another person that the person is permitted to provide under that licence; and
  - (ii) carries out the act solely for the purpose of providing that service;
- (i) an OTC derivative dealing act—
  - (i) carried out by a person who is licensed for Type 12 regulated activity; and
  - (ii) is carried out wholly incidentally to the carrying on of that regulated activity;
- (j) an act that constitutes entering into a market contract;
- (k) an act carried out by a person who—
  - (i) falls within a class prescribed by rules made under section 397 of this Ordinance for the purposes of this paragraph; or

- (ii) carries on a type or description of business so prescribed;
- (l) an OTC derivative dealing act carried out only on a market referred to in section 3(a), (b) or (c) of the Commodity Exchanges (Prohibition) Ordinance (Cap. 82);
- (m) an OTC derivative dealing act carried out by a person who—
  - (i) is a member of a commodity exchange referred to in section 3(d) of the Commodity Exchanges (Prohibition) Ordinance (Cap. 82); and
  - (ii) carries out the act only on an exchange referred to in subparagraph (i);
- (n) an OTC derivative dealing act that is carried out by a person (*first person*) through another person (*OTC derivative products dealer*) who is—
  - (i) licensed for Type 11 regulated activity;
  - (ii) an authorized financial institution;
  - (iii) an approved money broker;
  - (iv) an officer or employee of an authorized financial institution, acting in the person's capacity as such; or
  - (v) an officer or employee of an approved money broker, acting in the person's capacity as such,

except that the first person is to be regarded as dealing in OTC derivative products if that person, in return for a commission, rebate or other remuneration carries out an act set out in section 3.

3. The acts referred to in section 2(n) are that the first person (within the meaning of that section)—
  - (a) receives from a third person an offer or invitation to enter into an OTC derivative transaction, and communicates it, either in the first person's name or in the name of the third person to the OTC derivative products dealer (within the meaning of section 2(n));
  - (b) effects an introduction between the OTC derivative products dealer or that dealer's representative and a third person, so that the third person may enter into, or offer or invite to enter into, an OTC derivative transaction with the OTC derivative products dealer;
  - (c) effects the entering into an OTC derivative transaction by a third person through the OTC derivative products dealer;
  - (d) makes an offer for the OTC derivative products dealer to a third person to enter into an OTC derivative transaction; or
  - (e) accepts for the OTC derivative products dealer an offer by a third person to enter into an OTC derivative transaction.
4. In Part 2, *providing clearing agency services for OTC derivative transactions* does not include the following—
  - (a) an act carried out by a central counterparty, whether located in Hong Kong or elsewhere, for the purpose of performing the person's functions as a central counterparty;

- (b) an act carried out by an authorized financial institution or an approved money broker in the ordinary course of business;
- (c) an act of an acceptable participant of a central counterparty located in Hong Kong; or
- (d) an act of an agent, who does not handle client money or client assets, of such an acceptable participant.

## 5. In section 4—

**acceptable participant** (可接受參與者) means a person—

- (a) who does not have a place of business in Hong Kong;
- (b) who is, or has applied to become, a member of a central counterparty located in Hong Kong;
- (c) who does not market its services to persons in Hong Kong other than through an authorized financial institution or a licensed corporation; and
- (d) the provision by whom of clearing and settlement services (other than acts referred to in section 4) in respect of OTC derivative transactions or other similar transactions on behalf of another person and through a central counterparty (either directly as a member of the central counterparty or indirectly through another person that is such a member) is governed by legal or regulatory requirements of a comparable overseas jurisdiction;

**comparable overseas jurisdiction** (相若的海外司法管轄區) means a jurisdiction—

- (a) which the Commission is satisfied has legal or regulatory requirements comparable to those of

Hong Kong for regulating the provision of clearing and settlement services (other than acts referred to in section 4) in respect of OTC derivative transactions or other similar transactions on behalf of another person and through a central counterparty (either directly as a member of the central counterparty or indirectly through another person that is such a member); and

- (b) with the regulators of which the Commission has adequate cooperative arrangements or agreements.”.

**54. Schedule 8 amended (Securities and Futures Appeals Tribunal)**

## (1) Schedule 8, Part 2, Division 1, after item 4—

**Add**

- |      |   |  |
|------|---|--|
| “4A. | Section 101G(1)(a) or (b) of this Ordinance | Refusal to grant an exemption, or imposition of any condition.                       |
| 4B.  | Section 101G(2)(a) or (b) of this Ordinance | Suspension or withdrawal of an exemption, or amendment of any condition.             |
| 4C.  | Section 101I(1)(b) of this Ordinance        | Refusal to designate a person as a central counterparty.                             |
| 4D.  | Section 101I(5)(a) of this Ordinance        | Imposition of any condition.   |
| 4E.  | Section 101I(5)(b) or (c) of this Ordinance | Amendment or revocation of any condition, or imposition of any additional condition. |
| 4F.  | Section                                     | Revocation of a designation.   |

- 101I(5)(d) of this Ordinance
- 4G. Section 101J(1)(b) of this Ordinance Refusal to designate a person as a trading platform.
- 4H. Section 101J(5)(a) of this Ordinance Imposition of any condition.
- 4I. Section 101J(5)(b) or (c) of this Ordinance Amendment or revocation of any condition, or imposition of any additional condition.
- 4J. Section 101J(5)(d) of this Ordinance Revocation of a designation.
- 4K. Section 101Q(3) of this Ordinance Making an entry in the SIP register.
- 4L. Section 101S(1) or (2) of this Ordinance Refusal to remove from the SIP register the name of a person or a specific class entered in respect of a person's name.
- 4M. Section 101U(1) and (2) of this Ordinance Taking action to require a registered SIP to do an act.”.
- (2) Schedule 8, Part 2, Division 1, after item 40—  
**Add**
- “40A. Section 145A(1) of this Ordinance Variation of any financial resources rule.”.
- (3) Schedule 8, Part 2, Division 1, after item 59—  
**Add**
- “59A. Section Exercise of power to publicly or

- 197A(1)(a) or (b) of this Ordinance privately reprimand a registered SIP, or to order to pay a pecuniary penalty.”.
- (4) Schedule 8, Part 2, Division 2, after item 6—  
**Add**
- “7. Section 203A(1)(a), (b) or (c) of this Ordinance Exercise of power to publicly or privately reprimand a person, to impose a prohibition on a person, or to order to pay a pecuniary penalty.”.
- (5) Schedule 8, Part 3, Division 5, after item 2—  
**Add**
- “2A. A specified decision set out in item 4E of Division 1 of Part 2. Section 101I(7) of this Ordinance.
- 2B. A specified decision set out in item 4F of Division 1 of Part 2. Section 101I(8) of this Ordinance.
- 2C. A specified decision set out in item 4I of Division 1 of Part 2. Section 101J(7) of this Ordinance.
- 2D. A specified decision set out in item 4J of Division 1 of Part

- 2.
- 2E. A specified decision set out in item 4K of Division 1 of Part 2. Section 101Q(7) of this Ordinance.
- 2F. A specified decision set out in item 4M of Division 1 of Part 2. Section 101U(3) of this Ordinance.”.
- (6) Schedule 8, Part 3, Division 5, after item 8—  
**Add**
- “8A. A specified decision set out in item 40A of Division 1 of Part 2. Section 145A(8) of this Ordinance.”.

**55. Schedule 11 added**  
After Schedule 10—  
**Add**

**“Schedule 11**

[ss. 407,  
408 & 409]

**Transitional Provisions for Securities and Futures  
(Amendment) Ordinance 2013**

**Part 1**

**Interpretation**

**1. Interpretation**

(1) In this Schedule—

*amending Ordinance* (《修訂條例》) means the Securities and Futures (Amendment) Ordinance 2013 ( of 2013);

*application period* (申請期), in relation to a regulated activity mentioned in this Schedule (except the existing Type 7 RA and the existing Type 9 RA), means the period of 3 months beginning on the commencement date for that regulated activity;

*commencement date* (生效日期), in relation to a specified regulated activity, the new Type 9 activity, the expanded Type 9 RA, the new Type 7 activity and the expanded Type 7 RA, means the date appointed under section 1(2) of the amending Ordinance for the coming into operation of section 53 of the amending Ordinance;

*confirmation form* (確認表格), in relation to a provision that requires a person to confirm any matter, means the form specified under section 402(1) for the purpose;

*corporate applicant* (法團申請人)—

- (a) in relation to an application that relates to a specified regulated activity, means a person who makes an application referred to in section 3(1) or (2) of this Schedule;

- (b) in relation to an application that relates to the expanded Type 9 RA, means a person who makes an application referred to in section 13(2) or (3) of this Schedule; and
- (c) in relation to an application that relates to the expanded Type 7 RA, means a person who makes an application referred to in section 33(2) or (3) of this Schedule;

**deeming date** (當作持牌日期、當作核准日期、當作註冊日期、當作同意日期)——

- (a) in relation to an application made under section 116 or 127 by a corporate applicant, means the date on and from which that applicant is deemed under this Schedule to be licensed for the regulated activity to which the application relates;
- (b) in relation to an application made under section 120 or 127 by an LR applicant, means the date on and from which that applicant is deemed under this Schedule to be licensed for the regulated activity to which the application relates;
- (c) in relation to an application made under section 126 by an RO applicant, means the date on and from which that applicant is deemed under this Schedule to be approved for the regulated activity to which the application relates;
- (d) in relation to an application made under section 119 or 127 by an authorized financial institution, means the date on and from which that institution is deemed under this Schedule to be registered for the regulated activity to which the application relates; and

- (e) in relation to an application made for the purposes of section 71C of the Banking Ordinance (Cap. 155), means the date on and from which the applicant for consent under that section is deemed under this Schedule to have consent in relation to the regulated activity to which the application relates;

**executive director** (執行董事), in relation to a corporate applicant, means a director of that applicant who—

- (a) actively participates in the business of the regulated activity to which the corporate applicant's application relates; or
- (b) is responsible for directly supervising the business of the regulated activity to which the corporate applicant's application relates;

**existing Type 7 RA** (現有第 7 類受規管活動) means Type 7 regulated activity as it was immediately before the commencement date for the new Type 7 activity;

**existing Type 9 RA** (現有第 9 類受規管活動) means Type 9 regulated activity as it was immediately before the commencement date for the new Type 9 activity;

**expanded Type 7 RA** (經擴展第 7 類受規管活動) means Type 7 regulated activity on and from the commencement date for the new Type 7 activity;

**expanded Type 9 RA** (經擴展第 9 類受規管活動) means Type 9 regulated activity on and from the commencement date for the new Type 9 activity;

**LR applicant** (持牌代表申請人)——

- (a) in relation to an application that relates to a specified regulated activity, means an individual

who makes an application referred to in section 4(1) or (2) of this Schedule;

- (b) in relation to an application that relates to the expanded Type 9 RA, means an individual who makes an application referred to in section 14(2) or (3) of this Schedule; and
- (c) in relation to an application that relates to the expanded Type 7 RA, means an individual who makes an application referred to in section 34(2) or (3) of this Schedule;

**LR application** (持牌代表申請)—

- (a) in relation to an application for approval as a responsible officer under section 126(1) referred to in section 5(1) of this Schedule for a specified regulated activity, means an application referred to in section 4(1) or (2) of this Schedule for the same specified regulated activity;
- (b) in relation to an application for approval as a responsible officer under section 126(1) referred to in section 15(1) of this Schedule for the expanded Type 9 RA, means an application referred to in section 14(2) or (3) of this Schedule; and
- (c) in relation to an application for approval as a responsible officer under section 126(1) referred to in section 35(1) of this Schedule for the expanded Type 7 RA, means an application referred to in section 34(2) or (3) of this Schedule;

**new regulated activity** (新受規管活動) means a specified regulated activity, the expanded Type 7 RA or the expanded Type 9 RA;

**new Type 7 activity** (新的第 7 類活動) means the new activity included in Type 7 regulated activity by the amending Ordinance;

**new Type 9 activity** (新的第 9 類活動) means the new activity included in Type 9 regulated activity by the amending Ordinance;

**no-deeming notice** (不予當作通知), in relation to an applicant of an application referred to in this Schedule, means a notice—

- (a) issued to the applicant;
- (b) issued by the person to whom the application is made; and
- (c) informing that the applicant is not to be deemed for the purpose for which the application is made;

**principal** (主事人), in relation to an LR applicant or an RO applicant, means the corporate applicant in relation to whom the application is made by the applicant concerned;

**qualification period** (資格計算期)—

- (a) in relation to Type 11 regulated activity, Type 12 regulated activity or the expanded Type 7 RA, means at least 2 years immediately before the commencement date of the regulated activity concerned; and
- (b) in relation to the expanded Type 9 RA—
  - (i) for the purposes of an application referred to in section 13(2) or (3), 15(1), 22(2) or (3) or 23(2) of this Schedule, means at least 2 years immediately before the commencement date; and

- (ii) for the purposes of a notification referred to in section 28, 29, 30 or 31 of this Schedule, means at least 2 years within the 6 years immediately before the commencement date;

**qualifying activity** (合資格活動)—

- (a) in relation to Type 11 regulated activity, means an activity that would have constituted that regulated activity on and from the commencement date;
- (b) in relation to Type 12 regulated activity, means an activity that would have constituted that regulated activity on and from the commencement date except that the services constituting it need not have been provided to another person;
- (c) in relation to the expanded Type 7 RA, means an activity that would have constituted the new Type 7 activity on and from the commencement date; and
- (d) in relation to the expanded Type 9 RA, means an activity that would have constituted the new Type 9 activity on and from the commencement date;

**RO applicant** (負責人員申請人)—

- (a) in relation to an application that relates to a specified regulated activity, means an individual who makes an application referred to in section 5(1) of this Schedule for approval as a responsible officer;
- (b) in relation to an application that relates to the expanded Type 9 RA, means an individual who makes an application referred to in section 15(1) of this Schedule for approval as a responsible officer; and

- (c) in relation to an application that relates to the expanded Type 7 RA, means an individual who makes an application referred to in section 35(1) of this Schedule for approval as a responsible officer;

**specified regulated activity** (指明受規管活動) means Type 11 regulated activity or Type 12 regulated activity;

**transitional period** (過渡期), in relation to a regulated activity mentioned in this Schedule (except the existing Type 7 RA or the existing Type 9 RA), means the period of 6 months beginning on the commencement date for that regulated activity.

- (2) In this Schedule, a reference to a section is to be construed as a reference to a section of this Ordinance as amended by the amending Ordinance except where it is expressly stated that the reference is to a reference to a section of this Schedule.
- (3) In this Schedule, a reference to a regulated activity is to be construed as including the new Type 7 activity, the expanded Type 7 RA, the new Type 9 activity and the expanded Type 9 RA.
- (4) In this Schedule—
  - (a) a reference to carrying on, in connection with a regulated activity (including in connection with a deemed condition under Parts 3 and 4 of this Schedule), is to be construed—
    - (i) in relation to a corporate applicant (including a corporate applicant to whom Division 1 of Part 5 of this Schedule applies), a person deemed under this Schedule to be licensed under section 116, a licensed corporation or an authorized financial institution, as carrying on a business in the regulated activity;

- (ii) in relation to an LR applicant (including an LR applicant to whom Division 1 of Part 5 of this Schedule applies), as performing for or on behalf of or by arrangement with the principal any function in relation to the regulated activity other than work ordinarily performed by an accountant, clerk or cashier;
  - (iii) in relation to an executive officer of an authorized financial institution, as being responsible for directly supervising the conduct of the business that constitutes the regulated activity, conducted by the authorized financial institution; and
  - (iv) in relation to a licensed representative, a responsible officer, an individual deemed under this Schedule to be licensed, an individual referred to in section 42(2)(d) or (h) of this Schedule, a subject individual (as defined by section 45(5) of this Schedule) or an individual assisting a person under Division 2 of Part 5 of this Schedule, as performing for or on behalf of or by arrangement with a person (other than an individual) or an authorized financial institution, any function in relation to the regulated activity other than work ordinarily performed by an accountant, clerk or cashier;
- (b) a reference to carrying on a qualifying activity is to be construed—
- (i) in relation to a corporate applicant, any other corporation in the same group of companies as a corporate applicant, a licensed corporation or an authorized financial

- institution, as carrying on a business in the qualifying activity;
- (ii) in relation to an RO applicant or a responsible officer, as performing for or on behalf of or by arrangement with another person (other than an individual) any function in relation to the qualifying activity other than work ordinarily performed by an accountant, clerk or cashier; and
- (iii) in relation to an applicant for consent under section 71C of the Banking Ordinance (Cap. 155) in relation to an authorized financial institution or an executive officer of an authorized financial institution, as being responsible for directly supervising the conduct of the business that constitutes the qualifying activity, conducted by the authorized financial institution.

## Part 2

### Transitional Arrangements for Type 11 Regulated Activity and Type 12 Regulated Activity

#### Division 1—No Restriction during Transitional Period

##### 2. Section 114 not contravened during transitional period

- (1) A person who, during the transitional period, does an act referred to in section 114(1) in relation to a specified regulated activity, does not contravene that section even

if the person is not a person referred to in section 114(2)(a), (b) or (c).

- (2) A person who, during the transitional period, does an act referred to in section 114(3) in relation to a specified regulated activity, does not contravene that section even if the person is not a person referred to in section 114(4)(a), (b) or (c).

### **Division 2—Corporations and Individuals**

#### **3. Deemed licensing of corporations**

- (1) A person who applies in accordance with section 116(1) to be licensed to carry on a specified regulated activity is deemed to be licensed under that section to carry on the specified regulated activity if the conditions in subsection (3) are satisfied.
- (2) A person who applies in accordance with section 127(1) for variation of the regulated activity specified in the person's licence by adding a specified regulated activity is deemed to be licensed under section 116(1) to carry on the specified regulated activity if the conditions in subsection (3) are satisfied.
- (3) The conditions are that—
- (a) the corporate applicant is a person referred to in section 116(2)(a);
  - (b) the application is made within the application period;
  - (c) an application for the purposes of section 130(1) is lodged, unless—
    - (i) the corporate applicant is a licensed corporation; and

- (ii) the premises proposed to be used for keeping records or documents for the purposes of section 130(1) are the subject of an existing approval under that section;
- (d) not less than 2 individuals, at least one of whom is an executive director of the corporate applicant, have applied under section 126 to be approved as responsible officers of the corporate applicant in relation to the specified regulated activity concerned, and at least 2 of them, including at least 1 executive director of the corporate applicant, have not been issued a no-deeming notice before the corporate applicant is deemed;
- (e) every executive director of the corporate applicant has applied under section 126 to be approved as a responsible officer of the corporate applicant in relation to the specified regulated activity concerned and none of them has been issued a no-deeming notice before the corporate applicant is deemed;
- (f) subsection (4) is complied with; and
- (g) the corporate applicant has not been issued a no-deeming notice before the deeming date.
- (4) The corporate applicant must submit, together with the application, a confirmation form confirming—
- (a) if the application relates to Type 11 regulated activity, that the corporate applicant has been carrying on in Hong Kong a qualifying activity for the qualification period;
  - (b) if the application relates to Type 12 regulated activity, that the corporate applicant or any other corporation in the same group of companies as that

- applicant has been carrying on in Hong Kong or elsewhere a qualifying activity for the qualification period;
- (c) that not less than 2 individuals, at least one of whom is an executive director of the corporate applicant—
    - (i) have applied under section 126 to be approved as responsible officers of the corporate applicant in relation to the specified regulated activity concerned; and
    - (ii) satisfy the conditions in section 5(2)(a), (b) and (d) of this Schedule;
  - (d) that every executive director of the corporate applicant who is an individual—
    - (i) has applied under section 126 to be approved as a responsible officer of the corporate applicant in relation to the specified regulated activity concerned; and
    - (ii) satisfies the conditions in section 5(2)(a), (b) and (d) of this Schedule;
  - (e) either that—
    - (i) the corporate applicant has lodged an application under section 130(1) and the premises concerned satisfy the requirements of section 130(2)(a) and (b); or
    - (ii) the premises proposed to be used for keeping records or documents for the purposes of section 130(1) are the subject of an existing approval under that section;
  - (f) that the corporate applicant is in compliance, or has arrangements in place to ensure compliance, with

any requirements of the Securities and Futures (Financial Resources) Rules (Cap. 571 sub. leg. N) applicable to a licensed corporation that carries on the specified regulated activity concerned; and

- (g) that the corporate applicant is in compliance, or has arrangements in place to ensure compliance, with any provisions of this Ordinance, the guidelines and codes of conduct applicable to a licensed corporation that carries on the specified regulated activity concerned.
- (5) The deeming under subsections (1) and (2)—
  - (a) takes effect on the date immediately after the end of the transitional period for the specified regulated activity concerned; and
  - (b) ends in accordance with section 6 of this Schedule.

#### **4. Deemed licensing of representatives**

- (1) An individual who applies in accordance with section 120(1) to be licensed to carry on a specified regulated activity for a corporation, but not as a responsible officer, and who applies in accordance with section 122(1) to be accredited to the principal, is deemed, if the conditions in subsection (3) are satisfied—
  - (a) to be licensed as a licensed representative under section 120(1) to carry on for the principal the specified regulated activity concerned; and
  - (b) to be accredited to that principal.
- (2) An individual who applies in accordance with section 127(1) for variation of the regulated activity specified in the individual's licence by adding a specified regulated activity, and who applies in accordance with section

- 122(1) to be accredited to the principal, is deemed, if the conditions in subsection (3) are satisfied—
- (a) to be licensed as a licensed representative under section 120(1) to carry on for the principal the specified regulated activity concerned; and
  - (b) to be accredited to that principal.
- (3) The conditions are that—
- (a) the application is made within the application period;
  - (b) the application relates to a corporate applicant who has made an application referred to in section 3(1) or (2) of this Schedule for the same specified regulated activity to which the LR applicant's application relates;
  - (c) the conditions in section 3(3) of this Schedule are satisfied in relation to the principal's application for the same specified regulated activity to which the LR applicant's application relates;
  - (d) the LR applicant is carrying on for or on behalf of the principal the relevant qualifying activity at the time the application is made; and
  - (e) the LR applicant has not been issued a no-deeming notice before the deeming date.
- (4) The deeming under subsections (1) and (2)—
- (a) takes effect on the date immediately after the end of the transitional period for the specified regulated activity concerned; and
  - (b) ends in accordance with section 8 of this Schedule.

- (5) For the purposes of subsections (1) and (2), the reference in section 120(1) to a corporation licensed under section 116 is to be read as a reference to the principal.
- (6) For the purposes of subsections (1) and (2), the reference in section 122(1)(a) to a corporation licensed under section 116 is to be read as a reference to the principal.

### 5. Deemed approval of responsible officers

- (1) An individual who has made an LR application, and who also applies in accordance with section 126(1) to be approved as a responsible officer, is deemed to be approved in relation to the specified regulated activity concerned if the conditions in subsection (2) are satisfied.
- (2) The conditions are that—
  - (a) the application under section 126 in relation to the specified regulated activity concerned is made within the application period;
  - (b) the conditions in section 4(3)(a), (b), (d) and (e) of this Schedule are satisfied in relation to the LR application for the specified regulated activity concerned;
  - (c) the conditions in section 3(3) of this Schedule are satisfied in relation to the principal's application for the specified regulated activity concerned;
  - (d) subsection (3) is complied with; and
  - (e) the RO applicant has not been issued a no-deeming notice before the deeming date.
- (3) The RO applicant must submit, together with the application, a confirmation form confirming—

- (a) if the application relates to Type 11 regulated activity, that the RO applicant has been carrying on in Hong Kong a qualifying activity for the qualification period; and
  - (b) if the application relates to Type 12 regulated activity, that the RO applicant has been carrying on in Hong Kong or elsewhere a qualifying activity for the qualification period.
- (4) The deeming under subsection (1)—
- (a) takes effect on the date immediately after the end of the transitional period for the specified regulated activity concerned; and
  - (b) ends in accordance with section 10 of this Schedule.
- (5) For the purposes of subsection (1), the reference in section 126(1) to—
- (a) a licensed representative is to be read as a reference to an LR applicant; and
  - (b) the licensed corporation is to be read as a reference to the principal.

#### 6. When deemed status ends—corporations

- (1) A person deemed to be licensed under section 3(1) of this Schedule for a specified regulated activity ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
- (a) the corporate applicant's application under section 116 for the specified regulated activity is withdrawn;
  - (b) a licence is granted under section 116 for the specified regulated activity;

- (c) a refusal to grant a licence for the specified regulated activity takes effect as a specified decision under section 232.
- (2) A person deemed to be licensed under section 3(2) of this Schedule for a specified regulated activity ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
- (a) the corporate applicant's application under section 127 for the specified regulated activity is withdrawn;
  - (b) the regulated activity specified in the licence is varied by adding the specified regulated activity;
  - (c) a refusal to vary the regulated activity specified in the licence by adding the specified regulated activity takes effect as a specified decision under section 232.

#### 7. Consequences of deemed status—corporations

- (1) This section applies—
- (a) if a person is deemed to be licensed under section 3(1) or (2) of this Schedule; and
  - (b) in respect of the specified regulated activity for which the person is so deemed.
- (2) During the period the person is deemed to be licensed—
- (a) the premises in respect of which an application is lodged under section 130(1) are deemed to be approved;
  - (b) the person is deemed to have complied with section 130(3) in relation to the premises; and

- (c) the requirement in section 131(1) does not apply in respect of the person, but only if the person is not licensed for any other regulated activity.
- (3) If the person is deemed to be licensed under section 3(1) of this Schedule, during the period the person is so deemed, and if the person is granted a licence under section 116 for the specified regulated activity, even after that, the deeming date is to be regarded—
  - (a) for the purposes of section 138(2), as the date of the grant of the licence, unless another date is approved by the Commission under that section; and
  - (b) for the purposes of section 138(4), as the date on which the person is licensed, unless another date is approved by the Commission under that section.

#### 8. When deemed status ends—representatives

- (1) An individual deemed to be licensed under section 4(1) of this Schedule for a specified regulated activity ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
  - (a) the individual's application under section 120, or the principal's application under section 116 or 127, for the specified regulated activity concerned is withdrawn;
  - (b) the individual is granted a licence for the specified regulated activity;
  - (c) a refusal to—
    - (i) grant the individual a licence for the specified regulated activity takes effect as a specified decision under section 232;

- (ii) grant the principal a licence for the specified regulated activity takes effect as a specified decision under section 232; or
- (iii) vary the regulated activity specified in the principal's licence by adding the specified regulated activity takes effect as a specified decision under section 232;
- (d) after the deeming date, the individual ceases to act for or on behalf of the principal in relation to the specified regulated activity for which the individual is deemed.
- (2) An individual deemed to be licensed under section 4(2) of this Schedule for a specified regulated activity ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
  - (a) the individual's application under section 127, or the principal's application under section 116 or 127, for the specified regulated activity concerned is withdrawn;
  - (b) the regulated activity specified in the individual's licence is varied by adding the specified regulated activity;
  - (c) a refusal to—
    - (i) vary the regulated activity specified in the individual's licence by adding the specified regulated activity takes effect as a specified decision under section 232;
    - (ii) grant the principal a licence for the specified regulated activity takes effect as a specified decision under section 232; or

- (iii) vary the regulated activity specified in the principal's licence by adding the specified regulated activity takes effect as a specified decision under section 232;
- (d) after the deeming date, the individual ceases to act for or on behalf of the principal in relation to the specified regulated activity for which the individual is deemed.

#### 9. Consequences of deemed status—representatives

- (1) This section applies to an individual who is deemed to be licensed—
  - (a) under section 4(1) of this Schedule; and
  - (b) in respect of the specified regulated activity for which the individual is so deemed.
- (2) During the period the individual is deemed to be licensed, and if the individual is granted a licence under section 120 for the specified regulated activity, even after that, the deeming date is to be regarded—
  - (a) for the purposes of section 138(2), as the date of the grant of the licence, unless another date is approved by the Commission under that section; and
  - (b) for the purposes of section 138(4), as the date on which the individual is licensed, unless another date is approved by the Commission under that section.

#### 10. When deemed status ends—responsible officers

An individual deemed to be approved as a responsible officer under section 5(1) of this Schedule in relation to a specified regulated activity ceases to be so deemed on the date when

one of the following events happens (whichever happens first)—

- (a) the individual's LR application under section 120 or 127 for the specified regulated activity is withdrawn;
- (b) a refusal to grant a licence applied for by that LR applicant for the specified regulated activity takes effect as a specified decision under section 232;
- (c) a refusal to vary the regulated activity specified in the individual's licence by adding the specified regulated activity takes effect as a specified decision under section 232;
- (d) the individual's application under section 126 to be approved as a responsible officer in relation to the specified regulated activity is withdrawn;
- (e) the individual is approved under section 126 as a responsible officer in relation to the specified regulated activity;
- (f) a refusal to approve the individual as a responsible officer in relation to the specified regulated activity takes effect as a specified decision under section 232;
- (g) after the deeming date, the individual ceases to act for or on behalf of the principal in relation to the specified regulated activity for which the individual is deemed;
- (h) the principal's application under section 116 or 127 for the specified regulated activity is withdrawn;
- (i) a refusal to grant the principal a licence for the specified regulated activity takes effect as a specified decision under section 232;

- (j) a refusal to vary the regulated activity specified in the principal's licence by adding the specified regulated activity takes effect as a specified decision under section 232.

#### **11. Issue of no-deeming notices by Commission**

- (1) The Commission may issue a notice to a corporate applicant informing that the applicant is not to be deemed to be licensed under section 3(1) or (2) of this Schedule if the Commission is not satisfied that—
  - (a) the application is made in accordance with section 116(1) or 127(1); or
  - (b) the conditions in section 3(3)(a), (b), (c), (d), (e) and (f) of this Schedule have been met.
- (2) The Commission may issue a notice to an LR applicant informing that the applicant is not to be deemed to be licensed under section 4(1) or (2) of this Schedule if the Commission is not satisfied that—
  - (a) the application is made in accordance with section 120(1) or 127(1); or
  - (b) the conditions in section 4(3)(a), (b), (c) and (d) of this Schedule have been met.
- (3) The Commission may issue a notice to an RO applicant informing that the applicant is not to be deemed to be approved under section 5(1) of this Schedule, if the Commission is not satisfied that—
  - (a) the application is made in accordance with section 126(1); or
  - (b) the conditions in section 5(2)(a), (b), (c) and (d) of this Schedule have been met.

### **Part 3**

## **Transitional Arrangements for New Type 9 Activity**

### **Division 1—No Restriction during Transitional Period**

#### **12. Section 114 not contravened during transitional period**

- (1) A person who, during the transitional period, does an act referred to in section 114(1) in relation to the new Type 9 activity, does not contravene that section even if the person is not a person referred to in section 114(2)(a), (b) or (c).
- (2) A person who, during the transitional period, does an act referred to in section 114(3) in relation to the new Type 9 activity, does not contravene that section even if the person is not a person referred to in section 114(4)(a), (b) or (c).

### **Division 2—Corporations and Individuals**

#### **13. Deemed licensing of corporations**

- (1) This section applies to a person that—
  - (a) is not an authorized financial institution; and
  - (b) is not a corporation that is licensed to carry on the existing Type 9 RA.
- (2) A person who applies in accordance with section 116(1) to be licensed to carry on the expanded Type 9 RA is deemed to be licensed under that section to carry on the

- expanded Type 9 RA if the conditions in subsection (4) are satisfied.
- (3) A person who applies in accordance with section 127(1) for variation of the regulated activity specified in the person's licence by adding the expanded Type 9 RA is deemed to be licensed under section 116(1) to carry on the expanded Type 9 RA if the conditions in subsection (4) are satisfied.
  - (4) The conditions are that—
    - (a) the corporate applicant is a person referred to in section 116(2)(a);
    - (b) the application is made within the application period;
    - (c) an application for the purposes of section 130(1) is lodged, unless—
      - (i) the corporate applicant is a licensed corporation; and
      - (ii) the premises proposed to be used for keeping records or documents for the purposes of section 130(1) are the subject of an existing approval under that section;
    - (d) not less than 2 individuals, at least one of whom is an executive director of the corporate applicant, have applied under section 126 to be approved as responsible officers of the corporate applicant in relation to the expanded Type 9 RA, and at least 2 of them, including at least 1 executive director of the corporate applicant, have not been issued a no-deeming notice before the corporate applicant is deemed;

- (e) every executive director of the corporate applicant has applied under section 126 to be approved as a responsible officer of the corporate applicant in relation to the expanded Type 9 RA and none of them has been issued a no-deeming notice before the corporate applicant is deemed;
  - (f) subsection (5) is complied with; and
  - (g) the corporate applicant has not been issued a no-deeming notice before the deeming date.
- (5) The corporate applicant must submit, together with the application, a confirmation form confirming—
    - (a) that the corporate applicant has been carrying on in Hong Kong a qualifying activity for the qualification period;
    - (b) that not less than 2 individuals, at least one of whom is an executive director of the corporate applicant—
      - (i) have applied under section 126 to be approved as responsible officers of the corporate applicant in relation to the expanded Type 9 RA; and
      - (ii) satisfy the conditions in section 15(2)(a), (b) and (d) of this Schedule;
    - (c) that every executive director of the corporate applicant who is an individual—
      - (i) has applied under section 126 to be approved as a responsible officer of the corporate applicant in relation to the expanded Type 9 RA; and
      - (ii) satisfies the conditions in section 15(2)(a), (b) and (d) of this Schedule;

- (d) either that—
    - (i) the corporate applicant has lodged an application under section 130(1) and the premises concerned satisfy the requirements of section 130(2)(a) and (b); or
    - (ii) the premises proposed to be used for keeping records or documents for the purposes of section 130(1) are the subject of an existing approval under that section;
  - (e) that the corporate applicant is in compliance, or has arrangements in place to ensure compliance, with any requirements of the Securities and Futures (Financial Resources) Rules (Cap. 571 sub. leg. N) applicable to a licensed corporation that carries on the expanded Type 9 RA; and
  - (f) that the corporate applicant is in compliance, or has arrangements in place to ensure compliance, with any provisions of this Ordinance, the guidelines and codes of conduct applicable to a licensed corporation that carries on the new Type 9 activity.
- (6) The deeming under subsections (2) and (3)—
- (a) takes effect on the date immediately after the end of the transitional period for the new Type 9 activity; and
  - (b) ends in accordance with section 16 of this Schedule.

#### 14. Deemed licensing of representatives

- (1) This section applies to an individual who is not licensed to carry on the existing Type 9 RA.

- (2) An individual who applies in accordance with section 120(1) to be licensed to carry on the expanded Type 9 RA for a corporation, but not as a responsible officer, and who applies in accordance with section 122(1) to be accredited to the principal, is deemed, if the conditions in subsection (4) are satisfied—
  - (a) to be licensed as a licensed representative under section 120(1) to carry on for the principal the expanded Type 9 RA; and
  - (b) to be accredited to that principal.
- (3) An individual who applies in accordance with section 127(1) for variation of the regulated activity specified in the individual's licence by adding the expanded Type 9 RA, and who applies in accordance with section 122(1) to be accredited to the principal, is deemed, if the conditions in subsection (4) are satisfied—
  - (a) to be licensed as a licensed representative under section 120(1) to carry on for the principal the expanded Type 9 RA; and
  - (b) to be accredited to that principal.
- (4) The conditions are that—
  - (a) the application is made within the application period;
  - (b) the application relates to a corporate applicant who has made an application referred to in section 13(2) or (3) of this Schedule for the expanded Type 9 RA;
  - (c) the conditions in section 13(4) of this Schedule are satisfied in relation to the principal's application for the expanded Type 9 RA;

- (d) the LR applicant is carrying on for or on behalf of the principal the relevant qualifying activity at the time the application is made; and
- (e) the LR applicant has not been issued a no-deeming notice before the deeming date.
- (5) The deeming under subsections (2) and (3)—
  - (a) takes effect on the date immediately after the end of the transitional period for the new Type 9 activity; and
  - (b) ends in accordance with section 18 of this Schedule.
- (6) For the purposes of subsections (2) and (3), the reference in section 120(1) to a corporation licensed under section 116 is to be read as a reference to the principal.
- (7) For the purposes of subsections (2) and (3), the reference in section 122(1)(a) to a corporation licensed under section 116 is to be read as a reference to the principal.

#### 15. Deemed approval of responsible officers

- (1) An individual who has made an LR application, and who also applies in accordance with section 126(1) to be approved as a responsible officer, is deemed to be approved in relation to the expanded Type 9 RA if the conditions in subsection (2) are satisfied.
- (2) The conditions are that—
  - (a) the application under section 126 in relation to the expanded Type 9 RA is made within the application period;
  - (b) the conditions in section 14(4)(a), (b), (d) and (e) of this Schedule are satisfied in relation to the LR application for the expanded Type 9 RA;

- (c) the conditions in section 13(4) of this Schedule are satisfied in relation to the principal's application for the expanded Type 9 RA;
- (d) subsection (3) is complied with; and
- (e) the RO applicant has not been issued a no-deeming notice before the deeming date.
- (3) The RO applicant must submit, together with the application, a confirmation form confirming that the RO applicant has been carrying on in Hong Kong a qualifying activity for the qualification period.
- (4) The deeming under subsection (1)—
  - (a) takes effect on the date immediately after the end of the transitional period for the new Type 9 activity; and
  - (b) ends in accordance with section 20 of this Schedule.
- (5) For the purposes of subsection (1), the reference in section 126(1) to—
  - (a) a licensed representative is to be read as a reference to an LR applicant; and
  - (b) the licensed corporation is to be read as a reference to the principal.

#### 16. When deemed status ends—corporations

- (1) A person deemed to be licensed under section 13(2) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
  - (a) the corporate applicant's application under section 116 for the expanded Type 9 RA is withdrawn;

- (b) a licence is granted under section 116 for the expanded Type 9 RA;
  - (c) a refusal to grant a licence for the expanded Type 9 RA takes effect as a specified decision under section 232.
- (2) A person deemed to be licensed under section 13(3) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
- (a) the corporate applicant's application under section 127 for the expanded Type 9 RA is withdrawn;
  - (b) the regulated activity specified in the licence is varied by adding the expanded Type 9 RA;
  - (c) a refusal to vary the regulated activity specified in the licence by adding the expanded Type 9 RA takes effect as a specified decision under section 232.

**17. Consequences of deemed status—corporations**

- (1) This section applies if a person is deemed to be licensed under section 13(2) or (3) of this Schedule in respect of the expanded Type 9 RA.
- (2) During the period the person is deemed to be licensed—
- (a) the premises in respect of which an application is lodged under section 130(1) are deemed to be approved;
  - (b) the person is deemed to have complied with section 130(3) in relation to the premises; and
  - (c) the requirement in section 131(1) does not apply in respect of the person, but only if the person is not licensed for any other regulated activity.

- (3) If the person is deemed to be licensed under section 13(2) of this Schedule, during the period the person is so deemed, and if the person is granted a licence under section 116 for the expanded Type 9 RA, even after that, the deeming date is to be regarded—
- (a) for the purposes of section 138(2), as the date of the grant of the licence, unless another date is approved by the Commission under that section; and
  - (b) for the purposes of section 138(4), as the date on which the person is licensed, unless another date is approved by the Commission under that section.
- (4) During the period the person is deemed to be licensed under section 13(2) or (3) of this Schedule, the person is also deemed to be subject to the condition that the person must not carry on securities or futures contracts management.

**18. When deemed status ends—representatives**

- (1) An individual deemed to be licensed under section 14(2) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
- (a) the individual's application under section 120, or the principal's application under section 116 or 127, for the expanded Type 9 RA is withdrawn;
  - (b) the individual is granted a licence for the expanded Type 9 RA;
  - (c) a refusal to—
    - (i) grant the individual a licence for the expanded Type 9 RA takes effect as a specified decision under section 232;

- (ii) grant the principal a licence for the expanded Type 9 RA takes effect as a specified decision under section 232; or
  - (iii) vary the regulated activity specified in the principal's licence by adding the expanded Type 9 RA takes effect as a specified decision under section 232;
- (d) after the deeming date, the individual ceases to act for or on behalf of the principal in relation to the expanded Type 9 RA.
- (2) An individual deemed to be licensed under section 14(3) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
  - (a) the individual's application under section 127, or the principal's application under section 116 or 127, for the expanded Type 9 RA is withdrawn;
  - (b) the regulated activity specified in the individual's licence is varied by adding the expanded Type 9 RA;
  - (c) a refusal to—
    - (i) vary the regulated activity specified in the individual's licence by adding the expanded Type 9 RA takes effect as a specified decision under section 232;
    - (ii) grant the principal a licence for the expanded Type 9 RA takes effect as a specified decision under section 232; or
    - (iii) vary the regulated activity specified in the principal's licence by adding the expanded

- Type 9 RA takes effect as a specified decision under section 232;
- (d) after the deeming date, the individual ceases to act for or on behalf of the principal in relation to the expanded Type 9 RA.

### 19. Consequences of deemed status—representatives

- (1) This section applies to an individual who is deemed to be licensed under section 14(2) of this Schedule in respect of the expanded Type 9 RA.
- (2) During the period the individual is deemed to be licensed, and if the individual is granted a licence under section 120 for the expanded Type 9 RA, even after that, the deeming date is to be regarded—
  - (a) for the purposes of section 138(2), as the date of the grant of the licence, unless another date is approved by the Commission under that section; and
  - (b) for the purposes of section 138(4), as the date on which the individual is licensed, unless another date is approved by the Commission under that section.

### 20. When deemed status ends—responsible officers

An individual deemed to be approved as a responsible officer under section 15(1) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—

- (a) the individual's LR application under section 120 or 127 for the expanded Type 9 RA is withdrawn;

- (b) a refusal to grant the licence applied for by that LR applicant for the expanded Type 9 RA takes effect as a specified decision under section 232;
- (c) a refusal to vary the regulated activity specified in the individual's licence by adding the expanded Type 9 RA takes effect as a specified decision under section 232;
- (d) the individual's application under section 126 to be approved as a responsible officer in relation to the expanded Type 9 RA is withdrawn;
- (e) the individual is approved under section 126 as a responsible officer in relation to the expanded Type 9 RA;
- (f) a refusal to approve the individual as a responsible officer in relation to the expanded Type 9 RA takes effect as a specified decision under section 232;
- (g) after the deeming date, the individual ceases to act for or on behalf of the principal in relation to the expanded Type 9 RA;
- (h) the principal's application under section 116 or 127 for the expanded Type 9 RA is withdrawn;
- (i) a refusal to grant the principal a licence for the expanded Type 9 RA takes effect as a specified decision under section 232;
- (j) a refusal to vary the regulated activity specified in the principal's licence by adding the expanded Type 9 RA takes effect as a specified decision under section 232.

## 21. Issue of no-deeming notices by Commission

- (1) The Commission may issue a notice to a corporate applicant informing that the applicant is not to be deemed to be licensed under section 13(2) or (3) of this Schedule if the Commission is not satisfied that—
  - (a) the application is made in accordance with section 116(1) or 127(1); or
  - (b) the conditions in section 13(4)(a), (b), (c), (d), (e) and (f) of this Schedule have been met.
- (2) The Commission may issue a notice to an LR applicant informing that the applicant is not to be deemed to be licensed under section 14(2) or (3) of this Schedule if the Commission is not satisfied that—
  - (a) the application is made in accordance with section 120(1) or 127(1); or
  - (b) the conditions in section 14(4)(a), (b), (c) and (d) of this Schedule have been met.
- (3) The Commission may issue a notice to an RO applicant informing that the applicant is not to be deemed to be approved under section 15(1) of this Schedule if the Commission is not satisfied that—
  - (a) the application is made in accordance with section 126(1); or
  - (b) the conditions in section 15(2)(a), (b), (c) and (d) of this Schedule have been met.

### **Division 3—Authorized Financial Institutions and Individuals**

#### **22. Deemed registration of authorized financial institutions**

- (1) This section applies to an authorized financial institution that is not registered to carry on the existing Type 9 RA.
- (2) An authorized financial institution that applies in accordance with section 119(1) to carry on the expanded Type 9 RA is deemed to be registered under that section to carry on the expanded Type 9 RA if the conditions in subsection (4) are satisfied.
- (3) An authorized financial institution that applies in accordance with section 127(1) for variation of the regulated activity specified in its certificate of registration by adding the expanded Type 9 RA is deemed to be registered under section 119(1) to carry on the expanded Type 9 RA if the conditions in subsection (4) are satisfied.
- (4) The conditions are that—
  - (a) the application is made within the application period;
  - (b) not less than 2 individuals who propose to carry out, in relation to the expanded Type 9 RA, the functions of an executive officer under section 71D of the Banking Ordinance (Cap. 155)—
    - (i) have applied for consent under section 71C(1)(a) of that Ordinance; and
    - (ii) have not been issued no-deeming notices;
  - (c) subsection (5) is complied with; and
  - (d) the applicant has not been issued a no-deeming notice before the deeming date.

- (5) The applicant must submit, together with the application, a confirmation form confirming that—
  - (a) the applicant has been carrying on in Hong Kong a qualifying activity for the qualification period;
  - (b) not less than 2 individuals—
    - (i) have applied to obtain consent under section 71C(1)(a) of the Banking Ordinance (Cap. 155) in relation to the expanded Type 9 RA; and
    - (ii) satisfy the conditions in section 23(3)(a) and (c) of this Schedule;
  - (c) the applicant is in compliance, or has arrangements in place to ensure compliance, with any provisions of this Ordinance, the guidelines and codes of conduct applicable to a registered institution that carries on the new Type 9 activity;
  - (d) the applicant is in compliance with the requirement in paragraph 6 of the Seventh Schedule to the Banking Ordinance (Cap. 155); and
  - (e) if the applicant is a locally incorporated authorized financial institution, the applicant has also complied with any requirements imposed under Part XVIA of the Banking Ordinance (Cap. 155).
- (6) The deeming under subsections (2) and (3)—
  - (a) takes effect on the date immediately after the end of the transitional period for the new Type 9 activity; and
  - (b) ends in accordance with section 24 of this Schedule.

**23. Deeming of executive officers**

- (1) This section applies to an individual who is not an executive officer of an authorized financial institution in relation to the existing Type 9 RA.
- (2) An individual who applies for consent under section 71C(1) of the Banking Ordinance (Cap. 155) in relation to the expanded Type 9 RA is deemed to have consent to be an executive officer of the authorized financial institution concerned, in relation to that regulated activity, if the conditions in subsection (3) are satisfied.
- (3) The conditions are that—
  - (a) the application for consent under section 71C(1) of the Banking Ordinance (Cap. 155) in relation to the expanded Type 9 RA is made within the application period;
  - (b) the authorized financial institution in relation to which the application is made—
    - (i) has made an application under section 119 or 127 in relation to the expanded Type 9 RA; and
    - (ii) satisfies the conditions in section 22(4) of this Schedule;
  - (c) subsection (4) is complied with; and
  - (d) the applicant has not been issued a no-deeming notice before the deeming date.
- (4) The applicant must submit, together with the application, a confirmation form confirming that the applicant has been carrying on in Hong Kong a qualifying activity for the qualification period.
- (5) The deeming under subsection (2)—

- (a) takes effect on the date immediately after the end of the transitional period for the new Type 9 activity; and
- (b) ends in accordance with section 26 of this Schedule.

**24. When deemed status ends—authorized financial institutions**

- (1) An authorized financial institution deemed to be registered under section 22(2) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
  - (a) the application under section 119 for the expanded Type 9 RA is withdrawn;
  - (b) a certificate of registration is granted under section 119(1) for the expanded Type 9 RA;
  - (c) a refusal to grant a certificate of registration for the expanded Type 9 RA takes effect as a specified decision under section 232.
- (2) An authorized financial institution deemed to be registered under section 22(3) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
  - (a) the application under section 127 for the expanded Type 9 RA is withdrawn;
  - (b) the regulated activity specified in the certificate of registration is varied by adding the expanded Type 9 RA;
  - (c) a refusal to vary the regulated activity specified in the certificate of registration by adding the

expanded Type 9 RA takes effect as a specified decision under section 232.

**25. Consequences of deemed status—authorized financial institutions**

- (1) This section applies to an authorized financial institution that is deemed to be registered under section 22(2) or (3) of this Schedule in respect of the expanded Type 9 RA.
- (2) If the authorized financial institution is deemed to be registered under section 22(2) of this Schedule, subsection (3) applies.
- (3) During the period the authorized financial institution is so deemed, and if the authorized financial institution is granted a certificate of registration under section 119(1) for the expanded Type 9 RA, even after that, the deeming date is to be regarded for the purposes of section 138(2) as the date of the grant of the certificate of registration, unless another date is approved by the Commission under section 138(2).
- (4) During the period the authorized financial institution is deemed to be registered under section 22(2) or (3) of this Schedule, it is also deemed to be subject to the condition that it must not carry on securities or futures contracts management.

**26. When deemed status ends—executive officers**

An individual deemed under section 23(2) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—

- (a) the application for consent in relation to the expanded Type 9 RA is withdrawn;

- (b) the Monetary Authority gives consent under section 71C(1) of the Banking Ordinance (Cap. 155);
- (c) a refusal by the Monetary Authority to give consent in relation to the expanded Type 9 RA takes effect as a specified decision under section 232;
- (d) the application of the authorized financial institution under section 119 or 127 in relation to the expanded Type 9 RA is withdrawn;
- (e) a refusal to grant the authorized financial institution a certificate of registration for the expanded Type 9 RA takes effect as a specified decision under section 232;
- (f) a refusal to vary a regulated activity specified in the certificate of registration of the authorized financial institution by adding the expanded Type 9 RA takes effect as a specified decision under section 232.

**27. Issue of no-deeming notices by Commission and Monetary Authority**

- (1) The Commission may, after consultation with the Monetary Authority, issue a notice to an applicant referred to in section 22(2) or (3) of this Schedule informing that the applicant is not to be deemed to be registered under that section, if the Commission is not satisfied that—
  - (a) the application is made in accordance with section 119(1) or 127(1);
  - (b) the condition in section 22(4)(a) of this Schedule has been met;

- (c) the applicant has confirmed the matters required to be confirmed under section 22(5) of this Schedule; or
  - (d) of the applicants for consent under section 71C(1) of the Banking Ordinance (Cap. 155) for the purposes of section 22(4)(b) of this Schedule, not less than 2 individuals have not been issued no-deeming notices before the authorized financial institution is deemed.
- (2) The Monetary Authority may issue a notice to an applicant referred to in section 23(2) of this Schedule informing that the applicant is not to be deemed to have consent under that section, if the Monetary Authority is not satisfied that—
- (a) the conditions in section 23(3)(a) and (b) of this Schedule have been met; or
  - (b) the applicant has confirmed the matters required to be confirmed under section 23(4) of this Schedule.

#### **Division 4—Corporations and Individuals Licensed for Existing Type 9 RA**

##### **28. Corporations—deemed condition**

- (1) This section applies to a corporation that, immediately before the commencement date, is a corporation licensed to carry on the existing Type 9 RA.
- (2) Unless the corporation complies with subsections (3) and (4), the corporation's licence for the existing Type 9 RA is deemed, on and from the date immediately after the end of the transitional period for the expanded Type 9 RA, to be subject to the condition that it must not carry on the new Type 9 activity.

- (3) The corporation must, within the application period for the expanded Type 9 RA, notify the Commission in writing that it is carrying on the new Type 9 activity and provide—
  - (a) a full description of the nature of the business carried on or to be carried on and the types of services provided or to be provided by the corporation;
  - (b) information relating to the human and technical resources, operational procedures and organizational structure of the corporation showing that it is capable of carrying on its regulated activities, and its proposed regulated activities, competently; and
  - (c) a full description of any business history of the corporation and a business plan of the corporation covering internal controls, organizational structure, contingency plans and related matters.
- (4) The corporation must submit, together with the notification, a confirmation form confirming that—
  - (a) at least one of its responsible officers has been carrying on in Hong Kong or elsewhere a qualifying activity for the qualification period; and
  - (b) the corporation is in compliance, or has arrangements in place to ensure compliance, with any provisions of this Ordinance, the guidelines and codes of conduct applicable to a licensed corporation that carries on the new Type 9 activity.

##### **29. Responsible officers—deemed condition**

- (1) This section applies to an individual who is approved as a responsible officer of a corporation licensed to carry on

the existing Type 9 RA in relation to that regulated activity.

- (2) Unless the individual complies with subsections (3) and (4), the licensed representative licence of the individual is deemed, on and from the date immediately after the end of the transitional period for the expanded Type 9 RA, to be subject to the condition that the individual must not carry on the new Type 9 activity.
- (3) The individual must, within the application period for the expanded Type 9 RA, notify the Commission in writing that the individual is carrying on the new Type 9 activity.
- (4) The individual must submit, together with the notification, a confirmation form confirming that the individual has been carrying on in Hong Kong or elsewhere a qualifying activity for the qualification period.

### **Division 5—Authorized Financial Institutions Registered for Existing Type 9 RA**

#### **30. Authorized financial institutions—deemed condition**

- (1) This section applies to an authorized financial institution that, immediately before the commencement date, is an authorized financial institution registered to carry on the existing Type 9 RA.
- (2) Unless the authorized financial institution complies with subsections (3) and (4), the registration of the authorized financial institution for the existing Type 9 RA is deemed, on and from the date immediately after the end of the transitional period for the expanded Type 9 RA, to

be subject to the condition that it must not carry on the new Type 9 activity.

- (3) The authorized financial institution must, within the application period for the expanded Type 9 RA, notify the Commission and the Monetary Authority in writing that it is carrying on the new Type 9 activity and provide—
  - (a) a full description of the nature of the business carried on or to be carried on and the types of services provided or to be provided by the authorized financial institution;
  - (b) information relating to the human and technical resources, operational procedures and organizational structure of the authorized financial institution showing that it is capable of carrying on its regulated activities, and its proposed regulated activities, competently; and
  - (c) a full description of any business history of the authorized financial institution and a business plan of the authorized financial institution covering internal controls, organizational structure, contingency plans and related matters.
- (4) The authorized financial institution must submit, together with the notification, a confirmation form confirming—
  - (a) that at least one of its executive officers has been carrying on in Hong Kong or elsewhere a qualifying activity for the qualification period;
  - (b) that the authorized financial institution is in compliance with the requirement in paragraph 6 of the Seventh Schedule to the Banking Ordinance (Cap. 155);

- (c) if the authorized financial institution is incorporated in Hong Kong, that it is also in compliance with the minimum capital requirements applicable to it under Part XVIA of the Banking Ordinance (Cap. 155); and
- (d) that the authorized financial institution is in compliance with any provisions of this Ordinance, the guidelines and codes of conduct applicable to a registered institution that carries on the new Type 9 activity.

**31. Executive officers—deemed condition**

- (1) This section applies to an individual who is an executive officer of a registered institution in relation to the existing Type 9 RA.
- (2) Unless the executive officer complies with subsections (3) and (4), the consent given under section 71C of the Banking Ordinance (Cap. 155) to the executive officer in relation to the existing Type 9 RA is deemed, on and from the date immediately after the end of the transitional period for the expanded Type 9 RA, to be subject to the condition that the executive officer must not carry on the new Type 9 activity.
- (3) The executive officer must, within the application period for the expanded Type 9 RA, notify the Monetary Authority in writing that the executive officer is carrying on the new Type 9 activity.
- (4) The executive officer must submit, together with the notification, a confirmation form confirming that the executive officer has been carrying on in Hong Kong or elsewhere a qualifying activity for the qualification period.

**Part 4****Transitional Arrangements for New Type 7 Activity****Division 1—No Restriction during Transitional Period****32. Section 114 not contravened during transitional period**

- (1) A person who, during the transitional period, does an act referred to in section 114(1) in relation to the new Type 7 activity, does not contravene that section even if the person is not a person referred to in section 114(2)(a), (b) or (c).
- (2) A person who, during the transitional period, does an act referred to in section 114(3) in relation to the new Type 7 activity, does not contravene that section even if the person is not a person referred to in section 114(4)(a), (b) or (c).

**Division 2—Corporations and Individuals****33. Deemed licensing of corporations**

- (1) This section applies if—
  - (a) a person is not licensed to carry on the existing Type 7 RA; and
  - (b) the person indicates in the application referred to in subsection (2) or (3) that the person does not intend to carry on the existing Type 7 RA except to the extent that it also constitutes carrying on the new Type 7 activity.

- (2) Subject to subsection (4), a person who applies in accordance with section 116(1) to be licensed to carry on the expanded Type 7 RA is deemed to be licensed under that section to carry on the expanded Type 7 RA if the conditions in subsection (5) are satisfied.
- (3) Subject to subsection (4), a person who applies in accordance with section 127(1) for variation of the regulated activity specified in the person's licence by adding the expanded Type 7 RA is deemed to be licensed under section 116(1) to carry on the expanded Type 7 RA if the conditions in subsection (5) are satisfied.
- (4) During the period the person is deemed to be licensed to carry on the expanded Type 7 RA, the person is also deemed to be subject to the condition that the person must not carry on the existing Type 7 RA except to the extent that it also constitutes carrying on the new Type 7 activity.
- (5) The conditions are that—
  - (a) the corporate applicant is a person referred to in section 116(2)(a);
  - (b) the application is made within the application period;
  - (c) an application for the purposes of section 130(1) is lodged, unless—
    - (i) the corporate applicant is a licensed corporation; and
    - (ii) the premises proposed to be used for keeping records or documents for the purposes of section 130(1) are the subject of an existing approval under that section;

- (d) not less than 2 individuals, at least one of whom is an executive director of the corporate applicant, have applied under section 126 to be approved as responsible officers of the corporate applicant in relation to the expanded Type 7 RA, and at least 2 of them, including at least 1 executive director of the corporate applicant, have not been issued a no-deeming notice before the corporate applicant is deemed;
- (e) every executive director of the corporate applicant has applied under section 126 to be approved as a responsible officer of the corporate applicant in relation to the expanded Type 7 RA and none of them has been issued a no-deeming notice before the corporate applicant is deemed;
- (f) the corporate applicant indicates in the application that, if it is deemed to be licensed to carry on the expanded Type 7 RA, the corporate applicant does not intend to carry on the existing Type 7 RA during the period that it is so deemed except to the extent that it also constitutes carrying on the new Type 7 activity;
- (g) subsection (6) is complied with; and
- (h) the corporate applicant has not been issued a no-deeming notice before the deeming date.
- (6) The corporate applicant must submit, together with the application, a confirmation form confirming—
  - (a) that the corporate applicant has been carrying on in Hong Kong a qualifying activity for the qualification period;

- (b) that the corporate applicant does not intend to carry on the existing Type 7 RA except to the extent that it also constitutes carrying on the new Type 7 activity during the period that it is deemed for the expanded Type 7 RA;
- (c) that not less than 2 individuals, at least one of whom is an executive director of the corporate applicant—
  - (i) have applied under section 126 to be approved as responsible officers of the corporate applicant in relation to the expanded Type 7 RA; and
  - (ii) satisfy the conditions in section 35(2)(a), (b) and (d) of this Schedule;
- (d) that every executive director of the corporate applicant who is an individual—
  - (i) has applied under section 126 to be approved as a responsible officer of the corporate applicant in relation to the expanded Type 7 RA; and
  - (ii) satisfies the conditions in section 35(2)(a), (b) and (d) of this Schedule;
- (e) either that—
  - (i) the corporate applicant has lodged an application under section 130(1) and the premises concerned satisfy the requirements of section 130(2)(a) and (b); or
  - (ii) the premises proposed to be used for keeping records or documents for the purposes of section 130(1) are the subject of an existing approval under that section;

- (f) that the corporate applicant is in compliance, or has arrangements in place to ensure compliance, with any requirements of the Securities and Futures (Financial Resources) Rules (Cap. 571 sub. leg. N) applicable to a licensed corporation that carries on the expanded Type 7 RA; and
  - (g) that the corporate applicant is in compliance, or has arrangements in place to ensure compliance, with any provisions of this Ordinance, the guidelines and codes of conduct applicable to a licensed corporation that carries on the new Type 7 activity.
- (7) The deeming under subsections (2) and (3)—
- (a) takes effect on the date immediately after the end of the transitional period for the new Type 7 activity; and
  - (b) ends in accordance with section 36 of this Schedule.

### **34. Deemed licensing of representatives**

- (1) This section applies to an individual who is not licensed to carry on the existing Type 7 RA.
- (2) An individual who applies in accordance with section 120(1) to be licensed to carry on the expanded Type 7 RA for a corporation, but not as a responsible officer, and who applies in accordance with section 122(1) to be accredited to the principal, is deemed, if the conditions in subsection (4) are satisfied—
  - (a) to be licensed as a licensed representative under section 120(1) to carry on for the principal the expanded Type 7 RA; and
  - (b) to be accredited to that principal.

- (3) An individual who applies in accordance with section 127(1) for variation of the regulated activity specified in the individual's licence by adding the expanded Type 7 RA, and who applies in accordance with section 122(1) to be accredited to the principal, is deemed, if the conditions in subsection (4) are satisfied—
  - (a) to be licensed as a licensed representative under section 120(1) to carry on for the principal expanded Type 7 RA; and
  - (b) to be accredited to that principal.
- (4) The conditions are that—
  - (a) the application is made within the application period;
  - (b) the application relates to a corporate applicant who has made an application referred to in section 33(2) or (3) of this Schedule for the expanded Type 7 RA;
  - (c) the conditions in section 33(5) of this Schedule are satisfied in relation to the principal's application for the expanded Type 7 RA;
  - (d) the LR applicant is carrying on for or on behalf of the principal the relevant qualifying activity at the time the application is made; and
  - (e) the LR applicant has not been issued a no-deeming notice before the deeming date.
- (5) The deeming under subsections (2) and (3)—
  - (a) takes effect on the date immediately after the end of the transitional period for the new Type 7 activity; and
  - (b) ends in accordance with section 38 of this Schedule.

- (6) For the purposes of subsections (2) and (3), the reference in section 120(1) to a corporation licensed under section 116 is to be read as a reference to the principal.
- (7) For the purposes of subsections (2) and (3), the reference in section 122(1)(a) to a corporation licensed under section 116 is to be read as a reference to the principal.

### 35. Deemed approval of responsible officers

- (1) An individual who has made an LR application, and who also applies in accordance with section 126(1) to be approved as a responsible officer, is deemed to be approved in relation to the expanded Type 7 RA if the conditions in subsection (2) are satisfied.
- (2) The conditions are that—
  - (a) the application under section 126 in relation to the expanded Type 7 RA is made within the application period;
  - (b) the conditions in section 34(4)(a), (b), (d) and (e) of this Schedule are satisfied in relation to the LR application for the expanded Type 7 RA;
  - (c) the conditions in section 33(5) of this Schedule are satisfied in relation to the principal's application for the expanded Type 7 RA;
  - (d) subsection (3) is complied with; and
  - (e) the RO applicant has not been issued a no-deeming notice before the deeming date.
- (3) The RO applicant must submit, together with the application, a confirmation form confirming that the RO applicant has been carrying on in Hong Kong a qualifying activity for the qualification period.
- (4) The deeming under subsection (1)—

- (a) takes effect on the date immediately after the end of the transitional period for the new Type 7 activity; and
  - (b) ends in accordance with section 40 of this Schedule.
- (5) For the purposes of subsection (1), the reference in section 126(1) to—
- (a) a licensed representative is to be read as a reference to an LR applicant; and
  - (b) the licensed corporation is to be read as a reference to the principal.

### 36. When deemed status ends—corporations

- (1) A person deemed to be licensed under section 33(2) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
- (a) the corporate applicant's application under section 116 for the expanded Type 7 RA is withdrawn;
  - (b) a licence is granted under section 116 for the expanded Type 7 RA;
  - (c) a refusal to grant a licence for the expanded Type 7 RA takes effect as a specified decision under section 232.
- (2) A person deemed to be licensed under section 33(3) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
- (a) the corporate applicant's application under section 127 for the expanded Type 7 RA is withdrawn;

- (b) the regulated activity specified in the licence is varied by adding the expanded Type 7 RA;
- (c) a refusal to vary the regulated activity specified in the licence by adding the expanded Type 7 RA takes effect as a specified decision under section 232.

### 37. Consequences of deemed status—corporations

- (1) This section applies if a person is deemed to be licensed under section 33(2) or (3) of this Schedule in respect of the expanded Type 7 RA.
- (2) During the period the person is deemed to be licensed—
- (a) the premises in respect of which an application is lodged under section 130(1) are deemed to be approved;
  - (b) the person is deemed to have complied with section 130(3) in relation to the premises; and
  - (c) the requirement in section 131(1) does not apply in respect of the person, but only if the person is not licensed for any other regulated activity.
- (3) If the person is deemed to be licensed under section 33(2) of this Schedule, during the period the person is so deemed, and if the person is granted a licence under section 116 for the expanded Type 7 RA, even after that, the deeming date is to be regarded—
- (a) for the purposes of section 138(2), as the date of the grant of the licence, unless another date is approved by the Commission under that section; and

- (b) for the purposes of section 138(4), as the date on which the person is licensed, unless another date is approved by the Commission under that section.

### 38. When deemed status ends—representatives

- (1) An individual deemed to be licensed under section 34(2) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
  - (a) the individual's application under section 120, or the principal's application under section 116 or 127, for the expanded Type 7 RA is withdrawn;
  - (b) the individual is granted a licence for the expanded Type 7 RA;
  - (c) a refusal to—
    - (i) grant the individual a licence for the expanded Type 7 RA takes effect as a specified decision under section 232;
    - (ii) grant the principal a licence for the expanded Type 7 RA takes effect as a specified decision under section 232; or
    - (iii) vary the regulated activity specified in the principal's licence by adding the expanded Type 7 RA takes effect as a specified decision under section 232;
  - (d) after the deeming date, the individual ceases to act for or on behalf of the principal in relation to the expanded Type 7 RA.
- (2) An individual deemed to be licensed under section 34(3) of this Schedule ceases to be so deemed on the date

when one of the following events happens (whichever happens first)—

- (a) the individual's application under section 127, or the principal's application under section 116 or 127, for the expanded Type 7 RA is withdrawn;
- (b) the regulated activity specified in the individual's licence is varied by adding the expanded Type 7 RA;
- (c) a refusal to—
  - (i) vary the regulated activity specified in the individual's licence by adding the expanded Type 7 RA takes effect as a specified decision under section 232;
  - (ii) grant the principal a licence for the expanded Type 7 RA takes effect as a specified decision under section 232; or
  - (iii) vary the regulated activity specified in the principal's licence by adding the expanded Type 7 RA takes effect as a specified decision under section 232;
- (d) after the deeming date, the individual ceases to act for or on behalf of the principal in relation to the expanded Type 7 RA.

### 39. Consequences of deemed status—representatives

- (1) This section applies to an individual who is deemed to be licensed under section 34(2) of this Schedule in respect of the expanded Type 7 RA.
- (2) During the period the individual is deemed to be licensed, and if the individual is granted a licence under

section 120 for the expanded Type 7 RA, even after that, the deeming date is to be regarded—

- (a) for the purposes of section 138(2), as the date of the grant of the licence, unless another date is approved by the Commission under that section; and
- (b) for the purposes of section 138(4), as the date on which the individual is licensed, unless another date is approved by the Commission under that section.

#### 40. When deemed status ends—responsible officers

An individual deemed to be approved as a responsible officer under section 35(1) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—

- (a) the individual's LR application under section 120 or 127 for the expanded Type 7 RA is withdrawn;
- (b) a refusal to grant the licence applied for by that LR applicant for the expanded Type 7 RA takes effect as a specified decision under section 232;
- (c) a refusal to vary the regulated activity specified in the individual's licence by adding the expanded Type 7 RA takes effect as a specified decision under section 232;
- (d) the individual's application under section 126 to be approved as a responsible officer in relation to the expanded Type 7 RA is withdrawn;
- (e) the individual is approved under section 126 as a responsible officer in relation to the expanded Type 7 RA;

- (f) a refusal to approve the individual as a responsible officer in relation to the expanded Type 7 RA takes effect as a specified decision under section 232;
- (g) after the deeming date, the individual ceases to act for or on behalf of the principal in relation to the expanded Type 7 RA;
- (h) the principal's application under section 116 or 127 for the expanded Type 7 RA is withdrawn;
- (i) a refusal to grant the principal a licence for the expanded Type 7 RA takes effect as a specified decision under section 232;
- (j) a refusal to vary the regulated activity specified in the principal's licence by adding the expanded Type 7 RA takes effect as a specified decision under section 232.

#### 41. Issue of no-deeming notices by Commission

- (1) The Commission may issue a notice to a corporate applicant informing that the applicant is not to be deemed to be licensed under section 33(2) or (3) of this Schedule if the Commission is not satisfied that—
  - (a) the application is made in accordance with section 116(1) or 127(1); or
  - (b) the conditions in section 33(5)(a), (b), (c), (d), (e), (f) and (g) of this Schedule have been met.
- (2) The Commission may issue a notice to an LR applicant informing that the applicant is not to be deemed to be licensed under section 34(2) or (3) of this Schedule if the Commission is not satisfied that—
  - (a) the application is made in accordance with section 120(1) or 127(1); or

- (b) the conditions in section 34(4)(a), (b), (c) and (d) of this Schedule have been met.
- (3) The Commission may issue a notice to an RO applicant informing that the applicant is not to be deemed to be approved under section 35(1) of this Schedule if the Commission is not satisfied that—
  - (a) the application is made in accordance with section 126(1); or
  - (b) the conditions in section 35(2)(a), (b), (c) and (d) of this Schedule have been met.

## **Part 5**

### **Extension of Non-prosecution Period in Certain Circumstances**

#### **Division 1—Applicants for Licences or Registration**

##### **42. Application and interpretation of this Division**

- (1) This Division applies despite sections 2, 12 and 32 of this Schedule.
- (2) This Division applies to—
  - (a) a person (other than an individual) who—
    - (i) applies under section 116(1) or 127(1) during the application period to carry on a new regulated activity; and
    - (ii) has been issued a no-deeming notice in respect of the application;
  - (b) an individual who—

- (i) applies under section 120(1) or 127(1) to carry on a new regulated activity; and
- (ii) carries on the new regulated activity for a person referred to in paragraph (a);
- (c) an authorized financial institution that—
  - (i) applies under section 119(1) or 127(1) during the application period for registration to carry on a new regulated activity; and
  - (ii) has been issued a no-deeming notice in respect of the application;
- (d) an individual who carries on the new regulated activity for an applicant referred to in paragraph (c);
- (e) a person who—
  - (i) is deemed under this Schedule to be licensed under section 116 in respect of a new regulated activity; and
  - (ii) becomes an unsuccessful appellant or is a non-appellant;
- (f) an individual who—
  - (i) is licensed, or deemed under this Schedule to be licensed, under section 120(1) to carry on a new regulated activity; and
  - (ii) carries on the new regulated activity for a person referred to in paragraph (e);
- (g) an authorized financial institution that—
  - (i) is deemed under this Schedule to be registered under section 119 or 127 for a new regulated activity; and

- (ii) becomes an unsuccessful appellant or is a non-appellant; and
  - (h) an individual who carries on the new regulated activity for an authorized financial institution referred to in paragraph (g).
- (3) For the purposes of this Division, a person (other than an individual) or an authorized financial institution becomes an unsuccessful appellant, if—
  - (a) the person or the authorized financial institution applies for a review of a decision to refuse to—
    - (i) grant a licence under section 116 to carry on a new regulated activity;
    - (ii) grant registration under section 119 to carry on a new regulated activity; or
    - (iii) vary a regulated activity by adding a new regulated activity under section 127; and
  - (b) the decision is confirmed on review.
- (4) For the purposes of this Division, a person (other than an individual) or an authorized financial institution is a non-appellant, if the person or the authorized financial institution does not apply for a review of a decision to refuse to—
  - (a) grant a licence under section 116 to carry on a new regulated activity;
  - (b) grant registration under section 119 to carry on a new regulated activity; or
  - (c) vary a regulated activity by adding a new regulated activity under section 127.

**43. Section 114 not contravened during specified period**

- (1) A person (other than an individual) or an authorized financial institution to whom this Division applies who does an act referred to in section 114(1) in relation to a new regulated activity, does not contravene that section even if the person or the authorized financial institution is not a person referred to in section 114(2)(a), (b) or (c), if the conditions in subsection (3) are satisfied.
- (2) An individual to whom this Division applies who does an act referred to in section 114(3) in relation to a new regulated activity, does not contravene that section even if the individual is not a person referred to in section 114(4)(a), (b) or (c), if the conditions in subsection (4) are satisfied.
- (3) The conditions referred to in subsection (1) are that the act is done—
  - (a) during the specified period; and
  - (b) solely for the purpose of closing down the business that is connected with the new regulated activity concerned.
- (4) The conditions referred to in subsection (2) are that the act is done—
  - (a) during the specified period; and
  - (b) solely for the purpose of closing down the business—
    - (i) of the person or the authorized financial institution for whom the individual carries on the new regulated activity concerned; and
    - (ii) that is connected with that new regulated activity concerned.
- (5) In this section—

***specified period*** (指明期間), in relation to a new regulated activity—

- (a) for a person referred to in section 42(2)(a) of this Schedule, means the longer of the following periods—
  - (i) the period beginning on the date the no-deeming notice is issued to the person in respect of the new regulated activity and ending with the end of the transitional period;
  - (ii) the period of 3 months beginning on the date that the no-deeming notice is issued;
- (b) for an individual referred to in section 42(2)(b) of this Schedule, means the specified period applicable to the person for whom the individual carries on the new regulated activity;
- (c) for an authorized financial institution referred to in section 42(2)(c) of this Schedule, means the longer of the following periods—
  - (i) the period beginning on the date the no-deeming notice is issued to the authorized financial institution in respect of the new regulated activity and ending with the end of the transitional period;
  - (ii) the period of 3 months beginning on the date that the no-deeming notice is issued;
- (d) for an individual referred to in section 42(2)(d) of this Schedule, means the specified period applicable to the authorized financial institution for whom the individual carries on the new regulated activity;

- (e) for a person referred to in section 42(2)(e) of this Schedule who—
  - (i) becomes an unsuccessful appellant, means the period of 3 months beginning on the date the decision on review relating to the new regulated activity takes effect as a specified decision under section 232; and
  - (ii) is a non-appellant, means the period of 3 months beginning on the date the decision to refuse to grant the licence to carry on the new regulated activity takes effect as a specified decision under section 232;
- (f) for an individual referred to in section 42(2)(f) of this Schedule, means the specified period applicable to the person for whom the individual carries on the new regulated activity;
- (g) for an authorized financial institution referred to in section 42(2)(g) of this Schedule that—
  - (i) becomes an unsuccessful appellant, means the period of 3 months beginning on the date the decision on review relating to the new regulated activity takes effect as a specified decision under section 232; and
  - (ii) is a non-appellant, means the period of 3 months beginning on the date the decision to refuse to grant registration to carry on the new regulated activity takes effect as a specified decision under section 232; and
- (h) for an individual referred to in section 42(2)(h) of this Schedule, means the specified period applicable to the authorized financial institution for

whom the individual carries on the new regulated activity.

#### 44. Extension of specified period

- (1) A person (whether an individual or otherwise) referred to in section 42(2)(a), (b), (e) or (f) or 47(3) of this Schedule may apply to the Commission in writing, within the specified period that is applicable to the person in the particular case, for an extension of that specified period.
- (2) An authorized financial institution referred to in section 42(2)(c) or (g) of this Schedule may apply to the Commission in writing, within the specified period that is applicable to the authorized financial institution in the particular case, for an extension of that specified period.
- (3) An individual referred to in section 42(2)(d) or (h) of this Schedule may apply to the Monetary Authority in writing, within the specified period that is applicable to the individual in the particular case, for an extension of that specified period.
- (4) On receiving an application—
  - (a) made under subsection (1), the Commission may extend the specified period for a period that it considers appropriate, having regard to the circumstances of the person's business and activities;
  - (b) made under subsection (2), the Commission may, in consultation with the Monetary Authority, extend the specified period for a period that it, in consultation with the Monetary Authority, considers appropriate, having regard to the

circumstances of the business and activities of the authorized financial institution; and

- (c) made under subsection (3), the Monetary Authority may extend the specified period for a period that the Monetary Authority considers appropriate, having regard to the circumstances of the business and activities of the authorized financial institution.
- (5) If the specified period is extended under this section in relation to a particular person, an authorized financial institution or an individual, a reference in section 43 of this Schedule to the specified period, in its application to that person, authorized financial institution or individual, must be taken to include the period so extended.

#### 45. Requirements imposed by Commission or Monetary Authority

- (1) The Commission may, by a written notice served on a person (whether an individual or otherwise) referred to in section 42(2)(a), (b), (e) or (f) or 47(3) of this Schedule, require the person to comply with one or more of the requirements in subsection (4).
- (2) The Commission may, after consultation with the Monetary Authority, by a written notice served on an authorized financial institution referred to in section 42(2)(c) or (g) of this Schedule, require the authorized financial institution to comply with one or more of the requirements in subsection (4).
- (3) The Monetary Authority may, by a written notice served on an individual referred to in section 42(2)(d) or (h) of this Schedule, require the individual to comply with one or more of the requirements in subsection (4).

- (4) The requirements the issuing authority may impose are—
- (a) to require the subject person or subject individual to carry on the new regulated activity concerned in a specified manner;
  - (b) to require the subject person or subject individual not to carry on the new regulated activity concerned in a specified manner;
  - (c) to require the subject person to deal with or refrain from dealing with, any assets whether in Hong Kong or elsewhere and whether or not they are the subject person's assets, in a specified manner;
  - (d) to require the subject person to maintain assets in Hong Kong or a specified place outside Hong Kong so that—
    - (i) the assets are of a value or class or description that appear to be desirable to the issuing authority for the purpose of ensuring that the subject person will be able to meet the subject person's liabilities in respect of the business in the new regulated activity concerned carried on by that person; and
    - (ii) the assets are maintained in a manner that will enable the subject person at any time to freely transfer or otherwise dispose of the assets.
- (5) In this section—
- issuing authority** (主管當局), in relation to a notice issued under—
- (a) subsection (1) or (2), means the Commission; and
  - (b) subsection (3), means the Monetary Authority;

**specified** (指明) means specified in a notice served by the issuing authority;

**subject individual** (標的個人) means, if the issuing authority is the—

- (a) Commission, an individual on whom a notice is served under subsection (1);
- (b) Monetary Authority, an individual on whom a notice is served under subsection (3);

**subject person** (標的人士) means—

- (a) a person (other than an individual) on whom a notice is served under subsection (1); or
- (b) an authorized financial institution on whom a notice is served under subsection (2).

#### 46. Offence of contravening a requirement under section 45 of this Schedule

- (1) A person (whether an authorized financial institution, individual or other person) who fails to comply with a requirement specified in a notice served under section 45(1), (2) or (3) of this Schedule commits an offence.
- (2) A person (other than an individual) who commits an offence under subsection (1) is liable—
  - (a) on conviction on indictment to a fine of \$10,000,000; or
  - (b) on summary conviction to a fine of \$500,000.
- (3) An individual who commits an offence under subsection (1) is liable—
  - (a) on conviction on indictment to a fine of \$10,000,000 and to imprisonment for 7 years; or

- (b) on summary conviction to a fine of \$500,000 and to imprisonment for 6 months.

### **Division 2—Individuals Assisting Licensed Corporations to Carry on New Regulated Activity**

#### **47. Section 114 not contravened by individuals assisting licensed corporations**

- (1) This section applies despite sections 2, 12, and 32 of this Schedule.
- (2) This section applies if a person (other than an individual) has applied under section 116(1) or 127(1), within the application period, to carry on a new regulated activity and in respect of that activity—
  - (a) the person has been issued a no-deeming notice;
  - (b) the person has become an unsuccessful appellant (within the meaning of section 42(3) of this Schedule); or
  - (c) the person is a non-appellant (within the meaning of section 42(4) of this Schedule).
- (3) An individual who does an act in relation to that regulated activity to assist a person referred to in subsection (2) does not contravene section 114(3) even if the individual is not a person referred to in section 114(4) if the conditions in subsection (4) are satisfied.
- (4) The conditions are that—
  - (a) no individual to whom section 42(2)(b) or (f) of this Schedule applies is able to assist the person referred to in subsection (2) to close down the business connected with the new regulated activity;

- (b) the act is done solely for the purpose of closing down the business connected with the new regulated activity;
- (c) the act is done during the specified period applicable to the person under paragraph (a) or (e) of the definition of *specified period* in section 43(5) of this Schedule, depending on whether the person—
  - (i) has been issued a no-deeming notice;
  - (ii) has become an unsuccessful appellant (within the meaning of section 42(3) of this Schedule); or
  - (iii) is a non-appellant (within the meaning of section 42(4) of this Schedule); and
- (d) the Commission has received prior written notice from the person referred to in subsection (2) that the individual concerned would be assisting that person.
- (5) For the purposes of subsection (4), the Commission is to be regarded as having received the notice if the person who gave the notice receives a written acknowledgement of receipt from the Commission.

## **Part 6**

### **Application of Ordinance during Deemed Status**

#### **48. Application of Ordinance to deemed persons**

- (1) If a person is deemed under this Schedule to be licensed or registered for a regulated activity or to be approved as a responsible officer in relation to a regulated activity,

this Ordinance applies to and in relation to that person as if—

- (a) the person were licensed or registered for that regulated activity under this Ordinance; or
  - (b) the person were approved as a responsible officer under this Ordinance.
- (2) If an individual is deemed under this Schedule to have consent under section 71C of the Banking Ordinance (Cap. 155) to become an executive officer, this Ordinance and the provisions of the Banking Ordinance (Cap. 155) relating to an executive officer apply to that individual as if he or she obtained consent to become an executive officer under section 71C of the Banking Ordinance (Cap. 155).
- (3) This section is subject to sections 7, 9, 17, 19, 25, 37 and 39 of this Schedule.

#### 49. Deemed conditions

- (1) For the purposes of this Ordinance—
- (a) a condition that a licence is deemed to be subject to under section 28(2) of this Schedule is to be regarded as a condition imposed under section 116;
  - (b) a condition that a licence is deemed to be subject to under section 29(2) of this Schedule is to be regarded as a condition imposed under section 120;
  - (c) a condition that a registration is deemed to be subject to under section 30(2) of this Schedule is to be regarded as a condition imposed under section 119; and

- (d) a condition that a licence is deemed to be subject to under section 33(4) of this Schedule is to be regarded as a condition imposed under section 116.
- (2) A condition that a consent is deemed to be subject to under section 31(2) of this Schedule (*consent condition*) is to be regarded as a condition imposed under section 71C(9) of the Banking Ordinance (Cap. 155) except that paragraphs (a), (b) and (c) of that section 71C(9) do not apply to or in relation to the consent condition.”.
-

**Part 3****Amendments Relating to Protections under Part III of Securities and Futures Ordinance****56. Securities and Futures Ordinance amended**

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

**57. Section 18 amended (interpretation of Part III)**

(1) Section 18(1), definition of *default rules*, after “40(2)” —

**Add**

“or made under section 40(2A)”.

(2) After section 18(6) —

**Add**

“(7) In this section —

- (a) to avoid doubt, the reference to property held by or deposited with a recognized clearing house for the purpose described in the definition of *market collateral* in subsection (1) includes property held or deposited as collateral, margin or guarantee fund contributions (by whatever name called in the rules of the recognized clearing house) and whether the property is held or deposited by way of charge, transfer or other arrangement; and
- (b) *guarantee fund contribution* (保證基金供款) means any contribution by a recognized clearing house or its clearing participants to a fund that —

- (i) is maintained by the recognized clearing house to cover losses, including losses arising in connection with —
  - (A) it being unable or likely to become unable to meet its obligations in respect of any unsettled or open market contract; or
  - (B) a clearing participant being unable, or appearing to be, or likely to become, unable to meet obligations in respect of unsettled or open market contracts to which that participant is a party; and
- (ii) may be applied for that purpose under the default rules of the recognized clearing house.”.

**58. Section 40 amended (rules by recognized clearing houses)**

After section 40(2) —

**Add**

- “(2A) A recognized clearing house may make rules to provide for the following purposes —
- (a) taking proceedings or other action if —
    - (i) the recognized clearing house is unable, or likely to become unable, to meet its obligations in respect of any unsettled or open market contract to which it is a party as those obligations fall due; and
    - (ii) it becomes necessary or desirable for the recognized clearing house to cease to provide or operate any clearing and settlement facilities provided or operated by it;

- (b) taking proceedings or other action in relation to contracts entered into between a clearing participant in its capacity as a clearing agent and its clearing clients, if those contracts relate to unsettled or open market contracts to which the clearing participant is a party;
- (c) taking proceedings or other action in relation to positions or collateral of a clearing client held by a clearing participant in its capacity as a clearing agent, if those positions or collateral relate to unsettled or open market contracts to which the clearing participant is a party.”.

**59. Section 47 amended (duty to report on completion of default proceedings)**

Section 47(1)(a)—

**Repeal**

“the net sum (if any)”

**Substitute**

“any net sum”.

**60. Schedule 3 amended (exchange companies, clearing houses and exchange controllers)**

Schedule 3, Part 5, after section 1—

**Add**

- “2. If the RCH rules envisage that a clearing participant may record market contracts in separate capacities, as referred to in section 3, paragraphs (a), (b), (c), (d), (e) and (f) of section 1 must be complied with separately in respect of each capacity.
- 3. For the purposes of section 2—

- (a) a clearing participant will be regarded as recording market contracts in separate capacities if it enters into—
    - (i) transactions that are required or permitted by the RCH rules to be recorded in any of the clearing participant’s house accounts with the recognized clearing house;
    - (ii) transactions that are required or permitted by the RCH rules to be recorded in any of the clearing participant’s client accounts with the recognized clearing house;
  - (b) any net sum payable to the clearing participant in respect of transactions recorded in client accounts, as calculated under section 1(c), must not be set off against any net sum payable by the clearing participant in respect of transactions recorded in any house account, as calculated under that section, regardless of any provision to the contrary in the RCH rules;
  - (c) any net sum payable to the clearing participant in respect of transactions recorded in house accounts, as calculated under section 1(c), may be set off against any net sum payable by the clearing participant in respect of transactions recorded in any client account, as calculated under that section, if the RCH rules so provide or permit.
4. To avoid doubt—
- (a) a transfer of a defaulting participant’s positions under an unsettled market contract and collateral in a client account to one or more other clearing participants of the recognized clearing house in

accordance with the RCH rules constitutes settlement of that contract for the purposes of section 1(a); and

- (b) without limiting section 1(b), the reference in that section to the rights and liabilities of the clearing participant under or in respect of the contract concerned includes the rights and liabilities that arise as a result of action taken under the RCH rules authorizing the transfer of the clearing participant's positions under the contract and collateral in a client account to one or more other clearing participants of the recognized clearing house.

5. Sections 1, 2, 3 and 4 apply despite section 55 of this Ordinance.

6. In this Part—

**client account** (客户帳戶), in relation to a recognized clearing house, means an account held by the recognized clearing house in the name of a clearing participant other than a house account in which positions or collateral are recorded;

**house account** (結算所帳戶), in relation to a clearing participant, means an account—

- (a) held by the recognized clearing house in the name of the clearing participant; and
- (b) in which the following are recorded—
  - (i) the clearing participant's own positions and collateral;
  - (ii) the positions and collateral of other persons that are regarded by the RCH rules to be the

clearing participant's own positions and collateral;

**RCH rules** (《認可結算所規章》), in relation to a recognized clearing house, means the rules of the recognized clearing house referred to in section 1.”

**Part 4****Amendments to Securities and Futures Ordinance  
Relating to Electronic Filing****61. Securities and Futures Ordinance amended**

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

**62. Section 308 amended (interpretation of Part XV)**

Section 308(1)—

**Repeal the definition of *relevant exchange company***

**Substitute**

***“relevant exchange company*** (有關交易所公司) means the Stock Exchange Company;”.

**63. Section 374 substituted**

Section 374—

**Repeal the section**

**Substitute**

**“374. Mandatory electronic filing of notifications and reports**

(1) This section applies to the following documents (*specified documents*)—

- (a) a notification required by section 324;
- (b) a notification required by section 327(2);
- (c) a notification required by section 330(1) or (3);
- (d) a report required to be delivered by section 333(1) or (3);

(e) a notification required by section 347;

(f) a notification required by section 350(2).

(2) Despite section 400, a specified document that is required to be given or delivered to a person specified in column 1 of the following table is to be regarded as duly given or delivered only if it is sent to the person specified opposite that person in column 2 of the table—

- (a) by means of an electronic transmission system approved under subsection (4); and
- (b) in accordance with the directions and instructions for the use of that system published under subsection (5).

**Table**

| Column 1                      | Column 2                      |
|-------------------------------|-------------------------------|
| The relevant exchange company | The relevant exchange company |
| A listed corporation          | The relevant exchange company |
| The Commission                | The relevant exchange company |
| The Monetary Authority        | The Monetary Authority        |

(3) As soon as practicable after receiving a specified document under subsection (2), the relevant exchange company must send a copy of it to the Commission and (except for a notification under section 330(1) or a report

under section 333(1)) to the listed corporation concerned—

- (a) by means of an electronic transmission system approved under subsection (4); and
  - (b) in accordance with the directions and instructions for the use of that system published under subsection (5).
- (4) The Commission may from time to time approve one or more electronic transmission systems for the purposes of subsections (2) and (3).
- (5) As soon as practicable after approving an electronic transmission system under subsection (4), the Commission must publish, in the manner it considers appropriate, directions and instructions for the use of that system.
- (6) To avoid doubt, a document (other than a specified document) that is to be given, delivered, issued or sent for the purposes of this Part is to be regarded as duly given, delivered, issued or sent if it is sent in the manner (as appropriate) specified in section 400.”.

**64. Schedule 10 amended (savings, transitional, consequential and related provisions, etc.)**

At the end of Schedule 10—

**Add**

**“Part 6**

**Savings and Transitional Provisions Relating to Securities and Futures (Amendment) Ordinance 2013**

1. Subject to section 2, section 374 of this Ordinance as substituted by section 63 of the Securities and Futures (Amendment) Ordinance 2013 ( of 2013) applies to a specified document if the duty to give or deliver the document arose on or after the commencement date of section 63 of the Securities and Futures (Amendment) Ordinance 2013 ( of 2013).
2. If the duty to give or deliver a specified document arose before the commencement date of section 63 of the Securities and Futures (Amendment) Ordinance 2013 ( of 2013), the document is to be regarded as duly given or delivered if it is—
  - (a) delivered, left or sent on or after that date in accordance with section 374 of this Ordinance as in force immediately before that date; or
  - (b) sent in accordance with section 374 of this Ordinance as substituted by section 63 of the Securities and Futures (Amendment) Ordinance 2013 ( of 2013).
3. In this Part—

*specified document* (指明文件) means a document referred to in section 374(1) of this Ordinance as substituted by section 63 of the Securities and Futures (Amendment) Ordinance 2013 ( of 2013).”.

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## Part 5

### Amendments Relating to Disgorgement Orders for Market Misconduct Offences

#### Division 1—Amendments to Securities and Futures Ordinance

##### 65. Securities and Futures Ordinance amended

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

##### 66. Section 303 amended (penalties)

###### (1) Section 303(2)(c)—

###### Repeal

“him.”

###### Substitute

“the person;”.

###### (2) After section 303(2)(c)—

###### Add

“(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 commission of the offence in question.”.

###### (3) After section 303(7)—

###### Add

“(8) An order under subsection (2)(d) may be enforced in the same manner as a judgment of the High Court in its civil jurisdiction.”.

## **Division 2—Amendment to Organized and Serious Crimes Ordinance**

### **67. Organized and Serious Crimes Ordinance amended**

The Organized and Serious Crimes Ordinance (Cap. 455) is amended as set out in this Division.

### **68. Schedule 2 amended (other specified offences)**

Schedule 2, after item 12—

#### **Add**

#### **“13. Securities and Futures Ordinance (Cap. 571)**

|             |   |
|-------------|---|
| section 291 | insider dealing   |
| section 295 | false trading   |
| section 296 | price rigging   |
| section 297 | disclosure of information<br>about prohibited<br>transactions             |
| section 298 | disclosure of false or<br>misleading information<br>inducing transactions |
| section 299 | stock market<br>manipulation”.  |

## **Part 6**

### **Consequential Amendment**

### **69. Securities and Futures (Futures Contracts) Notice 2012 repealed**

The Securities and Futures (Futures Contracts) Notice 2012 (Cap. 571 sub. leg. AK) is repealed.

### Explanatory Memorandum

The main object of this Bill is to amend the Securities and Futures Ordinance (Cap. 571) (*SFO*) to establish a framework for the regulation of over-the-counter derivative products (*OTC derivative products*) and over-the-counter derivative transactions (*OTC derivative transactions*). The regulatory authorities are the Securities and Futures Commission (*SFC*) and the Monetary Authority (*MA*). The relevant amendments are in Part 2 of the Bill.

2. As part of the regulatory framework, the Bill creates 2 new regulated activities, Type 11 regulated activity (*Type 11 RA*) and Type 12 regulated activity (*Type 12 RA*) and adds new components to the existing Type 7 regulated activity (*Type 7 RA*) and Type 9 regulated activity (*Type 9 RA*). The purpose is to bring services provided in relation to OTC derivative products and OTC derivative transactions under the licensing and registration regime in Part V of the SFO.
3. Part 3 of the Bill amends Part III of, and Schedule 3 to, the SFO to clarify and extend the ambit of the protections contained in sections 45 to 57 of the SFO (*Part III protections*).
4. Part 4 of the Bill amends the SFO to require certain notifications and reports under Part XV of the SFO to be filed electronically.
5. Part 5 of the Bill, in Division 1, amends the SFO to provide for disgorgement orders for market misconduct offences. Division 2 makes related amendments to the Organized and Serious Crimes Ordinance (Cap. 455) (*OSCO*).
6. Part 6 of the Bill repeals the Securities and Futures (Futures Contracts) Notice 2012 (Cap. 571 sub. leg. AK) made under the SFO as a consequential amendment.

7. Clause 1 sets out the short title and provides for commencement by notice published in the Gazette by the Secretary for Financial Services and the Treasury.

### Amendments relating to regulation of OTC derivative products and transactions

8. Clauses 3 4, 5, 6, 7 and 8 amend sections 21, 27, 38, 42, 63 and 71 of the SFO (which relate to recognized exchange companies, recognized clearing houses and recognized exchange controllers) to apply them to OTC derivative products.
9. Clause 9 adds a new Part IIIA to the SFO relating to obligations and requirements relating to OTC derivative transactions. The obligations apply to prescribed persons. As defined, prescribed persons are authorized financial institutions, approved money brokers, licensed corporations and other persons prescribed by rules to be made under the SFO. Part IIIA also imposes requirements on systemically important participants (*SIPs*). They are persons (other than authorized financial institutions, approved money brokers and licensed corporations) whose positions in a class or description of OTC derivative transactions have reached a level specified in rules made under the SFO (*notification level*).
10. In Part IIIA, Division 1 (new section 101A) contains the definitions for the interpretation of that Part.
11. In Part IIIA, Division 2 adds new provisions to impose reporting, clearing and trading obligations (*obligations*) on prescribed persons in respect of OTC derivative transactions specified by rules made under the SFO. The provisions are—
  - (a) new sections 101B to 101D, which—
    - (i) impose the reporting obligation (obligation to report specified OTC derivative transactions to the MA);

- (ii) impose the clearing obligation (obligation to clear specified OTC derivative transactions with a designated central counterparty (**CCP**));
  - (iii) impose the trading obligation (obligation to execute specified OTC derivative transactions only on designated trading platforms);
  - (iv) provide that if the prescribed person is a locally incorporated authorized financial institution, the obligations include another element, namely to ensure that subsidiaries of that institution specified by the MA report specified OTC derivative transactions to the MA, clear them with a designated CCP and execute them only on a designated trading platform;
  - (b) new sections 101E and 101F, which empower the SFC and the MA to apply to the Court of First Instance (**CFI**) for imposition of financial penalties for non-compliance with the obligations;
  - (c) new sections 101G and 101H, which enable the grant of exemptions from the obligations and require the publication of guidelines governing exemptions.
12. In Part IIIA, Division 3 empowers the SFC to designate CCPs and trading platforms with the consent of the MA and after consultation with the Financial Secretary (**FS**).
13. In Part IIIA, Division 4 contains rule making powers relating to obligations and to designations. The rules may be made by the SFC with the consent of the MA and after consultation with the FS.
14. In Part IIIA, Division 5 relates to SIPs and the main provisions are—

- (a) new section 101O (the requirement to notify positions that have reached the notification level and the creation of an offence for non-compliance);
  - (b) new sections 101P and 101Q (the SFC's duty to maintain a register, which may be inspected by members of the public, to record the names of persons who have notified the SFC and, additionally, those who have not notified the SFC if the SFC or the MA has reasonable cause to believe that their positions have reached the notification level);
  - (c) new section 101R (non-application of the notification requirement in respect of a class or description of OTC derivative transaction while a person is registered for that class or description);
  - (d) new section 101S (deregistration if the SFC is satisfied that the relevant conditions, circumstances and criteria prescribed for deregistration have been met);
  - (e) new sections 101T and 101U (powers of the SFC and the MA to require information from a registered SIP and the SFC's power to require a registered SIP to take action specified by it regarding OTC derivative products);
  - (f) new section 101V (application by the SFC to CFI for the enforcement of requirements imposed on SIPs); and
  - (g) new section 101W (rule making power of the SFC to prescribe details of the matters dealt with in the Division).
15. Clause 10 amends section 109 of the SFO to extend the offence of issuing advertisements relating to the carrying on of regulated activities to cover Type 11 RA.

16. Clause 12 amends section 119 of the SFO (which deals with the registration of authorized financial institutions for regulated activities) to exclude from its ambit Type 11 RA and Type 12 RA.
17. Clause 14 adds a new section 145A to the SFO to empower the SFC to vary financial resources rules for licensed corporations that engage in OTC derivative transactions, to enhance the SFC's supervision of such corporations.
18. Clauses 15 to 20 amend Part VIII of the SFO to include powers relating to the regulation of OTC derivative transactions among the SFC's existing supervisory powers and investigatory powers. The amendments also add a new Division 3A to confer powers on the MA to exercise similar powers over authorized financial institutions and approved money brokers for contravening the obligations. The main amendments are—
  - (a) clause 15, which includes in section 178 of the SFO a definition of *MA investigator* to mean investigators directed or appointed by the MA and expands the definition of *person under investigation* to include a person investigated by an MA investigator;
  - (b) clause 16, which amends section 181 of the SFO to extend the powers of a person authorized by the SFC to include power to require the giving of information about activities in OTC derivative products;
  - (c) clause 18, which amends section 182 of the SFO to give the SFC power to investigate wrongdoing connected with dealing in OTC derivative products or advising on OTC derivative products, providing clearing agency services for OTC derivative transactions and the contravention of obligations and non-compliance by registered SIPs of regulatory requirements under the new regime;

- (d) clause 20, which adds a new Division 3A, with provisions to—
  - (i) give the MA power to direct or appoint MA investigators (new section 184A);
  - (ii) set out the powers of an MA investigator (new section 184B);
  - (iii) provide for the making of investigation reports (new section 184C);
  - (iv) create offences for non-compliance with requirements made during the course of an investigation and for giving false or misleading information (new section 184D); and
  - (v) provide for the recovery of costs of an investigation (new section 184E);
- (e) clause 21, which amends section 185 of the SFO (which deals with application to the CFI for non-compliance with requirements made during an investigation) to apply it to investigations carried out by an MA investigator;
- (f) clause 22, which amends section 186 of the SFO (which deals with the SFC's power to assist regulators outside Hong Kong) to include assistance relating to transactions regarding OTC derivative products;
- (g) clause 23, which adds a new section 186A to the SFO to enable the MA to assist regulators outside Hong Kong who perform regulatory functions, in their investigations into matters concerning OTC derivative transactions;
- (h) clauses 24, 25 and 26, which amend sections 187, 190 and 191 of the SFO so that provisions relating to the use of incriminating evidence in proceedings, inspection of records and documents and application for and search

under Magistrate's warrants extend to investigations carried out by an MA investigator.

19. Clauses 27 to 37 contain amendments relating to disciplinary powers of the SFC and the MA. They extend the existing powers of the SFC to enable it to take disciplinary action in relation to OTC derivative products and OTC derivative transactions. The amendments also add new Divisions 4 and 5 to Part IX of the SFO to enable the MA to take disciplinary action against authorized financial institutions and approved money brokers that contravene the obligations. The following are the key amendments—
- (a) clause 29, which adds a new section 197A to the SFO to empower the SFC to take disciplinary action for non-compliance with requirements imposed on a registered SIP under new section 101U;
  - (b) clauses 31 and 32, which amend sections 198 and 199 of the SFO to include new section 197A in the provisions relating to procedural requirements to be observed by the SFC in taking disciplinary action and to require the SFC to issue guidelines for taking disciplinary action to impose pecuniary penalties under new section 197A;
  - (c) clause 34, which amends section 201 of the SFO to bring new section 197A within the SFC's power to take additional action and to state that the disciplinary powers do not affect the CFI's power to exercise its powers under the new provisions that empower the SFC to apply to the CFI for non-compliance with requirements under the SFO;
  - (d) clause 37, which adds new Divisions 4 and 5 to Part IX of the SFO to—
    - (i) enable the MA to take disciplinary action against an authorized financial institution or an approved money broker (new section 203A);

- (ii) set out procedural requirements for taking disciplinary action (new section 203B);
- (iii) require the MA to publish guidelines for taking disciplinary action (new section 203C);
- (iv) enable the MA to take action additional to disciplinary action with the consent of the person being disciplined (new section 203D);
- (v) set out how to recover pecuniary penalties imposed by the MA (new section 203E);
- (vi) empower the MA to apply to the CFI to enforce compliance with a disciplinary order imposed on an authorized financial institution or an approved money broker prohibiting it from continuing to carry on or carrying on the business of OTC derivative transactions (new section 203F).

20. Clause 39 amends section 378 of the SFO to remove from its ambit the MA and persons assisting the MA, in the performance of the new functions relating to the regulatory regime for OTC derivative transactions.
21. Clause 40 adds a new Division 1A to Part XVI of the SFO to impose a confidentiality requirement on the MA and other persons involved in performing the MA's functions under the new regulatory regime and to create exceptions to the requirement in specified situations. Following are the main new sections—
- (a) new section 381A, which provides that the MA and every other person involved in performing the MA's new functions must preserve secrecy with regard to information that comes into their possession when performing those functions and sets out the circumstances in which they can disclose such information;

- (b) new section 381B, which sets out situations in which only the MA can disclose information;
  - (c) new section 381C, which sets out circumstances in which the MA can disclose information, but subject to a condition;
  - (d) new section 381D, which imposes restrictions on persons to whom information is disclosed regarding the onward disclosure of the information and creates offences for breaching the restrictions;
  - (e) new section 381E, which provides for situations in which the MA must disclose information to the SFC;
  - (f) new section 381F, which allows the MA to disclose information to overseas persons performing similar functions to the MA, but subject to certain conditions.
22. Clause 41 adds a new section 385A to the SFO to allow the MA to intervene in proceedings that are not criminal and concern matters relating to the MA's functions under the new regulatory regime.
23. Clause 42 amends section 388 of the SFO to exclude from the SFC's powers to bring prosecutions, matters relating to the MA's new functions.
24. Clause 43 adds a new section 388A to the SFO to empower the MA to prosecute certain offences relating to the MA's new functions and clause 44 amends section 389 of the SFO consequentially.
25. Clause 45 amends section 392 of the SFO to empower the FS to prescribe by a notice published in the Gazette that any interests, rights or property are to be regarded or not to be regarded as OTC derivative products.
26. Clause 46 adds a new section 392A to the SFO to empower the FS to prescribe by notice published in the Gazette certain matters for the purposes of the definition of *OTC derivative product*.

27. Clause 47 amends section 398 of the SFO to exclude from its application rules made by the SFC with the consent of the MA.
28. Clause 48 amends section 399 of the SFO to extend its application to all guidelines made by the SFC, including those made in relation to disciplinary action against registered SIPs.
29. Clauses 49 to 51 contain amendments consequential to the addition of a new Schedule 11 to the SFO setting out transitional arrangements relating to the Type 11 RA and Type 12 RA and the new components of Type 7 RA and Type 9 RA.
30. Clause 52 amends Schedule 1 (which contains definitions of general application) to the SFO to include a definition of *OTC derivative product* and other new definitions pertaining to the regulation of OTC derivative transactions. The replacement of the definition of *market contract* re-enacts the existing definition as paragraph (a) and adds a new paragraph (b) to cater for OTC derivative transactions.
31. Clause 53 amends Schedule 5 to the SFO to include definitions of Type 11 RA and Type 12 RA and the new components of Type 7 RA and Type 9 RA.
32. Clause 54 amends Schedule 8 to the SFO to include decisions under the new regime that are subject to review by the Securities and Futures Appeals Tribunal.

#### Transitional arrangements

33. Clause 55 adds a new Schedule 11 to the SFO to provide transitional arrangements for activities that fall within Type 11 RA and Type 12 RA and the new components of Type 7 RA and Type 9 RA. In substance, the arrangements are as follows—
- (a) a person who carries on Type 11 RA or Type 12 RA or the new components of Type 7 RA or Type 9 RA during

- the transitional period does not commit an offence even if the person is not licensed, registered or approved for that regulated activity;
- (b) the transitional period in relation to each regulated activity is 6 months from the commencement of the application of the SFO to the regulated activity;
  - (c) a licensed corporation or an individual who applies under Part V of the SFO for a licence to carry on Type 11 RA or Type 12 RA is deemed to be licensed for that regulated activity if certain conditions are satisfied;
  - (d) an individual who applies under Part V of the SFO to be approved as a responsible officer for Type 11 RA or Type 12 RA is deemed to be so approved if certain conditions are satisfied;
  - (e) if a person or an individual who is not licensed or approved for Type 9 RA applies under Part V of the SFO to carry on Type 9 RA (including the new component), the person or individual is deemed to be licensed or approved for the new component if certain conditions are satisfied;
  - (f) if an authorized financial institution that is not registered for Type 9 RA applies under Part V of the SFO to carry on Type 9 RA (including the new component) or an individual applies for consent to act as an executive officer for such an institution, the authorized financial institution or the individual is deemed to be registered or to have consent for Type 9 RA if certain conditions are satisfied;
  - (g) the SFC can issue a no-deeming notice to an applicant (other than an applicant to become an executive officer) if the specified conditions are not satisfied and the applicant is not to be deemed;

- (h) the MA can issue a no-deeming notice to an applicant to become an executive officer if the specified conditions are not satisfied and the applicant is not to be deemed;
- (i) the deemed status begins immediately on the expiry of the transitional period and, if the application is not withdrawn, lasts until the person's application is granted or refused, and in the second case, the refusal takes effect as a specified decision under section 232 of the SFO;
- (j) a licensed corporation, an authorized financial institution or a responsible officer licensed, registered or approved for Type 9 RA at the time the new component is introduced is deemed to have a condition attached to the licence or registration prohibiting the carrying on of the new component, unless the notification requirement set out in the new Schedule 11 is complied with;
- (k) an individual who is an executive officer of an authorized financial institution registered for Type 9 RA at the time the new component is introduced is deemed to have a condition attached to the consent given for Type 9 RA under the Banking Ordinance (Cap. 155) prohibiting the carrying on of the new component unless the notification requirement set out in the new Schedule 11 is complied with;
- (l) a person or an individual who is not licensed for Type 7 RA and applies under Part V of the SFO for a licence to carry on the new component of Type 7 RA is deemed to be licensed or approved for that activity if certain conditions are satisfied and subject to the condition that they can carry on only the new component of Type 7 RA;

- (m) if a person is issued a no-deeming notice or if the application of a person who is deemed is refused and the refusal is confirmed by the Securities and Futures Appeals Tribunal, provisions are included to extend the period for not taking any prosecution action if certain conditions are satisfied.

#### Amendments relating to Part III protections

- 34. Clause 57 amends section 18 of the SFO. Subclause (1) expands the definition of *default rules* to cover rules of a recognized clearing house (**RCH**) made under new section 40(2A) added by clause 58. Subclause (2) clarifies the ambit of the definition of *market collateral*.
- 35. Clause 58 amends section 40 of the SFO to add a new subsection (2A) to enable an RCH to make rules for taking proceedings or other action, to cover the RCH's own default or a reduction or cessation of the services provided by the RCH, and in relation to contracts entered into between a clearing participant and a clearing client and positions or collateral of a clearing client held by a clearing participant.
- 36. Clause 60 amends Part 5 of Schedule 3 (which sets out what the default rules must contain) to the SFO to add—
  - (a) a new section 2 to provide that if the RCH rules envisage that a clearing participant may record market contracts in separate capacities, the requirements as to the contents in section 1 of Schedule 3 to the SFO must be complied with for each capacity; and
  - (b) a new section 3 to—
    - (i) clarify when a clearing participant will be regarded as recording market contracts in separate capacities;

- (ii) state that a net sum payable to the clearing participant for transactions recorded in client accounts must not be set off against a net sum payable by the clearing participant for transactions recorded in a house account even if the RCH rules provide otherwise; and
- (iii) state that a net sum payable to the clearing participant for transactions recorded in house account may be set off against a net sum payable by the clearing participant for transactions recorded in a client account if the RCH rules so permit; and
- (c) a new section 4 to—
  - (i) clarify that a transfer of a defaulting participant's positions under an unsettled market contract and collateral in a client account to one or more other clearing participants of the recognized clearing house constitutes settlement of that contract; and
  - (ii) clarify consequentially the reference in section 1(b) of Part 5 of Schedule 3 to the SFO to the rights and liabilities of the clearing participant under or in respect of an unsettled or open market contract.

#### Amendments relating to electronic filing

- 37. Clause 63 replaces section 374 of the SFO, which deals with the method of giving certain notifications and delivering reports under Part XV of the SFO (disclosure of interests in listed corporations). The effect of the new section is to require these documents to be filed electronically with the relevant exchange company (which is The Stock Exchange of Hong Kong Limited), except for those required to be given to the MA, which must be filed electronically with the MA.

38. Clause 64 enacts transitional provisions for notifications and reports under Part XV of the SFO. In particular, if the duty to give or deliver the document arose before the commencement date of clause 63, the document may be filed electronically under the new section 374 or given or delivered by a method specified in the old section 374.

**Amendments relating to disgorgement orders and market misconduct offences**

39. Clause 66 amends section 303 of the SFO to empower a court to make a disgorgement order on a person who has committed a market misconduct offence under Part XIV of the SFO. A disgorgement order may be enforced in the same way as a civil judgment.
40. Clause 68 adds item 13 to Schedule 2 to the OSCO to add to that Schedule a range of market misconduct offences under Part XIV of the SFO. The effect of this amendment is to allow restraint orders, charging orders and confiscation orders to be made under the OSCO in relation to the proceeds of, or property derived from, those offences.

**Consequential repeal**

41. Clause 69 repeals the Securities and Futures (Futures Contracts) Notice 2012 (Cap. 571 sub. leg. AK) as a consequential amendment to the enactment of the definition of *OTC derivative product*. The Notice was a temporary measure as a result of which transactions that would fall within the meaning of *OTC derivative transactions* were to be regarded as a futures contract to enable them to benefit from certain protections under the SFO. This temporary measure is no longer necessary as these protections will apply to OTC derivative transactions under the new regime. Transactions cleared

through an RCH before the repeal of the Notice will continue to enjoy the benefits as OTC derivative transactions.

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| Section: | 21 | Duties of recognized exchange company | L.N. 12 of 2003 | 01/04/2003 |
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- (1) It shall be the duty of a recognized exchange company to ensure-
  - (a) so far as reasonably practicable, an orderly, informed and fair market-
    - (i) in the case of a recognized exchange company which operates a stock market, in securities that are traded on that stock market or through the facilities of that company; or
    - (ii) in the case of a recognized exchange company which operates a futures market, in futures contracts that are traded on that futures market or through the facilities of that company; and
  - (b) that risks associated with its business and operations are managed prudently.
- (2) In discharging its duty under subsection (1), a recognized exchange company shall-
  - (a) act in the interest of the public, having particular regard to the interest of the investing public; and
  - (b) ensure that the interest of the public prevails where it conflicts with the interest of the recognized exchange company.
- (3) A recognized exchange company shall operate its facilities in accordance with the rules made under section 23 and approved under section 24.
- (4) A recognized exchange company shall formulate and implement appropriate procedures for ensuring that its exchange participants comply with the rules of the company.
- (5) A recognized exchange company shall immediately notify the Commission if it becomes aware-
  - (a) that any of its exchange participants is unable to comply with any rules of the company or any financial resources rules; or
  - (b) of a financial irregularity or other matter which in the opinion of the company may indicate that the financial standing or integrity of an exchange participant is in question, or that an exchange participant may not be able to meet his legal obligations.
- (6) A recognized exchange company shall at all times provide and maintain-
  - (a) adequate and properly equipped premises;
  - (b) competent personnel; and
  - (c) automated systems with adequate capacity, facilities to meet contingencies or emergencies, security arrangements and technical support,
 for the conduct of its business.

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| Section: | 27 | Production of records, etc. by recognized exchange company | L.N. 12 of 2003 | 01/04/2003 |
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- (1) The Commission may, by notice in writing served on a recognized exchange company, require the company to provide to the Commission, within such period as the Commission may specify in the notice-
  - (a) such books and records kept by it in connection with or for the purposes of its business or in respect of any trading in securities or futures contracts; and
  - (b) such other information relating to its business or any trading in securities or futures contracts, as the Commission may reasonably require for the performance of its functions.
- (2) A recognized exchange company served with a notice under subsection (1) which, without reasonable excuse, fails to comply with the notice commits an offence and is liable on conviction to a fine at level 5.

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| Section: | 38 | Duties of recognized clearing house | L.N. 12 of 2003 | 01/04/2003 |
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- (1) It shall be the duty of a recognized clearing house to ensure-
  - (a) so far as reasonably practicable, that there are orderly, fair and expeditious clearing and settlement arrangements for any transactions in securities or futures contracts cleared or settled through its facilities; and
  - (b) that risks associated with its business and operations are managed prudently.

- (2) In discharging its duty under subsection (1), a recognized clearing house shall-
- (a) act in the interest of the public, having particular regard to the interest of the investing public; and
  - (b) ensure that the interest of the public prevails where it conflicts with the interest of the recognized clearing house.
- (3) A recognized clearing house shall operate its facilities in accordance with the rules made under section 40 and approved under section 41.
- (4) A recognized clearing house shall formulate and implement appropriate procedures for ensuring that its clearing participants comply with the rules of the clearing house.
- (5) A recognized clearing house shall at all times provide and maintain-
- (a) adequate and properly equipped premises;
  - (b) competent personnel; and
  - (c) automated systems with adequate capacity, facilities to meet contingencies or emergencies, security arrangements and technical support,
- for the conduct of its business.

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| Section: | 42 | Production of records, etc. by recognized clearing house | L.N. 12 of 2003 | 01/04/2003 |
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- (1) The Commission may, by notice in writing served on a recognized clearing house, require the clearing house to provide to the Commission, within such period as the Commission may specify in the notice-
- (a) such books and records kept by it in connection with or for the purposes of its business or in respect of any clearing and settlement arrangements for any transactions in securities or futures contracts; and
  - (b) such other information relating to its business or any clearing and settlement arrangements for any transactions in securities or futures contracts,
- as the Commission may reasonably require for the performance of its functions.
- (2) A recognized clearing house served with a notice under subsection (1) which, without reasonable excuse, fails to comply with the notice commits an offence and is liable on conviction to a fine at level 5.

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| Section: | 63 | Duties of recognized exchange controller | L.N. 12 of 2003 | 01/04/2003 |
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- (1) It shall be the duty of a recognized exchange controller which is a controller of a recognized exchange company or recognized clearing house to ensure so far as reasonably practicable-
- (a) an orderly, informed and fair market in securities or futures contracts traded on the stock market or futures market operated by the recognized exchange company or through the facilities of the company;
  - (b) that there are orderly, fair and expeditious clearing and settlement arrangements for any transactions in securities or futures contracts cleared or settled through the facilities of the recognized clearing house;
  - (c) that risks associated with its business and operations are managed prudently;
  - (d) that the recognized exchange company or recognized clearing house (as the case may be) complies with any lawful requirement placed on it under any enactment or rule of law and with any other legal requirement placed on it.
- (2) In discharging its duty under subsection (1)(a), (b) or (c), a recognized exchange controller shall-
- (a) act in the interest of the public, having particular regard to the interest of the investing public; and
  - (b) ensure that the interest of the public prevails where it conflicts with the interest of the recognized exchange controller.

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| Section: | 71 | Production of records, etc. by recognized exchange controller | L.N. 12 of 2003 | 01/04/2003 |
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- (1) The Commission may, by notice in writing served on a recognized exchange controller, require the controller to provide to the Commission, within such period as the Commission may specify in the notice-

- (a) such books and records kept by it-
  - (i) in connection with or for the purposes of its business;
  - (ii) in respect of any trading in securities or futures contracts traded on the stock market or futures market operated by the recognized exchange company of which it is a controller, or through the facilities of that company; or
  - (iii) in respect of any clearing and settlement arrangements for any transactions in securities or futures contracts cleared or settled through the facilities of the recognized clearing house of which it is a controller; and
- (b) such other information relating to its business or any such trading or clearing and settlement arrangements,

as the Commission may reasonably require for the performance of its functions.

(2) A recognized exchange controller served with a notice under subsection (1) which, without reasonable excuse, fails to comply with the notice commits an offence and is liable on conviction to a fine at level 5.

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| Chapter: | 571 | Securities and Futures Ordinance  | Gazette Number | Version Date |
| Section: | 109 | Offence to issue advertisements relating to carrying on of regulated activities, etc. | E.R. 2 of 2012 | 02/08/2012   |

- (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.

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| Section: | 116 | Corporations to be licensed for carrying on regulated activities | E.R. 2 of 2012 | 02/08/2012 |
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- (1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on one or more than one regulated activity as the Commission may specify in the licence.
- (2) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless-
  - (a) the applicant is-
    - (i) a company;
    - (ii) a non-Hong Kong company which has complied with the provisions of Part XI of the Companies Ordinance (Cap 32) for the registration of documents; or (Amended 30 of 2004 s. 3)
    - (iii) a corporation (other than a company or a non-Hong Kong company)- (Amended 30 of 2004 s. 3)
      - (A) which carries on a business principally outside Hong Kong in an activity which, if carried on in Hong Kong, would constitute the regulated activity;
      - (B) to which section 114(1) would not apply but for the provisions of section 115(1)(i) and (ii); and
      - (C) to which Part XI of the Companies Ordinance (Cap 32) would apply if it established a place of business in Hong Kong;
  - (b) applications have been lodged under section 126 in respect of such persons as referred to in section 125(1)(a) and (b) for approval of them as the responsible officers of the applicant in relation to the regulated activity; and
  - (c) an application has been lodged under section 130(1) for approval of premises to be used by the applicant for keeping records or documents required under this Ordinance.
- (3) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless the applicant satisfies the Commission that-
  - (a) it is a fit and proper person to be licensed for the regulated activity;
  - (b) it will be able, if licensed, to comply with the financial resources rules; and
  - (c) it-
    - (i) has lodged and maintains with the Commission such security in accordance with rules made under

subsection (4); or

(ii) is insured in accordance with rules made under subsection (5).

- (4) The Commission may make rules for the purposes of subsection (3)(c)(i) that provide for-
- (a) any security to be lodged and maintained by a licensed corporation with the Commission;
  - (b) the manner in which the security is lodged;
  - (c) the terms on which the security is maintained;
  - (d) the Commission's power to apply a security lodged and maintained with the Commission in such circumstances, for such purposes and in such manner as may be prescribed in the rules;
  - (e) any other matter relating to the security.
- (5) The Commission may make rules for the purposes of subsection (3)(c)(ii) that provide for-
- (a) insurance coverage for specified amounts to be taken out and maintained by a licensed corporation in relation to specified risks;
  - (b) the terms on which the insurance is to be taken out and maintained;
  - (c) any other matter relating to the insurance.
- (6) A licence granted under subsection (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the licensed corporation concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.
- (7) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (6), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.
- (8) A licensed corporation shall not, when carrying on a regulated activity for which it is licensed under subsection (1), use a name other than the name specified in the licence.
- (9) Without prejudice to the Commission's powers under Part IX, a licence granted to a corporation to carry on Type 7 regulated activity shall be deemed to be revoked in respect of that regulated activity upon the corporation's being granted an authorization under section 95(2) to provide automated trading services.

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| Section: | 119 | Registered institutions | E.R. 2 of 2012 | 02/08/2012 |
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- (1) The Commission may, upon application by an authorized financial institution in the prescribed manner and payment of the prescribed fee, register the applicant for one or more than one regulated activity (other than Type 3 and Type 8 regulated activities) and shall, upon such registration, grant to the applicant a certificate of registration specifying the regulated activity for which it is registered.
- (2) The Commission shall refer to the Monetary Authority any application made to it under subsection (1).
- (3) Upon receiving an application for registration for a regulated activity referred to him under subsection (2), the Monetary Authority shall-
- (a) consider the application;
  - (b) consult the Commission upon the merits of the application; and
  - (c) advise the Commission whether he is satisfied by the applicant that the applicant is a fit and proper person to be registered for that regulated activity.
- (4) In deciding whether to register or refuse to register an applicant under subsection (1), the Commission-
- (a) shall have regard to any advice given to it by the Monetary Authority pursuant to subsection (3)(c); and
  - (b) may rely wholly or partly on that advice in making that decision.
- (5) Any registration under subsection (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the registered institution concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.
- (6) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (5), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.
- (7) Without prejudice to the Commission's powers under Part IX, the registration of an authorized financial institution for Type 7 regulated activity shall be deemed to be revoked in respect of that regulated activity upon the institution's being granted an authorization under section 95(2) to provide automated trading services.
- (8) Without limiting the generality of subsection (5), it shall be a condition of any registration under subsection (1)

for-

- (a) a regulated activity, that-
    - (i) in relation to the regulated activity, there is at least one executive officer of the registered institution who is available at all times to supervise the business of the regulated activity for which the institution is registered; and
    - (ii) any individual whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as engaged by the registered institution in respect of the regulated activity is a fit and proper person to be so engaged;
  - (b) Type 7 regulated activity, that if the Commission in its absolute discretion requires by notice in writing, the registered institution shall apply, within such reasonable period as may be specified in the notice, for an authorization under section 95(2) for that regulated activity, and the regulated activity shall be operated in such manner as may be specified in the notice pending the revocation of the registration under section 197(2).
- (9) The Commission shall not exercise its power under subsection (5) or (8)(b) unless the Commission has first consulted the Monetary Authority.

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| Section: | 120 | Representatives to be licensed | E.R. 2 of 2012 | 02/08/2012 |
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- (1) The Commission may, upon application by an individual in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on one or more than one regulated activity as the Commission may specify in the licence for a corporation licensed under section 116 to which he is accredited.
- (2) The Commission in its absolute discretion may, upon request by the applicant in the prescribed manner and payment of the prescribed fee, grant to the applicant a provisional licence to carry on, for such corporation, the regulated activity in respect of which the application is made.
- (3) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) or (2) unless the applicant satisfies the Commission that he is a fit and proper person to be so licensed for the regulated activity.
- (4) The Commission shall refuse to grant a licence under subsection (2) unless the applicant satisfies the Commission that the grant of the licence will not prejudice the interest of the investing public.
- (5) A licence granted under subsection (1) or (2) shall be subject to the condition specified in subsection (6) and to any other reasonable conditions as the Commission may impose.
- (6) It shall be a condition of a licence granted under subsection (1) or (2) that the licensed representative concerned shall-
  - (a) at all times keep the Commission informed of particulars of his contact details including, in so far as applicable, his residential address, telephone and facsimile numbers and electronic mail address; and
  - (b) inform the Commission of any change in the particulars within 14 days after the change takes place.
- (7) The Commission may at any time, by notice in writing served on the licensed representative concerned, amend or revoke any condition imposed under subsection (5) or impose new conditions as may be reasonable in the circumstances.
- (8) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (7), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.
- (9) A provisional licence shall be deemed to be revoked-
  - (a) upon the Commission's refusal of the relevant application made under subsection (1); or
  - (b) upon the grant of the licence sought under the application, whichever first occurs.
- (10) Without prejudice to the Commission's powers under Part IX, the Commission may, after having regard to the interest of the investing public and in its absolute discretion, by notice in writing served on the licensed representative concerned, revoke a provisional licence granted under subsection (2).
- (11) On the revocation of a provisional licence under subsection (9) or (10), the person who was formerly the licensed representative under such licence shall return the licence to the Commission within 7 business days after the revocation.

- (12) A person who, without reasonable excuse, contravenes subsection (11) commits an offence and is liable on conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2000 for every day during which the offence continues.
- (13) A licensed representative shall not, when carrying on the regulated activity for which he is licensed under subsection (1) or (2), use a name other than the name specified in the licence.

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| Section: | 178 | Interpretation of Part VIII | E.R. 2 of 2012 | 02/08/2012 |
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In this Part, unless the context otherwise requires-

**audit working papers** (審計工作材料) means-

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

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

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

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| Section: | 181 | Information relating to transactions | E.R. 2 of 2012 | 02/08/2012 |
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- (1) An authorized person may, for the purpose of enabling or assisting the Commission to perform a function under any of the relevant provisions, require-
- (a) a person registered as the holder of securities in a register of members kept under the Companies Ordinance (Cap 32);
  - (b) a person whom the authorized person has reasonable cause to believe holds any securities, futures contract, leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme;
  - (c) a person whom the authorized person has reasonable cause to believe has acquired or disposed of any securities, futures contract, leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme, whether directly or through a nominee, trustee or agent, and whether as beneficial owner, nominee, trustee, agent or otherwise;
  - (d) a licensed person or registered institution through whom or which the authorized person has reasonable cause to believe any securities, futures contract, leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme has been acquired, disposed of, dealt with, traded or arranged,
- to furnish to him any of the information specified in subsection (2) within the time and in the form specified by him.
- (2) The information specified for the purposes of subsection (1) is-
- (a) the particulars (including, in so far as applicable, the name and aliases, address, telephone and facsimile numbers, electronic mail address, occupation and particulars of any document of identity (including, if not an individual, any document evidencing incorporation or registration)) that are reasonably capable of establishing the identity of the person on whose behalf, or by, from, to or through whom, the securities, futures contract, leveraged foreign exchange contract, or the interest in securities, futures contract, leveraged foreign exchange contract or collective investment scheme in question is held, or has been acquired, disposed of, dealt with, traded or arranged (as the case may be);
  - (b) the particulars (including the quantity) of and, in the case of acquisition or disposal, the consideration (if any) for the securities, futures contract, leveraged foreign exchange contract, or the interest in securities, futures contract, leveraged foreign exchange contract or collective investment scheme; and
  - (c) the instructions (if any) given to or by the person referred to in paragraph (a), or any officer, employee or

agent of such person, in relation to the holding, acquisition, disposal, dealing, trading, arrangement of or in respect of the securities, futures contract, leveraged foreign exchange contract, or the interest in securities, futures contract, leveraged foreign exchange contract or collective investment scheme.

- (3) An authorized person may in writing require the person furnishing any information under this section to verify within a reasonable period specified in the requirement the information by statutory declaration, which may be taken by the authorized person.
- (4) If a person does not furnish any information in accordance with a requirement under this section for the reason that the information was not within his knowledge or in his possession, an authorized person may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the authorized person, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.
- (5) The Commission may authorize in writing any person as an authorized person for the purposes of this section.
- (6) The Commission shall furnish an authorized person with a copy of his authorization, and the authorized person, when exercising any power under this section, shall upon request by the person in respect of whom the power is exercised produce a copy of the authorization for inspection.
- (7) A person who, without reasonable excuse, fails to comply with a requirement imposed on him by an authorized person under this section commits an offence and is liable-
  - (a) on conviction on indictment to a fine of \$200000 and to imprisonment for 1 year; or
  - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (8) A person who-
  - (a) in purported compliance with a requirement imposed on him by an authorized person under this section, furnishes to the authorized person information which is false or misleading in a material particular; and
  - (b) knows that, or is reckless as to whether, the information is false or misleading in a material particular, commits an offence and is liable-
    - (i) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
    - (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (9) A person who-
  - (a) with intent to defraud-
    - (i) fails to comply with a requirement imposed on him by an authorized person under this section; or
    - (ii) in purported compliance with a requirement imposed on him by an authorized person under this section, furnishes to the authorized person information which is false or misleading in a material particular; or
  - (b) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to-
    - (i) fail to comply with a requirement imposed on it by an authorized person under this section; or
    - (ii) in purported compliance with a requirement imposed on it by an authorized person under this section, furnish to the authorized person information which is false or misleading in a material particular, commits an offence and is liable-
      - (i) on conviction on indictment to a fine of \$1000000 and to imprisonment for 7 years; or
      - (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (10) In this section-

**authorized person** (獲授權人) means a person authorized under subsection (5);

**interest** (權益) includes an interest of any nature, whether legal, equitable, proprietary or otherwise.

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| Part:     | VIII | Powers of investigations | L.N. 12 of 2003 | 01/04/2003 |
| Division: | 3    |                          |                 |            |

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| Section: | 182 | Investigations | L.N. 95 of 2012 | 01/01/2013 |
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- (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;
  - (ca) the Commission has reasonable cause to believe that a breach of a disclosure requirement may have taken place under Part XIVA; (Added 9 of 2012 s. 4)
  - (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.

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| Section: | 184 | Offences in relation to investigations | E.R. 2 of 2012 | 02/08/2012 |
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- (1) A person who, without reasonable excuse-
  - (a) fails to produce any record or document required to be produced under section 183(1)(a);

- (b) fails to give an explanation or further particulars required under section 183(1)(b);
  - (c) fails to attend before the investigator as required under section 183(1)(c);
  - (d) fails to answer a question raised by the investigator under section 183(1)(c);
  - (e) fails to comply with section 183(1)(d); or
  - (f) fails to comply with a requirement under section 183(2) or (3),
- commits an offence and is liable-
- (i) on conviction on indictment to a fine of \$200000 and to imprisonment for 1 year; or
  - (ii) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (2) A person-
- (a) who-
    - (i) in purportedly complying with a requirement imposed by the investigator under section 183(1)(a), produces any record or document which is false or misleading in a material particular;
    - (ii) in purportedly complying with a requirement imposed by the investigator under section 183(1)(b), gives any explanation or further particulars which are false or misleading in a material particular;
    - (iii) in purportedly answering any question raised by the investigator under section 183(1)(c), says anything which is false or misleading in a material particular; or
    - (iv) in purportedly responding to any written question raised by the investigator under section 183(1)(d), states anything which is false or misleading in a material particular; and
  - (b) who knows that, or is reckless as to whether, the record or document, the explanation or further particulars, the thing or the statement (as the case may be) is false or misleading in a material particular,
- commits an offence and is liable-
- (i) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
  - (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (3) A person who-
- (a) with intent to defraud-
    - (i) fails to do anything as described in subsection (1)(a), (b), (c), (d), (e) or (f);
    - (ii) in purportedly complying with a requirement imposed by the investigator under section 183(1)(a), produces any record or document which is false or misleading in a material particular;
    - (iii) in purportedly complying with a requirement imposed by the investigator under section 183(1)(b), gives any explanation or further particulars which are false or misleading in a material particular;
    - (iv) in purportedly answering any question raised by the investigator under section 183(1)(c), says anything which is false or misleading in a material particular; or
    - (v) in purportedly responding to any written question raised by the investigator under section 183(1)(d), states anything which is false or misleading in a material particular; or
  - (b) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to-
    - (i) fail to do anything as described in subsection (1)(a), (b), (c), (d), (e) or (f);
    - (ii) in purportedly complying with a requirement imposed by the investigator under section 183(1)(a), produce any record or document which is false or misleading in a material particular;
    - (iii) in purportedly complying with a requirement imposed by the investigator under section 183(1)(b), give any explanation or further particulars which are false or misleading in a material particular;
    - (iv) in purportedly answering any question raised by the investigator under section 183(1)(c), say anything which is false or misleading in a material particular; or
    - (v) in purportedly responding to any written question raised by the investigator under section 183(1)(d), state anything which is false or misleading in a material particular,
- commits an offence and is liable-
- (i) on conviction on indictment to a fine of \$1000000 and to imprisonment for 7 years; or
  - (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (4) A person is not excused from complying with a requirement imposed on the person by an investigator under section 183 only on the ground that to do so might tend to incriminate the person.
- (5) Where any person is convicted by a court on a prosecution instituted as a result of an investigation under section 182, the court may order him to pay to the Commission the whole or a part of the costs and expenses of the investigation and the Commission may recover the whole or the part (as the case may be) of the costs and expenses as a civil debt due to it.
- (6) Where the Commission receives an amount under an order made under subsection (5) in respect of any of the costs and expenses of an investigation, and all or any of the costs and expenses have been paid out of moneys

provided by the Legislative Council, the Commission shall pay to the Financial Secretary the amount received under the order to the extent that it has already been paid out of moneys provided by the Legislative Council.

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| Section: | 185 | Application to Court of First Instance relating to non-compliance with requirements under section 179, 180, 181 or 183 | E.R. 2 of 2012 | 02/08/2012   |

- (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 Commission may, by originating summons or originating motion, make an application to the Court of First Instance in respect of the failure, and the Court may inquire into the case and- (Amended 9 of 2012 s. 40)
  - (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.

(Amended E.R. 2 of 2012)

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| Chapter: | 571 | Securities and Futures Ordinance           | Gazette Number | Version Date |
| Section: | 186 | Assistance to regulators outside Hong Kong | E.R. 2 of 2012 | 02/08/2012   |

- (1) Where the Commission receives, from an authority or regulatory organization outside Hong Kong which in the opinion of the Commission satisfies the requirements referred to in subsection (5)(a) and (b), a request for assistance to investigate whether a person specified by the authority or regulatory organization has contravened or is contravening legal or regulatory requirements which-
  - (a) the authority or regulatory organization enforces or administers; and
  - (b) relate to such transactions regarding any securities, futures contract, leveraged foreign exchange contract, collective investment scheme or other similar transactions as are regulated by the authority or regulatory organization,
 the Commission may, where it is of the opinion that the condition specified in subsection (3) is satisfied, provide the assistance to investigate the matter by exercising any of its powers under sections 179, 181, 182 and 183.
- (2) Where the Commission receives, from a companies inspector outside Hong Kong who in the opinion of the Commission satisfies the requirements referred to in subsection (5)(a) and (b), a request for assistance to investigate whether a person specified by the companies inspector has contravened or is contravening legal or

regulatory requirements which relate to transactions regarding any securities, futures contract, leveraged foreign exchange contract, collective investment scheme or other similar transactions, the Commission may, where it is of the opinion that the condition specified in subsection (3) is satisfied, provide the assistance to investigate the matter by exercising any of its powers under sections 179, 181, 182 and 183.

- (3) The condition referred to in subsections (1) and (2) is that-
  - (a) it is desirable or expedient that the assistance requested under subsection (1) or (2) (as the case may be) should be provided in the interest of the investing public or in the public interest; or
  - (b) the assistance will enable or assist the recipient of the assistance to perform its or his functions and it is not contrary to the interest of the investing public or to the public interest that the assistance should be provided.
- (4) In deciding whether the condition specified in subsection (3) is satisfied in a particular case, the Commission shall take into account-
  - (a) where the recipient of the assistance is an authority or regulatory organization referred to in subsection (1), whether the authority or regulatory organization will-
    - (i) pay to the Commission any of the costs and expenses incurred in providing the assistance; and
    - (ii) be able and willing to provide reciprocal assistance within its jurisdiction in response to a comparable request for assistance from Hong Kong; or
  - (b) where the recipient of the assistance is a companies inspector referred to in subsection (2), whether-
    - (i) the companies inspector will pay to the Commission any of the costs and expenses incurred in providing the assistance; and
    - (ii) under the laws of the country or territory in which the companies inspector is appointed, reciprocal assistance will be provided in response to a comparable request for assistance from Hong Kong.
- (5) Where the Commission is satisfied, for the purposes of subsection (1) or (2), that an authority, regulatory organization or companies inspector outside Hong Kong-
  - (a) performs any function similar to a function of the Commission or the Registrar of Companies, or regulates, supervises or investigates banking, insurance or other financial services or the affairs of corporations; and
  - (b) is subject to adequate secrecy provisions,the Commission shall as soon as reasonably practicable thereafter cause the name of the authority, regulatory organization or companies inspector (as the case may be) to be published in the Gazette.
- (6) If a person is required-
  - (a) to provide or make an explanation or statement as required by an authorized person within the meaning of section 179 exercising pursuant to subsection (1) or (2) a power under section 179; or
  - (b) to give an explanation or further particulars as required by, or to give an answer to any question as raised by, an investigator exercising pursuant to subsection (1) or (2) a power under section 183,and the explanation or statement, the explanation or further particulars, or the answer (as the case may be) might tend to incriminate him and he so claims before providing or making the explanation or statement, giving the explanation or further particulars, or giving the answer (as the case may be), then, without limiting the provisions of section 187, the authorized person or investigator (as the case may be) shall not provide evidence of the requirement and the explanation or statement, the explanation or further particulars, or the question and answer (as the case may be) to an authority, regulatory organization or companies inspector outside Hong Kong for use in criminal proceedings against him in the jurisdiction of the authority, regulatory organization or companies inspector (as the case may be).
- (7) Where the Commission receives from an authority, regulatory organization or companies inspector outside Hong Kong an amount paid in respect of any of the costs and expenses incurred in providing assistance under this section, and all or any of the costs and expenses have been paid out of moneys provided by the Legislative Council, the Commission shall pay to the Financial Secretary the amount received to the extent that it has already been paid out of moneys provided by the Legislative Council.
- (8) Any matter published under subsection (5) is not subsidiary legislation.
- (9) In this section, **companies inspector** (公司審查員), in relation to a place outside Hong Kong, means a person whose functions under the laws of that place include the investigation of the affairs of a corporation carrying on business in that place.

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| Section: | 187 | Use of incriminating evidence in proceedings | E.R. 2 of 2012 | 02/08/2012 |
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(1) Where-

- (a) an authorized person within the meaning of section 179 requires a person to provide or make an explanation or statement under that section; or
  - (b) an investigator requires a person to give an explanation or further particulars or to give an answer to any question under section 183,
- the authorized person or the investigator (as the case may be) shall ensure that the person has first been informed or reminded (as the case may be) of the limitations imposed by subsection (2) on the admissibility in evidence of the requirement and of the explanation or statement, the explanation or further particulars, or the question and answer (as the case may be).

(2) Notwithstanding any other provisions of this Ordinance, where-

- (a) an authorized person within the meaning of section 179 requires a person to provide or make an explanation or statement under that section; or
- (b) an investigator requires a person to give an explanation or further particulars or to give an answer to any question under section 183,

and the explanation or statement, the explanation or further particulars, or the answer (as the case may be) might tend to incriminate the person and the person so claims before providing or making the explanation or statement, giving the explanation or further particulars, or giving the answer (as the case may be), then the requirement as well as the explanation or statement, the explanation or further particulars, or the question and answer (as the case may be) shall not be admissible in evidence against the person in criminal proceedings in a court of law other than those in which the person is charged with an offence under section 179(13), (14) or (15) or 184, or under section 219(2)(a), 253(2)(a) or 254(6)(a) or (b), or under Part V of the Crimes Ordinance (Cap 200), or for perjury, in respect of the explanation or statement, the explanation or further particulars, or the answer (as the case may be).

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| Section: | 190 | Inspection of records or documents seized, etc. | E.R. 2 of 2012 | 02/08/2012 |
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Where an authorized person within the meaning of section 179, 180 or 181 or an investigator has taken possession of any record or document under this Part, the authorized person or the investigator (as the case may be) shall, subject to any reasonable conditions he imposes as to security or otherwise, permit a person who would be entitled to inspect the record or document had he not taken possession of it under this Part, to inspect it and to make copies or otherwise record details

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| Section: | 191 | Magistrate's warrants | E.R. 2 of 2012 | 02/08/2012 |
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(1) If a magistrate is satisfied on information on oath laid by-

- (a) an employee of the Commission or, where the exercise of powers under section 180 is concerned, of the relevant authority within the meaning of that section; or
  - (b) an authorized person within the meaning of section 179 or 180, or an investigator,
- that there are reasonable grounds to suspect that there is, or is likely to be, on premises specified in the information any record or document which may be required to be produced under this Part, the magistrate may issue a warrant authorizing a person specified in the warrant, a police officer, and such other persons as may be necessary to assist in the execution of the warrant to-
- (i) enter the premises so specified, if necessary by force, at any time within the period of 7 days beginning on the date of the warrant; and
  - (ii) search for, seize and remove any record or document which the person specified in the warrant or police officer has reasonable cause to believe may be required to be produced under this Part.

- (2) A person specified in, or a police officer or any other person authorized by, a warrant issued under subsection (1) may-
  - (a) require any person on the premises specified in the warrant whom he has reasonable cause to believe to be employed in connection with a business which is, or which has been, conducted on the premises to produce for examination any record or document which is in the possession of the person and which he has reasonable cause to believe may be required to be produced under this Part;
  - (b) prohibit any person found on the premises specified in the warrant from-
    - (i) removing from the premises any record or document required to be produced under paragraph (a);
    - (ii) erasing, adding to or otherwise altering an entry or other particulars contained in, or otherwise interfering in any manner with, or causing or permitting any other person to interfere with, the record or document;
  - (c) take, in relation to any record or document required to be produced under paragraph (a), any other step which may appear necessary for preserving it and preventing interference with it.
- (3) Any record or document removed under this section may be retained for any period not exceeding 6 months beginning on the day of its removal or, where the record or document is or may be required for criminal proceedings or for any proceedings under this Ordinance, for such longer period as may be necessary for the purposes of those proceedings.
- (4) Where a person removes any record or document under this section, he shall as soon as reasonably practicable thereafter give a receipt for it, and he may permit any person who would be entitled to inspect it but for the removal to inspect the record or document and to make copies or otherwise record details of it at all reasonable times.
- (5) Section 102 of the Criminal Procedure Ordinance (Cap 221) applies to any property which has by virtue of this section come into the possession of the Commission or, where the exercise of powers under section 180 is concerned, of the relevant authority within the meaning of that section, as it applies to property which has come into the possession of the police.
- (6) A person commits an offence if he-
  - (a) without reasonable excuse, fails to comply with a requirement or prohibition under subsection (2); or
  - (b) obstructs a person exercising a power conferred by subsection (2).
- (7) A person who commits an offence under subsection (6) is liable-
  - (a) on conviction on indictment to a fine of \$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: | 193 | Interpretation of Part IX | E.R. 2 of 2012 | 02/08/2012 |
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- (1) In this Part, unless the context otherwise requires-

***misconduct*** (失當行為) means-

- (a) a contravention of any of the relevant provisions;
- (b) a contravention of any of the terms and conditions of any licence or registration under this Ordinance;
- (c) a contravention of any other condition imposed under or pursuant to any provision of this Ordinance, or of any condition attached or amended under section 71C(2)(b) or (9) or 71E(3) of the Banking Ordinance (Cap 155); or
- (d) an act or omission relating to the carrying on of any regulated activity for which a person is licensed or registered which, in the opinion of the Commission, is or is likely to be prejudicial to the interest of the investing public or to the public interest,

and ***guilty of misconduct*** (犯失當行為) shall be construed accordingly;

***register of companies*** (公司登記冊) means the register within the meaning of section 291 of the Companies Ordinance (Cap 32) or a register of non-Hong Kong companies kept under section 333AA of that Ordinance. (Added 30 of 2004 s. 3)

(Amended 30 of 2004 s. 3)

- (2) In this Part, where an intermediary is, or was at any time, guilty of misconduct within the meaning of paragraph (a), (b), (c) or (d) of the definition of ***misconduct*** in subsection (1) as a result of the commission of any conduct occurring with the consent or connivance of, or attributable to any neglect on the part of-

- (a) in the case of a licensed corporation, another person as-
  - (i) a responsible officer of the licensed corporation; or
  - (ii) a person involved in the management of the business of the licensed corporation; or
- (b) in the case of a registered institution, another person as-
  - (i) an executive officer of the registered institution; or
  - (ii) a person involved in the management of the business constituting any regulated activity for which the registered institution is or was (as the case may be) registered,
 the conduct shall also be regarded as misconduct on the part of that other person, and **guilty of misconduct** shall also be construed accordingly.
- (3) For the purposes of paragraph (d) of the definition of **misconduct** in subsection (1), the Commission shall not form any opinion that any act or omission is or is likely to be prejudicial to the interest of the investing public or to the public interest, unless it has had regard to such of the provisions set out in any code of conduct published under section 169 or any code or guideline published under section 399 as are in force at the time of occurrence of, and applicable in relation to, the act or omission.

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| Section: | 198 | Procedural requirements in respect of exercise of powers under Part IX | E.R. 2 of 2012 | 02/08/2012 |
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- (1) The Commission shall not exercise any power under section 194(1) or (2), 195(1)(a), (b) or (c), (2) or (7), 196(1) or (2) or 197(1)(a) or (b) or (2) without first giving the person in respect of whom the power is to be exercised a reasonable opportunity of being heard.
- (2) The Commission shall not exercise any power under section 196(1) or (2) or 197(1) or (2) unless it has first consulted the Monetary Authority.
- (3) Where the Commission decides to exercise any power under section 194(1) or (2), 195(1), (2) or (7), 196(1) or (2) or 197(1) or (2), the Commission shall inform the person in respect of whom the power is exercised of its decision to do so by notice in writing, and the notice shall include-
  - (a) a statement of the reasons for which the decision is made;
  - (b) the time at which the decision is to take effect;
  - (c) in so far as applicable, the duration and terms of any revocation, suspension or prohibition to be imposed under the decision;
  - (d) in so far as applicable, the terms in which the person is to be reprimanded under the decision; and
  - (e) in so far as applicable, the amount of any pecuniary penalty to be imposed under the decision and the period (being specified as a period after the decision has taken effect as a specified decision under section 232) within which it is required to be paid.

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| Section: | 199 | Guidelines for performance of functions under section 194(2) or 196(2) | E.R. 2 of 2012 | 02/08/2012 |
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- (1) The Commission shall not perform any of its functions under section 194(2) or 196(2) unless-

- (a) it has published, in the Gazette and in any other manner it considers appropriate, guidelines to indicate the manner in which it proposes to perform such functions; and
- (b) in performing such functions, it has had regard to the guidelines so published.
- (2) Without prejudice to the inclusion of any other factors that the Commission may consider relevant, guidelines published under subsection (1) shall include the following as factors that the Commission shall take into account in performing any of its functions under section 194(2) or 196(2)-
  - (a) whether the conduct of the regulated person in question was intentional, reckless or negligent;
  - (b) whether the conduct damaged the integrity of the securities and futures market;
  - (c) whether the conduct caused loss to, or imposed costs on, any other person; and
  - (d) whether the conduct resulted in a benefit to the regulated person or any other person.
- (3) Guidelines published under subsection (1) are not subsidiary legislation.

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| Section: | 200 | Effect of suspension under Part IX | E.R. 2 of 2012 | 02/08/2012 |
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- (1) If a licence of a person is suspended under section 194 or 195 in relation to all or any, or any part of all or any, of the regulated activities for which the person is licensed, then, without prejudice to any provision of this Ordinance which has application in relation to the suspension, the person shall, during the period of the suspension-
  - (a) continue to be regarded for the purposes of the provisions of this Ordinance, but not section 114, to be licensed for the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the suspension relates; and
  - (b) without limiting the generality of paragraph (a), continue to be required to comply with such provisions of this Ordinance relating to a licensed person as would apply to the person were the licence not so suspended.
- (2) If an approval of a person as a responsible officer of a licensed corporation is suspended under section 194 or 195, then, without prejudice to any provision of this Ordinance which has application in relation to the suspension, the person shall, during the period of the suspension-
  - (a) continue to be regarded for the purposes of the provisions of this Ordinance, but not sections 118 and 125, to be such a responsible officer; and
  - (b) without limiting the generality of paragraph (a), continue to be required to comply with such provisions of this Ordinance relating to a responsible officer as would apply to the person were the approval not so suspended.
- (3) If any registration of a person is suspended under section 196 or 197 in relation to all or any, or any part of all or any, of the regulated activities for which the person is registered, then, without prejudice to any provision of this Ordinance which has application in relation to the suspension, the person shall, during the period of the suspension-
  - (a) continue to be regarded for the purposes of the provisions of this Ordinance, but not section 114, to be registered for the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the suspension relates; and
  - (b) without limiting the generality of paragraph (a), continue to be required to comply with such provisions of this Ordinance relating to a registered institution as would apply to the person were the registration not so suspended.
- (4) A licence of a person may be revoked under section 194 or 195 notwithstanding that, at the time of revocation, the licence is suspended, whether in relation to all or any, or any part of all or any, of the regulated activities for which the person is licensed, under any provision of this Ordinance.
- (5) An approval of a person as a responsible officer of a licensed corporation may be revoked under section 194 or 195 notwithstanding that, at the time of revocation, the approval is suspended under any provision of this Ordinance.
- (6) Any registration of a person may be revoked under section 196 or 197 notwithstanding that, at the time of revocation, the registration is suspended, whether in relation to all or any, or any part of all or any, of the regulated activities for which the person is registered, under any provision of this Ordinance.

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| Chapter: | 571 | Securities and Futures Ordinance                                | Gazette Number | Version Date |
| Section: | 201 | General provisions relating to exercise of powers under Part IX | E.R. 2 of 2012 | 02/08/2012   |

- (1) In reaching a decision under section 194(1) or (2), 195(1), (2) or (7), 196(1) or (2) or 197(1) or (2), the Commission may have regard to any information or material in its possession which is relevant to the decision, regardless of how the information or material has come into its possession.
- (2) The revocation or suspension of any licence or registration under this Part does not operate so as to-
  - (a) avoid or affect an agreement, transaction or arrangement entered into by the licensed person or registered institution (as the case may be) whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension;
  - (b) affect a right, obligation or liability arising under the agreement, transaction or arrangement.
- (3) Where at any time the Commission is contemplating exercising any power in respect of a person under section 194(1) or (2), 195(1)(a), (b) or (c), (2) or (7), 196(1) or (2) or 197(1)(a) or (b) or (2), it may, where it considers it appropriate to do so in the interest of the investing public or in the public interest, by agreement with the person-
  - (a) exercise any power the Commission may exercise in respect of the person under this Part (whether or not the same as the power the exercise of which has been contemplated); and
  - (b) take such additional action as it considers appropriate in the circumstances of the case.
- (4) Where the Commission exercises any power or takes any additional action in respect of a person under subsection (3)-
  - (a) it shall comply with section 198(2) and (3), as if section 198(2) and (3), in addition to applying to the exercise of power under the sections specified therein, also applies with necessary modifications to the taking of any additional action under subsection (3); and
  - (b) subject to the agreement of the person, it is not obliged to comply with section 198(1).
- (5) Nothing in this Part affects the power of the Court of First Instance to make any order or exercise any other power under or pursuant to section 211, 212, 213 or 214.

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| Chapter: | 571 | Securities and Futures Ordinance   | Gazette Number | Version Date |
| Section: | 202 | Requirement to transfer records upon revocation or suspension of licence or registration | E.R. 2 of 2012 | 02/08/2012   |

- (1) Where any licence or registration is revoked or suspended under this Part, the Commission may by notice in writing require the person to whom the licence or registration (as the case may be) was granted to transfer to, or to the order of, his client such records relating to client assets or to the affairs of the client held at any time for the client, in such manner, as the Commission may reasonably specify in the notice.
- (2) A person who, without reasonable excuse, fails to comply with a requirement imposed on him under subsection (1) commits an offence and is liable on conviction to a fine of \$200000 and to imprisonment for 2 years.
- (3) In this section, **client** (客戶), in relation to a person referred to in subsection (1), means any person who, at any time when the first-mentioned person was an intermediary, was a client of the first-mentioned person under the definition of **client** in section 1 of Part 1 of Schedule 1.

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| Chapter: | 571 | Securities and Futures Ordinance  | Gazette Number | Version Date |
| Section: | 203 | Permission to carry on business operations upon revocation or suspension of licence or registration | E.R. 2 of 2012 | 02/08/2012   |

- (1) Where any licence or registration is revoked or suspended under this Part, the Commission may by notice in writing permit the person to whom the licence or registration (as the case may be) was granted to-
  - (a) in the case of a revocation, carry on business operations for the purpose of closing down the business connected with the revocation; or
  - (b) in the case of a suspension, carry on only essential business operations for the protection of interests of clients of the person or, in the case of a licensed representative, of the licensed corporation to which the

person is accredited, during the period of suspension,  
subject to such conditions as the Commission may specify in the notice.

- (2) Notwithstanding section 200(1), where the Commission has granted a permission to a person under subsection (1), the person shall not, by reason of its carrying on business operations in accordance with the permission, be regarded as having contravened section 114.
- (3) Any permission granted under subsection (1), and the imposition of conditions pursuant to that subsection, take effect at the time of the service of the notice given in respect thereof or at the time specified in the notice, whichever is the later.

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| Part:     | XVI | Secrecy, conflict of interests, and immunity | L.N. 12 of 2003 | 01/04/2003 |
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| Section: | 378 | Preservation of secrecy, etc. | E.R. 2 of 2012 | 02/08/2012 |
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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;
  - (ea) to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal established under section 55 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap 615); (Added 15 of 2011 s. 90)
  - (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) (Repealed 9 of 2012 s. 44)
- (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.

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| Section: | 388 | Prosecution of certain offences by Commission | E.R. 2 of 2012 | 02/08/2012 |
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- (1) An offence under any of the relevant provisions, and an offence of conspiracy to commit such an offence, may be prosecuted by the Commission in its own name but, where under this subsection the Commission prosecutes an offence, the offence shall be tried before a magistrate as an offence which is triable summarily.
- (2) For, and only for, the purpose of the prosecution of an offence referred to in subsection (1), an employee of the Commission who apart from this subsection is not qualified to practise as a barrister or to act as a solicitor under the Legal Practitioners Ordinance (Cap 159) may appear and plead before a magistrate any case of which he has charge and shall, in relation to the prosecution, have all the other rights of a person qualified to practise as a barrister or to act as a solicitor under that Ordinance.
- (3) Nothing in this section derogates from the powers of the Secretary for Justice in respect of the prosecution of criminal offences.

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| Section: | 389 | Limitation on commencement of proceedings | E.R. 2 of 2012 | 02/08/2012 |
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- (1) Notwithstanding section 26 of the Magistrates Ordinance (Cap 227), any information or complaint relating to an offence under this Ordinance, other than an indictable offence, may be tried if it is laid or made (as the case may be) at any time within 3 years after the commission of the offence.

- (2) Nothing in section 388(1) affects or limits the meaning of indictable offence referred to in subsection (1).

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| Section: | 392 | Financial Secretary to prescribe interests, etc. as securities, etc. | E.R. 2 of 2012 | 02/08/2012 |
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- (1) For the purposes of this Ordinance, the Financial Secretary may, by notice published in the Gazette, prescribe, either generally or in a particular case, that—
- (a) any interests, rights or property, whether in the form of an instrument or otherwise, or any class or description of any such interests, rights or property, are to be regarded as—
    - (i) currency-linked instruments;
    - (ii) currency and interest rate-linked instruments;
    - (iii) futures contracts;
    - (iv) interest rate-linked instruments;
    - (v) securities; or
    - (vi) structured products; or
  - (b) any interests, rights or property, whether in the form of an instrument or otherwise, or any class or description of any such interests, rights or property, are not to be regarded as—
    - (i) currency-linked instruments;
    - (ii) currency and interest rate-linked instruments;
    - (iii) futures contracts;
    - (iv) interest rate-linked instruments;
    - (v) securities; or
    - (vi) structured products.
- (2) Without limiting subsection (1), a notice under that subsection may prescribe the circumstances under which or the purposes for which any interests, rights or property, or any class or description of any interests, rights or property, referred to in the notice are to be regarded, or not to be regarded, as—
- (a) currency-linked instruments;
  - (b) currency and interest rate-linked instruments;
  - (c) futures contracts;
  - (d) interest rate-linked instruments;
  - (e) securities; or
  - (f) structured products.

(Replaced 8 of 2011 s. 12)

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| Section: | 398 | General provisions for rules by Commission | E.R. 2 of 2012 | 02/08/2012 |
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- (1) Notwithstanding any other provisions of this Ordinance but subject to subsection (3), where the Commission proposes to make rules under any provision of this Ordinance, it shall publish a draft of the proposed rules, in such manner as it considers appropriate, for the purpose of inviting representations on the proposed rules by the public.
- (2) Where the Commission makes any rules under any provision of this Ordinance after a draft is published under subsection (1) in relation to the rules, it shall—
- (a) publish, in such manner as it considers appropriate, an account setting out in general terms—
    - (i) the representations made on the draft; and
    - (ii) the response of the Commission to the representations; and
  - (b) where the rules are made with modifications which in the opinion of the Commission result in the rules being significantly different from the draft, publish, in such manner as it considers appropriate, details of the difference.
- (3) Subsections (1) and (2) do not apply if the Commission considers, in the circumstances of the case, that—
- (a) it is inappropriate or unnecessary that such subsections should apply; or
  - (b) any delay involved in complying with such subsections would not be—

- (i) in the interest of the investing public; or
  - (ii) in the public interest.
- (4) Notwithstanding any other provisions of this Ordinance, the Commission shall consult the Monetary Authority regarding rules it proposes to make under any provision of this Ordinance in so far as such rules apply to authorized financial institutions by reason of their being registered institutions, or associated entities of intermediaries.
- (5) For the avoidance of doubt, nothing in subsections (1) to (4) affects any other requirements which, apart from such subsections, apply to the making of any rules under any provision of this Ordinance.
- (6) Where rules are made by the Commission under any provision of this Ordinance and it has not been provided in this Ordinance that the rules may provide that a contravention of any specified provision of the rules constitutes an offence, the Chief Executive in Council may make regulations to provide that a person who contravenes any specified provision of the rules that applies to him commits an offence and is liable to a specified penalty not exceeding-
  - (a) on conviction on indictment a fine of \$500000 and a term of imprisonment of 2 years;
  - (b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.
- (7) Except as otherwise provided in this Ordinance, rules made by the Commission under any provision of this Ordinance may provide that, subject to the terms and conditions specified in the rules, the provisions of this Ordinance specified in the rules-
  - (a) shall not have effect, or shall only have effect to a specified extent, in relation to any specified person or to members of a specified class of persons-
    - (i) who is or are or may be required to be licensed by reason only of his or their doing anything that is incidental to another business;
    - (ii) who does not or do not, on behalf of any other person, deal in securities or futures contracts or trade in interests in collective investment schemes or leveraged foreign exchange contracts; or
    - (iii) who is or are or may be required to be licensed by reason only of his or their entering into a specified class of transactions;
  - (b) shall not have effect in relation to any specified transaction or class of transactions entered into by any specified person or class of persons;
  - (c) shall, where they require any application, statement, notice or other document (however described) to be lodged or filed with or submitted to the Commission, be regarded as having been complied with if the application, statement, notice or other document (as the case may be) is lodged or filed with or submitted to any other specified person.
- (8) Except as otherwise provided in this Ordinance, rules made by the Commission under any provision of this Ordinance-
  - (a) may be of general or special application and may be made so as to apply only in specified circumstances;
  - (b) may make different provisions for different circumstances and provide for different cases or classes of cases;
  - (c) may authorize any matter or thing to be determined, applied or regulated by any specified person;
  - (d) may provide for the exercise of discretion in specified cases;
  - (e) may, for the better and more effectual carrying into effect of any provision of this Ordinance or the rules, include any savings, transitional, incidental, supplemental, evidential and consequential provisions (whether involving the provisions of any principal legislation or the provisions of any subsidiary legislation).

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| Section: | 399 | Codes or guidelines by Commission | E.R. 2 of 2012 | 02/08/2012 |
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- (1) The Commission may publish, in the Gazette and in any other manner it considers appropriate, such codes and guidelines as it considers appropriate for providing guidance-
  - (a) for the furtherance of any of its regulatory objectives;
  - (b) in relation to any matter relating to any of the functions of the Commission under any of the relevant provisions;
  - (c) in relation to the operation of any provision of this Ordinance.
- (2) Without limiting the generality of subsection (1), the Commission may publish under that subsection-
  - (a) a code to provide for matters concerning takeovers and mergers and matters incidental thereto;

- (b) a code to provide for matters concerning share repurchases and matters incidental thereto.
- (3) Notwithstanding anything in this section-
  - (a) the power of the Commission to publish codes or guidelines under this section in respect of any persons as intermediaries shall, where the intermediaries are registered institutions, be regarded as the power to publish codes or guidelines in respect of the intermediaries only in relation to the businesses which constitute any regulated activities for which they are registered;
  - (b) the power of the Commission to publish codes or guidelines under this section in respect of any persons as associated entities shall, where the associated entities are authorized financial institutions, be regarded as the power to publish codes or guidelines in respect of the associated entities only in relation to their businesses of receiving or holding client assets of intermediaries of which they are associated entities.
- (4) For the avoidance of doubt, the power of the Commission to publish codes or guidelines under this section is in addition to and not in derogation of any other power of the Commission to publish codes or guidelines under any provision of this or any other Ordinance.
- (5) The Commission may from time to time amend the whole or any part of any code or guideline published under this section in a manner consistent with the power to publish the code or guideline under this section, and-
  - (a) the other provisions of this section apply, with necessary modifications, to such amendments to the code or guideline as they apply to the code or guideline; and
  - (b) any reference in this or any other Ordinance to the code or guideline (however expressed) shall, unless the context otherwise requires, be construed as a reference to the code or guideline as so amended.
- (6) A failure on the part of any person to comply with the provisions set out in any code or guideline published under this section that apply to him shall not by itself render him liable to any judicial or other proceedings, but in any proceedings under this Ordinance before any court the code or guideline shall be admissible in evidence, and if any provision set out in the code or guideline appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.
- (7) Any code or guideline published under this section-
  - (a) may be of general or special application and may be made so as to apply only in specified circumstances;
  - (b) may make different provisions for different circumstances and provide for different cases or classes of cases.
- (8) Any code or guideline published under this section is not subsidiary legislation.
- (9) Notwithstanding any other provisions of this Ordinance, the Commission shall consult the Monetary Authority regarding codes or guidelines it proposes to publish under this section or any other provision of this Ordinance, or amendments it proposes to make to codes or guidelines published under this section or any other provision of this Ordinance, in so far as such codes or guidelines or such amendments (as the case may be) apply to authorized financial institutions by reason of their being registered institutions, or associated entities of intermediaries.

(Amended E.R. 2 of 2012)

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| Section: | 407 | Savings, transitional, consequential and related provisions, etc. | E.R. 2 of 2012 | 02/08/2012 |
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- (1) Part 1 of Schedule 10 provides for the savings, transitional and supplemental arrangements that apply on, or relate to, the commencement of this Ordinance or any part thereof.
- (2) Part 2 of Schedule 10 provides for the consequential and supplemental amendments that apply on, or relate to, the commencement of this Ordinance or any part thereof, and the enactments specified in column 2 of that Part are amended in the manner set out in column 3 of that Part.
- (3) Part 3 of Schedule 10 provides for the savings and transitional arrangements that apply on, or relate to, the commencement\* of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2011 (8 of 2011). (Added 8 of 2011 s. 13)
- (4) Part 4 of Schedule 10 provides for the savings and transitional arrangements that apply on, or relate to, the commencement of the Securities and Futures (Amendment) Ordinance 2012 (9 of 2012) or any part of that Ordinance. (Added 9 of 2012 s. 46)

**Note:**

\* Commencement date: 13 May 2011

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| Section: | 408 | Provisions of Part XVII, etc. not to derogate from section 23 of Interpretation and General Clauses Ordinance | E.R. 2 of 2012 | 02/08/2012 |
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Except as otherwise provided in this Part or Schedule 10, the provisions of this Part and of Schedule 10 are in addition to and not in derogation of section 23 of the Interpretation and General Clauses Ordinance (Cap 1).

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| Section: | 409 | Amendment of Schedule 10 | E.R 2 of 2012 | 02/08/2012 |
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The Chief Executive in Council may, by order published in the Gazette, amend Schedule 10.

(Amended L.N. 29 of 2004)

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| Schedule: | 1 | Interpretation and General Provisions | L.N. 95 of 2012 | 01/01/2013 |
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[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- (Amended 30 of 2004 s. 3)

- (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 3A 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; (Amended 9 of 2012 s. 53)
  - (ab) a Saturday; and (Added 9 of 2012 s. 53)
  - (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;
- disclosure proceedings** (關於披露的研訊程序) has the meaning given by section 307I(1) of this Ordinance; (Added 9 of 2012 s. 11)
- 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-
- 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
  - 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)-
- in relation to a licensed corporation, means a responsible officer of the licensed corporation;
  - 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
  - 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-
- any securities;
  - any futures contract;
  - any collective investment scheme;
  - any leveraged foreign exchange contract;
  - 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)-
- in relation to the Commission, means the financial year referred to in section 13(1) of this Ordinance; or
  - in relation to an intermediary, or an associated entity of an intermediary, means-
    - 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;
    - 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)
- (d) Part 2 (except section 6) of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap 615); (Added 15 of 2011 s. 91)

**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 23 of 2004 s. 56; 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 3A 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).

## **13. Notes in Ordinance**

A note located in the text of this Ordinance is provided for information only and has no legislative effect.

(Added 9 of 2012 s. 11)

## **Part 2**

### **Specified Futures Exchanges**

1. ASX Limited
2. Australian Securities Exchange Limited
3. BM&FBOVESPA S.A. – Bolsa de Valores, Mercadorias e Futuros
4. Board of Trade of the City of Chicago, Inc.
5. Chicago Board Options Exchange, Incorporated
6. Chicago Mercantile Exchange Inc.
7. China Financial Futures Exchange
8. Commodity Exchange, Inc.
9. Dalian Commodity Exchange
10. Eurex Frankfurt AG
11. Eurex Zurich AG

12. Euronext Amsterdam N.V.
13. Euronext Paris S.A.
14. Hong Kong Futures Exchange Limited
15. ICE Futures Canada, Inc.
16. ICE Futures U.S., Inc.
17. Korea Exchange, Inc.
18. LIFFE Administration and Management
19. Montreal Exchange Inc.
20. Multi Commodity Exchange of India Limited
21. National Commodity & Derivatives Exchange Limited
22. NASDAQ OMX PHLX LLC
23. NASDAQ OMX Stockholm AB
24. New York Mercantile Exchange, Inc.
25. New Zealand Futures and Options Exchange Limited
26. NYSE Arca, Inc.
27. Osaka Securities Exchange Co., Ltd.
28. Shanghai Futures Exchange
29. Singapore Exchange Derivatives Trading Limited
30. The London Metal Exchange Limited
31. Tokyo Financial Exchange Inc.
32. Tokyo Grain Exchange Inc.
33. Tokyo Stock Exchange, Inc.
34. Zhengzhou Commodity Exchange

(Replaced L.N. 94 of 2012)

### **Part 3**

#### **Specified Stock Exchanges**

1. ASX Limited
2. BSE Limited
3. Borsa Italiana S.p.A.
4. Bursa Malaysia Securities Berhad
5. Deutsche Borse AG
6. Euronext Amsterdam N.V.
7. Euronext Brussels S.A./N.V.
8. Euronext Paris S.A.
9. Korea Exchange, Inc.
10. London Stock Exchange plc
11. Montreal Exchange Inc.
12. Nagoya Stock Exchange, Inc.
13. NASDAQ OMX Copenhagen A/S
14. NASDAQ OMX Helsinki Ltd
15. NASDAQ OMX Stockholm AB
16. National Stock Exchange of India Limited
17. New York Stock Exchange LLC
18. NYSE Amex LLC
19. NZX Limited
20. Osaka Securities Exchange Co., Ltd.
21. Oslo Bors ASA
22. Singapore Exchange Securities Trading Limited
23. SIX Swiss Exchange AG
24. Sociedad Rectora de la Bolsa de Valores de Madrid, S.A. (Sociedad Unipersonal)
25. Societe de la Bourse de Luxembourg S.A.
26. The NASDAQ Stock Market LLC

27. The Philippine Stock Exchange, Inc.
28. The Stock Exchange of Hong Kong Limited
29. The Stock Exchange of Thailand
30. Tokyo Stock Exchange, Inc.
31. TSX Inc.
32. Wiener Borse AG

(Replaced L.N. 94 of 2012)

## **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.

(Amended E.R. 2 of 2012)  
(Format changes—E.R. 2 of 2012)

|           |     |                                  |                 |              |
|-----------|-----|----------------------------------|-----------------|--------------|
| Chapter:  | 571 | Securities and Futures Ordinance | Gazette Number  | Version Date |
| Schedule: | 5   | REGULATED ACTIVITIES             | L.N. 28 of 2011 | 01/06/2011   |

[sections 114, 118, 139 &  
142 & Schedule 1]

## **PART 1**

The following are regulated activities-

- Type 1 : dealing in securities;
- Type 2 : dealing in futures contracts;
- Type 3 : leveraged foreign exchange trading;
- Type 4 : advising on securities;
- Type 5 : advising on futures contracts;
- Type 6 : advising on corporate finance;
- Type 7 : providing automated trading services;
- Type 8 : securities margin financing;
- Type 9 : asset management; (Amended L.N. 28 of 2011)
- Type 10 : providing credit rating services. (Added L.N. 28 of 2011)

## PART 2

In this Schedule-

"advising on corporate finance" (就機構融資提供意見) means giving advice-

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

but does not include such advice given by-

- (i) a corporation solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;
- (ii) a person who is licensed for Type 1 regulated activity who gives such advice wholly incidental to the carrying on of that regulated activity;
- (iii) an authorized financial institution which is registered for Type 1 regulated activity which gives such advice wholly incidental to the carrying on of that regulated activity;
- (iv) an individual-
  - (A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as engaged in respect of Type 1 regulated activity by an authorized financial institution registered for that regulated activity; and
  - (B) who gives such advice wholly incidental to the carrying on of that regulated activity;
- (v) a solicitor who gives such advice wholly incidental to his practice as such in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap 159);
- (vi) counsel who gives such advice wholly incidental to his practice as such;
- (vii) a certified public accountant who gives such advice wholly incidental to his practice as such in a practice unit within the meaning of the Professional Accountants Ordinance (Cap 50); (Amended 23 of 2004 s. 56)
- (viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap 29) which gives such advice wholly incidental to the discharge of its duty as such; or
- (ix) a person through-
  - (A) a newspaper, magazine, book or other publication which is made generally available to the public; or
  - (B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise;

"advising on futures contracts" (就期貨合約提供意見) means-

- (a) giving advice on-
  - (i) whether;
  - (ii) which;
  - (iii) the time at which; or
  - (iv) the terms or conditions on which, futures contracts should be entered into; or
- (b) issuing analyses or reports, for the purposes of facilitating the recipients of the analyses or reports to make decisions on-
  - (i) whether;
  - (ii) which;
  - (iii) the time at which; or
  - (iv) the terms or conditions on which, futures contracts are to be entered into,

otherwise than by-

- (i) a corporation which gives such advice or issues such analyses or reports solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of

- that holding company;
- (ii) a person who is licensed for Type 2 regulated activity who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
- (iii) an authorized financial institution which is registered for Type 2 regulated activity which gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
- (iv) an individual-
  - (A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as engaged in respect of Type 2 regulated activity by an authorized financial institution registered for that regulated activity; and
  - (B) who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
- (iva) a person-
  - (A) who is licensed or registered for Type 9 regulated activity;
  - (B) who provides a service of managing a portfolio of futures contracts under a collective investment scheme for another person; and
  - (C) who gives such advice or issues such analyses or reports solely for the purposes of providing the service described in subparagraph (B); (Added L.N. 197 of 2005)
- (v) a solicitor who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a solicitor in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap 159);
- (vi) counsel who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as counsel;
- (vii) a certified public accountant who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a certified public accountant in a practice unit within the meaning of the Professional Accountants Ordinance (Cap 50); (Amended 23 of 2004 s. 56)
- (viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap 29) which gives such advice or issues such analyses or reports wholly incidental to the discharge of its duty as such; or
- (ix) a person who gives such advice or issues such analyses or reports through-
  - (A) a newspaper, magazine, book or other publication which is made generally available to the public; or
  - (B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise;

"advising on securities" (就證券提供意見) means-

- (a) giving advice on-
  - (i) whether;
  - (ii) which;
  - (iii) the time at which; or
  - (iv) the terms or conditions on which, securities should be acquired or disposed of; or
- (b) issuing analyses or reports, for the purposes of facilitating the recipients of the analyses or reports to make decisions on-
  - (i) whether;
  - (ii) which;
  - (iii) the time at which; or
  - (iv) the terms or conditions on which, securities are to be acquired or disposed of,
 otherwise than by-
  - (i) a corporation which gives such advice or issues such analyses or reports solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;
  - (ii) a person who is licensed for Type 1 regulated activity who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
  - (iii) an authorized financial institution which is registered for Type 1 regulated activity which gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
  - (iv) an individual-
    - (A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the

Banking Ordinance (Cap 155) as engaged in respect of Type 1 regulated activity by an authorized financial institution registered for that regulated activity; and

(B) who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;

(iva) a person-

(A) who is licensed or registered for Type 9 regulated activity;

(B) who provides a service of managing a portfolio of securities under a collective investment scheme for another person; and

(C) who gives such advice or issues such analyses or reports solely for the purposes of providing the service described in subparagraph (B); (Added L.N. 197 of 2005)

(v) a solicitor who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a solicitor in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap 159);

(vi) counsel who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as counsel;

(vii) a certified public accountant who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a certified public accountant in a practice unit within the meaning of the Professional Accountants Ordinance (Cap 50); (Amended 23 of 2004 s. 56)

(viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap 29) which gives such advice or issues such analyses or reports wholly incidental to the discharge of its duty as such; or

(ix) a person who gives such advice or issues such analyses or reports through-

(A) a newspaper, magazine, book or other publication which is made generally available to the public; or

(B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise,

but does not include the giving of such advice that falls within the meaning of "advising on corporate finance or **providing credit rating services**"; (Amended L.N. 28 of 2011)

"asset management" (資產管理) means-

(a) real estate investment scheme management; or

(b) securities or futures contracts management; (Added L.N. 197 of 2005)

"automated trading services" (自動化交易服務) means services provided by means of electronic facilities, not being facilities provided by a recognized exchange company or a recognized clearing house, whereby-

(a) offers to sell or purchase securities or futures contracts are regularly made or accepted in a way that forms or results in a binding transaction in accordance with established methods, including any method commonly used by a stock market or futures market;

(b) persons are regularly introduced, or identified to other persons in order that they may negotiate or conclude, or with the reasonable expectation that they will negotiate or conclude sales or purchases of securities or futures contracts in a way that forms or results in a binding transaction in accordance with established methods, including any method commonly used by a stock market or futures market; or

(c) transactions-

(i) referred to in paragraph (a);

(ii) resulting from the activities referred to in paragraph (b); or

(iii) effected on, or subject to the rules of, a stock market or futures market, may be novated, cleared, settled or guaranteed,

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

**credit ratings** (信貸評級) means opinions, expressed using a defined ranking system, primarily regarding the creditworthiness of-

(a) a person other than an individual;

(b) debt securities;

(c) preferred securities; or

(d) an agreement to provide credit; (Added L.N. 28 of 2011)

"dealing in futures contracts" (期貨合約交易), in relation to a person, means-

(a) making or offering to make an agreement with another person to enter into, or to acquire or dispose of, a futures contract;

(b) inducing or attempting to induce another person to enter into, or to offer to enter into, a futures contract; or

- (c) inducing or attempting to induce another person to acquire or dispose of a futures contract, by the person, except where the person-
  - (i) is carrying out his functions as a recognized clearing house;
  - (ii) performs the act referred to in paragraph (a), (b) or (c) through another person ("the futures dealer")-
    - (A) who is licensed or registered for Type 2 regulated activity; or
    - (B) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as engaged in respect of Type 2 regulated activity by an authorized financial institution registered for that regulated activity,
 but the person shall be regarded as dealing in futures contracts if, in return for a commission, rebate or other remuneration, the person-
    - (I) receives from a third person an offer or invitation to enter into a futures contract, and communicates it, either in his name or in the name of the third person, to the futures dealer;
    - (II) effects an introduction between the futures dealer or his representative and a third person, so that the third person may enter into, or offer or invite to enter into, a futures contract with the futures dealer;
    - (III) effects an acquisition or disposal of a futures contract for a third person through the futures dealer;
    - (IV) makes an offer for the futures dealer to a third person to acquire or dispose of a futures contract; or
    - (V) accepts for the futures dealer an offer by a third person to acquire or dispose of a futures contract;
  - (iii) performs the act referred to in paragraph (a), (b) or (c) only on a market referred to in section 3(a), (b) or (c) of the Commodity Exchanges (Prohibition) Ordinance (Cap 82);
  - (iv) is a member of a commodity exchange referred to in section 3(d) of the Commodity Exchanges (Prohibition) Ordinance (Cap 82) who only performs the act referred to in paragraph (a), (b) or (c) on such an exchange;
  - (v) enters into a market contract;
  - (vi) is licensed or registered for Type 9 regulated activity and performs the act referred to in paragraph (a), (b) or (c) solely for the purposes of carrying on that regulated activity; or
  - (vii) as principal performs the act referred to in paragraph (a), (b) or (c) in relation to a futures contract traded otherwise than on a recognized futures market by way of dealing with a person who is a professional investor (whether acting as principal or agent);

"dealing in securities" (證券交易), in relation to a person, means 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-

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

- (V) accepts for the securities dealer an offer by a third person to enter into an agreement referred to in paragraph (a) or (b);
- (v) as principal-
  - (A) performs the act by way of dealing with a person who is a professional investor (whether acting as principal or agent); or
  - (B) acquires, disposes of, subscribes for or underwrites securities;
- (vi) enters into a market contract;
- (vii) issues a prospectus which complies with, or is exempt from compliance with, Part II of the Companies Ordinance (Cap 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance;
- (viii) issues a document relating to the securities of a corporation incorporated in Hong Kong which is not a company, being a document which-
  - (A) would, if the corporation were a company, be a prospectus to which section 38 of the Companies Ordinance (Cap 32) applies, or would apply if not excluded by section 38(5)(b) or 38A of that Ordinance; and
  - (B) contains all the matters which, under Part XII of that Ordinance, would be required to contain if the corporation were a corporation incorporated outside Hong Kong and the document were a prospectus issued by the corporation;
- (ix) issues a form of application for the shares or debentures of a corporation, together with-
  - (A) a prospectus which complies with, or is exempt from compliance with, Part II of the Companies Ordinance (Cap 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance; or
  - (B) in the case of a corporation incorporated in Hong Kong which is not a company, a document which contains the matters specified in paragraph (viii)(B);
- (x) issues a prospectus the registration of which has been authorized by the Commission under section 342C of the Companies Ordinance (Cap 32) in relation to a collective investment scheme that is a corporation-
  - (A) which is or holds itself out as being engaged primarily in the business of investing, reinvesting or trading in any property (including securities and futures contracts); and
  - (B) the shares in which are exclusively, or primarily, redeemable shares, or issues together with the prospectus a form of application for the shares in the corporation;
- (xi) issues any advertisement, invitation or document the issue of which has been authorized by the Commission under section 105 of this Ordinance;
- (xii) is a trust company registered under Part VIII of the Trustee Ordinance (Cap 29) acting as an agent for a collective investment scheme which, by performing the act, is carrying out its functions of distributing application forms, redemption notices, conversion notices and contract notes, receiving money and issuing receipts on behalf of its principal;
- (xiii) is licensed or registered for Type 4 or Type 6 regulated activity and, solely for the purposes of carrying on that regulated activity, he issues a document under section 175(1)(a)(i) or (ii) of this Ordinance, the content of which complies with the requirements of section 175(1)(b) and (c) of this Ordinance; (Amended L.N. 197 of 2005)
- (xiv) is licensed or registered for Type 9 regulated activity and performs the act solely for the purposes of carrying on that regulated activity; or (Amended L.N. 197 of 2005)
- (xv) in any case where each of the parties to the transaction or proposed transaction under which securities are or will be acquired, disposed of, subscribed for or underwritten as described in paragraph (a) is an authorized financial institution, is an approved money broker within the meaning of section 2(1) of the Banking Ordinance (Cap 155) and performs the act for each of the parties to the transaction or proposed transaction; (Added L.N. 197 of 2005)

**debt securities** (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; (Added L.N. 28 of 2011)

"foreign exchange trading" (外匯交易) means entering into or offering to enter into, or inducing or attempting to induce a person to enter into or to offer to enter into, a contract or arrangement whereby any person undertakes to-

- (a) exchange currency with another person;

- (b) deliver an amount of foreign currency to another person; or
  - (c) credit the account of another person with an amount of foreign currency,
- but does not include any act performed for or in connection with any contract or arrangement or a proposed contract or arrangement as described in paragraphs (i) to (xv) of the definition of "leveraged foreign exchange trading";

"leveraged foreign exchange contract" (槓桿式外匯交易合約) means a contract or arrangement the effect of which is that one party agrees or undertakes to-

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

"leveraged foreign exchange trading" (槓桿式外匯交易) means-

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

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

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

transactions;

(xii) by an authorized financial institution;

(xiii) by any person belonging to a class of persons, or carrying on a type of business, as prescribed by rules made under section 397 of this Ordinance for the purposes of this paragraph;

(xiv) by a person through a trader, but the person shall be regarded as carrying on leveraged foreign exchange trading if, in return for a commission, rebate or other remuneration, the person-

(A) receives from another person an offer or invitation to-

(I) enter into a leveraged foreign exchange contract; or

(II) use any financial accommodation to facilitate foreign exchange trading or facilitate entering into a leveraged foreign exchange contract,

and communicates it, either in his name or in the name of the other person, to the trader;

(B) effects an introduction between the trader or its representative and another person, so that the other person may-

(I) enter into a leveraged foreign exchange contract with the trader; or

(II) use any financial accommodation provided by the trader to facilitate foreign exchange trading or facilitate entering into a leveraged foreign exchange contract; or

(C) effects the entering into a leveraged foreign exchange contract by another person through the trader, where in this paragraph, "trader" (交易商) means a corporation licensed for Type 3 regulated activity or an authorized financial institution; or

(xv) by-

(A) a collective investment scheme; or

(B) a person in the course of business for the purpose of operating a collective investment scheme, authorized by the Commission under section 104 of this Ordinance;

**preferred securities** (優先證券) means preference shares, preferred shares or preferred stock; (Added L.N. 28 of 2011)

**providing credit rating services** (提供信貸評級服務) means-

(a) preparing credit ratings-

(i) for dissemination to the public, whether in Hong Kong or elsewhere; or

(ii) with a reasonable expectation that they will be so disseminated; or

(b) preparing credit ratings-

(i) for distribution by subscription, whether in Hong Kong or elsewhere; or

(ii) with a reasonable expectation that they will be so distributed,

but does not include-

(c) preparing, pursuant to a request made by a person, a credit rating which is exclusively prepared for, and provided to, the person and that is neither intended for dissemination to the public or distribution by subscription, whether in Hong Kong or elsewhere, nor reasonably expected to be so disseminated or distributed; or

(d) gathering, collating, disseminating or distributing information concerning the indebtedness or credit history of any person; (Added L.N. 28 of 2011)

"real estate investment scheme management" (房地產投資計劃管理), in relation to a person, means providing a service of operating a collective investment scheme for another person by the person, where-

(a) the property that is being managed under the scheme consists primarily of immovable property; and

(b) the scheme is authorized under section 104 of this Ordinance; (Added L.N. 197 of 2005)

"securities margin financing" (證券保證金融資) means providing a financial accommodation in order to facilitate-

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

(b) (where applicable) the continued holding of those securities, whether or not those or other securities are pledged as security for the accommodation, but does not include the provision of financial accommodation-

(i) that forms part of an arrangement to underwrite or sub-underwrite securities;

(ii) to facilitate an acquisition of securities in accordance with the term of a prospectus, regardless of whether the offer of securities is made in Hong Kong or elsewhere;

(iii) by a person who is licensed or registered for Type 1 regulated activity in order to facilitate acquisitions or holdings of securities by the person for his client;

- (iv) by a collective investment scheme that is a corporation-
  - (A) which is or holds itself out as being engaged primarily in the business of investing, reinvesting or trading in any property (including securities and futures contracts); and
  - (B) the shares in which are exclusively, or primarily, redeemable shares, in order to finance investment in any interest in the collective investment scheme of which it is the issuer;
- (v) by an authorized financial institution for the purpose of facilitating acquisitions or holdings of securities by the institution's clients;
- (vi) by an individual to a company in which he holds 10% or more of its issued share capital to facilitate acquisitions or holdings of securities; or
- (vii) by an intermediary by way of effecting an introduction between a person and a related corporation of the intermediary in order that the corporation may provide the person with financial accommodation; (Amended L.N. 197 of 2005)

"securities or futures contracts management" (證券或期貨合約管理), in relation to a person, means providing a service of managing a portfolio of securities or futures contracts for another person by the person, otherwise than by- (Amended L.N. 197 of 2005)

- (a) a corporation which provides such service solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;
- (b) a person who is licensed for Type 1 or Type 2 regulated activity who provides such service wholly incidental to the carrying on of that regulated activity;
- (c) an authorized financial institution which is registered for Type 1 or Type 2 regulated activity which provides such service wholly incidental to the carrying on of that regulated activity;
- (d) an individual-
  - (i) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as engaged in respect of Type 1 or Type 2 (as the case may be) regulated activity by an authorized financial institution registered for that regulated activity; and
  - (ii) who provides such service wholly incidental to the carrying on of that regulated activity;
- (e) a solicitor who provides such service wholly incidental to his practice as such in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap 159);
- (f) counsel who provides such service wholly incidental to his practice as such;
- (g) a certified public accountant who provides such service wholly incidental to his practice as such in a practice unit within the meaning of the Professional Accountants Ordinance (Cap 50); or (Amended 23 of 2004 s. 56)
- (h) a trust company registered under Part VIII of the Trustee Ordinance (Cap 29) which provides such service wholly incidental to the discharge of its duty as such. (Amended L.N. 197 of 2005)

### PART 3

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

- (a) the acquisition of securities listed on a stock market which is or forms part of a stock borrowing or stock return as defined in section 19(16) of the Stamp Duty Ordinance (Cap 117), or any transaction in securities similar to such a borrowing or return; or
- (b) the provision of financial accommodation-
  - (i) to a corporation licensed for Type 1 or Type 8 regulated activity or an authorized financial institution to facilitate acquisitions or holdings of securities;
  - (ii) by a company to its directors or employees to facilitate acquisitions or holdings of its own securities; or
  - (iii) by a member of a group of companies to another member of the group to facilitate acquisitions or holdings of securities by that other member.

|           |     |   |                |              |
|-----------|-----|---|----------------|--------------|
| Chapter:  | 571 | Securities and Futures Ordinance        | Gazette Number | Version Date |
| Schedule: | 8   | SECURITIES AND FUTURES APPEALS TRIBUNAL | 8 of 2011      | 13/05/2011   |

[sections 215, 216, 217, 218,

## PART 1

### APPOINTMENT OF MEMBERS AND PROCEEDINGS OF TRIBUNAL, ETC.

1. In this Schedule, unless the context otherwise requires-

"appeal panel" (上訴委員會) means the panel of persons appointed under section 2;

"application for review" (覆核申請) has the meaning assigned to it by section 215 of this Ordinance;

"chairman" (主席) means the chairman of the Tribunal;

"judge" (法官) has the meaning assigned to it by section 215 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;

"panel member" (上訴委員) means a member of the appeal panel;

"parties" (各方) has the meaning assigned to it by section 215 of this Ordinance;

"relevant authority" (有關當局) has the meaning assigned to it by section 215 of this Ordinance;

"review" (覆核) has the meaning assigned to it by section 215 of this Ordinance;

"Secretary" (局長) means the Secretary for Financial Services and the Treasury; (Amended L.N. 106 of 2002)

"specified decision" (指明決定) has the meaning assigned to it by section 215 of this Ordinance;

"Tribunal" (審裁處) has the meaning assigned to it by section 215 of this Ordinance.

#### **Appointment of appeal panel**

2. The Chief Executive shall appoint persons to a panel comprising such number of members, who are not public officers, as he considers appropriate.

3. Subject to sections 4 and 5, a panel member shall be appointed for such period as the Chief Executive considers appropriate, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

4. A panel member may at any time resign his office by notice in writing to the Chief Executive.

5. The Chief Executive may by notice in writing remove a panel member from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.

6. For the avoidance of doubt, section 216(5) of this Ordinance does not require the appointment of persons to more than one panel under section 2.

#### **Appointment of chairman**

7. The chairman shall be appointed by the Chief Executive on the recommendation of the Chief Justice.

8. Subject to sections 9 to 11, the chairman shall be appointed for a term of 3 years or appointed to act in relation to any specified review, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

9. The chairman may at any time resign his office by notice in writing to the Chief Executive.

10. 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.

11. If a review has 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 review.

### **Appointment of ordinary members**

12. For the purpose of determining a review, the Secretary on the recommendation of the chairman shall appoint 2 panel members as ordinary members in relation to the review.

13. Subject to sections 14 and 15, an ordinary member shall be appointed to act in relation to any specified review, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

14. An ordinary member may at any time resign his office by notice in writing to the Secretary.

15. Where an ordinary member ceases to be a panel member, he ceases to be such ordinary member.

### **Sittings**

16. The chairman shall convene such sittings of the Tribunal as are necessary to determine a review.

17. Before convening a sitting under section 16 in respect of a review, the Tribunal may give directions to the parties to the review concerning procedural matters to be complied with by the parties and the time within which the parties are required to comply with such matters.

18. Subject to section 19, 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.

19. 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 31 or 32, the chairman only shall be present, and every question before the Tribunal shall be determined by him.

20. Every sitting of the Tribunal shall be held in public unless the Tribunal, on its own motion or on the application of any of the parties to the review, 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.

21. Where an application is made pursuant to section 20 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.

22. The parties to a review shall, at any sitting of the Tribunal relating to the review, be entitled to be heard-

- (a) in person or, in the case of the relevant authority or a corporation, through an officer or employee of the relevant authority or the corporation (as the case may be); and
- (b) through counsel or a solicitor or, with the leave of the Tribunal, through any other person.

23. 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.

24. The order of proceedings at any sitting of the Tribunal shall be determined by the Tribunal in the manner most appropriate to the circumstances of the case.

### **Preliminary conferences and consent orders**

25. At any time after an application for review has been made, the chairman may-

- (a) on his own motion or on the application of any of the parties to the review;
- (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 application for review by the parties to the review; and
- (c) if the parties agree or, in the case of an application made by any party pursuant to paragraph (a), the other party agrees,

direct that a conference, to be attended by the parties 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 review;
- (ii) assisting the Tribunal to determine issues for the purposes of the review; and
- (iii) generally securing the just, expeditious and economical conduct of the review.

26. At a conference held in accordance with a direction of the chairman under section 25, the chairman may-
- (a) give any direction he considers necessary or desirable for securing the just, expeditious and economical conduct of the review; and
  - (b) endeavour to secure that the parties to the review make all agreements as they ought reasonably to have made in relation to the review.

27. After a conference has been held in accordance with a direction of the chairman under section 25, the chairman shall report to the Tribunal on such matters relating to the conference as he considers appropriate.

28. At any time after an application for review has been made, 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 review 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.

29. Notwithstanding Part XI of this Ordinance or any other provisions of this Schedule, where under section 28 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.

30. In sections 28 and 29, "order" (命令) includes any finding, determination and any other decision.

### **Chairman as sole member of Tribunal**

31. Where, at any time after an application for review has been made but before any sitting of the Tribunal is held to determine the review, the parties to the review have, by notice in writing given to the Tribunal, informed the Tribunal that they have agreed that the review may be determined by the chairman alone as the sole member of the Tribunal, the chairman may determine the review as the sole member of the Tribunal.

32. Where-

- (a) an application is made to the Tribunal pursuant to section 217(4) of this Ordinance for the grant of an extension of the time within which an application for review shall be made; or
- (b) an application is made to the Tribunal under section 227(2) of this Ordinance for a stay of execution of a specified decision,

the chairman may determine the application as the sole member of the Tribunal.

33. Where section 31 or 32 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.

34. After the chairman has made any determination under section 31, or made any determination in respect of an application described in section 32(b), 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.

35. Where-

- (a) there is an application described in section 32(b); and

(b) the chairman is precluded by illness, absence from Hong Kong or any other cause from performing his functions, or considers it improper or undesirable that he should perform his functions in relation to the application,  
a judge within the meaning of paragraph (a) of the definition of "judge" in section 215 of this Ordinance shall, upon appointment by the Chief Justice for the purpose, determine the application as if he were the chairman duly appointed under this Ordinance, and the provisions of this Ordinance shall apply to him accordingly.

### **Miscellaneous**

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

## **PART 2**

### **SPECIFIED DECISIONS**

#### **Division 1**

##### **Specified decisions made by Commission**

| Item | Provision                            | Description of decision   |
|------|--------------------------------------|---|
| 1.   | Section 93(12) of this Ordinance     | Requirement to pay costs or expenses.   |
| 2.   | Section 95(2) of this Ordinance      | Refusal to grant an authorization, or imposition of any condition.  |
| 3.   | Section 97(1) of this Ordinance      | Amendment or revocation of any condition, or imposition of any new condition.   |
| 4.   | Section 98(1) of this Ordinance      | Withdrawal of an authorization.   |
| 5.   | Section 104(1) of this Ordinance     | Refusal to authorize a collective investment scheme, or imposition of any condition.                                    |
| 6.   | Section 104(3) of this Ordinance     | Refusal to approve an individual nominated in respect of a collective investment scheme.                                |
| 7.   | Section 104(3) of this Ordinance     | Withdrawal of approval of an individual nominated in respect of a collective investment scheme.                         |
| 8.   | Section 104(4) of this Ordinance     | Amendment or revocation of any condition, or imposition of any new condition.   |
| 8A.  | Section 104A(1) of this Ordinance    | Refusal to authorize a structured product, or imposition of any conditions. (Added 8 of 2011 s. 15)                     |
| 8B.  | Section 104A(3) of this Ordinance    | Refusal to approve an individual nominated in respect of a structured product. (Added 8 of 2011 s. 15)                  |
| 8C.  | Section 104A(4)(a) of this Ordinance | Amendment or revocation of any condition, or imposition of any new condition. (Added 8 of 2011 s. 15)                   |
| 8D.  | Section 104A(4)(b) of this Ordinance | Withdrawal of approval of an individual nominated in respect of a structured product. (Added 8 of 2011 s. 15)           |
| 9.   | Section 105(1) of this Ordinance     | Refusal to authorize the issue of any advertisement, invitation or document, or imposition of any condition.            |
| 10.  | Section 105(3) of this Ordinance     | Refusal to approve an individual nominated in respect of the issue of any advertisement, invitation or document.        |
| 11.  | Section 105(3) of this Ordinance     | Withdrawal of approval of an individual nominated in respect of the issue of any advertisement, invitation or document. |
| 12.  | Section 105(4) of this Ordinance     | Amendment or revocation of any condition, or imposition of any new condition.   |
| 13.  | Section 106(1) of this Ordinance     | Withdrawal of an authorization.   |

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| 14. | Section 106(3) of this Ordinance   | Refusal to withdraw an authorization.  |
| 15. | Section 106(4) of this Ordinance   | Imposition of any condition.   |
| 16. | Section 116(1) of this Ordinance   | Refusal to grant a licence.  |
| 17. | Section 116(6) of this Ordinance   | Imposition, amendment or revocation of any condition, or imposition of any new condition.  |
| 18. | Section 117(1) of this Ordinance   | Refusal to grant a licence for a period not exceeding 3 months.  |
| 19. | Section 117(3) of this Ordinance   | Imposition, amendment or revocation of any condition, or imposition of any new condition.  |
| 20. | Section 119(1) of this Ordinance   | Refusal to grant registration.   |
| 21. | Section 119(5) of this Ordinance   | Imposition, amendment or revocation of any condition, or imposition of any new condition.  |
| 22. | Section 120(1) of this Ordinance   | Refusal to grant a licence.  |
| 23. | Section 120(5) of this Ordinance   | Imposition of any condition.   |
| 24. | Section 120(7) of this Ordinance   | Amendment or revocation of any condition, or imposition of any new condition.  |
| 25. | Section 121(1) of this Ordinance   | Refusal to grant a licence for a period not exceeding 3 months.  |
| 26. | Section 121(3) of this Ordinance   | Imposition of any condition.   |
| 27. | Section 121(5) of this Ordinance   | Amendment or revocation of any condition, or imposition of any new condition.  |
| 28. | Section 122(1) of this Ordinance   | Refusal to approve an accreditation.   |
| 29. | Section 122(2) of this Ordinance   | Refusal to approve a transfer of an accreditation.   |
| 30. | Section 124(1) of this Ordinance   | Refusal to issue a duplicate licence or certificate of registration.   |
| 31. | Section 126(1) of this Ordinance   | Refusal to approve a person as a responsible officer.  |
| 32. | Section 126(3) of this Ordinance   | Imposition, amendment or revocation of any condition, or imposition of any new condition.  |
| 33. | Section 127(1) of this Ordinance   | Refusal to vary any regulated activity.  |
| 34. | Section 130(1) of this Ordinance   | Refusal to approve premises.   |
| 35. | Section 132(1) of this Ordinance   | Refusal to approve a person to become or continue to be a substantial shareholder.   |
| 36. | Section 132(3) of this Ordinance   | Imposition, amendment or revocation of any condition, or imposition of any new condition.  |
| 37. | Section 133(1) of this Ordinance   | Direction to a licensed corporation.   |
| 38. | Section 133(2) of this Ordinance   | Direction to a person.   |
| 39. | Section 134(1)(a), (b), (c), (d), (e), (f), (g), (h), (i) or (j) of this Ordinance | Refusal to grant a modification or waiver.   |
| 40. | Section 134(4) of this Ordinance   | Amendment of a modification or waiver, imposition, amendment or revocation of any condition, or imposition of any new condition. |
| 41. | Section 146(2) or (5)(b) of this Ordinance   | Imposition of any condition.   |
| 42. | Section 146(5)(a) of this Ordinance  | Suspension of a licence.   |
| 43. | Section 146(6) or (7) of this Ordinance  | Amendment of any condition.  |
| 44. | Section 147(3)(a) of this Ordinance  | Suspension of a licence.   |
| 45. | Section 147(3)(b) of this Ordinance  | Imposition of any condition.   |
| 46. | Section 147(4) or (5) of this Ordinance  | Amendment of any condition.  |
| 47. | Section 159(1) of this Ordinance   | Appointment of an auditor.   |
| 48. | Section 159(4) of this Ordinance   | Direction to pay any of the costs and expenses of any examination and audit.   |
| 49. | Section 160(1) of this Ordinance   | Appointment of an auditor.   |
| 50. | Section 160(8) of this Ordinance   | Direction to pay any of the costs and expenses of any examination and audit.   |
| 51. | Section 194(1)(i), (ii), (iii) or (iv) of this Ordinance                           | Exercise of power to revoke or suspend a licence or the approval of a person as a responsible officer, to publicly or            |

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|-----|---|---|
|     |   | privately reprimand a person, or to impose a prohibition on a person.   |
| 52. | Section 194(2) of this Ordinance  | Order to pay a pecuniary penalty.   |
| 53. | Section 195(1)(a), (b) or (c) of this Ordinance   | Revocation or suspension of a licence.  |
| 54. | Section 195(2) of this Ordinance  | Revocation of a licence.  |
| 55. | Section 195(7) of this Ordinance  | Revocation or suspension of the approval of a person as a responsible officer.  |
| 56. | Section 196(1)(i), (ii) or (iii) of this Ordinance  | Exercise of power to revoke or suspend any registration, to publicly or privately reprimand a person, or to impose a prohibition on a person. |
| 57. | Section 196(2) of this Ordinance  | Order to pay a pecuniary penalty.   |
| 58. | Section 197(1)(a) or (b) of this Ordinance  | Revocation or suspension of any registration.   |
| 59. | Section 197(2) of this Ordinance  | Revocation of any registration.   |
| 60. | Section 202(1) of this Ordinance  | Requirement to transfer records.  |
| 61. | Section 203(1) of this Ordinance  | Imposition of any condition.  |
| 62. | Section 204(1)(a) or (b) of this Ordinance  | Prohibition or requirement imposed on a licensed corporation concerning transactions, etc.  |
| 63. | Section 205(1)(a) or (b) of this Ordinance  | Prohibition or requirement imposed on a licensed corporation concerning relevant property.  |
| 64. | Section 206(1) of this Ordinance  | Requirement imposed on a licensed corporation to maintain property.   |
| 65. | Section 208(1)(b) of this Ordinance   | Substitution or variation of a prohibition or requirement under section 204, 205 or 206 of this Ordinance.                                    |
| 66. | Section 208(1) of this Ordinance  | Refusal to withdraw, substitute or vary a prohibition or requirement under section 204, 205 or 206 of this Ordinance.                         |
| 67. | Section 309(2) of this Ordinance  | Refusal to grant an exemption, or imposition of any condition.  |
| 68. | Section 309(3) of this Ordinance  | Refusal to grant an exemption, or imposition of any condition.  |
| 69. | Section 309(4)(a) or (b) of this Ordinance  | Suspension or withdrawal of an exemption, or amendment of any condition.  |
| 70. | Section 403 of this Ordinance   | Imposition of any condition.  |
| 71. | Section 38A(1) of the Companies Ordinance (Cap 32)  | Refusal to issue a certificate of exemption, or imposition of any condition.  |
| 72. | Section 342A(1) of the Companies Ordinance (Cap 32)   | Refusal to issue a certificate of exemption, or imposition of any condition.  |
| 73. | Section 6(2) of the Securities and Futures (Stock Market Listing) Rules (Cap 571 sub. leg. V)                                     | Objection to a listing of securities. (Added L.N. 231 of 2002)  |
| 74. | Section 6(3)(b) of the Securities and Futures (Stock Market Listing) Rules (Cap 571 sub. leg. V)                                  | Imposition of any condition. (Added L.N. 231 of 2002)   |
| 75. | Section 8(3) of the Securities and Futures (Disclosure of Interests-Securities Borrowing and Lending) Rules (Cap 571 sub. leg. X) | Refusal to approve a corporation as an approved lending agent. (Added L.N. 231 of 2002)   |
| 76. | Section 8(4) of the Securities and Futures (Disclosure of Interests-Securities Borrowing and Lending) Rules (Cap 571 sub. leg. X) | Imposition of any condition. (Added L.N. 231 of 2002)   |
| 77. | Section 8(6) of the Securities and Futures (Disclosure of Interests-Securities Borrowing and Lending) Rules (Cap 571              | Withdrawal of an approval. (Added L.N. 231 of 2002)   |

- sub. leg. X)
78. Section 4(4)(c) of the Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap 571 sub. leg. Y) Refusal to give notice. (Added L.N. 231 of 2002)

## Division 2

### Specified decisions made by Monetary Authority

| Item | Provision   | Description of decision   |
|------|---|---|
| 1.   | Section 58A(1)(c) or (d) of the Banking Ordinance (Cap 155) | Removal or suspension of relevant particulars of a relevant individual from the register. |
| 2.   | Section 71C(1) of the Banking Ordinance (Cap 155)           | Refusal to give consent.  |
| 3.   | Section 71C(2)(b) of the Banking Ordinance (Cap 155)        | Attachment of any condition.  |
| 4.   | Section 71C(4)(c) or (d) of the Banking Ordinance (Cap 155) | Withdrawal or suspension of consent.  |
| 5.   | Section 71C(9) of the Banking Ordinance (Cap 155)           | Attachment or amendment of any condition.   |
| 6.   | Section 71E(3) of the Banking Ordinance (Cap 155)           | Attachment or amendment of any condition.   |

## Division 3

### Specified decisions made by Commission or recognized investor compensation company

| Item | Provision  | Description of decision   |
|------|--|---|
| 1.   | Section 4(4) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap 571 sub. leg. T)                | Refusal to determine that a claim which is not lodged within the time limit provided in section 4(3) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap 571 sub. leg. T) is not barred. (Added L.N. 231 of 2002) |
| 2.   | Section 7(1)(a), (b) or (c) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap 571 sub. leg. T) | Determination as to whether there has been a default, as to the date of default, or as to whether a claimant is entitled to compensation. (Added L.N. 231 of 2002)  |
| 3.   | Section 7(2) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap 571 sub. leg. T)                | Determination of a provisional amount of compensation. (Added L.N. 231 of 2002)   |
| 4.   | Section 9(3) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap 571 sub. leg. T)                | Aggregation of separate claims or parts of those claims. (Added L.N. 231 of 2002)   |

## PART 3

## Division 1

### Specified decisions referred to in section 217(3)(b) of this Ordinance

| Item | Description of specified decision | Provisions |
|------|-----------------------------------|------------|
|------|-----------------------------------|------------|

1. A specified decision set out in item 41 or 43 of Division 1 of Part 2. Section 146(10) of this Ordinance.
2. A specified decision set out in item 45 or 46 of Division 1 of Part 2. Section 147(8) of this Ordinance.

## **Division 2**

### **Specified decisions referred to in section 218(4)(a) of this Ordinance**

| Item | Description of specified decision                                      | Provisions   |
|------|--|--|
| 1.   | A specified decision set out in item 56 or 57 of Division 1 of Part 2. | Sections 58A(1) and 71C(4) of the Banking Ordinance (Cap 155). |

## **Division 3**

### **Specified decisions referred to in section 218(4)(b) of this Ordinance**

| Item | Description of specified decision                                    | Provision                                 |
|------|--|---|
| 1.   | A specified decision set out in item 1 or 4 of Division 2 of Part 2. | Section 196(1) and (2) of this Ordinance. |

## **Division 4**

### **Specified decisions referred to in section 232(1) of this Ordinance**

| Item | Description of specified decision                                      | Provision                          |
|------|--|------------------------------------|
| 1.   | A specified decision set out in item 41 or 43 of Division 1 of Part 2. | Section 146(10) of this Ordinance. |
| 2.   | A specified decision set out in item 45 or 46 of Division 1 of Part 2. | Section 147(8) of this Ordinance.  |

## **Division 5**

### **Specified decisions referred to in section 232(2) of this Ordinance**

| Item | Description of specified decision                                | Provision                         |
|------|--|-----------------------------------|
| 1.   | A specified decision set out in item 3 of Division 1 of Part 2.  | Section 97(2) of this Ordinance.  |
| 2.   | A specified decision set out in item 4 of Division 1 of Part 2.  | Section 98(6) of this Ordinance.  |
| 3.   | A specified decision set out in item 17 of Division 1 of Part 2. | Section 116(7) of this Ordinance. |
| 4.   | A specified decision set out in item 19 of Division 1 of Part 2. | Section 117(4) of this Ordinance. |
| 5.   | A specified decision set out in item 21 of Division 1 of Part 2. | Section 119(6) of this Ordinance. |
| 6.   | A specified decision set out in item 24 of Division 1 of         | Section 120(8) of this Ordinance. |

- Part 2.
7. A specified decision set out in item 27 of Division 1 of Part 2. Section 121(6) of this Ordinance.
  8. A specified decision set out in item 36 of Division 1 of Part 2. Section 132(4) of this Ordinance.
  9. A specified decision set out in item 42 of Division 1 of Part 2. Section 146(9) of this Ordinance.
  10. A specified decision set out in item 41 or 43 of Division 1 of Part 2. Section 146(10) of this Ordinance.
  11. A specified decision set out in item 44 of Division 1 of Part 2. Section 147(7) of this Ordinance.
  12. A specified decision set out in item 45 or 46 of Division 1 of Part 2. Section 147(8) of this Ordinance.
  13. A specified decision set out in item 61 of Division 1 of Part 2. Section 203(3) of this Ordinance.
  14. A specified decision set out in item 62, 63, 64 or 65 of Division 1 of Part 2. Section 209(1) of this Ordinance.
  15. A specified decision set out in item 6 of Division 2 of Part 2. Section 71E(4) of the Banking Ordinance (Cap 155).
  16. A specified decision set out in item 73 of Division 1 of Part 2. Section 6(5) of the Securities and Futures (Stock Market Listing) Rules (Cap 571 sub. leg. V). (Added L.N. 231 of 2002)
  17. A specified decision set out in item 74 of Division 1 of Part 2. Section 6(5) of the Securities and Futures (Stock Market Listing) Rules (Cap 571 sub. leg. V). (Added L.N. 231 of 2002)

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| Section: | 18 | Interpretation of Part III | L.N. 12 of 2003 | 01/04/2003 |
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(1) In this Part, unless the context otherwise requires-

"associated person" (相聯者), in relation to a person entitled to exercise, or control the exercise of, voting power in relation to, or holding securities in, a corporation-

- (a) subject to paragraph (c), means any other person in respect of whom that first-mentioned person has an agreement or arrangement, whether oral or in writing, express or implied, with respect to the acquisition, holding or disposal of securities or other interests in that corporation or under which they act together in exercising their voting power in relation to it;
- (b) subject to paragraph (c), includes, in relation to such provisions of Division 4 as are specified in Part 2 of Schedule 3, a person, or a person belonging to a class of persons, specified in that Part to be an associated person;
- (c) excludes, in relation to such provisions of Division 4 as are specified in Part 3 of Schedule 3, a person, or a person belonging to a class of persons, specified in that Part not to be an associated person;

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

- (a) a shareholder controller of the corporation; or
- (b) an indirect controller of the corporation;

"default proceedings" (違責處理程序) means any proceedings or other action taken by a recognized clearing house under its default rules;

"default rules" (違責處理規則), in relation to a recognized clearing house, means the rules of the clearing house required by section 40(2);

"defaulter" (違責者) means a clearing participant who is the subject of any default proceedings;

"indirect controller" (間接控制人), in relation to a corporation-

- (a) subject to paragraph (b), means a person 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;

- (b) excludes, in relation to such provisions of Division 4 as are specified in Part 4 of Schedule 3, a person, or a person belonging to a class of persons, specified in that Part not to be an indirect controller;

"market charge" (市場押記) means a charge, whether fixed or floating, granted in favour of a recognized clearing house-

- (a) over any property which is held by or deposited with the clearing house; and  
(b) for the purpose of securing liabilities arising directly in connection with the clearing house's ensuring the settlement of a market contract;

"market collateral" (市場抵押品) means any property which is held by or deposited with a recognized clearing house for the purpose of securing liabilities arising directly in connection with the clearing house's ensuring the settlement of a market contract;

"relevant corporation" (相關法團) means a corporation of which a relevant recognized exchange controller is a controller;

"relevant office-holder" (有關人員) means-

- (a) the Official Receiver;  
(b) a person acting in relation to a company as its liquidator, receiver or manager;  
(c) a person acting in relation to an individual as his trustee in bankruptcy or interim receiver of his property; or  
(d) a person appointed pursuant to an order for the administration in bankruptcy of an insolvent estate of a deceased person;

"relevant recognized exchange controller" (相關認可控制人) means a recognized exchange controller which is a controller of the Stock Exchange Company;

"settlement" (交收), in relation to a market contract, includes partial settlement;

"shareholder controller" (股東控制人), in relation to a corporation, means any person who, either alone or with any associated person or persons, is entitled to exercise, or control the exercise of, more than 35% of the voting power at any general meeting of the corporation or of another corporation of which it is a subsidiary.

(2) Where a charge is granted partly for the purpose specified in the definition of "market charge" in subsection (1) and partly for other purposes, the charge is in Division 3 a market charge in so far as it has effect for that specified purpose.

(3) Where any collateral is granted partly for the purpose specified in the definition of "market collateral" in subsection (1) and partly for other purposes, the collateral is in Division 3 market collateral in so far as it has been provided for that specified purpose.

(4) In Division 3, a reference to the law of insolvency includes a reference to every provision made by or under-

- (a) the Bankruptcy Ordinance (Cap 6);  
(b) the Companies Ordinance (Cap 32); and  
(c) any other enactment which is concerned with or in any way related to the insolvency of a person.

(5) In Division 3, a reference to settlement in relation to a market contract is a reference to the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise.

(6) Where there is a reference in this or any other Ordinance to a controller of a recognized exchange company or recognized clearing house (however expressed), the term controller shall be construed in accordance with the provisions of this section.

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| Section: | 40 | Rules by recognized clearing houses | L.N. 12 of 2003 | 01/04/2003 |
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(1) Without limiting any of its other powers to make rules, a recognized clearing house may make rules for such matters as are necessary or desirable-

- (a) for the proper regulation and efficient operation of the clearing or settlement facilities which it operates;  
(b) for the proper regulation of its clearing participants;  
(c) for the establishment and maintenance of compensation arrangements for the investing public.

- (2) A recognized clearing house shall make rules which-
- (a) provide for the taking of proceedings or other action if a clearing participant appears to be unable, or likely to become unable, to meet his obligations in respect of all unsettled or open market contracts to which he is a party; and
  - (b) comply with Part 5 of Schedule 3.
- (3) Where a recognized clearing house takes default proceedings, all subsequent proceedings or other action taken under its rules for the settlement of market contracts to which the defaulter is a party shall be treated as taken under the default rules.
- (4) The Commission may, by notice in writing served on a recognized clearing house, request the clearing house-
- (a) to make rules specified in the request within the period specified in that request; or
  - (b) to amend rules referred to in the request in the manner and within the period specified in that request.
- (5) Before making a request under subsection (4), the Commission shall consult the Financial Secretary and the recognized clearing house to which the request relates.
- (6) Where the Commission is satisfied that a recognized clearing house has not complied with a request referred to in subsection (4) within the period specified in the request, the Commission may make or amend the rules specified in the request instead of the recognized clearing house.

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| Section: | 47 | Duty to report on completion of default proceedings | L.N. 12 of 2003 | 01/04/2003 |
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- (1) A recognized clearing house shall, upon the completion by it of any default proceedings, make a report on such proceedings stating in respect of each defaulter-
- (a) the net sum (if any) certified by the clearing house to be payable by or to the defaulter; or
  - (b) the fact that no sum is so payable,
- (as the case may be) and the clearing house may include in that report such other particulars in respect of such proceedings as it considers appropriate.
- (2) A recognized clearing house which has made a report pursuant to subsection (1) shall supply the report to-
- (a) the Commission; and
  - (b) (i) any relevant office-holder acting in relation to-
    - (A) the defaulter to whom the report relates; or
    - (B) that defaulter's estate; or
 (ii) if there is no relevant office-holder referred to in subparagraph (i), the defaulter to whom the report relates.
- (3) Where the Commission receives pursuant to subsection (2) a report made pursuant to subsection (1), it may publish notice of that fact in such manner as it considers appropriate to bring it to the attention of creditors of the defaulter to whom the report relates.
- (4) Where a relevant office-holder or defaulter receives pursuant to subsection (2) a report made pursuant to subsection (1), he shall, at the request of a creditor of the defaulter to whom the report relates-
- (a) make the report available for inspection by the creditor;
  - (b) on payment of such reasonable fee as the relevant office-holder or defaulter (as the case may be) determines, supply to the creditor all or any part of that report.
- (5) In subsections (2), (3) and (4), "report" (報告) includes a copy of a report.

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| Schedule: | 3 | EXCHANGE COMPANIES, CLEARING HOUSES AND EXCHANGE CONTROLLERS | L.N. 12 of 2003 | 01/04/2003 |
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[sections 18, 40, 58, 59,  
61, 62, 72 & 78  
& Schedule 2]

## PART 1

### DEFINITIONS

1. In this Schedule, unless the context otherwise requires, "associated person" (相聯者), "controller" (控制人), "default rules" (違責處理規則), "indirect controller" (間接控制人), "market charge" (市場押記), "market collateral" (市場抵押品) and "shareholder controller" (股東控制人) have the meanings respectively assigned to them in section 18 of this Ordinance.

## PART 2

### SPECIFICATION OF PERSONS WHO ARE ASSOCIATED PERSONS

## PART 3

### SPECIFICATION OF PERSONS WHO ARE NOT ASSOCIATED PERSONS

1. A person ("first person") is not an associated person of another person ("second person") for the purposes of all the provisions of Division 4 of Part III of this Ordinance in so far as-

- (a) the first person or the second person is a recognized clearing house (or its nominee) acting in its capacity as such;
- (b) the first person is the chairman of a general meeting of a corporation entitled to exercise voting rights in the corporation due to his appointment as a proxy by the second person where the appointment-
  - (i) is for that meeting only; and
  - (ii) does not involve any valuable consideration; or
- (c) the first person and the second person are persons who have appointed the chairman of a general meeting of a corporation as a proxy to exercise voting rights in the corporation where each appointment-
  - (i) is for that meeting only; and
  - (ii) does not involve any valuable consideration.

2. A person is not an associated person of another person for the purposes of section 61 of this Ordinance by reason only of each person having appointed the same person as a proxy to exercise voting rights in a corporation at a general meeting of the corporation where each appointment-

- (a) is for that meeting only; and
- (b) does not involve any valuable consideration.

## PART 4

### SPECIFICATION OF PERSONS WHO ARE NOT INDIRECT CONTROLLERS

1. A person is not an indirect controller for all the provisions of Division 4 of Part III of this Ordinance in so far as the person is a person in accordance with whose directions or instructions the directors of a corporation or of another corporation of which it is a subsidiary are accustomed or obliged to act by reason only that they act on advice given by the person in the person's professional capacity.

## PART 5

### REQUIREMENTS FOR DEFAULT RULES OF RECOGNIZED CLEARING HOUSES

1. The rules of a recognized clearing house which provide for the taking of proceedings or other action if a clearing participant appears to be unable, or likely to become unable, to meet his obligations in respect of all unsettled or open market contracts to which he is a party, shall-

- (a) enable the settlement, or closing-out by offset, of all of the contracts;
- (b) for the purpose of paragraph (a), provide for there to be payable by or to the clearing participant a sum of money in relation to each contract if this is required after taking into account all the rights and liabilities of the clearing participant under or in respect of the contract concerned;
- (c) enable all sums of money payable by or to the clearing participant as determined in accordance with paragraph (b) to be aggregated or set-off so as to produce a net sum (if any) payable by or to the clearing participant;
- (d) if any net sum referred to in paragraph (c) is payable by the clearing participant, provide for that net sum to be set-off against all property of the clearing participant which is either subject to a market charge or which has been provided as market collateral (or set-off against the proceeds of the realization of such property) so as to produce a further net sum (if any) payable by or to the clearing participant;
- (e) if any net sum referred to in paragraph (c) is payable to the clearing participant, provide that all property of the clearing participant which is either subject to a market charge or which has been provided as market collateral shall cease to be subject to the market charge (but without prejudice to any other form of charge to which it may be subject) or to be market collateral (but without prejudice to its provision as any other form of collateral) (as the case may be); and
- (f) provide for the certification by the clearing house of any net sum referred to in paragraph (c) payable to the clearing participant, or of any further net sum referred to in paragraph (d) payable by or to the clearing participant (as the case may be) or, if there is no such sum, the certification by the clearing house of that fact.

## PART 6

### PROVISIONS APPLICABLE WHERE THERE IS FAILURE TO COMPLY WITH NOTICE UNDER SECTION 59(9)(c), 61(9)(b) OR 72(1) OF THIS ORDINANCE

#### 1. Restrictions on and sale of securities

(1) The powers conferred by this section shall be exercisable where a person has failed to comply with a notice under section 59(9)(c), 61(9)(b) or 72(1) of this Ordinance.

(2) The Commission may, by notice in writing served on the person concerned, direct that any specified securities to which this section applies shall, until further notice, be subject to one or more of the following restrictions-

- (a) any transfer of those securities or, in the case of unissued securities, any transfer of the right to be issued with them, and any issue of such securities, shall be void;
- (b) no voting rights shall be exercisable in respect of the securities;
- (c) no further securities shall be issued in right of them or pursuant to any offer made to their holder;
- (d) except in a liquidation, no payment shall be made of any sums due from the corporation concerned on the securities, whether in respect of capital or otherwise;
- (e) that the holder of the securities shall cause them to be transferred to a nominee of the Commission specified in the notice and within the period specified in the notice.

(3) Where securities are subject to the restrictions under subsection (2)(a), any agreement to transfer them or, in the case of unissued securities, the right to be issued with them, shall be void.

(4) Where securities are subject to the restrictions under subsection (2)(c) or (d), any agreement to transfer any right to be issued with other securities in right of those securities, or to receive any payment on them (otherwise than in a liquidation), shall be void.

(5) Where securities are subject to any restrictions under subsection (2), any person affected by any of those restrictions may request the Commission to make an application referred to in subsection (6)(a) in respect of those securities and, where such a request is made, the Commission shall, not later than 30 days after that request has been made-

- (a) comply with that request; or
- (b) serve a notice in writing on that person stating that it does not propose to comply with that request.
- (6) The Court of First Instance may-
  - (a) on the application of the Commission, order the sale of any specified securities to which this section applies and, if they are for the time being subject to any restrictions under subsection (2), that they shall cease to be subject to those restrictions;
  - (b) on the application of a person who has made a request under subsection (5) where he has been served with a notice under paragraph (b) of that subsection in respect of that request, order the sale of any specified securities to which that request relates and that they shall cease to be subject to any restrictions under subsection (2).
- (7) Where an order has been made under subsection (6), the Court of First Instance may, on the application of the Commission, make such further order relating to the sale or transfer of the securities as it considers appropriate.
- (8) Where securities are sold pursuant to an order under this section, the proceeds of the sale, less the costs of the sale, shall, unless otherwise specified by the Court of First Instance, be paid into court for the benefit of the persons beneficially interested in them, and any such person may apply to the Court of First Instance for an order that the whole or part of the proceeds be paid to him.
- (9) This section shall apply-
  - (a) to all the securities of the corporation concerned by virtue of which the person concerned is a shareholder controller, or minority controller within the meaning of section 61 of this Ordinance, of the corporation which are held by him or any associated person of his and were not so held immediately before he became such a controller; and
  - (b) where the person concerned became a shareholder controller, or minority controller within the meaning of section 61 of this Ordinance, of the corporation concerned by virtue of the acquisition by him or any associated person of his of securities of another corporation, to all the securities of that corporation which are held by him or any associated person of his and were not so held immediately before he became such a controller.
- (10) A copy of a notice served under subsection (2) on the person concerned shall be served on the corporation to whose securities it relates and, if it relates to securities held by any associated person of that person, on that associated person.
- (11) The Chief Justice may make rules regulating the practice and procedure in connection with applications (including any class of applications) made under subsection (6).
- (12) It is hereby declared that the operation of subsection (2)(b) or (e) shall not by itself cause any person to contravene section 59(1) or 61(1) of this Ordinance.

## **2. Punishment for attempted evasion of restrictions**

- (1) Any person who-
  - (a) exercises or purports to exercise any right to dispose of any securities, or of any right to be issued with any such securities, knowing that to do so contravenes any restrictions under section 1(2) to which the securities are subject;
  - (b) votes in respect of any such securities as a holder or as a proxy knowing that to do so contravenes any such restrictions;
  - (c) appoints a proxy in respect of any such securities knowing that to vote in respect of any such securities would contravene any such restrictions;
  - (d) being the holder of any such securities, fails to notify of their being subject to those restrictions any person whom he does not know to be aware of that fact but does know to be entitled (apart from the restrictions) to vote in respect of those securities whether as a holder or as a proxy;
  - (e) being the holder of any such securities, or being entitled to any right to be issued with other securities in right of them, or to receive any payment on them (otherwise than in a liquidation), enters into any agreement which is void under section 1(3) or (4); or
  - (f) without reasonable excuse, fails to comply with a restriction under section 1(2)(e) to which any such securities are subject,
 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.

(2) Where securities of a corporation are issued in contravention of restrictions under section 1(2) or payments are made by a corporation in contravention of such restrictions, every director and every manager of the corporation who knowingly and wilfully permits such an issue of securities or the making of such a payment (as the case may be) 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.

### 3. **Prohibition on certain person acting as indirect controllers**

(1) In this section, "prohibited person" (受禁制人士), in relation to a corporation, means any person who has failed to comply with a notice under section 59(9)(c) or 72(1) of this Ordinance in relation to the corporation in so far as the notice relates to a controller who is an indirect controller.

(2) Where a person is or may become a prohibited person in respect of a corporation, the Commission shall serve on the corporation a copy of the notice concerned under section 59(9)(c) or 72(1) of this Ordinance.

(3) No person who is a prohibited person in respect of a corporation shall act or continue to act (as the case may be) as an indirect controller of the corporation and, accordingly, as such a controller shall not give or shall cease to give (as the case may be) any directions or instructions to the directors of the corporation or of another corporation of which it is a subsidiary.

(4) Where any director of a corporation or of another corporation of which it is a subsidiary is given (whether directly or indirectly) any directions or instructions-

- (a) by a person whom the director knows, or ought reasonably to know, is a prohibited person in respect of the first-mentioned corporation; and
- (b) which are, or might reasonably be construed as being, prohibited from being so given by virtue of subsection (3),

the director shall forthwith notify the Commission of those directions or instructions and the circumstances in which they were so given.

(5) Any prohibited person who contravenes subsection (3) commits an offence and is liable-

- (a) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10000 for every day during which the offence continues; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$10000 for every day during which the offence continues.

(6) Any director who, without reasonable excuse, contravenes subsection (4) commits an offence and is liable-

- (a) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10000 for every day during which the offence continues; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$10000 for every day during which the offence continues.

(7) In this section, a reference to a continuing offence means an offence consisting of a person's continued default, refusal or other contravention of subsection (3) or (4), and notwithstanding that any period (however expressed) specified in that subsection for complying with it has expired.

## PART 7

### SPECIFICATION OF PERSONS WHO ARE NOT MINORITY CONTROLLERS

1. A person is not a minority controller for the purposes of Division 4 of Part III of this Ordinance in so far as the person is-

- (a) a recognized clearing house (or its nominee) acting in its capacity as such; or
- (b) the chairman of a general meeting of a corporation entitled to exercise voting rights in the corporation due to his appointment as a proxy where the appointment-
  - (i) is for that meeting only; and
  - (ii) does not involve any valuable consideration.

2. A person is not a minority controller for all the provisions of Division 4 of Part III of this Ordinance by reason only of being entitled to exercise voting rights in a corporation due to his appointment as a proxy where the appointment-

- (a) is for only one general meeting of the corporation; and
- (b) does not involve any valuable consideration.

## PART 8

### EXEMPTION FROM SECTION 59(1) OF THIS ORDINANCE

1. A person is exempt from section 59(1) of this Ordinance in so far as the person is-
  - (a) a recognized clearing house (or its nominee) acting in its capacity as such; or
  - (b) the controller of a corporation by reason only of being the chairman of a general meeting of the corporation entitled to exercise voting rights in the corporation due to his appointment as a proxy where the appointment-
    - (i) is for that meeting only; and
    - (ii) does not involve any valuable consideration.

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| Section: | 308 | Interpretation of Part XV | E.R. 2 of 2012 | 02/08/2012 |
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(1) In this Part, unless the context otherwise requires-

**associated corporation** (相聯法團), in relation to a listed corporation, means a corporation-

- (a) which is a subsidiary or holding company of the listed corporation or a subsidiary of the listed corporation's holding company; or
- (b) (not being a subsidiary of the listed corporation) in which the listed corporation has an interest in the shares of a class comprised in its share capital exceeding in nominal value one-fifth of the nominal value of the issued shares of that class;

**cash settled equity derivatives** (現金結算股本衍生工具) means equity derivatives other than physically settled equity derivatives;

**chief executive** (最高行政人員) means 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;

**contract multiplier** (合約乘數), in relation to a stock futures contract, means the number specified by the recognized exchange company operating the futures market on which the stock futures contract is traded to be the contract multiplier for that stock futures contract under the rules of the recognized exchange company;

**custodian** (保管人) means a corporation the principal business of which is to act as a custodian of securities or other property for another person, whether on trust or by contract;

**deliver** (交付), in relation to any shares or debentures, means deliver the shares or debentures either physically or by electronic means and, in the case of unissued shares, means deliver the shares after they are issued; and **take delivery** (提取) shall be construed accordingly;

**duty of disclosure** (披露責任)-

- (a) for the purposes of, and otherwise in relation to, Divisions 2 to 6, means the duty of disclosure arising under section 310 which has to be performed in accordance with section 324; or
- (b) for the purposes of, and otherwise in relation to, Divisions 7 to 10, means the duty of disclosure arising under section 341 which has to be performed in accordance with section 347;

**equity derivatives** (股本衍生工具) means any-

- (a) rights, options or interests (whether described as units or otherwise) in, or in respect of, underlying shares;
- (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) underlying shares; 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); or
- (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 stock futures contracts, 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) underlying shares; or
- (ii) the rights, options or interests or the contracts,

whether or not-

- (i) the rights, options or interests, the contracts or the instruments or documents are traded on a recognized stock market or a recognized futures market;
- (ii) the rights, options or interests, the contracts or the instruments or documents are, where the underlying shares are shares in a listed corporation, issued or made available by the listed corporation; or
- (iii) the obligations under the rights, options or interests, the contracts or the instruments or documents are settled by payment of cash or by delivery of the underlying shares or otherwise;

**Exchange Company** (交易所公司) means the Exchange Company within the meaning of the repealed Securities (Disclosure of Interests) Ordinance;

**founder** (成立人), in relation to a discretionary trust, means a person who-

- (a) has directly or indirectly provided, or undertaken to provide, property for the purpose of the trust; or
- (b) has entered into a reciprocal arrangement or understanding (whether having legal effect or not) with another person leading, directly or indirectly, to the creation of the trust, or has procured another person, directly or indirectly, to create the trust,

and whose consent is required as a condition (whether having legal effect or not) to the exercise by any trustee of his discretion in connection with the trust property, or in accordance with whose wishes (whether having legal effect or not) any trustee is accustomed, or would be expected, to act;

**Hong Kong register** (香港登記冊), in relation to a listed corporation, means the register of members, or a branch register, of the listed corporation that is kept in Hong Kong;

**inspector** (審查員) means an inspector appointed under section 356 or 357;

**issued equity share capital** (已發行權益股本), in relation to a listed corporation, means the listed corporation's issued share capital of a class the shares in which carry rights to vote in all circumstances at general meetings of the corporation;

**listed** (上市) means listed on a recognized stock market;

**listed corporation** (上市法團) means any corporation which has any of its securities listed;

**notifiable interest** (須具報權益) has the meaning assigned to it by section 311(3);

**notifiable percentage level** (須具報百分率水平) has the meaning assigned to it by section 315(1);

**off-exchange transaction** (場外交易) means any transaction, arrangement or occurrence of an event (other than an on-exchange transaction) under which a person becomes, or ceases to be, interested in shares;

**on-exchange transaction** (場內交易) means any transaction conducted on a recognized stock market or a recognized futures market under which a person becomes, or ceases to be, interested in shares;

**physically settled equity derivatives** (實物結算股本衍生工具) means equity derivatives that are, or are to be, settled by delivery of the underlying shares, including equity derivatives in respect of which the holder, writer or issuer of the equity derivatives may choose to settle by payment of cash or by delivery of the underlying shares;

**qualified lender** (合資格借出人) means a person who is-

- (a) an authorized financial institution;
- (b) an insurer authorized under the Insurance Companies Ordinance (Cap 41);
- (c) an exchange participant of a recognized exchange company;
- (d) an intermediary licensed or registered for Type 1 or Type 8 regulated activity; or
- (e) a corporation authorized under the law of any place outside Hong Kong recognized for the purposes of section 313(13), 317(6), 323(6) or (7) or 341(5) by the Commission to carry on business-
  - (i) as a bank;
  - (ii) as an insurance company; or
  - (iii) in an activity that is in the opinion of the Commission equivalent to any of the regulated activities carried on by an intermediary referred to in paragraph (d);

**register of directors' and chief executives' interests and short positions** (董事及最高行政人員權益及淡倉登記冊) means the register kept under section 352;

**register of interests in shares and short positions** (股份權益及淡倉登記冊) means the register kept under section 336 including, except where the context otherwise requires, that part of the register kept under section 337;

**regulations** (規例) means regulations made under section 376;

**relevant event** (有關事件)-

- (a) for the purposes of, and otherwise in relation to, Divisions 2 to 6, means-
  - (i) in a case under section 310(1)(a) or (b) or (4)(a) or (b), the event or change referred to in such section;
  - (ii) in a case under section 310(2)(a), the event in consequence of which the corporation becomes a listed corporation;
  - (iii) in a case under section 310(2)(b), the event in consequence of which the listed corporation's share capital of a particular class becomes relevant share capital;
  - (iv) in a case under section 310(2)(c) or (5), the commencement of this Part; or
  - (v) in a case under section 310(3) or (6), the taking effect of the regulation providing for the reduction referred to in such section; or
- (b) for the purposes of, and otherwise in relation to, Divisions 7 to 10, means-
  - (i) in a case under section 341(1)(a), (b), (c), (d), (e) or (f), the event referred to in such section;
  - (ii) in a case under section 341(2)(a), the event in consequence of which the corporation becomes a listed corporation;
  - (iii) in a case under section 341(2)(b), the commencement of this Part;
  - (iv) in a case under section 341(2)(c), the event in consequence of which the person becomes a director or chief executive of a listed corporation; or
  - (v) in a case under section 341(2)(d), the event in consequence of which the corporation becomes an associated corporation of a listed corporation;

**relevant exchange company** (有關交易所公司), in relation to a listed corporation, means the recognized exchange company operating the stock market on which the shares in the listed corporation are listed;

**relevant share capital** (有關股本), in relation to a listed corporation-

- (a) means the listed corporation's issued share capital of a class the shares in which carry rights to vote in all circumstances at general meetings of the corporation; and
- (b) includes unissued shares in the listed corporation's share capital of a class which, if issued, would carry rights to vote in all circumstances at general meetings of the corporation;

**relevant time** (有關時間) means the time of the occurrence of the relevant event;

**rights issue** (供股) means an offer or issue by a listed corporation of shares in the listed corporation (whether issued or unissued) to all persons holding issued shares in the listed corporation at a certain date (other than a person whose address is in a place where such offer or issue is not permitted under the law of that place) in proportion to the number of those issued shares held by them at that date, but does not include an offer or issue of shares in the listed corporation in lieu of all or part of a cash dividend;

**short position** (淡倉) means the position which a person has-

- (a) where the person is the holder, writer or issuer of any equity derivatives, by virtue of which the person-
  - (i) has a right to require another person to take delivery of the underlying shares of the equity derivatives;
  - (ii) is under an obligation to deliver the underlying shares of the equity derivatives to another person, if called upon to do so;
  - (iii) has a right to receive from another person an amount if the price of the underlying shares of the equity derivatives declines; or
  - (iv) has a right to avoid or reduce a loss if the price of the underlying shares of the equity derivatives declines,before or on a certain date or within a certain period, whether in any case the right or obligation is conditional or absolute; or
- (b) where the person is the borrower of shares under a securities borrowing and lending agreement, by virtue of which the person is under an obligation to deliver shares to another person who has lent shares, if called upon to do so, before or on a certain date or within a certain period, whether or not the obligation to deliver shares is to be settled by payment of cash or by delivery of shares or otherwise;

**specified percentage level** (指明百分率水平) has the meaning assigned to it by section 315(2);

**stock futures contract** (股票期貨合約) means a contract which is of a class approved by the Commission as stock futures contracts for trading on a recognized futures market;

**target corporation** (目標法團), in relation to an agreement to which section 317 applies, means the particular listed corporation which is the target corporation for that agreement;

**underlying shares** (相關股份), in relation to any equity derivatives and subject to subsection (5), means-

- (a) for the purposes of, and otherwise in relation to, Divisions 2 to 6-
  - (i) the shares comprised in the relevant share capital of the listed corporation concerned which may be required to be delivered to, or by, the holder, writer or issuer of the equity derivatives on the exercise of rights or fulfilment of obligations under the equity derivatives, whether in any case the rights or obligations are conditional or absolute; or
  - (ii) the shares comprised in the relevant share capital of the listed corporation concerned by reference to the price or value of which, wholly or partly, the price or value of the equity derivatives is derived or determined; or
- (b) for the purposes of, and otherwise in relation to, Divisions 7 to 10-
  - (i) the shares in the listed corporation concerned, or any associated corporation of the listed corporation, which may be required to be delivered to, or by, the holder, writer or issuer of the equity derivatives on the exercise of rights or fulfilment of obligations under the equity derivatives, whether in any case the rights or obligations are conditional or absolute; or
  - (ii) the shares in the listed corporation concerned, or any associated corporation of the listed corporation, by reference to the price or value of which, wholly or partly, the price or value of the equity derivatives is derived or determined, whether in any case those shares are issued or unissued.
- (2) The temporary suspension of voting rights in respect of shares comprised in a class of the issued share capital of a listed corporation does not affect the application of this Part in relation to interests in those or any other shares comprised in that class.
- (3) In section 317, and also in references elsewhere in this Part to an agreement to which that section applies, **agreement** (協議) includes any agreement or arrangement, and a reference in that section to provisions of an agreement-
  - (a) accordingly includes a reference to undertakings, expectations or understandings operative under any arrangement; and
  - (b) (without prejudice to paragraph (a)) also includes a reference to any provisions, whether express or implied and whether absolute or not.
- (4) For the purposes of any provision of this Part which provides that an officer of a corporation who is in default is liable to a fine or penalty, the expression **every officer of it who is in default** (其每名違責的高級人員) means every officer of the corporation who knowingly and wilfully authorizes or permits the default, refusal or contravention referred to in that provision.
- (5) In the case of equity derivatives-
  - (a) where-
    - (i) no less than 5 listed corporations' shares will be required to be delivered on the exercise of rights or fulfilment of obligations under the equity derivatives; and
    - (ii) at the time of the issue of the equity derivatives, no more than-
      - (A) subject to sub-subparagraph (B), 30%; or
      - (B) where any other percentage is prescribed by regulations for the purposes of this subsection, such other percentage, of the value of all the shares which, but for this subsection, would have been the underlying shares of the equity derivatives is represented by the shares in any one of those listed corporations; or
  - (b) where-
    - (i) the prices or values of no less than 5 listed corporations' shares play a part in the derivation or determination of the price or value of the equity derivatives; and
    - (ii) at the time of the issue of the equity derivatives, no more than-
      - (A) subject to sub-subparagraph (B), 30%; or
      - (B) where any other percentage is prescribed by regulations for the purposes of this subsection, such

- other percentage,  
of the price or value of the equity derivatives is derived from or determined by the prices or values of the shares in any one of those listed corporations,  
those equity derivatives are taken to have no underlying shares.
- (6) In subsection (5), a reference to shares shall be construed as-
- (a) for the purposes of, and otherwise in relation to, Divisions 2 to 6, a reference to shares comprised in the relevant share capital of the listed corporation concerned; or
  - (b) for the purposes of, and otherwise in relation to, Divisions 7 to 10, a reference to shares in the listed corporation concerned.
- (7) In subsections (5) and (6), a reference to a listed corporation includes a reference to a corporation that is listed on a specified stock exchange.

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| Section: | 374 | Method of giving notification and delivering report | E.R. 2 of 2012 | 02/08/2012 |
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Notwithstanding section 400, any notification, requirement, report or other document (however described) to be, or required to be, given, delivered, issued or sent for the purposes of this Part shall be regarded as duly given, delivered, issued or sent if-

- (a) in the case of a corporation, it is-
  - (i) delivered to any officer of the corporation by hand;
  - (ii) left at, or sent by post to, the registered office, or the last known principal place of business, of the corporation;
  - (iii) sent by facsimile transmission to the last known facsimile number of the corporation;
  - (iv) sent by electronic mail transmission to the last known electronic mail address of the corporation; or
  - (v) sent by such other method as is prescribed by rules made under section 397 for the purposes of this section;
- (b) in the case of the relevant exchange company, it is-
  - (i) left at, or sent by post to, the registered office of the relevant exchange company;
  - (ii) sent by facsimile transmission to the facsimile number of the relevant exchange company;
  - (iii) sent by electronic mail transmission to the electronic mail address of the relevant exchange company; or
  - (iv) sent by such other method as is prescribed by rules made under section 397 for the purposes of this section;
- (c) in the case of the Commission, it is-
  - (i) left at, or sent by post to, the registered office of the Commission;
  - (ii) sent by facsimile transmission to the facsimile number of the Commission;
  - (iii) sent by electronic mail transmission to the electronic mail address of the Commission; or
  - (iv) sent by such other method as is prescribed by rules made under section 397 for the purposes of this section;
- (d) in the case of the Monetary Authority, it is-
  - (i) left at, or sent by post to, the registered office of the Monetary Authority;
  - (ii) sent by facsimile transmission to the facsimile number of the Monetary Authority;
  - (iii) sent by electronic mail transmission to the electronic mail address of the Monetary Authority; or
  - (iv) sent by such other method as is prescribed by rules made under section 397 for the purposes of this section; or
- (e) in any other case, it is sent in the manner (as appropriate) specified in section 400.

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| Schedule: | 10 | Savings, Transitional, Consequential and Related Provisions, etc. | E.R. 2 of 2012 | 02/08/2012 |
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[sections 237, 240, 242, 406,

## **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,

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

- (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-<br>(a) a corporation<br><br>(b) an individual                             | (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<br>(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-<br>(a) a corporation<br><br>(b) an individual                | (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<br>(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-<br>(a) a corporation<br><br>(b) an individual                    | (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<br>(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-<br>(a) a corporation<br><br>(b) an individual | (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<br>(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, 6 (other than rule 6(4)), 6B, 6C, 6D, 6E, 6F and 6G (other than rule 6G(4)) of the repealed Securities Rules; (Replaced 9 of 2012 s. 48)
  - (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, 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) (Replaced 9 of 2012 s. 48)

- (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 or the security lodged under section 121K(1) of the repealed Securities Ordinance may be made. (Amended 9 of 2012 s. 48)
- (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 or security referred to in subsection (4), he shall lodge his claim in writing with the Commission- (Amended 9 of 2012 s. 48)
  - (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) or 6G(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. (Amended 9 of 2012 s. 48)
- (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 or the security, the Commission shall repay the deposit or the security to which the claim relates or the remaining balance of the deposit or the security (as the case may be) to the dealer or the registered financier concerned. (Amended 9 of 2012 s. 48)
- (9) Where-
  - (a) a deposit made under section 52 of the repealed Securities Ordinance or section 31 of the repealed Commodities Trading Ordinance or a security lodged under section 121K(1) of the repealed Securities Ordinance has not been or is not required to be disposed of under the Ordinance; and
  - (b) the deposit or the security is not required to be disposed of under this section,the Commission shall repay the deposit or the security to the dealer or the registered financier concerned. (Amended 9 of 2012 s. 48)
- (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 or the registered financier concerned. (Amended 9 of 2012 s. 48)
- (11) Where-
  - (a) a deposit or a security or its remaining balance is required to be repaid to a dealer or a registered financier under subsection (8) or (9) or any amount is required to be repaid to a dealer or a registered financier under subsection (10); but
  - (b) the Commission is unable to locate the dealer or the registered financier for the purpose of repayment during the period of 3 years beginning with- (Amended 9 of 2012 s. 48)
    - (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 security or the remaining balance or the amount (as the case may be) to the compensation fund. (Amended 9 of 2012 s. 48)
- (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 or against any security lodged under section 121K(1) of the repealed Securities Ordinance after the appointed day. (Amended 9 of 2012 s. 48)
- (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) or 6G(2) of the repealed Securities Rules or rule 15(2) of the repealed Commodities Trading Rules. (Amended 9 of 2012 s. 48)

### **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**

(Omitted as spent—E.R. 2 of 2012)

## **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)

## **Part 4**

### **Savings and Transitional Provisions relating to Securities and Futures (Amendment) Ordinance 2012**

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 40 of the Securities and Futures (Amendment) Ordinance 2012 (9 of 2012) may be continued and determined on or after that date as if section 40 of the Securities and Futures (Amendment) Ordinance 2012 (9 of 2012) 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 40 of the Securities and Futures (Amendment) Ordinance 2012 (9 of 2012) 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 2012 (9 of 2012) may be continued and determined on or after that date as if Part 3 of the Securities and Futures (Amendment) Ordinance 2012 (9 of 2012) 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 2012 (9 of 2012) 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.

(Part 4 added 9 of 2012 s. 48)  
(Format changes—E.R. 2 of 2012)

**Note:**

\* **Commencement date: 13 May 2011.**

+ **Commencement date: 4 May 2012.**

|          |     |                                  |                 |              |
|----------|-----|----------------------------------|-----------------|--------------|
| Chapter: | 571 | Securities and Futures Ordinance | Gazette Number  | Version Date |
| Section: | 303 | Penalties                        | L.N. 95 of 2012 | 01/01/2013   |

- (1) A person who commits an offence under this Part is liable-
  - (a) on conviction on indictment to a fine of \$10000000 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 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 (Replaced 9 of 2012 s. 10)
  - (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: | 455 | ORGANIZED AND SERIOUS CRIMES ORDINANCE | Gazette Number | Version Date |
|----------|-----|--|----------------|--------------|

|           |   |                          |            |            |
|-----------|---|--------------------------|------------|------------|
| Schedule: | 2 | OTHER SPECIFIED OFFENCES | 22 of 2008 | 04/07/2008 |
|-----------|---|--------------------------|------------|------------|

[sections 2, 8 & 31]  
(Replaced 26 of 2002 s. 3)

### Common law offences

1. manslaughter
2. conspiracy to defraud

### Statutory offences

|    | Offence  | Description*  |
|----|--|---|
| 3. | Import and Export Ordinance (Cap 60)<br>section 14<br><br>section 14A<br>section 18A<br>section 35A                        | alteration of vessel, aircraft or vehicle for the purpose of smuggling<br>construction, etc., of vessels for the purpose of smuggling<br>assisting, etc., in export of unmanifested cargo<br>assisting, etc., in carriage of prohibited, etc., articles   |
| 4. | Immigration Ordinance (Cap 115)<br>section 37DA(1)   | assisting unauthorized entrant to remain  |
| 5. | Dangerous Drugs Ordinance (Cap 134)<br>section 5(1)<br><br>section 9(1), (2) and (3)<br>section 35(1)<br><br>section 37(1) | supplying or procuring a dangerous drug to or for unauthorized persons<br>offences relating to cannabis plant or opium poppy<br>keeping or managing a divan for the taking of dangerous drugs<br>permitting premises to be used for unlawful trafficking, manufacturing or storage of dangerous drugs |
| 6. | Gambling Ordinance (Cap 148)<br>section 14<br><br>section 15(1)  | providing money for unlawful gambling or for an unlawful lottery<br>permitting premises to be used as gambling establishment  |
| 7. | Registration of Persons Ordinance (Cap 177)  |   |

|   |  |
|---|--|
| section 7A  | possession of forged identity cards  |
| 8. Crimes Ordinance (Cap 200)                       |  |
| section 72  | copying a false instrument   |
| section 73  | using a false instrument   |
| section 74  | using a copy of a false instrument   |
| section 76  | making or possessing equipment for making a false instrument   |
| section 99(1)                                       | passing, etc. counterfeit notes and coins  |
| section 101   | making or custody or control of counterfeiting materials and implements  |
| 9. Prevention of Bribery Ordinance (Cap 201)        |  |
| section 4(1)  | bribery of public servant  |
| section 4(2)  | soliciting or accepting bribes in the capacity of a public servant (Added L.N. 229 of 2007)  |
| section 4(2A)                                       | bribery of Chief Executive (Added 22 of 2008 s. 6)   |
| section 4(2B)                                       | soliciting or accepting bribes in the capacity of Chief Executive (Added 22 of 2008 s. 6)  |
| section 5(1)  | bribery of public servant for giving assistance, etc. in regard to contracts (Replaced 22 of 2008 s. 6)  |
| section 5(2)  | soliciting or accepting bribes in the capacity of a public servant for giving assistance, etc. in regard to contracts (Added L.N. 229 of 2007) |
| section 5(3)  | bribery of Chief Executive for giving assistance, etc. in regard to contracts (Added 22 of 2008 s. 6)  |
| section 5(4)  | soliciting or accepting bribes in the capacity of Chief Executive for giving assistance, etc. in regard to contracts (Added 22 of 2008 s. 6)   |
| section 6(1)  | bribery for procuring withdrawal of tenders  |
| section 6(2)  | soliciting or accepting bribes for withdrawal of tenders (Added L.N. 229 of 2007)  |
| section 9(1)  | soliciting or accepting bribes in the capacity of an agent (Added L.N. 229 of 2007)  |
| section 9(2)  | bribery of agent   |
| 10. Theft Ordinance (Cap 210)                       |  |
| section 12(1)                                       | aggravated burglary  |
| section 18A   | obtaining services by deception  |
| 11. Offences against the Person Ordinance (Cap 212) |  |
| section 19  | wounding or inflicting grievous bodily harm  |
| 12. Criminal Procedure Ordinance (Cap 221)          |  |
| section 90(1)                                       | doing an act with intent to impede apprehension or prosecution of offender   |
|   | (Enacted 1994)   |

**Note:**

\* The short description of offences in this Schedule is for ease of reference only.

|          |       |  |                |              |
|----------|-------|--|----------------|--------------|
| Chapter: | 571AK | Securities and Futures (Futures Contracts) Notice 2012 | Gazette Number | Version Date |
|          |       | Empowering section                                     | E.R. 2 of 2012 | 02/08/2012   |

(Cap 571, section 392)

(Enacting provision omitted—E.R. 2 of 2012)

[27 June 2012]

(Originally L.N. 81 of 2012)

|          |       |  |                |              |
|----------|-------|--|----------------|--------------|
| Chapter: | 571AK | Securities and Futures (Futures Contracts) Notice 2012 | Gazette Number | Version Date |
| Section: | 1     | (Omitted as spent—E.R. 2 of 2012)                      | E.R. 2 of 2012 | 02/08/2012   |

|          |       |  |                 |              |
|----------|-------|--|-----------------|--------------|
| Chapter: | 571AK | Securities and Futures (Futures Contracts) Notice 2012 | Gazette Number  | Version Date |
| Section: | 2     | Structured product to be regarded as futures contract  | L.N. 81 of 2012 | 27/06/2012   |

The structured product set out in the Schedule is to be regarded as a futures contract for the purposes of the following provisions of the Ordinance—

- (a) Division 3 of Part III;
- (b) section 63(1)(b);
- (c) section 71(1)(a)(iii);
- (d) the definition of **clearing house** in section 1 of Part 1 of Schedule 1 in so far as the definition applies to the following provisions of the Ordinance—
  - (i) section 37;
  - (ii) section 43; and
  - (iii) the definition of **clearing participant** in section 1 of Part 1 of Schedule 1; and
- (e) the definition of **market contract** in section 1 of Part 1 of Schedule 1 in so far as the definition applies to the following provisions of the Ordinance—
  - (i) section 18;
  - (ii) Division 3 of Part III;
  - (iii) section 271(9);
  - (iv) section 292(9); and
  - (v) Part 5 of Schedule 3.

|           |       |  |                 |              |
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| Schedule: |       | Schedule   | L.N. 81 of 2012 | 27/06/2012   |

[section 2]

### Structured Product to be Regarded as Futures Contract

| Item | Description of structured product   |
|------|---|
| 1.   | Any structured product that— <ul style="list-style-type: none"> <li>(a) does not fall within the definition of <b>securities</b> in section 1 of Part 1 of Schedule 1 to the Ordinance; and</li> <li>(b) is not a contract or an option on a contract made under the rules or conventions of a futures market.</li> </ul> |