

**《證券及期貨條例》  
(第 571 章)**

**Securities and Futures Ordinance  
(Cap. 571)**

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尚未實施的條文及修訂的資料，可於「電子版香港法例」(<http://www.elegislation.gov.hk>) 閱覽。

#### Provisions / Amendments not yet in operation ——

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本條例旨在綜合和修訂關於金融產品、證券期貨市場及證券期貨業的法律、關於規管與金融產品、證券期貨市場及證券期貨業有關連的活動及其他事宜的法律、關於保障投資者的法律，以及關於附帶或相關事宜的法律，並就有關連的目的訂定條文。

An Ordinance to consolidate and amend the law relating to financial products, the securities and futures market and the securities and futures industry, the regulation of activities and other matters connected with financial products, the securities and futures market and the securities and futures industry, the protection of investors, and other matters incidental thereto or connected therewith, and for connected purposes.

[2003 年 4 月 1 日] 2003 年第 12 號法律公告

[1 April 2003] L.N. 12 of 2003

(略去制定語式條文——2012 年第 2 號編輯修訂紀錄)

(Enacting provision omitted—E.R. 2 of 2012)

## 第 I 部

### 導言

(格式變更——2012 年第 2 號編輯修訂紀錄)

## Part I

### Preliminary

(Format changes—E.R. 2 of 2012)

#### 1. 簡稱

- (1) 本條例可引稱為《證券及期貨條例》。
- (2) (已失時效而略去——2012 年第 2 號編輯修訂紀錄)

#### 1. Short title

- (1) This Ordinance may be cited as the Securities and Futures Ordinance.
- (2) (Omitted as spent—E.R. 2 of 2012)

#### 2. 釋義

- (1) 附表 1 所載釋義條文，按其內容適用於本條例。
- (2) 本條例各部及各條文所載釋義條文的適用範圍，按該等釋義條文的內容而定。

#### 2. Interpretation

- (1) Schedule 1 contains interpretation provisions which apply to this Ordinance in accordance with their terms.
- (2) Individual Parts and provisions of this Ordinance contain interpretation provisions which have application in accordance with their terms.

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(3) 證監會可藉憲報公告修訂附表 1 第 2、3、4 及 5 部。

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(3) The Commission may, by notice published in the Gazette, amend Parts 2, 3, 4 and 5 of Schedule 1.

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## 第 II 部

### 證券及期貨事務監察委員會

(格式變更——2012 年第 2 號編輯修訂紀錄)

#### 第 1 分部 —— 證監會

#### 3. 證券及期貨事務監察委員會

- (1) 儘管《證券及期貨事務監察委員會條例》(第 24 章)根據第 406 條被廢除，該條例第 3 條以“證券及期貨事務監察委員會”名稱設立的團體，仍以原來的名稱持續作為法人團體存在，並可以該名稱起訴及被起訴。
- (2) 在本條例條文的規限下，證監會的法團身分，以及屬於證監會的或屬於其他人士而與證監會有關的權利、特權、權力、義務及法律責任，不因《證券及期貨事務監察委員會條例》(第 24 章)根據第 406 條被廢除而受影響。不論在任何條例中，或在任何文書、紀錄或文件中，或在任何以書面或其他方式進行的程序或作出的協議或安排中，或為任何以書面或其他方式進行的程序或作出的協議或安排的目的，凡提述證監會之處(不論是否以提述《證券及期貨事務監察委員會條例》(第 24 章)的方式提述)，均須據此解釋。
- (3) 證監會的收入無須根據《稅務條例》(第 112 章)課稅。
- (4) 附表 2 第 1 部載有關於證監會的組成、處事程序以及其他與證監會有關的事宜的條文。

## Part II

### Securities and Futures Commission

(Format changes—E.R. 2 of 2012)

#### Division 1—The Commission

#### 3. Securities and Futures Commission

- (1) Notwithstanding the repeal of the Securities and Futures Commission Ordinance (Cap. 24) under section 406, the body established by section 3 of that Ordinance as the Securities and Futures Commission shall continue in existence in its original name as a body corporate with power to sue and be sued in that name.
- (2) Subject to the provisions of this Ordinance, the corporate identity of the Commission, and the rights, privileges, powers, obligations and liabilities of the Commission and those of others in relation to the Commission, are not affected by the repeal of the Securities and Futures Commission Ordinance (Cap. 24) under section 406, and any reference to the Commission (whether by reference to that Ordinance or otherwise) in any Ordinance or any instrument, record or document, or in or for the purposes of any proceedings, agreement or arrangement (whether in writing or not) shall be construed accordingly.
- (3) The receipts of the Commission are not subject to taxation under the Inland Revenue Ordinance (Cap. 112).
- (4) Part 1 of Schedule 2 contains provisions relating to the constitution and proceedings of and other matters relating to the Commission.



**4. 證監會的規管目標**

證監會的規管目標是 ——

- (a) 維持和促進證券期貨業的公平性、效率、競爭力、透明度及秩序；
- (b) 提高公眾對金融服務的了解，包括對證券期貨業的作業及運作的了解；(由 2012 年第 9 號第 30 條代替)
- (c) 向投資於或持有金融產品的公眾提供保障；
- (d) 盡量減少在證券期貨業內的犯罪行為及失當行為；
- (e) 減低在證券期貨業內的系統風險；及
- (f) 採取與證券期貨業有關的適當步驟，以協助財政司司長維持香港在金融方面的穩定性。

**5. 證監會的職能及權力**

(1) 證監會的職能是在合理地切實可行的範圍內 ——

- (a) 採取該會認為適當的步驟，以維持和促進證券期貨業的公平性、效率、競爭力、透明度及秩序；
- (b) 監管、監察和規管 ——
  - (i) 認可交易所、認可結算所、認可控制人或認可投資者賠償公司所進行的活動，以及進行受證監會根據任何有關條文規管的活動的人(註冊機構除外)所進行的活動；及

**4. Regulatory objectives of Commission**

The regulatory objectives of the Commission are—

- (a) to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
- (b) to promote understanding by the public of financial services including the operation and functioning of the securities and futures industry; (*Replaced 9 of 2012 s. 30*)
- (c) to provide protection for members of the public investing in or holding financial products;
- (d) to minimize crime and misconduct in the securities and futures industry;
- (e) to reduce systemic risks in the securities and futures industry; and
- (f) to assist the Financial Secretary in maintaining the financial stability of Hong Kong by taking appropriate steps in relation to the securities and futures industry.

**5. Functions and powers of Commission**

(1) The functions of the Commission are, so far as reasonably practicable—

- (a) to take such steps as it considers appropriate to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
- (b) to supervise, monitor and regulate—
  - (i) the activities carried on by recognized exchange companies, recognized clearing houses, recognized exchange controllers or recognized investor

- (ii) 註冊機構所進行並須受證監會根據任何有關係文規管的活動；
- (c) 促進和發展證券期貨業內適當程度的自律規管；
- (d) 促進、鼓勵和以強制方式確保進行受證監會根據任何有關係文規管的活動的人在進行該等活動時操守正當、力足勝任和廉潔自持；
- (e) 鼓勵就與金融產品有關的交易或活動提供明智的、不偏不倚的和有根據的意見；
- (f) 採取該會認為適當的步驟，以確保有關係文獲得遵守；
- (g) 以該會認為適當的方式維持和提高公眾對證券期貨業的信心，包括酌情決定向公眾披露與證監會執行其任何職能有關的事宜，或在該會執行其任何職能方面附帶引起的事宜；
- (h) 與在香港或其他地方組成或設立的規管當局或機構合作，並向它們提供協助；
- (i) 增進公眾人士對金融服務的了解及認識，包括 ——
  - (i) 證券期貨業的作業及運作；及
  - (ii) 購買金融服務(包括投資於金融產品)所涉的利益、風險及法律責任；(由 2012 年第 9 號第 31 條代替)
- (j) 鼓勵公眾理解透過進行受證監會根據任何有關係文規管的活動的人，而購買不同種類的金融服務(包括投資於金融產品)的相對利益；(由 2012 年第 9 號第 31 條修訂)
- (k) 提高公眾對以下事宜的重要性的了解 ——
  - (i) 就購買金融服務及與金融產品有關的交易及活動，作出有根據的決定；及
  - (ii) 為該等決定承擔責任；(由 2012 年第 9 號第 31 條代替)

- compensation companies, or by persons carrying on activities regulated by the Commission under any of the relevant provisions, other than registered institutions; and
- (ii) such of the activities carried on by registered institutions as are required to be regulated by the Commission under any of the relevant provisions;
- (c) to promote and develop an appropriate degree of self-regulation in the securities and futures industry;
- (d) to promote, encourage and enforce the proper conduct, competence and integrity of persons carrying on activities regulated by the Commission under any of the relevant provisions in the conduct of such activities;
- (e) to encourage the provision of sound, balanced and informed advice regarding transactions or activities related to financial products;
- (f) to take such steps as it considers appropriate to ensure that the relevant provisions are complied with;
- (g) to maintain and promote confidence in the securities and futures industry in such manner as it considers appropriate, including by the exercise of its discretion to disclose to the public any matter relating or incidental to the performance of any of its functions;
- (h) to co-operate with and provide assistance to regulatory authorities or organizations, whether formed or established in Hong Kong or elsewhere;
- (i) to enhance the understanding and knowledge of members of the public of financial services including—
  - (i) the operation and functioning of the securities and futures industry; and

- (l) 在顧及投資於或持有金融產品的公眾對該等投資或持有的認知水平和專門知識所達程度後，確保他們獲得適當程度的保障；
- (m) 促進、鼓勵和以強制方式確保 ——
  - (i) 進行受證監會根據任何有關係文規管的活動的人（註冊機構除外）採用適當的內部監控及風險管理制度；及
  - (ii) 註冊機構在進行受證監會根據任何有關係文規管的活動時，採用適當的內部監控及風險管理制度；
- (n) 遏止在證券期貨業內的非法、不名譽和不正當行為；
- (o) 應財政司司長的任何要求，採取與證券期貨業有關的適當步驟，以協助維持香港在金融方面的穩定性；
- (p) 倡議與證券期貨業有關的法律的改革；
- (q) 就與證券期貨業有關的事宜，向財政司司長提供意見，並向財政司司長提供該會認為適當的與該等事宜有關的資料；及
- (r) 執行本條例或其他條例授予或委予或根據本條例或其他條例授予或委予該會的職能。
- (2) 第 (1)(c) 款並不局限或以其他方式影響證監會的任何其他職能。
- (3) 證監會就 ——
  - (a) 任何屬註冊機構的認可財務機構，或任何屬中介人的有聯繫實體的認可財務機構；或
  - (b) 任何屬(a)段首述的認可財務機構的有聯繫實體的人，執行其任何職能時，可完全或局部依賴金融管理專員對該認可財務機構或該人（視屬何情況而定）的監管。
- (4) 為施行本條例，證監會可 ——
  - (a) 取得、持有和處置任何種類的財產；

- (ii) the benefits, risks and liabilities associated with purchasing financial services including investing in financial products; *(Replaced 9 of 2012 s. 31)*
- (j) to encourage the public to appreciate the relative benefits of purchasing different types of financial services including investing in financial products through persons carrying on activities regulated by the Commission under any of the relevant provisions; *(Amended 9 of 2012 s. 31)*
- (k) to promote understanding by the public of the importance of—
  - (i) making informed decisions regarding the purchasing of financial services and transactions and activities related to financial products; and
  - (ii) taking responsibility for those decisions; *(Replaced 9 of 2012 s. 31)*
- (l) to secure an appropriate degree of protection for members of the public investing in or holding financial products, having regard to their degree of understanding and expertise in respect of investing in or holding financial products;
- (m) to promote, encourage and enforce—
  - (i) the adoption of appropriate internal controls and risk management systems by persons carrying on activities regulated by the Commission under any of the relevant provisions, other than registered institutions; and
  - (ii) the adoption of appropriate internal controls and risk management systems by registered institutions in the conduct of activities regulated by the Commission under any of the relevant provisions;

- (b) 訂立合約或其他協議；
  - (c) 收取和支出款項；
  - (d) 在財政司司長的批准下，以提供保證的方式或以其他條件借入款項；
  - (da) 成立屬於證監會的全資附屬公司，以利便執行第 (1)(i)、(j) 及 (k) 款所賦的職能；(由 2012 年第 9 號第 31 條增補)
  - (e) 發表或以其他方式提供材料(不論實際如何稱述)，向受該會根據任何有關條文規管的人或進行受該會根據任何有關條文規管的活動的人及(如該會認為適當的話)其他人表明，在沒有任何特定考慮因素或情況下，該會擬執行其任何職能的方式；及
  - (f) 發表或以其他方式提供材料(不論實際如何稱述)，向公眾表明與該會執行其任何職能有關的事宜，或在該會執行其任何職能方面附帶引起的事宜。
- (5) 根據第 (4)(e) 或 (f) 款發表或提供的材料不是附屬法例。

- (n) to suppress illegal, dishonourable and improper practices in the securities and futures industry;
  - (o) to take appropriate steps in relation to the securities and futures industry further to any requirement of the Financial Secretary for the purpose of providing assistance in maintaining the financial stability of Hong Kong;
  - (p) to recommend reforms of the law relating to the securities and futures industry;
  - (q) to advise the Financial Secretary on matters relating to the securities and futures industry and provide him with such information in relation thereto as it considers appropriate; and
  - (r) to perform functions conferred or imposed on it by or under this or any other Ordinance.
- (2) Subsection (1)(c) does not limit or otherwise affect any other function of the Commission.
- (3) The Commission, in performing any of its functions in relation to—
- (a) any authorized financial institution as a registered institution or as an associated entity of an intermediary; or
  - (b) any person as an associated entity of an authorized financial institution that is a registered institution,
- may rely, in whole or in part, on the supervision of such authorized financial institution or person (as the case may be) by the Monetary Authority.
- (4) For the purposes of this Ordinance, the Commission may—
- (a) acquire, hold and dispose of property of any description;
  - (b) make contracts or other agreements;

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- (c) receive and expend moneys;
  - (d) with the approval of the Financial Secretary, borrow money on security or other conditions;
  - (da) establish a wholly owned subsidiary of the Commission to facilitate the performance of functions under subsection (1)(i), (j) and (k); *(Added 9 of 2012 s. 31)*
  - (e) publish or otherwise make available materials (however described) indicating to persons who are, or who carry on activities, regulated by the Commission under any of the relevant provisions and, where the Commission considers appropriate, to any other persons the manner in which, in the absence of any particular consideration or circumstance, the Commission proposes to perform any of its functions; and
  - (f) publish or otherwise make available materials (however described) indicating to the public any matter relating or incidental to the performance of any of the functions of the Commission.
- (5) Materials published or otherwise made available under subsection (4)(e) or (f) are not subsidiary legislation.

## 6. 證監會的一般責任

- (1) 證監會在執行其職能時，須在合理地切實可行的範圍內採取符合以下說明的行事方式——
  - (a) 能配合其規管目標；及
  - (b) 是該會認為就達致該等目標而言屬最適當的。
- (2) 證監會在尋求達致其規管目標和執行其職能時，須顧及——
  - (a) 證券期貨業的國際性質，及維持香港作為具競爭力的國際金融中心的地位的適切性；

## 6. General duties of Commission

- (1) In performing its functions, the Commission shall, so far as reasonably practicable, act in a way which—
  - (a) is compatible with its regulatory objectives; and
  - (b) it considers most appropriate for the purpose of meeting those objectives.
- (2) In pursuing its regulatory objectives and performing its functions, the Commission shall have regard to—
  - (a) the international character of the securities and futures industry and the desirability of maintaining the status



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- (b) 對與金融產品及受該會根據任何有關條文規管的活動有關連的創新提供利便的適切性；
- (c) 以下原則：如非必要，不應妨礙進行受該會根據任何有關條文規管的活動的人之間的競爭；
- (d) 在履行該會的保密責任之餘，以開放透明的方式行事的重要性；及
- (e) 有效率地運用該會資源的需要。

## 7. 諮詢委員會

- (1) 現設立諮詢委員會，就關於證監會任何規管目標及任何職能的政策事宜向證監會提供意見。
- (2) 諮詢委員會按照附表 2 第 1 部組成，並須按照該部處理其事務。
- (3) 諮詢委員會須至少每 3 個月舉行會議一次，以向證監會提供意見。
- (4) 證監會可請求諮詢委員會就關於證監會任何規管目標及任何職能的政策事宜，向證監會提供意見。

## 8. 證監會可設立委員會

- (1) 證監會可設立 ——
  - (a) 常設委員會；及
  - (b) 特別委員會。

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- of Hong Kong as a competitive international financial centre;
- (b) the desirability of facilitating innovation in connection with financial products and with activities regulated by the Commission under any of the relevant provisions;
- (c) the principle that competition among persons carrying on activities regulated by the Commission under any of the relevant provisions should not be impeded unnecessarily;
- (d) the importance of acting in a transparent manner, having regard to its obligations of preserving secrecy and confidentiality; and
- (e) the need to make efficient use of its resources.

## 7. Advisory Committee

- (1) There shall be an Advisory Committee to advise the Commission on matters of policy regarding any of its regulatory objectives and functions.
- (2) The Advisory Committee is constituted in accordance with Part 1 of Schedule 2 and shall conduct its business in accordance with that Part.
- (3) The Advisory Committee shall meet at least once every 3 months to advise the Commission.
- (4) The Commission may request the Advisory Committee to advise it on matters of policy regarding any of its regulatory objectives and functions.

## 8. Commission may establish committees

- (1) The Commission may establish—
  - (a) standing committees; and
  - (b) special committees.

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- (2) 證監會可將某事宜交付根據本條設立的委員會考慮、查訊或處理。
- (3) 證監會可委任某人擔任根據本條設立的委員會的委員，不論該人是否證監會的成員，並可委任該委員會某委員擔任該委員會的主席。
- (4) 根據第 (2) 款向委員會作出的交付，並不妨礙證監會自行執行其職能。
- (5) 證監會可 ——
  - (a) 從委員會撤回根據第 (2) 款作出的交付；
  - (b) 撤銷根據第 (3) 款作出的委員會委員或主席的委任。
- (6) 根據本條設立的委員會可從其委員中選出一人 ——
  - (a) (如沒有根據第 (3) 款委任的該委員會主席) 擔任該委員會主席；或
  - (b) 在根據第 (3) 款委任的該委員會主席因傷病、不在香港或其他因由而不能擔任主席的期間，署理主席職位，

並可隨時免去如此選出的委員的主席職位。
- (7) 根據本條設立的委員會可在本條例條文的規限下，規管本身的處事程序和事務。
- (8) 根據本條設立的委員會須在該委員會訂定的程序及證監會根據第 (9) 款發出的指示的規限下，按照該委員會主席所定的時間和地點舉行會議。
- (9) 證監會可一般地或就任何個別個案向根據本條設立的委員會發出指示 (不論該等指示是否與規定該委員會的行事方式有關)，而該委員會須按照該等指示行事。

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- (2) The Commission may refer a matter to a committee established under this section for consideration, inquiry or management.
- (3) The Commission may appoint a person to be a member of a committee established under this section, whether or not the person is a member of the Commission, and may appoint a member of the committee to be the chairman of the committee.
- (4) A reference of a matter to a committee under subsection (2) does not prevent the Commission from performing any of its functions.
- (5) The Commission may—
  - (a) withdraw a reference under subsection (2) from a committee;
  - (b) revoke an appointment of a member or chairman of a committee under subsection (3).
- (6) A committee established under this section may elect one of its members—
  - (a) to be its chairman if a chairman has not been appointed by the Commission under subsection (3); or
  - (b) to act as its chairman for any period during which a chairman appointed by the Commission under subsection (3) is unable to act as chairman due to illness, absence from Hong Kong or any other cause,

and may at any time remove the member so elected from the office of the chairman.
- (7) A committee established under this section may, subject to the provisions of this Ordinance, regulate its own procedure and business.
- (8) A committee established under this section shall meet when and where the chairman of the committee determines, subject

**9. 證監會的職員**

- (1) 證監會可按該會決定的報酬、津貼和其他條款及條件僱用任何人。
- (2) 證監會可設立和維持需供款或不需供款的計劃，向僱員及僱員的受養人支付退休福利、酬金或其他津貼。
- (3) 證監會可聘用顧問及代理人，協助該會執行職能。

**10. 證監會職能的轉授及再轉授**

- (1) 除第 (2) 款另有規定外，證監會可將其職能轉授予——
  - (a) 該會成員；
  - (b) 根據第 8 條設立的委員會；或
  - (c) 指名的或擔任指明職位的該會僱員。
- (1A) 證監會可將第 5(1)(i)、(j) 或 (k) 條所賦的任何職能，轉授予根據第 5(4)(da) 條成立的全資附屬公司。*(由 2012 年第 9 號第 32 條增補)*
- (2) 證監會不得根據第 (1) 款轉授——
  - (a) 該會根據本條轉授職能的權力；或
  - (b) 附表 2 第 2 部指明的職能。

to any procedure fixed by the committee and any direction given by the Commission under subsection (9).

- (9) The Commission may give directions to a committee established under this section, whether generally or in any particular case, and whether regarding the manner in which it shall act or otherwise, and the committee shall act in accordance with any such directions.

**9. Staff of Commission**

- (1) The Commission may employ persons for such remuneration and allowances, and on such other terms and conditions, as the Commission determines.
- (2) The Commission may provide and maintain schemes (whether contributory or not) for the payment of retirement benefits, gratuities or other allowances to its employees and their dependants.
- (3) The Commission may engage consultants, agents and advisers to assist it in the performance of its functions.

**10. Delegation and sub-delegation of Commission's functions**

- (1) Subject to subsection (2), the Commission may delegate any of its functions to—
  - (a) a member of the Commission;
  - (b) a committee established under section 8; or
  - (c) an employee of the Commission, whether by reference to his name or to the office held by him.
- (1A) The Commission may delegate any of its functions under section 5(1)(i), (j) or (k) to a wholly owned subsidiary established under section 5(4)(da). *(Added 9 of 2012 s. 32)*
- (2) No delegation shall be made under subsection (1) in respect of—



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- (2AA) 然而，第 (2)(b) 款無礙為以下目的，將附表 2 第 3 部指明的職能，轉授予證監會行政總裁：根據《金融機構（處置機制）條例》（第 628 章），對任何以下實體施行穩定措施——（編輯修訂——2017 年第 2 號編輯修訂紀錄）
- (a) 認可結算所；
  - (b) 根據該條例第 6(1)(b) 條被指定為受涵蓋金融機構的認可交易所；
  - (c) (a) 或 (b) 段所述實體的控權公司（該條例所指者）或相聯營運實體。（由 2016 年第 23 號第 215 條增補）
- (2A) 證監會在第 17 條（資金的投資）或第 241 條（投資組成賠償基金的款項）下的任何職能，可由證監會轉授予它根據第 9(3) 條聘用的顧問或代理人。（由 2012 年第 9 號第 37 條增補）
- (3) 證監會如根據本條轉授職能，可同時授權獲轉授職能者再轉授該職能，而該項授權可載有對再轉授職能的權力的行使的限制或規限條件。
  - (4) 根據本條作出的轉授或再轉授，並不妨礙證監會或獲轉授職能者同時執行已轉授或已再轉授的職能。
  - (5) 證監會可——
    - (a) 撤銷根據本條作出的轉授；
    - (b) 撤銷就根據本條作出的再轉授而作出的授權，而該項轉授或再轉授（視屬何情況而定）隨即不再具有效力。
  - (6) 凡任何人或委員會看來是依據在本條下作出的轉授或再轉授而行事，除非相反證明成立，否則須推定該人或該委員會是按照該項轉授或再轉授的條款而行事的。
  - (7) 在不損害第 (4) 款的原則下，凡根據本條就證監會任何職能作出轉授或再轉授，則在本條例或其他條例中就該職能的執行而提述證監會之處，除文意另有所指外，均須據此解釋。

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- (a) the power of the Commission to delegate under this section; or
  - (b) a function specified in Part 2 of Schedule 2.
- (2AA) However, subsection (2)(b) does not prevent a function specified in Part 3 of Schedule 2 from being delegated to the chief executive officer of the Commission for the purpose of the application of a stabilization option under the Financial Institutions (Resolution) Ordinance (Cap. 628) to any of the following— (*Amended E.R. 2 of 2017*)
- (a) a recognized clearing house;
  - (b) a recognized exchange company that is designated under section 6(1)(b) of that Ordinance as a within scope financial institution;
  - (c) a holding company (within the meaning of that Ordinance) or affiliated operational entity of an entity mentioned in paragraph (a) or (b). (*Added 23 of 2016 s. 215*)
- (2A) The Commission may delegate any of its functions under section 17 (investment of funds) or 241 (investment of money forming part of the compensation fund) to a consultant, agent or adviser engaged by the Commission under section 9(3). (*Added 9 of 2012 s. 37*)
- (3) Where the Commission delegates a function under this section, it may at the same time authorize the delegate to sub-delegate the function and the authorization may contain restrictions or conditions on the exercise of the power to sub-delegate.
  - (4) A delegation or sub-delegation under this section does not prevent the Commission or its delegate from concurrently performing the function delegated or sub-delegated.
  - (5) The Commission may—

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- (8) 立法會可藉決議修訂附表 2 第 2 或 3 部。(由 2016 年第 23 號第 215 條修訂)

# 11. 向證監會發出指示

- (1) 行政長官在諮詢證監會行政總裁後，如信納就達致證監會任何規管目標或執行該會任何職能而向該會發出書面指示，是符合公眾利益的，則可如此發出書面指示。(由 2006 年第 15 號第 2 條修訂)
- (2) 證監會須遵從根據第 (1) 款發出的書面指示。
- (3) 如行政長官根據第 (1) 款發出書面指示且該指示關乎證監會某項職能，而本條例其他條文或其他條例規定該會為執行該職能須——
  - (a) 得出意見；
  - (b) 確定是否信納某事宜(包括信納某種情況是否存在)；或
  - (c) 諮詢某人，

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- (a) revoke a delegation under this section;
- (b) revoke an authorization in respect of a sub-delegation under this section,  
whereupon the delegation or sub-delegation (as the case may be) shall cease to have effect.
- (6) Where a person or committee purports to act pursuant to a delegation or sub-delegation under this section, he or it shall be presumed, unless the contrary is proved, to be acting in accordance with the terms of the delegation or sub-delegation.
- (7) Without prejudice to subsection (4), where there is a delegation or sub-delegation under this section in respect of a function of the Commission, any reference in this or any other Ordinance to the Commission in connection with the performance of the function shall, unless the context otherwise requires, be construed accordingly.
- (8) The Legislative Council may by resolution amend Part 2 or 3 of Schedule 2. (*Amended 23 of 2016 s. 215*)

# 11. Directions to Commission

- (1) After consultation with the chief executive officer of the Commission, the Chief Executive may, upon being satisfied that it is in the public interest to do so, give the Commission written directions as to the furtherance of any of its regulatory objectives or the performance of any of its functions. (*Amended 15 of 2006 s. 2*)
- (2) The Commission shall comply with any written direction given under subsection (1).
- (3) Where any written direction is given under subsection (1), any requirement under any other provision of this or any other Ordinance that the Commission shall, for the purpose of performing any of the functions to which the written direction relates—

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則就與依據或由於該指示而執行職能一事有關連的所有目的而言，該等規定並不適用。

- (4) 根據第 (1) 款發出的書面指示不是附屬法例。

## 12. 證監會須提交資料

證監會須在財政司司長提出要求時，就該會達致其任何規管目標或執行其任何職能時所依循或採取或擬依循或擬採取的原則、實務及政策，向財政司司長提交他指明的資料，以及該會依循或採取或擬依循或擬採取該等原則、實務及政策的理由。

## 第 2 分部 —— 會計及財務安排

## 13. 財政年度及預算

- (1) 證監會的財政年度由每年的 4 月 1 日開始。
- (2) 證監會須在其每個財政年度的 12 月 31 日或之前，將下一個財政年度的收支預算呈交行政長官批准。
- (3) 財政司司長須安排將已依據第 (2) 款批准的預算提交立法會會議席上省覽。

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- (a) form any opinion;
  - (b) be satisfied as to any matter (including existence of particular circumstances); or
  - (c) consult any person,
- shall not apply for all purposes connected with the performance of functions pursuant to, or consequent upon, the written direction.
- (4) Written directions given under subsection (1) are not subsidiary legislation.

## 12. Commission to furnish information

The Commission shall, when required by the Financial Secretary, furnish to the Financial Secretary such information as he specifies on the principles, practices and policy it is pursuing or adopting, or proposes to pursue or adopt, in furthering any of its regulatory objectives or performing any of its functions, and the reasons therefor.

## Division 2—Accounting and financial arrangements

## 13. Financial year and estimates

- (1) The financial year of the Commission commences on 1 April in each year.
- (2) The Commission shall, not later than 31 December in each financial year of the Commission, submit to the Chief Executive for his approval estimates of its income and expenditure for the next financial year.
- (3) The Financial Secretary shall cause the estimates as approved pursuant to subsection (2) to be laid on the table of the Legislative Council.

## 14. Appropriation

政府須就證監會每個財政年度，將立法會撥予證監會的款項，從政府一般收入中支付證監會。

## 15. 帳目及年報

- (1) 證監會須備存其財務往來的妥善帳目及紀錄。
- (2) 證監會須在其每個財政年度終結後，在合理地切實可行的範圍內盡快擬備財務報表，該報表須 ——
  - (a) 真實而中肯地反映該會在該年度終結時的事務狀況，以及該會在該年度的業績及現金流量；及
  - (b) 由證監會的主席及行政總裁簽署。(由 2006 年第 15 號第 3 條修訂)
- (3) 證監會須在其每個財政年度終結後，在合理地切實可行的範圍內盡快擬備在該年度內該會事務的報告，並將該報告的文本送交財政司司長，而財政司司長須安排將一份文本提交立法會會議席上省覽。

## 16. 核數師及審計

- (1) 證監會須在財政司司長批准下委任核數師。
- (2) 證監會須在其每個財政年度終結後，在合理地切實可行的範圍內盡快將根據第 15(2) 條就該年度擬備的財務報表送交根據第 (1) 款委任的核數師審計。
- (3) 根據第 (1) 款委任的核數師須就根據第 (2) 款送交他們的財務報表擬備報告，並將該報告送交證監會。證監會在收到該報告後，須在合理地切實可行的範圍內盡快將該

For each financial year of the Commission, the Government shall pay to the Commission out of the general revenue the moneys appropriated by the Legislative Council for that purpose.

## 15. Accounts and annual report

- (1) The Commission shall keep proper accounts and records of its transactions.
- (2) The Commission shall, as soon as reasonably practicable after the end of each financial year of the Commission, prepare financial statements which shall—
  - (a) give a true and fair view of the state of affairs of the Commission as at the end of the financial year and of the results of its operations and cash flows in the financial year; and
  - (b) be signed by the chairman and the chief executive officer of the Commission. (Amended 15 of 2006 s. 3)
- (3) The Commission shall, as soon as reasonably practicable after the end of each financial year of the Commission, prepare a report on its activities during the financial year and send a copy of the report to the Financial Secretary who shall cause a copy thereof to be laid on the table of the Legislative Council.

## 16. Auditors and audit

- (1) The Commission shall, with the approval of the Financial Secretary, appoint auditors.
- (2) The Commission shall, as soon as reasonably practicable after the end of each financial year of the Commission, submit to the auditors appointed under subsection (1) for audit the financial statements prepared for the financial year under section 15(2).

報告及該報告所關乎的財務報表的文本各一份送交財政司司長。

- (4) 根據第 (1) 款委任的核數師須在其報告內包括一項陳述，說明他們是否認為該報告所關乎的財務報表真實而中肯地反映證監會在該報表所關乎的財政年度終結時的事務狀況，以及該會在該年度的業績及現金流量。
- (5) 根據第 (1) 款委任的核數師有權於任何合理時間取覽證監會備存的簿冊、帳目、憑單、紀錄及文件，並有權要求證監會的人員提供該核數師認為為執行其核數師職責而需要的資料及解釋。
- (6) 財政司司長須安排將第 (3) 款提述的核數師報告及該報告所關乎的財務報表的文本各一份提交立法會會議席上省覽。
- (7) 審計署署長或他根據第 (8) 款授權的另一名公職人員，可於任何合理時間——
  - (a) 審查證監會備存的簿冊、帳目、憑單、紀錄或文件；及
  - (b) (如審計署署長或該人員(視屬何情況而定)認為適當)將該簿冊、帳目、憑單、紀錄或文件的整份或其中任何記項複製副本。
- (8) 審計署署長可為施行第 (7) 款授權任何公職人員執行任何職能。

- (3) The auditors appointed under subsection (1) shall prepare a report on the financial statements submitted to them under subsection (2) and send the report to the Commission which shall, as soon as reasonably practicable after its receipt, send to the Financial Secretary a copy of the report and a copy of the financial statements to which the report relates.
- (4) The auditors appointed under subsection (1) shall include in their report a statement as to whether, in their opinion, the financial statements to which the report relates give a true and fair view of the state of affairs of the Commission as at the end of the financial year for which the financial statements are prepared and of the results of its operations and cash flows in the financial year.
- (5) An auditor appointed under subsection (1) has a right of access at all reasonable times to the books, accounts, vouchers, records and documents kept by the Commission and is entitled to require from the officers of the Commission such information and explanations as he considers necessary for the performance of his duties as auditor.
- (6) The Financial Secretary shall cause a copy of the report referred to in subsection (3), and a copy of the financial statements to which the report relates, to be laid on the table of the Legislative Council.
- (7) The Director of Audit or another public officer authorized by the Director under subsection (8) may at any reasonable time—
  - (a) examine any books, accounts, vouchers, records or documents kept by the Commission; and
  - (b) if the Director or the public officer (as the case may be) considers appropriate, make a copy of the whole of, or any entry in, such books, accounts, vouchers, records or documents.

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**17. 資金的投資**

證監會可將該會非即時需用的資金，按財政司司長批准的方式投資。

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(8) The Director of Audit may authorize any public officer to perform any function for the purposes of subsection (7).

**17. Investment of funds**

The Commission may invest its funds which are not immediately required in the manner that the Financial Secretary approves.

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**第 III 部****交易所公司、結算所、交易所控制人、投資者賠償公司  
及自動化交易服務***(格式變更——2015 年第 3 號編輯修訂紀錄)***第 1 分部 —— 釋義****18. 第 III 部的釋義**

(1) 在本部中，除文意另有所指外——

**市場押記** (market charge) 指符合以下說明並以某認可結算所為受益人的押記，不論是固定押記或浮動押記——

- (a) 就該結算所持有或存放於該結算所的財產而批給的；及
- (b) 為與該結算所確保任何市場合約的交收有關而直接產生的法律責任作保證的；

**市場抵押品** (market collateral) 指由某認可結算所持有或存放於該結算所的任何財產，而該財產是為與該結算所確保任何市場合約的交收有關而直接產生的法律責任作保證的；

**交收** (settlement) 就市場合約而言，包括局部交收；

**有關人員** (relevant office-holder) 指——

- (a) 破產管理署署長；
- (b) 以某公司的清盤人、接管人或經理人身分就該公司行事的人；
- (c) 以某名個人的破產管理人或該人的財產的臨時接管人身分就該人行事的人；或
- (d) 依據命令獲委任，對無力償債死者的遺產作遺產破產管理的人；

**Part III****Exchange Companies, Clearing Houses, Exchange  
Controllers, Investor Compensation Companies and  
Automated Trading Services***(Format changes—E.R. 3 of 2015)***Division 1—Interpretation****18. Interpretation of Part III**

(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;

**股東控制人** (shareholder controller) 就任何法團而言，指有權在該法團的成員大會上，或在以該法團為附屬公司的另一法團的成員大會上，單獨或聯同任何一名或多於一名的相聯者行使 35% 以上投票權或控制該數量的投票權的行使的人；

**相聯者** (associated person) 就任何有權行使關於某法團的投票權，或有權控制關於某法團的投票權的行使，或持有某法團證券的人而言 ——

- (a) 在不抵觸 (c) 段的情況下，指與上述的人以明示或隱含方式有口頭或書面協議或安排的任何一人，而根據該協議或安排，雙方在行使他們的關於該法團的投票權時是行動一致的，或該協議或安排是與獲取、持有或處置該法團的證券或其他權益有關的；
- (b) 在不抵觸 (c) 段的情況下，就附表 3 第 2 部指明的第 4 分部條文而言，包括該部指明為相聯者的人，或屬於該部指明為相聯者的任何類別人士的人；
- (c) 就附表 3 第 3 部指明的第 4 分部條文而言，不包括該部指明為不是相聯者的人，亦不包括屬於該部指明為不是相聯者的任何類別人士的人；

**相關法團** (relevant corporation) 指以相關認可控制人為控制人的法團；

**相關認可控制人** (relevant recognized exchange controller) 指本身屬聯交所控制人的認可控制人；

**控制人** (controller) 就任何法團而言，指該法團的 ——

- (a) 股東控制人；或
- (b) 間接控制人；

**間接控制人** (indirect controller) 就任何法團而言 ——

- (a) 在不抵觸 (b) 段的情況下，如該法團的董事 (或以該法團為附屬公司的另一法團的董事) 是慣於或有義務按照某人所發出的指示或指令行事，指該人；

**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) or made under section 40(2A); (*Amended 6 of 2014 s. 57*)

**defaulter** (違責者) means a recognized clearing house, or a clearing participant, that is the subject of any default proceedings; (*Amended 6 of 2014 s. 57*)

**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;



- (b) 就附表 3 第 4 部指明的第 4 分部條文而言，不包括該部指明為不是間接控制人的人，亦不包括屬於該部指明為不是間接控制人的任何類別人士的人；

**違責者** (defaulter) 指違責處理程序所針對的認可結算所或結算所參與者；(由 2014 年第 6 號第 57 條修訂)

**違責處理規則** (default rules) 就認可結算所而言，指該結算所按第 40(2) 條規定而訂立的規章或根據第 40(2A) 條訂立的規章；(由 2014 年第 6 號第 57 條修訂)

**違責處理程序** (default proceedings) 指認可結算所根據其違責處理規則採取的程序或其他行動。

- (2) 如批給押記的目的，部分是在第 (1) 款中的**市場押記**的定義中所指明的目的，部分是其他目的，則在第 3 分部中，在該押記是為該指明目的而具有效力的範圍內，該押記是市場押記。
- (3) 如批給抵押品的目的，部分是在第 (1) 款中的**市場抵押品**的定義中所指明的目的，部分是其他目的，則在第 3 分部中，在該抵押品是為該指明目的而提供的範圍內，該抵押品是市場抵押品。
- (4) 在第 3 分部中，凡提述破產清盤法，包括提述由下述各項或根據下述各項訂立的所有條文 ——
- (a) 《破產條例》(第 6 章)；
- (b) 《公司(清盤及雜項條文)條例》(第 32 章)；及(由 2012 年第 28 號第 912 及 920 條修訂)
- (c) 涉及任何人無償債能力或在任何方面與此有關的其他成文法則。
- (5) 在第 3 分部中，凡就市場合約提述交收，即提述合約各方以履行、妥協或其他方式，行使權利和解除法律責任。
- (6) 凡本條例或其他條例提述認可交易所或認可結算所的控制人(不論實際如何稱述)，**控制人**一詞須按照本條條文解釋。

**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.

## (7) 在本條中 ——

- (a) 為免生疑問，凡提述為在第 (1) 款中**市場抵押品**的定義中描述的目的而由任何認可結算所持有或存放於該結算所的財產，即包括作為抵押品、保證金或保證基金供款（不論在該結算所的規章內如何稱述）而持有或存放的財產，而不論該財產是否以押記、轉移或其他安排的方式而持有或存放；及
  - (b) **保證基金供款** (guarantee fund contribution) 指由任何認可結算所或其結算所參與者向符合以下說明的基金作出的供款 ——
    - (i) 該基金由該結算所維持，以應付損失，包括與下述項目有關連而引起的損失 ——
      - (A) 該結算所沒有能力就任何未交收或未平倉市場合約履行它的義務，或相當可能會喪失該能力；或
      - (B) 任何結算所參與者沒有能力（或看來沒有能力）就未交收或未平倉市場合約履行其作為合約一方的義務，或相當可能會喪失該能力；及
    - (ii) 該基金根據該結算所的違責處理規則可作該目的之用。（由 2014 年第 6 號第 57 條增補）
- （編輯修訂 —— 2015 年第 3 號編輯修訂紀錄）

- (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 (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and (*Amended 28 of 2012 ss. 912 & 920*)
  - (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.
- (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 clearing house) and whether the property is held or deposited by way of charge, transfer or other arrangement; and

## 第 2 分部 —— 交易所公司

## 19. 交易所公司的認可

- (1) 任何人 ——
  - (a) 如不是 ——
    - (i) 聯交所；
    - (ii) 以相關認可控制人作為控制人的認可交易所；或
    - (iii) 本身屬認可交易所的相關認可控制人，則不得營辦證券市場；
  - (b) 如不是認可交易所，則不得營辦期貨市場；
  - (c) 不得協助在違反本款的情況下營辦的證券市場的運作；

- (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 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 clearing house. (*Added 6 of 2014 s. 57*)

## Division 2—Exchange companies

## 19. Recognition of exchange company

- (1) No person shall—
  - (a) operate a stock market unless the person is—
    - (i) the Stock Exchange Company;
    - (ii) a recognized exchange company of which a relevant recognized exchange controller is a controller; or
    - (iii) a relevant recognized exchange controller which is itself a recognized exchange company;
  - (b) operate a futures market unless the person is a recognized exchange company;
  - (c) assist in the operation of a stock market which is operated in contravention of this subsection;

- (d) 不得協助在違反本款的情況下營辦的期貨市場的運作。
- (2) 凡證監會信納認可某公司為交易所公司 ——
- (a) 就維護投資大眾的利益或公眾利益而言是適當的；或
- (b) 對妥善規管證券或期貨合約的市場是適當的，
- 則可在先諮詢公眾人士繼而諮詢財政司司長後，藉送達書面通知予該公司，認可該公司為交易所公司，而該項認可 ——
- (i) 受該會認為適當並在該通知中指明的條件規限；及
- (ii) 自該通知指明的生效日期起生效。
- (3) 在不局限根據第 (2) 款送達的通知指明的條件的一般性的原則下，證監會 ——
- (a) 在基於該款 (a) 或 (b) 段指明的理由信納如此行事是適當的情況下；及
- (b) 在諮詢財政司司長後，
- 可藉送達書面通知予認可交易所，修訂或撤銷任何該等條件或施加任何新的條件。
- (4) 凡證監會藉根據第 (3) 款送達通知修訂或撤銷任何條件或施加任何新的條件，該項修訂、撤銷或施加在該通知送達時或在該通知指明的時間（兩者以較遲者為準）生效。
- (5) 任何人無合理辯解而違反第 (1) 款，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (6) 凡某公司成為認可交易所，證監會須安排在憲報刊登公告以公布此事。

- (d) assist in the operation of a futures market which is operated in contravention of this subsection.
- (2) Where the Commission is satisfied that it is appropriate to do so—
- (a) in the interest of the investing public or in the public interest; or
- (b) for the proper regulation of markets in securities or futures contracts,
- it may, after consultation with the public and then the Financial Secretary, by notice in writing served on a company, recognize the company as an exchange company—
- (i) subject to such conditions as it considers appropriate specified in the notice; and
- (ii) with effect from a date specified in the notice for the purpose.
- (3) Without limiting the generality of conditions which may be specified in a notice under subsection (2), the Commission may, by notice in writing served on a recognized exchange company, amend or revoke any condition specified in the first-mentioned notice or impose new conditions, where the Commission—
- (a) is satisfied that it is appropriate to do so on a ground specified in paragraph (a) or (b) of that subsection; and
- (b) has consulted the Financial Secretary.
- (4) Where the Commission amends or revokes any condition or imposes any new condition by a notice under subsection (3), the amendment, revocation or imposition takes effect at the time of service of the notice or at the time specified in the notice, whichever is the later.
- (5) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable—

- (7) 凡某公司尋求成為認可交易所，而證監會有意拒絕根據第 (2) 款認可該公司，則該會在決定不認可該公司前，須給予該公司合理的陳詞機會。
- (8) 凡證監會拒絕根據第 (2) 款認可某公司為交易所公司，證監會須藉送達書面通知予該公司，將拒絕一事及拒絕的理由告知該公司。
- (9) 任何人不得 ——
- (a) 僅因以下原因而視為違反第 (1)(b) 款 ——
- (i) 在以下情況下經營提供構成營辦期貨市場的自動化交易服務的業務 ——
- (A) 該人根據第 95(2) 條獲認可提供該服務或該人是就第 7 類受規管活動獲發牌或獲註冊的中介人；及
- (B) 憑藉該項認可、牌照或註冊，該人獲准從事構成營辦期貨市場的活動；或
- (ii) 在以下情況下經營構成營辦期貨市場的期貨合約交易業務 ——
- (A) 該人是就第 2 類受規管活動獲發牌或獲註冊的中介人；及
- (B) 憑藉該項牌照或註冊，該人獲准從事構成營辦期貨市場的活動；或
- (b) 僅因協助經營提供構成營辦期貨市場的自動化交易服務的業務或經營構成營辦期貨市場的期貨合約交易業務而視為違反第 (1)(d) 款，但前提是就提供自動化交易服務的業務或期貨合約交易業務而言，(a)(i)(A) 及 (B) 或 (ii)(A) 及 (B) 段（視屬何情況而定）提述的條件獲符合。
- (10) 在第 (1) 款中，**證券市場** (stock market) 具有在附表 1 第 1 部第 1 條中的**證券市場**的定義中給予該詞的涵義，但在該定義中對證券的提述須解釋為不包括對任何集體投資計劃的權益的提述。

- (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) Where a company becomes a recognized exchange company, the Commission shall cause notice of that fact to be published in the Gazette.
- (7) Where a company is seeking to be a recognized exchange company and the Commission is minded not to recognize the company under subsection (2), the Commission shall give the company a reasonable opportunity of being heard before making a decision not to recognize the company.
- (8) Where the Commission refuses to recognize a company as an exchange company under subsection (2), the Commission shall, by notice in writing served on the company, inform the company of the refusal and of the reasons for it.
- (9) A person shall not be regarded as contravening—
- (a) subsection (1)(b) by reason only of—
- (i) carrying on a business of providing automated trading services that constitutes an operation of a futures market if—
- (A) that person is authorized to provide the services under section 95(2) or is an intermediary licensed or registered for Type 7 regulated activity; and
- (B) by virtue of the authorization, licence or registration, that person is permitted to engage in activities that constitute an operation of a futures market; or



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第 571 章

第 III 部 —— 第 2 分部  
第 20 條

Part III—Division 2  
Section 20

3-16  
Cap. 571

## 20. 可在認可證券市場及認可期貨市場進行的交易

- (1) 在認可證券市場只可進行 ——
  - (a) 證券交易；及
  - (b) 證監會一般地或就個別個案藉憲報公告批准的其他金融產品的交易。
- (2) 在認可期貨市場只可進行證監會一般地或就個別個案藉憲報公告批准的 ——
  - (a) 期貨合約的交易；及

- (ii) carrying on a business of dealing in futures contracts that constitutes an operation of a futures market if—
  - (A) that person is an intermediary licensed or registered for Type 2 regulated activity; and
  - (B) by virtue of the licence or registration, that person is permitted to engage in activities that constitute an operation of a futures market; or
- (b) subsection (1)(d) by reason only of assisting in carrying on a business of providing automated trading services that constitutes an operation of a futures market or carrying on a business of dealing in futures contracts that constitutes an operation of a futures market if the conditions referred to in paragraph (a)(i)(A) and (B) or (ii)(A) and (B) (as the case may be) are fulfilled in relation to the business of providing automated trading services or the business of dealing in futures contracts.

- (10) In subsection (1), **stock market** (證券市場) shall have the meaning assigned to it in the definition of **stock market** in section 1 of Part 1 of Schedule 1, except that a reference to securities in that definition shall be construed as not including a reference to interests in any collective investment scheme.

## 20. Transactions that may be conducted on recognized stock market and recognized futures market

- (1) No transaction may be conducted on a recognized stock market other than dealings in—
  - (a) securities; and
  - (b) other financial products which are approved by the Commission by notice published in the Gazette, either generally or in a particular case.

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- (b) 其他金融產品的交易。
- (3) 第 (1) 或 (2) 款提述的公告不是附屬法例。

## 21. 認可交易所的責任

- (1) 認可交易所所有責任確保 ——
  - (a) 在合理地切實可行的範圍內 ——
    - (i) (就營辦證券市場的認可交易所而言) 在該市場或透過該交易所的設施買賣證券；(由 2014 年第 6 號第 3 條修訂)
    - (ii) (就營辦期貨市場的認可交易所而言) 在該市場或透過該交易所的設施買賣期貨合約；或 (由 2014 年第 6 號第 3 條修訂)
    - (iii) 透過認可交易所的設施買賣場外衍生工具產品，(由 2014 年第 6 號第 3 條增補)
- 是在有秩序、信息靈通和公平的市場中進行的；及
- (b) 審慎管理與其業務及營運有關聯的風險。
- (2) 認可交易所履行第 (1) 款所指的責任時，須 ——
  - (a) 以維護公眾利益為原則而行事，尤其須顧及投資大眾的利益；及
  - (b) 確保一旦公眾利益與該交易所的利益有衝突時，優先照顧公眾利益。
- (3) 認可交易所須按照在第 23 條下訂立並根據第 24 條獲批准的規章運作其設施。

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- (2) No transaction may be conducted on a recognized futures market other than dealings in—
  - (a) futures contracts; and
  - (b) other financial products,
 which are approved by the Commission by notice published in the Gazette, either generally or in a particular case.
- (3) A notice under subsection (1) or (2) is not subsidiary legislation.

## 21. Duties of recognized exchange company

- (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; (Amended 6 of 2014 s. 3)
    - (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; or (Amended 6 of 2014 s. 3)
    - (iii) in OTC derivative products that are traded through the facilities of the recognized exchange company; and (Added 6 of 2014 s. 3)
  - (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—



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- (4) 認可交易所須制訂及實施適當的程序以確保其交易所參與者遵守該交易所的規章。
- (5) 認可交易所如察覺有以下情況，須立即通知證監會 ——
  - (a) 該交易所的任何交易所參與者不能遵守該交易所任何規章或任何財政資源規則；或
  - (b) 有任何在財務方面欠妥之處或其他事情，而該交易所認為該欠妥之處或該事情可能顯示某交易所參與者在財務狀況或處理財務事宜的操守方面出現問題，或顯示某交易所參與者可能不能履行其法律義務。
- (6) 認可交易所須時刻提供和維持 ——
  - (a) 足以應付其業務的需求和設備妥善的處所以進行該交易所的業務；
  - (b) 稱職的人員以進行該交易所的業務；及
  - (c) 具有足夠處理能力、應變或應急設施、保安安排及技術支援的自動系統，以進行該交易所的業務。

## 22. 豁免承擔法律責任等

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- (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.

## 22. Immunity, etc.

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- (1) 以下人士 ——
- (a) 認可交易所；或
  - (b) 任何代表認可交易所行事的人，包括 ——
    - (i) 該交易所的董事局的任何成員；或
    - (ii) 該交易所設立的任何委員會的任何成員，
- 在履行或其本意是履行第 21 條所規定的該交易所的責任時，或在執行或其本意是執行該交易所的規章授予該交易所的職能時，如出於真誠而作出或不作出任何作為，則在不局限第 380(1) 條的一般性的原則下，無須就該等作為或不作為承擔任何民事法律責任，不論是在合約法、侵權法、誹謗法、衡平法或是在其他法律下產生的民事法律責任。
- (2) 凡認可交易所的認可控制人在履行或其本意是履行第 63 條所規定的該控制人的責任時，向該交易所發出指令或指示或作出要求，而該交易所按照該等指令、指示或要求出於真誠而作出或不作出任何作為，則就該作為或不作為而言，第 21 條或該交易所的規章所規定的該交易所的責任不適用於該交易所。

**23. 認可交易所訂立規章**

- (1) 在不局限認可交易所訂立規章的其他權力的原則下，該交易所可為以下目的而就有需要或可取的事宜訂立規章 ——
- (a) 該交易所營辦的市場的妥善規管和有效率的運作；
  - (b) 該交易所的交易所參與者及交易權持有人的妥善規管；
  - (c) 為投資大眾設立和維持賠償安排。

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- (1) Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by—
- (a) a recognized exchange company; or
  - (b) any person acting on behalf of a recognized exchange company, including—
    - (i) any member of the board of directors of the company; or
    - (ii) any member of any committee established by the company,
- in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties of the company under section 21 or in the performance or purported performance of its functions under its rules.
- (2) Where, in the discharge or purported discharge of its duties under section 63, a recognized exchange controller gives an instruction or direction or makes a request to a recognized exchange company of which it is a controller, the company's duties under section 21 or under its rules are not applicable to the company in respect of anything done or omitted to be done in good faith by the company in compliance with the instruction, direction or request.

**23. Rules by recognized exchange company**

- (1) Without limiting any of its other powers to make rules, a recognized exchange company may make rules for such matters as are necessary or desirable—
- (a) for the proper regulation and efficient operation of the market which it operates;
  - (b) for the proper regulation of its exchange participants and holders of trading rights;

- (2) 在不局限第 (1) 款的一般性的原則下，可營辦證券市場的認可交易所可就以下事宜訂立規章——
- (a) 證券上市的申請，以及在證券上市前須符合的規定；
  - (b) 該交易所與其他人就證券的上市訂立協議，以及由該交易所強制執行該等協議；
  - (c) 在該交易所營辦的認可證券市場上市的證券取消上市及撤回上市，以及該等證券暫停交易及恢復交易；
  - (d) 向任何人施加就證券的上市或維持上市而合理施加的義務，規定該人遵守指明的操守標準，或作出或不得作出指明的作為；
  - (e) 容許在任何香港以外的司法管轄區內受到規管的證券在任何認可交易所營辦的認可證券市場進行交易；
  - (f) 該交易所可就違反根據本條訂立的規章而施加的罰則或制裁；
  - (g) 可就根據本條訂立的規章規定的事宜施加的程序或條件，或須就該等事宜存在的情況；
  - (h) 處理相關法團或相關認可控制人屬上市法團或尋求成為上市法團而可能引起的利益衝突；
  - (i) 為妥善及有效率地營辦及管理該交易所而有需要或可取的其他事項。
- (3) 證監會可藉送達書面通知予認可交易所，要求該交易所——
- (a) 在該要求指明的期間內訂立該要求指明的規章；或
  - (b) 在該要求指明的期間內按該要求指明的方式修訂該要求提述的規章。
- (4) 證監會在根據第 (3) 款提出要求之前，須諮詢財政司司長及該要求所關乎的認可交易所。
- (5) 凡證監會信納某認可交易所沒有在第 (3) 款提述的要求指明的期間內遵從該要求，則該會可取代該交易所而訂立或修訂該要求指明的規章。

- (c) for the establishment and maintenance of compensation arrangements for the investing public.
- (2) Without limiting the generality of subsection (1), a recognized exchange company which may operate a stock market may make rules for—
- (a) applications for the listing of securities and the requirements to be met before securities may be listed;
  - (b) the entering into of agreements between the recognized exchange company and other persons in connection with the listing of securities, and the enforcement of those agreements by the company;
  - (c) the cancellation and withdrawal of the listing of, and the suspension and resumption of dealings in, securities listed on the recognized stock market operated by the recognized exchange company;
  - (d) the imposition on any person of obligations to observe specified standards of conduct or to perform, or refrain from performing, specified acts reasonably imposed in connection with the listing or continued listing of securities;
  - (e) the admission of securities which are regulated in a jurisdiction outside Hong Kong to trading on a recognized stock market operated by the recognized exchange company;
  - (f) the penalties or sanctions which may be imposed by the recognized exchange company for a breach of rules made under this section;
  - (g) procedures or conditions which may be imposed, or circumstances which are required to exist, in relation to matters which are provided for in the rules made under this section;

- (6) 如認可交易所的規章規定以下任何人或任何尋求成為該等人士的人就規章指明的事宜作出法定聲明，該人須作出該聲明 ——
- (a) 該交易所的交易所參與者或交易權持有人；
  - (b) 使用該交易所設施的法團的董事；
  - (c) 尋求將本身的證券上市的法團的董事；及
  - (d) 上市法團的董事或顧問。
- (7) 認可交易所在根據本條訂立規章時，須顧及作私人執業的律師或會計師以專業身分行事時，負有法律施加的和根據專業操守規則施加的責任。(由 2004 年第 23 號第 56 條修訂)
- (8) 認可交易所須在它與香港律師會或香港會計師公會不時協定的安排中所訂定的情況下，將符合以下說明的個案，交付該會或該公會(視屬何情況而定)以決定是否作出裁斷、施加處罰或制裁或採取其他紀律行動 ——
- (a) 指稱作私人執業的律師或會計師作出並屬違反根據本條訂立的規章的；及(由 2004 年第 23 號第 56 條修訂)
  - (b) 該項違反亦可能構成違反法律施加的或根據專業操守規則施加的責任的。
- (9) 就第 (7) 及 (8) 款而言，任何人如在私人執業過程中向客戶提供法律服務或專業會計服務，即視為以作私人執業的律師或會計師(視屬何情況而定)身分行事，但如就根據本條訂立的規章所管限的任何事宜而言，他亦以任何其他身分與該事宜有關連，則他不得視為以作私人執業的律師或會計師(視屬何情況而定)身分行事。(由 2004 年第 23 號第 56 條修訂)

- (h) dealing with possible conflicts of interest that might arise where a relevant corporation or a relevant recognized exchange controller seeks to be or is a listed corporation;
  - (i) such other matters as are necessary or desirable for the proper and efficient operation and management of the recognized exchange company.
- (3) The Commission may, by notice in writing served on a recognized exchange company, request the company—
- (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.
- (4) Before making a request under subsection (3), the Commission shall consult the Financial Secretary and the recognized exchange company to which the request relates.
- (5) Where the Commission is satisfied that a recognized exchange company has not complied with a request referred to in subsection (3) within the period specified in the request, the Commission may make or amend the rules specified in the request instead of the company.
- (6) The following persons or anyone who seeks to become any such person shall, if required to do so by the rules of a recognized exchange company, make a statutory declaration concerning such matters as may be specified in the rules—
- (a) an exchange participant or holder of trading rights of the company;
  - (b) a director of a corporation which uses the facilities of the company;
  - (c) a director of a corporation which is seeking to have any of its securities listed; and

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(d) a director or adviser of a listed corporation.

(7) In making rules under this section, a recognized exchange company shall take into account that a solicitor or certified public accountant acting in his professional capacity in private practice has duties imposed by law and under rules of professional conduct. (*Amended 23 of 2004 s. 56*)

(8) A recognized exchange company shall, in circumstances stipulated in arrangements agreed from time to time between it and The Law Society of Hong Kong or the Hong Kong Institute of Certified Public Accountants, refer breaches of rules made under this section— (*Amended 23 of 2004 s. 56*)

(a) which are alleged to have been committed by a solicitor or certified public accountant in private practice; and (*Amended 23 of 2004 s. 56*)

(b) which may also constitute a breach of duty imposed by law or under rules of professional conduct,

to The Law Society of Hong Kong or the Hong Kong Institute of Certified Public Accountants (as the case may be), for determination of whether to make a finding, impose a penalty or sanction or take other disciplinary action. (*Amended 23 of 2004 s. 56*)

(9) For the purposes of subsections (7) and (8), a person shall be regarded as acting in the capacity of a solicitor or certified public accountant in private practice if in the course of private practice he provides legal or professional accountancy services to a client, but shall not be regarded as so acting where, in respect of a matter governed by rules made under this section, he is also connected with the matter in any other capacity. (*Amended 23 of 2004 s. 56*)

## 24. 批准認可交易所規章或對該等規章的修訂

(1) 除第 (7) 款另有規定外，認可交易所的規章 (不論是否根

## 24. Approval of rules or amendments to rules of recognized exchange company



據第 23 條訂立) 或對該等規章的修訂須獲證監會書面批准，否則不具效力。

(2) 認可交易所須 ——

- (a) 將或安排將任何根據第 (1) 款須取得批准的規章及修訂，呈交證監會批准；呈交的規章及修訂須附有就該等規章及修訂的目的及相當可能會有之影響 (包括對投資大眾之影響) 而作出的解釋，該等解釋的詳細程度，須足以使該會能夠決定是否批准該等規章及修訂；及
  - (b) 在屬根據第 (7) 款宣布的類別的規章訂立後，及在對該等規章的修訂作出後，在合理地切實可行的範圍內盡快向證監會呈交或安排向該會呈交該等規章及修訂，讓該會知悉。
- (3) 證監會須在收到認可交易所根據第 (2)(a) 款呈交的規章或修訂後的 6 個星期內，藉送達書面通知予該交易所，批准或拒絕批准該等規章或修訂 (視屬何情況而定)，或批准或拒絕批准其中任何部分；如該會拒絕批准，須在有關通知中說明拒絕批准的理由。
  - (4) 證監會根據第 (3) 款給予的批准，可受某些在該等規章或修訂或其中任何部分生效前須符合的要求所規限。
  - (5) 證監會可在有關的認可交易所的同意下，在任何個別個案中延展第 (3) 款訂明的期限。
  - (6) 財政司司長可在諮詢證監會及有關的認可交易所後，延展第 (3) 款訂明的期限。
  - (7) 證監會可藉憲報公告宣布認可交易所的某類別的規章無須根據第 (1) 款獲批准，而任何屬於該類別的該交易所規章 (包括對該等規章的修訂) 即使沒有根據第 (1) 款獲批准，仍屬有效。
  - (8) 根據第 23 條訂立的規章及第 (7) 款提述的公告均不是附屬法例。

- (1) Subject to subsection (7), no rule (whether or not made under section 23) of a recognized exchange company or any amendment thereto shall have effect unless it has the approval in writing of the Commission.
- (2) A recognized exchange company shall submit or cause to be submitted to the Commission—
  - (a) for its approval the rules and every amendment thereto that require approval under subsection (1), together with explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them; and
  - (b) for its information the rules which belong to a class the subject of a declaration under subsection (7) and every amendment to the rules, as soon as reasonably practicable after they have been made.
- (3) The Commission shall, not later than 6 weeks after the receipt of a submission under subsection (2)(a) from a recognized exchange company, by notice in writing served on the company, give its approval or refuse to give its approval (together with its reasons for the refusal) to the rules or amendment of the rules (as the case may be) or any part thereof, the subject of the submission.
- (4) The Commission may give its approval under subsection (3) subject to requirements which shall be satisfied before the rules or amendment of the rules or any part thereof take effect.
- (5) The Commission may in a particular case, with the agreement of the recognized exchange company concerned, extend the time prescribed in subsection (3).

**25. 證監會職能的轉移及收回**

- (1) 證監會如信納某認可交易所 (**指定交易所**) 願意和有能  
力執行以下職能，則可請求行政長官會同行政會議藉在  
憲報刊登的命令 (**轉移令**)，將以下職能轉移予該交易  
所 ——
  - (a) 本條適用的職能；或
  - (b) 在本條適用的職能適用於指定交易所的交易所參與  
者或交易所參與者申請人的範圍內的該職能。
- (2) 本條適用於以下條文授予證監會的職能 ——
  - (a) 第 V 部；
  - (b) 第 145 條；(由 2012 年第 28 號第 912 及 920 條修訂)
  - (c) 《公司 (清盤及雜項條文) 條例》(第 32 章) 第 II 及  
XII 部；及 (由 2012 年第 28 號第 912 及 920 條代替)
  - (d) 《公司條例》(第 622 章) 第 5 部。(由 2012 年第 28  
號第 912 及 920 條增補)
- (3) 本條適用的職能可藉轉移令完全或局部轉移，而該項轉  
移可 ——

- (6) The Financial Secretary may, after consultation with  
the Commission and the recognized exchange company  
concerned, extend the time prescribed in subsection (3).
- (7) The Commission may, by notice published in the Gazette,  
declare any class of rules of a recognized exchange  
company to be a class of rules which are not required to be  
approved under subsection (1) and, accordingly, any rules  
of the company which belong to that class (including any  
amendment thereto) shall have effect notwithstanding that  
they have not been so approved.
- (8) Neither the rules under section 23 nor a notice under  
subsection (7) is subsidiary legislation.

**25. Transfer and resumption of functions of Commission**

- (1) The Commission may request the Chief Executive in Council  
to transfer, by order (**transfer order**) published in the Gazette,  
to a recognized exchange company (**designated exchange  
company**)—
  - (a) a function to which this section applies; or
  - (b) that function in so far as it applies to the exchange  
participants or applicants to be exchange participants of  
the designated exchange company,  
if the Commission is satisfied that the designated exchange  
company is willing and able to perform the function.
- (2) This section applies to a function of the Commission under—
  - (a) Part V;
  - (b) section 145; (*Amended 28 of 2012 ss. 912 & 920*)
  - (c) Parts II and XII of the Companies (Winding Up and  
Miscellaneous Provisions) Ordinance (Cap. 32); and  
(*Replaced 28 of 2012 ss. 912 & 920*)



- (a) 受保留條款規限，根據該條款，證監會可與指定交易所同時執行該職能；及
- (b) 受證監會認為適當的其他條件規限。
- (4) 轉移令可載有為使該命令得以全面施行而有需要或合宜的附帶條文、補充條文及相應修訂。
- (5) 除非擬成為指定交易所的交易所事先向證監會提供該交易所擬訂立的財政資源規則的草擬本，且該會信納如該等規則得以訂立，會為投資大眾提供足夠程度的保障，否則該會不得請求就該等規則的訂立而作出轉移令。
- (6) 證監會可應指定交易所的請求或在該交易所的同意下，收回已藉轉移令轉移的職能，但職能的收回須憑藉行政長官會同行政會議作出的命令進行，方具效力。
- (7) 如證監會請求收回一項已藉轉移令轉移的職能，而行政長官會同行政會議覺得如此收回是符合公眾利益的，則行政長官會同行政會議可命令該會收回該職能。
- (8) 轉移令可訂明由指定交易所保留全部或部分就執行經轉移的職能而須繳付予該交易所的費用，而根據第 (6) 或 (7) 款作出的命令可訂明由證監會自命令指明的日期起，保留上述費用。

- (d) Part 5 of the Companies Ordinance (Cap. 622). (*Added 28 of 2012 ss. 912 & 920*)
- (3) A function to which this section applies may be transferred by a transfer order either in whole or in part, and the transfer may be subject to—
  - (a) a reservation that the Commission is to perform the function concurrently with the designated exchange company; and
  - (b) such other conditions as the Commission considers appropriate.
- (4) A transfer order may contain such incidental, supplemental and consequential provisions as may be necessary or expedient for the purpose of giving full effect to the order.
- (5) The Commission shall not request that a transfer order be made in respect of the making of financial resources rules unless the proposed designated exchange company has first supplied the Commission with a draft of the financial resources rules which it proposes to make, and the Commission is satisfied that the rules, if made, will afford the investing public an adequate level of protection.
- (6) The Commission may at the request or with the consent of a designated exchange company resume a function transferred by a transfer order, but the resumption takes effect only by order of the Chief Executive in Council.
- (7) The Chief Executive in Council may order that the Commission resume a function transferred to a designated exchange company by a transfer order if the Commission so requests and if it appears to the Chief Executive in Council to be in the public interest to do so.
- (8) A transfer order may provide for a designated exchange company to retain all or any of the fees payable in relation to the performance of a transferred function, and an order made

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- 26. 認可交易所最高行政人員的委任須經證監會核准**  
除非獲證監會書面核准，否則任何人擔任認可交易所的最高行政人員的委任，均屬無效。

**27. 認可交易所交出紀錄等**

- (1) 證監會可藉送達書面通知予認可交易所，要求該交易所在通知指明的期間內，向該會提供該會為執行其職能而合理地要求的以下資料——
  - (a) 該交易所在與其業務有關連的情況下或為其業務而備存的，或就任何證券、期貨合約或場外衍生工具產品的交易而備存的簿冊及紀錄；及 (由 2014 年第 6 號第 4 條修訂)
  - (b) 關乎以下事宜的其他資料：該交易所的業務、任何證券的交易、任何期貨合約的交易或任何場外衍生工具產品的交易。(由 2014 年第 6 號第 4 條代替)
- (2) 根據第 (1) 款獲送達通知的認可交易所如無合理辯解而沒有遵從該通知，即屬犯罪，一經定罪，可處第 5 級罰款。

**28. 撤回對交易所公司的認可和指令停止提供設施或服務**

- (1) 在第 (4)、(5) 及 (6) 款的規限下，證監會可在諮詢財政司司長後，藉送達書面通知予認可交易所——

under subsection (6) or (7) may provide for the Commission to retain all or any such fees, from a date specified in the order.

**26. Appointment of chief executive of recognized exchange company requires approval of Commission**

No appointment of a person as chief executive of a recognized exchange company shall have effect unless the appointment has the approval in writing of the Commission.

**27. Production of records, etc. by recognized exchange company**

- (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, futures contracts or OTC derivative products; and
  - (b) such other information relating to its business or any trading in securities, futures contracts or OTC derivative products,
 as the Commission may reasonably require for the performance of its functions. (Amended 6 of 2014 s. 4)
- (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.

**28. Withdrawal of recognition of exchange company and direction to cease to provide facilities or services**

- (1) Subject to subsections (4), (5) and (6), the Commission may,

- (a) 撤回該公司作為交易所公司的認可，自該通知指明的生效日期起生效；或
- (b) 指令該公司自該通知指明的日期起停止 ——
  - (i) 提供或運作該通知指明的設施；或
  - (ii) 提供該通知指明的服務。
- (2) 證監會可藉根據第 (1) 款送達的通知准許有關的認可交易所所有有關撤回或指令的生效日期當日或之後，為 ——
  - (a) 結束該交易所的運作或停止提供該通知指明的服務的目的；或
  - (b) 保障投資大眾的利益或公眾利益的目的，而繼續進行證監會在該通知中指明的受該項撤回或指令所影響的活動。
- (3) 凡認可交易所獲得證監會根據第 (2) 款給予的准許，則該交易所不得因其按照准許進行有關的活動而視為違反第 19(1) 條。
- (4) 證監會只可在以下情況下根據第 (1) 款向某認可交易所送達通知 ——
  - (a) 該交易所沒有遵從本條例的任何規定或根據第 19 條施加的條件；
  - (b) 該交易所正在清盤；
  - (c) 該交易所不再營辦它憑藉第 19 條獲授權營辦的市場；或
  - (d) 該交易所請求該會如此送達通知。
- (5) 證監會在根據第 (1) 款就某公司行使權力前，須給予該公司合理的陳詞機會，但如該會是回應根據第 (4)(d) 款作出的請求，則屬例外。
- (6) 證監會須給予認可交易所不少於 14 日的書面通知，以告知該交易所該會擬根據第 (1) 款送達通知的意向及如此行

- after consultation with the Financial Secretary, by notice in writing served on a recognized exchange company—
- (a) withdraw the company's recognition as an exchange company with effect from a date specified in the notice for the purpose; or
- (b) direct the company to cease with effect from a date specified in the notice for the purpose—
  - (i) to provide or operate such facilities as are specified therein; or
  - (ii) to provide such services as are specified therein.
- (2) The Commission may by the notice served under subsection (1) permit the recognized exchange company to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Commission may specify in the notice for the purpose of—
  - (a) closing down the operations of the company or ceasing to provide the services specified in the notice; or
  - (b) protecting the interest of the investing public or the public interest.
- (3) Where the Commission has granted a permission to a recognized exchange company under subsection (2), the company shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 19(1).
- (4) The Commission may only serve a notice under subsection (1) in relation to a recognized exchange company that—
  - (a) fails to comply with any requirement of this Ordinance or with a condition imposed under section 19;
  - (b) is being wound up;

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- 事的理由，但如該會是回應根據第 (4)(d) 款作出的請求，則屬例外。
- (7) 凡證監會根據第 (1)(a) 款撤回某公司作為交易所公司的認可，該會須安排在憲報刊登公告以公布此事。
- (8) 根據第 (1)(a) 款送達的通知 ——
- (a) 在不抵觸 (b) 段的條文下，在根據第 33 條針對該通知提出上訴的限期屆滿之前，不得生效；或
- (b) 在有關公司根據第 33 條針對該通知提出上訴的情況下，在上訴撤回、放棄或裁定之前，不得生效。
- (9) 根據第 (1)(b) 款送達的通知即時生效。

## 29. 在緊急情況下指令停止提供設施或服務

- (1) 證監會除了具有第 28 條所賦權力外，亦可在諮詢某認可交易所後，藉送達書面通知予該交易所，指令該交易所有一段不超過 5 個營業日的期間內，停止提供或運作該通知指明的設施，或停止提供該通知指明的服務。

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- (c) ceases to operate a market that it has been authorized to operate by virtue of section 19; or
- (d) requests the Commission to do so.
- (5) Except where responding to a request under subsection (4)(d), the Commission shall not exercise its power under subsection (1) in relation to a recognized exchange company unless it has given the company a reasonable opportunity of being heard.
- (6) Except where responding to a request under subsection (4)(d), the Commission shall give the recognized exchange company not less than 14 days' notice in writing of its intention to serve a notice under subsection (1) and the grounds for doing so.
- (7) Where the Commission withdraws a company's recognition as an exchange company under subsection (1)(a), it shall cause notice of that fact to be published in the Gazette.
- (8) A notice served under subsection (1)(a) shall not take effect—
- (a) subject to paragraph (b), until the expiration of the period within which an appeal against the notice may be made under section 33; or
- (b) if an appeal against the notice is made under section 33, until the appeal is withdrawn, abandoned or determined.
- (9) A notice served under subsection (1)(b) shall take effect immediately.

## 29. Direction to cease to provide facilities or services in emergencies

- (1) In addition to the powers of the Commission under section 28, the Commission may, after consultation with a recognized exchange company, by notice in writing served on the company, direct the company to cease to provide or operate

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- (2) 證監會如認為因有以下情況而致阻礙或相當可能會阻礙證券市場或期貨市場的業務有秩序地進行，方可根據第(1)款送達通知——
- (a) 香港已發生緊急事故或自然災害；或
  - (b) 香港或其他地方出現經濟或金融危機，或有其他情況，而該危機或情況相當可能會妨害該業務有秩序地進行。
- (3) 證監會可藉送達書面通知予認可交易所，延展根據第(1)款作出的指令所涉的期間，但延展的總日數不得超逾 10 個營業日。
- (4) 根據本條送達的通知即時生效。

### 30. 違反通知構成罪行

任何人無合理辯解而在違反根據第 28(1)(b) 或 29(1) 或 (3) 條送達的通知的情況下——

- (a) 提供或運作設施；或
  - (b) 提供服務，
- 即屬犯罪——
- (i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
  - (ii) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

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- such facilities or cease to provide such services as are specified in the notice for a period not exceeding 5 business days.
- (2) The Commission may only serve a notice under subsection (1) if it is of the opinion that the orderly transaction of business on the stock market or futures market (as the case may be) is being, or is likely to be, impeded because—
- (a) an emergency or natural disaster has occurred in Hong Kong; or
  - (b) there exists an economic or financial crisis, whether in Hong Kong or elsewhere, or any other circumstances, which is likely to prejudice orderly transaction of business on the stock market or futures market (as the case may be).
- (3) The Commission may, by notice in writing served on the recognized exchange company, extend the direction under subsection (1) for further periods not exceeding 10 business days in all.
- (4) A notice served under this section shall take effect immediately.

### 30. Contravention of notice constitutes offence

A person who, without reasonable excuse—

- (a) provides or operates facilities; or
- (b) provides services,

in contravention of a notice under section 28(1)(b) or 29(1) or (3) commits an offence and is liable—

- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.



**31. 防止進入停開的交易市場**

- (1) 證監會可採取一切所需步驟以確保根據第 28(1)(b) 或 29(1) 或 (3) 條送達的通知獲得遵從，尤其可確保 ——
- (a) 該通知所關乎的設施；或
  - (b) 該等設施所在的處所，或提供該通知所關乎的服務的處所，
- 不會用作進行證券或期貨合約交易或其他用途。
- (2) 任何人未經證監會授權亦無合理辯解而 ——
- (a) 使用根據第 28(1)(b) 或 29(1) 或 (3) 條送達的通知所關乎的設施或服務；或
  - (b) 進入該等設施所在的處所，或提供該等服務的處所，即屬犯罪，一經定罪，可處第 5 級罰款。

**32. 指令的刊登**

凡證監會 ——

- (a) 根據第 28(1)(b) 或 29(1) 條指令認可交易所停止提供或運作設施或停止提供服務；或
  - (b) 根據第 29(3) 條延展該條提述的指令所涉的期間，
- 該會須安排在憲報刊登載有該指令或延展（視屬何情況而定）的詳情的公告。

**33. 上訴**

- (1) 如證監會於某日根據第 28(1) 或 29(1) 或 (3) 條向某公司

**31. Prevention of entry into closed trading markets**

- (1) The Commission may take all necessary steps to ensure compliance with a notice under section 28(1)(b) or 29(1) or (3) and may, in particular, secure—
- (a) the facilities to which the notice relates; or
  - (b) the premises on which such facilities are kept or the premises on which the services to which the notice relates are provided,
- against use for dealings in securities or futures contracts or other purposes.
- (2) A person commits an offence and is liable on conviction to a fine at level 5 if, without the authority of the Commission or reasonable excuse, he—
- (a) makes use of any facilities or services to which the notice under section 28(1)(b) or 29(1) or (3) relates; or
  - (b) enters the premises on which such facilities are kept or the premises on which such services are provided.

**32. Publication of directions**

Where the Commission—

- (a) directs a recognized exchange company under section 28(1)(b) or 29(1) to cease to provide or operate any facilities or cease to provide any services; or
- (b) extends under section 29(3) a direction referred to in that section,

it shall cause notice of the particulars of the direction or extension (as the case may be) to be published in the Gazette.

**33. Appeals**

- (1) A company served with a notice under section 28(1) or 29(1)

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送達通知，該公司可在該日後 14 日內，或在該會在該通知指明的較長限期（如有的話）內，針對該通知向行政長官會同行政會議提出上訴。

- (2) 行政長官會同行政會議就第 (1) 款提述的上訴所作的決定，即為最終決定。

### 34. 限制使用與交易所、市場等有關的稱銜

- (1) 任何人未經證監會授權亦無合理辯解而採用或使用以下任何稱銜或與之相似的稱銜，即屬犯罪 ——
- (a) “stock exchange”；
  - (b) “stock market”；
  - (c) “commodity exchange”；
  - (d) “futures exchange”；
  - (e) “futures market”；
  - (f) “unified exchange”；
  - (g) “united exchange”；
  - (h) “證券交易所”；
  - (i) “股票交易所”；
  - (j) “證券市場”；
  - (k) “股票市場”；
  - (l) “商品交易所”；
  - (m) “期貨交易所”；
  - (n) “期貨市場”；
  - (o) “聯合交易所”。
- (2) 任何人犯本條所訂罪行 ——
- (a) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 2 年；或

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or (3) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period (if any) as the Commission specifies in the notice.

- (2) The decision of the Chief Executive in Council on an appeal under subsection (1) shall be final.

### 34. Restriction on use of titles relating to exchanges, markets, etc.

- (1) A person commits an offence if he, without the authority of the Commission or reasonable excuse, takes or uses the title—
- (a) “stock exchange”;
  - (b) “stock market”;
  - (c) “commodity exchange”;
  - (d) “futures exchange”;
  - (e) “futures market”;
  - (f) “unified exchange”;
  - (g) “united exchange”;
  - (h) “證券交易所”;
  - (i) “股票交易所”;
  - (j) “證券市場”;
  - (k) “股票市場”;
  - (l) “商品交易所”;
  - (m) “期貨交易所”;
  - (n) “期貨市場”;
  - (o) “聯合交易所”，
- or anything which closely resembles any such title.



- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。

### 35. 合約限量及須申報的持倉量

- (1) 在不損害第 398(7) 及 (8) 條的原則下，證監會可訂立規則以 ——
- (a) 訂明任何人可直接或間接持有或控制的期貨合約的數目上限，或與該等數目有關的條件，不論該等合約是否在認可期貨市場或透過認可交易所的設施買賣的；
  - (b) 訂明任何人可直接或間接持有或控制的期權合約的數目上限，或與該等數目有關的條件，不論該等合約是否在認可證券市場或認可期貨市場買賣或透過認可交易所的設施買賣的；
  - (c) 規定持有或控制某須申報的持倉量的人向認可交易所或證監會提交關於該持倉量的通知；
  - (d) 訂明提交關於須申報的持倉量的通知的方式及時限；
  - (e) 訂明關於須申報的持倉量的通知須附有的資料。
- (2) 證監會在根據第 (1)(e) 款訂立規則前須諮詢財政司司長。
- (3) 第 (1) 款並不禁止證監會為不同類型或類別的期貨或期權合約訂明不同的合約限量或條件或須申報的持倉量，亦不禁止該會豁免指明的期貨或期權合約。
- (4) 在不局限第 (1) 款的一般性及不損害第 398(7) 及 (8) 條的原則下，證監會可為施行本條而訂立規則，禁止任何人 ——

- (2) A person who commits an offence under this section is liable—
- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

### 35. Contract limits and reportable open position

- (1) Without prejudice to section 398(7) and (8), the Commission may make rules to—
- (a) prescribe limits on, or conditions relating to, the number of futures contracts which may be held or controlled, directly or indirectly, by any person, whether or not such contracts are traded on a recognized futures market or through the facilities of a recognized exchange company;
  - (b) prescribe limits on, or conditions relating to, the number of options contracts which may be held or controlled, directly or indirectly, by any person, whether or not such contracts are traded on a recognized stock market or recognized futures market or through the facilities of a recognized exchange company;
  - (c) require a person holding or controlling a reportable position to lodge a notice of that reportable position with a recognized exchange company or the Commission;
  - (d) prescribe the manner in which and the period within which a notice of a reportable position is to be lodged;
  - (e) prescribe the information by which a notice of a reportable position is to be accompanied.
- (2) The Commission shall consult the Financial Secretary before making rules under subsection (1)(e).

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- (a) 在指明期間直接或間接進行超逾指明限量的指明類別交易；或
- (b) 直接或間接持有或控制超逾指明持倉限量的指明類別持倉量。
- (5) 根據本條訂立的規則，可訂明任何人無合理辯解而違反該等規則中適用於該人的指明條文，即屬犯罪——
  - (a) 一經循公訴程序定罪，可處不超過第 6 級罰款及監禁 2 年的指明罰則；
  - (b) 一經循簡易程序定罪，可處不超過第 3 級罰款及監禁 6 個月的指明罰則。
- (6) 在本條中，**須申報的持倉量** (reportable position) 指數目或總值超逾根據在本條下訂立的規則指明的數目或總值的期貨或期權合約的持倉量。

### 36. 證監會訂立規則

- (1) 在不損害第 398(7) 及 (8) 條的原則下，證監會可就以下事宜訂立規則——
  - (a) 證券的上市，尤其是——

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- (3) Subsection (1) does not prohibit the Commission from prescribing different limits or conditions, or different reportable positions, for different types or classes of futures or options contracts, or from exempting specified futures or options contracts.
- (4) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may make rules for the purposes of this section to prohibit a person from—
  - (a) directly or indirectly entering, during a specified period, into transactions of a specified class in excess of a specified amount; or
  - (b) directly or indirectly holding or controlling positions of a specified class in excess of a specified position limit.
- (5) Rules made under this section may provide that a person who, without reasonable excuse, contravenes any specified provision of the rules that applies to the person commits an offence and is liable to a specified penalty not exceeding—
  - (a) on conviction on indictment a fine at level 6 and a term of imprisonment of 2 years;
  - (b) on summary conviction a fine at level 3 and a term of imprisonment of 6 months.
- (6) In this section **reportable position** (須申報的持倉量) means an open position in futures or options contracts the number or total value of which is in excess of a number or total value specified by rules made under this section.

### 36. Rules by Commission

- (1) Without prejudice to section 398(7) and (8), the Commission may make rules in respect of the following matters—
  - (a) the listing of securities, and in particular—

- (i) 訂明在證券上市前須符合的規定；
- (ii) 訂明處理證券上市申請的程序；
- (iii) 訂定條文，在該會所訂的上市規定或關於 (e) 段提述的承諾的規定不獲遵從時，或在該會認為有需要取消某指明證券的上市以在香港維持一個有秩序的市場時，取消該證券的上市；
- (b) 認可交易所須在何等條件規限下及在何等情況下暫停證券交易或指示恢復證券交易；
- (c) 因向公眾就任何證券提出要約而作出的分配的程序及方法；
- (d) 可接納為認可交易所的交易所參與者的人；
- (e) 規定有證券上市或獲接納上市的法團，以規則訂明的格式向根據第 19 條可營辦證券市場的認可交易所作出承諾，在該承諾指明的時間提供該承諾指明的資料，並履行該承諾中委以的關於該法團的證券的責任；(由 2016 年第 16 號第 3 條修訂)
- (f) 規定認可交易所如察覺有任何事宜對該交易所任何交易所參與者履行其作為交易所參與者的義務的能力有或相當可能有不良影響，則須於察覺該事宜後，在合理地切實可行的範圍內盡快向該會作出關於該事宜的報告；
- (g) 規定認可交易所在開除其任何交易所參與者時，或使任何交易所參與者暫停該交易所營辦的認可證券市場或認可期貨市場或透過該交易所的設施進行交易時，或在要求任何交易所參與者辭去該參與者的身分時，須在如此行事後 3 個營業日內，向該會具報此事，此外，並須安排將此事以規則訂明的方式在規則訂明的期間內向公眾公布；
- (h) 根據第 23 條訂立的規章須予訂明或可予訂明的任何事情。

- (i) prescribing the requirements to be met before securities may be listed;
- (ii) prescribing the procedure for dealing with applications for the listing of securities;
- (iii) providing for the cancellation of the listing of any specified securities if the Commission's requirements for listing, or the requirements of the undertaking referred to in paragraph (e), are not complied with or the Commission considers that such action is necessary to maintain an orderly market in Hong Kong;
- (b) the conditions subject to which, and the circumstances in which, a recognized exchange company shall suspend dealings in securities or shall direct that dealings in securities recommence;
- (c) the procedure for and the method of allotment of any securities arising out of an offer made to members of the public in respect of those securities;
- (d) persons who may be admitted as an exchange participant of a recognized exchange company;
- (e) requiring corporations the securities of which are listed or accepted for listing to enter into an undertaking in the form prescribed in the rules with a recognized exchange company which may operate a stock market under section 19 to provide such information at such times as may be specified, and to carry out such duties in relation to its securities as may be imposed, in the undertaking; (Amended 16 of 2016 s. 3)
- (f) requiring a recognized exchange company which has become aware of any matter which adversely affects, or is likely to adversely affect, the ability of any exchange participant of the company to meet its obligations as

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- (2) 證監會在根據第 (1) 款就任何該款指明的事宜訂立規則前，須諮詢 ——
- (a) 財政司司長；及
- (b) 與該事宜有關的認可交易所。
- (3) 本條並不阻止認可交易所根據第 23 條就第 (1) 款提述的事宜訂立規章，但該等規章具有的效力，以不抵觸證監會根據第 (1) 款訂立的規則為限。

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- an exchange participant, to make a report concerning the matter to the Commission as soon as reasonably practicable after becoming aware of the matter;
- (g) requiring a recognized exchange company when it expels any of its exchange participants, or suspends any of its exchange participants from trading on the recognized stock market or recognized futures market it operates or through its facilities, or requests any of its exchange participants to resign as an exchange participant, to notify the Commission of that fact within 3 business days after the expulsion, suspension or making of the request (as the case may be) and, in addition, to cause the expulsion, suspension or request to be notified to the public in such manner and within such period as may be prescribed in the rules;
- (h) any matter which is to be or may be prescribed by rules made under section 23.
- (2) Before making any rules in respect of any matter specified in subsection (1), the Commission shall consult—
- (a) the Financial Secretary; and
- (b) the recognized exchange company or all the recognized exchange companies (as the case may be) to which that matter relates.
- (3) Nothing in this section prevents a recognized exchange company from making rules under section 23 on any matter referred to in subsection (1), but any such rules shall have effect only to the extent that they are not repugnant to any rule made by the Commission under subsection (1).

### 第 3 分部 —— 結算所

#### 37. 結算所的認可

### Division 3—Clearing houses

#### 37. Recognition of clearing house

- (1) 凡證監會信納認可某公司為結算所 ——
  - (a) 就維護投資大眾的利益或公眾利益而言是適當的；或
  - (b) 對妥善規管證券或期貨合約的市場是適當的，則可在諮詢財政司司長後，藉送達書面通知予該公司，認可該公司為結算所，而該項認可 ——
    - (i) 受該會認為適當並在該通知中指明的條件規限；及
    - (ii) 自該通知指明的生效日期起生效。
- (2) 在不局限根據第 (1) 款送達的通知指明的條件的一般性的原則下，證監會 ——
  - (a) 在基於該款 (a) 或 (b) 段指明的理由信納如此行事是適當的情況下；及
  - (b) 在諮詢財政司司長後，可藉送達書面通知予認可結算所，修訂或撤銷任何該等條件或施加任何新的條件。
- (3) 凡證監會藉根據第 (2) 款送達通知修訂或撤銷任何條件或施加任何新的條件，該項修訂、撤銷或施加在該通知送達時或在該通知指明的時間（兩者以較遲者為準）生效。
- (4) 凡某公司成為認可結算所，證監會須安排在憲報刊登公告以公布此事。
- (5) 凡某公司尋求成為認可結算所，而證監會有意拒絕根據第 (1) 款認可該公司，則該會在決定不認可該公司前，須給予該公司合理的陳詞機會。
- (6) 凡證監會拒絕根據第 (1) 款認可某公司為結算所，證監會須藉送達書面通知予該公司，將拒絕一事及拒絕的理由告知該公司。

- (1) Where the Commission is satisfied that it is appropriate to do so—
  - (a) in the interest of the investing public or in the public interest; or
  - (b) for the proper regulation of markets in securities or futures contracts, it may, after consultation with the Financial Secretary, by notice in writing served on a company, recognize the company as a clearing house—
    - (i) subject to such conditions as it considers appropriate specified in the notice; and
    - (ii) with effect from a date specified in the notice for the purpose.
- (2) Without limiting the generality of conditions which may be specified in a notice under subsection (1), the Commission may, by notice in writing served on a recognized clearing house, amend or revoke any condition specified in the first-mentioned notice or impose new conditions, where the Commission—
  - (a) is satisfied that it is appropriate to do so on a ground specified in paragraph (a) or (b) of that subsection; and
  - (b) has consulted the Financial Secretary.
- (3) Where the Commission amends or revokes any condition or imposes any new condition by a notice under subsection (2), the amendment, revocation or imposition takes effect at the time of service of the notice or at the time specified in the notice, whichever is the later.
- (4) Where a company becomes a recognized clearing house, the Commission shall cause notice of that fact to be published in the Gazette.



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### 38. 認可結算所的責任

- (1) 認可結算所有責任確保 ——
  - (a) 在合理地切實可行的範圍內，透過其設施結算或交收任何證券、期貨合約或場外衍生工具產品的交易，是在有秩序、公平和快捷的結算及交收安排下進行的；及 (由 2014 年第 6 號第 5 條修訂)
  - (b) 審慎管理與其業務及營運有關聯的風險。
- (2) 認可結算所在履行第 (1) 款所指的責任時，須 ——
  - (a) 以維護公眾利益為原則而行事，尤其須顧及投資大眾的利益；及
  - (b) 確保一旦公眾利益與該結算所的利益有衝突時，優先照顧公眾利益。
- (3) 認可結算所須按照在第 40 條下訂立並根據第 41 條獲批准的規章運作其設施。
- (4) 認可結算所須制訂及實施適當的程序以確保其結算所參與者遵守該結算所的規章。
- (5) 認可結算所須時刻提供和維持 ——
  - (a) 足以應付其業務的需求和設備妥善的處所以進行該結算所的業務；
  - (b) 稱職的人員以進行該結算所的業務；及

- (5) Where a company is seeking to be a recognized clearing house and the Commission is minded not to recognize the company under subsection (1), the Commission shall give the company a reasonable opportunity of being heard before making a decision not to recognize the company.
- (6) Where the Commission refuses to recognize a company as a clearing house under subsection (1), the Commission shall, by notice in writing served on the company, inform the company of the refusal and of the reasons for it.

### 38. Duties of recognized clearing house

- (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, futures contracts or OTC derivative products cleared or settled through its facilities; and (*Amended 6 of 2014 s. 5*)
  - (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.

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- (c) 具有足夠處理能力、應變或應急設施、保安安排及技術支援的自動系統，以進行該結算所的業務。

### 39. 豁免承擔法律責任等

- (1) 以下人士 ——
- (a) 認可結算所；或
  - (b) 任何代表認可結算所行事的人，包括 ——
    - (i) 該結算所的董事局的任何成員；或
    - (ii) 該結算所設立的任何委員會的任何成員，

在履行或其本意是履行第 38 及 47 條所規定的該結算所的責任時，或在執行或其本意是執行該結算所的規章授予該結算所的職能時（包括其違責處理規則所授予的職能），如出於真誠而作出或不作出任何作為，則在不局限第 380(1) 條的一般性的原則下，無須就該等作為或不作為承擔任何民事法律責任，不論是在合約法、侵權法、誹謗法、衡平法或是在其他法律下產生的民事法律責任。

- (2) 凡認可結算所的認可控制人在履行或其本意是履行第 63 條所規定的該控制人的責任時，向該結算所發出指令或指示或作出要求，而該結算所按照該等指令、指示或要求出於真誠而作出或不作出任何作為，則就該作為或不

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- (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.

### 39. Immunity, etc.

- (1) Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by—
- (a) a recognized clearing house; or
  - (b) any person acting on behalf of a recognized clearing house, including—
    - (i) any member of the board of directors of the clearing house; or
    - (ii) any member of any committee established by the clearing house,

in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties of the clearing house under sections 38 and 47 or in the performance or purported performance of its functions under its rules, including its default rules.

- (2) Where, in the discharge or purported discharge of its duties under section 63, a recognized exchange controller gives an



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作為而言，第 38 及 47 條或該結算所的規章（包括其違責處理規則）所規定的該結算所的責任不適用於該結算所。

(3) 以下人士 ——

- (a) 憑藉認可結算所的違責處理規則所作的一項轉授而執行與違責處理程序有關連的結算所職能的人；或
- (b) 任何代表 (a) 段提述的人行事的人，包括 ——
  - (i) 該人的董事局的任何成員；或
  - (ii) 該人設立的任何委員會的任何成員，

在執行或其本意是執行該職能時，如出於真誠而作出或不作出任何作為，則在不局限第 380(1) 條的一般性的原則下，無須就該等作為或不作為承擔任何民事法律責任，不論是在合約法、侵權法、誹謗法、衡平法或是在其他法律下產生的民事法律責任。

- (4) 如認可結算所在某事宜上沒有遵守其規章，則只要此事沒有在實質上影響任何有權要求它遵守該規章的人的權利，此事並不阻止該事宜就本條例的目的而言視作按照該規章作出。
- (5) 凡違責者的財產可按照認可結算所的違責處理規則處理，而有關人員就該財產採取行動，並基於合理理由相信他有權採取該行動，則他不須就該行動所引起的損失或損害而對任何人負上法律責任，但如該損失或損害（視屬何情況而定）是因有關人員本身的疏忽而導致的，則屬例外。

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instruction or direction or makes a request to a recognized clearing house of which it is a controller, the clearing house's duties under sections 38 and 47 or under its rules (including its default rules) are not applicable to the clearing house in respect of anything done or omitted to be done in good faith by the clearing house in compliance with the instruction, direction or request.

- (3) Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by—
  - (a) a person performing, by virtue of a delegation under the default rules of a recognized clearing house, a function of the clearing house in connection with any default proceedings; or
  - (b) any person acting on behalf of a person referred to in paragraph (a), including—
    - (i) any member of the board of directors of that person; or
    - (ii) any member of any committee established by that person,

in respect of anything done or omitted to be done in good faith in the performance and purported performance of that function.

- (4) Any failure by a recognized clearing house to comply with its rules in relation to a matter does not prevent the matter from being treated for the purposes of this Ordinance as done in accordance with the rules so long as the failure does not substantially affect the rights of a person entitled to require compliance with the rules.
- (5) Where a relevant office-holder takes action in relation to property of a defaulter which is liable to be dealt with in accordance with the default rules of a recognized clearing

**40. 認可結算所訂立規章**

- (1) 在不局限認可結算所訂立規章的其他權力的原則下，該結算所可為以下目的而就有需要或可取的事宜訂立規章——
  - (a) 該結算所運作的結算或交收設施的妥善規管和有效率的運作；
  - (b) 該結算所的結算所參與者的妥善規管；
  - (c) 為投資大眾設立和維持賠償安排。
- (2) 認可結算所須訂立符合以下說明的規章——
  - (a) 規定在任何結算所參與者看來沒有能力或相當可能會喪失能力履行他作為合約一方的未交收或未平倉市場合約的義務時，須採取程序或其他行動；及
  - (b) 符合附表 3 第 5 部的規定。
- (2A) 認可結算所可訂立規章，為下述目的而訂定條文——
  - (a) 在下述情況下，採取處理程序或其他行動——
    - (i) 該結算所沒有能力就其屬合約一方的任何未交收或未平倉市場合約履行其到期須履行的義務，或相當可能會喪失該能力；而
    - (ii) 該結算所停止提供或營辦它所提供或營辦的結算及交收設施，變得有必要或可取；
  - (b) 在下述情況下，就結算所參與者與其客戶訂立的任何合約採取處理程序或其他行動——

house, and believes on reasonable grounds that he is entitled to take that action, he is not liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage (as the case may be) is caused by the office-holder's own negligence.

**40. Rules by recognized clearing houses**

- (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.
- (2A) A recognized clearing house may make rules to provide for the following purposes—
  - (a) taking proceedings or other action if—
    - (i) the 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

- (i) 該結算所參與者看來沒有能力就其屬合約一方的未交收或未平倉市場合約履行其義務，或相當可能會喪失該能力；而
- (ii) 該等合約關乎記錄在客戶帳戶內的未交收或未平倉市場合約；
- (c) 在下述情況下，就關乎 (b) 段提述的結算所參與者與其客戶訂立的合約的持倉量或抵押品採取處理程序或其他行動 ——
  - (i) 該結算所參與者看來沒有能力就其屬合約一方的未交收或未平倉市場合約履行其義務，或相當可能會喪失該能力；而
  - (ii) 該等持倉量或抵押品關乎記錄在客戶帳戶內的未交收或未平倉市場合約。(由 2014 年第 6 號第 58 條增補)
- (3) 凡認可結算所採取違責處理程序，則它為使有關違責者屬合約一方的市場合約得以交收而根據其規章所採取的所有隨後的程序或其他行動，須視作根據違責處理規則作出。
- (4) 證監會可藉送達書面通知予認可結算所，要求該結算所 ——
  - (a) 在該要求指明的期間內訂立該要求指明的規章；或
  - (b) 在該要求指明的期間內按該要求指明的方式修訂該要求提述的規章。
- (5) 證監會在根據第 (4) 款提出要求之前，須諮詢財政司司長及該要求所關乎的認可結算所。
- (6) 凡證監會信納某認可結算所沒有在第 (4) 款提述的要求指明的期間內遵從該要求，則該會可取代該結算所而訂立或修訂該要求指明的規章。
- (7) 在本條中 ——

- (ii) it becomes necessary or desirable for the 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 any contracts entered into between a clearing participant and its clients if—
  - (i) the clearing participant appears to be unable, or likely to become unable, to meet its obligations in respect of all unsettled or open market contracts to which it is a party; and
  - (ii) those contracts relate to such unsettled or open market contracts recorded in a client account;
- (c) taking proceedings or other action in relation to any positions or collateral relating to a contract entered into between a clearing participant and its clients referred to in paragraph (b) if—
  - (i) the clearing participant appears to be unable, or likely to become unable, to meet its obligations in respect of all unsettled or open market contracts to which it is a party; and
  - (ii) those positions or collateral relate to such unsettled or open market contracts recorded in a client account. (Added 6 of 2014 s. 58)
- (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—

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**客戶帳戶** (client account) 就任何結算所參與者而言，指以該結算所參與者名義在任何認可結算所持有的帳戶（記錄持倉量或抵押品的結算所帳戶除外）；

**結算所帳戶** (house account) 就任何結算所參與者而言，指符合以下說明的帳戶 ——

- (a) 以該結算所參與者名義在任何認可結算所持有；及
- (b) 記錄下述項目 ——
  - (i) 該結算所參與者本身的持倉量或抵押品；
  - (ii) 有關認可結算所的規章視為屬該結算所參與者本身的持倉量或抵押品的其他人士的持倉量或抵押品。（由 2014 年第 6 號第 58 條增補）

#### 41. 批准認可結算所規章或對該等規章的修訂

- (1) 除第 (7) 款另有規定外，認可結算所的規章（不論是否根

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- (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.

(7) In this section—

**client account** (客戶帳戶), in relation to a clearing participant, means an account held with a recognized clearing house in the name of the 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) which is held with a 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 or collateral;
  - (ii) the positions or collateral of other persons that are regarded by the rules of the recognized clearing house to be the clearing participant's own positions or collateral. (Added 6 of 2014 s. 58)

#### 41. Approval of rules or amendments to rules of recognized clearing house

- 據第 40 條訂立) 或對該等規章的修訂須獲證監會書面批准，否則不具效力。
- (2) 認可結算所須 ——
- (a) 將或安排將任何根據第 (1) 款須取得批准的規章及修訂，呈交證監會批准；呈交的規章及修訂須附有就該等規章及修訂的目的及相當可能會有的影響 (包括對投資大眾的影響) 而作出的解釋，該等解釋的詳細程度，須足以使該會能夠決定是否批准該等規章及修訂；及
- (b) 在屬根據第 (7) 款宣布的類別的規章訂立後，及在對該等規章的修訂作出後，在合理地切實可行的範圍內盡快向證監會呈交或安排向該會呈交該等規章及修訂，讓該會知悉。
- (3) 證監會須在收到認可結算所根據第 (2)(a) 款呈交的規章或修訂後的 6 個星期內，藉送達書面通知予該結算所，批准或拒絕批准該等規章或修訂 (視屬何情況而定)，或批准或拒絕批准其中任何部分；如該會拒絕批准，須在有關通知中說明拒絕批准的理由。
- (4) 證監會根據第 (3) 款給予的批准，可受某些在該等規章或修訂或其中任何部分生效前須符合的要求所規限。
- (5) 證監會可在有關的認可結算所的同意下，在任何個別個案中延展第 (3) 款訂明的期限。
- (6) 財政司司長可在諮詢證監會及有關的認可結算所後，延展第 (3) 款訂明的期限。
- (7) 證監會可藉憲報公告宣布認可結算所的某類別的規章 (違責處理規則除外) 無須根據第 (1) 款獲批准，而任何屬於該類別的該結算所規章 (包括對該等規章的修訂) 即使沒有根據第 (1) 款獲批准，仍屬有效。
- (8) 根據第 40 條訂立的規章及第 (7) 款提述的公告均不是附屬法例。

- (1) Subject to subsection (7), no rule (whether or not made under section 40) of a recognized clearing house or any amendment thereto shall have effect unless it has the approval in writing of the Commission.
- (2) A recognized clearing house shall submit or cause to be submitted to the Commission—
- (a) for its approval the rules and every amendment thereto that require approval under subsection (1), together with explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them; and
- (b) for its information the rules which belong to a class the subject of a declaration under subsection (7) and every amendment to the rules, as soon as reasonably practicable after they have been made.
- (3) The Commission shall, not later than 6 weeks after the receipt of a submission under subsection (2)(a) from a recognized clearing house, by notice in writing served on the clearing house, give its approval or refuse to give its approval (together with its reasons for the refusal) to the rules or amendment of the rules (as the case may be) or any part thereof, the subject of the submission.
- (4) The Commission may give its approval under subsection (3) subject to requirements which shall be satisfied before the rules or amendment of the rules or any part thereof take effect.
- (5) The Commission may in a particular case, with the agreement of the recognized clearing house concerned, extend the time prescribed in subsection (3).



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#### 42. 認可結算所交出紀錄等

- (1) 證監會可藉送達書面通知予認可結算所，要求該結算所在通知指明的期間內，向該會提供該會為執行其職能而合理地要求的以下資料——
  - (a) 該結算所在與其業務有關連的情況下或為其業務而備存的，或就任何證券、期貨合約或場外衍生工具產品的交易，的結算及交收安排而備存的簿冊及紀錄；及（由 2014 年第 6 號第 6 條修訂）
  - (b) 關乎以下事宜的其他資料：該結算所的業務、任何證券的交易、任何期貨合約的交易或任何場外衍生工具產品的交易。（由 2014 年第 6 號第 6 條代替）
- (2) 根據第 (1) 款獲送達通知的認可結算所如無合理辯解而沒有遵從該通知，即屬犯罪，一經定罪，可處第 5 級罰款。

- (6) The Financial Secretary may, after consultation with the Commission and the recognized clearing house concerned, extend the time prescribed in subsection (3).
- (7) The Commission may, by notice published in the Gazette, declare any class of rules of a recognized clearing house (except any default rules of the clearing house) to be a class of rules which are not required to be approved under subsection (1) and, accordingly, any rules of the clearing house which belong to that class (including any amendment thereto) shall have effect notwithstanding that they have not been so approved.
- (8) Neither the rules under section 40 nor a notice under subsection (7) is subsidiary legislation.

#### 42. Production of records, etc. by recognized clearing house

- (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, futures contracts or OTC derivative products; and
  - (b) such other information relating to its business or any clearing and settlement arrangements for any transactions in securities, futures contracts or OTC derivative products,

as the Commission may reasonably require for the performance of its functions. (*Amended 6 of 2014 s. 6*)
- (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.

**43. 撤回對結算所的認可和指令停止提供設施**

- (1) 在第 (3)、(4) 及 (5) 款的規限下，證監會可在諮詢財政司司長後，藉送達書面通知予認可結算所 ——
  - (a) 撤回該公司作為結算所的認可，自該通知指明的生效日期起生效；或
  - (b) 指令該公司自該通知指明的日期起，停止提供或運作該通知指明的結算或交收設施。
- (2) 證監會可藉根據第 (1) 款送達的通知准許有關的認可結算所在有關撤回或指令的生效日期當日或之後，為 ——
  - (a) 結束該結算所的運作的目的；或
  - (b) 保障投資大眾的利益或公眾利益的目的，而繼續進行證監會在該通知中指明的受該項撤回或指令所影響的活動。
- (3) 證監會只可在以下情況下根據第 (1) 款向某認可結算所送達通知 ——
  - (a) 該結算所沒有遵從本條例的任何規定或根據第 37 條施加的條件；
  - (b) 該結算所正在清盤；
  - (c) 該結算所已停止以結算所的形式營辦；或
  - (d) 該結算所請求該會如此送達通知。
- (4) 證監會在根據第 (1) 款就某認可結算所行使權力前，須給予該結算所合理的陳詞機會，但如該會是回應根據第 (3)(d) 款作出的請求，則屬例外。
- (5) 證監會須給予認可結算所不少於 14 日的書面通知，以告知該結算所該會擬根據第 (1) 款送達通知的意向及如此行事的理由，但如該會是回應根據第 (3)(d) 款作出的請求，則屬例外。

**43. Withdrawal of recognition of clearing house and direction to cease to provide facilities**

- (1) Subject to subsections (3), (4) and (5), the Commission may, after consultation with the Financial Secretary, by notice in writing served on a recognized clearing house—
  - (a) withdraw the company's recognition as a clearing house with effect from a date specified in the notice for the purpose; or
  - (b) direct the clearing house to cease to provide or operate with effect from a date specified in the notice for the purpose such clearing or settlement facilities as are specified therein.
- (2) The Commission may by the notice served under subsection (1) permit the recognized clearing house to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Commission may specify in the notice for the purpose of—
  - (a) closing down the operations of the clearing house; or
  - (b) protecting the interest of the investing public or the public interest.
- (3) The Commission may only serve a notice under subsection (1) in relation to a recognized clearing house that—
  - (a) fails to comply with any requirement of this Ordinance or with a condition imposed under section 37;
  - (b) is being wound up;
  - (c) ceases to operate as a clearing house; or
  - (d) requests the Commission to do so.

- (6) 凡證監會根據第 (1)(a) 款撤回某公司作為結算所的認可，該會須安排在憲報刊登公告以公布此事。
- (7) 凡證監會根據第 (1)(b) 款指令某認可結算所停止提供或運作任何結算或交收設施，該會須安排在憲報刊登關於該指令的詳情的公告。
- (8) 根據第 (1)(a) 款送達的通知 ——
  - (a) 在不抵觸 (b) 段的條文下，在根據第 44 條針對該通知提出上訴的限期屆滿之前，不得生效；或
  - (b) 在有關公司根據第 44 條針對該通知提出上訴的情況下，在上訴撤回、放棄或裁定之前，不得生效。
- (9) 根據第 (1)(b) 款送達的通知即時生效。

#### 44. 上訴

- (1) 如證監會於某日根據第 43(1) 條向某公司送達通知，該公司可在該日後 14 日內，或在該會在該通知指明的較長限期 ( 如有的話 ) 內，針對該通知向行政長官會同行政會議提出上訴。

- (4) Except where responding to a request under subsection (3)(d), the Commission shall not exercise its power under subsection (1) in relation to a recognized clearing house unless it has given the clearing house a reasonable opportunity of being heard.
- (5) Except where responding to a request under subsection (3)(d), the Commission shall give the recognized clearing house not less than 14 days' notice in writing of its intention to serve a notice under subsection (1) and the grounds for doing so.
- (6) Where the Commission withdraws a company's recognition as a clearing house under subsection (1)(a), it shall cause notice of that fact to be published in the Gazette.
- (7) Where the Commission directs under subsection (1)(b) a recognized clearing house to cease to provide or operate any clearing or settlement facilities, it shall cause notice of the particulars of the direction to be published in the Gazette.
- (8) A notice served under subsection (1)(a) shall not take effect—
  - (a) subject to paragraph (b), until the expiration of the period within which an appeal against the notice may be made under section 44; or
  - (b) if an appeal against the notice is made under section 44, until the appeal is withdrawn, abandoned or determined.
- (9) A notice served under subsection (1)(b) shall take effect immediately.

#### 44. Appeals

- (1) A company served with a notice under section 43(1) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period (if any) as the Commission specifies in the notice.

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- (2) 行政長官會同行政會議就第 (1) 款提述的上訴所作的決定，即為最終決定。

#### 45. 認可結算所的處事程序凌駕破產清盤法

- (1) 以下各項不得由於與分發無償債能力、破產或清盤的人的資產有關的法律有抵觸，或與在任何人的資產的接管人獲委任後分發該等資產有關的法律有抵觸，而在任何程度上視為在法律上無效——
- (a) 市場合約；
  - (b) 關於市場合約交收的認可結算所規章；
  - (c) 根據關於市場合約交收的認可結算所規章而採取的程序或其他行動；
  - (d) 市場押記；
  - (da) 提供市場抵押品；(由 2014 年第 6 號第 59 條增補)
  - (e) 認可結算所的違責處理規則；或
  - (f) 違責處理程序。
- (2) 有關人員或根據破產清盤法行事的法庭不得行使其權力以阻止或干預——
- (a) 按照認可結算所的規章作出的市場合約交收；或
  - (b) 任何違責處理程序。
- (3) 第 (2) 款並不阻止有關人員在該款 (a) 或 (b) 段提述的事宜完結後，根據第 51 條追討任何款額。

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- (2) The decision of the Chief Executive in Council on an appeal under subsection (1) shall be final.

#### 45. Proceedings of recognized clearing house take precedence over law of insolvency

- (1) None of the following shall be regarded as to any extent invalid at law on the ground of inconsistency with the law relating to distribution of the assets of a person on insolvency, bankruptcy or winding up, or on the appointment of a receiver over any of the assets of a person—
- (a) a market contract;
  - (b) the rules of a recognized clearing house relating to the settlement of a market contract;
  - (c) any proceedings or other action taken under the rules of a recognized clearing house relating to the settlement of a market contract;
  - (d) a market charge;
  - (da) the provision of market collateral; (*Added 6 of 2014 s. 59*)
  - (e) the default rules of a recognized clearing house; or
  - (f) any default proceedings.
- (2) The powers of a relevant office-holder in his capacity as such, and the powers of a court acting under the law of insolvency, shall not be exercised in such a way as to prevent or interfere with—
- (a) the settlement in accordance with the rules of a recognized clearing house of a market contract; or
  - (b) any default proceedings.
- (3) Subsection (2) shall not operate to prevent a relevant office-holder from recovering an amount under section 51 after the

**46. 關於違責處理程序的補充條文**

- (1) 如因為有待決的違責處理程序或可能、已經或本可採取的違責處理程序，以致影響有關人員的職能，則法庭可應該人員的申請，作出它認為適當的命令，改動或免除該人員執行該等受影響的職能。
- (2) 第 (1) 款提述的有關人員的職能，須在不抵觸根據該款作出的命令下予以解釋。
- (3) 《破產條例》(第 6 章)第 12、14 或 20 至 20K 條、《公司(清盤及雜項條文)條例》(第 32 章)第 181、183、186 及 254 條及《公司條例》(第 622 章)第 670 及 673 條並不阻止或干預任何違責處理程序。(由 2012 年第 28 號第 912 及 920 條修訂)

**47. 完成違責處理程序後作出報告的責任**

- (1) 認可結算所完成違責處理程序後，須就該等程序作出報告，就每名違責者按情況述明——
  - (a) 經該結算所證明須由該違責者支付或須支付予該違責者的任何淨款額；或(由 2014 年第 6 號第 60 條修訂)
  - (b) 並無款項須予支付的事實，
 視屬何情況而定，而該結算所可將它認為適當的其他關於該等程序的詳情包括在報告內。
- (2) 認可結算所依據第 (1) 款作出報告後，須將該報告提供予——

completion of a matter referred to in paragraph (a) or (b) of that subsection.

**46. Supplementary provisions as to default proceedings**

- (1) A court may, on an application by a relevant office-holder, make such order as it considers appropriate altering or releasing him from compliance with the functions of his office that are affected by the fact that default proceedings are pending or could be taken, or have been or could have been taken.
- (2) The functions of the relevant office-holder referred to in subsection (1) shall be construed subject to an order made under that subsection.
- (3) Section 12, 14 or 20 to 20K of the Bankruptcy Ordinance (Cap. 6), sections 181, 183, 186 and 254 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and sections 670 and 673 of the Companies Ordinance (Cap. 622) do not prevent or interfere with any default proceedings. (Amended 28 of 2012 ss. 912 & 920)

**47. Duty to report on completion of default proceedings**

- (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) any net sum certified by the clearing house to be payable by or to the defaulter; or (Amended 6 of 2014 s. 60)
  - (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) 證監會；及
- (b) (i) 就 ——
  - (A) 該報告所關乎的違責者；或
  - (B) 該違責者的產業，
 而行事的任何有關人員；或
- (ii) (如沒有第 (i) 節提述的有關人員) 該報告所關乎的違責者。
- (3) 證監會如依據第 (2) 款收到依據第 (1) 款作出的報告，可以該會認為適當的方式發表公告，促請該報告所關乎的違責者的債權人注意該事實。
- (4) 凡有關人員或違責者依據第 (2) 款收到依據第 (1) 款作出的報告，他須在該報告所關乎的違責者的任何債權人提出請求時 ——
  - (a) 提供該報告予該債權人查閱；
  - (b) 在該人員或違責者 (視屬何情況而定) 釐定的合理費用獲繳付後，將該報告的整份或任何部分提供予該債權人。
- (5) 在第 (2)、(3) 及 (4) 款中，**報告** (report) 包括報告的副本。

**48. 違責處理程序完成後須支付的淨款額**

- (1) 本條就第 47(1)(a) 條提述的淨款額而適用。
- (2) 不論《破產條例》(第 6 章) 第 34 或 35 條或《公司 (清盤及雜項條文) 條例》(第 32 章) 第 264 條的任何條文有任何規定，凡破產令或清盤令已作出，或自動清盤決議已獲通過，則任何淨款額 —— (由 2012 年第 28 號第 912 及 920 條修訂)

- (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.

**48. Net sum payable on completion of default proceedings**

- (1) This section applies with respect to any net sum referred to in section 47(1)(a).
- (2) Where a bankruptcy or winding-up order has been made, or a resolution for voluntary winding up has been passed, any net sum shall, notwithstanding any provision of section 34 or 35 of the Bankruptcy Ordinance (Cap. 6) or section 264 of the Companies (Winding Up and Miscellaneous Provisions)



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- (a) 可於破產或清盤案中予以證明，或須支付予有關人員，視屬何情況而定；及
- (b) (如適當的話) 須根據《破產條例》(第 6 章) 第 35 條計算在內，或在該條適用於根據《公司(清盤及雜項條文)條例》(第 32 章) 作出清盤令的個案中，根據該條計算在內。(由 2012 年第 28 號第 912 及 920 條修訂)

#### 49. 放棄財產、撤銷合約等

- (1) 《破產條例》(第 6 章) 第 59 條及《公司(清盤及雜項條文)條例》(第 32 章) 第 268 條不適用於 —— (由 2012 年第 28 號第 912 及 920 條修訂)
  - (a) 市場合約；
  - (b) 認可結算所為將提供作市場抵押品的財產變現而達成的合約；
  - (c) 市場押記；或
  - (d) 任何違責處理程序。
- (2) 《破產條例》(第 6 章) 第 42 條及《公司(清盤及雜項條文)條例》(第 32 章) 第 182 條並不就依據以下各項而作出的作為或事情而適用 —— (由 2012 年第 28 號第 912 及 920 條修訂)
  - (a) 市場合約；
  - (b) 依據市場合約作出的財產處置；
  - (c) 市場抵押品的提供；
  - (d) 認可結算所為將提供作市場抵押品的財產變現而達成的合約，或依據該等合約作出的財產處置；

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Ordinance (Cap. 32), be— (*Amended 28 of 2012 ss. 912 & 920*)

- (a) provable in the bankruptcy or winding up or (as the case may be) payable to the relevant office-holder; and
- (b) taken into account, where appropriate, under section 35 of the Bankruptcy Ordinance (Cap. 6) or that section as applied in the case of a winding-up order under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32). (*Amended 28 of 2012 ss. 912 & 920*)

#### 49. Disclaimer of property, rescission of contracts, etc.

- (1) Section 59 of the Bankruptcy Ordinance (Cap. 6) and section 268 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) do not apply in relation to— (*Amended 28 of 2012 ss. 912 & 920*)
  - (a) a market contract;
  - (b) a contract effected by a recognized clearing house for the purpose of realizing property provided as market collateral;
  - (c) a market charge; or
  - (d) any default proceedings.
- (2) Section 42 of the Bankruptcy Ordinance (Cap. 6) and section 182 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) do not apply in relation to any act, matter or thing which has been done pursuant to— (*Amended 28 of 2012 ss. 912 & 920*)
  - (a) a market contract;
  - (b) a disposal of property pursuant to a market contract;
  - (c) the provision of market collateral;



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- (e) 按照關乎提供作市場抵押品的財產的運用的認可結算所規章而作出的財產處置；
- (f) 導致有關財產受市場押記規限的財產處置，或作出該項處置所依據的交易；
- (g) 強制執行市場押記時作出的財產處置；
- (h) 市場押記；或
- (i) 任何違責處理程序。

**50. 優先交易的調整**

- (1) 任何人不得就本條適用的事宜而依據以下條文作出命令——
  - (a) 《破產條例》(第 6 章)第 49 或 50 條；
  - (b) 《公司(清盤及雜項條文)條例》(第 32 章)第 265D 或 266 條；或(由 2012 年第 28 號第 912 及 920 條修訂；由 2016 年第 14 號第 184 條修訂)
  - (c) 《物業轉易及財產條例》(第 219 章)第 60 條。
- (2) 本條適用於以下事宜——
  - (a) 市場合約；
  - (b) 依據市場合約作出的財產處置；
  - (c) 市場抵押品的提供；
  - (d) 認可結算所為將提供作市場抵押品的財產變現而達成的合約；

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- (d) a contract effected by a recognized clearing house for the purpose of realizing property provided as market collateral, or any disposal of property pursuant to such a contract;
- (e) a disposal of property in accordance with the rules of a recognized clearing house as to the application of property provided as market collateral;
- (f) a disposal of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposal is made;
- (g) a disposal of property made in enforcing a market charge;
- (h) a market charge; or
- (i) any default proceedings.

**50. Adjustment of prior transactions**

- (1) No order shall be made pursuant to—
  - (a) section 49 or 50 of the Bankruptcy Ordinance (Cap. 6);
  - (b) section 265D or 266 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or (*Amended 28 of 2012 ss. 912 & 920; 14 of 2016 s. 184*)
  - (c) section 60 of the Conveyancing and Property Ordinance (Cap. 219),
 in relation to any matter to which this section applies.
- (2) The matters to which this section applies are—
  - (a) a market contract;
  - (b) a disposal of property pursuant to a market contract;
  - (c) the provision of market collateral;

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- (e) 按照關乎提供作市場抵押品的財產的運用的認可結算所規章而作出的財產處置；
  - (f) 市場押記；及
  - (g) 任何違責處理程序。
- (3) 在第 (1)(b) 款中，提述《公司 (清盤及雜項條文) 條例》(第 32 章) 第 266 條，包括在緊接《2016 年公司 (清盤及雜項條文) (修訂) 條例》(2016 年第 14 號) 的生效日期前有效的該條。(由 2016 年第 14 號第 184 條增補)

#### 51. 有關人員追討得自某些交易的某些款額的權利

- (1) 凡一名結算所參與者 (**第一參與者**) 與另一名結算所參與者 (**第二參與者**) 在第 (2) 款描述的情況下以低於或高於證券的價值進行證券買賣的交易，而其後有關人員就以下的人或產業而行事 ——
  - (a) 第二參與者；
  - (b) 該項交易中第二參與者的主事人 (**第二主事人**)；或
  - (c) 第二參與者或第二主事人的產業，
 則除非法庭另有命令，否則有關人員可向第一參與者或該項交易中第一參與者的主事人 (**第一主事人**)，追討相等於該人從該項交易取得的訂明收益的款額。即使該項交易可能已按照認可結算所規章予以撤銷而以市場合約取代，該款額仍可予追討。
- (2) 如 ——
  - (a) 與第二參與者有關或與第二主事人有關的訂明事件已發生；或

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- (d) a contract effected by a recognized clearing house for the purpose of realizing property provided as market collateral;
  - (e) a disposal of property in accordance with the rules of a recognized clearing house as to the application of property provided as market collateral;
  - (f) a market charge; and
  - (g) any default proceedings.
- (3) In subsection (1)(b), the reference to section 266 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) includes that section as in force immediately before the commencement date of the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2016 (14 of 2016). (*Added 14 of 2016 s. 184*)

#### 51. Right of relevant office-holder to recover certain amounts arising from certain transactions

- (1) Where a clearing participant (*the first participant*) enters into a transaction for the sale or purchase of securities with another clearing participant (*the second participant*) at an undervalue or an over-value in circumstances described in subsection (2), and thereafter a relevant office-holder is acting in relation to—
  - (a) the second participant;
  - (b) the person who was, in respect of the transaction, the principal of the second participant (*the second principal*); or
  - (c) the estate of the second participant or the second principal,
 then, unless a court otherwise orders, the relevant office-holder may recover, from the first participant, or the person

- (b) 第一參與者或第一主事人已知道或理應已知道 ——
- (i) (就第一參與者而言) 某訂明事件相當可能會就第二參與者或第二主事人而發生；
  - (ii) (就第一主事人而言) 某訂明事件相當可能會就第二主事人而發生，

而上述事件是在緊接交易日期後的 6 個月內發生的，則第 (1) 款提述的情況即告發生。

- (3) 在本條中 ——

**訂明收益** (prescribed gain) 就第 (1) 款提述的交易而言，指訂立交易時以下兩者之間的差額 ——

- (a) 該項交易所買賣的證券的市值；及
- (b) 該項交易的成交價；

**訂明事件** (prescribed event) 就第二參與者或第二主事人而言，指 ——

- (a) 債權人針對他提交破產呈請書的理由已存在；
- (b) 有符合指明格式的陳述書依據《公司 (清盤及雜項條文) 條例》(第 32 章) 第 228A 條就他作出；(由 2003 年第 28 號第 129 條修訂；由 2012 年第 28 號第 912 及 920 條修訂；由 2016 年第 14 號第 185 條修訂)
- (c) 有債權人會議依據《公司 (清盤及雜項條文) 條例》(第 32 章) 第 241 條就他召開；或 (由 2012 年第 28 號第 912 及 920 條修訂)
- (d) 有人提出呈請，要求法庭將他清盤。

who was, in respect of the transaction, the principal of the first participant (*the first principal*), an amount equal to the prescribed gain obtained under the transaction by the first participant or the first principal (as the case may be). The amount is recoverable even if the transaction may have been discharged in accordance with the rules of a recognized clearing house and replaced by a market contract.

- (2) The circumstances referred to in subsection (1) in which a transaction is entered into occur when—

- (a) a prescribed event has occurred in relation to the second participant or the second principal; or
- (b) the first participant or the first principal knew or ought reasonably to have known—

- (i) in the case of the first participant, that a prescribed event was likely to occur in relation to the second participant or the second principal;
- (ii) in the case of the first principal, that a prescribed event was likely to occur in relation to the second principal,

and the event occurs within the period of 6 months immediately following the date on which the transaction was so entered into.

- (3) In this section—

**prescribed event** (訂明事件), in relation to a second participant or a second principal, means—

- (a) grounds exist for a creditor to present a bankruptcy petition against the second participant or the second principal (as the case may be);
- (b) the making of a statement in the specified form in respect of the second participant or the second principal (as the case may be) pursuant to section 228A of the

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Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); (*Amended 28 of 2003 s. 129; 28 of 2012 ss. 912 & 920; 14 of 2016 s. 185*)

- (c) a meeting of creditors summoned in relation to the second participant or the second principal (as the case may be) pursuant to section 241 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or (*Amended 28 of 2012 ss. 912 & 920*)
- (d) the presentation of a petition for the winding up of the second participant or the second principal (as the case may be) by a court;

***prescribed gain*** (訂明收益), in relation to a transaction referred to in subsection (1), means the difference between—

- (a) the market value of the securities the subject of the transaction; and
- (b) the value of the consideration for the transaction, as at the time the transaction was entered into.

## 52. 市場抵押品的運用不受某些其他權益等影響

- (1) 本條就認可結算所對提供作市場抵押品的財產的運用具有效力。
- (2) 如為使提供作市場抵押品的財產能按照認可結算所規章予以運用而有此需要，則即使有任何優先的衡平法權益或權利，或有由於違反受信責任而產生的權利或補救，該財產仍可按照該等規章予以運用，但如在該財產被提供作市場抵押品時，該結算所實際得悉該權益、權利或違反責任事件（視屬何情況而定），則屬例外。
- (3) 在財產被提供作市場抵押品後才產生的權利或補救，不得強制執行以阻止或干預認可結算所按照其規章運用該財產。

## 52. Application of market collateral not affected by certain other interests, etc.

- (1) The provisions of this section have effect with respect to the application by a recognized clearing house of property provided as market collateral.
- (2) So far as necessary to enable the property to be applied in accordance with the rules of a recognized clearing house, it may be so applied notwithstanding any prior equitable interest or right, or any right or remedy arising from a breach of fiduciary duty, unless the clearing house had actual notice of the interest, right or breach of duty (as the case may be) at the time the property was provided as market collateral.

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- (4) 即使有上述權益、權利或補救，如認可結算所憑藉本條仍有權運用財產，則從該結算所得按照其規章處置的財產的人，其所得財產不受該權益、權利或補救所限制。

**53. 對受市場押記等所規限的財產所作判決的強制執行**

- (1) 凡財產受市場押記所規限或被提供作市場抵押品，則除非獲有關的認可結算所同意，否則並非尋求強制執行該財產中的權益或就該財產而取得的保證的人不可針對該財產展開或繼續進行执行程序或其他法律程序，以強制執行判決或命令，亦不可扣押該財產。
- (2) 凡因本條任何人不會有權針對任何財產強制執行判決或命令，則為利便該等判決或命令的強制執行而發出的強制令或其他補救，均不得延伸適用於該財產。

**54. 其他司法管轄區的破產清盤法**

- (1) 如 ——
- (a) 在香港以外地方行使在破產清盤法下的司法管轄權的法院作出任何命令；或
- (b) 在該地方獲委任以根據當地破產清盤法執行職能的人作出任何作為，

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- (3) No right or remedy arising subsequently to the property being provided as market collateral may be enforced so as to prevent or interfere with the application of the property by the recognized clearing house in accordance with its rules.
- (4) Where a recognized clearing house has power by virtue of the provisions of this section to apply property notwithstanding an interest, right or remedy, a person to whom the clearing house disposes of the property in accordance with its rules takes free from that interest, right or remedy.

**53. Enforcement of judgments over property subject to market charge, etc.**

- (1) Where property is subject to a market charge or has been provided as market collateral, no execution or other legal process for the enforcement of a judgment or order may be commenced or continued, and no distress may be levied, against the property by a person not seeking to enforce any interest in or security over the property, except with the consent of the recognized clearing house concerned.
- (2) Where by virtue of this section a person would not be entitled to enforce a judgment or order against any property, any injunction or other remedy granted with a view to facilitating the enforcement of any such judgment or order shall not extend to that property.

**54. Law of insolvency in other jurisdictions**

- (1) A court shall not, pursuant to any enactment or rule of law, recognize or give effect to—
- (a) an order of a court exercising jurisdiction under the law of insolvency in a place outside Hong Kong; or
- (b) an act of a person appointed in that place to perform a function under the law of insolvency there,



而按本條例所訂立或根據本條例訂立的條文，香港的法院或有關人員是禁止作出該命令或作為的，則法院不得依據任何成文法則或法律規則，承認該命令或作為，或將它付諸執行。

- (2) 在本條中，**破產清盤法** (law of insolvency) 就香港以外地方而言，指與香港的破產清盤法的任何部分相似，或為相同目的而施行的當地法律。

#### 55. 結算所參與者以主事人身分作為某些交易的一方

(1) 凡 ——

- (a) 結算所參與者以該身分與認可結算所訂立交易 (包括市場合約)；及
- (b) 該參與者如非因本款便會以代理人身分作為交易的一方，

則不論任何其他成文法則或法律規則有任何規定，在該結算所與任何人 (包括該參與者及他在該項交易中的主事人) 之間 (但只在該兩者之間)，就所有目的 (包括任何民事或刑事的訴訟、申索或要求) 而言，該參與者須 ——

- (i) 當作並非以代理人身分作為交易的一方；及
- (ii) 當作以主事人身分作為交易的一方。

(2) 凡 ——

- (a) 多於 1 名結算所參與者以該身分訂立交易；及
- (b) 任何該等參與者如非因本款便會以代理人身分作為交易的一方，

則不論任何其他成文法則或法律規則有任何規定，(b) 段適用的參與者除在他與他在該項交易中的主事人之間 (但只在該兩者之間) 外，就所有目的 (包括任何民事或刑事的訴訟、申索或要求) 而言，須 ——

- (i) 當作並非以代理人身分作為交易的一方；及

in so far as making the order or doing the act would be prohibited in the case of a court in Hong Kong or a relevant office-holder by provisions made by or under this Ordinance.

- (2) In this section, **law of insolvency** (破產清盤法), in relation to a place outside Hong Kong, means any law of that place which is similar to, or serves the same purposes as, any part of the law of insolvency in Hong Kong.

#### 55. Clearing participant to be party to certain transactions as principal

(1) Where a clearing participant—

- (a) in his capacity as such enters into any transaction (including a market contract) with a recognized clearing house; and
- (b) but for this subsection, would be a party to that transaction as agent,

then, notwithstanding any other enactment or rule of law, as between, but only as between, the clearing house and any other person (including the clearing participant and the person who is his principal in respect of that transaction), the clearing participant shall for all purposes (including any action, claim or demand, either civil or criminal)—

- (i) be deemed not to be a party to that transaction as agent; and
- (ii) be deemed to be a party to that transaction as principal.

(2) Where—

- (a) 2 or more clearing participants in their capacities as such enter into any transaction; and
- (b) but for this subsection, any such clearing participant would be a party to that transaction as agent,



(ii) 當作以主事人身分作為交易的一方。

## 56. 存放於認可結算所的財產

- (1) 在第 (2) 及 (3) 款的規限下，凡結算所參與者按照認可結算所規章將任何財產作為市場抵押品而存放於該結算所，則不論任何其他成文法則或法律規則有任何規定，均不得就任何人在該等財產中所持有或享有的權利、所有權或權益而循民事或刑事程序針對該結算所或其代名人提出訴訟、申索或要求，而上述訴訟、申索或要求亦不可展開或獲准受理。
- (2) 就任何作為市場抵押品而存放於認可結算所的財產而施行第 (1) 款時，須受該結算所的規章所訂定的變通及免除條文所規限。
- (3) 本條並不損害以下條文的施行 —— (由 2012 年第 28 號第 912 及 920 條修訂；由 2016 年第 16 號第 4 條修訂)
  - (a) 《公司條例》(第 622 章) 第 633 條；或
  - (b) 《開放式基金型公司規則》中關乎更正開放式基金型公司的股東登記冊的任何條文。(由 2016 年第 16 號第 4 條修訂)

## 57. 保留權利等

then, notwithstanding any other enactment or rule of law, any such clearing participant to whom paragraph (b) applies shall for all purposes (including any action, claim or demand, either civil or criminal), except as between, but only as between, him and the person who is his principal in respect of that transaction—

- (i) be deemed not to be a party to that transaction as agent; and
- (ii) be deemed to be a party to that transaction as principal.

## 56. Property deposited with recognized clearing house

- (1) Subject to subsections (2) and (3), where any property is deposited as market collateral by a clearing participant with a recognized clearing house in accordance with the rules of the clearing house, then, notwithstanding any other enactment or rule of law, no action, claim or demand, either civil or criminal, in respect of any right, title or interest in such property held or enjoyed by any person lies, or shall be commenced or allowed, against the clearing house or its nominees.
- (2) The operation of subsection (1) in respect of any property deposited as market collateral with a recognized clearing house is subject to the modifications and exclusions provided in the rules of the clearing house.
- (3) This section does not operate to prejudice the operation of—  
(Amended 28 of 2012 ss. 912 & 920; 16 of 2016 s. 4)
  - (a) section 633 of the Companies Ordinance (Cap. 622); or
  - (b) any provision of the OFC rules relating to the rectification of the register of shareholders of an open-ended fund company. (Amended 16 of 2016 s. 4)

## 57. Preservation of rights, etc.

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除在本分部明文規定的範圍外，本分部並不局限、限制或以其他方式影響——

- (a) 任何人的權利、所有權、權益、特權、義務或法律責任；
- (b) 關於上述權利、所有權、權益、特權、義務或法律責任的調查、法律程序或補救。

#### 58. 附表 3 的修訂

- (1) 財政司司長可藉憲報公告修訂附表 3 第 5 部。
- (2) 為免生疑問，現宣布財政司司長行使第 (1) 款賦予的修訂附表 3 第 5 部的權力的方式，可以在該部中加入條文，規定認可結算所訂立規章，一般地或就個別個案禁止該結算所採取該條文指明的程序或其他行動，以作為該結算所的違責處理規則的一部分。

### 第 4 分部 —— 交易所控制人

#### 59. 交易所控制人的認可

- (1) 除第 (20) 款及第 62 條另有規定外，除認可控制人外，任何人不得成為或繼續作為認可交易所或認可結算所的控制人。
- (2) 凡證監會信納認可某公司為交易所控制人——
  - (a) 就維護投資大眾的利益或公眾利益而言是適當的；或
  - (b) 對妥善規管證券或期貨合約的市場是適當的，

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Except to the extent that they expressly provide, the provisions of this Division do not operate to limit, restrict or otherwise affect—

- (a) any right, title, interest, privilege, obligation or liability of a person;
- (b) any investigation, legal proceeding or remedy in respect of any such right, title, interest, privilege, obligation or liability.

#### 58. Amendment of Schedule 3

- (1) The Financial Secretary may, by notice published in the Gazette, amend Part 5 of Schedule 3.
- (2) For the avoidance of doubt, it is hereby declared that the power of the Financial Secretary under subsection (1) to amend Part 5 of Schedule 3 may be exercised in such a way as to include in that Part a provision which requires a recognized clearing house to have, as part of its default rules, rules which prohibit the clearing house from taking any proceedings or other action specified in the provision, either generally or in a particular case.

### Division 4—Exchange controllers

#### 59. Recognition of exchange controller

- (1) Subject to subsection (20) and section 62, no person shall become or continue to be a controller of a recognized exchange company or recognized clearing house unless the person is a recognized exchange controller.
- (2) Where the Commission is satisfied that it is appropriate to do so—
  - (a) in the interest of the investing public or in the public interest; or

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- 則可在財政司司長的書面同意下，藉送達書面通知予該公司，認可該公司為交易所控制人，而該項認可 ——
- (i) 受該會認為適當並在該通知中指明的條件規限；及
  - (ii) 自該通知指明的生效日期起生效。
- (3) 在不局限根據第 (2) 款送達的通知指明的條件的一般性的原則下，證監會 ——
- (a) 在基於該款 (a) 或 (b) 段指明的理由信納如此行事是適當的情況下；及
  - (b) 在財政司司長的書面同意下，可藉送達書面通知予認可控制人，修訂或撤銷任何該等條件或施加任何新的條件。
- (4) 凡證監會藉根據第 (3) 款送達通知修訂或撤銷任何條件或施加任何新的條件，該項修訂、撤銷或施加在該通知送達時或在該通知指明的時間（兩者以較遲者為準）生效。
- (5) 除第 (6) 款另有規定外，任何人違反第 (1) 款，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (6) 凡任何人憑藉某作為或情況而成為有關的認可交易所或認可結算所的控制人，並被控犯第 (5) 款所訂罪行，他如證明他不知道該作為或情況是有該效果的，即可以此作為免責辯護。
- (7) 凡任何人 ——
- (a) 在違反第 (1) 款的情況下（不論他是否就此事被控犯第 (5) 款所訂罪行）擔任認可交易所或認可結算所的控制人；
  - (b) 憑藉某作為或情況而成為該控制人但他既不知道亦無理由懷疑有該作為或情況的存在；而

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- (b) for the proper regulation of markets in securities or futures contracts,  
it may, with the consent in writing of the Financial Secretary, by notice in writing served on a company, recognize the company as an exchange controller—
  - (i) subject to such conditions as it considers appropriate specified in the notice; and
  - (ii) with effect from a date specified in the notice for the purpose.
- (3) Without limiting the generality of conditions which may be specified in a notice under subsection (2), the Commission may, by notice in writing served on a recognized exchange controller, amend or revoke any condition specified in the first-mentioned notice or impose new conditions, where the Commission—
- (a) is satisfied that it is appropriate to do so on a ground specified in paragraph (a) or (b) of that subsection; and
  - (b) has the consent in writing of the Financial Secretary to do so.
- (4) Where the Commission amends or revokes any condition or imposes any new condition by a notice under subsection (3), the amendment, revocation or imposition takes effect at the time of service of the notice or at the time specified in the notice, whichever is the later.
- (5) Subject to subsection (6), a person who contravenes subsection (1) commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

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- (c) 其後察覺他成為該控制人一事，  
則他須在察覺該事後 14 日內向證監會送達書面通知，說明他已成為該控制人。
- (8) 凡任何人根據第 (7) 款向證監會送達通知，該會可 ——
- (a) 按照第 (2) 款認可他為交易所控制人；或
- (b) 拒絕認可他為交易所控制人。
- (9) 凡任何人在違反第 (1) 款的情況下擔任認可交易所或認可結算所的控制人，不論他是否就此事被控犯第 (5) 款所訂罪行 ——
- (a) 證監會可藉憲報公告 ——
- (i) 宣布該人成為該控制人後在該所的任何會議上所投的票，均屬無效；及
- (ii) 發出該會認為適當的指令，以再度召開上述會議，就該人已投票的事宜重新進行投票；
- (b) 則除非為停止作為該控制人的目的，否則該人或其任何相聯者不得行使該人作為該所的證券持有人而獲賦予的權利，或他以其他方式控制的該所的證券的權利；及
- (c) 證監會可藉送達書面通知予該人，指令他 ——
- (i) 採取該通知指明的步驟，以停止作為該控制人；及
- (ii) 在該通知指明的限期內採取該等步驟。

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- (6) Where a person is charged with an offence under subsection (5), it is a defence to the charge for the person to prove that the person did not know that the acts or circumstances by virtue of which the person became a controller of the recognized exchange company or recognized clearing house concerned were such as to have that effect.
- (7) Where a person—
- (a) is a controller of a recognized exchange company or recognized clearing house in contravention of subsection (1) (and whether or not the person is charged with an offence under subsection (5) in relation to the contravention);
- (b) did not know and had no reason to suspect the existence of any of the acts or circumstances by virtue of which the person became the controller of the recognized exchange company or recognized clearing house; and
- (c) subsequently becomes aware of the fact that the person has become such a controller,
- the person shall serve on the Commission, not later than 14 days after becoming aware of that fact, a notice in writing stating that the person has become such a controller.
- (8) The Commission may, upon the service of a notice under subsection (7)—
- (a) recognize the person as an exchange controller in accordance with subsection (2); or
- (b) refuse to recognize the person as an exchange controller.
- (9) Where a person is a controller of a recognized exchange company or recognized clearing house in contravention of subsection (1) (and whether or not the person is charged with an offence under subsection (5) in relation to the contravention)—

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- (10) 在不局限根據第 (9)(c) 款送達某人的通知指明的步驟的一般性的原則下，該等步驟可全部或部分由他以書面向證監會建議的步驟組成。
- (11) 根據第 (9)(c) 款送達某人的通知指明的步驟，可提供停止作為有關認可交易所或認可結算所的控制人的不同方法，讓他選擇。
- (12) 根據第 (9)(c) 款送達的通知 ——
  - (a) 在不抵觸 (b) 段的條文下，在根據第 73 條針對該通知提出上訴的限期屆滿之前，不得生效；或
  - (b) 在有關的人根據第 73 條針對該通知提出上訴的情況下，在上訴撤回、放棄或裁定之前，不得生效。
- (13) 除第 (14) 款另有規定外，任何人沒有遵從根據第 (9)(c) 款送達予他的通知，即屬犯罪 ——
  - (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (14) 被控犯第 (13) 款所訂罪行的人如證明他已盡了合理的努力以遵從根據第 (9)(c) 款送達予他的通知，即可以此作為免責辯護。

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- (a) the Commission may, by notice published in the Gazette—
  - (i) declare that any votes cast at any meeting of the recognized exchange company or recognized clearing house (as the case may be) by the person after the person became the controller shall be void and of no effect; and
  - (ii) give such directions as it considers appropriate for any such meetings to be reconvened for voting anew on the business on which such votes were cast;
- (b) the person or any of his associated persons shall not exercise any rights conferred on the person as a holder of securities in the recognized exchange company or recognized clearing house, or any rights in securities in any such company which are otherwise controlled by the person, except for the purpose of ceasing to be such controller; and
- (c) the Commission may, by notice in writing served on the person, direct the person to take such steps as are specified in the notice—
  - (i) for the purpose of causing the person to cease to be such controller; and
  - (ii) within such period as is specified in the notice for the purpose.
- (10) Without limiting the generality of steps referred to in subsection (9)(c) which may be specified in a notice under that subsection to be served on a person referred to in that subsection, such steps may consist in whole or in part of steps proposed in writing to the Commission by that person.
- (11) The steps specified in a notice under subsection (9)(c) may be framed so as to afford the person on whom the notice is



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- (15) 凡任何人沒有遵從根據第 (9)(c) 款送達予他的通知，則不論他是否就此事被控犯第 (13) 款所訂罪行，附表 3 第 6 部的條文立即適用。
- (16) 本條條文 ( 第 (5) 款除外 ) 適用於在本條生效前成為認可交易所或認可結算所的控制人的人，一如該等條文適用於在本條生效日期當日或之後成為該所的控制人的人。
- (17) 凡任何公司成為認可控制人，證監會須安排在憲報刊登公告以公布此事。
- (18) 凡任何公司尋求成為認可控制人，而證監會有意拒絕根據第 (2) 款認可該公司，則該會在決定不認可該公司前，須給予該公司合理的陳詞機會。
- (19) 凡證監會拒絕根據第 (2) 或 (8)(b) 款認可某公司或某人為交易所控制人，證監會須藉送達書面通知予該公司或該人 ( 視屬何情況而定 )，將拒絕一事及拒絕的理由告知該公司或該人。
- (20) 如任何人是認可交易所或認可結算所的控制人，而該所本身是認可控制人，則第 (1) 款不適用於該人。
- (21) 第 (9)(a) 款提述的公告不是附屬法例。

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- served a choice between different ways of ceasing to be a controller of the recognized exchange company or recognized clearing house concerned.
- (12) A notice served under subsection (9)(c) shall not take effect—
  - (a) subject to paragraph (b), until the expiration of the period within which an appeal against the notice may be made under section 73; or
  - (b) if an appeal against the notice is made under section 73, until the appeal is withdrawn, abandoned or determined.
- (13) Subject to subsection (14), a person served with a notice under subsection (9)(c) who fails to comply with the notice 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.
- (14) It is a defence for a person charged with an offence under subsection (13) to prove that the person exercised reasonable diligence to comply with the notice concerned under subsection (9)(c) served on the person.
- (15) Where a person served with a notice under subsection (9)(c) fails to comply with the notice (and whether or not the person is charged with an offence under subsection (13) in relation to the failure), the provisions of Part 6 of Schedule 3 shall immediately apply.
- (16) The provisions of this section, except subsection (5), shall apply to a person who became a controller of a recognized exchange company or recognized clearing house before the commencement of this section as they apply to a person who became a controller of a recognized exchange company or recognized clearing house on or after that commencement.



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**60. 未經證監會批准不得增加或減少認可控制人在認可交易所或認可結算所的權益**

不論任何其他成文法則或法律規則有任何規定，凡任何認可控制人是認可交易所或認可結算所的控制人，則憑藉本條的規定 ——

- (a) 除非得到證監會的書面批准，否則該控制人以控制人身分擁有的該所的權益不得增加或減少；
- (b) 任何在違反 (a) 段的情況下增加或減少該等權益的嘗試 (不論以協議或任何其他形式作出或由何人作出)，就任何目的而言，均屬無效。

- (17) Where a company becomes a recognized exchange controller, the Commission shall cause notice of that fact to be published in the Gazette.
- (18) Where a company is seeking to be a recognized exchange controller and the Commission is minded not to recognize the company under subsection (2), the Commission shall give the company a reasonable opportunity of being heard before making a decision not to recognize the company.
- (19) Where the Commission refuses to recognize a company or a person as an exchange controller under subsection (2) or (8)(b), the Commission shall, by notice in writing served on the company or the person (as the case may be), inform the company or the person of the refusal and of the reasons for it.
- (20) Subsection (1) shall not apply to a person who is a controller of a recognized exchange company or recognized clearing house if the recognized exchange company or recognized clearing house is itself a recognized exchange controller.
- (21) A notice under subsection (9)(a) is not subsidiary legislation.

**60. Interest of recognized exchange controller in recognized exchange company or recognized clearing house cannot be increased or decreased except with approval of Commission**

Where a recognized exchange controller is a controller of a recognized exchange company or recognized clearing house, then, by virtue of this section and notwithstanding any other enactment or rule of law—

- (a) any interest the recognized exchange controller has in the recognized exchange company or recognized clearing house (as the case may be) as such controller cannot be increased or decreased except with the approval in writing of the Commission;

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# 61. 未經證監會核准不得成為交易所控制人等的次要控制人

- (1) 在不抵觸第 (2) 及 (16) 款的條文下，在本條生效日期當日或之後 ——
  - (a) 任何人除非得到證監會在諮詢財政司司長後給予的書面核准，否則不得擔任或成為認可控制人、認可交易所或認可結算所的次要控制人；及
  - (b) 任何人如獲得該核准，則在不抵觸任何在該核准中指明的、使本段全部或部分條文不適用於該核准的條件的情況下，該人除非得到該會在諮詢財政司司長後給予的進一步書面核准，否則不得增加以次要控制人的身分擁有的認可控制人、認可交易所或認可結算所的權益。
- (2) 除非證監會信納就維護投資大眾的利益或公眾利益而言，根據第 (1)(a) 或 (b) 款給予核准是適當的，否則不得如此給予核准。
- (3) 凡證監會拒絕根據第 (1)(a) 或 (b) 款給予核准，則該會須向有關的人發出書面通知，說明拒絕核准的理由。
- (4) 除第 (5) 款另有規定外，任何人違反第 (1) 款，即屬犯罪 ——
  - (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (5) 凡任何人被控犯第 (4) 款所訂罪行 ——
  - (a) 而該人是憑藉某作為或情況而成為有關認可控制人、認可交易所或認可結算所的次要控制人，或增加其以次要控制人的身分擁有的該控制人或該所的權益

- (b) any attempt (whether in the form of an agreement or otherwise and by whomsoever) to increase or decrease any such interest in contravention of paragraph (a) is void for all purposes.

# 61. Person not to become minority controller of exchange controller, etc. without approval of Commission

- (1) Subject to subsections (2) and (16), on or after the commencement of this section, a person shall not—
  - (a) be or become a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house except with the approval in writing of the Commission after consultation with the Financial Secretary; and
  - (b) if such approval is given, and subject to any condition specified in the approval disapplying this paragraph in whole or in part, increase the interest the person has as such minority controller except with the further approval in writing of the Commission after consultation with the Financial Secretary.
- (2) The Commission shall not give an approval under subsection (1)(a) or (b) unless it is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest.
- (3) Where the Commission refuses to give an approval under subsection (1)(a) or (b), it shall give notice in writing of its reasons for the refusal to the person concerned.
- (4) Subject to subsection (5), a person who contravenes subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

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- (視屬何情況而定)，他如證明他不知道該作為或情況是有該效果的，即可以此作為免責辯護；或
- (b) 他如證明他已盡了合理的努力以避免違反第 (1) 款，即可以此作為免責辯護。
- (6) 凡任何人 ——
- (a) 在違反第 (1) 款的情況下 (不論他是否就此事被控犯第 (4) 款所訂罪行) 擔任認可控制人、認可交易所或認可結算所的次要控制人；
- (b) 憑藉某作為或情況而成為該控制人，但他既不知道亦無理由懷疑有該作為或情況的存在；而
- (c) 其後察覺他成為該控制人一事，
- 則他須在察覺該事後 14 日內向證監會送達書面通知，說明他已成為該控制人。
- (7) 凡任何人根據第 (6) 款向證監會送達通知，該會可 ——
- (a) 按照第 (1) 款核准他為次要控制人；或
- (b) 拒絕核准他為次要控制人。
- (8) 凡任何人在違反第 (1) 款的情況下擔任認可控制人、認可交易所或認可結算所的次要控制人，不論他是否就此事被控犯第 (4) 款所訂罪行，證監會可藉憲報公告 ——
- (a) 宣布該人成為該控制人後在該控制人或該所 (視屬何情況而定) 的任何會議上所投的票，均屬無效；及
- (b) 發出該會認為適當的指令，以再度召開上述會議，就該人已投票的事宜重新進行投票。

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- (5) Where a person is charged with an offence under subsection (4), it is a defence to the charge for the person to prove that the person—
- (a) did not know that the acts or circumstances by virtue of which the person became a minority controller, or increased the interest the person has as a minority controller (as the case may be) of the recognized exchange controller, recognized exchange company or recognized clearing house concerned were such as to have that effect; or
- (b) exercised reasonable diligence to avoid contravening subsection (1).
- (6) Where a person—
- (a) is a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house in contravention of subsection (1) (and whether or not the person is charged with an offence under subsection (4) in relation to the contravention);
- (b) did not know and had no reason to suspect the existence of any of the acts or circumstances by virtue of which the person became the minority controller of that recognized exchange controller, recognized exchange company or recognized clearing house; and
- (c) subsequently becomes aware of the fact that the person has become such a minority controller,
- the person shall serve on the Commission, not later than 14 days after becoming aware of that fact, a notice in writing stating that the person has become such a minority controller.
- (7) The Commission may, upon the service of a notice under subsection (6)—

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- (9) 凡任何人在違反第 (1) 款的情況下擔任認可控制人、認可交易所或認可結算所的次要控制人或沒有遵從根據該款給予的核准指明的條件，則不論該人是否因該項違反而被控犯第 (4) 款所訂罪行 ——
- (a) 除非為停止作為該次要控制人的目的，否則該人或其任何相聯者不得行使該人作為該控制人或該所的證券持有人而獲賦予的權利，或該人以其他方式控制的該控制人或該所的證券的權利；及
- (b) 證監會可藉送達書面通知予他，指令他 ——
- (i) 採取該通知指明的步驟，以停止作為該控制人或該所的次要控制人；及
- (ii) 在該通知指明的限期內採取該等步驟。
- (10) 在不局限根據第 (9)(b) 款送達某人的通知指明的步驟的一般性的原則下，該等步驟可全部或部分由他以書面向證監會建議的步驟組成。
- (11) 根據第 (9)(b) 款送達某人的通知指明的步驟，可提供停止作為有關認可控制人、認可交易所或認可結算所的次要控制人的不同方法，讓他選擇。

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- (a) approve the person as a minority controller in accordance with subsection (1); or
- (b) refuse to approve the person as a minority controller.
- (8) Where a person is a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house in contravention of subsection (1) (and whether or not the person is charged with an offence under subsection (4) in relation to the contravention), the Commission may, by notice published in the Gazette—
- (a) declare that any votes cast at any meeting of the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be) by the person after the person became the minority controller, shall be void and of no effect; and
- (b) give such directions as it considers appropriate for any such meetings to be reconvened for voting anew on the business on which such votes were cast.
- (9) Where a person is a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house in contravention of subsection (1) or has failed to comply with a condition specified in an approval under that subsection (and whether or not the person is charged with an offence under subsection (4) in relation to the contravention)—
- (a) the person or any of his associated persons shall not exercise any rights conferred on the person as a holder of securities in the recognized exchange controller, recognized exchange company or recognized clearing house concerned or any rights in securities in any such company which are otherwise controlled by the person, except for the purpose of ceasing to be such controller; and

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- (12) 根據第 (9)(b) 款送達的通知 ——
- (a) 在不抵觸 (b) 段的條文下，在根據第 73 條針對該通知提出上訴的限期屆滿之前，不得生效；或
- (b) 在有關的人根據第 73 條針對該通知提出上訴的情況下，在上訴撤回、放棄或裁定之前，不得生效。
- (13) 除第 (14) 款另有規定外，任何人沒有遵從根據第 (9)(b) 款送達予他的通知，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (14) 被控犯第 (13) 款所訂罪行的人如證明他已盡了合理的努力以遵從根據第 (9)(b) 款送達予他的通知，即可以此作為免責辯護。
- (15) 凡任何人沒有遵從根據第 (9)(b) 款送達予他的通知，則不論他是否就此事被控犯第 (13) 款所訂罪行，附表 3 第 6 部的條文立即適用。

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- (b) the Commission may, by notice in writing served on the person, direct the person to take such steps as are specified in the notice—
- (i) for the purpose of causing the person to cease to be a minority controller of the recognized exchange controller, recognized exchange company or recognized clearing house the subject of that contravention or failure; and
- (ii) within such period as is specified in the notice for the purpose.
- (10) Without limiting the generality of steps referred to in subsection (9)(b) which may be specified in a notice under that subsection to be served on a person referred to in that subsection, such steps may consist in whole or in part of steps proposed in writing to the Commission by that person.
- (11) The steps specified in a notice under subsection (9)(b) may be framed so as to afford the person on whom the notice is served a choice between different ways of ceasing to be a minority controller of the recognized exchange controller, recognized exchange company or recognized clearing house concerned.
- (12) A notice served under subsection (9)(b) shall not take effect—
- (a) subject to paragraph (b), until the expiration of the period within which an appeal against the notice may be made under section 73; or
- (b) if an appeal against the notice is made under section 73, until the appeal is withdrawn, abandoned or determined.
- (13) Subject to subsection (14), a person served with a notice under subsection (9)(b) who fails to comply with the notice commits an offence and is liable—



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- (16) 證監會可在諮詢財政司司長後訂立規則，向規則指明的人或屬於規則指明的任何類別人士的人授予豁免，使其不受第 (1) 款中一項或多於一項規定所規限。證監會並可就豁免施加規則中指明的條件（如有的話）。
- (17) 凡任何人尋求成為認可控制人、認可交易所或認可結算所的次要控制人，而證監會有意拒絕就此給予第 (1) 款所指的核准，則該會在決定不給予核准前，須給予該人合理的陳詞機會。
- (18) 本條並不阻止證監會根據本條例或其他條例批准任何認可控制人、認可交易所或認可結算所的章程的有關條文，或對章程的任何修訂的有關條文。上述“有關條文”指在本條以外就以下事宜施加額外的規定的條文——
- (a) 在認可控制人、認可交易所或認可結算所（視屬何情況而定）所持的權益，包括（但不限於）在該控制人或該所（視屬何情況而定）的成員大會上行使投票權或控制投票權的行使；或
- (b) 為使任何人處置該等權益所須採取的步驟，包括（但不限於）停止作為該控制人或該所（視屬何情況而定）的次要控制人（不論實際如何稱述）。

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- (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.
- (14) It is a defence for a person charged with an offence under subsection (13) to prove that the person exercised reasonable diligence to comply with the notice concerned under subsection (9)(b) served on the person.
- (15) Where a person served with a notice under subsection (9)(b) fails to comply with the notice (and whether or not the person is charged with an offence under subsection (13) in relation to the failure), the provisions of Part 6 of Schedule 3 shall immediately apply.
- (16) The Commission may, after consultation with the Financial Secretary, make rules to exempt a person, or a person belonging to a class of persons, specified in the rules from one or more of the requirements of subsection (1) subject to such conditions (if any) as are specified in the rules.
- (17) Where a person is seeking to be a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house and the Commission is minded not to give approval under subsection (1) in relation thereto, the Commission shall give the person a reasonable opportunity of being heard before making a decision not to give such approval.
- (18) Nothing in this section shall operate to prevent the Commission from approving under this or any other Ordinance the provisions of the constitution, or the provisions of an amendment to the constitution, of a recognized exchange controller, recognized exchange company or recognized clearing house which impose requirements additional to this section in relation to—



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- (19) 第 (8) 款提述的公告不是附屬法例。
- (20) 在本條中，**次要控制人** (minority controller) 就任何認可控制人、認可交易所或認可結算所而言 ——
- (a) 在不抵觸 (b) 段的情況下，指有權在該控制人或該所 (視屬何情況而定) 的成員大會上，或在以該控制人或該所 (視屬何情況而定) 為附屬公司的另一法團的成員大會上，單獨或聯同任何一名或多於一名的相聯者行使不少於 5% 投票權或控制該數量的投票權的行使的人；
- (b) 不包括以下的人 ——
- (i) 認可控制人；或
- (ii) 附表 3 第 7 部指明為就本分部而言不是次要控制人的人，或屬於該部指明為就本分部而言不是次要控制人的任何類別人士的人。

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- (a) interests held in the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be) including, but not limited to, the exercise, or the control of the exercise, of voting power at any general meeting of the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be); or
- (b) steps to be taken for the purpose of causing a person to dispose of any such interest including, but not limited to, ceasing to be a minority controller (by whatever name called) of the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be).
- (19) A notice under subsection (8) is not subsidiary legislation.
- (20) In this section, **minority controller** (次要控制人), in relation to a recognized exchange controller, recognized exchange company or recognized clearing house—
- (a) subject to paragraph (b), means any person who, either alone or with any associated person or persons, is entitled to exercise, or control the exercise of, 5% or more of the voting power at any general meeting of the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be) or of a corporation of which the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be) is a subsidiary;
- (b) does not include—
- (i) a recognized exchange controller; or
- (ii) a person, or a person belonging to a class of persons, specified in Part 7 of Schedule 3 not to

be a minority controller for the purposes of this Division.

## 62. 豁免而不受第 59(1) 條的規限及撤銷豁免

- (1) 凡財政司司長信納豁免某人使他不受第 59(1) 條規限 ——
  - (a) 就維護投資大眾的利益或公眾利益而言是適當的；或
  - (b) 對妥善規管證券或期貨合約的市場是適當的，則可藉送達書面通知予該人如此豁免該人，而該項豁免 ——
    - (i) 受財政司司長認為適當並在該通知中指明的條件規限；及
    - (ii) 自該通知指明的生效日期起生效。
- (2) 凡財政司司長信納撤銷根據第 (1) 款授予某人的豁免 ——
  - (a) 就維護投資大眾的利益或公眾利益而言是適當的；或
  - (b) 對妥善規管證券或期貨合約的市場是適當的，則可藉送達述明該項撤銷的理由的書面通知予該人，撤銷該項豁免，而該項撤銷 ——
    - (i) 受財政司司長認為適當並在該通知中指明的條件規限；及
    - (ii) 自該通知指明的生效日期起生效，該日期須在該個案的整體情況下屬合理的。
- (3) 除第 (4) 款另有規定外，任何人沒有遵從根據第 (1) 或 (2) 款送達的通知指明的條件，即屬犯罪 ——
  - (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

## 62. Exemption from section 59(1) and revocation of exemption

- (1) Where the Financial Secretary is satisfied that it is appropriate to do so—
  - (a) in the interest of the investing public or in the public interest; or
  - (b) for the proper regulation of markets in securities or futures contracts,he may, by notice in writing served on a person, exempt the person from section 59(1)—
  - (i) subject to such conditions as he considers appropriate specified in the notice; and
  - (ii) with effect from a date specified in the notice for the purpose.
- (2) Where the Financial Secretary is satisfied that it is appropriate to do so—
  - (a) in the interest of the investing public or in the public interest; or
  - (b) for the proper regulation of markets in securities or futures contracts,he may, by notice in writing served on a person the subject of an exemption under subsection (1) stating the reasons in support of the ground or grounds for the notice, revoke the exemption—
  - (i) subject to such conditions as he considers appropriate specified in the notice; and

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- (4) 被控犯第 (3) 款所訂罪行的人如證明他已盡了合理努力以遵從根據第 (1) 或 (2) 款送達予他的有關通知，即可以此作為免責辯護。
- (5) 在不局限第 (1) 款賦予財政司司長的權力的一般性的原則下，附表 3 第 8 部指明的人在該部指明的情況下，獲豁免而不受第 59(1) 條的規限。
- (6) 為免生疑問，現宣布財政司司長根據第 (2) 款撤銷豁免的權力，包括撤銷並替換該項豁免的權力。

**63. 認可控制人的責任**

- (1) 任何身為認可交易所或認可結算所的控制人的認可控制人，有責任在合理地切實可行的範圍內，確保 ——
  - (a) 在該交易所營辦的證券市場或期貨市場或透過該交易所的設施買賣證券或期貨合約是在有秩序、信息靈通和公平的市場中進行的；
  - (ab) 透過該交易所的設施買賣場外衍生工具產品，是在有秩序、信息靈通和公平的市場中進行的；(由 2014 年第 6 號第 7 條增補)

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- (ii) with effect from a date specified in the notice for the purpose, being a date reasonable in all the circumstances of the case.
- (3) Subject to subsection (4), a person who fails to comply with a condition specified in a notice under subsection (1) or (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.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that the person exercised reasonable diligence to comply with the notice concerned under subsection (1) or (2) served on the person.
- (5) Without limiting the generality of the Financial Secretary's power under subsection (1), a person is exempt from section 59(1) in the cases specified in Part 8 of Schedule 3.
- (6) For the avoidance of doubt, it is hereby declared that the Financial Secretary's power under subsection (2) to revoke an exemption under subsection (1) includes the power to revoke and replace the exemption.

**63. Duties of recognized exchange controller**

- (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;

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- (b) 透過該結算所的設施結算或交收任何證券、期貨合約或場外衍生工具產品的交易，是在有秩序、公平和快捷的結算及交收安排下進行的；(由 2014 年第 6 號第 7 條修訂)
  - (c) 審慎管理與其業務及營運有關聯的風險；
  - (d) 該所遵從根據任何成文法則或法律規則施加於該所的合法要求或規定，及遵從施加於該所的其他法律規定。
- (2) 認可控制人在履行第 (1)(a)、(b) 或 (c) 款所指的責任時，須——
- (a) 以維護公眾利益為原則而行事，尤其須顧及投資大眾的利益；及
  - (b) 確保一旦公眾利益與該控制人的利益有衝突時，優先照顧公眾利益。

**64. 豁免承擔法律責任等**

以下人士——

- (a) 認可控制人；或
- (b) 任何代表認可控制人行事的人，包括——
  - (i) 該控制人的董事局的任何成員；或
  - (ii) 該控制人設立的任何委員會的任何成員，

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- (ab) an orderly, informed and fair market in OTC derivative products traded through the facilities of the recognized exchange company; (*Added 6 of 2014 s. 7*)
  - (b) that there are orderly, fair and expeditious clearing and settlement arrangements for any transactions in securities, futures contracts or OTC derivative products cleared or settled through the facilities of the recognized clearing house; (*Amended 6 of 2014 s. 7*)
  - (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.

**64. Immunity, etc.**

Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by—

- (a) a recognized exchange controller; or
- (b) any person acting on behalf of a recognized exchange controller, including—

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在履行或其本意是履行第 63 條所規定的該控制人的責任時，或在執行或其本意是執行該控制人的規章授予該控制人的職能時，如出於真誠而作出或不作出任何作為，則在不局限第 380(1) 條的一般性的原則下，無須就該等作為或不作為承擔任何民事法律責任，不論是在合約法、侵權法、誹謗法、衡平法或是在其他法律下產生的民事法律責任。

#### 65. 風險管理委員會的設立及職能

- (1) 任何認可交易所或認可結算所的認可控制人須設立並維持一個名為“風險管理委員會”的委員會，就關於該控制人及該所的活動的風險管理的事宜，制訂政策方案，並將該等政策方案呈交該控制人考慮。
- (2) 風險管理委員會須由以下人士組成——
  - (a) 認可控制人的主席，他亦須擔任委員會的主席；及
  - (b) 4 至 7 名其他成員。
- (3) 在第(2)(b)款提述的成員中，3 至 5 名須由財政司司長委任。
- (4) 在第(2)(b)款提述的成員中，1 至 2 名須由認可控制人委任；其中至少 1 名須為該控制人董事局的成員，而該名成員須——
  - (a) 不是憑藉第 77(1) 條獲委任為董事局成員的；亦
  - (b) 不是該控制人的最高行政人員。

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- (i) any member of the board of directors of the recognized exchange controller; or
- (ii) any member of any committee established by the recognized exchange controller,

in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties of the controller under section 63 or in the performance or purported performance of its functions under its rules.

#### 65. Establishment and functions of Risk Management Committee

- (1) A recognized exchange controller shall establish and keep established a committee, to be called the Risk Management Committee, to formulate policies on risk management matters relating to the activities of the recognized exchange controller and of any recognized exchange company or recognized clearing house of which the recognized exchange controller is a controller and to submit such policies to the recognized exchange controller for its consideration.
- (2) The Risk Management Committee shall consist of—
  - (a) the chairman of the recognized exchange controller who shall also be the chairman of the Committee; and
  - (b) not less than 4 or more than 7 other members.
- (3) The Financial Secretary shall appoint not less than 3 or more than 5 of the members referred to in subsection (2)(b).
- (4) The recognized exchange controller shall appoint not more than 2 of the members referred to in subsection (2)(b) of whom not less than one shall be a member of the board of directors of the recognized exchange controller who—
  - (a) is such a member otherwise than by virtue of an appointment under section 77(1); and



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- (b) is not the chief executive of the recognized exchange controller.

#### 66. 認可控制人訂立規章

- (1) 在不局限認可控制人訂立規章的其他權力的原則下，該控制人可為以下目的而就有需要或可取的事宜訂立規章——
  - (a) 履行第 63 條所指的責任；
  - (b) 為投資大眾設立和維持賠償安排。
- (2) 證監會可在諮詢財政司司長後，藉憲報公告宣布在附表 1 第 1 部第 1 條中的**規章**的定義的 (c)(ii)(C) 段適用於該公告中指明的人或團體。

#### 67. 批准認可控制人規章或對該等規章的修訂

- (1) 除第 (7) 款另有規定外，認可控制人的規章（不論是否根據第 66 條訂立）或對該等規章的修訂須獲證監會書面批准，否則不具效力。
- (2) 認可控制人須——
  - (a) 將或安排將任何根據第 (1) 款須取得批准的規章及修訂，呈交證監會批准；呈交的規章及修訂須附有就該等規章及修訂的目的及相當可能會有的影響（包括對投資大眾的影響）而作出的解釋，該等解釋的詳細程度，須足以使該會能夠決定是否批准該等規章及修訂；及
  - (b) 在屬根據第 (7) 款宣布的類別的規章訂立後，及在對該等規章的修訂作出後，在合理地切實可行的範圍內盡快向證監會呈交或安排向該會呈交該等規章及修訂，讓該會知悉。

#### 66. Rules by recognized exchange controllers

- (1) Without limiting any of its other powers to make rules, a recognized exchange controller may make rules for such matters as are necessary or desirable—
  - (a) for the discharge of its duties under section 63;
  - (b) for the establishment and maintenance of compensation arrangements for the investing public.
- (2) The Commission may, after consultation with the Financial Secretary, by notice published in the Gazette, declare a person or body of persons specified in the notice to be a person or body of persons (as the case may be) to which paragraph (c)(ii)(C) of the definition of **rules** in section 1 of Part 1 of Schedule 1 shall apply.

#### 67. Approval of rules or amendments to rules of recognized exchange controller

- (1) Subject to subsection (7), no rule (whether or not made under section 66) of a recognized exchange controller or any amendment thereto shall have effect unless it has the approval in writing of the Commission.
- (2) A recognized exchange controller shall submit or cause to be submitted to the Commission—
  - (a) for its approval the rules and every amendment thereto that require approval under subsection (1), together with explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them; and



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- (3) 證監會須在收到認可控制人根據第 (2)(a) 款呈交的規章或修訂後的 6 個星期內，藉送達書面通知予該控制人，批准或拒絕批准該等規章或修訂（視屬何情況而定），或批准或拒絕批准其中任何部分；如該會拒絕批准，須在有關通知中說明拒絕批准的理由。
- (4) 證監會根據第 (3) 款給予的批准，可受某些在該等規章或修訂或其中任何部分生效前須符合的要求所規限。
- (5) 證監會可在有關的認可控制人的同意下，在任何個別個案中延展第 (3) 款訂明的期限。
- (6) 財政司司長可在諮詢證監會及有關的認可控制人後，延展第 (3) 款訂明的期限。
- (7) 證監會可藉憲報公告宣布認可控制人的某類別的規章無須根據第 (1) 款獲批准，而任何屬於該類別的該控制人規章（包括對該等規章的修訂）即使沒有根據第 (1) 款獲批准，仍屬有效。
- (8) 根據第 66(1) 條訂立的規章及第 (7) 款提述的公告均不是附屬法例。

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- (b) for its information the rules which belong to a class the subject of a declaration under subsection (7) and every amendment to the rules, as soon as reasonably practicable after they have been made.
- (3) The Commission shall, not later than 6 weeks after the receipt of a submission under subsection (2)(a) from a recognized exchange controller, by notice in writing served on the controller, give its approval or refuse to give its approval (together with its reasons for the refusal) to the rules or amendment of the rules (as the case may be) or any part thereof, the subject of the submission.
- (4) The Commission may give its approval under subsection (3) subject to requirements which shall be satisfied before the rules or amendment of the rules or any part thereof take effect.
- (5) The Commission may in a particular case, with the agreement of the recognized exchange controller concerned, extend the time prescribed in subsection (3).
- (6) The Financial Secretary may, after consultation with the Commission and the recognized exchange controller concerned, extend the time prescribed in subsection (3).
- (7) The Commission may, by notice published in the Gazette, declare any class of rules of a recognized exchange controller to be a class of rules which are not required to be approved under subsection (1) and, accordingly, any rules of the controller which belong to that class (including any amendment thereto) shall have effect notwithstanding that they have not been so approved.
- (8) Neither the rules under section 66(1) nor a notice under subsection (7) is subsidiary legislation.

**68. Transfer and resumption of functions of Commission**

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- (1) 證監會如信納某認可控制人 (**指定控制人**) 願意和有能力執行本條適用的職能，則可請求行政長官會同行政會議藉在憲報刊登的命令 (**轉移令**)，將該等職能轉移予該控制人。
- (2) 本條適用於以下條文授予證監會的職能 ——
  - (a) 第 V 部；
  - (b) 第 145 條；(由 2012 年第 28 號第 912 及 920 條修訂)
  - (c) 《公司 (清盤及雜項條文) 條例》(第 32 章) 第 II 及 XII 部；及 (由 2012 年第 28 號第 912 及 920 條代替)
  - (d) 《公司條例》(第 622 章) 第 5 部。(由 2012 年第 28 號第 912 及 920 條增補)
- (3) 本條適用的職能可藉轉移令完全或局部轉移，而該項轉移可 ——
  - (a) 受保留條款規限，根據該條款，證監會可與指定控制人同時執行該職能；及
  - (b) 受證監會認為適當的其他條件規限。
- (4) 轉移令可載有為使該命令得以全面施行而有需要或合宜的附帶條文、補充條文及相應修訂。
- (5) 除非擬成為指定控制人的控制人事先向證監會提供該控制人擬訂立的財政資源規則的草擬本，且該會信納如該等規則得以訂立，會為投資大眾提供足夠程度的保障，否則該會不得請求就該等規則的訂立而作出轉移令。
- (6) 證監會可應指定控制人的請求或在該控制人的同意下，收回已藉轉移令轉移的職能，但職能的收回須憑藉行政長官會同行政會議作出的命令進行，方具效力。
- (7) 如證監會請求收回一項已藉轉移令轉移的職能，而行政長官會同行政會議覺得如此收回是符合公眾利益的，則行政長官會同行政會議可命令該會收回該職能。
- (8) 轉移令可訂明由指定控制人保留全部或部分就執行經轉移的職能而須繳付予該控制人的費用，而根據第 (6) 或 (7)

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- (1) The Commission may request the Chief Executive in Council to transfer, by order (**transfer order**) published in the Gazette, to a recognized exchange controller (**designated exchange controller**), a function to which this section applies, if the Commission is satisfied that the designated exchange controller is willing and able to perform the function.
- (2) This section applies to a function of the Commission under—
  - (a) Part V;
  - (b) section 145; (*Amended 28 of 2012 ss. 912 & 920*)
  - (c) Parts II and XII of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and (*Replaced 28 of 2012 ss. 912 & 920*)
  - (d) Part 5 of the Companies Ordinance (Cap. 622). (*Added 28 of 2012 ss. 912 & 920*)
- (3) A function to which this section applies may be transferred by a transfer order either in whole or in part, and the transfer may be subject to—
  - (a) a reservation that the Commission is to perform the function concurrently with the designated exchange controller; and
  - (b) such other conditions as the Commission considers appropriate.
- (4) A transfer order may contain such incidental, supplemental and consequential provisions as may be necessary or expedient for the purpose of giving full effect to the order.
- (5) The Commission shall not request that a transfer order be made in respect of the making of financial resources rules unless the proposed designated exchange controller has first supplied the Commission with a draft of the financial resources rules which it proposes to make, and the

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款作出的命令可訂明由證監會自命令指明的日期起，保留上述費用。

## 69. 認可控制人的主席

- (1) 任何人除非已獲行政長官書面核准，否則不得擔任屬認可控制人的公司的主席。
- (2) 凡行政長官信納免除認可控制人的主席的職位 ——
  - (a) 就維護投資大眾的利益或公眾利益而言是適當的；或
  - (b) 對妥善規管證券或期貨合約的市場是適當的，
 則可藉送達書面通知予他，免除其主席職位，自該通知指明的生效日期起生效。

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Commission is satisfied that the rules, if made, will afford the investing public an adequate level of protection.

- (6) The Commission may at the request or with the consent of a designated exchange controller resume a function transferred by a transfer order, but the resumption takes effect only by order of the Chief Executive in Council.
- (7) The Chief Executive in Council may order that the Commission resume a function transferred to a designated exchange controller by a transfer order if the Commission so requests and if it appears to the Chief Executive in Council to be in the public interest to do so.
- (8) A transfer order may provide for a designated exchange controller to retain all or any of the fees payable in relation to the performance of a transferred function, and an order made under subsection (6) or (7) may provide for the Commission to retain all or any such fees, from a date specified in the order.

## 69. Chairman of recognized exchange controller

- (1) No person shall be the chairman of a company which is a recognized exchange controller unless he has the approval in writing of the Chief Executive to hold that office.
- (2) Where the Chief Executive is satisfied that it is appropriate to do so—
  - (a) in the interest of the investing public or in the public interest; or
  - (b) for the proper regulation of markets in securities or futures contracts,
 he may, by notice in writing served on a person who is the chairman of a recognized exchange controller, remove the person from that office with effect from a date specified in the notice for the purpose.

**70. 認可控制人的最高行政人員或最高營運人員的委任須獲證監會核准**

- (1) 除非獲證監會書面核准，否則任何人擔任屬認可控制人的公司的最高行政人員或最高營運人員的委任，均屬無效。
- (2) 凡證監會在諮詢財政司司長及某認可控制人的主席後，信納免除該控制人的最高行政人員或最高營運人員的職位——
  - (a) 就維護投資大眾的利益或公眾利益而言是適當的；或
  - (b) 對妥善規管證券或期貨合約的市場是適當的，
 則可藉送達書面通知予該人員，免除該人員的職位，自該通知指明的生效日期起生效。
- (3) 根據第 (2) 款送達的通知即時生效。

**71. 認可控制人交出紀錄等**

- (1) 證監會可藉送達書面通知予認可控制人，要求該控制人在通知指明的期間內，向該會提供該會為執行其職能而合理地要求的以下資料——
  - (a) (i) 該控制人在與其業務有關連的情況下或為其業務而備存的簿冊及紀錄；
  - (ii) 就以下買賣而由該控制人備存的簿冊及紀錄：任何在其屬控制人的認可交易所營辦的證券市

**70. Appointment of chief executive or chief operating officer of recognized exchange controller requires approval of Commission**

- (1) No appointment of a person as chief executive or chief operating officer of a company which is a recognized exchange controller shall have effect unless the appointment has the approval in writing of the Commission.
- (2) Where the Commission, after consultation with the Financial Secretary and the chairman of a recognized exchange controller, is satisfied that it is appropriate to do so—
  - (a) in the interest of the investing public or in the public interest; or
  - (b) for the proper regulation of markets in securities or futures contracts,
 it may, by notice in writing served on a person who is the chief executive or chief operating officer of the controller, remove the person from that office with effect from a date specified in the notice for the purpose.
- (3) A notice served under subsection (2) shall take effect immediately.

**71. Production of records, etc. by recognized exchange controller**

- (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;

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- 場或期貨市場進行 (或透過該交易所的設施進行) 的證券或期貨合約的買賣；
- (ia) 就以下買賣而由該控制人備存的簿冊及紀錄：任何透過其屬控制人的認可交易所的設施進行的場外衍生工具產品的買賣；或 (由 2014 年第 6 號第 8 條增補)
- (iii) 就以下安排而由該控制人備存的簿冊及紀錄：任何透過其屬控制人的認可結算所的設施結算或交收的證券、期貨合約或場外衍生工具產品的交易的結算及交收安排；及 (由 2014 年第 6 號第 8 條修訂)
- (b) 與該控制人的業務或任何該等買賣或結算及交收安排有關的其他資料。
- (2) 根據第 (1) 款獲送達通知的認可控制人如無合理辯解而沒有遵從該通知，即屬犯罪，一經定罪，可處第 5 級罰款。

## 72. 撤回對交易所控制人的認可

- (1) 在符合第 (2) 款的規定下，凡證監會信納送達有關通知——
- (a) 就維護投資大眾的利益或公眾利益而言是適當的；或
- (b) 對妥善規管證券或期貨合約的市場是適當的，

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- (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;
- (ia) 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 (Added 6 of 2014 s. 8)
- (iii) in respect of any clearing and settlement arrangements for any transactions in securities, futures contracts or OTC derivative products cleared or settled through the facilities of the recognized clearing house of which it is a controller; and (Amended 6 of 2014 s. 8)
- (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.

## 72. Withdrawal of recognition of exchange controller

- (1) Subject to subsection (2), where the Commission is satisfied that it is appropriate to do so—
- (a) in the interest of the investing public or in the public interest; or
- (b) for the proper regulation of markets in securities or futures contracts,



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則該會可在財政司司長的書面同意下，藉送達書面通知予認可控制人——

- (i) 撤回該控制人作為交易所控制人的認可，自該通知指明的生效日期起生效；或
- (ii) 指令該控制人——
  - (A) 採取該通知指明的步驟，以停止作為該控制人；及
  - (B) 在該通知指明的限期內採取該等步驟，
 該通知須述明送達該通知的理由。
- (2) 證監會在根據第 (1) 款就某認可控制人行使權力前，須給予該控制人合理的陳詞機會。
- (3) 在不局限根據第 (1)(ii) 款送達某公司的通知指明的步驟的一般性的原則下，該等步驟可全部或部分由該公司以書面向證監會建議的步驟組成。
- (4) 根據第 (1)(ii) 款送達某公司的通知指明的步驟，可提供停止作為有關的認可交易所或認可結算所的控制人的不同方法，讓該公司選擇。
- (5) 凡證監會根據第 (1)(i) 款撤回某公司的認可，該會須安排在憲報刊登公告以公布此事。
- (6) 根據第 (1) 款送達的通知——
  - (a) 在不抵觸 (b) 段的條文下，在根據第 73 條針對該通知提出上訴的限期屆滿之前，不得生效；或
  - (b) 在有關公司根據第 73 條針對該通知提出上訴的情況下，在上訴撤回、放棄或裁定之前，不得生效。
- (7) 除第 (8) 款另有規定外，任何公司沒有遵從根據第 (1) 款送達該公司的通知，即屬犯罪——
  - (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

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it may, with the consent in writing of the Financial Secretary, by notice in writing served on a recognized exchange controller stating the reasons in support of the ground or grounds for the notice—

- (i) withdraw the company's recognition as an exchange controller with effect from a date specified in the notice for the purpose; or
- (ii) direct the company to take such steps as are specified in the notice—
  - (A) for the purpose of causing the company to cease to be such controller; and
  - (B) within such period as is specified in the notice for the purpose.
- (2) The Commission shall not exercise its power under subsection (1) in relation to a recognized exchange controller unless it has given the controller a reasonable opportunity of being heard.
- (3) Without limiting the generality of steps referred to in subsection (1)(ii) which may be specified in a notice under that subsection to be served on a company referred to in that subsection, such steps may consist in whole or in part of steps proposed in writing to the Commission by that company.
- (4) The steps specified in a notice under subsection (1)(ii) may be framed so as to afford the company on which the notice is served a choice between different ways of ceasing to be a controller of the recognized exchange company or recognized clearing house concerned.
- (5) Where the Commission withdraws a company's recognition as an exchange controller under subsection (1)(i), it shall cause notice of that fact to be published in the Gazette.
- (6) A notice served under subsection (1) shall not take effect—



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- (8) 被控犯第 (7) 款所訂罪行的人如證明他已盡了合理的努力以遵從根據第 (1) 款送達予他的通知，即可以此作為免責辯護。
- (9) 凡任何公司沒有遵從根據第 (1) 款送達該公司的通知，則不論該公司是否就此事被控犯第 (7) 款所訂罪行，附表 3 第 6 部的條文立即適用。

### 73. 上訴

- (1) 如證監會於某日根據第 59(9)(c)、61(9)(b)、70(2)、72(1) 或 75(1) 條向某人送達通知，該人可在該日後 14 日內，或在該會在該通知指明的較長限期（如有的話）內，針對該通知向行政長官會同行政會議提出上訴。
- (2) 行政長官會同行政會議就第 (1) 款提述的上訴所作的決定，即為最終決定。

### 74. 認可控制人等尋求成為上市法團時適用的條文

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- (a) subject to paragraph (b), until the expiration of the period within which an appeal against the notice may be made under section 73; or
- (b) if an appeal against the notice is made under section 73, until the appeal is withdrawn, abandoned or determined.
- (7) Subject to subsection (8), a company served with a notice under subsection (1) which fails to comply with the notice 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.
- (8) It is a defence for a person charged with an offence under subsection (7) to prove that the person exercised reasonable diligence to comply with the notice concerned under subsection (1) served on the person.
- (9) Where a company served with a notice under subsection (1) fails to comply with the notice (and whether or not the company is charged with an offence under subsection (7) in relation to the failure), the provisions of Part 6 of Schedule 3 shall immediately apply.

### 73. Appeals

- (1) A person served with a notice under section 59(9)(c), 61(9)(b), 70(2), 72(1) or 75(1) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period (if any) as the Commission specifies in the notice.
- (2) The decision of the Chief Executive in Council on an appeal under subsection (1) shall be final.

### 74. Provisions applicable where recognized exchange controller,

- (1) 在證監會以書面述明該會信納以下事宜之前 ——
- (a) 在符合第 (2) 款的規定下，根據第 23 條訂立的規章，足以處理相關認可控制人或相關法團假如成為上市法團而可能引起的利益衝突；及
  - (b) 相關認可控制人或相關法團已與該會訂立安排，而該安排足以確保 ——
    - (i) 在有關的認可交易所營辦的證券市場或期貨市場或透過該交易所的設施買賣證券或期貨合約是在廉潔而穩健的市場中進行；及
    - (ii) 相關認可控制人或相關法團履行其假如成為上市法團即須履行的責任，
 該控制人或法團（視屬何情況而定）不得成為上市法團。
- (2) 第 (1)(a) 款提述的規章須訂定條文，規定證監會須取代聯交所，就相關認可控制人或相關法團作出所有倘若某法團既非認可控制人亦非相關法團時，本應是由聯交所作出的行動或決定，但如該會以書面通知，說明該會信納由聯交所作出某些行動或決定（視屬何情況而定）不會引起利益衝突，則該等行動或決定屬例外。
- (3) 證監會憑藉本條具有以下規章及安排授予該會的職能 ——
- (a) 為施行第 (1)(a) 及 (2) 款而訂立的規章；
  - (b) 第 (1)(b) 款提述的安排。
- (4) 凡任何人須就聯交所作出某行動或決定而向聯交所繳付費用，而證監會憑藉第 (1)(a) 及 (2) 款作出該行動或決定（視屬何情況而定），則不論任何其他成文法則或法律規則有任何規定，該人仍須向該會繳付該費用。

**etc. seeks to be listed corporation**

- (1) A relevant recognized exchange controller, or a relevant corporation, shall not become a listed corporation unless and until the Commission states in writing that it is satisfied that—
- (a) subject to subsection (2), rules made under section 23 adequately deal with possible conflicts of interest that might arise if the relevant recognized exchange controller or relevant corporation (as the case may be) were to be a listed corporation; and
  - (b) the relevant recognized exchange controller or relevant corporation (as the case may be) has entered into arrangements with the Commission that adequately ensure—
    - (i) the integrity of the market in securities or futures contracts traded on the stock market or futures market operated by the recognized exchange company concerned or through the facilities of that recognized exchange company; and
    - (ii) the compliance with obligations as a listed corporation which would fall on the relevant recognized exchange controller or relevant corporation (as the case may be) if it were to become a listed corporation.
- (2) Rules referred to in subsection (1)(a) shall make provision to the effect that the Commission shall, instead of the Stock Exchange Company, take all actions and make all decisions in relation to the relevant recognized exchange controller or relevant corporation that would be taken by the Stock Exchange Company in the case of a corporation that was neither a recognized exchange controller nor a relevant corporation except in the case of any action or decision in

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## 75. 證監會如信納存在利益衝突可向認可控制人發出指令等

### (1) 凡證監會信納 ——

- (a) 以下利益之間存在或可能出現利益衝突 ——
  - (i) 認可控制人或相關法團的利益；與
  - (ii) 本條例或其他條例（包括根據任何條例訂立的規則，不論該等規則是否附屬法例）授予該控制人或法團的職能可獲妥善地執行的利益；或
- (b) 導致存在該項利益衝突的情況，令該項利益衝突相當可能會繼續存在或重覆發生，

則該會可向該控制人或法團（視屬何情況而定）送達書面通知，說明支持該通知的理由的依據，並指令該控制人或法團（視屬何情況而定）立即採取該通知所指明的步驟（包括關於其事務、業務或任何財產的步驟），以糾正該

respect of which the Commission states in writing that it is satisfied that a conflict of interest will not arise if that action or decision were to be taken or made (as the case may be) by the Stock Exchange Company.

- (3) By virtue of this section, the Commission shall have such functions as are provided for it under—
  - (a) rules made for the purposes of subsections (1)(a) and (2);
  - (b) arrangements referred to in subsection (1)(b).
- (4) Where a fee is payable to the Stock Exchange Company by a person for the taking of an action or the making of a decision which may be taken or made (as the case may be) by the Commission by virtue of subsections (1)(a) and (2), then, notwithstanding any other enactment or rule of law, that person shall pay that fee to the Commission in any case where the Commission takes that action or makes that decision (as the case may be) by virtue of those subsections.

## 75. Commission may give directions to recognized exchange controller where it is satisfied that conflict of interest exists, etc.

### (1) Where the Commission is satisfied that—

- (a) a conflict of interest exists or may come into existence between—
  - (i) the interest of a recognized exchange controller or a relevant corporation; and
  - (ii) the interest of the proper performance of the functions conferred by this or any other Ordinance (including any rules made under any Ordinance, whether or not they are subsidiary legislation) on the controller or the relevant corporation; or

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項利益衝突或造成該項利益衝突的事項(視屬何情況而定)。

- (2) 根據第(1)款送達的通知即時生效。
- (3) 任何認可控制人或相關法團無合理辯解而沒有遵從根據第(1)款向其送達的通知，即屬犯罪——
  - (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

## 76. 費用須經證監會批准

- (1) 凡——
  - (a) 任何認可控制人以該控制人身分在本條生效日期當日或之後徵收費用；或
  - (b) 任何認可交易所或認可結算所——
    - (i) 的控制人為認可控制人；而

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- (b) such a conflict of interest has existed in circumstances that make it likely that the conflict of interest will continue or be repeated,

then the Commission may, by notice in writing served on the controller or relevant corporation (as the case may be) stating the reasons in support of the ground or grounds for the notice, direct the controller or relevant corporation (as the case may be) to forthwith take such steps as are specified in the notice (including steps in relation to any of its affairs, business and property whatsoever) for the purposes of remedying the conflict of interest or the matters occasioning the conflict of interest (as the case may be).

- (2) A notice served under subsection (1) shall take effect immediately.
- (3) A recognized exchange controller or relevant corporation served with a notice under subsection (1) which, without reasonable excuse, fails to comply with the notice 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.

## 76. Fees to be approved by Commission

- (1) No fee imposed on or after the commencement of this section by—
  - (a) a recognized exchange controller in its capacity as a recognized exchange controller; or
  - (b) a recognized exchange company or recognized clearing house—

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- (ii) 該交易所或結算所以該交易所或結算所 (視屬何情況而定) 身分在本條生效日期當日或之後徵收費用，

除非該控制人或該所 (視屬何情況而定) 的規章中有指明該費用，並已獲證監會書面批准，否則該費用屬無效。

- (2) 證監會在決定是否批准第 (1) 款提述的為某事項而徵收的費用時，除其他事宜外，須考慮——
- (a) 該事項在香港的競爭 (如有的話) 程度；及
  - (b) 其他認可控制人、認可交易所或認可結算所或香港以外地方的任何相類團體就與該事項相同或相類似的事項所徵收的費用 (如有的話) 的水平。

#### 77. 財政司司長可委任不超過 8 人進入交易結算公司的董事局

- (1) 不論任何成文法則或法律規則有任何規定，在不抵觸第 (2) 款的情況下，凡財政司司長信納作出有關委任就維護投資大眾的利益或公眾利益而言是適當的，則可委任不超過 8 名人士為交易結算公司董事局的成員。
- (2) 財政司司長行使第 (1) 款授予的權力，須達致以下效果：在緊接在 2003 年舉行的交易結算公司的成員大會之後，在當時根據第 (1) 款獲委任的交易結算公司的董事局的成員的數目，不得超過該董事局的其他成員 (但不包括交易結算公司的最高行政人員) 的最高人數限額。
- (3) 除第 (4) 款另有規定外，任何根據第 (1) 款獲委任的交易結算公司董事局的成員，在任何成文法則或法律規則下

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- (i) of which the recognized exchange controller is a controller; and
- (ii) in its capacity as a recognized exchange company or recognized clearing house (as the case may be),

shall have effect unless the fee is specified in the rules of the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be) and has the approval in writing of the Commission.

- (2) The Commission shall, in deciding whether or not to approve a fee referred to in subsection (1), have regard to, among other matters—
- (a) the level of competition (if any) in Hong Kong for the matter for which the fee is to be imposed; and
  - (b) the level of fee (if any) imposed by another recognized exchange controller, recognized exchange company or recognized clearing house or any similar body outside Hong Kong, for the same or a similar matter to which the fee relates.

#### 77. Financial Secretary may appoint not more than 8 persons to board of directors of HKEC

- (1) Notwithstanding any enactment or rule of law but subject to subsection (2), the Financial Secretary may appoint not more than 8 persons to be members of the board of directors of the HKEC where the Financial Secretary is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest.
- (2) The Financial Secretary shall exercise his power under subsection (1) in such a way that immediately following the annual general meeting of the HKEC held in 2003 and thereafter, the number of members of its board of directors who are such members by virtue of an appointment under



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享有及承擔的權利、特權、義務及法律責任，與該董事局的其他成員所享有及承擔者相同。

- (4) 不論任何成文法則或法律規則有任何規定，根據第 (1) 款獲委任的交易結算公司董事局的成員不可藉該董事局其他成員通過的決議或交易結算公司通過的特別決議而免任。
- (5) 在本條中，**交易結算公司** (HKEC) 指根據《有關條例》成立並根據該條例以“香港交易及結算有限公司”的名稱註冊的公司。(由 2012 年第 28 號第 912 及 920 條修訂)

## 78. 附表 3 的修訂

行政長官會同行政會議可藉在憲報刊登的命令修訂附表 3 第 2、3、4、6、7 或 8 部。

## 第 5 分部 —— 投資者賠償公司

## 79. 投資者賠償公司的認可

- (1) 凡證監會信納認可某公司為投資者賠償公司 ——
- (a) 就維護投資大眾的利益或公眾利益而言是適當的；或
- (b) 對利便管理第 XII 部所指的賠償基金是適當的，

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that subsection is not more than the maximum number of members of that board who may be such members otherwise than by virtue of such an appointment (but excluding the chief executive of the HKEC).

- (3) Subject to subsection (4), a member of the board of directors of the HKEC who is such a member by virtue of an appointment under subsection (1) shall have the same rights, privileges, obligations and liabilities under any enactment or rule of law as a member of that board who is such a member otherwise than by virtue of such an appointment.
- (4) Notwithstanding any enactment or rule of law, no person appointed under subsection (1) as a member of the board of directors of the HKEC may be removed from that office by a resolution of the other directors of the board or a special resolution of the HKEC.
- (5) In this section, **HKEC** (交易結算公司) means the company incorporated, and registered by the name Hong Kong Exchanges and Clearing Limited, under the relevant Ordinance. (Amended 28 of 2012 ss. 912 & 920)

## 78. Amendment of Schedule 3

The Chief Executive in Council may, by order published in the Gazette, amend Parts 2, 3, 4, 6, 7 or 8 of Schedule 3.

## Division 5—Investor compensation companies

## 79. Recognition of investor compensation company

- (1) Where the Commission is satisfied that it is appropriate to do so—
- (a) in the interest of the investing public or in the public interest; or



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- 則可在諮詢財政司司長後，藉送達書面通知予該公司，認可該公司為投資者賠償公司，而該項認可——
- (i) 受該會認為適當並在該通知中指明的條件規限；及
  - (ii) 自該通知指明的生效日期起生效。
- (2) 在不局限根據第 (1) 款送達的通知指明的條件的一般性的原則下，證監會——
- (a) 在基於該款 (a) 或 (b) 段指明的理由信納如此行事是適當的情況下；及
  - (b) 在諮詢財政司司長後，
- 可藉送達書面通知予認可投資者賠償公司，修訂或撤銷任何該等條件或施加任何新的條件。
- (3) 凡證監會藉根據第 (2) 款送達通知修訂或撤銷任何條件或施加任何新的條件，該項修訂、撤銷或施加在該通知送達時或在該通知指明的時間（兩者以較遲者為準）生效。
- (4) 凡某公司成為認可投資者賠償公司，證監會須安排在憲報刊登公告以公布此事。
- (5) 凡某公司尋求成為認可投資者賠償公司，而證監會有意拒絕根據第 (1) 款認可該公司，則該會在決定不認可該公司前，須給予該公司合理的陳詞機會。
- (6) 凡證監會拒絕根據第 (1) 款認可某公司為投資者賠償公司，證監會須藉送達書面通知予該公司，將拒絕一事及拒絕的理由告知該公司。

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- (b) for the facilitation of the management and administration of the compensation fund under Part XII,
- it may, after consultation with the Financial Secretary, by notice in writing served on a company, recognize the company as an investor compensation company—
- (i) subject to such conditions as it considers appropriate specified in the notice; and
  - (ii) with effect from a date specified in the notice for the purpose.
- (2) Without limiting the generality of conditions which may be specified in a notice under subsection (1), the Commission may, by notice in writing served on a recognized investor compensation company, amend or revoke any condition specified in the first-mentioned notice or impose new conditions, where the Commission—
- (a) is satisfied that it is appropriate to do so on a ground specified in paragraph (a) or (b) of that subsection; and
  - (b) has consulted the Financial Secretary.
- (3) Where the Commission amends or revokes any condition or imposes any new condition by a notice under subsection (2), the amendment, revocation or imposition takes effect at the time of service of the notice or at the time specified in the notice, whichever is the later.
- (4) Where a company becomes a recognized investor compensation company, the Commission shall cause notice of that fact to be published in the Gazette.
- (5) Where a company is seeking to be a recognized investor compensation company and the Commission is minded not to recognize the company under subsection (1), the Commission shall give the company a reasonable opportunity of being heard before making a decision not to recognize the company.

**80. 證監會職能的轉移及收回**

- (1) 證監會如信納某認可投資者賠償公司 (**指定公司**) 願意和有能力執行本條適用的職能，則可請求行政長官會同行政會議藉在憲報刊登的命令 (**轉移令**)，將該等職能轉移予該公司。
- (2) 本條適用於第 XII 部 (第 240(4) 及 (9) 及 244(2) 條除外) 或根據在該部下訂立的規則授予證監會的職能。
- (3) 就第 (2) 款而言，第 XII 部授予證監會維持賠償基金的職能，包括維持整筆或部分賠償基金的職能，而本條例其他條文須據此適用。
- (4) 本條適用的職能可藉轉移令完全或局部轉移，而該項轉移可——
  - (a) 受保留條款規限，根據該條款，證監會可與指定公司同時執行該職能；及
  - (b) 受證監會認為適當的其他條件規限。
- (5) 轉移令可載有為使該命令得以全面施行而有需要或合宜的附帶條文、補充條文及相應修訂。
- (6) 證監會可應指定公司的請求或在該公司的同意下，收回已藉轉移令轉移的職能，但職能的收回須憑藉行政長官會同行政會議作出的命令進行，方具效力。
- (7) 如證監會請求收回一項已藉轉移令轉移的職能，而行政長官會同行政會議覺得如此收回是符合公眾利益的，則行政長官會同行政會議可命令該會收回該職能。

- (6) Where the Commission refuses to recognize a company as an investor compensation company under subsection (1), the Commission shall, by notice in writing served on the company, inform the company of the refusal and of the reasons for it.

**80. Transfer and resumption of functions of Commission**

- (1) The Commission may request the Chief Executive in Council to transfer, by order (**transfer order**) published in the Gazette, to a recognized investor compensation company (**designated investor compensation company**), a function to which this section applies, if the Commission is satisfied that the designated investor compensation company is willing and able to perform the function.
- (2) This section applies to a function of the Commission under Part XII (other than sections 240(4) and (9) and 244(2)) or rules made under that Part.
- (3) For the purposes of subsection (2), the function of the Commission under Part XII to maintain the compensation fund includes a function to maintain all or any part of the compensation fund, and the other provisions of this Ordinance shall apply accordingly.
- (4) A function to which this section applies may be transferred by a transfer order either in whole or in part, and the transfer may be subject to—
  - (a) a reservation that the Commission is to perform the function concurrently with the designated investor compensation company; and
  - (b) such other conditions as the Commission considers appropriate.

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# 81. 豁免承擔法律責任等

## (1) 以下人士 ——

- (a) 認可投資者賠償公司；或
- (b) 任何代表該公司行事的人，包括 ——
  - (i) 該公司的董事局的任何成員；或
  - (ii) 該公司設立的任何委員會的任何成員，

在履行或其本意是履行本款適用的責任時，如出於真誠而作出或不作出任何作為，則在不局限第 380(1) 條的一般性的原則下，無須就該等作為或不作為承擔任何民事法律責任，不論是在合約法、侵權法、誹謗法、衡平法或是在其他法律下產生的民事法律責任。

## (2) 第 (1) 款適用於以下責任 ——

- (a) 關乎根據第 80 條轉移予有關認可投資者賠償公司的職能的責任，或由該等職能引起的責任；或
- (b) 該公司按照在第 XII 部下訂立的規則須承擔的責任。

- (5) A transfer order may contain such incidental, supplemental and consequential provisions as may be necessary or expedient for the purpose of giving full effect to the order.
- (6) The Commission may at the request or with the consent of a designated investor compensation company resume a function transferred by a transfer order, but the resumption takes effect only by order of the Chief Executive in Council.
- (7) The Chief Executive in Council may order that the Commission resume a function transferred to a designated investor compensation company by a transfer order if the Commission so requests and if it appears to the Chief Executive in Council to be in the public interest to do so.

# 81. Immunity, etc.

- (1) Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by—

- (a) a recognized investor compensation company; or
- (b) any person acting on behalf of a recognized investor compensation company, including—
  - (i) any member of the board of directors of the company; or
  - (ii) any member of any committee established by the company,

in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties to which this subsection applies.

- (2) The duties to which subsection (1) applies are those—

- (a) that relate to or arise out of a function that has been transferred to the recognized investor compensation company under section 80; or

**82. 認可投資者賠償公司訂立規章**

在不局限認可投資者賠償公司訂立規章的其他權力的原則下，該公司可為以下目的而就有需要或可取的事宜訂立規章——

- (a) 該公司的妥善和有效率的管理及運作；
- (b) 就該公司為其運作的目的取得所需或適當的保險、擔保、保證或其他保證物，或訂立所需或適當的財務安排；
- (c) 該公司的妥善和有效率執行根據第 80 條轉移予該公司的職能。

**83. 批准認可投資者賠償公司規章或對該等規章的修訂**

- (1) 除第 (7) 款另有規定外，認可投資者賠償公司的規章（不論是否根據第 82 條訂立）或對該等規章的修訂須獲證監會書面批准，否則不具效力。
- (2) 認可投資者賠償公司須——
  - (a) 將或安排將任何根據第 (1) 款須取得批准的規章及修訂，呈交證監會批准，呈交的規章及修訂須附有就該等規章及修訂的目的及相當可能會有的影響（包括對投資大眾的影響）而作出的解釋，該等解釋的詳細程度，須足以使該會能夠決定是否批准該等規章及修訂；及
  - (b) 在屬根據第 (7) 款宣布的類別的規章訂立後，及在對該等規章的修訂作出後，在合理地切實可行的範圍內盡快向證監會呈交或安排向該會呈交該等規章及修訂，讓該會知悉。

- (b) to which the company is subject under rules made under Part XII.

**82. Rules by recognized investor compensation company**

Without limiting any of its other powers to make rules, a recognized investor compensation company may make rules for such matters as are necessary or desirable—

- (a) for the proper and efficient management and operation of the company;
- (b) for the obtaining of such insurance, surety, guarantee or other security or the making of such financial arrangement by the company as may be necessary or appropriate for the purposes of its operation;
- (c) for the proper and efficient performance of a function transferred to the company under section 80.

**83. Approval of rules or amendments to rules of recognized investor compensation companies**

- (1) Subject to subsection (7), no rule (whether or not made under section 82) of a recognized investor compensation company or any amendment thereto shall have effect unless it has the approval in writing of the Commission.
- (2) A recognized investor compensation company shall submit or cause to be submitted to the Commission—
  - (a) for its approval the rules and every amendment thereto that require approval under subsection (1), together with explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them; and
  - (b) for its information the rules which belong to a class the subject of a declaration under subsection (7) and

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- (3) 證監會須在收到認可投資者賠償公司根據第 (2)(a) 款呈交的規章或修訂後的 6 個星期內，藉送達書面通知予該公司，批准或拒絕批准該等規章或修訂（視屬何情況而定），或批准或拒絕批准其中任何部分；如該會拒絕批准，須在有關通知中說明拒絕批准的理由。
- (4) 證監會根據第 (3) 款給予的批准，可受某些在該等規章或修訂或其中任何部分生效前須符合的要求所規限。
- (5) 證監會可在有關的認可投資者賠償公司的同意下，在任何個別個案中延展第 (3) 款訂明的期限。
- (6) 財政司司長可在諮詢證監會及有關的認可投資者賠償公司後，延展第 (3) 款訂明的期限。
- (7) 證監會可藉憲報公告宣布認可投資者賠償公司的某類別的規章無須根據第 (1) 款獲批准，而任何屬於該類別的該公司規章（包括對該等規章的修訂）即使沒有根據第 (1) 款獲批准，仍屬有效。
- (8) 認可投資者賠償公司須以證監會批准的方式，向公眾提供該公司的規章。
- (9) 根據第 82 條訂立的規章及第 (7) 款提述的公告均不是附屬法例。

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- every amendment to the rules, as soon as reasonably practicable after they have been made.
- (3) The Commission shall, not later than 6 weeks after the receipt of a submission under subsection (2)(a) from a recognized investor compensation company, by notice in writing served on the company, give its approval or refuse to give its approval (together with its reasons for the refusal) to the rules or amendment of the rules (as the case may be) or any part thereof, the subject of the submission.
  - (4) The Commission may give its approval under subsection (3) subject to requirements which shall be satisfied before the rules or amendment of the rules or any part thereof take effect.
  - (5) The Commission may in a particular case, with the agreement of the recognized investor compensation company concerned, extend the time prescribed in subsection (3).
  - (6) The Financial Secretary may, after consultation with the Commission and the recognized investor compensation company concerned, extend the time prescribed in subsection (3).
  - (7) The Commission may, by notice published in the Gazette, declare any class of rules of a recognized investor compensation company to be a class of rules which are not required to be approved under subsection (1) and, accordingly, any rules of the company which belong to that class (including any amendment thereto) shall have effect notwithstanding that they have not been so approved.
  - (8) A recognized investor compensation company shall make its rules available to the public in a manner approved by the Commission.
  - (9) Neither the rules under section 82 nor a notice under subsection (7) is subsidiary legislation.



**84. 認可投資者賠償公司交出紀錄等**

- (1) 證監會可藉送達書面通知予認可投資者賠償公司，要求該公司在通知指明的期間內，向該會提供該會為執行其職能而合理地要求的以下資料——
  - (a) 該公司在與其業務有關連的情況下或為其業務而備存的，或就第 XII 部所指的賠償基金的管理而備存的簿冊及紀錄；及
  - (b) 與該公司的業務或第 XII 部所指的賠償基金的管理有關的其他資料。
- (2) 根據第 (1) 款獲送達通知的認可投資者賠償公司如無合理辯解而沒有遵從該通知，即屬犯罪，一經定罪，可處第 5 級罰款。

**85. 撤回對投資者賠償公司的認可**

- (1) 在第 (3)、(4) 及 (5) 款的規限下，證監會可在諮詢財政司長後，藉送達書面通知予認可投資者賠償公司，撤回該公司作為投資者賠償公司的認可，自該通知指明的生效日期起生效。
- (2) 證監會可藉根據第 (1) 款送達的通知准許有關的認可投資者賠償公司在有關撤回的生效日期當日或之後，為——
  - (a) 結束該公司的運作的目的；或
  - (b) 保障投資大眾的利益或公眾利益的目的，

**84. Production of records, etc. by recognized investor compensation company**

- (1) The Commission may, by notice in writing served on a recognized investor compensation 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 the management and administration of the compensation fund under Part XII; and
  - (b) such other information relating to its business or the management and administration of the compensation fund under Part XII,as the Commission may reasonably require for the performance of its functions.
- (2) A recognized investor compensation 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.

**85. Withdrawal of recognition of investor compensation company**

- (1) Subject to subsections (3), (4) and (5), the Commission may, after consultation with the Financial Secretary, by notice in writing served on a recognized investor compensation company, withdraw the company's recognition as an investor compensation company with effect from a date specified in the notice for the purpose.
- (2) The Commission may by the notice served under subsection (1) permit the recognized investor compensation company to continue, on or after the date on which the withdrawal is to take effect, to carry on such activities affected by the



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- 而繼續進行證監會在該通知中指明的受該項撤回所影響的活動。
- (3) 證監會只可在以下情況下根據第 (1) 款向某認可投資者賠償公司送達通知 ——
- (a) 該公司沒有遵從本條例的任何規定或根據第 79 條施加的條件；
  - (b) 該公司正在清盤；
  - (c) 該公司已停止執行根據第 80 條轉予該公司的任何職能；或
  - (d) 該公司請求該會如此送達通知。
- (4) 證監會在根據第 (1) 款就某認可投資者賠償公司行使權力前，須給予該公司合理的陳詞機會，但如該會是回應根據第 (3)(d) 款作出的請求，則屬例外。
- (5) 證監會須給予認可投資者賠償公司不少於 14 日的書面通知，以告知該公司該會擬根據第 (1) 款送達通知的意向及如此行事的理由，但如該會是回應根據第 (3)(d) 款作出的請求，則屬例外。
- (6) 凡證監會根據第 (1) 款撤回某公司作為投資者賠償公司的認可，該會須安排在憲報刊登公告以公布此事。
- (7) 根據本條送達的通知即時生效。

## 86. 上訴

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- withdrawal as the Commission may specify in the notice for the purpose of—
- (a) closing down the operations of the company; or
  - (b) protecting the interest of the investing public or the public interest.
- (3) The Commission may only serve a notice under subsection (1) in relation to a recognized investor compensation company that—
- (a) fails to comply with any requirement of this Ordinance or with a condition imposed under section 79;
  - (b) is being wound up;
  - (c) ceases to perform any function transferred to it under section 80; or
  - (d) requests the Commission to do so.
- (4) Except where responding to a request under subsection (3)(d), the Commission shall not exercise its power under subsection (1) in relation to a recognized investor compensation company unless it has given the company a reasonable opportunity of being heard.
- (5) Except where responding to a request under subsection (3)(d), the Commission shall give the recognized investor compensation company not less than 14 days' notice in writing of its intention to serve a notice under subsection (1) and the grounds for doing so.
- (6) Where the Commission withdraws a company's recognition as an investor compensation company under subsection (1), it shall cause notice of that fact to be published in the Gazette.
- (7) A notice served under this section shall take effect immediately.

## 86. Appeals

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- (1) 如證監會於某日根據第 85(1) 條向某公司送達通知，該公司可在該日後 14 日內，或在該會在該通知指明的較長限期（如有的話）內，針對該通知向行政長官會同行政會議提出上訴。
- (2) 行政長官會同行政會議就第 (1) 款提述的上訴所作的決定，即為最終決定。

#### 87. 從賠償基金撥款支付後認可投資者賠償公司在申索人權利等方面的代位權

- (1) 凡任何人根據在第 XII 部下訂立的規則，就導致他蒙受某項損失的某項違責提出申索，在認可投資者賠償公司應該申索而從賠償基金撥款作出支付後 ——
  - (a) 除第 (1A) 款另有規定外，申索人就該項損失而享有的一切權利及補救，須在上述支付的款額在該項損失（在不考慮任何為該項損失而從或須從賠償基金撥款支付的賠償的情況下）所佔的份額的範圍內，由該公司藉代位而享有；及（由 2004 年第 7 號第 55 條修訂）
  - (b) 申索人及該公司各別享有在破產或清盤的情況下，或藉法律程序或其他方法，就該項損失而 ——
    - (i) 從犯該項違責的有關的人的資產中收取任何款項的權利；或
    - (ii) 收取任何由該有關的人以信託方式為申索人持有的財產的權利，
 為順序攤還次序相同的權利。
- (1A) 該公司不得藉代位而具有申索人所享有的從《存款保障計劃條例》（第 581 章）第 14 條所設立的存款保障計劃基金取得補償的權利及補救。（由 2004 年第 7 號第 55 條增補）

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- (1) A company served with a notice under section 85(1) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period (if any) as the Commission specifies in the notice.
- (2) The decision of the Chief Executive in Council on an appeal under subsection (1) shall be final.

#### 87. Subrogation of recognized investor compensation company to rights, etc. of claimant on payment from compensation fund

- (1) Where a recognized investor compensation company makes any payment out of the compensation fund in respect of any claim made under rules made under Part XII—
  - (a) subject to subsection (1A), the company shall be subrogated, to the extent which that payment bears to the loss sustained (without taking into account any compensation paid or payable out of the compensation fund for the loss) by the claimant by reason of the default on which the claim was based, to all the rights and remedies of the claimant in relation to the loss; and (*Amended 7 of 2004 s. 55*)
  - (b) the respective rights of the claimant and the company in bankruptcy or winding up or by legal proceedings or otherwise to receive in respect of the loss—
    - (i) any sum out of the assets of the person concerned who is in default; or
    - (ii) any property held on trust by that person for the claimant,
 shall rank equally.
- (1A) The company is not subrogated to any rights and remedies of the claimant in respect of compensation from the Deposit Protection Scheme Fund established by section 14 of the

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- (2) 認可投資者賠償公司根據第 (1) 款追討所得的一切資產 (不論是現金或其他資產)，須按證監會指示的方式處理，並成為賠償基金一部分。

### 88. 認可投資者賠償公司的財務報表

- (1) 除第 (3) 款另有規定外，認可投資者賠償公司須 ——
- 就為施行本條而藉根據第 397 條訂立的規則訂明的期間，擬備該等規則訂明的財務報表及其他文件；並
  - 在該等報表及文件所關乎的財政年度終結後 4 個月內，將該等報表及文件連同核數師報告呈交證監會。
- (2) 在不局限第 (1) 款的一般性的原則下，該款中關乎財務報表、其他文件及核數師報告的規定，包括以下規定 ——
- 該等報表及文件須就為施行本條而藉根據第 397 條訂立的規則訂明的事宜而擬備，並載有如此訂明的詳情；
  - 該報告須載有該等規則訂明的詳情，包括如此訂明的意見陳述；
  - 該等報表、文件及報告須按照該等規則訂明的原則或基準擬備；及
  - 在不局限《公司條例》(第 622 章) 第 387 條的一般性的原則下，該等報表及文件須由擬備該等報表及文件的認可投資者賠償公司的最高行政人員簽署。(由 2012 年第 28 號第 912 及 920 條修訂)
- (3) 凡根據第 (1) 款規定須呈交財務報表、其他文件及核數師報告的認可投資者賠償公司提出書面申請，而證監會信納有特別理由支持，則該會可將呈交該等報表、文件及報告的限期，延展該會認為適當的一段時期，並可施加

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Deposit Protection Scheme Ordinance (Cap. 581). (*Added 7 of 2004 s. 55*)

- (2) All assets (whether in cash or otherwise) recovered by the recognized investor compensation company under subsection (1) shall be dealt with in such manner as the Commission may direct and shall become part of the compensation fund.

### 88. Financial statements of a recognized investor compensation company

- (1) Subject to subsection (3), a recognized investor compensation company shall—
- prepare such financial statements and other documents, for such periods, as are prescribed by rules made under section 397 for the purposes of this section; and
  - submit the financial statements and other documents, together with an auditor's report, to the Commission not later than 4 months after the end of the financial year to which they relate.
- (2) Without limiting the generality of subsection (1), the requirements under that subsection relating to the financial statements and other documents, and the auditor's report, referred to in that subsection include the requirements that—
- the financial statements and other documents are to relate to such matters and contain such particulars as are prescribed by rules made under section 397 for the purposes of this section;
  - the auditor's report is to contain such particulars, including such statement of opinion, as are prescribed by the rules;
  - the financial statements and other documents, and the auditor's report, are to be prepared in accordance with

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該會認為適當的條件以作規限；凡該會准予延展時限，第 (1) 款須在該項延展的規限下適用。

- (4) 認可投資者賠償公司須安排將該公司根據第 (1) 款須呈交的財務報表、其他文件或核數師報告的文本，送交財政司司長及在憲報刊登。
- (5) 在本條中，凡提述財務報表，不得解釋為包括提述賠償基金的財務報表。

## 89. 認可投資者賠償公司的僱員及轉授

- (1) 證監會可安排其高級人員、僱員、代理人或顧問協助認可投資者賠償公司運作。

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such principles or bases as are prescribed by the rules; and

- (d) without limiting the generality of section 387 of the Companies Ordinance (Cap. 622), the financial statements and other documents are to be signed by the chief executive officer of the recognized investor compensation company, by which they are prepared. *(Amended 28 of 2012 ss. 912 & 920)*
- (3) On an application in writing by the recognized investor compensation company by which any financial statements and other documents, and any auditor's report, are required under subsection (1) to be submitted, the Commission may, where it is satisfied that there are special reasons for so doing, extend the period within which the financial statements and other documents, and the auditor's report, are required to be submitted, for such period and subject to such conditions as the Commission considers appropriate, and upon the Commission granting the extension, subsection (1) shall apply subject to the extension accordingly.
- (4) A recognized investor compensation company shall cause a copy of each of the financial statements and other documents and the auditor's report that are required under subsection (1) to be submitted by it to be sent to the Financial Secretary and to be published in the Gazette.
- (5) A reference in this section to financial statements shall not be construed as including a reference to financial statements of the compensation fund.

## 89. Employees of and delegations by a recognized investor compensation company

- (1) The Commission may arrange for any of its officers, employees, agents or consultants to assist in the operations of a recognized investor compensation company.

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- (2) 認可交易所或認可控制人可在認可投資者賠償公司同意下，安排該交易所或控制人（視屬何情況而定）的高級人員、僱員、代理人或顧問協助該公司運作。
- (3) 如獲證監會批准，認可投資者賠償公司可藉決議，將其任何權力及責任（根據第 82 條獲授予的權力除外）以書面轉授予任何人，並可按該公司認為適當而對該項轉授施加或不施加限制或條件。

**90. 認可投資者賠償公司的其他活動**

- (1) 認可投資者賠償公司除執行根據第 80 條轉移予它的職能外，亦可進行證監會書面批准的其他活動或業務。
- (2) 除非證監會信納第 (1) 款提述的其他活動或業務與管理第 XII 部所指的賠償基金有附帶關係，否則不得批准進行該等活動或業務。

**第 6 分部 —— 一般條文 —— 交易所公司、結算所、交易所控制人及投資者賠償公司****91. 提供資料**

- (1) 證監會、認可交易所、認可結算所、認可控制人及認可投資者賠償公司有權互相提供關於本身事務及以下事務的資料 ——
  - (a) 就認可交易所而言，其任何交易所參與者的事務；
  - (b) 就認可結算所而言，其任何結算所參與者的事務；

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- (2) A recognized exchange company or recognized exchange controller may, with the consent of a recognized investor compensation company, arrange for any of its officers, employees, agents or consultants to assist in the operations of that recognized investor compensation company.
- (3) A recognized investor compensation company may by resolution and subject to the approval of the Commission, with or without restrictions or conditions as the company considers appropriate, delegate in writing to any person any of its powers and duties other than its power under section 82.

**90. Further activities of recognized investor compensation company**

- (1) A recognized investor compensation company may, in addition to performing a function transferred to it under section 80, conduct such activities or businesses as may be approved in writing by the Commission.
- (2) The Commission shall not approve the conduct of any activities or businesses referred to in subsection (1) unless it is satisfied that such activities or businesses are incidental to the management or administration of the compensation fund under Part XII.

**Division 6—General—Exchange companies, clearing houses, exchange controllers and investor compensation companies****91. Supply of information**

- (1) The Commission, a recognized exchange company, a recognized clearing house, a recognized exchange controller or a recognized investor compensation company shall be entitled to supply each other with information about its affairs and—



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- (c) 就認可控制人而言，其任何附屬公司的事務；或
  - (d) 就認可投資者賠償公司而言，任何針對賠償基金提出的申索，
- 但該項資料提供必須是 ——
- (i) (在資料是提供予證監會的情況下) 為執行有關條文授予證監會的職能而合理所需的；或
  - (ii) (在任何其他情況下) 為執行本部或獲提供資料的該所、控制人或公司各別規章授予獲提供資料的該所、控制人或公司的職能而合理所需的。
- (2) 證監會可藉送達書面通知予認可交易所、認可結算所、認可控制人或認可投資者賠償公司，要求該所、控制人或公司 (視屬何情況而定) 向該會提供該會為執行任何有關條文授予的職能而合理地要求的資料，包括由該所、控制人或公司 (視屬何情況而定) 管有而關乎以下事宜的資料 ——
- (a) 就認可交易所而言，其任何交易所參與者的事務；
  - (b) 就認可結算所而言，其任何結算所參與者的事務；
  - (c) 就認可控制人而言，其任何附屬公司的事務；或
  - (d) 就認可投資者賠償公司而言，任何針對賠償基金提出的申索。
- (3) 根據第 (1) 或 (2) 款提供資料不得就誹謗法而言視作發布，而在不局限第 380(3) 條的一般性的原則下及在不抵觸第 378 條的條文下，任何提供該等資料的人並不因此而招致法律責任。
- (4) 凡認可交易所、認可結算所、認可控制人或認可投資者賠償公司根據第 (1) 款獲提供任何資料，該所、控制人或公司 (視屬何情況而定) 除非獲證監會同意，否則不得向任何其他人士披露該資料或該資料任何部分。

- (a) in the case of a recognized exchange company, the affairs of any of its exchange participants;
  - (b) in the case of a recognized clearing house, the affairs of any of its clearing participants;
  - (c) in the case of a recognized exchange controller, the affairs of any of its subsidiaries; or
  - (d) in the case of a recognized investor compensation company, any claim made against the compensation fund,
- if the supply of information is reasonably required for the performance of—
- (i) in the case where the information is supplied to the Commission, the functions of the Commission under the relevant provisions; or
  - (ii) in any other cases, the functions of the recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company to which the information is supplied, under this Part or their respective rules.
- (2) The Commission may, by notice in writing served on a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, require it to supply the Commission with such information as the Commission may reasonably require for the performance of the functions of the Commission under any of the relevant provisions, including information in its possession relating to—
- (a) in the case of a recognized exchange company, the affairs of any of its exchange participants;
  - (b) in the case of a recognized clearing house, the affairs of any of its clearing participants;



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## 92. 證監會的額外權力 —— 限制通知

- (1) 在第 (2)、(6) 及 (14) 款的規限下，證監會如信納送達有關通知 ——
- (a) 就維護投資大眾的利益或公眾利益而言是適當的；
  - (b) 對保障投資者是適當的；或
  - (c) 對妥善規管認可交易所、認可結算所、認可控制人或認可投資者賠償公司是適當的，
- 則可藉送達書面通知 (**限制通知**) 予該所、控制人或公司 ——
- (i) 要求該所、控制人或公司在該通知指明的限期內 ——
  - (A) 以該通知指明的方式修訂、補充、撤回或撤銷該通知指明的其規章或其他文書中的條文；

- (c) in the case of a recognized exchange controller, the affairs of any of its subsidiaries; or
  - (d) in the case of a recognized investor compensation company, any claim made against the compensation fund.
- (3) The supply of information under subsection (1) or (2) shall not be treated as publication for the purposes of the law of defamation and, without limiting the generality of section 380(3) but subject to section 378, a person supplying the information does not incur liability as a consequence thereof.
- (4) Where any information is supplied under subsection (1) to a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, the company concerned, the clearing house or the controller to whom the information is supplied shall not disclose the information, or any part of it, to any other person without the consent of the Commission.

## 92. Additional powers of Commission—restriction notices

- (1) Subject to subsections (2), (6) and (14), where the Commission is satisfied that it is appropriate to do so—
- (a) in the interest of the investing public or in the public interest;
  - (b) for the protection of investors; or
  - (c) for the proper regulation of a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company,
- it may by notice in writing (**restriction notice**) served on the exchange company, clearing house, exchange controller or investor compensation company do any or all of the following—

- (B) 就其業務的管理、進行或營運採取該通知指明的行動；
- (ii) 禁止該所、控制人或公司在該通知指明的期間，就其業務的管理、進行或營運作出該通知指明的作為或其他事情。
- (2) 除非符合以下情況，否則證監會不得送達限制通知 ——
- (a) 該會事先就該通知諮詢財政司司長；
- (b) 該會事先書面要求有關的認可交易所、認可結算所、認可控制人或認可投資者賠償公司實施或安排實施該項要求內指明的條文（包括要求它不作出任何作為或其他事情），而該條文的效果相類於該通知指明的要求或禁止的效果；如該通知指明多於一項要求或禁止，則上述要求內指明的所有條文的綜合效果相類於該等要求或禁止的綜合效果；及
- (c) (b) 段所指的要求 ——
- (i) 載有一項條文，要求有關的認可交易所、認可結算所、認可控制人或認可投資者賠償公司根據第 (1)(i) 款修訂、補充、撤回或撤銷其章程中的任何條文，而在該項要求指明的限期（該限期不得少於 45 日）屆滿時，該項條文沒有獲得遵從；或
- (ii) 載有一項條文，要求有關的認可交易所、認可結算所、認可控制人或認可投資者賠償公司作出或不作出任何作為或其他事情，而證監會信納該項條文沒有獲得遵從。
- (3) 凡限制通知要求任何認可交易所、認可結算所、認可控制人或認可投資者賠償公司修訂、補充、撤回或撤銷其章程中的任何條文，該所、控制人或公司可針對該通知向行政長官會同行政會議提出上訴。
- (4) 行政長官會同行政會議就第 (3) 款提述的上訴所作的決定，即為最終決定。

- (i) require the exchange company, clearing house, exchange controller or investor compensation company before the expiry of a period specified in the notice—
- (A) to amend, supplement, withdraw or revoke, in the manner specified in the notice, a provision of its rules or other instrument so specified;
- (B) to take such action relating to the management, conduct or operation of its business as may be so specified;
- (ii) prohibit the exchange company, clearing house, exchange controller or investor compensation company from doing, during a period so specified, such act or other thing relating to the management, conduct or operation of its business as may be so specified.
- (2) The Commission shall not serve a restriction notice unless—
- (a) it has previously consulted the Financial Secretary in relation to the notice;
- (b) it has previously requested in writing the exchange company, clearing house, exchange controller or investor compensation company concerned to put, or cause to be put, into effect a provision (which includes a request to refrain from doing any act or other thing) specified in the request and similar in effect to the requirement or prohibition specified in the restriction notice or, where there is more than one such requirement or prohibition so specified, provisions the combined effect of all of which is similar to the combined effect of the requirements or prohibitions so specified; and
- (c) in the case of a request under paragraph (b) which—
- (i) contains a provision requesting the exchange company, clearing house, exchange controller or investor compensation company concerned

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- (5) 根據本條送達的限制通知即時生效。
- (6) 限制通知內就第 (1)(ii) 款所指的禁止而指明的期間，不得超逾自該通知的日期起計的 6 個月。
- (7) 證監會可在諮詢財政司司長後，藉送達書面通知予有關的認可交易所、認可結算所、認可控制人或認可投資者賠償公司，延展限制通知的有效期，延展次數不限，但每次不得超逾 3 個月。
- (8) 凡根據本條發出限制通知或延展該通知的有效期，證監會可在憲報刊登該通知或(如適當的話)該項延展的詳情。
- (9) 如證監會向原訟法庭提出申請，該法庭可作出命令強制執行限制通知，猶如該通知是該法庭的判決或命令一樣。
- (10) 凡任何認可交易所、認可結算所、認可控制人或認可投資者賠償公司沒有遵從第 (1)(i)(A) 款所指的限制通知的要求 ——
  - (a) 如該要求是修訂或補充某條文，則該條文即當作具有經修訂或補充(視屬何情況而定)後的效力，猶如該要求已獲遵從一樣；或
  - (b) 如該要求是撤回或撤銷某條文，則該條文即終止有效。
- (11) 凡 ——
  - (a) 限制通知內包括第 (1)(i)(A) 款所述的要求，而該要求與某公司的章程有關；及
  - (b) 該要求所關乎的條文已憑藉第 (10) 款具有效力或終止有效(視屬何情況而定)，
 則證監會須盡快將該通知的副本交付公司註冊處處長。
- (12) 如有上訴根據第 (3) 款提出，而且並沒有撤回，則證監會須盡快以書面將上訴結果通知公司註冊處處長。
- (13) 以下人士 ——
  - (a) 認可交易所、認可結算所、認可控制人或認可投資者賠償公司；

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- to amend, supplement, withdraw or revoke any provision of its constitution under subsection (1)(i), the provision has not been complied with before the expiration of the period specified in relation thereto in the request being not less than 45 days; or
  - (ii) contains a provision requesting the exchange company, clearing house, exchange controller or investor compensation company concerned to do or refrain from doing any act or other thing, the Commission is satisfied that the provision has not been complied with.
- (3) A recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company may appeal to the Chief Executive in Council against a restriction notice that requires the exchange company, clearing house, exchange controller or investor compensation company to amend, supplement, withdraw or revoke any provision of its constitution.
  - (4) The decision of the Chief Executive in Council on an appeal under subsection (3) shall be final.
  - (5) A restriction notice served under this section shall take effect immediately.
  - (6) A period specified in a restriction notice in relation to a prohibition under subsection (1)(ii) shall not exceed 6 months beginning on the date of the notice.
  - (7) The Commission may, after consultation with the Financial Secretary, by notice in writing served on the exchange company, clearing house, exchange controller or investor compensation company concerned, extend, for a period or successive periods of not more than 3 months each, the period during which a restriction notice is to remain in force.

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- (b) 該所、控制人或公司的高級人員或僱員；
- (c) 交易所參與者；或
- (d) 結算所參與者，

在履行或其本意是履行限制通知時，如出於真誠而作出或不作出任何作為，則在不局限第 380(1) 條的一般性的原則下，無須就該等作為或不作為承擔任何民事法律責任，不論是在合約法、侵權法、誹謗法、衡平法或是在其他法律下產生的民事法律責任。

- (14) 本條不得解釋為使證監會能夠根據本條作出該會可根據第 28(1)(b) 或 29 條藉指令而作出的事情。

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- (8) Where a restriction notice is issued or extended under this section, the Commission may publish in the Gazette a copy of the notice or, as may be appropriate, particulars of the extension.
- (9) A restriction notice may, on the application of the Commission to the Court of First Instance, be enforced by an order of the Court as if it were a judgment or order of the Court.
- (10) Where a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company is in breach of a requirement in a restriction notice under subsection (1)(i)(A) relating to a provision of its rules or other instrument—
  - (a) in the case of a requirement to amend or supplement such provision, the provision shall be deemed to have effect as if the requirement had been complied with; or
  - (b) in the case of a requirement to withdraw or revoke such provision, the provision ceases to have effect.
- (11) Where—
  - (a) a restriction notice includes a requirement described in subsection (1)(i)(A) and the requirement relates to the constitution of a company; and
  - (b) by virtue of subsection (10) the provision to which the requirement relates has effect as if the requirement had been complied with or has ceased to have effect (as the case may be),
 the Commission shall, as soon as may be, deliver to the Registrar of Companies a copy of the notice.
- (12) If there is an appeal under subsection (3) against the notice and the appeal is not withdrawn, the Commission shall, as

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### 93. 證監會的額外權力 —— 暫停職能令

- (1) 證監會如信納作出有關命令 (**暫停職能令**) ——
- (a) 就維護投資大眾的利益或公眾利益而言是適當的；
  - (b) 對保障投資者是適當的；或
  - (c) 對妥善規管認可交易所、認可結算所、認可控制人或認可投資者賠償公司是適當的，
- 則可在諮詢財政司司長後，作出與以下所有或其中任何職能有關的暫停職能令 ——

soon as may be, inform the Registrar of Companies in writing of the outcome of the appeal.

- (13) Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by—
- (a) a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company;
  - (b) an officer or employee of a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company;
  - (c) an exchange participant; or
  - (d) a clearing participant,
- in respect of anything done or omitted to be done in good faith in compliance or purported compliance with a restriction notice.
- (14) This section shall not be construed as enabling the Commission to do under this section anything which may be done by the Commission by direction under section 28(1)(b) or 29.

### 93. Additional powers of Commission—suspension orders

- (1) Where the Commission is satisfied that it is appropriate to do so—
- (a) in the interest of the investing public or in the public interest;
  - (b) for the protection of investors; or
  - (c) for the proper regulation of a recognized exchange company, recognized clearing house, recognized



- (i) 該所、控制人或公司的董事局或管治團體的職能；
  - (ii) 第 (i) 段提述的董事局或管治團體的成員的職能；
  - (iii) 第 (i) 段提述的董事局或管治團體設立的委員會 (包括小組委員會) 的職能；
  - (iv) 該所、控制人或公司的最高行政人員 (不論實際如何稱述) 的職能。
- (2) 以下條文在暫停職能令有效時適用 ——
- (a) 該命令所關乎的認可交易所、認可結算所、認可控制人或認可投資者賠償公司或其董事局、管治團體、委員會或高級人員，均不得執行該命令所關乎的職能；
  - (b) (a) 段適用的職能可由該命令就該職能指明的人執行；
  - (c) (a) 段提述的人不得藉任何作為或不作為直接或間接影響該段提述的職能的執行方式。
- (3) 認可交易所、認可結算所、認可控制人或認可投資者賠償公司可針對就其發出的暫停職能令，向行政長官會同行政會議提出上訴。
- (4) 行政長官會同行政會議就第 (3) 款提述的上訴所作的決定，即為最終決定。
- (5) 除第 (9) 款另有規定外，暫停職能令的有效期在該命令中指明，但不得超逾 6 個月。
- (6) 暫停職能令或根據第 (9) 款所作的延展，須在該命令或延展通知的文本根據第 (10)(a) 款送達該命令所關乎的認可交易所、認可結算所、認可控制人或認可投資者賠償公司時生效。
- (7) 凡根據本條作出暫停職能令或延展其有效期，證監會須在合理地切實可行的範圍內盡快將該命令或 (如適當的話) 延展通知的文本送交該命令所關乎的認可交易所、認可結算所、認可控制人或認可投資者賠償公司的最高行政人員，如該會認為在有關情況下將該文本送交該所、控

- exchange controller or recognized investor compensation company,
- it may, after consultation with the Financial Secretary, make an order (*suspension order*) relating to all or any of the following—
- (i) the functions of the board of directors or governing body of the exchange company, clearing house, exchange controller or investor compensation company;
  - (ii) the functions of a director of a board or a member of a body referred to in paragraph (i);
  - (iii) the functions of a committee, including a sub-committee, established by a board or body referred to in paragraph (i);
  - (iv) the functions of the chief executive officer (by whatever name called) of the exchange company, clearing house, exchange controller or investor compensation company.
- (2) While a suspension order is in force the following provisions apply—
- (a) neither the recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company to which the order relates nor any board, governing body, committee or officer of it shall perform a function to which the order relates;
  - (b) a function to which paragraph (a) applies may be performed by the person specified in the order in relation to that function;
  - (c) a person referred to in paragraph (a) shall not, by act or omission, either directly or indirectly, affect the manner in which a function referred to in that paragraph is performed.



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- 制人或公司的董事或其委員會 ( 如有的話 ) 的委員是適當的，則可送交予該等人士。
- (8) 第 (7) 款不影響第 (6) 款的施行。
- (9) 證監會可在諮詢財政司司長後，延展暫停職能令的有效期，延展次數不限，但每次不得超逾 3 個月。
- (10) 凡根據本條作出暫停職能令或延展其有效期，證監會須 ——
- (a) 立即將該命令或延展通知的文本送達該命令所關乎的認可交易所、認可結算所、認可控制人或認可投資者賠償公司；及
- (b) 在憲報刊登該命令或 ( 如適當的話 ) 通知，並透過至少一種其他媒介發表。
- (11) 如證監會向原訟法庭提出申請，該法庭可作出命令強制執行有關的暫停職能令，猶如該命令是該法庭的判決或命令一樣。
- (12) 有關的認可交易所、認可結算所、認可控制人或認可投資者賠償公司須應要求，向證監會支付該會或其成員或僱員就某暫停職能令合理地招致的費用及開支。
- (13) 證監會可將根據第 (12) 款要求的費用及開支的款額，作為民事債項予以追討。
- (14) 任何人明知而違反第 (2)(c) 款，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

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- (3) A recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company may appeal to the Chief Executive in Council against a suspension order made in respect of the exchange company, clearing house, exchange controller or investor compensation company.
- (4) The decision of the Chief Executive in Council on an appeal under subsection (3) shall be final.
- (5) Subject to subsection (9), a suspension order shall continue in force for the period not exceeding 6 months specified in the order.
- (6) A suspension order or an extension of it under subsection (9) shall take effect when a copy of the order or notice of the extension is served under subsection (10)(a) on the exchange company, clearing house, exchange controller or investor compensation company to which the order relates.
- (7) Where a suspension order is made or extended under this section, the Commission shall, as soon as reasonably practicable to do so, give a copy of a suspension order or, as may be appropriate, notice of its extension to the chief executive officer of the exchange company, clearing house, exchange controller or investor compensation company to which the order relates and to the directors or members of its committee (if any) as the Commission considers appropriate in the circumstances.
- (8) Nothing in subsection (7) affects subsection (6).
- (9) The Commission may, after consultation with the Financial Secretary, extend for a period or successive periods of not more than 3 months each the period during which a suspension order is to remain in force.
- (10) Where a suspension order is made or extended under this section, the Commission shall—

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- (a) forthwith serve a copy of the order or notice in writing of the extension on the exchange company, clearing house, exchange controller or investor compensation company to which the order relates; and
- (b) publish in the Gazette and publish through at least one other medium a copy of the suspension order or, as may be appropriate, notice of its extension.
- (11) A suspension order may, on the application of the Commission to the Court of First Instance, be enforced by an order of the Court as if it were a judgment or order of the Court.
- (12) The exchange company, clearing house, exchange controller or investor compensation company concerned shall pay to the Commission on demand costs and expenses reasonably incurred by the Commission or a member or employee of the Commission in connection with a suspension order.
- (13) The amount of the costs and expenses demanded under subsection (12) are recoverable by the Commission as a civil debt.
- (14) A person who knowingly contravenes subsection (2)(c) commits an offence and is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

#### 94. 《公司條例》及《公司 (清盤及雜項條文) 條例》的適用

(由 2012 年第 28 號第 912 及 920 條修訂)

凡本部與《公司條例》(第 622 章)或《公司 (清盤及雜項條文) 條例》(第 32 章)在對認可交易所、認可結算所、認可控制人或認可投資者賠償公司的適用方面有所抵觸，以本部為準。

#### 94. Application of Companies Ordinance and Companies (Winding Up and Miscellaneous Provisions) Ordinance

(Amended 28 of 2012 ss. 912 & 920)

Where there is any inconsistency between this Part and the Companies Ordinance (Cap. 622) or the Companies (Winding

(由 2012 年第 28 號第 912 及 920 條修訂)

Up and Miscellaneous Provisions) Ordinance (Cap. 32) in its application to a recognized exchange company, a recognized clearing house, a recognized exchange controller or a recognized investor compensation company, this Part prevails.

(Amended 28 of 2012 ss. 912 &amp; 920)

**第 7 分部 —— 自動化交易服務****Division 7—Automated trading services****95. 認可提供自動化交易服務****95. Authorization for providing automated trading services**

- (1) 任何人不得 ——
  - (a) 提供自動化交易服務；或
  - (b) 要約提供該服務，
 除非該人是 ——
  - (i) 根據第 (2) 款獲認可提供自動化交易服務的人；
  - (ii) 根據第 (2) 款獲認可提供該服務的人的僱員或代理人並且以該身為該人或代該人行事；
  - (iii) 就第 7 類受規管活動獲發牌或獲註冊的中介人；
  - (iv) 第 7 類受規管活動的持牌代表並且以該身為他所隸屬的持牌法團行事；或
  - (v) 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為受就第 7 類受規管活動獲註冊的註冊機構就該活動聘用的人並且以該身為該機構行事。
- (2) 凡證監會信納認可某人提供自動化交易服務是適當的，則可應該人的申請，藉送達書面通知予該人，認可該人提供該服務，而該項認可 ——
  - (a) 受該會認為適當並在該通知中指明的條件規限；及
  - (b) 自該通知指明的生效日期起生效。
- (3) 凡某人根據第 (2) 款獲認可，證監會須安排在憲報刊登公告以公布此事。

- (1) No person shall—
  - (a) provide automated trading services; or
  - (b) offer to provide automated trading services,
 unless that person—
  - (i) is authorized under subsection (2);
  - (ii) is an employee or agent of a person authorized under subsection (2), and is acting in that capacity for or on behalf of that person;
  - (iii) is an intermediary licensed or registered for Type 7 regulated activity;
  - (iv) is a licensed representative for Type 7 regulated activity, and is acting in that capacity for the licensed corporation to which the representative is accredited; or
  - (v) is an individual whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged in respect of Type 7 regulated activity by a registered institution registered for that regulated activity, and is acting in that capacity for the registered institution.
- (2) Where the Commission is satisfied that it is appropriate to do so, the Commission may upon application by a person, by

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- (4) 凡某人尋求獲認可提供自動化交易服務，而證監會有意拒絕根據第 (2) 款給予認可，則該會在決定拒絕給予認可前，須給予該人合理的陳詞機會。
- (5) 凡證監會拒絕根據第 (2) 款認可某人提供自動化交易服務，證監會須藉送達書面通知予該人，將拒絕一事及拒絕的理由告知該人。
- (6) 證監會須擬備指引，列明關於根據本條認可提供自動化交易服務的原則、程序及準則，並在憲報刊登或以任何其他方式發表該等指引。
- (7) 根據第 (6) 款刊登或發表的指引不是附屬法例。
- (8) 除第 (9) 款另有規定外，就第 (1)(b) 款而言，某人須或任何人須代該人（不論在香港或其他地方）向在香港的人積極推廣自動化交易服務，首述的人方屬要約提供該服務。
- (9) 就第 (1)(b) 款而言，如某人或其有連繫法團於緊接提出提供自動化交易服務的要約之日之前的 3 年的任何時間內，曾向受要約的人提供或同意向受要約的人提供任何財經服務（包括自動化交易服務），則首述的人不得視為要約提供自動化交易服務。

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- notice in writing served on that person, authorize that person to provide automated trading services—
- (a) subject to such conditions as it considers appropriate specified in the notice; and
  - (b) with effect from a date specified in the notice for the purpose.
- (3) Where a person is granted an authorization under subsection (2), the Commission shall cause notice of that fact to be published in the Gazette.
  - (4) Where a person is seeking an authorization to provide automated trading services and the Commission is minded not to grant the authorization under subsection (2), the Commission shall give the person a reasonable opportunity of being heard before making a decision not to grant the authorization.
  - (5) Where the Commission refuses to authorize a person to provide automated trading services under subsection (2), the Commission shall, by notice in writing served on the person, inform the person of the refusal and of the reasons for it.
  - (6) The Commission shall prepare and publish in the Gazette or otherwise guidelines setting out the principles, procedures and standards in relation to authorization for providing automated trading services under this section.
  - (7) Guidelines published under subsection (6) are not subsidiary legislation.
  - (8) Subject to subsection (9), for the purposes of subsection (1)(b), a person offers to provide automated trading services only if the services are actively marketed, whether in Hong Kong or elsewhere, to persons in Hong Kong by the first-mentioned person or by another person on his behalf.

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## 96. 申請認可

- (1) 根據第 95(2) 條提出的申請，須附有 ——
  - (a) 證監會合理地要求的資料及詳情；及
  - (b) 為施行本條而藉根據第 395 條訂立的規則訂明的申請費用。
- (2) 在不局限第 (1)(a) 款的一般性的原則下，根據第 95(2) 條提出的申請，須附有關乎以下各項而證監會合理地要求的資料 ——
  - (a) 如該申請獲批准，申請人會顯示自己有能力提供的服務及設施；
  - (b) 申請人擬經營及該申請所關乎的業務，及申請人擬在經營該業務過程中聘用何人或與何人聯結；
  - (c) 申請人現時從事的業務，及在經營該業務過程中聘用何人及與何人聯結；及
  - (d) 申請人的董事及大股東；如申請人的任何大股東是法團，則須附有關於該法團的董事及大股東的資料。
- (3) 證監會在考慮根據第 95(2) 條提出的申請時，可考慮該會管有的任何資料，不論該等資料是否由申請人提供。

## 96. Application for authorization

- (1) An application under section 95(2) shall be accompanied by—
  - (a) such information and particulars as the Commission may reasonably require; and
  - (b) an application fee prescribed by rules made under section 395 for the purposes of this section.
- (2) Without limiting the generality of subsection (1)(a), an application under section 95(2) shall also be accompanied by such information as may reasonably be required by the Commission regarding—
  - (a) the services and facilities which the applicant will hold itself out as being able to provide if the application is allowed;
  - (b) the business which the applicant proposes to carry on and to which the application relates, and any person whom the applicant proposes to employ or with whom the applicant intends to be associated in the course of carrying on the business;
  - (c) the business which the applicant is carrying on, the officers it employs and the persons with whom the applicant is associated in the course of carrying on the business; and



**97. 認可的條件**

- (1) 在不局限根據第 95(2) 條送達的通知指明的條件的一般性的原則下，如證監會認為修訂或撤銷根據該條指明的任何條件或施加任何新的條件是適當的，則可藉送達書面通知予根據該條獲認可的人，修訂或撤銷（視屬何情況而定）任何根據該條指明的條件或施加任何新的條件。
- (2) 凡證監會藉根據第 (1) 款送達通知修訂或撤銷任何條件或施加任何新的條件，該項修訂、撤銷或施加在該通知送達時或在該通知指明的時間（兩者以較遲者為準）生效。
- (3) 在不局限第 (1) 款或第 95(2) 條的一般性的原則下，根據該條或該款送達的通知，可載有條件，要求獲認可提供自動化交易服務的人遵從以下所有或任何規定——
  - (a) 按照證監會就該等服務批准的規則提供其服務；
  - (b) 在合理地切實可行的範圍內，確保藉着或透過該等服務進行的一切交易，是在有秩序、信息靈通和公平的市場中進行的；
  - (c) 確保藉着或透過該等服務洽商或達成買賣的證券或期貨合約，屬於證監會為此目的在該通知指明的類別的證券或期貨合約；
  - (d) 確保藉着或透過該等服務更替、結算、交收或擔保的交易，屬於證監會為此目的在該通知指明的類別的交易；

- (d) its directors and substantial shareholders and, if any of its substantial shareholders is a corporation, the directors and substantial shareholders of that corporation.

- (3) In considering an application under section 95(2), the Commission may have regard to any information in its possession whether provided by the applicant or not.

**97. Conditions for authorization**

- (1) Without limiting the generality of conditions which may be specified in a notice under section 95(2), the Commission may, by notice in writing served on a person authorized under that section, amend or revoke any conditions specified under that section or impose new conditions, where the Commission is satisfied that it is appropriate to do so.
- (2) Where the Commission amends or revokes any condition or imposes any new condition under subsection (1), the amendment, revocation or imposition takes effect at the time of service of the notice or at the time specified in the notice, whichever is the later.
- (3) Without limiting the generality of subsection (1) or section 95(2), a notice served thereunder may contain a condition that the person authorized to provide automated trading services shall comply with all or any of the following requirements, that is to say, the person shall—
  - (a) provide the services according to rules approved by the Commission for the purpose;
  - (b) ensure as far as is reasonably practicable that there is an orderly, informed and fair market in relation to all transactions which are carried out by means of or through the services;
  - (c) ensure that the securities or futures contract, the sale or purchase of which is to be negotiated or concluded by



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- (e) 在該通知指明的限期內，按該通知指明的方式向證監會披露該會為執行本條例授予的職能而要求的資料；
- (f) 准許證監會為此授權的人在任何合理時間進入提供該等服務的處所和視察提供該等服務的電子設施；
- (g) 提供及維持具有足夠處理能力、應變或應急設施，保安安排及技術支援的自動系統，以提供該等服務；
- (h) 在證監會根據第 96(1) 或 (2) 條要求的資料或詳情有任何改變時，將該等改變通知該會；
- (i) 向證監會繳付為施行本條而藉根據第 395 條訂立的規則訂明的費用。

**98. 撤回認可**

- (1) 在第 (4) 款的規限下，凡證監會信納撤回某人根據第 95(2) 條獲給予的認可，就維護投資大眾的利益或公眾利益而言是適當的，則可藉送達書面通知予該人，撤回該項認可，該通知須述明作出該通知的理由，並自該通知指明的生效日期起生效。

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- means of or through the services, belongs to a class of securities or futures contracts specified in the notice by the Commission for this purpose;
- (d) ensure that the transaction that is to be novated, cleared, settled or guaranteed by means of or through the services belongs to a class of transactions specified in the notice by the Commission for this purpose;
- (e) disclose to the Commission within the time and in the manner specified in the notice, such information as the Commission may request for the purpose of performing its functions under this Ordinance;
- (f) permit any person authorized in that behalf by the Commission to enter at any reasonable time the premises on which the services are provided and to inspect the electronic facilities by means of which the services are provided;
- (g) provide and maintain automated systems with adequate capacity, facilities to meet contingencies or emergencies, security arrangements and technical support for the provision of the services;
- (h) notify the Commission of any changes to the information and particulars required by the Commission under section 96(1) or (2);
- (i) pay to the Commission a fee prescribed by rules made under section 395 for the purposes of this section.

**98. Withdrawal of authorization**

- (1) Subject to subsection (4), where the Commission is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest, it may, by notice in writing served on a person who has been granted an authorization under section 95(2), stating the reasons in support of the

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- (2) 證監會可藉根據第 (1) 款送達的通知准許有關的人在有關撤回的生效日期當日或之後，為——
  - (a) 停止提供該項撤回所關乎的自動化交易服務的目的；或
  - (b) 保障投資大眾的利益或公眾利益的目的，而繼續進行證監會在該通知中指明的受該項撤回所影響的活動。
- (3) 凡某人獲得證監會根據第 (2) 款給予的准許，則該人不得因其按照准許進行有關的活動而視為違反第 95 條。
- (4) 證監會在根據第 (1) 款就某根據第 95(2) 條獲認可的人行使權力前，須給予該人合理的陳詞機會。
- (5) 凡證監會根據第 (1) 款撤回認可，該會須安排在憲報刊登公告以公布此事。
- (6) 根據本條送達的通知即時生效。

#### 99. 證監會須備存認可自動化交易服務的紀錄冊

- (1) 證監會須以該會認為適當的格式備存一份認可自動化交易服務的紀錄冊。
- (2) 根據第 (1) 款備存的紀錄冊須就每名根據第 95(2) 條獲給予認可的人而載有以下資料——
  - (a) 該人的姓名或名稱及業務地址；

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- ground or grounds for the notice, withdraw the authorization with effect from a date specified in the notice for the purpose.
- (2) The Commission may by the notice served under subsection (1) permit the person to continue, on or after the date on which the withdrawal is to take effect, to carry on such activities affected by the withdrawal as the Commission may specify in the notice for the purpose of—
    - (a) ceasing to provide the automated trading services to which the withdrawal relates; or
    - (b) protecting the interest of the investing public or the public interest.
  - (3) Where the Commission has granted a permission to a person under subsection (2), the person shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 95.
  - (4) The Commission shall not exercise its power under subsection (1) in relation to a person who has been granted an authorization under section 95(2) unless it has given the person a reasonable opportunity of being heard.
  - (5) Where the Commission withdraws an authorization under subsection (1), it shall cause notice of that fact to be published in the Gazette.
  - (6) A notice served under this section shall take effect immediately.

#### 99. Commission to maintain register of authorized automated trading services

- (1) The Commission shall maintain a register of authorized automated trading services in such form as it considers appropriate.

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- (b) 該項認可附有的而證監會認為適宜載入紀錄冊的條件；及
- (c) 為施行本款而藉根據第 397 條訂立的規則訂明的其他詳情。
- (3) 紀錄冊可藉以下方式備存 ——
  - (a) 以文件形式；或
  - (b) 並非以可閱讀形式記錄第 (2) 款所規定的資料，但如此記錄的該等資料須能以可閱讀形式重現。
- (4) 為使任何公眾人士能確定他是否正在就任何自動化交易服務的事宜或就與任何自動化交易服務有關連的事宜與根據第 95(2) 條獲給予認可的人往來，以及為確定該人的認可的詳情，紀錄冊須於任何合理時間提供予公眾查閱。
- (5) 在任何合理時間，公眾人士可 ——
  - (a) 查閱紀錄冊或（如紀錄冊並非以文件形式備存的）以可閱讀形式重現的紀錄冊的資料或其有關部分；及
  - (b) 在繳付藉根據第 395 條訂立的規則訂明的費用後，取得紀錄冊的任何記項或摘錄的副本。
- (6) 任何文件如看來是 ——
  - (a) 根據本條備存的紀錄冊的任何記項或摘錄的副本；及
  - (b) 經由證監會的獲授權人員核證為 (a) 段提述的記項或摘錄的真確副本，
 則須在任何法律程序中獲接納為其中內容的證據。
- (7) 在不減損本條其他條文的原則下，證監會須另行安排將紀錄冊以聯機紀錄形式提供予公眾。

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- (2) The register maintained under subsection (1) shall contain in relation to each person who has been granted an authorization under section 95(2)—
  - (a) the name and business address of the person;
  - (b) such conditions of the authorization as the Commission considers appropriate; and
  - (c) such other particulars as are prescribed by rules made under section 397 for the purposes of this subsection.
- (3) The register may be maintained—
  - (a) in a documentary form; or
  - (b) by recording the information required under subsection (2) otherwise than in a legible form, so long as the information is capable of being reproduced in a legible form.
- (4) For the purposes of enabling any member of the public to ascertain whether he is dealing with a person who has been granted an authorization under section 95(2) in matters of or connected with any automated trading services and to ascertain the particulars of the authorization of such person, the register shall be made available for public inspection at all reasonable times.
- (5) At all reasonable times, a member of the public may—
  - (a) inspect the register, or (where the register is maintained otherwise than in a documentary form) a reproduction of the information or the relevant part of it in a legible form; and
  - (b) obtain a copy of an entry in or extract of the register on payment of a fee prescribed by rules made under section 395.
- (6) A document purporting to be—

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#### 100. 證監會訂立規則

- (1) 在不損害第 398(7) 及 (8) 條的原則下，證監會可訂立規則以 ——
  - (a) 規定獲認可提供自動化交易服務的人向該會提供該會要求的資料，以使該會信納根據第 95(2) 或 97 條送達該人的通知所指明的條件獲得遵從；
  - (b) 就 (a) 段所指的資料須於何時及以何方式提供，訂定條文；
  - (c) 就自動化交易服務的規管及任何其他附帶事宜，訂定條文。
- (2) 在不局限可根據第 (1) 款訂立的規則的一般性的原則下，該等規則可 ——
  - (a) 就提供自動化交易服務須遵守的操守及實務標準，訂定條文；
  - (b) 禁止使用與提供自動化交易服務有關而具誤導性或欺騙性的廣告，或就使用與提供該服務有關的廣告施加條件；(由 2005 年第 10 號第 199 條修訂)
  - (c) 規定獲認可提供自動化交易服務的人 ——

- (a) a copy of an entry in or extract of the register maintained under this section; and
- (b) certified by an authorized officer of the Commission as a true copy of the entry or extract referred to in paragraph (a),

shall be admissible as evidence of its contents in any legal proceedings.

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

#### 100. Rules by Commission

- (1) Without prejudice to section 398(7) and (8), the Commission may make rules to—
  - (a) require a person authorized to provide automated trading services to supply the Commission with such information as the Commission requires to satisfy the Commission that the conditions specified in a notice served on the person under section 95(2) or 97 are complied with;
  - (b) provide for the time within which and the manner in which the information under paragraph (a) shall be provided;
  - (c) provide for the regulation of automated trading services and any other matters incidental thereto.
- (2) Without limiting the generality of rules which may be made under subsection (1), such rules may—
  - (a) provide for the standards of conduct and practices to be complied with in relation to the provision of automated trading services;

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- (i) 採取步驟避免有利益衝突，並指明一旦出現潛在或實際利益衝突時須採取的步驟；及
- (ii) 採取證監會指明的步驟，確保透過該服務進行的交易是在廉潔、穩健、有秩序、具透明度和公平的情況下進行的，包括採取步驟確保——
  - (A) 妥當地和在當時情況下在適當範圍內盡速地處理任何服務要求；及
  - (B) 向獲提供該服務的人妥為解釋關於透過該服務進行交易的使用服務權及有關慣例；
- (d) 訂定措施以遏阻和識辨任何洗錢活動。
- (3) 根據本條訂立的規則，可訂明任何人無合理辯解而違反該等規則適用於該人的指明條文，即屬犯罪——
  - (a) 一經循公訴程序定罪，可處不超過第 6 級罰款及監禁 2 年的指明罰則；
  - (b) 一經循簡易程序定罪，可處不超過第 3 級罰款及監禁 6 個月的指明罰則。

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- (b) prohibit the use of misleading or deceptive advertisements in relation to the provision of automated trading services or impose conditions for the use of advertisements in relation to the provision of such services;
- (c) require a person authorized to provide automated trading services—
  - (i) to take steps to avoid conflicts of interests, and specify the steps that shall be taken in the event that there is a potential or actual conflict of interest; and
  - (ii) to take such steps as the Commission may specify to ensure that there is integrity, orderliness, transparency and fairness in transactions conducted through the services, including steps to ensure that—
    - (A) a request for the services is to be dealt with properly and as expeditiously as is appropriate in the circumstances; and
    - (B) access rights to the services and the relevant trading conventions relating to the transactions to be conducted through the services are properly explained to the persons to whom the services are provided;
- (d) provide for measures designed to discourage and identify any money laundering activities.
- (3) Rules made under this section may provide that a person who, without reasonable excuse, contravenes any specified provision of the rules that apply to the person commits an offence and is liable to a specified penalty not exceeding—
  - (a) on conviction on indictment a fine at level 6 and a term of imprisonment of 2 years;

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### 101. 未獲認可而提供自動化交易服務

任何人無合理辯解而違反第 95(1) 條，即屬犯罪 ——

- (a) 一經循公訴程序定罪，可處罰款 \$5,000,000 及監禁 7 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$100,000；或
  - (b) 一經循簡易程序定罪，可處罰款 \$500,000 及監禁 2 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$10,000。
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- (b) on summary conviction a fine at level 3 and a term of imprisonment of 6 months.

### 101. Providing automated trading services without authorization

A person who, without reasonable excuse, contravenes section 95(1) commits an offence and is liable—

- (a) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues; or
  - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.
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## 第 IIIA 部

## 場外衍生工具交易

(第 IIIA 部由 2014 年第 6 號第 9 條增補)

## 第 1 分部 —— 釋義

## 101A. 第 IIIA 部的釋義

在本部中 ——

# **已登記系統重要參與者** (registered SIP) 指名列系統重要參與者登記冊的人；# **《交易規則》** (trading rules) 指根據第 101O 條訂立的規則；# **交易責任** (trading obligation) ——

(a) 就屬在香港成立為法團的認可財務機構的訂明人士而言，指 ——

(i) 第 101D(1) 條所施加的責任；或

(ii) 第 101D(3) 條所施加的責任；及

(b) 就任何其他訂明人士而言，指第 101D(1) 條所施加的責任；

# **系統重要參與者** (systemically important participant) 指符合以下說明的人 ——

(a) 第 101R(1) 條適用於該人；及

(b) 該人就某特定類別的持倉量，已達到具報水平；

# **系統重要參與者登記冊** (SIP register) 指根據第 101S(1) 條備存的登記冊；# **具報** (notification) 指為施行第 101R(2) 條而規定須作出的具報；

編輯附註：

# 尚未實施。

## Part IIIA

## OTC Derivative Transactions

(Part IIIA added 6 of 2014 s. 9)

## 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 101N;# **deregistration** (撤銷登記), in relation to a specific class, means the removal of—

(a) a name under section 101V(1); or

(b) an entry under section 101V(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 101J for that class or description;

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# Not yet in operation.

# **具報水平** (notification level) 就某特定類別而言，指符合以下說明的門檻 ——

- (a) 就該特定類別而訂明的；及
- (b) 由根據第 101Z(a)(i) 條訂立的規則訂明的；

# **具報規定** (notification requirement) 指第 101R(2) 條所施加的規定；

# **《具報規則》** (notification rules) 指根據第 101Z 條訂立的規則；

**指定中央對手方** (designated CCP) 就某類別或某種類的指明場外衍生工具交易而言，指根據第 101J 條就該類別或該種類指定為中央對手方的人；

# **指定交易平台** (designated trading platform) 就某類別或某種類的指明場外衍生工具交易而言，指根據第 101K 條就該類別或該種類指定為交易平台的人；

**《指定規則》** (designation rules) 指根據第 101Q 條訂立的規則；

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

- (a) 就匯報責任而言，指在《匯報規則》內就該責任而指明的交易；
- (b) 就結算責任而言，指在《結算規則》內就該責任而指明的交易；
- #(c) 就交易責任而言，指在《交易規則》內就該責任而指明的交易；及
- (d) 就備存紀錄責任而言，指在《備存紀錄規則》內就該責任而指明的交易；

**訂明人士** (prescribed person) ——

- (a) 就匯報責任而言，指 ——
  - (i) 認可財務機構；

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# 尚未實施。

# **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 101K for that class or description;

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

# **notification** (具報) means a notification required to be given for the purposes of section 101R(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 101Z(a)(i);

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

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

**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 101Q(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 101Q(a)(ii);

**prescribed person** (訂明人士)——

- (a) in relation to the reporting obligation, means——

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- (ii) 核准貨幣經紀；
- (iii) 持牌法團；或
- (iv) 屬在《匯報規則》內指明為負有匯報責任的某類別或某種類的人；
- (b) 就結算責任而言，指 ——
  - (i) 認可財務機構；
  - (ii) 核准貨幣經紀；
  - (iii) 持牌法團；或
  - (iv) 屬在《結算規則》內指明為負有結算責任的某類別或某種類的人；
- <sup>#</sup>(c) 就交易責任而言，指 ——
  - (i) 認可財務機構；
  - (ii) 核准貨幣經紀；
  - (iii) 持牌法團；或
  - (iv) 屬在《交易規則》內指明為負有交易責任的某類別或某種類的人；及
- (d) 就備存紀錄責任而言，指 ——
  - (i) 認可財務機構；
  - (ii) 核准貨幣經紀；
  - (iii) 持牌法團；或
  - (iv) 屬在《備存紀錄規則》內指明為負有備存紀錄責任的某類別或某種類的人；

**訂明方式** (prescribed manner) ——

- (a) 就要求指定為中央對手方的申請而言，指根據第 101Q(a)(i) 條訂立的規則所訂明的方式；及

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- (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;
- <sup>#</sup>(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; and
- (d) in relation to the record keeping obligation, means—
  - (i) an authorized financial institution;
  - (ii) an approved money broker;
  - (iii) a licensed corporation; or

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<sup>#</sup>(b) 就要求指定為交易平台的申請而言，指根據第 101Q(a)(ii) 條訂立的規則所訂明的方式；

**訂明費用** (prescribed fee) 指根據第 395 條訂立的規則所訂明的費用；

<sup>#</sup> **特定類別** (specific class) 指某特定類別或種類的場外衍生工具交易；

**《備存紀錄規則》** (record keeping rules) 指根據第 101P 條訂立的規則；

**備存紀錄責任** (record keeping obligation) ——

(a) 就屬在香港成立為法團的認可財務機構的訂明人士而言，指 ——

(i) 第 101E(1) 條所施加的責任；或

(ii) 第 101E(3) 條所施加的責任；及

(b) 就任何其他訂明人士而言，指第 101E(1) 條所施加的責任；

**《結算規則》** (clearing rules) 指根據第 101N 條訂立的規則；

**結算責任** (clearing obligation) ——

(a) 就屬在香港成立為法團的認可財務機構的訂明人士而言，指 ——

(i) 第 101C(1) 條所施加的責任；或

(ii) 第 101C(3) 條所施加的責任；及

(b) 就任何其他訂明人士而言，指第 101C(1) 條所施加的責任；

**《匯報規則》** (reporting rules) 指根據第 101L 條訂立的規則；

**匯報責任** (reporting obligation) ——

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(iv) a person of a class or description specified in the record keeping rules as being subject to the record keeping obligation;

**record keeping obligation** (備存紀錄責任)——

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

(i) an obligation imposed by section 101E(1); or

(ii) an obligation imposed by section 101E(3); and

(b) in relation to any other prescribed person, means an obligation imposed by section 101E(1);

**record keeping rules** (《備存紀錄規則》) means rules made under section 101P;

<sup>#</sup>**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 101L;

<sup>#</sup>**SIP register** (系統重要參與者登記冊) means the register maintained under section 101S(1);

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- (a) 就屬在香港成立為法團的認可財務機構的訂明人士而言，指 ——
- (i) 第 101B(1) 條所施加的責任；或
- (ii) 第 101B(3) 條所施加的責任；及
- (b) 就任何其他訂明人士而言，指第 101B(1) 條所施加的責任；

**# 撤銷登記** (deregistration) 就某特定類別而言，指 ——

- (a) 根據第 101V(1) 條除名；或
- (b) 根據第 101V(2) 條將某記項移除；

**標的項目** (underlying subject matter) ——

- (a) 就屬附表 1 第 1 部第 1A 條第 (1)(a)(i) 款所指的場外衍生工具產品的交易而言，指任何類型的證券、商品、指數、財產、利率、貨幣兌換率或期貨合約，亦指任何類型的該等項目的組合；
- (b) 就屬附表 1 第 1 部第 1A 條第 (1)(a)(ii) 款所指的場外衍生工具產品的交易而言，指任何一籃子多於一種類型的證券、商品、指數、財產、利率、貨幣兌換率或期貨合約，亦指多於一種類型的該等項目的組合；及
- (c) 就屬附表 1 第 1 部第 1A 條第 (1)(a)(iii) 款所指的場外衍生工具產品的交易而言，指任何指明事件 ( 不包括任何只關乎票據的發行人或擔保人或關乎兩者的事件 ) 。

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**#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;
- #(c)** in relation to the trading obligation, means a transaction specified in the trading rules for the purposes of that obligation; and
- (d) in relation to the record keeping obligation, means a transaction specified in the record keeping rules for the purposes of that obligation;

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

- (a) to whom section 101R(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);

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

*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).

## 第 2 分部 —— 匯報、結算、交易及備存紀錄責任

## Division 2—Reporting, Clearing, Trading and Record Keeping Obligations

### 101B. 匯報責任

- (1) 訂明人士須 ——
  - (a) 向金融管理專員；並
  - (b) 按照《匯報規則》，
 匯報任何屬第 (2) 款適用的場外衍生工具交易。
- (2) 本款適用於符合以下說明的場外衍生工具交易 ——
  - (a) 該項交易 ——

### 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—



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- (i) 是就上述訂明人士而在《匯報規則》內指明的；及
- (ii) 屬一項在《匯報規則》內指明為須向金融管理專員匯報的交易；
- (b) 該項交易符合在《匯報規則》內 ——
  - (i) 就上述訂明人士而指明的；並
  - (ii) 為 (a)(ii) 段提述的匯報規定的適用而指明的，情況及準則；及
- (c) 該項交易不符合在《匯報規則》內 ——
  - (i) 就上述訂明人士而指明的；並
  - (ii) 指明為屬匯報規定視為已獲符合的，情況。
- (3) 訂明人士如屬在香港成立為法團的認可財務機構，則亦須確保以下情況：根據第 (5) 款指明的該機構的附屬公司，就場外衍生工具交易，遵守第 (4) 款所列規定。
- (4) 第 (3) 款所指的規定為：有關附屬公司按照《匯報規則》，向金融管理專員匯報符合以下說明的場外衍生工具交易 ——
  - (a) 該附屬公司屬該項交易的對手方；及
  - (b) 屬在《匯報規則》內指明為屬第 (3) 款適用的交易。
- (5) 為施行第 (3) 款，金融管理專員可藉向在香港成立為法團的認可財務機構發出書面通知 ——
  - (a) 指明某特定的附屬公司；
  - (b) 指明多於一間的附屬公司；或
  - (c) 一般性地指明任何附屬公司。
- (6) 金融管理專員可根據第 (5) 款，指明任何在香港以外地方成立為法團的附屬公司，或指明任何在香港成立為法團的附屬公司。

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- (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;

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- (7) 除交易的各方有訂立相反的明訂協議外，任何人就場外衍生工具交易違反匯報責任一事，本身並不使該項交易失效，亦不影響任何根據該項交易而產生的權利或責任、或任何關乎該項交易的權利或責任。

**101C. 結算責任**

- (1) 訂明人士須 ——
- (a) 與指定中央對手方；並
  - (b) 按照《結算規則》，結算任何屬第 (2) 款適用的場外衍生工具交易。
- (2) 本款適用於符合以下說明的場外衍生工具交易 ——
- (a) 該項交易 ——
    - (i) 是就上述訂明人士而在《結算規則》內指明的；及
    - (ii) 屬一項在《結算規則》內指明為須與指定中央對手方結算的交易；
  - (b) 該項交易符合在《結算規則》內 ——
    - (i) 就上述訂明人士而指明的；並
    - (ii) 為 (a)(ii) 段提述的結算規定的適用而指明的，情況及準則；及
  - (c) 該項交易不符合在《結算規則》內 ——
    - (i) 就上述訂明人士而指明的；並

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- (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.
- (7) Subject to an express agreement to the contrary by the parties to the transaction, a contravention of the reporting obligation in relation to an OTC derivative transaction does not of itself invalidate the transaction or affect any rights or obligations arising under, or relating to, the transaction.

**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—

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- (ii) 指明為屬結算規定視為已獲符合的，  
情況。
- (3) 訂明人士如屬在香港成立為法團的認可財務機構，則亦須確保以下情況：根據第 (5) 款指明的該機構的附屬公司，就場外衍生工具交易，遵守第 (4) 款所列規定。
- (4) 第 (3) 款所指的規定為：有關附屬公司按照《結算規則》，與指定中央對手方結算符合以下說明的場外衍生工具交易——
- (a) 該附屬公司屬該項交易的對手方；及
- (b) 屬在《結算規則》內指明為屬第 (3) 款適用的交易。
- (5) 為施行第 (3) 款，金融管理專員可藉向在香港成立為法團的認可財務機構發出書面通知——
- (a) 指明某特定的附屬公司；
- (b) 指明多於一間的附屬公司；或
- (c) 一般性地指明任何附屬公司。
- (6) 金融管理專員可根據第 (5) 款，指明任何在香港以外地方成立為法團的附屬公司，或指明任何在香港成立為法團的附屬公司。
- (7) 除交易的各方有訂立相反的明訂協議外，任何人就場外衍生工具交易違反結算責任一事，本身並不使該項交易失效，亦不影響任何根據該項交易而產生的權利或責任，或任何關乎該項交易的權利或責任。

- (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.
- (7) Subject to an express agreement to the contrary by the parties to the transaction, a contravention of the clearing obligation in relation to an OTC derivative transaction does not of itself invalidate the transaction or affect any rights or obligations arising under, or relating to, the transaction.

**101D. 交易責任**

(尚未實施)

**101D. Trading obligation**

(Not yet in operation)

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- (1) 訂明人士 ——
- (a) 只可在指定交易平台；並
  - (b) 須按照《交易規則》，  
執行任何屬第 (2) 款適用的場外衍生工具交易。
- (2) 本款適用於符合以下說明的場外衍生工具交易 ——
- (a) 該項交易 ——
    - (i) 是就上述訂明人士而在《交易規則》內指明的；及
    - (ii) 屬一項在《交易規則》內指明為規定只可在指定交易平台執行的交易；
  - (b) 該項交易符合在《交易規則》內 ——
    - (i) 就上述訂明人士而指明的；並
    - (ii) 為 (a)(ii) 段所描述的執行規定的適用而指明的，  
情況及準則；及
  - (c) 該項交易不符合在《交易規則》內 ——
    - (i) 就上述訂明人士而指明的；並
    - (ii) 指明為屬第 (1) 款所描述的執行規定視為已獲符合的，  
情況。
- (3) 訂明人士如屬在香港成立為法團的認可財務機構，則亦須確保以下情況：根據第 (5) 款指明的該機構的附屬公司，就場外衍生工具交易，遵守第 (4) 款所列規定。
- (4) 第 (3) 款所指的規定為：有關附屬公司只在指定交易平台（並按照《交易規則》）執行符合以下說明的場外衍生工具交易 ——
- (a) 該附屬公司屬該項交易的對手方；及
  - (b) 屬在《交易規則》內指明為屬第 (3) 款適用的交易。

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- (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—

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- (5) 為施行第 (3) 款，金融管理專員可藉向在香港成立為法團的認可財務機構發出書面通知 ——
- (a) 指明某特定的附屬公司；
  - (b) 指明多於一間附屬公司；或
  - (c) 一般性地指明任何附屬公司。
- (6) 金融管理專員可根據第 (5) 款，指明任何在香港以外地方成立為法團的附屬公司，或指明任何在香港成立為法團的附屬公司。
- (7) 除交易的各方有訂立相反的明訂協議外，任何人就場外衍生工具交易違反交易責任一事，本身並不使該項交易失效，亦不影響任何根據該項交易而產生的權利或責任，或任何關乎該項交易的權利或責任。

**101E. 備存紀錄責任**

- (1) 訂明人士須按照《備存紀錄規則》，備存任何關乎屬第 (2) 款適用的場外衍生工具交易的紀錄。
- (2) 本款適用於符合以下說明的場外衍生工具交易 ——
- (a) 該項交易 ——
    - (i) 是就上述訂明人士而在《備存紀錄規則》內指明的；及
    - (ii) 屬一項在《備存紀錄規則》內指明為須備存紀錄的交易；
  - (b) 該項交易符合在《備存紀錄規則》內 ——
    - (i) 就上述訂明人士而指明的；並

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- (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.
- (7) Subject to an express agreement to the contrary by the parties to the transaction, a contravention of the trading obligation in relation to an OTC derivative transaction does not of itself invalidate the transaction or affect any rights or obligations arising under, or relating to, the transaction.

**101E. Record keeping obligation**

- (1) A prescribed person must keep, in accordance with the record keeping rules, records relating to an OTC derivative transaction to which subsection (2) applies.
- (2) This subsection applies to an OTC derivative transaction that—
- (a) is specified in the record keeping rules—
    - (i) in relation to the prescribed person; and
    - (ii) as a transaction the records of which are required to be kept;
  - (b) falls within the circumstances and the criteria specified in those rules—



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- (ii) 為 (a)(ii) 段提述的備存紀錄規定的適用而指明的，  
情況及準則；及
- (c) 該項交易不符合在《備存紀錄規則》內 ——
  - (i) 就上述訂明人士而指明的；並
  - (ii) 指明為屬備存紀錄規定視為已獲符合的，  
情況。
- (3) 訂明人士如屬在香港成立為法團的認可財務機構，則亦須確保以下情況：根據第 (5) 款指明的該機構的附屬公司，就場外衍生工具交易，遵守第 (4) 款所列規定。
- (4) 第 (3) 款所指的規定為：有關附屬公司按照《備存紀錄規則》，備存符合以下說明、關乎場外衍生工具交易的紀錄 ——
  - (a) 該附屬公司屬該項交易的對手方；及
  - (b) 屬在《備存紀錄規則》內指明為屬第 (3) 款適用的交易。
- (5) 為施行第 (3) 款，金融管理專員可藉向在香港成立為法團的認可財務機構發出書面通知 ——
  - (a) 指明某特定的附屬公司；
  - (b) 指明多於一間附屬公司；或
  - (c) 一般性地指明任何附屬公司。
- (6) 金融管理專員可根據第 (5) 款，指明任何在香港以外地方成立為法團的附屬公司，或指明任何在香港成立為法團的附屬公司。
- (7) 第 (9)(a) 款所指明的人，須應證監會的要求 ——
  - (a) 讓證監會有途徑取得根據本條備存的紀錄；並
  - (b) 在證監會指明的時間內，在該會指明的地點，向該會交出該等紀錄。

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- (i) in relation to the prescribed person; and
- (ii) for the application of the requirement to keep record 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 keep record 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 keeps, in accordance with the record keeping rules, records relating to 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.
- (7) A person specified in subsection (9)(a) must, when requested by the Commission—



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- (8) 第 (9)(b) 款所指明的人，須應金融管理專員的要求 ——
- (a) 讓金融管理專員有途徑取得根據本條備存的紀錄；並
  - (b) 在金融管理專員指明的時間內，在該專員指明的地點，向該專員交出該等紀錄。
- (9) 為施行 ——
- (a) 第 (7) 款而指明的人是 ——
    - (i) 屬持牌法團的訂明人士；或
    - (ii) 屬在《備存紀錄規則》內指明為負有備存紀錄責任的某類別或某種類的人的訂明人士；及
  - (b) 第 (8) 款而指明的人是 ——
    - (i) 屬認可財務機構的訂明人士；或
    - (ii) 屬核准貨幣經紀的訂明人士。
- (10) 除交易的各方有訂立相反的明訂協議外，任何人就場外衍生工具交易違反備存紀錄責任一事，本身並不使該項交易失效，亦不影響任何根據該項交易而產生的權利或責任、或任何關乎該項交易的權利或責任。

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- (a) give the Commission access to the records kept under this section; and
  - (b) produce the records to the Commission within the time and at the place specified by the Commission.
- (8) A person specified in subsection (9)(b) must, when requested by the Monetary Authority—
- (a) give the Monetary Authority access to the records kept under this section; and
  - (b) produce the records to the Monetary Authority within the time and at the place specified by the Monetary Authority.
- (9) The person specified—
- (a) for the purposes of subsection (7) is—
    - (i) a prescribed person that is a licensed corporation; or
    - (ii) a prescribed person that is a person of a class or description specified in the record keeping rules as being subject to the record keeping obligation; and
  - (b) for the purposes of subsection (8) is—
    - (i) a prescribed person that is an authorized financial institution; or
    - (ii) a prescribed person that is an approved money broker.
- (10) Subject to an express agreement to the contrary by the parties to the transaction, a contravention of the record keeping obligation in relation to an OTC derivative transaction does not of itself invalidate the transaction or affect any rights or obligations arising under, or relating to, the transaction.

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**#101F. 證監會就違反責任向原訟法庭提出申請**

- (1) 凡有不屬認可財務機構或核准貨幣經紀的訂明人士違反匯報責任、結算責任、交易責任或備存紀錄責任，證監會可就該項違反，向原訟法庭提出申請。
- (2) 上述申請須以原訴傳票（須採用《高等法院規則》（第 4 章，附屬法例 A）附錄 A 表格 10）提出。
- (3) 原訟法庭可查訊有關個案，如信納就有關違反事項並無合理辯解，可向有關訂明人士施加不超過 \$5,000,000 的罰款。

**#101F. 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, trading obligation or record keeping 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.

編輯附註：

\* 由《2014 年證券及期貨（修訂）條例》（2014 年第 6 號）新增的第 101F 條於——

- (a) 2015 年 7 月 10 日開始實施，但限於在該條關乎違反匯報責任及備存紀錄責任的範圍內；請參閱《2015 年〈2014 年證券及期貨（修訂）條例〉（生效日期）公告》（2015 年第 95 號法律公告）（c）(iii) 段；及
- (b) 2016 年 9 月 1 日開始實施，但限於在該條關乎違反結算責任的範圍內；請參閱《2016 年〈2014 年證券及期貨（修訂）條例〉（生效日期）公告》（2016 年第 27 號法律公告）（a）(iii) 段。

Editorial Note:

\* The new section 101F added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on—

- (a) 10 July 2015, in so far as it relates to the contravention of the reporting obligation and the record keeping obligation; please see paragraph (c)(iii) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015); and
- (b) 1 September 2016, in so far as it relates to the contravention of the clearing obligation; please see paragraph (a)(iii) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

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第 101G 條Part IIIA—Division 2  
Section 101G3A-30  
Cap. 571**#101G. 金融管理專員就違反責任向原訟法庭提出申請**

- (1) 凡有屬認可財務機構或核准貨幣經紀的訂明人士違反匯報責任、結算責任、交易責任或備存紀錄責任，金融管理專員可就該項違反，向原訟法庭提出申請。
- (2) 上述申請須以原訴傳票（須採用《高等法院規則》（第 4 章，附屬法例 A）附錄 A 表格 10）提出。
- (3) 原訟法庭可查訊有關個案，如信納就有關違反事項並無合理辯解，可向有關訂明人士施加不超過 \$5,000,000 的罰款。

編輯附註：

\* 由《2014 年證券及期貨（修訂）條例》（2014 年第 6 號）新增的第 101G 條於——

- (a) 2015 年 7 月 10 日開始實施，但限於在該條關乎違反匯報責任及備存紀錄責任的範圍內；請參閱《2015 年〈2014 年證券及期貨（修訂）條例〉（生效日期）公告》（2015 年第 95 號法律公告）（c）(iv) 段；及
- (b) 2016 年 9 月 1 日開始實施，但限於在該條關乎違反結算責任的範圍內；請參閱《2016 年〈2014 年證券及期貨（修訂）條例〉（生效日期）公告》（2016 年第 27 號法律公告）（a）(iv) 段。

**#101G. 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, trading obligation or record keeping 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.

Editorial Note:

\* The new section 101G added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on—

- (a) 10 July 2015, in so far as it relates to the contravention of the reporting obligation and the record keeping obligation; please see paragraph (c)(iv) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015); and
- (b) 1 September 2016, in so far as it relates to the contravention of the clearing obligation; please see paragraph (a)(iv) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

**#101H. 責任的豁免**

- (1) 如任何訂明人士提出申請，並已繳付訂明費用，證監會可在金融管理專員同意下 ——
  - (a) 豁免該人履行下述一項或多於一項的責任 ——
    - (i) 匯報責任；
    - (ii) 結算責任；
    - (iii) 交易責任；
    - (iv) 備存紀錄責任；及
  - (b) 在批給該項豁免時，施加任何條件。
- (2) 證監會可在金融管理專員同意下 ——
  - (a) 基於下述理由，暫時撤銷或撤回任何豁免 ——
    - (i) 任何條件未獲遵從；或
    - (ii) 證監會認為適當的任何其他理由；或
  - (b) 修訂任何條件。
- (3) 證監會須將根據本條批給、暫時撤銷或撤回豁免的詳情（須屬該會認為適當者），在互聯網上發表。

編輯附註：

\* 由《2014 年證券及期貨（修訂）條例》（2014 年第 6 號）新增的第 101H 條於 ——

- (a) 2015 年 7 月 10 日開始實施，但限於在該條關乎豁免履行匯報責任及備存紀錄責任的範圍內；請參閱《2015 年〈2014 年證券及期貨（修訂）條例〉（生效日期）公告》（2015 年第 95 號法律公告）(c)(v) 段；及
- (b) 2016 年 9 月 1 日開始實施，但限於在該條關乎豁免履行結算責任的範圍內；請參閱《2016 年〈2014 年證券及期貨（修訂）條例〉（生效日期）公告》（2016 年第 27 號法律公告）(a)(v) 段。

**#101H. 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;
    - (iv) the record keeping 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

Editorial Note:

\* The new section 101H added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on—

- (a) 10 July 2015, in so far as it relates to the exemptions from the reporting obligation and the record keeping obligation; please see paragraph (c)(v) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015); and
- (b) 1 September 2016, in so far as it relates to the exemption from the clearing obligation; please see paragraph (a)(v) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

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(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.

**#101I. 豁免的指引**

- (1) 證監會可在金融管理專員同意下，在諮詢財政司司長後，就批給任何匯報責任、結算責任、交易責任或備存紀錄責任的豁免，發表指引。
- (2) 證監會 ——
  - (a) 只有在指引發表後，方可根據第 101H 條行使其權力；及
  - (b) 在根據第 101H 條行使其權力時，須顧及已發表的指引。
- (3) 根據第 (1) 款發表的指引，不是附屬法例。

**#101I. 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, trading obligation or record keeping obligation.
- (2) The Commission—
  - (a) may exercise its powers under section 101H only after guidelines have been published; and
  - (b) must have regard to the published guidelines when exercising its powers under section 101H.
- (3) Guidelines published under subsection (1) are not subsidiary legislation.

編輯附註：

\* 由《2014 年證券及期貨(修訂)條例》(2014 年第 6 號)新增的第 101I 條於——

- (a) 2015 年 7 月 10 日開始實施，但限於在該條關乎豁免履行匯報責任及備存紀錄責任的指引的範圍內；請參閱《2015 年〈2014 年證券及期貨(修訂)條例〉(生效日期)公告》(2015 年第 95 號法律公告) (c)(vi) 段；及
- (b) 2016 年 9 月 1 日開始實施，但限於在該條關乎豁免履行結算責任的指引的範圍內；請參閱《2016 年〈2014 年證券及期貨(修訂)條例〉(生效日期)公告》(2016 年第 27 號法律公告) (a)(vi) 段。

Editorial Note:

\* The new section 101I added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on—

- (a) 10 July 2015, in so far as it relates to the guidelines on the exemptions from the reporting obligation and the record keeping obligation; please see paragraph (c)(vi) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015); and
- (b) 1 September 2016, in so far as it relates to the guidelines on exemption from the clearing obligation; please see paragraph (a)(vi) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).



**第 3 分部 —— 中央對手方及交易平台的指定****Division 3—Designation of Central Counterparties and Trading Platforms****101J. 中央對手方的指定**

- (1) 如任何人以訂明方式提出申請，並已繳付訂明費用，證監會可在金融管理專員同意下，在諮詢財政司司長後 ——
  - (a) 按照《指定規則》並藉向該人送達書面通知，為施行本部而指定該人為中央對手方；或
  - (b) 按照《指定規則》而拒絕指定該人。
- (2) 任何人只可在以下情況下獲指定 ——
  - (a) 在指定作出時，該人是 ——
    - (i) 某認可結算所；或
    - (ii) 根據第 95(2) 條獲認可以提供自動化交易服務的人；而
  - (b) 《指定規則》所訂明的規定已獲符合。
- (3) 指定可 ——
  - (a) 就場外衍生工具交易一般性地作出；或
  - (b) 就該項指定指明的某類別或某種類場外衍生工具交易而作出。
- (4) 在香港境外或境內的人，均可根據本條獲指定。
- (5) 證監會可在金融管理專員同意下，在諮詢財政司司長後，按照《指定規則》並藉向任何人送達書面通知，就任何指定 ——
  - (a) 施加任何條件；
  - (b) 修訂或撤銷任何條件；
  - (c) 施加額外條件；

**101J. 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,

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- (d) 撤銷該指定。
- (6) 證監會在行使第 (1)(b) 或 (5)(d) 款所指的權力之前，須給予有關的人合理的陳詞機會。
- (7) 如證監會根據第 (5)(b) 或 (c) 款修訂或撤銷任何條件，或施加任何額外條件，則該項修訂、撤銷或施加的生效時間，是有關通知送達之時，或該通知指明的時間，兩者以較遲者為準。
- (8) 如證監會根據第 (5)(d) 款撤銷任何指定，則該項撤銷的生效時間，是有關通知送達之時，或該通知指明的時間，兩者以較遲者為準。
- (9) 如任何人根據本條獲指定，或任何指定根據本條遭撤銷，證監會須在憲報刊登公告，以公布此事。
- (10) 根據第 (9) 款刊登的公告，不是附屬法例。

**101K. 交易平台的指定**

(尚未實施)

- (1) 如任何人以訂明方式提出申請，並已繳付訂明費用，證監會可在金融管理專員同意下，在諮詢財政司司長後——

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- 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.

**101K. Designation of trading platforms**

(Not yet in operation)

- (1) On application by a person in the prescribed manner and on payment of the prescribed fee, the Commission may, with the

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- (a) 按照《指定規則》並藉向該人送達書面通知，為施行本部而指定該人為交易平台；或
- (b) 按照《指定規則》而拒絕指定該人。
- (2) 任何人只可在以下情況下獲指定 ——
  - (a) 在指定作出時，該人是 ——
    - (i) 某認可交易所；或
    - (ii) 根據第 95(2) 條獲認可以提供自動化交易服務的人；而
  - (b) 《指定規則》所訂明的規定已獲符合。
- (3) 指定可 ——
  - (a) 就場外衍生工具交易一般性地作出；或
  - (b) 就該項指定指明的某類別或某種類場外衍生工具交易而作出。
- (4) 在香港境外或境內的人，均可根據本條獲指定。
- (5) 證監會可在金融管理專員同意下，在諮詢財政司司長後，按照《指定規則》並藉向任何人送達書面通知，就任何指定 ——
  - (a) 施加任何條件；
  - (b) 修訂或撤銷任何條件；
  - (c) 施加額外條件；
  - (d) 撤銷該指定。
- (6) 證監會在行使第 (1)(b) 或 (5)(d) 款所指的權力之前，須給予有關的人合理的陳詞機會。
- (7) 如證監會根據第 (5)(b) 或 (c) 款修訂或撤銷任何條件，或施加任何額外條件，則該項修訂、撤銷或施加的生效時間，是有關通知送達之時，或該通知指明的時間，兩者以較遲者為準。

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- 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.

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- (8) 如證監會根據第 (5)(d) 款撤銷任何指定，則該項撤銷的生效時間，是有關通知送達之時，或該通知指明的時間，兩者以較遲者為準。
- (9) 如任何人根據本條獲指定，或任何指定根據本條遭撤銷，證監會須在憲報刊登公告，以公布此事。
- (10) 根據第 (9) 款刊登的公告，不是附屬法例。

## 第 4 分部 —— 就責任及指定訂立規則的權力

### 101L. 訂立規則的權力 —— 匯報責任

- (1) 證監會可在金融管理專員同意下，在諮詢財政司司長後，訂立規則 ——
  - (a) 以就匯報責任作出一般性規定；及
  - (b) 以在不局限 (a) 段的原則下，訂明本條所列的特定事項。
- (2) 根據本條訂立的規則 ——
  - (a) 可為施行第 101A 條訂明人士的定義的 (a)(iv) 段，指明某類別或某種類人士；及

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- (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

### 101L. 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—

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- (b) 須就屬該類別或該種類人士的人訂定條文，規定除非該人是某項指明場外衍生工具交易的對手方，否則該人不負有匯報責任。
- (3) 根據本條訂立的規則 ——
- (a) 可一般性地指明 ( 或就某類型或某種類交易而指明 ) 受匯報責任所規限的場外衍生工具交易；及
- (b) 在不局限 (a) 段的原則下，可規定即使在以下情況下，場外衍生工具交易亦受匯報責任所規限 ——
- (i) 有一名對手方或多於一名對手方屬在香港境外的人；
- (ii) 訂明人士並非該項交易的對手方 ( 就根據第 (2) 款指明的屬某類別或某種類人士的人則除外 ) ；或
- (iii) 該項交易，是完全或局部在香港境外訂立或進行的。
- (4) 在不局限第 (3) 款的原則下，根據該款指明任何場外衍生工具交易時，可參照關乎場外衍生工具交易的任何因素，包括 ——
- (a) 該項交易的標的項目；
- (b) 該項交易的特點或特性；及
- (c) 該項交易涉及的人。
- (5) 根據本條訂立的規則可 ——
- (a) 指明下述情況 ——
- (i) 關乎屬匯報責任適用的指明場外衍生工具交易的情況；
- (ii) 關乎屬匯報責任不適用的指明場外衍生工具交易的情況；或
- (iii) 關乎屬匯報責任視為已獲履行的指明場外衍生工具交易的情況；

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- (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—



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- (b) 指明匯報責任適用的準則 (包括門檻) ; 及
- (c) 就不同訂明人士或不同場外衍生工具交易, 指明不同情況及準則。
- (6) 根據本條訂立的規則可規定 ——
  - (a) 任何訂明人士須就符合以下說明的場外衍生工具交易負有匯報責任 ——
    - (i) 在匯報責任開始適用於該人所屬的類別或種類人士的日期之前, 已經訂立; 或
    - (ii) 在匯報責任開始就該項交易所屬的類別或種類場外衍生工具交易而適用的日期之前, 已經訂立; 及
  - (b) 如 (a) 段提述的場外衍生工具交易符合以下說明, 該訂明人士即負有匯報責任 ——
    - (i) 該項交易, 屬為施行匯報責任而根據本條訂立的規則所指明的類別或種類的交易; 及
    - (ii) 在匯報責任開始適用於該人或該項交易時, 該項交易屬 (根據本款訂立的規則所指的) 仍未完結的交易。
- (7) 根據本條訂立的規則 ——
  - (a) 可指明向金融管理專員匯報任何指明場外衍生工具交易時, 須採用何種格式及方式;
  - (b) 在不局限 (a) 段的原則下, 可指明如金融管理專員就為施行第 101B 條而呈交及收取場外衍生工具交易的報告, 操作或由他人代其操作某電子系統, 而有關指明場外衍生工具交易, 是藉該系統匯報的, 則關於匯報格式及方式的規定, 即屬獲遵從;
  - (c) 可指明任何為履行匯報責任而須呈交的文件, 或須呈報的資料或詳情;
  - (d) 可指明履行匯報責任的限期; 及
  - (e) 可指明任何其他關乎履行匯報責任的程序的事宜。

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- (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—



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(8) 根據本條訂立的規則 ——

- (a) 可指明訂明人士可直接 (或透過第三者) 向金融管理專員匯報任何指明場外衍生工具交易; 及
- (b) 可指明根據第 101B(5) 條指明的附屬公司 (屬某項指明場外衍生工具交易的任何對手方者) 可直接 (或透過第三者) 向金融管理專員匯報該項交易。

#### 101M. 訂立規則的權力 —— 費用

- (1) 行政長官會同行政會議可在諮詢金融管理專員後訂立規則，規定就使用第 101L(7)(b) 條提述的電子系統向金融管理專員繳付費用，並就繳付該等費用訂定條文。
- (2) 根據本條訂立的規則 ——

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- (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 or on behalf of 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; and
- (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.

#### 101M. Rule making power—fees

- (1) The Chief Executive in Council may, after consultation with the Monetary Authority, make rules to require and provide for the payment to the Monetary Authority of the fees for using the electronic system referred to in section 101L(7)(b).
- (2) Rules made under this section may provide—

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- (a) 可規定費用的款額可參照規則內列明的收費表而釐定；
  - (b) 可規定不同類別或種類的人繳付不同的費用，或就不同類別或種類的個案而繳付不同的費用；
  - (c) 可規定繳付費用的時間及方式；
  - (d) 可規定可在一般情況或就個別個案減免繳付任何費用，或退還已繳費用；
  - (e) 可規定金融管理專員可將任何仍未繳付的費用的款額，作為拖欠金融管理專員的民事債項，予以追討；及
  - (f) 可就關乎 (a)、(b)、(c)、(d) 或 (e) 段提述的事宜或附帶於該事宜的任何其他事宜，訂定條文。
- (3) 本條增補而非減損《釋義及通則條例》(第 1 章) 第 29 及 29A 條。

**101N. 訂立規則的權力 —— 結算責任**

- (1) 證監會可在金融管理專員同意下，在諮詢財政司司長後，訂立規則 ——
- (a) 以就結算責任作出一般性規定；及
  - (b) 以在不局限 (a) 段的原則下，訂明本條所列的特定事項。
- (2) 根據本條訂立的規則 ——
- (a) 可為施行第 101A 條訂明人士的定義的 (b)(iv) 段，指明某類別或某種類人士；及
  - (b) 須就屬該類別或該種類人士的人訂定條文，規定除非該人是某項指明場外衍生工具交易的對手方，否則該人不負有結算責任。
- (3) 根據本條訂立的規則 ——

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- (a) that the amount of any fees may be fixed by reference to a scale set out in the rules;
  - (b) for the payment of different fees by or in relation to persons or cases of different classes or descriptions;
  - (c) for the time and manner of payment of the fees;
  - (d) that the payment of any fees may, either generally or in a particular case, be reduced, waived or refunded;
  - (e) that the Monetary Authority may recover any outstanding amount of the fees as a civil debt due to the Monetary Authority; and
  - (f) for any other matters relating or incidental to a matter mentioned in paragraph (a), (b), (c), (d) or (e).
- (3) This section is in addition to and not in derogation of sections 29 and 29A of the Interpretation and General Clauses Ordinance (Cap. 1).

**101N. 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

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- (a) 可一般性地指明 ( 或就某類型或某種類交易而指明 ) 受結算責任所規限的場外衍生工具交易；及
- (b) 在不局限 (a) 段的原則下，可規定即使在以下情況下，場外衍生工具交易亦受結算責任所規限 ——
  - (i) 有一名對手方或多於一名對手方屬在香港境外的人；
  - (ii) 訂明人士並非該項交易的對手方 ( 就根據第 (2) 款指明的屬某類別或某種類人士的人則除外 )；或
  - (iii) 該項交易，是完全或局部在香港境外訂立或進行的。
- (4) 在不局限第 (3) 款的原則下，根據該款指明任何場外衍生工具交易時，可參照關乎場外衍生工具交易的任何因素，包括 ——
  - (a) 該項交易的標的項目；
  - (b) 該項交易的特點或特性；及
  - (c) 該項交易涉及的人。
- (5) 根據本條訂立的規則可 ——
  - (a) 指明下述情況 ——
    - (i) 關乎屬結算責任適用的指明場外衍生工具交易的情況；
    - (ii) 關乎屬結算責任不適用的指明場外衍生工具交易的情況；或
    - (iii) 關乎屬結算責任視為已獲履行的指明場外衍生工具交易的情況；
  - (b) 指明結算責任適用的準則 ( 包括門檻 )；及
  - (c) 就不同訂明人士或不同場外衍生工具交易，指明不同情況及準則。
- (6) 根據本條訂立的規則 ——

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- 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

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- (a) 可指明須採用何種方式，與指定中央對手方結算指明場外衍生工具交易；
- (b) 可指明履行結算責任的限期；
- (c) 可指明在何種情況下，與指定中央對手方以外的人結算的指明場外衍生工具交易，就施行結算責任而言，被視為已與指定中央對手方結算；
- (d) 可指明訂明人士可直接（或透過第三者）與指定中央對手方結算任何指明場外衍生工具交易；及
- (e) 可指明根據第 101C(5) 條指明的附屬公司（屬某項指明場外衍生工具交易的任何對手方者）可直接（或透過第三者）與指定中央對手方結算該項交易。

**101O. 訂立規則的權力 —— 交易責任**

(尚未實施)

- (1) 證監會可在金融管理專員同意下，在諮詢財政司司長後，訂立規則 ——
  - (a) 以就交易責任作出一般性規定；及

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- (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; and
  - (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.

**101O. Rule making power—trading obligation**

(Not yet in operation)

- (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

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- (b) 以在不局限 (a) 段的原則下，訂明本條所列的特定事項。
- (2) 根據本條訂立的規則 ——
- (a) 可為施行第 101A 條訂明人士的定義的 (c)(iv) 段，指明某類別或某種類人士；及
- (b) 須就屬該類別或該種類人士的人訂定條文，規定除非該人是某項指明場外衍生工具交易的對手方，否則該人不負有交易責任。
- (3) 根據本條訂立的規則 ——
- (a) 可一般性地指明 (或就某類型或某種類交易而指明) 受交易責任所規限的場外衍生工具交易；及
- (b) 在不局限 (a) 段的原則下，可規定即使在以下情況下，場外衍生工具交易亦受交易責任所規限 ——
- (i) 有一名對手方或多於一名對手方屬在香港境外的人；
- (ii) 訂明人士並非該項交易的對手方 (就根據第 (2) 款指明的屬某類別或某種類人士的人則除外)；或
- (iii) 該項交易，是完全或局部在香港境外訂立或進行的。
- (4) 在不局限第 (3) 款的原則下，根據該款指明任何場外衍生工具交易時，可參照關乎場外衍生工具交易的任何因素，包括 ——
- (a) 該項交易的標的項目；
- (b) 該項交易的特點或特性；及
- (c) 該項交易涉及的人。
- (5) 根據本條訂立的規則可 ——
- (a) 指明下述情況 ——

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- (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;



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- (i) 關乎屬交易責任適用的指明場外衍生工具交易的情況；
- (ii) 關乎屬交易責任不適用的指明場外衍生工具交易的情況；或
- (iii) 關乎屬交易責任視為已獲履行的指明場外衍生工具交易的情況；
- (b) 指明交易責任適用的準則（包括門檻）；及
- (c) 就不同訂明人士或不同場外衍生工具交易，指明不同情況及準則。
- (6) 根據本條訂立的規則 ——
  - (a) 可指明須採用何種方式，在指定交易平台執行指明場外衍生工具交易；
  - (b) 可指明在何種情況下，在指定交易平台以外的平台執行的指明場外衍生工具交易，就施行交易責任而言，被視為已在指定交易平台執行；
  - (c) 可指明訂明人士可直接（或透過第三者）在指定交易平台執行任何指明場外衍生工具交易；及
  - (d) 可指明根據第 101D(5) 條指明的附屬公司（屬某項指明場外衍生工具交易的任何對手方者）可直接（或透過第三者）在指定交易平台執行該項交易。

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- (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; and
  - (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.



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第 571 章第 IIIA 部 —— 第 4 分部  
第 101P 條Part IIIA—Division 4  
Section 101P3A-62  
Cap. 571**101P. 訂立規則的權力 —— 備存紀錄責任**

- (1) 證監會可在金融管理專員同意下，在諮詢財政司司長後，訂立規則 ——
  - (a) 以就備存紀錄責任作出一般性規定；及
  - (b) 以在不局限 (a) 段的原則下，訂明本條所列的特定事項。
- (2) 根據本條訂立的規則 ——
  - (a) 可為施行第 101A 條訂明人士的定義的 (d)(iv) 段，指明某類別或某種類人士；及
  - (b) 須就屬該類別或該種類人士的人訂定條文，規定除非該人是某項指明場外衍生工具交易的對手方，否則該人不負有備存紀錄責任。
- (3) 根據本條訂立的規則 ——
  - (a) 可一般性地指明 (或就某類型或某種類交易而指明) 受備存紀錄責任所規限的場外衍生工具交易；
  - (b) 可指明須備存的紀錄；
  - (c) 可指明在不同情況下須備存的不同紀錄，或須由不同類別或種類的訂明人士備存的不同紀錄；
  - (d) 可指明備存紀錄須採用的方式、紀錄須存放的地點，以及紀錄最低限度須保留的時間；
  - (e) 可指明下述情況 ——
    - (i) 關乎屬備存紀錄責任適用的指明場外衍生工具交易的情況；
    - (ii) 關乎屬備存紀錄責任不適用的指明場外衍生工具交易的情況；或
    - (iii) 關乎屬備存紀錄責任視為已獲履行的指明場外衍生工具交易的情況；及
  - (f) 可指明關乎須備存的紀錄的任何其他事宜。

**101P. Rule making power—record keeping 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 record keeping 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 (d)(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 record keeping obligation only if the person is a counterparty to a specified OTC derivative transaction.
- (3) Rules made under this section may specify—
  - (a) generally, or with reference to a class or description of transactions, the OTC derivative transactions that are subject to the record keeping obligation;
  - (b) the records to be kept;
  - (c) different records to be kept under different circumstances or by different classes or descriptions of prescribed persons;
  - (d) the manner in which, the location at which and the minimum duration for which the records must be kept;
  - (e) the circumstances relating to a specified OTC derivative transaction in which the record keeping obligation—
    - (i) applies;

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第 571 章第 IIIA 部 —— 第 4 分部  
第 101Q 條Part IIIA—Division 4  
Section 101Q3A-64  
Cap. 571**101Q. 訂立規則的權力 —— 指定**

證監會可在金融管理專員同意下，在諮詢財政司司長後，訂立規則訂明 ——

- (a) 下述指定的申請程序 (包括申請人須提供的文件及資料) ——
  - (i) 中央對手方的指定；或
  - <sup>#</sup>(ii) 交易平台的指定；
- (b) 要求獲指定的申請人須遵從的其他規定；
- (c) 在考慮申請時可顧及的任何事項；
- (d) 可據以拒絕或撤銷指定的理由；
- <sup>+</sup>(e) 根據第 101J(1) 或 (5) 或 101K(1) 或 (5) 條行使權力的程序；或
- <sup>+</sup>(f) 關乎根據第 101J 或 101K 條作出指定或撤銷的過程或程序的任何其他事項。

編輯附註：

<sup>#</sup> 尚未實施。

<sup>+</sup> 由《2014 年證券及期貨 (修訂) 條例》(2014 年第 6 號) 新增的第 101Q(e) 及 (f) 條於 2016 年 9 月 1 日開始實施，但限於在該段關乎新的第 101K 條的範圍內除外。請參閱《2016 年〈2014 年證券及期貨 (修訂) 條例〉(生效日期) 公告》(2016 年第 27 號法律公告) (a)(viii)(B) 及 (C) 段。

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- (ii) does not apply; or
- (iii) is taken to have been complied with; and
- (f) any other matter relating to the records to be kept.

**101Q. 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
  - <sup>#</sup>(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;
- <sup>+</sup>(e) the procedure for exercising a power under section 101J(1) or (5) or 101K(1) or (5); or
- <sup>+</sup>(f) any other matter relating to the process of or procedure for a designation or revocation under section 101J or 101K.

Editorial Note:

<sup>#</sup> Not yet in operation.

<sup>+</sup> The new section 101Q(e) and (f) added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on 1 September 2016, except in so far as they relate to the new section 101K. Please see paragraph (a)(viii)(B) and (C) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

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## 第 5 分部 —— 系統重要參與者

(尚未實施)

## Division 5—Systemically Important Participants

(Not yet in operation)

### 101R. 須具報場外衍生工具交易的持倉量的人

(尚未實施)

- (1) 凡任何人 ——
  - (a) 並非 ——
    - (i) 認可財務機構；
    - (ii) 核准貨幣經紀；
    - (iii) 持牌法團；
    - (iv) 認可交易所；
    - (v) 認可結算所；或
    - (vi) 根據第 95(2) 條獲認可提供自動化交易服務的人；並
  - (b) 從事場外衍生工具交易，  
本條即適用於該人。
- (2) 如本條適用的人的特定類別的持倉量，達到具報水平，該人須按照第 (4) 款，向證監會具報。
- (3) 為施行第 (2) 款，如某人就履行因另一人的持倉量而產生的責任作擔保，則凡提述該人的持倉量，即包括在該擔保範圍內的該另一人的持倉量。
- (4) 有關具報須 ——
  - (a) 於《具報規則》所訂明的限期內，以書面作出；並
  - (b) 按照第 (5) 款作出。
- (5) 有關具報須 ——
  - (a) 載有足夠資料，以 ——
    - (i) 識別有關系統重要參與者；

### 101R. Persons who must notify positions in OTC derivative transactions

(Not yet in operation)

- (1) This section applies to a person who—
  - (a) is not—
    - (i) an authorized financial institution;
    - (ii) an approved money broker;
    - (iii) a licensed corporation;
    - (iv) a recognized exchange company;
    - (v) a recognized clearing house; or
    - (vi) a person authorized under section 95(2) to provide automated trading services; and
  - (b) engages in OTC derivative transactions.
- (2) A person to whom this section applies must notify the Commission in accordance with subsection (4) if the person's position in a specific class reaches the notification level.
- (3) For the purposes of subsection (2), a reference to a person's position includes the position of another person to the extent to which the performance of the obligations arising from that other person's position is guaranteed by the person.
- (4) A notification must be given—
  - (a) in writing and within the period prescribed by the notification rules; and
  - (b) in accordance with subsection (5).
- (5) A notification must contain—

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- (ii) 識別該項具報所關乎的特定類別；及
- (iii) 顯示有關持倉量已達到具報水平；及
- (b) 載有《具報規則》所訂明的任何資料（包括關乎 (a) 段提述的事宜的附加資料）。
- (6) 任何人無合理辯解而沒有遵守第 (2) 款，即屬犯罪。
- (7) 犯第 (6) 款所訂罪行的人 ——
  - (a) 一經循公訴程序定罪，可處罰款 \$5,000,000 及監禁 7 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$100,000，直至該另處罰款的截止日期為止；或
  - (b) 一經循簡易程序定罪，可處罰款 \$500,000 及監禁 2 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$10,000，直至該另處罰款的截止日期為止。
- (8) 為施行第 (7) 款，可對該款所述的人另處的罰款的截止日期，是該人按照第 (5) 款向證監會以書面具報該人的有關特定類別的持倉量的日期。

**101S. 證監會須備存登記冊**

(尚未實施)

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- (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)).
- (6) A person who without reasonable excuse fails to comply with subsection (2) commits an offence.
- (7) A person who commits an offence under subsection (6) is liable—
  - (a) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years and, if the offence is a continuing offence, to a further fine of \$100,000 for every day during which the offence continues, until the cut-off date for the further fine; or
  - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years and, if the offence is a continuing offence, to a further fine of \$10,000 for every day during which the offence continues, until the cut-off date for the further fine.
- (8) For the purposes of subsection (7), the cut-off date for a further fine for which the person is liable is the date on which the person, in writing, notifies the Commission in accordance with subsection (5) of the person's position in that specific class.

**101S. Commission to maintain register**

(Not yet in operation)

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- (1) 證監會須以其認為適當的格式，備存一份登記冊，用以記錄第 101T 條所指的資料。
- (2) 系統重要參與者登記冊可藉以下方式備存 ——
  - (a) 以文件形式；或
  - (b) 並非以文件形式記錄資料，但該等資料須能以可閱讀形式重現。
- (3) 系統重要參與者登記冊須於所有合理時間提供予公眾，使任何公眾人士能確定 ——
  - (a) 該人是否正在與任何已登記系統重要參與者有往來；及
  - (b) 與該人有往來的已登記系統重要參與者的登記詳情。
- (4) 在所有合理時間，公眾人士 ——
  - (a) 可查閱系統重要參與者登記冊，或（如該登記冊並非以文件形式備存）可查閱以可閱讀形式重現的該登記冊的資料，或其有關部分；及
  - (b) 一經繳付訂明費用，可取得 ——
    - (i) 該登記冊的記項的副本；或
    - (ii) 該登記冊的摘錄的副本。
- (5) 如任何文件看來是 ——
  - (a) 系統重要參與者登記冊的記項或摘錄的副本；及
  - (b) 經證監會的獲授權人員核證為該記項或摘錄的真確副本，

則該文件可在任何法律程序中，獲接納為其內容的證據。
- (6) 在不減損本條其他條文的原則下，證監會須另行安排，將系統重要參與者登記冊以聯機紀錄形式，提供予公眾。

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- (1) The Commission must maintain a register, in a form that it considers appropriate, to record information under section 101T.
- (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.



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### 101T. 在系統重要參與者登記冊上登記

(尚未實施)

- (1) 證監會可就已遵守具報規定的人，將以下資料記入系統重要參與者登記冊 ——
  - (a) 該人的姓名或名稱；及
  - (b) 已就哪個特定類別，達到具報水平。
- (2) 凡任何人看來是已作出具報，但該項具報並非按照第 101R(4) 條作出，則證監會可就該人，將以下資料記入系統重要參與者登記冊 ——
  - (a) 該人的姓名或名稱；及
  - (b) 已就哪個特定類別，達到具報水平。
- (3) 如第 (6) 款所述的條件，已就某人獲符合，則證監會可將以下資料記入系統重要參與者登記冊 ——
  - (a) 該人的姓名或名稱；及
  - (b) 第 (6)(b) 款提述的特定類別。
- (4) 在根據第 (3)(a) 或 (b) 款就某人在系統重要參與者登記冊作出記項前，證監會須 ——
  - (a) 通知金融管理專員；及
  - (b) 給予該人合理的機會，就擬作出的記項陳詞。
- (5) 在根據第 (1)(a) 或 (b)、(2)(a) 或 (b) 或 (3)(a) 或 (b) 款在系統重要參與者登記冊作出記項後，證監會須在切實可行範圍內，盡快藉書面通知，告知有關的人。
- (6) 第 (3) 款提述的條件是 ——
  - (a) 第 101R(1) 條適用於有關人士；及

- (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.

### 101T. Registration in SIP register

(Not yet in operation)

- (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 101R(4)—
  - (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



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- (b) 以下兩者其中之一 ——
- (i) 證監會有合理理由相信，該人的任何特定類別的持倉量，已達到有關具報水平，但該人並未就該類別作出具報；
  - (ii) 金融管理專員有合理理由相信，該人的任何特定類別的持倉量，已達到有關具報水平，但該人並未就該類別作出具報，而金融管理專員將此事通知證監會。
- (7) 為施行第 (6)(b) 款，如某人就履行因另一人的持倉量而產生的責任作擔保，則凡提述該人的持倉量，即包括在該擔保範圍內的該另一人的持倉量。
- (8) 凡證監會決定根據第 (1)、(2) 或 (3) 款，在系統重要參與者登記冊作出記項，該決定的生效時間，是第 (5) 款所指的通知送達之時，或該通知指明的時間，兩者以較遲者為準。

**101U. 就特定類別獲登記後，不須再作具報**

(尚未實施)

- (1) 如任何人已就某特定類別獲登記，只要其姓名或名稱仍就該類別而列於系統重要參與者登記冊內，該人不須就該類別遵守具報規定。

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- 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 101R(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) For the purposes of subsection (6)(b), a reference to a person's position includes the position of another person to the extent to which the performance of the obligations arising from that other person's position is guaranteed by the person.
- (8) 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.

**101U. Notification not required after registration for specific class**

(Not yet in operation)

- (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.

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- (2) 凡根據第 101T(2) 或 (3) 條就某特定類別獲登記的人，在如此獲登記前，沒有就該類別遵守具報規定，則第 (1) 款並不影響因該項不遵守而招致的任何法律責任。
- (3) 此外，如在關乎某特定類別的首次或其後的任何撤銷登記後，某人的該類別的持倉量，達到具報水平，則第 (1) 款並不影響第 101R(2) 條對該人的適用。
- (4) 就本條而言，如系統重要參與者登記冊顯示，某人的某特定類別的持倉量，已達到具報水平，則該人視為就該類別獲登記。
- (5) 為施行第 (3) 及 (4) 款，如某人就履行因另一人的持倉量而產生的責任作擔保，則凡提述該人的持倉量，即包括在該擔保範圍內的該另一人的持倉量。

**101V. 撤銷登記**

(尚未實施)

- (1) 如證監會信納，《具報規則》訂明的、將某人從系統重要參與者登記冊除名的有關條件、情況及準則，均已獲符合，則證監會須將該人從該登記冊除名。
- (2) 如證監會信納，《具報規則》訂明的、將某特定類別(該類別是就某人的姓名或名稱而記入的)從系統重要參與者登記冊移除的有關條件、情況及準則，均已獲符合，則證監會須將該類別從該登記冊移除。
- (3) 撤銷登記可——
  - (a) 由證監會主動作出；或
  - (b) 應已登記系統重要參與者的申請而作出。

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- (2) Subsection (1) does not affect any liability incurred for a failure by a person who is registered for a specific class under section 101T(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 101R(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.
- (5) For the purposes of subsections (3) and (4), a reference to the position of a person or a person's position includes the position of another person to the extent to which the performance of the obligations arising from that other person's position is guaranteed by the person.

**101V. Deregistration**

(Not yet in operation)

- (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—

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第 101W 條

- (4) 證監會在拒絕要求撤銷登記的申請前，須給予有關的人合理的陳詞機會。
- (5) 證監會在撤銷登記前，須諮詢金融管理專員。
- (6) 證監會在撤銷登記後，或在拒絕撤銷登記後，須在切實可行範圍內，盡快藉書面通知，將撤銷或拒絕一事，通知有關的人。
- (7) 凡證券及期貨事務上訴審裁處根據第 XI 部，覆核證監會根據第 101T(3) 條作出的決定，本條不阻止證監會修訂系統重要參與者登記冊，以執行該審裁處在該覆核中作出的決定。

**101W. 要求已登記系統重要參與者提供資料的權力**

(尚未實施)

- (1) 證監會可藉書面通知，要求已登記系統重要參與者以該通知所列的格式及方式，向證監會提供該通知要求的、關乎以下一項或多於一項事宜的資料——
  - (a) 該參與者的場外衍生工具產品的活動及交易；
  - (b) 就該參與者的場外衍生工具產品的交易而設立的風險管理制度，以及就該等交易而訂立的風險管理政策；
  - (c) 《具報規則》訂明的任何其他事宜。
- (2) 金融管理專員可藉書面通知，要求已登記系統重要參與者以該通知所列的格式及方式，向金融管理專員提供該通知要求的、關乎以下一項或多於一項事宜的資料——

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- (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 101T(3).

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

(Not yet in operation)

- (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.

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第 101X 條

- (a) 該參與者的場外衍生工具產品的活動及交易；
  - (b) 就該參與者的場外衍生工具產品的交易而設立的風險管理制度，以及就該等交易而訂立的風險管理政策；
  - (c) 《具報規則》訂明的任何其他事宜。
- (3) 有關已登記系統重要參與者須在有關通知指明的限期內，提供根據第 (1) 或 (2) 款被要求提供的資料。

**101X. 要求已登記系統重要參與者採取若干行動的權力**

(尚未實施)

- (1) 如證監會有合理理由相信，已登記系統重要參與者的場外衍生工具產品的活動或交易 ——
- (a) 構成 (或可能構成) 證券期貨業內的系統風險；或
  - (b) 對 (或可能對) 香港在金融方面的穩定性，構成系統風險，
- 則證監會在金融管理專員同意或要求下，可採取第 (2) 款指明的行動。
- (2) 證監會可採取的行動，是藉書面通知，要求有關已登記系統重要參與者，作出一項或多於一項該通知指明的以下作為 ——
- (a) 停止增加該參與者因其一個或多於一個特定類別的持倉量而產生的風險承擔，或減低上述風險承擔；
  - (b) 收取抵押品，或增加已收取的抵押品的數額；
  - (c) 提供抵押品，或增加已提供的抵押品的數額；

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- (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.

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

(Not yet in operation)

- (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 exposure arising from its positions in one or more specific classes;

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第 101Y 條

- (d) 限制抵押品的使用；
- (e) 限制收取或提供的抵押品的類型；
- (f) 採取《具報規則》訂明的任何其他行動。
- (3) 為施行第 (2)(a) 款，凡提述已登記系統重要參與者因其持倉量而產生的風險承擔，即提述該參與者就以下項目所承擔的風險 ——
  - (a) 該參與者的持倉量；及
  - (b) (如該參與者就履行因另一人的持倉量而產生的責任作擔保) 在該擔保範圍內的該另一人的持倉量。
- (4) 根據本條送達的通知中的要求的生效時間，是該通知送達之時，或該通知指明的時間，兩者以較遲者為準。

**101Y. 向原訟法庭提出申請**

(尚未實施)

- (1) 如已登記系統重要參與者沒有遵從根據第 101W(1) 或 101X 條作出的要求，則證監會可向原訟法庭提出申請，就該項不遵從進行查訊。
- (2) 如已登記系統重要參與者沒有遵從根據第 101W(2) 條作出的要求，則金融管理專員可向原訟法庭提出申請，就該項不遵從進行查訊。
- (3) 原訟法庭可查訊有關個案，而原訟法庭 ——

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- (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;
- (e) to restrict the type of collateral collected or posted;
- (f) to take any other action prescribed by the notification rules.
- (3) For the purposes of subsection (2)(a), a reference to the registered SIP's exposure arising from its positions is a reference to the risk to which the registered SIP is exposed in respect of—
  - (a) the positions of the registered SIP; and
  - (b) the positions of another person to the extent to which the performance of the obligations arising from those positions is guaranteed by the registered SIP.
- (4) 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.

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

(Not yet in operation)

- (1) If a registered SIP fails to comply with a requirement made under section 101W(1) or 101X, 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 101W(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—



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第 101Z 條

- (a) 如信納有關已登記系統重要參與者不遵從有關要求，是沒有合理辯解的，則可命令該參與者在原訟法庭指明的限期內，遵從該要求；及
- (b) 如信納該參與者無合理辯解而不遵從該要求，則可懲罰該參與者，懲罰的方式猶如該參與者犯藐視法庭罪一樣。
- (4) 如某已登記系統重要參與者有合理可能會不遵從第(1)款提述的要求，證監會可向原訟法庭申請命令，飭令該參與者按原訟法庭的指示採取（或不得採取）任何行動。
- (5) 如某已登記系統重要參與者有合理可能會不遵從第(2)款提述的要求，金融管理專員可向原訟法庭申請命令，飭令該參與者按原訟法庭的指示採取（或不得採取）任何行動。
- (6) 根據第(1)、(2)、(4)或(5)款提出的申請，須以原訴傳票（須採用《高等法院規則》（第4章，附屬法例A）附錄A表格10）提出。

**101Z. 訂立規則的權力 —— 具報等**

(尚未實施)

證監會可在金融管理專員同意下，在諮詢財政司司長後，訂立規則 ——

- (a) 就任何特定類別 ——
  - (i) 為具報規定的適用，訂明門檻；
  - (ii) 訂明遵守具報規定的限期；
  - (iii) 訂明撤銷登記的條件、情況及準則；及

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- (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).

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

(Not yet in operation)

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;



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第 101Z 條

- (iv) 訂明將某人的持倉量視為達到具報水平的條件、情況及準則；
  - (b) 訂明某人須根據第 101R(5)(b) 條提供的附加資料；
  - (c) 訂明可就何種事宜而根據第 101W(1)(c) 及 (2)(c) 條要求提供資料；
  - (d) 訂明可根據第 101X(2)(f) 條要求已登記系統重要參與者採取的行動；及
  - (e) 為更有效地施行本分部而作出一般性規定。
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- (ii) the period within which the notification requirement must be complied with;
  - (iii) the conditions, circumstances and criteria for deregistration; and
  - (iv) the conditions, circumstances and criteria for regarding a person's position as reaching the notification level;
  - (b) additional information to be given by a person under section 101R(5)(b);
  - (c) matters on which information may be required to be given under section 101W(1)(c) and (2)(c);
  - (d) action a registered SIP may be required to take under section 101X(2)(f); and
  - (e) generally for better carrying out the purposes of this Division.
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**第 IV 部****投資要約**

(格式變更——2012 年第 2 號編輯修訂紀錄)

**第 1 分部 —— 釋義****102. 第 IV 部的釋義**

(1) 在本部中，除文意另有所指外——

**文件** (document) 指符合以下說明的刊物 (包括報章、雜誌、期刊、海報、公告、啟事、通知、通告、冊子、小冊子、傳單，或招股章程)——

- (a) 以公眾為對象的，或公眾相當可能會取得或閱讀 (不論是同時取得和閱讀或在其他情況下取得或閱讀) 其內容的；及
- (b) 不論是以機械、電子、磁力、光學、人手或其他方式製作的；

**代表** (representative) ——

- (a) 就持牌法團而言，指符合以下說明的個人——
  - (i) 就某類受規管活動獲發牌為持牌代表；及
  - (ii) 以隸屬該法團的身分為該法團進行該類活動的；或
- (b) 就註冊機構而言，指符合以下說明的個人——
  - (i) 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為受該機構就某類受規管活動聘用的；及
  - (ii) 為該機構進行該類活動的；

**核准人士** (approved person) ——**Part IV****Offers of Investments**

(Format changes—E.R. 2 of 2012)

**Division 1—Interpretation****102. Interpretation of Part IV**

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

**advertisement** (廣告) includes every form of advertising, whether made orally or produced mechanically, electronically, magnetically, optically, manually or by any other means;**approved person** (核准人士)—

- (a) in relation to a collective investment scheme, means an individual approved by the Commission under section 104(3); (Amended 8 of 2011 s. 2)
- (aa) in relation to a structured product, means an individual approved by the Commission under section 104A(3); or (Added 8 of 2011 s. 2)
- (b) in relation to the issue of an advertisement, invitation or document, means an individual approved by the Commission under section 105(3);

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

- (a) directed at, or the contents of which are likely to be accessed or read (whether concurrently or otherwise) by, the public; and
- (b) whether produced mechanically, electronically, magnetically, optically, manually or by any other means;

- (a) 就集體投資計劃而言，指證監會根據第 104(3) 條核准的個人；(由 2011 年第 8 號第 2 條修訂)
- (aa) 就結構性產品而言，指證監會根據第 104A(3) 條核准的個人；或 (由 2011 年第 8 號第 2 條增補)
- (b) 就廣告、邀請或文件的發出而言，指證監會根據第 105(3) 條核准的個人；

**發出** (issue) 就任何材料 (包括任何廣告、邀請或文件) 而言，包括——

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

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

**監管當局** (relevant authority) 就香港以外地方而言，指金融管理專員信納是該地方的認可銀行監管機構的機構；

**廣告** (advertisement) 包括各種形式的廣告，不論是口頭作出的，或是以機械、電子、磁力、光學、人手或其他方式製作的；

**獲豁免團體** (exempted body) 指附表 4 第 3 部指明的團體；(由 2011 年第 8 號第 2 條修訂)

**邀請** (invitation) 包括要約及邀請，不論是口頭作出的，或是以機械、電子、磁力、光學、人手或其他方式製作的；

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

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

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

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

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

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

**representative** (代表)——

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

**證券** (securities) 具有附表 1 第 1 部第 1 條中**證券**的定義給予該詞的相同涵義，但並不包括只因該定義的 (g) 段而屬證券的結構性產品。(由 2011 年第 8 號第 2 條增補)

(2) 就本部而言 ——

- (a) 在任何人安排或授權下發出廣告、邀請或文件期間的每一天，該廣告、邀請或文件 (視屬何情況而定) 須視為由他發出的；
- (b) 由某人代另一人發出的廣告、邀請或文件，須視為由該二人發出的廣告、邀請或文件 (視屬何情況而定)。

(編輯修訂 —— 2012 年第 2 號編輯修訂紀錄)

## 第 2 分部 —— 投資要約的規管等

### 103. 在某些情況下發出關於投資的廣告、邀請或文件的罪行

- (i) who is licensed as a licensed representative for a regulated activity; and
- (ii) who carries on that regulated activity for the licensed corporation as a licensed corporation to which he is accredited; or
- (b) in relation to a registered institution, means an individual—
  - (i) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by the registered institution in respect of a regulated activity; and
  - (ii) who carries on that regulated activity for the registered institution; (*Amended 8 of 2011 s. 2*)

**securities** (證券) has the same meaning as that given by the definition of **securities** in section 1 of Part 1 of Schedule 1 except that it does not include structured products that are securities only because of paragraph (g) of that definition. (*Added 8 of 2011 s. 2*)

(2) For the purposes of this Part—

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

## Division 2—Regulation of offers of investments, etc.

### 103. Offence to issue advertisements, invitations or documents

- (1) 除第 (2)、(3) 及 (5) 至 (9) 款另有規定外，任何人在香港或其他地方發出任何廣告、邀請或文件，或為在香港或其他地方發出而管有任何廣告、邀請或文件，而他知道該廣告、邀請或文件（視屬何情況而定）屬或載有請公眾作出以下作為的邀請的，即屬犯罪 ——
- (a) 訂立或要約訂立 ——
- (i) 旨在取得、處置、認購或包銷證券的協議；或
  - (ii) 受規管投資協議，或旨在取得、處置、認購或包銷任何其他結構性產品的協議；或（由 2011 年第 8 號第 3 條代替）
- (b) 取得或要約取得集體投資計劃的權益，或參與或要約參與集體投資計劃，
- 但如該項發出獲證監會根據第 105(1) 條認可，則屬例外。
- (2) 第 (1) 款不適用於發出或為發出而管有在以下情況下作出的廣告、邀請或文件 ——
- (a) 由就第 1、4 或 6 類受規管活動獲發牌或獲註冊的中介人（不論以主事人或代理人身分行事）或由他人代該中介人（不論該中介人以主事人或代理人身分行事）就以下證券而作出 ——
- (i) 上市證券；或
  - (ii) 非上市證券（屬結構性產品的非上市證券除外）；（由 2011 年第 8 號第 3 條代替）
- (b) 由就第 2 或 5 類受規管活動獲發牌或獲註冊的中介人（不論以主事人或代理人身分行事）或由他人代該中介人（不論該中介人以主事人或代理人身分行事）就期貨合約而作出；

**relating to investments in certain cases**

- (1) Subject to subsections (2), (3) and (5) to (9), a person commits an offence if he issues, or has in his possession for the purposes of issue, whether in Hong Kong or elsewhere, an advertisement, invitation or document which to his knowledge is or contains an invitation to the public—
- (a) to enter into or offer to enter into—
- (i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or
  - (ii) a regulated investment agreement or an agreement to acquire, dispose of, subscribe for or underwrite any other structured product; or (*Replaced 8 of 2011 s. 3*)
- (b) to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme,
- unless the issue is authorized by the Commission under section 105(1).
- (2) Subsection (1) does not apply to the issue, or the possession for the purposes of issue, of any advertisement, invitation or document—
- (a) made by or on behalf of an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity (whether acting as principal or agent) in respect of—
- (i) listed securities; or
  - (ii) unlisted securities (excluding unlisted securities that are structured products); (*Replaced 8 of 2011 s. 3*)
- (b) made by or on behalf of an intermediary licensed or registered for Type 2 or Type 5 regulated activity



- (c) 由下述者或由他人代下述者就槓桿式外匯交易合約而作出 ——
- (i) 認可財務機構 (不論以主事人或代理人身分行事) ; 或
  - (ii) 就第 3 類受規管活動獲發牌的中介人 (不論以主事人或代理人身分行事) ;
- (d) 由認可交易所或認可結算所或由他人代認可交易所或認可結算所就該認可交易所或認可結算所 (視屬何情況而定) 的服務的提供而作出 ;
- (e) 由某法團或 (由他人代某法團) 就該法團或其有連繫法團的證券 (屬結構性產品的證券除外) 而向以下人士作出 ——
- (i) 該法團或其有連繫法團的證券 (屬結構性產品的證券除外) 的持有人 ;
  - (ii) 該法團或其有連繫法團的債權人 ;
  - (iii) 該法團或其有連繫法團的僱員 ; 或
  - (iv) 以專業身分代該法團或其有連繫法團行事的代理人 ; (由 2011 年第 8 號第 3 條代替)
- (f) 由政府或由他人代政府就政府發行的證券或結構性產品而作出 ; (由 2011 年第 8 號第 3 條修訂)
- (g) 由某儲蓄互助社或由他人代某儲蓄互助社就該社的股份而作出 ;
- (ga) 由某法團或由他人代某法團作出, 但只限於在該廣告、邀請或文件所關乎的要約, 屬與《公司 (清盤及雜項條文) 條例》(第 32 章) 附表 17 各部 (第 1 部除外) 一併理解的該附表第 1 部指明的要約的範圍內 ; (由 2016 年第 16 號第 5 條代替)

- (whether acting as principal or agent) in respect of futures contracts;
- (c) made by or on behalf of—
- (i) an authorized financial institution (whether acting as principal or agent); or
  - (ii) an intermediary licensed for Type 3 regulated activity (whether acting as principal or agent), in respect of leveraged foreign exchange contracts;
- (d) made by or on behalf of a recognized exchange company or recognized clearing house in respect of the provision of services by such recognized exchange company or recognized clearing house (as the case may be);
- (e) made by or on behalf of a corporation in respect of securities (excluding securities that are structured products) of the corporation, or of a related corporation of the corporation, to—
- (i) holders of securities (excluding securities that are structured products) of the corporation or related corporation;
  - (ii) creditors of the corporation or related corporation;
  - (iii) employees employed by the corporation or related corporation; or
  - (iv) agents acting in a professional capacity on behalf of the corporation or related corporation; (*Replaced 8 of 2011 s. 3*)
- (f) made by or on behalf of the Government in respect of securities or structured products issued by it; (*Amended 8 of 2011 s. 3*)



- (h) 由以不是集體投資計劃的某信託的受託人身分行事的人或由他人代該人向該信託的受益人作出；或
- (i) 由從事買賣非證券或非結構性產品財產的業務的人（不論以主事人或代理人身分行事）或由他人代該人（不論該人以主事人或代理人身分行事）在該業務的日常運作過程中作出。（由 2011 年第 8 號第 3 條修訂）
- (3) 第 (1) 款不適用於 ——
  - (a) 發出或為發出而管有 ——
    - (i) 符合或獲豁免而無需符合《公司（清盤及雜項條文）條例》（第 32 章）第 II 部的招股章程；
    - (ii) （如屬在香港以外地方成立的法團）符合或獲豁免而無需符合該條例第 XII 部的招股章程；
    - (iii) 屬該條例第 38B(2) 條範圍內的刊登文件；（由 2004 年第 30 號第 3 條代替。由 2012 年第 28 號第 912 及 920 條修訂）
  - (b) 發出或為發出而管有關乎在香港成立的、既非註冊公司亦非開放式基金型公司的法人團體的證券的文件，而 ——（由 2016 年第 16 號第 5 條修訂）
    - (i) 假若該法人團體是註冊公司，該文件便會是《公司（清盤及雜項條文）條例》（第 32 章）第 38 條適用或（若該文件沒有被該條例第 38(5)(b) 或 38A 條豁除）會適用的招股章程；及（由 2012 年第 28 號第 912 及 920 條修訂）
    - (ii) 假若該法人團體是在香港以外地方成立的法團而該文件是該法團發出的招股章程，則由於該條例第 XII 部，該文件須載有某些事項，而該文件已載有所有該等事項；

- (g) made by or on behalf of a credit union in respect of shares in the credit union;
- (ga) made by or on behalf of a corporation, but only to the extent that the advertisement, invitation or document relates to an offer specified in Part 1 of the Seventeenth Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) as read with the other Parts of that Schedule; (*Replaced 16 of 2016 s. 5*)
- (h) made by or on behalf of a person acting as a trustee of a trust, not being a collective investment scheme, to beneficiaries under the trust; or
- (i) made by or on behalf of a person who is engaged in the business of selling and purchasing property other than securities or structured products (whether acting as principal or agent) in the ordinary course of that business. (*Amended 8 of 2011 s. 3*)
- (3) Subsection (1) does not apply to the issue, or the possession for the purposes of issue—
  - (a) of—
    - (i) a prospectus which complies with or is exempt from compliance with Part II of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);
    - (ii) in the case of a corporation incorporated outside Hong Kong, a prospectus which complies with or is exempt from compliance with Part XII of that Ordinance;
    - (iii) a publication falling within section 38B(2) of that Ordinance; (*Replaced 30 of 2004 s. 3. Amended 28 of 2012 ss. 912 & 920*)

- (c) 發出或為發出而管有申請某個不是開放式基金型公司的法團的股份或債權證的表格，而該表格是連同下述招股章程或文件發出的，或管有該表格是為連同下述招股章程或文件發出該表格的 —— (由 2016 年第 16 號第 5 條修訂)
- (i) 關乎該等股份或債權證且符合或獲豁免而無需符合《公司(清盤及雜項條文)條例》(第 32 章)第 II 部的招股章程，或(如該法團是在香港以外地方成立的法團)符合或獲豁免而無需符合該條例第 XII 部的招股章程；或 (由 2012 年第 28 號第 912 及 920 條修訂)
- (ii) (如該法團是在香港成立的不是註冊公司的法人團體)一份文件，其中載有假若該法人團體是在香港以外地方成立的法團而該文件是該法團就該等股份或債權證發出的招股章程，則該文件便會憑藉該條例第 XII 部而須載有的所有事項；
- (d) 向任何人發出或為向任何人發出而管有申請某法團證券的表格，而該表格是在與邀請他就該等證券訂立包銷協議而真誠地向他作出的邀請有關連的情況下發出的，或管有該表格是為在與該項邀請有關連的情況下發出該表格的；
- (e) 發出或為發出而管有就認可財務機構在香港或其他地方發行存款證而作出的任何廣告、邀請或文件；
- (ea) 發出或為發出而管有就認可財務機構在香港或其他地方發行貨幣掛鈎票據、利率掛鈎票據或貨幣及利率掛鈎票據而作出的任何廣告、邀請或文件；(由 2011 年第 8 號第 3 條增補)

- (b) of a document relating to the securities of a body corporate incorporated in Hong Kong that is neither a registered company nor an open-ended fund company, being a document which— (*Amended 16 of 2016 s. 5*)
- (i) would, if the body corporate were a registered company, be a prospectus to which section 38 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) applies, or would apply if not excluded by section 38(5)(b) or 38A of that Ordinance; and (*Amended 28 of 2012 ss. 912 & 920*)
- (ii) contains all the matters which, by virtue of Part XII of that Ordinance, it would be required to contain if the body corporate were a corporation incorporated outside Hong Kong and the document were a prospectus issued by that corporation;
- (c) of a form of application for the shares or debentures of a corporation that is not an open-ended fund company, where it is issued, or the possession is for the purposes of issue, together with— (*Amended 16 of 2016 s. 5*)
- (i) a prospectus with respect to those shares or debentures which complies with or is exempt from compliance with Part II of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) or, in the case of a corporation incorporated outside Hong Kong, complies with or is exempt from compliance with Part XII of that Ordinance; or (*Amended 28 of 2012 ss. 912 & 920*)
- (ii) in the case of a body corporate incorporated in Hong Kong that is not a registered company, a document containing all the matters which, by virtue of Part XII of that Ordinance, it would be required to contain if the body corporate were

- (f) 發出或為發出而管有就在香港或其他地方發行存款證而作出的任何廣告、邀請或文件，而 ——
- (i) 該存款證的款額或面額不少於附表 4 第 1 部指明的金額；及
  - (ii) 該存款證是 ——
    - (A) 由多邊機構發行的；或
    - (B) 由在香港沒有營業地點且在香港以外地方成立為法團的銀行發行的，而金融管理專員已作出書面聲明，指他信納該銀行相當可能獲得該地方或其主營業地點所在地的監管當局的充分監管；
- (g) 發出或為發出而管有就在香港或其他地方發行附表 4 第 2 部指明的票據（存款證除外）而作出的任何廣告、邀請或文件，而該票據的款額或面額不少於附表 4 第 1 部指明的金額，且該票據是 ——
- (i) 由認可財務機構或多邊機構發行的，或由獲豁免團體發行的，但該團體如屬附表 4 第 3 部第 11 項指明的法團或全資附屬公司，則須符合有關條件；
  - (ii) 由符合有關條件的法團發行，並獲認可財務機構或多邊機構作出擔保或獲得獲豁免團體（附表 4 第 3 部第 11 項指明的但不符合有關條件的法團或該法團的全資附屬公司除外）作出擔保的；或
  - (iii) 由附表 4 第 3 部第 11 項指明的全資附屬公司發行，並獲該公司所屬的符合有關條件的法團作出擔保的；

- a corporation incorporated outside Hong Kong and the document were a prospectus issued by that corporation with respect to those shares or debentures;
- (d) of a form of application for the securities of a corporation, where it is issued, or the possession is for the purposes of issue, in connection with an invitation made in good faith to a person to enter into an underwriting agreement with respect to those securities;
  - (e) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a certificate of deposit by an authorized financial institution;
  - (ea) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a currency-linked instrument, an interest rate-linked instrument or a currency and interest rate-linked instrument by an authorized financial institution; *(Added 8 of 2011 s. 3)*
  - (f) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a certificate of deposit—
    - (i) the amount or denomination of which is not less than the sum specified in Part 1 of Schedule 4; and
    - (ii) by—
      - (A) a multilateral agency; or
      - (B) a bank incorporated outside Hong Kong and having no place of business in Hong Kong, where the Monetary Authority has declared in writing that he is satisfied that the bank is likely to be adequately supervised by the relevant authority of any place in which it

- (h) 發出或為發出而管有就發行已獲某認可交易所批准在該交易所營辦的認可證券市場上市的證券而作出的任何廣告、邀請或文件，而該廣告、邀請或文件是符合根據第 23 或 36 條就管限證券上市而訂立的規章或規則的（在按照該等規章或規則而免除、修改或不要求符合的範圍內除外）；
- (i) 發出或為發出而管有某些在香港以外的司法管轄區內受規管的證券而作出的任何廣告、邀請或文件，而該等證券是根據或依據在第 23 或 36 條下訂立的規章或規則獲容許在認可證券市場進行交易的；
- (j) 發出或為發出而管有就證券或結構性產品或就集體投資計劃的權益而作出的任何廣告、邀請或文件，而該等證券、產品或權益是只轉讓予或擬只轉讓予在香港以外地方的人；（由 2011 年第 8 號第 3 條代替）
- (k) 發出或為發出而管有就證券或結構性產品或就集體投資計劃的權益而作出的任何廣告、邀請或文件，而該等證券、產品或權益是只轉讓予或擬只轉讓予專業投資者。（由 2011 年第 8 號第 3 條代替）
- (4) 任何人犯第 (1) 款所訂罪行 ——
  - (a) 一經循公訴程序定罪，可處罰款 \$500,000 及監禁 3 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$20,000；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$10,000。
- (5) 任何人不得僅因 ——
  - (a) 他以就第 1、4 或 6 類受規管活動獲發牌或獲註冊的中介人身分（不論以主事人或代理人身分行事）發出或為發出而管有就以下證券而作出的廣告、邀請或文件，或他代該等中介人（不論該等中介人以主事人或代理人身分行事）發出或為代該等中介人（不論

- is incorporated or has its principal place of business;
- (g) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of any instrument specified in Part 2 of Schedule 4 (other than a certificate of deposit), where the amount or denomination of the instrument is not less than the sum specified in Part 1 of Schedule 4 and the instrument—
  - (i) is issued by an authorized financial institution or a multilateral agency, or by an exempted body which, if it is a corporation or a wholly owned subsidiary specified in item 11 of Part 3 of Schedule 4, complies with the relevant condition;
  - (ii) is issued by a corporation which complies with the relevant condition, and is guaranteed by an authorized financial institution or a multilateral agency, or by an exempted body (other than a corporation specified in item 11 of Part 3 of Schedule 4 which does not comply with the relevant condition, or a wholly owned subsidiary of the corporation); or
  - (iii) is issued by a wholly owned subsidiary specified in item 11 of Part 3 of Schedule 4 and is guaranteed by the corporation of which it is such a subsidiary and which complies with the relevant condition;
- (h) of any advertisement, invitation or document made in respect of the issue of securities the listing of which on a recognized stock market has been approved by the recognized exchange company by which the recognized stock market is operated, where the advertisement, invitation or document complies with the rules made under section 23 or 36 governing the listing of securities,



該等中介人以主事人或代理人身分行事)發出而管有該等廣告、邀請或文件——

- (i) 上市證券；或
  - (ii) 非上市證券(屬結構性產品的非上市證券除外)；  
(由 2011 年第 8 號第 3 條代替)
- (b) 他以就第 2 或 5 類受規管活動獲發牌或獲註冊的中介人身分(不論以主事人或代理人身分行事)發出或為發出而管有就期貨合約而作出的廣告、邀請或文件，或他代該等中介人(不論該等中介人以主事人或代理人身分行事)發出或為代該等中介人(不論該等中介人以主事人或代理人身分行事)發出而管有該等廣告、邀請或文件；
- (c) 他——
- (i) 以認可財務機構身分(不論以主事人或代理人身分行事)發出或為發出而管有就槓桿式外匯交易合約而作出的廣告、邀請或文件，或他代該等機構(不論該等機構以主事人或代理人身分行事)發出或為代該等機構(不論該等機構以主事人或代理人身分行事)發出而管有該等廣告、邀請或文件；或
  - (ii) 以就第 3 類受規管活動獲發牌的中介人身分(不論以主事人或代理人身分行事)發出或為發出而管有就槓桿式外匯交易合約而作出的廣告、邀請或文件，或他代該等中介人(不論該等中介人以主事人或代理人身分行事)發出或為代該等中介人(不論該等中介人以主事人或代理人身分行事)發出而管有該等廣告、邀請或文件，

而視為犯第(1)款所訂罪行。

except to the extent that compliance is, in accordance with those rules, waived, modified or not required;

- (i) of any advertisement, invitation or document made in respect of securities regulated in a jurisdiction outside Hong Kong which have been admitted to trading on a recognized stock market under or pursuant to rules made under section 23 or 36;
  - (j) of any advertisement, invitation or document made in respect of securities or structured products, or interests in any collective investment scheme, that are or are intended to be disposed of only to persons outside Hong Kong; *(Replaced 8 of 2011 s. 3)*
  - (k) of any advertisement, invitation or document made in respect of securities or structured products, or interests in any collective investment scheme, that are or are intended to be disposed of only to professional investors. *(Replaced 8 of 2011 s. 3)*
- (4) A person who commits an offence under subsection (1) is liable—
- (a) on conviction on indictment to a fine of \$500,000 and to imprisonment for 3 years and, in the case of a continuing offence, to a further fine of \$20,000 for every day during which the offence continues; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.
- (5) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues, or has in his possession for the purposes of issue—
- (a) as or on behalf of an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity (whether

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第 571 章

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- (6) 任何人不得僅因他向以下的人發出任何廣告、邀請或文件，或為向以下的人發出而管有任何廣告、邀請或文件，而視為犯第 (1) 款所訂罪行 ——
- (a) ( 如有關廣告、邀請或文件是就任何以下證券而作出的 ) 就第 1、4 或 6 類受規管活動獲發牌或獲註冊的中介人，或為該中介人進行該等活動的該中介人的代表 ——
- (i) 上市證券；或
- (ii) 非上市證券 ( 屬結構性產品的非上市證券除外 )；  
( 由 2011 年第 8 號第 3 條代替 )
- (b) ( 如有關廣告、邀請或文件是就期貨合約而作出的 ) 就第 2 或 5 類受規管活動獲發牌或獲註冊的中介人，或為該中介人進行該等活動的該中介人的代表；或
- (c) ( 如有關廣告、邀請或文件是就槓桿式外匯交易合約而作出的 ) 以下的人 ——
- (i) 認可財務機構；或
- (ii) 就第 3 類受規管活動獲發牌的中介人，或為該中介人進行該類活動的該中介人的代表。

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- acting as principal or agent) any advertisement, invitation or document made in respect of—
- (i) listed securities; or
- (ii) unlisted securities (excluding unlisted securities that are structured products); *(Replaced 8 of 2011 s. 3)*
- (b) as or on behalf of an intermediary licensed or registered for Type 2 or Type 5 regulated activity (whether acting as principal or agent), any advertisement, invitation or document made in respect of futures contracts;
- (c) as or on behalf of—
- (i) an authorized financial institution (whether acting as principal or agent); or
- (ii) an intermediary licensed for Type 3 regulated activity (whether acting as principal or agent),  
any advertisement, invitation or document made in respect of leveraged foreign exchange contracts.
- (6) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues any advertisement, invitation or document, or has any advertisement, invitation or document in his possession for the purposes of issue—
- (a) in the case of any advertisement, invitation or document made in respect of any of the following to an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity, or a representative of such an intermediary that carries on such a regulated activity for the intermediary—
- (i) listed securities; or



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- (7) 在以下情況下，任何人不得僅因他發出或為發出而管有任何廣告、邀請或文件，而視為犯第 (1) 款所訂罪行 ——
- (a) 該廣告、邀請或文件 (視屬何情況而定) 是在某業務 (不論是否由他經營) 的日常運作過程中如此發出的，或是為發出而在該過程中如此管有的，而該業務的主要目的，是收取和發出其他人提供的材料；
  - (b) 該廣告、邀請或文件 (視屬何情況而定) 的內容 (不論是全部或其中任何部分內容) ——
    - (i) (如該業務是由他經營) 並非由他本人或由他的任何高級人員、僱員或代理人設定；或
    - (ii) (如該業務不是由他經營) 並非由他本人設定；及
  - (c) 為了該項發出 ——
    - (i) (如該業務是由他經營) 他本人或他的任何高級人員、僱員或代理人；或
    - (ii) (如該業務不是由他經營) 他本人，並無揀選、增補、修改或以其他方式控制該廣告、邀請或文件 (視屬何情況而定) 的內容。

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- (ii) unlisted securities (excluding unlisted securities that are structured products); (*Replaced 8 of 2011 s. 3*)
  - (b) in the case of any advertisement, invitation or document made in respect of futures contracts, to an intermediary licensed or registered for Type 2 or Type 5 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary; or
  - (c) in the case of any advertisement, invitation or document made in respect of leveraged foreign exchange contracts, to—
    - (i) an authorized financial institution; or
    - (ii) an intermediary licensed for Type 3 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary.
- (7) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues, or has in his possession for the purposes of issue, any advertisement, invitation or document if—
- (a) the advertisement, invitation or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was receiving and issuing materials provided by others;
  - (b) the contents of the advertisement, invitation or document (as the case may be) were not, wholly or partly, devised—
    - (i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

- (8) 在以下情況下，任何人不得僅因他以直播方式發出或為以直播方式發出而管有任何廣告、邀請或文件，而視為犯第 (1) 款所訂罪行 ——
- (a) 該廣告、邀請或文件 (視屬何情況而定) 是在某廣播業者 (不論他是否該廣播業者) 的業務的日常運作過程中如此發出的，或是為發出而在該過程中如此管有的；
  - (b) 該廣告、邀請或文件 (視屬何情況而定) 的內容 (不論是全部或其中任何部分內容) ——
    - (i) (如他是該廣播業者) 並非由他本人或由他的任何高級人員、僱員或代理人設定；或
    - (ii) (如他不是該廣播業者) 並非由他本人設定；
  - (c) 為了該項發出 ——
    - (i) (如他是該廣播業者) 他本人或他的任何高級人員、僱員或代理人；或
    - (ii) (如他不是該廣播業者) 他本人，並無揀選、增補、修改或以其他方式控制該廣告、邀請或文件 (視屬何情況而定) 的內容；及
  - (d) 就該項廣播而言 ——
    - (i) (如他是該廣播業者) 他；或
    - (ii) (如他不是該廣播業者) 他相信並有合理理由相信該廣播業者，

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

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

- (9) 被控犯第 (1) 款所訂罪行的人如證明他已採取一切合理步驟和盡了一切應盡的努力避免犯該罪行，即可以此作為免責辯護。
- (10) 就根據本條提起的任何法律程序而言 ——
- (a) 任何廣告、邀請或文件如由相當可能直接或間接引致作出第 (1)(a) 或 (b) 款所述作為的資料組成或載有該等資料，則視為屬或載有請受眾作出該作為的邀請的廣告、邀請或文件 (視屬何情況而定)；
- (b) 任何廣告、邀請或文件如屬或載有某項以公眾為對象的邀請，或屬或載有某項邀請而公眾相當可能會取得或閱讀 (不論是同時取得和閱讀或在其他情況下取得或閱讀) 該項邀請的內容，則視為屬或載有向公眾作出邀請的廣告、邀請或文件 (視屬何情況而定)。
- (11) 第 (2)(a)、(b)、(c) 及 (i) 及 (5)(a)、(b) 及 (c) 款不適用於任何人就未經證監會根據第 104 條認可的集體投資計劃的權益作出的作為。
- (12) 在本條中 ——
- 有關條件** (relevant condition) 就某法團 (包括任何其他法團的全資附屬公司) 而言，指下述條件：按照普遍接納的會計原則計算，該法團的資產總額超出其負債總額的款額，不少於附表 4 第 4 部指明的金額；
- 作出擔保** (guaranteed) 指以書面作出全面的、無條件和不可撤銷的擔保；
- 註冊公司** (registered company) 指根據《公司條例》(第 622 章) 或《有關條例》註冊的公司。(由 2012 年第 28 號第 912 及 920 條修訂)

- did not select, add to, modify or otherwise exercise control over the contents of the advertisement, invitation or document (as the case may be); and
- (d) in relation to the broadcast—
- (i) where he was the broadcaster, he; or
- (ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster,
- acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster.
- (9) It is a defence to a charge for an offence under subsection (1) for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence with which he is charged.
- (10) For the purposes of any proceedings under this section—
- (a) an advertisement, invitation or document which consists of or contains information likely to lead, directly or indirectly, to the doing of any act referred to in subsection (1)(a) or (b) shall be regarded as an advertisement, invitation or document (as the case may be) which is or contains an invitation to do such act;
- (b) an advertisement, invitation or document which is or contains an invitation directed at, or the contents of which are likely to be accessed or read (whether concurrently or otherwise) by, the public shall be

regarded as an advertisement, invitation or document (as the case may be) which is or contains an invitation to the public.

- (11) Nothing in subsection (2)(a), (b), (c) or (i) or (5)(a), (b) or (c) applies to anything done by any person in respect of any interest in a collective investment scheme that is not authorized by the Commission under section 104.

- (12) In this section—

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

**registered company** (註冊公司) means a company registered under the Companies Ordinance (Cap. 622) or the relevant Ordinance; (*Amended 28 of 2012 ss. 912 & 920*)

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

#### 104. 證監會可認可集體投資計劃

- (1) 證監會如認為適當，可應任何人向該會提出的申請而認可任何集體投資計劃，而該項認可受第(2)款指明的條件及該會認為適當的任何其他條件規限。
- (2) 根據第(1)款認可任何集體投資計劃的條件，是在該計劃獲認可的期間內須持續符合以下規定——
  - (a) 須有一名個人獲證監會根據第(3)款核准為該會可就該計劃送達通知或決定的核准人士；及
  - (b) 須——

#### 104. Commission may authorize collective investment schemes

- (1) On an application to the Commission, the Commission may, where it considers appropriate, authorize any collective investment scheme, subject to the condition specified in subsection (2) and to any other conditions it considers appropriate.
- (2) It shall be a condition of authorization of a collective investment scheme under subsection (1) that at any time when the scheme is authorized—
  - (a) there is an individual approved by the Commission under subsection (3) as an approved person for the

- (i) 在不抵觸第(ii)節的條文下，將(a)段提述的核准人士現時的聯絡辦法資料的詳情告知證監會，包括(在適用範圍內)其地址、電話號碼、傳真號碼及電子郵件地址；
- (ii) 在第(i)節提述的資料有所改變後14日內，將該項改變的詳情告知證監會。
- (3) 為施行第(2)(a)款，證監會如認為適當，可應任何人向該會提出的申請，核准在該項申請中就集體投資計劃而獲提名的個人為該會可就該計劃送達通知或決定的核准人士，該會並可藉送達書面通知予該人士而撤回該項核准。
- (4) 證監會可隨時藉送達書面通知予就集體投資計劃而獲核准的核准人士，修訂或撤銷根據第(1)款就該計劃給予的認可而施加的條件(第(2)款指明的條件除外)，或就該項認可施加新的條件。
- (5) 在不局限證監會可藉以拒絕根據第(1)款給予認可的理由的原則下，該會如不信納認可某集體投資計劃是符合投資大眾的利益的，則可拒絕認可該計劃。
- (6) 依據第(1)或(3)款提出的申請，須附有證監會要求的資料及文件。
- (7) 凡證監會拒絕依據第(1)款認可任何集體投資計劃，或拒絕依據第(3)款核准某人為核准人士，該會須以書面將其決定及作出該決定的理由通知有關申請人。
- (8) 證監會可按它認為適當的方式，發表關於根據第(1)款獲認可的集體投資計劃的詳情。
- (9) 根據第(8)款發表的詳情不是附屬法例。

- purpose of being served by the Commission with notices and decisions for the scheme; and
- (b) the Commission is informed of particulars—
  - (i) subject to subparagraph (ii), of the current contact details of the approved person referred to in paragraph (a), including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address of the approved person;
  - (ii) where there is any change in the contact details referred to in subparagraph (i), of the change, within 14 days after the change takes place.
- (3) For the purposes of subsection (2)(a), on an application by any person to the Commission, the Commission may, where it considers appropriate, approve any individual nominated in the application in respect of a collective investment scheme as an approved person for the purpose of being served by the Commission with notices and decisions for the scheme, and may, by notice in writing served on the person, withdraw the approval.
- (4) The Commission may at any time, by notice in writing served on the approved person for a collective investment scheme, amend or revoke any of the conditions (other than the condition specified in subsection (2)) imposed, or impose new conditions, in respect of the authorization granted under subsection (1) in respect of the scheme.
- (5) Without limiting any other ground on which the Commission may refuse to authorize any collective investment scheme under subsection (1), the Commission may refuse to do so where it is not satisfied that the authorization is in the interest of the investing public.



**104A. 證監會可認可結構性產品**

- (1) 證監會可應任何人的申請，在第 (2) 款指明的條件及該會認為適當的任何其他條件的規限下認可任何結構性產品。
- (2) 認可任何結構性產品的條件，是在該產品屬獲認可的任何時間，以下規定獲符合——
  - (a) 須有一名個人根據第 (3) 款獲證監會核准為核准人士，成為該會可就該產品送達通知及決定的送達對象；及
  - (b) 須——
    - (i) 在不抵觸第 (ii) 節的條文下，將該核准人士最新的聯絡辦法詳情告知證監會，包括 (如適用的話) 其地址、電話號碼、傳真號碼及電郵地址；
    - (ii) 在有關的聯絡辦法詳情有所改變後的 14 日內，將該項改變告知證監會。

- (6) An application made pursuant to subsection (1) or (3) shall be accompanied by such information and documents as the Commission requires.
- (7) Where the Commission refuses to authorize a collective investment scheme, or to approve an individual as an approved person, pursuant to subsection (1) or (3), it shall by notice in writing notify the person making the application in question of the decision and the reasons for which it is made.
- (8) The Commission may publish in such manner as it considers appropriate particulars of any collective investment scheme authorized under subsection (1).
- (9) Particulars published under subsection (8) are not subsidiary legislation.

**104A. Commission may authorize structured products**

- (1) On an application by any person, the Commission may authorize a structured product, subject to the condition specified in subsection (2) and to any other conditions it considers appropriate.
- (2) It is a condition of authorization of a structured product that, at any time when the product is authorized—
  - (a) there is an individual approved by the Commission under subsection (3) as an approved person for the purpose of being served by the Commission with notices and decisions for the product; and
  - (b) the Commission is informed—
    - (i) subject to subparagraph (ii), of the current contact details of the approved person, including, as applicable, the address, telephone and facsimile numbers, and electronic mail address of the approved person;



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- (3) 為施行第 (2)(a) 款，證監會可應任何人的申請，核准在該項申請中就某結構性產品而獲提名的個人為核准人士，成為該會可就該產品送達通知及決定的送達對象。
- (4) 證監會可隨時藉送達書面通知予就某結構性產品而獲核准的核准人士 ——
  - (a) 修訂或撤銷就該產品的認可而施加的任何條件 ( 第 (2) 款指明的條件除外 )，或就有關認可施加新的條件；或
  - (b) 撤回根據第 (3) 款對該人的核准。
- (5) 在不局限證監會可藉以拒絕根據第 (1) 款給予認可的任何其他理由的原則下，該會如不信納認可某結構性產品是符合投資大眾的利益的，可拒絕根據該款認可該產品。
- (6) 根據第 (1) 或 (3) 款提出的申請，須附有證監會要求的資料及文件。
- (7) 如證監會拒絕認可任何結構性產品，或拒絕核准某人為核准人士，該會須以書面將此事及拒絕理由通知有關申請人。
- (8) 證監會可按它認為適當的方式，發表關於根據第 (1) 款獲認可的結構性產品的詳情。
- (9) 根據第 (8) 款發表的詳情不是附屬法例。

( 由 2011 年第 8 號第 4 條增補 )

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- (ii) if there is any change in those contact details, of the change within 14 days after the change takes place.
- (3) For the purposes of subsection (2)(a), on an application by any person, the Commission may approve an individual nominated in the application in respect of a structured product as an approved person for the purpose of being served by the Commission with notices and decisions for the product.
- (4) The Commission may at any time, by notice in writing served on the approved person for a structured product—
  - (a) amend or revoke any of the conditions (other than the condition specified in subsection (2)) imposed, or impose new conditions, in respect of the authorization of the product; or
  - (b) withdraw the person's approval under subsection (3).
- (5) Without limiting any other ground on which the Commission may refuse to authorize a structured product under subsection (1), the Commission may refuse to do so if it is not satisfied that the authorization is in the interest of the investing public.
- (6) An application made under subsection (1) or (3) must be accompanied by any information and documents that the Commission requires.
- (7) If the Commission refuses to authorize a structured product, or to approve an individual as an approved person, the Commission must notify the applicant in writing of the refusal and the reasons for it.
- (8) The Commission may publish, in any manner it considers appropriate, particulars of a structured product authorized under subsection (1).
- (9) Particulars published under subsection (8) are not subsidiary legislation.

*(Added 8 of 2011 s. 4)***105. 證監會可認可廣告、邀請或文件的發出**

- (1) 證監會如認為適當，可應任何人向該會提出的申請，認可屬或載有請受眾作出第 103(1)(a) 或 (b) 條所述作為的任何廣告、邀請或文件的發出，而該項認可受第 (2) 款指明的條件及該會認為適當的任何其他條件（包括就該廣告、邀請或文件所涉事宜施加的條件）規限。
- (2) 根據第 (1) 款認可任何廣告、邀請或文件的發出的條件，是在該項發出獲認可的期間內須持續符合以下規定——
  - (a) 須有一名個人獲證監會根據第 (3) 款核准為該會可就該項發出送達通知或決定的核准人士；及
  - (b) 須——
    - (i) 在不抵觸第 (ii) 節的條文下，將 (a) 段提述的核准人士現時的聯絡辦法資料的詳情告知證監會，包括（在適用範圍內）其地址、電話號碼、傳真號碼及電子郵件地址；
    - (ii) 在第 (i) 節提述的資料有所改變後 14 日內，將該項改變的詳情告知證監會。
- (3) 為施行第 (2)(a) 款，證監會如認為適當，可應任何人向該會提出的申請，核准在該項申請中就任何廣告、邀請或文件的發出而獲提名的個人為該會可就該項發出送達通知或決定的核准人士，該會並可藉送達書面通知予該人士而撤回該項核准。
- (4) 證監會可隨時藉送達書面通知予就任何廣告、邀請或文件的發出而獲核准的核准人士，修訂或撤銷根據第 (1) 款就該項發出給予的認可而施加的條件（第 (2) 款指明的條件除外），或就該項認可施加新的條件。
- (5) 在不局限證監會可藉以拒絕根據第 (1) 款給予認可的理由的原則下，該會如不信納某廣告、邀請或文件所涉事宜

**105. Commission may authorize issue of advertisements, invitations or documents**

- (1) On an application to the Commission, the Commission may, where it considers appropriate, authorize the issue of any advertisement, invitation or document which is or contains an invitation to do any act referred to in section 103(1)(a) or (b), subject to the condition specified in subsection (2) and to any other conditions it considers appropriate, including conditions on the matter to which the advertisement, invitation or document relates.
- (2) It shall be a condition of authorization of the issue of any advertisement, invitation or document under subsection (1) that at any time when the issue is authorized—
  - (a) there is an individual approved by the Commission under subsection (3) as an approved person for the purpose of being served by the Commission with notices and decisions for the issue; and
  - (b) the Commission is informed of particulars—
    - (i) subject to subparagraph (ii), of the current contact details of the approved person referred to in paragraph (a), including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address of the approved person;
    - (ii) where there is any change in the contact details referred to in subparagraph (i), of the change, within 14 days after the change takes place.
- (3) For the purposes of subsection (2)(a), on an application by any person to the Commission, the Commission may, where it considers appropriate, approve any individual nominated in the application in respect of the issue of any advertisement,

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是符合投資大眾的利益的，則可拒絕認可該廣告、邀請或文件的發出。

- (6) 依據第 (1) 或 (3) 款提出的申請，須附有證監會要求的資料及文件。
- (7) 凡證監會拒絕依據第 (1) 款認可任何廣告、邀請或文件的發出，或拒絕依據第 (3) 款核准某人為核准人士，該會須以書面將其決定及作出該決定的理由通知有關申請人。

#### 106. 撤回根據第 104、104A 或 105 條給予的認可等

(由 2011 年第 8 號第 5 條修訂)

- (1) 在符合第 (5) 款的規定下，就根據第 104 條就某集體投資計劃、根據第 104A 條就某結構性產品或根據第 105 條就某廣告、邀請或文件的發出所給予的認可而言，如證監會斷定 —— (由 2011 年第 8 號第 5 條修訂)

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invitation or document as an approved person for the purpose of being served by the Commission with notices and decisions for the issue, and may, by notice in writing served on the person, withdraw the approval.

- (4) The Commission may at any time, by notice in writing served on the approved person for the issue of any advertisement, invitation or document, amend or revoke any of the conditions (other than the condition specified in subsection (2)) imposed, or impose new conditions, in respect of the authorization granted under subsection (1) in respect of the issue.
- (5) Without limiting any other ground on which the Commission may refuse to authorize the issue of any advertisement, invitation or document under subsection (1), the Commission may refuse to do so where it is not satisfied that the matter to which the advertisement, invitation or document relates is in the interest of the investing public.
- (6) An application made pursuant to subsection (1) or (3) shall be accompanied by such information and documents as the Commission requires.
- (7) Where the Commission refuses to authorize the issue of any advertisement, invitation or document, or to approve an individual as an approved person, pursuant to subsection (1) or (3), it shall by notice in writing notify the person making the application in question of the decision and the reasons for which it is made.

#### 106. Withdrawal of authorization under section 104, 104A or 105, etc.

(Amended 8 of 2011 s. 5)

- (1) Subject to subsection (5), where, in relation to an authorization of a collective investment scheme under section 104, an authorization of a structured product under section

- (a) 任何依據第 104(6)、104A(6) 或 105(6) 條 (視屬何情況而定) 向該會提供的資料在提供的時候在要項上屬虛假或具誤導性；
- (b) 根據第 104、104A 或 105 條 (視屬何情況而定) 就該項認可而施加的任何條件未獲遵從；
- (c) 任何在看來是遵從根據第 104、104A 或 105 條 (視屬何情況而定) 就該項認可而施加的條件時向該會提供的資料在提供的時候在要項上屬虛假或具誤導性；或
- (d) 為保障投資大眾的利益，撤回該項認可是可取的，則證監會可撤回該項認可。(由 2011 年第 8 號第 5 條修訂)
- (2) 除第 (3) 款另有規定外，就某集體投資計劃、就某結構性產品或就某廣告、邀請或文件的發出而獲核准的核准人士，如以書面請求證監會撤回有關認可 (視屬何情況而定)，該會須撤回該項認可。(由 2011 年第 8 號第 5 條代替)
- (3) 在符合第 (5) 款的規定下，在以下情況下，證監會可拒絕根據第 (2) 款撤回對某集體投資計劃、對某結構性產品或對某廣告、邀請或文件的發出的認可 —— (由 2011 年第 8 號第 5 條修訂)
  - (a) (就對集體投資計劃或對結構性產品的認可而言) 在根據第 (2) 款撤回該項認可前先調查關於該計劃或該產品的任何事宜，是符合公眾利益的；或 (由 2011 年第 8 號第 5 條修訂)
  - (b) 撤回該項認可並不符合投資大眾的利益。
- (4) 在符合第 (5) 款的規定下，證監會如根據第 (1) 或 (2) 款撤回認可，可就該項撤回施加該會認為適當的條件。
- (5) 除非證監會已給予就有關集體投資計劃、有關結構性產品或就有關廣告、邀請或文件的發出而獲核准的核准人士合理的陳詞機會，否則 —— (由 2011 年第 8 號第 5 條修訂)

- 104A, or an authorization of the issue of an advertisement, invitation or document under section 105, the Commission decides that— (*Amended 8 of 2011 s. 5*)
- (a) any information provided to the Commission pursuant to section 104(6), 104A(6) or 105(6) (as the case may be) was at the time when it was provided false or misleading in a material particular;
  - (b) any of the conditions imposed in respect of the authorization under section 104, 104A or 105 (as the case may be) are not being complied with;
  - (c) any information provided to the Commission in purported compliance with any of the conditions imposed in respect of the authorization under section 104, 104A or 105 (as the case may be) was at the time when it was provided false or misleading in a material particular; or
  - (d) it is desirable to withdraw the authorization in order to protect the interest of the investing public,
- the Commission may withdraw the authorization. (*Amended 8 of 2011 s. 5*)
- (2) Subject to subsection (3), the Commission must withdraw the authorization of a collective investment scheme, a structured product or the issue of an advertisement, invitation or document on a request in writing made by the approved person for the scheme, product or issue (as the case may be). (*Replaced 8 of 2011 s. 5*)
  - (3) Subject to subsection (5), the Commission may refuse to withdraw an authorization of a collective investment scheme or structured product or of the issue of an advertisement, invitation or document under subsection (2) where it considers that— (*Amended 8 of 2011 s. 5*)



- (a) 不得根據第 (1) 款撤回對該計劃、該產品或該項發出 (視屬何情況而定) 的認可；
  - (b) 不得根據第 (3) 款拒絕撤回對該計劃、該產品或該項發出 (視屬何情況而定) 的認可；或
  - (c) 不得根據第 (4) 款就撤回對該計劃、該產品或該項發出 (視屬何情況而定) 的認可一事施加條件。 (由 2011 年第 8 號第 5 條修訂)
- (6) 如證監會 ——
- (a) 根據第 (1) 款撤回對集體投資計劃、對結構性產品或對廣告、邀請或文件的發出的認可；
  - (b) 根據第 (2) 款撤回對集體投資計劃、對結構性產品或對廣告、邀請或文件的發出的認可；
  - (c) 根據第 (3) 款拒絕撤回對集體投資計劃、對結構性產品或對廣告、邀請或文件的發出的認可；或
  - (d) 根據第 (4) 款就撤回對集體投資計劃、對結構性產品或對廣告、邀請或文件的發出的認可一事施加條件，
- 證監會須以書面將其決定及 (就 (a)、(c)、或 (d) 段而言) 作出該決定的理由通知就該計劃、該產品或該項發出 (視屬何情況而定) 獲核准的核准人士。 (由 2011 年第 8 號第 5 條修訂)
- (7) 證監會如根據第 (1) 或 (2) 款撤回認可，可按該會認為適當的方式發表撤回通知及撤回的理由。
  - (8) 根據第 (7) 款發表的通知或任何其他事項不是附屬法例。

- (a) in the case of an authorization of a collective investment scheme or structured product, it is in the public interest that any matter concerning the scheme or product should be investigated before the authorization is withdrawn under subsection (2); or (*Amended 8 of 2011 s. 5*)
  - (b) the withdrawal of the authorization would not be in the interest of the investing public.
- (4) Subject to subsection (5), where the Commission withdraws an authorization under subsection (1) or (2), it may impose such conditions on the withdrawal of the authorization as it considers appropriate.
- (5) The Commission shall not—
- (a) withdraw an authorization of a collective investment scheme or structured product or of the issue of an advertisement, invitation or document under subsection (1);
  - (b) refuse to withdraw an authorization of a collective investment scheme or structured product or of the issue of an advertisement, invitation or document under subsection (3); or
  - (c) impose any conditions on the withdrawal of an authorization of a collective investment scheme or structured product or of the issue of an advertisement, invitation or document under subsection (4),
- without first giving the approved person for the scheme, the product or the issue (as the case may be) a reasonable opportunity of being heard. (*Amended 8 of 2011 s. 5*)
- (6) Where the Commission—
- (a) withdraws an authorization of a collective investment scheme or structured product or of the issue of an



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# 107. 欺詐地或罔顧實情地誘使他人投資金錢的罪行

- (1) 任何人為誘使另一人作出以下作為而作出任何欺詐的失實陳述或罔顧實情的失實陳述，即屬犯罪 ——
  - (a) 訂立或要約訂立 ——
    - (i) 旨在取得、處置、認購或包銷證券的協議；或

- advertisement, invitation or document under subsection (1);
- (b) withdraws an authorization of a collective investment scheme or structured product or of the issue of an advertisement, invitation or document under subsection (2);
- (c) refuses to withdraw an authorization of a collective investment scheme or structured product or of the issue of an advertisement, invitation or document under subsection (3); or
- (d) imposes any conditions on the withdrawal of an authorization of a collective investment scheme or structured product or of the issue of an advertisement, invitation or document under subsection (4),

it shall by notice in writing notify the approved person for the scheme, the product or the issue (as the case may be) of the decision and, in the case of paragraph (a), (c) or (d), the reasons for which it is made. (*Amended 8 of 2011 s. 5*)

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

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

- (1) A person commits an offence if he makes any fraudulent misrepresentation or reckless misrepresentation for the purpose of inducing another person—
  - (a) to enter into or offer to enter into—

- (ii) 受規管投資協議，或旨在取得、處置、認購或包銷任何其他結構性產品的協議；或 (*由 2011 年第 8 號第 6 條代替*)
- (b) 取得或要約取得集體投資計劃的權益，或參與或要約參與集體投資計劃。
- (2) 任何人犯第 (1) 款所訂罪行 ——
  - (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 7 年；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (3) 就本條而言 ——
  - (a) **欺詐的失實陳述** (fraudulent misrepresentation) 指 ——
    - (i) 任何陳述，而在該陳述作出時，作出該陳述的人知道該陳述是虛假、具誤導性或具欺騙性的；
    - (ii) 任何承諾，而在該承諾作出時，作出該承諾的人是無意履行該承諾的，或知道該承諾是不能夠履行的；
    - (iii) 任何預測，而在該預測作出時，作出該預測的人知道根據他當時所知的事實，該預測是沒有充分理由支持的；或
    - (iv) 任何陳述或預測，而在該陳述或預測作出時，作出該陳述或預測的人蓄意遺漏某項事關重要的事實，以致 ——
      - (A) (就陳述而言) 該陳述成為虛假、具誤導性或具欺騙性的陳述；或
      - (B) (就預測而言) 該預測成為具誤導性或具欺騙性的預測；
  - (b) **罔顧實情的失實陳述** (reckless misrepresentation) 指 ——

- (i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or
- (ii) a regulated investment agreement or an agreement to acquire, dispose of, subscribe for or underwrite any other structured product; or (*Replaced 8 of 2011 s. 6*)
- (b) to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme.
- (2) A person who commits an offence under subsection (1) is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (3) For the purposes of this section—
  - (a) **fraudulent misrepresentation** (欺詐的失實陳述) means—
    - (i) any statement which, at the time when it is made, is to the knowledge of its maker false, misleading or deceptive;
    - (ii) any promise which, at the time when it is made, its maker has no intention of fulfilling, or is to the knowledge of its maker not capable of being fulfilled;
    - (iii) any forecast which, at the time when it is made, is to the knowledge of its maker not justified on the facts then known to him; or
    - (iv) any statement or forecast from which, at the time when it is made, its maker intentionally omits a material fact, with the result that—

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

#### 108. 在某些情況下誘使他人投資金錢的民事法律責任

- (1) 凡任何人作出任何欺詐的失實陳述、罔顧實情的失實陳述或疏忽的失實陳述，而另一人受該失實陳述所誘使而 ——
  - (a) 訂立或要約訂立 ——
    - (i) 旨在取得、處置、認購或包銷證券的協議；或

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

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

- (1) Where a person makes any fraudulent misrepresentation, reckless misrepresentation or negligent misrepresentation by which another person is induced—
  - (a) to enter into or offer to enter into—
    - (i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or

(ii) 受規管投資協議，或旨在取得、處置、認購或包銷任何其他結構性產品的協議；或 (由 2011 年第 8 號第 7 條代替)

(b) 取得或要約取得集體投資計劃的權益，或參與或要約參與集體投資計劃，

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

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

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

(4) 本條並不授予在《公司 (清盤及雜項條文) 條例》(第 32 章) 第 40 條適用 (不論是否參照該條例第 342E 條而適用) 的個案中提出訴訟的權利。 (由 2012 年第 28 號第 912 及 920 條修訂)

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

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

(7) 就本條而言 ——

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

(i) 任何陳述，而在該陳述作出時，作出該陳述的人知道該陳述是虛假、具誤導性或具欺騙性的；

(ii) a regulated investment agreement or an agreement to acquire, dispose of, subscribe for or underwrite any other structured product; or (*Replaced 8 of 2011 s. 7*)

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

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

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

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

(4) This section does not confer a right of action in any case to which section 40 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (whether with or without reference to section 342E of that Ordinance) applies. (*Amended 28 of 2012 ss. 912 & 920*)

- (ii) 任何承諾，而在該承諾作出時，作出該承諾的人是無意履行該承諾的，或知道該承諾是不能夠履行的；
- (iii) 任何預測，而在該預測作出時，作出該預測的人知道根據他當時所知的事實，該預測是沒有充分理由支持的；或
- (iv) 任何陳述或預測，而在該陳述或預測作出時，作出該陳述或預測的人蓄意遺漏某項事關重要的事實，以致 ——
  - (A) (就陳述而言) 該陳述成為虛假、具誤導性或具欺騙性的陳述；或
  - (B) (就預測而言) 該預測成為具誤導性或具欺騙性的預測；
- (b) **罔顧實情的失實陳述** (reckless misrepresentation) 指 ——
  - (i) 任何陳述，而在該陳述作出時，該陳述是虛假、具誤導性或具欺騙性的，並且是罔顧實情地作出的；
  - (ii) 任何承諾，而在該承諾作出時，該承諾是不能夠履行的，並且是罔顧實情地作出的；
  - (iii) 任何預測，而在該預測作出時，該預測是罔顧實情地作出的，並且根據作出該預測的人當時所知的事實，該預測是沒有充分理由支持的；或
  - (iv) 任何陳述或預測，而在該陳述或預測作出時，作出該陳述或預測的人罔顧實情地遺漏某項事關重要的事實，以致 ——
    - (A) (就陳述而言) 該陳述成為虛假、具誤導性或具欺騙性的陳述；或
    - (B) (就預測而言) 該預測成為具誤導性或具欺騙性的預測；

- (5) A person may bring an action under subsection (1) even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of a contravention of this Part.
- (6) Nothing in this section affects, limits or diminishes any rights conferred on a person, or any liabilities a person may incur, under the common law or any other enactment.
- (7) For the purposes of this section—
  - (a) ***fraudulent misrepresentation*** (欺詐的失實陳述) means—
    - (i) any statement which, at the time when it is made, is to the knowledge of its maker false, misleading or deceptive;
    - (ii) any promise which, at the time when it is made, its maker has no intention of fulfilling, or is to the knowledge of its maker not capable of being fulfilled;
    - (iii) any forecast which, at the time when it is made, is to the knowledge of its maker not justified on the facts then known to him; or
    - (iv) any statement or forecast from which, at the time when it is made, its maker intentionally omits a material fact, with the result that—
      - (A) in the case of the statement, the statement is rendered false, misleading or deceptive; or
      - (B) in the case of the forecast, the forecast is rendered misleading or deceptive;
  - (b) ***reckless misrepresentation*** (罔顧實情的失實陳述) means—



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

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

**109. 發出關於進行受規管活動等的廣告的罪行**

(1) 除第 (3) 至 (6) 款另有規定外 ——

(a) 凡 ——

- (i) 某人在任何廣告中顯示自己準備進行第 4、5、6 或 9 類受規管活動；而
- (ii) 該人沒有按本條例規定就該等活動獲發牌或獲註冊，

則明知有第 (i) 及 (ii) 節所述情況而發出該廣告或為發出而管有該廣告的人，即屬犯罪；或

(b) 任何人發出其本身知道載有上述廣告的文件，或為發出而管有其本身知道載有上述廣告的文件，即屬犯罪。（由 2012 年第 9 號第 38 條代替）

(2) 任何人犯第 (1) 款所訂罪行，一經定罪，可處第 5 級罰款及監禁 6 個月。

(3) 任何人不得僅因他向以下的人發出任何廣告或文件，或為向以下的人發出而管有任何廣告或文件，而視為犯第 (1) 款所訂罪行 ——

(a) （就某人在廣告中顯示自己準備進行第 4 類受規管活動的情況而言）就第 4 類受規管活動獲發牌或獲註冊的中介人，或為該中介人進行該類活動的該中介人的代表；

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

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

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

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

(1) Subject to subsections (3) to (6), a person commits an offence if he issues, or has in his possession for the purposes of issue—

(a) an advertisement in which to his knowledge—

(i) a person holds himself out as being prepared to carry on Type 4, Type 5, Type 6 or Type 9 regulated activity; and

(ii) the person is not licensed or registered for such regulated activity as required under this Ordinance; or

(b) any document which to his knowledge contains such advertisement.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

(3) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues any advertisement or document, or has any advertisement or document in his possession for the purposes of issue—

(a) in the case of an advertisement in which a person holds himself out as being prepared to carry on Type

- (b) (就某人在廣告中顯示自己準備進行第 5 類受規管活動的情況而言)就第 5 類受規管活動獲發牌或獲註冊的中介人，或為該中介人進行該類活動的該中介人的代表；
  - (c) (就某人在廣告中顯示自己準備進行第 6 類受規管活動的情況而言)就第 6 類受規管活動獲發牌或獲註冊的中介人，或為該中介人進行該類活動的該中介人的代表；或
  - (d) (就某人在廣告中顯示自己準備進行第 9 類受規管活動的情況而言)就第 9 類受規管活動獲發牌或獲註冊的中介人，或為該中介人進行該類活動的該中介人的代表。
- (4) 在以下情況下，任何人不得僅因他發出或為發出而管有任何廣告或文件，而視為犯第 (1) 款所訂罪行——
- (a) 該廣告或文件 (視屬何情況而定) 是在某業務 (不論是否由他經營) 的日常運作過程中如此發出的，或是為發出而在該過程中如此管有的，而該業務的主要目的，是收取和發出其他人提供的材料；
  - (b) 該廣告或文件 (視屬何情況而定) 的內容 (不論是全部或其中任何部分內容) ——
    - (i) (如該業務是由他經營) 並非由他本人或由他的任何高級人員、僱員或代理人設定；或
    - (ii) (如該業務不是由他經營) 並非由他本人設定；及
  - (c) 為了該項發出 ——
    - (i) (如該業務是由他經營) 他本人或他的任何高級人員、僱員或代理人；或
    - (ii) (如該業務不是由他經營) 他本人，並無揀選、增補、修改或以其他方式控制該廣告或文件 (視屬何情況而定) 的內容。

- 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;

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- (5) 在以下情況下，任何人不得僅因他以直播方式發出或為以直播方式發出而管有任何廣告或文件，而視為犯第 (1) 款所訂罪行 ——
- (a) 該廣告或文件 (視屬何情況而定) 是在某廣播業者 (不論他是否該廣播業者) 的業務的日常運作過程中如此發出的，或是為發出而在該過程中如此管有的；
  - (b) 該廣告或文件 (視屬何情況而定) 的內容 (不論是全部或其中任何部分內容) ——
    - (i) (如他是該廣播業者) 並非由他本人或由他的任何高級人員、僱員或代理人設定；或
    - (ii) (如他不是該廣播業者) 並非由他本人設定；
  - (c) 為了該項發出 ——
    - (i) (如他是該廣播業者) 他本人或他的任何高級人員、僱員或代理人；或
    - (ii) (如他不是該廣播業者) 他本人，並無揀選、增補、修改或以其他方式控制該廣告或文件 (視屬何情況而定) 的內容；及
  - (d) 就該項廣播而言 ——
    - (i) (如他是該廣播業者) 他；或
    - (ii) (如他不是該廣播業者) 他相信並有合理理由相信該廣播業者，  
按照使他或該廣播業者 (視屬何情況而定) 有權以廣播業者身分廣播的牌照 (如有的話) 的條款及條件，及按照任何根據或依據《電訊條例》(第 106 章) 或《廣播條例》(第 562 章) 發出並以廣播業者身分適用於他或該廣播業者 (視屬何情況而定) 的業務守則或指引 (不論實際如何稱述) 而行事。
- (6) 被控犯第 (1) 款所訂罪行的人如證明他已採取一切合理步驟和盡了一切應盡的努力避免犯該罪行，即可以此作為免責辯護。

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- (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

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- (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.

### 第 3 分部 —— 雜項條文

### Division 3—Miscellaneous

#### 110. 向證監會呈交資料

#### 110. Submission of information to Commission

- (1) 任何人如屬 ——
  - (a) 認可財務機構；
  - (b) 獲豁免團體，或附表 4 第 3 部第 11 項指明的但在香港以外地方成立為法團的全資附屬公司的獲授權代表；

- (1) A person that is—
  - (a) an authorized financial institution;
  - (b) an exempted body or, in the case of a wholly owned subsidiary specified in item 11 of Part 3 of Schedule



- (c) 多邊機構或其獲授權代表；或
- (d) 在香港以外地方成立為法團的銀行或其獲授權代表，而沒有在該財務機構、團體、附屬公司、多邊機構或銀行（視屬何情況而定）發出第 103(3)(e)、(f) 或 (g) 條提述的任何廣告、邀請或文件後 10 個營業日內，或為施行本款而藉根據第 397 條訂立的規則訂明的較長限期內，將該等規則訂明的關於該廣告、邀請或文件的資料呈交證監會，即屬犯罪。
- (2) 任何人犯第(1)款所訂罪行，一經定罪，可處第 5 級罰款，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$5,000。
- (3) 在第(1)款中，**獲授權代表** (authorized representative) 就任何廣告、邀請或文件的發出而言——
- (a) 如涉及附表 4 第 3 部第 11 項指明的但在香港以外地方成立為法團的全資附屬公司，指該公司所屬的上市法團；或
- (b) 如涉及多邊機構或在香港以外地方成立為法團的銀行，指居於香港並獲該機構或銀行（視屬何情況而定）授權就該項發出代它行事的人。

- 4 but incorporated outside Hong Kong, an authorized representative of that subsidiary;
- (c) a multilateral agency or an authorized representative of that agency; or
- (d) a bank incorporated outside Hong Kong or an authorized representative of that bank,
- commits an offence if he fails, within 10 business days, or such longer period as is prescribed by rules made under section 397 for the purposes of this subsection, after the issue of any advertisement, invitation or document referred to in section 103(3)(e), (f) or (g) by the authorized financial institution, the exempted body or the wholly owned subsidiary, the multilateral agency or the bank (as the case may be), to submit to the Commission such information in respect of the advertisement, invitation or document as is prescribed by the rules.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$5,000 for every day during which the offence continues.
- (3) In subsection (1), **authorized representative** (獲授權代表), in relation to the issue of any advertisement, invitation or document, means—
- (a) in the case of a wholly owned subsidiary specified in item 11 of Part 3 of Schedule 4 but incorporated outside Hong Kong, the listed corporation of which it is the subsidiary; or
- (b) in the case of a multilateral agency or a bank incorporated outside Hong Kong, a person resident in Hong Kong who is authorized by the agency or the bank (as the case may be) to act on behalf of the agency or the bank (as the case may be) in respect of that issue.

**111. 將通知等送達核准人士**

- (1) 不論第 400 條有任何規定，由證監會或須由證監會為本條例的目的向核准人士發出或送達（不論實際如何稱述）的任何書面通知、決定或指示或其他文件（不論實際如何稱述），就所有目的而言，只有在以下情況下，方可視為已妥為發出或送達——
- (a) 由專人交付他本人；或
  - (b) 按為第 104(2)(b)、104A(2)(b) 或 105(2)(b) 條（視屬何情況而定）的目的就該人士而告知證監會的詳情——（由 2011 年第 8 號第 8 條修訂）
    - (i) 留在或郵寄往該等詳情所顯示的最後的地址；
    - (ii) 藉傳真傳送往該等詳情所顯示的最後的傳真號碼；或
    - (iii) 藉電子郵遞傳送往該等詳情所顯示的最後的電子郵件地址。
- (2) 凡任何通知、決定或指示或其他文件（不論實際如何稱述）根據第 (1)(b) 款視為已向核准人士妥為發出或送達，則就所有目的而言，該通知、決定或指示或文件——
- (a) 如是留在某地址的，須視為在如此留下之時；
  - (b) 如是郵寄往某地址的，須視為在經一般郵遞程序應寄達之時；
  - (c) 如是藉傳真傳送往某傳真號碼的，須視為在經一般傳真程序應可在該號碼接獲之時；或
  - (d) 如是藉電子郵遞傳送往某電子郵件地址的，須視為在經一般電子郵遞程序應可在該地址接獲之時，
- 發出或送達該人士，並為他所知悉。

**111. Service of notices, etc. on approved persons**

- (1) Notwithstanding section 400, any written notice, decision or direction or other document (however described) to be, or required to be, issued or served (however described) to or on an approved person by the Commission for the purposes of this Ordinance shall for all purposes be regarded as duly issued or served only if—
- (a) it is delivered to him by hand; or
  - (b) it is—
    - (i) left at, or sent by post to, the last address;
    - (ii) sent by facsimile transmission to the last facsimile number; or
    - (iii) sent by electronic mail transmission to the last electronic mail address,shown by the particulars of which the Commission is informed in respect of the approved person for the purposes of section 104(2)(b), 104A(2)(b) or 105(2)(b) (as the case may be). (*Amended 8 of 2011 s. 8*)
- (2) Where a notice, decision or direction or other document (however described) is regarded as duly issued or served to or on an approved person under subsection (1)(b), it shall for all purposes be regarded as issued or served to or on the approved person, and as coming to his notice, at the time when—
- (a) where it is left at an address, it is so left at that address;
  - (b) where it is sent by post to an address, it would in the ordinary course of post be delivered to that address;
  - (c) where it is sent by facsimile transmission to a facsimile number, it would in the ordinary course of transmission by facsimile be received at that number; or

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

## 112. 附表 4 的修訂

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

## 112. Amendment of Schedule 4

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

**第 IVA 部****開放式基金型公司**

(第 IVA 部由 2016 年第 16 號第 6 條增補)

**第 1 分部 —— 導言****112A. 第 IVA 部的釋義**

在本部中 ——

**子基金** (sub-fund) —— 參閱第 112R 條；**次保管人** (sub-custodian) 就開放式基金型公司而言，指獲託付該公司的任何計劃財產作妥善保管的人（該公司的保管人除外）；**計劃財產** (scheme property) 就由某集體投資計劃所構成的開放式基金型公司而言，指在該計劃下的財產；**開放式基金型公司** (open-ended fund company) 指構成法團的集體投資計劃，而該法團持有公司註冊處處長根據第 112C 條發出的公司註冊證明書；**《開放式基金型公司規則》** (OFC rules) 指根據第 112ZK、112ZL 或 112ZM 條訂立的規則；**擬成立公司** (proposed company) 指擬根據本部成立為法團的公司。**112B. 禁止未經註冊而以開放式基金型公司形式經營業務等**

(1) 任何人如並非根據第 112D 條註冊的開放式基金型公司，不得 ——

(a) 以開放式基金型公司形式經營業務；或

**Part IVA****Open-ended Fund Companies**

(Part IVA added 16 of 2016 s. 6)

**Division 1—Preliminary****112A. Interpretation of Part IVA**

In this Part—

**OFC rules** (《開放式基金型公司規則》) means rules made under section 112ZK, 112ZL or 112ZM;**open-ended fund company** (開放式基金型公司) means a collective investment scheme constituted as a corporation that holds a certificate of incorporation issued by the Registrar of Companies under section 112C;**proposed company** (擬成立公司) means a company intended to be incorporated under this Part;**scheme property** (計劃財產), in relation to an open-ended fund company, means the property under the collective investment scheme that is constituted as the company;**sub-custodian** (次保管人), in relation to an open-ended fund company, means a person to whom any scheme property of the company is entrusted for safe keeping, other than the custodian of the company;**sub-fund** (子基金)—see section 112R.**112B. Prohibition against carrying on business as open-ended fund company without registration etc.**

(1) A person, not being an open-ended fund company that is registered under section 112D, must not—

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- (b) 顯示自己是開放式基金型公司。
- (2) 如某人(前者)並非根據第 112D 條註冊的開放式基金型公司，而——
- (a) 以開放式基金型公司形式經營業務；或
- (b) 顯示自己是開放式基金型公司，  
則任何人均不得代前者管理任何財產。
- (3) 如某人(前者)並非根據第 112D 條註冊的開放式基金型公司，而——
- (a) 以開放式基金型公司形式經營業務；或
- (b) 顯示自己是開放式基金型公司，  
則任何人均不得顯示自己是代前者行事。
- (4) 任何人無合理辯解而違反第 (1) 款，即屬犯罪——
- (a) 一經循公訴程序定罪，可處罰款 \$5,000,000 及監禁 7 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$100,000；或
- (b) 一經循簡易程序定罪，可處罰款 \$500,000 及監禁 2 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$10,000。
- (5) 任何人無合理辯解而違反第 (2) 或 (3) 款，即屬犯罪——
- (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$20,000；或
- (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$2,000。

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- (a) carry on business as an open-ended fund company; or
- (b) hold out as an open-ended fund company.
- (2) A person must not manage any property on behalf of another person who, not being an open-ended fund company that is registered under section 112D—
- (a) carries on business as an open-ended fund company; or
- (b) holds out as an open-ended fund company.
- (3) A person must not hold out as acting on behalf of another person who, not being an open-ended fund company that is registered under section 112D—
- (a) carries on business as an open-ended fund company; or
- (b) holds out as an open-ended fund company.
- (4) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of \$100,000 for each day during which the offence continues; or
- (b) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for each day during which the offence continues.
- (5) A person who, without reasonable excuse, contravenes subsection (2) or (3) commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$20,000 for each 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



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第 112C 條Part IVA—Division 2  
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continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

## 第 2 分部 —— 成立、註冊、名稱及註冊辦事處

## Division 2—Incorporation, Registration, Name and Registered Office

### 112C. 開放式基金型公司的成立

- (1) 任何人可藉將以下文件交付公司註冊處處長登記，而根據本部成立公司 ——
  - (a) 《開放式基金型公司規則》所訂明的法團成立表格；及
  - (b) 有關擬成立公司的法團成立文書的文本，而該文本已按照《開放式基金型公司規則》簽署。
- (2) 第 (1) 款指明的文件 ——
  - (a) 須以《開放式基金型公司規則》所訂明的方式交付；及
  - (b) 須附同《開放式基金型公司規則》所訂明的任何文件或資料。
- (3) 在符合第 (4) 款的規定的原則下，如公司註冊處處長信納，就某擬成立公司而言，《開放式基金型公司規則》所訂明的關於成立法團的規定已獲符合，則公司註冊處處長 ——
  - (a) 須登記根據第 (1) 款交付的文件；及
  - (b) 須就該擬成立公司發出公司註冊證明書，核證該公司屬根據本部成立為法團的公司。
- (4) 除非公司註冊處處長已根據第 112D(7) 條獲通知，有關擬成立公司已註冊，否則公司註冊處處長不得根據第 (3) 款，登記相關的文件或發出公司註冊證明書。

### 112C. Incorporation of open-ended fund company

- (1) Any person may incorporate a company under this Part by delivering to the Registrar of Companies for registration—
  - (a) an incorporation form prescribed by the OFC rules; and
  - (b) a copy of the instrument of incorporation of the proposed company that has been signed in accordance with the OFC rules.
- (2) The documents specified in subsection (1)—
  - (a) must be delivered in the manner prescribed by the OFC rules; and
  - (b) must be accompanied by any document or information prescribed by the OFC rules.
- (3) Subject to subsection (4), if the Registrar of Companies is satisfied that the requirements for incorporation prescribed by the OFC rules are met with respect to the proposed company, the Registrar—
  - (a) must register the documents delivered under subsection (1); and
  - (b) must issue a certificate of incorporation in respect of the proposed company certifying that it is a company incorporated under this Part.
- (4) The Registrar of Companies must not register the relevant documents or issue a certificate of incorporation under subsection (3) unless the Registrar has been notified of the registration of the proposed company under section 112D(7).

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第 112D 條Part IVA—Division 2  
Section 112D4A-8  
Cap. 571**112D. 成立前向證監會申請註冊**

- (1) 證監會可應任何人提出的申請，為施行本部而註冊擬成立公司。
- (2) 為第 (1) 款的目的而提出的申請 ——
  - (a) 須以證監會指明的方式提出；及
  - (b) 須附同證監會要求的任何文件或資料。
- (3) 擬成立公司的註冊，在公司註冊處處長根據第 112C(3)(b) 條就該公司發出公司註冊證明書當日生效。
- (4) 除非證監會信納，就某擬成立公司而言，第 112E 條指明的註冊規定，將會在註冊生效當日獲符合，否則證監會須拒絕註冊該公司。
- (5) 在不局限證監會可據以拒絕註冊擬成立公司的其他理由的原則下，證監會如不信納註冊某擬成立公司，是符合投資大眾的利益的，可拒絕註冊該公司。
- (6) 證監會在註冊某擬成立公司時，可施加證監會認為適當的任何條件。
- (7) 在根據第 (1) 款註冊某擬成立公司後，證監會須在合理地切實可行的範圍內，盡快以書面將此事通知公司註冊處處長。
- (8) 在拒絕根據第 (1) 款註冊某擬成立公司後，證監會須在合理地切實可行的範圍內，盡快以書面將此事及拒絕理由通知申請人。

**112D. Application for registration with Commission before incorporation**

- (1) On an application by a person, the Commission may register a proposed company for the purposes of this Part.
- (2) An application for the purposes of subsection (1)—
  - (a) must be made in the manner specified by the Commission; and
  - (b) must be accompanied by any document or information that the Commission requires.
- (3) The registration of a proposed company takes effect on the day on which a certificate of incorporation is issued by the Registrar of Companies under section 112C(3)(b) in respect of it.
- (4) The Commission must refuse to register a proposed company unless it is satisfied that the requirements for registration specified in section 112E will, on the day on which the registration takes effect, be met with respect to the company.
- (5) Without limiting any other ground on which the Commission may refuse to register a proposed company, the Commission may refuse to do so if it is not satisfied that the registration is in the interest of the investing public.
- (6) On registering a proposed company, the Commission may impose any condition that it considers appropriate.
- (7) The Commission must, as soon as reasonably practicable after registering a proposed company under subsection (1), notify the Registrar of Companies in writing of the registration.
- (8) The Commission must, as soon as reasonably practicable after refusing to register a proposed company under subsection (1), notify the applicant in writing of the refusal and the reasons for it.

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### 112E. 註冊規定

為施行第 112D(4) 條而指明的註冊規定是 ——

- (a) 第 112H(2)、(3)、(4) 及 (5) 條所列的、關乎開放式基金型公司的名稱的規定；
- (b) 第 112I 條所列的、關乎開放式基金型公司的註冊辦事處的規定；
- (c) 第 112U(1)、112V(1)、112W(1) 及 112X(1) 條所列的、關乎開放式基金型公司的董事的規定；
- (d) 第 112Z 條所列的、關乎開放式基金型公司的投資經理的規定；
- (e) 第 112ZA(1) 條所列的、關乎開放式基金型公司的保管人的規定；及
- (f) 《開放式基金型公司規則》所訂明的任何其他註冊規定。

### 112F. 證監會可修訂註冊條件

證監會可藉送達書面通知予某開放式基金型公司，修訂或撤銷任何已就該公司的註冊施加的條件，或就該項註冊施加新的條件。

### 112G. 發表開放式基金型公司的詳情

- (1) 證監會可按其認為適當的任何方式，發表開放式基金型公司的詳情。
- (2) 根據第 (1) 款發表的詳情，並非附屬法例。

### 112H. 開放式基金型公司的名稱

### 112E. Requirements for registration

The requirements for registration specified for the purposes of section 112D(4) are—

- (a) the requirements relating to the name of an open-ended fund company as set out in section 112H(2), (3), (4) and (5);
- (b) the requirement relating to the registered office of an open-ended fund company as set out in section 112I;
- (c) the requirements relating to directors of an open-ended fund company as set out in sections 112U(1), 112V(1), 112W(1) and 112X(1);
- (d) the requirements relating to an investment manager of an open-ended fund company as set out in section 112Z;
- (e) the requirement relating to a custodian of an open-ended fund company as set out in section 112ZA(1); and
- (f) any other requirements for registration prescribed by the OFC rules.

### 112F. Commission may amend conditions of registration

The Commission may, by notice in writing served on an open-ended fund company, amend or revoke any of the conditions imposed, or impose new conditions, in respect of its registration.

### 112G. Publication of particulars of open-ended fund company

- (1) The Commission may publish, in any manner it considers appropriate, particulars of an open-ended fund company.
- (2) Particulars published under subsection (1) are not subsidiary legislation.

### 112H. Name of open-ended fund company

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- (1) 開放式基金型公司以下述名稱為名 ——
  - (a) 其公司註冊證明書所述明的名稱；或
  - (b) 如有名稱的更改根據《開放式基金型公司規則》生效 —— 其新名稱。
- (2) 開放式基金型公司不得以下述名稱為名 ——
  - (a) 證監會認為具誤導性或因其他理由而屬不適宜的名稱；或
  - (b) 與另一間現有的開放式基金型公司的名稱相同的名稱。
- (3) 開放式基金型公司如只有英文名稱，該名稱須以“Open-ended Fund Company”或“OFC”作結。
- (4) 開放式基金型公司如只有中文名稱，該名稱須以“開放式基金型公司”作結。
- (5) 開放式基金型公司如兼有英文名稱及中文名稱 ——
  - (a) 該英文名稱須以“Open-ended Fund Company”或“OFC”作結；及
  - (b) 該中文名稱須以“開放式基金型公司”作結。

**112I. 開放式基金型公司的註冊辦事處**

開放式基金型公司須在香港設有一個註冊辦事處，讓所有通訊及通知均可致予該辦事處。

**第 3 分部 —— 身分及權力****112J. 開放式基金型公司的身分**

開放式基金型公司具有的身分、權利、權力及特權，一如《開放式基金型公司規則》所訂明者。

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- (1) The name of an open-ended fund company is—
  - (a) the name stated in its certificate of incorporation; or
  - (b) if a change of name has effect under the OFC rules, its new name.
- (2) The name of an open-ended fund company must not—
  - (a) in the opinion of the Commission, be misleading or otherwise undesirable; or
  - (b) be the same as the name of another existing open-ended fund company.
- (3) For an open-ended fund company that has an English name only, the name must end with “Open-ended Fund Company” or “OFC”.
- (4) For an open-ended fund company that has a Chinese name only, the name must end with “開放式基金型公司”.
- (5) For an open-ended fund company that has both an English name and a Chinese name—
  - (a) the English name must end with “Open-ended Fund Company” or “OFC”; and
  - (b) the Chinese name must end with “開放式基金型公司”.

**112I. Registered office of open-ended fund company**

An open-ended fund company must have a registered office in Hong Kong to which all communications and notices may be addressed.

**Division 3—Capacity and Powers****112J. Capacity of open-ended fund company**

An open-ended fund company has the capacity, rights, powers and privileges as are prescribed by the OFC rules.

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第 112K 條Part IVA—Division 3  
Section 112K4A-14  
Cap. 571**112K. 開放式基金型公司的法團成立文書**

- (1) 開放式基金型公司須有法團成立文書，訂明該公司的規例。
- (2) 開放式基金型公司的法團成立文書須載有 ——
  - (a) 該公司的名稱；
  - (b) 一項陳述，述明該公司的註冊辦事處位於香港；
  - (c) 該公司的宗旨；
  - (d) 關於該公司將會投資於何種財產的條文；
  - (e) 一項陳述，述明該公司是具有可變動股本的開放式基金型公司；
  - (f) 一項陳述，述明該公司的已繳股本的款額，在所有時間，均相等於該公司的淨資產值；
  - (g) 一項陳述，述明該公司的股東，無須為該公司的債項承擔法律責任；
  - (h) 一項陳述，述明該公司的計劃財產，是遵照法律而託付予該公司的保管人作妥善保管的；及
  - (i) 《開放式基金型公司規則》所訂明的任何其他事宜。
- (3) 有子基金的開放式基金型公司的法團成立文書，須同時載有一項陳述，述明該公司的某子基金的資產，只屬於該子基金，且不得用作解除任何其他人士（包括該公司及該公司的任何其他子基金）的法律責任，或用作解除針對任何其他人士（包括該公司及該公司的任何其他子基金）的申索。

**112K. Instrument of incorporation of open-ended fund company**

- (1) An open-ended fund company must have an instrument of incorporation prescribing regulations for the company.
- (2) The instrument of incorporation of an open-ended fund company must contain—
  - (a) the name of the company;
  - (b) a statement that the registered office of the company is situated in Hong Kong;
  - (c) the objects of the company;
  - (d) provision as to the kinds of property in which the company is to invest;
  - (e) a statement that the company is an open-ended fund company with variable share capital;
  - (f) a statement that the amount of the paid-up share capital of the company is at all times equal to the net asset value of the company;
  - (g) a statement that the company's shareholders are not liable for the debts of the company;
  - (h) a statement that the company's scheme property is entrusted to a custodian of the company for safe keeping in compliance with the law; and
  - (i) any other matters prescribed by the OFC rules.
- (3) For an open-ended fund company with sub-funds, its instrument of incorporation must also contain a statement that the assets of a sub-fund of the company belong exclusively to the sub-fund and are not to be used to discharge the liabilities of, or the claims against, any other person, including the company and any other sub-fund of the company.



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### 112L. 法團成立文書的效力

- (1) 在符合本條例的規定的原則下，開放式基金型公司的法團成立文書一經根據本條例登記 ——
  - (a) 即在 ——
    - (i) 該公司與每名股東之間；及
    - (ii) 任何股東與每名其他股東之間，作為蓋上印章的合約而具有效力；及
  - (b) 即須視為載有契諾，內容是該公司及每名股東，均會遵守該文書的所有條文。
- (2) 在不局限第 (1) 款的原則下，開放式基金型公司的法團成立文書 ——
  - (a) 可由該公司，針對每名股東強制執行；
  - (b) 可由任何股東，針對該公司強制執行；及
  - (c) 可由任何股東，針對每名其他股東強制執行。
- (3) 根據開放式基金型公司的法團成立文書須由任何股東支付予該公司的款項，均 ——
  - (a) 屬該股東拖欠該公司的債項；及
  - (b) 具有蓋印文據債項的性質。

## 第 4 分部 —— 合約

### 112M. 由或代表開放式基金型公司訂立的合約

- (1) 本條適用於符合任何以下說明的合約 ——
  - (a) 該合約如在自然人之間訂立，則法律規定須以書面形式訂立，並須蓋上印章；

### 112L. Effect of instrument of incorporation

- (1) Subject to this Ordinance, the instrument of incorporation of an open-ended fund company, once registered under this Ordinance—
  - (a) has effect as a contract under seal—
    - (i) between the company and each shareholder; and
    - (ii) between a shareholder and each other shareholder; and
  - (b) is to be regarded as containing covenants on the part of the company and of each shareholder to observe all the provisions of the instrument.
- (2) Without limiting subsection (1), the instrument of incorporation of an open-ended fund company is enforceable—
  - (a) by the company against each shareholder;
  - (b) by a shareholder against the company; and
  - (c) by a shareholder against each other shareholder.
- (3) Money payable by a shareholder to an open-ended fund company under its instrument of incorporation—
  - (a) is a debt due from the shareholder to the company; and
  - (b) is of the nature of a specialty debt.

## Division 4—Contracts

### 112M. Contracts made by or on behalf of open-ended fund company

- (1) This section applies to—
  - (a) a contract that would be required by law to be in writing and under seal if made between natural persons;

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- (b) 該合約如在自然人之間訂立，則法律規定須以書面形式訂立，並由合約各方簽署；及
- (c) 該合約雖以口頭方式（而非以書面形式）訂立，但如該合約是在自然人之間訂立，則會在法律上屬有效。
- (2) 開放式基金型公司可藉以下方式，訂立第 (1)(a) 款指明的合約——
  - (a) 以書面形式訂立，並蓋上該公司的法團印章（如有）；或
  - (b) 以書面形式訂立，並按照《開放式基金型公司規則》簽立，且在合約中說明（不論措詞如何）是由該公司簽立的。
- (3) 第 (1)(b) 款指明的合約，可藉書面形式，代表開放式基金型公司訂立，並由任何獲該公司授權（不論明訂或默示）行事的人簽署。
- (4) 第 (1)(c) 款指明的合約，可由任何獲開放式基金型公司授權（不論明訂或默示）行事的人以口頭方式，代表該公司訂立。
- (5) 由開放式基金型公司按照本條訂立的合約，或代表開放式基金型公司按照本條訂立的合約——
  - (a) 在法律上有效；及
  - (b) 對該公司及其繼承者，以及該合約的所有其他各方，均具約束力。
- (6) 按照本條訂立的合約，可按本條批准訂立該合約的相同方式，予以更改或解除。

**112N. 開放式基金型公司成立為法團前訂立的合約**

- (1) 如合約看來是在開放式基金型公司成立為法團前，以該公司的名義訂立，或代表該公司訂立，則本條適用。

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- (b) a contract that would be required by law to be in writing, and to be signed by the parties to the contract, if made between natural persons; and
- (c) a contract that, though made orally and not in writing, would by law be valid if made between natural persons.
- (2) A contract specified in subsection (1)(a) may be made by an open-ended fund company—
  - (a) in writing under the company's common seal (if any); or
  - (b) in writing executed in accordance with the OFC rules and expressed (in whatever words) to be executed by the company.
- (3) A contract specified in subsection (1)(b) may be made on behalf of an open-ended fund company in writing signed by any person acting with the company's authority (whether express or implied).
- (4) A contract specified in subsection (1)(c) may be made on behalf of an open-ended fund company orally by any person acting with the company's authority (whether express or implied).
- (5) A contract made by or on behalf of an open-ended fund company in accordance with this section—
  - (a) is effective in law; and
  - (b) binds the company and its successors and all other parties to the contract.
- (6) A contract made in accordance with this section may be varied or discharged in the same manner in which it is authorized by this section to be made.

**112N. Contracts made before open-ended fund company's incorporation**

- (1) This section applies if a contract purports to have been made

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- (2) 除任何明訂協議有相反規定外 ——
- (a) 有關合約一如由看來是代表有關公司行事的人 (或看來是作為該公司代理人的人) 訂立的合約般, 具有效力; 及
- (b) 該人須為該合約承擔個人法律責任, 並有權強制執行該合約。
- (3) 有關公司可在成立為法團後, 追認有關合約, 可追認範圍猶如有以下情況一樣 ——
- (a) 該公司在該合約訂立時, 已成立為法團; 及
- (b) 該合約是由未獲該公司授權的代理人, 代表該公司訂立的。
- (4) 儘管第 (2)(b) 款另有規定, 如有關合約獲有關公司追認, 則在該項追認之時及之後, 該款所述的人所須承擔的法律責任, 並不大於假若該人是在以下情況下訂立該合約, 便須承擔的法律責任: 在該公司成立為法團後, 該人未獲該公司授權, 而以代理人身分, 代表該公司訂立該合約。

**112O. 註冊取消後訂立的合約**

如 ——

- (a) 開放式基金型公司在其註冊根據第 112ZH 或 112ZI 條取消後, 訂立合約; 及
- (b) 在該合約的另一方要求該公司履行該合約下的任何義務當日起計的 21 日內, 該公司沒有履行該義務, 則授權該合約的人, 須負有法律責任 (如由多於 1 人授權, 他們須共同和個別地負有法律責任), 就該另一方因該公司沒有履行該義務而蒙受的損失或損害, 對該另一方作出彌償。

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- in the name or on behalf of an open-ended fund company before the company was incorporated.
- (2) Subject to any express agreement to the contrary—
- (a) the contract has effect as a contract made by the person purporting to act for the company or as an agent for the company; and
- (b) the person is personally liable on the contract and is entitled to enforce the contract.
- (3) After incorporation, the company may ratify the contract to the same extent as if—
- (a) the company had already been incorporated when the contract was made; and
- (b) the contract had been made on the company's behalf by an agent acting without the company's authority.
- (4) Despite subsection (2)(b), if the contract is ratified by the company, then on and after the ratification, the liability of the person mentioned in that subsection is not greater than the liability that the person would have incurred if the person had made the contract after the company's incorporation as an agent acting without the company's authority.

**112O. Contracts made after cancellation of registration**

If—

- (a) an open-ended fund company makes a contract after its registration has been cancelled under section 112ZH or 112ZI; and
- (b) the company fails to comply with any obligation under the contract within 21 days of being called on to do so by the other party to the contract,

the person who has authorized the contract is liable, and if the contract was authorized by 2 or more persons, they are jointly and

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Cap. 571**第 5 分部 —— 股本及股東的法律責任****112P. 開放式基金型公司的股本**

- (1) 開放式基金型公司可發行股份。
- (2) 開放式基金型公司的股份沒有面值。
- (3) 開放式基金型公司的已繳股本的款額，在所有時間，均相等於該公司的淨資產值。
- (4) 在本條中 ——

**淨資產值** (net asset value) 就開放式基金型公司而言，指該公司的總資產減去其負債總額的餘額。

**112Q. 股東的法律責任**

開放式基金型公司股東的法律責任，限於該股東所持有的股份的未繳款額。

**第 6 分部 —— 子基金****112R. 開放式基金型公司的子基金**

- (1) 開放式基金型公司的法團成立文書，可訂定將其計劃財產拆分為獨立的部分。
- (2) 有關開放式基金型公司計劃財產的每個獨立的部分，即為該公司的一個子基金。

severally liable, to indemnify that other party in respect of any loss or damage suffered by that other party by reason of the company's failure to comply with the obligation.

**Division 5—Share Capital and Shareholders' Liability****112P. Share capital of open-ended fund company**

- (1) An open-ended fund company may issue shares.
- (2) Shares in an open-ended fund company have no nominal value.
- (3) The amount of the paid-up share capital of an open-ended fund company is at all times equal to the net asset value of the company.
- (4) In this section—

**net asset value** (淨資產值), in relation to an open-ended fund company, means the balance after deducting the total liabilities of the company from its total assets.

**112Q. Shareholders' liability**

The liability of the shareholders of an open-ended fund company is limited to any amount unpaid on the shares held by the shareholders.

**Division 6—Sub-funds****112R. Sub-funds of open-ended fund company**

- (1) The instrument of incorporation of an open-ended fund company may provide for the division of its scheme property into separate parts.
- (2) Each separate part of the scheme property of an open-ended fund company is a sub-fund of the company.

**112S. 子基金的法律責任分隔**

- (1) 開放式基金型公司的某子基金的資產，只屬於該子基金，且不得用作解除任何其他人（包括該公司及該公司的任何其他子基金）的法律責任，或用作解除針對任何其他人（包括該公司及該公司的任何其他子基金）的申索。
- (2) 如任何法律責任屬代表開放式基金型公司的某子基金招致者，或屬可歸因於開放式基金型公司的某子基金者，則該法律責任只能以該子基金的資產解除。
- (3) 載於開放式基金型公司的法團成立文書的條文，或載於由開放式基金型公司訂立或簽立的合約或任何其他文書的條文，在該條文抵觸第(1)或(2)款的範圍內，即屬無效。
- (4) 凡在違反第(1)或(2)款的情況下，應用開放式基金型公司的子基金的資產，該項應用即屬無效；凡協議如此應用該等資產，該協議亦屬無效。
- (5) 有子基金的開放式基金型公司，可將符合以下說明的任何資產或負債，以該公司認為對其股東公平的方式，在其子基金之間作分配——
  - (a) 該資產或負債是該公司——
    - (i) 代表其子基金收取或招致的；或
    - (ii) 為使其子基金得以運作而收取或招致的；及
  - (b) 該資產或負債不能歸因於任何特定子基金。
- (6) 開放式基金型公司的子基金，並非獨立於該公司的法人，但法庭命令能以某子基金的資產為對象，猶如該子基金是獨立的法人一樣。
- (7) 在不影響第(1)及(2)款的原則下，且除《開放式基金型公司規則》有所規定外，開放式基金型公司可就該公司的任何子基金而起訴和被起訴，並可就該子基金，行使抵銷的權利（相同於就公司而言適用者）。

**112S. Segregated liability of sub-funds**

- (1) The assets of a sub-fund of an open-ended fund company belong exclusively to the sub-fund and must not be used to discharge the liabilities of, or the claims against, any other person, including the company and any other sub-fund of the company.
- (2) Any liability incurred on behalf of, or attributable to, a sub-fund of an open-ended fund company may only be discharged out of the assets of the sub-fund.
- (3) A provision contained in the instrument of incorporation of an open-ended fund company, or in a contract or any other instrument made or executed by an open-ended fund company, is void to the extent that it is inconsistent with subsection (1) or (2).
- (4) An application of, or agreement to apply, assets of a sub-fund of an open-ended fund company in contravention of subsection (1) or (2) is void.
- (5) An open-ended fund company with sub-funds may allocate any assets or liabilities that—
  - (a) it receives or incurs—
    - (i) on behalf of its sub-funds; or
    - (ii) in order to enable the operation of its sub-funds; and
  - (b) are not attributable to any particular sub-fund, between its sub-funds in a manner that it considers is fair to its shareholders.
- (6) A sub-fund of an open-ended fund company is not a legal person separate from the company but the assets of the sub-fund may be subject to orders of the court as if it were a separate legal person.



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Cap. 571**第 7 分部 —— 董事、投資經理、保管人、次保管人及核數師****112T. 第 IVA 部第 7 分部的釋義**

在本分部中 ——

**失當行為** (misconduct) ——

- (a) 就開放式基金型公司的董事而言，指在該董事就該公司履行董事職責的過程中，該董事的疏忽、失責、失職或違反信託行為；
- (b) 就開放式基金型公司的投資經理而言，指在該投資經理就該公司履行投資經理職責的過程中，該投資經理的疏忽、失責、失職或違反信託行為；
- (c) 就開放式基金型公司的保管人而言，指在該保管人就該公司履行保管人職責的過程中，該保管人的疏忽、失責、失職或違反信託行為；
- (d) 就開放式基金型公司的次保管人而言，指在該次保管人就該公司履行次保管人職責的過程中，該次保管人的疏忽、失責、失職或違反信託行為；及
- (e) 就開放式基金型公司的核數師而言，指在該核數師就該公司履行核數師職責的過程中，該核數師的疏忽、失責、失職或違反信託行為；

**指明人員** (specified officer) 就開放式基金型公司而言，指 ——

- (a) 該公司的董事；
- (b) 該公司的投資經理；

- (7) Without affecting subsections (1) and (2) and except as provided by the OFC rules, an open-ended fund company may sue and be sued in respect of any sub-fund of the company and may exercise the same rights of set-off in relation to the sub-fund as apply in respect of companies.

**Division 7—Directors, Investment Manager, Custodian, Sub-custodian and Auditor****112T. Interpretation of Division 7 of Part IVA**

In this Division—

**misconduct** (失當行為)—

- (a) in relation to a director of an open-ended fund company, means negligence, default, breach of duty or breach of trust on the part of the director occurring in the course of performing duties as a director in relation to the company;
- (b) in relation to an investment manager of an open-ended fund company, means negligence, default, breach of duty or breach of trust on the part of the investment manager occurring in the course of performing duties as an investment manager in relation to the company;
- (c) in relation to a custodian of an open-ended fund company, means negligence, default, breach of duty or breach of trust on the part of the custodian occurring in the course of performing duties as a custodian in relation to the company;
- (d) in relation to a sub-custodian of an open-ended fund company, means negligence, default, breach of duty or breach of trust on the part of the sub-custodian occurring in the course of performing duties as a sub-custodian in relation to the company; and

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- (c) 該公司的保管人；
- (d) 該公司的次保管人；或
- (e) 該公司的核數師。

**112U. 董事**

- (1) 開放式基金型公司須有最少 2 名董事。
- (2) 開放式基金型公司的首任董事，由根據第 112C(1)(a) 條交付公司註冊處處長的法團成立表格內列名為董事的人擔任。
- (3) 開放式基金型公司的董事，對該開放式基金型公司負有 ——
  - (a) 受信責任，該責任相同於普通公司的董事對該普通公司負有的受信責任；及
  - (b) 以合理水平的謹慎、技巧及努力行事的責任，該責任即根據《公司條例》(第 622 章) 第 465 條，普通公司的董事對該普通公司負有的如此行事的責任。
- (4) 凡開放式基金型公司的某董事違反 (或威脅違反) 第 (3) 款所提述的任何董事責任，該董事須承擔的後果，一如假若該董事是普通公司的董事便會適用者。
- (5) 在本條中 ——

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- (e) in relation to an auditor of an open-ended fund company, means negligence, default, breach of duty or breach of trust on the part of the auditor occurring in the course of performing duties as an auditor in relation to the company;

**specified officer** (指明人員), in relation to an open-ended fund company, means—

- (a) a director of the company;
- (b) an investment manager of the company;
- (c) a custodian of the company;
- (d) a sub-custodian of the company; or
- (e) an auditor of the company.

**112U. Directors**

- (1) An open-ended fund company must have at least 2 directors.
- (2) The first directors of an open-ended fund company are the persons named as directors in the incorporation form delivered to the Registrar of Companies under section 112C(1)(a).
- (3) A director of an open-ended fund company owes the open-ended fund company—
  - (a) the same fiduciary duties that are owed by a director of an ordinary company to the ordinary company; and
  - (b) the duty to exercise reasonable care, skill and diligence that is owed by a director of an ordinary company to the ordinary company under section 465 of the Companies Ordinance (Cap. 622).
- (4) In the case of a breach or threatened breach by a director of an open-ended fund company of any of the director's duties referred to in subsection (3), the director is liable to the same

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**普通公司** (ordinary company) 指根據《公司條例》(第 622 章) 組成和註冊的公司。

#### 112V. 法人團體擔任董事的限制

- (1) 法人團體不得獲委任為開放式基金型公司的董事。
- (2) 任何違反第 (1) 款的委任，均屬無效。
- (3) 然而，本條不影響法人團體在本條例下，須為以下作為而負上的法律責任 ——
  - (a) 看來是以開放式基金型公司董事的身分行事；或
  - (b) 以開放式基金型公司幕後董事的身分行事。

#### 112W. 委任為董事的最低年齡

- (1) 除非某人在獲委任為開放式基金型公司董事時，已年滿 18 歲，否則該人不得獲委任。
- (2) 任何違反第 (1) 款的委任，均屬無效。
- (3) 然而，本條不影響未年滿 18 歲的人在本條例下，須為以下作為而負上的法律責任 ——
  - (a) 看來是以開放式基金型公司董事的身分行事；或
  - (b) 以開放式基金型公司幕後董事的身分行事。

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consequences as would apply if the director were a director of an ordinary company.

(5) In this section—

**ordinary company** (普通公司) means a company formed and registered under the Companies Ordinance (Cap. 622).

#### 112V. Restrictions on body corporate being director

- (1) A body corporate must not be appointed a director of an open-ended fund company.
- (2) An appointment made in contravention of subsection (1) is void.
- (3) However, this section does not affect any liability of a body corporate under this Ordinance for—
  - (a) purporting to act as a director of an open-ended fund company; or
  - (b) acting as a shadow director of an open-ended fund company.

#### 112W. Minimum age for appointment as director

- (1) A person must not be appointed a director of an open-ended fund company unless at the time of appointment the person has attained the age of 18 years.
- (2) An appointment made in contravention of subsection (1) is void.
- (3) However, this section does not affect any liability of a person below the age of 18 years under this Ordinance for—
  - (a) purporting to act as a director of an open-ended fund company; or
  - (b) acting as a shadow director of an open-ended fund company.

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### 112X. 關於未獲解除破產的破產人擔任董事的條文

- (1) 任何人凡屬未獲解除破產的破產人，除非獲裁定該人破產的原訟法庭許可，否則不得——
  - (a) 擔任開放式基金型公司的董事；或
  - (b) 直接或間接關涉或參與開放式基金型公司的管理。
- (2) 任何人違反第 (1) 款，即屬犯罪——
  - (a) 一經循公訴程序定罪，可處罰款 \$700,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處罰款 \$150,000 及監禁 1 年。
- (3) 除非擬申請原訟法庭許可的意向通知書，已送達破產管理署署長，否則原訟法庭不得為本條的目的給予許可。
- (4) 破產管理署署長如認為，批准要求給予許可的申請，屬有違公眾利益，則須出席該項申請的聆訊，並且反對批准該項申請。

### 112Y. 董事的作為的有效性

- (1) 任何以開放式基金型公司董事的身分行事的人的作為，均屬有效，即使其後發現有以下情況亦然——
  - (a) 委任該人為董事的委任，有欠妥之處；
  - (b) 該人不符合擔任董事的資格，或已喪失擔任董事的資格；
  - (c) 該人已不再擔任董事；或
  - (d) 該人無權就有關事宜表決。

### 112X. Provisions as to undischarged bankrupt acting as director

- (1) A person who is an undischarged bankrupt must not, except with the leave of the Court of First Instance by which the person was adjudged bankrupt—
  - (a) act as a director of an open-ended fund company; or
  - (b) directly or indirectly, be concerned, or take part, in the management of an open-ended fund company.
- (2) A person who contravenes subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment to a fine of \$700,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine of \$150,000 and to imprisonment for 1 year.
- (3) The Court of First Instance must not give leave for the purposes of this section unless a notice of the intention to apply for it has been served on the Official Receiver.
- (4) If the Official Receiver is of opinion that it is contrary to the public interest that an application for leave should be granted, the Official Receiver must attend the hearing of, and oppose the granting of, the application.

### 112Y. Validity of acts of director

- (1) The acts of a person acting as a director of an open-ended fund company are valid even though it is afterwards discovered—
  - (a) that there was a defect in the appointment of the person as a director;
  - (b) that the person was not qualified to hold office as a director or was disqualified from holding office as a director;

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- (2) 即使根據第 112V 或 112W 條，有關的人的董事委任屬無效，第 (1) 款仍適用。

### 112Z. 投資經理

- (1) 開放式基金型公司須有投資經理，負責管理該公司的計劃財產。
- (2) 開放式基金型公司的投資經理，須由就第 9 類受規管活動獲發牌或獲註冊的中介人擔任。

### 112ZA. 保管人

- (1) 開放式基金型公司須有保管人。
- (2) 開放式基金型公司的所有計劃財產，均須託付予該公司的保管人作妥善保管。
- (3) 儘管第 (2) 款另有規定，任何計劃財產，如屬證監會為施行本款而指明的類別或描述者，均無須託付予保管人。
- (4) 凡開放式基金型公司的計劃財產，根據第 (2) 款被託付予該公司的保管人，該保管人須以合理水平的謹慎、技巧及努力，確保該等財產獲妥善保管。
- (5) 凡開放式基金型公司的計劃財產，被託付予以下任何人士，本條不禁止該人藉書面協議，將所有該等財產或其任何部分，託付予另一人作妥善保管 ——
  - (a) 該公司的保管人；
  - (b) 根據書面協議，獲託付該公司的任何計劃財產作妥善保管的人（該公司的保管人除外）。

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- (c) that the person had ceased to hold office as a director; or
- (d) that the person was not entitled to vote on the matter in question.

- (2) Subsection (1) applies even if the appointment of the person as a director is void under section 112V or 112W.

### 112Z. Investment manager

- (1) An open-ended fund company must have an investment manager who is responsible for managing the scheme property of the company.
- (2) An investment manager of an open-ended fund company must be an intermediary licensed or registered for Type 9 regulated activity.

### 112ZA. Custodian

- (1) An open-ended fund company must have a custodian.
- (2) All the scheme property of an open-ended fund company must be entrusted to a custodian of the company for safe keeping.
- (3) Despite subsection (2), any scheme property of a class or description specified by the Commission for the purposes of this subsection is not required to be entrusted to a custodian.
- (4) A custodian of an open-ended fund company must take reasonable care, skill and diligence to ensure the safe keeping of the scheme property of the company that is entrusted to the custodian under subsection (2).
- (5) This section does not prohibit either of the following persons from entrusting, by an agreement in writing, to another person for safe keeping any or all of the scheme property of an open-



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第 112ZB 條Part IVA—Division 7  
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Cap. 571**112ZB. 核數師**

開放式基金型公司須就該公司的每個財政年度，委任核數師。

**112ZC. 免除指明人員的法律責任的條文，均屬無效**

- (1) 本條適用於載於以下文件的條文 ——
  - (a) 開放式基金型公司的法團成立文書；或
  - (b) 由開放式基金型公司訂立或簽立的合約或任何其他文書。
- (2) 如某條文看來是豁免有關公司的指明人員，使該人員無須承擔本須在與其失當行為相關的情況下承擔的法律責任，則該條文即屬無效。
- (3) 如有關公司藉着某條文，而直接或間接向該公司的指明人員提供彌償，以彌償該人員須在與其失當行為相關的情況下承擔的法律責任，則該條文即屬無效。

**112ZD. 原訟法庭可在關於失當行為的法律程序中，向指明人員給予寬免**

- (1) 在就開放式基金型公司的指明人員的失當行為而針對該人員提起的法律程序中，如原訟法庭 ——

ended fund company that is entrusted to the first-mentioned person—

- (a) a custodian of the company;
- (b) a person to whom any scheme property of the company is entrusted for safe keeping under an agreement in writing, other than the custodian of the company.

**112ZB. Auditor**

An open-ended fund company must appoint an auditor for each financial year of the company.

**112ZC. Provision protecting specified officer from liability void**

- (1) This section applies to a provision contained in—
  - (a) the instrument of incorporation of an open-ended fund company; or
  - (b) a contract, or any other instrument, made or executed by an open-ended fund company.
- (2) If a provision purports to exempt a specified officer of the company from any liability that would otherwise attach to the officer in connection with the officer's misconduct, the provision is void.
- (3) If, by a provision, the company directly or indirectly provides an indemnity for a specified officer of the company against any liability attaching to the officer in connection with the officer's misconduct, the provision is void.

**112ZD. Court of First Instance may grant specified officer relief in proceedings for misconduct**

- (1) This section applies if, in any proceedings for any misconduct against a specified officer of an open-ended fund company, it appears to the Court of First Instance that the officer—

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- (a) 覺得該人員須為或可能須為該失當行為，而承擔法律責任；
- (b) 覺得該人員有誠實而合理地行事；及
- (c) 在顧及有關案件的整體情況（包括與該人員的委任相關的情況）後，覺得如公平地看待，該人員應就該失當行為而獲寬宥，  
則本條適用。
- (2) 原訟法庭可按其認為合適的條款，全盤或局部寬免有關指明人員的法律責任。
- (3) 如有關案件的審訊，是由法官在有陪審團的情況下進行的，該法官可——
  - (a) 從陪審團手中，完全或局部撤回該案件；及
  - (b) 指示按該法官認為合適的、關於訟費或其他事項的條款，判有關指明人員勝訴。
- (4) 為免生疑問，本條並不就刑事法律程序而適用。

**112ZE. 原訟法庭可應指明人員的申請，就失當行為向該人員給予寬免**

- (1) 如開放式基金型公司的指明人員有理由憂慮，將會有或可能有申索，就某失當行為而針對該人員提出，則該人員可向原訟法庭申請寬免。
- (2) 原訟法庭可應開放式基金型公司的指明人員的申請，而按原訟法庭認為合適的條款，全盤或局部寬免該人員的法律責任，前提是原訟法庭——
  - (a) 覺得該人員須為或可能須為有關失當行為，而承擔法律責任；
  - (b) 覺得該人員有誠實而合理地行事；及
  - (c) 在顧及有關案件的整體情況（包括與該人員的委任相關的情況）後，覺得如公平地看待，該人員應就該失當行為而獲寬宥。

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- (a) is or may be liable for the misconduct;
- (b) has acted honestly and reasonably; and
- (c) ought fairly to be excused for the misconduct, having regard to all the circumstances of the case (including those connected with the officer's appointment).
- (2) The Court of First Instance may relieve the specified officer, either wholly or partly, from the liability on any terms that the Court thinks fit.
- (3) If the case is tried by a judge with a jury, the judge may—
  - (a) withdraw the case in whole or in part from the jury; and
  - (b) direct judgment to be entered for the specified officer on any terms as to costs or otherwise that the judge thinks fit.
- (4) To avoid doubt, this section does not apply in relation to criminal proceedings.

**112ZE. Court of First Instance may grant specified officer relief for misconduct on specified officer's application**

- (1) A specified officer of an open-ended fund company may apply to the Court of First Instance for relief if the officer has reason to apprehend that a claim will or might be made against the officer for any misconduct.
- (2) On an application by a specified officer of an open-ended fund company, the Court of First Instance may relieve the officer, either wholly or partly, from the liability on any terms that the Court thinks fit if it appears to the Court that the officer—
  - (a) is or may be liable for the misconduct;
  - (b) has acted honestly and reasonably; and

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## 第 8 分部 —— 證監會的監管

### 112ZF. 證監會發出指示的權力

- (1) 證監會可藉書面通知，發出第 (2) 款指明的任何指示，前提是證監會覺得 ——
  - (a) 就某開放式基金型公司而言，第 112E 條指明的任何註冊規定，不再獲符合；
  - (b) 某開放式基金型公司，或其任何董事、投資經理、保管人或次保管人，違反 ——
    - (i) 任何有關條文；
    - (ii) 證監會根據或依據本條例發出或作出的任何通知或規定；或
    - (iii) 任何就該公司的註冊施加的條件；
  - (c) 某開放式基金型公司，或其任何董事、投資經理、保管人或次保管人 ——
    - (i) 在充作遵守任何有關條文時；
    - (ii) 在充作遵從或遵守證監會根據或依據本條例發出或作出的任何通知或規定時；或
    - (iii) 在充作遵從任何就該公司的註冊施加的條件時，明知而向證監會提供 (或罔顧實情地向證監會提供) 在要項上屬虛假或具誤導性的資料；
  - (d) 某開放式基金型公司的投資經理，違反該投資經理根據本條例獲發牌或註冊的任何條款或條件；
  - (e) 某開放式基金型公司的投資經理，在充作遵從該投資經理根據本條例獲發牌或註冊的任何條款或條件

- (c) ought fairly to be excused for the misconduct, having regard to all the circumstances of the case (including those connected with the officer's appointment).

## Division 8—Supervision by Commission

### 112ZF. Commission's power to give directions

- (1) The Commission may, by notice in writing, give any of the directions specified in subsection (2) if it appears to the Commission that—
  - (a) with respect to an open-ended fund company, any of the requirements for registration specified in section 112E is no longer met;
  - (b) an open-ended fund company or a director, an investment manager, a custodian or a sub-custodian of an open-ended fund company has contravened—
    - (i) any of the relevant provisions;
    - (ii) any notice or requirement given or made by the Commission under or pursuant to this Ordinance; or
  - (iii) any of the conditions imposed in respect of the registration of the company;
- (c) an open-ended fund company or a director, an investment manager, a custodian or a sub-custodian of an open-ended fund company has, in purported compliance with—
  - (i) any of the relevant provisions;
  - (ii) any notice or requirement given or made by the Commission under or pursuant to this Ordinance; or

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- 時，明知而向證監會提供 (或罔顧實情地向證監會提供) 在要項上屬虛假或具誤導性的資料；或
- (f) 為保障投資大眾的利益，發出有關指示，是可取的。
- (2) 有關指示是 ——
- (a) 向有關公司或其投資經理發出的指示，指示該公司須停止發行或停止贖回 (或停止發行及停止贖回) 該公司的股份或該公司任何類別的股份；及
- (b) 向有關公司的某董事發出的指示，指示該董事須停止將該公司的股份或該公司任何類別的股份 (**公司股份**)，轉讓為該董事自己持有的股份，或停止將公司股份從該董事自己持有的股份轉讓，或同時停止作出上述兩類轉讓。
- (3) 凡有指示根據本條向某人發出，證監會可藉送達書面通知予該人，修訂或撤銷該指示。
- (4) 根據第 (1) 款發出的指示，或根據第 (3) 款修訂或撤銷該等指示，於以下時間生效 ——
- (a) 送達關乎該項指示、修訂或撤銷的通知之時；或
- (b) 如該通知指明一個較後時間 —— 該較後時間。
- (5) 除第 (6) 款另有規定外，凡根據本條就某開放式基金型公司發出的指示，正具有效力，而該公司的註冊根據第 112ZH 或 112ZI 條取消，則 ——
- (a) 該指示在任何方面，均不受該項取消所影響；及
- (b) 本條繼續適用於該公司，猶如其註冊不曾取消一樣。
- (6) 如法院根據第 212 條或《開放式基金型公司規則》，作出將開放式基金型公司清盤的命令，則在該命令作出時，根據本條就該公司發出的指示即停止具有效力。

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- (iii) any of the conditions imposed in respect of the registration of the company,
- knowingly or recklessly provided to the Commission any information that is false or misleading in a material particular;
- (d) an investment manager of an open-ended fund company has contravened any of the terms and conditions of its licence or registration under this Ordinance;
- (e) an investment manager of an open-ended fund company has, in purported compliance with any of the terms and conditions of its licence or registration under this Ordinance, knowingly or recklessly provided to the Commission any information that is false or misleading in a material particular; or
- (f) it is desirable to do so in order to protect the interest of the investing public.
- (2) The directions are—
- (a) a direction to the company or its investment manager that the company is to cease to issue or redeem, or cease to issue and redeem, shares or any class of shares in the company; and
- (b) a direction to a director of the company that the director is to cease to transfer shares or any class of shares in the company to or from, or to and from, the director's own holding of shares.
- (3) The Commission may, by notice in writing served on the person to whom a direction is given under this section, amend or revoke the direction.
- (4) A direction given under subsection (1), or an amendment or revocation of such a direction under subsection (3), takes effect—

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### 112ZG. 就沒有遵從指示而向原訟法庭提出申請

- (1) 如任何人沒有遵從根據第 112ZF 條發出的指示，證監會可就此事，向原訟法庭提出申請，而原訟法庭 ——
  - (a) 如信納該人不遵從該指示，是沒有合理辯解的，則可命令該人在原訟法庭指明的限期內，遵從該指示；及
  - (b) 如信納該項不遵從是無合理辯解的，則可懲罰該人，以及明知而牽涉於該項不遵從的任何其他人（**另一人**），懲罰的方式猶如該人及（如適用的話）該另一人犯藐視法庭罪一樣。
- (2) 如某人有合理可能會不遵從根據第 112ZF 條發出的指示，證監會可向原訟法庭申請命令，飭令 ——
  - (a) 該人；及
  - (b) 原訟法庭信納能促致該人遵從該指示的任何其他人，

- (a) at the time of the service of the notice in respect of the direction, amendment or revocation; or
  - (b) if a later time is specified in the notice, at that time.
- (5) Subject to subsection (6), if the registration of an open-ended fund company is cancelled under section 112ZH or 112ZI while a direction given under this section in relation to the company is in force—
  - (a) the direction is not to be affected in any respect by the cancellation; and
  - (b) this section continues to apply to the company as if its registration had not been cancelled.
- (6) If an order for the winding up of an open-ended fund company is made by the court under section 212 or the OFC rules, a direction given under this section in relation to the company ceases to have effect on the making of the order.

### 112ZG. Application to Court of First Instance in respect of failure to comply with direction

- (1) If a person fails to comply with a direction given under section 112ZF, the Commission may apply to the Court of First Instance in respect of the failure and the Court may—
  - (a) if satisfied that there is no reasonable excuse for the person not to comply with the direction, order the person to comply with the direction within the period specified by the Court; and
  - (b) if 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 the person and, if applicable, that other person had been guilty of contempt of court.



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採取或不得採取原訟法庭指示的任何行動。

- (3) 根據本條提出的申請，須以原訴傳票（須採用《高等法院規則》（第 4 章，附屬法例 A）附錄 A 表格 10）提出。

#### 112ZH. 證監會取消註冊的權力：應開放式基金型公司申請而取消

- (1) 除第 (2) 款另有規定外，凡某開放式基金型公司按照《開放式基金型公司規則》提出申請，證監會須應此項申請，取消該公司在第 112D 條下的註冊。
- (2) 證監會如認為有以下情況，可拒絕取消開放式基金型公司的註冊——
  - (a) 為符合公眾利益，在取消該公司的註冊之前，有任何關涉該公司的事宜，應予調查；或
  - (b) 取消該項註冊，是不符合投資大眾的利益的。
- (3) 證監會在取消某開放式基金型公司的註冊時，可施加證監會認為適當的任何條件。
- (4) 凡證監會取消某開放式基金型公司的註冊，證監會可藉送達書面通知予該公司，修訂或撤銷任何已就該項取消施加的條件，或就該項取消施加新的條件。
- (5) 在根據第 (2)、(3) 或 (4) 款就某開放式基金型公司行使權力之前，證監會須先給予該公司合理的陳詞機會。

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- (2) If there is a reasonable likelihood that a person will fail to comply with a direction given under section 112ZF, the Commission may apply to the Court of First Instance for an order that—
  - (a) the person; and
  - (b) any other person whom the Court is satisfied is able to procure the person to comply with the direction,
 take any action or refrain from taking any action that the Court directs.
- (3) An application under this section must be made by originating summons in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

#### 112ZH. Commission's power to cancel registration on open-ended fund company's application

- (1) Subject to subsection (2), the Commission must cancel the registration under section 112D of an open-ended fund company on an application made by the company in accordance with the OFC rules.
- (2) The Commission may refuse to cancel the registration of an open-ended fund company if it considers that—
  - (a) it is in the public interest that any matter concerning the company should be investigated before its registration is so cancelled; or
  - (b) the cancellation would not be in the interest of the investing public.
- (3) On cancelling the registration of an open-ended fund company, the Commission may impose any condition that it considers appropriate.
- (4) The Commission may, by notice in writing served on an open-ended fund company the registration of which is

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- (6) 證監會如取消某開放式基金型公司的註冊，則須以書面將此事通知該公司。
- (7) 證監會如根據第 (2)、(3) 或 (4) 款，就某開放式基金型公司行使權力，則須以書面將此事及其理由通知該公司。
- (8) 證監會如取消某開放式基金型公司的註冊，則 ——
  - (a) 須在取消註冊後，在合理地切實可行的範圍內，盡快以書面將此事通知公司註冊處處長；及
  - (b) 可按證監會認為適當的任何方式，發表取消註冊一事及其理由的通知。

**112ZI. 證監會取消註冊的權力：並非應開放式基金型公司申請而取消**

- (1) 在以下情況下，證監會可取消某開放式基金型公司在第 112D 條下的註冊 ——
  - (a) 證監會覺得，就該公司而言，第 112E 條指明的任何註冊規定，不再獲符合；
  - (b) 證監會覺得，該公司或其任何董事、投資經理、保管人或次保管人，違反 ——
    - (i) 任何有關條文；

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- cancelled, amend or revoke any of the conditions imposed, or impose new conditions, in respect of the cancellation.
- (5) The Commission must not exercise a power under subsection (2), (3) or (4) in relation to an open-ended fund company without first giving the company a reasonable opportunity to be heard.
- (6) If the Commission cancels the registration of an open-ended fund company, it must notify the company in writing of the cancellation.
- (7) If the Commission exercises a power under subsection (2), (3) or (4) in relation to an open-ended fund company, it must notify the company in writing of the exercise and the reasons for it.
- (8) If the Commission cancels the registration of an open-ended fund company, it—
  - (a) must, as soon as reasonably practicable after cancelling the registration, notify the Registrar of Companies in writing of the cancellation; and
  - (b) may publish notice of the cancellation and the reason for the cancellation in any manner that it considers appropriate.

**112ZI. Commission's power to cancel registration otherwise than on open-ended fund company's application**

- (1) The Commission may cancel the registration under section 112D of an open-ended fund company if—
  - (a) it appears to the Commission that, with respect to the company, any of the requirements for registration specified in section 112E is no longer met;

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- (ii) 證監會根據或依據本條例發出或作出的任何通知或規定；或
- (iii) 任何就該公司的註冊施加的條件；
- (c) 證監會覺得，該公司或其任何董事、投資經理、保管人或次保管人 ——
  - (i) 在充作遵守任何有關係文時；
  - (ii) 在充作遵從或遵守證監會根據或依據本條例發出或作出的任何通知或規定時；或
  - (iii) 在充作遵從任何就該公司的註冊施加的條件時，明知而向證監會提供（或罔顧實情地向證監會提供）在要項上屬虛假或具誤導性的資料；
- (d) 證監會不信納，該公司維持註冊，是符合投資大眾的利益的；或
- (e) 法院根據《開放式基金型公司規則》，作出將該公司清盤的命令。
- (2) 證監會在取消某開放式基金型公司的註冊時，可施加證監會認為適當的任何條件。
- (3) 凡證監會取消某開放式基金型公司的註冊，證監會可藉送達書面通知予該公司，修訂或撤銷任何已就該項取消施加的條件，或就該項取消施加新的條件。
- (4) 在根據第 (1)、(2) 或 (3) 款就某開放式基金型公司行使權力之前，證監會須先給予該公司合理的陳詞機會。
- (5) 證監會如根據第 (1)、(2) 或 (3) 款，就某開放式基金型公司行使權力，則須以書面將此事及其理由通知該公司。
- (6) 證監會如取消某開放式基金型公司的註冊，則 ——
  - (a) 須在取消註冊後，在合理地切實可行的範圍內，盡快以書面將此事通知公司註冊處處長；及
  - (b) 可按證監會認為適當的任何方式，發表取消註冊一事及其理由的通知。

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- (b) it appears to the Commission that the company or a director, an investment manager, a custodian or a sub-custodian of the company has contravened—
  - (i) any of the relevant provisions;
  - (ii) any notice or requirement given or made by the Commission under or pursuant to this Ordinance; or
  - (iii) any of the conditions imposed in respect of the registration of the company;
- (c) it appears to the Commission that the company or a director, an investment manager, a custodian or a sub-custodian of the company has, in purported compliance with—
  - (i) any of the relevant provisions;
  - (ii) any notice or requirement given or made by the Commission under or pursuant to this Ordinance; or
  - (iii) any of the conditions imposed in respect of the registration of the company, knowingly or recklessly provided to the Commission any information that is false or misleading in a material particular;
- (d) the Commission is not satisfied that the continued registration of the company is in the interest of the investing public; or
- (e) an order for the winding up of the company has been made by the court under the OFC rules.
- (2) On cancelling the registration of an open-ended fund company, the Commission may impose any condition that it considers appropriate.

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- (3) The Commission may, by notice in writing served on an open-ended fund company the registration of which is cancelled, amend or revoke any of the conditions imposed, or impose new conditions, in respect of the cancellation.
- (4) The Commission must not exercise a power under subsection (1), (2) or (3) in relation to an open-ended fund company without first giving the company a reasonable opportunity to be heard.
- (5) If the Commission exercises a power under subsection (1), (2) or (3) in relation to an open-ended fund company, it must notify the company in writing of the exercise and the reasons for it.
- (6) If the Commission cancels the registration of an open-ended fund company, it—
  - (a) must, as soon as reasonably practicable after cancelling the registration, notify the Registrar of Companies in writing of the cancellation; and
  - (b) may publish notice of the cancellation and the reasons for the cancellation in any manner that it considers appropriate.

#### 112ZJ. 在註冊取消後，准許進行必要的業務運作

- (1) 凡某開放式基金型公司的註冊根據第 112ZH 或 112ZI 條取消，證監會可藉送達書面通知予該公司，准許該公司進行必要的業務運作。
- (2) 凡某開放式基金型公司獲得上述准許，在該公司按照該項准許進行必要的業務運作期間，該公司的註冊就本條例而言，當作沒有取消。
- (3) 證監會在向某開放式基金型公司給予准許時，可施加證監會認為適當的任何條件。

#### 112ZJ. Permission to carry on essential business operations on cancellation of registration

- (1) The Commission may, by notice in writing served on an open-ended fund company the registration of which has been cancelled under section 112ZH or 112ZI, permit the company to carry on essential business operations.
- (2) The registration of an open-ended fund company to which permission is given is, while it carries on essential business operations in accordance with the permission, deemed not to be cancelled for the purposes of this Ordinance.

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- (4) 根據第 (3) 款施加的條件，須於關乎有關准許的通知中指明。
- (5) 已給予的某項准許，或根據第 (3) 款就該項准許而施加的條件，於以下時間生效 ——
- (a) 送達關乎該項准許的通知之時；或
- (b) 如該通知指明一個較後時間 —— 該較後時間。
- (6) 凡證監會向某開放式基金型公司給予准許，證監會可藉送達書面通知予該公司，修訂或撤銷任何已就該項准許施加的條件，或就該項准許施加新的條件。
- (7) 根據第 (6) 款修訂或撤銷某項條件，或根據該款施加的新條件，於以下時間生效 ——
- (a) 送達關乎修訂或撤銷該項條件或施加該項新條件的通知之時；或
- (b) 如該通知指明一個較後時間 —— 該較後時間。
- (8) 在本條中 ——
- 必要的業務運作** (essential business operations) 就某開放式基金型公司而言，指對結束該公司的業務屬必要的業務運作。

## 第 9 分部 —— 證監會訂立規則

### 112ZK. 證監會訂立規則的權力

- (1) 證監會可訂立規則，就以下事宜訂定條文 ——
- (a) 藉着開放式基金型公司，經營集體投資；及

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- (3) On giving permission to an open-ended fund company, the Commission may impose any condition that it considers appropriate.
- (4) A condition imposed under subsection (3) must be specified in the notice in respect of the permission.
- (5) A permission given or a condition imposed in respect of it under subsection (3) takes effect—
- (a) at the time of the service of the notice in respect of the permission; or
- (b) if a later time is specified in the notice, at that time.
- (6) The Commission may, by notice in writing served on an open-ended fund company to which permission is given, amend or revoke any of the conditions imposed, or impose new conditions, in respect of the permission.
- (7) An amendment or revocation of a condition, or a new condition imposed, under subsection (6) takes effect—
- (a) at the time of the service of the notice in respect of the amendment or revocation of the condition or the imposition of the new condition; or
- (b) if a later time is specified in the notice, at that time.
- (8) In this section—
- essential business operations** (必要的業務運作), in relation to an open-ended fund company, means business operations that are essential for closing down its business.

## Division 9—Rules made by Commission

### 112ZK. Commission's power to make rules

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



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- (b) 開放式基金型公司的規管。
- (2) 根據第 (1) 款訂立的規則，可就以下事宜訂定條文 ——
- (a) 關於將擬成立公司成立為法團的規定；
  - (b) 關於將擬成立公司向證監會註冊的規定；
  - (c) 開放式基金型公司的名稱；
  - (d) 開放式基金型公司的名稱的更改；
  - (e) 開放式基金型公司的身分、宗旨、權力、特權、權利及法律責任；
  - (f) 開放式基金型公司的法團成立文書，包括該等文書的格式；
  - (g) 關乎開放式基金型公司簽立文件的規定；
  - (h) 開放式基金型公司可作出的投資的類型；
  - (i) 開放式基金型公司的管理及運作，包括其行政及程序；
  - (j) 開放式基金型公司的計劃財產的管理；
  - (k) 開放式基金型公司須遵守的會計及匯報規定；
  - (l) 由開放式基金型公司及其高級人員作出或發出陳述書、報表、證明書或其他文件；
  - (m) 開放式基金型公司備存帳目及紀錄，以及該等帳目及紀錄的查閱；
  - (n) 開放式基金型公司備存股東登記冊及其他登記冊，以及該等登記冊的查閱及更正；
  - (o) 關乎開放式基金型公司的股本的事宜，包括股份的估值、購買、贖回及轉讓、股本的幣值重訂，以及更改股份所附帶的權利；
  - (p) 關乎開放式基金型公司的子基金的法律責任分隔的規定；及
  - (q) 開放式基金型公司的子基金之間的交叉投資。

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- (a) the carrying on of collective investments by means of open-ended fund companies; and
  - (b) the regulation of open-ended fund companies.
- (2) Rules made under subsection (1) may provide for—
- (a) the requirements for incorporation of proposed companies;
  - (b) the requirements for registration of proposed companies with the Commission;
  - (c) the naming of open-ended fund companies;
  - (d) the change of names of open-ended fund companies;
  - (e) the capacity, objects, powers, privileges, rights and liabilities of open-ended fund companies;
  - (f) the instruments of incorporation of open-ended fund companies, including the form of such instruments;
  - (g) the requirements relating to the execution of documents by open-ended fund companies;
  - (h) the types of investments that open-ended fund companies may make;
  - (i) the management and operation of open-ended fund companies, including their administration and procedure;
  - (j) the management of the scheme property of open-ended fund companies;
  - (k) the accounting and reporting requirements with which open-ended fund companies must comply;
  - (l) the making or issue of statements, certificates or other documents by open-ended fund companies and their officers;

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- (3) 根據第 (1) 款訂立的規則，亦可就以下事宜訂定條文 ——
- (a) 開放式基金型公司的股東的權利、權力及法律責任；
  - (b) 開放式基金型公司的董事、投資經理、保管人、次保管人或核數師的權利、權力、職責及法律責任；
  - (c) 任何人擔任開放式基金型公司的董事、投資經理、保管人、次保管人或核數師所需的資格；
  - (d) 開放式基金型公司的董事、投資經理、保管人、次保管人或核數師的委任及免任，包括當他們停任時所須依循的程序；
  - (e) 關於委任及免任開放式基金型公司的董事、投資經理、保管人、次保管人或核數師的具報或通知；及
  - (f) 關於開放式基金型公司的董事、投資經理、保管人、次保管人或核數師的詳情更改的具報或通知。
- (4) 根據第 (1) 款訂立的規則，亦可就以下事宜訂定條文 ——
- (a) 根據第 112ZF 條發出、修訂和撤銷指示所須依循的程序；
  - (b) 根據第 112ZH 或 112ZI 條取消開放式基金型公司的註冊所須依循的程序；
  - (c) 多於 1 間開放式基金型公司的合併，以及將 1 間開放式基金型公司重組為多於 1 間開放式基金型公司；
  - (d) 關乎開放式基金型公司訂立（或擬由開放式基金型公司訂立）的安排及妥協的事宜，包括證監會在有關的法院程序中陳詞的權利，以及將安排及妥協向公司註冊處處長註冊；
  - (e) 開放式基金型公司的清盤及解散，包括清盤及解散的理由及程序；
  - (f) 開放式基金型公司的子基金的清盤及解散，包括清盤及解散的理由及程序；
  - (g) 原訟法庭作出以下命令的權力：飭令取消任何人以任何身分就開放式基金型公司（或開放式基金型公

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- (m) the keeping of accounts and records by open-ended fund companies, and the inspection of such accounts and records;
  - (n) the keeping of a register of shareholders and other registers by open-ended fund companies, and the inspection and rectification of such registers;
  - (o) matters relating to the share capital of open-ended fund companies, including valuation, purchase, redemption and transfer of shares, redenomination of share capital and variation of rights attached to shares;
  - (p) the requirements relating to segregating the liabilities of sub-funds of an open-ended fund company; and
  - (q) the cross investments between sub-funds of an open-ended fund company.
- (3) Rules made under subsection (1) may also provide for—
- (a) the rights, powers and liabilities of a shareholder of an open-ended fund company;
  - (b) the rights, powers, duties and liabilities of a director, an investment manager, a custodian, a sub-custodian or an auditor of an open-ended fund company;
  - (c) the eligibility of a person to be a director, an investment manager, a custodian, a sub-custodian or an auditor of an open-ended fund company;
  - (d) the appointment and removal of a director, an investment manager, a custodian, a sub-custodian or an auditor of an open-ended fund company, including the procedures to be followed when they cease to act;
  - (e) the notification of the appointment and removal of a director, an investment manager, a custodian, a sub-custodian or an auditor of an open-ended fund company; and

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- 司的計劃財產)行事的資格,或取消任何人以任何身分在擬成立公司的發起或成立當中行事的資格;
- (h) 在以下情況下行事的人的法律責任:違反第 112X 條,或違反原訟法庭根據有關規則(即根據(g)段訂立的規則)作出的命令;
- (i) 就任何關涉開放式基金型公司(或關涉開放式基金型公司的子基金)的事宜而言,法院所具有的職能;及
- (j) 根據本部規定由或准許由規則訂明或規定的任何其他事情。
- (5) 根據本條訂立的規則可規定,凡根據該等規則,對任何人施加交出文件或資料的規定,該人不得僅以遵守該規定可能會導致自己入罪為理由,而獲免遵守該規定。
- (6) 第(2)、(3)、(4)及(5)款不具有局限第(1)款的效力。

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- (f) the notification of changes in the particulars of a director, an investment manager, a custodian, a sub-custodian or an auditor of an open-ended fund company.
- (4) Rules made under subsection (1) may also provide for—
- (a) the procedures to be followed in relation to the giving, amendment and revocation of directions under section 112ZF;
- (b) the procedures to be followed in relation to the cancellation of the registration of open-ended fund companies under section 112ZH or 112ZI;
- (c) the merger of 2 or more open-ended fund companies and the reorganization of an open-ended fund company into 2 or more open-ended fund companies;
- (d) matters relating to the arrangements and compromises entered into, or proposed to be entered into, by open-ended fund companies, including the Commission's right to be heard in the related court process and the registration of arrangements and compromises with the Registrar of Companies;
- (e) the winding up and dissolution of open-ended fund companies, including the grounds and procedures for such winding up and dissolution;
- (f) the winding up and dissolution of sub-funds of open-ended fund companies, including the grounds and procedures for such winding up and dissolution;
- (g) the power of the Court of First Instance to make an order to disqualify a person from acting in any capacity in relation to open-ended fund companies or the scheme property of open-ended fund companies, or from acting in any capacity in the promotion or incorporation of proposed companies;

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- (h) the liability of a person acting in contravention of section 112X or of an order made by the Court of First Instance under rules made under paragraph (g);
  - (i) a court's functions in relation to any matter concerning open-ended fund companies and sub-funds of open-ended fund companies; and
  - (j) any other thing that, under this Part, is required or permitted to be prescribed or provided by rules.
- (5) Rules made under this section may provide that a person is not excused from complying with a requirement to produce a document or information imposed on the person under those rules only on the ground that to do so might tend to incriminate the person.
- (6) Subsections (2), (3), (4) and (5) do not have the effect of limiting subsection (1).

### 112ZL. 在公司註冊處處長同意下訂立規則

- (1) 證監會可在公司註冊處處長同意下訂立規則，就公司註冊處處長在開放式基金型公司方面具有的職能，訂定條文，該等職能包括 ——
- (a) 為規定須交付或獲授權可交付公司註冊處處長的任何文件（但由本條例或可由本條例訂明格式的文件除外），指明文件格式；
  - (b) 就規定須交付或獲授權可交付公司註冊處處長的文件及資料，指明規定；
  - (c) 備存關乎開放式基金型公司的文件及資料的紀錄；
  - (d) 備存開放式基金型公司的名單；
  - (e) 設立並維持開放式基金型公司的登記冊；
  - (f) 提供《開放式基金型公司登記冊》讓公眾查閱；

### 112ZL. Rules made with consent of Registrar of Companies

- (1) The Commission may, with the consent of the Registrar of Companies, make rules to provide for the functions of the Registrar in relation to open-ended fund companies, including—
- (a) specifying the form of any document required or authorized to be delivered to the Registrar, other than a document the form of which is or may be prescribed by this Ordinance;
  - (b) specifying requirements in relation to documents and information required or authorized to be delivered to the Registrar;
  - (c) keeping records of documents and information relating to open-ended fund companies;

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- (g) 發出《開放式基金型公司登記冊》內的文件及資料的文本或經核證真實副本；
  - (h) 規定開放式基金型公司解決以下資料之間的相抵觸之處：公司註冊處處長就該公司而登記的文件所載的資料，與《開放式基金型公司登記冊》內關乎該公司的任何其他資料；
  - (i) 確保《開放式基金型公司登記冊》準確並反映現況；
  - (j) 在《開放式基金型公司登記冊》加上註釋；
  - (k) 發出更改名稱證明書；及
  - (l) 銷毀或處置交付公司註冊處處長作登記的文件及資料。
- (2) 證監會亦可在公司註冊處處長同意下訂立規則，就以下事宜訂定條文——
- (a) 由公司註冊處處長登記以下文件：擬成立公司交付的文件、開放式基金型公司交付的文件、代表擬成立公司交付的文件，及代表開放式基金型公司交付的文件；
  - (b) 針對公司註冊處處長拒絕登記文件的決定，向原訟法庭提出上訴；
  - (c) 《開放式基金型公司登記冊》須載有的資料；
  - (d) 不提供《開放式基金型公司登記冊》內的資料讓公眾查閱，以及使用或披露該等不提供的資料；
  - (e) 向原訟法庭申請命令，以更正《開放式基金型公司登記冊》內的資料，或從《開放式基金型公司登記冊》刪除資料，以及原訟法庭就該等申請具有的權力；
  - (f) 公司註冊處處長參與為 (e) 段所述的命令而於原訟法庭進行的法律程序；
  - (g) 公司註冊處處長發出的證明書的格式；
  - (h) 在司法或其他法律程序中，由公司註冊處處長核證為真實的文件及資料作為證據的可接納性；

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- (d) keeping a list of the names of open-ended fund companies;
  - (e) establishing and maintaining a register of open-ended fund companies;
  - (f) making available the OFC register for public inspection;
  - (g) issuing copies or certified true copies of documents and information on the OFC register;
  - (h) requiring an open-ended fund company to resolve any inconsistency between information contained in a document registered by the Registrar in respect of the company and any other information relating to the company on the OFC register;
  - (i) ensuring that the OFC register is accurate and up-to-date;
  - (j) annotating the OFC register;
  - (k) issuing certificates of change of name; and
  - (l) destroying or disposing of documents and information delivered to the Registrar for registration.
- (2) The Commission may also, with the consent of the Registrar of Companies, make rules to provide for—
- (a) the registration by the Registrar of documents delivered by or on behalf of proposed companies and open-ended fund companies;
  - (b) appeals to the Court of First Instance against a decision of the Registrar to refuse registration of a document;
  - (c) the information to be contained in the OFC register;
  - (d) the withholding of information on the OFC register from public inspection, and the use and disclosure of the withheld information;



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- (i) 藉電子方式，交付規定須交付或獲授權可交付公司註冊處處長的文件及資料；
  - (j) 凡交付公司註冊處處長的文件，是採用一種既非英文亦非中文的語文，而該文件與其經核證譯本出現歧異——該項歧異的影響；
  - (k) 在有某作為會構成關乎向公司註冊處處長提供任何具誤導性、虛假或具欺騙性的資料或陳述的罪行的情況下，由公司註冊處處長對該等作為進行查訊，以及將公司註冊處處長進行該等查訊的權力轉授；
  - (l) 凡根據本條或第 112ZK 或 112ZM 條訂立的規則，規定須向公司註冊處處長交付文件或資料，並訂明沒有遵守該規定，即屬犯罪，且就有關罪行持續期間的每一日，施加罰款——有關每日罰款的計算；
  - (m) 由公司註冊處處長發出指引，以及該等指引的效力；及
  - (n) 對公司註冊處處長、其他公職人員及其他人的保障及法律責任豁免。
- (3) 根據本條訂立的規則可規定，凡根據該等規則，對任何人施加交出文件或資料的規定，該人不得僅以遵守該規定可能會導致自己入罪為理由，而獲免遵守該規定。
- (4) 在本條中——
- 《開放式基金型公司登記冊》** (OFC register) 指公司註冊處處長根據有關規則維持的開放式基金型公司的登記冊，而上述有關規則，指根據本條訂立的規則。

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- (e) applications to the Court of First Instance for an order to rectify information on, or to remove information from, the OFC register and the Court's powers in relation to such applications;
- (f) the Registrar taking part in the proceedings for an order mentioned in paragraph (e) before the Court of First Instance;
- (g) the forms of the certificates issued by the Registrar;
- (h) the admissibility in evidence in judicial or other proceedings of documents and information certified to be true by the Registrar;
- (i) the delivery of documents and information required or authorized to be delivered to the Registrar by electronic means;
- (j) the effect of a discrepancy between a document delivered to the Registrar that is in a language other than English and Chinese and the certified translation of the document;
- (k) inquiry by the Registrar into acts that would constitute offences relating to the giving of any misleading, false or deceptive information or statement to the Registrar and the delegation of the Registrar's powers to inquire into such acts;
- (l) calculation of the daily fine imposed under rules made under this section or section 112ZK or 112ZM that make it an offence for failing to comply with a requirement to deliver a document or information to the Registrar under those rules and that impose a fine for each day during which the offence continues;
- (m) the issue of guidelines by the Registrar and the effect of such guidelines; and

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第 112ZM 條Part IVA—Division 9  
Section 112ZM4A-68  
Cap. 571**112ZM. 在破產管理署署長同意下訂立規則**

證監會可在破產管理署署長同意下訂立規則，就破產管理署署長在以下事宜方面具有的職能，訂定條文 ——

- (a) 開放式基金型公司的清盤及解散；及
- (b) 開放式基金型公司的子基金的清盤及解散。

**112ZN.《開放式基金型公司規則》可訂明罪行**

- (1) 《開放式基金型公司規則》可 ——
  - (a) 訂明任何人作出任何指明作為，或不作出任何指明作為，即屬犯罪；及
  - (b) 規定有關罪行可處罰款或監禁，或兼處罰款及監禁。
- (2) 《開放式基金型公司規則》可就該等規則訂明的任何罪行，訂定免責辯護。
- (3) 如罪行屬經循公訴程序定罪者，可訂明的最高罰款為 \$1,000,000，而可訂明的最高監禁期為 7 年。此外，如屬

(n) the protection and immunity of the Registrar, other public officers and other persons.

- (3) Rules made under this section may provide that a person is not excused from complying with a requirement to produce a document or information imposed on the person under those rules only on the ground that to do so might tend to incriminate the person.

- (4) In this section—

**OFC register** (《開放式基金型公司登記冊》) means the register of open-ended fund companies maintained by the Registrar of Companies under rules made under this section.

**112ZM. Rules made with consent of Official Receiver**

The Commission may, with the consent of the Official Receiver, make rules to provide for the functions of the Official Receiver in relation to—

- (a) the winding up and dissolution of open-ended fund companies; and
- (b) the winding up and dissolution of sub-funds of open-ended fund companies.

**112ZN. OFC rules may prescribe offences**

- (1) The OFC rules may—
  - (a) make it an offence for a person to do, or omit to do, any specified act; and
  - (b) provide that the offence is punishable by a fine, imprisonment or both.
- (2) The OFC rules may provide for defences to any offence prescribed by those rules.
- (3) For an offence punishable on conviction on indictment, the maximum fine that may be prescribed is \$1,000,000 and the

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持續的罪行，則可就有關罪行持續期間的每一日，另訂不超過第 6 級的罰款。

- (4) 如罪行屬經循簡易程序定罪者，可訂明的最高罰款為 \$500,000，而可訂明的最高監禁期為 2 年。此外，如屬持續的罪行，則可就有關罪行持續期間的每一日，另訂不超過第 3 級的罰款。

#### 112ZO. 藉通知批予對《開放式基金型公司規則》的規定的修改或寬免

- (1) 證監會可應第 (2) 款指明的人提出的申請，就該人而批予對《開放式基金型公司規則》的任何規定的修改或寬免。
- (2) 有關的人是 ——
  - (a) 開放式基金型公司；
  - (b) 開放式基金型公司的董事；
  - (c) 開放式基金型公司的投資經理；
  - (d) 開放式基金型公司的保管人；
  - (e) 開放式基金型公司的次保管人；或
  - (f) 開放式基金型公司的核數師。
- (3) 為第 (1) 款的目的而提出的申請 ——
  - (a) 須以《開放式基金型公司規則》所訂明的方式提出；及
  - (b) 須附同為施行本條而根據第 112ZQ 條訂立的規例所訂明的費用。
- (4) 證監會須信納，有關修改或寬免不會損害投資大眾的利益，方可批予該項修改或寬免。

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maximum imprisonment that may be prescribed is 7 years. In addition, in the case of a continuing offence, a further fine not exceeding level 6 for each day during which the offence continues may be prescribed.

- (4) For an offence punishable on summary conviction, the maximum fine that may be prescribed is \$500,000 and the maximum imprisonment that may be prescribed is 2 years. In addition, in the case of a continuing offence, a further fine not exceeding level 3 for each day during which the offence continues may be prescribed.

#### 112ZO. Modification or waiver of requirements of OFC rules by notice

- (1) The Commission may, on an application by a person specified in subsection (2), grant a modification or waiver in relation to the person in respect of any of the requirements of the OFC rules.
- (2) The person is—
  - (a) an open-ended fund company;
  - (b) a director of an open-ended fund company;
  - (c) an investment manager of an open-ended fund company;
  - (d) a custodian of an open-ended fund company;
  - (e) a sub-custodian of an open-ended fund company; or
  - (f) an auditor of an open-ended fund company.
- (3) An application for the purposes of subsection (1)—
  - (a) must be made in the manner prescribed by the OFC rules; and
  - (b) must be accompanied by the fee prescribed by regulations made under section 112ZQ for the purposes of this section.

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- (5) 就某人而批予的修改或寬免，須藉送達書面通知予該人而批予，該通知須指明該項修改或寬免的有效期限（如有的話）。
- (6) 證監會在批予修改或寬免時，可施加證監會認為適當的任何條件。
- (7) 凡證監會就某人批予修改或寬免，證監會可藉送達書面通知予該人，修訂或撤銷該項修改或寬免。
- (8) 凡證監會就某人批予修改或寬免，證監會可藉送達書面通知予該人，修訂或撤銷任何已就該項修改或寬免施加的條件，或就該項修改或寬免施加新的條件。
- (9) 任何人違反根據第 (6) 或 (8) 款施加的條件，或違反根據第 (8) 款修訂的條件，即屬犯罪，一經定罪，可處第 6 級罰款。

**112ZP. 藉規則批予對《開放式基金型公司規則》的規定的修改或寬免**

- (1) 證監會可藉訂立規則，就某一類別的開放式基金型公司，或就開放式基金型公司某一類別的董事、投資經理、保管人、次保管人或核數師，批予對《開放式基金型公司規則》的任何規定的修改或寬免。
- (2) 證監會須信納，有關修改或寬免不會損害投資大眾的利益，方可批予該項修改或寬免。
- (3) 證監會可在上述規則中，指明批予某項修改或寬免的規限條件。
- (4) 上述規則可 ——

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- (4) The Commission may only grant a modification or waiver if it is satisfied that the modification or waiver will not prejudice the interest of the investing public.
- (5) The grant of a modification or waiver in relation to a person is to be effected by a notice in writing served on the person specifying the period (if any) for which the modification or waiver is in force.
- (6) On granting a modification or waiver, the Commission may impose any condition that it considers appropriate.
- (7) The Commission may, by notice in writing served on a person in relation to whom a modification or waiver is granted, amend or revoke the modification or waiver.
- (8) The Commission may, by notice in writing served on a person in relation to whom a modification or waiver is granted, amend or revoke any of the conditions imposed, or impose new conditions, in respect of the modification or waiver.
- (9) A person who contravenes a condition imposed under subsection (6) or (8), or as amended under subsection (8), commits an offence and is liable on conviction to a fine at level 6.

**112ZP. Modification or waiver of requirements of OFC rules by rules**

- (1) The Commission may by rules grant a modification or waiver, in relation to a class of open-ended fund companies, or a class of directors, investment managers, custodians, sub-custodians or auditors of open-ended fund companies, in respect of any of the requirements of the OFC rules.
- (2) The Commission may only grant a modification or waiver if it is satisfied that the modification or waiver will not prejudice the interest of the investing public.
- (3) The Commission may specify in the rules the conditions subject to which a modification or waiver is granted.

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- (a) 訂明任何人違反就某項修改或寬免而指明的條件，即屬犯罪；及
- (b) 規定有關罪行可處罰款（以不超過第 6 級為限）。

## 第 10 分部 —— 雜項

### 112ZQ. 財政司司長可訂立關乎費用的規例

- (1) 儘管第 395 條另有規定，財政司司長可訂立規例，就以下事宜訂定條文 ——
  - (a) 由證監會就以下事宜徵收或收取費用 ——
    - (i) 在執行本部下或《開放式基金型公司規則》下的證監會職能的過程中，證監會作出的任何事情，或提供的任何服務；或
    - (ii) 在與《開放式基金型公司規則》指明的任何其他事宜相關的情況下，證監會作出的任何事情，或提供的任何服務；
  - (b) 由公司註冊處處長就以下事宜徵收或收取費用 ——
    - (i) 在執行本部下或《開放式基金型公司規則》下的公司註冊處處長職能的過程中，公司註冊處處長作出的任何事情，或提供的任何服務；或
    - (ii) 在與《開放式基金型公司規則》指明的任何其他事宜相關的情況下，公司註冊處處長作出的任何事情，或提供的任何服務；及
  - (c) 由破產管理署署長就以下事宜徵收或收取費用 ——
    - (i) 在執行本部下或《開放式基金型公司規則》下的破產管理署署長職能的過程中，破產管理署署長作出的任何事情，或提供的任何服務；或

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- (4) The rules may—
  - (a) make it an offence for a person to contravene any of the conditions specified in respect of a modification or waiver; and
  - (b) provide that the offence is punishable by a fine not exceeding level 6.

## Division 10—Miscellaneous

### 112ZQ. Financial Secretary may make regulations relating to fees

- (1) Despite section 395, the Financial Secretary may make regulations to provide for—
  - (a) the charging or collecting of fees by the Commission—
    - (i) in respect of any things done, or services provided, by the Commission in performing the Commission's functions under this Part or the OFC rules; or
    - (ii) in respect of any things done, or services provided, by the Commission in connection with any other matters specified in the OFC rules;
  - (b) the charging or collecting of fees by the Registrar of Companies—
    - (i) in respect of any things done, or services provided, by the Registrar in performing the Registrar's functions under this Part or the OFC rules; or
    - (ii) in respect of any things done, or services provided, by the Registrar in connection with any other matters specified in the OFC rules; and
  - (c) the charging or collecting of fees by the Official Receiver—



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- (ii) 在與《開放式基金型公司規則》指明的任何其他事宜相關的情況下，破產管理署署長作出的任何事情，或提供的任何服務。
- (2) 上述規例可 ——
- (a) 就須由該等規例指定的費用款額，或須根據該等規例釐定的費用款額，訂定條文；
- (b) 訂定在不同情況下，須就相同事宜繳付不同費用；
- (c) 指明須於何時及如何繳付費用；及
- (d) 規定就一般情況或在個別個案中，寬免該等規例所訂明的任何費用。
- (3) 公司註冊處處長 ——
- (a) 如獲財政司司長批准，可決定須就以下事情或服務徵收何種費用 ——
- (i) 任何作出的事情或提供的服務，前提是上述規例沒有就該事情或服務訂定費用；或
- (ii) 在任何情況（不屬上述規例有為之訂定費用者）下作出的事情或提供的服務；及
- (b) 可徵收該等費用。

**112ZR. 證監會可刊登和發表守則及指引**

- (1) 證監會可在憲報刊登（並可藉證監會認為適當的任何其他方式發表）任何守則或指引，就關乎以下事項的任何事宜，提供指引 ——

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- (i) in respect of any things done, or services provided, by the Official Receiver in performing the Official Receiver's functions under this Part or the OFC rules; or
- (ii) in respect of any things done, or services provided, by the Official Receiver in connection with any other matters specified in the OFC rules.
- (2) The regulations may—
- (a) provide for the amount of the fees to be fixed by or determined under the regulations;
- (b) provide for different fees to be payable in respect of the same matter in different circumstances;
- (c) specify when and how fees are to be paid; and
- (d) provide for the waiver of payment of any fee prescribed by the regulations, either generally or in a particular case.
- (3) The Registrar of Companies—
- (a) may, subject to the approval of the Financial Secretary, determine what fees are chargeable in respect of the things done, or services provided—
- (i) for which fees are not provided for by the regulations; or
- (ii) in circumstances other than those for which fees are provided by the regulations; and
- (b) may charge such fees.

**112ZR. Commission may publish codes and guidelines**

- (1) The Commission may publish, in the Gazette and in any other manner it considers appropriate, any code or guideline to provide guidance in respect of any matter relating to—

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- (a) 開放式基金型公司的成立、註冊、管理及運作，包括其行政及程序；或
- (b) 開放式基金型公司的業務。
- (2) 在不局限第 (1) 款的原則下，根據該款刊登或發表的守則或指引，可提述遵守並非由證監會發出的任何其他守則或指引的義務，或遵守並非由證監會施加的規定的義務。
- (3) 證監會可修訂根據第 (1) 款刊登或發表的任何守則或指引。
- (4) 凡根據第 (1) 款刊登或發表的守則或指引有所修訂，該等修訂須在憲報刊登，並須藉證監會認為適當的任何其他方式發表。
- (5) 根據第 (1) 款刊登或發表的守則或指引 ——
  - (a) 可一般地適用或在特別情況下適用，並尤其可按以下方式制訂 ——
    - (i) 只在指明的範圍內，就某指明人士或某指明類別人士的成員而適用或不適用；或
    - (ii) 只於指明的情況下適用，或只於指明的情況下不適用；及
  - (b) 可就不同情況訂定不同條文，並可就不同個案或不同類別的個案，訂定條文。
- (6) 根據第 (1) 款刊登或發表的守則或指引，以及其所有修訂，均不是附屬法例。

**112ZS. 守則及指引的效力**

- (1) 凡任何人沒有遵守守則或指引的條文，此事本身不會令該人可在任何司法或其他法律程序中被起訴。

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Section 112ZS4A-78  
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- (a) the incorporation, registration, management and operation of open-ended fund companies, including their administration and procedure; or
- (b) the business of open-ended fund companies.
- (2) Without limiting subsection (1), a code or guideline published under that subsection may refer to obligations to observe any other codes or guidelines issued, or requirements imposed, otherwise than by the Commission.
- (3) The Commission may amend any code or guideline published under subsection (1).
- (4) Any amendments made to a code or guideline published under subsection (1) must be published in the Gazette and in any other manner the Commission considers appropriate.
- (5) A code or guideline published under subsection (1)—
  - (a) may be of general or special application and, in particular, may be made so as to apply, or so as not to apply—
    - (i) to a specified extent in relation to a specified person or to members of a specified class of persons; or
    - (ii) in specified circumstances; and
  - (b) may make different provisions for different circumstances and provide for different cases or classes of cases.
- (6) A code or guideline published under subsection (1) and all amendments made to it are not subsidiary legislation.

**112ZS. Effect of codes and guidelines**

- (1) A failure by a person to comply with a provision in a code or guideline does not itself make the person liable to any judicial or other proceedings.

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第 571 章第 IVA 部 —— 第 10 分部  
第 112ZT 條

- (2) 然而，凡中介人以開放式基金型公司的投資經理的身分行事，而該中介人（或其代表）沒有遵守守則或指引的條文，該事實可在為施行本條例任何條文而考慮以下事項時，予以顧及——
- (a) （就中介人而言）該中介人是否獲發牌或獲註冊或繼續持牌或維持註冊的適當人選；
- (b) （就屬持牌法團的中介人的代表而言）該代表是否獲發牌或繼續持牌作代表的適當人選；或
- (c) （就屬註冊機構的中介人的代表而言）該代表是否以下事宜的適當人選：名列於或繼續名列於金融管理專員根據《銀行業條例》（第 155 章）第 20 條備存的紀錄冊，並顯示為受該機構就某類受規管活動聘用。
- (3) 儘管第 (1) 款另有規定，在根據本條例提起而於法院進行的法律程序中——
- (a) 守則或指引可獲接納為證據；及
- (b) 如法院覺得，守則或指引的條文，攸關該法律程序中產生的問題，則在裁定該問題時，須顧及該條文。
- (4) 在本條中——
- 守則或指引** (code or guideline) 指根據第 112ZR 條刊登或發表的守則或指引。

**112ZT. 欺詐交易屬罪行**Part IVA—Division 10  
Section 112ZT4A-80  
Cap. 571

- (2) However, a failure on the part of an intermediary acting as an investment manager of an open-ended fund company, or a representative of such an intermediary, to comply with a provision in a code or guideline may be taken into account in considering, for the purposes of any provision of this Ordinance—
- (a) in the case of an intermediary, whether it is a fit and proper person to be or to remain licensed or registered;
- (b) in the case of a representative of an intermediary that is a licensed corporation, whether he or she is a fit and proper person to be or to remain licensed as a representative; or
- (c) in the case of a representative of an intermediary that is a registered institution, whether he or she is a fit and proper person to be or to remain a person whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by a registered institution in respect of a regulated activity.
- (3) Despite subsection (1), in any proceedings under this Ordinance before a court—
- (a) a code or guideline is admissible in evidence; and
- (b) if any provision in a code or guideline appears to the court to be relevant to a question arising in the proceedings, the provision is to be taken into account in determining the question.
- (4) In this section—
- code or guideline** (守則或指引) means a code or guideline published under section 112ZR.

**112ZT. Offence of fraudulent trading**

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第 571 章

第 IVA 部 —— 第 10 分部  
第 112ZT 條

- (1) 如開放式基金型公司的任何業務 ——
  - (a) 是出於欺詐該公司的債權人或任何其他人的債權人的意圖而經營的；或
  - (b) 是為任何欺詐目的而經營的，
 則每個明知而參與出於該意圖而經營該業務 ( 或明知而參與為該欺詐目的而經營該業務 ) 的人，均屬犯罪。
- (2) 任何人犯第 (1) 款所訂罪行 ——
  - (a) 一經循公訴程序定罪，可處罰款 \$10,000,000 及監禁 10 年；或
  - (b) 一經循簡易程序定罪，可處罰款 \$1,000,000 及監禁 3 年。
- (3) 不論有關開放式基金型公司是否已清盤或正在清盤，本條亦適用。

Part IVA—Division 10  
Section 112ZT

4A-82  
Cap. 571

- (1) If any business of an open-ended fund company is carried on—
  - (a) with intent to defraud creditors of the company or creditors of any other person; or
  - (b) for any fraudulent purpose,
 every person who is knowingly a party to the carrying on of the business with that intent or for that purpose commits an offence.
- (2) A person 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 10 years; or
  - (b) on summary conviction to a fine of \$1,000,000 and to imprisonment for 3 years.
- (3) This section applies whether or not the open-ended fund company has been, or is in the course of being, wound up.

## 第 V 部

## 發牌及註冊

(格式變更——2012 年第 2 號編輯修訂紀錄)

## Part V

## Licensing and Registration

(Format changes—E.R. 2 of 2012)

## 113. 第 V 部的釋義

(1) 在本部中，除文意另有所指外——

**主事人** (principal) 就持牌代表而言，指該代表所隸屬的持牌法團；**受規管職能** (regulated function) 就任何人以業務形式進行的某類受規管活動而言，指為該人 (或代該人或藉與該人訂立的安排) 執行的任何與該類活動有關的職能 (通常由會計員、文員或出納員履行的工作除外)；**指明稱銜** (specified titles) 指附表 6 第 3 欄指明的稱銜；**訂明方式** (prescribed manner) 指根據第 397 條訂立的規則所訂明的方式；**訂明費用** (prescribed fee) 指根據第 395 條訂立的規則所訂明的費用；**執行董事** (executive director) 就持牌法團而言，指——

(a) 積極參與；或

(b) 負責直接監管，

該法團獲發牌經營的受規管活動的業務的該法團的董事。

(2) 在本部中，凡提述進行某類受規管活動的牌照——

(a) 就持牌法團而言，須解釋為授權經營該類活動的業務的牌照；及

(b) 就持牌代表而言，須解釋為授權為他所隸屬的持牌法團 (或代該法團或藉與該法團訂立的安排) 而就該類活動執行任何受規管職能的牌照。

## 113. Interpretation of Part V

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

**executive director** (執行董事), in relation to a licensed corporation, means a director of the corporation who—

(a) actively participates in; or

(b) is responsible for directly supervising,

the business of a regulated activity for which the corporation is licensed;

**prescribed fee** (訂明費用) means a fee prescribed by rules made under section 395;**prescribed manner** (訂明方式) means such manner as is prescribed by rules made under section 397;**principal** (主事人), in relation to a licensed representative, means the licensed corporation to which the representative is accredited;**regulated function** (受規管職能), in relation to a regulated activity carried on as a business by any person, means any function performed for or on behalf of or by arrangement with the person relating to the regulated activity, other than work ordinarily performed by an accountant, clerk or cashier;**specified titles** (指明稱銜) means the titles specified in column 3 of Schedule 6.

(2) In this Part, a reference to a licence to carry on a regulated activity shall be construed—



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第 114 條

- (3) 凡根據第 119 條就某類受規管活動獲註冊，須解釋為獲註冊經營該類活動的業務。

(編輯修訂——2012 年第 2 號編輯修訂紀錄)

#### 114. 對經營受規管活動的業務的限制等

- (1) 除第 (2)、(5) 及 (6) 款另有規定外，任何人不得——
- 經營某類受規管活動的業務；或
  - 顯示自己經營某類受規管活動的業務。
- (2) 第 (1) 款不適用於——
- 就有關類別的受規管活動而根據第 116 或 117 條獲發牌的法團；
  - 就有關類別的受規管活動而根據第 119 條獲註冊的認可財務機構；或
  - 根據第 95(2) 條獲認可進行有關類別的受規管活動的人。
- (3) 在不損害第 (1) 款的原則下但在第 (4) 款的規限下，任何人不得——
- 就任何以業務形式進行的受規管活動執行任何受規管職能；或
  - 顯示自己執行該項職能。
- (4) 第 (3) 款——
- 在持牌代表為其主事人進行該代表獲發牌進行的受規管活動的情況下，不適用於該代表；

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

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

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

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- (b) 不適用於符合以下說明的個人——
  - (i) 為註冊機構進行該機構獲註冊進行的受規管活動；及
  - (ii) 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為受該機構就該類活動聘用的；或
- (c) 不適用於根據第 95(2) 條獲認可進行某類受規管活動的人士的僱員，而該僱員是就該類活動執行任何受規管職能的。
- (5) 任何人不得僅因進行附表 5 第 3 部指明的一項或多於一項活動，而視為就第 8 類受規管活動違反第 (1) 款。
- (6) 任何人如提供財務通融並合理地相信該項通融並非用以利便——
  - (a) 取得在證券市場 (不論是認可證券市場或香港以外地方的任何其他證券市場) 上市的證券；或
  - (b) 繼續持有該等證券，
 則該人不得僅因該項提供而視為就第 8 類受規管活動違反第 (1) 款。
- (7) 就第 (6) 款而言，在就違反第 (1) 款而進行的法律程序中，如證明有關的人在向某借用人提供財務通融之前，已從該借用人取得確認書，確認該項通融並非用以利便第 (6)(a) 及 (b) 款提述的取得或繼續持有，則除非相反證明成立，否則須推定該人已合理地相信該項通融不會如此使用。
- (8) 任何人無合理辯解而違反第 (1) 款，即屬犯罪——
  - (a) 一經循公訴程序定罪，可處罰款 \$5,000,000 及監禁 7 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$100,000；或

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- (a) a licensed representative who carries on for his principal a regulated activity for which the representative is licensed;
- (b) an individual—
  - (i) who carries on for a registered institution a regulated activity for which the registered institution is registered; and
  - (ii) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the registered institution in respect of the regulated activity; or
- (c) an employee of a person authorized under section 95(2) for the regulated activity who performs any regulated function in relation to the regulated activity for which the person is so authorized.
- (5) A person shall not be regarded as contravening subsection (1) in relation to Type 8 regulated activity by reason only of carrying on one or more of the activities specified in Part 3 of Schedule 5.
- (6) A person shall not be regarded as contravening subsection (1) in relation to Type 8 regulated activity by reason only of providing financial accommodation if he reasonably believes that the financial accommodation is not to be used to facilitate—
  - (a) the acquisition of securities listed on a stock market (whether a recognized stock market or any other stock market outside Hong Kong); or
  - (b) the continued holding of such securities.
- (7) For the purposes of subsection (6), where it is proved in any proceedings for a contravention of subsection (1) that

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- (b) 一經循簡易程序定罪，可處罰款 \$500,000 及監禁 2 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$10,000。
- (9) 任何人無合理辯解而違反第 (3) 款，即屬犯罪——
  - (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$20,000；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$2,000。

#### 115. 第 114 條就在香港以外地方的行為或活動的適用

- (1) 如——

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- the person had obtained, before providing the financial accommodation to a borrower, a written confirmation from the borrower that the financial accommodation was not to be used to facilitate such acquisition or continued holding as referred to in subsection (6)(a) and (b), that person shall be presumed, unless the contrary is proved, to have reasonably believed that the financial accommodation was not to be so used.
- (8) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues; or
  - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.
- (9) A person who, without reasonable excuse, contravenes subsection (3) commits an offence and is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$20,000 for every day during which the offence continues; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which the offence continues.

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

- (1) If—

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- (a) 任何人 (不論由他本人或由另一人代他) 在香港或從香港以外地方向公眾積極推廣他提供的任何服務；及
- (b) 該等服務如在香港提供，便會構成某類受規管活動，則——
  - (i) 就第 114(1)(a) 條而言，提供該等被如此推廣的服務視為經營該類受規管活動的業務；
  - (ii) 就第 114(1)(b) 條而言，該人推廣 (a) 段提述的服務，視為顯示自己經營該類受規管活動的業務；及
  - (iii) 如提供該等服務涉及某人執行某項職能，而該項職能如在香港就某類受規管活動而執行，便會構成某項受規管職能，則在此範圍內，就第 114(3)(a) 條而言，該人執行該項職能，視為就該類受規管活動執行該項受規管職能。
- (2) 如——
  - (a) 任何人 (不論由他本人或由另一人代他) 在香港或從香港以外地方向公眾積極推廣他執行的任何職能；及
  - (b) 該項職能如在香港就以業務形式進行的某類受規管活動而執行，便會構成某項受規管職能，則——
    - (i) 就第 114(3)(a) 條而言，執行該項被如此推廣的職能視為就該類受規管活動執行該項受規管職能；及
    - (ii) 就第 114(3)(b) 條而言，該人推廣 (a) 段提述的職能，視為顯示自己就該類受規管活動執行該項受規管職能。

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- (a) a person actively markets, whether by himself or another person on his behalf and whether in Hong Kong or from a place outside Hong Kong, to the public any services that he provides; and
- (b) such services, if provided in Hong Kong, would constitute a regulated activity, then—
  - (i) the provision of such services so marketed shall be regarded for the purposes of section 114(1)(a) as carrying on a business in that regulated activity;
  - (ii) the person's marketing of such services as referred to in paragraph (a) shall be regarded for the purposes of section 114(1)(b) as holding himself out as carrying on a business in that regulated activity; and
  - (iii) to the extent that the provision of such services involves the performance by a person of a function that, if performed in Hong Kong in relation to a regulated activity, would constitute a regulated function, the performance of such function by that person shall be regarded for the purposes of section 114(3)(a) as performance of that regulated function in relation to that regulated activity.
- (2) If—
  - (a) a person actively markets, whether by himself or another person on his behalf and whether in Hong Kong or from a place outside Hong Kong, to the public any function that he performs; and
  - (b) such function, if performed in Hong Kong in relation to a regulated activity carried on as a business, would constitute a regulated function, then—

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# 116. 法團須獲發牌以進行受規管活動

- (1) 證監會可應申請人以訂明方式提出的申請並在訂明費用獲繳付後，向申請人批給牌照，使申請人可進行一類或多於一類受規管活動。(由 2015 年第 19 號第 3 條修訂)
- (1A) 證監會在根據第 (1) 款批給牌照後，須向申請人發給印刷本牌照，該印刷本牌照須指明該申請人獲發牌進行的受規管活動。(由 2015 年第 19 號第 3 條增補)
- (2) 除非以下規定獲符合，否則證監會須拒絕根據第 (1) 款批給進行某類受規管活動的牌照——
  - (a) 申請人是——
    - (i) 一間公司；
    - (ii) 《公司條例》(第 622 章)第 2(1) 條所界定的註冊非香港公司；或(由 2012 年第 28 號第 912 及 920 條代替)
    - (iii) 符合以下說明而非公司或非香港公司的法團——(由 2004 年第 30 號第 3 條修訂)
      - (A) 主要在香港以外地方經營某項活動的業務，而該項活動如在香港進行，便會構成該類受規管活動；
      - (B) 若非有第 115(1)(i) 及 (ii) 條的條文，則第 114(1) 條不會適用於該法團；及

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

# 116. Corporations to be licensed for carrying on regulated activities

- (1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on one or more than one regulated activity. (*Amended 19 of 2015 s. 3*)
- (1A) The Commission must, on granting a licence under subsection (1), issue to the applicant a printed licence specifying the regulated activity for which the applicant is licensed. (*Added 19 of 2015 s. 3*)
- (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 registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622); or (*Replaced 28 of 2012 ss. 912 & 920*)
    - (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



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- (C) 如該法團在香港設立營業地點，則《公司條例》(第 622 章)第 16 部便會適用於該法團；(由 2012 年第 28 號第 912 及 920 條修訂)
- (b) 已就第 125(1)(a) 及 (b) 條所提述的人根據第 126 條提出申請，要求核准他們就該類活動成為申請人的負責人員；及
- (c) 已根據第 130(1) 條提出申請，要求批准將某處所用作為申請人存放本條例規定的紀錄或文件的地方。
- (3) 除非申請人令證監會信納以下事宜，否則該會須拒絕根據第 (1) 款批給進行某類受規管活動的牌照——
- (a) 申請人是就該類活動獲發牌的適當人選；
- (b) 申請人如獲發牌，將有能力遵守財政資源規則；及
- (c) 申請人——
- (i) 已按照在第 (4) 款下訂立的規則向證監會交存保證，並將保證保持有效；或
- (ii) 已按照根據第 (5) 款訂立的規則投購保險。
- (4) 證監會可為施行第 (3)(c)(i) 款而訂立規則，就以下各項作出規定——
- (a) 持牌法團須向證監會交存並將之保持有效的任何保證；
- (b) 交存該等保證的方式；
- (c) 須按甚麼條款將該等保證保持有效；
- (d) 證監會按該等規則訂明的情況、目的及方式運用該等保證的權力；
- (e) 關乎該等保證的任何其他事宜。
- (5) 證監會可為施行第 (3)(c)(ii) 款而訂立規則，就以下各項作出規定——
- (a) 持牌法團須就指明風險投購並將之保持有效的指明款額的保險保障內容；

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- 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 16 of the Companies Ordinance (Cap. 622) would apply if it established a place of business in Hong Kong; (*Amended 28 of 2012 ss. 912 & 920*)
- (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).

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- (b) 須按甚麼條款投購該等保險並將之保持有效；
- (c) 關乎該等保險的任何其他事宜。
- (6) 根據第 (1) 款批給的牌照須受證監會施加的合理條件規限，而證監會可隨時藉送達書面通知予有關持牌法團，修訂或撤銷任何該等條件或施加新的條件，但該項修訂、撤銷或施加須是在有關情況下屬合理的。
- (7) 凡證監會根據第 (6) 款藉送達書面通知修訂或撤銷任何條件或施加任何新的條件，該項修訂、撤銷或施加在該通知送達時或在該通知指明的時間（兩者以較遲者為準）生效。
- (8) 持牌法團在進行它根據第 (1) 款獲發牌進行的受規管活動時，須使用印刷本牌照上指明的名稱，而不得使用其他名稱。（由 2015 年第 19 號第 3 條修訂）
- (9) 在不損害證監會在第 IX 部第 2 及 3 分部下的權力的原則下，凡某法團獲發牌進行第 7 類受規管活動，在該法團根據第 95(2) 條獲認可提供自動化交易服務時，該牌照須當作就該類活動而被撤銷。（由 2014 年第 6 號第 11 條修訂）

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- (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.

**117. 向法團批給短期牌照以進行受規管活動**

- (1) 證監會可應法團以訂明方式提出的申請並在訂明費用獲繳付後，向申請人批給牌照，使申請人可進行一類或多於一類受規管活動（第 3、7、8 及 9 類受規管活動除外），為期不超過 3 個月。（由 2015 年第 19 號第 4 條修訂）
- (1A) 證監會在根據第 (1) 款批給牌照後，須向申請人發給印刷本牌照，該印刷本牌照須指明該申請人獲發牌進行的受規管活動。（由 2015 年第 19 號第 4 條增補）
- (2) 除非申請人令證監會信納以下事宜，否則該會須拒絕根據第 (1) 款批給進行某類受規管活動的牌照——
  - (a) 申請人主要在香港以外地方經營某項活動的業務，而該項活動如在香港進行，便會構成該類受規管活動的；
  - (b) 申請人尋求就該類受規管活動獲發牌，純粹是為了在香港經營 (a) 段提述的業務；
  - (c) 申請人根據 (a) 段提述的地方的主管當局或規管機構的授權（不論實際如何稱述）在該地方經營 (a) 段提述的業務，而——
    - (i) 證監會認為該當局或機構所執行的職能，是與本部授予該會的職能相似的；

- (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 printed licence. *(Amended 19 of 2015 s. 3)*
- (9) Without prejudice to the Commission's powers under Divisions 2 and 3 of 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. *(Amended 6 of 2014 s. 11)*

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

- (1) The Commission may, upon application by a corporation in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on, for a period not exceeding 3 months, one or more than one regulated activity (other than Type 3, Type 7, Type 8 and Type 9 regulated activities). *(Amended 19 of 2015 s. 4)*
- (1A) The Commission must, on granting a licence under subsection (1), issue to the applicant a printed licence specifying the regulated activity for which the applicant is licensed. *(Added 19 of 2015 s. 4)*
- (2) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless the applicant satisfies the Commission that—
  - (a) it carries on a business principally outside Hong Kong in an activity which, if carried on in Hong Kong, would constitute the regulated activity;

- (ii) 該當局或機構確認並令證監會信納申請人已獲如此授權；及
- (iii) 證監會信納該當局或機構獲該地方的法律賦權調查申請人在香港的行為，並在適用的情況下為該等行為採取紀律行動；
- (d) 批給該牌照，不會導致在任何一段 24 個月的期間內，申請人根據第 (1) 款獲批給的各牌照的各別牌照期合計超逾 6 個月；
- (e) 申請人是就該類受規管活動獲如此發牌的適當人選；
- (f) 申請人已提名至少一名個人以供證監會為第 (5)(a) 款的目的而核准；及
- (g) 已根據第 130(1) 條提出申請，要求批准將某處所用申請人存放本條例規定的紀錄或文件的地方。
- (3) 根據第 (1) 款批給的牌照須受證監會施加的合理條件限制，而證監會可隨時藉送達書面通知予有關持牌法團，修訂或撤銷任何該等條件或施加新的條件，但該項修訂、撤銷或施加須是在有關情況下屬合理的。
- (4) 凡證監會根據第 (3) 款藉送達書面通知修訂或撤銷任何條件或施加任何新的條件，該項修訂、撤銷或施加在該通知送達時或在該通知指明的時間（兩者以較遲者為準）生效。
- (5) 在不局限第 (3) 款的一般性的原則下，根據第 (1) 款為進行某類受規管活動而批給的牌照，須受以下條件限制——
  - (a) 就該類活動而言，須有至少一名個人——
    - (i) 由有關持牌法團提名，並獲證監會為本段的目的而核准；及
    - (ii) 可時刻監督該法團獲發牌進行的受規管活動的業務；及

- (b) it seeks to be licensed for the regulated activity solely for carrying on in Hong Kong such business in the activity;
- (c) it carries on such business in the activity in the place referred to in paragraph (a) under an authorization (however described) by an authority or regulatory organization in that place which—
  - (i) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part;
  - (ii) confirms to the satisfaction of the Commission that the applicant has been so authorized; and
  - (iii) the Commission is satisfied is empowered under the law of that place to investigate, and, where applicable, to take disciplinary action for, the conduct of the applicant in Hong Kong;
- (d) the granting of the licence would not result in its being granted licences under subsection (1) for respective licence periods that in total exceed 6 months in any period of 24 months;
- (e) it is a fit and proper person to be so licensed for the regulated activity;
- (f) it has nominated at least one individual for approval by the Commission for the purposes of subsection (5)(a); and
- (g) an application has been lodged under section 130(1) for approval of premises to be used by the applicant for keeping records or documents required under this Ordinance.
- (3) A licence granted under subsection (1) shall be subject to such reasonable conditions as the Commission may impose,

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- (b) 該持牌法團在進行該類活動時不得持有任何客戶資產。
- (6) 持牌法團在進行它根據第 (1) 款獲發牌進行的受規管活動時，須使用印刷本牌照上指明的名稱，而不得使用其他名稱。(由 2015 年第 19 號第 4 條修訂)

#### 118. 在某些情況下的發牌條件

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

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- and the Commission may at any time, by notice in writing served on the licensed corporation concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.
- (4) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (3), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.
- (5) Without limiting the generality of subsection (3), it shall be a condition of a licence granted under subsection (1) for carrying on a regulated activity—
- (a) that, in relation to the regulated activity, there is at least one individual who is—
- (i) nominated by the licensed corporation and approved by the Commission for the purposes of this paragraph; and
- (ii) available at all times to supervise the business of the regulated activity for which the corporation is licensed; and
- (b) that the licensed corporation shall not hold any client assets in carrying on the regulated activity.
- (6) A licensed corporation shall not, when carrying on a regulated activity for which it is licensed under subsection (1), use a name other than the name specified in the printed licence.  
(Amended 19 of 2015 s. 4)

#### 118. Licensing conditions in certain cases

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



- (a) 如是為進行某類受規管活動而批給的，則牌照須受以下條件規限 ——
- (i) 持牌法團 ——
- (A) 須就該類活動向證監會交存根據第 116(4) 條訂立的規則所規定的保證 (不論是否附加於它已交存的任何保證)，並將保證保持有效；或
- (B) 已按照根據第 116(5) 條訂立的規則投購保險以代替交存 (在適用情況下) 上述保證及保持該項保證有效；及
- (ii) 就該類活動而言，持牌法團須有至少一名負責人員可時刻監督該類活動的業務；
- (b) 如是為進行第 3 類受規管活動而批給的，則牌照須受以下條件規限：就持牌法團與客戶之間的爭議而言，如是關於或觸及進行該類活動的任何事宜的，則在客戶要求下，持牌法團有責任按照根據第 (2) 款訂立的規則以仲裁方式解決該爭議；
- (c) 如是為進行第 7 類受規管活動而批給的，則牌照須受以下條件規限：如證監會行使其絕對酌情決定權藉書面通知提出要求，則持牌法團須在該通知指明的合理期間內，根據第 95(2) 條申請獲認可進行該類活動，而在該牌照有待根據第 195(2) 條撤銷前，該類活動須以該通知指明的方式營辦；
- (d) 如是為進行第 8 類受規管活動而批給的，則牌照須受以下條件規限 ——
- (i) 持牌法團不得經營證券保證金融資業務以外的業務，但屬必然附帶於經營該等業務的業務除外；及
- (ii) 如持牌法團經營附表 5 第 3 部指明的一項或多於一項活動的業務，它須就該等業務遵守根據第 VI 部訂立並適用於它的規則的規定。

- (a) a regulated activity—
- (i) that the licensed corporation—
- (A) shall lodge (whether or not in addition to any security that it may have lodged) and maintain with the Commission such security in respect of that regulated activity as may be required by rules made under section 116(4); or
- (B) is insured, in lieu of lodging (where applicable) and maintaining such security, in accordance with rules made under section 116(5); and
- (ii) that, in relation to the regulated activity, there is at least one responsible officer of the licensed corporation who is available at all times to supervise the business of the regulated activity for which the corporation is licensed;
- (b) Type 3 regulated activity, that in relation to any dispute between the licensed corporation and a client regarding or touching upon any matter concerning the carrying on of that regulated activity, the licensed corporation is obliged, if the client so requires, to have the dispute settled by arbitration in accordance with rules made under subsection (2);
- (c) Type 7 regulated activity, that if the Commission in its absolute discretion requires by notice in writing, the licensed corporation shall apply, within such reasonable period as may be specified in the notice, for an authorization under section 95(2) for that regulated activity, and the regulated activity shall be operated in such manner as may be specified in the notice pending the revocation of the licence under section 195(2);

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- (2) 證監會可為施行第 (1)(b) 款而訂立規則，就以下各項作出規定——
- (a) 仲裁小組的設立及職能以及有關事宜；
  - (b) 由財政司司長委任仲裁小組成員，包括主席及一名或多於一名副主席；
  - (c) 從仲裁小組中委出審裁小組，以聆訊持牌法團與其客戶之間的爭議，以及審裁小組的組成與成員組合；
  - (d) 爭議的一方支付訟費的法律責任及獲判訟費的權利，以及訟費的追討；
  - (e) 聆訊爭議的實務及程序；
  - (f) 證監會使用審裁小組的裁斷以行使該會根據任何有關條文獲授予的職能；
  - (g) 任何人根據該等規則行使任何酌情決定權。

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

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- (1) 證監會可應任何認可財務機構以訂明方式提出的申請並在訂明費用獲繳付後，將申請人註冊，使申請人可進行一類或多於一類受規管活動（第 3 及 8 類受規管活動除外），該會並須在註冊後向申請人發給註冊證明書，指明該申請人獲註冊進行的受規管活動。
- (2) 證監會須將任何根據第 (1) 款提出的申請轉交金融管理專員。
- (3) 金融管理專員在收到根據第 (2) 款轉交的、要求就某類受規管活動獲註冊的申請後，須——
  - (a) 考慮該申請；
  - (b) 就應否批准該申請諮詢證監會；及
  - (c) 通知證監會申請人是否令他信納申請人是就該類活動獲註冊的適當人選。
- (4) 證監會在決定根據第 (1) 款將申請人註冊或拒絕根據第 (1) 款將申請人註冊時——
  - (a) 須顧及金融管理專員依據第 (3)(c) 款給予該會的意見；及
  - (b) 可完全或局部依賴該意見，以作出該決定。
- (5) 根據第 (1) 款所作的註冊須受證監會施加的合理條件規限，而證監會可隨時藉送達書面通知予有關註冊機構，修訂或撤銷任何該等條件或施加新的條件，但該項修訂、撤銷或施加須是在有關情況下屬合理的。
- (6) 凡證監會根據第 (5) 款藉送達書面通知修訂或撤銷任何條件或施加任何新的條件，該項修訂、撤銷或施加在該通知送達時或在該通知指明的時間（兩者以較遲者為準）生效。
- (7) 在不損害證監會在第 IX 部第 2 及 3 分部下的權力的原則下，凡某認可財務機構就第 7 類受規管活動獲註冊，在該機構根據第 95(2) 條獲認可提供自動化交易服務時，該項註冊須當作就該類活動而被撤銷。（由 2014 年第 6 號第 12 條修訂）

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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.

- (8) 在不局限第 (5) 款的一般性的原則下，根據第 (1) 款所作的註冊 ——
- (a) 如是就某類受規管活動所作的，則該項註冊須受以下條件規限 ——
- (i) 就該類活動而言，註冊機構須有至少一名主管人員可時刻監督該類活動的業務；及
- (ii) 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為受註冊機構就該類活動聘用的個人屬獲如此聘用的適當人選；
- (b) 如是就第 7 類受規管活動所作的，則該項註冊須受以下條件規限：如證監會行使其絕對酌情決定權藉書面通知提出要求，則註冊機構須在該通知指明的合理期間內，根據第 95(2) 條申請獲認可進行該類活動，而在該項註冊有待根據第 197(2) 條撤銷前，該類活動須以該通知指明的方式營辦。
- (9) 證監會不得在沒有事先諮詢金融管理專員的情況下，根據第 (5) 或 (8)(b) 款行使其權力。

- (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 Divisions 2 and 3 of 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. (*Amended 6 of 2014 s. 12*)
- (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

**120. 代表須獲發牌**

- (1) 證監會可應任何個人以訂明方式提出的申請並在訂明費用獲繳付後，向申請人批給牌照，使該人可為該人所隸屬的、並根據第 116 條獲發牌的法團進行一類或多於一類受規管活動。*(由 2015 年第 19 號第 5 條修訂)*
- (2) 證監會可應申請人以訂明方式提出的申請並在訂明費用獲繳付後，行使其絕對酌情決定權向申請人批給臨時牌照，使他可為上述法團進行該申請所關乎的受規管活動。
- (2A) 在根據第 (1) 或 (2) 款批給牌照後，證監會須藉送達書面通知予申請人，告知該申請人——
  - (a) 批給牌照一事；及
  - (b) 該申請人獲發牌進行的受規管活動。*(由 2015 年第 19 號第 5 條增補)*
- (2B) 自《2015 年證券及期貨 (修訂) 條例》(2015 年第 19 號) 第 2 部實施<sup>#</sup>當日起——
  - (a) 證監會在根據第 (1) 或 (2) 款批給牌照後，無須發給印刷本牌照；及
  - (b) 證監會在該日之前發給某持牌代表的印刷本牌照，不再具有顯示某名個人根據第 (1) 或 (2) 款獲發牌的效力。*(由 2015 年第 19 號第 5 條增補)*
- (3) 除非申請人令證監會信納他是就有關的受規管活動獲發牌的適當人選，否則該會須拒絕根據第 (1) 或 (2) 款向他批給進行該類活動的牌照。
- (4) 除非申請人令證監會信納根據第 (2) 款向他批給牌照不會損害投資大眾的利益，否則證監會須拒絕批給該牌照。

such manner as may be specified in the notice pending the revocation of the registration under section 197(2).

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

**120. Representatives to be licensed**

- (1) The Commission may, upon application by an individual in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on one or more than one regulated activity for a corporation licensed under section 116 to which he is accredited. *(Amended 19 of 2015 s. 5)*
- (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.
- (2A) On granting a licence under subsection (1) or (2), the Commission must, by notice in writing served on the applicant, inform the applicant of—
  - (a) the grant of the licence; and
  - (b) the regulated activity for which the applicant is licensed. *(Added 19 of 2015 s. 5)*
- (2B) Beginning on the day on which Part 2 of the Securities and Futures (Amendment) Ordinance 2015 (19 of 2015) comes into operation<sup>#</sup>—
  - (a) no printed licence is to be issued on granting a licence under subsection (1) or (2); and
  - (b) a printed licence issued by the Commission to a licensed representative before that day ceases to be effective for



- (5) 根據第 (1) 或 (2) 款批給的牌照須受第 (6) 款指明的條件以及證監會施加的任何其他合理條件規限。
- (6) 根據第 (1) 或 (2) 款批給的牌照須受以下條件規限：有關持牌代表——
- (a) 須時刻令證監會知悉其聯絡辦法資料的詳情，包括（在適用範圍內）其住址、電話號碼、傳真號碼及電子郵件地址；及
  - (b) 須在該等詳情有所改變後 14 日內將該項改變告知證監會。
- (7) 證監會可隨時藉送達書面通知予有關持牌代表，修訂或撤銷根據第 (5) 款施加的任何條件或施加新的條件，但該項修訂、撤銷或施加須是在有關情況下屬合理的。
- (8) 凡證監會根據第 (7) 款藉送達書面通知修訂或撤銷任何條件或施加任何新的條件，該項修訂、撤銷或施加在該通知送達時或在該通知指明的時間（兩者以較遲者為準）生效。
- (9) 當有以下情況（以先發生者為準），臨時牌照須當作被撤銷——
- (a) 證監會拒絕根據第 (1) 款提出的有關申請；或
  - (b) 證監會應該申請批給牌照。
- (10) 在不損害證監會在第 IX 部第 2 及 3 分部下的權力的原則下，該會可在考慮投資大眾的利益後，行使其絕對酌情決定權，藉送達書面通知予有關持牌代表，撤銷根據第 (2) 款批給的臨時牌照。（由 2014 年第 6 號第 13 條修訂）
- (11)-(12) （由 2015 年第 19 號第 5 條廢除）
- (13) 凡持牌代表以某姓名而根據第 (1) 或 (2) 款獲發牌照，該代表在進行其獲發牌進行的受規管活動時，須使用該姓名，而不得使用其他姓名。（由 2015 年第 19 號第 5 條修訂）

編輯附註：

- indicating that an individual is licensed under subsection (1) or (2). (Added 19 of 2015 s. 5)
- (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—

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# 實施日期：2015 年 11 月 13 日。

## 121. 向代表批給短期牌照

- (1) 證監會可應任何個人以訂明方式提出的申請並在訂明費用獲繳付後，向申請人批給牌照，使他可——
  - (a) 為他所隸屬的、並根據第 116 條獲發牌的法團；或
  - (b) 為他所隸屬的、並根據第 117 條獲發牌的法團，進行一類或多於一類受規管活動（第 3、7、8 及 9 類受規管活動除外），為期不超過 3 個月。（由 2015 年第 19 號第 6 條修訂）
- (1A) 在根據第 (1) 款批給牌照後，證監會須藉送達書面通知予申請人，告知該申請人——

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- (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 Divisions 2 and 3 of 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). (*Amended 6 of 2014 s. 13*)
- (11)-(12) (*Repealed 19 of 2015 s. 5*)
- (13) A licensed representative shall not, when carrying on the regulated activity for which the representative is licensed under subsection (1) or (2), use a name other than the name under which the representative is licensed. (*Amended 19 of 2015 s. 5*)

Editorial Note:

# Commencement date: 13 November 2015.

## 121. Temporary licences for representatives

- (1) The Commission may, upon application by an individual in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on, for a period not exceeding 3 months, one or more than one regulated activity (other than Type 3, Type 7, Type 8 and Type 9 regulated activities)— (*Amended 19 of 2015 s. 6*)
  - (a) for a corporation licensed under section 116 to which he is accredited; or
  - (b) for a corporation licensed under section 117 to which he is accredited.

- (a) 批給牌照一事；及
- (b) 該申請人獲發牌進行的受規管活動。(由 2015 年第 19 號第 6 條增補)
- (1B) 自《2015 年證券及期貨(修訂)條例》(2015 年第 19 號)第 2 部實施<sup>#</sup>當日起——
- (a) 證監會在根據第 (1) 款批給牌照後，無須發給印刷本牌照；及
- (b) 證監會在該日之前發給某持牌代表的印刷本牌照，不再具有顯示某名個人根據第 (1) 款獲發牌的效力。(由 2015 年第 19 號第 6 條增補)
- (2) 除非申請人令證監會信納以下事宜，否則該會須拒絕根據第 (1) 款批給進行某類受規管活動的牌照——
- (a) 他根據在香港以外地方的主管當局或規管機構的授權(不論實際如何稱述)在該地方進行某項活動，而該項活動如在香港進行，便會構成該類受規管活動的，而——
- (i) 證監會認為該當局或機構所執行的職能，是與本部授予該會的職能相似的；
- (ii) 該當局或機構確認並令證監會信納申請人已獲如此授權；及
- (iii) 證監會信納該當局或機構獲該地方的法律賦權調查申請人在香港的行為，並在適用的情況下為該等行為採取紀律行動；
- (b) 就申領第 (1)(a) 款所指的牌照的申請而言——
- (i) 他為某法團或代某法團進行 (a) 段提述的活動，而該法團主要於香港以外地方，在符合以下說明的該地方的主管當局或規管機構的授權(不論實際如何稱述)下經營該項活動的業務——
- (A) 證監會認為該當局或機構所執行的職能，是與本部授予該會的職能相似的；及

- (1A) On granting a licence under subsection (1), the Commission must, by notice in writing served on the applicant, inform the applicant of—
- (a) the grant of the licence; and
- (b) the regulated activity for which the applicant is licensed. (Added 19 of 2015 s. 6)
- (1B) Beginning on the day on which Part 2 of the Securities and Futures (Amendment) Ordinance 2015 (19 of 2015) comes into operation<sup>#</sup>—
- (a) no printed licence is to be issued on granting a licence under subsection (1); and
- (b) a printed licence issued by the Commission to a licensed representative before that day ceases to be effective for indicating that an individual is licensed under subsection (1). (Added 19 of 2015 s. 6)
- (2) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless the applicant satisfies the Commission—
- (a) that he carries on in a place outside Hong Kong an activity which, if carried on in Hong Kong, would constitute carrying on the regulated activity, under an authorization (however described) by an authority or regulatory organization in that place which—
- (i) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part;
- (ii) confirms to the satisfaction of the Commission that the applicant has been so authorized; and
- (iii) the Commission is satisfied is empowered under the law of that place to investigate, and, where

- (B) 該當局或機構確認並令證監會信納該法團已獲如此授權；及
- (ii) 他尋求隸屬的持牌法團是第 (i) 節提述的法團所屬的公司集團的成員；
- (c) 就申領第 (1)(b) 款所指的牌照的申請而言，他尋求獲發該牌照，純粹是為了經營他的主事人經營的第 117(2)(a) 條提述的活動的業務；
- (d) 批給該牌照，不會導致在任何一段 24 個月的期間內，他根據第 (1) 款獲批給的各牌照的各別牌照期合計超逾 6 個月；及
- (e) 他是就該類受規管活動獲如此發牌的適當人選。
- (3) 根據第 (1) 款批給的牌照須受第 (4) 款指明的條件以及證監會施加的任何其他合理條件規限。
- (4) 根據第 (1) 款批給的牌照須受以下條件規限：有關持牌代表——
- (a) 須時刻令證監會知悉其聯絡辦法資料的詳情，包括（在適用範圍內）其住址、電話號碼、傳真號碼及電子郵件地址；
- (b) 須在該等詳情有所改變後 14 日內將該項改變告知證監會；及
- (c) 在進行他獲如此發牌進行的受規管活動時，不得持有任何客戶資產。
- (5) 證監會可隨時藉送達書面通知予有關持牌代表，修訂或撤銷根據第 (3) 款施加的任何條件或施加新的條件，但該項修訂、撤銷或施加須是在有關情況下屬合理的。
- (6) 凡證監會根據第 (5) 款藉送達書面通知修訂或撤銷任何條件或施加任何新的條件，該項修訂、撤銷或施加在該通知送達時或在該通知指明的時間（兩者以較遲者為準）生效。

- applicable, to take disciplinary action for, the conduct of the applicant in Hong Kong;
- (b) where the application is for a licence under subsection (1)(a), that—
- (i) he carries on the activity referred to in paragraph (a) for or on behalf of a corporation which carries on the activity as a business principally in a place outside Hong Kong under an authorization (however described) by an authority or regulatory organization in that place which—
- (A) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part; and
- (B) confirms to the satisfaction of the Commission that the corporation has been so authorized; and
- (ii) the licensed corporation to which he seeks to be accredited is a member of the same group of companies as the corporation referred to in subparagraph (i);
- (c) where the application is for a licence under subsection (1)(b), that he seeks to be so licensed solely for the conduct of his principal's business in the activity referred to in section 117(2)(a);
- (d) that the granting of the licence would not result in his being granted licences under subsection (1) for respective licence periods that in total exceed 6 months in any period of 24 months; and
- (e) that he is a fit and proper person to be so licensed for the regulated activity.

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- (7) 凡持牌代表以某姓名而根據第(1)款獲發牌照，該代表在進行其獲發牌進行的受規管活動時，須使用該姓名，而不得使用其他姓名。(由 2015 年第 19 號第 6 條修訂)

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編輯附註：

# 實施日期：2015 年 11 月 13 日。

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- (3) A licence granted under subsection (1) shall be subject to the condition specified in subsection (4) and to any other reasonable conditions as the Commission may impose.
- (4) It shall be a condition of a licence granted under subsection (1) that the licensed representative concerned—
- (a) shall at all times keep the Commission informed of particulars of his contact details including, in so far as applicable, his residential address, telephone and facsimile numbers and electronic mail address;
  - (b) shall inform the Commission of any change in the particulars within 14 days after the change takes place; and
  - (c) shall not hold any client assets in carrying on the regulated activity for which he is so licensed.
- (5) The Commission may at any time, by notice in writing served on the licensed representative concerned, amend or revoke any condition imposed under subsection (3) or impose new conditions as may be reasonable in the circumstances.
- (6) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (5), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.
- (7) A licensed representative shall not, when carrying on the regulated activity for which the representative is licensed under subsection (1), use a name other than the name under which the representative is licensed. (*Amended 19 of 2015 s. 6*)

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Editorial Note:

# Commencement date: 13 November 2015.



**122. 隸屬關係的批准及轉移**

- (1) 證監會可應以訂明方式提出的申請並在訂明費用獲繳付後，批准——
- (a) 根據第 120(1) 或 (2) 或 121(1)(a) 條獲發牌的持牌代表隸屬根據第 116 條獲發牌的法團；或
  - (b) 根據第 121(1)(b) 條獲發牌的持牌代表隸屬根據第 117 條獲發牌的法團，
- 而在證監會批准上述隸屬後，該法團即成為該代表的主事人。(由 2015 年第 19 號第 7 條修訂)
- (2) 證監會可應根據第 120(1) 或 (2) 或 121(1) 條獲發牌的持牌代表以訂明方式提出的申請並在訂明費用獲繳付後，批准將該代表的隸屬關係轉移至另一個根據第 116 或 117 條(視屬何情況而定)獲發牌的法團，而在證監會批准該項轉移後，該法團即成為該代表的主事人。(由 2015 年第 19 號第 7 條修訂)
- (2A) 在根據第 (1) 或 (2) 款給予批准後，證監會須藉送達書面通知予申請人，告知該申請人上述批准一事。(由 2015 年第 19 號第 7 條增補)
- (3) 除非申請人令證監會信納他將有能力履行他作為有關持牌法團的持牌代表的職責，並達到所需的水準，否則該會須拒絕——
- (a) 根據第 (1) 款批准隸屬關係；或
  - (b) 根據第 (2) 款批准轉移隸屬關係。
- (4) 在不局限第 (3) 款的一般性的原則下，凡根據第 121(1)(a) 條獲發牌的持牌代表提出申請，要求——
- (a) 根據第 (1)(a) 款批准隸屬關係；或
  - (b) 根據第 (2) 款批准轉移隸屬關係，

**122. Approval and transfer of accreditation**

- (1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve the accreditation of a licensed representative—
- (a) who is licensed under section 120(1) or (2) or 121(1)(a), to a corporation licensed under section 116; or
  - (b) who is licensed under section 121(1)(b), to a corporation licensed under section 117,
- and on the Commission's approving the accreditation, the corporation becomes the representative's principal. (*Amended 19 of 2015 s. 7*)
- (2) The Commission may, upon application in the prescribed manner and payment of the prescribed fee by a licensed representative licensed under section 120(1) or (2) or 121(1), approve the transfer of his accreditation to another corporation licensed under section 116 or 117 (as the case may be), and on the Commission's approving the transfer, the corporation becomes the representative's principal. (*Amended 19 of 2015 s. 7*)
- (2A) On granting an approval under subsection (1) or (2), the Commission must, by notice in writing served on the applicant, inform the applicant of the approval. (*Added 19 of 2015 s. 7*)
- (3) The Commission shall refuse to—
- (a) approve an accreditation under subsection (1); or
  - (b) approve a transfer of accreditation under subsection (2), unless the applicant satisfies the Commission that he will be competent to carry out his duties to the requisite standard as a licensed representative for or on behalf of the licensed corporation concerned.

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

### 123. 持牌代表須將終止為其主事人行事一事通知證監會等

- (1) 如根據第 120(1) 或 (2) 或 121(1) 條獲發牌的任何個人終止以持牌代表身為其主事人或代其主事人行事，則他即終止隸屬該主事人，而——
  - (a) 該主事人須在該項終止發生後 7 個營業日內，將此事通知證監會；及 (由 2015 年第 19 號第 8 條修訂)
  - (b) (由 2015 年第 19 號第 8 條廢除)
  - (c) 如該名個人未有在該項終止發生後 180 日內申請將其隸屬關係轉移至另一個根據第 116 或 117 條 (視屬何情況而定) 獲發牌的法團，則該牌照須當作在該項終止發生時被撤銷。
- (2) 任何人違反第 (1)(a) 款，即屬犯罪，一經定罪，可處第 6 級罰款。
- (3) (由 2015 年第 19 號第 8 條廢除)

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- (4) Without limiting the generality of subsection (3), where a licensed representative who is licensed under section 121(1)(a) applies—
  - (a) under subsection (1)(a) for approval of an accreditation; or
  - (b) under subsection (2) for approval of a transfer of accreditation,
 to a corporation licensed under section 116, the Commission shall refuse to grant the approval unless the applicant satisfies the Commission that the licensed corporation to which he seeks to be accredited is a member of the same group of companies as the corporation referred to in section 121(2)(b)(i).

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

- (1) If an individual licensed under section 120(1) or (2) or 121(1) ceases to act for or on behalf of his principal as a licensed representative, he thereupon ceases to be accredited to the principal and—
  - (a) the principal shall, within 7 business days after such cessation, notify the Commission of the cessation; and (Amended 19 of 2015 s. 8)
  - (b) (Repealed 19 of 2015 s. 8)
  - (c) where the individual has not applied for transfer of his accreditation to another corporation licensed under section 116 or 117 (as the case may be) within 180 days after such cessation, the licence shall be deemed to have been revoked upon such cessation.
- (2) A person who contravenes subsection (1)(a) commits an offence and is liable on conviction to a fine at level 6.

**124. 印刷本牌照的複本等***(由 2015 年第 19 號第 9 條修訂)*

- (1) 在第 (2) 款的規限下，證監會可應持牌法團或註冊機構以訂明方式提出的申請（申請理由須是申請人的印刷本牌照或註冊證明書遭遺失、污損或銷毀）並在訂明費用獲繳付後，向該法團或該機構發出該印刷本牌照或註冊證明書（視屬何情況而定）的複本。
- (2) 根據第 (1) 款提出申請的持牌法團或註冊機構須向證監會——*(由 2015 年第 19 號第 9 條修訂)*
  - (a) 呈交一份該法團或該機構作出的法定聲明，述明申請理由，以及該個案所要求的其他詳情，以核實有關印刷本牌照或註冊證明書遭遺失、污損或銷毀（視屬何情況而定）一事；及
  - (b) 提交證監會就該申請而合理地要求的其他資料。

*(由 2015 年第 19 號第 9 條修訂)***125. 關於主管人員的規定**

- (1) 除非以下規定獲符合，否則根據第 116 條獲發牌的法團不得進行任何它獲發牌進行的受規管活動——
  - (a) 該法團每名屬個人的執行董事均獲證監會就該類活動核准為該法團的負責人員；及

*(3) (Repealed 19 of 2015 s. 8)***124. Duplicate printed licence, etc.***(Amended 19 of 2015 s. 9)*

- (1) Subject to subsection (2), the Commission may, upon application in the prescribed manner and payment of the prescribed fee by a licensed corporation or a registered institution on the ground that its printed licence or certificate of registration is lost, defaced or destroyed, issue to the licensed corporation or the registered institution a duplicate of the printed licence or certificate of registration (as the case may be).
- (2) In support of an application under subsection (1), the licensed corporation or the registered institution shall—*(Amended 19 of 2015 s. 9)*
  - (a) submit to the Commission a statutory declaration made by the licensed corporation or the registered institution stating the ground of the application and such other particulars as the case may require in order to verify the loss, defacement or destruction (as the case may be) of the printed licence or certificate of registration; and
  - (b) furnish to the Commission such other information as the Commission may reasonably require in relation to the application.

*(Amended 19 of 2015 s. 9)***125. Requirement for executive officers**

- (1) A corporation licensed under section 116 shall not carry on any regulated activity for which it is licensed unless—
  - (a) every executive director of the licensed corporation who is an individual is approved by the Commission as a

- (b) 有不少於 2 名個人獲證監會就該類活動核准為該法團的負責人員，而其中至少有 1 名為該法團的執行董事。
- (2) 任何註冊機構除非已就委任主管人員符合《銀行業條例》(第 155 章) 第 71D 條的規定，而該等人員亦符合該條例第 71C 條 (包括與該條例第 71E 條一併理解的該條) 的規定，否則該機構不得進行該機構獲註冊進行的任何受規管活動。
- (3) 任何持牌法團無合理辯解而違反第 (1) 款或任何註冊機構無合理辯解而違反第 (2) 款，該法團或機構 (視屬何情況而定) 即屬犯罪，一經定罪，可處第 6 級罰款，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$2,000。

**126. 負責人員的核准**

- (1) 證監會可應持牌代表以訂明方式提出的申請並在訂明費用獲繳付後，核准申請人成為他所隸屬的持牌法團的負責人員。
- (2) 除非申請人令證監會信納以下事宜，否則該會須拒絕根據第 (1) 款核准他成為持牌法團的負責人員——
- (a) 他是獲如此核准的適當人選；及
- (b) 他在該法團內具有充分的權限。
- (3) 根據第 (1) 款作出的核准須受證監會向有關的持牌法團或負責人員施加的合理條件規限，而證監會可隨時藉送達書面通知予該法團或人員，修訂或撤銷任何該等條件或

- responsible officer of the corporation in relation to the regulated activity; and
- (b) not less than 2 individuals, at least one of whom shall be an executive director of the licensed corporation, are approved by the Commission as the responsible officers of the corporation in relation to the regulated activity.
- (2) A registered institution shall not carry on any regulated activity for which it is registered unless it has complied with section 71D of the Banking Ordinance (Cap. 155) in respect of the appointment of executive officers and such executive officers are in compliance with section 71C of that Ordinance (including section 71C of that Ordinance as read with section 71E of that Ordinance).
- (3) If a licensed corporation contravenes subsection (1) or a registered institution contravenes subsection (2), without reasonable excuse, the licensed corporation or registered institution (as the case may be) commits an offence and is liable on conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which the offence continues.

**126. Approval of responsible officers**

- (1) The Commission may, upon application by a licensed representative in the prescribed manner and payment of the prescribed fee, approve the applicant as a responsible officer of the licensed corporation to which he is accredited.
- (2) The Commission shall refuse to approve an applicant as a responsible officer of a licensed corporation under subsection (1) unless the applicant satisfies the Commission that—
- (a) he is a fit and proper person to be so approved; and
- (b) he has sufficient authority within the licensed corporation.

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施加新的條件，但該項修訂、撤銷或施加須是在有關情況下屬合理的。

- (4) 當有以下情況，對任何個人成為某持牌法團的負責人員的核准須當作被撤銷——
- (a) 該人不再以持牌代表身分為該法團或代該法團行事；或
  - (b) 該人不再隸屬該法團。

## 127. 更改持牌人或註冊機構獲發牌或獲註冊進行的受規管活動的類別

(由 2015 年第 19 號第 10 條修訂)

- (1) 證監會可應以訂明方式提出的申請並在訂明費用獲繳付後，藉增加或減少受規管活動的方式，更改持牌人或註冊機構獲發牌或獲註冊進行的受規管活動。(由 2015 年第 19 號第 10 條修訂)
- (2) 如任何人提出申請，要求根據第 (1) 款藉增加受規管活動的方式而作出更改，則就本部而言，該項申請須視為就該類受規管活動而提出的牌照或註冊（視屬何情況而定）申請。(由 2015 年第 19 號第 10 條代替)

## 128. 申請人須提供資料

- (1) 任何人如——

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- (3) An approval under subsection (1) shall be subject to such reasonable conditions as the Commission may impose on the licensed corporation and the responsible officer concerned, and the Commission may at any time, by notice in writing served on the licensed corporation or the responsible officer concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.
- (4) The approval of an individual as a responsible officer of a licensed corporation shall be deemed to be revoked if the individual—
  - (a) ceases to act as a licensed representative for or on behalf of; or
  - (b) ceases to be accredited to, the licensed corporation.

## 127. Variation of regulated activity for which licensed person or registered institution is licensed or registered

(Amended 19 of 2015 s. 10)

- (1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, vary the regulated activity for which a licensed person or registered institution is licensed or registered by adding to or reducing the regulated activity. (Amended 19 of 2015 s. 10)
- (2) If a person applies for variation under subsection (1) by adding a regulated activity, the application is, for the purposes of this Part, to be regarded as an application for a licence or registration (as the case may be) in relation to that regulated activity. (Replaced 19 of 2015 s. 10)

## 128. Applicant to provide information

- (1) A person who applies—



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- (a) 根據第 116、117、120 或 121 條申請牌照；
  - (b) 根據第 119 條申請註冊；
  - (c) 根據第 122 條申請批准隸屬關係或將隸屬關係轉移；
  - (d) 根據第 126 條申請核准成為負責人員；
  - (e) 根據第 127 條申請更改該人獲發牌或獲註冊進行的一類或多於一類受規管活動；
  - (f) 根據第 130(1) 條申請批准某處所的用途；
  - (g) 根據第 132 條申請核准成為或繼續作為(視屬何情況而定)大股東；
  - (h) 根據第 134 條申請修改或寬免；或
  - (i) 申請需要證監會根據本部批准或核准的任何其他事宜，
- 須向證監會提供該會合理地要求的資料，以令該會能考慮該申請。
- (2) 證監會在考慮第 (1) 款提述的申請時，可考慮它所管有的任何資料，不論這些資料是否由申請人提供。
  - (3) 證監會可訂立規則，就以下各項作出規定——
    - (a) 申請人為令證監會能考慮其申請而須提供的資料；
    - (b) 提供該等資料的格式、方式及時限；
    - (c) 任何其他與此有關的事宜。

**129. 適當人選的斷定**

- (1) 證監會或金融管理專員(視屬何情況而定)在考慮某人是否就本部任何條文而言的適當人選時，除考慮其認為有

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- (a) for a licence under section 116, 117, 120 or 121;
  - (b) for registration under section 119;
  - (c) for approval of accreditation or approval of transfer of accreditation to a principal, under section 122;
  - (d) for approval to be a responsible officer under section 126;
  - (e) for variation, under section 127, of the regulated activity for which the person is licensed or registered;
  - (f) for approval of premises under section 130(1);
  - (g) for approval to become or continue to be (as the case may be) a substantial shareholder under section 132;
  - (h) for a modification or waiver under section 134; or
  - (i) for any other matter requiring the approval of the Commission under this Part,
- shall provide the Commission with such information as it may reasonably require to enable it to consider the application.
- (2) In considering an application referred to in subsection (1), the Commission may have regard to any information in its possession whether provided by the applicant or not.
  - (3) The Commission may make rules providing for—
    - (a) the information to be provided by an applicant to enable the Commission to consider his application;
    - (b) the form, manner and time period in which such information is to be provided;
    - (c) any other matter relating thereto.

**129. Determination of fit and proper**

- (1) In considering whether a person is a fit and proper person for the purposes of any provision of this Part, the Commission or

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關的任何事項外，在不抵觸第 134 條的情況下，亦須就該人考慮以下事項——

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

而上述有關人士——

- (i) (凡該人是個人)是該人本人；
  - (ii) (凡該人是並非認可財務機構的法團)是該法團及該法團的任何高級人員；或
  - (iii) (凡該人是認可財務機構)是該機構及該機構的任何董事、最高行政人員、經理(《銀行業條例》(第 155 章)第 2(1)條所界定者)及主管人員。
- (2) 在不局限第(1)款的一般性的原則下，證監會或金融管理專員(視屬何情況而定)在考慮某人是否就本條例任何條文而言的適當人選時，可——
- (a) 考慮以下人士就該人作出的任何決定——
    - (i) (如屬證監會的情況)金融管理專員或(如屬金融管理專員的情況)證監會；
    - (ii) 保監局；(由 2015 年第 12 號第 138 條修訂)
    - (iii) 積金局；或
    - (iv) 任何其他主管當局或規管機構(不論該當局或機構是在香港或其他地方)，而證監會認為該當局或機構所執行的職能，是與該會的職能相似的；

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the Monetary Authority (as the case may be) shall, in addition to any other matter that the Commission or the Monetary Authority (as the case may be) may consider relevant, but subject to section 134, have regard to—

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

of—

- (i) where the person is an individual, the person himself;
  - (ii) where the person is a corporation (other than an authorized financial institution), the corporation and any officer of the corporation; or
  - (iii) where the person is an authorized financial institution, the institution and any director, chief executive, manager (as defined in section 2(1) of the Banking Ordinance (Cap. 155)) and executive officer of the institution.
- (2) Without limiting the generality of subsection (1), the Commission or the Monetary Authority (as the case may be) may, in considering whether a person is a fit and proper person for the purposes of any provision of this Ordinance—
- (a) take into account a decision made in respect of the person by—
    - (i) (in the case of the Commission) the Monetary Authority or (in the case of the Monetary Authority) the Commission;

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

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- (ii) the Insurance Authority;
  - (iii) the Mandatory Provident Fund Schemes Authority; or
  - (iv) any other authority or regulatory organization, whether in Hong Kong or elsewhere, which, in the Commission's opinion, performs a function similar to the functions of the Commission;
- (b) take into account any information in the possession of the Commission or the Monetary Authority (as the case may be), whether provided by the person or not, relating to—
- (i) where such consideration relates to a licence under section 116 or 117 or an application for the licence, any other person who is or is to be employed by, or associated with, the person for the purposes of the regulated activity for which the licence is granted or the application is made (as the case may be);
  - (ii) where such consideration relates to a licence under section 116 or 117 to carry on a regulated activity or any registration for a regulated activity under section 119 or an application for the licence or registration, any other person who will be acting for or on behalf of the person in relation to the regulated activity; or
  - (iii) where the person is a corporation in a group of companies—
    - (A) any other corporation in the same group of companies; or
    - (B) any substantial shareholder or officer of the corporation or any corporation referred to in sub-subparagraph (A);

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### 130. 存放紀錄或文件的處所的適合性

- (1) 證監會可應以訂明方式提出的申請並在訂明費用獲繳付後，批准持牌法團將某處所用作存放本條例或《打擊洗錢及恐怖分子資金籌集條例》(第 615 章)規定的紀錄或文件的地方。(由 2011 年第 15 號第 88 條修訂；由 2018 年第 4 號第 43 條修訂)
- (2) 除非申請人令證監會信納以下事宜，否則該會須拒絕根據第 (1) 款就某處所給予批准——
  - (a) 該處所適合用作該款提述的用途；及
  - (b) (如該處所的某部分被用作居住用途)該處所部分用作居住用途一事不會影響在本部或第 VI 或 VIII 部下任何權力的行使。
- (3) 任何持牌法團在未經證監會事先書面批准下，不得將任何處所用作存放關乎它獲發牌進行的受規管活動的紀錄或文件。
- (4) 證監會在接獲申請後，須在合理地切實可行的範圍內盡快以書面將該會根據第 (1) 款作出的決定告知申請人。

- (c) take into account, where such consideration relates to a licence under section 116 or 117 or any registration under section 119 or an application for the licence or registration, whether the person has established effective internal control procedures and risk management systems to ensure his compliance with all applicable regulatory requirements under any of the relevant provisions, having regard in particular to the information provided in accordance with section 128; and
- (d) have regard to the state of affairs of any other business which the person carries on or proposes to carry on.

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

- (1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve premises to be used by a licensed corporation for keeping records or documents required under this Ordinance or the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615). (*Amended 15 of 2011 s. 88; 4 of 2018 s. 43*)
- (2) The Commission shall refuse to approve premises under subsection (1) unless the applicant satisfies the Commission that—
  - (a) the premises are suitable for being used for the purpose referred to in that subsection; and
  - (b) where the premises are used partly for residential purposes, such residential use of the premises will not affect the exercise of any powers under this Part or Part VI or VIII.
- (3) A licensed corporation shall not, without the prior approval in writing of the Commission, use any premises for the keeping of records or documents relating to the carrying on of the regulated activity for which it is licensed.

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### 131. 對大股東的限制等

- (1) 任何人不得在未經證監會事先根據第 132(1)(a) 條核准的情況下成為或繼續作為根據第 116 條獲發牌的法團的大股東。
- (2) 任何人違反第 (1) 款，即屬犯罪——
  - (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年，並可就該人在未經證監會根據第 132(1)(b) 條核准的情況下繼續作為大股東的期間的每一日，另處罰款 \$5,000；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月，並可就該人在未經證監會根據第 132(1)(b) 條核准的情況下繼續作為大股東的期間的每一日，另處罰款 \$500。
- (3) 被控犯第 (2) 款所訂罪行的人如證明——
  - (a) 他既不知道且即使盡了合理的努力亦不能確定有令他成為該大股東的作為或情況存在；及
  - (b) (如他其後察覺有上述作為或情況存在) 他已在合理地切實可行的範圍內盡快 (而無論如何須在他如此察覺後 3 個營業日內) 根據第 132(1)(b) 條申請核准繼續作為有關法團的大股東，  
即可以此作為免責辯護。
- (4) 如任何人憑藉——
  - (a) 股份的轉讓；
  - (b) 股份的發行；或
  - (c) 獲得發行的股份的權利的轉讓，

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

### 131. Restriction on substantial shareholding, etc.

- (1) A person shall not become and continue to be a substantial shareholder of a corporation licensed under section 116 without first being approved by the Commission under section 132(1)(a).
- (2) A person who contravenes subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years, and to a further fine of \$5,000 for every day during which the person continues to be such substantial shareholder without the Commission's approval under section 132(1)(b); or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months, and to a further fine of \$500 for every day during which the person continues to be such substantial shareholder without the Commission's approval under section 132(1)(b).
- (3) It is a defence for a person charged with an offence under subsection (2) to prove—
  - (a) that he did not know, and could not have by the exercise of reasonable diligence ascertained, the existence of the act or circumstances by virtue of which he became such a substantial shareholder; and
  - (b) where he subsequently became aware of such act or circumstances, that he applied under section 132(1)(b), as soon as reasonably practicable and in any event within 3 business days after he became so aware, for



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- 而在未經證監會事先根據第 132(1)(a) 條核准的情況下成為根據第 116 條獲發牌的法團的大股東，則在證監會根據第 132(1)(b) 條核准他繼續作為該法團的大股東之前，有關股份所賦予的投票權不得行使。
- (5) 如任何人作出看來是行使根據第 (4) 款不得行使的投票權的作為，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 1 年；或
- (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (6) 被控犯第 (5) 款所訂罪行的人如證明他 ——
- (a) 並不知道；及
- (b) 即使盡了合理的努力亦不能知道，
- 根據第 (4) 款，他用意行使的投票權是不得行使的，即可以此作為免責辯護。

### 132. 核准成為或繼續作為大股東

- (1) 證監會可應申請人以訂明方式提出的申請並在訂明費用獲繳付後，核准申請人 ——

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- approval to continue to be a substantial shareholder of the corporation.
- (4) If a person becomes a substantial shareholder of a corporation licensed under section 116 without the Commission's prior approval under section 132(1)(a) by virtue of—
- (a) a transfer of shares;
- (b) an issue of shares; or
- (c) a transfer of the right to be issued with shares,
- then, unless and until the Commission approves the person to continue to be a substantial shareholder of the corporation under section 132(1)(b), the voting rights conferred by the shares concerned are not exercisable.
- (5) A person who purportedly exercises any voting right that is not exercisable by virtue of subsection (4) commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (6) It is a defence for a person charged with an offence under subsection (5) to prove that he—
- (a) did not know; and
- (b) could not have by the exercise of reasonable diligence known,
- that the voting right which he purportedly exercised is by virtue of subsection (4) not exercisable.

### 132. Approval to become or continue to be substantial shareholder

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

- (a) 成為；或
- (b) 繼續作為，  
(視屬何情況而定) 根據第 116 條獲發牌的法團的大股東。
- (2) 除非申請人令證監會信納如申請一旦獲准，有關持牌法團會繼續是獲發牌的適當人選，否則證監會須拒絕核准申請人成為或繼續作為(視屬何情況而定)該法團的大股東。
- (3) 根據第 (1)(a) 或 (b) 款給予的核准須受證監會向申請人及有關持牌法團施加的合理條件規限，而證監會可隨時藉送達書面通知予獲核准的大股東及該法團，修訂或撤銷任何該等條件或施加新的條件，但該項修訂、撤銷或施加須是在有關情況下屬合理的。
- (4) 凡證監會根據第 (3) 款藉送達書面通知修訂或撤銷任何條件或施加任何新的條件，該項修訂、撤銷或施加在該通知送達時或在該通知指明的時間(兩者以較遲者為準)生效。
- (5) 在不局限第 (3) 款的一般性的原則下，根據第 (1)(a) 或 (b) 款給予的核准須受以下條件規限：獲核准的大股東——
- (a) 須時刻令證監會知悉其聯絡辦法資料的詳情，包括(在適用範圍內)其業務地址、住址、電話號碼、傳真號碼及電子郵件地址；及
- (b) 須在該等詳情有所改變後 14 日內將該項改變告知證監會。

applicant—

- (a) to become; or
- (b) to continue to be,
- as the case may be, a substantial shareholder of a corporation licensed under section 116.
- (2) The Commission shall refuse to approve an applicant to become or continue to be (as the case may be) a substantial shareholder of the licensed corporation concerned unless the applicant satisfies the Commission that the corporation will remain a fit and proper person to be licensed if the application is approved.
- (3) An approval under subsection (1)(a) or (b) shall be subject to such reasonable conditions as the Commission may impose on the applicant and on the licensed corporation concerned, and the Commission may at any time, by notice in writing served on the approved substantial shareholder and the corporation, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.
- (4) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (3), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.
- (5) Without limiting the generality of subsection (3), it shall be a condition of an approval under subsection (1)(a) or (b) that the approved substantial shareholder shall—
- (a) at all times keep the Commission informed of particulars of his contact details including, in so far as applicable, his business address, residential address, telephone and facsimile numbers and electronic mail address; and

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

### 133. 證監會發出指示的權力

- (1) 如任何人在未經證監會根據第 132(1)(a) 條事先核准的情況下成為大股東 (不論該人是否已根據第 132(1)(b) 條申請核准繼續作為大股東, 亦不論該人是否獲給予該項核准), 證監會可藉書面通知指示有關持牌法團——
- (a) 不得准許或默許該人參與該法團的業務的管理;
  - (b) 將該人或其有聯繫者 (如有的話) 在該法團的任何會議上所投的票當作無效;
  - (c) 再度召開上述會議, 就該人已投票的事宜重新進行投票; 及
  - (d) 採取該會在該通知指明的其他合理步驟。
- (2) 在不損害第 (1) 款的施行的原則下, 如證監會拒絕批准根據第 132(1)(b) 條就繼續作為大股東而提出的申請, 該會可藉書面通知指示申請人——
- (a) 在該會要求的合理時間內, 將該人藉以成為有關持牌法團的大股東的股份權益減低至他不再成為該法團的大股東的程度; 及
  - (b) 採取該會在該通知指明的其他合理步驟。
- (3) 如任何人沒有遵從根據第 (1) 或 (2) 款發出的指示, 證監會可藉原訴傳票或原訴動議, 就該項不遵從向原訟法庭提出申請, 而原訟法庭可查訊有關個案, 如——
- (a) 原訟法庭信納該人不遵從該指示是無合理辯解的, 則原訟法庭可命令該人在原訟法庭指明的期間內遵從該指示; 及
  - (b) 原訟法庭信納該人是在無合理辯解的情況下沒有遵從該指示的, 則原訟法庭可懲罰該人及明知而牽涉入該項不遵從的任何其他人, 而懲罰的方式猶如該人及 (如適用的話) 該其他人犯藐視法庭罪一樣。

### 133. Commission's power to give directions

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

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- (4) 第 (3) 款所指的原訴傳票須採用《高等法院規則》(第 4 章，附屬法例 A) 附錄 A 表格 10。
- (編輯修訂——2012 年第 2 號編輯修訂紀錄)

#### 134. 對規定作出修改或寬免

- (1) 證監會可應——
- (a) 持牌法團；
  - (b) 根據第 116 或 117 條申請牌照的人；
  - (c) 註冊機構；
  - (d) 根據第 119 條申請註冊的人；
  - (e) 持牌代表；
  - (f) 根據第 120 或 121 條申請牌照的人；
  - (g) 根據第 126 條獲核准的負責人員；
  - (h) 根據第 132 條獲核准的大股東；

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- (3) If a person fails to comply with any direction under subsection (1) or (2), the Commission may, by originating summons or originating motion, make an application to the Court of First Instance in respect of the failure, and the Court may inquire into the case and—
- (a) if the Court is satisfied that there is no reasonable excuse for the person not to comply with the direction, order the person to comply with the direction within the period specified by the Court; and
  - (b) if the Court is satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if he and, where applicable, that other person had been guilty of contempt of court.
- (4) An originating summons under subsection (3) shall be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

*(Amended E.R. 2 of 2012)*

#### 134. Modification or waiver of requirements

- (1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee by—
- (a) a licensed corporation;
  - (b) an applicant for a licence under section 116 or 117;
  - (c) a registered institution;
  - (d) an applicant for registration under section 119;
  - (e) a licensed representative;
  - (f) an applicant for a licence under section 120 or 121;
  - (g) a responsible officer approved under section 126;
  - (h) a substantial shareholder approved under section 132;

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- (i) 根據第 132 條申請核准成為或繼續作為 (視屬何情況而定) 大股東的人；或
- (j) 有聯繫實體，  
以訂明方式提出的申請並在訂明費用獲繳付後，就申請人而對第 118 條指明的或根據第 116、117、119、120、121、126 或 132 條施加的任何條件，或對以下條文或規則的任何規定作出修改或寬免——
- (i) 第 116(2)(b) 及 125(1) 及 (2) 條；
- (ii) 第 116(2)(c) 及 130 條；
- (iii) 根據第 118(2) 條訂立的規則；
- (iv) 第 121(2)(a) 條；
- (v) 第 129 條；
- (vi) 根據第 145 條訂立的規則；
- (vii) 根據第 148 條訂立的規則；
- (viii) 根據第 149 條訂立的規則；
- (ix) 根據第 151 條訂立的規則；
- (x) 根據第 152 條訂立的規則；
- (xi) 根據第 168 條訂立的規則；
- (xii) 根據第 173 條訂立的規則；
- (xiii) 第 175(1)、(2) 及 (3) 條；或
- (xiv) 證監會根據本條例訂立的規則的任何條文。
- (2) 第 (1) 款所指的修改或寬免，須以送達書面通知予申請人的方式作出，該通知須指明該項修改或寬免的有效期 (如有的話)。
- (3) 除非申請人令證監會信納——
- (a) 就根據第 116、117 或 119 條施加的條件作出修改或寬免，不會損害申請人任何客戶的權益；或

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- (i) an applicant for approval under section 132 to become or continue to be (as the case may be) a substantial shareholder; or
- (j) an associated entity,  
grant a modification or waiver, in relation to the applicant, in respect of any condition specified in section 118 or imposed under section 116, 117, 119, 120, 121, 126 or 132 or any of the requirements of the following—
- (i) sections 116(2)(b) and 125(1) and (2);
- (ii) sections 116(2)(c) and 130;
- (iii) rules made under section 118(2);
- (iv) section 121(2)(a);
- (v) section 129;
- (vi) rules made under section 145;
- (vii) rules made under section 148;
- (viii) rules made under section 149;
- (ix) rules made under section 151;
- (x) rules made under section 152;
- (xi) rules made under section 168;
- (xii) rules made under section 173;
- (xiii) section 175(1), (2) and (3); or
- (xiv) any provision of rules made by the Commission under this Ordinance.
- (2) The grant of a modification or waiver under subsection (1) shall be effected by a notice in writing served on the applicant specifying the period (if any) for which the modification or waiver is valid.



- (b) 就第 118 條指明的或根據第 120、121、126 或 132 條施加的條件或就第 (1)(i) 至 (xiv) 款指明的條文或規則的任何規定作出修改或寬免，不會損害投資大眾的利益，
- 否則證監會須拒絕根據第 (1) 款作出該項修改或寬免。
- (4) 根據第 (1) 款應某人的申請作出的修改或寬免須受證監會施加的合理條件規限，而證監會可隨時藉送達書面通知予——
- (a) 該人；
- (b) (凡該人是中介人或有聯繫實體) 該人的主管人員；或
- (c) (凡該項修改或寬免是應一項根據第 (1)(e)、(f) 或 (g) 款提出的申請而作出的) 該人所隸屬的主事人，
- 修訂該項修改或寬免，或修訂或撤銷任何該等條件或施加新的條件，但該項修訂、撤銷或施加須是在有關情況下屬合理的。
- (5) 除第 (4) 款另有規定外，根據第 (1) 款應某人的申請作出的修改或寬免——
- (a) 在根據第 (2) 款就此事送達的通知指明的期間內持續有效，直至該期間終結為止；
- (b) 在沒有上述的指明期間的情況下，則在證監會藉送達書面通知予以下人士而將之撤銷前持續有效——
- (i) 該人；
- (ii) (凡該人是中介人或有聯繫實體) 該人的主管人員；或
- (iii) (凡該項修改或寬免是依據一項根據第 (1)(e)、(f) 或 (g) 款提出的申請而作出的) 該人所隸屬的主事人。
- (6) 就根據第 (1) 款應某人的申請作出的修改或寬免而言，證監會須——

- (3) The Commission shall refuse to grant a modification or waiver under subsection (1) unless it is satisfied by the applicant that to do so will not prejudice—
- (a) in the case of a modification or waiver granted in respect of a condition imposed under section 116, 117 or 119, the interests of any client of the applicant; or
- (b) in the case of a modification or waiver granted in respect of a condition specified in section 118 or imposed under section 120, 121, 126 or 132, or in respect of any requirement of a provision specified in subsection (1)(i) to (xiv), the interest of the investing public.
- (4) A modification or waiver granted under subsection (1) to a person shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on—
- (a) the person;
- (b) where the person is an intermediary or an associated entity, an executive officer of the intermediary or the entity; or
- (c) where the modification or waiver is granted pursuant to an application made under subsection (1)(e), (f) or (g), the principal to which the person is accredited,
- amend such modification or waiver, or amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.
- (5) Subject to subsection (4), a modification or waiver granted under subsection (1) remains in force—
- (a) if a period is specified in the notice served under subsection (2) in respect of the modification or waiver, until the end of the period; or

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- (a) 在作出該項修改或寬免時；
  - (b) 在根據第 (4) 款修訂該項修改或寬免、或修訂或撤銷該項修改或寬免的條件或施加任何新的條件時；或
  - (c) 在根據第 (5)(b) 款撤銷該項修改或寬免時，  
(除在第 (7) 款規定的情況下外) 藉使用互聯網，以公告發表——(由 2012 年第 9 號第 39 條修訂)
  - (i) 該人的姓名或名稱；
  - (ii) (a)、(b) 或 (c) 段(視屬何情況而定) 提述的事情，及作出該事情的理由；
  - (iii) 在作出該項修改或寬免時施加於該項修改或寬免的條件，或其後根據第 (4) 款修訂、撤銷或新施加的條件(視屬何情況而定)；及
  - (iv) (如適用的話) 該項作出或修訂的有效期或所施加的條件的有效期。
- (7) 如申請人令證監會信納在遵守第 (6)(iii) 款的情況下以公告發表任何條件會在不合理的程度上損害該申請人的商業利益，證監會可在第 (6) 款提述的公告內包括以下項目，以代替以公告發表有關條件——(由 2012 年第 9 號第 39 條修訂)
- (a) 該會不以公告發表有關條件的理由的簡述；及(由 2012 年第 9 號第 39 條修訂)
  - (b) 關於有關條件的、而證監會認為不會在不合理的程度上損害該申請人的商業利益的適當資料。
- (8) 證監會可就某一類別的持牌人、註冊機構或有聯繫實體，藉訂立規則而就第 (1)(vi)、(vii)、(viii)、(ix)、(x) 或 (xi) 款提述的規則的任何規定，作出修改或寬免。
- (9) 除非證監會信納根據第 (8) 款訂立規則以作出該款提述的修改或寬免不會損害投資大眾的利益，否則該會不得作出該項修改或寬免。

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- (b) if no such period is specified, until revoked by the Commission by notice in writing served on—
    - (i) the person;
    - (ii) where the person is an intermediary or an associated entity, an executive officer of the intermediary or the entity; or
    - (iii) where the modification or waiver is granted pursuant to an application made under subsection (1)(e), (f) or (g), the principal to which the person is accredited.
- (6) In relation to a modification or waiver under subsection (1) to a person, the Commission shall—
- (a) on the grant of the modification or waiver;
  - (b) on its amendment or an amendment or revocation of its conditions or the imposition of any new condition on it under subsection (4); or
  - (c) on its revocation under subsection (5)(b),  
subject to subsection (7), publish, by the use of the Internet, notice of—(Amended 9 of 2012 s. 39)
    - (i) the name of the person;
    - (ii) the event referred to in paragraph (a), (b) or (c) (as the case may be) and the reasons for the event;
    - (iii) any condition imposed on the modification or waiver on its grant, or the condition amended or revoked or newly imposed subsequently under subsection (4) (as the case may be); and
    - (iv) (if applicable) the period for which the grant or amendment or the condition so imposed is valid.
- (7) If the applicant satisfies the Commission that publishing notice of any condition in compliance with subsection (6)(iii)

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- (10) 證監會可在第 (8) 款提述的規則中，指明規限有關的修改或寬免的條件。該等規則可規定沒有遵從該等條件的人屬犯罪，一經定罪，可處不超過第 6 級罰款。
- (11) 證監會可隨時藉訂立規則——
  - (a) 撤銷根據第 (8) 款作出的修改或寬免；或
  - (b) 修訂、撤銷或增補規限該等修改或寬免的條件。
- (12) 證監會不得在沒有事先諮詢金融管理專員的情況下，就註冊機構或屬認可財務機構的有聯繫實體而根據第 (1)、(4)、(8)、(10) 或 (11) 款行使其權力。
- (13) 任何人沒有遵從根據第 (4) 款施加的條件，即屬犯罪，一經定罪，可處第 6 級罰款。

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- would prejudice, to an unreasonable degree, the commercial interests of the applicant, the Commission may, in lieu of publishing notice of the condition, include in the notice referred to in subsection (6)— (*Amended 9 of 2012 s. 39*)
- (a) a brief account of its reasons for not publishing notice of the condition; and (*Amended 9 of 2012 s. 39*)
  - (b) such appropriate information on the condition as the Commission considers incapable of prejudicing, to an unreasonable degree, the commercial interests of the applicant.
- (8) The Commission may by rules grant a modification or waiver, in relation to a class of licensed persons or registered institutions or associated entities, in respect of any of the requirements of the rules referred to in subsection (1)(vi), (vii), (viii), (ix), (x) or (xi).
  - (9) The Commission shall not make any rules under subsection (8) to grant a modification or waiver referred to in that subsection unless the Commission is satisfied that to do so will not prejudice the interest of the investing public.
  - (10) The Commission may specify in the rules referred to in subsection (8) the conditions subject to which the modification or waiver is granted and the rules may provide that a person who fails to comply with such a condition commits an offence and is liable on conviction to a fine not exceeding level 6.
  - (11) The Commission may at any time by rules—
    - (a) revoke a modification or waiver granted under subsection (8); or
    - (b) amend, revoke or add to, any condition subject to which such modification or waiver is granted.

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### 135. 持牌人及註冊機構須報告若干事情

- (1) 持牌人或註冊機構如擬於某日終止進行他獲發牌或獲註冊進行的某類受規管活動，須在合理地切實可行的範圍內盡快以書面將此意向通知證監會及（如屬註冊機構）金融管理專員，而在任何情況下，該通知須在該日之前 7 個營業日或之前發出。
- (2) 中介人如擬更改他擬用作進行他獲發牌或獲註冊進行的受規管活動的地址，須以書面給予證監會及（如屬註冊機構）金融管理專員不少於 7 個營業日的事先通知。
- (3) 除第 (5) 款另有規定外，如任何人已根據本部任何條文向證監會提供任何資料，而該等資料有改變，則在為施行本款而藉根據第 397 條訂立的規則訂明的情況下，該人須在該項改變發生後 7 個營業日內，發出載有該項改變的詳盡描述的書面通知。
- (4) 第 (3) 款提述的通知須向 ——
  - (a) （如有關資料是與根據本部任何條文提出的申請有關連的，而且證監會仍在考慮該申請）證監會發出；或
  - (b) （在其他情況下）證監會及（如所提供的資料關乎註冊機構）金融管理專員發出。
- (5) 如所提供的資料是與根據本部任何條文提出的申請有關連的，而該申請已被拒絕或撤回，則第 (3) 款不再適用於該等資料。

- (12) The Commission shall not exercise its power under subsection (1), (4), (8), (10) or (11) in relation to any registered institution or any associated entity that is an authorized financial institution unless the Commission has first consulted the Monetary Authority.
- (13) A person who fails to comply with a condition imposed under subsection (4) commits an offence and is liable on conviction to a fine at level 6.

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

- (1) A licensed person or registered institution who intends to cease to carry on any regulated activity for which he is licensed or registered shall notify the Commission and (in the case of a registered institution) the Monetary Authority in writing of such intended cessation as soon as reasonably practicable and in any event not later than 7 business days before such intended cessation.
- (2) An intermediary shall give to the Commission and (in the case of a registered institution) the Monetary Authority at least 7 business days' advance notice in writing of any intended change of address at which it proposes to carry on the regulated activity for which it is licensed or registered.
- (3) Subject to subsection (5), where a person has provided any information to the Commission under any provision of this Part and a change in the information occurs, then in such circumstances as are prescribed by rules made under section 397 for the purposes of this subsection, the person shall, within 7 business days of the change, give notice in writing of the change containing a full description of it.
- (4) The notice referred to in subsection (3) shall be given to the following person or persons—

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- (6) 凡任何人成為或終止擔任持牌法團的董事，則該人及該法團須在此事發生後 7 個營業日內，以書面將該人的姓名或名稱及地址，以及他所擔任或已停任（視屬何情況而定）的職位性質通知證監會。
- (7) 任何人無合理辯解而違反第 (1)、(2)、(3) 或 (6) 款，即屬犯罪，一經定罪，可處第 5 級罰款。

### 136. 證監會須備存持牌人及註冊機構紀錄冊

- (1) 證監會須以該會認為適當的格式備存一份持牌人及註冊機構紀錄冊。
- (2) 根據第 (1) 款備存的紀錄冊須就每個牌照或每項註冊而載有以下資料——
  - (a) 持牌人或註冊機構（視屬何情況而定）的姓名或名稱及業務地址；
  - (b) 牌照或註冊（視屬何情況而定）附有的而證監會認為適宜載入紀錄冊的條件；
  - (c) 就每名持牌代表而言，其主事人的名稱；

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- (a) (where the information has been provided in connection with an application under any provision of this Part and the Commission is still considering the application) the Commission; or
- (b) (in other cases) the Commission and (if the information provided relates to a registered institution) the Monetary Authority.
- (5) Where the information has been provided in connection with an application under any provision of this Part and the application has been refused or withdrawn, subsection (3) shall no longer apply in relation to the information.
- (6) Where a person becomes or ceases to be a director of a licensed corporation, both the person and the corporation shall, within 7 business days thereafter, notify the Commission in writing of the name and address of the person and of the nature of the position which he occupies or has ceased to occupy (as the case may be).
- (7) A person who, without reasonable excuse, contravenes subsection (1), (2), (3) or (6) commits an offence and is liable on conviction to a fine at level 5.

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

- (1) The Commission shall maintain a register of licensed persons and registered institutions in such form as it considers appropriate.
- (2) The register maintained under subsection (1) shall contain in relation to each licence or registration—
  - (a) the name and business address of the licensed person or registered institution (as the case may be);
  - (b) such conditions of the licence or registration (as the case may be) as the Commission considers appropriate;



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- (d) 就持牌法團或註冊機構 (視屬何情況而定) 而言, 其每名主管人員的姓名及業務地址; 及
- (e) 為施行本款而藉根據第 397 條訂立的規則訂明的其他詳情。
- (3) 紀錄冊可藉以下方式備存——
  - (a) 以文件形式; 或
  - (b) 並非以文件形式記錄第 (2) 款所規定的資料, 但如此記錄的該等資料須能以可閱讀形式重現。
- (4) 為使任何公眾人士能確定他是否正在就任何受規管活動的事宜或就與任何受規管活動有關連的事宜與持牌人或註冊機構有往來, 以及為確定該人或該機構 (視屬何情況而定) 的牌照或註冊的詳情, 紀錄冊須於任何合理時間提供予公眾查閱。
- (5) 在任何合理時間, 公眾人士可——
  - (a) 查閱紀錄冊或 (如紀錄冊並非以文件形式備存的) 以可閱讀形式重現的紀錄冊的資料或其有關部分; 及
  - (b) 在繳付訂明費用後, 取得紀錄冊的任何記項或摘錄的副本。
- (6) 任何文件如看來是——
  - (a) 根據本條備存的紀錄冊的任何記項或摘錄的副本; 及
  - (b) 經由證監會的獲授權人員核證為 (a) 段提述的記項或摘錄的真確副本,
 則須在任何法律程序中獲接納為其中內容的證據。
- (7) 在不減損本條其他條文的原則下, 證監會須另行安排將紀錄冊以聯機紀錄形式提供予公眾。

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

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### 137. 持牌人及註冊機構的姓名或名稱的發表

- (1) 證監會須至少每年一次在該會認為適當的時間及以該會認為適當的形式，發表每個持牌人及註冊機構的姓名或名稱及地址、該人或該機構獲發牌或獲註冊進行的受規管活動，以及該人或該機構的牌照或註冊所附有的而該會認為適宜發表的條件。
- (2) 證監會如修訂根據第 136 條備存的紀錄冊，將某持牌人或註冊機構的姓名或名稱加入紀錄冊或從紀錄冊中刪除、更改某持牌人或註冊機構獲發牌或獲註冊進行的受規管活動，或更改某牌照或註冊所附有的任何條件，均須在作出修訂後一個月內發表該項修訂的詳情。

### 138. 年費及申報表

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

- (b) certified by an authorized officer of the Commission as a true copy of the entry or extract referred to in paragraph (a),

shall be admissible as evidence of its contents in any legal proceedings.

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

### 137. Publication of names of licensed persons and registered institutions

- (1) The Commission shall at least once in each year publish at such time and in such manner as it considers appropriate the name and address of each licensed person and registered institution, the regulated activities for which the person or institution is licensed or registered and such conditions of the licence or registration as the Commission considers appropriate.
- (2) If the Commission amends the register maintained under section 136 by adding or removing the name of a licensed person or registered institution or varying the regulated activity for which a licensed person or registered institution is licensed or registered or any condition of a licence or registration, it shall publish particulars of the amendment within one month after making the amendment.

### 138. Annual fee and return

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

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- (2) 年費須於批給牌照或註冊證明書(視屬何情況而定)的日期之後每年的同月同日後一個月內繳付,或於證監會藉書面通知批准的其他日期繳付。
- (3) 須繳付年費的人如不依照第(2)款的規定全數繳付年費,須向證監會繳付按以下方式計算的附加款項——
- (a) 就到期繳付年費之日之後的首個月而言,金額為年費的 10% 或仍未繳付的部分年費的 10%(視屬何情況而定);
- (b) 如年費仍未繳付,就其後每個月而言,金額為年費的 20% 或仍未繳付的部分年費的 20%(視屬何情況而定),
- 而在計算上述附加款項時,不足一個月須視作為一個月。
- (4) 根據第 116 或 120(1) 條獲發牌的人須——
- (a) 在發牌日期之後每年的同月同日後一個月內;或
- (b) 在證監會藉書面通知批准的其他日期或之前,向證監會呈交周年申報表,該申報表須載有為施行本款而藉根據第 397 條訂立的規則訂明的資料。

### 139. 禁止使用若干稱銜

- (1) 除非以下規定獲符合,否則任何人不得採用或使用在附表 6 中與在第 2 欄中提述本款之處相對之處列出的任何指明稱銜——
- (a) 他就第 1 類受規管活動獲發牌或獲註冊;或

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- (2) The annual fee shall be payable within one month after each anniversary of the date of grant of the licence or certificate of registration (as the case may be), or on such other date as may be approved by the Commission by notice in writing.
- (3) In default of full payment of the annual fee as required under subsection (2), the person shall pay to the Commission an additional sum calculated as follows—
- (a) 10% of the fee or such part of the fee (as the case may be) that remains unpaid for the first month after the due date for its payment;
- (b) 20% of the fee or such part of the fee (as the case may be) for each subsequent month when it remains unpaid, and in calculating the additional sum for the purposes of this subsection, any fraction of a month shall be treated as a month.
- (4) A person licensed under section 116 or 120(1) shall submit an annual return to the Commission—
- (a) within one month after each anniversary of the date on which the person is licensed; or
- (b) by such other date as may be approved by the Commission by notice in writing,
- which return shall contain such information as is prescribed by rules made under section 397 for the purposes of this subsection.

### 139. Prohibition of use of certain titles

- (1) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—
- (a) the person is licensed or registered for Type 1 regulated activity; or

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- (b) 他名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示為就第 1 類受規管活動受聘於就該類活動獲註冊的人，而在採用或使用有關稱銜時他是以該身分行事的。
- (2) 除非以下規定獲符合，否則任何人不得採用或使用在附表 6 中與在第 2 欄中提述本款之處相對之處列出的任何指明稱銜——
- (a) 他就第 2 類受規管活動獲發牌或獲註冊；或
- (b) 他名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示為就第 2 類受規管活動受聘於就該類活動獲註冊的人，而在採用或使用有關稱銜時他是以該身分行事的。
- (3) 除非以下規定獲符合，否則任何人不得採用或使用在附表 6 中與在第 2 欄中提述本款之處相對之處列出的任何指明稱銜——
- (a) 他就第 3 類受規管活動獲發牌；
- (b) 他是認可財務機構；或
- (c) 他受聘於認可財務機構，而在採用或使用有關稱銜時，他是為該機構在一項若非有附表 5 第 2 部中**槓桿式外匯交易**的定義的第 (xii) 段，便會構成該定義所指的槓桿式外匯交易的活動中行事的。
- (4) 除非以下規定獲符合，否則任何人不得採用或使用在附表 6 中與在第 2 欄中提述本款之處相對之處列出的任何指明稱銜——
- (a) 他就第 4 類受規管活動獲發牌或獲註冊；或
- (b) 他名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示為就第 4 類受規管活動受聘於就該類活動獲註冊的人，而在採用或使用有關稱銜時他是以該身分行事的。

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- (b) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 regulated activity by a person registered for that regulated activity, while acting in that capacity.
- (2) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—
- (a) the person is licensed or registered for Type 2 regulated activity; or
- (b) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 2 regulated activity by a person registered for that regulated activity, while acting in that capacity.
- (3) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless the person—
- (a) is licensed for Type 3 regulated activity;
- (b) is an authorized financial institution; or
- (c) is engaged by an authorized financial institution, while acting for the institution in an activity that would have fallen within the meaning of the definition of **leveraged foreign exchange trading** in Part 2 of Schedule 5 but for paragraph (xii) of that definition.
- (4) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—
- (a) the person is licensed or registered for Type 4 regulated activity; or



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- (5) 除非以下規定獲符合，否則任何人不得採用或使用在附表 6 中與在第 2 欄中提述本款之處相對之處列出的任何指明稱銜——
- (a) 他就第 5 類受規管活動獲發牌或獲註冊；或
  - (b) 他名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示為就第 5 類受規管活動受聘於就該類活動獲註冊的人，而在採用或使用有關稱銜時他是以該身分行事的。
- (6) 除非以下規定獲符合，否則任何人不得採用或使用在附表 6 中與在第 2 欄中提述本款之處相對之處列出的任何指明稱銜——
- (a) 他就第 6 類受規管活動獲發牌或獲註冊；或
  - (b) 他名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示為就第 6 類受規管活動受聘於就該類活動獲註冊的人，而在採用或使用有關稱銜時他是以該身分行事的。
- (7) 除非以下規定獲符合，否則任何人不得採用或使用在附表 6 中與在第 2 欄中提述本款之處相對之處列出的任何指明稱銜——
- (a) 他就第 7 類受規管活動獲發牌或獲註冊；
  - (b) 他根據第 95(2) 條獲認可提供自動化交易服務；
  - (c) 他名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示為就第 7 類受規管活動受聘於就該類活動獲註冊的人，而在採用或使用有關稱銜時他是以該身分行事的；或
  - (d) 他是根據第 95(2) 條就該類活動獲認可的人的僱員，而在採用或使用有關稱銜時，他是為該人在該類活動中行事的。
- (8) 除非以下規定獲符合，否則任何人不得採用或使用在附表 6 中與在第 2 欄中提述本款之處相對之處列出的任何指明稱銜——

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- (b) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 4 regulated activity by a person registered for that regulated activity, while acting in that capacity.
- (5) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—
- (a) the person is licensed or registered for Type 5 regulated activity; or
  - (b) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 5 regulated activity by a person registered for that regulated activity, while acting in that capacity.
- (6) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—
- (a) the person is licensed or registered for Type 6 regulated activity; or
  - (b) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 6 regulated activity by a person registered for that regulated activity, while acting in that capacity.
- (7) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—
- (a) the person is licensed or registered for Type 7 regulated activity;



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- (a) 他就第 8 類受規管活動獲發牌；
  - (b) 他是認可財務機構；或
  - (c) 他受聘於認可財務機構，而在採用或使用有關稱銜時，他是為該機構在一項若非有附表 5 第 2 部中**證券保證金融資**的定義的第 (v) 段，便會構成該定義所指的證券保證金融資的活動中行事的。
- (9) 任何人不得採用或使用第 (1)、(2)、(3)、(4)、(5)、(6)、(7) 或 (8) 款提述的任何指明稱銜以外的，並顯示——
- (a) 他是經營上述某款所提述的受規管活動的業務；或
  - (b) 他就以業務形式進行的上述某款所提述的受規管活動執行任何受規管職能，
- 的稱銜，但如該人符合該款某段的描述，則屬例外。
- (10) 任何人違反第 (1)、(2)、(3)、(4)、(5)、(6)、(7)、(8) 或 (9) 款，即屬犯罪，一經定罪，可處第 6 級罰款，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$2,000。

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- (b) the person is granted an authorization under section 95(2) to provide automated trading services;
  - (c) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 7 regulated activity by a person registered for that regulated activity, while acting in that capacity; or
  - (d) the person is an employee of a person authorized under section 95(2) to provide automated trading services, while acting for that person in that regulated activity.
- (8) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless the person—
- (a) is licensed for Type 8 regulated activity;
  - (b) is an authorized financial institution; or
  - (c) is engaged by an authorized financial institution, while acting for the institution in an activity that would have fallen within the meaning of the definition of **securities margin financing** in Part 2 of Schedule 5 but for paragraph (v) of that definition.
- (9) A person shall not take or use any title, other than any specified title referred to in subsection (1), (2), (3), (4), (5), (6), (7) or (8), which suggests that—
- (a) he carries on a business in any regulated activity referred to in any of those subsections; or
  - (b) he performs any regulated function in relation to a regulated activity referred to in any of those subsections which is carried on as a business,
- unless he falls within the description specified in a paragraph of such of those subsections.

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## 140. 程序規定

- (1) 如證監會的初步意向是——
  - (a) 完全或局部拒絕根據本部提出的申請；
  - (b) 在批准有關申請時施加條件；或
  - (c) 修訂或撤銷以下項目的條件或就以下項目施加新的條件——
    - (i) 根據第 116、117、120 或 121 條批給的牌照，或根據第 119 條所作的註冊；
    - (ii) 根據第 122 條批准或轉移的隸屬關係；
    - (iii) 根據第 126 條就某人成為負責人員或根據第 132 條就某人成為或繼續作為（視屬何情況而定）大股東給予的核准；或
    - (iv) 根據第 134(1) 條作出的修改或寬免，
 則證監會須在作出最終決定前——
  - (i) 將形成初步意向的理由告知申請人或有關的持牌法團、註冊機構、持牌代表、負責人員或獲核准的大股東（視屬何情況而定）；及
  - (ii) 給予該人合理的陳詞機會。
- (2) 當證監會作出最終決定時，該會須在合理地切實可行的範圍內盡快以書面將作出該決定的理由通知申請人或有關的持牌法團、註冊機構、持牌代表、負責人員或獲核准的大股東（視屬何情況而定）。

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

## 140. Procedural requirements

- (1) If the Commission forms a preliminary view to—
  - (a) refuse the whole or a part of an application made under this Part;
  - (b) impose conditions on approving an application; or
  - (c) amend or revoke the conditions of, or impose new conditions to—
    - (i) a licence granted under section 116, 117, 120 or 121, or any registration under section 119;
    - (ii) an accreditation approved or transferred under section 122;
    - (iii) an approval for a person to be a responsible officer under section 126 or to become or continue to be (as the case may be) a substantial shareholder under section 132; or
    - (iv) a modification or waiver granted under section 134(1),
 then the Commission shall, before making its final decision—
  - (i) inform the applicant or the relevant licensed corporation, registered institution, licensed representative, responsible officer or approved substantial shareholder (as the case may be) of the ground for the preliminary view; and
  - (ii) give such person a reasonable opportunity of being heard.

**141. 將通知等送達持牌人**

- (1) 不論第 400 條有任何規定，為本條例的目的向持牌人或須向持牌人發出或送達（不論實際如何稱述）的任何書面通知、決定或指示或其他文件（不論實際如何稱述），就所有目的而言，只有在以下情況下，方可視為已妥為發出或送達——
- (a) 該持牌人屬個人，而該通知、決定或指示或文件——
- (i) 由專人交付他本人；或
  - (ii) (A) 留在或郵寄往他依據第 120(6) 或 121(4) 條（視屬何情況而定）提供予證監會的最後的住址；
  - (B) 藉傳真傳送往他如此提供的最後的傳真號碼；或
  - (C) 藉電子郵件遞傳送往他如此提供的最後的電子郵件地址；或
- (b) 該持牌人屬法團，而該通知、決定或指示或文件——
- (i) 由專人交付該法團的任何高級人員；或
  - (ii) (A) 留在或郵寄往它依據第 116、117、130(1)、135(2) 或 138(4) 條（視屬何情況而定）提供予證監會的最後的地址；
  - (B) 藉傳真傳送往它如此提供的最後的傳真號碼；或

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

**141. Service of notices, etc. on licensed persons**

- (1) Notwithstanding section 400, any written notice, decision or direction or other document (however described) to be, or required to be, issued or served (however described) to or on a licensed person for the purposes of this Ordinance shall for all purposes be regarded as duly issued or served only if—
- (a) in the case of an individual, it is—
- (i) delivered to him by hand; or
  - (ii) (A) left at, or sent by post to, the last residential address;
  - (B) sent by facsimile transmission to the last facsimile number; or
  - (C) sent by electronic mail transmission to the last electronic mail address,
  - provided by the person to the Commission pursuant to section 120(6) or 121(4) (as the case may be); or
- (b) in the case of a corporation, it is—
- (i) delivered to any officer of the corporation by hand; or
  - (ii) (A) left at, or sent by post to, the last address;
  - (B) sent by facsimile transmission to the last facsimile number; or

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(C) 藉電子郵遞傳送往它如此提供的最後的電子郵件地址。

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

- (a) 如是留在某地址的，須視為在如此留下之時；
- (b) 如是郵寄往某地址的，須視為在經一般郵遞程序應寄達之時；
- (c) 如是藉傳真傳送往某傳真號碼的，須視為在經一般傳真程序應可在該號碼接獲之時；或
- (d) 如是藉電子郵遞傳送往某電子郵件地址的，須視為在經一般電子郵遞程序應可在該地址接獲之時，發出或送達該持牌人，並為他所知悉。

#### 142. 附表 5 的修訂

財政司司長可藉憲報公告修訂附表 5。

#### 143. 附表 6 的修訂

證監會可藉憲報公告修訂附表 6。

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(C) sent by electronic mail transmission to the last electronic mail address,

provided by the corporation to the Commission pursuant to section 116, 117, 130(1), 135(2) or 138(4) (as the case may be).

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

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

#### 142. Amendment of Schedule 5

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

#### 143. Amendment of Schedule 6

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

**第 VI 部****關乎中介人的資本規定、客戶資產、紀錄及審計***(格式變更——2015 年第 3 號編輯修訂紀錄)***第 1 分部 —— 釋義****144. 第 VI 部的釋義**

在本部中，除文意另有所指外——

**指明數額規定** (specified amount requirements) 指依據第 145(2)(a)(i) 條在財政資源規則中指明的規定。**第 2 分部 —— 資本規定****145. 持牌法團的財政資源**

- (1) 證監會可在諮詢財政司司長後訂立規則，規定持牌法團須維持該等規則指明的財政資源。
- (2) 在不局限第 (1) 款的一般性及不損害第 398(7) 及 (8) 條的原則下，證監會可在第 (1) 款提述的規則中——
  - (a) 規定持牌法團按照以下的規定維持財政資源——
    - (i) 指明的關於須維持的財政資源數額的規定；及
    - (ii) 任何其他指明的規定；
  - (b) 指明為施行該等規則而確定持牌法團的財政資源數額時，根據該等規則須予考慮的資產、負債及其他事宜，並指明為此目的對該等資產、負債及其他事宜作出考慮的範圍及方式；

**Part VI****Capital Requirements, Client Assets, Records and Audit Relating to Intermediaries***(Format changes—E.R. 3 of 2015)***Division 1—Interpretation****144. Interpretation of Part VI**

In this Part, unless the context otherwise requires—

**specified amount requirements** (指明數額規定) means the requirements specified in the financial resources rules pursuant to section 145(2)(a)(i).**Division 2—Capital requirements****145. Financial resources of licensed corporations**

- (1) The Commission may, after consultation with the Financial Secretary, make rules requiring licensed corporations to maintain such financial resources as are specified in the rules.
- (2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—
  - (a) require licensed corporations to maintain financial resources in accordance with—
    - (i) specified requirements as to the amount in which they are to be maintained; and
    - (ii) any other specified requirements;
  - (b) specify the assets, liabilities and other matters to be taken into account under the rules to determine



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

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

**145A. 證監會可就個別持牌法團更改財政資源規則**

- (1) 證監會如經顧及與某從事涉及場外衍生工具交易的作為的持牌法團有關聯的風險，基於合理理由信納，更改適用於該法團的任何財政資源規則屬穩妥做法，即可藉向該法團送達書面通知，作出該項更改。
- (2) 證監會如擬根據第 (1) 款，向持牌法團送達通知，須向該法團送達該通知的草擬本 (**通知草擬本**)。
- (3) 通知草擬本須 ——
  - (a) 指明 ——
    - (i) 擬更改甚麼財政資源規則；
    - (ii) 擬以何種方式，更改該規則；及
    - (iii) 擬作出該更改的理由；及
  - (b) 包含一項陳述，指出在自該通知草擬本送達日期起計的 14 日 (或在證監會於個別個案中容許的較長限期) 內，有關法團可就該通知草擬本所指明的任何或所有事宜，向證監會作出書面申述。
- (4) 凡有通知草擬本送達某持牌法團，而該法團按照第 (3)(b) 款作出申述，在證監會考慮該等申述後 ——
  - (a) 證監會可根據第 (1) 款，向該法團送達內容與該通知草擬本大致相同的通知；
  - (b) 如該等申述中任何一項或多於一項 (**有關申述**)，令證監會信納應修改通知的內容，則證監會可在顧及

- (g) require licensed corporations to submit returns to the Commission in response to a request by the Commission for information relating to their financial resources and trading activities;
- (h) provide for any other matter relating to financial resources of licensed corporations.

**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 acts involving 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.

- 有關申述下作出該項修改，並根據第 (1) 款，向該法團送達內容經修改的通知；或
- (c) 如有關申述令證監會信納不應採取 (a) 段所述的行動，亦不應採取 (b) 段所述的行動，則證監會可因此選擇不根據第 (1) 款向該法團送達通知。
- (5) 如有通知草擬本送達某持牌法團，但該法團沒有按照第 (3)(b) 款，就該通知草擬本作出申述，則證監會可根據第 (1) 款，向該法團送達內容與該通知草擬本大致相同的通知。
- (6) 如適用於某從事場外衍生工具交易的持牌法團的任何財政資源規則，根據本條被更改，則本部 (包括根據第 145 條訂立的規則) 就該法團而適用，但須顧及經更改的財政資源規則，作出必要的變通。
- (7) 為免生疑問 ——
- (a) 證監會可向某持牌法團送達通知草擬本，以取代較早前送達該法團的另一份通知草擬本；及
- (b) 在第 (4)(a) 及 (5) 款中，凡提述“內容與該通知草擬本大致相同”，不得解釋為包括第 (3)(b) 款規定須包含在通知草擬本內的陳述。
- (8) 凡財政資源規則根據第 (1) 款更改，該項更改的生效時間，是更改的書面通知根據該款送達有關持牌法團之時，或該通知指明的時間，兩者以較遲者為準。

(由 2014 年第 6 號第 14 條增補)

- (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

**146. 沒有遵守財政資源規則**

- (1) 如任何持牌法團察覺本身無能力按照適用於它的指明數額規定維持財政資源，或察覺本身無能力確定它是否如此維持財政資源，則該法團須——
  - (a) 在合理地切實可行的範圍內盡快以書面將此事通知證監會；及
  - (b) 除第 (2) 款另有規定外，立即停止進行它獲發牌進行的受規管活動，但為完成證監會所准許的交易而進行的活動則除外。
- (2) 證監會如認為適當，可准許任何根據第 (1)(a) 款給予通知的持牌法團在該會以口頭或書面通知施加的條件的規限下，進行該法團獲發牌進行的受規管活動。
- (3) 如任何持牌法團察覺本身無能力遵從財政資源規則中適用於它的全部或任何規定（指明數額規定除外），或察覺本身無能力確定它是否遵從該等規定，則該法團須在隨後一個營業日內，以書面將此事通知證監會。
- (4) 在不局限財政資源規則及根據第 151 條訂立的規則的一般性的原則下，財政資源規則中的任何規定所適用的持牌法團須——
  - (a) 備存紀錄，而該等紀錄的詳盡程度須足以令人輕易確定該等規定是否全部獲得遵從；及

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.

*(Added 6 of 2014 s. 14)*

**146. Failure to comply with financial resources rules**

- (1) If a licensed corporation becomes aware of its inability to maintain, or to ascertain whether it maintains, financial resources in accordance with the specified amount requirements that apply to it, it shall—
  - (a) as soon as reasonably practicable notify the Commission by notice in writing of that fact; and
  - (b) subject to subsection (2), immediately cease carrying on any regulated activity for which it is licensed, otherwise than for the purpose of completing such transactions as the Commission may permit.
- (2) Where the Commission considers appropriate, the Commission may permit a licensed corporation which gives notice to the Commission under subsection (1)(a) to carry on any regulated activity for which it is licensed, subject to such conditions as may be imposed by the Commission by notice given to it, whether orally or in writing.
- (3) If a licensed corporation becomes aware of its inability to comply with, or to ascertain whether it complies with, all or any of the requirements of the financial resources rules that apply to it, other than the specified amount requirements, it shall within one business day thereafter notify the Commission by notice in writing of that fact.



- (b) 在證監會藉送達書面通知予該法團，要求提供該等紀錄的情況下，在該通知送達後 5 個營業日內向證監會提供該等紀錄。
- (5) 在不損害第 194 及 195 條的原則下，如證監會合理地相信任何持牌法團無能力按照適用於它的指明數額規定維持財政資源，或無能力確定本身是否如此維持財政資源，則不論該法團是否已根據第 (1)(a) 款給予通知，該會均可——
- (a) 藉送達予該法團的書面通知，就該法團獲發牌進行的所有或任何受規管活動或其中任何部分，將該牌照暫時吊銷一段證監會指明的期間或直至該會指明的事件發生為止；或
- (b) 准許該法團在證監會藉口頭或書面通知施加的條件的規限下，進行它獲發牌進行的受規管活動。
- (6) 凡證監會藉給予任何持牌法團書面通知而依據第 (2) 或 (5)(b) 款施加任何條件，該會可藉給予該法團口頭或另一書面通知而按該另一通知指明的方式，修訂任何該等條件，而凡任何條件被如此修訂——
- (a) 該等條件須按修訂後的內容而具有效力；及
- (b) 如修訂是藉書面通知作出的，則本款的條文在作出必要的變通後，適用於該等經修訂的條件，猶如該等條件是依據第 (2) 或 (5)(b) 款（視屬何情況而定）施加的一樣。
- (7) 凡證監會藉給予任何持牌法團口頭通知而依據第 (2) 或 (5)(b) 款施加任何條件或根據第 (6) 款修訂任何條件，該會須在合理地切實可行的範圍內盡快另行給予該法團書面通知，以確認所施加的條件或經修訂的條件（視屬何情況而定）；該會亦可在該書面通知中指明對該等條件作出的修訂（如有的話），而凡任何條件在任何修訂的規限下獲確認——
- (a) 該等條件須按修訂後的內容而具有效力；及

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



- (b) 第 (6) 款在作出必要的變通後，適用於該等經修訂的條件，猶如該等條件是依據第 (2) 或 (5)(b) 款 (視屬何情況而定) 施加的一樣。
- (8) 如某法團已在就證監會依據第 (2) 或 (5)(b) 款施加任何條件或根據第 (6) 款修訂任何條件而依據第 (12) 款作出的陳詞中，提出證監會只可藉給予該法團書面通知而施加或修訂 (視屬何情況而定) 該等條件的要求，則不論本條有任何規定，證監會均不得藉給予該法團口頭通知而施加或修訂 (視屬何情況而定) 該等條件。
- (9) 證監會根據第 (5)(a) 款作出的暫時吊銷牌照，在該會就該項暫時吊銷而依據該款送達通知時或在該通知指明的時間 (兩者以較遲者為準) 生效。
- (10) 證監會依據第 (2) 或 (5)(b) 款施加的任何條件，或根據或依據第 (6) 或 (7) 款作出的修訂，在該會就該項施加或修訂而依據第 (2)、(5)(b)、(6) 或 (7) 款 (視屬何情況而定) 給予通知時或在該通知指明的時間 (兩者以較遲者為準) 生效。
- (11) 如任何牌照根據第 (5)(a) 款被暫時吊銷，則第 200(1)、201(2) 及 (5)、202 及 203 條在作出必要的變通後，適用於該項暫時吊銷，猶如該項暫時吊銷是根據第 194 或 195 條作出的一樣。
- (12) 不論本條有任何規定，除非證監會已給予有關持牌法團合理的陳詞機會，否則不得就該法團而行使該會在第 (1)(b)、(2)、(4)(b)、(5)、(6)、(7)、(9) 或 (10) 款下的任何權力。
- (13) 任何持牌法團違反第 (1)(a) 或 (b) 款，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$100,000；或
- (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$10,000。

- given to the licensed corporation, whether orally or in writing, and where any of the conditions are so amended—
- (a) such conditions shall have effect subject to the amendment accordingly; and
- (b) where the conditions are amended by notice in writing, this subsection shall apply, with necessary modifications, to the conditions as so amended as if they had been imposed pursuant to subsection (2) or (5)(b) (as the case may be).
- (7) Where any conditions are imposed pursuant to subsection (2) or (5)(b), or amended under subsection (6), by notice given to a licensed corporation otherwise than in writing, the Commission shall as soon as reasonably practicable give the licensed corporation a further notice in writing to confirm the conditions imposed or the conditions as amended (as the case may be), subject to such amendment (if any) in respect of the conditions as it may specify in the notice, and where any conditions are so confirmed subject to any amendment—
- (a) the conditions shall have effect subject to the amendment accordingly; and
- (b) subsection (6) shall apply, with necessary modifications, to the conditions as so amended as if they had been imposed pursuant to subsection (2) or (5)(b) (as the case may be).
- (8) Notwithstanding anything in this section, the Commission shall not impose any conditions pursuant to subsection (2) or (5)(b), or amend any conditions under subsection (6), by notice given to a licensed corporation otherwise than in writing if the licensed corporation has on the occasion of being heard pursuant to subsection (12) in respect of the imposition or amendment (as the case may be) made a

- (14) 任何持牌法團違反依據第 (2) 或 (5)(b) 款施加的任何條件，或根據或依據第 (6) 或 (7) 款修訂的任何條件，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$100,000；或
- (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$10,000。
- (15) 任何持牌法團無合理辯解而違反第 (3) 款，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 1 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
- (16) 任何持牌法團違反第 (4) 款，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (17) 財政資源規則可規定如任何持牌法團無合理辯解而沒有遵守財政資源規則中適用於它的任何指明條文（施加任何指明數額規定的條文除外），即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處不超過罰款 \$200,000 及監禁 1 年的指明罰則；
- (b) 一經循簡易程序定罪，可處不超過第 5 級罰款及監禁 6 個月的指明罰則。

- request to the Commission that the conditions shall only be so imposed, or amended, by notice given to it in writing.
- (9) The suspension of a licence under subsection (5)(a) takes effect at the time when notice is served in respect of it pursuant to that subsection or at the time specified in the notice, whichever is the later.
- (10) The imposition of any conditions pursuant to subsection (2) or (5)(b), or the amendment of any conditions under or pursuant to subsection (6) or (7), takes effect at the time when notice is given in respect of it pursuant to such subsection or at the time specified in the notice, whichever is the later.
- (11) Where a licence of a licensed corporation is suspended under subsection (5)(a), sections 200(1), 201(2) and (5), 202 and 203 shall apply, with necessary modifications, in relation to the suspension as if it were a suspension under section 194 or 195.
- (12) Notwithstanding anything in this section, the Commission shall not exercise any power under subsection (1)(b), (2), (4)(b), (5), (6), (7), (9) or (10) in respect of a licensed corporation unless the Commission has given the licensed corporation a reasonable opportunity of being heard.
- (13) A licensed corporation which contravenes subsection (1)(a) or (b) commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

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

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

**147. 監察持牌法團是否遵守財政資源規則**

- (1) 證監會可隨時藉送達書面通知予持牌法團的主管人員，要求該法團令該會信納該法團有遵從所有適用於它的財政資源規則的規定。
- (2) 在不局限第 (1) 款的一般性的原則下，為確定某持牌法團是否有遵從所有適用於它的財政資源規則的規定，證監會及根據第 (12) 款獲授權的人可行使第 162 條所提述的核數師的任何權力。
- (3) 在不損害第 194 及 195 條的原則下，如任何持牌法團在證監會根據第 (1) 款提出要求時，沒有令該會信納該法團有按照適用於它的指明數額規定維持財政資源，則該會可 ——
  - (a) 藉送達予該法團的書面通知，就該法團獲發牌進行的所有或任何受規管活動或其中任何部分，將該牌照暫時吊銷一段證監會指明的期間或直至該會指明的事件發生為止；或
  - (b) 准許該法團在證監會藉口頭或書面通知施加的條件的規限下，進行它獲發牌進行的受規管活動。
- (4) 凡證監會藉給予任何持牌法團書面通知而依據第 (3)(b) 款施加任何條件，該會可藉給予該法團口頭或另一書面通知而按該另一通知指明的方式，修訂任何該等條件，而凡任何條件被如此修訂 ——
  - (a) 該等條件須按修訂後的內容而具有效力；及

- (a) on conviction on indictment a fine of \$200,000 and a term of imprisonment of 1 year;
  - (b) on summary conviction a fine at level 5 and a term of imprisonment of 6 months.
- (18) A licensed corporation is not excused from complying with subsection (3) only on the ground that to do so might tend to incriminate it.

**147. Monitoring compliance with financial resources rules**

- (1) The Commission may at any time, by notice in writing served on an executive officer of a licensed corporation, require the licensed corporation to satisfy the Commission that it complies with all of the requirements of the financial resources rules that apply to it.
- (2) Without limiting the generality of subsection (1), the Commission and any person authorized by the Commission under subsection (12) may exercise any of the powers of an auditor referred to in section 162 for the purpose of ascertaining whether a licensed corporation complies with all of the requirements of the financial resources rules that apply to it.
- (3) Without prejudice to sections 194 and 195, where a licensed corporation, upon being required to do so under subsection (1), fails to satisfy the Commission that it maintains financial resources in accordance with the specified amount requirements that apply to it, the Commission may ——
  - (a) by notice in writing served on the licensed corporation suspend the licensed corporation's licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is licensed for such period or until the occurrence of such event as the Commission may specify; or



- (b) 如修訂是藉書面通知作出的，則本款的條文在作出必要的變通後，適用於該等經修訂的條件，猶如該等條件是依據第 (3)(b) 款施加的一樣。
- (5) 凡證監會藉給予任何持牌法團口頭通知而依據第 (3)(b) 款施加任何條件或根據第 (4) 款修訂任何條件，該會須在合理地切實可行的範圍內盡快另行給予該法團書面通知，以確認所施加的條件或經修訂的條件（視屬何情況而定）；該會亦可在該書面通知中指明對該等條件作出的修訂（如有的話），而凡任何條件在任何修訂的規限下獲確認——
- (a) 該等條件須按修訂後的內容而具有效力；及
- (b) 第 (4) 款在作出必要的變通後，適用於該等經修訂的條件，猶如該等條件是依據第 (3)(b) 款施加的一樣。
- (6) 如某法團已在就證監會依據第 (3)(b) 款施加任何條件或根據第 (4) 款修訂任何條件而依據第 (10) 款作出的陳詞中，提出證監會只可藉給予該法團書面通知而施加或修訂（視屬何情況而定）該等條件的要求，則不論本條有任何規定，證監會均不得藉給予該法團口頭通知而施加或修訂（視屬何情況而定）該等條件。
- (7) 證監會根據第 (3)(a) 款作出的暫時吊銷牌照，在該會就該項暫時吊銷而依據該款送達通知時或在該通知指明的時間（兩者以較遲者為準）生效。
- (8) 證監會依據第 (3)(b) 款施加的任何條件，或根據或依據第 (4) 或 (5) 款作出的修訂，在該會就該項施加或修訂而依據第 (3)(b)、(4) 或 (5) 款（視屬何情況而定）給予通知時或在該通知指明的時間（兩者以較遲者為準）生效。
- (9) 如任何牌照根據第 (3)(a) 款被暫時吊銷，則第 200(1)、201(2) 及 (5)、202 及 203 條在作出必要的變通後，適用於該項暫時吊銷，猶如該項暫時吊銷是根據第 194 或 195 條作出的一樣。
- (10) 不論本條有任何規定，除非證監會或任何獲該會根據第 (12) 款授權的人已給予有關持牌法團合理的陳詞機會，否則——

- (b) permit the licensed corporation to carry on any regulated activity for which it is licensed, subject to such conditions as may be imposed by the Commission by notice given to it, whether orally or in writing.
- (4) Where any conditions are imposed pursuant to subsection (3)(b) by notice given to a licensed corporation in writing, the Commission may amend any of the conditions in such manner as may be specified by the Commission, by notice given to the licensed corporation, whether orally or in writing, and where any of the conditions are so amended—
- (a) such conditions shall have effect subject to the amendment accordingly; and
- (b) where the conditions are amended by notice in writing, this subsection shall apply, with necessary modifications, to the conditions as so amended as if they had been imposed pursuant to subsection (3)(b).
- (5) Where any conditions are imposed pursuant to subsection (3)(b), or amended under subsection (4), by notice given to a licensed corporation otherwise than in writing, the Commission shall as soon as reasonably practicable give the licensed corporation a further notice in writing to confirm the conditions imposed or the conditions as amended (as the case may be), subject to such amendment (if any) in respect of the conditions as it may specify in the notice, and where any conditions are so confirmed subject to any amendment—
- (a) the conditions shall have effect subject to the amendment accordingly; and
- (b) subsection (4) shall apply, with necessary modifications, to the conditions as so amended as if they had been imposed pursuant to subsection (3)(b).
- (6) Notwithstanding anything in this section, the Commission shall not impose any conditions pursuant to subsection (3)(b),



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- (a) 該會或該人 (視屬何情況而定) 不得就該法團而行使在第 (2) 款下的任何權力;
- (b) 該會不得就該法團而行使在第 (3)、(4)、(5)、(7) 或 (8) 款下的任何權力。
- (11) 任何持牌法團違反依據第 (3)(b) 款施加的任何條件, 或根據或依據第 (4) 或 (5) 款修訂的任何條件, 即屬犯罪——
  - (a) 一經循公訴程序定罪, 可處罰款 \$1,000,000 及監禁 2 年, 如屬持續的罪行, 則可就罪行持續期間的每一日, 另處罰款 \$100,000; 或
  - (b) 一經循簡易程序定罪, 可處第 6 級罰款及監禁 6 個月, 如屬持續的罪行, 則可就罪行持續期間的每一日, 另處罰款 \$10,000。
- (12) 為施行第 (2) 款, 證監會可以書面授權任何人行使該款所述的任何權力。

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- or amend any conditions under subsection (4), by notice given to a licensed corporation otherwise than in writing if the licensed corporation has on the occasion of being heard pursuant to subsection (10) in respect of the imposition or amendment (as the case may be) made a request to the Commission that the conditions shall only be so imposed, or amended, by notice given to it in writing.
- (7) The suspension of a licence under subsection (3)(a) takes effect at the time when notice is served in respect of it pursuant to that subsection or at the time specified in the notice, whichever is the later.
- (8) The imposition of any conditions pursuant to subsection (3)(b), or the amendment of any conditions under or pursuant to subsection (4) or (5), takes effect at the time when notice is given in respect of it pursuant to such subsection or at the time specified in the notice, whichever is the later.
- (9) Where a licence of a licensed corporation is suspended under subsection (3)(a), sections 200(1), 201(2) and (5), 202 and 203 shall apply, with necessary modifications, in relation to the suspension as if it were a suspension under section 194 or 195.
- (10) Notwithstanding anything in this section—
  - (a) the Commission or any person authorized by the Commission under subsection (12) shall not exercise any power under subsection (2) in respect of a licensed corporation;
  - (b) the Commission shall not exercise any power under subsection (3), (4), (5), (7) or (8) in respect of a licensed corporation,
 unless the Commission or the person (as the case may be) has given the licensed corporation a reasonable opportunity of being heard.

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### 第 3 分部 —— 客戶資產

### Division 3—Client assets

#### 148. 由中介人及其有聯繫實體持有的客戶證券及抵押品

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

- (1) 證監會可訂立規則，規定中介人及其有聯繫實體以該等規則指明的方式，對待和處理中介人的客戶證券及抵押品，並確保由任何其他人代中介人或其有聯繫實體（視屬何情況而定）收取或持有的中介人的客戶證券及抵押品，亦獲以該等方式對待和處理。
- (2) 在不局限第 (1) 款的一般性及不損害第 398(7) 及 (8) 條的原則下，證監會可在第 (1) 款提述的規則中 ——
  - (a) 規定以指明的方式持有及交代中介人的客戶證券及抵押品；
  - (b) 規定客戶證券及抵押品只可以指明的方式存放、轉讓、借出、質押、再質押或作其他形式的處理；
  - (c) 指明中介人或其有聯繫實體可在何種情況下，處理屬合法申索權或留置權的標的之客戶證券及抵押品；

- (11) A licensed corporation which contravenes a condition imposed pursuant to subsection (3)(b), or as amended under or pursuant to subsection (4) or (5), commits an offence and is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.
- (12) For the purposes of subsection (2), the Commission may authorize any person in writing to exercise any of the powers referred to in that subsection.

- (1) The Commission may make rules requiring intermediaries and their associated entities to treat and deal with client securities and collateral of the intermediaries, and to ensure that client securities and collateral of the intermediaries that are received or held by any other person on behalf of the intermediaries or the associated entities (as the case may be) are treated and dealt with, in such manner as is specified in the rules.
- (2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—
  - (a) require client securities and collateral of intermediaries to be held, and accounted for, in the specified manner;

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- (d) 就於證監會認為適當的條件下，核准任何公司或非香港公司為適合負責穩妥保管客戶證券及抵押品，作出規定；(由 2004 年第 30 號第 3 條修訂)
  - (e) 規定中介人及其有聯繫實體確保(或採取合理步驟以確保)代中介人或其有聯繫實體(視屬何情況而定)收取或持有客戶證券及抵押品的人遵從指明的規定；
  - (f) 規定以指明的方式備存關於客戶證券及抵押品的紀錄(包括就該等客戶證券及抵押品在中介人或其有聯繫實體的帳戶的提存所進行的對帳的紀錄)；
  - (g) 規定在證監會提出要求時或每隔指明的期間，向該會呈交指明的資料、紀錄及文件，以便該會能夠輕易確定該等規則是否獲得遵守；
  - (h) 規定將指明的事宜以及與該等事宜有關的情況，通知中介人的客戶或證監會或上述兩者；
  - (i) 規定任何人如察覺他沒有遵守該等規則中適用於他的任何指明條文，即須在指明時間內將此事及任何進一步的指明的資料通知證監會；
  - (j) 就關乎客戶證券及抵押品的任何其他事宜，作出規定。
- (3) 除非根據本條訂立的規則另有規定，否則中介人的客戶證券及抵押品不得在針對該中介人或其有聯繫實體而執行法庭命令或法庭程序文件時取去。
- (4) 根據本條訂立的規則可規定，凡任何中介人或中介人的有聯繫實體無合理辯解而違反該等規則中對其適用的任何指明條文，即屬犯罪——
- (a) 一經循公訴程序定罪，可處不超過罰款 \$200,000 及監禁 2 年的指明罰則；
  - (b) 一經循簡易程序定罪，可處不超過第 6 級罰款及監禁 6 個月的指明罰則。

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- (b) provide that the client securities and collateral shall not be deposited, transferred, lent, pledged, repledged or otherwise dealt with except in the specified manner;
- (c) specify the circumstances in which the client securities and collateral may, notwithstanding that they are subject to a lawful claim or lien, be dealt with by intermediaries or their associated entities;
- (d) provide for the approval, subject to such conditions as the Commission considers appropriate, of companies or non-Hong Kong companies as being suitable for the safe custody of the client securities and collateral; (*Amended 30 of 2004 s. 3*)
- (e) require intermediaries and their associated entities to ensure, or to take reasonable steps to ensure, that persons who receive or hold the client securities and collateral on behalf of the intermediaries or the associated entities (as the case may be) comply with specified requirements;
- (f) require the maintenance of records in relation to the client securities and collateral (including records of performance of reconciliations in respect of movements of the client securities and collateral into and out of accounts of intermediaries or their associated entities) in the specified manner;
- (g) require the submission to the Commission, upon request or at specified intervals, of specified information, records and documents for the purpose of enabling the Commission to ascertain readily whether the rules are being complied with;
- (h) require specified matters, and the circumstances relevant thereto, to be notified to the clients of intermediaries or the Commission, or both;

- (5) 根據本條訂立的規則可規定，凡任何中介人或中介人的有聯繫實體意圖詐騙而違反該等規則中對其適用的任何指明條文，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處不超過罰款 \$1,000,000 及監禁 7 年的指明罰則；
- (b) 一經循簡易程序定罪，可處不超過罰款 \$500,000 及監禁 1 年的指明罰則。
- (6) 任何人不得僅以遵從依據第 (2)(i) 款訂立的任何規則中關於給予證監會通知的規定可能會導致他入罪為理由，而獲豁免遵從該規定。
- (7) 不論本條有任何規定 ——
- (a) 證監會根據本條就中介人訂立規則的權力，在該等中介人屬註冊機構的情況下，須視為只就該等中介人訂立與他們在經營構成他們獲註冊進行的任何受規管活動的業務過程中所收取或持有的客戶證券及抵押品有關的規則的權力；
- (b) 證監會根據本條就中介人的有聯繫實體訂立規則的權力，在該等實體屬認可財務機構的情況下，須視為只就該等實體訂立與他們在經營收取或持有該等中介人的客戶證券及抵押品的業務過程中所收取或持有的客戶證券及抵押品有關的規則的權力。

- (i) require a person who becomes aware that he does not comply with any specified provision of the rules that applies to him to notify the Commission of that fact and of any further specified information, within the specified time;
- (j) provide for any other matter relating to the client securities and collateral.
- (3) Except as provided in the rules made under this section, client securities and collateral of an intermediary are not liable to be taken in execution against the intermediary or an associated entity of the intermediary under the order or process of a court.
- (4) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—
- (a) on conviction on indictment a fine of \$200,000 and a term of imprisonment of 2 years;
- (b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.
- (5) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, with intent to defraud, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—
- (a) on conviction on indictment a fine of \$1,000,000 and a term of imprisonment of 7 years;
- (b) on summary conviction a fine of \$500,000 and a term of imprisonment of 1 year.

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- (8) 不論第 (3) 款有任何規定 ——
- (a) 就註冊機構所收取或持有的客戶證券及抵押品而言，該等證券及抵押品須是該機構在經營構成它獲註冊進行的受規管活動的業務過程中所收取或持有的，第 (3) 款方適用於它們；
  - (b) 就某中介人的屬認可財務機構的有聯繫實體所收取或持有的客戶證券及抵押品而言，該等證券及抵押品須是該實體在經營收取或持有該中介人的客戶證券及抵押品的業務過程中所收取或持有的，第 (3) 款方適用於它們。

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- (6) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(i) to give notification to the Commission only on the ground that to do so might tend to incriminate the person.
- (7) Notwithstanding anything in this section—
  - (a) the power of the Commission to make rules under this section in respect of intermediaries shall, where the intermediaries are registered institutions, be regarded as the power to make rules in respect of the intermediaries only in relation to client securities and collateral received or held by them in the course of the businesses which constitute any regulated activities for which they are registered;
  - (b) the power of the Commission to make rules under this section in respect of associated entities shall, where the associated entities are authorized financial institutions, be regarded as the power to make rules in respect of the associated entities only in relation to client securities and collateral received or held by them in the course of their businesses of receiving or holding client securities and collateral of intermediaries of which they are associated entities.
- (8) Notwithstanding anything in subsection (3), that subsection—
  - (a) applies to client securities and collateral received or held by a registered institution only if the client securities and collateral were received or held by the registered institution in the course of the business which constitutes any regulated activity for which the registered institution is registered;
  - (b) applies to client securities and collateral received or held by an associated entity that is an authorized financial institution only if the client securities and collateral were



received or held by the associated entity in the course of its business of receiving or holding client securities and collateral of the intermediary of which the associated entity is an associated entity.

**149. 由持牌法團及其有聯繫實體持有的客戶款項**

- (1) 證監會可訂立規則，規定持牌法團及其有聯繫實體以該等規則指明的方式，對待和處理該法團的客戶款項。
- (2) 在不局限第 (1) 款的一般性及不損害第 398(7) 及 (8) 條的原則下，證監會可在第 (1) 款提述的規則中 ——
  - (a) 規定持牌法團的客戶款項或其任何部分須存入為客戶款項開立並指定為信託帳戶或客戶帳戶的獨立帳戶；
  - (b) 指明於何時及如何將客戶款項或其任何部分存入該等帳戶，並規定以指明的方式處理和交代該等款項；
  - (c) 指明無須存入該等帳戶的客戶款項的數額或比例，並指明將客戶款項存入該等帳戶前可作出的扣減；
  - (d) 指明可在何種情況下從該等帳戶提取客戶款項，包括可在何種情況下從該等帳戶提取屬合法申索權或留置權的標的之客戶款項；
  - (e) 規定以指明的方式處理和支付該等帳戶內的客戶款項所孳生的利息；
  - (f) 指明哪些在香港的人為可與之開立和維持該等帳戶的人；
  - (g) 規定在指明的情況下，須先獲得證監會的批准方可從該等帳戶提取客戶款項；
  - (h) 規定以指明的方式備存關於該等帳戶的紀錄（包括就客戶款項在該等帳戶的提存所進行的對帳的紀錄）；
  - (i) 規定在證監會提出要求時或每隔指明的期間，向該會呈交指明的資料、紀錄及文件，以便該會能夠輕易確定該等規則是否獲得遵守；

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

- (1) The Commission may make rules requiring licensed corporations and their associated entities to treat and deal with client money of the licensed corporations in such manner as is specified in the rules.
- (2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—
  - (a) require client money of licensed corporations or any part thereof to be paid into segregated accounts established for client money and designated as trust accounts or client accounts;
  - (b) specify when and how the client money or any part thereof is to be paid into such accounts and require it to be dealt with, and accounted for, in the specified manner;
  - (c) specify the amount or proportion of the client money that is not to be paid into such accounts, and the deductions that may be made before the client money is paid into such accounts;
  - (d) specify the circumstances in which the client money may be paid out of such accounts, including the circumstances in which the client money that is the subject of a lawful claim or lien may be paid out of such accounts;

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- (j) 規定須將指明的事宜以及與該等事宜有關的情況，通知持牌法團的客戶或證監會或上述兩者；
- (k) 規定任何人如察覺他沒有遵守該等規則中適用於他的任何指明條文，即須在指明的時間內將此事以及任何進一步的指明的資料通知證監會；
- (l) 就關乎客戶款項的任何其他事宜，作出規定。
- (3) 除非根據本條訂立的規則另有規定，否則持牌法團的客戶款項不得在針對該法團或其有聯繫實體而執行法庭命令或法庭程序文件時取去。
- (4) 根據本條訂立的規則可規定，凡任何持牌法團或持牌法團的有聯繫實體無合理辯解而違反該等規則中對其適用的任何指明條文，即屬犯罪 ——
  - (a) 一經循公訴程序定罪，可處不超過罰款 \$200,000 及監禁 2 年的指明罰則；
  - (b) 一經循簡易程序定罪，可處不超過第 6 級罰款及監禁 6 個月的指明罰則。
- (5) 根據本條訂立的規則可規定，凡任何持牌法團或持牌法團的有聯繫實體意圖詐騙而違反該等規則中對其適用的任何指明條文，即屬犯罪 ——
  - (a) 一經循公訴程序定罪，可處不超過罰款 \$1,000,000 及監禁 7 年的指明罰則；
  - (b) 一經循簡易程序定罪，可處不超過罰款 \$500,000 及監禁 1 年的指明罰則。
- (6) 任何人不得僅以遵從依據第 (2)(k) 款訂立的任何規則中關於給予證監會通知的規定可能會導致他入罪為理由，而獲豁免遵從該規定。
- (7) 不論本條有任何規定，根據本條訂立的規則不適用於屬認可財務機構的有聯繫實體。

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

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- (8) 如持牌法團的客戶款項是由屬認可財務機構的有聯繫實體所收取或持有的，則不論第 (3) 款有任何規定，該款並不阻止該等款項在針對該實體而執行判決時取去。

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- (4) Rules made under this section may provide that a licensed corporation, or an associated entity of a licensed corporation, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—
- (a) on conviction on indictment a fine of \$200,000 and a term of imprisonment of 2 years;
  - (b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.
- (5) Rules made under this section may provide that a licensed corporation, or an associated entity of a licensed corporation, which, with intent to defraud, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—
- (a) on conviction on indictment a fine of \$1,000,000 and a term of imprisonment of 7 years;
  - (b) on summary conviction a fine of \$500,000 and a term of imprisonment of 1 year.
- (6) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(k) to give notification to the Commission only on the ground that to do so might tend to incriminate the person.
- (7) Notwithstanding anything in this section, no rules made under this section shall apply to associated entities that are authorized financial institutions.
- (8) Notwithstanding anything in subsection (3), that subsection does not prevent client money of a licensed corporation that is received or held by an associated entity that is an authorized financial institution from being taken in execution against the associated entity.

**150. 申索權及留置權不受影響**

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

**第 4 分部 —— 紀錄****151. 中介人及其有聯繫實體須備存帳目及紀錄**

- (1) 證監會可訂立規則，規定 ——
  - (a) 中介人備存該等規則指明的帳目及紀錄；
  - (b) 中介人的有聯繫實體就它收取或持有的中介人的客戶資產，備存該等規則指明的帳目及紀錄。
- (2) 在不局限第 (1) 款的一般性及不損害第 398(7) 及 (8) 條的原則下，證監會可在第 (1) 款提述的規則中 ——
  - (a) 規定中介人及其有聯繫實體為指明的目的備存指明的帳目及紀錄；
  - (b) 就備存該等帳目及紀錄的方式作出規定；
  - (c) 就該等帳目及紀錄可予銷毀前須保留的時間及存放的地點，作出規定；
  - (d) 規定任何人如察覺他沒有遵守該等規則中適用於他的任何指明條文，即須在指明的時間內將此事及任何進一步的指明的資料通知證監會；
  - (e) 就關乎須備存的帳目及紀錄的其他事宜作出規定，而不論須由中介人或由其有聯繫實體備存。

**150. Claims and liens not affected**

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

**Division 4—Records****151. Keeping of accounts and records by intermediaries and their associated entities**

- (1) The Commission may make rules to provide for—
  - (a) the keeping by intermediaries of such accounts and records as are specified in the rules;
  - (b) the keeping by associated entities of intermediaries of such accounts and records in respect of client assets of the intermediaries that they receive or hold as are specified in the rules.
- (2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—
  - (a) require intermediaries and their associated entities to keep the specified accounts and records for specified purposes;
  - (b) provide for the manner in which the accounts and records are to be kept;

- (3) 在沒有相反證據的情況下，中介人或其有聯繫實體的帳目或紀錄中的記項，須當作是由該中介人或該實體（視屬何情況而定）作出，或在該中介人或該實體（視屬何情況而定）的授權下作出。
- (4) 任何人意圖詐騙而 ——
- (a) 在遵守根據本條訂立的規則或在看來是遵守該等規則而備存的帳目或紀錄中記入、記錄或貯存他知道在要項上屬虛假或具誤導性的事項，或致使在該等帳目或紀錄中記入、記錄或貯存該等事項；
- (b) 刪除、銷毀、移除或捏改或致使刪除、銷毀、移除或捏改任何已記入、記錄或貯存於為遵守根據本條訂立的規則或看來是為遵守該等規則而備存的帳目或紀錄的事項；或
- (c) 沒有在合理地切實可行的範圍內盡快在為遵守根據本條訂立的規則或看來是遵守該等規則而備存的帳目或紀錄中記入、記錄或貯存任何應如此記入、記錄或貯存的事項，
- 即屬犯罪 ——
- (i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 7 年；或
- (ii) 一經循簡易程序定罪，可處罰款 \$500,000 及監禁 1 年。
- (5) 根據本條訂立的規則可規定，凡任何中介人或中介人的有聯繫實體無合理辯解而違反該等規則中對其適用的任何指明條文，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處不超過罰款 \$200,000 及監禁 2 年的指明罰則；
- (b) 一經循簡易程序定罪，可處不超過第 6 級罰款及監禁 6 個月的指明罰則。

- (c) provide for the period for which, and the location at which, the accounts and records are to be kept before they may be destroyed;
- (d) require a person who becomes aware that he does not comply with any specified provision of the rules that applies to him to notify the Commission of that fact and of any further specified information, within the specified time;
- (e) provide for any other matter relating to accounts and records to be kept, whether by intermediaries or their associated entities.
- (3) An entry in the accounts or records of an intermediary or an associated entity of an intermediary shall, in the absence of evidence to the contrary, be deemed to have been made by or with the authority of the intermediary or the associated entity (as the case may be).
- (4) A person who, with intent to defraud—
- (a) enters, records or stores, or causes to be entered, recorded or stored, in any accounts or records kept in compliance with, or in purported compliance with, rules made under this section, any matter which he knows to be false or misleading in a material particular;
- (b) deletes, destroys, removes or falsifies, or causes to be deleted, destroyed, removed or falsified, any matter that has been entered, recorded or stored in any accounts or records kept in compliance with, or in purported compliance with, rules made under this section; or
- (c) fails to enter, record or store in any accounts or records kept in compliance with, or in purported compliance with, rules made under this section, as soon as reasonably practicable, any matter that should be so entered, recorded or stored,



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

- commits an offence and is liable—
- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
- (ii) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.
- (5) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—
- (a) on conviction on indictment a fine of \$200,000 and a term of imprisonment of 2 years;
- (b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.
- (6) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, with intent to defraud, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—
- (a) on conviction on indictment a fine of \$1,000,000 and a term of imprisonment of 7 years;
- (b) on summary conviction a fine of \$500,000 and a term of imprisonment of 1 year.
- (7) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(d) to give notification to the Commission only on the ground that to do so might tend to incriminate the person.
- (8) Notwithstanding anything in this section, the power of the Commission to make rules under this section in respect of intermediaries shall, where the intermediaries are registered institutions, be regarded as the power to make rules in respect

of the intermediaries only in relation to accounts and records relating to the businesses which constitute any regulated activities for which they are registered.

## 152. 中介人及其有聯繫實體須提供成交單據、收據、戶口結單及通知單

- (1) 證監會可訂立規則，規定——
  - (a) 中介人製備並向其客戶提供該等規則指明的成交單據、收據、戶口結單及通知單；
  - (b) 中介人的有聯繫實體須就他們收到或持有的該中介人的客戶資產，製備並向該中介人的客戶提供該等規則指明的收據、戶口結單及通知單。
- (2) 在不局限第 (1) 款的一般性及不損害第 398(7) 及 (8) 條的原則下，證監會可在第 (1) 款提述的規則中——
  - (a) 規定中介人在經營任何構成他獲發牌或獲註冊進行的任何受規管活動的業務時，在指明的情況下按指明的方式，就他在某段指明的期間與其客戶訂立或代其客戶訂立的所有交易，製備並向有關客戶提供成交單據及（如適用的話）戶口結單；
  - (b) 規定中介人及其有聯繫實體在指明的情況下按指明的方式，就每名獲該中介人提供財務通融的該中介人的客戶製備並向有關客戶提供戶口結單；
  - (c) 規定中介人及其有聯繫實體在指明的情況下按指明的方式，就每次自該中介人任何客戶的帳戶或為該等帳戶收取的客戶資產，製備並向有關客戶提供收據；
  - (d) 規定中介人及其有聯繫實體在指明的情況下按指明的方式，就每張關乎該中介人或該實體（視屬何情況而定）代該中介人任何客戶收取或持有的客戶資產但並非由有關客戶發出的通知單（包括任何關乎與客戶資產有關的權利的通知單）製備並向有關客戶提供通知單；

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

- (1) The Commission may make rules to provide for—
  - (a) the preparation by intermediaries of such contract notes, receipts, statements of account and notifications as are specified in the rules, and the provision thereof to clients of the intermediaries;
  - (b) the preparation by associated entities of intermediaries, in respect of client assets of the intermediaries that they receive or hold, of such receipts, statements of account and notifications as are specified in the rules, and the provision thereof to clients of the intermediaries.
- (2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—
  - (a) require intermediaries, in relation to all transactions they enter into, over any specified period of time, with or on behalf of a client of the intermediaries in the conduct of any of the businesses which constitute any regulated activities for which they are licensed or registered, to prepare and provide to the client a contract note and, where applicable, a statement of account in the specified manner and circumstances;
  - (b) require intermediaries and their associated entities, in relation to every client of the intermediaries to whom the intermediaries have provided financial accommodation, to prepare and provide to the client a statement of account in the specified manner and circumstances;

- (e) 就須提供成交單據、收據、戶口結單及通知單的時間及可將之銷毀前須保留的期間及其保留的地點，作出規定；
  - (f) 規定任何人如察覺他沒有遵守該等規則中適用於他的任何指明條文，即須在指明的時間內將此事及任何進一步的指明的資料通知證監會；
  - (g) 就關乎須製備並向該中介人的客戶提供的成交單據、收據、戶口結單及通知單的其他事宜作出規定，而不論須由中介人或由其有聯繫實體製備及提供。
- (3) 根據本條訂立的規則可規定，凡任何中介人或中介人的有聯繫實體無合理辯解而違反該等規則中對其適用的任何指明條文，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處不超過罰款 \$200,000 及監禁 2 年的指明罰則；
  - (b) 一經循簡易程序定罪，可處不超過第 6 級罰款及監禁 6 個月的指明罰則。
- (4) 根據本條訂立的規則可規定，凡任何中介人或中介人的有聯繫實體意圖詐騙而違反該等規則中對其適用的任何指明條文，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處不超過罰款 \$1,000,000 及監禁 7 年的指明罰則；
  - (b) 一經循簡易程序定罪，可處不超過罰款 \$500,000 及監禁 1 年的指明罰則。
- (5) 任何人不得僅以遵從依據第 (2)(f) 款訂立的任何規則中關於給予證監會通知的規定可能會導致他人罪為理由，而獲豁免遵從該規定。
- (6) 不論本條有任何規定，證監會根據本條就中介人訂立規則的權力，在該等中介人屬註冊機構的情況下，須視為只就該等中介人訂立與構成他們獲註冊進行的任何受規管活動的業務所涉及的成交單據、收據、戶口結單及通知單有關的規則的權力。

- (c) require intermediaries and their associated entities, in relation to every receipt of client assets from or for the account of a client of the intermediaries, to prepare and provide to the client a receipt in the specified manner and circumstances;
  - (d) require intermediaries and their associated entities, in relation to every notification which relates to client assets received or held by the intermediaries or the associated entities (as the case may be) on behalf of a client of the intermediaries, and which is received from any person other than the client (including any notification concerning any entitlement relating to client assets), to prepare and provide to the client a notification in the specified manner and circumstances;
  - (e) provide for the time when contract notes, receipts, statements of account and notifications are to be provided and the period for which, and the location at which, copies thereof are to be kept before they may be destroyed;
  - (f) require a person who becomes aware that he does not comply with any specified provision of the rules that applies to him to notify the Commission of that fact and of any further specified information, within the specified time;
  - (g) provide for any other matter relating to contract notes, receipts, statements of account and notifications to be prepared and provided to clients of intermediaries, whether by the intermediaries or their associated entities.
- (3) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

- (a) on conviction on indictment a fine of \$200,000 and a term of imprisonment of 2 years;
  - (b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.
- (4) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, with intent to defraud, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—
- (a) on conviction on indictment a fine of \$1,000,000 and a term of imprisonment of 7 years;
  - (b) on summary conviction a fine of \$500,000 and a term of imprisonment of 1 year.
- (5) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(f) to give notification to the Commission only on the ground that to do so might tend to incriminate the person.
- (6) Notwithstanding anything in this section, the power of the Commission to make rules under this section in respect of intermediaries shall, where the intermediaries are registered institutions, be regarded as the power to make rules in respect of the intermediaries only in relation to contract notes, receipts, statements of account and notifications relating to the businesses which constitute any regulated activities for which they are registered.

**Division 5—Audit****第 5 分部 —— 審計****153. 持牌法團、及中介人的有聯繫實體須委任核數師**

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

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

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

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- (3) 持牌法團、及中介人的有聯繫實體，須在根據第 (1) 或 (2) 款 (視屬何情況而定) 委任核數師後 7 個營業日內，以書面將該核數師的姓名或名稱及地址通知證監會。
- (4) 任何人 ——
- (a) (i) 如是帳目須予審計的持牌法團或有聯繫實體的高級人員或僱員，或正受僱於該等人員或僱員，即沒有資格根據第 (1) 或 (2) 款獲委任；或
- (ii) 如屬於為施行本款而藉根據第 397 條訂立的規則訂明的類別的人，即沒有資格根據第 (1) 或 (2) 款獲委任；
- (b) 即使已獲帳目須予審計的持牌法團或有聯繫實體委任為核數師 (不論該項委任是為《公司條例》(第 622 章) 的目的或為其他目的而作出)，在不抵觸 (a) 段的條文下，除該項委任外，該人仍有資格根據第 (1) 或 (2) 款獲委任。 (由 2012 年第 28 號第 912 及 920 條修訂)
- (5) 如任何持牌法團、或中介人的有聯繫實體 ——
- (a) 在獲發牌或成為該實體 (視屬何情況而定) 後一個月內；或
- (b) 在獲發牌或成為該實體 (視屬何情況而定) 後，首次根據第 (1) 或 (2) 款委任或其後根據第 (1) 或 (2) 款委任的任何核數師不再擔任該核數師後一個月內，
- 沒有按照第 (1) 或 (2) 款委任核數師，即屬犯罪 ——
- (i) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 1 年；或
- (ii) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
- (6) 任何持牌法團、或中介人的有聯繫實體違反第 (3) 款，即屬犯罪，一經定罪，可處第 5 級罰款。

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- (2) An associated entity of an intermediary shall appoint an auditor to perform the functions required of an auditor of the associated entity under or pursuant to the provisions of this or any other Ordinance.
- (3) A licensed corporation, and an associated entity of an intermediary, shall, within 7 business days after its appointment of an auditor under subsection (1) or (2) (as the case may be), notify the Commission by notice in writing of the name and address of the auditor.
- (4) A person—
- (a) is not eligible for appointment as an auditor under subsection (1) or (2)—
- (i) if he is an officer or employee of the licensed corporation or the associated entity the accounts of which are to be audited, or is in the employment of such an officer or employee; or
- (ii) if he belongs to a class of persons prescribed by rules made under section 397 for the purposes of this subsection;
- (b) is, subject to paragraph (a), eligible for appointment as an auditor under subsection (1) or (2), notwithstanding that he is, apart from that appointment, already an auditor appointed by the licensed corporation or the associated entity the accounts of which are to be audited, whether for the purposes of the Companies Ordinance (Cap. 622) or otherwise. (Amended 28 of 2012 ss. 912 & 920)
- (5) A licensed corporation, or an associated entity of an intermediary, which fails to appoint an auditor in accordance with subsection (1) or (2) within one month after—
- (a) it becomes licensed or becomes such an associated entity (as the case may be); or



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- (7) 本條並不損害任何其他與核數師的委任有關的規定的施行，不論該等規定是否根據《公司條例》(第 622 章)作出。  
(由 2012 年第 28 號第 912 及 920 條修訂)
- (8) 在本條中，中介人的有聯繫實體指上述實體中並非屬認可財務機構者。

**154. 持牌法團、及中介人的有聯繫實體須就擬更換核數師發出通知**

- (1) 凡任何持牌法團、或中介人的有聯繫實體 ——
- (a) 向其成員發出通知，表示擬於成員大會上提出 ——
- (i) 在其根據第 153 條委任的核數師的任期屆滿前將該核數師辭退的動議；或

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- (b) the auditor first appointed under subsection (1) or (2) after it becomes licensed or becomes such an associated entity, or any auditor further appointed under subsection (1) or (2), ceases to be an auditor of the licensed corporation or of the associated entity (as the case may be),
- commits an offence and is liable—
- (i) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
- (ii) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (6) A licensed corporation, or an associated entity of an intermediary, which contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 5.
- (7) Nothing in this section prejudices the operation of any other requirements relating to the appointment of an auditor, whether under the Companies Ordinance (Cap. 622) or otherwise. (*Amended 28 of 2012 ss. 912 & 920*)
- (8) In this section, a reference to an associated entity of an intermediary shall be construed as a reference to such associated entity other than one that is an authorized financial institution.

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

- (1) A licensed corporation, and an associated entity of an intermediary, shall within one business day after—
- (a) it gives notice to its members of a motion, to be moved at its general meeting—
- (i) to remove an auditor appointed by it under section 153 before the expiration of his term of office; or

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

#### 155. 持牌法團、及中介人的有聯繫實體等須就財政年度的終結發出通知

- (1) 持牌法團、及中介人的有聯繫實體須在下述限期內，以書面將其財政年度終結的日期通知證監會 ——
  - (a) （就持牌法團而言）在它獲發牌後一個月內；或
  - (b) （就有聯繫實體而言）在它成為該實體後一個月內。
- (2) 持牌法團、及中介人的有聯繫實體 ——
  - (a) 除非得到證監會根據第 (3)(a) 款給予的書面批准，否則不得更改根據第 (1) 款通知證監會的其財政年度終結的日期；
  - (b) 除非得到證監會根據第 (3)(b) 款給予的書面批准，否則不得採用一段超過 12 個月的期間作為其財政年度。

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

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

- (1) A licensed corporation, and an associated entity of an intermediary, shall—
  - (a) in the case of the licensed corporation, within one month after it becomes licensed; or
  - (b) in the case of the associated entity, within one month after it becomes such an associated entity,  
notify the Commission by notice in writing of the date on which its financial year ends.
- (2) A licensed corporation, and an associated entity of an intermediary, shall not—
  - (a) except with the approval in writing of the Commission under subsection (3)(a), alter the date notified to the

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- (3) 持牌法團、或中介人的有聯繫實體如就以下事宜提出書面申請，證監會可在該會認為適當的條件的規限下給予書面批准——
- (a) 要求更改根據第 (1) 款通知證監會的其財政年度終結的日期；
- (b) 要求採用一段超過 12 個月的期間作為其財政年度。
- (4) 任何持牌法團、或中介人的有聯繫實體違反第 (1) 或 (2) 款或依據第 (3) 款施加的條件，即屬犯罪，一經定罪，可處第 5 級罰款。
- (5) 本條並不損害《公司條例》(第 622 章) 第 429 條的施行。(由 2012 年第 28 號第 912 及 920 條修訂)
- (6) 在本條中，中介人的有聯繫實體指上述實體中並非屬認可財務機構者。

#### 156. 持牌法團、及中介人的有聯繫實體須呈交經審計帳目等

- (1) 在不抵觸第 (3) 款的條文下及除第 (4) 款另有規定外，持牌法團、及中介人的有聯繫實體須——

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- Commission under subsection (1) as the date on which its financial year ends;
- (b) except with the approval in writing of the Commission under subsection (3)(b), adopt any period which exceeds 12 months as its financial year.
- (3) On an application in writing by a licensed corporation or an associated entity of an intermediary, the Commission may, subject to such conditions as it considers appropriate, grant approval in writing in respect of—
- (a) an alteration of the date notified to the Commission under subsection (1) as the date on which its financial year ends;
- (b) the adoption of any period which exceeds 12 months as its financial year.
- (4) A licensed corporation, or an associated entity of an intermediary, which contravenes subsection (1) or (2), or a condition imposed pursuant to subsection (3), commits an offence and is liable on conviction to a fine at level 5.
- (5) Nothing in this section prejudices the operation of section 429 of the Companies Ordinance (Cap. 622). (Amended 28 of 2012 ss. 912 & 920)
- (6) In this section, a reference to an associated entity of an intermediary shall be construed as a reference to such associated entity other than one that is an authorized financial institution.

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

- (1) Subject to subsections (3) and (4), a licensed corporation, and an associated entity of an intermediary, shall—

- (a) 就為施行本條而藉根據第 397 條訂立的規則訂明的期間，擬備該等規則訂明的財務報表及其他文件；並
- (b) 在該等報表及文件所關乎的財政年度終結後 4 個月內，將該等報表及文件連同核數師報告呈交證監會。
- (2) 在不抵觸第 (3) 款的條文下及除第 (4) 款另有規定外，如持牌法團在為施行本條而藉根據第 397 條訂立的規則訂明的情況下，於某日停止進行它獲發牌進行的所有受規管活動，或如中介人的有聯繫實體停止作為該人的有聯繫實體，則該法團或該實體（視屬何情況而定）須——
  - (a) 擬備該等規則訂明而以該日狀況為準的財務報表及其他文件；並
  - (b) 在該日後 4 個月內，將該等報表及文件連同核數師報告呈交證監會。
- (3) 在不局限第 (1) 或 (2) 款的一般性的原則下，該等條文中關乎財務報表、其他文件及核數師報告的規定，包括以下規定——
  - (a) 該等報表及文件須就為施行本條而藉根據第 397 條訂立的規則訂明的事宜而擬備，並載有如此訂明的詳情；
  - (b) 該報告須載有該等規則訂明的詳情，包括如此訂明的意見陳述；
  - (c) 該等報表、文件及報告須按照該等規則訂明的原則或基礎擬備；及
  - (d) 在不局限《公司條例》(第 622 章) 第 387 條的一般性的原則下，該等報表及文件須由該等規則訂明的人簽署。（由 2012 年第 28 號第 912 及 920 條修訂）
- (4) 凡根據第 (1) 或 (2) 款規定須呈交財務報表、其他文件及核數師報告的持牌法團或有聯繫實體提出書面申請，而證監會信納有特別理由支持，則該會可將呈交該等報表、文件及報告的限期，延展該會認為適當的一段時期，並

- (a) prepare such financial statements and other documents, for such periods, as are prescribed by rules made under section 397 for the purposes of this section; and
- (b) submit the financial statements and other documents, together with an auditor's report, to the Commission not later than 4 months after the end of the financial year to which they relate.
- (2) Subject to subsections (3) and (4), a licensed corporation that ceases, in such circumstances as are prescribed by rules made under section 397 for the purposes of this section, carrying on all of the regulated activities for which it is licensed, and an associated entity of an intermediary that ceases to be such an associated entity, shall—
  - (a) prepare such financial statements and other documents, which shall be made up to (and including) the date of the cessation, as are prescribed by the rules; and
  - (b) submit the financial statements and other documents, together with an auditor's report, to the Commission not later than 4 months after the date of the cessation.
- (3) Without limiting the generality of subsection (1) or (2), the requirements under such subsection relating to the financial statements and other documents, and the auditor's report, referred to in such subsection include the requirements that—
  - (a) the financial statements and other documents are to relate to such matters and contain such particulars as are prescribed by rules made under section 397 for the purposes of this section;
  - (b) the auditor's report is to contain such particulars, including such statement of opinion, as are prescribed by the rules;
  - (c) the financial statements and other documents, and the auditor's report, are to be prepared in accordance with

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可施加該會認為適當的條件以作規限；凡該會准予延展時限，第 (1) 或 (2) 款（視屬何情況而定）須在該項延展的規限下適用。

- (5) 任何持牌法團、或中介人的有聯繫實體無合理辯解而違反第 (1) 或 (2) 款或依據第 (4) 款施加的條件，即屬犯罪——
- (a) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 1 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
- (6) 任何持牌法團、或中介人的有聯繫實體意圖詐騙而違反第 (1) 或 (2) 款或依據第 (4) 款施加的條件，即屬犯罪——
- (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 7 年；或
- (b) 一經循簡易程序定罪，可處罰款 \$500,000 及監禁 1 年。
- (7) 在本條中，中介人的有聯繫實體指上述實體中並非屬認可財務機構者。

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such principles or bases as are prescribed by the rules; and

- (d) without limiting the generality of section 387 of the Companies Ordinance (Cap. 622), the financial statements and other documents are to be signed by such person as is prescribed by the rules. (*Amended 28 of 2012 ss. 912 & 920*)
- (4) On an application in writing by the licensed corporation or the associated entity by which any financial statements and other documents, and any auditor's report, are required under subsection (1) or (2) to be submitted, the Commission may, where it is satisfied that there are special reasons for so doing, extend the period within which the financial statements and other documents, and the auditor's report, are required to be submitted, for such period and subject to such conditions as the Commission considers appropriate, and upon the Commission granting the extension, subsection (1) or (2) (as the case may be) shall apply subject to the extension accordingly.
- (5) A licensed corporation, or an associated entity of an intermediary, which, without reasonable excuse, contravenes subsection (1) or (2), or a condition imposed pursuant to subsection (4), commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (6) A licensed corporation, or an associated entity of an intermediary, which, with intent to defraud, contravenes subsection (1) or (2), or a condition imposed pursuant to subsection (4), commits an offence and is liable—



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

(1) 如 ——

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

則 ——

- (i) 在 (a) 段所述的情況下，他須在察覺有該項須報告事項後，在合理地切實可行的範圍內盡快按以下規定提交關於該事項的書面報告 ——
  - (A) 如他獲持牌法團、或中介人的有聯繫實體根據第 153 條委任，則提交予證監會；或
  - (B) 如他獲中介人的有聯繫實體為《銀行業條例》(第 155 章)的目的而委任，則提交予證監會及金融管理專員；

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
- (b) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.
- (7) In this section, a reference to an associated entity of an intermediary shall be construed as a reference to such associated entity other than one that is an authorized financial institution.

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

(1) If a person—

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

he shall—

- (ii) 在 (b) 段所述的情況下，他須在首次擬加入該項有所保留的意見或不利聲明後，在合理地切實可行的範圍內盡快向證監會提交關於該項意見或聲明的書面報告。
- (2) 獲持牌法團、或中介人的有聯繫實體根據第 153 條委任的核數師如 ——
- (a) 在他作為該法團或該實體 (視屬何情況而定) 的核數師的任期屆滿前辭去核數師職務；
- (b) 在他作為該法團或該實體 (視屬何情況而定) 的核數師的任期屆滿時不欲連任；或
- (c) 在其他情況下不再擔任該法團或該實體 (視屬何情況而定) 的核數師，
- 則須在隨後一個營業日內，以書面將此事通知證監會，並在通知書上說明理由，以及提供他認為應促請該會注意的相關情況的詳情，如無此等情況，則須作出表明此意的陳述。
- (3) 在本條中 ——
- 訂明規定** (prescribed requirement) 指根據第 148、149、151 或 152 條訂立的任何規則中，由根據第 397 條訂立的規則為本定義的目的而訂明為訂明規定的規定；
- 須報告事項** (reportable matter) 就擔任第 (1)(a) 款所指的核數師的人而言 ——
- (a) 在他是持牌法團的核數師的情況下，指他認為 ——
- (i) 構成該法團或其任何有聯繫實體沒有遵從任何訂明規定的事情；
- (ii) 對該法團或其任何有聯繫實體的財務狀況有達關鍵程度的不利影響的事情；或
- (iii) 構成該法團沒有遵從第 146 條或財政資源規則的全部或任何適用於它的規定的事情；或

- (i) in the case of paragraph (a), as soon as reasonably practicable after he becomes aware of the reportable matter, lodge with—
- (A) in the case of an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary, the Commission; or
- (B) in the case of an auditor appointed for the purposes of the Banking Ordinance (Cap. 155) by an associated entity of an intermediary, the Commission and the Monetary Authority,
- a written report on the reportable matter;
- (ii) in the case of paragraph (b), as soon as reasonably practicable after he first proposes the inclusion of the qualification or adverse statement, lodge with the Commission a written report on the qualification or adverse statement.
- (2) If a person appointed as an auditor under section 153 by a licensed corporation or an associated entity of an intermediary—
- (a) resigns as an auditor of the licensed corporation or the associated entity (as the case may be) before the expiration of his term of office as such auditor;
- (b) does not seek reappointment as an auditor of the licensed corporation or the associated entity (as the case may be) at the expiration of his term of office as such auditor; or
- (c) otherwise ceases to be an auditor of the licensed corporation or the associated entity (as the case may be),
- he shall within one business day thereafter notify the Commission by notice in writing of that fact, and in the notice state the reasons therefor, and give particulars of

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- (b) 在他是中介人的有聯繫實體的核數師的情況下，指他認為 ——
- (i) 構成該實體沒有遵從任何訂明規定的事情；或
  - (ii) (如該實體並非認可財務機構) 對該實體的財務狀況有達關鍵程度的不利影響的事情。

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any connected circumstances which he considers should be brought to the attention of the Commission or, where no such circumstances exist, make a statement to that effect.

- (3) In this section—

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

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

- (a) in the case of a licensed corporation—

- (i) constitutes on the part of the licensed corporation or any of its associated entities a failure to comply with any prescribed requirement;
- (ii) adversely affects to a material extent the financial position of the licensed corporation or any of its associated entities; or
- (iii) constitutes on the part of the licensed corporation a failure to comply with section 146 or with all or any of the requirements of the financial resources rules that apply to it; or

- (b) in the case of an associated entity of an intermediary—

- (i) constitutes on the part of the associated entity a failure to comply with any prescribed requirement; or
- (ii) where the associated entity is not an authorized financial institution, adversely affects to a material extent the financial position of the associated entity.

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

- (1) 在不損害第 380 及 381 條的原則下，根據第 153 條獲持牌法團、或中介人的有聯繫實體委任的核數師或在中介人的有聯繫實體屬認可財務機構的情況下，獲該實體為《銀行業條例》(第 155 章)的目的而委任的核數師，如將——
- (a) 他基於該核數師身分而察覺(不論是否在執行該核數師職能時察覺)的；及
- (b) 對證監會或金融管理專員的任何職能屬有關的，
- 事情的任何資料或對該事情的意見，真誠地傳達予證監會或金融管理專員(視屬何情況而定)，則不論他是否應證監會或金融管理專員(視屬何情況而定)的要求而如此行事，他不得因此被視為違反他作為核數師須履行的責任。
- (2) 第(1)款除適用於根據第 153 條獲持牌法團、或中介人的有聯繫實體委任的核數師，以及中介人的有聯繫實體為《銀行業條例》(第 155 章)的目的而委任的核數師外——
- (a) 亦適用於曾根據第 153 條獲持牌法團、或中介人的有聯繫實體委任為核數師，或曾獲中介人的有聯繫實體為《銀行業條例》(第 155 章)的目的而委任的核數師，但其委任已終止的人；在此情況下，第(1)款提述的事情，須解釋為他在其委任終止之前，該款(a)段規定他須基於該核數師身分而察覺(不論是否在執行該核數師職能時察覺)的任何事情；
- (b) 亦適用於獲前持牌法團、或中介人的前有聯繫實體委任的核數師(不論該項委任是否根據第 153 條或為《銀行業條例》(第 155 章)的目的而作出)；在此情況下，第(1)款提述的事情，須解釋為該款(a)段規定他須基於該核數師身分而察覺(不論是否在執行該核數師職能時察覺)的任何事情；及

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

- (1) Without prejudice to sections 380 and 381, no duty which a person may be subject to as an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary or, where an associated entity of an intermediary is an authorized financial institution, as an auditor appointed for the purposes of the Banking Ordinance (Cap. 155) by the associated entity shall be regarded as contravened by reason of his communicating in good faith to the Commission or the Monetary Authority, whether or not in response to a request made by the Commission or the Monetary Authority (as the case may be), any information or opinion on a matter which—
- (a) he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor); and
- (b) is relevant to any function of the Commission or the Monetary Authority (as the case may be).
- (2) In addition to applying to a person who is an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary, or appointed for the purposes of the Banking Ordinance (Cap. 155) by an associated entity of an intermediary, subsection (1) also applies to—
- (a) a person whose appointment as an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary, or appointed for the purposes of the Banking Ordinance (Cap. 155) by an associated entity of an intermediary, has ceased, in which case a reference to a matter in that subsection

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

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- shall be construed on the basis that paragraph (a) of that subsection requires the matter to be one which he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor) before the appointment has ceased;
- (b) an auditor appointed, whether or not under section 153 or for the purposes of the Banking Ordinance (Cap. 155), by a former licensed corporation or by a former associated entity of an intermediary, in which case a reference to a matter in that subsection shall be construed on the basis that paragraph (a) of that subsection requires the matter to be one which he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor); and
- (c) a person whose appointment as an auditor, whether or not under section 153 or for the purposes of the Banking Ordinance (Cap. 155), by a former licensed corporation or by a former associated entity of an intermediary, has ceased, in which case a reference to a matter in that subsection shall be construed on the basis that paragraph (a) of that subsection requires the matter to be one which he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor) before the appointment has ceased.
- (3) In this section—
- former associated entity of an intermediary** (中介人的前有聯繫實體) means a corporation which was formerly an associated entity of an intermediary;
- former licensed corporation** (前持牌法團) means a corporation which was formerly a licensed corporation.



**159. 證監會就持牌法團及其有聯繫實體委任核數師的權力**

- (1) 在符合第 (3) 款的規定下，凡 ——
- (a) 某持牌法團沒有按照第 147 條令證監會信納該法團有遵從所有適用於它的財政資源規則的規定；
  - (b) 證監會有合理理由相信某持牌法團或該法團的某有聯繫實體沒有遵從任何訂明規定；
  - (c) 證監會有合理理由相信某持牌法團或該法團的某有聯繫實體沒有按照第 156 條呈交財務報表或其他文件；或
  - (d) 證監會接到根據第 157 條就某持牌法團或該法團的某有聯繫實體而提交的書面報告，

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

- (2) 凡有核數師根據第 (1) 款獲委任，以審查和審計某持牌法團及其任何有聯繫實體的帳目及紀錄，他可為該項審查和審計的進行而審查該法團或該實體（視屬何情況而定）所收取或持有的該法團的任何客戶資產。
- (3) 如有關的有聯繫實體屬認可財務機構，則證監會在根據第 (1) 款委任核數師審查和審計該實體的帳目及紀錄之前，須先就該項委任以及該項審查和審計的範圍諮詢金融管理專員。
- (4) 在符合第 (5) 款的規定下，凡根據第 (1) 款委任的核數師已審查和審計有關的持牌法團或持牌法團的有聯繫實體的帳目及紀錄，而證監會在考慮到該法團或該實體（視屬何情況而定）的行為（不論是在該項委任之前或之後的行為）後，認為應由該法團或該實體（視屬何情況而定）支

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

- (1) Subject to subsection (3), where—
- (a) a licensed corporation has failed to satisfy the Commission in accordance with section 147 that it complies with all of the requirements of the financial resources rules that apply to it;
  - (b) the Commission has reasonable cause to believe that a licensed corporation or any of its associated entities has failed to comply with any prescribed requirement;
  - (c) the Commission has reasonable cause to believe that a licensed corporation or any of its associated entities has failed to submit any financial statements or other documents in accordance with section 156; or
  - (d) the Commission has received a written report lodged by a person under section 157 in relation to a licensed corporation or any of its associated entities,

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

- (2) Where an auditor is appointed under subsection (1) to examine and audit the accounts and records of a licensed corporation and any of its associated entities, the auditor may, for the purpose of carrying out the examination and audit,

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付審查和審計的全部或部分費用及開支，則該會可藉書面通知，指示該法團或該實體（視屬何情況而定）於指明時間內按指明方式，支付一筆相等於該等費用及開支的全部或部分的指明款項。

- (5) 證監會在根據第 (4) 款向某持牌法團或有聯繫實體作出指示前，須給予該法團或該實體合理的陳詞機會。
- (6) 持牌法團或持牌法團的有聯繫實體如沒有遵從根據第 (4) 款作出的指示，證監會可將該指示所提述的指明款項作為拖欠該會的民事債項予以追討。
- (7) 在本條中，**訂明規定** (prescribed requirement) 指根據第 148、149、151 或 152 條訂立的任何規則中，由根據第 397 條訂立的規則為本定義的目的而訂明為訂明規定的規定。

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examine any client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be).

- (3) The Commission shall not appoint an auditor under subsection (1) to examine and audit the accounts and records of an associated entity that is an authorized financial institution unless the Commission has first consulted the Monetary Authority in respect of the appointment and of the scope of the examination and audit to be carried out by the auditor.
- (4) Subject to subsection (5), where an auditor appointed under subsection (1) has examined and audited the accounts and records of a licensed corporation or an associated entity of a licensed corporation, the Commission may, where it is of the opinion that it is appropriate to do so having regard to the conduct (whether before or after the appointment) of the licensed corporation or the associated entity (as the case may be), by notice in writing direct the licensed corporation or the associated entity (as the case may be) to pay a specified amount, being the whole or a part of the costs and expenses of the examination and audit, within the specified time and in the specified manner.
- (5) The Commission shall not give a direction under subsection (4) unless it has given the licensed corporation or the associated entity to which the direction is to be given a reasonable opportunity of being heard.
- (6) Where a licensed corporation or an associated entity of a licensed corporation fails to comply with a direction of the Commission under subsection (4), the Commission may recover the specified amount referred to in the direction as a civil debt due to it.
- (7) In this section, **prescribed requirement** (訂明規定) means such of the requirements under any of the rules made under

section 148, 149, 151 or 152 as are prescribed by rules made under section 397 for the purposes of this definition.

# 160. 證監會應申請而就持牌法團或其有聯繫實體委任核數師的權力

- (1) 在不抵觸第 (3) 至 (6) 款的條文下，如有人提出書面申請，聲稱某持牌法團或該法團的某有聯繫實體 ——
  - (a) 沒有就該法團或該實體 (視屬何情況而定) 代該人持有的任何客戶資產，向作為該法團的客戶的該人作出交代；或
  - (b) 沒有按照作為該法團的客戶的該人給予該法團或該實體 (視屬何情況而定) 的指示行事，且 ——
    - (i) 沒有就假若該指示獲依循該人可獲得或增加的利潤，向他作出交代；或
    - (ii) 沒有就假若該指示獲依循他可避免或減少的損失，向他作出賠償，

則證監會可委任核數師全面或就任何個別事項審查和審計該法團及其任何有聯繫實體的帳目及紀錄 (包括該法團與任何其他人士達成的交易的紀錄，以及該法團或帳目及紀錄被審查和審計的該實體 (視屬何情況而定) 所收取或持有的該法團的客戶資產的紀錄)，並在不損害第 161 條的原則下，就該會所指示的事項向該會作出報告。
- (2) 凡有核數師根據第 (1) 款獲委任，以審查和審計某持牌法團及其任何有聯繫實體的帳目及紀錄，他可為該項審查和審計的進行而審查該法團或該實體 (視屬何情況而定) 所收取或持有的該法團的任何客戶資產。
- (3) 依據第 (1) 款提出申請的人，須在該申請中述明 ——
  - (a) 有關的持牌法團或持牌法團的有聯繫實體遭指稱沒有就任何客戶資產作出交代的詳情，或沒有按照給予它的指示行事及就任何利潤作出交代或就任何損失作出賠償 (視屬何情況而定) 的詳情；

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

- (1) Subject to subsections (3) to (6), on an application in writing by a person who alleges that a licensed corporation or any of its associated entities—
  - (a) has failed to account to the person as a client of the licensed corporation for any client assets held on behalf of the person by the licensed corporation or the associated entity (as the case may be); or
  - (b) has failed to act in accordance with instructions given by the person as a client of the licensed corporation to the licensed corporation or the associated entity (as the case may be), and has failed—
    - (i) to account to the person for any profit that may have been secured or increased by the person had the instructions been followed; or
    - (ii) to compensate the person for any loss that may have been avoided or reduced by the person had the instructions been followed,

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

- (b) 所涉及的客戶資產的詳情；
- (c) 指稱沒有作出交代或沒有依循指示行事的事件所涉及的交易詳情；及
- (d) 證監會要求提供的任何其他詳情，  
該人並須藉法定聲明核實該申請中的所有陳述，而該聲明可由證監會為此授權的任何人監理。
- (4) 除非證監會信納以下條件獲符合，否則不得根據第 (1) 款委任核數師 ——
  - (a) 依據該款提出有關申請的人有好的理由提出該項申請；及
  - (b) 委任核數師是符合以下人士的利益的 ——
    - (i) 帳目及紀錄將被該核數師審查和審計的持牌法團及有聯繫實體；
    - (ii) 提出該項申請的人；或
    - (iii) 投資大眾或公眾。
- (5) 如有關的有聯繫實體屬認可財務機構，則證監會在根據第 (1) 款委任核數師審查和審計該實體的帳目及紀錄之前，須先就該項委任以及該項審查和審計的範圍諮詢金融管理專員。
- (6) 除非證監會已給予有關的持牌法團或持牌法團的有聯繫實體合理的陳詞機會，否則不得根據第 (1) 款委任核數師審查和審計該法團或該實體（視屬何情況而定）的帳目及紀錄。
- (7) 就誹謗法而言，在依據第 (1) 款提出的申請中以真誠而並非惡意作出的每項陳述，均享有特權。
- (8) 在符合第 (9) 款的規定下，凡根據第 (1) 款委任的核數師已審查和審計有關的持牌法團或持牌法團的有聯繫實體的帳目及紀錄，而證監會在考慮到該法團或該實體（視屬何情況而定）的行為（不論是在該項委任之前或之後的行為），以及依據第 (1) 款提出該項委任申請的人的行為後，

- (2) Where an auditor is appointed under subsection (1) to examine and audit the accounts and records of a licensed corporation and any of its associated entities, the auditor may, for the purpose of carrying out the examination and audit, examine any client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be).
- (3) A person making an application pursuant to subsection (1) shall state in the application—
  - (a) the particulars of the circumstances in which any licensed corporation or any associated entity of a licensed corporation is alleged to have failed to account for any client assets, or to act in accordance with instructions given to the licensed corporation or the associated entity and to account for any profit or compensate for any loss (as the case may be);
  - (b) the particulars of any client assets concerned;
  - (c) the particulars of the transactions in respect of which the alleged failure has occurred; and
  - (d) any other particulars the Commission may require,
 and shall verify all statements in the application by statutory declaration, which may be taken by any person authorized by the Commission in that behalf.
- (4) The Commission shall not appoint an auditor under subsection (1) unless it is satisfied that—
  - (a) the person making the application pursuant to that subsection has a good reason for making the application; and
  - (b) it is in the interest of—



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- 認為應由該法團或該實體（視屬何情況而定）或該人支付以下的指明款項，則該會可藉書面通知，指示該法團或該實體（視屬何情況而定）或該人於指明時間內按指明方式，支付該等款項——
- (a) （就該法團或該實體（視屬何情況而定）而言）審查和審計的全部或部分費用及開支；或
  - (b) （就該人而言）審查和審計的全部或部分費用及開支，但以為確定該項申請所關乎的事宜而合理地招致的費用及開支為限。
- (9) 證監會在根據第 (8) 款向某持牌法團、有聯繫實體或人作出指示前，須給予該法團、該實體或該人合理的陳詞機會。
- (10) 持牌法團、持牌法團的有聯繫實體或依據第 (1) 款提出申請的人如沒有遵從根據第 (8) 款作出的指示，證監會可將該指示所提述的指明款項作為拖欠該會的民事債項予以追討。

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- (i) the licensed corporation and the associated entity the accounts and records of which are to be examined and audited by the auditor;
  - (ii) the person making the application; or
  - (iii) the investing public or the public,
- that the auditor be appointed.
- (5) The Commission shall not appoint an auditor under subsection (1) to examine and audit the accounts and records of an associated entity that is an authorized financial institution unless the Commission has first consulted the Monetary Authority in respect of the appointment and of the scope of the examination and audit to be carried out by the auditor.
- (6) The Commission shall not appoint an auditor under subsection (1) to examine and audit the accounts and records of a licensed corporation or an associated entity of a licensed corporation unless the Commission has given the licensed corporation or the associated entity (as the case may be) a reasonable opportunity of being heard.
- (7) For the purposes of the law of defamation, every statement in an application made pursuant to subsection (1) shall, if made in good faith and without malice, be privileged.
- (8) Subject to subsection (9), where an auditor appointed under subsection (1) has examined and audited the accounts and records of a licensed corporation or an associated entity of a licensed corporation, the Commission may, where it is of the opinion that it is appropriate to do so having regard to the conduct (whether before or after the appointment) of the licensed corporation or the associated entity (as the case may be) and of the person making the application pursuant to subsection (1) in respect of the appointment, by notice in writing direct the licensed corporation or the associated entity



(as the case may be) or the person making the application to pay a specified amount, being—

- (a) in the case of the licensed corporation or the associated entity (as the case may be), the whole or a part of the costs and expenses of the examination and audit; or
- (b) in the case of the person making the application, the whole or a part of the costs and expenses of the examination and audit to the extent that they have been reasonably incurred for the purpose of ascertaining matters to which the application relates,

within the specified time and in the specified manner.

- (9) The Commission shall not give a direction under subsection (8) unless it has given the licensed corporation, the associated entity or the person to which or to whom the direction is to be given a reasonable opportunity of being heard.
- (10) Where a licensed corporation, an associated entity of a licensed corporation or a person making an application pursuant to subsection (1) fails to comply with a direction of the Commission under subsection (8), the Commission may recover the specified amount referred to in the direction as a civil debt due to it.

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

- (1) 根據第 159 或 160 條獲委任的核數師須按證監會的規定，向該會提交中期報告，並在他獲委任進行的審查和審計完成後，向該會提交最後報告。
- (2) 第 (1) 款提述的報告須在證監會指示的時間內以該會指示的方式提交。
- (3) 凡根據第 (1) 款向證監會提交的任何報告所提述的審查和審計以某持牌法團或有聯繫實體的帳目及紀錄為對象，證監會如認為適當，可將該報告遞送至該法團或該實體（視屬何情況而定）。

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

- (1) An auditor appointed under section 159 or 160 shall make such interim reports to the Commission as it may require and shall, on the conclusion of the examination and audit which he is appointed to carry out, make a final report to the Commission.
- (2) A report referred to in subsection (1) shall be made within such time and in such manner as the Commission may direct.

**162. 根據第 159 或 160 條委任的核數師的權力**

- (1) 根據第 159 或 160 條獲委任審查和審計任何持牌法團及其任何有聯繫實體的帳目及紀錄的核數師，為了進行該項審查和審計，除可採取他為進行該項審查和審計而可合理地採取的其他行動外，亦可 ——
- (a) 就任何與該法團或該實體（視屬何情況而定）的業務有關的事宜，或任何與該法團或該實體（視屬何情況而定）所收取或持有的該法團的客戶資產有關的事宜，訊問經宣誓或未經宣誓的以下人士 ——
- (i) 該法團或該實體（視屬何情況而定）的任何高級人員、僱員及代理人；及
- (ii) 獲該法團或該實體（視屬何情況而定）根據第 153 條委任的任何核數師，或在該實體屬認可財務機構的情況下，獲該實體為《銀行業條例》（第 155 章）的目的而委任的任何核數師，以及為進行訊問的目的而監誓；
- (b) 要求該法團或該實體（視屬何情況而定）的任何高級人員、僱員及代理人 ——
- (i) 交出帳目及紀錄，而該等帳目及紀錄是關乎任何與該法團或該實體（視屬何情況而定）的業務有關的事宜，或任何與該法團或該實體（視屬何情況而定）所收取或持有的該法團的客戶資產有關的事宜的；及
- (ii) 就所交出的帳目及紀錄的內容作出解釋；

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

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

- (1) An auditor appointed under section 159 or 160 to examine and audit the accounts and records of any licensed corporation and any of its associated entities, for the purpose of carrying out the examination and audit, may, in addition to any other action that the auditor may reasonably take for the purpose—
- (a) examine on oath or otherwise—
- (i) any officer, employee and agent of the licensed corporation or the associated entity (as the case may be); and
- (ii) any auditor appointed by the licensed corporation or the associated entity (as the case may be) under section 153 or, where the associated entity is an authorized financial institution, for the purposes of the Banking Ordinance (Cap. 155),
- in respect of any matter relating to the business of the licensed corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be) and, for that purpose, administer oaths accordingly;
- (b) require any officer, employee and agent of the licensed corporation or the associated entity (as the case may be) to—
- (i) produce any accounts and records concerning any matter relating to the business of the licensed

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- (c) 要求獲該法團或該實體 (視屬何情況而定) 根據第 153 條委任的任何核數師, 或在該實體屬認可財務機構的情況下, 獲該實體為《銀行業條例》(第 155 章) 的目的而委任的任何核數師 ——
- (i) 交出他持有的帳目及紀錄, 而該等帳目及紀錄是關乎任何與該法團或該實體 (視屬何情況而定) 的業務有關的事宜, 或任何與該法團或該實體 (視屬何情況而定) 所收取或持有的該法團的客戶資產有關的事宜的; 及
- (ii) 就所交出的帳目及紀錄的內容作出解釋;
- (d) 要求認可交易所或認可結算所 ——
- (i) 交出它備存的帳目及紀錄或它管有的資料, 而該等帳目及紀錄或該等資料是關乎任何與該法團或該實體 (視屬何情況而定) 的業務有關的事宜, 或任何與該法團或該實體 (視屬何情況而定) 所收取或持有的該法團的客戶資產有關的事宜的; 及
- (ii) 就所交出的帳目、紀錄及資料的內容作出解釋;
- (e) 要求任何代該法團或該實體 (視屬何情況而定) 收取或持有該法團的客戶資產的人 ——
- (i) 交出他備存的關乎與該等資產有關的事宜的帳目及紀錄, 或交出他管有的關乎該等事宜的資料; 及
- (ii) 就所交出的帳目、紀錄及資料的內容作出解釋;
- (f) 僱用他認為需要的人協助進行他獲委任進行的該項審查和審計; 及
- (g) 為進行該項審查和審計, 以書面授權他僱用的人作出或進行本款提述的任何作為或事情 (根據 (a) 段於某人宣誓後向該人進行訊問或行使本段賦予他的任何權力除外)。

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

- (2) 如根據第 159 或 160 條獲委任的核數師或根據第 (1)(g) 款獲授權的人合理地認為，為進行該核數師獲委任進行的對有關的持牌法團及其任何有聯繫實體的帳目及紀錄的審查和審計而有此需要，則第 (1) 款提述的權力——
- (a) 可就該法團連同它獲發牌進行的任何受規管活動一併進行的任何其他業務，以及其任何有聯繫實體的任何業務而行使；在此情況下，第 (1)(a) 至 (g) 款中對“任何與該法團或該實體（視屬何情況而定）的業務有關的事宜”的提述，須解釋為對任何與該法團進行的該等其他業務或與該法團的任何有聯繫實體的業務有關的事宜的提述；及
- (b) 可就該法團或其任何有聯繫實體的有連繫法團而行使；在此情況下——
- (i) 第 (1)(a) 至 (g) 款中對“該法團或該實體（視屬何情況而定）的任何高級人員、僱員或代理人”的提述，須解釋為對該有連繫法團的任何高級人員、僱員或代理人的提述；
- (ii) 第 (1)(a) 至 (g) 款中對“獲該法團或該實體（視屬何情況而定）根據第 153 條委任的任何核數師，或在該實體屬認可財務機構的情況下，獲該實體為《銀行業條例》（第 155 章）的目的而委任的任何核數師”的提述，須解釋為對獲該有連繫法團委任的任何核數師的提述，而不論該項委任是否根據本條例作出；
- (iii) 第 (1)(a) 至 (g) 款中對“任何與該法團或該實體（視屬何情況而定）的業務有關的事宜，或任何與該法團或該實體（視屬何情況而定）所收取或持有的該法團的客戶資產有關的事宜”的提述，除須解釋為對文中原先所提述的事宜的提述外，亦須解釋為對任何與該有連繫法團的業務有關的事宜的提述；及

- (ii) explain the contents of the accounts and records, and the information, so produced;
- (e) require any person receiving or holding client assets of the licensed corporation on behalf of the licensed corporation or the associated entity (as the case may be) to—
- (i) produce any accounts and records kept by the person, or information in his possession, concerning any matter relating to the client assets; and
- (ii) explain the contents of the accounts and records, and the information, so produced;
- (f) employ any person he considers necessary to assist him in carrying out the examination and audit which he is appointed to carry out; and
- (g) for the purpose of carrying out the examination and audit which he is appointed to carry out, authorize in writing any person employed by him to do any act or thing referred to in this subsection (except to examine a person on oath under paragraph (a) or to exercise any power conferred by this paragraph).
- (2) If an auditor appointed under section 159 or 160, or a person authorized under subsection (1)(g), reasonably considers it necessary for the purpose of carrying out the examination and audit of the accounts and records of a licensed corporation and any of its associated entities which the auditor is appointed to carry out, the powers referred to in subsection (1)—
- (a) are exercisable in relation to any other business carried on by the licensed corporation in conjunction with any regulated activity for which it is licensed and to any business of any of its associated entities, in which case



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- (iv) 第 (1)(a) 至 (g) 款中對“任何代該法團或該實體 (視屬何情況而定) 收取或持有該法團的客戶資產的人”的提述，須解釋為對任何代該有連繫法團收取或持有文中所提述的該法團的客戶資產的人的提述。
- (3) 任何人無合理辯解而沒有遵從根據本條向他施加 (不論是由根據第 159 或 160 條獲委任的核數師或是由根據第 (1)(g) 款獲授權的人所施加) 的要求 (包括要他回答向他提出的問題的要求)，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 1 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
- (4) 任何人 ——
- (a) 在看來是遵從根據本條向他施加 (不論是由根據第 159 或 160 條獲委任的核數師或是由根據第 (1)(g) 款獲授權的人所施加) 的要求 (包括要他回答向他提出的問題的要求) 時，交出在要項上屬虛假或具誤導性的帳目或紀錄，或給予在要項上屬虛假或具誤導性的答案；且
- (b) 知道該等帳目、紀錄或答案在要項上屬虛假或具誤導性，或罔顧該等帳目、紀錄或答案是否在要項上屬虛假或具誤導性，
- 即屬犯罪 ——
- (i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
- (ii) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (5) 任何人意圖詐騙而 ——
- (a) 沒有遵從根據本條向他施加 (不論是由根據第 159 或 160 條獲委任的核數師或是由根據第 (1)(g) 款獲授權的人所施加) 的要求 (包括要他回答向他提出的問題的要求)；或

- any reference to “any matter relating to the business of the licensed corporation or the associated entity (as the case may be)” in subsection (1)(a) to (g) shall be construed on the basis that it refers to any matter relating to such other business carried on by the licensed corporation or to such business of any of its associated entities; and
- (b) are exercisable in relation to a related corporation of the licensed corporation or any of its associated entities, in which case—
- (i) any reference to “any officer, employee and agent of the licensed corporation or the associated entity (as the case may be)” in subsection (1)(a) to (g) shall be construed on the basis that it refers to any officer, employee and agent of the related corporation;
- (ii) any reference to “any auditor appointed by the licensed corporation or the associated entity (as the case may be) under section 153 or, where the associated entity is an authorized financial institution, for the purposes of the Banking Ordinance (Cap. 155)” in subsection (1)(a) to (g) shall be construed on the basis that it refers to any auditor appointed by the related corporation, whether under this Ordinance or otherwise;
- (iii) any reference to “any matter relating to the business of the licensed corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be)” in subsection (1)(a) to (g) shall be construed on the basis that it refers, apart from the matter originally referred to, also to



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

即屬犯罪 ——

- (i) 一經循公訴程序定罪, 可處罰款 \$1,000,000 及監禁 7 年; 或
- (ii) 一經循簡易程序定罪, 可處罰款 \$500,000 及監禁 1 年。

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any matter relating to the business of the related corporation; and

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

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

- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

- (4) A person who—

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

commits an offence and is liable—

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- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (5) A person who, with intent to defraud—
- (a) fails to comply with any requirement imposed on him (including the requirement to answer any question put to him) under this section (whether by an auditor appointed under section 159 or 160 or a person authorized under subsection (1)(g)); or
  - (b) in purported compliance with a requirement imposed on him (including the requirement to answer any question put to him) under this section (whether by an auditor appointed under section 159 or 160 or a person authorized under subsection (1)(g)), produces any accounts or records or gives an answer which is false or misleading in a material particular,
- commits an offence and is liable—
- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
  - (ii) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.

### 163. 銷毀、隱藏或更改帳目、紀錄或文件等的罪行

- (1) 任何人意圖防止、阻延或阻撓進行根據本部獲委任的核數師所需進行的審查和審計，而作出以下行為，即屬犯罪——
  - (a) 刪除、銷毀、切割、捏改、隱藏、更改或以其他方法致使不能提供任何與該項審查和審計有關的帳目、紀錄或文件，或協助或教唆或串同另一人如此行事；

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

- (1) A person commits an offence if he, with intent to prevent, delay or obstruct the carrying out of any examination and audit which an auditor appointed under this Part is required to carry out—
  - (a) deletes, destroys, mutilates, falsifies, conceals, alters or otherwise makes unavailable any accounts, records or

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- (b) 不論以任何方式亦不論以任何途徑，處置或促致處置任何與該項審查和審計有關的財產，或協助或教唆或串同另一人如此行事；或
- (c) 離開或企圖離開香港。
- (2) 任何人犯第(1)款所訂罪行——
  - (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 7 年；或
  - (b) 一經循簡易程序定罪，可處罰款 \$500,000 及監禁 1 年。
- (3) 在就第(1)款所訂罪行而進行的法律程序中，如證明被控人刪除、銷毀、切割、捏改、隱藏或更改任何與根據本部獲委任的核數師所需進行的任何審查和審計有關的帳目、紀錄或文件，或協助或教唆或串同另一人如此行事，被控人即推定為是意圖防止、阻延或阻撓該項審查和審計的進行而如此行事，但如有相反證據，則作別論。

## 第 6 分部 —— 雜項規定

### 164. 就收取或持有客戶資產方面的限制

- (1) 只有以下人士可在香港收取或持有中介人的客戶資產——
  - (a) 該中介人；
  - (b) 該中介人的有聯繫實體；或
  - (c) 豁除人士。

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

## Division 6—Miscellaneous

### 164. Restriction on receiving or holding of client assets

- (1) No person shall receive or hold in Hong Kong client assets of an intermediary unless the person is—
  - (a) the intermediary;
  - (b) an associated entity of the intermediary; or
  - (c) an excluded person.

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- (2) 任何人無合理辯解而違反第 (1) 款，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (3) 在本條中，**豁除人士** (excluded person) ——
- (a) 指任何認可財務機構；
- (b) 就任何中介人的客戶抵押品而言，指符合以下說明的任何其他人士或中介人：在附表 1 第 1 部第 1 條中**證券抵押品**或**其他抵押品**（視屬何情況而定）的定義的 (a)(A) 或 (B) 或 (b)(A) 或 (B) 段（視屬何情況而定）提述的情況下，該抵押品須提供予該其他人士或中介人或存放於其處；
- (c) 指根據在第 148(2)(d) 條下訂立的規則，而獲核准為適合負責穩妥保管中介人的客戶證券及抵押品的任何公司或非香港公司；或（由 2004 年第 30 號第 3 條修訂）
- (d) 指符合以下說明的在香港的人：根據在第 149(2)(f) 條下訂立的規則指明他為可與之開立和維持指定為信託帳戶或客戶帳戶的、就持牌法團的客戶款項而開立的獨立帳戶的人。

## 165. 有聯繫實體

- (1) 中介人的有聯繫實體須 ——
- (a) 在它成為該實體後 7 個營業日內；或
- (b) 在它不再是該實體後 7 個營業日內，

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- (2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (3) In this section, **excluded person** (豁除人士) means—
- (a) any authorized financial institution;
- (b) in the case of client collateral of any intermediary, any other intermediary or person with which or whom it is deposited, or to which or whom it is provided, in the circumstances referred to in paragraph (a)(A) or (B) or (b)(A) or (B) (as the case may be) of the definition of **securities collateral** or **other collateral** (as the case may be) in section 1 of Part 1 of Schedule 1;
- (c) any company or non-Hong Kong company that is approved under rules made pursuant to section 148(2)(d) as being suitable for the safe custody of client securities and collateral of intermediaries; or (*Amended 30 of 2004 s. 3*)
- (d) any person in Hong Kong that is specified under rules made pursuant to section 149(2)(f) as that with whom segregated accounts established for client money of licensed corporations and designated as trust accounts or client accounts are to be established and maintained.

## 165. Associated entities

- (1) An associated entity of an intermediary shall within 7 business days after—
- (a) it becomes such an associated entity; or
- (b) it ceases to be such an associated entity,

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以書面將此事以及為施行本條而藉根據第 397 條訂立的規則訂明的其他詳情通知證監會。

- (2) 凡中介人的有聯繫實體根據第 (1) 款須提供的詳情有任何改變，該實體須在該項改變發生後 7 個營業日內，以書面將此事通知證監會，並在通知內提供該項改變的詳情。
- (3) 如中介人的有聯繫實體（屬認可財務機構者除外）收取或持有該中介人的客戶資產，則除非獲證監會書面認可，否則該實體除經營收取或持有客戶資產（不論該等資產是否代該中介人收取或持有）的業務外，不得經營任何其他業務。
- (4) 任何中介人的有聯繫實體無合理辯解而違反第 (1)、(2) 或 (3) 款，即屬犯罪——
  - (a) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (5) 任何中介人的有聯繫實體意圖詐騙而違反第 (1)、(2) 或 (3) 款，即屬犯罪——
  - (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 7 年；或
  - (b) 一經循簡易程序定罪，可處罰款 \$500,000 及監禁 1 年。
- (6) 中介人的有聯繫實體如察覺本身沒有遵守第 (1)、(2) 或 (3) 款，須在隨後一個營業日內，以書面將此事以及相關情況通知證監會。
- (7) 任何中介人的有聯繫實體違反第 (6) 款，即屬犯罪——
  - (a) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (8) 任何中介人的有聯繫實體不得僅以遵從第 (6) 款可能會導致它入罪為理由，而獲豁免遵從該款。

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notify the Commission by notice in writing of that fact and such other particulars as are prescribed by rules made under section 397 for the purposes of this section.

- (2) Where there is any change in the particulars required to be provided by an associated entity of an intermediary under subsection (1), the associated entity shall within 7 business days thereafter notify the Commission by notice in writing of that fact and provide in the notice particulars of the change.
- (3) Where an associated entity of an intermediary, other than an authorized financial institution, receives or holds client assets of the intermediary, the associated entity shall not, unless authorized in writing by the Commission, conduct any business other than that of receiving or holding client assets, whether on behalf of the intermediary or otherwise.
- (4) An associated entity of an intermediary which, without reasonable excuse, contravenes subsection (1), (2) or (3) commits an offence and is liable—
  - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (5) An associated entity of an intermediary which, with intent to defraud, contravenes subsection (1), (2) or (3) commits an offence and is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
  - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.
- (6) An associated entity of an intermediary which becomes aware that it does not comply with subsection (1), (2) or (3) shall within one business day thereafter notify the Commission



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

### 166. 導致入罪的證據在法律程序中的使用

不論本條例其他條文有任何規定，凡任何人 ——

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

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

- (i) 他就該通知而被控犯《刑事罪行條例》(第 200 章) 第 V 部所訂罪行或被控犯作假證供罪；

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- by notice in writing of that fact and of the surrounding circumstances.
- (7) An associated entity of an intermediary which contravenes subsection (6) commits an offence and is liable—
    - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years; or
    - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
  - (8) An associated entity of an intermediary is not excused from complying with subsection (6) only on the ground that to do so might tend to incriminate it.
  - (9) Notwithstanding anything in this section, the power of the Commission to make rules for the purposes of this section in respect of associated entities shall, where the associated entities are authorized financial institutions, be regarded as the power to make rules in respect of the associated entities only in relation to particulars relating to their businesses of receiving or holding client assets of intermediaries of which they are associated entities.

### 166. Use of incriminating evidence in proceedings

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

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

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- (ii) 在 (a) 段所述情況下，他就該通知而被控犯第 146(15) 條所訂罪行；
  - (iii) 在 (b) 段所述情況下，他就該通知而被控犯第 165(7) 條所訂罪行；或
  - (iv) 在 (c) 段所述情況下，他因沒有遵從該段描述的關於通知的規定而導致違例，而他就該項違例被控犯根據第 148(4) 或 (5)、149(4) 或 (5)、151(5) 或 (6)、152(3) 或 (4) 條 (視屬何情況而定) 訂立的規則所訂罪行。
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and the notification might tend to incriminate the person, then the notification shall not be admissible in evidence against the person in criminal proceedings in a court of law other than those in which—

- (i) he is charged with an offence under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the notification;
  - (ii) in the case of paragraph (a), he is charged with an offence under section 146(15) in respect of the notification;
  - (iii) in the case of paragraph (b), he is charged with an offence under section 165(7) in respect of the notification; or
  - (iv) in the case of paragraph (c), he is charged with an offence under any rules made under section 148(4) or (5), 149(4) or (5), 151(5) or (6), 152(3) or (4) (as the case may be) in respect of a contravention taking place by reason of a failure to comply with the requirement described in paragraph (c) relating to the notification.
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**第 VII 部****中介人的業務操守等***(格式變更——2017 年第 2 號編輯修訂紀錄)***第 1 分部 —— 釋義****167. 第 VII 部的釋義**

在本部中，除文意另有所指外 ——

**代表** (representative) ——

- (a) 就持牌法團而言，指符合以下說明的個人 ——
  - (i) 就某類受規管活動獲發牌為持牌代表；及
  - (ii) 以隸屬該法團的身分為該法團進行該類活動的；或
- (b) 就註冊機構而言，指符合以下說明的個人 ——
  - (i) 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為受該機構就某類受規管活動聘用的；及
  - (ii) 為該機構進行該類活動的；

**客戶合約** (client contract) 指中介人與他人之間的任何合約或安排，而該中介人須根據該合約或安排的條款提供構成受規管活動的服務。

**Part VII****Business Conduct, etc. of Intermediaries***(Format changes—E.R. 2 of 2017)***Division 1—Interpretation****167. Interpretation of Part VII**

In this Part, unless the context otherwise requires—

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

**representative** (代表)—

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

**第 2 分部 —— 業務操守****Division 2—Business conduct****168. 中介人及其代表的業務操守****168. Business conduct of intermediaries and their representatives**

- (1) 證監會可訂立規則，規定中介人及其代表在進行該中介人獲發牌或獲註冊進行的受規管活動時，須遵守規則所指定的關乎該中介人或該代表（視屬何情況而定）在進行該等活動方面的行為操守的常規和標準。
- (2) 在不局限第 (1) 款的一般性及不損害第 398(7) 及 (8) 條的原則下，證監會可在第 (1) 款提述的規則中 ——
  - (a) 禁止中介人或他人代中介人使用具誤導性或欺騙性的廣告；並在中介人或他人代中介人使用廣告方面施加條件；
  - (b) 規定客戶合約須包括指明的條款及條件，而除非證監會就任何個別條款或條件另有指示，否則該等條款及條件須視為有關合約的要素，而不論有關合約的條文是否顯露不同的意圖；
  - (c) 規定中介人在與客戶訂立客戶合約時，及在其後不時在該客戶的要求下，須向該客戶提供指明的、關乎該中介人的業務及代該中介人行事而該客戶可聯絡的人的身分及地位的資料；
  - (d) 規定中介人及其任何代表須採取指明的步驟，以確知指明的、關乎該中介人的每一位客戶的身分、財務狀況，以及與該中介人提供的服務有關的投資經驗和目標的事宜；
  - (e) 規定中介人及其任何代表在向該中介人的任何客戶提供有關金融產品的資料或意見之前須採取指明的步驟；
  - (f) 規定中介人及其任何代表在向該中介人的任何客戶作出任何關於金融產品的建議時，須以指明的方式向該客戶披露該中介人或該代表（視屬何情況而定）在該產品中的任何利害關係；

- (1) The Commission may make rules requiring intermediaries and their representatives to comply with such practices and standards, relating to the conduct of the intermediaries or the representatives (as the case may be) in carrying on the regulated activities for which the intermediaries are licensed or registered, as are specified in the rules.
- (2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—
  - (a) prohibit the use of misleading or deceptive advertisements by or on behalf of intermediaries, and impose conditions for the use of advertisements by or on behalf of intermediaries;
  - (b) require specified terms and conditions to be included in client contracts and provide that the terms and conditions are, unless the Commission in relation to any particular term or condition otherwise directs, to be deemed to be of the essence of the client contracts in which they are included, whether or not a different intention appears from the provisions of such client contracts;
  - (c) require an intermediary to provide to its client, upon entering into a client contract with the client, and thereafter from time to time upon request by the client, specified information concerning the business of the intermediary, and the identity and status of any person acting on behalf of the intermediary and with whom the client may have contact;

- (g) 規定中介人及其任何代表須採取指明的步驟，以確保他向該中介人的客戶披露他所推薦的金融產品所涉及的財務風險；
  - (h) 規定中介人及其任何代表須採取指明的步驟，以確保他向該中介人的客戶披露他就所推薦的金融產品而從第三者或將從第三者收取的佣金或利益；
  - (i) 規定在指明情況下，中介人及其任何代表不得代該中介人的客戶進行交易；
  - (j) 禁止中介人或其任何代表在指明情況以外的情況下，或在不符合指明條件的情況下，使用關乎該中介人任何客戶的事務的資料；
  - (k) 規定中介人及其任何代表在其本身的利益與該中介人的客戶的利益出現衝突的情況下須採取指明的步驟；
  - (l) 禁止中介人在指明情況以外的情況下，或在不符合指明條件的情況下，向另一中介人收取財物或獲取服務，以作為將業務轉介予該另一中介人的代價；
  - (m) 禁止任何中介人的代表在指明情況以外的情況下，或在不符合指明條件的情況下，為自己進行證券或期貨合約交易；
  - (n) 規定中介人及其任何代表須採取指明的步驟，以推行及實施遏阻及識辨洗錢活動的程序；
  - (o) 就與常規和標準有關的其他事宜作出規定，而該等常規和標準是關乎在進行中介人獲發牌或獲註冊進行的受規管活動方面的操守的。
- (3) 不論本條有任何規定，證監會不得行使本條賦予的訂立規則的權力，以就第 (2)(b) 款提述的規定指明任何條款及條件，除非該會信納指明該等條款及條件是為了更佳地達致該會的任何規管目標或更佳地執行其任何職能。

- (d) require an intermediary, and any representative of an intermediary, to take specified steps to ascertain, in relation to each of the clients of the intermediary, specified matters relating to his identity and his financial situation, investment experience and investment objectives relevant to the services to be provided by the intermediary;
- (e) require an intermediary, and any representative of an intermediary, to take specified steps before providing information or advice concerning financial products to any client of the intermediary;
- (f) require an intermediary, and any representative of an intermediary, when making any recommendation concerning any financial product to any client of the intermediary, to disclose to the client in the specified manner any interest the intermediary or the representative (as the case may be) may have in the financial product;
- (g) require an intermediary, and any representative of an intermediary, to take specified steps to ensure that disclosure is made to any client of the intermediary of financial risks in relation to any financial product the intermediary or the representative (as the case may be) recommends to the client;
- (h) require an intermediary, and any representative of an intermediary, to take specified steps to ensure that disclosure is made to any client of the intermediary of any commission or advantage the intermediary or the representative (as the case may be) receives or is to receive from any third party in connection with any financial product the intermediary or the representative (as the case may be) recommends to the client;



- (4) 根據本條訂立的規則可規定，任何中介人或其代表無合理辯解而違反該等規則中適用於他的任何指明條文，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處不超過罰款 \$200,000 及監禁 2 年的指明罰則；
- (b) 一經循簡易程序定罪，可處不超過第 6 級罰款及監禁 6 個月的指明罰則。

- (i) require an intermediary, and any representative of an intermediary, not to effect a transaction on behalf of any client of the intermediary in specified circumstances;
- (j) prohibit the use by an intermediary, or any representative of an intermediary, of information relating to the affairs of a client of the intermediary, except in specified circumstances and under specified conditions;
- (k) require an intermediary, and any representative of an intermediary, to take specified steps in cases of conflict arising between any of their interests and those of a client of the intermediary;
- (l) prohibit the receipt by an intermediary of any property or services from another intermediary in consideration of directing business to that other intermediary, except in specified circumstances and under specified conditions;
- (m) prohibit the dealing by any representative of an intermediary for his own account in securities or futures contracts, except in specified circumstances and under specified conditions;
- (n) require an intermediary, and any representative of an intermediary, to take specified steps to introduce and implement procedures to discourage and identify any money laundering activities;
- (o) provide for any other matter relating to the practices and standards relating to conduct in carrying on the regulated activities for which intermediaries are licensed or registered.
- (3) Notwithstanding anything in this section, the Commission shall not exercise any of its powers under this section to make rules to specify any terms and conditions for the purposes of any requirement referred to in subsection (2)(b) unless it is satisfied that the specification of the terms and conditions is

**169. 中介人及其代表的業務操守守則**

- (1) 在不損害證監會根據第 168 條訂立規則的權力的原則下，該會可在憲報刊登及以該會認為適當的任何其他方式發表操守守則，就在通常情況下期望中介人及其代表在進行該中介人獲發牌或獲註冊進行的受規管活動方面須遵守的常規和標準，作出指引。
- (2) 在不局限第 (1) 款的一般性的原則下，第 (1) 款提述的任何操守守則在作出該款提述的指引時，可提述 ——
  - (a) 遵守並非由證監會發出或施加的任何其他守則或規定的義務；
  - (b) 履行持續義務（包括以下的義務）的義務 ——
    - (i) （就中介人而言）向中介人的代表提供持續訓練的義務；或
    - (ii) （就中介人的代表而言）接受持續訓練的義務；
  - (c) 遵守關乎第 168(2) 條所述任何事宜的常規和標準的義務。
- (3) 證監會可不時以符合該會根據本條刊登及發表操守守則的權力的方式，修訂該守則的全部或任何部分，而 ——

for the better furtherance of any of its regulatory objectives or the better performance of any of its functions.

- (4) Rules made under this section may provide that an intermediary, or a representative of an intermediary, that, without reasonable excuse, contravenes any specified provision of the rules that applies to it or him commits an offence and is liable to a specified penalty not exceeding—
  - (a) on conviction on indictment a fine of \$200,000 and a term of imprisonment of 2 years;
  - (b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

**169. Codes for business conduct of intermediaries and their representatives**

- (1) Without prejudice to the power of the Commission to make rules under section 168, the Commission may publish, in the Gazette and in any other manner it considers appropriate, codes of conduct for the purpose of giving guidance relating to the practices and standards with which intermediaries and their representatives are ordinarily expected to comply in carrying on the regulated activities for which the intermediaries are licensed or registered.
- (2) Without limiting the generality of subsection (1), any code of conduct referred to in that subsection may, in giving guidance referred to in that subsection, refer to obligations to observe—
  - (a) any other codes or requirements issued or imposed otherwise than by the Commission;
  - (b) continuing obligations, including any such obligations—
    - (i) in the case of an intermediary, to provide for the continuous training of its representatives; or

- (a) 本條其他條文在作出必要的變通後，適用於該等修訂，猶如它們適用於該守則一樣；及
- (b) 除非文意另有所指，否則在本條例或其他條例中對該守則（不論實際如何稱述）的提述，須解釋為對經如此修訂的該守則的提述。
- (4) 任何中介人或其代表如沒有遵守根據本條刊登及發表並適用於他的任何操守守則所列條文，並不會僅因此而令他在任何司法或其他法律程序中被起訴，但在為施行本條例任何條文而考慮以下事項時，可顧及上述事實——
  - (a) （就中介人而言）該中介人是否獲發牌或獲註冊或繼續持牌或獲註冊的適當人選；
  - (b) （就屬持牌法團的中介人的代表而言）該代表是否獲發牌或繼續持牌的適當人選；或
  - (c) （就屬註冊機構的中介人的代表而言）該代表是否名列於或繼續名列於金融管理專員根據《銀行業條例》（第 155 章）第 20 條備存的紀錄冊並顯示為受該機構就某類受規管活動聘用的適當人選，

而在根據本條例於任何法庭進行的法律程序中，該守則須獲接納為證據；如法庭覺得該守則的任何條文與法律程序中產生的任何問題有關，則在裁定該問題時須考慮該條文。
- (5) 根據本條刊登及發表的任何操守守則可——
  - (a) 在一般或特別情況下適用，而在不局限前文的一般性的原則下，該守則亦可——
    - (i) 在指明的範圍內適用於或不適用於任何指明人士或屬某指明類別的人；
    - (ii) 在某些指明情況下適用或不適用；
  - (b) 就不同情況訂定不同條文，亦可就不同個案或不同類別的個案訂定不同條文。
- (6) 根據本條刊登及發表的操守守則不是附屬法例。

- (ii) in the case of a representative of an intermediary, to undergo continuous training;
- (c) practices and standards concerning any of the matters described in section 168(2).
- (3) The Commission may from time to time amend the whole or any part of any code of conduct published under this section in a manner consistent with the power to publish the code of conduct under this section, and—
  - (a) the other provisions of this section apply, with necessary modifications, to such amendments to the code as they apply to the code; and
  - (b) any reference in this or any other Ordinance to the code (however expressed) shall, unless the context otherwise requires, be construed as a reference to the code as so amended.
- (4) A failure on the part of an intermediary, or a representative of an intermediary, to comply with the provisions set out in any code of conduct published under this section that apply to it or him shall not by itself render it or him liable to any judicial or other proceedings, but may be taken into account in considering, for the purposes of any provision of this Ordinance—
  - (a) in the case of an intermediary, whether it is a fit and proper person to be or to remain licensed or registered;
  - (b) in the case of a representative of an intermediary that is a licensed corporation, whether he is a fit and proper person to be or to remain licensed as a representative; or
  - (c) in the case of a representative of an intermediary that is a registered institution, whether he is a fit and proper person to be or to remain a person whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance

(Cap. 155) as that of a person engaged by a registered institution in respect of a regulated activity,

and in any proceedings under this Ordinance before any court the code shall be admissible in evidence, and if any provision set out in the code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

- (5) Any code of conduct published under this section—
- (a) may be of general or special application and, without limiting the generality of the foregoing, may be made so as to apply, or so as not to apply—
    - (i) to a specified extent in relation to any specified person or to members of a specified class of persons;
    - (ii) in specified circumstances;
  - (b) may make different provisions for different circumstances and provide for different cases or classes of cases.
- (6) Any code of conduct published under this section is not subsidiary legislation.

### Division 3—Restriction on short selling, etc.

#### 170. Short selling restricted

- (1) Subject to subsections (2) and (3), a person shall not sell securities at or through a recognized stock market unless at the time he sells them—
- (a) he has or, where he is selling as an agent, his principal has; or

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#### 170. 限制賣空

- (1) 在第 (2) 及 (3) 款的規限下，除非任何人在認可證券市場或透過認可證券市場售賣證券時 ——
- (a) 具有或 (如他以代理人身分售賣) 他的當事人具有；或
  - (b) 他相信並有合理理由相信他具有或 (如他以代理人身分售賣) 他的當事人具有，

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

(2) 就第 (1) 款而言 ——

(a) 任何人如 ——

- (i) 其本意是售賣證券；
- (ii) 提出售賣證券的要約；
- (iii) 顯示自己有權售賣證券；或
- (iv) 指示任何為中介人進行第 1 類受規管活動的中介人代表售賣證券，

則他須被視為售賣該等證券；

- (b) 任何人如在某特定時間具有一項即時可行使而不附有條件的權利，以將證券轉歸於他名下或按照他的指示而轉歸他人名下，則他須被視為在該時間具有一項即時可行使而不附有條件的權利，以將該等證券轉歸於其購買人名下；

- (c) 任何人將證券轉歸其購買人名下的權利，不得僅因該等證券被押記或質押予其他人以作為還款的保證，而被視為是附有條件的。

(3) 第 (1) 款不適用於 ——

- (a) 秉誠行事的人，而他相信並有合理理由相信在他作出第 (1) 款所指的售賣證券的作為時，他對該等證券或在該等證券中是具有權利、所有權或權益的；
- (b) 以中介人代表身為該中介人進行第 1 類受規管活動的人，以該身分秉誠代其他人行事，而他相信並有合理理由相信在他代該其他人作出第 (1) 款所指的售賣證券的作為時，該其他人對該等證券或在該等證券中是具有權利、所有權或權益的；
- (c) 在交易所參與者按照營辦某證券市場的認可交易所的規則經營其證券碎股交易業務的過程中，他以當

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

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

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

- (a) a person shall be regarded as selling securities if he—

- (i) purports to sell the securities;
- (ii) offers to sell the securities;
- (iii) holds himself out as being entitled to sell the securities; or
- (iv) instructs any representative of an intermediary that carries on Type 1 regulated activity for the intermediary, to sell the securities;

- (b) a person who, at a particular time, has a presently exercisable and unconditional right to have securities vested in him or in accordance with his directions shall be regarded as having at that time a presently exercisable and unconditional right to vest the securities in a purchaser of them;

- (c) a right of a person to vest securities in a purchaser of them shall not be regarded as not unconditional by reason only of the fact that the securities are charged or pledged in favour of some other person to secure the repayment of money.

(3) Subsection (1) does not apply to—

- (a) a person who acts in good faith, believing and having reasonable grounds to believe that he has a right, title, or interest to or in the securities which he sells within the meaning of subsection (1);



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事人身份作出的證券售賣，而該項售賣純粹是為以下目的而作出的 ——

- (i) 接受購買證券碎股的要約；或
  - (ii) 以售賣一個交易單位的證券的方法，將證券碎股處置；
  - (d) 依據一項期權合約的交易而作出的證券售賣，而該項合約是在認可證券市場進行買賣的；
  - (e) 屬於為施行本段而藉根據第 397 條訂立的規則訂明的交易類別的證券售賣。
- (4) 任何人違反第 (1) 款，即屬犯罪，一經定罪，可處第 6 級罰款及監禁 2 年。

#### 171. 確認賣空指示的規定

- (1) 凡任何人以當事人身份售賣證券，他不得在認可證券市場或透過認可證券市場傳達任何賣空指示，除非他以文件形式向他的代理人提供一項對以下事項的保證 ——
  - (a) 他具有一項即時可行使而不附有條件的權利，以將該指示所關乎的證券轉歸於其購買人名下；及

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- (b) a person who, as a representative of an intermediary that carries on Type 1 regulated activity for the intermediary, acts in good faith on behalf of some other person, believing and having reasonable grounds to believe that such other person has a right, title, or interest to or in the securities which he sells within the meaning of subsection (1) on behalf of such other person;
  - (c) a sale of securities by an exchange participant acting as a principal, when he acts in the course of his business of dealing in odd lots of securities, in accordance with the rules of the recognized exchange company which operates a stock market, being a sale effected solely for the purpose of—
    - (i) accepting an offer to purchase an odd lot of securities; or
    - (ii) disposing of an odd lot of securities, by means of the sale of one board lot of those securities;
  - (d) a sale of securities effected pursuant to a transaction in an options contract traded on a recognized stock market;
  - (e) a sale of securities falling within a class of transactions prescribed by rules made under section 397 for the purposes of this paragraph.
- (4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 2 years.

#### 171. Requirements to confirm short selling order

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

- (b) 如該指示是憑藉在附表 1 第 1 部第 1 條中的**賣空指示**的定義中的 (a)(i) 或 (v) 段而構成一項賣空指示的話，該段所提述的對手方或另一人(視屬何情況而定)備有該指示所關乎的證券可供借給或交付給他。
- (2) 第 (1) 款所適用的人須在為施行本款而藉根據第 397 條訂立的規則訂明的時間內，以文件形式向他的代理人提供如此訂明的資料(如有的話)。
- (3) 任何以當事人身分售賣證券的交易所參與者，不得在認可證券市場或透過認可證券市場傳達任何憑藉在附表 1 第 1 部第 1 條中的**賣空指示**的定義中的 (a)(i) 或 (v) 段而構成一項賣空指示的指示，除非他已從該段所提述的對手方或另一人(視屬何情況而定)收到一項以文件形式提供的保證，表示該對手方或該另一人備有該指示所關乎的證券可供借給或交付給他。
- (4) 第 (3) 款所適用的交易所參與者須在為施行本款而藉根據第 397 條訂立的規則訂明的時間內，從該款所提述的對手方或另一人收取以文件形式提供的如此訂明的資料(如有的話)。
- (5) 任何以代理人身分售賣證券的人，不得在認可證券市場或透過認可證券市場傳達或接受任何屬賣空指示的指示，除非他已從他的當事人或(如該指示是為其他人的利益作出或代其他人作出)該其他人，收到一項以文件形式提供的對以下事項的保證——
- (a) 該當事人或該其他人(視屬何情況而定)具有一項即時可行使而不附有條件的權利，以將該指示所關乎的證券轉歸其購買人名下；及
- (b) 如該指示是憑藉在附表 1 第 1 部第 1 條中的**賣空指示**的定義中的 (a)(i) 或 (v) 段而構成一項賣空指示的話，該段所提述的對手方或另一人(視屬何情況而定)備有該指示所關乎的證券可供借給或交付給他。
- (6) 第 (5) 款所適用的人須在為施行本款而藉根據第 397 條訂立的規則訂明的時間內，從他的當事人或該款所提述的

- (a) he has a presently exercisable and unconditional right to vest the securities to which the order relates in the purchaser of them; and
- (b) where the short selling order is such order by virtue of paragraph (a)(i) or (v) of the definition of **short selling order** in section 1 of Part 1 of Schedule 1, the counterparty or the other person (as the case may be) referred to in such paragraph has the securities to which the order relates available to lend or deliver to him.
- (2) A person to which subsection (1) applies shall provide to his agent such information (if any), in the form of a document and within such time, as is prescribed by rules made under section 397 for the purposes of this subsection.
- (3) An exchange participant, where he is selling as a principal, shall not convey a short selling order which is such order by virtue of paragraph (a)(i) or (v) of the definition of **short selling order** in section 1 of Part 1 of Schedule 1 at or through a recognized stock market unless he has received an assurance, in the form of a document, from the counterparty or the other person (as the case may be) referred to in such paragraph that the counterparty or the other person (as the case may be) has the securities to which the order relates available to lend or deliver to him.
- (4) An exchange participant to which subsection (3) applies shall collect from the counterparty or the other person referred to in that subsection such information (if any), in the form of a document and within such time, as is prescribed by rules made under section 397 for the purposes of this subsection.
- (5) A person, where he is selling as an agent, shall not convey or accept an order to sell securities which is a short selling order at or through a recognized stock market unless he has received from his principal, or the other person for whose

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- 其他人收取以文件形式提供的如此訂明的資料 ( 如有的話 ) 。
- (7) 就第 (1)、(3) 及 (5) 款而言，如有以下情況，則任何代客戶或受益人傳達或接受指示的人須視為以當事人身分售賣證券 ——
- (a) 他有完全酌情決定權售賣該指示所關乎的證券；及
- (b) 他並非按照其客戶或受益人的任何指示而作出上述的傳達或接受。
- (8) 任何憑藉或根據第 (1)、(2)、(3)、(4)、(5) 或 (6) 款而收到或收取任何保證或資料的代理人或交易所參與者 ——
- (a) 在不抵觸 (b) 段的條文下，須於自他收到載有該保證或資料的文件當日起計 1 年內，保留該文件；及
- (b) 須在證監會於該年內任何時間作出要求時，讓該會有途徑取得該文件，及在該會指明的時間內在該會指明的地點向該會交出該文件。
- (9) 在根據本條例於任何法庭進行的法律程序中，第 (1)、(2)、(3)、(4)、(5) 或 (6) 款提述的保證或資料須獲接納為以下事項的表面證據 ——
- (a) 就任何保證而言，第 (1)、(3) 或 (5) 款 ( 視屬何情況而定 ) 中指明的該保證所關乎的事項；或
- (b) 就任何資料而言，第 (2)、(4) 或 (6) 款 ( 視屬何情況而定 ) 提述的規則中指明的該資料所關乎的事項 ( 如有的話 ) 。
- (10) 在不抵觸第 (11) 款的規定下，任何人違反第 (1)、(3) 或 (5) 款，即屬犯罪，一經定罪，可處第 5 級罰款及監禁 1 年。
- (11) 被控犯第 (10) 款所訂罪行的人如證明當他傳達，或就違反第 (5) 款而言，當他傳達或接受有關指示時，他 ——
- (a) 相信並有合理理由相信該指示並非一項賣空指示；或
- (b) 並不知道該指示屬一項賣空指示，

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- benefit or on whose behalf the order is made, an assurance, in the form of a document, that—
- (a) his principal or that other person (as the case may be) has a presently exercisable and unconditional right to vest the securities to which the order relates in the purchaser of them; and
- (b) where the short selling order is such order by virtue of paragraph (a)(i) or (v) of the definition of **short selling order** in section 1 of Part 1 of Schedule 1, the counterparty or the other person (as the case may be) referred to in such paragraph has the securities to which the order relates available to lend or deliver to him.
- (6) A person to which subsection (5) applies shall collect from his principal, or the other person referred to in that subsection, such information (if any), in the form of a document and within such time, as is prescribed by rules made under section 397 for the purposes of this subsection.
- (7) For the purposes of subsections (1), (3) and (5), a person who conveys or accepts an order on behalf of his clients or beneficiaries shall be regarded as selling as a principal if—
- (a) he has full discretion to sell the securities to which the order relates; and
- (b) his conveyance or acceptance is not in accordance with any instruction from his clients or beneficiaries.
- (8) An agent or exchange participant who receives or collects an assurance or information by virtue of or under subsection (1), (2), (3), (4), (5) or (6) shall—
- (a) subject to paragraph (b), retain the document in which it is contained for not less than one year from the date on which it is received; and

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則可以此作為免責辯護。

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

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- (b) upon request made at any time within that year by the Commission, give the Commission access to the document, and produce to the Commission, within the time and at the place specified by the Commission, the document.

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

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

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

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

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

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

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

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

## 172. 披露賣空的規定

## 172. Requirements to disclose short sales

- (1) 任何交易所參與者或交易所參與者代表如知道或獲告知某項售賣證券的指示屬一項賣空指示，則 ——
  - (a) 當他將該指示傳達任何其他人，以使該人將該指示輸入某認可證券市場的交易系統時，他須告知該人該指示屬一項賣空指示；及
  - (b) 當他將該指示輸入某認可證券市場的交易系統時，他須註明營辦該市場的認可交易所的規章所規定的、用以顯示該指示屬一項賣空指示的事項。
- (2) 除第 (3) 款另有規定外，任何人無合理辯解而違反第 (1) 款，即屬犯罪，一經定罪，可處第 5 級罰款及監禁 1 年。
- (3) 任何人如僅因他的粗心大意、不小心或疏忽而違反第 (1) 款，則他不得視為犯第 (2) 款所訂罪行。
- (4) 在本條中，**交易所參與者代表** (exchange participant's representative) 指隸屬某持牌法團的持牌代表，而該法團是營辦某認可證券市場的認可交易所的交易所參與者。

## 第 4 分部 —— 其他規定

### 173. 期權買賣的規定

- (1) 證監會可訂立規則 ——
  - (a) 禁止第 1 類中介人在該等規則所規定的情況以外的情況下 ——
    - (i) 在香港進行交易；

- (1) An exchange participant or exchange participant's representative who knows or is informed that an order to sell securities is a short selling order shall—
  - (a) when passing the order to any other person with a view that the other person shall input the order into the trading system of a recognized stock market, inform that other person that the order is a short selling order; and
  - (b) when inputting the order into the trading system of a recognized stock market, indicate such matters as may be required, under the rules of the recognized exchange company by which the recognized stock market is operated, to show that the order is a short selling order.
- (2) Subject to subsection (3), a person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.
- (3) A person shall not be regarded as committing an offence under subsection (2) if he contravenes subsection (1) by reason only of his inadvertence, carelessness or negligence.
- (4) In this section, **exchange participant's representative** (交易所參與者代表) means a licensed representative accredited to a licensed corporation that is an exchange participant of a recognized exchange company which operates a recognized stock market.

## Division 4—Other requirements

### 173. Requirements for options trading

- (1) The Commission may make rules—
  - (a) prohibiting Type 1 intermediaries from—
    - (i) transacting in Hong Kong;



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

## 174. 進行未獲邀約的造訪時不得訂立某些協議

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

## 174. Certain agreements not to be made during unsolicited calls

- (1) 除第 (2) 及 (3) 款另有規定外，任何中介人或其代表不得在（不論是在香港或在其他地方）進行未獲邀約的造訪時或繼續進行未獲邀約的造訪後，以主事人或代理人身分作出以下作為——
- (a) 與另一人訂立或要約與另一人訂立符合以下說明的協議——
- (i) 協議的內容或目的是該另一人售賣或購買任何證券、期貨合約或槓桿式外匯交易合約；
  - (ii) 協議的內容或目的是向該另一人提供證券保證金融資；或
  - (iii) 協議的目的或作用，或伴稱的目的或作用是向該另一人提供（不論是否附有條件）——
    - (A) 從證券、期貨合約或槓桿式外匯交易合約中取得的利潤、收益或其他回報；或
    - (B) 藉參照任何證券、期貨合約或槓桿式外匯交易合約的價值的變動而計算的利潤、收益或其他回報；或
- (b) 誘使或企圖誘使另一人訂立 (a) 段提述的協議，不論他在進行該造訪時，有沒有作出任何其他作為或事情。
- (2) 任何中介人或其代表不得僅因以下理由而視為違反第 (1) 款——
- (a) 他造訪另一人，而該另一人是以其專業身分行事的律師或會計師，或是持牌人、註冊機構、放債人、專業投資者或是他的原有客戶；及（由 2004 年第 23 號第 56 條修訂）
  - (b) （不論以主事人或代理人身分）與該另一人訂立或要約與該另一人訂立第 (1)(a) 款提述的協議，或誘使或企圖誘使該另一人訂立該協議。
- (3) 本條不適用於——

- (1) Subject to subsections (2) and (3), an intermediary, or a representative of an intermediary, shall not, as principal or agent, during or as a consequence of an unsolicited call made, whether in Hong Kong or elsewhere, by it or him—
- (a) make or offer to make with another person—
- (i) an agreement for that other person to sell or purchase, or with a view to having that other person sell or purchase, any securities, futures contract or leveraged foreign exchange contract;
  - (ii) an agreement to provide, or with a view to providing, to that other person securities margin financing; or
  - (iii) an agreement the purpose or effect, or pretended purpose or effect, of which is to provide, whether conditionally or unconditionally, to that other person a profit, income or other returns—
    - (A) from any securities, futures contract or leveraged foreign exchange contract; or
    - (B) calculated by reference to changes in the value of any securities, futures contract or leveraged foreign exchange contract; or
- (b) induce or attempt to induce another person to enter into an agreement referred to in paragraph (a), whether or not in making the unsolicited call it or he does any other act or thing.
- (2) An intermediary, or a representative of an intermediary, shall not be regarded as contravening subsection (1) by reason only that it or he—
- (a) makes a call on another person who is a solicitor or certified public accountant acting in his professional capacity, or is a licensed person, registered institution,

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

- money lender or professional investor, or its or his existing client; and (*Amended 23 of 2004 s. 56*)
- (b) whether as principal or agent, makes or offers to make with that other person an agreement referred to in subsection (1)(a), or induces or attempts to induce that other person to enter into such an agreement.
- (3) This section does not apply to—
- (a) agreements relating to securities, futures contracts or leveraged foreign exchange contracts or to securities margin financing which are of a class prescribed by rules made under section 397 for the purposes of this paragraph;
- (b) calls made by a person who is of a class prescribed by rules made under section 397 for the purposes of this paragraph;
- (c) calls made on a person who is of a class prescribed by rules made under section 397 for the purposes of this paragraph;
- (d) calls which are of a class prescribed by rules made under section 397 for the purposes of this paragraph.
- (4) Without limiting the generality of the powers of the Commission to make rules for the purposes of subsection (3)(d), the Commission may in the rules prescribe that calls made by an authorized financial institution in compliance with such requirements under any guidelines published under section 7(3) of the Banking Ordinance (Cap. 155) that apply to it shall be within a class of calls to which this section does not apply.
- (5) An intermediary, or a representative of an intermediary, that contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

- (a) 在緊接進行有關造訪當日前的 3 年期間內的任何時間，他已和該中介人訂立客戶合約，而在進行有關造訪時，他仍然是該合約的一方的人；或
- (b) 在緊接進行有關造訪當日前的 3 年期間內的任何時間，獲該中介人提供構成受規管活動的服務的人；

**造訪** (call) 指親身探訪，或以任何方式作出通訊，不論是以機械、電子、磁力、光學、人手或其他媒介，或藉光、影像或聲音或其他媒介的產生或傳送作出的；

**期貨合約** (futures contract) 指 ——

- (a) 附表 1 第 1 部第 1 條界定的期貨合約；
- (b) 就某項目訂立的期貨合約或表述為屬期貨合約的合約，而該項目是由為本定義的目的而藉根據第 397 條訂立的規則訂明的，不論該項目是否能夠予以交付。

- (6) Where a person on whom an unsolicited call is made enters into an agreement with another person in consequence of a contravention of subsection (1), the person on whom the unsolicited call is so made may, subject to the rights of a subsequent purchaser in good faith for value, rescind the agreement, by giving notice in writing to that effect to that other person, within 28 days after the day on which the agreement is entered into or 7 days after the day on which he becomes aware of the contravention, whichever is the earlier.

- (7) In this section—

**call** (造訪) means a visit in person, or a communication by any means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium;

**existing client** (原有客戶), in relation to an intermediary or a representative of an intermediary, means a person—

- (a) who has entered into a client contract with the intermediary at any time during the period of 3 years immediately preceding the day on which the call is made, and remains a party to the client contract when the call is made; or
- (b) for whom the intermediary has provided a service, the provision of which constitutes a regulated activity, at any time during the period of 3 years immediately preceding the day on which the call is made;

**futures contract** (期貨合約) means—

- (a) a futures contract as defined in section 1 of Part 1 of Schedule 1;
- (b) a futures contract, or a contract represented as being a futures contract, in respect of an item, whether or not capable of being delivered, which is prescribed by

rules made under section 397 for the purposes of this definition;

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

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

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

- (1) 除第 (5) 款另有規定外，除非符合以下條件，否則第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表不得傳達為取得或處置某團體的或由某團體發行的證券而提出的要約——
  - (a) 該要約——
    - (i) 載於一份以一種法定語文寫成的書面文件中；或
    - (ii) 以符合第 (i) 節規定的書面文件以外的形式傳達，並在傳達後 24 小時內，轉為一份以一種法定語文寫成的書面文件並交付受要約的人；
  - (b) 該要約——
    - (i) 載有足以識辨該等證券的描述；
    - (ii) 指明要約的條款（如適用的話，包括建議須就依據該要約取得的證券而支付的代價的款額）；
    - (iii) （在已就該等證券宣布或建議派發股息，或預期在該等證券轉讓之前可能會就該等證券宣布或建議派發股息的情況下）述明該等證券在轉讓時是否附連該等股息；

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

- (1) Subject to subsection (5), a Type 1 intermediary or representative, a Type 4 intermediary or representative or a Type 6 intermediary or representative shall not communicate an offer to acquire or dispose of any securities of, or issued by, a body unless—
  - (a) the offer—
    - (i) is contained in a written document in an official language; or
    - (ii) if communicated otherwise than in the form of a written document satisfying the requirement of subparagraph (i), is reduced to a written document in an official language and delivered to the person or persons to whom it was made not later than 24 hours after the communication;
  - (b) the offer—
    - (i) contains a description of the securities sufficient to enable them to be identified;



- (iv) 指明 ——
- (A) 如任何人接受該要約，該人就該宗交易而根據《印花稅條例》(第 117 章)有法律責任繳付的印花稅，會否由要約人繳付；及
  - (B) 如要約人不會繳付該等印花稅的話，則接受該要約的人將會就該宗交易而根據該條例有法律責任繳付的印花稅的稅率；
- (v) 指明如任何人接受該要約，該人是否須向以下的人支付任何費用 ——
- (A) (如該第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表(視屬何情況而定)憑藉作為中介人而被視為第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表(視屬何情況而定))該第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表(視屬何情況而定)；或
  - (B) (如該第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表(視屬何情況而定)憑藉作為某中介人的代表而被視為第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表(視屬何情況而定))該中介人；
- (vi) 如載於 (a)(i) 段提述的書面文件中，則 ——
- (A) 指明要約人的姓名或名稱及地址，如任何人代要約人發出要約，則一併指明該人的姓名或名稱及地址；
  - (B) 載有一個不早於傳達該要約日期前 3 日的日期；
  - (C) (如該要約是為取得證券)符合附表 7 第 1 部的規定；

- (ii) specifies the terms of the offer, including where appropriate the amount of consideration proposed to be paid for the securities to be acquired pursuant to the offer;
- (iii) where a dividend has been declared or recommended in respect of the securities, or it is anticipated that a dividend may be so declared or recommended before the transfer of the securities, states whether the securities are to be transferred with or without the dividend;
- (iv) specifies—
  - (A) whether, in the event of a person accepting the offer, the offeror will pay any stamp duty which the person so accepting the offer will become liable to pay in respect of the transaction under the Stamp Duty Ordinance (Cap. 117); and
  - (B) if the offeror will not so pay the stamp duty, the rate of the stamp duty that the person so accepting the offer will become liable to pay in respect of the transaction under that Ordinance;
- (v) specifies whether, in the event of a person accepting the offer, any fees will be payable by that person to—
  - (A) where the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be) is regarded as such by virtue of being an intermediary, the Type 1 intermediary or representative, the Type 4 intermediary or

- (D) (如該要約是為處置證券)符合附表 7 第 2 部的規定; 及
- (E) (如該要約載列或附加一份與該要約有關連的專家報告)載有一項陳述,其意是該專家已同意該要約載列或附加該報告,並且沒有在該要約傳達前撤回該同意; 及
- (vii) 如以 (a)(ii) 段描述的方式傳達,而有一份專家報告與該要約有關連,則指明可在何處查閱該報告,並包含一項陳述,其意是該專家已同意該報告的內容,並且沒有在該要約傳達前撤回該同意; 及
- (c) (如該要約載於 (a)(i) 段提述的書面文件中或轉為 (a)(ii) 段提述的書面文件,但該書面文件只以一種法定語文寫成)該書面文件附有另一種法定語文的譯本,而該譯本載有 (b) 段就該要約規定的一切詳情,但如證監會先前已就個別個案同意可免除本段的規定,則該個案屬例外。
- (2) 凡載於第 (1)(a)(i) 款提述的書面文件的要約須載有第 (1)(b)(vi)(E) 款提述的關於某專家的同意的陳述,該要約不得在以下條件不獲符合的情況下傳達:該專家已同意該要約在該陳述按它載列的形式及文意載列於該書面文件的情況下傳達,並且沒有在該要約傳達前撤回其同意。
- (3) 凡以第 (1)(a)(ii) 款描述的方式傳達的要約須包含第 (1)(b)(vii) 款提述的關於某專家的同意的陳述,該要約不得在以下條件不獲符合的情況下傳達:該專家已同意該要約在該要約按它提述該陳述的形式及文意提述該陳述的情況下傳達,並且沒有在該要約傳達前撤回其同意。
- (4) 任何第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表在沒有遵守第 (1)、(2) 及 (3) 款的情況下,傳達為取得或處置證券而提出的要約,即屬犯罪,一經定罪,可處第 6 級罰款,如屬持續的罪行,則可就罪行持續期間的每一日,另處罰款 \$20,000。

- representative or the Type 6 intermediary or representative (as the case may be); or
- (B) where the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be) is regarded as such by virtue of being a representative of an intermediary, the intermediary;
- (vi) if contained in a written document referred to in paragraph (a)(i)—
  - (A) specifies the name and address of the offeror and, where any person is making the offer on behalf of the offeror, the name and address of that person;
  - (B) bears a date which is not more than 3 days before the date on which the offer is communicated;
  - (C) where the offer is for the acquisition of securities, satisfies the requirements of Part 1 of Schedule 7;
  - (D) where the offer is for the disposal of securities, satisfies the requirements of Part 2 of Schedule 7; and
  - (E) where a report of an expert in connection with the offer is included in or annexed to the offer, contains a statement to the effect that the expert has consented to the inclusion or annexure, and has not, before the communication of the offer, withdrawn that consent; and
- (vii) if communicated in the manner described in paragraph (a)(ii), where there is a report of an

## (5) 本條不適用於 ——

## (a) 受以下規定規管或按照以下規定提出的要約 ——

- (i) 根據第 23 或 36 條就管限證券上市而訂立的規章或規則的規定；
- (ii) 根據第 399(2)(a) 條刊登或發表的守則的規定；或
- (iii) 《公司(清盤及雜項條文)條例》(第 32 章) 第 II 部或(就在香港以外地方成立的法團而言) 該條例第 XII 部的規定；(由 2012 年第 28 號第 912 及 920 條修訂)

## (aa) 符合以下說明的要約 ——

- (i) 與《公司(清盤及雜項條文)條例》(第 32 章) 附表 17 各部(第 1 部除外) 一併理解的該附表第 1 部指明的要約；及(由 2012 年第 28 號第 912 及 920 條修訂)
  - (ii) 由證監會藉於憲報刊登的公告指明為本條不適用的要約；(由 2004 年第 30 號第 3 條增補)
- (b) 向已經持有某團體的或由某團體發出的證券的人傳達，讓該人取得該團體的或由該團體發出的證券的要約；
- (c) 某第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表向某人傳達的要約，但不適用的前提是在緊接該要約的日期之前的 3 年內 ——
- (i) (如該第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表(視屬何情況而定) 憑藉作為中介人而被視為第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表(視屬何情況而定)) 該第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表(視屬何情況而定)；或

expert in connection with the offer, specifies the place at which the report is available for inspection, and contains a statement to the effect that the expert has consented to the contents of the report, and has not, before the communication of the offer, withdrawn that consent; and

- (c) where the offer is contained in a written document referred to in paragraph (a)(i) or is reduced to a written document referred to in paragraph (a)(ii) but the written document is in only one official language, the written document includes a translation, in the other official language, of all the particulars required in respect of the offer under paragraph (b), except where the Commission has previously agreed that the requirements of this paragraph may be dispensed with in any particular case.
- (2) Where an offer contained in a written document referred to in subsection (1)(a)(i) is to contain a statement referred to in subsection (1)(b)(vi)(E) regarding the consent of an expert, the offer shall not be communicated unless the expert has given, and has not before the communication of the offer withdrawn, his consent to the offer being communicated with the inclusion of the statement in the form and context in which it is included in the written document.
- (3) Where an offer communicated in the manner described in subsection (1)(a)(ii) is to contain a statement referred to in subsection (1)(b)(vii) regarding the consent of an expert, the offer shall not be communicated unless the expert has given, and has not before the communication of the offer withdrawn, his consent to the offer being communicated with a reference to the statement in the form and context in which it is referred to.
- (4) Any Type 1 intermediary or representative, Type 4 intermediary or representative or Type 6 intermediary or

- (ii) (如該第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表(視屬何情況而定)憑藉作為某中介人的代表而被視為第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表(視屬何情況而定))該中介人，  
須已經與該人或代該人進行過至少 3 次證券售賣或購買的交易；
- (d) 向以下人士提出的要約 ——
- (i) 專業投資者；
  - (ii) 以其專業身分行事的律師或會計師；或 (*由 2004 年第 23 號第 56 條修訂*)
  - (iii) 屬於為施行本段而藉根據第 397 條訂立的規則訂明的類別的其他人；
- (e) 由交易所參與者在認可證券市場的日常交易過程中傳達的要約；
- (f) 由屬於為施行本段而藉根據第 397 條訂立的規則訂明的類別的人傳達的要約；
- (g) 屬於為施行本段而藉根據第 397 條訂立的規則訂明的類別的要約。

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

- (5) This section does not apply to—
- (a) an offer regulated by, and made in accordance with, the requirements of—
    - (i) the rules made under section 23 or 36 governing the listing of securities;
    - (ii) the code published under section 399(2)(a); or
    - (iii) Part II of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance; (*Amended 28 of 2012 ss. 912 & 920*)
  - (aa) an offer—
    - (i) specified in Part 1 of the Seventeenth Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) as read with the other Parts of that Schedule; and (*Amended 28 of 2012 ss. 912 & 920*)
    - (ii) specified by the Commission, by notice published in the Gazette, as an offer to which this section does not apply; (*Added 30 of 2004 s. 3*)
  - (b) an offer communicated to persons who already hold securities of, or issued by, a body, for those persons to acquire securities of, or issued by, the body;
  - (c) an offer communicated by a Type 1 intermediary or representative, a Type 4 intermediary or representative



## (6) 凡 ——

- (a) 任何人已接受為取得或處置某團體的或由某團體發行的證券而提出的要約，而本條適用於該要約；及
- (b) 該要約的傳達在要項上是沒有遵守第 (1)、(2) 及 (3) 款的，

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

## (7) 就本條而言 ——

- (a) 凡第 1 類中介人或代表、第 4 類中介人或代表或第 6 類中介人或代表向某人傳達取得或處置某團體的或由某團體發行的證券的邀請，該項邀請即當作為要約，而在本條中凡提述承約之處，須據此解釋；
- (b) 凡有一項取得或處置證券或證券權益的權利，任何為取得或處置該項權利而提出的要約，即當作為一項為取得或處置證券而提出的要約；而在本條中凡提述持有證券的人，即包括持有取得證券或證券權益的權利的人；
- (c) 用其他證券作為代價或部分代價以取得或處置證券的要約，即當作為既是為取得證券亦是為處置證券而提出的要約。

or a Type 6 intermediary or representative if the offer is made to a person with whom, or on whose behalf—

- (i) where the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be) is regarded as such by virtue of being an intermediary, the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be); or
- (ii) where the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be) is regarded as such by virtue of being a representative of an intermediary, the intermediary,

has transacted the sale or purchase of securities on at least 3 occasions during the period of 3 years immediately preceding the date of the offer;

## (d) an offer made to—

- (i) a professional investor;
- (ii) a solicitor or certified public accountant acting in his professional capacity; or (*Amended 23 of 2004 s. 56*)
- (iii) any other person who is of a class prescribed by rules made under section 397 for the purposes of this paragraph;
- (e) an offer communicated by an exchange participant in the ordinary course of trading on a recognized stock market;
- (f) an offer communicated by a person who is of a class prescribed by rules made under section 397 for the purposes of this paragraph;



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- (8) 在本條中，除文意另有所指外，凡提述某團體的證券，須解釋為提述附表 1 第 1 部第 1 條界定並符合以下說明的證券 ——
- (a) 由該團體發行、提供或批給；或
- (b) 擬由該團體發行、提供或批給。
- (8A) 根據第 (5)(aa)(ii) 款刊登的公告不是附屬法例。（由 2004 年第 30 號第 3 條增補）

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- (g) an offer which is of a class prescribed by rules made under section 397 for the purposes of this paragraph.
- (6) Where—
- (a) a person has accepted an offer to acquire or dispose of any securities of, or issued by, a body which is an offer to which this section applies; and
- (b) the offer has been communicated without subsections (1), (2) and (3) having been complied with in a material particular,
- that person may, subject to the rights of a subsequent purchaser of the securities in good faith for value, rescind the acceptance, by giving notice in writing to that effect to the offeror, within 28 days after the date of acceptance or 7 days after the day on which he becomes aware of the matter described in paragraph (b), whichever is the earlier.
- (7) For the purposes of this section—
- (a) where a Type 1 intermediary or representative, a Type 4 intermediary or representative or a Type 6 intermediary or representative communicates an invitation to a person to acquire or dispose of any securities of, or issued by, a body, the invitation shall be deemed to be an offer, and a reference in this section to acceptance shall be construed accordingly;
- (b) an offer to acquire or dispose of a right to acquire or dispose of securities or an interest in securities shall be deemed to be an offer to acquire or dispose of securities, and a reference in this section to a person who holds securities includes a person who holds a right to acquire securities or an interest in securities;
- (c) an offer to acquire or dispose of securities in consideration or part consideration for other securities

(9) 在本條中 ——

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

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

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

- (a) 就第 1 類受規管活動獲發牌或獲註冊的中介人；或
- (b) 為該中介人進行第 1 類受規管活動的該中介人的代表；

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

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

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

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

**團體** (body) 指法團、多邊機構，或某政府或市政府當局。

(編輯修訂 —— 2017 年第 2 號編輯修訂紀錄)

shall be deemed to be both an offer to acquire and an offer to dispose of securities.

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

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

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

(9) In this section—

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

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

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

- (a) an intermediary licensed or registered for Type 1 regulated activity; or
- (b) its representative that carries on Type 1 regulated activity for it;

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

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

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#### 176. 禁止作出某些表述

- (1) 除第 (2) 款另有規定外，任何中介人或其代表均不得以任何方式（不論是明示或隱含的方式）作出他的能力或資格已獲政府或證監會認可或保證的表述，亦不得准許任何其他人士以上述方式作出該等表述。
- (2) 任何人不得僅因表示某人獲根據本條例發牌或註冊的陳述而屬違反第 (1) 款。
- (3) 任何中介人或其代表無合理辯解而違反第 (1) 款，即屬犯罪，一經定罪，可處第 5 級罰款。

### 第 5 分部 —— 雜項條文

#### 177. 修訂附表 7

行政長官會同行政會議可藉在憲報刊登的命令修訂附表 7。

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

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

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

#### 176. Certain representations prohibited

- (1) Subject to subsection (2), an intermediary, or a representative of an intermediary, shall not represent, or permit any other person to represent, in any manner and whether expressly or by implication, that its or his abilities or qualifications have been endorsed or warranted by the Government or the Commission.
- (2) A statement to the effect that a person is licensed or registered under this Ordinance does not by itself constitute a contravention of subsection (1).
- (3) An intermediary, or a representative of an intermediary, that, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

### Division 5—Miscellaneous

#### 177. Amendment of Schedule 7

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

**第 VIII 部****監管及調查**

(格式變更——2012 年第 2 號編輯修訂紀錄)

**第 1 分部 —— 釋義****178. 第 VIII 部的釋義**

在本部中，除文意另有所指外——

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

- (a) 在第 183 條中，指符合以下說明的人：有調查員根據第 182(1) 條獲指示或委任，就該人調查任何事宜；及
- (b) 在第 184B 條中，指符合以下說明的人：有金管局調查員根據第 184A(1) 條獲指示或委任，就該人調查任何事宜；(由 2014 年第 6 號第 15 條代替)

**金管局調查員** (MA investigator) 指根據第 184A 條獲指示或委任調查任何事宜的人；(由 2014 年第 6 號第 15 條增補)**審計工作材料** (audit working papers) 指為執行與核數師審計法團帳目有關的職能，或在與執行該等職能有關連的情況下，由該核數師或由他人代該核數師——

- (a) 擬備的紀錄或文件；及
- (b) 取得和保留的紀錄或文件；

**調查員** (investigator) 指 (除在本條的**金管局調查員**的定義中) 根據第 182(1) 條獲指示或委任調查任何事宜的人。(由 2014 年第 6 號第 15 條修訂)**Part VIII****Supervision and Investigations**

(Format changes—E.R. 2 of 2012)

**Division 1—Interpretation****178. Interpretation of Part VIII**

In this Part, unless the context otherwise requires—

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

- (a) any record or document prepared by or on behalf of an auditor; and
- (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 (except in the definition of **MA investigator** in this section) a person directed or appointed to investigate any matter under section 182(1); (Amended 6 of 2014 s. 15)**MA investigator** (金管局調查員) means a person directed or appointed to investigate any matter under section 184A; (Added 6 of 2014 s. 15)**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

**第 2 分部 —— 要求資料的權力等****179. 要求交出關於上市法團等的紀錄及文件的權力**

- (1) 凡任何法團屬或曾屬上市法團，如 ——
- (a) 證監會覺得有某些情況顯示該法團的業務曾於任何有關時間在以下情況下經營 ——
    - (i) 用意在詐騙其債權人或其他人的債權人；
    - (ii) 是為欺詐性或非法目的而經營的；或
    - (iii) 是以欺壓該法團的成員或任何部分成員的方式而經營的；
  - (b) 證監會覺得有某些情況顯示該法團是為欺詐性或非法目的而組成的；
  - (c) 證監會覺得有某些情況顯示與該法團上市過程（包括在該過程中向公眾提供該法團的證券的過程）有關的人，曾經在與該過程有關的情況下作出虧空、欺詐、不當行為或其他失當行為；
  - (d) 證監會覺得有某些情況顯示參與該法團事務的管理的人，曾於任何有關時間在與該等事務的管理有關的情況下對該法團或其成員或任何部分成員作出虧空、欺詐、不當行為或其他失當行為；
  - (e) 證監會覺得有某些情況顯示該法團的成員或任何部分成員曾於任何有關時間未獲提供他們可合理期望獲得的關於該法團事務的所有資料；或
  - (f) 證監會決定根據第 186(1) 或 (2) 條協助調查某事宜，而該事宜與該法團有關，且（按該會的意見）在性質上與 (a)、(b)、(c)、(d) 或 (e) 段提述的情況所顯示的

- (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). (*Replaced 6 of 2014 s. 15*)

**Division 2—Powers to require information, etc.****179. Power to require production of records and documents concerning listed corporations, etc.**

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



並在該段描述的事宜相似，(由 2015 年第 19 號第 21 條修訂)

則獲授權人可在第 (5) 至 (10) 款的規限下向下述者發出指示，要求在該指示指明的時間內在該指示指明的地點，交出該指示指明的紀錄及文件——

- (i) 該法團；
  - (ii) 屬或曾在關鍵時間屬該法團的有連繫法團的另一法團；
  - (iii) 認可財務機構 ( 但非該法團或第 (ii) 段描述的法團 ) ；
  - (iv) 核數師 ( 但非該法團或第 (ii) 段描述的法團 ) ；
  - (v) 任何其他人士。
- (2) 根據本條要求某人交出紀錄或文件的權力，包括作出以下作為的權力——
- (a) 在該等紀錄或文件已交出的情況下——
    - (i) 複印該等紀錄或文件或以其他方式記錄其中的細節；及
    - (ii) 要求以下人士就該等紀錄或文件提供或作出解釋或陳述 ( 在適用範圍內，包括描述擬備或製作該等紀錄或文件時的情況、提供所有在與該等紀錄或文件有關連的情況下作出或收取的指令的細節，以及解釋在該等紀錄或文件中作出或遺漏某記項的理由 ) ——
      - (A) 該人；
      - (B) ( 如該人是法團 ) 任何屬或曾屬該法團的高級人員的人，或任何正受僱或曾在任何時間受僱於該法團的人；或
  - (b) 在該等紀錄或文件未予交出的情況下，要求以下人士說明該等紀錄或文件在何處——
    - (i) 該人；

management, in defalcation, fraud, misfeasance or other misconduct towards it or its members or any part of its members;

- (e) it appears to the Commission that there are circumstances suggesting that at any relevant time members of the corporation or any part of its members have not been given all the information with respect to its affairs that they might reasonably expect; or
  - (f) a matter in respect of the investigation of which the Commission decides to provide assistance under section 186(1) or (2) relates to the corporation and is, in the opinion of the Commission, of a nature similar to the matter described in paragraph (a), (b), (c), (d) or (e) as being suggested by the circumstances referred to in such paragraph, (*Amended 19 of 2015 s. 21*)
- an authorized person may, subject to subsections (5) to (10), give a direction to—
- (i) the corporation;
  - (ii) a corporation that is, or was at the material time, a related corporation of the corporation;
  - (iii) an authorized financial institution, other than the corporation or a corporation described in paragraph (ii);
  - (iv) an auditor, other than the corporation or a corporation described in paragraph (ii);
  - (v) any other person,
- requiring the production, within the time and at the place specified in the direction, of any record and document specified in the direction.
- (2) A power under this section to require the production of any record or document by any person includes the power—
- (a) if the record or document is produced—

- (ii) (如該人是法團)任何屬或曾屬該法團的高級人員的人,或任何正受僱或曾在任何時間受僱於該法團的人。
- (3) 獲授權人可以書面要求根據本條提供或作出解釋、陳述或說明的人在該要求指明的合理期間內,藉法定聲明核實該解釋、陳述或說明,而該聲明可由該獲授權人監理。
- (4) 如任何人沒有按照根據本條施加的要求提供或作出解釋、陳述或說明的理由,是該解釋、陳述或說明是他所不知道的或並非由他管有的,則獲授權人可以書面要求該人在該要求指明的合理期間內,藉法定聲明核實他因該理由不能遵從或不能完全遵從(視屬何情況而定)該要求,而該聲明可由該獲授權人監理。
- (5) 除非獲授權人有合理理由相信根據第(1)(i)或(ii)款向法團發出指示而要求交出的紀錄或文件,是與該法團的事務有關,或與屬或曾在關鍵時間屬該法團的有連繫法團的另一法團的事務有關,否則獲授權人不得根據第(1)(i)或(ii)款發出該指示。
- (6) 除非獲授權人有合理理由相信並經證監會以書面證明他有合理理由相信以下各項,否則他不得根據第(1)(iii)款向認可財務機構發出指示,要求它交出任何紀錄或文件——
- (a) 該機構管有與某法團的事務有關的紀錄或文件,而該法團已根據或可能會根據第(1)(i)或(ii)款接獲指示;及

- (i) to make copies or otherwise record details of the record or document; and
- (ii) to require—
- (A) the person;
- (B) in the case of a corporation, any person who is a present or past officer of the corporation, or is or was at any time employed by the corporation,
- to provide or make any explanation or statement in respect of the record or document (including, in so far as applicable, a description of the circumstances under which it was prepared or created, details of all instructions given or received in connection with it, and an explanation of the reasons for the making of entries contained in it or the omission of entries from it); or
- (b) if the record or document is not produced, to require—
- (i) the person;
- (ii) in the case of a corporation, any person who is a present or past officer of the corporation, or is or was at any time employed by the corporation,
- to state where it is.
- (3) An authorized person may in writing require the person providing or making an explanation or statement under this section to verify within a reasonable period specified in the requirement the explanation or statement by statutory declaration, which may be taken by the authorized person.
- (4) If a person does not provide or make an explanation or statement in accordance with a requirement under this section for the reason that the explanation or statement was not within his knowledge or in his possession, an authorized

- (b) 要求交出的紀錄或文件 ——
- (i) 與該法團的事務或交易有關；及
- (ii) (A) 在第 (1)(a)、(b)、(c)、(d) 或 (e) 款適用的情況下，與考慮該款提述的情況所顯示的並在該款描述的事宜曾否存在一事有關；或
- (B) 在第 (1)(f) 款適用的情況下，與考慮證監會決定根據第 186(1) 或 (2) 條協助調查的事宜曾否存在一事有關。(由 2015 年第 19 號第 21 條修訂)
- (7) 除非獲授權人有合理理由相信並經證監會以書面證明他有合理理由相信以下各項，否則他不得根據第 (1)(iv) 款向任何核數師發出指示，要求該核數師交出任何紀錄或文件 ——
- (a) 該核數師管有任何屬審計工作材料性質並與某法團的事務有關的紀錄或文件，而該法團已根據或可能會根據第 (1)(i) 或 (ii) 款接獲指示；及
- (b) 要求交出的紀錄或文件 ——
- (i) 與該法團的事務有關；及
- (ii) (A) 在第 (1)(a)、(b)、(c)、(d) 或 (e) 款適用的情況下，與考慮該款提述的情況所顯示的並在該款描述的事宜曾否存在一事有關；或
- (B) 在第 (1)(f) 款適用的情況下，與考慮證監會決定根據第 186(1) 或 (2) 條協助調查的事宜曾否存在一事有關。(由 2015 年第 19 號第 21 條修訂)

- person may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the authorized person, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.
- (5) An authorized person shall not give any direction under subsection (1)(i) or (ii) to require the production of any record or document unless the authorized person has reasonable cause to believe that the record or document relates to the affairs of the corporation to which the direction is to be given or a corporation of which such corporation is, or was at the material time, a related corporation.
- (6) An authorized person shall not give any direction to an authorized financial institution under subsection (1)(iii) to require the production of any record or document unless the authorized person has reasonable cause to believe, and the Commission certifies in writing that the authorized person has reasonable cause to believe, that—
- (a) the authorized financial institution is in possession of any record or document relating to the affairs of a corporation to which any direction has been or may be given under subsection (1)(i) or (ii); and
- (b) the record or document required to be produced under the direction—
- (i) relates to the affairs of such corporation or to a transaction with such corporation; and
- (ii) is relevant to the consideration of whether there has been the occurrence of—
- (A) where subsection (1)(a), (b), (c), (d) or (e) applies, the matter described in such subsection as being suggested by the

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- (8) 除非獲授權人有合理理由相信並經證監會以書面證明他有合理理由相信以下各項，否則他不得根據第 (1)(v) 款向任何人發出指示，要求該人交出任何紀錄或文件 ——
- (a) 該人曾直接或間接與某法團有事務往來或進行交易，或在其他情況下管有與某法團的事務有關的紀錄或文件，而該法團已根據或可能會根據第 (1)(i) 或 (ii) 款接獲指示；及
- (b) 要求交出的紀錄或文件 ——
- (i) 與該法團的事務或交易有關；
- (ii) (A) 在第 (1)(a)、(b)、(c)、(d) 或 (e) 款適用的情況下，與考慮該款提述的情況所顯示的並在該款描述的事宜曾否存在一事有關；或
- (B) 在第 (1)(f) 款適用的情況下，與考慮證監會決定根據第 186(1) 或 (2) 條協助調查的事宜曾否存在一事有關；及 (由 2015 年第 19 號第 21 條修訂)
- (iii) 不能夠藉根據第 (1)(i)、(ii)、(iii) 或 (iv) 款向其他人發出指示而取得。
- (9) 根據第 (1) 款 (第 (1)(iii) 款除外) 向任何屬認可財務機構的法團發出指示的權力 ——
- (a) 只可就第 (1)(e) 款而行使；或
- (b) 在以下情況下，方可就第 (1)(f) 款而行使：證監會決定根據第 186(1) 或 (2) 條協助調查的事宜，按該會的意見，在性質上與第 (1)(e) 款提述的情況所顯示的並在第 (1)(e) 款描述的事宜相似。(由 2015 年第 19 號第 21 條修訂)

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- circumstances referred to in such subsection; or
- (B) where subsection (1)(f) applies, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186(1) or (2). (Amended 19 of 2015 s. 21)
- (7) An authorized person shall not give any direction to an auditor under subsection (1)(iv) to require the production of any record or document unless the authorized person has reasonable cause to believe, and the Commission certifies in writing that the authorized person has reasonable cause to believe, that—
- (a) the auditor is in possession of any record or document, which is in the nature of audit working papers, relating to the affairs of a corporation to which any direction has been or may be given under subsection (1)(i) or (ii); and
- (b) the record or document required to be produced under the direction—
- (i) relates to the affairs of such corporation; and
- (ii) is relevant to the consideration of whether there has been the occurrence of—
- (A) where subsection (1)(a), (b), (c), (d) or (e) applies, the matter described in such subsection as being suggested by the circumstances referred to in such subsection; or
- (B) where subsection (1)(f) applies, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186(1) or (2). (Amended 19 of 2015 s. 21)

- (10) 獲授權人在根據第 (1) 款 (第 (1)(iii) 款除外) ——
- (a) 向以下兩類法團發出指示前，須諮詢金融管理專員：第一類是屬認可財務機構的法團；第二類是符合以下說明的法團：獲授權人知道該法團是某認可財務機構的控制人，或知道該法團的控制人屬認可財務機構，或知道該法團的控制人亦是某認可財務機構的控制人；或
  - (b) 向屬根據《保險業條例》(第 41 章) 獲授權的保險人的法團發出指示前，須諮詢保監局。(由 2015 年第 12 號第 139 條修訂)
- (11) 證監會可為施行本條以書面授權任何人為獲授權人。
- (12) 證監會須向獲授權人發給授權書文本，而獲授權人根據本條就任何人行使權力前，須向該人出示該授權書文本，以供查閱。
- (13) 任何人無合理辯解而沒有遵從獲授權人根據本條向他施加的要求，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 1 年；或
  - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。

- (8) An authorized person shall not give any direction to a person under subsection (1)(v) to require the production of any record or document unless the authorized person has reasonable cause to believe, and the Commission certifies in writing that the authorized person has reasonable cause to believe, that—
- (a) the person has dealt or has had dealings, directly or indirectly, with, or is otherwise in possession of any record or document relating to the affairs of, a corporation to which any direction has been or may be given under subsection (1)(i) or (ii); and
  - (b) the record or document required to be produced under the direction—
    - (i) relates to the affairs of such corporation or to a transaction with such corporation;
    - (ii) is relevant to the consideration of whether there has been the occurrence of—
      - (A) where subsection (1)(a), (b), (c), (d) or (e) applies, the matter described in such subsection as being suggested by the circumstances referred to in such subsection; or
      - (B) where subsection (1)(f) applies, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186(1) or (2); and (*Amended 19 of 2015 s. 21*)
    - (iii) cannot be obtained by giving a direction to any other person under subsection (1)(i), (ii), (iii) or (iv).
- (9) The power of an authorized person to give any direction under subsection (1) (other than subsection (1)(iii)) to any



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(14) 任何人 ——

- (a) 在看來是遵從獲授權人根據本條向他施加的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件，或提供或作出在要項上屬虛假或具誤導性的解釋、陳述或說明；且
- (b) 知道該紀錄、文件、解釋、陳述或說明在要項上屬虛假或具誤導性，或罔顧該紀錄、文件、解釋、陳述或說明是否在要項上屬虛假或具誤導性，

即屬犯罪 ——

- (i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
- (ii) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

(15) 任何人 ——

(a) 意圖詐騙而 ——

- (i) 沒有遵從獲授權人根據本條向他施加的要求；或
- (ii) 在看來是遵從獲授權人根據本條向他施加的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件，或提供或作出在要項上屬虛假或具誤導性的解釋、陳述或說明；或

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corporation which is an authorized financial institution may be exercised only in respect of—

- (a) subsection (1)(e); or
- (b) subsection (1)(f), if, and only if, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186(1) or (2) is, in the opinion of the Commission, of a nature similar to the matter described in subsection (1)(e) as being suggested by the circumstances referred to in that subsection (1)(e).  
(Amended 19 of 2015 s. 21)

(10) Before an authorized person gives any direction under subsection (1) (other than subsection (1)(iii)) to any corporation—

- (a) where the corporation is an authorized financial institution or a corporation which, to the knowledge of the authorized person, is a controller of an authorized financial institution, or has as its controller an authorized financial institution, or has a controller that is also a controller of an authorized financial institution, the authorized person shall consult the Monetary Authority; or
- (b) where the corporation is an insurer authorized under the Insurance Ordinance (Cap. 41), the authorized person shall consult the Insurance Authority. (Amended 12 of 2015 s. 139)

(11) The Commission may authorize in writing any person as an authorized person for the purposes of this section.

(12) The Commission shall furnish an authorized person with a copy of his authorization, and the authorized person, before exercising any power under this section, shall produce a copy of the authorization to the person in respect of whom the power is exercised for inspection.

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- (b) 如屬法團的高級人員或僱員，意圖詐騙而致使或容許該法團 ——
- (i) 沒有遵從獲授權人根據本條向該法團施加的要求；或
  - (ii) 在看來是遵從獲授權人根據本條向該法團施加的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件，或提供或作出在要項上屬虛假或具誤導性的解釋、陳述或說明，
- 即屬犯罪 ——
- (i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 7 年；或
  - (ii) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (16) 任何人不得僅以遵從獲授權人根據本條向他施加的要求可能會導致他人入罪為理由，而獲豁免遵從該要求。
- (17) 在本條中 ——
- 有關時間** (relevant time) ——
- (a) 就屬上市法團的法團而言，指在該法團組成之後的任何時間；或
  - (b) 就曾屬上市法團的法團而言，指在該法團組成之後但不再屬上市法團之前的任何時間；
- 控制人** (controller) 指屬《銀行業條例》(第 155 章) 第 2(1) 條所界定的間接控權人或大股東控權人的人；
- 獲授權人** (authorized person) 指根據第 (11) 款獲授權的人；
- 關鍵時間** (material time) ——
- (a) 就第 (1)(a)、(b)、(c)、(d) 或 (e) 款而言，指證監會覺得該款提述的情況所顯示的並在該款描述的事宜正在發生的時間；或

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- (13) A person who, without reasonable excuse, fails to comply with a requirement imposed on him by an authorized person under this section commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
  - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (14) A person who—
- (a) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or provides or makes an explanation or statement which is false or misleading in a material particular; and
  - (b) knows that, or is reckless as to whether, the record or document or the explanation or statement is false or misleading in a material particular,
- commits an offence and is liable—
- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (15) A person who—
- (a) with intent to defraud—
    - (i) fails to comply with a requirement imposed on him by an authorized person under this section; or
    - (ii) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or provides or makes an explanation or statement

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- (b) 就第 (1)(f) 款而言，指證監會認為該會決定根據第 186(1) 或 (2) 條協助調查的事宜正在發生的時間。(由 2015 年第 19 號第 21 條修訂)

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- which is false or misleading in a material particular; or
- (b) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to—
- (i) fail to comply with a requirement imposed on it by an authorized person under this section; or
- (ii) in purported compliance with a requirement imposed on it by an authorized person under this section, produce any record or document or provide or make an explanation or statement which is false or misleading in a material particular,
- commits an offence and is liable—
- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (16) A person is not excused from complying with a requirement imposed on the person by an authorized person under this section only on the ground that to do so might tend to incriminate the person.
- (17) In this section—
- authorized person** (獲授權人) means a person authorized under subsection (11);
- controller** (控制人) means a person who is an indirect controller or a majority shareholder controller as defined in section 2(1) of the Banking Ordinance (Cap. 155);
- material time** (關鍵時間) means—
- (a) where subsection (1)(a), (b), (c), (d) or (e) applies, the time at which the matter described in such subsection as

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### 180. 對中介人及其有聯繫實體的監管

- (1) 在第 (9) 及 (10) 款的規限下，獲授權人可為確定任何中介人或任何中介人的有聯繫實體是否正遵從、已遵從或相當可能有能力遵從第 (2) 款指明的規定，而於任何合理時間 ——
  - (a) 進入以下處所 ——
    - (i) 就該中介人而言 ——
      - (A) (如該中介人是持牌法團) 證監會根據第 130(1) 條批准的該法團的處所；或
      - (B) (如該中介人是註冊機構) 該機構的處所；或
    - (ii) (就該中介人的有聯繫實體而言) 該實體的處所；
  - (b) 查閱和複印任何關於下述事宜的紀錄或文件，或以其他方式記錄該等紀錄或文件中的細節 ——
    - (i) 該中介人或該實體 (視屬何情況而定) 經營的業務；

being suggested by the circumstances referred to in such subsection appears to the Commission as occurring; or

- (b) where subsection (1)(f) applies, the time at which the matter in respect of the investigation of which the Commission decides to provide assistance under section 186(1) or (2) appears to the Commission as occurring; (*Amended 19 of 2015 s. 21*)

**relevant time** (有關時間) —

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

### 180. Supervision of intermediaries and their associated entities

- (1) Subject to subsections (9) and (10), an authorized person may at any reasonable time, for the purpose of ascertaining whether an intermediary or an associated entity of an intermediary is complying or has complied with, or is likely to be able to comply with, the requirement specified in subsection (2) —
  - (a) enter —
    - (i) in the case of an intermediary —
      - (A) where it is a licensed corporation, its premises as approved by the Commission under section 130(1); or
      - (B) where it is a registered institution, the premises of the registered institution; or
    - (ii) in the case of an associated entity of an intermediary, the premises of the associated entity;

- (ii) 由該中介人或該實體 (視屬何情況而定) 的有連繫法團履行的交易; 或
- (iii) 在該中介人或該實體 (視屬何情況而定) 經營的業務過程中所作的交易或活動, 或可能影響該中介人或該實體 (視屬何情況而定) 經營的業務的交易或活動; 及
- (c) 就 (b) 段提述的紀錄或文件, 或就在該中介人或該實體 (視屬何情況而定) 經營的業務過程中所作的交易或活動, 或就可能影響該中介人或該實體 (視屬何情況而定) 經營的業務的交易或活動, 而 ——
  - (i) 查訊該中介人或該實體 (視屬何情況而定);
  - (ii) 查訊該中介人或該實體 (視屬何情況而定) 的有連繫法團;
  - (iii) (在第 (7) 款的規限下) 查訊獲授權人有合理理由相信是管有 (b) 段提述的紀錄或文件或掌握關於該等紀錄或文件的資料的其他人, 不論該人是否與該中介人或該實體 (視屬何情況而定) 有關連。
- (2) 為施行第 (1) 款而指明的規定是不得違反以下各項的規定 ——
  - (a) 本條例任何條文;
  - (ba) 《打擊洗錢及恐怖分子資金籌集條例》(第 615 章) 第 2 部的任何條文 (第 6 條除外); (由 2011 年第 15 號第 89 條增補。由 2018 年第 4 號第 44 條修訂)
  - (b) 根據或依據任何有關條文給予或作出的任何通知、規定或要求;
  - (c) 根據本條例批給的任何牌照或註冊的任何條款或條件;
  - (d) 根據或依據本條例任何條文施加的任何其他條件; 或 (由 2016 年第 16 號第 7 條修訂)

- (b) inspect, and make copies or otherwise record details of, any record or document relating to—
  - (i) the business conducted by the intermediary or the associated entity (as the case may be);
  - (ii) any transaction carried out by a related corporation of the intermediary or the associated entity (as the case may be); or
  - (iii) any transaction or activity which was undertaken in the course of, or which may affect, the business conducted by the intermediary or the associated entity (as the case may be); and
- (c) make inquiries of—
  - (i) the intermediary or the associated entity (as the case may be);
  - (ii) a related corporation of the intermediary or the associated entity (as the case may be);
  - (iii) subject to subsection (7), any other person, whether or not connected with the intermediary or the associated entity (as the case may be), whom the authorized person has reasonable cause to believe has information relating to, or is in possession of, any record or document referred to in paragraph (b),

concerning any record or document referred to in paragraph (b), or concerning any transaction or activity which was undertaken in the course of, or which may affect, the business conducted by the intermediary or the associated entity (as the case may be).
- (2) The requirement specified for the purposes of subsection (1) is the requirement not to contravene—
  - (a) any provision of this Ordinance;



- (e) 根據本條例刊登或發表的守則或指引的任何條文。  
(由 2016 年第 16 號第 7 條增補)
- (3) 在第 (9) 及 (10) 款的規限下，獲授權人在行使第 (1)(b) 款所賦權力時，可 ——
- (a) 要求有關中介人或有關聯實體 (視屬何情況而定)；
  - (b) 要求該中介人或該實體 (視屬何情況而定) 的有連繫法團；
  - (c) (在第 (8) 款的規限下) 要求獲授權人有合理理由相信是管有第 (1)(b) 款提述的紀錄或文件或掌握關於該等紀錄或文件的資料的其他人，不論該人是否與該中介人或該實體 (視屬何情況而定) 有關連，
- 作出以下作為 ——
- (i) 讓獲授權人有途徑取得第 (1)(b) 款提述的紀錄或文件，及在獲授權人指明的時間內在他指明的地點交出該等紀錄或文件；及
  - (ii) 回答任何關於該等紀錄或文件的問題。
- (4) 在第 (9) 及 (10) 款的規限下，獲授權人在行使第 (1)(c) 款所賦權力時，可要求該款提述的中介人、有連繫實體、有連繫法團或其他人 (視屬何情況而定) ——
- (a) 讓獲授權人有途徑取得第 (1)(b) 款提述的紀錄或文件，及在獲授權人指明的時間內在他指明的地點交出該等紀錄或文件；及
  - (b) 回答任何為施行第 (1)(c) 款而提出的問題。
- (4A) 在第 (10) 款的規限下，證監會如決定根據第 186(2A) 條，就某持牌法團而提供協助，獲授權人可要求該法團或其有連繫法團 ——
- (a) 在獲授權人指明的時間內，並在獲授權人指明的地點，向獲授權人提供關乎以下事宜的紀錄或文件的文本 ——
    - (i) 該持牌法團所進行的任何受規管活動；或

- (ba) any provision of Part 2 (except section 6) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615); (*Added 15 of 2011 s. 89. Amended 4 of 2018 s. 44*)
  - (b) any notice or requirement given or made under or pursuant to any of the relevant provisions;
  - (c) any of the terms and conditions of any licence or registration under this Ordinance;
  - (d) any other condition imposed under or pursuant to any provision of this Ordinance; or (*Amended 16 of 2016 s. 7*)
  - (e) any provision in a code or guideline published under this Ordinance. (*Added 16 of 2016 s. 7*)
- (3) Subject to subsections (9) and (10), an authorized person in exercising any of his powers under subsection (1)(b) may require—
- (a) the intermediary or the associated entity (as the case may be);
  - (b) a related corporation of the intermediary or the associated entity (as the case may be);
  - (c) subject to subsection (8), any other person, whether or not connected with the intermediary or the associated entity (as the case may be), whom the authorized person has reasonable cause to believe has information relating to, or is in possession of, any record or document referred to in subsection (1)(b),
- to—
- (i) give the authorized person access to any record or document referred to in subsection (1)(b), and produce, within the time and at the place specified by him, the record or document; and

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- (ii) 在該持牌法團進行任何受規管活動的過程中作出的任何交易或活動，或可能影響該持牌法團所進行的任何受規管活動的任何交易或活動；及
- (b) 回答獲授權人就 (a) 段提述的任何紀錄、文件、受規管活動、交易或活動而提出的問題。(由 2015 年第 19 號第 22 條增補)
- (5) 獲授權人可以書面要求根據本條給予答案的人在該要求指明的合理期間內，藉法定聲明核實該答案，而該聲明可由該獲授權人監理。
- (6) 如任何人沒有按照根據本條施加的要求給予答案的理由是他不知道答案，則獲授權人可以書面要求該人在該要求指明的合理期間內，藉法定聲明核實他因該理由不能遵從或不能完全遵從(視屬何情況而定)該要求，而該聲明可由該獲授權人監理。
- (7) 除非獲授權人有合理理由相信不能夠藉行使第 (1)(c)(i) 或 (ii) 款所賦權力而取得所尋求的資料，否則他不得根據第 (1)(c)(iii) 款行使其權力。
- (8) 除非獲授權人有合理理由相信不能夠藉行使第 (3)(a) 或 (b) 款所賦權力而取得所尋求的紀錄、文件或資料，否則他不得根據第 (3)(c) 款行使其權力。
- (9) 本條不得解釋為規定並非第 (1) 款提述的有關中介人或有關有聯繫實體(或該中介人或該實體(視屬何情況而定)的有連繫法團)的認可財務機構披露任何關於其任何顧客的事務的資料或交出關於其任何顧客的事務的紀錄或文件，但如有關當局信納並以書面證明它信納為施行本條，披露該等資料或交出該等紀錄或文件是有需要的，則不在此限。
- (10) 獲授權人在根據本條(第 (1)(c)(iii) 或 (3)(c) 款除外)——
  - (a) 就屬以下任何類別的法團行使權力前，須諮詢金融管理專員：第一類是屬認可財務機構的法團；第二類是符合以下說明的法團：獲授權人知道該法團是

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- (ii) answer any question regarding the record or document.
- (4) Subject to subsections (9) and (10), an authorized person in exercising any of his powers under subsection (1)(c) may require the intermediary or the associated entity, the related corporation or the other person (as the case may be) referred to in subsection (1)(c), to—
  - (a) give the authorized person access to any record or document referred to in subsection (1)(b), and produce, within the time and at the place specified by him, the record or document; and
  - (b) answer any question raised for the purposes of subsection (1)(c).
- (4A) Subject to subsection (10), if the Commission decides to provide assistance in relation to a licensed corporation under section 186(2A), an authorized person may require the licensed corporation or a related corporation of the licensed corporation to—
  - (a) provide to the authorized person, within the time and at the place specified by the authorized person, a copy of any record or document relating to—
    - (i) any regulated activity carried on by the licensed corporation; or
    - (ii) any transaction or activity which was undertaken in the course of, or which may affect, any regulated activity carried on by the licensed corporation; and
  - (b) answer any question raised by the authorized person regarding any record, document, regulated activity, transaction or activity referred to in paragraph (a). (Added 19 of 2015 s. 22)
- (5) An authorized person may in writing require the person giving an answer under this section to verify within a

某認可財務機構的控制人，或知道該法團的控制人屬認可財務機構，或知道該法團的控制人亦是某認可財務機構的控制人；或

- (b) 就屬根據《保險業條例》(第 41 章)獲授權的保險人的法團行使權力前，須諮詢保監局。(由 2015 年第 12 號第 140 條修訂)
- (11) 有關當局可為施行本條以書面授權任何人為獲授權人。
- (12) 有關當局須向它授權的獲授權人發給授權書文本，而獲授權人根據本條行使權力時，須在合理地切實可行的範圍內盡快出示該授權書文本，以供查閱。
- (13) 凡任何紀錄或文件的文本是為遵從根據本條施加的要求而提供或製成，並藉使用某人的(而非有關當局的)設施而製成的，則有關當局須向他付還該當局認為是他因製作該文本而合理地招致的開支。
- (14) 任何人無合理辯解而沒有遵從獲授權人根據本條向他施加的要求，即屬犯罪——
- (a) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 1 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
- (15) 任何人——
- (a) 在看來是遵從獲授權人根據本條向他施加的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件，或給予在要項上屬虛假或具誤導性的答案；且
- (b) 知道該紀錄、文件或答案在要項上屬虛假或具誤導性，或罔顧該紀錄、文件或答案是否在要項上屬虛假或具誤導性，
- 即屬犯罪——
- (i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
- (ii) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

reasonable period specified in the requirement the answer by statutory declaration, which may be taken by the authorized person.

- (6) If a person does not give an answer in accordance with a requirement under this section for the reason that the answer was not within his knowledge, an authorized person may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the authorized person, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.
- (7) An authorized person shall not exercise any of his powers under subsection (1)(c)(iii) unless he has reasonable cause to believe that the information sought cannot be obtained by the exercise of any of the powers under subsection (1)(c)(i) or (ii).
- (8) An authorized person shall not exercise any of his powers under subsection (3)(c) unless he has reasonable cause to believe that the record or document or the information sought cannot be obtained by the exercise of any of the powers under subsection (3)(a) or (b).
- (9) This section shall not be construed as requiring an authorized financial institution, not being the intermediary or the associated entity in question as referred to in subsection (1) or a related corporation of the intermediary or the associated entity (as the case may be), to disclose any information or produce any record or document relating to the affairs of a customer unless the relevant authority is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of this section.
- (10) Before an authorized person exercises any power under this section (other than subsection (1)(c)(iii) or (3)(c)) in respect of a corporation—

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(16) 任何人 ——

(a) 意圖詐騙而 ——

- (i) 沒有遵從獲授權人根據本條向他施加的要求；或
- (ii) 在看來是遵從獲授權人根據本條向他施加的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件，或給予在要項上屬虛假或具誤導性的答案；或

(b) 如屬法團的高級人員或僱員，意圖詐騙而致使或容許該法團 ——

- (i) 沒有遵從獲授權人根據本條向該法團施加的要求；或
- (ii) 在看來是遵從獲授權人根據本條向該法團施加的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件，或給予在要項上屬虛假或具誤導性的答案，

即屬犯罪 ——

- (i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 7 年；或
- (ii) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

(17) 在本條中 ——

**有關當局** (relevant authority) ——

(a) 在以下情況下，指金融管理專員 ——

- (i) 第 (1) 款提述的有關中介人是註冊機構；或
- (ii) 第 (1) 款提述的有關有聯繫實體是註冊機構的有聯繫實體；或

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(a) where the corporation is an authorized financial institution or a corporation which, to the knowledge of the authorized person, is a controller of an authorized financial institution, or has as its controller an authorized financial institution, or has a controller that is also a controller of an authorized financial institution, the authorized person shall consult the Monetary Authority; or

(b) where the corporation is an insurer authorized under the Insurance Ordinance (Cap. 41), the authorized person shall consult the Insurance Authority. (*Amended 12 of 2015 s. 140*)

(11) The relevant authority may authorize in writing any person as an authorized person for the purposes of this section.

(12) The relevant authority shall furnish an authorized person authorized by it with a copy of his authorization, and the authorized person, when exercising any power under this section, shall as soon as reasonably practicable produce a copy of the authorization for inspection.

(13) Where a copy of any record or document is supplied or made for the purpose of complying with a requirement imposed under this section and a facility of a person other than the relevant authority is used to make the copy, the relevant authority shall reimburse the expenses which, in the opinion of the relevant authority, have been reasonably incurred by the person in making the copy.

(14) A person who, without reasonable excuse, fails to comply with a requirement imposed on him by an authorized person under this section commits an offence and is liable—

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



(b) 在其他情況下，指證監會；

**控制人** (controller) 指屬《銀行業條例》(第 155 章) 第 2(1) 條所界定的間接控權人或大股東控權人的人；

**獲授權人** (authorized person) 指根據第 (11) 款獲授權的人。

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

(15) A person who—

(a) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or gives an answer which is false or misleading in a material particular; and

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

commits an offence and is liable—

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

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

(16) A person who—

(a) with intent to defraud—

(i) fails to comply with a requirement imposed on him by an authorized person under this section; or

(ii) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or gives an answer which is false or misleading in a material particular; or

(b) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to—

(i) fail to comply with a requirement imposed on it by an authorized person under this section; or

(ii) in purported compliance with a requirement imposed on it by an authorized person under this



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section, produce any record or document or give an answer which is false or misleading in a material particular,

commits an offence and is liable—

- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(17) In this section—

**authorized person** (獲授權人) means a person authorized under subsection (11);

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

**relevant authority** (有關當局) means—

- (a) where—
  - (i) the intermediary in question as referred to in subsection (1) is a registered institution; or
  - (ii) the associated entity in question as referred to in that subsection is the associated entity of a registered institution,
 the Monetary Authority; or
- (b) in any other case, the Commission.

## 181. 與交易有關的資料

- (1) 獲授權人可為使證監會能夠根據任何有關條文執行職能，或為協助證監會根據任何有關條文執行職能，而要求以下人士在他指明的時間內，按他指明的形式向他提交第(2)款指明的資料——

## 181. Information relating to transactions

- (1) An authorized person may, for the purpose of enabling or assisting the Commission to perform a function under any of the relevant provisions, require—
  - (a) a person registered as the holder of securities in a register of members kept under the Companies

- (a) 在根據《公司條例》(第 622 章) 備存的成員登記冊中登記為證券持有人的人；(由 2012 年第 28 號第 912 及 920 條修訂)
- (b) 該獲授權人有合理理由相信是符合以下說明的人：持有任何證券、期貨合約、槓桿式外匯交易合約、場外衍生工具產品，或任何證券、期貨合約、槓桿式外匯交易合約、場外衍生工具產品或集體投資計劃的權益；
- (c) 該獲授權人有合理理由相信是符合以下說明的人：已直接或透過代名人、受託人或代理人，且不論是以實益擁有人、代名人、受託人或代理人身分或其他身分，取得或處置任何證券、期貨合約、槓桿式外匯交易合約、場外衍生工具產品，或任何證券、期貨合約、槓桿式外匯交易合約、場外衍生工具產品或集體投資計劃的權益；
- (d) 符合以下說明的持牌人或註冊機構：該獲授權人有合理理由相信曾有任何證券、期貨合約、槓桿式外匯交易合約、場外衍生工具產品，或任何證券、期貨合約、槓桿式外匯交易合約、場外衍生工具產品或集體投資計劃的權益透過該持牌人或註冊機構而取得、處置、處理、買賣或安排。(由 2014 年第 6 號第 16 條修訂)
- (2) 為施行第 (1) 款而指明的資料是——
- (a) 按理能夠確立有關的人的身分的詳情(在適用範圍內，包括姓名或名稱、別名、地址、電話號碼、傳真號碼、電子郵件地址、職業及身分證明文件(就並非個人的人而言，包括成立為法團的證據或登記的證據)的詳情)，而有關證券、期貨合約、槓桿式外匯交易合約、場外衍生工具產品，或有關證券、期貨合約、槓桿式外匯交易合約、場外衍生工具產品或集體投資計劃的權益現時是代該人或由該人或透過該人而持有的或是從該人取得而持有的，或曾是代該人或由該人或從該人或透過該人而取得、處

Ordinance (Cap. 622); (Amended 28 of 2012 ss. 912 & 920)

- (b) a person whom the authorized person has reasonable cause to believe holds any securities, futures contract, leveraged foreign exchange contract, OTC derivative product, or an interest in any securities, futures contract, leveraged foreign exchange contract, OTC derivative product 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, OTC derivative product, or an interest in any securities, futures contract, leveraged foreign exchange contract, OTC derivative product 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, OTC derivative product, or an interest in any securities, futures contract, leveraged foreign exchange contract, OTC derivative product 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. (Amended 6 of 2014 s. 16)
- (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

置、處理、買賣或安排的，或曾是經處置而轉予該人的（視屬何情況而定）；

- (b) 有關證券、期貨合約、槓桿式外匯交易合約、場外衍生工具產品，或有關證券、期貨合約、槓桿式外匯交易合約、場外衍生工具產品或集體投資計劃的權益的詳情（包括數量）及（如屬取得或處置）代價（如有的話）；及
- (c) (a) 段提述的人或該人的高級人員、僱員或代理人就有關證券、期貨合約、槓桿式外匯交易合約、場外衍生工具產品，或有關證券、期貨合約、槓桿式外匯交易合約、場外衍生工具產品或集體投資計劃的權益的持有、取得、處置、處理、買賣或安排而作出或收取的指令（如有的話），或與上述持有、取得、處置、處理、買賣或安排有關而向該等人作出或由該等人收取的指令（如有的話）。（由 2014 年第 6 號第 16 條修訂）
- (3) 獲授權人可以書面要求根據本條提交資料的人在該要求指明的合理期間內，藉法定聲明核實該等資料，而該聲明可由該獲授權人監理。
- (4) 如任何人沒有按照根據本條施加的要求提交資料的理由，是該資料是他所不知道的或並非由他管有的，則獲授權人可以書面要求該人在該要求指明的合理期間內，藉法定聲明核實他因該理由不能遵從或不能完全遵從（視屬何情況而定）該要求，而該聲明可由該獲授權人監理。
- (5) 證監會可為施行本條以書面授權任何人為獲授權人。
- (6) 證監會須向獲授權人發給授權書文本，而獲授權人根據本條就任何人行使權力時，須應該人要求出示該授權書文本，以供查閱。
- (7) 任何人無合理辯解而沒有遵從獲授權人根據本條向他施加的要求，即屬犯罪 ——
  - (a) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 1 年；或

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, OTC derivative product, or the interest in securities, futures contract, leveraged foreign exchange contract, OTC derivative product 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, OTC derivative product, or the interest in securities, futures contract, leveraged foreign exchange contract, OTC derivative product 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, OTC derivative product, or the interest in securities, futures contract, leveraged foreign exchange contract, OTC derivative product or collective investment scheme. (Amended 6 of 2014 s. 16)
- (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

- (b) 一經循簡易程序定罪，可處第5級罰款及監禁6個月。
- (8) 任何人 ——
- (a) 在看來是遵從獲授權人根據本條向他施加的要求時，提交在要項上屬虛假或具誤導性的資料；且
- (b) 知道該資料在要項上屬虛假或具誤導性，或罔顧該資料是否在要項上屬虛假或具誤導性，
- 即屬犯罪 ——
- (i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
- (ii) 一經循簡易程序定罪，可處第6級罰款及監禁6個月。
- (9) 任何人 ——
- (a) 意圖詐騙而 ——
- (i) 沒有遵從獲授權人根據本條向他施加的要求；或
- (ii) 在看來是遵從獲授權人根據本條向他施加的要求時，提交在要項上屬虛假或具誤導性的資料；或
- (b) 如屬法團的高級人員或僱員，意圖詐騙而致使或容許該法團 ——
- (i) 沒有遵從獲授權人根據本條向該法團施加的要求；或
- (ii) 在看來是遵從獲授權人根據本條向該法團施加的要求時，提交在要項上屬虛假或具誤導性的資料，
- 即屬犯罪 ——
- (i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 7 年；或
- (ii) 一經循簡易程序定罪，可處第6級罰款及監禁6個月。
- (10) 在本條中 ——

- 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 \$200,000 and to imprisonment for 1 year; or
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (8) A person who—
- (a) in purported compliance with a requirement imposed on him by an authorized person under this section, furnishes to the authorized person information which is false or misleading in a material particular; and

**獲授權人** (authorized person) 指根據第 (5) 款獲授權的人；

**權益** (interest) 包括任何性質的權益，不論是法律性質、衡平法性質、所有權性質或其他性質。

(b) knows that, or is reckless as to whether, the information is false or misleading in a material particular, commits an offence and is liable—

- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(9) A person who—

(a) with intent to defraud—

- (i) fails to comply with a requirement imposed on him by an authorized person under this section; or
- (ii) in purported compliance with a requirement imposed on him by an authorized person under this section, furnishes to the authorized person information which is false or misleading in a material particular; or

(b) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to—

- (i) fail to comply with a requirement imposed on it by an authorized person under this section; or
- (ii) in purported compliance with a requirement imposed on it by an authorized person under this section, furnish to the authorized person information which is false or misleading in a material particular,

commits an offence and is liable—

- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.



**第 3 分部 —— 證監會的調查權力***(由 2014 年第 6 號第 17 條代替)***182. 證監會所作的調查***(由 2014 年第 6 號第 18 條代替)*

- (1) 如 ——
- (a) 證監會有合理理由相信有人可能已犯任何有關條文所訂罪行；
  - (b) 證監會有合理理由相信有人可能已在與下述事宜有關連的情況下作出虧空、欺詐、不當行為或其他失當行為 ——
    - (i) 證券或期貨合約的交易或槓桿式外匯交易合約的買賣；
    - (ii) 證券、期貨合約或槓桿式外匯交易合約的投資的管理；
    - (iii) 提出結構性產品、槓桿式外匯交易合約或集體投資計劃的要約，或訂立該產品、該等合約或計劃；*(由 2011 年第 8 號第 9 條修訂)*
    - (iv) 提供關於以下事宜的意見：配售證券，或證券、結構性產品、期貨合約或槓桿式外匯交易合約的取得、處置或投資，或證券、結構性產品、期貨合約、槓桿式外匯交易合約或集體投資計劃的權益的取得、處置或投資；或*(由 2011 年第 8 號第 9 條修訂)*

(10) In this section—

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

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

**Division 3—Commission's Powers of Investigation***(Replaced 6 of 2014 s. 17)***182. Investigations by Commission***(Replaced 6 of 2014 s. 18)*

- (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

- (v) 涉及證券保證金融資的交易；
- (vi) (增補尚未實施——見 2014 年第 6 號第 18 條)
- (vii) (增補尚未實施——見 2014 年第 6 號第 18 條)
- (viii) 開放式基金型公司的管理，或開放式基金型公司的計劃財產的管理或妥善保管；(由 2016 年第 16 號第 8 條增補)
- (c) 證監會有合理理由相信可能曾發生市場失當行為；
- (ca) 證監會有合理理由相信根據第 XIVA 部可能曾發生違反披露規定；(由 2012 年第 9 號第 4 條增補)
- (d) 任何人曾經或正在從事 (b)(i) 至 (v)\* 段提述的任何活動，而證監會有合理理由相信該人從事該等活動的方式並不符合投資大眾的利益或公眾利益；
- <sup>#</sup>(da) 證監會有合理理由相信，任何訂明人士(認可財務機構及核准貨幣經紀除外)可能已違反匯報責任、結算責任、交易責任或備存紀錄責任；(由 2014 年第 6 號第 18 條增補)
- <sup>@</sup>(db) 證監會有合理理由相信，任何已登記系統重要參與者可能沒有遵從根據第 101X 條作出的要求；(由 2014 年第 6 號第 18 條增補)
- (e) 證監會——
  - (i) 為考慮是否根據第 194 或 196 條行使任何權力，有理由查訊任何人是否如第 194(1) 或 (2) 或 196(1) 或 (2) 條所描述般犯失當行為或曾在任何時間犯失當行為或並非適當人選；或
  - (ii) 為協助金融管理專員考慮是否根據《銀行業條例》(第 155 章)第 58A 或 71C 條行使任何權力，有理由查訊任何人是否——
    - (A) 如該條例第 58A(1) 條所描述般犯失當行為或曾在任何時間犯失當行為或並非或不再是適當人選；或

- 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;
- (vi) (*Addition not yet in operation—see 6 of 2014 s. 18*)
- (vii) (*Addition not yet in operation—see 6 of 2014 s. 18*)
- (viii) the management of an open-ended fund company or the management or safe keeping of the scheme property of an open-ended fund company; (*Added 16 of 2016 s. 8*)
- (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;
- <sup>#</sup>(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, trading obligation or record keeping obligation; (*Added 6 of 2014 s. 18*)
- <sup>@</sup>(db) the Commission has reasonable cause to believe that a registered SIP may have failed to comply with a requirement made under section 101X; (*Added 6 of 2014 s. 18*)

- (B) 如該條例第 71C(4) 條所描述般犯失當行為或曾在任何時間犯失當行為或應不再視為適當人選；
- (f) 證監會有理由查訊根據第 104、104A 或 105 條就某項認可施加的條件是否正獲遵從；(由 2011 年第 8 號第 9 條修訂；由 2016 年第 16 號第 8 條修訂)
- (fa) 證監會有理由查訊，就某開放式基金型公司而言，第 112E 條指明的任何註冊規定，是否不再獲符合；(由 2016 年第 16 號第 8 條增補)
- (fb) 證監會有理由查訊，任何就某開放式基金型公司的註冊施加的條件，是否已獲遵從或正獲遵從；或 (由 2016 年第 16 號第 8 條增補)
- <sup>##</sup>(g) 證監會決定根據第 186(1) 或 (2) 條協助調查某事宜，而該事宜按該會的意見，在性質上與 (a)、(b)、(c)、(d)、(da)、(db)、(e)、(f)、(fa) 或 (fb) 段所述的而該會有合理理由相信或有理由查訊 (視屬何情況而定) 的事宜相似；(由 2014 年第 6 號第 18 條修訂；由 2015 年第 19 號第 23 條修訂；由 2016 年第 16 號第 8 條修訂)

則證監會可以書面指示一名或多於一名該會僱員，或在財政司司長的同意下，委任一名或多於一名其他人，以調查 (a) 至 (g) 段提述的任何事宜。

- (2) 並非證監會僱員的調查員所招致的費用及開支，由立法會所撥款項支付。
- (3) 證監會須向調查員發給他所獲的指示或委任 (視屬何情況而定) 的文本，而調查員根據第 183(1)、(2) 或 (3) 條向任何人首次施加要求前，須向該人交出該文本，以供查閱。
- (4) 證監會在指示其任何僱員或委任任何人作出以下作為前，須諮詢金融管理專員 ——

- (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; (Amended 8 of 2011 s. 9; 16 of 2016 s. 8)
- (fa) the Commission has reason to inquire whether, with respect to an open-ended fund company, any of the requirements for registration specified in section 112E is no longer met; (Added 16 of 2016 s. 8)
- (fb) the Commission has reason to inquire whether any of the conditions imposed in respect of the registration of an open-ended fund company has been or is being complied with; or (Added 16 of 2016 s. 8)

- (a) 根據第 (1)(e)(i) 款調查任何事宜，但只限於該項調查是為考慮是否根據第 196 條行使任何權力的；或
- (b) 根據第 (1)(e)(ii) 款調查任何事宜。

編輯附註：

\* 由《2014 年證券及期貨（修訂）條例》（2014 年第 6 號）新增的第 182(1)(da) 條於

- (a) 2015 年 7 月 10 日開始實施，但限於在該條關乎違反匯報責任及備存紀錄責任的範圍內；請參閱《2015 年〈2014 年證券及期貨（修訂）條例〉（生效日期）公告》（2015 年第 95 號法律公告）(f) 段；及
- (b) 2016 年 9 月 1 日開始實施，但限於在該條關乎違反結算責任的範圍內；請參閱《2016 年〈2014 年證券及期貨（修訂）條例〉（生效日期）公告》（2016 年第 27 號法律公告）(b) 段。

@ 尚未實施。

## 《2014 年證券及期貨（修訂）條例》（2014 年第 6 號）對第 182(1)(g) 條的修訂於 2015 年 7 月 10 日開始實施，但在該條關乎新的第 182(1)(db) 條的範圍內除外。請參閱《2015 年〈2014 年證券及期貨（修訂）條例〉（生效日期）公告》（2015 年第 95 號法律公告）(g) 段。

\* 請參閱《2014 年證券及期貨（修訂）條例》（2014 年第 6 號）第 18(4) 條（尚未實施）及《2016 年證券及期貨（修訂）條例》（2016 年第 16 號）第 8(4) 條（於 2018 年 7 月 30 日生效）。

- ##(g) a matter in respect of the investigation of which the Commission decides to provide assistance under section 186(1) or (2) is, in the opinion of the Commission, of a nature similar to the matter described in paragraph (a), (b), (c), (d), (da), (db), (e), (f), (fa) or (fb) as that which the Commission has reasonable cause to believe or has reason to inquire (as the case may be), (*Amended 6 of 2014 s. 18; 19 of 2015 s. 23; 16 of 2016 s. 8*)

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.

Editorial Note:

**183. 調查的進行**

- (1) 任何受調查人，或調查員有合理理由相信是管有載有或相當可能載有與根據第 182 條所作調查有關的資料的任何紀錄或文件的人，或調查員有合理理由相信是以其他方式管有該等資料的人，須——
- (a) 在該調查員以書面合理地要求的時間內，在該調查員以書面合理地要求的地點，向該調查員交出該調查員指明的、與或可能與該項調查有關的並且是由該人所管有的紀錄或文件；
- (b) 按該調查員的要求（如有的話），就根據 (a) 段交出的紀錄或文件向該調查員提供解釋或進一步詳情；

- # The new section 182(1)(da) added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on—
- (a) 10 July 2015, in so far as it relates to the contravention of the reporting obligation and the record keeping obligation; please see paragraph (f) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015); and
- (b) 1 September 2016, in so far as it relates to the contravention of the clearing obligation; please see paragraph (b) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

@ Not yet in operation.

## The amendment to section 182(1)(g) made by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on 10 July 2015, except in so far as it relates to the new section 182(1)(db) of the Ordinance. Please see paragraph (g) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015).

\* Please see s.18(4) (not yet in operation) of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) and s. 8(4) (commenced on 30 July 2018) of the Securities and Futures (Amendment) Ordinance 2016 (16 of 2016).

**183. Conduct of investigations**

- (1) The person under investigation or a person whom the investigator has reasonable cause to believe has in his possession any record or document which contains, or which is likely to contain, information relevant to an investigation under section 182, or whom the investigator has reasonable cause to believe otherwise has such information in his possession, shall—
- (a) produce to the investigator, within the time and at the place the investigator reasonably requires in writing, any record or document specified by the investigator which is, or may be, relevant to the investigation and which is in his possession;



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- (c) 在該調查員以書面合理地要求的時間及地點，面見該調查員，並回答該調查員就調查中的事宜向該人提出的問題；及
- (d) 就該項調查向該調查員提供所有該人按理能夠提供的協助，包括回答該調查員提出的書面問題。
- (2) 調查員可以書面要求根據本條提供或作出解釋、詳情、答案或陳述的人在該要求指明的合理期間內，藉法定聲明核實該解釋、詳情、答案或陳述，而該聲明可由該調查員監理。
- (3) 如任何人沒有按照根據本條施加的要求提供或作出解釋、詳情、答案或陳述的理由，是該解釋、詳情、答案或陳述是他所不知道的或並非由他管有的，則調查員可以書面要求該人在該要求指明的合理期間內，藉法定聲明核實他因該理由不能遵從或不能完全遵從（視屬何情況而定）該要求，而該聲明可由該調查員監理。
- (4) 第 182 條及本條均不得解釋為規定認可財務機構向調查員披露關於其任何顧客的事務的資料或交出關於其任何顧客的事務的紀錄或文件，但如 ——
  - (a) 調查員有合理理由相信該顧客可能有能力提供與該項調查有關的資料；及
  - (b) 證監會信納並以書面證明它信納就該項調查而言，披露該等資料或交出該等紀錄或文件是有需要的，則不在此限。
- (5) 調查員可向證監會作出中期調查報告，如證監會有所指示，則調查員須向該會作出中期調查報告，而在調查完成後，調查員須向該會作出最後調查報告。
- (6) 證監會可在律政司司長的同意下，安排發表根據本條作出的報告。

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- (b) if required by the investigator, give the investigator an explanation or further particulars in respect of any record or document produced under paragraph (a);
- (c) attend before the investigator at the time and place the investigator reasonably requires in writing, and answer any question relating to the matters under investigation that the investigator may raise with him; and
- (d) give the investigator all assistance in connection with the investigation which he is reasonably able to give, including responding to any written question raised by the investigator.
- (2) An investigator may in writing require the person giving or making an explanation, particulars, answer or statement under this section to verify within a reasonable period specified in the requirement the explanation, particulars, answer or statement by statutory declaration, which may be taken by the investigator.
- (3) If a person does not give or make an explanation, particulars, answer or statement in accordance with a requirement under this section for the reason that the explanation, particulars, answer or statement was not within his knowledge or in his possession, an investigator may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the investigator, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.
- (4) Neither section 182 nor this section shall be construed as requiring an authorized financial institution to disclose any information or produce any record or document relating to the affairs of a customer to the investigator unless—

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#### 184. 與調查有關的罪行

- (1) 任何人無合理辯解而沒有 ——
  - (a) 交出根據第 183(1)(a) 條被要求交出的紀錄或文件；
  - (b) 提供根據第 183(1)(b) 條被要求提供的解釋或進一步詳情；
  - (c) 遵從根據第 183(1)(c) 條作出的面見要求；
  - (d) 回答根據第 183(1)(c) 條提出的問題；
  - (e) 遵守第 183(1)(d) 條；或
  - (f) 遵從根據第 183(2) 或 (3) 條作出的要求，
 即屬犯罪 ——
  - (i) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 1 年；或
  - (ii) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
- (2) 任何人 ——

- (a) the customer is a person whom the investigator has reasonable cause to believe may be able to give information relevant to the investigation; and
- (b) the Commission is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of the investigation.
- (5) The investigator may, and if so directed by the Commission shall, make interim reports on his investigation to the Commission, and on the conclusion of his investigation shall make a final report on his investigation to the Commission.
- (6) The Commission may, with the consent of the Secretary for Justice, cause a report under this section to be published.

#### 184. Offences in relation to investigations

- (1) A person who, without reasonable excuse—
  - (a) fails to produce any record or document required to be produced under section 183(1)(a);
  - (b) fails to give an explanation or further particulars required under section 183(1)(b);
  - (c) fails to attend before the investigator as required under section 183(1)(c);
  - (d) fails to answer a question raised by the investigator under section 183(1)(c);
  - (e) fails to comply with section 183(1)(d); or
  - (f) fails to comply with a requirement under section 183(2) or (3),
 commits an offence and is liable—
  - (i) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or

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- (a) (i) 在看來是遵從根據第 183(1)(a) 條施加的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件；
- (ii) 在看來是遵從根據第 183(1)(b) 條施加的要求時，提供在要項上屬虛假或具誤導性的解釋或進一步詳情；
- (iii) 在看來是回答根據第 183(1)(c) 條提出的問題時，說出在要項上屬虛假或具誤導性的話語；或
- (iv) 在看來是回答根據第 183(1)(d) 條提出的書面問題時，作出在要項上屬虛假或具誤導性的陳述；且
- (b) 知道該紀錄、文件、解釋、詳情、話語或陳述（視屬何情況而定）在要項上屬虛假或具誤導性，或罔顧該紀錄、文件、解釋、詳情、話語或陳述（視屬何情況而定）是否在要項上屬虛假或具誤導性，  
即屬犯罪 ——
  - (i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
  - (ii) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (3) 任何人 ——
  - (a) 意圖詐騙而 ——
    - (i) 沒有作出第 (1)(a)、(b)、(c)、(d)、(e) 或 (f) 款描述的作為；
    - (ii) 在看來是遵從根據第 183(1)(a) 條施加的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件；
    - (iii) 在看來是遵從根據第 183(1)(b) 條施加的要求時，提供在要項上屬虛假或具誤導性的解釋或進一步詳情；

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- (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 \$1,000,000 and to imprisonment for 2 years; or
    - (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (3) A person who—

- (iv) 在看來是回答根據第 183(1)(c) 條提出的問題時，說出在要項上屬虛假或具誤導性的話語；或
- (v) 在看來是回答根據第 183(1)(d) 條提出的書面問題時，作出在要項上屬虛假或具誤導性的陳述；或
- (b) 如屬法團的高級人員或僱員，意圖詐騙而致使或容許該法團 ——
  - (i) 沒有作出第 (1)(a)、(b)、(c)、(d)、(e) 或 (f) 款描述的作為；
  - (ii) 在看來是遵從根據第 183(1)(a) 條施加的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件；
  - (iii) 在看來是遵從根據第 183(1)(b) 條施加的要求時，提供在要項上屬虛假或具誤導性的解釋或進一步詳情；
  - (iv) 在看來是回答根據第 183(1)(c) 條提出的問題時，說出在要項上屬虛假或具誤導性的話語；或
  - (v) 在看來是回答根據第 183(1)(d) 條提出的書面問題時，作出在要項上屬虛假或具誤導性的陳述，即屬犯罪 ——
    - (i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 7 年；或
    - (ii) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (4) 任何人不得僅以遵從調查員根據第 183 條向他施加的要求可能會導致他人入罪為理由，而獲豁免遵從該要求。
- (5) 如根據第 182 條進行的調查導致任何人被檢控並被法庭定罪，則該法庭可命令該人向證監會繳付該項調查的全部或部分費用及開支，而該會可將全部或部分 (視屬何情

- (a) with intent to defraud—
  - (i) fails to do anything 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 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

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況而定) 該等費用及開支，作為拖欠該會的民事債項予以追討。

- (6) 凡證監會根據第 (5) 款所指的命令就調查的費用及開支接獲任何款額，而所有或任何該等費用及開支是由立法會所撥款項支付的，則證監會須將該款額支付予財政司司長，但以上述撥款的款額為限。

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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 \$1,000,000 and to imprisonment for 7 years; or
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months. (*Amended 6 of 2014 s. 19*)
- (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



**第 3A 分部 —— 金融管理專員的調查權力***(第 3A 分部由 2014 年第 6 號第 20 條增補)***#184A. 金融管理專員所作的調查**

- (1) 如金融管理專員有合理理由相信，某認可財務機構或核准貨幣經紀可能已違反匯報責任、結算責任、交易責任或備存紀錄責任，則金融管理專員可 ——
  - (a) 以書面指示一名或多於一名根據《外匯基金條例》(第 66 章) 第 5A(3) 條獲委任的人，調查該事宜；或
  - (b) 在財政司司長同意下，以書面委任一名或多於一名其他人，調查該事宜。
- (2) 金融管理專員須給予金管局調查員 ——
  - (a) (如該金管局調查員是根據第 (1)(a) 款獲指示的) 有關指示的文本；及
  - (b) (如該金管局調查員是根據第 (1)(b) 款獲委任的) 有關委任的文本。
- (3) 金管局調查員在根據第 184B(1)、(2) 或 (3) 條向任何人作出要求前，須出示有關指示或委任的文本，以供該人查閱。

編輯附註：

\* 由《2014 年證券及期貨(修訂)條例》(2014 年第 6 號) 新增的第 184A 條於 ——

- (a) 2015 年 7 月 10 日開始實施，但限於在該條關乎違反匯報責任及備存紀錄責任的範圍內；請參閱《2015 年〈2014 年證券及期貨(修訂)條例〉(生效日期) 公告》(2015 年第 95 號法律公告) (i)(i) 段；及
- (b) 2016 年 9 月 1 日開始實施，但限於在該條關乎違反結算責任的範圍內；請參閱《2016 年〈2014 年證券及期貨(修訂)條例〉(生效日期) 公告》(2016 年第 27 號法律公告) (c) 段。

to the extent that it has already been paid out of moneys provided by the Legislative Council.

**Division 3A—Monetary Authority's Powers of Investigation***(Division 3A added 6 of 2014 s. 20)***#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, trading obligation or record keeping 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—

**Editorial Note:**

\* The new section 184A added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on—

- (a) 10 July 2015, in so far as it relates to the contravention of the reporting obligation and the record keeping obligation; please see paragraph (i)(i) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015); and
- (b) 1 September 2016, in so far as it relates to the contravention of the clearing obligation; please see paragraph (c) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

**184B. 調查的進行**

- (1) 任何受調查人，或任何金管局調查員有合理理由相信是管有紀錄或文件（該紀錄或文件載有，或相當可能載有，與根據第 184A 條所作調查有關的資料）的人，或任何金管局調查員有合理理由相信是以其他方式管有該等資料的人，均須——
  - (a) 在該調查員以書面合理地要求的時間內，在該調查員以書面合理地要求的地點，向該調查員交出該調查員指明的任何紀錄或文件，而該紀錄或文件是——
    - (i) 攸關（或可能攸關）該項調查的；及
    - (ii) 由該人所管有的；
  - (b) （如該調查員有所要求的話）就根據 (a) 段交出的紀錄或文件，向該調查員提供解釋或進一步詳情；
  - (c) 在該調查員以書面合理地要求的時間及地點，面見該調查員，並回答該調查員就調查中的事宜提出的問題；及
  - (d) 就該項調查，向該調查員提供所有該人按理能夠提供的協助，包括回答該調查員提出的書面問題。
- (2) 凡任何人根據本條作出或提供解釋、詳情、答案或陳述，金管局調查員可用書面要求該人，在該要求指明的合理限期內，藉法定聲明核實該解釋、詳情、答案或陳述。

- (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

- (3) 如任何人沒有按照根據本條作出的要求，作出或提供解釋、詳情、答案或陳述，而其理由是該人並不知道或並不管有該解釋、詳情、答案或陳述，則金管局調查員可用書面要求該人 ——
- (a) 藉法定聲明核實，該人因上述理由不能遵從或不能完全遵從（視屬何情況而定）該要求；及
- (b) 在該要求指明的合理限期內，作出該法定聲明。
- (4) 根據本條作出的法定聲明，可由有關金管局調查員監理。

**184C. 調查報告**

- (1) 金管局調查員 ——
- (a) 可就根據本分部進行的調查，向金融管理專員作出中期報告；
- (b) （如金融管理專員有所指示的話）須就該項調查，向金融管理專員作出中期報告；及
- (c) 在該項調查完成後，須就該項調查，向金融管理專員作出最終報告。

- (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

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- (2) 金融管理專員可在律政司司長同意下，發表根據第 (1) 款作出的報告。

#### 184D. 與調查有關的罪行

- (1) 任何人無合理辯解而沒有 ——
- (a) 交出根據第 184B(1)(a) 條被要求交出的紀錄或文件；
  - (b) 提供根據第 184B(1)(b) 條被要求提供的解釋或進一步詳情；
  - (c) 遵從金管局調查員根據第 184B(1)(c) 條作出的面見要求；
  - (d) 回答金管局調查員根據第 184B(1)(c) 條提出的問題；
  - (e) 遵守第 184B(1)(d) 條；或
  - (f) 遵從根據第 184B(2) 或 (3) 條作出的要求，即屬犯罪。
- (2) 犯第 (1) 款所訂罪行的人 ——
- (a) 一經循公訴程序定罪，可處罰款 \$200,000 及監禁 1 年；或
  - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
- (3) 任何人 ——
- (a) 在 ——
    - (i) 看來是遵從金管局調查員根據第 184B(1)(a) 條作出的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件；

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- (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—

- (ii) 看來是遵從金管局調查員根據第 184B(1)(b) 條作出的要求時，提供在要項上屬虛假或具誤導性的解釋或進一步詳情；
- (iii) 看來是回答金管局調查員根據第 184B(1)(c) 條提出的問題時，說出在要項上屬虛假或具誤導性的話語；或
- (iv) 看來是回答金管局調查員根據第 184B(1)(d) 條提出的書面問題時，作出在要項上屬虛假或具誤導性的陳述；且
- (b) 知道該紀錄或文件、解釋或進一步詳情、話語或陳述在要項上屬虛假或具誤導性，或罔顧該紀錄或文件、解釋或進一步詳情、話語或陳述是否在要項上屬虛假或具誤導性，  
即屬犯罪。
- (4) 犯第 (3) 款所訂罪行的人 ——
  - (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (5) 任何人意圖詐騙而 ——
  - (a) 沒有作出第 (1)(a)、(b)、(c)、(d)、(e) 或 (f) 款描述的作為；
  - (b) 在看來是遵從金管局調查員根據第 184B(1)(a) 條作出的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件；
  - (c) 在看來是遵從金管局調查員根據第 184B(1)(b) 條作出的要求時，提供在要項上屬虛假或具誤導性的解釋或進一步詳情；
  - (d) 在看來是回答金管局調查員根據第 184B(1)(c) 條提出的問題時，說出在要項上屬虛假或具誤導性的話語；或

- (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);



- (e) 在看來是回答金管局調查員根據第 184B(1)(d) 條提出的書面問題時，作出在要項上屬虛假或具誤導性的陳述，  
即屬犯罪。
- (6) 任何法團的高級人員或僱員意圖詐騙而致使或容許該法團 ——
- (a) 沒有作出第 (1)(a)、(b)、(c)、(d)、(e) 或 (f) 款描述的作為；
- (b) 在看來是遵從金管局調查員根據第 184B(1)(a) 條作出的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件；
- (c) 在看來是遵從金管局調查員根據第 184B(1)(b) 條作出的要求時，提供在要項上屬虛假或具誤導性的解釋或進一步詳情；
- (d) 在看來是回答金管局調查員根據第 184B(1)(c) 條提出的問題時，說出在要項上屬虛假或具誤導性的話語；或
- (e) 在看來是回答金管局調查員根據第 184B(1)(d) 條提出的書面問題時，作出在要項上屬虛假或具誤導性的陳述，  
即屬犯罪。
- (7) 任何人不得僅以遵從根據第 184B(1)、(2) 或 (3) 條作出的要求可能會導致自己入罪為理由，而獲豁免遵從該要求。
- (8) 犯第 (5) 或 (6) 款所訂罪行的人 ——
- (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 7 年；或
- (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

- (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

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- (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. 追討調查費用

- (1) 如根據本分部進行的調查，導致任何人被檢控並被法庭定罪，則該法庭可命令該人，向金融管理專員繳付該項調查的全部或部分費用及開支。
- (2) 金融管理專員可將根據第 (1) 款命令繳付的有關全部或部分（視屬何情況而定）費用及開支，作為拖欠金融管理專員的民事債項予以追討。
- (3) 金融管理專員須將根據第 (2) 款追討所得的費用及開支，撥入外匯基金。

#### 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).

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**185. 就根據第 179、180、181、183 或 184B 條作出的要求不獲遵從而向原訟法庭提出申請**

(由 2014 年第 6 號第 21 條修訂)

### Division 4—Miscellaneous

**185. Application to Court of First Instance relating to non-compliance with requirements under section 179, 180, 181, 183 or 184B**

(Amended 6 of 2014 s. 21)

- (1) 如任何人沒有作出獲授權人根據第 179、180 或 181 條要求他作出的事情，或沒有作出調查員根據第 183(1)、(2) 或 (3) 條要求他作出的事情，則證監會可藉原訴傳票或原訴動議，就該項不遵從向原訟法庭提出申請，而原訟法庭可查訊有關個案，如 —— (由 2012 年第 9 號第 40 條修訂)
- (a) 原訟法庭信納該人不遵從該要求是無合理辯解的，則原訟法庭可命令該人在原訟法庭指明的期間內遵從該要求；及
- (b) 原訟法庭信納該人是在無合理辯解的情況下沒有遵從該要求的，則原訟法庭可懲罰該人及明知而牽涉入該項不遵從的任何其他人，而懲罰的方式猶如該人及 (如適用的話) 該其他人犯藐視法庭罪一樣。
- (1A) 凡金管局調查員根據第 184B(1)、(2) 或 (3) 條要求某人作出某事情，而該人沒有作出該事情，則金融管理專員可藉原訴傳票，就該項不遵從向原訟法庭提出申請。(由 2014 年第 6 號第 21 條增補)
- (1B) 原訟法庭可查訊有關個案，而原訟法庭 ——
- (a) 如信納有關人士不遵從有關要求，是沒有合理辯解的，則可命令該人在原訟法庭指明的限期內，遵從該要求；及
- (b) 如信納該人無合理辯解而不遵從該要求，則可懲罰該人，以及明知而牽涉入該項不遵從的任何其他人，懲罰的方式猶如該人及 (如適用的話) 該其他人犯藐視法庭罪一樣。(由 2014 年第 6 號第 21 條增補)
- (2) 第 (1) 或 (1A) 款所指的原訴傳票，須採用《高等法院規則》(第 4 章，附屬法例 A) 附錄 A 表格 10。(由 2014 年第 6 號第 21 條修訂)
- (3) 不論本條及本條例其他條文有任何規定 ——

- (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.
- (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. (*Added 6 of 2014 s. 21*)
- (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

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- (a) 在以下情況下，不得為施行第 (1)(b) 或 (1B)(b) 款就某行為對某人提起法律程序——（由 2014 年第 6 號第 21 條修訂）
- (i) 過往已根據第 179、180、181、184 或 184D 條，就同一行為對該人提起刑事法律程序；及
- (ii) (A) 該刑事法律程序仍待決；或
- (B) 由於過往已提起該刑事法律程序，因此不得根據該條就同一行為再次合法地對該人提起刑事法律程序；
- (b) 在以下情況下，不得根據第 179、180、181、184 或 184D 條就某行為而對某人提起刑事法律程序——（由 2014 年第 6 號第 21 條修訂）
- (i) 過往已為施行第 (1)(b) 或 (1B)(b) 款就同一行為對該人提起法律程序；及
- (ii) (A) 該法律程序仍待決；或
- (B) 由於過往已提起該法律程序，因此不得為施行該款就同一行為再次合法地對該人提起法律程序。（由 2014 年第 6 號第 21 條修訂）
- （編輯修訂——2012 年第 2 號編輯修訂紀錄；由 2014 年第 6 號第 21 條修訂）

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- (if applicable) that other person, had been guilty of contempt of court. *(Added 6 of 2014 s. 21)*
- (2) An originating summons under subsection (1) or (1A) 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) or (1B)(b) in respect of any conduct if— *(Amended 6 of 2014 s. 21)*
- (i) criminal proceedings have previously been instituted against the person under section 179, 180, 181, 184 or 184D 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, 184 or 184D in respect of any conduct if— *(Amended 6 of 2014 s. 21)*
- (i) proceedings have previously been instituted against the person for the purposes of subsection (1)(b) or (1B)(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; 6 of 2014 s. 21)

# 186. 證監會向香港以外地方的規管者提供協助

(由 2014 年第 6 號第 22 條修訂)

- (1) 凡證監會接獲在香港以外地方，且是該會認為符合第 (5)(a) 及 (b) 款提述的規定的主管當局或規管機構的請求，要求協助調查該當局或機構指明的人是否已違反或正違反符合以下說明的法律規定或規管性規定——

- (a) 由該當局或機構執行或施行的；及
- (b) 關乎由該當局或機構規管的關於任何證券、期貨合約、槓桿式外匯交易合約、場外衍生工具產品或集體投資計劃的交易或其他相類交易的，(由 2014 年第 6 號第 22 條修訂)

則該會在認為第 (3) 款指明的條件已獲符合的情況下，可藉作出行使第 179、181、182 及 183 條所賦的任何權力的指示，以協助調查上述事宜。(由 2015 年第 19 號第 24 條修訂)

- (2) 凡證監會接獲在香港以外地方，且是該會認為符合第 (5)(a) 及 (b) 款提述的規定的公司審查員的請求，要求協助調查該審查員指明的人是否已違反或正違反關於任何證券、期貨合約、槓桿式外匯交易合約、場外衍生工具產品或集體投資計劃的交易或其他相類交易的法律規定或規管性規定，則該會在認為第 (3) 款指明的條件已獲符合的情況下，可藉作出行使第 179、181、182 及 183 條所賦的任何權力的指示，以協助調查上述事宜。(由 2014 年第 6 號第 22 條修訂；由 2015 年第 19 號第 24 條修訂)
- (2A) 凡證監會接獲在香港以外地方的主管當局或規管機構的請求，要求就某持牌法團提供協助，則在以下情況下，證監會可藉作出行使第 180(4A) 條所賦權力的指示，而提供協助——

# 186. Commission's assistance to regulators outside Hong Kong

(Amended 6 of 2014 s. 22)

- (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, OTC derivative product, collective investment scheme or other similar transactions as are regulated by the authority or regulatory organization, (Amended 6 of 2014 s. 22)

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 directing that any of the powers under sections 179, 181, 182 and 183 be exercised. (Amended 19 of 2015 s. 24)

- (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



- (a) 證監會認為 ——
- (i) 該當局或機構符合第 (5)(a) 及 (b) 款提述的規定；及
  - (ii) 第 (3) 款指明的條件已獲符合；及
- (b) 該當局或機構已向證監會提供符合第 (2D) 款規定的書面陳述，以及符合第 (2E) 款規定的書面承諾。(由 2015 年第 19 號第 24 條增補)
- (2B) 在第 (2A) 款中，提述就持牌法團提供協助，即提述提供協助以確定第 (2C) 款所指明的法團 ——
- (a) 是否對上述主管當局或規管機構的司法管轄區在金融方面的穩定性，構成風險，或是否可能影響該管轄區在金融方面的穩定性；或
  - (b) 是否正遵從、已遵從或相當可能有能力遵從符合以下說明的法律規定或規管性規定 ——
    - (i) 由該當局或機構施行的；及
    - (ii) 關乎由該當局或機構規管的關於任何證券、期貨合約、槓桿式外匯交易合約、場外衍生工具產品或集體投資計劃的交易或活動，或其他相類的交易或活動。(由 2015 年第 19 號第 24 條增補)
- (2C) 為施行第 (2B) 款而指明的法團，是符合以下說明的法團 ——
- (a) 屬上述主管當局或規管機構所規管的；及
  - (b) 屬持牌法團，或屬持牌法團的有連繫法團。(由 2015 年第 19 號第 24 條增補)
- (2D) 第 (2A)(b) 款提述的書面陳述的內容，須具有確認以下事項的效果：上述主管當局或規管機構未能夠和將不會能夠 ——
- (a) 藉任何其他合理方法，取得第 180(4A)(a) 或 (b) 條提述的資料；及

- to transactions regarding any securities, futures contract, leveraged foreign exchange contract, OTC derivative product, 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 directing that any of the powers under sections 179, 181, 182 and 183 be exercised. (*Amended 6 of 2014 s. 22; 19 of 2015 s. 24*)
- (2A) Where the Commission receives, from an authority or regulatory organization outside Hong Kong, a request for assistance in relation to a licensed corporation, the Commission may provide the assistance by directing that the power under section 180(4A) be exercised if—
- (a) in the opinion of the Commission—
    - (i) the authority or regulatory organization satisfies the requirements referred to in subsection (5)(a) and (b); and
    - (ii) the condition specified in subsection (3) is satisfied; and
  - (b) the authority or regulatory organization has provided to the Commission a written statement that conforms with subsection (2D) and a written undertaking that conforms with subsection (2E). (*Added 19 of 2015 s. 24*)
- (2B) In subsection (2A), a reference to assistance in relation to a licensed corporation is a reference to assistance to ascertain whether a corporation specified in subsection (2C)—
- (a) constitutes a risk to, or may affect, the financial stability of the jurisdiction of the authority or regulatory organization; or
  - (b) is complying or has complied with, or is likely to be able to comply with, legal or regulatory requirements that—

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- (b) 在沒有該等資料的情況下，全面確定第 (2B) 款描述的事宜。(由 2015 年第 19 號第 24 條增補)
- (2E) 第 (2A)(b) 款提述的書面承諾的內容，須表明上述主管當局或規管機構——
- (a) 只會將因該項協助請求而從證監會取得的資料，用於確定第 (2B) 款描述的事宜；
- (b) 除非有以下情況，否則不會將任何上述資料，在該當局或機構的司法管轄區內或其他地方的任何程序中使用——
- (i) 該當局或機構已根據第 (1) 款另作請求(調查請求)，而證監會已決定根據該款提供協助；及
- (ii) 該當局或機構已因該項調查請求，而從證監會取得相同資料；
- (c) 會將該等資料列作機密處理，和不會在未獲證監會同意下，為任何目的而向在該當局或機構的司法管轄區內或其他地方的任何其他人士，披露該等資料；
- (d) 會在接獲要求披露任何資料的請求(根據該當局或機構的司法管轄區的法律屬可在法律上強制執行者)後——
- (i) 在合理地切實可行範圍內，盡快通知證監會；及
- (ii) 採取所有可用的適當措施(包括但不限於根據該當局或機構的司法管轄區的法律，宣示法律豁免權或法律特權)，以協助將該等資料保密；及
- (e) 會在旨在保障將該等資料保密而於該當局或機構的司法管轄區內或其他地方進行的任何行動或程序中，與證監會合作。(由 2015 年第 19 號第 24 條增補)
- (3) 第 (1)、(2) 及 (2A)(a)(ii) 款提述的條件是——(由 2015 年第 19 號第 24 條修訂)

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- (i) are administered by the authority or regulatory organization; and
- (ii) relate to transactions or activities regarding any securities, futures contract, leveraged foreign exchange contract, OTC derivative product, collective investment scheme, or other similar transactions or activities, that are regulated by the authority or regulatory organization. (Added 19 of 2015 s. 24)
- (2C) The corporation specified for the purposes of subsection (2B) is one that—
- (a) is regulated by the authority or regulatory organization; and
- (b) is a licensed corporation or a related corporation of a licensed corporation. (Added 19 of 2015 s. 24)
- (2D) The written statement referred to in subsection (2A)(b) must be to the effect of confirming that the authority or regulatory organization has not been and will not be able to—
- (a) obtain the information referred to in section 180(4A)(a) or (b) by any other reasonable means; and
- (b) fully ascertain the matters described in subsection (2B) without the information. (Added 19 of 2015 s. 24)
- (2E) The written undertaking referred to in subsection (2A)(b) must be to the effect that the authority or regulatory organization—
- (a) will use the information obtained from the Commission because of the request for assistance solely for ascertaining the matters described in subsection (2B);
- (b) will not use any of the information in any proceedings, in the jurisdiction of the authority or regulatory organization or elsewhere, unless—

- (a) 就維護投資大眾的利益或公眾利益而言，提供根據第 (1)、(2) 或 (2A) 款 (視屬何情況而定) 請求的協助是可取或合宜的；或 (由 2015 年第 19 號第 24 條修訂)
- (b) 所提供的協助會使受協助者能夠執行其職能或會協助受協助者執行其職能，而該等協助並不違反投資大眾的利益或公眾利益。
- (4) 在任何個案中，證監會在斷定第 (3) 款指明的條件是否已獲符合時 ——
  - (a) 如尋求協助者屬第 (1) 或 (2A) 款提述的主管當局或規管機構，該會須考慮該當局或機構是否會 —— (由 2015 年第 19 號第 24 條修訂)
    - (i) 向該會支付該會因提供協助而招致的任何費用及開支；及
    - (ii) 有能力和願意因應香港方面提出的類似請求而在其管轄範圍內提供交互協助；或
  - (b) 如尋求協助者屬第 (2) 款提述的公司審查員，該會須考慮 ——
    - (i) 該審查員是否會向該會支付該會因提供協助而招致的任何費用及開支；及
    - (ii) 根據委任該審查員的國家或地區的法律，是否會因應香港方面提出的類似請求而提供交互協助。
- (5) 凡證監會就第 (1)、(2) 或 (2A)(a)(i) 款信納在香港以外地方的主管當局、規管機構或公司審查員 —— (由 2015 年第 19 號第 24 條修訂)
  - (a) 執行任何與該會或公司註冊處處長的職能相似的職能，或規管、監管或調查銀行服務、保險服務或其他財經服務或法團事務；及
  - (b) 已受足夠保密條文規限，

- (i) the authority or regulatory organization has made a separate request under subsection (1) (*investigation request*), and the Commission has decided to provide assistance under that subsection; and
- (ii) the authority or regulatory organization has obtained the same information from the Commission because of the investigation request;
- (c) will treat the information as confidential and will not disclose it to any other person, in the jurisdiction of the authority or regulatory organization or elsewhere, for any purpose without the consent of the Commission;
- (d) will, on receiving a demand legally enforceable under the laws of the jurisdiction of the authority or regulatory organization, for the disclosure of any of the information—
  - (i) inform the Commission as soon as reasonably practicable; and
  - (ii) assist in preserving the confidentiality of the information by taking all appropriate measures as may be available (including but not limited to asserting legal exemptions or privileges under the laws of the jurisdiction of the authority or regulatory organization); and
- (e) will cooperate with the Commission in any action or proceedings, in the jurisdiction of the authority or regulatory organization or elsewhere, that seek to safeguard the confidentiality of any of the information. (*Added 19 of 2015 s. 24*)
- (3) The condition referred to in subsections (1), (2) and (2A)(a)(ii) is that— (*Amended 19 of 2015 s. 24*)
  - (a) it is desirable or expedient that the assistance requested under subsection (1), (2) or (2A) (as the case may be)

則該會須隨即在合理地切實可行的範圍內，盡快安排在憲報刊登該當局、機構或審查員（視屬何情況而定）的名稱或姓名。

(6) 任何人如須 ——

- (a) 按第 179 條所指的獲授權人於依據第 (1) 或 (2) 款行使第 179 條所賦權力時作出的要求，而提供或作出解釋、陳述或說明；或
- (b) 按調查員於依據第 (1) 或 (2) 款行使第 183 條所賦權力時作出的要求，而提供解釋或進一步詳情，或回答調查員於如此行使該等權力時提出的問題，

而該解釋或陳述或說明、該解釋或詳情或該答案（視屬何情況而定）可能會導致該人入罪，而該人在提供或作出該解釋或陳述或說明、提供該解釋或詳情或給予該答案（視屬何情況而定）前又聲稱如此，則在不局限第 187 條的原則下，該獲授權人或調查員（視屬何情況而定）不得向任何在香港以外地方的主管當局、規管機構或公司審查員提供該要求及該解釋或陳述或說明、該解釋或詳情或該問題及答案（視屬何情況而定）的證據，以供在該當局、機構或審查員（視屬何情況而定）的管轄範圍內在針對該人而提起的刑事法律程序中使用。

- (7) 凡證監會從香港以外地方的主管當局、規管機構或公司審查員接獲一筆就根據本條提供協助所招致的任何費用及開支而支付的款額，而所有或任何該等費用及開支是由立法會所撥款項支付的，則證監會須將該款額支付予財政司司長，但以上述撥款的款額為限。
- (8) 根據第 (5) 款刊登的材料不是附屬法例。

should be provided in the interest of the investing public or in the public interest; or (*Amended 19 of 2015 s. 24*)

- (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) or (2A), whether the authority or regulatory organization will— (*Amended 19 of 2015 s. 24*)
    - (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), (2) or (2A)(a)(i), that an authority, regulatory

- (9) 在本條中，**公司審查員** (companies inspector) 就香港以外任何地方而言，指根據該地方的法律，所具有的職能包括調查在該地方經營業務的法團的事務的人。

organization or companies inspector outside Hong Kong—  
(Amended 19 of 2015 s. 24)

(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



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#### 186A. 金融管理專員向香港以外地方的規管者提供協助

- (1) 如金融管理專員接獲海外實體的請求，要求提供第 (2) 款所述的協助，而金融管理專員認為 ——
  - (a) 該實體符合第 (5) 款提述的規定；及
  - (b) 第 (7) 款所述的條件已獲符合，
 則金融管理專員可藉行使第 184A 及 184B 條所賦予的權力，提供被要求提供的協助。
- (2) 第 (1) 款提述的要求提供協助的請求，是要求協助調查有關海外實體所指明的人，是否已違反或正違反符合以下說明的法律規定或規管性規定 ——
  - (a) 該規定由該實體執行或施行；及
  - (b) 該規定關乎 ——

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.

#### 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

- (i) 由該實體規管的、關於場外衍生工具產品的交易；或
  - (ii) 由該實體規管的其他相類交易。
- (3) 如金融管理專員接獲香港以外地方的公司審查員的請求，要求提供第 (4) 款所述的協助，而金融管理專員認為 ——
- (a) 該審查員符合第 (6) 款提述的規定；及
  - (b) 第 (7) 款所述的條件已獲符合，
- 則金融管理專員可藉行使第 184A 及 184B 條所賦予的權力，提供被要求提供的協助。
- (4) 第 (3) 款提述的要求提供協助的請求，是要求協助調查有關香港以外地方的公司審查員指明的人，是否已違反或正違反與關於場外衍生工具產品的交易（或其他相類交易）有關的法律規定或規管性規定。
- (5) 第 (1)(a) 款提述的規定是 ——
- (a) 有關海外實體執行的職能，類近金融管理專員的職能，或該實體規管、監管或調查銀行服務、保險服務或其他財經服務；及
  - (b) 該實體受足夠保密條文所規限。
- (6) 第 (3)(a) 款提述的規定是 ——
- (a) 有關的香港以外地方的公司審查員執行的職能，類近公司註冊處處長的職能，或該審查員規管、監管或調查法團事務；及
  - (b) 該審查員受足夠保密條文所規限。
- (7) 第 (1)(b) 及 (3)(b) 款提述的條件是 ——
- (a) 就維護投資大眾的利益或公眾利益而言，提供有關協助是可取或合宜的；或
  - (b) 提供的協助會使受協助者能夠執行其職能，或會協助該受協助者執行其職能，而提供該等協助，並不違反投資大眾的利益或公眾利益。

- 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.

- (8) 金融管理專員在斷定第 (7) 款列明的條件，是否已在任何個別個案中獲符合時 ——
- (a) (如尋求協助者是海外實體) 須考慮該海外實體是否會 ——
- (i) 向金融管理專員支付因提供協助而招致的任何費用及開支；及
- (ii) 有能力和願意因應香港方面提出的類似請求，而在其管轄範圍內提供交互協助；或
- (b) (如尋求協助者是香港以外地方的公司審查員) 須考慮 ——
- (i) 該公司審查員是否會向金融管理專員支付因提供協助而招致的任何費用及開支；及
- (ii) 根據在該公司審查員獲委任所在的國家或地區的法律，交互協助會否因應香港方面提出的類似請求而提供。
- (9) 金融管理專員在信納第 (5)(a) 及 (b) 或 (6)(a) 及 (b) 款提述的事宜後 (如信納的話)，須在合理地切實可行範圍內，盡快在憲報公布有關海外實體或香港以外地方的公司審查員的姓名或名稱。
- (10) 凡金管局調查員於根據第 (1) 或 (3) 款行使第 184B 條所賦予的權力時，作出某要求，而某人須按該要求提供解釋或進一步詳情，或須回答金管局調查員於如此行使該等權力時提出的問題，而該解釋、進一步詳情或答案可能會導致該人入罪，且該人在提供該解釋、進一步詳情或答案前又聲稱如此，則第 (11) 款適用。
- (11) 在不局限第 187 條的原則下，金管局調查員不得向任何海外實體或香港以外地方的公司審查員提供下述證據，以供在該實體或審查員的司法管轄區內，於針對該人而提起的刑事法律程序中使用 ——
- (a) 有關要求的證據；
- (b) 有關問題及答案的證據；或

- (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

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- (c) 有關解釋或進一步詳情的證據。
- (12) 如金融管理專員因根據本條提供協助，而招致任何費用及開支，並收到海外實體或香港以外地方的公司審查員就該等費用及開支而支付的任何款額，則金融管理專員須將該款額撥入外匯基金。
- (13) 根據第 (9) 款作出的公布，不是附屬法例。
- (14) 在本條中 ——
- 公司審查員** (companies inspector) 就香港以外任何地方而言，具有第 186(9) 條給予該詞的涵義；
- 海外實體** (overseas entity) 指香港以外地方的主管當局或規管機構。

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- (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.

**187. 導致入罪的證據在法律程序中的使用**

## (1) 凡 ——

- (a) 第 179 條所指的獲授權人根據該條，要求任何人提供或作出解釋、陳述或說明；
- (b) 調查員根據第 183 條，要求任何人提供解釋或進一步詳情，或回答問題；或
- (c) 金管局調查員根據第 184B 條，要求任何人提供解釋或進一步詳情，或回答問題，(由 2014 年第 6 號第 24 條增補)

該獲授權人或調查員(視屬何情況而定)須確保該人已先獲告知或提醒(視屬何情況而定)關於第(2)款就該要求及該解釋或陳述或說明、該解釋或詳情或該問題及答案(視屬何情況而定)作為證據的可接納性所訂下的限制。

## (2) 不論本條例其他條文有任何規定，凡 ——

- (a) 第 179 條所指的獲授權人根據該條，要求任何人提供或作出解釋、陳述或說明；
- (b) 調查員根據第 183 條，要求任何人提供解釋或進一步詳情，或回答問題；或
- (c) 金管局調查員根據第 184B 條，要求任何人提供解釋或進一步詳情，或回答問題，(由 2014 年第 6 號第 24 條增補)

而該解釋或陳述或說明、該解釋或詳情或該答案(視屬何情況而定)可能會導致該人入罪，而該人在提供或作出該

## (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.

(Added 6 of 2014 s. 23)

**187. Use of incriminating evidence in proceedings**

## (1) Where—

- (a) an authorized person within the meaning of section 179 requires a person to provide or make an explanation or statement under that section;
- (b) an investigator requires a person to give an explanation or further particulars or to give an answer to any question under section 183; or
- (c) an MA investigator requires a person to give an explanation or further particulars or give an answer to a question under section 184B, (Added 6 of 2014 s. 24)

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;



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解釋或陳述或說明、提供該解釋或詳情或給予該答案（視屬何情況而定）前又聲稱如此，則該要求及該解釋或陳述或說明、該解釋或詳情或該問題及答案（視屬何情況而定）不得在法院進行的刑事法律程序中接納為針對該人的證據，但如該人就該解釋或陳述或說明、該解釋或詳情或該答案（視屬何情況而定）而被控犯第 179(13)、(14) 或 (15)、184 或 184D 條或第 219(2)(a)、253(2)(a) 或 254(6)(a) 或 (b) 條或《刑事罪行條例》（第 200 章）第 V 部所訂罪行或被控犯作假證供罪，則就該等罪行而進行的刑事法律程序屬例外。

(由 2014 年第 6 號第 24 條修訂)

#### 188. 聲稱對紀錄或文件擁有的留置權

凡任何人管有根據本部要求交出的任何紀錄或文件，而該人聲稱對該等紀錄或文件有留置權，則 ——

- (a) 交出該等紀錄或文件的要求，並不受該留置權影響；
- (b) 無須因該項交出或就該項交出而支付任何費用；及
- (c) 交出該等紀錄或文件並不損害該留置權。

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- (b) an investigator requires a person to give an explanation or further particulars or to give an answer to any question under section 183; or
- (c) an MA investigator requires a person to give an explanation or further particulars or give an answer to a question under section 184B, (*Added 6 of 2014 s. 24*)

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), 184 or 184D, 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).

(*Amended 6 of 2014 s. 24*)

#### 188. Lien claimed on records or documents

Where the person in possession of any record or document required to be produced under this Part claims a lien on the record or document—

- (a) the requirement to produce the record or document shall not be affected by the lien;
- (b) no fees shall be payable for or in respect of the production; and

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### 189. 交出在資訊系統內的資料等

凡任何資料或材料載於根據本部要求交出的紀錄或文件，但並非以可閱讀形式記錄，則本部所授予要求交出紀錄或文件的權力，包括要求交出以下述形式將該等資料或材料或其有關部分重現而製成的版本的權力——

- (a) (如記錄該等資料或材料的方式能使該等資料或材料以可閱讀形式重現) 以可閱讀形式；及
- (b) (如該等資料或材料記錄於資訊系統) 以能使該等資料或材料以可閱讀形式重現的形式。

### 190. 查閱被檢取的紀錄或文件等

凡調查員、金管局調查員或第 179、180 或 181 條所指的獲授權人根據本部管有任何紀錄或文件，該調查員或獲授權人須在符合其就保安或其他方面而施加的合理條件下，准許如該等紀錄或文件沒有根據本部被其管有便會有權查閱該等紀錄或文件的人，在任何合理時間查閱該等紀錄或文件，及將該等紀錄或文件複印或以其他方式記錄其中的細節。

(由 2014 年第 6 號第 25 條修訂)

### 191. 裁判官手令

(1) 裁判官如根據——

- (a) 證監會僱員，或(就根據第 180 條行使權力的情況而言) 第 180 條所指的有關當局的僱員；或

(c) the production shall be without prejudice to the lien.

### 189. Production of information in information systems, etc.

Where any information or matter contained in any record or document required to be produced under this Part is recorded otherwise than in a legible form, any power conferred by this Part to require the production of the record or document includes the power to require the production of a reproduction of the recording of the information or matter or of the relevant part of it—

- (a) where the recording enables the information or matter to be reproduced in a legible form, in a legible form; and
- (b) where the information or matter is recorded in an information system, in a form which enables the information or matter to be reproduced in a legible form.

### 190. Inspection of records or documents seized, etc.

Where an authorized person within the meaning of section 179, 180 or 181 or an investigator or MA investigator has taken possession of any record or document under this Part, the authorized person or the investigator or MA investigator (as the case may be) shall, subject to any reasonable conditions he imposes as to security or otherwise, permit a person who would be entitled to inspect the record or document had he not taken possession of it under this Part, to inspect it and to make copies or otherwise record details of it at all reasonable times.

(Amended 6 of 2014 s. 25)

### 191. Magistrate's warrants

(1) If a magistrate is satisfied on information on oath laid by—

- (a) an employee of the Commission or, where the exercise of powers under section 180 is concerned, of the relevant authority within the meaning of that section; or

(b) 調查員、金管局調查員或第 179 或 180 條所指的獲授權人，(由 2014 年第 6 號第 26 條修訂)

經宣誓而作的告發，信納有合理理由懷疑在該項告發指明的處所內，有或相當可能有任何紀錄或文件是根據本部可要求交出的，則該裁判官可發出手令，授權警務人員、手令指明的人及為協助執行該手令而需要的其他人——

- (i) 在自該手令日期起計的 7 日內，隨時進入該處所，如有必要，可強行進入；及
  - (ii) 搜尋、檢取和移走警務人員或該手令指明的人有合理理由相信是根據本部可要求交出的任何紀錄或文件。
- (2) 根據第 (1) 款發出的手令所指明的人或所授權的警務人員或其他人，可——
- (a) 要求身處在手令指明的處所內而他合理理由相信是在與正在或曾經在該處所經營的業務有關連的情況下受僱的人，交出該人所管有而他合理理由相信是根據本部可要求交出的任何紀錄或文件，以供查驗；
  - (b) 禁止在手令指明的處所內發現的人——
    - (i) 將根據 (a) 段要求交出的任何紀錄或文件移離該處所；
    - (ii) 刪除、增添或以其他方式更改載於該等紀錄或文件的記項或其他詳情，或以任何方式干擾該等紀錄或文件，或致使或准許其他人干擾該等紀錄或文件；
  - (c) 就任何根據 (a) 段要求交出的紀錄或文件採取任何他覺得屬必要的其他步驟，以保存該等紀錄或文件及防止它受干擾。
- (3) 根據本條移走的紀錄或文件可在自移走當日起計的 6 個月內予以保留，如該等紀錄或文件為刑事法律程序或根

(b) an authorized person within the meaning of section 179 or 180, or an investigator or MA investigator, (*Amended 6 of 2014 s. 26*)

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);

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據本條例提起的法律程序所需要，或可能為該等程序所需要，則可為該等法律程序的目的而保留所需的較長期間。

- (4) 凡任何人根據本條移走任何紀錄或文件，該人須隨即在合理地切實可行的範圍內盡快為此發出收據，並可准許如該等紀錄或文件沒有被移走便會有權查閱該等紀錄或文件的人，在任何合理時間查閱該等紀錄或文件，及將該等紀錄或文件複印或以其他方式記錄其中的細節。
- (5) 《刑事訴訟程序條例》(第 221 章)第 102 條適用於已憑藉本條歸證監會、金融管理專員或(就根據第 180 條行使權力的情況而言)第 180 條所指的有關當局管有的財產。(由 2014 年第 6 號第 26 條修訂)
- (6) 任何人 ——
  - (a) 無合理辯解而沒有遵從根據第 (2) 款作出的要求或禁止；或
  - (b) 妨礙任何人行使第 (2) 款授予的權力，即屬犯罪。
- (7) 任何人犯第 (6) 款所訂罪行 ——
  - (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

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- (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 the Monetary Authority 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. (*Amended 6 of 2014 s. 26*)
- (6) A person commits an offence if he—
  - (a) without reasonable excuse, fails to comply with a requirement or prohibition under subsection (2); or

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## 192. 文件的銷毀等

- (1) 任何人意圖向根據本部要求交出任何紀錄或文件的人隱瞞可由該等紀錄或文件披露的事實或事情，而銷毀、捏改、隱藏或以其他方式處置該等紀錄或文件，或致使或准許他人作出該等作為，即屬犯罪。
- (2) 任何人犯第(1)款所訂罪行——
  - (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

## 192. Destruction of documents, etc.

- (1) A person commits an offence if he destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any record or document required to be produced under this Part, with intent to conceal, from the person by whom the requirement to produce was imposed, facts or matters capable of being disclosed by the record or document.
- (2) A person who commits an offence under subsection (1) is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.



## 第 IX 部

## 紀律等

(格式變更——2012 年第 2 號編輯修訂紀錄)

## 第 1 分部 —— 釋義

## 193. 第 IX 部的釋義

(1) 在本部中，除文意另有所指外——

**公司登記冊** (*Companies Register*) 具有《公司條例》(第 622 章) 第 2(1) 條給予該詞的涵義；(由 2012 年第 28 號第 912 及 920 條代替)**失當行為** (*misconduct*) 指——

- (a) 違反任何有關條文；
- (b) 違反根據本條例批給的任何牌照或註冊的任何條款或條件；
- (c) 違反根據或依據本條例任何條文施加的任何其他條件，或違反根據《銀行業條例》(第 155 章) 第 71C(2)(b) 或 (9) 或 71E(3) 條附加或修訂的任何條件；(由 2016 年第 16 號第 9 條修訂)
- (d) 與某人進行他獲發牌或獲註冊進行的受規管活動有關的作為或不作為，而按證監會的意見，該作為或不作為是有損或相當可能有損投資大眾的利益或公眾利益的；或 (由 2016 年第 16 號第 9 條修訂)
- (e) 符合以下說明的作為或不作為——
  - (i) 該作為或不作為，是關乎某中介人進行該中介人根據本條例可為開放式基金型公司進行的任何活動 (非受規管活動者)；及

## Part IX

## Discipline, etc.

(Format changes—E.R. 2 of 2012)

## Division 1—Interpretation

## 193. Interpretation of Part IX

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

**Companies Register** (*公司登記冊*) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622); (*Added 28 of 2012 ss. 912 & 920*)**disciplinary power** (*紀律懲處權*) means—

- <sup>#</sup>(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); (*Added 6 of 2014 s. 27*)

**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); (*Amended 16 of 2016 s. 9*)

Editorial Note:

<sup>#</sup> Not yet in operation. Please see paragraph (l) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015).

- (ii) 按證監會的意見，該作為或不作為，是有損或相當可能有損投資大眾的利益或公眾利益的，  
(由 2016 年第 16 號第 9 條增補)

而**犯失當行為** (guilty of misconduct) 須據此解釋；(由 2014 年第 6 號第 27 條修訂)

**紀律懲處權** (disciplinary power) ——

- # (a) 在第 197A 條中，指證監會根據第 197A(1) 條可行使的權力；而
- (b) 在第 4 及 5 分部中，指金融管理專員根據第 203A(1) 條可行使的權力。(由 2014 年第 6 號第 27 條增補)  
(由 2004 年第 30 號第 3 條修訂)
- (2) 在本部中，如某中介人因作出某行為，而屬犯或曾在任何時間屬犯第(1)款中**失當行為**的定義的(a)、(b)、(c)、(d)或(e)段所指的失當行為，而該行為是在——(由 2016 年第 16 號第 9 條修訂)
- (a) (就持牌法團而言) 以 ——
- (i) 該法團的負責人員；或
- (ii) 參與該法團的業務的管理的人；或
- (b) (就註冊機構而言) 以 ——
- (i) 該機構的主管人員；或
- (ii) 參與構成該機構現時或曾經(視屬何情況而定)獲註冊進行的受規管活動的業務的管理的人，
- 身分行事的另一人的同意或縱容下發生，或是可歸因於該另一人的怠忽的，則該行為亦視為該另一人的失當行為，而**犯失當行為**亦須據此解釋。
- (3) 就第(1)款中**失當行為**的定義的(d)及(e)段而言，除非證監會已顧及根據第 112ZR 條刊登或發表的任何守則或指

- (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; or (*Amended 16 of 2016 s. 9*)
- (e) an act or omission that—
- (i) relates to the carrying on of any activity, other than a regulated activity, that an intermediary may carry on for an open-ended fund company under this Ordinance; and
- (ii) 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, (*Added 16 of 2016 s. 9*)

and **guilty of misconduct** (犯失當行為) shall be construed accordingly. (*Amended 28 of 2012 ss. 912 & 920*)

(*Amended 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920*)

- (2) In this Part, where an intermediary is, or was at any time, guilty of misconduct within the meaning of paragraph (a), (b), (c), (d) or (e) 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— (*Amended 16 of 2016 s. 9*)
- (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

編輯附註：

\* 尚未實施。請參閱《2015 年(2014 年證券及期貨(修訂)條例)(生效日期)公告》(2015 年第 95 號法律公告) (I) 段。

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引、根據第 169 條刊登及發表的任何操守守則或根據第 399 條刊登及發表的任何守則或指引中所列的、就有關作為或不作為適用的、並在有關作為或不作為發生時有效的條文，否則不得得出該等作為或不作為是有損或相當可能有損投資大眾的利益或公眾利益的意見。(由 2016 年第 16 號第 9 條修訂)

## 第 2 分部 —— 由證監會採取的紀律行動

(由 2014 年第 6 號第 28 條代替)

### 194. 就持牌人等採取紀律行動

(1) 在符合第 198 條的規定下，如 ——

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

則證監會可行使該會認為就有關個案的情況而言屬適當的下述權力 ——

- (i) 如該受規管人士是持牌人 ——

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- (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 paragraphs (d) and (e) 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 or guideline published under section 112ZR, 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. (Amended 16 of 2016 s. 9)

## Division 2—Disciplinary Action by Commission

(Replaced 6 of 2014 s. 28)

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

(1) Subject to section 198, where—

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

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

- (i) where the regulated person is a licensed person—

- (A) 就該受規管人士獲發牌進行的所有或任何受規管活動或其中任何部分，撤銷該牌照；或
- (B) 就該受規管人士獲發牌進行的所有或任何受規管活動或其中任何部分，將該牌照暫時吊銷一段證監會指明的期間或直至該會指明的事件發生為止；
- (ii) 如該受規管人士是某持牌法團的負責人員 ——
  - (A) 撤銷根據第 126(1) 條就該受規管人士成為該負責人員而給予該受規管人士的核准；或
  - (B) 將上述核准暫時撤銷一段證監會指明的期間或直至該會指明的事件發生為止；
- (iii) 公開地或非公開地譴責該受規管人士；
- (iv) 禁止該受規管人士在證監會指明的期間內或在該會指明的事件發生之前就該類受規管活動或該等受規管活動作出以下所有或其中任何事情 ——
  - (A) 申請牌照或註冊；
  - (B) 申請根據第 126(1) 條獲核准成為持牌法團的負責人員；
  - (C) 申請根據《銀行業條例》(第 155 章) 第 71C 條獲給予同意以或繼續以註冊機構的主管人員的身分行事；
  - (D) 透過註冊機構，尋求名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示該受規管人士就某類受規管活動受聘於該機構。
- (2) 在符合第 198 及 199 條的規定下，如 ——
  - (a) 某受規管人士犯失當行為或曾在任何時間犯失當行為；或
  - (b) 按證監會的意見，某受規管人士並非擔任或留任同一類受規管人士的適當人選，

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



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

- (i) \$10,000,000；或
- (ii) 因該失當行為或因該受規管人士其他導致證監會得出該意見的行為（視屬何情況而定）而令該受規管人士獲取的利潤金額或避免的損失金額的3倍。
- (3) 證監會在斷定某受規管人士是否第(1)(b)或(2)(b)款所指的適當人選時，除可考慮其他事宜（包括第129條指明的事宜）外，亦可考慮該會認為在有關個案的情況下適宜考慮的該受規管人士現時或過往的行為。
- (4) 根據第(2)款被命令繳付罰款的受規管人士，須在該命令根據第232條作為指明決定而生效後30日（或證監會根據第198(3)條藉通知而指明的較長限期）內，向該會繳付該罰款。
- (5) 原訟法庭可應證監會按為施行本款而藉根據第397條訂立的規則訂明的方式而提出的申請，在原訟法庭登記根據第(2)款作出的命令，而該命令一經登記，即就所有目的而言視為原訟法庭在其民事司法管轄權範圍內就繳付款項而作出的命令。
- (6) 依據一項根據第(2)款作出的命令而付予證監會或由該會追討所得的罰款，須由該會撥入政府一般收入。
- (6A) 如證監會針對某受規管人士，行使第(1)或(2)款所賦予的權力，證監會可向公眾披露其決定的細節，包括作出該決定的理由，以及關乎該個案的任何事關重要的事實。（由2012年第9號第41條增補）
- (7) 在本條中——

**有關時間** (relevant time) 就某人而言——

- (a) 就第(1)(a)或(2)(a)款而言，指該人犯失當行為或曾犯失當行為的時間；或

Banking Ordinance (Cap. 155) as that of a person engaged by the registered institution in respect of a regulated activity.

- (2) Subject to sections 198 and 199, where—
  - (a) a regulated person is, or was at any time, guilty of misconduct; or
  - (b) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,
 the Commission may, separately or in addition to any power exercisable under subsection (1), order the regulated person to pay a pecuniary penalty not exceeding the amount which is the greater of—
  - (i) \$10,000,000; or
  - (ii) 3 times the amount of the profit gained or loss avoided by the regulated person as a result of his misconduct, or of his other conduct which leads the Commission to form the opinion (as the case may be).
- (3) The Commission, in determining whether a regulated person is a fit and proper person within the meaning of subsection (1)(b) or (2)(b), may, among other matters (including those specified in section 129), take into account such present or past conduct of the regulated person as it considers appropriate in the circumstances of the case.
- (4) A regulated person ordered to pay a pecuniary penalty under subsection (2) shall pay the penalty to the Commission within 30 days, or such further period as the Commission may specify by notice under section 198(3), after the order has taken effect as a specified decision under section 232.
- (5) The Court of First Instance may, on an application of the Commission made in the manner prescribed by rules made



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

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

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

**195. 在其他情況下就持牌人等採取紀律行動**

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under section 397 for the purposes of this subsection, register an order made under subsection (2) in the Court of First Instance and the order shall, on registration, be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.

- (6) Any pecuniary penalty paid to or recovered by the Commission pursuant to an order made under subsection (2) shall be paid by the Commission into the general revenue.
- (6A) Where the Commission exercises its power under subsection (1) or (2) against a regulated person, the Commission may disclose to the public details of the decision including the reasons for it and any material facts relating to the case. *(Added 9 of 2012 s. 41)*
- (7) In this section—

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

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

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

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

**195. Other circumstances for disciplinary actions in respect of**

- (1) 在符合第 198 條的規定下，證監會可在以下情況下，就持牌人獲發牌進行的所有或任何受規管活動或其中任何部分，撤銷該牌照或將該牌照暫時吊銷一段該會指明的期間或直至該會指明的事件發生為止 ——
- (a) 持牌人屬個人，而 ——
- (i) 該持牌人根據《破產條例》(第 6 章)與債權人訂立自願安排，或有破產令根據該條例針對該持牌人而作出；
  - (ii) 該持牌人沒有清償某項實施執行所涉及的款項；
  - (iii) 該持牌人根據《精神健康條例》(第 136 章)被法庭裁斷為精神上無行為能力或被羈留在精神病院，而證監會認為該項裁斷或羈留損害該持牌人作為繼續持牌的人選的適當性；或
  - (iv) 該持牌人在香港或其他地方被裁定犯某罪行(任何有關係文所訂罪行除外)，而證監會認為該項定罪損害該持牌人作為繼續持牌的人選的適當性；
- (b) 持牌人是法團，而 ——
- (i) 有人獲委任為該持牌人的財產或業務的接管人或經理人；
  - (ii) 該持牌人沒有清償某項實施執行所涉及的款項；
  - (iii) 該持牌人與債權人作出債務妥協或債務償還安排；
  - (iv) 該持牌人正在清盤或被下令清盤；
  - (v) 該持牌人在香港或其他地方被裁定犯某罪行(任何有關係文所訂罪行除外)，而證監會認為該項定罪損害該持牌人作為繼續持牌的人選的適當性；
  - (vi) 該持牌人的任何董事根據《精神健康條例》(第 136 章)被法庭裁斷為精神上無行為能力或被羈

**licensed persons, etc.**

- (1) Subject to section 198, the Commission may revoke a licensed person's licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed, or suspend a licensed person's licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed for such period or until the occurrence of such event as the Commission may specify, if—
- (a) where the licensed person is an individual—
- (i) the licensed person enters into a voluntary arrangement with creditors, or has a bankruptcy order made against him, under the Bankruptcy Ordinance (Cap. 6);
  - (ii) the licensed person fails to satisfy a levy of execution;
  - (iii) the licensed person has been found by a court to be mentally incapacitated, or is detained in a mental hospital, under the Mental Health Ordinance (Cap. 136), which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed; or
  - (iv) the licensed person is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed;
- (b) where the licensed person is a corporation—
- (i) a receiver or manager of the property or business of the licensed person is appointed;

- 留在精神病院，而證監會認為該項裁斷或羈留損害該持牌人作為繼續持牌的人選的適當性；或
- (vii) 該持牌人的任何董事在香港或其他地方被裁定犯某罪行（任何有關條文所訂罪行除外），而證監會認為該項定罪損害該持牌人作為繼續持牌的人選的適當性；
- (c) 持牌人不進行該項撤銷或暫時吊銷（視屬何情況而定）所關乎的受規管活動或其中部分活動；或
- (d) 持牌人請求證監會如此撤銷或暫時吊銷該牌照。
- (2) 在符合第 198 條的規定下，並在不局限第 (1) 款的一般性的原則下，證監會可在以下情況下，就第 7 類受規管活動或該類活動中的任何部分，撤銷持牌人的牌照——
- (a) 證監會根據第 118(1)(c) 條要求該持牌人應根據第 95(2) 條就該類活動申請認可；而
- (b) (i) 該持牌人沒有按照該要求根據第 95(2) 條申請認可，或該持牌人已以其他方式告知證監會他不擬根據第 95(2) 條申請認可；或
- (ii) 該持牌人已根據第 95(2) 條申請認可，但該項申請不獲批准。
- (3) 在以下情況下，有關牌照當作被撤銷——
- (a) 持牌人屬個人，而該持牌人去世；或
- (b) 持牌人是法團，而該持牌人已清盤、自公司登記冊中剔除，或以其他方式解散。
- (4) 除第 (5) 款另有規定外，在以下情況下，有關牌照當作被暫時吊銷——
- (a) 持牌人沒有在他須根據第 138 條繳付年費之日後 3 個月內全數繳付該年費，或沒有在該 3 個月內繳付因他沒有全數繳付該年費而致他根據該條須繳付的附加款項；或

- (ii) the licensed person fails to satisfy a levy of execution;
- (iii) the licensed person enters into a compromise or scheme of arrangement with its creditors;
- (iv) the licensed person goes into liquidation or is ordered to be wound up;
- (v) the licensed person is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed;
- (vi) any of the directors of the licensed person has been found by a court to be mentally incapacitated, or is detained in a mental hospital, under the Mental Health Ordinance (Cap. 136), which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed; or
- (vii) any of the directors of the licensed person is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed;
- (c) the licensed person does not carry on the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the revocation or suspension (as the case may be) relates; or
- (d) the licensed person requests the Commission to so revoke or suspend the licence.

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- (b) 持牌人沒有在他須根據第 138 條呈交周年申報表之日後 3 個月內呈交該申報表，
- 而除第 (6) 款另有規定外，暫時吊銷屬持續有效，直至證監會認為該牌照不應再被暫時吊銷並藉表明此意的書面通知告知持牌人為止。
- (5) 在以下條件獲符合前，任何牌照不得根據第 (4) 款當作被暫時吊銷 ——
- (a) (就根據第 (4)(a) 款因沒有全數繳付任何年費或附加款項一事而當作暫時吊銷的情況而言) 證監會已在該項暫時吊銷生效前給予不少於 10 個營業日的書面通知，告知持牌人須全數繳付有關年費或附加款項 (視屬何情況而定)，以及如沒有遵從該規定則根據本條會有何後果；或
- (b) (就根據第 (4)(b) 款因沒有呈交周年申報表一事而當作暫時吊銷的情況而言) 證監會已在該項暫時吊銷生效前給予不少於 10 個營業日的書面通知，告知持牌人須呈交周年申報表，以及如沒有遵從該規定則根據本條會有何後果。
- (6) 如任何牌照根據第 (4) 款被暫時吊銷，而第 (4)(a) 或 (b) 款 (視屬何情況而定) 描述的事件在該項暫時吊銷根據第 (4) 款生效之日後 30 日內仍未補救，或在證監會藉向有關持牌人發出書面通知而指明的較長限期內仍未補救，該牌照即當作被撤銷。

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- (2) Subject to section 198, but without limiting the generality of subsection (1), the Commission may revoke a licensed person's licence in relation to Type 7 regulated activity or any part thereof if—
- (a) the Commission has required under section 118(1)(c) that the licensed person should apply for an authorization under section 95(2) for that regulated activity; and
- (b) (i) the licensed person has failed to make an application for the authorization under section 95(2) in accordance with the requirement, or has otherwise informed the Commission that he proposes not to make an application for the authorization under section 95(2); or
- (ii) the licensed person has made an application for the authorization under section 95(2), but the application is not granted.
- (3) A licence shall be deemed to be revoked if—
- (a) where the licensed person is an individual, the licensed person dies; or
- (b) where the licensed person is a corporation, the licensed person is wound up, struck off the Companies Register or is otherwise dissolved. (*Amended 28 of 2012 ss. 912 & 920*)
- (4) Subject to subsection (5), a licence shall be deemed to be suspended if—
- (a) the licensed person fails to make full payment of any annual fee payable by him under section 138, or any additional sum payable by him under that section as a result of any default in making full payment of any annual fee payable by him under that section, within 3 months after the due date for payment of the annual fee under that section; or

- (7) 在符合第 198 條的規定下，如持牌法團的負責人員在香港或其他地方被裁定犯某罪行（任何有關條文所訂罪行除外），而證監會認為該項定罪損害該人作為留任負責人員的人選的適當性，該會可——
- (a) 撤銷根據第 126(1) 條就該人成為該負責人員而給予該人的核准；或
  - (b) 將上述核准暫時撤銷一段證監會指明的期間或直至該會指明的事件發生為止。

- (b) the licensed person fails to submit an annual return required to be submitted by him under section 138 within 3 months after the due date for submission of the annual return under that section,  
and, subject to subsection (6), the suspension shall remain in force until such time as the Commission considers it appropriate that the licence should no longer be suspended and informs the licensed person to that effect by notice in writing.
- (5) A licence shall not be regarded as suspended under subsection (4) unless and until—
- (a) in the case of a suspension under subsection (4)(a) by reference to any failure to make full payment of any annual fee or additional sum, the Commission has, by notice in writing given not less than 10 business days before the suspension is to take effect, informed the licensed person of the requirement to make full payment of the annual fee or additional sum (as the case may be), and of the consequence of the failure to comply with the requirement under this section; or
  - (b) in the case of a suspension under subsection (4)(b) by reference to any failure to submit an annual return, the Commission has, by notice in writing given not less than 10 business days before the suspension is to take effect, informed the licensed person of the requirement to submit the annual return, and of the consequence of the failure to comply with the requirement under this section.
- (6) Where a licence is suspended under subsection (4) and the event described in subsection (4)(a) or (b) (as the case may be) has not been remedied within 30 days after the day on which the suspension becomes effective under subsection (4), or such further period as the Commission may specify by



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### 196. 就註冊機構等採取紀律行動

- (1) 在符合第 198 條的規定下，如 ——
- (a) 某受規管人士犯失當行為或曾在任何時間犯失當行為；或
  - (b) 按證監會的意見，某受規管人士並非擔任或留任同一類受規管人士的適當人選，
- 則證監會可行使該會認為就有關個案的情況而言屬適當的下述權力 ——
- (i) 如該受規管人士是註冊機構 ——
    - (A) 就該受規管人士獲註冊進行的所有或任何受規管活動或其中任何部分，撤銷該項註冊；或
    - (B) 就該受規管人士獲註冊進行的所有或任何受規管活動或其中任何部分，將該項註冊暫時撤銷一段證監會指明的期間或直至該會指明的事件發生為止；
  - (ii) 公開地或非公開地譴責該受規管人士；

notice in writing to the licensed person, the licence shall be deemed to be revoked.

- (7) Subject to section 198, where a person who is a responsible officer of a licensed corporation is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the person to remain such a responsible officer, the Commission may—
- (a) revoke the approval granted under section 126(1) in respect of the person as such a responsible officer; or
  - (b) suspend such approval for such period or until the occurrence of such event as the Commission may specify.

### 196. Disciplinary action in respect of registered institutions, etc.

- (1) Subject to section 198, where—
- (a) a regulated person is, or was at any time, guilty of misconduct; or
  - (b) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,
- the Commission may exercise such of the following powers as it considers appropriate in the circumstances of the case—
- (i) where the regulated person is a registered institution—
    - (A) revoke its registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered; or
    - (B) suspend its registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered for such period

- (iii) 禁止該受規管人士在證監會指明的期間內或在該會指明的事件發生之前就該類受規管活動或該等受規管活動作出以下所有或其中任何事情 ——
- (A) 申請牌照或註冊；
  - (B) 申請根據第 126(1) 條獲核准成為持牌法團的負責人員；
  - (C) 申請根據《銀行業條例》(第 155 章) 第 71C 條獲給予同意以或繼續以註冊機構的主管人員的身分行事；
  - (D) 透過註冊機構，尋求名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示該受規管人士就某類受規管活動受聘於該機構。
- (2) 在符合第 198 及 199 條的規定下，如 ——
- (a) 某受規管人士犯失當行為或曾在任何時間犯失當行為；或
  - (b) 按證監會的意見，某受規管人士並非擔任或留任同一類受規管人士的適當人選，
- 則證監會不論是否同時行使第 (1) 款所賦權力，均可命令該受規管人士繳付最高數額如下的罰款 (以金額較大者為準) ——
- (i) \$10,000,000；或
  - (ii) 因該失當行為或因該受規管人士其他導致證監會得出該意見的行為 (視屬何情況而定) 而令該受規管人士獲取的利潤金額或避免的損失金額的 3 倍。
- (3) 證監會在斷定某受規管人士是否第 (1)(b) 或 (2)(b) 款所指的適當人選時，除可考慮其他事宜 (包括第 129 條指明的事宜) 外，亦可考慮該會認為在有關個案的情況下適宜考慮的該受規管人士現時或過往的行為。

- or until the occurrence of such event as the Commission may specify;
- (ii) publicly or privately reprimand the regulated person;
  - (iii) prohibit the regulated person from doing all or any of the following in relation to such regulated activity or regulated activities, and for such period or until the occurrence of such event, as the Commission may specify—
- (A) applying to be licensed or registered;
  - (B) applying to be approved under section 126(1) as a responsible officer of a licensed corporation;
  - (C) applying to be given consent to act or continue to act as an executive officer of a registered institution under section 71C of the Banking Ordinance (Cap. 155);
  - (D) seeking through a registered institution to have his name entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by the registered institution in respect of a regulated activity.
- (2) Subject to sections 198 and 199, where—
- (a) a regulated person is, or was at any time, guilty of misconduct; or
  - (b) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,

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

- (4) 根據第 (2) 款被命令繳付罰款的受規管人士，須在該命令根據第 232 條作為指明決定而生效後 30 日 (或證監會根據第 198(3) 條藉通知而指明的較長限期) 內，向該會繳付該罰款。
- (5) 原訟法庭可應證監會按為施行本款而藉根據第 397 條訂立的規則訂明的方式而提出的申請，在原訟法庭登記根據第 (2) 款作出的命令，而該命令一經登記，即就所有目的而言視為原訟法庭在其民事司法管轄權範圍內就繳付款項而作出的命令。
- (6) 依據一項根據第 (2) 款作出的命令而付予證監會或由該會追討所得的罰款，須由該會撥入政府一般收入。
- (6A) 如證監會針對某受規管人士行使第 (1) 或 (2) 款所賦予的權力，證監會可向公眾披露其決定的細節，包括作出該決定的理由，以及關乎該個案的任何事關重要的事實。  
(由 2012 年第 9 號第 42 條增補)
- (7) 在不損害金融管理專員根據《銀行業條例》(第 155 章) 行使任何權力的原則下，證監會可就金融管理專員根據該條例第 58A(1) 或 71C(4) 條行使其任何權力方面，向金融管理專員作出該會認為適當的建議。
- (8) 在本條中 ——
- 有關時間** (relevant time) 就某人而言 ——
- (a) 就第 (1)(a) 或 (2)(a) 款而言，指該人犯失當行為或曾犯失當行為的時間；或
- (b) 就第 (1)(b) 或 (2)(b) 款而言，指某事件發生的時間，而該事件 (不論是否連同任何其他事件) 令證監會得出該人並非該款所指的適當人選的意見；
- 受規管人士** (regulated person) 指屬或曾在有關時間屬以下任何類別人士的人 ——
- (a) 註冊機構；
- (b) 註冊機構的主管人員；

- (i) \$10,000,000; or
- (ii) 3 times the amount of the profit gained or loss avoided by the regulated person as a result of his misconduct, or of his other conduct which leads the Commission to form the opinion (as the case may be).
- (3) The Commission, in determining whether a regulated person is a fit and proper person within the meaning of subsection (1)(b) or (2)(b), may, among other matters (including those specified in section 129), take into account such present or past conduct of the regulated person as it considers appropriate in the circumstances of the case.
- (4) A regulated person ordered to pay a pecuniary penalty under subsection (2) shall pay the penalty to the Commission within 30 days, or such further period as the Commission may specify by notice under section 198(3), after the order has taken effect as a specified decision under section 232.
- (5) The Court of First Instance may, on an application of the Commission made in the manner prescribed by rules made under section 397 for the purposes of this subsection, register an order made under subsection (2) in the Court of First Instance and the order shall, on registration, be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.
- (6) Any pecuniary penalty paid to or recovered by the Commission pursuant to an order made under subsection (2) shall be paid by the Commission into the general revenue.
- (6A) Where the Commission exercises its power under subsection (1) or (2) against a regulated person, the Commission may disclose to the public details of the decision including the reasons for it and any material facts relating to the case.  
(Added 9 of 2012 s. 42)

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- (c) 參與構成註冊機構現時或曾經（視屬何情況而定）獲註冊進行的受規管活動的業務的管理的人；或
- (d) 現時或曾經（視屬何情況而定）名列於金融管理專員根據《銀行業條例》（第 155 章）第 20 條備存的紀錄冊並顯示為受註冊機構就某類受規管活動聘用的個人。

# 197. 在其他情況下就註冊機構等採取紀律行動

- (1) 在符合第 198 條的規定下，證監會可在以下情況下，就

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

- (8) In this section—

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

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

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

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

# 197. Other circumstances for disciplinary action in respect of registered institutions, etc.

註冊機構獲註冊進行的所有或任何受規管活動或其中任何部分，撤銷該項註冊或將該項註冊暫時撤銷一段該會指明的期間或直至該會指明的事件發生為止 ——

- (a) (i) 有人獲委任為該機構的財產或業務的接管人或經理人；
- (ii) 該機構沒有清償某項實施執行所涉及的款項；
- (iii) 該機構與債權人作出債務妥協或債務償還安排；
- (iv) 該機構正在清盤或被下令清盤；
- (v) 該機構在香港或其他地方被裁定犯某罪行（任何有關係文所訂罪行除外），而證監會認為該項定罪損害該機構作為繼續獲註冊的人選的適當性；
- (b) 該機構不進行該項撤銷或暫時撤銷（視屬何情況而定）所關乎的受規管活動或其中部分活動；或
- (c) 該機構請求證監會如此撤銷或暫時撤銷該項註冊。
- (2) 在符合第 198 條的規定下，並在不局限第 (1) 款的一般性的原則下，證監會可在以下情況下，就第 7 類受規管活動或該類活動中的任何部分，撤銷註冊機構的註冊 ——
  - (a) 證監會根據第 119(8)(b) 條要求該機構應根據第 95(2) 條就該類活動申請認可；而
  - (b) (i) 該機構沒有按照該要求根據第 95(2) 條申請認可，或該機構已以其他方式告知證監會它不擬根據第 95(2) 條申請認可；或
  - (ii) 該機構已根據第 95(2) 條申請認可，但該項申請不獲批准。
- (3) 在以下情況下，註冊機構的註冊當作被撤銷 ——
  - (a) 該機構不再是認可財務機構；或
  - (b) 該機構已清盤、自公司登記冊中剔除，或以其他方式解散。

- (1) Subject to section 198, the Commission may revoke a registered institution's registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered, or suspend a registered institution's registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered for such period or until the occurrence of such event as the Commission may specify—
  - (a) if—
    - (i) a receiver or manager of the property or business of the registered institution is appointed;
    - (ii) the registered institution fails to satisfy a levy of execution;
    - (iii) the registered institution enters into a compromise or scheme of arrangement with its creditors;
    - (iv) the registered institution goes into liquidation or is ordered to be wound up;
    - (v) the registered institution is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the registered institution to remain registered;
  - (b) if the registered institution does not carry on the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the revocation or suspension (as the case may be) relates; or
  - (c) if the registered institution requests the Commission to so revoke or suspend the registration.
- (2) Subject to section 198, but without limiting the generality of subsection (1), the Commission may revoke a registered



- (4) 除第 (5) 款另有規定外，如註冊機構沒有在該機構須根據第 138 條繳付年費之日後 3 個月內全數繳付該年費，或沒有在該 3 個月內繳付因它沒有全數繳付該年費而致它根據該條須繳付的附加款項，該機構的註冊即當作被暫時撤銷，而除第 (6) 款另有規定外，暫時撤銷屬持續有效，直至證監會認為該項註冊不應再被暫時撤銷並藉表明此意的書面通知告知該機構為止。
- (5) 在以下條件獲符合前，任何註冊不得因沒有全數繳付年費或附加款項一事而根據第 (4) 款當作被暫時撤銷：證監會已在該項暫時撤銷生效前給予不少於 10 個營業日的書面通知，告知註冊機構須全數繳付有關年費或附加款項（視屬何情況而定），以及如沒有遵從該規定則根據本條會有何後果。
- (6) 如任何註冊根據第 (4) 款被暫時撤銷，而在該款所述的沒有全數繳付年費或附加款項之事在該項暫時撤銷根據該款生效之日後 30 日內仍未補救，或在證監會藉向有關註冊機構發出書面通知而指明的較長限期內仍未補救，該項註冊即當作被撤銷。

institution's registration in relation to Type 7 regulated activity or any part thereof if—

- (a) the Commission has required under section 119(8)(b) that the registered institution should apply for an authorization under section 95(2) for that regulated activity; and
- (b) (i) the registered institution has failed to make an application for the authorization under section 95(2) in accordance with the requirement, or has otherwise informed the Commission that it proposes not to make an application for the authorization under section 95(2); or
- (ii) the registered institution has made an application for the authorization under section 95(2), but the application is not granted.
- (3) The registration of a registered institution shall be deemed to be revoked if—
- (a) the registered institution ceases to be an authorized financial institution; or
- (b) the registered institution is wound up, struck off the Companies Register or is otherwise dissolved. (*Amended 28 of 2012 ss. 912 & 920*)
- (4) Subject to subsection (5), the registration of a registered institution shall be deemed to be suspended if the registered institution fails to make full payment of any annual fee payable by it under section 138, or any additional sum payable by it under that section as a result of any default in making full payment of any annual fee payable by it under that section, within 3 months after the due date for payment of the annual fee under that section, and, subject to subsection (6), the suspension shall remain in force until such time as the Commission considers it appropriate that the registration

should no longer be suspended and informs the registered institution to that effect by notice in writing.

- (5) Any registration shall not be regarded as suspended under subsection (4) by reference to any failure to make full payment of any annual fee or additional sum, unless and until the Commission has, by notice in writing given not less than 10 business days before the suspension is to take effect, informed the registered institution of the requirement to make full payment of the annual fee or additional sum (as the case may be), and of the consequence of the failure to comply with the requirement under this section.
- (6) Where any registration is suspended under subsection (4) and the failure to make full payment of the annual fee or additional sum described in that subsection has not been remedied within 30 days after the day on which the suspension becomes effective under that subsection, or such further period as the Commission may specify by notice in writing to the registered institution, the registration shall be deemed to be revoked.

### 第 3 分部 —— 關乎第 2 分部的雜項條文

(由 2014 年第 6 號第 30 條修訂)

#### 198. 有關根據第 2 分部行使權力的程序規定

(由 2014 年第 6 號第 31 條修訂)

- (1) 證監會在根據第 194(1) 或 (2)、195(1)(a)、(b) 或 (c)、(2) 或 (7)、196(1) 或 (2) 或 197(1)(a) 或 (b) 或 (2) 條就某人行使權力之前，須給予該人合理的陳詞機會。
- (2) 證監會在根據第 196(1) 或 (2) 或 197(1) 或 (2) 條行使權力之前，須諮詢金融管理專員。

### Division 3—Miscellaneous Provisions Relating to Division 2

(Amended 6 of 2014 s. 30)

#### 198. Procedural requirements in respect of exercise of powers under Division 2

(Amended 6 of 2014 s. 31)

- (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.

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- (3) 如證監會決定根據第 194(1) 或 (2)、195(1)、(2) 或 (7)、196(1) 或 (2) 或 197(1) 或 (2) 條就某人行使權力，須藉書面通知將該決定告知該人；該通知須包括 ——
- (a) 述明作出該決定的理由；
  - (b) 載有該決定的生效時間；
  - (c) (在適用範圍內) 載有根據該決定將施加的撤銷、暫時吊銷、暫時撤銷或禁止的持續期及條款；
  - (d) (在適用範圍內) 載有根據該決定該人將受譴責的內容；及
  - (e) (在適用範圍內) 載有根據該決定將判處的罰款金額以及須繳付該罰款的限期 (即指明為該決定根據第 232 條作為指明決定而生效後的一段期間)。

#### 199. 根據第 194(2) 或 196(2) 條行使職能的指引

- (1) 除非符合以下規定，否則證監會不得根據第 194(2) 或 196(2) 條執行其職能 ——
- (a) 該會已在憲報刊登並以該會認為適當的其他方式發表指引，顯示該會擬採用何種方式執行該等職能；及
  - (b) 該會在執行該等職能時，已顧及如此刊登及發表的指引。

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- (2) The Commission shall not exercise any power under section 196(1) or (2) or 197(1) or (2) unless it has first consulted the Monetary Authority.
- (3) Where the Commission decides to exercise any power under section 194(1) or (2), 195(1), (2) or (7), 196(1) or (2) or 197(1) or (2), the Commission shall inform the person in respect of whom the power is exercised of its decision to do so by notice in writing, and the notice shall include—
- (a) a statement of the reasons for which the decision is made;
  - (b) the time at which the decision is to take effect;
  - (c) in so far as applicable, the duration and terms of any revocation, suspension or prohibition to be imposed under the decision;
  - (d) in so far as applicable, the terms in which the person is to be reprimanded under the decision; and
  - (e) in so far as applicable, the amount of any pecuniary penalty to be imposed under the decision and the period (being specified as a period after the decision has taken effect as a specified decision under section 232) within which it is required to be paid.

#### 199. Guidelines for performance of functions under section 194(2) or 196(2)

- (1) The Commission shall not perform any of its functions under section 194(2) or 196(2) unless—
- (a) it has published, in the Gazette and in any other manner it considers appropriate, guidelines to indicate the manner in which it proposes to perform such functions; and

- (2) 在不規限可加入證監會認為有關的任何其他因素的原則下，根據第 (1) 款刊登及發表的指引須包括證監會在根據第 194(2) 或 196(2) 條執行職能時須考慮的以下因素 ——
- (a) 有關受規管人士的行為是否屬蓄意、罔顧後果或疏忽的；
  - (b) 該行為是否損害證券期貨市場的廉潔穩健；(由 2018 年第 17 號第 137 條修訂)
  - (c) 該行為是否對任何其他人造成損失或使任何其他人承擔支出；及
  - (d) 該行為是否導致該受規管人士或任何其他人得到利益。
- (3) 根據第 (1) 款刊登及發表的指引不是附屬法例。

**200. 根據第 2 或 3 分部作出的暫時吊銷或暫時撤銷的效果***(由 2014 年第 6 號第 33 條修訂)*

- (1) 如某人的牌照根據第 194 或 195 條就該人獲發牌進行的所有或任何受規管活動或其中任何部分而被暫時吊銷，則在不損害本條例中就該項暫時吊銷而適用的任何條文的原則下，在暫時吊銷的期間 ——
- (a) 就本條例條文 (第 114 條除外) 而言，該人繼續視為獲發牌進行該等受規管活動或該部分活動；及
  - (b) 在不局限 (a) 段的一般性的原則下，該人須繼續遵守本條例中關於持牌人而在該牌照假若沒有被暫時吊銷的情況下本會適用於該人的條文。
- (2) 如某人獲核准成為某持牌法團的負責人員，而該項核准根據第 194 或 195 條被暫時撤銷，則在不損害本條例中

- (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.

**200. Effect of suspension under Division 2 or 3***(Amended 6 of 2014 s. 33)*

- (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

就該項暫時撤銷而適用的任何條文的原則下，在暫時撤銷的期間——

- (a) 就本條例條文(第 118 及 125 條除外)而言，該人繼續視為該持牌法團的負責人員；及
  - (b) 在不局限 (a) 段的一般性的原則下，該人須繼續遵守本條例中關於負責人員而在該項核准假若沒有被暫時撤銷的情況下本會適用於該人的條文。
- (3) 如某人的註冊，根據第 196 或 197 條就該人獲註冊進行的所有或任何受規管活動或其中任何部分而被暫時撤銷，則在不損害本條例中就該項暫時撤銷而適用的任何條文的原則下，在暫時撤銷的期間——
- (a) 就本條例條文(第 114 條除外)而言，該人繼續視為獲註冊進行該等受規管活動或該部分活動；及
  - (b) 在不局限 (a) 段的一般性的原則下，該人須繼續遵守本條例中關於註冊機構而在該項註冊假若沒有被暫時撤銷的情況下本會適用於該人的條文。
- (4) 在某人的牌照根據本條例任何條文被暫時吊銷期間(不論是就該人獲發牌進行的所有或任何受規管活動或其中任何部分被暫時吊銷)，該牌照仍可根據第 194 或 195 條被撤銷。
- (5) 在准許某人成為某持牌法團的負責人員的核准根據本條例任何條文被暫時撤銷期間，該項核准仍可根據第 194 或 195 條被撤銷。
- (6) 在某人的註冊根據本條例任何條文被暫時撤銷期間(不論是就該人獲註冊進行的所有或任何受規管活動或其中任何部分被暫時撤銷)，該項註冊仍可根據第 196 或 197 條被撤銷。

- (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.



**201. 關於根據第 2 或 3 分部行使權力的一般條文***(由 2014 年第 6 號第 34 條修訂)*

- (1) 證監會在根據第 194(1) 或 (2)、195(1)、(2) 或 (7)、196(1) 或 (2) 或 197(1) 或 (2) 條作出決定時，可顧及該會管有的任何與該決定有關的資料或材料，不論該會如何得以管有該等資料或材料。
- (2) 根據第 2 或 3 分部撤銷或暫時吊銷任何牌照或撤銷或暫時撤銷任何註冊，不具有以下效力——*(由 2014 年第 6 號第 34 條修訂)*
  - (a) 廢止或影響由有關的持牌人或註冊機構 (視屬何情況而定) 訂立的協議、交易或安排，不論該協議、交易或安排是在撤銷或暫時吊銷或暫時撤銷之前或之後訂立的；
  - (b) 影響根據該協議、交易或安排產生的權利、義務或法律責任。
- (3) 證監會如在任何時間考慮根據第 194(1) 或 (2)、195(1)(a)、(b) 或 (c)、(2) 或 (7)、196(1) 或 (2) 或 197(1)(a) 或 (b) 或 (2)

- (4) A licence of a person may be revoked under section 194 or 195 notwithstanding that, at the time of revocation, the licence is suspended, whether in relation to all or any, or any part of all or any, of the regulated activities for which the person is licensed, under any provision of this Ordinance.
- (5) An approval of a person as a responsible officer of a licensed corporation may be revoked under section 194 or 195 notwithstanding that, at the time of revocation, the approval is suspended under any provision of this Ordinance.
- (6) Any registration of a person may be revoked under section 196 or 197 notwithstanding that, at the time of revocation, the registration is suspended, whether in relation to all or any, or any part of all or any, of the regulated activities for which the person is registered, under any provision of this Ordinance.

**201. General provisions relating to exercise of powers under Division 2 or 3***(Amended 6 of 2014 s. 34)*

- (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 Division 2 or 3 does not operate so as to—*(Amended 6 of 2014 s. 34)*
  - (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;

條就某人行使權力，並認為就維護投資大眾的利益或公眾利益而言，作出以下作為是適當的，則可與該人達成協議，作出以下作為——

- (a) 行使該會根據本部可就該人行使的任何權力（不論該等權力是否與該會考慮行使的權力相同）；及
  - (b) 採取證監會認為就有關個案的情況而言屬適當的進一步行動。
- (4) 證監會如根據第 (3) 款就某人行使權力或採取進一步行動——
- (a) 該會須遵守第 198(2) 及 (3) 條，猶如第 198(2) 及 (3) 條除適用於根據該條指明的條文行使權力的情況外，亦在作出必要的變通後適用於根據第 (3) 款採取任何進一步行動一樣；及
  - (b) 在該人同意下，該會無須遵守第 198(1) 條。
- <sup>#</sup>(5) 本部任何條文均不影響原訟法庭根據或依據第 101F、101Y、211、212、213、214、214A 或 214B 條作出任何命令或行使任何其他權力的權力。（由 2014 年第 6 號第 34 條修訂；由 2016 年第 16 號第 10 條修訂）

(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).
- <sup>#</sup>(5) Nothing in this Part affects the power of the Court of First Instance to make any order or exercise any other power under

編輯附註：

<sup>#</sup>《2014 年證券及期貨（修訂）條例》（2014 年第 6 號）對第 201(5) 條的修訂於 2015 年 7 月 10 日開始實施，但在關乎新的第 101Y 條的範圍內除外。請參閱《2015 年（2014 年證券及期貨（修訂）條例）（生效日期）公告》（2015 年第 95 號法律公告）(o) 段。

Editorial Note:

<sup>#</sup> The amendment to section 201(5) by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) has come into operation on 10 July 2015, except in so far as it relates to the new section 101Y of the Ordinance. Please see paragraph (o) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015).

or pursuant to section 101F, 101Y, 211, 212, 213, 214, 214A or 214B. (Amended 6 of 2014 s. 34; 16 of 2016 s. 10)

## 202. 在牌照或註冊被撤銷或暫時吊銷或暫時撤銷後，須轉移紀錄

- (1) 凡任何牌照或註冊根據第 2 或 3 分部被撤銷、暫時吊銷或暫時撤銷，證監會可藉書面通知，要求獲批給該牌照或該項註冊（視屬何情況而定）的人，將證監會在該通知中合理地指明的、關乎客戶資產或該人的客戶的事務而由該人在任何時間為該客戶持有的紀錄，以證監會在該通知中合理地指明的方式，轉移予該客戶或該客戶指定的人。（由 2014 年第 6 號第 35 條修訂）
- (2) 任何人無合理辯解而沒有遵從根據第 (1) 款向他施加的要求，即屬犯罪，一經定罪，可處罰款 \$200,000 及監禁 2 年。
- (3) 在本條中，**客戶** (client) 就第 (1) 款提述的人而言，指在該人屬中介人的任何時候，根據附表 1 第 1 部第 1 條中**客戶**的定義屬該人客戶的人。

## 203. 在牌照或註冊被撤銷或暫時吊銷或暫時撤銷後，准許進行業務運作

- (1) 如某中介人的牌照或註冊被撤銷，證監會可藉書面通知，准許該中介人進行與撤銷活動相關的、對結束該撤銷活動的業務屬必要的業務運作。（由 2015 年第 19 號第 25 條代替）
- (1A) 獲證監會在第 (1) 款所發出的通知中指名的個人，可為有關中介人和代有關中介人進行該款提述的業務運作。（由 2015 年第 19 號第 25 條增補）

## 202. Requirement to transfer records upon revocation or suspension of licence or registration

- (1) Where any licence or registration is revoked or suspended under Division 2 or 3, 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. (Amended 6 of 2014 s. 35)
- (2) A person who, without reasonable excuse, fails to comply with a requirement imposed on him under subsection (1) commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 2 years.
- (3) In this section, **client** (客戶), in relation to a person referred to in subsection (1), means any person who, at any time when the first-mentioned person was an intermediary, was a client of the first-mentioned person under the definition of **client** in section 1 of Part 1 of Schedule 1.

## 203. Permission to carry on business operations upon revocation or suspension of licence or registration

- (1) If the licence or registration of an intermediary is revoked, the Commission may by notice in writing permit the intermediary to carry on business operations connected with a revoked activity that are essential for closing down the business of the revoked activity. (Replaced 19 of 2015 s. 25)
- (1A) An individual named by the Commission in the notice given under subsection (1) may carry on the business operations

- (1B) 為施行第 (1A) 款，證監會只可在有關通知中，指名屬或在緊接有關撤銷前曾屬以下人士的個人 ——
- (a) 如屬撤銷持牌法團的牌照 ——
- (i) 該持牌法團的負責人員；或
- (ii) 隸屬該持牌法團的持牌代表；
- (b) 如屬撤銷註冊機構的註冊 ——
- (i) 該註冊機構的主管人員，而金融管理專員已根據或曾根據《銀行業條例》(第 155 章) 第 71C(1) 條向該人員給予同意；或
- (ii) 該註冊機構聘用的登記個人。(由 2015 年第 19 號第 25 條增補)
- (1C) 如某中介人的牌照被暫時吊銷，或其註冊被暫時撤銷，證監會可藉書面通知，准許該中介人進行與暫時吊銷活動或暫時撤銷活動相關的、對保障該中介人的客戶的權益屬必要的業務運作。(由 2015 年第 19 號第 25 條增補)
- (1D) 獲證監會在第 (1C) 款所發出的通知中指名的個人，可為有關中介人和代有關中介人進行該款提述的業務運作。(由 2015 年第 19 號第 25 條增補)
- (1E) 為施行第 (1D) 款，證監會只可在有關通知中，指名屬以下人士的個人 ——
- (a) 如屬暫時吊銷持牌法團的牌照 ——
- (i) 該持牌法團的負責人員；或
- (ii) 隸屬該持牌法團的持牌代表；
- (b) 如屬暫時撤銷註冊機構的註冊 ——
- (i) 該註冊機構的主管人員，而金融管理專員已根據《銀行業條例》(第 155 章) 第 71C(1) 條向該人員給予同意；或
- (ii) 該註冊機構聘用的登記個人。(由 2015 年第 19 號第 25 條增補)

- referred to in that subsection for and on behalf of the intermediary. *(Added 19 of 2015 s. 25)*
- (1B) For the purpose of subsection (1A), the Commission may name in the notice only an individual who is or, immediately before the revocation, was—
- (a) for the revocation of the licence of a licensed corporation—
- (i) a responsible officer of the licensed corporation; or
- (ii) a licensed representative accredited to the licensed corporation;
- (b) for the revocation of the registration of a registered institution—
- (i) an executive officer of the registered institution to whom the Monetary Authority has or had given consent under section 71C(1) of the Banking Ordinance (Cap. 155); or
- (ii) a registered individual engaged by the registered institution. *(Added 19 of 2015 s. 25)*
- (1C) If the licence or registration of an intermediary is suspended, the Commission may by notice in writing permit the intermediary to carry on business operations connected with a suspended activity that are essential for protecting the interests of the clients of the intermediary. *(Added 19 of 2015 s. 25)*
- (1D) An individual named by the Commission in the notice given under subsection (1C) may carry on the business operations referred to in that subsection for and on behalf of the intermediary. *(Added 19 of 2015 s. 25)*
- (1E) For the purpose of subsection (1D), the Commission may name in the notice only an individual who is—



- (1F) 證監會可在根據第 (1) 或 (1C) 款批給准許時，施加該會認為適當的條件，施加方式是在根據該款發出的通知中，指明該等條件。 *(由 2015 年第 19 號第 25 條增補)*
- (2) 不論第 200(1) 條有任何規定，如證監會根據第 (1) 或 (1C) 款，向某中介人批給准許，則該中介人及在根據該款所發出的通知中指名的個人，均不得因按照該項准許進行業務運作而視為違反第 114 條。
- (2A) 凡有根據第 (1) 款批給的准許，在按照該准許進行業務運作時 ——
- (a) 儘管有關中介人的牌照或註冊被撤銷 ——
- (i) 該中介人的牌照或註冊，須當作為沒有就有關撤銷活動而被撤銷；
  - (ii) 第 (1B)(a)(i) 款所提述的個人，須當作為就有關撤銷活動而獲核准為該中介人的負責人員；
  - (iii) 第 (1B)(a)(ii) 款所提述的個人，須當作為隸屬該中介人並獲發牌為該中介人進行有關撤銷活動的持牌代表；
  - (iv) 第 (1B)(b)(i) 款所提述的個人，須當作為該中介人的、已獲金融管理專員給予同意 (根據《銀行業條例》(第 155 章) 第 71C(1) 條就有關撤銷活動而給予者) 的主管人員；及
  - (v) 第 (1B)(b)(ii) 款所提述的個人，須當作為該中介人就有關撤銷活動而聘用的登記個人；及
- (b) 任何適用於中介人、負責人員、持牌代表、主管人員或登記個人 (視屬何情況而定) 的有關條文，均據此而適用於該中介人及該等個人；任何就中介人、負責人員、持牌代表、主管人員或登記個人 (視屬何情況而定) 而適用的有關條文，均據此就該中介人及該等個人而適用。 *(由 2015 年第 19 號第 25 條增補)*

- (a) for the suspension of the licence of a licensed corporation—
    - (i) a responsible officer of the licensed corporation; or
    - (ii) a licensed representative accredited to the licensed corporation;
  - (b) for the suspension of the registration of a registered institution—
    - (i) an executive officer of the registered institution to whom the Monetary Authority has given consent under section 71C(1) of the Banking Ordinance (Cap. 155); or
    - (ii) a registered individual engaged by the registered institution. *(Added 19 of 2015 s. 25)*
- (1F) The Commission may, on granting a permission under subsection (1) or (1C), impose any condition that the Commission thinks fit by specifying the condition in the notice given under that subsection. *(Added 19 of 2015 s. 25)*
- (2) Notwithstanding section 200(1), where the Commission has granted a permission to an intermediary under subsection (1) or (1C), the intermediary and the individuals named in the notice given under that subsection are not, because of their carrying on business operations in accordance with the permission, regarded as having contravened section 114.
- (2A) When carrying on business operations in accordance with a permission granted under subsection (1)—
- (a) despite the revocation of the licence or registration of the intermediary—
    - (i) it is deemed that the licence or registration of the intermediary in relation to the revoked activity is not revoked;



(2B) 凡有根據第 (1C) 款批給的准許，在按照該准許進行業務運作時 ——

(a) 儘管有關中介人的牌照被暫時吊銷，或其註冊被暫時撤銷 ——

(i) 該中介人的牌照，須當作為沒有就有關暫時吊銷活動而被暫時吊銷，或該中介人的註冊，須當作為沒有就有關暫時撤銷活動而被暫時撤銷；

(ii) 第 (1E)(a)(i) 款所提述的個人，繼續以該中介人的就有關暫時吊銷活動而獲核准的負責人員身分行事，或須當作為就該活動而獲核准為該中介人的負責人員 (視情況所需而定)；

(iii) 第 (1E)(a)(ii) 款所提述的個人，繼續以隸屬該中介人並獲發牌為該中介人進行有關暫時吊銷活動的持牌代表身分行事，或須當作為隸屬該中介人並獲發牌為該中介人進行有關暫時吊銷活動的持牌代表 (視情況所需而定)；

(iv) 第 (1E)(b)(i) 款所提述的個人，繼續以該中介人的、已獲金融管理專員給予同意 (根據《銀行業條例》(第 155 章) 第 71C(1) 條就有關暫時撤銷活動而給予者) 的主管人員身分行事，或須當作為該中介人的、已獲上述同意的主管人員 (視情況所需而定)；及

(v) 第 (1E)(b)(ii) 款所提述的個人，繼續以該中介人就有關暫時撤銷活動而聘用的登記個人身分行事，或須當作為該中介人就有關暫時撤銷活動而聘用的登記個人；及

(b) 任何適用於中介人、負責人員、持牌代表、主管人員或登記個人 (視屬何情況而定) 的有關係文，均據此而適用於該中介人及該等個人；任何就中介人、負責人員、持牌代表、主管人員或登記個人 (視屬何情況而定) 而適用的有關係文，均據此就該中介

(ii) an individual referred to in subsection (1B)(a)(i) is deemed to be a responsible officer of the intermediary approved in relation to the revoked activity;

(iii) an individual referred to in subsection (1B)(a)(ii) is deemed to be a licensed representative accredited to, and licensed to carry on the revoked activity for, the intermediary;

(iv) an individual referred to in subsection (1B)(b)(i) is deemed to be an executive officer of the intermediary to whom the Monetary Authority has given consent under section 71C(1) of the Banking Ordinance (Cap. 155) in relation to the revoked activity; and

(v) an individual referred to in subsection (1B)(b)(ii) is deemed to be a registered individual engaged by the intermediary in relation to the revoked activity; and

(b) any of the relevant provisions that apply to or in relation to an intermediary, responsible officer, licensed representative, executive officer or registered individual (as the case may be) apply accordingly to or in relation to the intermediary and individuals. (*Added 19 of 2015 s. 25*)

(2B) When carrying on business operations in accordance with a permission granted under subsection (1C)—

(a) despite the suspension of the licence or registration of the intermediary—

(i) it is deemed that the licence or registration of the intermediary in relation to the suspended activity is not suspended;

人及該等個人而適用。(由 2015 年第 19 號第 25 條增補)

- (3) 根據第 (1) 或 (1C) 款批給的准許，及依據第 (1F) 款施加的條件，在就該項准許或施加而給予的通知送達時生效，或在該通知指明的時間生效，兩者以較遲者為準。

- (4) 在本條中 ——

**中介人** (intermediary) 包括 ——

- (a) 所持牌照被撤銷或暫時吊銷的法團；及
- (b) 所作註冊被撤銷或暫時撤銷的認可財務機構；

**登記個人** (registered individual) 就某註冊機構而言，指符合以下說明的個人：該人的姓名，在金融管理專員根據《銀行業條例》(第 155 章) 第 20(1)(ea) 條備存的紀錄冊中，列為受聘於該機構的人的姓名；

**撤銷** (revoke) 就某中介人的牌照或註冊而言，指根據第 2 或 3 分部，就該中介人獲發牌或獲註冊進行的所有或任何受規管活動或其中任何部分而撤銷；

**撤銷活動** (revoked activity) 就撤銷某牌照或註冊而言，凡該牌照或註冊就任何受規管活動或其中任何部分而被撤銷 —— 指該受規管活動或該部分；

**暫時吊銷、暫時撤銷** (suspend) 就某中介人的牌照或註冊而言，指根據第 2 或 3 分部，就該中介人獲發牌或獲註冊進行的所有或任何受規管活動或其中任何部分而暫時吊銷或暫時撤銷；

- (ii) an individual referred to in subsection (1E)(a)(i) continues to act in the capacity of or is deemed to be (as the case requires) a responsible officer of the intermediary approved in relation to the suspended activity;
  - (iii) an individual referred to in subsection (1E)(a)(ii) continues to act in the capacity of or is deemed to be (as the case requires) a licensed representative accredited to, and licensed to carry on the suspended activity for, the intermediary;
  - (iv) an individual referred to in subsection (1E)(b)(i) continues to act in the capacity of or is deemed to be (as the case requires) an executive officer of the intermediary to whom the Monetary Authority has given consent under section 71C(1) of the Banking Ordinance (Cap. 155) in relation to the suspended activity; and
  - (v) an individual referred to in subsection (1E)(b)(ii) continues to act in the capacity of or is deemed to be (as the case requires) a registered individual engaged by the intermediary in relation to the suspended activity; and
- (b) any of the relevant provisions that apply to or in relation to an intermediary, responsible officer, licensed representative, executive officer or registered individual (as the case may be) apply accordingly to or in relation to the intermediary and individuals. (Added 19 of 2015 s. 25)
- (3) Any permission granted under subsection (1) or (1C), and the imposition of conditions pursuant to subsection (1F), 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.

**暫時吊銷活動、暫時撤銷活動** (suspended activity) 就暫時吊銷某牌照或暫時撤銷某註冊而言，凡該牌照就任何受規管活動或其中任何部分而被暫時吊銷，或該註冊就任何受規管活動或其中任何部分而被暫時撤銷——指該受規管活動或該部分。(由 2015 年第 19 號第 25 條增補)

(由 2015 年第 19 號第 25 條修訂)

(4) In this section—

**intermediary** (中介人) includes—

- (a) a corporation the licence of which has been revoked or suspended; and
- (b) an authorized financial institution the registration of which has been revoked or suspended;

**registered individual** (登記個人), in relation to a registered institution, means an individual whose name is entered in the register maintained by the Monetary Authority under section 20(1)(ea) of the Banking Ordinance (Cap. 155) as that of a person engaged by the registered institution;

**revoke** (撤銷), in relation to the licence or registration of an intermediary, means revoke under Division 2 or 3, whether in relation to all or any, or any part of all or any, of the regulated activities for which the intermediary is licensed or registered;

**revoked activity** (撤銷活動), in relation to the revocation of a licence or registration, means any of the regulated activities, or any part of any of the regulated activities, in relation to which the licence or registration has been revoked;

**suspend** (暫時吊銷、暫時撤銷), in relation to the licence or registration of an intermediary, means suspend under Division 2 or 3, whether in relation to all or any, or any part of all or any, of the regulated activities for which the intermediary is licensed or registered;

**suspended activity** (暫時吊銷活動、暫時撤銷活動), in relation to the suspension of a licence or registration, means any of the regulated activities, or any part of any of the regulated activities, in relation to which the licence or registration has been suspended. (Added 19 of 2015 s. 25)

(Amended 19 of 2015 s. 25)

**第 4 分部 —— 由金融管理專員採取的紀律行動<sup>#</sup>***(第 4 分部由 2014 年第 6 號第 37 條增補)***203A. 由金融管理專員採取的紀律行動**

- (1) 如認可財務機構或核准貨幣經紀違反任何責任，則金融管理專員可就屬紀律行動的對象的人，行使金融管理專員認為就有關個案的情況而言屬適當的以下一項或多於一項權力 ——
- (a) 公開地或非公開地譴責該人；
  - (b) 禁止該人在金融管理專員指明的期間內，或在金融管理專員指明的事件發生之前 ——
    - (i) (如在金融管理專員行使其權力時，該人正在經營場外衍生工具交易的業務) 繼續經營該業務；或
    - (ii) (如在金融管理專員行使其權力時，該人沒有經營場外衍生工具交易的業務) 經營該業務；
  - (c) 命令該人繳付最高數額如下的罰款 (以金額較大者為準) ——
    - (i) \$10,000,000；
    - (ii) 因違責而令該人獲取的利潤金額或避免的損失金額的 3 倍。

編輯附註：

<sup>#</sup> 由《2014 年證券及期貨 (修訂) 條例》(2014 年第 6 號) 新增的第 IX 部第 4 分部於

- (a) 2015 年 7 月 10 日開始實施，但限於在該分部關乎違反匯報責任及備存紀錄責任的範圍內；請參閱《2015 年〈2014 年證券及期貨 (修訂) 條例〉(生效日期) 公告》(2015 年第 95 號法律公告) (q)(i) 段；及
- (b) 2016 年 9 月 1 日開始實施，但限於在該分部關乎違反結算責任的範圍內；請參閱《2016 年〈2014 年證券及期貨 (修訂) 條例〉(生效日期) 公告》(2016 年第 27 號法律公告) (d) 段。

**Division 4—Disciplinary Action by Monetary Authority<sup>#</sup>***(Division 4 added 6 of 2014 s. 37)***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;

Editorial Note:

<sup>#</sup> The new Division 4 of Part IX added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on—

- (a) 10 July 2015, in so far as it relates to the contravention of the reporting obligation and the record keeping obligation; please see paragraph (q)(i) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015); and
- (b) 1 September 2016, in so far as it relates to the contravention of the clearing obligation; please see paragraph (d) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

- (2) 金融管理專員 ——
- (a) 行使第 (1)(a) 及 (b) 款所賦予的紀律懲處權，須受第 203B 條規限；及
- (b) 行使第 (1)(c) 款所賦予的紀律懲處權，須受第 203B 及 203C 條規限。
- (3) 金融管理專員如行使紀律懲處權，可向公眾披露其決定的細節，包括作出該決定的理由，以及關乎該個案的任何事關重要的事實。
- (4) 金融管理專員在作出行使紀律懲處權的決定時，可顧及金融管理專員管有的任何攸關該決定的資料或材料，不論金融管理專員如何得以管有該等資料或材料。
- (5) 就第 (1) 款而言，下列的人屬紀律行動的對象 ——
- (a) 在違責發生時，屬認可財務機構的人；
- (b) 就 (a) 段提述的人所作的違責的情況而言，在該項違責發生時，參與該認可財務機構的場外衍生工具交易的業務管理的人；
- (c) 在違責發生時，屬核准貨幣經紀的人；及
- (d) 就 (c) 段提述的人所作的違責的情況而言，在該項違責發生時，參與該核准貨幣經紀的場外衍生工具交易的業務管理的人。
- (6) 在本條中 ——
- 責任** (obligation) 指匯報責任、結算責任、交易責任或備存紀錄責任；
- 違責** (contravention) 指違反任何責任。

- (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



**第 5 分部 —— 關乎第 4 分部的雜項條文<sup>#</sup>***(第 5 分部由 2014 年第 6 號第 37 條增補)***203B. 行使紀律懲處權的程序規定**

- (1) 金融管理專員如擬對某人作紀律懲處，則須在行使紀律懲處權前，給予該人合理的陳詞機會。
- (2) 金融管理專員如決定行使紀律懲處權，則須藉書面通知，將該決定告知受紀律懲處的人。
- (3) 上述通知須 ——
  - (a) 述明作出有關決定的理由；
  - (b) 述明該決定的生效時間；
  - (c) (就作出譴責的決定而言) 述明有關人士將受的譴責的內容；
  - (d) (就禁止某人繼續經營或經營場外衍生工具交易的業務的決定而言) 述明該項禁止的持續期及其他條款；及

編輯附註：

<sup>#</sup> 由《2014 年證券及期貨(修訂)條例》(2014 年第 6 號)新增的第 IX 部第 5 分部於 2015 年 7 月 10 日開始實施，但在該分部關乎新的第 203D(3) 條中所提述的新的第 101Y 條的範圍內除外；請參閱《2015 年〈2014 年證券及期貨(修訂)條例〉(生效日期)公告》(2015 年第 95 號法律公告) (q)(ii) 段。

- (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, trading obligation or record keeping obligation.

**Division 5—Miscellaneous Provisions Relating to Division 4<sup>#</sup>***(Division 5 added 6 of 2014 s. 37)***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;

Editorial Note:

<sup>#</sup> The new Division 5 of Part IX added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) has come into operation on 10 July 2015, except in so far as it relates to the new section 101Y referred to in the new section 203D(3) of the Ordinance. Please see paragraph (q)(ii) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015).

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- (e) (就命令繳付罰款的決定而言) 述明 ——
- (i) 罰款金額；及
  - (ii) 在該決定根據第 232 條作為指明決定而生效後，繳付該罰款的限期。

### 203C. 根據第 203A(1)(c) 條行使職能的指引

- (1) 金融管理專員須刊登及發表指引，顯示金融管理專員擬採用何種方式，行使命令繳付罰款的紀律懲處權。
- (2) 上述指引須 ——
  - (a) 在憲報刊登；及
  - (b) 以金融管理專員認為適當的其他方式發表。
- (3) 在不局限第 (1) 款的原則下，根據第 (2) 款刊登及發表的指引 ——
  - (a) 可包括金融管理專員認為攸關行使命令繳付罰款的紀律懲處權的因素；及
  - (b) 須包括以下事宜，作為金融管理專員就任何人行使該紀律懲處權時須考慮的因素 ——
    - (i) 該人的行為是否屬蓄意、罔顧後果或疏忽的；
    - (ii) 該人的行為是否損害證券期貨市場的廉潔穩健，或是否對證券期貨市場的廉潔穩健或香港在金融方面的穩定性，造成潛在損害或不利；
    - (iii) 該人的行為是否對任何其他人士造成損失，或使任何其他人士承擔支出；
    - (iv) 該人的行為是否導致其本身或任何其他人士得到利益。

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- (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;

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- (4) 金融管理專員 ——
- (a) 只有在刊登及發表上述指引後，方可行使命令繳付罰款的紀律懲處權；及
  - (b) 在行使命令繳付罰款的紀律懲處權時，須顧及經刊登及發表的指引。
- (5) 金融管理專員可修訂根據本條刊登及發表的指引，修訂的方式，須與金融管理專員刊登及發表該指引的權力相符。本條其他條文適用於該等修訂，一如該等條文適用於該指引。
- (6) 如任何人沒有遵守指引，此事本身不會令該人可在任何司法或其他法律程序中被起訴，但在根據本條例提起而於任何法庭進行的法律程序中 ——
- (a) 該指引可獲接納為證據；而
  - (b) (如該法庭覺得該指引攸關該法律程序中產生的問題) 在裁定該問題時，須考慮該指引。
- (7) 根據本條刊登及發表的指引，不是附屬法例。
- (8) 凡提述任何指引，即為提述不時根據本條修訂的該指引。

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- (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. 關於根據第 4 分部行使權力的一般條文**

- (1) 金融管理專員如考慮對某人行使紀律懲處權，並認為就維護投資大眾的利益或公眾利益而言，作出以下作為是適當的，則可在該人同意下，作出以下作為——
  - (a) 行使任何紀律懲處權（不論該權力是否就是金融管理專員考慮行使的紀律懲處權）；及
  - (b) 採取金融管理專員認為就有關個案的情況而言屬適當的任何其他行動（**進一步行動**）。
- (2) 如金融管理專員根據第 (1) 款，行使紀律懲處權或採取進一步行動，則——
  - (a) 金融管理專員須遵守第 203B(2) 及 (3) 條，猶如第 203B(2) 及 (3) 條在經必要的變通後，適用於採取進一步行動一樣；及
  - (b) 在紀律懲處的建議對象的同意下，金融管理專員無須遵守第 203B(1) 條。
- <sup>#</sup>(3) 本分部或第 4 分部，並不影響原訟法庭根據或依據第 101G、101Y 或 203F 條，作出任何命令或行使任何其他權力。

編輯附註：

<sup>#</sup> 由《2014 年證券及期貨（修訂）條例》（2014 年第 6 號）新增的第 IX 部第 5 分部於 2015 年 7 月 10 日開始實施，但在該分部關乎新的第 203D(3) 條中所提述的新的第 101Y 條的範圍內除外；請參閱《2015 年〈2014 年證券及期貨（修訂）條例〉（生效日期）公告》（2015 年第 95 號法律公告）(q)(ii) 段。）

**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).
- <sup>#</sup>(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 101G, 101Y or 203F.

Editorial Note:

<sup>#</sup> The new Division 5 of Part IX added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) has come into operation on 10 July 2015, except in so far as it relates to the new section 101Y referred to in the new section 203D(3) of the Ordinance. Please see paragraph (q)(ii) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015).

**203E. 追討和繳付罰款**

- (1) 如有人因金融管理專員行使紀律懲處權，而被命令繳付罰款，則該人須 ——
  - (a) 在該命令根據第 232 條作為指明決定而生效後的 30 日內；或
  - (b) 在第 203B(2) 條提述的通知所指明的、在該命令根據第 232 條作為指明決定而生效後的較長限期內，向金融管理專員繳付該罰款。
- (2) 原訟法庭可應金融管理專員提出的申請，在原訟法庭登記有關命令。
- (3) 第 (2) 款所指的申請須藉以下方式提出：向高等法院司法常務官提交書面通知，要求登記有關命令，並提交該命令及該命令的副本一份。
- (4) 有關命令一經登記，即就所有目的而言，視為原訟法庭在其民事司法管轄權範圍內就繳付款項而作出的命令。
- (5) 按根據本條作出的命令而付予金融管理專員 ( 或由金融管理專員追討所得 ) 的罰款，須由金融管理專員撥入政府一般收入。

**203F. 就根據第 203A 條所指的禁止不獲遵從而向原訟法庭提出申請**

- (1) 凡金融管理專員根據第 203A(1)(b) 條，行使權力施加某項禁止，而該項禁止因此對某人有效，如該人沒有遵從該項禁止，則金融管理專員可就該項不遵從，藉原訴傳票向原訟法庭提出申請。
- (2) 原訟法庭可查訊有關個案，而原訟法庭 ——

**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.



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- (a) 如信納有關人士不遵從有關禁止，是沒有合理辯解的，則可命令該人在原訟法庭指明的期間內，遵從該項禁止；及
- (b) 如信納該人無合理辯解而不遵從該項禁止，則可懲罰該人，以及明知而牽涉入該項不遵從的任何其他人，懲罰的方式猶如該人及（如適用的話）該其他人犯藐視法庭罪一樣。
- (3) 凡金融管理專員根據第 203A(1)(b) 條，行使權力施加某項禁止，而該項禁止因此對某人有效，如該人有合理可能會不遵從該項禁止，則金融管理專員可藉原訴傳票，向原訟法庭申請命令，飭令——
  - (a) 該人按原訟法庭的指示採取（或不得採取）任何行動；及
  - (b) 原訟法庭信納能促致該人遵從該項禁止的任何其他人，按原訟法庭的指示採取（或不得採取）任何行動。
- (4) 本條所指的原訴傳票，須採用《高等法院規則》（第 4 章，附屬法例 A）附錄 A 表格 10。

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- (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).

**第 X 部****干預的權力及法律程序***(格式變更——2012 年第 2 號編輯修訂紀錄)***第 1 分部 —— 干預的權力****204. 限制業務**

- (1) 在符合第 207 條的規定下，證監會可藉書面通知 ——
- (a) 禁止持牌法團 ——
- (i) 訂立屬指明種類或不屬指明種類的交易，或在指明情況下或在指明情況以外的情況下訂立交易，或在指明範圍內或在指明範圍以外訂立交易；
- (ii) 向屬指明種類或不屬指明種類的人招攬生意；
- (iii) 以指明方式或以指明方式以外的方式經營業務；
- (b) 要求持牌法團以 ( 並只以 ) 指明方式經營業務。
- (2) 根據本條施加於任何持牌法團的禁止或要求，可涉及以下一項或兩項事宜 ——
- (a) 與構成該法團獲發牌進行的受規管活動的業務相關而訂立的交易；
- (b) 與該法團經營的其他業務相關而訂立的交易，而該等其他業務是在與構成該法團獲發牌進行的受規管活動的業務有關連的情況下經營的。

**Part X****Powers of Intervention and Proceedings***(Format changes—E.R. 2 of 2012)***Division 1—Powers of intervention****204. Restriction of business**

- (1) Subject to section 207, the Commission may by notice in writing—
- (a) prohibit a licensed corporation from—
- (i) entering into transactions of a specified description or other than of a specified description, or entering into transactions in specified circumstances or other than in specified circumstances, or entering into transactions to a specified extent or other than to a specified extent;
- (ii) soliciting business from persons of a specified description or from persons other than of a specified description;
- (iii) carrying on business in a specified manner or other than in a specified manner;
- (b) require a licensed corporation to carry on business in, and only in, a specified manner.
- (2) A prohibition or requirement imposed on a licensed corporation under this section may relate to either or both of the following—
- (a) transactions entered into in connection with the business which constitutes a regulated activity for which the licensed corporation is licensed;

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## 205. 限制處理財產

- (1) 在符合第 207 條的規定下，證監會可藉書面通知 ——
  - (a) 禁止某持牌法團 ——
    - (i) 作出以下作為 ——
      - (A) 處置任何有關財產；
      - (B) 以指明方式或以指明方式以外的方式處理任何有關財產；
    - (ii) 輔助、慫使或促致另一人 ——
      - (A) 處置任何有關財產；
      - (B) 以指明方式或以指明方式以外的方式處理任何有關財產；
  - (b) 要求某持牌法團以 ( 並只以 ) 指明方式處理任何有關財產。
- (2) 在本條中，**有關財產** (relevant property) 就某持牌法團而言，指 ——
  - (a) 該法團以它獲發牌的身分代它的任何客戶持有的任何財產，或由其他人代以該身分行事的該法團持有的任何財產，或依照以該身分行事的該法團的指示持有的任何財產；
  - (b) 證監會合理地相信是該法團所擁有或控制的其他財產。

- (b) transactions entered into in connection with any other business which is carried on by the licensed corporation in connection with the business which constitutes a regulated activity for which it is licensed.

## 205. Restriction on dealing with property

- (1) Subject to section 207, the Commission may by notice in writing—
  - (a) prohibit a licensed corporation—
    - (i) from—
      - (A) disposing of any relevant property;
      - (B) dealing with any relevant property in a specified manner or other than in a specified manner;
    - (ii) from assisting, counselling or procuring another person to—
      - (A) dispose of any relevant property;
      - (B) deal with any relevant property in a specified manner or other than in a specified manner;
  - (b) require a licensed corporation to deal with any relevant property in, and only in, a specified manner.
- (2) In this section, **relevant property** (有關財產), in relation to a licensed corporation, means—
  - (a) any property held by the licensed corporation, acting within the capacity for which the licensed corporation is licensed, on behalf of any of the clients of the licensed corporation, or held by any other person on behalf or to the order of the licensed corporation acting within such capacity;

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## 206. 保存財產

- (1) 在符合第 207 條的規定下，證監會可藉書面通知，要求某持牌法團在香港及在香港以外任何指明地方保存某財產，而——
  - (a) 該財產的價值及種類，是證監會覺得就確保該法團能應付與構成它獲發牌進行的受規管活動的業務有關的債務而言屬可取的；及
  - (b) 保存該財產的方式，能讓該法團隨時隨意轉移或以其他方式處置該財產。
- (2) 證監會可在根據本條施加的要求中，指示須為該要求的目的而將屬指明種類的財產計算在內，或不得為該要求的目的而將屬指明種類的財產計算在內。

## 207. 根據第 204、205 或 206 條施加禁止或要求

證監會如覺得有以下情況，可就任何持牌法團根據第 204、205 或 206 條施加禁止或要求——

- (a) 該法團或其客戶的任何財產，或與構成該法團獲發牌進行的受規管活動的業務有關連的任何財產，可能會以損害該法團的任何客戶或債權人的權益的方式耗散、轉移或作其他處理；

- (b) any other property which the Commission reasonably believes to be owned or controlled by the licensed corporation.

## 206. Maintenance of property

- (1) Subject to section 207, the Commission may by notice in writing require a licensed corporation to maintain property in Hong Kong and in any specified place outside Hong Kong such that—
  - (a) the property maintained is of the value and of the description that appear to the Commission to be desirable with a view to ensuring that the licensed corporation will be able to meet its liabilities in relation to the business which constitutes a regulated activity for which it is licensed; and
  - (b) the property is maintained in a manner that will enable the licensed corporation at any time freely to transfer or otherwise dispose of the property.
- (2) The Commission may in any requirement imposed under this section direct that, for the purposes of the requirement, property of a specified description shall or shall not be taken into account.

## 207. Imposition of prohibition or requirement under section 204, 205 or 206

The Commission may impose a prohibition or requirement under section 204, 205 or 206 in respect of or with reference to any licensed corporation if it appears to the Commission that—

- (a) any property of the licensed corporation or its clients, or any property connected with the business which constitutes a regulated activity for which it is licensed, might be dissipated, transferred or otherwise dealt with

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- (b) (在顧及包括第 129 條指明事宜的各有關事宜後) 該法團並非繼續持牌的適當人選或並非進行它獲發牌進行的受規管活動的適當人選；
- (c) 該法團沒有遵從第 180(2) 條指明的規定，或在看來是遵從該規定時，向證監會提交在提交時在要項上屬虛假或具誤導性的資料；
- (d) 該法團的牌照可基於第 194(1) 或 195(1) 或 (2) 條指明的理由而被撤銷或暫時吊銷；或
- (e) 施加該項禁止或要求就維護投資大眾的利益或公眾利益而言是可取的。

**208. 撤回、取代或更改根據第 204、205 或 206 條施加的禁止或要求**

- (1) 凡根據第 204、205 或 206 條施加於某人的任何禁止或要求仍然有效，證監會如認為適當（不論是該會主動或應該人或受該項禁止或要求影響的其他人的請求），可藉給予該人的書面通知——
  - (a) 撤回該項禁止或要求；或
  - (b) 以另一項禁止或要求取代該項禁止或要求，或更改該項禁止或要求。
- (2) 根據第 204、205 或 206 條施加的任何禁止或要求，或根據第 (1)(b) 款取代任何禁止或要求的另一項禁止或要求，或根據第 (1)(b) 款更改後的禁止或要求，除非本身另有

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- in a manner prejudicial to the interest of any of its clients or creditors;
- (b) the licensed corporation is not a fit and proper person to remain licensed or is not a fit and proper person to carry on any regulated activity for which it is licensed (having regard, among other matters, to the matters specified in section 129);
- (c) the licensed corporation has failed to comply with the requirement specified in section 180(2) or, in purported compliance with such requirement, has furnished the Commission with information which was at the time when it was furnished false or misleading in a material particular;
- (d) the licence of the licensed corporation may be revoked or suspended on any of the grounds specified in section 194(1) or 195(1) or (2); or
- (e) the imposition of the prohibition or requirement is desirable in the interest of the investing public or in the public interest.

**208. Withdrawal, substitution or variation of prohibitions or requirements under section 204, 205 or 206**

- (1) Where a prohibition or requirement imposed under section 204, 205 or 206 is in force, the Commission may, where it considers appropriate to do so (whether of its own volition or upon the request of the person on whom the prohibition or requirement is imposed or any other person affected by the prohibition or requirement), by notice in writing given to the person on whom the prohibition or requirement is imposed—
  - (a) withdraw the prohibition or requirement; or
  - (b) substitute another prohibition or requirement for, or vary, the prohibition or requirement.



規定，否則須按照其內容持續有效，直至證監會根據本條——

- (a) 將它撤回為止；或
  - (b) 將它更改或以另一項禁止或要求取代為止。
- (3) 本條條文在作出必要的變通後，適用於根據第 (1)(b) 款取代某項禁止或要求的另一項禁止或要求，或根據第 (1)(b) 款更改後的禁止或要求，一如該等條文適用於根據第 204、205 或 206 條施加的禁止或要求，而本分部條文須據此解釋。

## 209. 關於第 204、205、206 及 208 條的一般條文

- (1) 凡證監會根據第 204、205 或 206 條施加任何禁止或要求，或根據第 208 條撤回、取代或更改任何禁止或要求，並就此事給予通知，該項施加、撤回、取代或更改（視屬何情況而定）在該通知送達時或在該通知指明的時間（兩者以較遲者為準）生效。
- (2) 凡證監會根據第 204、205 或 206 條施加任何禁止或要求，或根據第 208 條撤回、取代或更改任何禁止或要求，並就此事給予通知，該通知須附有陳述，指明施加、撤回、取代或更改（視屬何情況而定）該項禁止或要求的理由。
- (3) 凡任何人依據第 208(1) 條請求證監會撤回、取代或更改任何禁止或要求——
  - (a) 該會如應該項請求撤回、取代或更改該項禁止或要求，須向該人送達就該項施加、撤回、取代或更改

- (2) A prohibition or requirement imposed under section 204, 205 or 206, or a prohibition or requirement substituting for another prohibition or requirement under subsection (1)(b), or a prohibition or requirement as varied under subsection (1)(b), shall, unless it provides otherwise, remain in force in accordance with the terms thereof until it is—
  - (a) withdrawn; or
  - (b) substituted by another prohibition or requirement, or varied,
 by the Commission under this section.
- (3) The provisions of this section apply, with necessary modifications, to a prohibition or requirement substituting for another prohibition or requirement under subsection (1)(b), or a prohibition or requirement as varied under subsection (1)(b), as they apply to a prohibition or requirement imposed under section 204, 205 or 206, and the provisions of this Division shall be construed accordingly.

## 209. General provisions relating to sections 204, 205, 206 and 208

- (1) Where the Commission imposes under section 204, 205 or 206, or withdraws, substitutes or varies under section 208, a prohibition or requirement, the imposition, withdrawal, substitution or variation (as the case may be) of the prohibition or requirement takes 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.
- (2) Where the Commission imposes under section 204, 205 or 206, or withdraws, substitutes or varies under section 208, a prohibition or requirement, the notice given in respect thereof shall be accompanied by a statement specifying the reasons for the imposition, withdrawal, substitution or variation (as the case may be) of the prohibition or requirement.

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(視屬何情況而定)而給予的通知的文本，以及按照第(2)款附於該通知的陳述的文本；或

- (b) 如儘管有該項請求，但證監會拒絕撤回、取代或更改該項禁止或要求，則證監會須向該人送達拒絕通知，連同一項陳述，指明拒絕的理由。

(4) 凡 ——

- (a) 證監會根據第 204、205 或 206 條施加任何禁止或要求，或根據第 208 條撤回、取代或更改任何禁止或要求；及

- (b) 按照第(2)款就該項施加、撤回、取代或更改給予的通知所附有的陳述所指明的關於該項施加、撤回、取代或更改(視屬何情況而定)的理由，明確地涉及某事宜，而 ——

- (i) 該事宜關乎被該項陳述識辨的人，但該項禁止或要求並不是對該人施加的；及

- (ii) 證監會認為該事宜在某方面對該人不利，

則證監會須在施加、撤回、取代或更改(視屬何情況而定)該項禁止或要求後，在合理地切實可行的範圍內，盡快採取一切合理步驟向該人送達就施加、撤回、取代或更改(視屬何情況而定)該項禁止或要求而給予的通知的文本，以及按照第(2)款附於該通知的陳述的文本。

- (5) 就施加、撤回、取代或更改某項禁止或要求而給予某人的通知，及按照第(2)款附於該通知的陳述，如已根據本部其他條文(但非第(3)及(4)款)送達該人，或其文本已根據本部其他條文(但非第(3)及(4)款)送達該人，則第(3)及(4)款並不規定將該通知或陳述(視屬何情況而定)的文本送達該人。

- (6) 證監會須在憲報刊登並可以該會認為適當的其他方式發表關於根據第 204、205 或 206 條施加禁止或要求的公告，或關於根據第 208 條撤回、取代或更改禁止或要求的公告。

- (3) Where any request is made by any person to the Commission pursuant to section 208(1) for the withdrawal, substitution or variation of a prohibition or requirement, the Commission shall serve on the person—

- (a) where it withdraws, substitutes or varies the prohibition or requirement in accordance with the request, a copy of the notice given in respect thereof and of the statement accompanying it in accordance with subsection (2); or

- (b) where it refuses to withdraw, substitute or vary the prohibition or requirement notwithstanding the request, a notice of its refusal, together with a statement specifying the reasons for the refusal.

(4) Where—

- (a) the Commission imposes under section 204, 205 or 206, or withdraws, substitutes or varies under section 208, a prohibition or requirement; and

- (b) the reasons for the imposition, withdrawal, substitution or variation (as the case may be) as specified in the statement accompanying the notice given in respect thereof in accordance with subsection (2) relate specifically to matters which—

- (i) refer to any person who is identified in the statement but who is not the person on whom the prohibition or requirement was imposed; and

- (ii) are, in the opinion of the Commission, prejudicial to the person in any respect,

the Commission shall, as soon as reasonably practicable after the imposition, withdrawal, substitution or variation (as the case may be), take all reasonable steps to serve on the person a copy of the notice given in respect of the imposition, withdrawal, substitution or variation (as the case may be)

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- (7) 證監會如認為適當，則根據第 (6) 款刊登或發表的公告可加入一項陳述，指明作出該公告所關乎的施加、撤回、取代或更改（視屬何情況而定）的理由。
- (8) 任何法團如屬交易所參與者或結算所參與者，則 ——
- (a) 證監會在就該法團根據第 204、205 或 206 條施加任何禁止或要求或根據第 208 條撤回、取代或更改任何禁止或要求之前，須盡最大努力以書面將擬如此行事一事通知有關的認可交易所或認可結算所（視屬何情況而定）；及
- (b) 證監會如沒有在施加、撤回、取代或更改該項禁止或要求之前，以書面將擬如此行事一事通知有關的認可交易所或認可結算所（視屬何情況而定），則須在施加、撤回、取代或更改（視屬何情況而定）該項禁止或要求之後，立即以書面將如此行事一事通知該認可交易所或認可結算所（視屬何情況而定）。
- (9) 第 204、205、206 及 208 條及根據第 204、205、206 或 208 條施加、撤回、取代或更改任何禁止或要求之事，在以下情況下不具有使有關協議的任何一方不能強制執行該協議的效力：該方證明他在訂立該協議時以真誠行事，並證明他並不察覺根據第 204、205、206 或 208 條或本條就該項施加、撤回、取代或更改（視屬何情況而定）而給予或送達的通知或關乎該項施加、撤回、取代或更改（視屬何情況而定）而刊登或發表的公告。
- (10) 凡任何人因第 204、205、206 或 208 條的施行，或因任何通知或公告的給予、送達、刊登或發表（不論是根據第 204、205、206 或 208 條或本條而給予、送達、刊登或發表），而撤銷任何協議，他須將他根據該協議而從該協議的任何另一方收到或取得的任何款項或其他利益，歸還該另一方。
- (11) 根據第 (6) 款刊登或發表的公告不是附屬法例。

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- and of the statement accompanying it in accordance with subsection (2).
- (5) Nothing in subsections (3) and (4) requires a copy of any notice given in respect of the imposition, withdrawal, substitution or variation of a prohibition or requirement, or of a statement accompanying it in accordance with subsection (2), to be served on any person if the notice or statement or a copy of the notice or statement (as the case may be) has been served on the person under any other provision of this Part.
- (6) The Commission shall publish in the Gazette, and may publish by such additional means as it may consider appropriate, a notice regarding the imposition under section 204, 205 or 206, or the withdrawal, substitution or variation under section 208, of a prohibition or requirement.
- (7) A notice published under subsection (6) may, if the Commission considers appropriate, include a statement specifying the reasons for the imposition, withdrawal, substitution or variation (as the case may be) to which the notice relates.
- (8) The Commission shall—
- (a) before imposing under section 204, 205 or 206, or withdrawing, substituting or varying under section 208, a prohibition or requirement in respect of or with reference to a corporation that is an exchange participant or a clearing participant, use its best endeavours to inform the recognized exchange company or the recognized clearing house (as the case may be) of the proposed imposition, withdrawal, substitution or variation (as the case may be) by notice in writing; and
- (b) where before the imposition, withdrawal, substitution or variation of a prohibition or requirement it has not informed the recognized exchange company or the

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recognized clearing house (as the case may be) of the proposed imposition, withdrawal, substitution or variation (as the case may be) by notice in writing, forthwith after the imposition, withdrawal, substitution or variation (as the case may be) inform the recognized exchange company or the recognized clearing house (as the case may be) thereof by notice in writing.

- (9) Sections 204, 205, 206 and 208, and the imposition, withdrawal, substitution or variation of a prohibition or requirement under section 204, 205, 206 or 208, do not operate so as to render an agreement unenforceable by a party to the agreement if he proves that in entering into the agreement he acted in good faith and was unaware of any notice given, served or published, whether under section 204, 205, 206 or 208 or under this section, in respect of or regarding the imposition, withdrawal, substitution or variation (as the case may be).
- (10) Where by reason of the application of section 204, 205, 206 or 208 or of the giving, service or publication of any notice, whether under section 204, 205, 206 or 208 or under this section, a person rescinds an agreement, he shall restore to any other party to the agreement any money or other benefit received or obtained by him under the agreement from that party.
- (11) A notice published under subsection (6) is not subsidiary legislation.

## 210. 撤銷或暫時吊銷持牌法團的牌照的情況

- (1) 不論本條例其他條文有任何規定，在不局限第 200(1) 條 (不論是否參照第 146(11) 或 147(9) 條而適用) 的一般性的原則下，凡任何持牌法團的牌照根據本條例任何條文被撤銷或暫時吊銷 ——

## 210. Cases of revocation or suspension of licensed corporations' licences

- (1) Notwithstanding any other provisions of this Ordinance, but without limiting the generality of section 200(1) (whether having application with or without reference to section 146(11) or 147(9)), the revocation or suspension of the



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- (a) 如在該項撤銷或暫時吊銷 (視屬何情況而定) 生效之前任何時間 ——
- (i) 某項根據第 204、205 或 206 條就該法團而施加的禁止或要求已生效；
  - (ii) 某項根據第 208(1)(b) 條用以取代另一項禁止或要求的禁止或要求已生效；或
  - (iii) 某項根據第 208(1)(b) 條更改的禁止或要求已生效，
- 則該項撤銷或暫時吊銷 (視屬何情況而定) 並不影響該項禁止或要求 (視屬何情況而定) 的有效性；
- (b) 在不局限 (a) 段的一般性的原則下，該項撤銷或暫時吊銷 (視屬何情況而定) 並不影響證監會在該項撤銷或暫時吊銷 (視屬何情況而定) 生效時或生效之後任何時間根據第 208 條可就該段所指的禁止或要求行使的權力，
- 而本分部中提述持牌法團之處，須據此解釋。
- (2) 不論第 200(1) 條 (不論是否參照第 146(11) 或 147(9) 條而適用) 有任何規定，如 ——
- (a) 任何法團的牌照根據本條例任何條文被撤銷或暫時吊銷；及
  - (b) 證監會在該項撤銷或暫時吊銷發生之前或之後曾就該法團根據第 204、205 或 206 條施加禁止或要求，或根據第 208 條取代或更改已施加的禁止或要求，
- 則該法團不得因遵從在 (b) 段所述的情況下就該法團有效的禁止或要求，而視為違反第 114 條。
- (3) 為免生疑問，凡證監會決定根據本條例任何條文撤銷或暫時吊銷任何持牌法團的牌照，該會可在該項撤銷或暫時吊銷 (視屬何情況而定) 生效之前任何時間 ——
- (a) 根據第 204、205 或 206 條就該法團施加禁止或要求；或

licence of a licensed corporation under any provision of this Ordinance does not affect—

- (a) the validity of—
  - (i) a prohibition or requirement imposed under section 204, 205 or 206 in respect of or with reference to the corporation;
  - (ii) a prohibition or requirement substituting for another prohibition or requirement under section 208(1)(b); or
  - (iii) a prohibition or requirement as varied under section 208(1)(b),

where the imposition, substitution or variation (as the case may be) takes effect at any time before the revocation or suspension (as the case may be) takes effect;
- (b) without limiting the generality of paragraph (a), any power exercisable by the Commission under section 208 in respect of any prohibition or requirement provided for in that paragraph, at the time when, or at any time after, the revocation or suspension (as the case may be) takes effect,

and references in this Division to a licensed corporation shall be construed accordingly.

- (2) Notwithstanding section 200(1) (whether having application with or without reference to section 146(11) or 147(9)), where—
- (a) the licence of a corporation is revoked or suspended under any provision of this Ordinance; and
  - (b) the Commission has imposed under section 204, 205 or 206 a prohibition or requirement in respect of or with reference to, or substituted or varied under section 208 a



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- (b) 根據第 208 條撤回、取代或更改已就該法團施加的禁止或要求。
- (4) 為免生疑問，即使某持牌法團的牌照已根據本條例任何條文被暫時吊銷，本條並不影響證監會採取以下行動的權力——
- (a) 根據第 204、205 或 206 條就該法團施加禁止或要求；或
- (b) 根據第 208 條撤回、取代或更改就該法團施加的禁止或要求。

**211. 就某人沒有遵從根據第 204、205、206 或 208 條作出的禁止或要求而向原訟法庭提出申請**

- (1) 如任何人沒有遵從由於證監會根據第 204、205、206 或

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- prohibition or requirement imposed in respect of or with reference to, the corporation, whether before or after the revocation or suspension,
- the corporation shall not, by reason of its compliance with the prohibition or requirement in force in respect of it under the circumstances described in paragraph (b), be regarded as having contravened section 114.
- (3) For the avoidance of doubt, where the Commission has decided to revoke or suspend the licence of a licensed corporation under any provision of this Ordinance, the Commission may, at any time before the revocation or suspension (as the case may be) takes effect—
- (a) impose under section 204, 205 or 206 a prohibition or requirement in respect of or with reference to; or
- (b) withdraw, substitute or vary under section 208 a prohibition or requirement imposed in respect of or with reference to,
- the licensed corporation.
- (4) For the avoidance of doubt, nothing in this section affects the power of the Commission to—
- (a) impose under section 204, 205 or 206 a prohibition or requirement in respect of or with reference to; or
- (b) withdraw, substitute or vary under section 208 a prohibition or requirement imposed in respect of or with reference to,
- a licensed corporation the licence of which has been suspended under any provision of this Ordinance.

**211. Application to Court of First Instance relating to non-compliance with prohibitions or requirements under section 204, 205, 206 or 208**

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208 條行使權力而對他有效的禁止或要求，該會可藉原訴傳票或原訴動議，就該項不遵從向原訟法庭提出申請，而原訟法庭可查訊有關個案，如——

- (a) 原訟法庭信納該人不遵從該項禁止或要求（視屬何情況而定）是無合理辯解的，則原訟法庭可命令該人在原訟法庭指明的期間內遵從該項禁止或要求（視屬何情況而定）；及
  - (b) 原訟法庭信納該人是在無合理辯解的情況下沒有遵從該項禁止或要求（視屬何情況而定）的，則原訟法庭可懲罰該人及明知而牽涉入該項不遵從的任何其他人，而懲罰的方式猶如該人及（如適用的話）該其他人犯藐視法庭罪一樣。
- (2) 如有合理可能有人會不遵從由於證監會根據第 204、205、206 或 208 條行使權力而對他有效的禁止或要求，該會可藉原訴傳票或原訴動議，向原訟法庭申請命令，飭令該人及原訟法庭信納能促致該人遵從該項禁止或要求（視屬何情況而定）的任何其他人採取或不得採取原訟法庭所指示的行動。
  - (3) 本條所指的原訴傳票須採用《高等法院規則》（第 4 章，附屬法例 A）附錄 A 表格 10。

（編輯修訂——2012 年第 2 號編輯修訂紀錄）

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- (1) If a person fails to comply with a prohibition or requirement in force in respect of him as a result of the exercise of any of the powers under sections 204, 205, 206 and 208, the Commission may, by originating summons or originating motion, make an application to the Court of First Instance in respect of the failure, and the Court may inquire into the case and—
  - (a) if the Court is satisfied that there is no reasonable excuse for the person not to comply with the prohibition or requirement (as the case may be), order the person to comply with the prohibition or requirement (as the case may be) 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) If there is a reasonable likelihood that a person will fail to comply with a prohibition or requirement in force in respect of him as a result of the exercise of any of the powers under sections 204, 205, 206 and 208, the Commission may, by originating summons or originating motion, apply to the Court of First Instance for an order that the person, and any other person who the Court is satisfied is able to procure the person to comply with the prohibition or requirement (as the case may be), to take such action or refrain from taking such action as the Court directs.
- (3) An originating summons under this section shall be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

(Amended E.R. 2 of 2012)

**第 2 分部 —— 其他權力及法律程序****Division 2—Other powers and proceedings****212. 清盤令及破產令****212. Winding-up orders and bankruptcy orders**

## (1) 如 ——

## (1) If—

(a) 某並非認可財務機構的法團屬原訟法庭具司法管轄權根據《公司(清盤及雜項條文)條例》(第 32 章)將它清盤的一類法團；及 (由 2012 年第 28 號第 912 及 920 條修訂)

(a) a corporation, other than an authorized financial institution, is of a class of corporations which the Court of First Instance has jurisdiction to wind up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and (*Amended 28 of 2012 ss. 912 & 920*)

(b) 證監會覺得將該法團清盤，就維護公眾利益而言是可取的，

(b) it appears to the Commission that it is desirable in the public interest that the corporation should be wound up,

證監會可基於根據該條例將該法團清盤屬公正公平的理由而提出呈請，要求根據該條例將該法團清盤，而該條例即適用於該項呈請，一如該條例適用於根據該條例提出的呈請。

the Commission may present a petition for the corporation to be wound up under that Ordinance on the ground that it is just and equitable that the corporation should be so wound up, and that Ordinance shall apply to such petition as it applies in relation to a petition presented under that Ordinance.

(1A) 如證監會覺得，將某開放式基金型公司清盤，就維護公眾利益而言是可取的，則證監會可基於“根據《開放式基金型公司規則》，將該公司清盤，屬公正公平”此項理由，而提出呈請，要求根據該等規則，將該公司清盤，而該等規則即適用於該項呈請，一如該等規則就根據該等規則提出的呈請而適用。(由 2016 年第 16 號第 11 條增補)

(1A) If it appears to the Commission that it is desirable in the public interest that an open-ended fund company should be wound up, the Commission may present a petition for the company to be wound up under the OFC rules on the ground that it is just and equitable that the company should be so wound up, and those rules apply to such a petition as they apply in relation to a petition presented under them. (*Added 16 of 2016 s. 11*)

## (2) 如 ——

## (2) If—

(a) 某持牌代表的債權人有理由根據《破產條例》(第 6 章)提出呈請，要求針對該持牌代表作出破產令；及

(a) grounds exist for the presentation of a petition for a bankruptcy order against a licensed representative by his creditor in accordance with the Bankruptcy Ordinance (Cap. 6); and

(b) 證監會覺得根據該條例提出呈請要求針對該持牌代表作出破產令，就維護公眾利益而言是可取的，

(b) it appears to the Commission that it is desirable in the public interest to present a petition for a bankruptcy

證監會可按照該條例提出呈請，要求針對該持牌代表作出破產令，而該條例即適用於該項呈請，一如該條例適用於由債權人提出的呈請。

## (3) 證監會 ——

(a) 在根據第 (1) 款針對某屬交易所參與者或結算所參與者的法團提出呈請之前，須盡最大努力以書面將擬

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提出呈請一事通知有關的認可交易所或認可結算所 (視屬何情況而定) ; 及

- (b) 如沒有在提出呈請之前，以書面將擬提出呈請一事通知有關的認可交易所或認可結算所 (視屬何情況而定)，則須在提出呈請之後立即以書面將提出呈請一事通知該認可交易所或認可結算所 (視屬何情況而定)。

### 213. 強制令及其他命令

- (1) 凡 ——
- (a) 任何人 ——
- (i) 違反 ——
- (A) 任何有關條文；
- (B) 根據或依據任何有關條文給予或作出的通知、規定或要求；
- (C) 根據本條例批給的任何牌照或註冊的任何條款或條件；或

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order against the licensed representative in accordance with that Ordinance,

the Commission may present a petition for a bankruptcy order against the licensed representative in accordance with that Ordinance, and that Ordinance shall apply to such petition as it applies in relation to a petition presented by a creditor.

- (3) The Commission shall—
- (a) before presenting a petition under subsection (1) against a corporation that is an exchange participant or a clearing participant, use its best endeavours to inform the recognized exchange company or the recognized clearing house (as the case may be) of the proposed presentation of the petition by notice in writing; and
- (b) where before the presentation of the petition it has not informed the recognized exchange company or the recognized clearing house (as the case may be) of the proposed presentation of the petition by notice in writing, forthwith after the presentation of the petition inform the recognized exchange company or the recognized clearing house (as the case may be) thereof by notice in writing.

### 213. Injunctions and other orders

- (1) Where—
- (a) a person has—
- (i) contravened—
- (A) any of the relevant provisions;
- (B) any notice or requirement given or made under or pursuant to any of the relevant provisions;

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- (D) 根據或依據本條例任何條文施加的任何其他條件；
- (ii) 協助、教唆，或以其他方式輔助、慫恿或促使另一人犯任何上述違反事項；
- (iii) 以威脅、承諾或以其他方式，誘使另一人犯任何上述違反事項；
- (iv) 明知而直接或間接以任何方式牽涉入任何上述違反事項；或直接或間接參與任何上述違反事項；或
- (v) 企圖犯或串謀他人犯任何上述違反事項；或
- (b) 證監會覺得(a)(i)至(v)段提述的任何事項已發生、正發生或可能發生，不論該會是否在根據第 VIII 部行使權力的過程中覺得如此，或因根據該部行使權力以致覺得如此，
- 在符合第(4)款的規定下，原訟法庭可應證監會的申請，作出第(2)款指明的一項或多於一項命令。
- (2) 以下是為施行第(1)款而指明的命令——
- (a) 制止或禁止第(1)(a)(i)至(v)款提述的任何事項發生或持續發生的命令；
- (b) (如某人曾經(或看來是曾經)、正在或可能牽涉入第(1)(a)(i)至(v)款提述的任何事項，不論該人是否明知而牽涉入該等事項)飭令該人採取原訟法庭指示的步驟，包括使交易各方回復他們訂立交易之前的狀況的命令；
- (c) 制止或禁止某人取得或處置命令上指明的任何財產或以其他方式進行該等財產的交易的命令；
- (d) 委任某人管理另一人的財產的命令；
- (e) 宣布某一與任何證券、結構性產品、期貨合約、槓桿式外匯交易合約有關，或與任何證券、結構性產品、期貨合約、槓桿式外匯交易合約或集體投資計

- (C) any of the terms and conditions of any licence or registration under this Ordinance; or
- (D) any other condition imposed under or pursuant to any provision of this Ordinance;
- (ii) aided, abetted, or otherwise assisted, counselled or procured a person to commit any such contravention;
- (iii) induced, whether by threats, promises or otherwise, a person to commit any such contravention;
- (iv) directly or indirectly been in any way knowingly involved in, or a party to, any such contravention; or
- (v) attempted, or conspired with others, to commit any such contravention; or
- (b) it appears, whether or not during the course or as a result of the exercise of any power under Part VIII, to the Commission that any of the matters referred to in paragraph (a)(i) to (v) has occurred, is occurring or may occur,
- the Court of First Instance, on the application of the Commission, may, subject to subsection (4), make one or more of the orders specified in subsection (2).
- (2) The orders specified for the purposes of subsection (1) are—
- (a) an order restraining or prohibiting the occurrence or the continued occurrence of any of the matters referred to in subsection (1)(a)(i) to (v);
- (b) where a person has been, or it appears that a person has been, is or may become, involved in any of the matters referred to in subsection (1)(a)(i) to (v), whether knowingly or otherwise, an order requiring the person to take such steps as the Court of First Instance may direct,



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劃的權益有關的合約為在命令指明的範圍內無效或可使無效的命令；(由 2011 年第 8 號第 10 條修訂)

- (f) 指示某人作出或避免作出命令所指明的作為，從而確保根據本條作出的其他命令獲遵從的命令；
  - (g) 原訟法庭認為在作出 (a) 至 (f) 段提述的任何命令後亦有必要作出的附帶命令。
- (3) 證監會 ——
- (a) 在依據第 (1) 款申請某項影響某屬交易所參與者或結算所參與者的人的命令之前，須盡最大努力以書面將擬提出申請一事通知有關的認可交易所或認可結算所 (視屬何情況而定)；及
  - (b) 如沒有在提出申請之前，以書面將擬提出申請一事通知有關的認可交易所或認可結算所 (視屬何情況而定)，則須在提出申請之後立即以書面將提出申請一事通知該認可交易所或認可結算所 (視屬何情況而定)。
- (3A) 如有關個案牽涉的違反事項，是由某開放式基金型公司，或其任何董事、投資經理、保管人或次保管人違反的，則原訟法庭亦可應證監會的申請，作出第 (3C) 款指明的任何命令。(由 2016 年第 16 號第 12 條增補)
- (3B) 不論證監會的申請是否亦有要求作出第 (2) 款指明的命令，原訟法庭均可行使第 (3A) 款所指的權力。(由 2016 年第 16 號第 12 條增補)
- (3C) 為施行第 (3A) 款而指明的命令如下 ——
- (a) 就沒有子基金的開放式基金型公司而言 ——
    - (i) 免任該公司某董事的命令；
    - (ii) 免任該公司某投資經理的命令；
    - (iii) 免任該公司某保管人的命令；
    - (iv) 免任該公司某次保管人的命令；

including steps to restore the parties to any transaction to the position in which they were before the transaction was entered into;

- (c) an order restraining or prohibiting a person from acquiring, disposing of, or otherwise dealing in, any property specified in the order;
  - (d) an order appointing a person to administer the property of another person;
  - (e) an order declaring a contract relating to 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 to be void or voidable to the extent specified in the order; (Amended 8 of 2011 s. 10)
  - (f) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing any act specified in the order;
  - (g) any ancillary order which the Court of First Instance considers necessary in consequence of the making of any of the orders referred to in paragraphs (a) to (f).
- (3) The Commission shall—
- (a) before making an application pursuant to subsection (1) for an order affecting any person that is an exchange participant or a clearing participant, use its best endeavours to inform the recognized exchange company or the recognized clearing house (as the case may be) of the proposed application by notice in writing; and
  - (b) where before the making of the application it has not informed the recognized exchange company or the recognized clearing house (as the case may be) of the

- (v) 具以下效力的命令：飭令將該公司的某部分投資變現，並在解除該公司可歸因於該部分投資的法律責任（如有的話）後，將餘下的資金，按照《開放式基金型公司規則》，分派予該公司的股東；
  - (vi) 具以下效力的命令：飭令將該公司的所有投資變現，並在解除該公司的法律責任（如有的話）後，將餘下的資金，按照《開放式基金型公司規則》，分派予該公司的股東；
  - (vii) 飭令根據《開放式基金型公司規則》將該公司清盤的命令；及
  - (viii) 原訟法庭認為因作出第(i)、(ii)、(iii)、(iv)、(v)、(vi)及(vii)節提述的任何命令，而有必要作出的附帶命令；及
- (b) 就有子基金的開放式基金型公司而言 ——
- (i) (a)(i)、(ii)、(iii)、(iv)、(v)、(vi)及(vii)段指明的任何命令；
  - (ii) 具以下效力的命令：飭令將就該公司的某子基金的某部分而作出的投資變現，並在解除該公司可歸因於該部分的法律責任（如有的話）後，將餘下的資金，按照《開放式基金型公司規則》，分派予該公司的股東；
  - (iii) 具以下效力的命令：飭令將就該公司的某子基金而作出的所有投資變現，並在解除該公司可歸因於該子基金的法律責任（如有的話）後，將餘下的資金，按照《開放式基金型公司規則》，分派予該公司的股東；
  - (iv) 飭令根據《開放式基金型公司規則》將該公司某子基金清盤的命令；及

proposed application by notice in writing, forthwith after the making of the application inform the recognized exchange company or the recognized clearing house (as the case may be) thereof by notice in writing.

- (3A) If the contravention involved in a case is a contravention by an open-ended fund company or a director, an investment manager, a custodian or a sub-custodian of an open-ended fund company, the Court of First Instance may also, on the application of the Commission, make any of the orders specified in subsection (3C). (*Added 16 of 2016 s. 12*)
- (3B) The power under subsection (3A) may be exercised whether or not the Commission also applies for an order specified in subsection (2). (*Added 16 of 2016 s. 12*)
- (3C) The orders specified for the purposes of subsection (3A) are—
  - (a) for an open-ended fund company without sub-funds—
    - (i) an order removing a director of the company;
    - (ii) an order removing an investment manager of the company;
    - (iii) an order removing a custodian of the company;
    - (iv) an order removing a sub-custodian of the company;
    - (v) an order requiring a part of the investments of the company to be realized and the funds remaining after the discharge of the liabilities (if any) of the company attributable to the part to be distributed to shareholders of the company in accordance with the OFC rules;
    - (vi) an order requiring all of the investments of the company to be realized and the funds remaining after the discharge of the liabilities (if any) of the

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- (v) 原訟法庭認為因作出第 (i)、(ii)、(iii) 及 (iv) 節提述的任何命令，而有必要作出的附帶命令。  
(由 2016 年第 16 號第 12 條增補)
- (4) 原訟法庭在根據第 (1) 或 (3A) 款作出命令前，須在合理地可能的範圍內，信納作出該命令是可取的，並信納該命令不會不公平地損害任何人。
- (5) 原訟法庭在根據第 (1) 或 (3A) 款作出命令前，可指示將有關申請的通知給予它認為適當的人，或按它認為適當的方式發表該通知，或兩者均進行。
- (6) 原訟法庭如認為可取，可在依據第 (1) 或 (3A) 款提出的申請仍待決時，頒發它認為適當的臨時命令。
- (7) 原訟法庭不論是否覺得 ——
- 有關命令所針對的人意圖再次從事或繼續從事第 (1)(a)(i) 至 (v) 款提述的事項；
  - 有關命令所針對的人曾從事該等事項；
  - 如不作出有關命令，會使任何人有蒙受損害的迫切危險，
- 均可根據第 (1) 或 (3A) 款作出命令。
- (8) 原訟法庭如有權力根據第 (1) 或 (3A) 款針對某人作出命令，則除可作出該命令外，亦可增發命令，或另發命令以取代該命令，飭令該人向任何其他人士支付損害賠償。
- (9) 原訟法庭可推翻、更改或解除它根據第 (1)、(3A) 或 (6) 款作出或頒發的命令，或暫緩執行該等命令。
- (10) 根據第 (5) 款發表的通知不是附屬法例。

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- company to be distributed to shareholders of the company in accordance with the OFC rules;
- (vii) an order requiring the company to be wound up under the OFC rules; and
- (viii) any ancillary order that the Court of First Instance considers necessary as a result of the making of any of the orders referred to in subparagraphs (i), (ii), (iii), (iv), (v), (vi) and (vii); and
- (b) for an open-ended fund company with sub-funds—
- any of the orders specified in paragraph (a)(i), (ii), (iii), (iv), (v), (vi) and (vii);
  - an order requiring the investments made in respect of a part of a sub-fund of the company to be realized and the funds remaining after the discharge of the liabilities (if any) of the company attributable to the part to be distributed to shareholders of the company in accordance with the OFC rules;
  - an order requiring all of the investments made in respect of a sub-fund of the company to be realized and the funds remaining after the discharge of the liabilities (if any) of the company attributable to the sub-fund to be distributed to shareholders of the company in accordance with the OFC rules;
  - an order requiring a sub-fund of the company to be wound up under the OFC rules; and
  - any ancillary order that the Court of First Instance considers necessary as a result of the making of any of the orders referred to in subparagraphs (i), (ii), (iii) and (iv). (*Added 16 of 2016 s. 12*)

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(11) 在本條中 ——

**子基金** (sub-fund) —— 參閱第 112R 條。(由 2016 年第 16 號第 12 條增補)

(由 2016 年第 16 號第 12 條修訂)

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- (4) The Court of First Instance shall, before making an order under subsection (1) or (3A), satisfy itself, so far as it can reasonably do so, that it is desirable that the order be made, and that the order will not unfairly prejudice any person. (*Amended 16 of 2016 s. 12*)
- (5) The Court of First Instance may, before making an order under subsection (1) or (3A), direct that a notice of the application made in respect thereof be given to the persons it considers appropriate, or be published in the manner it considers appropriate, or both. (*Amended 16 of 2016 s. 12*)
- (6) Where the Court of First Instance considers it desirable to do so, it may grant such interim order as it considers appropriate pending the determination of an application made pursuant to subsection (1) or (3A). (*Amended 16 of 2016 s. 12*)
- (7) An order may be made under subsection (1) or (3A) whether or not it appears to the Court of First Instance that— (*Amended 16 of 2016 s. 12*)
- (a) the person against whom the order is made intends to engage again, or to continue to engage, in any of the matters referred to in subsection (1)(a)(i) to (v);
  - (b) the person against whom the order is made has previously engaged in any of such matters;
  - (c) there is an imminent danger of damage to any person in the event of the order not being made.
- (8) Where the Court of First Instance has power to make an order against a person under subsection (1) or (3A), it may, in addition to or in substitution for such order, make an order requiring the person to pay damages to any other person. (*Amended 16 of 2016 s. 12*)
- (9) The Court of First Instance may reverse, vary or discharge an order made or granted by it under subsection (1), (3A) or (6)

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第 214 條Part X—Division 2  
Section 21410-38  
Cap. 571**214. 在對上市法團的成員等的權益有不公平損害等的情況下的補救辦法**

- (1) 凡任何法團屬或曾屬上市法團，如證監會覺得在有任何有關時間，該法團的業務或事務曾以以下方式經營或處理——
- (a) 欺壓其成員或其任何部分成員；
  - (b) 涉及對該法團或其成員或其任何部分成員作出虧空、欺詐、不當行為或其他失當行為；
  - (c) 導致其成員或其任何部分成員未獲提供他們可合理期望獲得的關於該法團的業務或事務的所有資料；或
  - (d) 對其成員或其任何部分成員造成不公平損害，
- 則證監會可在符合第 (3) 款的規定下，以呈請方式向原訟法庭申請根據本條作出命令。
- (2) 原訟法庭接獲根據本條提出的申請後，如認為某法團的業務或事務曾以第 (1)(a)、(b)、(c) 或 (d) 款描述的方式經營或處理，則不論經營或處理方式是否透過包含單一次的作為或一連串的作為或是沒有作出任何作為的行為，原訟法庭均可——
- (a) 作出命令，制止任何作為的進行，或飭令進行任何作為；
  - (b) 命令該法團以其名義，按命令指明的條款並針對命令指明的人，提起原訟法庭認為適當的法律程序；

or suspend the operation of the order. (*Amended 16 of 2016 s. 12*)

- (10) A notice published under subsection (5) is not subsidiary legislation.

- (11) In this section—

*sub-fund* (子基金)—see section 112R. (*Added 16 of 2016 s. 12*)

**214. Remedies in cases of unfair prejudice, etc. to interests of members of listed corporations, etc.**

- (1) Where, in relation to a corporation which is or was listed, it appears to the Commission that at any relevant time the business or affairs of the corporation have been conducted in a manner—
- (a) oppressive to its members or any part of its members;
  - (b) involving defalcation, fraud, misfeasance or other misconduct towards it or its members or any part of its members;
  - (c) resulting in its members or any part of its members not having been given all the information with respect to its business or affairs that they might reasonably expect; or
  - (d) unfairly prejudicial to its members or any part of its members,

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

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



- (c) (除非該法團屬認可財務機構) 為該法團的所有或任何部分財產或業務委任接管人或經理人，並可指明獲委任者的權力及責任並釐定其報酬；
  - (d) 作出命令，飭令某名須為該等業務或事務曾如此經營或處理負全部或部分責任的人，在命令指明的不超過 15 年的期間內，未經原訟法庭許可，不得——
    - (i) 擔任或留任該法團或其他法團的董事或清盤人，或該法團或其他法團的財產或業務的接管人或經理人；或
    - (ii) 以任何方式直接或間接關涉或參與該法團或其他法團的管理；
  - (e) 作出它認為適當的其他命令，不論是命令對該法團將來的業務或事務的經營或處理作出規管，或是命令由該法團購買其任何成員的股份或由該法團的任何成員購買其他成員的股份（如由該法團購買該等成員的股份，則法庭亦可命令該法團的資本須相應地減少），或是作出其他命令。
- (3) 證監會根據本條提出申請之前——
- (a) (由 2012 年第 9 號第 18 條廢除)
  - (b) 如有關法團屬以下任何類別的法團，須諮詢金融管理專員：第一類是屬認可財務機構的法團；第二類是符合以下說明的法團：證監會知道該法團是某認可財務機構的控制人，或知道該法團的控制人屬認可財務機構，或知道該法團的控制人亦是某認可財務機構的控制人。
- (4) 原訟法庭如根據第 (2)(d) 款作出任何命令，須在作出該命令後，在合理地切實可行的範圍內盡快將該命令送交公司註冊處處長存檔。
- (5) 不論《公司條例》(第 622 章) 或《公司(清盤及雜項條文)條例》(第 32 章) 其他條文有任何規定，凡根據本條作出的命令對公司的章程作出改動或增補，則除該命令另有

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

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規定外，該公司未得原訟法庭許可，無權對該章程另行作出抵觸該命令的改動或增補。(由 2012 年第 28 號第 912 及 920 條修訂)

- (6) 根據本條作出的命令對公司的章程作出的改動或增補的效力，猶如藉該公司的決議妥為作出的一樣，而《公司條例》(第 622 章)及《公司(清盤及雜項條文)條例》(第 32 章)據此適用於經如此改動或增補的章程。(由 2012 年第 28 號第 912 及 920 條修訂)
- (7) 凡原訟法庭命令對公司的章程作出改動或增補，或許可作出改動或增補，該公司須在該命令或許可作出後 14 日內，將該命令或許可的一份正式文本交付公司註冊處處長登記。
- (8) 任何公司違反第 (7) 款，即屬犯罪，一經定罪，可處第 3 級罰款，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$300。

(9) 在本條中 ——

**有關時間** (relevant time) ——

- (a) 就屬上市法團的法團而言，指在該法團組成之後的任何時間；或
- (b) 就曾屬上市法團的法團而言，指在該法團組成之後但不再屬上市法團之前的任何時間；

**控制人** (controller) 指屬《銀行業條例》(第 155 章)第 2(1) 條所界定的間接控權人或大股東控權人的人。

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(a) *(Repealed 9 of 2012 s. 18)*

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

- (4) Where the Court of First Instance makes an order under subsection (2)(d), the order shall be filed by the Court with the Registrar of Companies, as soon as reasonably practicable after it is made.
- (5) Where an order under this section makes an alteration in or addition to the constitution of a company, notwithstanding any other provisions of the Companies Ordinance (Cap. 622) or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) but subject to the provisions of the order, the company shall not have the power, without the leave of the Court of First Instance, to make any further alteration in or addition to the constitution inconsistent with the order. *(Amended 28 of 2012 ss. 912 & 920)*
- (6) Where any alteration in or addition to the constitution of a company is made by an order under this section, the alteration or addition (as the case may be) has the same effect as if duly made by a resolution of the company, and the Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) apply to the constitution as altered or added to accordingly. *(Amended 28 of 2012 ss. 912 & 920)*
- (7) An office copy of an order of the Court of First Instance altering or adding to, or of the leave of the Court to alter or add to, the constitution of a company shall, within 14 days

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#### 214A. 對開放式基金型公司的股東的權益有不公平損害等：補救辦法

- (1) 如證監會覺得，自某開放式基金型公司成立為法團起，在任何時間，該公司的業務或事務，曾以下述方式經營或處理，則證監會可藉呈請方式，向原訟法庭提出申請，要求根據本條作出命令——
- (a) 欺壓該公司的股東，或該公司的任何部分股東；
  - (b) 涉及對該公司或其股東或任何部分股東作出虧空、欺詐、不當行為或其他失當行為；
  - (c) 導致該公司的股東或該公司的任何部分股東未獲提供他們可合理期望獲得的、關於該公司的業務或事務的所有資料；或
  - (d) 對該公司的股東，或該公司的任何部分股東造成不公平損害。

after the order is made or the leave is given, be delivered by the company to the Registrar of Companies for registration.

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

- (9) In this section—

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

**relevant time** (有關時間)—

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

#### 214A. Remedies in cases of unfair prejudice etc. to interests of shareholders of open-ended fund companies

- (1) The Commission may by petition apply to the Court of First Instance for an order under this section if it appears to the Commission that at any time since the incorporation of an open-ended fund company, the business or affairs of the company have been conducted in a manner—
- (a) oppressive to its shareholders or any part of its shareholders;
  - (b) involving defalcation, fraud, misfeasance or other misconduct towards it or its shareholders or any part of its shareholders;
  - (c) resulting in its shareholders or any part of its shareholders not having been given all the information

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- (2) 原訟法庭接獲根據第 (1) 款提出的申請後，如認為有關開放式基金型公司的業務或事務，曾以第 (1)(a)、(b)、(c) 或 (d) 款描述的方式經營或處理，則不論有關經營或處理是包含單一次的作為、一連串的作為，抑或是沒有作出任何作為，原訟法庭均可 ——
- (a) 作出命令，制止任何作為的進行，或飭令進行任何作為；
  - (b) 作出命令，飭令該公司以其名義，按命令指明的條款並針對命令指明的人，提起原訟法庭認為適當的法律程序；
  - (c) 作出命令，為該公司的全部或任何部分財產或業務，委任接管人或經理人，以及指明該接管人或經理人的權力及責任，並釐定其報酬；
  - (d) 作出命令，飭令須為該等業務或事務曾如此經營或處理負全部或部分責任的人，未經原訟法庭許可，不得 ——
    - (i) 擔任或繼續擔任該公司或任何其他法團的董事、投資經理或清盤人，或該公司或任何其他法團的財產或業務的接管人或經理人；或
    - (ii) 以任何方式，直接或間接關涉或參與該公司或任何其他法團的管理；或
  - (e) 作出原訟法庭認為適當的其他命令，不論是飭令對該公司將來的業務或事務的經營或處理，作出規管，或是飭令由該公司購買其任何股東的股份，或由該公司的其他股東購買該等股東的股份，抑或是作出其他命令。
- (3) 如證監會擬根據第 (1) 款申請命令，而該命令是針對 ——
- (a) 某認可財務機構；或
  - (b) 某法團，而證監會知道 ——
    - (i) 該法團是某認可財務機構的控制人；

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- with respect to its business or affairs that they might reasonably expect; or
- (d) unfairly prejudicial to its shareholders or any part of its shareholders.
- (2) If, on an application under subsection (1), the Court of First Instance is of the opinion that the business or affairs of an open-ended fund company have been conducted in a manner described in subsection (1)(a), (b), (c) or (d), whether through conduct consisting of an isolated act or a series of acts or a failure to act, the Court may—
- (a) make an order restraining the carrying out, or requiring the carrying out, of an act;
  - (b) make an order requiring the company to bring in its name any proceedings that the Court considers appropriate against any persons, and on any terms, specified in the order;
  - (c) make an order appointing a receiver or manager of the whole or any part of the property or business of the company, specifying the powers and duties of the receiver or manager and fixing his or her remuneration;
  - (d) make an order that a person wholly or partly responsible for the business or affairs of the company having been so conducted must not, without the leave of the Court—
    - (i) be, or continue to be, a director, an investment manager, a liquidator, or a receiver or manager of the property or business, of the company or any other corporation; or
    - (ii) in any way, whether directly or indirectly, be concerned, or take part, in the management of the company or any other corporation; or

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- (ii) 該法團的控制人屬認可財務機構；或
- (iii) 該法團的控制人亦是某認可財務機構的控制人，則證監會須先行諮詢金融管理專員，方可提出該項申請。
- (4) 根據第 (2)(d) 款作出的命令，須指明該命令的有效期，而該有效期不得超逾 15 年。
- (5) 原訟法庭在根據第 (2)(d) 款作出命令後，須在合理地切實可行的範圍內，盡快將該命令送交公司註冊處處長存檔。
- (6) 在本條中 ——  
**控制人** (controller) 指《銀行業條例》( 第 155 章 ) 第 2(1) 條所界定的間接控權人或大股東控權人。

(由 2016 年第 16 號第 13 條增補)

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- (e) make any other order the Court considers appropriate, whether for regulating the conduct of the business or affairs of the company in the future, or for the purchase of the shares of any shareholders of the company by other shareholders of the company or by the company, or otherwise.
- (3) If the order to be applied for under subsection (1) is an order against—
  - (a) an authorized financial institution; or
  - (b) a corporation that, to the knowledge of the Commission—
    - (i) is a controller of an authorized financial institution;
    - (ii) has as its controller an authorized financial institution; or
    - (iii) has a controller that is also a controller of an authorized financial institution,
 the Commission must not make the application unless it has first consulted the Monetary Authority.
- (4) An order under subsection (2)(d) must specify the period for which it is to have effect and such a period must not exceed 15 years.
- (5) The Court of First Instance must, as soon as reasonably practicable after making an order under subsection (2)(d), file the order with the Registrar of Companies.
- (6) In this section—  
**controller** (控制人) means an indirect controller, or a majority shareholder controller, as defined by section 2(1) of the Banking Ordinance (Cap. 155).

(Added 16 of 2016 s. 13)



**214B. 改動開放式基金型公司的法團成立文書的、第 214A 條所指的命令**

- (1) 儘管本條例其他條文有任何規定，凡根據第 214A 條作出的命令，改動開放式基金型公司的法團成立文書，則除該命令另有規定外，該公司未得原訟法庭許可，無權對該文書作出抵觸該命令的進一步改動。
- (2) 如根據第 214A 條作出的命令，改動開放式基金型公司的法團成立文書，則 ——
  - (a) 該項改動的效力，猶如該項改動是藉該公司的決議妥為作出的一樣；及
  - (b) 本條例據此適用於經如此改動的該文書。
- (3) 凡原訟法庭根據第 214A 條作出命令，改動開放式基金型公司的法團成立文書，該公司須在該命令作出後 14 日內，將該命令的正式文本交付公司註冊處處長，根據本條例作登記。
- (4) 凡原訟法庭給予許可，准許對開放式基金型公司的法團成立文書作出改動，該公司須在該許可給予後 14 日內，將該許可的正式文本交付公司註冊處處長，根據本條例作登記。
- (5) 任何開放式基金型公司違反第 (3) 或 (4) 款，即屬犯罪，一經定罪，可處第 3 級罰款，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$300。
- (6) 在本條中 ——  
**改動** (alter) 包括增補。

**214B. Order under section 214A altering open-ended fund company's instrument of incorporation**

- (1) If an order made under section 214A alters the instrument of incorporation of an open-ended fund company, despite any other provisions of this Ordinance but subject to the provisions of the order, the company does not have the power, without the leave of the Court of First Instance, to make any further alteration to the instrument that is inconsistent with the order.
- (2) If the instrument of incorporation of an open-ended fund company is altered by an order made under section 214A—
  - (a) the alteration has the same effect as if duly made by a resolution of the company; and
  - (b) this Ordinance applies to the instrument as altered accordingly.
- (3) An open-ended fund company must, within 14 days after an order altering its instrument of incorporation is made under section 214A, deliver an office copy of the order to the Registrar of Companies for registration under this Ordinance.
- (4) An open-ended fund company must, within 14 days after the leave of the Court of First Instance to alter its instrument of incorporation is given, deliver an office copy of the leave to the Registrar of Companies for registration under this Ordinance.
- (5) An open-ended fund company that contravenes subsection (3) or (4) commits an offence and is liable on conviction to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (6) In this section—  
**alter** (改動) includes add to.

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(由 2016 年第 16 號第 13 條增補)

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(Added 16 of 2016 s. 13)

## 第 XI 部

## 證券及期貨事務上訴審裁處

(格式變更——2017 年第 2 號編輯修訂紀錄)

## 第 1 分部 —— 釋義

## 215. 第 XI 部的釋義

在本部中，除文意另有所指外——

**各方** (parties) 就某項覆核而言，指——

- (a) 作出有關的指明決定的有關當局；及
- (b) 提出有關的覆核申請的人；

**有關當局** (relevant authority) ——

- (a) 就本條中**指明決定**的定義的 (a) 段所指的指明決定而言，指證監會；
- (b) 就本條中**指明決定**的定義的 (b) 段所指的指明決定而言，指金融管理專員；或
- (c) 就本條中**指明決定**的定義的 (c) 段所指的指明決定而言，指證監會或作出該決定的認可投資者賠償公司 (視屬何情況而定)；

**法官** (judge) 指——

- (a) 原訟法庭的法官或暫委法官；
- (b) 上訴法庭的前任上訴法庭法官；
- (c) 原訟法庭的前任法官或前任暫委法官；

**指明決定** (specified decision) 指——

- (a) 由證監會作出並符合以下說明的決定——
  - (i) 根據或依據附表 8 第 2 部第 1 分部第 2 欄所列的任何條文作出；及

## Part XI

## Securities and Futures Appeals Tribunal

(Format changes—E.R. 2 of 2017)

## Division 1—Interpretation

## 215. Interpretation of Part XI

In this Part, unless the context otherwise requires—

**application for review** (覆核申請) means an application made under section 217(1);**judge** (法官) means—

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

**parties** (各方), in relation to a review, means—

- (a) the relevant authority making the specified decision in question; and
- (b) the person making the application for review in question;

**relevant authority** (有關當局)—

- (a) in relation to a specified decision within the meaning of paragraph (a) of the definition of **specified decision** in this section, means the Commission;
- (b) in relation to a specified decision within the meaning of paragraph (b) of the definition of **specified decision** in this section, means the Monetary Authority; or

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- (ii) 屬在附表 8 第 2 部第 1 分部第 3 欄與上述條文相對之處所描述的範疇；
- (b) 由金融管理專員作出並符合以下說明的決定 ——
  - (i) 根據或依據附表 8 第 2 部第 2 分部第 2 欄所列的任何條文作出；及
  - (ii) 屬在附表 8 第 2 部第 2 分部第 3 欄與上述條文相對之處所描述的範疇；或
- (c) 由證監會或認可投資者賠償公司作出並符合以下說明的決定 ——
  - (i) 根據或依據附表 8 第 2 部第 3 分部第 2 欄所列的任何條文作出；及
  - (ii) 屬在附表 8 第 2 部第 3 分部第 3 欄與上述條文相對之處所描述的範疇；

**審裁處** (Tribunal) 指第 216 條設立的證券及期貨事務上訴審裁處；

**覆核** (review) 指審裁處根據第 218(1) 條覆核某指明決定；

**覆核申請** (application for review) 指根據第 217(1) 條提出的申請。

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- (c) in relation to a specified decision within the meaning of paragraph (c) of the definition of **specified decision** in this section, means the Commission or the recognized investor compensation company by which the decision is made (as the case may be);

**review** (覆核) means a review of a specified decision by the Tribunal under section 218(1);

**specified decision** (指明決定) means—

- (a) a decision of the Commission which—
  - (i) is made under or pursuant to any of the provisions set out in column 2 of Division 1 of Part 2 of Schedule 8; and
  - (ii) is within the description set out, opposite such provisions, in column 3 of Division 1 of Part 2 of Schedule 8;
- (b) a decision of the Monetary Authority which—
  - (i) is made under or pursuant to any of the provisions set out in column 2 of Division 2 of Part 2 of Schedule 8; and
  - (ii) is within the description set out, opposite such provisions, in column 3 of Division 2 of Part 2 of Schedule 8; or
- (c) a decision of the Commission or a recognized investor compensation company which—
  - (i) is made under or pursuant to any of the provisions set out in column 2 of Division 3 of Part 2 of Schedule 8; and
  - (ii) is within the description set out, opposite such provisions, in column 3 of Division 3 of Part 2 of Schedule 8;

## 第 2 分部 —— 證券及期貨事務上訴審裁處

### 216. 證券及期貨事務上訴審裁處

- (1) 現設立一個名為“證券及期貨事務上訴審裁處”的審裁處，審裁處具有司法管轄權按照本部及附表 8 覆核指明決定，以及聆聽和裁定任何覆核所引起或與任何覆核有關連的任何問題或爭議點。
- (2) 除本部或附表 8 另有規定外，審裁處 ——
  - (a) 由一名主席及 2 名其他成員組成；及
  - (b) 由主席主持，他須與該 2 名其他成員一起聆訊。
- (3) 審裁處主席須由法官出任，上述 2 名其他成員須不是公職人員。
- (4) 附表 8 第 1 部適用於審裁處成員的委任，以及審裁處的研訊程序和聆訊及與審裁處有關的在程序及其他方面的事宜。
- (5) 如行政長官認為適當，可為任何覆核的目的而增設審裁處，在此情況下，本條例或其他條例的條文在作出必要的變通後適用於每個如此增設的審裁處（包括每個如此增設的審裁處的主席及其他成員的委任，以及與每個如此增設的審裁處有關的一切事宜），一如該等條文適用於審裁處。
- (6) 審裁處成員（身為第 215 條中**法官**的定義的 (a) 段所指的法官的主席除外）可獲付一筆財政司司長認為數額適當的款項，作為服務酬金；該筆款項由政府一般收入支付。
- (7) 凡任何屬第 215 條中**法官**的定義的 (a) 段所指的法官的人獲委任為審裁處主席，該項委任及他擔任或免任主席之事，均不影響 ——

**Tribunal** (審裁處) means the Securities and Futures Appeals Tribunal established by section 216.

## Division 2—Securities and Futures Appeals Tribunal

### 216. Securities and Futures Appeals Tribunal

- (1) There is established a Tribunal to be known as the Securities and Futures Appeals Tribunal which shall have jurisdiction to review specified decisions, and to hear and determine any question or issue arising out of or in connection with any review, in accordance with this Part and Schedule 8.
- (2) Except as otherwise provided in this Part or in Schedule 8, the Tribunal—
  - (a) shall consist of a chairman and 2 other members; and
  - (b) shall be presided over by the chairman who shall sit with the 2 other members.
- (3) The chairman of the Tribunal shall be a judge and the 2 other members of the Tribunal shall not be public officers.
- (4) Part 1 of Schedule 8 shall have effect in relation to the appointment of members of the Tribunal, and to the proceedings and sittings of, and procedural and other matters concerning, the Tribunal.
- (5) Where the Chief Executive considers appropriate, additional Tribunals may be established for the purposes of any reviews, whereupon the provisions of this or any other Ordinance shall apply, subject to necessary modifications, to each of such additional Tribunals (including appointment of the chairman and other members of, and all matters concerning, each of such additional Tribunals) as they apply to the Tribunal.
- (6) With the exception of the chairman of the Tribunal who is a judge within the meaning of paragraph (a) of the definition of **judge** in section 215, a member of the Tribunal may be



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- (a) 他作為該段所指的法官的任期，亦不影響他作為該段所指的法官而行使權力；
- (b) 他擔任該職位而具有的職級、稱銜、地位、排名、薪金或其他權利或特權；
- (c) 他擔任該職位須遵守的條款及條件。

## 217. 申請覆核指明決定

- (1) 在符合第 (2) 及 (3) 款的規定下，任何人如因有關當局就他作出的指明決定感到受屈，可藉給予審裁處書面通知，而向審裁處申請覆核該決定。
- (2) 根據第 (1) 款給予審裁處的通知須列明該通知所關乎的申請的理由。
- (3) 凡有關當局就任何人作出指明決定 ——
  - (a) 除 (b) 段另有規定外 ——
    - (i) 如本條例或其他條例規定就該決定送達書面通知，則就該決定而提出的覆核申請，須在該通知按照該規定送達後 21 日內提出；或
    - (ii) 如本條例或其他條例並無上述規定，則就該決定而提出的覆核申請，須在關於該決定的書面通知送達該人後 21 日內提出；

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

- (7) Where a person who is a judge within the meaning of paragraph (a) of the definition of *judge* in section 215 is appointed as the chairman of the Tribunal, neither the appointment nor the service or removal of the person as the chairman affects—
  - (a) the tenure of office of, and the exercise of powers by, the person as a judge within the meaning of that paragraph;
  - (b) the person's rank, title, status, precedence, salary or other rights or privileges as a holder of that office;
  - (c) the terms and conditions to which the person is subject as a holder of that office.

## 217. Applications for review of specified decisions

- (1) Subject to subsections (2) and (3), a person aggrieved by a specified decision of the relevant authority made in respect of him may, by notice in writing given to the Tribunal, apply to the Tribunal for a review of the decision.
- (2) A notice given to the Tribunal under subsection (1) shall set out the grounds for the application to which the notice relates.
- (3) An application for review of a specified decision of the relevant authority shall be made within 21 days after—
  - (a) subject to paragraph (b)—
    - (i) where there is any requirement in this or any other Ordinance for notice in writing in respect of the decision to be served, the notice has been served in accordance with such requirement; or

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- (b) 如該決定屬附表 8 第 3 部第 1 分部第 2 欄所描述的指明決定，且屬在該分部第 3 欄與該指明決定的描述相對之處所列的條文所適用者，則就該決定而提出的覆核申請，須在將關於該決定的通知給予該人後 21 日內提出。
- (4) 不論第 (3) 款有任何規定，在符合第 (5) 款的規定下，審裁處可應任何人以書面提出的申請，藉命令而將根據第 (3) 款就有關當局所作的指明決定提出覆核申請的限期延展，而凡審裁處作出該命令，根據第 (3) 款提出該項申請的限期即據此延展。
- (5) 除非有以下情況，否則審裁處不得根據第 (4) 款批給延展——
- (a) 該人已根據該款申請批給延展，而該有關當局已獲給予合理的陳詞機會；及
- (b) 審裁處信納有好的因由批給延展。
- (6) 審裁處如根據第 (1) 款接獲通知，須在其後在合理地切實可行的範圍內，盡快將該通知的副本送達有關當局。

## 218. 在審裁處席前進行的研訊程序

- (1) 在有覆核申請提出後，審裁處須覆核該申請所關乎的指明決定。

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- (ii) where there is no such requirement, a notice in writing in respect of the decision has been served on the person in respect of whom it is made;
- (b) where the decision is a specified decision which is described in column 2 of Division 1 of Part 3 of Schedule 8 and to which the provision set out, opposite such description of the specified decision, in column 3 of that Division applies, a notice in respect of the decision has been given to the person in respect of whom it is made.
- (4) Notwithstanding subsection (3), the Tribunal, upon application in writing by any person, may, subject to subsection (5), by order extend the time within which an application for review of a specified decision of the relevant authority shall be made under subsection (3), whereupon the time within which such an application shall be made under subsection (3) shall be extended accordingly.
- (5) The Tribunal shall not grant an extension under subsection (4) unless—
- (a) the person who has applied for the grant of the extension pursuant to that subsection and the relevant authority have been given a reasonable opportunity of being heard; and
- (b) it is satisfied that there is a good cause for granting the extension.
- (6) Where the Tribunal receives a notice under subsection (1), it shall as soon as reasonably practicable thereafter serve a copy of the notice on the relevant authority.

## 218. Proceedings before Tribunal

- (1) After an application for review has been made, the Tribunal shall review the specified decision to which the application

- (2) 審裁處根據第 (1) 款覆核指明決定後，可 ——
- (a) 確認、更改或推翻該決定，及 ( 如推翻該決定 ) 以審裁處認為適當的任何其他決定取代該決定；
  - (b) 將有關事宜發還有關當局處理，並給予審裁處認為適當的指示，包括指示該當局就審裁處指明的事宜重新作出決定。
- (3) 如審裁處根據第 (2)(a) 款更改某指明決定或以任何決定取代某指明決定，經更改的該指明決定或以取代該指明決定的決定 ( 視屬何情況而定 ) 可以有權根據它據以作出該指明決定的同一條文或根據其他條文而就提出有關的覆核申請的人作出的任何決定 ( 不論較嚴苛或寬鬆 )。
- (4) 在不局限第 (2)(a) 及 (3) 款的一般性的原則但符合第 (6) 款的規定下 ——
- (a) 如有關的指明決定屬附表 8 第 3 部第 2 分部第 2 欄描述的指明決定，則審裁處根據第 (2)(a) 款用以取代該指明決定的決定，可包括 ( 不論是否附加於審裁處除本款外可根據第 (2)(a) 款用以取代該指明決定的決定 ) 金融管理專員本有權根據或依據該分部第 3 欄與該指明決定的描述相對之處所列的任何條文而就提出有關的覆核申請的人作出的任何決定；及
  - (b) 如有關的指明決定屬附表 8 第 3 部第 3 分部第 2 欄描述的指明決定，則審裁處根據第 (2)(a) 款用以取代該指明決定的決定，可包括 ( 不論是否附加於審裁處除本款外可根據第 (2)(a) 款用以取代該指明決定的決定 ) 證監會本有權根據或依據該分部第 3 欄與該指明決定的描述相對之處所列的任何條文而就提出有關的覆核申請的人作出的任何決定。
- (5) 不論本條有任何規定，審裁處就任何覆核作出裁定前，須給予該項覆核的各方合理的陳詞機會。
- (6) 在不局限第 (5) 款的一般性的原則下，審裁處依據第 (4)(a) 或 (b) 款行使權力前，須給予 ——

relates.

- (2) Following the review of a specified decision under subsection (1), the Tribunal may—
- (a) confirm, vary or set aside the decision, and, where the decision is set aside, substitute for the decision any other decision which the Tribunal considers appropriate;
  - (b) remit the matter in question to the relevant authority with the directions it considers appropriate, which may include a direction to the relevant authority to make a decision afresh in respect of any matter specified by the Tribunal.
- (3) Where the Tribunal varies, or substitutes any decision for, a specified decision under subsection (2)(a), the decision as varied or the decision substituting for the specified decision (as the case may be) may be any decision (whether more or less onerous) that the relevant authority had power to make in respect of the person making the application for review in question, whether or not under the same provision as that under which the specified decision has been made.
- (4) Without limiting the generality of subsections (2)(a) and (3) but subject to subsection (6)—
- (a) where the specified decision in question is a specified decision described in column 2 of Division 2 of Part 3 of Schedule 8, the decision that the Tribunal may substitute under subsection (2)(a) for the specified decision may also include (whether or not in addition to the decision that the Tribunal may, apart from this subsection, substitute under subsection (2)(a) for the specified decision) any decision that the Monetary Authority had power to make in respect of the person making the application for review in question under or pursuant to any of the provisions set out, opposite such

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- (a) (就第 (4)(a) 款而言) 金融管理專員；或
- (b) (就第 (4)(b) 款而言) 證監會，  
合理的陳詞機會。
- (7) 除第 221(3) 條另有規定外，在裁定任何有待審裁處裁定的問題或爭議點時所要求的舉證準則，是適用於在法院進行的民事法律程序的舉證準則。

## 219. 審裁處的權力

- (1) 在符合附表 8 第 1 部及終審法院首席法官根據第 233 條訂立的規則的規定下，審裁處為某項覆核的目的，可主

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- description of the specified decision, in column 3 of that Division; and
- (b) where the specified decision in question is a specified decision described in column 2 of Division 3 of Part 3 of Schedule 8, the decision that the Tribunal may substitute under subsection (2)(a) for the specified decision may also include (whether or not in addition to the decision that the Tribunal may, apart from this subsection, substitute under subsection (2)(a) for the specified decision) any decision that the Commission had power to make in respect of the person making the application for review in question under or pursuant to any of the provisions set out, opposite such description of the specified decision, in column 3 of that Division.
- (5) Notwithstanding anything in this section, the Tribunal shall not determine a review without first giving the parties to the review a reasonable opportunity of being heard.
- (6) Without limiting the generality of subsection (5), the Tribunal shall not exercise any power pursuant to subsection (4)(a) or (b) without first giving a reasonable opportunity of being heard to—
  - (a) in the case of subsection (4)(a), the Monetary Authority; or
  - (b) in the case of subsection (4)(b), the Commission.
- (7) Subject to section 221(3), the standard of proof required to determine any question or issue before the Tribunal shall be the standard of proof applicable to civil proceedings in a court of law.

## 219. Powers of Tribunal

- (1) Subject to the provisions of Part 1 of Schedule 8 and any rules made by the Chief Justice under section 233, the

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動或應該項覆核的各方中的任何一方的申請 ——

- (a) 收取及考慮以口述證供、書面陳述或文件提供的材料；即使該等材料在法院民事或刑事法律程序中會屬不可接納為證據，審裁處亦可收取及考慮；
  - (b) 藉審裁處主席簽署的書面通知，要求某人出席聆訊、提供證據及交出由他管有並與該項覆核的標的有關的任何物品、紀錄或文件；
  - (c) 監誓；
  - (d) 訊問或安排訊問任何在其席前已宣誓或未經宣誓的人，並要求該人據實回答審裁處認為就該項覆核而言屬適當的問題；
  - (e) 命令證人為該項覆核的目的以誓章據實提供證據；
  - (f) 命令任何人不得發表或以其他方式披露已為審裁處收取的材料；
  - (g) 禁止發表或披露審裁處在閉門進行的任何聆訊（或聆訊中閉門進行的任何部分）中所收取的材料；
  - (h) 決定收取 (a) 段提述的材料的方式；
  - (i) 在顧及公正原則後，基於審裁處認為適當的理由及按審裁處認為適當的條款及條件，而擱置該項覆核的任何程序；
  - (j) 決定在該項覆核中須依循的程序；
  - (k) 為進行該項覆核或執行其職能，而行使所需或所附帶的其他權力，或作出所需或所附帶的其他命令。
- (2) 任何人無合理辯解而有以下行為，即屬犯罪 ——
- (a) 沒有遵從審裁處根據或依據第 (1) 款作出的命令、通知、禁令或要求；
  - (b) 令審裁處聆訊無法繼續進行，或在聆訊過程中有其他不檢行為；

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Tribunal, for the purposes of a review, may, on its own motion or on the application of any of the parties to the review—

- (a) receive and consider any material by way of oral evidence, written statements or documents, even if the material would not be admissible in evidence in civil or criminal proceedings in a court of law;
- (b) by notice in writing signed by the chairman of the Tribunal require a person to attend before it at any sitting and to give evidence and produce any article, record or document in his possession relating to the subject matter of the review;
- (c) administer oaths;
- (d) examine or cause to be examined on oath or otherwise a person attending before it and require the person to answer truthfully any question which the Tribunal considers appropriate for the purposes of the review;
- (e) order a witness to provide evidence in a truthful manner for the purposes of the review by affidavit;
- (f) order a person not to publish or otherwise disclose any material the Tribunal receives;
- (g) prohibit the publication or disclosure of any material the Tribunal receives at any sitting, or any part of a sitting, which is held in private;
- (h) determine the manner in which any material referred to in paragraph (a) is received;
- (i) stay any of the proceedings in the review on such grounds and on such terms and conditions as it considers appropriate having regard to the interests of justice;
- (j) determine the procedure to be followed in the review;



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- (c) 在按審裁處根據第 (1) 款作出的要求於某地方出席審裁處聆訊後，未經審裁處准許而離開該地方；
- (d) 阻礙任何人為某項覆核的目的出席審裁處聆訊、提供證據或交出任何物品、紀錄或文件，或阻嚇任何人以期他不為該目的作出該等作為；
- (e) 因任何人曾出席審裁處聆訊而威脅或侮辱他，或令他蒙受損失；或
- (f) 因任何審裁處成員以該身分執行職能，而在任何時間威脅或侮辱他，或令他蒙受損失。
- (3) 任何人犯第 (2) 款所訂罪行 ——
  - (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (4) 任何人不得僅以遵從審裁處根據或依據第 (1) 款作出的命令、通知、禁令或要求可能會導致他人入罪為理由，而獲豁免遵從該命令、通知、禁令或要求。

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- (k) exercise such other powers or make such other orders as may be necessary for or ancillary to the conduct of the review or the carrying out of its functions.
- (2) A person commits an offence if he, without reasonable excuse—
  - (a) fails to comply with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1);
  - (b) disrupts or otherwise misbehaves during any sitting of the Tribunal;
  - (c) having been required by the Tribunal under subsection (1) to attend before the Tribunal, leaves the place where his attendance is so required without the permission of the Tribunal;
  - (d) hinders or deters any person from attending before the Tribunal, giving evidence or producing any article, record or document, for the purposes of a review;
  - (e) threatens, insults or causes any loss to be suffered by any person who has attended before the Tribunal, on account of such attendance; or
  - (f) threatens, insults or causes any loss to be suffered by any member of the Tribunal at any time on account of the performance of his functions in that capacity.
- (3) A person who commits an offence under subsection (2) 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.
- (4) A person is not excused from complying with an order, notice, prohibition or requirement of the Tribunal made or

**220. 審裁處要求的導致入罪的證據的使用**

不論本條例其他條文有任何規定，凡審裁處 ——

- (a) 根據第 219(1)(b) 條要求任何人提供證據；
- (b) 根據第 219(1)(d) 條要求任何人回答問題；
- (c) 根據第 219(1)(e) 條命令任何人提供證據；或
- (d) 根據第 219(1)(k) 條以其他方式命令或要求任何人提供任何資料，

而該證據、答案或資料（視屬何情況而定）可能會導致該人入罪，則該要求或命令及該證據、該問題及答案或該資料（視屬何情況而定）不得在法院進行的刑事法律程序中接納為針對該人的證據，但如該人就該證據、答案或資料（視屬何情況而定）而被控犯第 219(2)(a)、253(2)(a) 或 254(6)(a) 或 (b) 條或《刑事罪行條例》（第 200 章）第 V 部所訂罪行或被控犯作假證供罪，則就該等罪行而進行的刑事法律程序屬例外。

**221. 審裁處處理的藐視罪**

- (1) 審裁處在懲罰犯藐視罪者方面所具有的權力，與原訟法庭所具有的相同。
- (2) 在不局限第 (1) 款賦予的權力的一般性的原則下，如任何人無合理辯解而有第 219(2)(a)、(b)、(c)、(d)、(e) 或 (f) 條描述的行為，則審裁處可以該人犯藐視罪而懲罰該人，猶如該人犯藐視法庭罪一樣，而審裁處在這方面所具有的權力，與原訟法庭所具有的相同。

given under or pursuant to subsection (1) only on the ground that to do so might tend to incriminate the person.

**220. Use of incriminating evidence required by Tribunal**

Notwithstanding any other provisions of this Ordinance, where the Tribunal—

- (a) requires a person to give evidence under section 219(1)(b);
- (b) requires a person to answer any question under section 219(1)(d);
- (c) orders a person to provide evidence under section 219(1)(e); or
- (d) otherwise orders or requires a person to provide any information under section 219(1)(k),

and the evidence, answer or information (as the case may be) might tend to incriminate the person, then the requirement or order as well as the evidence, the question and answer, or the information (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 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 evidence, answer or information (as the case may be).

**221. Contempt dealt with by Tribunal**

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

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- (3) 審裁處在根據本條行使懲罰犯藐視罪者的權力時，須採用原訟法庭在行使權力懲罰犯藐視罪者時採用的舉證準則。
- (4) 不論本條及本條例其他條文有任何規定 ——
- (a) 在以下情況下，不得根據或依據本條行使權力，以決定是否就某行為以某人犯藐視罪而懲罰該人 ——
- (i) 過往已根據第 219(2) 條就同一行為對該人提起刑事法律程序；及
- (ii) (A) 該刑事法律程序仍待決；或
- (B) 由於過往已提起該刑事法律程序，因此不得根據該條就同一行為再次合法地對該人提起刑事法律程序；
- (b) 在以下情況下，不得根據第 219(2) 條就某行為而對某人提起刑事法律程序 ——
- (i) 過往已根據或依據本條行使權力，以決定是否就同一行為以該人犯藐視罪而懲罰該人；及
- (ii) (A) 因行使該權力而產生的法律程序仍待決；或
- (B) 由於過往已行使該權力，因此不得根據或依據本條再次合法地行使權力，以決定是否就同一行為以該人犯藐視罪而懲罰該人。

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excuse, commits any conduct falling within the description of section 219(2)(a), (b), (c), (d), (e) or (f).

- (3) The Tribunal shall, in the exercise of its powers to punish for contempt under this section, adopt the same standard of proof as the Court of First Instance in the exercise of the same powers to punish for contempt.
- (4) Notwithstanding anything in this section and any other provisions of this Ordinance—
- (a) no power may be exercised under or pursuant to this section to determine whether to punish any person for contempt in respect of any conduct if—
- (i) criminal proceedings have previously been instituted against the person under section 219(2) 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 219(2) in respect of any conduct if—
- (i) any power has previously been exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct; and
- (ii) (A) proceedings arising from the exercise of such power remain pending; or

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## 222. 受保密權涵蓋的資料

即使有人提出覆核申請，本部及附表 8 並不規定擔任該人的銀行或財務顧問的認可財務機構，披露該人以外的該機構顧客的事務的資料。

## 223. 訟費

- (1) 審裁處可就某項覆核，就以下的人就該項覆核及該項覆核的申請合理地招致的訟費，藉命令向他們判給一筆審裁處認為數額適當的款項——
  - (a) 為該項覆核的目的而需要以或被要求以證人或其他身分出席的人；
  - (b) 該項覆核的任何一方。
- (2) 凡審裁處根據第 (1) 款將訟費——
  - (a) 判給第 (1)(a) 款所指的人，該訟費須在審裁處認為適當的情況下由有關覆核的各方或某一方支付，並可作為民事債項予以追討；或
  - (b) 判給第 (1)(b) 款所指的一方，該訟費須由有關覆核的另一方支付，並可作為民事債項予以追討。
- (3) 除終審法院首席法官根據第 233 條訂立的規則另有規定外，《高等法院規則》(第 4 章，附屬法例 A) 第 62 號命令適用於根據第 (1) 款判給的訟費的判給和評定。

(編輯修訂——2017 年第 2 號編輯修訂紀錄)

- (B) by reason of the previous exercise of such power, no power may again be lawfully exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct.

## 222. Privileged information

Nothing in this Part and Schedule 8 requires an authorized financial institution, acting as the banker or financial adviser of a person who makes an application for review, to disclose information as to the affairs of any of its customers other than that person.

## 223. Costs

- (1) The Tribunal may, in relation to a review, by order award to—
  - (a) any person whose attendance, whether as a witness or otherwise, has been necessary or required for the purposes of the review;
  - (b) any party to the review,
 such sum as it considers appropriate in respect of the costs reasonably incurred by the person or the party (as the case may be) in relation to the review and the application for review in question.
- (2) Any costs awarded under subsection (1) shall be paid by and recoverable as a civil debt from—
  - (a) where the costs are awarded to any person under subsection (1)(a), such of the parties to the review in question as the Tribunal considers appropriate; or
  - (b) where the costs are awarded to any party to the review under subsection (1)(b), the other party to the review.

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## 224. 就審裁處的裁定作出通知

- (1) 審裁處須在某項覆核完結後，在合理地切實可行的範圍內盡快宣告——
  - (a) 審裁處就該項覆核作出的裁定，以及作出該裁定的理由；及
  - (b) 審裁處就該項覆核根據第 223 條作出的任何命令，以及作出該命令的理由。
- (2) 如與某項覆核有關的聆訊或該聆訊的任何部分是閉門進行的，則審裁處可藉命令禁止發表或披露就該項覆核作出的第 (1)(a) 或 (b) 款提述的任何裁定或命令或作出該等裁定或命令的任何理由，或該等裁定、命令或理由的任何部分。
- (3) 任何人無合理辯解而沒有遵從依據第 (2) 款作出的命令，即屬犯罪——
  - (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

## 225. 審裁處命令的格式及證明

- (1) 審裁處命令須以書面記錄，並由審裁處主席簽署。
- (2) 在無相反證明的情況下，任何文件如看來是審裁處命令，並看來是由審裁處主席簽署的，則視為審裁處妥為作出

- (3) Subject to any rules made by the Chief Justice under section 233, Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the award of costs, and to the taxation of any costs awarded, by the Tribunal under subsection (1).

*(Amended E.R. 2 of 2017)*

## 224. Notification of Tribunal determinations

- (1) The Tribunal shall, as soon as reasonably practicable after the conclusion of a review, deliver—
  - (a) its determination in respect of the review, and the reasons for making the determination; and
  - (b) any order made under section 223 in relation to the review, and the reasons for making the order.
- (2) Where any sitting of the Tribunal relating to a review, or any part thereof, is held in private, the Tribunal may by order prohibit the publication or disclosure of any determination or order, or any reasons for any determination or order, referred to in subsection (1)(a) or (b), or any part thereof.
- (3) A person commits an offence if he, without reasonable excuse, fails to comply with an order of the Tribunal made pursuant to subsection (2) 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.

## 225. Form and proof of orders of Tribunal

- (1) An order made by the Tribunal shall be recorded in writing and signed by the chairman of the Tribunal.
- (2) A document purporting to be an order of the Tribunal and to be signed by the chairman of the Tribunal shall, in the



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的命令，而無須提出關於作出或簽署該命令的證明，亦無須證明簽署該命令的人確是審裁處主席。

## 226. 審裁處命令可在原訟法庭登記

原訟法庭可應審裁處按終審法院首席法官藉根據第 233 條訂立的規則訂明的方式而發出的書面通知，在原訟法庭登記審裁處的命令，而該命令一經登記，即就所有目的而言成為原訟法庭在其司法管轄權範圍內作出的命令。

## 227. 申請擱置執行指明決定

- (1) 除第 (2) 及 (3) 款另有規定外，提出覆核申請本身並不具有擱置執行與該申請有關的指明決定的效力。
- (2) 提出覆核申請或依據第 217(4) 條提出申請的人可在審裁處就該項覆核或申請（視屬何情況而定）作出裁定前，隨時向審裁處申請擱置執行與該申請有關的指明決定。
- (3) 審裁處須應根據第 (2) 款提出的申請，在合理地切實可行的範圍內盡快進行聆訊以裁定該申請，審裁處如認為適當，可藉命令而准予擱置執行與該申請有關的指明決定，並可在訟費、繳存款項於審裁處或其他方面定出它認為適當的條件，而有關的擱置執行須受該等條件規限。

## 228. 申請擱置執行審裁處的決定

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absence of proof to the contrary, be regarded as an order of the Tribunal duly made, without proof of its making, or proof of signature, or proof that the person signing the order was in fact the chairman.

## 226. Orders of Tribunal may be registered in Court of First Instance

The Court of First Instance may, on notice in writing given by the Tribunal in the manner prescribed by rules made by the Chief Justice under section 233, register an order of the Tribunal in the Court of First Instance and the order shall, on registration, become for all purposes an order of the Court of First Instance made within the jurisdiction of the Court of First Instance.

## 227. Applications for stay of execution of specified decisions

- (1) Subject to subsections (2) and (3), the making of an application for review does not by itself operate as a stay of execution of the specified decision to which the application relates.
- (2) A person who has made an application for review or an application pursuant to section 217(4) may, at any time before the review or the application (as the case may be) is determined by the Tribunal, apply to the Tribunal for a stay of execution of the specified decision to which the application relates.
- (3) On an application made under subsection (2), the Tribunal shall as soon as reasonably practicable conduct a hearing to determine the application, and may, where it considers appropriate, by order grant a stay of execution of the specified decision to which the application relates, subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Tribunal considers appropriate.

## 228. Applications for stay of execution of decisions of Tribunal

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在審裁處就某項覆核作出裁定後，該項覆核的任何一方可隨時向審裁處申請擱置執行與該項覆核有關的決定，而凡有人提出該申請，審裁處如認為適當，可藉命令而准予擱置執行，並可在訟費、繳存款項於審裁處或其他方面定出它認為適當的條件，而有關的擱置執行須受該等條件規限。

### 第 3 分部 —— 上訴

#### 229. 向上訴法庭提出上訴

- (1) 凡某項覆核的任何一方對審裁處就該項覆核所作的決定感到不滿，可針對該決定向上訴法庭就法律論點提出上訴。
- (2) 上訴法庭對根據第 (1) 款提出的上訴，可 ——
  - (a) 判上訴得直；
  - (b) 駁回上訴；
  - (c) 更改或推翻有關決定，及（如推翻該決定）以上訴法庭認為適當的任何其他決定取代該決定；
  - (d) 將有關事宜發還審裁處處理，並給予上訴法庭認為適當的指示，包括指示審裁處重新進行有關覆核，以裁定上訴法庭指明的問題。
- (3) 如上訴法庭根據第 (2)(c) 款更改某決定或以任何其他決定取代某決定，經更改的該決定或用以取代該決定的其他決定（視屬何情況而定）可以是審裁處本有權根據它據以作出該決定的同一條文或根據其他條文而就有關覆核作出的任何決定（不論較嚴苛或寬鬆）。
- (4) 上訴法庭對根據第 (1) 款提出的上訴，可就訟費作出它認為適當的命令。

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A party to a review may, at any time after the determination of the review, apply to the Tribunal for a stay of execution of a decision of the Tribunal relating to the review, whereupon the Tribunal may, where it considers appropriate, by order grant the stay, subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Tribunal considers appropriate.

### Division 3—Appeals

#### 229. Appeal to Court of Appeal

- (1) A party to a review who is dissatisfied with a decision of the Tribunal relating to the review may appeal to the Court of Appeal against the decision on a point of law.
- (2) In an appeal under subsection (1), the Court of Appeal may—
  - (a) allow the appeal;
  - (b) dismiss the appeal;
  - (c) vary or set aside the decision in question, and, where the decision is set aside, substitute for the decision any other decision it considers appropriate;
  - (d) remit the matter in question to the Tribunal with the directions it considers appropriate, which may include a direction to the Tribunal to conduct the review in question afresh for the purpose of determining any question specified by the Court of Appeal.
- (3) Where the Court of Appeal varies, or substitutes any other decision for, a decision under subsection (2)(c), the decision as varied or the other decision substituting for the decision (as the case may be) may be any decision (whether more or less onerous) that the Tribunal had power to make in respect of the review in question, whether or not under the same provision as that under which the decision has been made.

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### 230. 上訴不擱置執行

在不損害第 228 條的原則下，除非上訴法庭另有命令，否則根據第 229 條提出上訴本身並不具有擱置執行審裁處的決定的效力。上訴法庭如命令擱置執行，可在訟費、繳存款項於審裁處或其他方面定出它認為適當的條件，而有關的擱置執行須受該等條件規限。

### 231. 無其他上訴權

除第 229 條及《高等法院條例》(第 4 章)第 50 條另有規定外，審裁處所作的決定，即為最終決定，不可上訴。

## 第 4 分部 —— 雜項條文

### 232. 指明決定的生效時間

- (1) 不論第 (2) 及 (3) 款及本條例或其他條例的其他條文有任何規定，凡有關當局就任何人作出指明決定 (但如該指明決定屬附表 8 第 3 部第 4 分部第 2 欄所描述的、且屬在該分部第 3 欄與該指明決定的描述相對之處所列的條文所適用的指明決定則除外) ——
  - (a) 如本條例或其他條例規定就該決定送達書面通知，則該決定不得在該通知按照該規定送達之前生效；或
  - (b) 如本條例或其他條例並無上述規定，則該決定不得在關於該決定的書面通知送達該人之前生效。
- (2) 凡有關當局就任何人作出指明決定 (但如該指明決定屬附表 8 第 3 部第 5 分部第 2 欄所描述的、且屬在該分部第

- (4) In an appeal under subsection (1), the Court of Appeal may make such order as to costs as it considers appropriate.

### 230. No stay of execution on appeal

Without prejudice to section 228, the lodging of an appeal under section 229 does not by itself operate as a stay of execution of a decision of the Tribunal unless the Court of Appeal otherwise orders, and any stay of execution may be subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Court of Appeal considers appropriate.

### 231. No other right of appeal

Subject to section 229 and section 50 of the High Court Ordinance (Cap. 4), any decision of the Tribunal shall be final and shall not be subject to appeal.

## Division 4—Miscellaneous

### 232. Time when specified decisions to take effect

- (1) Notwithstanding subsections (2) and (3) and any other provisions of this or any other Ordinance, no specified decision, other than a specified decision which is described in column 2 of Division 4 of Part 3 of Schedule 8 and to which the provision set out, opposite such description of the specified decision, in column 3 of that Division applies, takes effect at any time before—
  - (a) where there is any requirement in this or any other Ordinance for notice in writing in respect of the decision to be served, the notice has been served in accordance with such requirement; or
  - (b) where there is no such requirement, a notice in writing in respect of the decision has been served on the person in respect of whom it is made.

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3 欄與該指明決定的描述相對之處所列的條文所適用的指明決定則除外) ——

- (a) 如該人在第 217(3) 條指明的 21 日限期屆滿前，通知有關當局他不會就該決定提出覆核申請，則該決定在該人如此通知該當局之時生效；
- (b) 除 (a) 段另有規定外，如該人沒有在第 217(3) 條指明的 21 日限期內提出覆核申請，則該決定在該限期屆滿之時生效；或
- (c) 如該人在第 217(3) 條指明的 21 日限期內就該決定提出覆核申請，而 ——
  - (i) 審裁處確認該決定，則該決定在獲確認之時生效；
  - (ii) 審裁處更改該決定或以另一決定取代，則該決定在如此被更改或取代之時，按該項更改或取代的條款而生效；或
  - (iii) 該人撤回該申請，則該決定在該申請被撤回之時生效。
- (3) 除第 (1) 款另有規定外，不論第 (2) 款及本條例或其他條例的其他條文有任何規定，有關當局如認為就維護投資大眾的利益或公眾利益而言是適當的話，可在就某指明決定送達的通知中，指明如非因本款則該決定本會生效的時間以外的另一時間，作為該決定生效的時間，而在此情況下，該決定在如此指明的時間生效。
- (4) 本條並不影響審裁處根據第 227 條准予擱置執行某指明決定的權力。

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- (2) A specified decision, other than a specified decision which is described in column 2 of Division 5 of Part 3 of Schedule 8 and to which the provision set out, opposite such description of the specified decision, in column 3 of that Division applies, takes effect—
  - (a) where, prior to the expiration of the period of 21 days specified in section 217(3), the person in respect of whom the decision is made notifies the relevant authority that he will not make an application for review of the decision, at the time when he so notifies the relevant authority;
  - (b) subject to paragraph (a), where the person does not make an application for review of the decision within the period of 21 days specified in section 217(3), at the time when the period so specified expires; or
  - (c) where the person makes an application for review of the decision within the period of 21 days specified in section 217(3)—
    - (i) where the decision is confirmed by the Tribunal, at the time when the decision is so confirmed;
    - (ii) where the decision is varied, or substituted by another decision, by the Tribunal, at the time when the decision is so varied or substituted, subject however to the terms of the variation or substitution; or
    - (iii) where the application is withdrawn, at the time when it is so withdrawn.
- (3) Notwithstanding subsection (2) and any other provisions of this or any other Ordinance, but subject to subsection (1), the relevant authority may, where it considers appropriate in the interest of the investing public or in the public interest to do so, specify in the notice served in respect of a specified

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### 233. 終審法院首席法官訂立規則

終審法院首席法官可訂立規則——

- (a) 對根據第 223 條判給訟費及對該等訟費的評定作出規定；
- (b) 訂明審裁處依據第 226 條就其命令向原訟法庭發出通知的方式；
- (c) 規管根據第 229 條提出的上訴的聆訊程序；
- (d) 規定繳付在規則中就與覆核申請有關的任何事宜而指明的費用；
- (e) 對本部或附表 8 第 1 部沒有作出規定而關乎覆核申請的程序事宜或其他事宜作出規定；
- (f) 就為施行本部或附表 8 第 1 部發出或送達任何文件（不論實際如何稱述）作出規定；
- (g) 訂明本部規定由或可由終審法院首席法官藉規則訂明的事宜。

### 234. 附表 8 第 2 及 3 部的修訂

行政長官會同行政會議可藉在憲報刊登的命令修訂附表 8 第 2 及 3 部。

decision any time, other than that at which the decision is apart from this subsection to take effect, as the time at which the decision is to take effect, in which case the decision takes effect at the time so specified.

- (4) Nothing in this section affects the power of the Tribunal to grant a stay of execution of a specified decision under section 227.

### 233. Rules by Chief Justice

The Chief Justice may make rules—

- (a) providing for the award of costs under section 223 and the taxation of those costs;
- (b) prescribing the manner in which the Tribunal is to give notice to the Court of First Instance in respect of orders of the Tribunal pursuant to section 226;
- (c) regulating the procedure for the hearing of appeals under section 229;
- (d) requiring the payment of the fees specified in the rules for any matter relating to applications for review;
- (e) providing for matters of procedure or other matters relating to applications for review or reviews, which are not provided for in this Part or in Part 1 of Schedule 8;
- (f) providing for the issue or service of any document (however described) for the purposes of this Part or Part 1 of Schedule 8;
- (g) prescribing any matter which this Part provides is, or may be, prescribed by rules made by the Chief Justice.

### 234. Amendment of Parts 2 and 3 of Schedule 8

The Chief Executive in Council may, by order published in the Gazette, amend Parts 2 and 3 of Schedule 8.



## 第 XII 部

### 對投資者的賠償

(格式變更——2017 年第 2 號編輯修訂紀錄)

#### 235. 第 XII 部的釋義

在本部中，除文意另有所指外——

**期交所賠償基金** (Futures Exchange Compensation Fund) 指根據已廢除的《商品交易條例》第 VIII 部設立的賠償基金；

**違責** (default) 指根據第 244 條訂立的規則訂明的違責；

**賠償** (compensation) 指根據在第 244 條下訂立的規則，須從賠償基金撥款支付的賠償；

**聯交所賠償基金** (Unified Exchange Compensation Fund) 指根據已廢除的《證券條例》第 X 部設立的賠償基金。

#### 236. 賠償基金的設立

(1) 為按照在第 244 條下訂立的規則以對因任何指明人士或任何該人士的相聯者在與指明證券或期貨合約有關連的情況下所犯的違責而蒙受損失的該人士的客戶提供賠償措施，證監會須設立及維持一個賠償基金，其中文名稱為“投資者賠償基金”，而英文名稱則為“Investor Compensation Fund”。

(2) 在本條中——

**指明人士** (specified person) 指——

- (a) 就第 1 或 2 類受規管活動獲發牌或獲註冊的中介人；
- (b) 就第 8 類受規管活動獲發牌的中介人；或
- (c) 根據第 244 條訂立的規則可予訂明的其他人士；

## Part XII

### Investor Compensation

(Format changes—E.R. 2 of 2017)

#### 235. Interpretation of Part XII

In this Part, unless the context otherwise requires—

**compensation** (賠償) means compensation payable out of the compensation fund under rules made under section 244;

**default** (違責) means a default prescribed by rules made under section 244;

**Futures Exchange Compensation Fund** (期交所賠償基金) means the compensation fund established under Part VIII of the repealed Commodities Trading Ordinance;

**Unified Exchange Compensation Fund** (聯交所賠償基金) means the compensation fund established under Part X of the repealed Securities Ordinance.

#### 236. Establishment of compensation fund

(1) The Commission shall establish and maintain a compensation fund, to be known as the Investor Compensation Fund in English and “投資者賠償基金” in Chinese, for the purpose of providing, in accordance with rules made under section 244, a measure of compensation to clients of a specified person who sustain a loss by reason of a default committed by the specified person or any of his associated persons in connection with specified securities or futures contracts.

(2) In this section—

**associated person** (相聯者), in relation to a specified person, means—

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**指明證券或期貨合約** (specified securities or futures contracts) 指任何在或將會在下列市場上市或交易的證券或期貨合約——

- (a) 認可證券市場或認可期貨市場；或
- (b) 根據第 244 條訂立的規則可予訂明的其他市場；

**相聯者** (associated person) 就任何指明人士而言，指——

- (a) 受該人士僱用或以其他方式聘用的人；
- (b) 根據第 164 條可收取或持有該人士的客戶資產的人或該人的僱員；或
- (c) 根據第 244 條訂立的規則可予訂明的其他人士。

- (a) a person employed or otherwise engaged by the specified person;
- (b) a person (*first-mentioned person*) who may under section 164 receive or hold client assets of the specified person, or an employee of the first-mentioned person; or
- (c) such other persons as may be prescribed by rules made under section 244;

**specified person** (指明人士) means—

- (a) an intermediary licensed or registered for Type 1 or Type 2 regulated activity;
- (b) an intermediary licensed for Type 8 regulated activity; or
- (c) such other person as may be prescribed by rules made under section 244;

**specified securities or futures contracts** (指明證券或期貨合約) means any securities or futures contracts listed or traded or to be listed or traded on—

- (a) a recognized stock market or recognized futures market; or
- (b) such other markets as may be prescribed by rules made under section 244.

## 237. 組成賠償基金的款項

(1) 賠償基金由下列各項組成——

- (a) 按照在本部下訂立的規則付予證監會或認可投資者賠償公司的所有款項；
- (b) 證監會根據第 (2)(b) 款付予賠償基金的所有款項；
- (c) 根據附表 10 第 74(2) 或 (9)(b)、75(2) 或 (9)(b) 及 76(11) 條撥入賠償基金的所有款項；

## 237. Money constituting the compensation fund

(1) The compensation fund shall consist of—

- (a) all amounts paid to the Commission or a recognized investor compensation company in accordance with rules made under this Part;
- (b) all amounts paid by the Commission into the compensation fund under subsection (2)(b);

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- (d) 證監會或認可投資者賠償公司行使第 243 或 87 條授予提出訴訟的權利而追討所得的所有資產 (不論是現金或其他資產)；
  - (e) 根據第 (2)(a) 款借入的所有款項；
  - (f) 根據第 241 條作出投資而獲得的收益或利潤；
  - (g) 合法地付予賠償基金的所有其他款項。
- (2) 證監會在獲得財政司司長的書面同意下，可——
- (a) 為賠償基金的目的，按該會認為可接受的條款及利率，向任何認可財務機構借入款項，並將根據第 241 條取得的投資項目作為押記，用以擔保該等借貸；
  - (b) 從該會的儲備金撥出該會認為適當的款額付予賠償基金。

**238. 賠償基金的管理**

- (1) 在符合本部的規定下，證監會須負責賠償基金的管理，包括賠償申索的裁定。
- (2) 證監會可在該會認為適當的時間將任何賠償基金的非現金資產變現，而變現所得收益須成為賠償基金一部分。

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- (c) all amounts paid into the compensation fund under sections 74(2) or (9)(b), 75(2) or (9)(b) and 76(11) of Schedule 10;
  - (d) all assets (whether in cash or otherwise) recovered by the Commission or a recognized investor compensation company in exercise of a right of action conferred by section 243 or 87;
  - (e) all amounts borrowed under subsection (2)(a);
  - (f) any return or profit received on an investment made under section 241;
  - (g) all other amounts lawfully paid into the compensation fund.
- (2) With the consent in writing of the Financial Secretary, the Commission may—
- (a) for the purpose of the compensation fund, borrow from any authorized financial institution on such terms and at such rates of interest as it considers acceptable and charge any investments acquired under section 241 by way of security for any such loan;
  - (b) pay into the compensation fund from its reserves such amount of money as it considers appropriate.

**238. Management of compensation fund**

- (1) Subject to this Part, the Commission shall be responsible for the management and administration of the compensation fund, including the determination of a claim for compensation.
- (2) The Commission may realize any of the non-cash assets of the compensation fund at such times as it considers appropriate and the proceeds of realization shall become part of the compensation fund.

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### 239. 款項須存於帳戶

證監會須於一間或多於一間認可財務機構開立一個或多於一個帳戶，並須在組成賠償基金的所有款項未按照本部運用前，將該等款項存入或轉帳入該帳戶或該等帳戶。

### 240. 賠償基金的帳目

- (1) 證監會須為賠償基金備存妥當帳目。
- (2) 證監會可在認為有需要時 ——
  - (a) 就根據附表 10 第 74、75 及 76 條分別撥入賠償基金的款項，維持獨立帳戶；
  - (b) 為 ——
    - (i) (A) 不同的認可交易所；
    - (B) 認可交易所營辦的不同的市場；
    - (C) 提供自動化交易服務的不同人士；或
    - (D) 不同類別的投資者；或
    - (ii) 更佳地及更有效地管理賠償基金，而就賠償基金維持獨立帳戶；
  - (c) 以該會認為適當的方式，就 (a) 或 (b) 段提述的獨立帳戶維持分帳戶。
- (3) 證監會須就在本條生效前開始並於本條生效後終結的財政年度，及就隨後的每個財政年度，擬備以下文件 ——
  - (a) 關於賠償基金的帳目，且以該年度最後一日狀況為準的財務報表；及
  - (b) 根據第 (2)(a) 或 (b) 款維持獨立帳戶或根據第 (2)(c) 款維持分帳戶的情況下 ——

### 239. Money to be kept in account

The Commission shall open at one or more authorized financial institutions one or more accounts and shall, pending their application in accordance with this Part, pay into or transfer to such account or accounts all amounts forming part of the compensation fund.

### 240. Accounts of compensation fund

- (1) The Commission shall keep proper accounts of the compensation fund.
- (2) The Commission may, if it considers it necessary to do so—
  - (a) maintain separate accounts in respect of the amounts that are respectively paid into the compensation fund under sections 74, 75 and 76 of Schedule 10;
  - (b) maintain separate accounts in respect of the compensation fund—
    - (i) for different—
      - (A) recognized exchange companies;
      - (B) markets operated by recognized exchange companies;
      - (C) persons providing automated trading services; or
      - (D) classes of investors; or
    - (ii) for the better and more effectual management or administration of the fund;
  - (c) maintain sub-accounts in respect of the separate accounts referred to in paragraph (a) or (b) in such manner as it considers appropriate.

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- (i) 就該等獨立帳戶或分帳戶 (視屬何情況而定) 而擬備的以該年度最後一日狀況為準的綜合財務報表; 及
- (ii) 就每個獨立帳戶或分帳戶 (視屬何情況而定) 而擬備的以該年度最後一日狀況為準的獨立財務報表。
- (4) 根據第 (3) 款擬備的財務報表須由證監會的主席及行政總裁簽署。 (由 2006 年第 15 號第 4 條修訂)
- (5) 證監會須委任一名核數師, 審計賠償基金。
- (6) 根據第 (5) 款委任的核數師須每年審計賠償基金帳目, 並須審計根據第 (3) 款擬備的每一份財務報表, 以及就每份該等報表擬備有關的核數師報告, 並將報告呈交證監會。
- (7) 根據第 (6) 款擬備的核數師報告須載有該核數師所作的一項陳述, 說明他是否認為財務報表能真實而中肯地反映它們所關乎的事宜。
- (8) 根據本條委任的核數師為執行本條授予的職能, 可按他所要求提交及查閱證監會或任何認可投資者賠償公司的簿冊及紀錄。
- (9) 在每個財政年度終結後的 4 個月內, 證監會須安排 ——
  - (a) 將以下文件文本提交財政司司長 ——
    - (i) 就該年度擬備並經審計的每份財務報表; 及
    - (ii) 核數師就每份該等報表擬備的報告; 及
  - (b) 在憲報刊登該等報表文本。
- (10) 財政司司長須安排將任何根據第 (9)(a) 款提交予他的財務報表及報告提交立法會會議席上省覽。
- (11) 在本條中, **財務報表** (financial statement) 指載有以下所有文件的報表 ——
  - (a) 收支帳目;
  - (b) 資產負債表; 及

- (3) The Commission shall in respect of the financial year beginning before and ending after the day on which this section commences, and in respect of each subsequent financial year, prepare—
  - (a) a financial statement made up to (and including) the last day of that year, in respect of the accounts of the compensation fund; and
  - (b) in the case where separate accounts are maintained under subsection (2)(a) or (b) or sub-accounts are maintained under subsection (2)(c)—
    - (i) a consolidated financial statement made up to (and including) the last day of that year, in respect of the separate accounts or sub-accounts (as the case may be); and
    - (ii) a separate financial statement made up to (and including) the last day of that year, in respect of each separate account or sub-account (as the case may be).
- (4) A financial statement prepared under subsection (3) shall be signed by the chairman and the chief executive officer of the Commission. (Amended 15 of 2006 s. 4)
- (5) The Commission shall appoint an auditor to audit the compensation fund.
- (6) The auditor so appointed shall annually audit the accounts of the compensation fund and shall audit, and prepare an auditor's report in respect of, each financial statement prepared under subsection (3) and shall submit the report to the Commission.
- (7) An auditor's report prepared under subsection (6) shall contain a statement made by the auditor as to whether in his opinion the financial statement gives a true and fair view of the matters to which the statement relates.



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(c) 現金流轉表。

- (8) The auditor appointed under this section may call for and inspect such books and records of the Commission or any recognized investor compensation company as he may require in order to perform his functions under this section.
- (9) Not later than 4 months after the end of each financial year the Commission shall cause—
- (a) a copy of—
- (i) each audited financial statement in respect of that financial year; and
- (ii) the auditor's report on each such financial statement,
- to be sent to the Financial Secretary; and
- (b) a copy of each such audited financial statement to be published in the Gazette.
- (10) The Financial Secretary shall cause to be laid on the table of the Legislative Council any financial statement and report sent to him under subsection (9)(a).
- (11) In this section, **financial statement** (財務報表) means a statement which contains all of the following documents—
- (a) a revenue and expenditure account;
- (b) a balance sheet; and
- (c) a cash flow statement.

## 241. 款項的投資

- (1) 證監會可將組成賠償基金而又不需即時用於本部所訂其他用途的款項——
- (a) 存放於認可財務機構作定期存款；或
- (b) 投資於受託人獲法律授權而可將其信託基金所投資於的證券。

## 241. Investment of moneys

- (1) The Commission may invest any money which forms part of the compensation fund and is not immediately required for any other purposes provided for by this Part—
- (a) on fixed deposit with an authorized financial institution; or

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- (2) 證監會根據第 (1) 款將款項投資或存放而獲得的收益或利潤，須撥入賠償基金內。
- (3) 定期存款收據及證明款項已根據第 (1) 款投資的其他文件，可存放於證監會辦事處，或交由認可財務機構保管。

**242. 從賠償基金撥款**

- (1) 在符合本部的規定下，賠償基金須不時按需要及按證監會決定的次序，撥出款項用以支付以下款項——
  - (a) (i) 因調查或抗辯根據在本部下訂立的規則而提出的賠償申索所招致的一切法律及其他開支；
  - (ii) 就賠償基金所招致的一切法律及其他開支；
  - (iii) 證監會在行使本部或根據本部訂立的規則就賠償基金賦予該會的權利、權力及權限下所招致的一切法律及其他開支；
  - (iv) 認可投資者賠償公司在執行根據第 80 條轉移予它的職能或根據本部訂立的規則所規定的職能所招致的一切法律及其他開支；
- (b) 管理賠償基金所招致的開支；
- (c) 就根據在本部下訂立的規則提出的賠償申索而獲取保險、擔保、保證或其他保證物，或作出財務安排所招致的開支；
- (d) 就根據第 237(2)(a) 條借入的款項而支付的利息；
- (e) 根據本部訂立的規則所容許的賠償申索款額、提出及證明該等申索的費用及附帶費用，以及就賠償而支付的利息；

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- (b) in securities in which trustees are authorized by law to invest trust funds.
- (2) Any return or profit on an investment of moneys by the Commission under subsection (1) shall be added to the compensation fund.
- (3) A fixed deposit receipt and other document evidencing the investment of moneys under subsection (1) may be kept in the office of the Commission or deposited for safe keeping with an authorized financial institution.

**242. Payments out of the compensation fund**

- (1) Subject to this Part, there shall from time to time be paid out of the compensation fund as required and in such order as the Commission may determine one or more of the following amounts—
  - (a) all legal and other expenses incurred—
    - (i) in investigating or defending claims for compensation made under rules made under this Part;
    - (ii) in relation to the compensation fund;
    - (iii) in the exercise by the Commission of the rights, powers, and authorities vested in it by this Part or rules made under this Part in relation to the compensation fund;
    - (iv) in the performance by a recognized investor compensation company of a function transferred to it under section 80 or provided for under rules made under this Part;
  - (b) the expenses incurred in the management or administration of the compensation fund;

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- (f) 須按照在本部下訂立的規則從賠償基金撥付的一切其他款項。
- (2) 如證監會認為聯交所賠償基金或期交所賠償基金的貸方款額，不足以——
- (a) 支付該會認為為應付針對該基金的申索或可能的申索所需的款額；及
- (b) 付還根據已廢除的《證券條例》第 104 條或已廢除的《商品交易條例》第 82 條（視屬何情況而定）以現金繳存該會的款額，
- 則在符合第 (3) 款的規定下，該會須從賠償基金撥出該會認為適當的款額，並將之撥入聯交所賠償基金或期交所賠償基金（視屬何情況而定）。
- (3) 根據第 (2) 款撥入聯交所賠償基金或期交所賠償基金的總款額，不得超逾根據附表 10 第 74(2) 或 75(2) 條撥入賠償基金的各別總款額（視屬何情況而定）。

- (c) the expenses incurred in obtaining insurance, surety, guarantee or other security, or in making any financial arrangement, in respect of claims for compensation made under rules made under this Part;
- (d) interest on any sum borrowed under section 237(2)(a);
- (e) the amounts of claims for compensation, costs of and incidental to the making and proving of such claims and interest on compensation, as allowed under rules made under this Part;
- (f) all other money payable out of the compensation fund in accordance with rules made under this Part.
- (2) Where the Commission considers that the amount at credit in either the Unified Exchange Compensation Fund or the Futures Exchange Compensation Fund is insufficient to enable—
- (a) the payment of the amounts which the Commission considers to be necessary to meet any claims or likely claims against the Unified Exchange Compensation Fund or the Futures Exchange Compensation Fund (as the case may be); and
- (b) the repayment of the amounts deposited in cash with the Commission under section 104 of the repealed Securities Ordinance or section 82 of the repealed Commodities Trading Ordinance (as the case may be),
- then the Commission shall, subject to subsection (3), pay into the Unified Exchange Compensation Fund or the Futures Exchange Compensation Fund (as the case may be) out of the compensation fund such amount as it considers appropriate.
- (3) The aggregate amounts paid under subsection (2) to the Unified Exchange Compensation Fund or the Futures Exchange Compensation Fund shall not exceed the respective

**243. 從賠償基金撥款支付後證監會在申索人權利等方面的代位權**

- (1) 凡任何人根據在本部下訂立的規則，就導致他蒙受某項損失的某項違責提出賠償申索，在證監會應該申索而從賠償基金撥款作出支付後——
- (a) 除第 (1A) 款另有規定外，申索人就該項損失而享有的一切權利及補救，須在上述支付的款額在該項損失（在不考慮任何為該項損失而從或須從賠償基金撥款支付的賠償的情況下）所佔的份額的範圍內，由證監會藉代位而享有；及（由 2004 年第 7 號第 55 條修訂）
- (b) 申索人及證監會各別享有在破產或清盤的情況下，或藉法律程序或其他方法，就該項損失而——
- (i) 從犯該項違責的有關的人的資產中收取任何款項的權利；或
- (ii) 收取任何由該有關的人以信託方式為申索人持有的財產的權利，
- 為順序攤還次序相同的權利。
- (1A) 證監會不得藉代位而具有申索人所享有的從《存款保障計劃條例》（第 581 章）第 14 條所設立的存款保障計劃基金取得補償的權利及補救。（由 2004 年第 7 號第 55 條增補）
- (2) 證監會根據第 (1) 款追討所得的一切資產（不論是現金或其他資產），須成為賠償基金一部分。

aggregate amounts paid into the compensation fund under section 74(2) or 75(2) of Schedule 10 (as the case may be).

**243. Subrogation of the Commission to rights, etc. of claimant on payment from compensation fund**

- (1) Where the Commission makes any payment out of the compensation fund in respect of any claim for compensation made under rules made under this Part—
- (a) subject to subsection (1A), the Commission shall be subrogated, to the extent which that payment bears to the loss sustained (without taking into account any compensation paid or payable out of the compensation fund for the loss) by the claimant by reason of the default on which the claim was based, to all the rights and remedies of the claimant in relation to the loss; and (*Amended 7 of 2004 s. 55*)
- (b) the respective rights of the claimant and the Commission in bankruptcy or winding up or by legal proceedings or otherwise to receive in respect of the loss—
- (i) any sum out of the assets of the person concerned who is in default; or
- (ii) any property held on trust by that person for the claimant,
- shall rank equally.
- (1A) The Commission is not subrogated to any rights and remedies of the claimant in respect of compensation from the Deposit Protection Scheme Fund established by section 14 of the Deposit Protection Scheme Ordinance (Cap. 581). (*Added 7 of 2004 s. 55*)
- (2) All assets (whether in cash or otherwise) recovered by the Commission under subsection (1) shall become part of the compensation fund.

**244. 由行政長官會同行政會議及證監會訂立規則**

- (1) 行政長官會同行政會議可就以下事宜訂立規則——
  - (a) 為賠償基金提供經費的方法；
  - (b) 提出賠償申索的人可獲得的最高賠償金額；
  - (c) 根據第 240(2)(c) 條維持分帳戶，從該等分帳戶支付款項，以及就賠償基金所招致的開支及基金所賺得的利息在不同的分帳戶之間的分配；
  - (d) 對更佳地實現本部的宗旨及目的作出規定。
- (2) 在不損害第 398(7) 及 (8) 條的原則及在符合第 (3) 款的規定下，證監會可就以下事宜，訂立不抵觸根據第 (1) 款訂立的規則的規則——
  - (a) 在何種情況下有權提出賠償申索，包括任何第 235 或 236(2) 條提述的根據本條訂立的規則可予訂明的事情；
  - (b) 提出賠償申索的方式；
  - (c) 提出及證明賠償申索的費用及附帶費用的支付；
  - (d) 賠償款額的利息的支付；
  - (e) 為使證監會可決定是否批准申請而須向該會提交的資料或文件；

**244. Rules by Chief Executive in Council and Commission**

- (1) The Chief Executive in Council may make rules for the following matters—
  - (a) the means of funding the compensation fund;
  - (b) the maximum amount of compensation that may be paid to a person making a claim for compensation;
  - (c) the maintenance of sub-accounts under section 240(2)(c), payments to be made from such sub-accounts and the apportionment between different sub-accounts of expenses incurred in relation to the compensation fund and of interest earned on the fund;
  - (d) providing for the better carrying out of the objects and purposes of this Part.
- (2) Without prejudice to section 398(7) and (8), the Commission may, subject to subsection (3), make rules which are not inconsistent with rules made by the Chief Executive in Council under subsection (1), for the following matters—
  - (a) the circumstances in which a person is entitled to claim compensation, including any matter referred to in section 235 or 236(2) which may be prescribed by rules made under this section;
  - (b) the manner in which the claim for compensation is to be made;
  - (c) the payment of costs of and incidental to the making and proving of a claim for compensation;
  - (d) the payment of interest on the amount of compensation;
  - (e) the information or documents to be supplied to the Commission for the purpose of enabling the Commission to determine the application;



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- (f) 何人或屬何類別的人無權提出賠償申索；
- (g) 證監會可於何種情況下及以何種方式籲請提出賠償申索；
- (h) 賠償申索的裁定及支付以及處理賠償申索的程序；
- (i) 賦權證監會作出以下事宜——
  - (i) 在清盤或破產的法律程序中提出一項賠償申索，作為債權證明；
  - (ii) 以證券作為支付賠償的形式，並為此目的而購買證券；及
  - (iii) 要求將申索人的訴訟權轉讓，以作為支付賠償的先決條件；
- (j) 認可投資者賠償公司在管理賠償基金方面的職能；
- (k) 就認可投資者賠償公司根據第 80 條獲轉移職能時可能須負責的賠償基金的管理，制訂妥善的會計及審計制度；
- (l) 須在認可投資者賠償公司清盤時作出的安排；
- (m) 為更佳地實現本部的宗旨及目的而需要或適宜獲取的保險、擔保、保證或其他保證物，或需要或適宜作出的財務安排；

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- (f) the persons or classes of persons who are not entitled to make a claim for compensation;
- (g) the circumstances and manner in which the Commission may call for claims for compensation;
- (h) the determination and payment of and the procedures for dealing with a claim for compensation;
- (i) enabling the Commission—
  - (i) to submit a claim for compensation as a proof of debt in any winding-up or bankruptcy proceedings;
  - (ii) to pay compensation in the form of securities and to purchase securities for that purpose; and
  - (iii) to require the assignment of a claimant's rights of action as a pre-condition for the payment of compensation;
- (j) the functions of a recognized investor compensation company in relation to the management or administration of the compensation fund;
- (k) the formulation of proper accounting and auditing systems with respect to the management or administration of the compensation fund for which a recognized investor compensation company may be responsible upon a transfer of a function to it under section 80;
- (l) arrangements that are to be made when a recognized investor compensation company is wound up;
- (m) the obtaining of such insurance, surety, guarantee or other security or the making of such financial arrangement as may be necessary or appropriate for the better carrying out of the objects and purposes of this Part;

- (n) 對更佳地實現本部的宗旨及目的作出規定。
- (3) 證監會在根據第 (2) 款就該款 (a) 及 (f) 段指明的事宜訂立規則前，須諮詢財政司司長。
- (4) 在根據第 (1)(a) 款訂立規則時，行政長官會同行政會議須確保賠償基金的資金在合理地切實可行的範圍內由證券期貨市場的參與者或某個別類別的參與者承擔。
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- (n) providing for the better carrying out of the objects and purposes of this Part.
- (3) The Commission shall consult the Financial Secretary before making rules under subsection (2) for the matters specified in paragraphs (a) and (f) of that subsection.
- (4) In making any rules under subsection (1)(a), the Chief Executive in Council shall ensure that the funds of the compensation fund shall, so far as reasonably practicable, be borne by participants or any particular class of participants in the securities and futures market.
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**第 XIII 部****市場失當行為審裁處***(格式變更——2012 年第 2 號編輯修訂紀錄)***第 1 分部 —— 釋義****245. 第 XIII 部的釋義**

(1) 在本部中，除文意另有所指外 ——

**內幕交易** (insider dealing) 指第 270 條所指的內幕交易；

**市場失當行為** (market misconduct) 指 ——

- (a) 內幕交易；
  - (b) 第 274 條所指的虛假交易；
  - (c) 第 275 條所指的操控價格的行為；
  - (d) 第 276 條所指的披露關於受禁交易的資料的行為；
  - (e) 第 277 條所指的披露虛假或具誤導性的資料以誘使進行交易的行為；或
  - (f) 第 278 條所指的操縱證券市場的行為，
- 並包括企圖從事，或輔助、慫恿或促使另一人從事 (a) 至 (f) 段提述的任何行為；

**有聯繫者** (associate) 就某人而言 ——

- (a) 指該人的配偶或公認配偶、與該人同居儼如配偶的人，或該人的兄弟、姊妹、父母、繼父母、親生子女、領養子女或繼子女；
- (b) 指該人擔任董事的法團；
- (c) 指該人的僱員或合夥人；
- (d) 在該人是法團的情況下，指該法團各董事、該法團各有連繫法團，以及該等有連繫法團各董事或僱員；

**Part XIII****Market Misconduct Tribunal***(Format changes—E.R. 2 of 2012)***Division 1—Interpretation****245. Interpretation of Part XIII**

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

**associate** (有聯繫者), in relation to a person, means—

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

(e) 在不局限 (a) 至 (d) 段適用的情況的原則下，如有關情況涉及法團的證券或其他權益，或因持有該等證券或權益而產生的權利，則指 ——

- (i) 與該人訂有關於取得、持有或處置該等證券或權益的協議或安排的另一人；或
- (ii) 與該人訂有某項協議或安排的人，而根據該項協議或安排，他們承諾在該法團的成員大會上行使投票權時行動一致；

**有關境外市場** (relevant overseas market) ——

- (a) 就證券而言，指香港以外地方的證券市場；或
- (b) 就期貨合約而言，指香港以外地方的期貨市場；

**有關認可市場** (relevant recognized market) ——

- (a) 就證券而言，指認可證券市場；或
- (b) 就期貨合約而言，指認可期貨市場；

**法官** (judge) 指 ——

- (a) 原訟法庭的法官或暫委法官；
- (b) 上訴法庭的前任上訴法庭法官；
- (c) 原訟法庭的前任法官或前任暫委法官；

**控制人** (controller) 就某法團而言，指符合以下情況的人 ——

- (a) 該法團的董事是慣於或有義務按照該人的指示或指令行事的；如該法團是另一法團的附屬公司，則該另一法團的董事是慣於或有義務按照該人的指示或指令行事的；或
- (b) 該人 (不論單獨或聯同其任何有聯繫者) 有權在該法團的成員大會上行使 33% 以上的投票權或控制該數量的投票權的行使；如該法團是另一法團的附屬公司，則該人 (不論單獨或聯同其任何有聯繫者) 有權在該另一法團的成員大會上行使 33% 以上的投票權或控制該數量的投票權的行使；

**controller** (控制人), in relation to a corporation, means any person—

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

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

**judge** (法官) means—

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

**market misconduct** (市場失當行為) means—

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

**提控官** (Presenting Officer) 就根據第 252 條提起的研訊程序或任何關於披露的研訊程序而言，指根據第 251(4) 條委任以進行該程序的人；(由 2012 年第 9 號第 5 條修訂)

**審裁處** (Tribunal) 指第 251 條設立的市場失當行為審裁處。

(2) 在本款及第 246 至 249 條及第 4 分部中，除文意另有所指外——

**上市** (listed) 指在認可證券市場上市，而就本定義而言，證券在認可證券市場暫停交易期間，須持續視為上市證券；

**上市法團** (listed corporation) 指有發行證券的法團，而在與該法團有關的內幕交易發生時，該等證券是上市證券；

**上市證券** (listed securities) 指——

- (a) 在與某法團有關的內幕交易發生時，已由該法團發行並且是上市的證券；
- (b) 在與某法團有關的內幕交易發生時，已由該法團發行而沒有上市，但當時可合理預見會上市，而其後確實上市的證券；
- (c) 在與某法團有關的內幕交易發生時並未由該法團發行，亦沒有上市，但當時可合理預見會如此發行及上市，而其後確實如此發行及上市的證券；

**內幕消息** (inside information) 就某法團而言，指符合以下說明的具體消息或資料——

- (a) 關於——
  - (i) 該法團的；
  - (ii) 該法團的股東或高級人員的；或
  - (iii) 該法團的上市證券或該等證券的衍生工具的；及
- (b) 並非普遍為慣常 (或相當可能會) 進行該法團上市證券交易的人所知，但該等消息或資料如普遍為他們所知，則相當可能會對該等證券的價格造成重大影響；(由 2012 年第 9 號第 5 條增補)

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

**Presenting Officer** (提控官), in relation to any proceedings instituted under section 252 or any disclosure proceedings, means the person appointed under section 251(4) to conduct the proceedings; (Amended 9 of 2012 s. 5)

**relevant overseas market** (有關境外市場)——

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

**relevant recognized market** (有關認可市場)——

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

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

(2) In this subsection and sections 246 to 249 and Division 4, unless the context otherwise requires——

**derivatives** (衍生工具), in relation to listed securities, means——

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



**衍生工具** (derivatives) 就上市證券而言，指 ——

- (a) 在該等證券中的或關乎該等證券的權利、期權或權益 (不論以單位或其他方式描述)；
- (b) 任何合約，而該等合約的目的或伴稱目的是藉完全或部分參照以下項目的價格或價值，或該價格或價值的變動，以獲得或增加利潤或避免或減少損失 ——
  - (i) 該等證券；或
  - (ii) (a) 段提述的任何權利、期權或權益；
- (c) 在以下項目中的或關乎以下項目的權利、期權或權益 (不論以單位或其他方式描述) ——
  - (i) (a) 段提述的任何權利、期權或權益；或
  - (ii) (b) 段提述的任何合約；
- (d) 任何產生、確認或證明 (a)、(b) 或 (c) 段提述的任何權利、期權、權益或合約的文書或其他文件，包括以下項目的權益證明書、參與證明書、臨時證明書、中期證明書，關乎以下項目的收據 (包括寄存單據)，以及認購或購買以下項目的權證 ——
  - (i) 該等證券；或
  - (ii) 該等權利、期權、權益或合約，
 不論該等衍生工具是否上市的，亦不論是由何人發行或訂立的；

**證券** (securities) 指 ——

- (a) 任何團體 (不論是否屬法團) 或政府或市政府當局的或由它發行的或可合理預見會由它發行的股份、股額、債權證、債權股額、基金、債券或票據；
- (b) 在該等股份、股額、債權證、債權股額、基金、債券或票據中的或關乎該等股份、股額、債權證、債權股額、基金、債券或票據的權利、期權或權益 (不論以單位或其他方式描述)；

- (c) rights, options or interests (whether described as units or otherwise) in, or in respect of—
  - (i) any rights, options or interests referred to in paragraph (a); or
  - (ii) any contracts referred to in paragraph (b);
- (d) instruments or other documents creating, acknowledging or evidencing any rights, options or interests or any contracts referred to in paragraph (a), (b) or (c), including certificates of interest or participation in, temporary or interim certificates for, receipts (including depositary receipts) in respect of, or warrants to subscribe for or purchase—
  - (i) the listed securities; or
  - (ii) the rights, options or interests or the contracts, whether or not the derivatives are listed and regardless of who issued or made them;

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

- (a) is about—
  - (i) the corporation;
  - (ii) a shareholder or officer of the corporation; or
  - (iii) the listed securities of the corporation or their derivatives; and
- (b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities; (*Added 9 of 2012 s. 5*)

**listed** (上市) means listed on a recognized stock market, and for the purposes of this definition, securities shall continue to be

- (c) 該等股份、股額、債權證、債權股額、基金、債券或票據的權益證明書、參與證明書、臨時證明書、中期證明書、收據，或認購或購買該等項目的權證；
  - (d) 通常稱為證券的權益、權利或財產，不論屬文書或其他形式；
  - (e) 第 392 條所指的公告訂明為按照該公告的條款視為證券的權益、權利或財產，不論屬文書或其他形式。
- (由 2012 年第 9 號第 5 條修訂)
- (3) 就第 (1) 款中**控制人**的定義而言，凡任何人有權在某法團的成員大會上行使 33% 以上的投票權或控制該數量的投票權的行使，而該法團有權在另一法團的成員大會上行使投票權或控制投票權的行使 (**有效投票權**)，則在該另一法團的成員大會上的有效投票權視為可由該人行使。
  - (4) 就本部而言，如法團董事按照某人以專業身分所提供的意見而行事，則不得僅以此為理由而視該法團的董事為慣常或有義務按照該人的指示或指令行事。

regarded as listed during a period of suspension of dealings in those securities on the recognized stock market;

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

**listed securities** (上市證券) means—

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

**securities** (證券) means—

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

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- (d) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;
- (e) interests, rights or property, whether in the form of an instrument or otherwise, prescribed by notice under section 392 as being regarded as securities in accordance with the terms of the notice.

*(Amended 9 of 2012 s. 5)*

- (3) For the purposes of the definition of **controller** in subsection (1), where a person is entitled to exercise or control the exercise of more than 33% of the voting power at general meetings of a corporation and the corporation is entitled to exercise or control the exercise of any of the voting power at general meetings of another corporation (***the effective voting power***), then the effective voting power at general meetings of the other corporation shall be regarded as exercisable by the person.
- (4) For the purposes of this Part, a person shall not be regarded as a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act by reason only that the directors of the corporation act on advice given by him in a professional capacity.

#### 246. 證券權益 (內幕交易)

就第 245(2) 及 247 至 249 條及第 4 分部而言，凡提述證券權益，須解釋為包括該等證券中任何種類的權益，而就此而言，於行使依附於該權益的權利時可能受到的限制或約束，均無須理會。

#### 247. 與法團有關連 (內幕交易)

- (1) 就第 4 分部而言，任何個人如符合以下說明，即屬與某法團有關連的人 ——

#### 246. Interest in securities (insider dealing)

For the purposes of sections 245(2) and 247 to 249 and Division 4, a reference to an interest in securities shall be construed as including an interest of any kind whatsoever in the securities, and for that purpose any restraint or restriction to which the exercise of a right attached to the interest may be subject shall be disregarded.

#### 247. Connected with a corporation (insider dealing)

- (1) For the purposes of Division 4, a person shall be regarded as connected with a corporation if, being an individual—

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- (a) 他是該法團或其有連繫法團的董事或僱員；
  - (b) 他是該法團或其有連繫法團的大股東；
  - (c) 他身居某職位，而因以下理由可合理預期該職位給予他接觸關於該法團的內幕消息的途徑——（由 2012 年第 9 號第 14 條修訂）
    - (i) 在——
      - (A) 他本人、他的僱主、他擔任董事的法團，或他屬合夥人的商號；與
      - (B) 該法團、該法團的有連繫法團，或該法團或有連繫法團的任何高級人員或大股東，之間存在專業或業務關係；或
    - (ii) 他是該法團或其有連繫法團的大股東的董事、僱員或合夥人；
  - (d) 他有途徑接觸關於該法團的內幕消息，而——（由 2012 年第 9 號第 14 條修訂）
    - (i) 他有該途徑是因他身居某職位，而憑藉 (a)、(b) 或 (c) 段，該職位令他會被視為與另一法團有關連；及
    - (ii) 該內幕消息關乎涉及上述兩個法團的交易（實際進行的或意圖進行的），或涉及該兩個法團的其中一個與其餘一個的上市證券或其衍生工具的交易（實際進行的或意圖進行的），或關乎已打消進行上述交易的意圖；或（由 2012 年第 9 號第 14 條修訂）
  - (e) 在與該法團有關的內幕交易發生之前 6 個月內的任何時間，憑藉 (a)、(b)、(c) 或 (d) 段他會被視為與該法團有關連的人。
- (2) 只要某法團的任何董事或僱員是憑藉第 (1) 款會被視為與另一法團有關連的人，則就第 4 分部而言，該法團視為與該另一法團有關連的人。

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- (a) he is a director or employee of the corporation or a related corporation of the corporation;
- (b) he is a substantial shareholder of the corporation or a related corporation of the corporation;
- (c) he occupies a position which may reasonably be expected to give him access to inside information in relation to the corporation by reason of— (*Amended 9 of 2012 s. 14*)
  - (i) a professional or business relationship existing between—
    - (A) himself, or his employer, or a corporation of which he is a director, or a firm of which he is a partner; and
    - (B) the corporation, a related corporation of the corporation, or an officer or substantial shareholder of either corporation; or
  - (ii) his being a director, employee or partner of a substantial shareholder of the corporation or a related corporation of the corporation;
- (d) he has access to inside information in relation to the corporation and— (*Amended 9 of 2012 s. 14*)
  - (i) he has such access by reason of his being in such a position that he would be regarded as connected with another corporation by virtue of paragraph (a), (b) or (c); and
  - (ii) the inside information relates to a transaction (actual or contemplated) involving both those corporations or involving one of them and the listed securities of the other or their derivatives, or to the fact that the transaction is no longer contemplated; or (*Amended 9 of 2012 s. 14*)

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- (3) 不論本條例其他條文有任何規定，在第 (1) 款中，法團的**大股東** (substantial shareholder) 指擁有該法團的有關股本中股份總數的 5% 或以上權益的人。(由 2012 年第 28 號第 912 及 920 條修訂)

**248. 與法團有關連 —— 掌握以享有特權的身分獲得的內幕消息 (內幕交易)**

(由 2012 年第 9 號第 14 條修訂)

- (1) 就第 4 分部而言，任何公職人員或指明人士如以該身分接獲關於某法團的內幕消息，則視為與該法團有關連的人。(由 2012 年第 9 號第 14 條修訂)
- (2) 在第 (1) 款中，提述指明人士之處，指 ——
- (a) 行政會議成員；
  - (b) 立法會議員；
  - (c) 由行政長官或行政長官會同行政會議或由他人代行政長官或行政長官會同行政會議根據任何條例委出的各類委員會或其他團體的成員；
  - (d) 認可交易所、認可結算所或認可控制人的高級人員或僱員；
  - (e) 交易所參與者；

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- (e) he was, at any time within the 6 months preceding any insider dealing in relation to the corporation, a person who would be regarded as connected with the corporation by virtue of paragraph (a), (b), (c) or (d).
- (2) For the purposes of Division 4, a corporation shall be regarded as a person connected with another corporation so long as any of its directors or employees is a person who would be regarded as connected with that other corporation by virtue of subsection (1).
- (3) In subsection (1), notwithstanding any other provisions of this Ordinance, **substantial shareholder** (大股東), in relation to a corporation, means a person who has an interest in 5% or more of the total number of shares comprised in the relevant share capital of the corporation. (Amended 28 of 2012 ss. 912 & 920)

**248. Connected with a corporation—possession of inside information obtained in privileged capacity (insider dealing)**

(Amended 9 of 2012 s. 14)

- (1) For the purposes of Division 4, where a public officer or a specified person in that capacity receives inside information in relation to a corporation, he shall be regarded as a person connected with the corporation. (Amended 9 of 2012 s. 14)
- (2) In subsection (1), a reference to a specified person means a person who is—
- (a) a member of the Executive Council;
  - (b) a member of the Legislative Council;
  - (c) a member of a board, commission, committee or other body appointed by or on behalf of the Chief Executive or the Chief Executive in Council under an Ordinance;



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- (f) 交易所參與者的高級人員或僱員；
  - (g) 任何條例成立的法人團體的高級人員或僱員；或
  - (h) 財政司司長根據第 (3) 款指明的法人團體的高級人員或僱員，
- 不論 (就 (a)、(b)、(c)、(d)、(f)、(g) 或 (h) 段而言) 該成員、議員、高級人員或僱員 (視屬何情況而定) 是臨時的或常任的，亦不論是否獲付酬金的。
- (3) 財政司司長可為施行第 (2)(h) 款藉憲報公告指明任何法人團體。

**249. 上市證券或其衍生工具的交易 (內幕交易)**

就第 245(2) 條及第 4 分部而言，凡任何人 (不論以主事人或代理人身分) 售賣、購買、交換或認購任何上市證券或其衍生工具，或與別人協議售賣、購買、交換或認購任何上市證券或其衍生工具，或取得或處置任何上市證券或其衍生工具的售賣、購買、交換或認購的權利，或與別人協議取得或處置該等權利，則他視為進行上市證券或其衍生工具的交易。

**250. 證券權益及實益擁有權等 (內幕交易以外的市場失當行為)**

- (1) 任何人如具有處置某證券或行使處置某證券的控制權的權限 (不論是正式或非正式的，亦不論是明示或隱含的)，或就關乎某證券的期權而言，具有行使該期權的權限，則就第 5 分部而言，他視為擁有該證券的權益。

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- (d) an officer or employee of a recognized exchange company, a recognized clearing house or a recognized exchange controller;
  - (e) an exchange participant;
  - (f) an officer or employee of an exchange participant;
  - (g) an officer or employee of a body corporate incorporated by an Ordinance; or
  - (h) an officer or employee of a body corporate specified by the Financial Secretary under subsection (3),
- whether, in the case of paragraph (a), (b), (c), (d), (f), (g) or (h), the person is such a member, officer or employee (as the case may be) on a temporary or permanent basis, and whether he is paid or unpaid.
- (3) The Financial Secretary may, by notice published in the Gazette, specify any body corporate for the purposes of subsection (2)(h).

**249. Dealing in listed securities or their derivatives (insider dealing)**

For the purposes of section 245(2) and Division 4, a person shall be regarded as dealing in listed securities or their derivatives if, whether as principal or agent, he sells, purchases, exchanges or subscribes for, or agrees to sell, purchase, exchange or subscribe for, any listed securities or their derivatives or acquires or disposes of, or agrees to acquire or dispose of, the right to sell, purchase, exchange or subscribe for, any listed securities or their derivatives.

**250. Interest in securities and beneficial ownership, etc. (market misconduct other than insider dealing)**

- (1) For the purposes of Division 5, a person shall be regarded as having an interest in securities if he has authority, whether formal or informal and whether express or implied, to dispose of or to exercise control over the disposal of the securities or,

- (2) 第 (1) 款提述的人的權限即使 ——
- (a) 受到限制或約束，或可受到限制或約束；或
  - (b) 須聯同另一人方可行使，  
此事實無關重要。
- (3) 凡任何法團就某證券具有第 (1) 款提述的權限，而 ——
- (a) 該法團或其董事慣於或有義務（不論是正式或非正式的）按照某人的指示或指令就該證券而行事；或
  - (b) 某人或其有聯繫者是該法團的控制人，  
則該人視為就該證券具有第 (1) 款提述的權限。
- (4) 凡任何人 ——
- (a) 已訂立合約以購買某證券，則在他若履行合約便能如此購買的範圍內；
  - (b) 具有使某證券轉移予他或按他的命令轉移的權利，不論該權利是現在或將來可行使的，亦不論是否在某條件符合後方可行使的，則在他若強制執行該權利便能令該證券如此轉移的範圍內；或
  - (c) 具有根據一項期權取得某證券或證券權益的權利，不論該權利是現在或將來可行使的，亦不論是否在某條件符合後方可行使的，則在他若行使該權利便能取得該證券或權益的範圍內，  
他視為就該證券具有第 (1) 款提述的權限。
- (5) 凡任何證券受信託所規限，而任何不是該證券的受託人的人如憑藉第 (4)(b) 款擁有該證券的權益，則在斷定某人是否就第 5 分部而言擁有證券權益時，受託人在該證券中的權益須不予理會。
- (6) 證監會可訂立規則，訂明某人的權益或某些屬於某類別的人的權益，在斷定他或他們是否就第 5 分部而言擁有證券權益時須不予理會。

- in the case of options in respect of the securities, to exercise the options.
- (2) It is immaterial that the authority of a person referred to in subsection (1)—
- (a) is, or is capable of being made, subject to restraint or restriction; or
  - (b) is exercisable jointly with another person.
- (3) A person shall be regarded as having the authority referred to in subsection (1) where a corporation has the authority referred to in that subsection and—
- (a) the corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions or instructions of the person in relation to the securities in question; or
  - (b) the person, or an associate of the person, is a controller of the corporation.
- (4) Where a person—
- (a) has entered into a contract to purchase securities;
  - (b) has a right to have securities transferred to him or to his order whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or
  - (c) has the right to acquire securities, or an interest in securities, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not,
- the person shall, to the extent to which he could do so on completing the contract, enforcing the right or exercising the option, be regarded as having the authority referred to in subsection (1).

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- (7) 如任何人在買賣某證券前擁有該證券的權益，而該人或其有聯繫者在買賣該證券後擁有該證券的權益，則就第 5 分部而言，買賣該證券不涉及其實益擁有權的改變。

## 第 2 分部 —— 市場失當行為審裁處

### 251. 市場失當行為審裁處

- (1) 現設立一個名為“市場失當行為審裁處”的審裁處，審裁處具有司法管轄權按照本部及附表 9 聆聽和裁定根據第 252 條提起的研訊程序所引起或與該程序有關連的任何問題或爭議點。

#### 附註 ——

審裁處在第 XIVA 部亦具有司法管轄權 —— 見第 307H 條。

(由 2012 年第 9 號第 6 條修訂)

- (2) 除本部或附表 9 另有規定外，審裁處 ——
- (a) 由一名主席及 2 名其他成員組成；及
  - (b) 由主席主持，他須與該 2 名其他成員一起聆訊。

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- (5) Where securities are subject to a trust, and a person who is not a trustee in those securities has an interest in those securities by virtue of subsection (4)(b), the interest of a trustee in those securities shall be disregarded for the purpose of determining whether the person has an interest in securities for the purposes of Division 5.
- (6) The Commission may make rules to prescribe that an interest, being an interest of a person or of the persons included in a class of persons, shall be disregarded for the purpose of determining whether the person or the persons has or have an interest in securities for the purposes of Division 5.
- (7) For the purposes of Division 5, a sale or purchase of securities does not involve a change in their beneficial ownership if a person who had an interest in the securities before the sale or purchase, or an associate of the person, has an interest in the securities after the sale or purchase.

## Division 2—Market Misconduct Tribunal

### 251. Market Misconduct Tribunal

- (1) There is established a Tribunal to be known as the Market Misconduct Tribunal which shall have jurisdiction to hear and determine in accordance with this Part and Schedule 9 any question or issue arising out of or in connection with the proceedings instituted under section 252.

#### Note—

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

(Amended 9 of 2012 s. 6)

- (2) Except as otherwise provided in this Part or in Schedule 9, the Tribunal—
- (a) shall consist of a chairman and 2 other members; and

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- (3) 審裁處主席須由法官出任，上述 2 名其他成員須不是公職人員。
- (4) 證監會須就根據第 252 條提起的研訊程序，或就關於披露的研訊程序委任一人為提控官，以進行該程序，證監會並可委任一人或多於一人協助提控官。(由 2012 年第 9 號第 6 及 19 條修訂)
- (5) 提控官須為大律師或律師。(由 2012 年第 9 號第 19 條修訂)
- (6) 附表 9 適用於審裁處成員的委任、提控官及獲委任協助提控官的人的委任及角色，以及審裁處的研訊程序和聆訊及與審裁處有關的在程序及其他方面的事宜。
- (7) 如行政長官認為適當，可為根據第 252 條提起的任何研訊程序的目的，或為任何關於披露的研訊程序的目的，增設審裁處，在此情況下，本條例或其他條例的條文在作出必要的變通後適用於每個如此增設的審裁處(包括每個如此增設的審裁處的主席及其他成員的委任，以及與每個如此增設的審裁處有關的一切事宜)，一如該等條文適用於審裁處。(由 2012 年第 9 號第 6 條修訂)
- (8) 審裁處成員(但如主席是第 245(1) 條中**法官**的定義中(a)段所指的法官，則除主席外)可獲支付一筆財政司司長認為數額適當的款項，作為其服務酬金，該筆款項由政府一般收入支付。(由 2012 年第 9 號第 19 條代替)
- (8A) 提控官及獲委任協助提控官的人，可獲證監會支付一筆該會認為數額適當的款項，作為其服務酬金。(由 2012 年第 9 號第 19 條增補)
- (9) 凡任何屬第 245(1) 條中**法官**的定義的(a)段所指的法官的人獲委任為審裁處主席，該項委任及他擔任或免任主席之事，均不影響——
  - (a) 他作為該段所指的法官的任期，亦不影響他作為該段所指的法官而行使權力；
  - (b) 他擔任該職位而具有的職級、稱銜、地位、排名、薪金或其他權利或特權；

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- (b) shall be presided over by the chairman who shall sit with the 2 other members.
- (3) The chairman of the Tribunal shall be a judge and the 2 other members of the Tribunal shall not be public officers.
- (4) The Commission shall, in respect of any proceedings instituted under section 252 or any disclosure proceedings, appoint a person as the Presenting Officer to conduct the proceedings, and may appoint one or more persons to assist the Presenting Officer. (Amended 9 of 2012 ss. 6 & 19)
- (5) A Presenting Officer shall be a counsel or solicitor. (Amended 9 of 2012 s. 19)
- (6) Schedule 9 shall have effect in relation to the appointment of members of the Tribunal, the appointment and the role of Presenting Officers and of persons appointed to assist Presenting Officers, and to the proceedings and sittings of, and procedural and other matters concerning, the Tribunal.
- (7) Where the Chief Executive considers appropriate, additional Tribunals may be established for the purposes of any proceedings instituted under section 252 or any disclosure proceedings, whereupon the provisions of this or any other Ordinance shall apply, subject to necessary modifications, to each of such additional Tribunals (including appointment of the chairman and other members of, and all matters concerning, each of such additional Tribunals) as they apply to the Tribunal. (Amended 9 of 2012 s. 6)
- (8) There may be paid to a member of the Tribunal (other than the chairman if he or she is a judge within the meaning of paragraph (a) of the definition of **judge** in section 245(1)) an amount, as a fee for the member's services, that the Financial Secretary considers appropriate, and that amount is a charge on the general revenue. (Replaced 9 of 2012 s. 19)

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(c) 他擔任該職位須遵守的條款及條件。

## 252. 關於市場失當行為的研訊程序

- (1) 在第 252A 條的規限下，證監會如覺得曾發生或可能曾發生市場失當行為，可就該事宜在審裁處提起研訊程序。  
(由 2012 年第 9 號第 20 條代替)
- (2) 證監會可藉向審裁處發出書面通知而根據本條提起研訊程序，通知須載有一項陳述，指明附表 9 訂明的事宜。  
(由 2012 年第 9 號第 20 條代替)
- (3) 在不局限第 251(1) 條的一般性的原則下，根據本條提起的研訊程序的目的是由審裁處裁定 —— (由 2012 年第 9 號第 20 條修訂)
  - (a) 是否曾發生市場失當行為；
  - (b) 任何曾從事該失當行為的人的身分；及
  - (c) 因該失當行為而獲取的利潤或避免的損失的金額。

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- (8A) There may be paid by the Commission to a Presenting Officer and to a person appointed to assist a Presenting Officer an amount, as a fee for his or her services, that the Commission considers appropriate. (*Added 9 of 2012 s. 19*)
- (9) Where a person who is a judge within the meaning of paragraph (a) of the definition of **judge** in section 245(1) is appointed as the chairman of the Tribunal, neither the appointment nor the service or removal of the person as the chairman affects—
  - (a) the tenure of office of, and the exercise of powers by, the person as a judge within the meaning of that paragraph;
  - (b) the person's rank, title, status, precedence, salary or other rights or privileges as a holder of that office;
  - (c) the terms and conditions to which the person is subject as a holder of that office.

## 252. Market misconduct proceedings

- (1) Subject to section 252A, if it appears to the Commission that market misconduct has or may have taken place, the Commission may institute proceedings in the Tribunal concerning the matter. (*Replaced 9 of 2012 s. 20*)
- (2) The Commission institutes proceedings under this section by giving the Tribunal a notice in writing containing a statement specifying the matters prescribed in Schedule 9. (*Replaced 9 of 2012 s. 20*)
- (3) Without limiting the generality of section 251(1), the object of the proceedings instituted under this section is for the Tribunal to determine— (*Amended 9 of 2012 s. 20*)
  - (a) whether any market misconduct has taken place;



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- (4) 除第 (5) 及 (6) 款另有規定外，在以下情況下，審裁處可依據第 (3)(b) 款識辨某人曾從事市場失當行為 ——
- (a) 該人曾作出構成市場失當行為的行為；
  - (b) 雖然該人沒有作出構成市場失當行為的行為，但 ——
    - (i) 審裁處依據第 (3)(b) 款識辨某屬法團的另一人曾從事市場失當行為；及
    - (ii) 該人是該法團的高級人員，而該失當行為是在獲該人同意或縱容的情況下發生的；或
  - (c) 雖然該人沒有作出構成市場失當行為的行為，但 ——
    - (i) 審裁處依據第 (3)(b) 款識辨另一人曾從事市場失當行為；及
    - (ii) 該人協助或縱容該另一人作出構成該失當行為的行為，而該人是知道該行為構成或可能構成市場失當行為的。
- (5) 如本部任何條文規定不得以某市場失當行為為理由而視某人為曾從事市場失當行為，則審裁處不得依據第 (3)(b) 款識辨他曾從事市場失當行為。
- (6) 審裁處在依據第 (3)(b) 款識辨任何人曾從事市場失當行為前，須給予該人合理的陳詞機會。
- (7) 除第 261(3) 條另有規定外，在裁定任何有待審裁處裁定的問題或爭議點時所要求的舉證準則，是適用於在法院進行的民事法律程序的舉證準則。
- (8)-(10) (由 2012 年第 9 號第 20 條廢除)

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- (b) the identity of any person who has engaged in the market misconduct; and
  - (c) the amount of any profit gained or loss avoided as a result of the market misconduct.
- (4) Subject to subsections (5) and (6), the Tribunal may identify a person as having engaged in market misconduct pursuant to subsection (3)(b) if—
- (a) he has perpetrated any conduct which constitutes the market misconduct;
  - (b) notwithstanding that he has not perpetrated any conduct which constitutes the market misconduct—
    - (i) the Tribunal identifies another person which is a corporation as having engaged in market misconduct pursuant to subsection (3)(b); and
    - (ii) the market misconduct occurred with his consent or connivance as an officer of the corporation; or
  - (c) notwithstanding that he has not perpetrated any conduct which constitutes the market misconduct—
    - (i) the Tribunal identifies any other person as having engaged in market misconduct pursuant to subsection (3)(b); and
    - (ii) he assisted or connived with that other person in the perpetration of any conduct which constitutes the market misconduct, with the knowledge that such conduct constitutes or might constitute market misconduct.
- (5) The Tribunal shall not identify a person as having engaged in market misconduct pursuant to subsection (3)(b) if it is provided under any provision of this Part that the person shall not by reason of that market misconduct be regarded as having engaged in market misconduct.

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### 252A. 提起市場失當行為的研訊程序須經律政司司長同意

- (1) 證監會除非取得律政司司長的同意，否則不可根據第 252 條提起研訊程序。
- (2) 如有以下情況，則律政司司長只可在以下情況持續期間，拒絕根據第 (1) 款對根據第 252 條提起的、關乎任何行為的研訊程序給予同意 ——
  - (a) 正在就同一行為，考慮就第 XIV 部所訂的罪行而提起法律程序；或
  - (b) 正在就同一行為，考慮就某可公訴罪行 (第 XIV 部所訂的罪行除外) 提起法律程序，或已提起有關程序，而根據第 252 條提起研訊程序，可能會對該罪行的調查或檢控造成嚴重損害。
- (3) 為免生疑問，律政司司長根據第 (1) 款給予的同意，並不禁止就同一行為而提起檢控任何罪行 (第 XIV 部所訂的罪行除外) 的法律程序。
- (4) 本條並不減損律政司司長就刑事罪行提出檢控的權力。

(由 2012 年第 9 號第 21 條增補)

- (6) The Tribunal shall not identify a person as having engaged in market misconduct pursuant to subsection (3)(b) without first giving the person a reasonable opportunity of being heard.
- (7) Subject to section 261(3), the standard of proof required to determine any question or issue before the Tribunal shall be the standard of proof applicable to civil proceedings in a court of law.

(8)-(10) *(Repealed 9 of 2012 s. 20)*

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

- (1) The Commission must not institute proceedings under section 252 unless it has obtained the consent of the Secretary for Justice.
- (2) The Secretary for Justice may withhold the giving of consent under subsection (1) to proceedings under section 252 in respect of any conduct only if and so long as—
  - (a) proceedings for an offence under Part XIV are contemplated in respect of the same conduct; or
  - (b) proceedings for an indictable offence (other than an offence under Part XIV) are contemplated, or have been instituted, in respect of the same conduct and the institution of proceedings under section 252 would be likely to cause serious prejudice to the investigation or prosecution of that offence.
- (3) To avoid doubt, the consent of the Secretary for Justice under subsection (1) does not preclude proceedings for any offence (other than an offence under Part XIV) in respect of the same conduct.
- (4) Nothing in this section derogates from the powers of the Secretary for Justice in respect of the prosecution of criminal offences.

*(Added 9 of 2012 s. 21)***253. 審裁處的權力**

- (1) 在符合附表 9 及終審法院首席法官根據第 269 條訂立的規則的規定下，審裁處為根據第 252 條提起的研訊程序的目的，可主動或應研訊程序任何一方的申請 ——
  - (a) 收取及考慮以口述證供、書面陳述或文件提供的材料；即使該等材料在法院民事或刑事法律程序中會屬不可接納為證據，審裁處亦可收取及考慮；
  - (b) 藉審裁處主席簽署的書面通知，要求某人出席聆訊、提供證據及交出由他管有並與該研訊程序的標的有關的任何物品、紀錄或文件；
  - (c) 監誓；
  - (d) 訊問或安排訊問任何在其席前已宣誓或未經宣誓的人，並要求該人據實回答審裁處認為就該研訊程序而言屬適當的問題；
  - (e) 命令證人為研訊程序的目的以誓章據實提供證據；
  - (f) 命令任何人不得發表或以其他方式披露已為審裁處收取的材料；
  - (g) 禁止發表或披露審裁處在閉門進行的任何聆訊（或聆訊中閉門進行的任何部分）中所收取的材料；
  - (h) 決定收取 (a) 段提述的材料的方式；
  - (i) 在顧及公正原則後，基於審裁處認為適當的理由及按審裁處認為適當的條款及條件，而擱置該研訊程序的任何部分；
  - (j) 決定在該研訊程序中須依循的程序；
  - (k) 為進行該研訊程序或執行其職能，而行使所需或所附帶的其他權力，或作出所需或所附帶的其他命令。
- (2) 任何人無合理辯解而有以下行為，即屬犯罪 ——

**253. Powers of Tribunal**

- (1) Subject to the provisions of Schedule 9 and any rules made by the Chief Justice under section 269, the Tribunal, for the purposes of any proceedings instituted under section 252, may, on its own motion or on the application of any party before it—
  - (a) receive and consider any material by way of oral evidence, written statements or documents, even if the material would not be admissible in evidence in civil or criminal proceedings in a court of law;
  - (b) by notice in writing signed by the chairman of the Tribunal require a person to attend before it at any sitting and to give evidence and produce any article, record or document in his possession relating to the subject matter of the proceedings;
  - (c) administer oaths;
  - (d) examine or cause to be examined on oath or otherwise a person attending before it and require the person to answer truthfully any question which the Tribunal considers appropriate for the purposes of the proceedings;
  - (e) order a witness to provide evidence in a truthful manner for the purposes of the proceedings by affidavit;
  - (f) order a person not to publish or otherwise disclose any material the Tribunal receives;
  - (g) prohibit the publication or disclosure of any material the Tribunal receives at any sitting, or any part of a sitting, which is held in private;

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- (a) 沒有遵從審裁處根據或依據第 (1) 款作出的命令、通知、禁令或要求；
  - (b) 令審裁處聆訊無法繼續進行，或在聆訊過程中有其他不檢行為；
  - (c) 在按審裁處根據第 (1) 款作出的要求於某地方出席審裁處聆訊後，未經審裁處准許而離開該地方；
  - (d) 阻礙任何人為根據第 252 條提起的研訊程序的目的出席審裁處聆訊、提供證據或交出任何物品、紀錄或文件，或阻嚇任何人以期他不為該目的作出該等作為；
  - (e) 因任何人曾出席審裁處聆訊而威脅或侮辱他，或令他蒙受損失；或
  - (f) 因任何審裁處成員、提控官或協助提控官的人以該等身分執行職能，而在任何時間威脅或侮辱他，或令他蒙受損失。
- (3) 任何人犯第 (2) 款所訂罪行 ——
- (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (4) 任何人不得僅以遵從審裁處根據或依據第 (1) 款作出的命令、通知、禁令或要求可能導致他人入罪為理由，而獲豁免遵從該命令、通知、禁令或要求。

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- (h) determine the manner in which any material referred to in paragraph (a) is received;
  - (i) stay any of the proceedings on such grounds and on such terms and conditions as it considers appropriate having regard to the interests of justice;
  - (j) determine the procedure to be followed in the proceedings;
  - (k) exercise such other powers or make such other orders as may be necessary for or ancillary to the conduct of the proceedings or the carrying out of its functions.
- (2) A person commits an offence if he, without reasonable excuse—
- (a) fails to comply with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1);
  - (b) disrupts or otherwise misbehaves during any sitting of the Tribunal;
  - (c) having been required by the Tribunal under subsection (1) to attend before the Tribunal, leaves the place where his attendance is so required without the permission of the Tribunal;
  - (d) hinders or deters any person from attending before the Tribunal, giving evidence or producing any article, record or document, for the purposes of any proceedings instituted under section 252;
  - (e) threatens, insults or causes any loss to be suffered by any person who has attended before the Tribunal, on account of such attendance; or
  - (f) threatens, insults or causes any loss to be suffered by any member of the Tribunal, any Presenting Officer or any person assisting a Presenting Officer at any time

**254. 審裁處在證據方面的進一步權力**

- (1) 為根據第 252 條提起的研訊程序的目的，審裁處可主動或應就該研訊程序委任的提控官的申請，以書面授權證監會行使第 (2) 款指明的權力和向審裁處提供因行使該等權力而取得的任何紀錄、文件及資料。
- (2) 作出以下作為的權力是為施行第 (1) 款而指明的權力 ——
  - (a) 在審裁處有合理理由相信或懷疑任何人的紀錄或文件可能載有與有關研訊程序有關的資料時，查閱該等紀錄或文件；
  - (b) 複印 (a) 提述的任何紀錄或文件或以其他方式記錄其中的細節，以及在不抵觸第 (3) 款的情況下，在作出該等作為所需的期間（該期間不得超過 2 日），取去該等紀錄或文件；
  - (c) 要求任何人在指明時間內就關於 (a) 段提述的任何紀錄或文件提供解釋或詳情（在適用範圍內，包括描述擬備或製作該等紀錄或文件時的情況、提供所有在與該等紀錄或文件有關連的情況下作出或收取的

on account of the performance of his functions in that capacity.

- (3) A person who commits an offence under subsection (2) 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.
- (4) A person is not excused from complying with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1) only on the ground that to do so might tend to incriminate the person.

**254. Further powers of Tribunal concerning evidence**

- (1) For the purposes of any proceedings instituted under section 252, the Tribunal may, on its own motion or on the application of the Presenting Officer appointed for the proceedings, authorize the Commission in writing to exercise any of the powers specified in subsection (2) and to provide the Tribunal with any of the records, documents and information obtained as a result of the exercise of the powers.
- (2) The powers specified for the purposes of subsection (1) are the powers—
  - (a) to inspect any record or document of any person where the Tribunal has reasonable grounds to believe or suspect that the record or document may contain information relevant to the proceedings;
  - (b) to make copies or otherwise record details of any record or document referred to in paragraph (a) and, subject to subsection (3), to take possession of the record or document for the period (not exceeding 2 days) necessary to do so;



- 指令的細節，以及解釋在該等紀錄或文件中作出或遺漏某記項的理由)；
- (d) 要求任何人在指明時間內，就在任何處所是否存有  
可能載有與有關研訊程序有關的資料的任何紀錄或  
文件提供資料，並提供關於該等處所、紀錄或文件  
的詳情；
  - (e) 要求任何依據本條提供的資料、解釋或詳情藉法定  
聲明核實，並監理該等聲明；
  - (f) 向審裁處有合理理由相信或懷疑能夠提供與有關研  
訊程序有關的資料的人錄取口供。
- (3) 證監會須在符合該會就保安或其他方面而施加的合理條  
件下，准許如任何紀錄或文件沒有根據第 (2)(b) 款被取去  
便會有權查閱該等紀錄或文件的人，在任何合理時間查  
閱該等紀錄或文件，及將該等紀錄或文件複印或以其他方式  
記錄其中的細節。
- (4) 如證監會尋求根據本條查閱由任何人管有的紀錄或文件，  
或尋求根據本條就該等紀錄或文件行使其他權力，則該  
人須向證監會交出該等紀錄或文件。
- (5) 凡任何人根據本條被要求提供任何資料、解釋或詳情，  
他須在其權力所及的範圍內遵從該要求，並須應要求而  
藉法定聲明核實該等資料、解釋或詳情（視屬何情況而  
定）。
- (6) 任何人 ——
- (a) 無合理辯解而違反第 (4) 或 (5) 款；
  - (b) (i) 在看來是遵守第 (4) 或 (5) 款時，作出在要項上  
屬虛假或具誤導性的陳述；且
  - (ii) 知道該陳述在要項上屬虛假或具誤導性，或罔  
顧該陳述是否在要項上屬虛假或具誤導性；
  - (c) 妨礙證監會根據本條行使其任何權力；或

- (c) to require any person to give, within a specified time,  
any explanation or particulars in respect of any record  
or document referred to in paragraph (a) (including, in  
so far as applicable, a description of the circumstances  
under which it was prepared or created, details of all  
instructions given or received in connection with it, and  
an explanation of the reasons for the making of entries  
contained in it or the omission of entries from it);
  - (d) to require any person to give, within a specified time,  
information as to whether or not there is on any  
premises any record or document which may contain  
information relevant to the proceedings, and particulars  
as to the premises or the record or document;
  - (e) to require that any information, explanation or  
particulars given pursuant to this section be verified by  
statutory declaration and to take the declaration;
  - (f) to take a statement from a person whom the Tribunal  
has reasonable grounds to believe or suspect is able to  
provide information which is relevant for the purposes  
of the proceedings.
- (3) The Commission shall, subject to any reasonable conditions  
it imposes as to security or otherwise, permit a person who  
would be entitled to inspect any record or document had the  
Commission not taken possession of it under subsection (2)(b),  
to inspect it and to make copies or otherwise record details of  
it at all reasonable times.
- (4) A person shall produce a record or document in his possession  
to the Commission if the Commission seeks to inspect it, or  
exercise any other powers in respect of it, under this section.
- (5) A person who is required under this section to give or provide  
any information, explanation or particulars shall comply with  
the requirement so far as it lies within his power to do so

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- (d) 意圖向審裁處隱瞞任何可由與根據第 252 條提起的研訊程序有關的紀錄或文件披露的事實或事情，而銷毀、捏改、隱藏或以其他方式處置該等紀錄或文件，或致使或准許他人作出任何該等作為，即屬犯罪。
- (7) 任何人犯第 (6) 款所訂罪行 ——
- (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (8) 任何人不得僅以遵守第 (4) 或 (5) 款可能會導致他人入罪為理由，而獲豁免遵守該等條文。

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- and shall, if requested, verify the information, explanation or particulars (as the case may be) by statutory declaration.
- (6) A person commits an offence if—
- (a) he, without reasonable excuse, contravenes subsection (4) or (5);
- (b) he—
- (i) in purported compliance with subsection (4) or (5), makes any statement which is false or misleading in a material particular; and
- (ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular;
- (c) he obstructs the Commission in the exercise of any of its powers under this section; or
- (d) he, with intent to conceal, from the Tribunal, facts or matters capable of being disclosed by any record or document which is relevant to any proceedings instituted under section 252, destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, such record or document.
- (7) A person who commits an offence under subsection (6) is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (8) A person is not excused from complying with subsection (4) or (5) only on the ground that to do so might tend to incriminate him.

**255. 為市場失當行為的法律程序的目的使用經收取的證據**

- (1) 不論本條例其他條文有任何規定，任何人在根據第 252 條提起的研訊程序中提出的或為該程序的目的而提出的證據（包括根據第 253 條由審裁處收取或向審裁處交出的材料、紀錄或文件，及根據第 254 條向審裁處提供、交出或披露的紀錄、文件或資料），就本部（包括根據或依據本部提起的民事或刑事法律程序）的所有目的而言均可獲接納為證據，但除第 (2) 款另有規定外，該等證據不得在任何由該人在法院或為針對該人而在法院提起的民事或刑事法律程序中為任何其他目的而獲接納為針對他的證據。
- (2) 在第 (1) 款中提述的由某人在根據第 252 條提起的研訊程序中提出的或為該程序的目的而提出的證據在以下法律程序中可獲接納為針對他的證據——
  - (a) 根據或依據第 XI 部提起的民事法律程序；
  - (b) 根據第 305 條提起的法律程序；
  - (c) 因在根據第 252 條提起的研訊程序中提出或為該程序的目的提出證據而引起的在法院進行的民事法律程序；
  - (d) 就他在根據第 252 條提起的研訊程序中或為該程序的目的對任何問題的回答，而檢控他犯第 219(2)(a) 條或《刑事罪行條例》(第 200 章) 第 V 部所訂罪行或作假證供罪的刑事法律程序。

**255. Use of evidence received for purposes of market misconduct proceedings**

- (1) Notwithstanding any other provisions of this Ordinance, evidence given by any person at or for the purposes of any proceedings instituted under section 252 (including any material, record or document received by the Tribunal from the person or produced to the Tribunal by the person under section 253, and any record or document or information given, provided, produced or disclosed to the Tribunal by the person under section 254) shall be admissible in evidence for all the purposes of this Part (including any proceedings (civil or criminal) instituted under or pursuant to this Part) but, subject to subsection (2), shall not be admissible in evidence against that person for any other purposes in any proceedings (civil or criminal) in a court of law brought by or against him.
- (2) The evidence given by any person at or for the purposes of any proceedings instituted under section 252 as referred to in subsection (1) shall be admissible in evidence against that person—
  - (a) in civil proceedings instituted under or pursuant to Part XI;
  - (b) in proceedings instituted under section 305;
  - (c) in civil proceedings in a court of law arising out of the giving of evidence at or for the purposes of the proceedings instituted under section 252;
  - (d) in criminal proceedings where the person is charged with an offence under section 219(2)(a), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of answers given by that person to questions put to him at or for the purposes of the proceedings instituted under section 252.

**256. 受保密權涵蓋的資料**

即使根據第 252 條提起的研訊程序的標的是 (不論全部或有部分是) 某人的行為, 本部及附表 9 並不規定擔任該人的銀行或財務顧問的認可財務機構, 披露該人以外的該機構顧客的事務的資料。

**257. 審裁處的命令等**

- (1) 在符合第 (3) 款的規定下, 凡任何人在根據第 252 條提起的研訊程序中, 依據第 252(3)(b) 條被識辨為曾從事市場失當行為, 審裁處可在該研訊程序完結時就該人作出一項或多於一項以下命令——
  - (a) 命令他在該命令指明的不超過 5 年的期間內, 未經原訟法庭許可, 不得擔任或留任上市法團或其他指明法團的董事或清盤人, 或擔任或留任該等法團的財產或業務的接管人或經理人, 或以任何方式直接或間接關涉或參與該等法團的管理;
  - (b) 命令他在該命令指明的不超過 5 年的期間內, 未經原訟法庭許可, 不得在香港直接或間接取得、處置或以其他方式處理任何證券、期貨合約、槓桿式外匯交易合約, 或任何證券、期貨合約、槓桿式外匯交易合約或集體投資計劃的權益;
  - (c) 命令他不得再作出構成該命令指明的市場失當行為 (不論是否屬該研訊程序的對象的市場失當行為) 的任何行為;
  - (d) 命令他向政府繳付一筆款項, 金額不得超逾該人因該失當行為而令他獲取的利潤或避免的損失的金額;
  - (e) 在不減損第 260 條賦予審裁處的權力的原則下, 就由政府就有關研訊程序而合理地招致或合理地附帶招致的訟費及開支, 命令該人向政府繳付一筆審裁

**256. Privileged information**

Nothing in this Part and Schedule 9 requires an authorized financial institution, acting as the banker or financial adviser of a person whose conduct is the subject, whether wholly or in part, of any proceedings instituted under section 252, to disclose information as to the affairs of any of its customers other than that person.

**257. Orders, etc. of Tribunal**

- (1) Subject to subsection (3), the Tribunal may at the conclusion of any proceedings instituted under section 252 make one or more of the following orders in respect of a person identified as having engaged in market misconduct pursuant to section 252(3)(b)—
  - (a) an order that the person shall not, without the leave of the Court of First Instance, be or continue to be a director, liquidator, or receiver or manager of the property or business, of a listed corporation or any other specified corporation or in any way, whether directly or indirectly, be concerned or take part in the management of a listed corporation or any other specified corporation for the period (not exceeding 5 years) specified in the order;
  - (b) an order that the person shall not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities, futures contract or leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme for the period (not exceeding 5 years) specified in the order;
  - (c) an order that the person shall not again perpetrate any conduct which constitutes such market misconduct as is



處認為數額適當的款項；(由 2012 年第 9 號第 22 條修訂)

- (f) 在不減損第 260 條賦予審裁處的權力的原則下，就由證監會就以下項目而合理地招致或合理地附帶招致的訟費及開支，命令該人向該會繳付一筆審裁處認為數額適當的款額 ——
  - (i) 有關的研訊程序；
  - (ii) 在提起該研訊程序前，對該人的行為或事務所作出任何調查；或
  - (iii) 為該研訊程序的目的，對該人的行為或事務所作出任何調查；(由 2012 年第 9 號第 22 條代替)
- (fa) 凡有關研訊程序是因根據《財務匯報局條例》(第 588 章)進行的調查而提起的，就由該條例第 6(1) 條設立的財務匯報局就該項調查而合理地招致或合理地附帶招致的費用及開支，命令他向該局繳付一筆審裁處認為是數額適當的款項；(由 2006 年第 18 號第 85 條增補)
- (g) 在他是某團體的成員而該團體可針對他採取紀律行動的情況下，命令建議該團體針對他採取紀律行動。
- (2) 凡某人的行為 ——
  - (a) 在過往導致他在香港被裁定犯某罪行；
  - (b) 在過往導致審裁處 ——
    - (i) 根據第 252(3)(b) 條識辨該人曾從事市場失當行為；或
    - (ii) 根據第 307J(1)(b) 條識辨該人為違反披露規定；或 (由 2012 年第 9 號第 7 條代替)
  - (c) 在本部生效前任何時間導致他在根據已廢除的《證券(內幕交易)條例》第 16(3) 條作出的裁定中或在根據該條例第 22(1) 條擬備和發出的報告書中被識辨為內幕交易者，

specified in the order (whether the same as the market misconduct in question or not);

- (d) an order that the person pay to the Government an amount not exceeding the amount of any profit gained or loss avoided by the person as a result of the market misconduct in question;
- (e) without prejudice to any power of the Tribunal under section 260, an order that the person pay to the Government the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Government in relation or incidental to the proceedings; (Amended 9 of 2012 s. 22)
- (f) without prejudice to any power of the Tribunal under section 260, an order that the person pay to the Commission the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Commission, whether in relation or incidental to—
  - (i) the proceedings;
  - (ii) any investigation of the person's conduct or affairs carried out before the proceedings were instituted; or
  - (iii) any investigation of the person's conduct or affairs carried out for the purposes of the proceedings; (Replaced 9 of 2012 s. 22)
- (fa) where the proceedings were instituted as a result of an investigation under the Financial Reporting Council Ordinance (Cap. 588), an order that the person pay to the Financial Reporting Council established by section 6(1) of that Ordinance the sum the Tribunal considers appropriate for the costs and expenses in relation or incidental to the investigation reasonably incurred by the Council; (Added 18 of 2006 s. 85)



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- 審裁處在根據第 (1) 款就他作出命令時，可考慮該行為。
- (3) 審裁處在根據第 (1) 款就某人作出命令之前，須給予他合理的陳詞機會。
- (4) 審裁處如根據第 (1)(a) 款作出命令，可藉點名或提述與其他法團的關係而指明一個法團。
- (5) 審裁處可就任何人在根據第 (1)(c) 款作出的命令中指明任何市場失當行為，不論在該命令作出時，他是否可能會作出構成該市場失當行為的行為。
- (6) 凡審裁處根據第 (1)(e) 或 (f) 款作出命令，要求繳付訟費，作為就根據第 252 條提起的任何法律程序而合理地招致或合理地附帶招致的訟費，則除終審法院首席法官根據第 269 條訂立的規則另有規定外，《高等法院規則》(第 4 章，附屬法例 A) 第 62 號命令適用於該等訟費的評定。
- (7) 審裁處須將根據第 (1) 款就某人作出的命令，以書面通知他。
- (8) 根據第 (1) 款就某人作出的命令，在他接獲關於該命令的通知時或在該通知指明的時間(兩者以較遲者為準)生效。
- (9) 凡審裁處根據第 (1)(b) 款作出命令，證監會可按該會認為適當的方式，將該命令通知任何持牌人或註冊機構。
- (10) 任何人沒有遵從根據第 (1)(a)、(b) 或 (c) 款作出的命令，即屬犯罪——
- (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

(編輯修訂——2012 年第 2 號編輯修訂紀錄)

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- (g) an order that any body which may take disciplinary action against the person as one of its members be recommended to take disciplinary action against him.
- (2) When making any order in respect of a person under subsection (1), the Tribunal may take into account any conduct by the person which—
- (a) previously resulted in the person being convicted of an offence in Hong Kong;
- (b) previously resulted in the person being identified by the Tribunal—
- (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. 7*)
- (c) at any time before the commencement of this Part resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.
- (3) The Tribunal shall not make an order in respect of a person under subsection (1) without first giving the person a reasonable opportunity of being heard.
- (4) Where the Tribunal makes an order under subsection (1)(a), the Tribunal may specify a corporation by name or by reference to a relationship with any other corporation.
- (5) The Tribunal may, in relation to any person, specify any market misconduct in an order under subsection (1)(c), whether or not there is, at the time when the order is made, likelihood that the person would perpetrate any conduct which constitutes the market misconduct.

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- (6) Where the Tribunal makes an order under subsection (1)(e) or (f) requiring the payment of costs as costs reasonably incurred in relation or incidental to any proceedings instituted under section 252, subject to any rules made by the Chief Justice under section 269, Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the taxation of the costs.
- (7) The Tribunal shall by notice in writing notify a person of an order made in respect of him under subsection (1).
- (8) An order made in respect of a person under subsection (1) takes effect at the time when it is notified to the person or at the time specified in the notice, whichever is the later.
- (9) Where the Tribunal makes an order under subsection (1)(b), the Commission may notify any licensed person or registered institution of the order in such manner as it considers appropriate.
- (10) A person commits an offence if he fails to comply with an order made under subsection (1)(a), (b) or (c) and is liable—
  - (a) on conviction on indictment to a fine of \$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.

*(Amended E.R. 2 of 2012)*

## 258. 就法團高級人員而作出的進一步的命令

- (1) 在符合第 (3) 款的規定下，凡某法團依據第 252(3)(b) 條被識辨為曾從事市場失當行為，如某人是該法團的高級人員，而該行為可直接或間接歸因於他違反第 279 條委予他的責任，則即使他並沒有依據第 252(3)(b) 條被識辨為曾從事市場失當行為，審裁處仍可就他而作出一項或多於一項第 257(1)(a) 至 (g) 條提述的命令。
- (2) 凡某人的行為 ——

## 258. Further orders in respect of officers of corporation

- (1) Subject to subsection (3), where a corporation has been identified as having engaged in market misconduct pursuant to section 252(3)(b) and the market misconduct is directly or indirectly attributable to a breach by any person as an officer of the corporation of the duty imposed on him by section 279, the Tribunal may make one or more of the orders referred to in section 257(1)(a) to (g) in respect of the person even if the

- (a) 在過往導致他在香港被裁定犯某罪行；
- (b) 在過往導致審裁處 ——
- (i) 根據第 252(3)(b) 條識辨該人曾從事市場失當行為；或
- (ii) 根據第 307J(1)(b) 條識辨該人為違反披露規定；或（由 2012 年第 9 號第 8 條代替）
- (c) 在本部生效前任何時間導致他在根據已廢除的《證券（內幕交易）條例》第 16(3) 條作出的裁定中或在根據該條例第 22(1) 條擬備和發出的報告書中被識辨為內幕交易者，
- 審裁處在根據第 (1) 款就他作出命令時，可考慮該行為。
- (3) 審裁處在根據第 (1) 款就某人作出命令之前，須給予他合理的陳詞機會。
- (4) 審裁處如根據第 (1) 款作出第 257(1)(a) 條提述的命令，可藉點名或提述與其他法團的關係而指明一個法團。
- (5) 審裁處如根據第 (1) 款就任何人作出第 257(1)(c) 條提述的命令，可在該命令中指明任何市場失當行為，不論在該命令作出時，他是否可能會作出構成該市場失當行為的行為。
- (6) 凡審裁處根據第 (1) 款作出第 257(1)(e) 或 (f) 條提述的命令，要求繳付訟費，作為就根據第 252 條提起的任何法律程序而合理地招致或合理地附帶招致的訟費，則除終審法院首席法官根據第 269 條訂立的規則另有規定外，《高等法院規則》（第 4 章，附屬法例 A）第 62 號命令適用於該等訟費的評定。
- (7) 審裁處須將根據第 (1) 款就某人作出的命令，以書面通知他。
- (8) 根據第 (1) 款就某人作出的命令，在他接獲關於該命令的通知時或在該通知指明的時間（兩者以較遲者為準）生效。

- person has not been identified as having engaged in market misconduct pursuant to section 252(3)(b).
- (2) When making any order in respect of a person under subsection (1), the Tribunal may take into account any conduct by the person which—
- (a) previously resulted in the person being convicted of an offence in Hong Kong;
- (b) previously resulted in the person being identified by the Tribunal—
- (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. 8*)
- (c) at any time before the commencement of this Part resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.
- (3) The Tribunal shall not make an order in respect of a person under subsection (1) without first giving the person a reasonable opportunity of being heard.
- (4) Where the Tribunal makes under subsection (1) an order referred to in section 257(1)(a), the Tribunal may specify a corporation by name or by reference to a relationship with any other corporation.
- (5) Where the Tribunal, in relation to any person, makes under subsection (1) an order referred to in section 257(1)(c), the Tribunal may specify any market misconduct in the order, whether or not there is, at the time when the order is made, likelihood that the person would perpetrate any conduct which constitutes the market misconduct.

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- (9) 凡審裁處根據第 (1) 款作出第 257(1)(b) 條提述的命令，證監會可按該會認為適當的方式，將該命令通知任何持牌人或註冊機構。
- (10) 凡審裁處根據第 (1) 款就任何人作出第 257(1)(a)、(b) 或 (c) 條提述的命令，如他沒有遵從該命令，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (編輯修訂 —— 2012 年第 2 號編輯修訂紀錄)

**259. 根據第 257(1)(d) 條提述的命令須付的款項的利息**

凡審裁處作出第 257(1)(d) 條提述的命令 (不論該命令是根據第 257(1) 條或是根據第 258(1) 條而作出的)，要求某人繳付款項，則審裁處亦可命令所繳付的款項須按以下方式衍生複利息 ——

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- (6) Where the Tribunal makes under subsection (1) an order referred to in section 257(1)(e) or (f) requiring the payment of costs as costs reasonably incurred in relation or incidental to any proceedings instituted under section 252, subject to any rules made by the Chief Justice under section 269, Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the taxation of the costs.
- (7) The Tribunal shall by notice in writing notify a person of an order made in respect of him under subsection (1).
- (8) An order made in respect of a person under subsection (1) takes effect at the time when it is notified to the person or at the time specified in the notice, whichever is the later.
- (9) Where the Tribunal makes under subsection (1) an order referred to in section 257(1)(b), the Commission may notify any licensed person or registered institution of the order in such manner as it considers appropriate.
- (10) Where an order referred to in section 257(1)(a), (b) or (c) is made in respect of a person under subsection (1), the person commits an offence if he fails to comply with the order and is liable—
- (a) on conviction on indictment to a fine of \$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.

*(Amended E.R. 2 of 2012)***259. Interest on moneys payable under order referred to in section 257(1)(d)**

Where the Tribunal makes an order referred to in section 257(1)(d), whether under section 257(1) or 258(1), requiring the payment of money by a person, the Tribunal may also order that the payment shall carry compound interest calculated—

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- (a) 複利息自有關市場失當行為發生當日起計算；及
- (b) 利率按不時根據《高等法院條例》(第 4 章) 第 49 條適用於判定債項的利率計算，結算期及衍生複利息的方式按審裁處認為適當者而定。

## 260. 訟費

- (1) 除第 (4) 款另有規定外，審裁處可於根據第 252 條提起的研訊程序完結時，或於該程序結束後在合理地切實可行範圍內，盡快就以下的人就該程序合理地招致的訟費，藉命令向他們判給一筆審裁處認為數額適當的款項——
  - (a) 為該程序的目的而需要以或被要求以證人或其他身分出席的人；
  - (b) 任何人，而該程序的標的是 (不論全部或有部分是) 該人的行為。
- (2) 根據本條判給的訟費，由政府一般收入支付。
- (3) 除終審法院首席法官根據第 269 條訂立的規則另有規定外，《高等法院規則》(第 4 章，附屬法例 A) 第 62 號命令適用於根據本條判給的訟費的判給和評定。
- (4) 第 (1)(a) 及 (b) 款不適用於符合以下說明的人——
  - (a) 該人憑藉第 252(4)(a)、(b) 或 (c) 條而依據第 252(3)(b) 條被識辨為曾從事市場失當行為；
  - (b) 審裁處認為該人的行為，引致 (不論是全部或部分) 審裁處在根據有關研訊程序進行期間，對其行為作出調查或考慮；
  - (c) 審裁處認為該人的行為引致 (不論是全部或部分) 提起有關研訊程序。

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- (a) from the date of occurrence of the market misconduct in question; and
- (b) at the rate from time to time applicable to judgment debts under section 49 of the High Court Ordinance (Cap. 4) and with such rests and in such manner as the Tribunal considers appropriate.

## 260. Costs

- (1) Subject to subsection (4), at the conclusion of any proceedings instituted under section 252 or as soon as reasonably practicable after the conclusion of the proceedings, the Tribunal may by order award to—
  - (a) any person whose attendance, whether as a witness or otherwise, has been necessary or required for the purposes of the proceedings;
  - (b) any person whose conduct is the subject, whether wholly or in part, of the proceedings,
 such sum as it considers appropriate in respect of the costs reasonably incurred by the person in relation to the proceedings.
- (2) Any costs awarded under this section are a charge on the general revenue.
- (3) Subject to any rules made by the Chief Justice under section 269, Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the award of costs, and to the taxation of any costs awarded, by the Tribunal under this section.
- (4) Subsection (1)(a) and (b) does not apply to—
  - (a) a person who has by virtue of section 252(4)(a), (b) or (c) been identified as having engaged in market misconduct pursuant to section 252(3)(b);



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第 261 條Part XIII—Division 2  
Section 26113-58  
Cap. 571**261. 審裁處處理的藐視罪**

- (1) 審裁處在懲罰犯藐視罪者方面所具有的權力，與原訟法庭所具有的相同。
- (2) 在不局限第 (1) 款賦予的權力的一般性的原則下，如任何人——
  - (a) 無合理辯解而有第 253(2)(a)、(b)、(c)、(d)、(e) 或 (f) 條描述的行為；或
  - (b) 有第 254(6)(a)、(b)、(c) 或 (d) 條描述的行為，
  - (c) (由 2012 年第 9 號第 23 條廢除)
 則審裁處可以該人犯藐視罪而懲罰該人，猶如該人犯藐視法庭罪一樣，而審裁處在這方面所具有的權力，與原訟法庭所具有的相同。(由 2012 年第 9 號第 23 條修訂)
- (3) 審裁處在根據本條行使懲罰犯藐視罪者的權力時，須採用原訟法庭在行使權力懲罰犯藐視罪者時採用的舉證準則。
- (4) 不論本條及本條例其他條文有任何規定——
  - (a) 在以下情況下，不得根據或依據本條行使權力，以決定是否就某行為以某人犯藐視罪而懲罰該人——
    - (i) 過往已根據第 253(2) 或 254(6) 條就同一行為對該人提起刑事法律程序；及 (由 2012 年第 9 號第 23 條修訂)

- (b) a person whose conduct the Tribunal considers has caused, whether wholly or in part, the Tribunal to investigate or consider his conduct during the course of the proceedings in question;
- (c) a person whom the Tribunal considers has by his conduct caused, whether wholly or in part, the institution of the proceedings.

*(Amended E.R. 2 of 2012)***261. Contempt dealt with by Tribunal**

- (1) The Tribunal shall have the same powers as the Court of First Instance to punish for contempt.
- (2) Without limiting the generality of the powers of the Tribunal under subsection (1), the Tribunal shall have the same powers as the Court of First Instance to punish for contempt, as if it were contempt of court, a person who—
  - (a) without reasonable excuse, commits any conduct falling within the description of section 253(2)(a), (b), (c), (d), (e) or (f); or *(Amended 9 of 2012 s. 23)*
  - (b) commits any conduct falling within the description of section 254(6)(a), (b), (c) or (d). *(Amended 9 of 2012 s. 23)*
  - (c) *(Repealed 9 of 2012 s. 23)*
- (3) The Tribunal shall, in the exercise of its powers to punish for contempt under this section, adopt the same standard of proof as the Court of First Instance in the exercise of the same powers to punish for contempt.
- (4) Notwithstanding anything in this section and any other provisions of this Ordinance—

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- (ii) (A) 該刑事法律程序仍待決；或
- (B) 由於過往已提起該刑事法律程序，因此不得根據該條就同一行為再次合法地對該人提起刑事法律程序；
- (b) 在以下情況下，不得根據第 253(2) 或 254(6) 條就某行為而對某人提起刑事法律程序 —— (由 2012 年第 9 號第 23 條修訂)
  - (i) 過往已根據或依據本條行使權力，以決定是否就同一行為以該人犯藐視罪而懲罰該人；及
  - (ii) (A) 因行使該權力而產生的法律程序仍待決；或
  - (B) 由於過往已行使該權力，因此不得根據或依據本條再次合法地行使權力，以決定是否就同一行為以該人犯藐視罪而懲罰該人。

## 262. 審裁處的報告

- (1) 審裁處在進行根據第 252 條提起的研訊程序後，須就該程序擬備書面報告，報告須載有 ——

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- (a) no power may be exercised under or pursuant to this section to determine whether to punish any person for contempt in respect of any conduct if—
  - (i) criminal proceedings have previously been instituted against the person under section 253(2) or 254(6) in respect of the same conduct; and (*Amended 9 of 2012 s. 23*)
  - (ii) (A) those criminal proceedings remain pending; or
  - (B) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under such section in respect of the same conduct;
- (b) no criminal proceedings may be instituted against any person under section 253(2) or 254(6) in respect of any conduct if— (*Amended 9 of 2012 s. 23*)
  - (i) any power has previously been exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct; and
  - (ii) (A) proceedings arising from the exercise of such power remain pending; or
  - (B) by reason of the previous exercise of such power, no power may again be lawfully exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct.

## 262. Report of Tribunal

- (1) The Tribunal shall, after the conduct of any proceedings instituted under section 252, prepare a written report in

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- (a) 審裁處依據第 252(3) 條作出的任何裁定及根據第 257 或 258 條作出的任何命令，以及作出該裁定及命令的理由；及
  - (b) 根據第 259 或 260 條作出的任何命令，以及作出該命令的理由。
- (2) 審裁處須以下述方式發出根據第 (1) 款擬備的報告 ——
- (a) 將報告的文本交予證監會；及 (由 2012 年第 9 號第 24 條代替)
  - (b) 除非審裁處閉門進行某次聆訊或該聆訊任何部分) —— (由 2012 年第 9 號第 24 條修訂)
    - (i) 將報告發表，使其文本可提供予公眾；
    - (ii) 在合理地切實可行的範圍內及在有關研訊程序直接涉及某人的行為的情況下，將報告的文本交予該人；及 (由 2012 年第 9 號第 24 條修訂)
  - (iii)-(iv) (由 2012 年第 9 號第 24 條廢除)
  - (v) 如某人依據第 252(3)(b) 條被識辨為曾從事市場失當行為，而該人是某團體的成員而該團體可針對該人採取紀律行動，則 (如審裁處認為適當的話) 將報告的文本交予該團體。
- (3) 如審裁處閉門進行某次聆訊或該聆訊任何部分，證監會可安排將整份報告或其中任何部分，以其指示的方式提供予公眾或某特定的人或團體。證監會行使上述權力的先決條件是其認為如此行使權力是符合公眾利益的。(由 2012 年第 9 號第 24 條修訂)
- (4) 凡審裁處的報告根據第 (2)(b) 款發表或根據第 (3) 款提供，任何人不得因發表該報告的真實準確敘述或中肯準確摘要，而在民事或刑事法律程序中被起訴。

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- respect of the proceedings, which shall contain—
- (a) any of its determinations made pursuant to section 252(3) and any order made under section 257 or 258, and the reasons for making such determinations and order; and
  - (b) any order made under section 259 or 260, and the reasons for making such order.
- (2) The Tribunal shall issue the report prepared under subsection (1)—
- (a) by giving a copy of the report to the Commission; and (*Replaced 9 of 2012 s. 24*)
  - (b) except where the Tribunal sat in private for the whole or any part of its proceedings, by— (*Amended 9 of 2012 s. 24*)
    - (i) publishing the report so that copies of the report are available to the public;
    - (ii) giving a copy of the report, so far as reasonably practicable, to any person whose conduct was directly in question in the proceedings; and (*Amended 9 of 2012 s. 24*)
  - (iii)-(iv) (*Repealed 9 of 2012 s. 24*)
  - (v) where the Tribunal considers appropriate, giving a copy of the report to any body which may take disciplinary action against the person identified as having engaged in market misconduct pursuant to section 252(3)(b), as one of its members.
- (3) Where the Tribunal sat in private for the whole or any part of its proceedings, the Commission may, if the Commission is of the opinion that it is in the public interest to do so, cause the whole or any part of the report to be made available to

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### 263. 審裁處命令的格式及證明

- (1) 審裁處命令須以書面記錄，並由審裁處主席簽署。
- (2) 在無相反證明的情況下，任何文件如看來是審裁處命令，並看來是由審裁處主席簽署的，則視為審裁處妥為作出的命令，而無須提出關於作出或簽署該命令的證明，亦無須證明簽署該命令的人確是審裁處主席。

### 264. 審裁處命令可在原訟法庭登記

- (1) 原訟法庭可應審裁處按終審法院首席法官藉根據第 269 條訂立的規則訂明的方式而發出的書面通知，在原訟法庭登記審裁處的命令，而該命令一經登記，即就所有目的而言成為原訟法庭在其司法管轄權範圍內作出的命令。
- (2) 審裁處如根據第 257(1)(a) 條作出命令，或根據第 258(1) 條作出第 257(1)(a) 條提述的命令，須在作出該等命令後，在合理地切實可行的範圍內盡快將該等命令送交公司註冊處處長存檔。

### 265. 申請擱置執行審裁處根據第 257、258、259 或 260 條所作的命令

the public or to a particular person or body in the manner it directs. (*Amended 9 of 2012 s. 24*)

- (4) A person is not liable to civil or criminal proceedings for publishing a true and accurate account or a fair and accurate summary of a report of the Tribunal issued or made available under subsection (2)(b) or (3).

### 263. Form and proof of orders of Tribunal

- (1) An order made by the Tribunal shall be recorded in writing and signed by the chairman of the Tribunal.
- (2) A document purporting to be an order of the Tribunal and to be signed by the chairman of the Tribunal shall, in the absence of proof to the contrary, be regarded as an order of the Tribunal duly made, without proof of its making, or proof of signature, or proof that the person signing the order was in fact the chairman.

### 264. Orders of Tribunal may be registered in Court of First Instance

- (1) The Court of First Instance may, on notice in writing given by the Tribunal in the manner prescribed by rules made by the Chief Justice under section 269, register an order of the Tribunal in the Court of First Instance and the order shall, on registration, become for all purposes an order of the Court of First Instance made within the jurisdiction of the Court of First Instance.
- (2) Where an order is made under section 257(1)(a), or an order referred to in section 257(1)(a) is made under section 258(1), the order shall be filed by the Tribunal with the Registrar of Companies, as soon as reasonably practicable after it is made.

### 265. Applications for stay of execution of orders of Tribunal under section 257, 258, 259 or 260

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第 266 條

凡審裁處根據第 257、258、259 或 260 條就任何人作出命令，該人可向審裁處申請擱置執行該命令，而凡有人提出該申請，審裁處如認為適當，可藉命令而准予擱置執行，並可在訟費、繳存款項於審裁處或其他方面定出它認為適當的條件，而有關的擱置執行須受該等條件規限。

### 第 3 分部 —— 上訴等

#### 266. 向上訴法庭提出上訴

- (1) 凡審裁處為根據第 252 條提起的研訊程序的目的作出裁斷或裁定，而證監會或依據第 252(3)(b) 條被識辨為曾從事市場失當行為的人對該裁斷或裁定感到不滿，則證監會或該人（視屬何情況而定）可在審裁處為該程序的目的根據第 257、258、259 或 260 條作出命令（如有的話）後，針對該裁斷或裁定向上訴法庭 ——（由 2012 年第 9 號第 25 條修訂）
  - (a) 就法律論點；或
  - (b) （如獲上訴法庭許可）就事實問題，提出上訴。
- (2) 凡審裁處根據第 257、258、259、260 或 265 條就某人作出命令，他可針對該命令向上訴法庭提出上訴。

#### 267. 上訴法庭處理上訴的權力

- (1) 上訴法庭對根據第 266(1) 條提出的上訴，可 ——
  - (a) 判上訴得直；
  - (b) 駁回上訴；

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Any person in respect of whom an order has been made under section 257, 258, 259 or 260 may apply to the Tribunal for a stay of execution of the order, whereupon the Tribunal may, where it considers appropriate, by order grant the stay, subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Tribunal considers appropriate.

### Division 3—Appeals, etc.

#### 266. Appeal to Court of Appeal

- (1) Where the Tribunal has made any finding or determination for the purposes of any proceedings instituted under section 252, and the Commission, or a person identified as having engaged in market misconduct pursuant to section 252(3)(b), is dissatisfied with the finding or determination, the Commission or the person (as the case may be) may, after the Tribunal has made orders (if any) under section 257, 258, 259 or 260 for the purposes of the proceedings, appeal to the Court of Appeal against the finding or determination— (*Amended 9 of 2012 s. 25*)
  - (a) on a point of law; or
  - (b) with the leave of the Court of Appeal, on a question of fact.
- (2) A person in respect of whom an order has been made under section 257, 258, 259, 260 or 265 may appeal to the Court of Appeal against the order.

#### 267. Powers of Court of Appeal on appeal

- (1) In an appeal under section 266(1), the Court of Appeal may—
  - (a) allow the appeal;
  - (b) dismiss the appeal;



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- (c) 更改或推翻有關裁斷或裁定，及（如推翻該裁斷或裁定）以上訴法庭認為適當的任何其他裁斷或裁定取代該裁斷或裁定；
  - (d) 將有關事宜發還審裁處處理，並給予上訴法庭認為適當的指示，包括指示審裁處重新進行有關研訊程序，以裁定上訴法庭指明的問題。
- (2) 上訴法庭對根據第 266(2) 條提出的上訴，可 ——
- (a) 確認、更改或推翻上訴所針對的命令；及
  - (b) （如推翻該命令）以它認為適當的任何其他命令取代該命令。
- (3) 如上訴法庭根據第 (1)(c) 或 (2)(a) 或 (b) 款更改某裁斷、裁定或命令或以任何其他裁斷、裁定或命令取代某裁斷、裁定或命令，經更改的該裁斷、裁定或命令或以取代該裁斷、裁定或命令的其他裁斷、裁定或命令（視屬何情況而定）可以是審裁處本有權根據它據以作出該裁斷、裁定或命令的同一條文或根據其他條文而 ——
- (a) （就第 (1)(c) 款的情況而言）就有關研訊程序作出的任何裁斷或裁定（不論較嚴苛或寬鬆）；或
  - (b) （就第 (2)(a) 或 (b) 款的情況而言）就上訴人作出的任何命令（不論較嚴苛或寬鬆）。
- (4) 如上訴法庭應上訴而根據第 267(1)(d) 條將任何事宜發還審裁處處理，除非上訴法庭另有指示，否則處置該事宜的審裁處的成員，可與該上訴所來自的審裁處的成員相同或有所不同。
- (5) 上訴法庭對根據第 266 條提出的上訴，可就訟費作出它認為適當的命令。

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- (c) vary or set aside the finding or determination, and, where the finding or determination is set aside, substitute for the finding or determination any other finding or determination it considers appropriate;
  - (d) remit the matter in question to the Tribunal with the directions it considers appropriate, which may include a direction to the Tribunal to conduct the proceedings in question afresh for the purpose of determining any question specified by the Court of Appeal.
- (2) In an appeal under section 266(2), the Court of Appeal may—
- (a) confirm, vary or set aside the order appealed against; and
  - (b) where the order is set aside, substitute for the order any other order it considers appropriate.
- (3) Where the Court of Appeal varies, or substitutes any other finding, determination or order for, a finding, determination or order under subsection (1)(c) or (2)(a) or (b), the finding, determination or order as varied or the other finding, determination or order substituting for the finding, determination or order (as the case may be) may be—
- (a) in the case of subsection (1)(c), any finding or determination (whether more or less onerous) that the Tribunal had power to make for the purposes of the proceedings in question; or
  - (b) in the case of subsection (2)(a) or (b), any order (whether more or less onerous) that the Tribunal had power to make in respect of the appellant,
- whether or not under the same provision as that under which the finding, determination or order has been made.
- (4) Where on appeal the Court of Appeal remits any matter to the Tribunal under section 267(1)(d), unless the Court of Appeal

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## 268. 上訴不擱置執行

在不損害第 265 條的原則下，除非上訴法庭另有命令，否則根據第 266 條提出上訴或送交上訴許可申請書存檔，本身並不具有擱置執行審裁處的裁斷或裁定或命令（視屬何情況而定）的效力。上訴法庭如命令擱置執行，可在訟費、繳存款項於審裁處或其他方面定出它認為適當的條件，而有關的擱置執行須受該等條件規限。

## 269. 終審法院首席法官訂立規則

終審法院首席法官可訂立規則——

- (a) 對須根據第 257(1)(e) 或 (f) 條提述的命令（不論該命令是根據第 257(1) 條或是根據第 258(1) 條而作出的）繳付的訟費的評定，以及對根據第 260 條判給訟費及對該等訟費的評定作出規定；
- (b) 訂明審裁處依據第 264 條就其命令向原訟法庭發出的通知的方式；
- (c) 規管——
  - (i) 根據第 266 條申請上訴許可的程序及該等申請的聆訊程序；
  - (ii) 根據該條提出的上訴的聆訊程序；
- (d) 規定繳付在規則中就與根據第 252 條提起的研訊程序有關的任何事宜而指明的費用；

otherwise directs, members of the Tribunal disposing of the matter may be the same as, or different from, those of the Tribunal from which the appeal lies.

- (5) In an appeal under section 266, the Court of Appeal may make such order as to costs as it considers appropriate.

## 268. No stay of execution on appeal

Without prejudice to section 265, neither the lodging of an appeal nor the filing of an application for leave to appeal under section 266 by itself operates as a stay of execution of a finding or determination or an order (as the case may be) of the Tribunal unless the Court of Appeal otherwise orders, and any stay of execution may be subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Court of Appeal considers appropriate.

## 269. Rules by Chief Justice

The Chief Justice may make rules—

- (a) providing for the taxation of costs required to be paid under an order referred to in section 257(1)(e) or (f), whether made under section 257(1) or 258(1), and for the award of costs under section 260 and the taxation of those costs;
- (b) prescribing the manner in which the Tribunal is to give notice to the Court of First Instance in respect of orders of the Tribunal pursuant to section 264;
- (c) regulating the procedure for—
  - (i) applying for leave to appeal, and the hearing of applications for leave to appeal, under section 266;
  - (ii) the hearing of appeals under that section;

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- (e) 對本部或附表 9 沒有作出規定而關乎根據第 252 條提起的研訊程序的程序事宜或其他事宜作出規定；
- (f) 就為施行本部或附表 9 發出或送達任何文件（不論實際如何稱述）作出規定；
- (g) 訂明本部規定由或可由終審法院首席法官藉規則訂明的事宜。

- (d) requiring the payment of the fees specified in the rules for any matter relating to the proceedings instituted under section 252;
- (e) providing for matters of procedure or other matters relating to the proceedings instituted under section 252, which are not provided for in this Part or in Schedule 9;
- (f) providing for the issue or service of any document (however described) for the purposes of this Part or Schedule 9;
- (g) prescribing any matter which this Part provides is, or may be, prescribed by rules made by the Chief Justice.

## 第 4 分部 —— 內幕交易

## Division 4—Insider dealing

### 270. 內幕交易

- (1) 當以下情況出現時，與某上市法團有關的內幕交易即告發生 ——
  - (a) 與該法團有關連的人，掌握他知道屬關於該法團的內幕消息的消息，並 ——（由 2012 年第 9 號第 14 條修訂）
    - (i) 進行該法團（或該法團的有連繫法團）的上市證券或其衍生工具的交易；或
    - (ii) 在知道或有合理理由相信另一人會進行該等證券或工具的交易的情況下，慫恿或促致該另一人進行該等交易；
  - (b) 正意圖或曾意圖提出收購該法團的要約的人（不論是否聯同別人提出），在知道該項收購意圖的消息或已打消該意圖的消息是關於該法團的內幕消息的情況下 ——（由 2012 年第 9 號第 14 條修訂）

### 270. Insider dealing

- (1) Insider dealing in relation to a listed corporation takes place—
  - (a) when a person connected with the corporation and having information which he knows is inside information in relation to the corporation— (*Amended 9 of 2012 s. 14*)
    - (i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or
    - (ii) counsels or procures another person to deal in such listed securities or derivatives, knowing or having reasonable cause to believe that the other person will deal in them;
  - (b) when a person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for the corporation and who

- (i) 為該項收購以外的目的，進行該法團（或該法團的有連繫法團）的上市證券或其衍生工具的交易；或
- (ii) 為該項收購以外的目的，慫使或促致另一人進行該等證券或工具的交易；
- (c) 與該法團有關連的人，直接或間接向另一人披露任何消息，而他知道該消息是關於該法團的內幕消息，並知道或有合理理由相信該另一人會利用該消息而進行該法團（或該法團的有連繫法團）的上市證券或其衍生工具的交易，或慫使或促致他人進行該等交易；
- (d) 正意圖或曾意圖提出收購該法團的要約的人（不論是否聯同別人提出），在知道該項收購意圖的消息或已打消該意圖的消息是關於該法團的內幕消息的情況下，直接或間接向另一人披露該消息，並知道或有合理理由相信該另一人會利用該消息而進行該法團（或該法團的有連繫法團）的上市證券或其衍生工具的交易，或慫使或促致他人進行該等交易；
- (e) 任何人知道另一人與該法團有關連，並知道或有合理理由相信該另一人因該項關連而掌握關於該法團的內幕消息，而他在直接或間接從該另一人收到他知道屬關於該法團的內幕消息的消息的情況下——（由 2012 年第 9 號第 14 條修訂）
  - (i) 進行該法團（或該法團的有連繫法團）的上市證券或其衍生工具的交易；或
  - (ii) 慫使或促致他人進行該等證券或工具的交易；或
- (f) 任何人知道或有合理理由相信另一人正意圖提出收購該法團的要約，或已打消該意圖，並直接或間接從該另一人收到該另一人的上述意圖或打消該意圖的消息，而在知道該消息是關於該法團的內幕消息的情況下——（由 2012 年第 9 號第 14 條修訂）

knows that the information that the offer is contemplated or is no longer contemplated is inside information in relation to the corporation— (*Amended 9 of 2012 s. 14*)

- (i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, otherwise than for the purpose of the take-over; or
- (ii) counsels or procures another person to deal in such listed securities or derivatives, otherwise than for the purpose of the take-over;
- (c) when a person connected with the corporation and knowing that any information is inside information in relation to the corporation, discloses the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives;
- (d) when a person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for the corporation and who knows that the information that the offer is contemplated or is no longer contemplated is inside information in relation to the corporation, discloses the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or

- (i) 進行該法團 (或該法團的有連繫法團) 的上市證券或其衍生工具的交易；或
  - (ii) 慫使或促致他人進行該等證券或工具的交易。
- (2) 明知而在第 (1) 款描述的情況下掌握關於某上市法團的內幕消息的人，如作出以下作為，則與該法團有關的內幕交易亦告發生 —— (由 2012 年第 9 號第 14 條修訂)
- (a) 知道或有合理理由相信另一人會於香港以外地方在認可證券市場以外的證券市場進行該法團 (或該法團的有連繫法團) 的上市證券或其衍生工具的交易，而慫使或促致該另一人進行該等交易；或
  - (b) 知道或有合理理由相信另一人或其他人會利用該內幕消息，於香港以外地方在認可證券市場以外的證券市場進行或慫使或促致別人如此進行該法團 (或該法團的有連繫法團) 的上市證券或其衍生工具的交易，而將該內幕消息披露予該另一人。
- (由 2012 年第 9 號第 14 條修訂)

- their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives;
- (e) when a person who has information which he knows is inside information in relation to the corporation and which he received, directly or indirectly, from a person whom he knows is connected with the corporation and whom he knows or has reasonable cause to believe held the information as a result of being connected with the corporation— (*Amended 9 of 2012 s. 14*)
- (i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or
  - (ii) counsels or procures another person to deal in such listed securities or derivatives; or
- (f) when a person having received, directly or indirectly, from a person whom he knows or has reasonable cause to believe is contemplating or is no longer contemplating making a take-over offer for the corporation, information to that effect which he knows is inside information in relation to the corporation— (*Amended 9 of 2012 s. 14*)
- (i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or
  - (ii) counsels or procures another person to deal in such listed securities or derivatives.
- (2) Insider dealing in relation to a listed corporation also takes place when a person who knowingly has inside information in relation to the corporation in any of the circumstances described in subsection (1)— (*Amended 9 of 2012 s. 14*)



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**271. 內幕交易 —— 某些人不得視為曾從事市場失當行為**

- (1) 凡任何人證明以下情況，則不得以透過他進行或慫使或促致另一人進行上市證券或衍生工具的交易而發生的內幕交易為理由，而視他為曾從事市場失當行為 ——
- (a) 他進行或慫使或促致該另一人進行有關的上市證券或衍生工具的交易 (視屬何情況而定) 的唯一目的，是取得作為某法團的董事或未來董事的資格所需的股份；
- (b) 他在真誠地履行有關的上市證券或衍生工具的包銷協議過程中進行或慫使或促致該另一人進行有關的上市證券或衍生工具的交易 (視屬何情況而定)；或

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

*(Amended 9 of 2012 s. 14)*

**271. Insider dealing—certain persons not to be regarded as having engaged in market misconduct**

- (1) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question (as the case may be)—
- (a) for the sole purpose of acquiring shares required for his being qualified as a director or intending director of a corporation;

- (c) 他在真誠地執行其清盤人、接管人或破產管理人的職能的過程中進行或慫使或促致該另一人進行有關的上市證券或衍生工具的交易（視屬何情況而定）。
- (2) 凡任何法團證明以下情況，則不得以透過該法團進行或慫使或促致另一人進行上市證券或衍生工具的交易而發生的內幕交易為理由，而視該法團為曾從事市場失當行為——
- (a) （就有關的上市證券或衍生工具是另一法團的上市證券或另一法團的上市證券的衍生工具的情況而言）雖然有一名或多於一名屬該法團的董事或僱員的人掌握關於該另一法團的內幕消息，但決定進行或慫使或促致該另一人進行該等上市證券或衍生工具的交易（視屬何情況而定）的每一個人，直至該法團進行或慫使或促致該另一人進行該等上市證券或衍生工具的交易（視屬何情況而定）之時（包括該法團進行或慫使或促致該另一人進行該等上市證券或衍生工具的交易（視屬何情況而定）的一刻），並沒有掌握該內幕消息；
- (b) 當時已有安排，以確保——
- (i) 直至該法團進行或慫使或促致該另一人進行該等上市證券或衍生工具的交易（視屬何情況而定）之時（包括該法團進行或慫使或促致該另一人進行該等上市證券或衍生工具的交易（視屬何情況而定）的一刻），該內幕消息不會傳達予作出該決定的人；及
- (ii) 沒有任何掌握該內幕消息的該法團的董事或僱員在該法團進行或慫使或促致該另一人進行該等上市證券或衍生工具的交易（視屬何情況而定）之前任何時間，向作出該決定的人提供關於該決定的意見；及
- (c) 該內幕消息事實上沒有如此傳達予作出該決定的人，亦沒有任何掌握該內幕消息的該法團的董事或僱員

- (b) in the performance in good faith of an underwriting agreement for the listed securities or derivatives in question; or
- (c) in the performance in good faith of his functions as a liquidator, receiver or trustee in bankruptcy.
- (2) A corporation shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through its dealing in or counselling or procuring another person to deal in listed securities or derivatives if it establishes that—
- (a) although one or more of its directors or employees had the inside information in relation to the corporation the listed securities of which were, or the derivatives of the listed securities of which were, the listed securities or derivatives in question, each person who took the decision for it to deal in or counsel or procure the other person to deal in such listed securities or derivatives (as the case may be) did not have the inside information up to (and including) the time when it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be);
- (b) arrangements then existed to secure that—
- (i) the inside information was, up to (and including) the time when it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be), not communicated to any person who took the decision; and
- (ii) none of its directors or employees who had the inside information gave advice concerning the decision to any person who took the decision at any time before it dealt in or counselled or

如此向作出該決定的人提供意見。(由 2012 年第 9 號第 14 條修訂)

- (3) 凡任何人證明以下情況，則不得以透過他進行或慫使或促致另一人進行上市證券或衍生工具的交易或透過他披露消息而發生的內幕交易為理由，而視他為曾從事市場失當行為：他進行或慫使或促致該另一人進行有關的上市證券或衍生工具的交易或披露有關的消息（視屬何情況而定）的目的，並非在於（亦並不包括）利用內幕消息為自己或他人獲得或增加利潤或避免或減少損失。(由 2012 年第 9 號第 14 條修訂)
- (4) 凡任何人證明以下情況，則不得以透過他進行或慫使或促致另一人進行上市證券或衍生工具的交易而發生的內幕交易為理由，而視他為曾從事市場失當行為——
- (a) 他是以代理人身分進行或慫使或促致該另一人進行有關的上市證券或衍生工具的交易（視屬何情況而定）；
- (b) 他沒有揀選該等上市證券或衍生工具，亦沒有就揀選該等上市證券或衍生工具提供意見；及
- (c) （如他以某人的代理人身分行事）他不知道——
- (i) （就有關的上市證券或衍生工具是某法團的上市證券或某法團的上市證券的衍生工具的情況而言）該人是與該法團有關連的人；或
- (ii) 該人掌握有關的內幕消息。(由 2012 年第 9 號第 14 條修訂)
- (5) 凡任何人證明以下情況，則不得以透過他進行或慫使或促致另一人進行上市證券或衍生工具的交易而發生的內幕交易為理由，而視他為曾從事市場失當行為——
- (a) 在他進行或慫使或促致該另一人進行有關的上市證券或衍生工具的交易時，有關的交易無須在認可證券市場記錄，亦無須根據認可交易所規章通知該交易所；及

procured the other person to deal in such listed securities or derivatives (as the case may be); and

- (c) the inside information was in fact not so communicated to any person who took the decision and none of its directors or employees who had the inside information in fact so gave the advice to any person who took the decision. (Amended 9 of 2012 s. 14)
- (3) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives or his disclosure of information if he establishes that the purpose for which he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question or disclosed the information in question (as the case may be) was not, or, where there was more than one purpose, the purposes for which he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question or disclosed the information in question (as the case may be) did not include, the purpose of securing or increasing a profit or avoiding or reducing a loss, whether for himself or another, by using inside information. (Amended 9 of 2012 s. 14)
- (4) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that—
- (a) he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question (as the case may be) as agent;
- (b) he did not select or advise on the selection of such listed securities or derivatives; and

- (b) (i) 就有關的內幕交易是透過他進行上市證券或衍生工具的交易而發生的情況而言 ——
- (A) 他與有關的交易的另一方直接與對方訂立該宗交易；及
- (B) 在他訂立該宗交易時，該宗交易的另一方知道或理應知道有關的內幕消息；或
- (ii) 就有關的內幕交易是透過他慫使或促致另一人進行上市證券或衍生工具的交易而發生的情況而言 ——
- (A) 他慫使或促致有關的交易的另一方直接與他訂立該宗交易；及
- (B) 在他慫使或促致該另一方訂立該宗交易時，該另一方知道或理應知道有關的內幕消息。 (由 2012 年第 9 號第 14 條修訂)
- (6) 凡任何人證明以下情況，則不得以透過他進行上市證券或衍生工具的交易而發生的內幕交易為理由，而視他為曾從事市場失當行為 ——
- (a) 他並非作為慫使或促致有關的交易的另一方進行上市證券或衍生工具的交易的人而訂立該宗交易；及
- (b) (就有關的上市證券或衍生工具是某法團的上市證券或某法團的上市證券的衍生工具的情況而言) 在他訂立該宗交易時，該宗交易的另一方知道或理應知道他是與該法團有關連的人。
- (7) 凡任何人證明以下情況，則不得以透過他慫使或促致另一人進行上市證券或衍生工具的交易而發生的內幕交易為理由，而視他為曾從事市場失當行為 ——
- (a) 該另一人沒有慫使或促致有關的交易的另一方進行上市證券或其衍生工具的交易；及
- (b) (就有關的上市證券或衍生工具是某法團的上市證券或某法團的上市證券的衍生工具的情況而言) 在他慫使或促致該另一人進行有關的上市證券或衍生工

- (c) he—
- (i) did not know that the person for whom he acted as agent was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives; or
- (ii) did not know that the person for whom he acted as agent had the inside information in question. (Amended 9 of 2012 s. 14)
- (5) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that—
- (a) at the time when he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question, the dealing in question was not required to be recorded on a recognized stock market or to be notified to a recognized exchange company under its rules; and
- (b) (i) where the insider dealing took place through his dealing in listed securities or derivatives—
- (A) he and the other party to the dealing in question entered into the dealing directly with each other; and
- (B) at the time when he entered into the dealing, the other party to the dealing knew, or ought reasonably to have known, of the inside information in question; or
- (ii) where the insider dealing took place through his counselling or procuring another person to deal in listed securities or derivatives—



- 具的交易時，有關的交易的另一方知道或理應知道該另一人是與該法團有關連的人。
- (8) 凡任何人證明以下情況，則不得以透過他進行或慫使或促致另一人進行上市證券或衍生工具的交易而發生的內幕交易為理由，而視他為曾從事市場失當行為——
- (a) 他——
- (i) 是就任何正在考慮中或屬商議標的的上市證券交易或上市證券衍生工具交易（不論該宗交易是由他本人或另一人進行）而行事的，或是在一連串該等交易的過程中行事的；及
- (ii) 是為利便該宗交易或一連串該等交易的完成而行事的；及
- (b) 有關的內幕消息是由於他牽涉入該宗交易或一連串該等交易而直接產生的市場消息。（由 2012 年第 9 號第 14 條修訂）
- (9) 凡任何人證明有關的交易是一項市場合約，則不得以透過他進行或慫使或促致另一人進行上市證券或衍生工具的交易而發生的內幕交易為理由，而視他為曾從事市場失當行為。
- (10) 就第 (8) 款而言，**市場消息** (market information) 指包含以下一項或多於一項事實的消息或資料——
- (a) 曾有或將會有某類上市證券或上市證券衍生工具的交易，或有任何該等交易正在考慮中或屬商議標的；
- (b) 未曾有或將不會有某類上市證券或上市證券衍生工具的交易；
- (c) 現時或將會交易的上市證券或上市證券衍生工具的數量，或正在考慮中或屬商議標的的交易涉及的上市證券或上市證券衍生工具的數量；
- (d) 上市證券或上市證券衍生工具曾經或將會進行交易的價格（或價格範圍），或正在考慮中或屬商議標的

- (A) he counselled or procured the other party to the dealing in question to enter into the dealing directly with him; and
- (B) at the time when he counselled or procured the other party to enter into the dealing, the other party knew, or ought reasonably to have known, of the inside information in question.  
(Amended 9 of 2012 s. 14)
- (6) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in listed securities or derivatives if he establishes that—
- (a) he entered into the dealing in question, otherwise than as a person who has counselled or procured the other party to the dealing to deal in listed securities or their derivatives; and
- (b) at the time when he entered into the dealing, the other party to the dealing knew, or ought reasonably to have known, that he was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, the listed securities or derivatives in question.
- (7) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his counselling or procuring another person to deal in listed securities or derivatives if he establishes that—
- (a) the other person did not counsel or procure the other party to the dealing in question to deal in listed securities or their derivatives; and
- (b) at the time when he counselled or procured the other person to deal in the listed securities or derivatives in question, the other party to the dealing in question



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的交易涉及的上市證券或上市證券衍生工具所可能  
交易的價格 ( 或價格範圍 ) ；

- (e) 以任何身分牽涉或可能牽涉入上市證券或上市證券  
衍生工具的任何交易的人的身分。

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knew, or ought reasonably to have known, that the other  
person was a person connected with the corporation the  
listed securities of which were, or the derivatives of the  
listed securities of which were, such listed securities or  
derivatives.

- (8) A person shall not be regarded as having engaged in market  
misconduct by reason of an insider dealing taking place  
through his dealing in or counselling or procuring another  
person to deal in listed securities or derivatives if he  
establishes that—
- (a) he acted—
- (i) in connection with any dealing in listed securities  
or their derivatives (whether by himself or another  
person) which was under consideration or was the  
subject of negotiation, or in the course of a series  
of such dealings; and
- (ii) with a view to facilitating the accomplishment of  
the dealing or the series of dealings; and
- (b) the inside information in question was market  
information arising directly out of his involvement in the  
dealing or the series of dealings. (*Amended 9 of 2012*  
*s. 14*)
- (9) A person shall not be regarded as having engaged in market  
misconduct by reason of an insider dealing taking place  
through his dealing in or counselling or procuring another  
person to deal in listed securities or derivatives if he  
establishes that the dealing in question is a market contract.
- (10) For the purposes of subsection (8), **market information** (市  
場消息) means information consisting of one or more of the  
following facts—
- (a) that there has been or is to be any dealing in listed  
securities or derivatives of listed securities of a particular

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**272. 內幕交易 —— 某些受託人及遺產代理人不得視為曾從事市場失當行為**

凡任何屬受託人或遺產代理人的人證明以下情況，則不得以透過他進行或慫使或促致另一人進行上市證券或衍生工具的交易而發生的內幕交易為理由，而視他為曾從事市場失當行為 ——

- (a) 他當時是依照真誠地得自另一人的意見而行事的；
- (b) 他當時覺得該另一人是徵詢上述意見的適當對象；及
- (c) 他當時並不覺得假使該另一人進行有關的上市證券或衍生工具的交易，便會發生內幕交易。

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

**272. Insider dealing—certain trustees and personal representatives not to be regarded as having engaged in market misconduct**

A person who is a trustee or personal representative shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that—

- (a) he acted on advice obtained in good faith from another person;
- (b) that other person appeared to him to be an appropriate person from whom to seek the advice; and

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Cap. 571**273. 內幕交易 —— 某些行使認購或取得證券或衍生工具的權利的人不得視為曾從事市場失當行為**

凡任何人證明以下情況，則不得以透過他進行上市證券或衍生工具的交易而發生的內幕交易為理由，而視他為曾從事市場失當行為 ——

- (a) 他藉着行使權利以認購或以其他方式取得該等上市證券或衍生工具而進行該等上市證券或衍生工具的交易；及
- (b) (就該等上市證券或衍生工具是某法團的上市證券或某法團的上市證券的衍生工具的情況而言) 在他知悉關於該法團的內幕消息之前，他已獲授予該權利或該權利已自他所持有的證券或其衍生工具衍生。  
(由 2012 年第 9 號第 14 條修訂)

**第 5 分部 —— 其他市場失當行為****274. 虛假交易**

- (1) 如任何人意圖使某事情具有或相當可能具有造成以下表象的效果，或罔顧某事情是否具有或相當可能具有造成以下表象的效果，而在香港或其他地方作出或致使作出該事情，則虛假交易即告發生 ——
  - (a) 在有關認可市場或透過使用認可自動化交易服務交易的證券或期貨合約交投活躍的虛假或具誤導性的表象；或

- (c) it did not appear to him that, had that other person dealt in the listed securities or derivatives in question, an insider dealing would take place.

**273. Insider dealing—certain persons exercising right to subscribe for or acquire securities or derivatives not to be regarded as having engaged in market misconduct**

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

- (a) he dealt in the listed securities or derivatives in question by way of his exercise of a right to subscribe for or otherwise acquire such listed securities or derivatives; and
- (b) the right was granted to him or was derived from securities or their derivatives that were held by him before he became aware of any inside information in relation to the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives. (Amended 9 of 2012 s. 14)

**Division 5—Other market misconduct****274. False trading**

- (1) False trading takes place when, in Hong Kong or elsewhere, a person does anything or causes anything to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance—
  - (a) of active trading in securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services; or

- (b) 在有關認可市場或透過使用認可自動化交易服務交易的證券或期貨合約在行情或買賣價格方面的虛假或具誤導性的表象。
- (2) 如任何人意圖使某事情具有或相當可能具有造成以下表象的效果，或罔顧某事情是否具有或相當可能具有造成以下表象的效果，而在香港作出或致使作出該事情，則虛假交易即告發生——
- (a) 在有關境外市場交易的證券或期貨合約交投活躍的虛假或具誤導性的表象；或
- (b) 在有關境外市場交易的證券或期貨合約在行情或買賣價格方面的虛假或具誤導性的表象。
- (3) 如任何人意圖使一宗或多於一宗交易（不論其中是否有證券交易或期貨合約交易）具有或相當可能具有有關效果，或罔顧該宗或該等交易是否具有或相當可能具有有關效果，而在香港或其他地方直接或間接參與、牽涉入或履行該宗或該等交易，則虛假交易即告發生。在本款中，**有關效果**指為在有關認可市場或透過使用認可自動化交易服務交易的證券或期貨合約，設定非真實的買賣價格或維持非真實的買賣價格水平（不論該水平先前是否非真實的）。
- (4) 如任何人意圖使一宗或多於一宗交易（不論其中是否有證券交易或期貨合約交易）具有或相當可能具有有關效果，或罔顧該宗或該等交易是否具有或相當可能具有有關效果，而在香港直接或間接參與、牽涉入或履行該宗或該等交易，則虛假交易即告發生。在本款中，**有關效果**指為在有關境外市場交易的證券或期貨合約，設定非真實的買賣價格或維持非真實的買賣價格水平（不論該水平先前是否非真實的）。
- (5) 在不局限構成第 (1) 或 (2) 款所指的虛假交易的行為的一般性質的原則下，如任何人——

- (b) with respect to the market for, or the price for dealings in, securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services.
- (2) False trading takes place when, in Hong Kong, a person does anything or causes anything to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance—
- (a) of active trading in securities or futures contracts traded on a relevant overseas market; or
- (b) with respect to the market for, or the price for dealings in, securities or futures contracts traded on a relevant overseas market.
- (3) False trading takes place when, in Hong Kong or elsewhere, a person takes part in, is concerned in, or carries out, directly or indirectly, one or more transactions (whether or not any of them is a dealing in securities or futures contracts), with the intention that, or being reckless as to whether, it or they has or have, or is or are likely to have, the effect of creating an artificial price, or maintaining at a level that is artificial (whether or not it was previously artificial) a price, for dealings in securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services.
- (4) False trading takes place when, in Hong Kong, a person takes part in, is concerned in, or carries out, directly or indirectly, one or more transactions (whether or not any of them is a dealing in securities or futures contracts), with the intention that, or being reckless as to whether, it or they has or have, or is or are likely to have, the effect of creating an artificial price, or maintaining at a level that is artificial (whether or not it was previously artificial) a price, for dealings in

- (a) 直接或間接訂立或履行證券買賣交易或看來是證券買賣交易的交易，而該宗交易並不涉及該等證券的實益擁有權的轉變；
- (b) 要約以某個價格售賣證券，而該價格與該人已要約或擬要約購買同一數目或數目大致相同的證券的買入價大致相同，或與就該人所知一名該人的有聯繫者已要約或擬要約購買同一數目或數目大致相同的證券的買入價大致相同；或
- (c) 要約以某個價格購買證券，而該價格與該人已要約或擬要約售賣同一數目或數目大致相同的證券的售出價大致相同，或與就該人所知一名該人的有聯繫者已要約或擬要約售賣同一數目或數目大致相同的證券的售出價大致相同，

則除非有關交易屬場外交易，就第 (1) 及 (2) 款而言，該人視為意圖使某事情具有或相當可能具有造成以下表象的效果，或罔顧某事情是否具有或相當可能具有造成以下表象的效果，而作出或致使作出該事情——

- (i) (就在有關認可市場或透過使用認可自動化交易服務交易的證券而言) 該等證券交投活躍的虛假或具誤導性的表象，或該等證券在行情或買賣價格方面的虛假或具誤導性的表象；或
  - (ii) (就在有關境外市場交易的證券而言) 該等證券交投活躍的虛假或具誤導性的表象，或該等證券在行情或買賣價格方面的虛假或具誤導性的表象。
- (6) 如作出第 (5)(a)、(b) 或 (c) 款提述的作為的人證明他作出該作為的目的，並非在於 (亦並不包括) 造成第 (1) 或 (2) 款 (視屬何情況而定) 所指的證券交投活躍或在行情或買賣價格方面的虛假或具誤導性的表象，則不得以透過該作為而發生的虛假交易為理由，而視該人為曾從事市場失當行為。
- (7) 在第 (5) 款中，**場外交易** (off-market transaction) 指符合以下說明的交易——

securities or futures contracts traded on a relevant overseas market.

- (5) Without limiting the general nature of the conduct which constitutes false trading under subsection (1) or (2), where a person—
  - (a) enters into or carries out, directly or indirectly, any transaction of sale or purchase, or any transaction which purports to be a transaction of sale or purchase, of securities that does not involve a change in the beneficial ownership of them;
  - (b) offers to sell securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to purchase the same or substantially the same number of them; or
  - (c) offers to purchase securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to sell the same or substantially the same number of them,

then, unless the transaction in question is an off-market transaction, the person shall, for the purposes of subsections (1) and (2), be regarded as doing something or causing something to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance——

- (i) where the securities are traded on a relevant recognized market or by means of authorized automated trading services, of active trading in securities so traded or with respect to the market for, or the price for dealings in, securities so traded; or



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- (a) (就在有關認可市場交易的證券而言)無須在該有關認可證券市場記錄,亦無須根據營辦該認可證券市場的人的規章而通知該人;
  - (b) (就透過使用認可自動化交易服務交易的證券而言)無須透過認可自動化交易服務記錄,亦無須根據營辦該認可自動化交易服務的人的規章而通知該人;或
  - (c) (就在有關境外市場交易的證券而言)無須在該有關境外市場記錄,亦無須根據營辦該有關境外市場的人的規章而通知該人。
- (8) 在本條中 ——
- (a) 提述證券買賣交易之處,包括提述買賣證券的要約,及以明示或隱含方式邀請他人要約買賣證券的邀請(不論實際如何稱述);及
  - (b) 提述訂立或履行買賣交易之處,如屬(a)段提述的要約或邀請的情況,須解釋為作出該項要約或邀請(視屬何情況而定)。

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- (ii) where the securities are traded on a relevant overseas market, of active trading in securities so traded or with respect to the market for, or the price for dealings in, securities so traded.
- (6) A person shall not be regarded as having engaged in market misconduct by reason of false trading taking place through the commission of an act referred to in subsection (5)(a), (b) or (c) if he establishes that the purpose for which he committed the act was not, or, where there was more than one purpose, the purposes for which he committed the act did not include, the purpose of creating a false or misleading appearance of active trading in securities, or with respect to the market for, or the price for dealings in, securities, referred to in subsection (1) or (2) (as the case may be).
- (7) In subsection (5), **off-market transaction** (場外交易) means a transaction which—
- (a) in the case of securities traded on a relevant recognized market, is not required to be recorded on the relevant recognized market, or to be notified, under the rules of the person by whom the relevant recognized market is operated, to such person;
  - (b) in the case of securities traded by means of authorized automated trading services, is not required to be recorded by means of authorized automated trading services, or to be notified, under the rules of the person by whom the authorized automated trading services are operated, to such person; or
  - (c) in the case of securities traded on a relevant overseas market, is not required to be recorded on the relevant overseas market, or to be notified, under the rules of the person by whom the relevant overseas market is operated, to such person.

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## 275. 操控價格

(1) 如任何人 ——

- (a) 在香港或其他地方直接或間接訂立或履行任何當中不涉及實益擁有權轉變的證券買賣交易，而該宗交易具有以下效果：維持、提高、降低或穩定在有關認可市場或透過使用認可自動化交易服務交易的證券的價格，或引致該等證券的價格波動；或
- (b) 意圖使任何虛構或非真實的交易或手段具有以下效果，或罔顧該宗交易或該手段是否具有以下效果，而在香港或其他地方直接或間接訂立或履行該宗交易或採取該手段：維持、提高、降低或穩定在有關認可市場或透過使用認可自動化交易服務交易的證券的價格或期貨合約交易的價格，或引致該等證券的價格或期貨合約交易的價格波動，

則操控價格的行為即告發生。

(2) 如任何人 ——

- (a) 在香港直接或間接訂立或履行任何當中不涉及實益擁有權轉變的證券買賣交易，而該宗交易具有以下效果：維持、提高、降低或穩定在有關境外市場交易的證券的價格，或引致該等證券的價格波動；或

(8) In this section—

- (a) a reference to a transaction of sale or purchase, in relation to securities, includes an offer to sell or purchase securities and an invitation (however expressed) that expressly or impliedly invites a person to offer to sell or purchase securities; and
- (b) a reference to entering into or carrying out a transaction of sale or purchase shall, in the case of an offer or an invitation referred to in paragraph (a), be construed as a reference to making the offer or the invitation (as the case may be).

## 275. Price rigging

(1) Price rigging takes place when, in Hong Kong or elsewhere, a person—

- (a) enters into or carries out, directly or indirectly, any transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, which has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities traded on a relevant recognized market or by means of authorized automated trading services; or
- (b) enters into or carries out, directly or indirectly, any fictitious or artificial transaction or device, with the intention that, or being reckless as to whether, it has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities, or the price for dealings in futures contracts, that are traded on a relevant recognized market or by means of authorized automated trading services.

(2) Price rigging takes place when, in Hong Kong, a person—

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- (b) 意圖使任何虛構或非真實的交易或手段具有以下效果，或罔顧該宗交易或該手段是否具有以下效果，而在香港直接或間接訂立或履行該宗交易或採取該手段：維持、提高、降低或穩定在有關境外市場交易的證券的價格或期貨合約交易的價格，或引致該等證券的價格或期貨合約交易的價格波動，則操控價格的行為即告發生。
- (3) 就第 (1)(b) 及 (2)(b) 款而言，一宗交易的各方是或曾是打算該宗交易按其條款具有效力此一事實，並非斷定該宗交易是否不屬虛構或非真實的交易的決定性因素。
- (4) 如任何人證明買賣有關證券的目的，並非在於（亦並不包括）就證券的價格造成虛假或具誤導性的表象，則不得以透過第 (1)(a) 或 (2)(a) 款提述的證券買賣交易而發生的操控價格的行為為理由，而視他為曾從事市場失當行為。
- (5) 在本條中——
- (a) 提述證券買賣交易之處，包括提述買賣證券的要約，及以明示或隱含方式邀請他人要約買賣證券的邀請（不論實際如何稱述）；及
- (b) 提述訂立或履行買賣交易之處，如屬 (a) 段提述的要約或邀請的情況，須解釋為作出該項要約或邀請（視屬何情況而定）。

- (a) enters into or carries out, directly or indirectly, any transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, which has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities traded on a relevant overseas market; or
- (b) enters into or carries out, directly or indirectly, any fictitious or artificial transaction or device, with the intention that, or being reckless as to whether, it has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities, or the price for dealings in futures contracts, that are traded on a relevant overseas market.
- (3) For the purposes of subsections (1)(b) and (2)(b), the fact that a transaction is, or at any time was, intended to have effect according to its terms is not conclusive in determining whether the transaction is, or was, not fictitious or artificial.
- (4) A person shall not be regarded as having engaged in market misconduct by reason of price rigging taking place through any transaction of sale or purchase of securities referred to in subsection (1)(a) or (2)(a) if he establishes that the purpose for which the securities were sold or purchased was not, or, where there was more than one purpose, the purposes for which the securities were sold or purchased did not include, the purpose of creating a false or misleading appearance with respect to the price of securities.
- (5) In this section—
- (a) a reference to a transaction of sale or purchase, in relation to securities, includes an offer to sell or purchase securities and an invitation (however expressed) that expressly or impliedly invites a person to offer to sell or purchase securities; and

**276. 披露關於受禁交易的資料**

- (1) 如任何人披露、傳遞或散發任何資料，或授權披露、傳遞或散發任何資料，或牽涉入披露、傳遞或散發任何資料，而該資料的大意是某法團證券的價格或期貨合約交易的價格（不論該等證券或期貨合約是在有關認可市場或是透過使用認可自動化交易服務交易的），將會因或相當可能會因就該法團或其有連繫法團的證券或就該等期貨合約（視屬何情況而定）所進行的受禁交易，而得以維持、提高、降低或穩定，而該人或其有聯繫者——
- (a) 已直接或間接訂立或履行該受禁交易；或
  - (b) 已由於披露、傳遞或散發上述資料而直接或間接收取利益，或預期會由於披露、傳遞或散發上述資料而直接或間接收取利益，
- 則披露關於受禁交易的資料的行為，即告發生。
- (2) 凡任何人證明以下情況，則不得基於該人或其有聯繫者直接或間接收取第(1)(b)款提述的利益，或預期會直接或間接收取第(1)(b)款提述的利益，而以披露關於受禁交易的資料為理由，視該人為曾從事市場失當行為——
- (a) 該人或其有聯繫者（視屬何情況而定）收取或預期會收取的利益，並非從直接或間接訂立或履行有關的受禁交易的另一人或從該另一人的有聯繫者收取的；或
  - (b) 該人或其有聯繫者（視屬何情況而定）收取或預期會收取的利益，是從直接或間接訂立或履行有關的受禁交易的另一人或從該另一人的有聯繫者收取的，但直至該資料被披露、傳遞或散發之時（包括該資

- (b) a reference to entering into or carrying out a transaction of sale or purchase shall, in the case of an offer or an invitation referred to in paragraph (a), be construed as a reference to making the offer or the invitation (as the case may be).

**276. Disclosure of information about prohibited transactions**

- (1) Disclosure of information about prohibited transactions takes place when a person discloses, circulates or disseminates, or authorizes or is concerned in the disclosure, circulation or dissemination of, information to the effect that the price of securities of a corporation, or the price for dealings in futures contracts, that are traded on a relevant recognized market or by means of authorized automated trading services will be maintained, increased, reduced or stabilized, or is likely to be maintained, increased, reduced or stabilized, because of a prohibited transaction relating to securities of either the corporation or a related corporation of the corporation or to the futures contracts (as the case may be), if he, or an associate of his—
- (a) has entered into or carried out, directly or indirectly, the prohibited transaction; or
  - (b) has received, or expects to receive, directly or indirectly, a benefit as a result of the disclosure, circulation or dissemination of the information.
- (2) A person shall not be regarded as having engaged in market misconduct by reason of disclosure of information about prohibited transactions on the basis that he, or an associate of his, received, or expected to receive, directly or indirectly, a benefit referred to in subsection (1)(b), if he establishes that—
- (a) the benefit which he or the associate of his (as the case may be) received, or expected to receive, was not from a person who has entered into or carried out, directly or

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料被披露、傳遞或散發的一刻)，該人或其有聯繫者（視屬何情況而定）是以真誠行事的。

(3) 在本條中 ——

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

## 277. 披露虛假或具誤導性的資料以誘使進行交易

(1) 凡任何資料相當可能會 ——

- (a) 誘使他人在香港認購證券或進行期貨合約交易；
- (b) 誘使他人在香港售賣或購買證券；或
- (c) 在香港維持、提高、降低或穩定證券的價格或期貨合約交易的價格，

如任何人在以下情況下在香港或其他地方披露、傳遞或散發該資料，或授權披露、傳遞或散發該資料，或牽涉入披露、傳遞或散發該資料，則披露虛假或具誤導性的資料以誘使進行交易的行為即告發生 ——

- (i) 該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性；及

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indirectly, the prohibited transaction in question, or an associate of such person; or

- (b) the benefit which he or the associate of his (as the case may be) received, or expected to receive, was from a person who has entered into or carried out, directly or indirectly, the prohibited transaction in question, or an associate of such person, but up to (and including) the time of the disclosure, circulation or dissemination of the information he has acted in good faith.

(3) In this section—

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

## 277. Disclosure of false or misleading information inducing transactions

(1) Disclosure of false or misleading information inducing transactions takes place when, in Hong Kong or elsewhere, a person discloses, circulates or disseminates, or authorizes or is concerned in the disclosure, circulation or dissemination of, information that is likely—

- (a) to induce another person to subscribe for securities, or deal in futures contracts, in Hong Kong;
- (b) to induce the sale or purchase in Hong Kong of securities by another person; or
- (c) to maintain, increase, reduce or stabilize the price of securities, or the price for dealings in futures contracts, in Hong Kong,



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- (ii) 該人知道該資料屬第 (i) 段所述的資料，或罔顧該資料是否屬第 (i) 段所述的資料，或在該資料是否屬第 (i) 段所述的資料方面有疏忽。
- (2) 在以下情況下，不得以披露虛假或具誤導性的資料以誘使進行交易為理由，而視某人為曾從事市場失當行為：該項披露只因該資料的發出或複製而發生，而該人證明——
- (a) 該資料的發出或複製是在某業務（不論是否由他經營）的日常運作過程中發生的，而該業務的主要目的，是發出或複製其他人提供的材料；
- (b) 該資料的內容（不論是全部或其中任何部分內容）——
- (i) （如該業務是由他經營）並非由他本人或由他的任何高級人員、僱員或代理人設定；或
- (ii) （如該業務不是由他經營）並非由他本人設定；
- (c) 為了該項發出或複製——
- (i) （如該業務是由他經營）他本人或他的任何高級人員、僱員或代理人；或
- (ii) （如該業務不是由他經營）他本人，並無揀選、增補、修改或以其他方式控制該資料的內容；及
- (d) 在該資料發出或複製時，他不知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性。
- (3) 在以下情況下，不得以披露虛假或具誤導性的資料以誘使進行交易為理由，而視某人為曾從事市場失當行為：該項披露只因該資料的再傳送而發生，而該人證明——
- (a) 該資料的再傳送是在某業務（不論是否由他經營）的日常運作過程中發生的，而該業務的正常運作，涉及將資訊再傳送往資訊系統內的其他人，或將資訊

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- if—
- (i) the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and
- (ii) the person knows that, or is reckless or negligent as to whether, the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.
- (2) A person shall not be regarded as having engaged in market misconduct by reason of disclosure of false or misleading information inducing transactions if the disclosure has taken place by reason only of the issue or reproduction of the information and he establishes that—
- (a) the issue or reproduction of the information took place in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was issuing or reproducing materials provided by others;
- (b) the contents of the information were not, wholly or partly, devised—
- (i) where the business was carried on by him, by himself or any officer, employee or agent of his; or
- (ii) where the business was not carried on by him, by himself;
- (c) for the purposes of the issue or reproduction—
- (i) where the business was carried on by him, he or any officer, employee or agent of his; or
- (ii) where the business was not carried on by him, he, did not select, add to, modify or otherwise exercise control over the contents of the information; and

從一個資訊系統再傳送往另一個資訊系統 (不論位於何處), 不論是直接地再傳送或是藉利便該等其他人與第三者之間建立連結而再傳送;

- (b) 該資料的內容 (不論是全部或其中任何部分內容) ——
- (i) (如該業務是由他經營) 並非由他本人或由他的任何高級人員、僱員或代理人設定; 或
  - (ii) (如該業務不是由他經營) 並非由他本人設定;
- (c) 為了該項再傳送 ——
- (i) (如該業務是由他經營) 他本人或他的任何高級人員、僱員或代理人; 或
  - (ii) (如該業務不是由他經營) 他本人, 並無揀選、增補、修改或以其他方式控制該資料的內容;
- (d) 就該資料所作的再傳送, 是附有一項大意如下的訊息的, 或是在獲再傳送該資料的人確認明白以下事項之後完成的 ——
- (i) (如該業務是由他經營) 他本人或他的任何高級人員、僱員或代理人並無設定該資料的內容, 而且既不就該資料負責, 亦不認可其準確性; 或
  - (ii) (如該業務不是由他經營) 經營該業務的人或該人的任何高級人員、僱員或代理人並無設定該資料的內容, 而且既不就該資料負責, 亦不認可其準確性; 及
- (e) 在該資料再傳送時 ——
- (i) 他不知道該資料在某事關重要的事實方面屬虛假或具誤導性, 或因遺漏某事關重要的事實而屬虛假或具誤導性; 或

- (d) at the time of the issue or reproduction, he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact.

- (3) A person shall not be regarded as having engaged in market misconduct by reason of disclosure of false or misleading information inducing transactions if the disclosure has taken place by reason only of the re-transmission of the information and he establishes that—

- (a) the re-transmission of the information took place in the ordinary course of a business (whether or not carried on by him), the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system (wherever situated), whether directly or by facilitating the establishment of links between such other persons and third parties;
- (b) the contents of the information were not, wholly or partly, devised—
  - (i) where the business was carried on by him, by himself or any officer, employee or agent of his; or
  - (ii) where the business was not carried on by him, by himself;
- (c) for the purposes of the re-transmission—
  - (i) where the business was carried on by him, he or any officer, employee or agent of his; or
  - (ii) where the business was not carried on by him, he, did not select, add to, modify or otherwise exercise control over the contents of the information;
- (d) the re-transmission of the information was accompanied by a message to the effect, or was effected following

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- (ii) 他知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性，但 ——
  - (A) (如該業務是由他經營) 在有關個案的情況下，按理不能期望他阻止該項再傳送；或
  - (B) (如該業務不是由他經營) 在有關個案的情況下，他已採取所有合理步驟，使某個能夠採取步驟致使阻止該項再傳送的人，知悉該資料如此屬虛假或具誤導性之事(即使該項再傳送事實上發生)。
- (4) 在以下情況下，不得以披露虛假或具誤導性的資料以誘使進行交易為理由，而視某人為曾從事市場失當行為：該項披露只因該資料的直播而發生，而該人證明 ——
  - (a) 該資料的廣播是在某廣播業者(不論他是否該廣播業者)的業務的日常運作過程中發生的；
  - (b) 該資料的內容(不論是全部或其中任何部分內容) ——
    - (i) (如他是該廣播業者)並非由他本人或由他的任何高級人員、僱員或代理人設定；或
    - (ii) (如他不是該廣播業者)並非由他本人設定；
  - (c) 為了該項廣播 ——
    - (i) (如他是該廣播業者)他本人或他的任何高級人員、僱員或代理人；或
    - (ii) (如他不是該廣播業者)他本人，並無揀選、增補、修改或以其他方式控制該資料的內容；
  - (d) 就該項廣播而言 ——
    - (i) (如他是該廣播業者)他；或
    - (ii) (如他不是該廣播業者)他相信並有合理理由相信該廣播業者，

acknowledgment by the persons to whom it was re-transmitted of their understanding, that—

- (i) where the business was carried on by him, he or any officer, employee or agent of his; or
  - (ii) where the business was not carried on by him, the person who carried on the business or any officer, employee or agent of that person,
- did not devise the contents of the information, and neither took responsibility for it nor endorsed its accuracy; and
- (e) at the time of the re-transmission—
    - (i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or
    - (ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—
      - (A) where the business was carried on by him, in the circumstances of the case he could not reasonably be expected to prevent the re-transmission; or
      - (B) where the business was not carried on by him, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the re-transmission to be prevented (even if the re-transmission in fact took place).

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

- (e) 在該資料廣播時 ——
- (i) 他不知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性；或
  - (ii) 他知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性，但 ——
    - (A) （如他是該廣播業者）在有關個案的情況下，按理不能期望他阻止該項廣播；或
    - (B) （如他不是該廣播業者）在有關個案的情況下，他已採取所有合理步驟，使某個能夠採取步驟致使阻止該項廣播的人，知悉該資料如此屬虛假或具誤導性之事（即使該項廣播事實上發生）。
- (5) 在本條中，**發出** (issue) 就任何材料（包括任何資料）而言，包括 ——
- (a) 藉親自造訪；
  - (b) 在報章、雜誌、期刊或其他刊物；
  - (c) 藉海報、公告、啓事或通知的展示；
  - (d) 以通告、冊子、小冊子或傳單的方式；
  - (e) 藉照片展覽或放映電影片；
  - (f) 藉聲音或電視廣播；
  - (g) 藉資訊系統或其他電子器材；或

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- (4) A person shall not be regarded as having engaged in market misconduct by reason of disclosure of false or misleading information inducing transactions if the disclosure has taken place by reason only of the live broadcast of the information and he establishes that—
- (a) the broadcast of the information took place in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);
  - (b) the contents of the information were not, wholly or partly, devised—
    - (i) where he was the broadcaster, by himself or any officer, employee or agent of his; or
    - (ii) where he was not the broadcaster, by himself;
  - (c) for the purposes of the broadcast—
    - (i) where he was the broadcaster, he or any officer, employee or agent of his; or
    - (ii) where he was not the broadcaster, he, did not select, add to, modify or otherwise exercise control over the contents of the information;
  - (d) in relation to the broadcast—
    - (i) where he was the broadcaster, he; or
    - (ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster,

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

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- (h) 以其他方式 (不論是以機械、電子、磁力、光學、人手或其他媒介, 或藉光、影像或聲音或其他媒介的產生或傳送),
- 發表、傳遞、分發或以其他方式散發該材料或其內容, 並包括安排或授權發出該材料。

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- Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster; and
- (e) at the time of the broadcast—
- (i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or
  - (ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—
    - (A) where he was the broadcaster, in the circumstances of the case he could not reasonably be expected to prevent the broadcast; or
    - (B) where he was not the broadcaster, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the broadcast to be prevented (even if the broadcast in fact took place).
- (5) In this section, **issue** (發出), in relation to any material (including any information), includes publishing, circulating, distributing or otherwise disseminating the material or the contents thereof, whether
- (a) by any visit in person;
  - (b) in a newspaper, magazine, journal or other publication;
  - (c) by the display of posters or notices;
  - (d) by means of circulars, brochures, pamphlets or handbills;



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## 278. 操縱證券市場

### (1) 如任何人 ——

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

- (e) by an exhibition of photographs or cinematograph films;
- (f) by way of sound or television broadcasting;
- (g) by any information system or other electronic device; or
- (h) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,

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

## 278. Stock market manipulation

### (1) Stock market manipulation takes place when, in Hong Kong or elsewhere—

- (a) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction increase, or are likely to increase, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to purchase or subscribe for, or to refrain from selling, securities of the corporation or of a related corporation of the corporation;
- (b) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction reduce, or are likely to reduce, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to sell, or to

任何證券的價格(不論後述的證券是在有關認可市場或是透過使用認可自動化交易服務交易的),

則操縱證券市場的行為即告發生。

(2) 如任何人 ——

- (a) 意圖誘使另一人購買或認購或不售賣某法團或其有連繫法團的證券,而在香港直接或間接訂立或履行 2 宗或多於 2 宗買賣該法團的證券的交易,而該等交易本身或連同其他交易提高或相當可能會提高在有關境外市場交易的任何證券的價格;
- (b) 意圖誘使另一人售賣或不購買某法團或其有連繫法團的證券,而在香港直接或間接訂立或履行 2 宗或多於 2 宗買賣該法團的證券的交易,而該等交易本身或連同其他交易降低或相當可能會降低在有關境外市場交易的任何證券的價格;或
- (c) 意圖誘使另一人售賣、購買或認購,或不售賣、不購買或不認購某法團或其有連繫法團的證券,而在香港直接或間接訂立或履行 2 宗或多於 2 宗買賣該法團的證券的交易,而該等交易本身或連同其他交易維持或穩定或相當可能會維持或穩定在有關境外市場交易的任何證券的價格,

則操縱證券市場的行為即告發生。

(3) 在本條中 ——

- (a) 提述交易之處,包括提述要約及邀請(不論實際如何稱述);及
- (b) 提述訂立或履行交易之處,如屬(a)段提述的要約或邀請的情況,須解釋為作出該項要約或邀請(視屬何情況而定)。

refrain from purchasing, securities of the corporation or of a related corporation of the corporation; or

- (c) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction maintain or stabilize, or are likely to maintain or stabilize, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to sell, purchase or subscribe for, or to refrain from selling, purchasing or subscribing for, securities of the corporation or of a related corporation of the corporation.

(2) Stock market manipulation takes place when, in Hong Kong—

- (a) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction increase, or are likely to increase, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to purchase or subscribe for, or to refrain from selling, securities of the corporation or of a related corporation of the corporation;
- (b) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction reduce, or are likely to reduce, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to sell, or to refrain from purchasing, securities of the corporation or of a related corporation of the corporation; or

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## 第 6 分部 —— 雜項條文

### 279. 法團高級人員的責任

任何法團的每一名高級人員，均須不時採取一切合理措施，以確保有妥善的預防措施，防止該法團以導致它作出構成市場失當行為的行為的方式行事。

### 280. 關乎市場失當行為的交易既非無效亦非可使無效

任何交易不得僅因任何市場失當行為曾就該交易或因該交易而發生，而屬無效或可使無效。

### 281. 就市場失當行為須負的民事法律責任

(c) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction maintain or stabilize, or are likely to maintain or stabilize, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to sell, purchase or subscribe for, or to refrain from selling, purchasing or subscribing for, securities of the corporation or of a related corporation of the corporation.

(3) In this section—

- (a) a reference to a transaction includes an offer and an invitation (however expressed); and
- (b) a reference to entering into or carrying out a transaction shall, in the case of an offer or an invitation referred to in paragraph (a), be construed as a reference to making the offer or the invitation (as the case may be).

## Division 6—Miscellaneous

### 279. Duty of officers of corporations

Every officer of a corporation shall take all reasonable measures from time to time to ensure that proper safeguards exist to prevent the corporation from acting in a way which would result in the corporation perpetrating any conduct which constitutes market misconduct.

### 280. Transactions relating to market misconduct not void or voidable

A transaction is not void or voidable by reason only that any market misconduct has taken place in relation to or as a result of it.

### 281. Civil liability for market misconduct

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- (1) 除第 (2) 款另有規定外，任何人如作出與市場失當行為有關的作為，則他負有法律責任以損害賠償的方式賠償另一人因該行為而蒙受的金錢損失，不論他是否亦根據本部或其他規定招致任何其他法律責任，亦不論該損失是否由於該另一人曾以受該行為影響的價格訂立交易所引致的。
- (2) 除非就有關個案的情況而言，某人應根據第 (1) 款作出賠償是公平、公正和合理的，否則該人無須根據該款作出賠償。
- (3) 就本條而言，凡 ——
  - (a) 某人作出構成市場失當行為的行為；
  - (b) (i) 某屬法團的另一人就 (a) 段提述的市場失當行為作出有關作為；及
  - (ii) 某人是該法團的高級人員，而該市場失當行為是在獲該人同意或縱容的情況下發生的；或
  - (c) (i) 另一人就 (a) 段提述的市場失當行為作出有關作為；及
  - (ii) 某人協助或縱容該另一人作出構成該市場失當行為的行為，而該人是知道該行為構成或可能構成市場失當行為的，
 在不抵觸第 (4) 款的條文下，該人視為已就市場失當行為作出有關作為。
- (4) 就本條而言，如本部任何條文規定不得以某市場失當行為為理由而視某人為曾從事市場失當行為，則不得就該市場失當行為而視該人為曾就市場失當行為作出有關作為。
- (5) 如某人指稱因某市場失當行為蒙受金錢損失，則即使 ——
  - (a) 另一人的行為不是根據第 252 條就該市場失當行為提起的法律程序的標的或該標的一部分；或

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- (1) Subject to subsection (2), a person who has committed a relevant act in relation to market misconduct shall, whether or not he also incurs any other liability (whether under this Part or otherwise), be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of the market misconduct, whether or not the loss arises from the other person having entered into a transaction or dealing at a price affected by the market misconduct.
- (2) No person shall be liable to pay compensation under subsection (1) unless it is fair, just and reasonable in the circumstances of the case that he should be so liable.
- (3) For the purposes of this section, a person shall, subject to subsection (4), be regarded as having committed a relevant act in relation to market misconduct if—
  - (a) he has perpetrated any conduct which constitutes market misconduct;
  - (b) (i) another person which is a corporation has committed a relevant act in relation to market misconduct under paragraph (a); and
  - (ii) the market misconduct occurred with his consent or connivance as an officer of the corporation; or
  - (c) (i) any other person has committed a relevant act in relation to market misconduct under paragraph (a); and
  - (ii) he assisted or connived with that other person in the perpetration of any conduct which constitutes the market misconduct, with the knowledge that such conduct constitutes or might constitute market misconduct.
- (4) For the purposes of this section, where it is provided under any provision of this Part that a person shall not by reason

- (b) 審裁處沒有依據第 252(3)(b) 條識辨另一人曾從事該市場失當行為，  
該人仍可根據第 (1) 款針對該另一人提出訴訟。
- (6) 為免生疑問，凡任何法院具有司法管轄權裁定根據第 (1) 款提出的訴訟，如該法院除本條外具有司法管轄權受理強制令的申請，則可按它認為適當的條款及條件批給強制令，以附加於或取代損害賠償。
- (7) 在不損害《證據條例》(第 8 章) 第 62 條的原則下，在根據第 (1) 款提出的訴訟中 ——
- (a) 審裁處依據第 252(3)(a) 條裁定曾發生市場失當行為此一事實；
- (b) 審裁處在依據第 252(3)(b) 條所作的裁定中識辨某人 (不論該人是否訴訟的一方) 曾從事市場失當行為此一事實，  
只要該裁定仍然存在，即可在與該訴訟的任何爭議點有關的情況下獲接納為證明以下事宜的證據 ——
- (i) (就 (a) 段提述的裁定而言) 曾發生該市場失當行為；或
- (ii) (就 (b) 段提述的裁定而言) 該人曾從事該市場失當行為。
- (8) 在根據第 (1) 款提出的訴訟中，如有第 (7)(a) 或 (b) 款提述的裁定存在一事根據第 (7) 款可獲接納為證據 ——
- (a) 則 ——
- (i) 就第 (7)(a) 款提述的裁定而言，除非相反證明成立，否則該裁定針對的市場失當行為須當作曾發生；或
- (ii) 就第 (7)(b) 款提述的裁定而言，除非相反證明成立，否則該裁定針對的人須當作曾從事市場失當行為；及

- of any market misconduct be regarded as having engaged in market misconduct, the person shall not, in relation to that market misconduct, be regarded as having committed a relevant act in relation to market misconduct.
- (5) A person may bring an action under subsection (1) even though the person against whom the action is brought—
- (a) is not a person whose conduct has been the subject, whether wholly or in part, of any proceedings instituted under section 252 in respect of the market misconduct from which the pecuniary loss of the person bringing the action is alleged to result; or
- (b) has not been identified by the Tribunal pursuant to section 252(3)(b) as having engaged in the market misconduct.
- (6) For the avoidance of doubt, where a court has jurisdiction to determine an action brought under subsection (1), it may, where it is, apart from this section, within its jurisdiction to entertain an application for an injunction, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.
- (7) Without prejudice to section 62 of the Evidence Ordinance (Cap. 8), in an action brought under subsection (1)—
- (a) the fact that there is a determination by the Tribunal pursuant to section 252(3)(a) that market misconduct has taken place;
- (b) the fact that there is a determination by the Tribunal pursuant to section 252(3)(b) identifying a person (whether or not a party to the action) as having engaged in market misconduct,
- shall, in so far the determination is still subsisting, be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in the action—



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- (b) 在不損害為作為該裁定的證據或為識辨該裁定所依據的事實而收取任何其他可獲接納的證據的原則下，根據第 262(2)(b)(i) 條發表並載有該裁定的審裁處報告的內容，或根據第 (9) 款提供並載有該裁定的審裁處報告的文本的內容，亦可為該目的而獲接納為證據。
- (9) 在根據第 (1) 款提出的訴訟中，如 ——
- (a) 有第 (7)(a) 或 (b) 款提述的裁定存在一事根據第 (7) 款可獲接納為證據；及
- (b) 載有審裁處裁定的報告沒有根據第 262(2)(b)(i) 條發表，
- 則具有司法管轄權就該訴訟作出裁定的法院如認為適當的話，可要求向該法院提供該報告的文本，以供該法院為第 (8)(b) 款的目的使用；如該法院作出該要求 ——
- (i) 審裁處須安排向該法院提供該報告的文本，以供該法院為第 (8)(b) 款的目的使用；及
- (ii) 該報告的內容可為第 (8)(b) 款指明的目的獲接納。
- (10) 在本條中，提述交易之處，包括提述要約及邀請（不論實際如何稱述）。
- (11) 本條並不影響、限制或減免任何人根據普通法或任何其他成文法則而獲授予的權利或可招致的法律責任。

- (i) in the case of a determination referred to in paragraph (a), that the market misconduct has taken place; or
- (ii) in the case of a determination referred to in paragraph (b), that the person has engaged in market misconduct.
- (8) In an action brought under subsection (1), where the fact that there is a determination referred to in subsection (7)(a) or (b) is admissible in evidence under subsection (7)—
- (a) then—
- (i) in the case of a determination referred to in subsection (7)(a), the market misconduct that is the subject of the determination shall, unless the contrary is proved, be taken to have taken place; or
- (ii) in the case of a determination referred to in subsection (7)(b), the person that is the subject of the determination shall, unless the contrary is proved, be taken to have engaged in market misconduct; and
- (b) without prejudice to the reception of any other admissible evidence as evidence of the determination or for the purpose of identifying the facts on which the determination was based, the contents of a report of the Tribunal containing the determination and published under section 262(2)(b)(i), or the contents of a copy of a report of the Tribunal containing the determination and made available under subsection (9), shall also be admissible in evidence for such purpose.
- (9) Where in an action brought under subsection (1)—
- (a) the fact that there is a determination referred to in subsection (7)(a) or (b) is admissible in evidence under subsection (7); and

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## 282. 不構成市場失當行為的行為

- (1) 不論本部有任何規定，如任何人證明有關行為按照在第(2)款下訂立的規則不得視為構成市場失當行為，則不得以本部任何市場失當行為為理由，而視該人為曾從事市場失當行為。
- (2) 為施行第(1)款，證監會如認為訂立規則訂明在何種情況下，任何根據本部本會構成市場失當行為的行為不得視為構成市場失當行為，是符合公眾利益的，則可在諮詢財政司司長後訂立該等規則。
- (3) 不論本部有任何規定，如 ——
  - (a) 某人因某行為而被指稱曾從事第 274、275 或 278 條所指的市場失當行為；及
  - (b) 該項指稱是基於該行為是就在有關境外市場交易的證券或期貨合約而作出的，而非就在有關認可市場

- (b) a report of the Tribunal containing the determination has not been published under section 262(2)(b)(i),

the court having jurisdiction to determine the action may, where it considers appropriate, require that a copy of the report be made available to the court to enable it to be used for the purposes of subsection (8)(b), whereupon—

- (i) the Tribunal shall cause a copy of the report to be made available to the court to enable it to be used for the purposes of subsection (8)(b); and
  - (ii) the contents of the report shall be admissible for the purpose specified in subsection (8)(b).
- (10) In this section, a reference to a transaction includes an offer and an invitation (however expressed).
  - (11) Nothing in this section affects, limits or diminishes any rights conferred on a person, or any liabilities a person may incur, under the common law or any other enactment.

## 282. Conduct not to constitute market misconduct

- (1) Notwithstanding anything in this Part, a person shall not be regarded as having engaged in market misconduct by reason of any market misconduct under this Part if he establishes that the conduct in question is, according to the rules made under subsection (2), not to be regarded as constituting market misconduct.
- (2) For the purposes of subsection (1), the Commission, after consultation with the Financial Secretary, may, where it considers it is in the public interest to do so, make rules to prescribe the circumstances in which any conduct that would otherwise constitute market misconduct under this Part shall not be regarded as constituting market misconduct.
- (3) Notwithstanding anything in this Part, where—

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或透過使用認可自動化交易服務交易的證券或期貨合約而作出的，

除非證明假使該行為在該有關境外市場所在的地方作出，即屬違法，否則不得視該人為曾從事市場失當行為。

### 283. 根據第 XIV 部提起刑事法律程序後不得提起進一步法律程序

不論本部有任何規定，在以下情況下，不得根據第 252 條就某行為而對某人提起法律程序——

- (a) 過往已根據第 XIV 部就同一行為對該人提起刑事法律程序；及
- (b) (i) 該刑事法律程序仍待決；或
- (ii) 由於過往已提起該刑事法律程序，因此不得根據第 XIV 部就同一行為再次合法地對該人提起刑事法律程序。

### 284. 從事市場失當行為視作違反本部條文

任何人如因某行為而依據第 252(3)(b) 條所作的裁定被識辨為曾從事市場失當行為，該人須因該行為而視為曾違反本部的

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- (a) it is alleged that a person has engaged in market misconduct under section 274, 275 or 278 by reason of any conduct; and
- (b) it is so alleged on the basis that the conduct was carried out not in respect of securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services, but in respect of securities or futures contracts traded on a relevant overseas market,

the person shall not be regarded as having engaged in the market misconduct unless it is proved that in any place in which such relevant overseas market is situated the conduct would have been unlawful had it been carried out there.

### 283. No further proceedings after Part XIV criminal proceedings

Notwithstanding anything in this Part, no proceedings may be instituted against any person under section 252 in respect of any conduct if—

- (a) criminal proceedings have previously been instituted against the person under Part XIV in respect of the same conduct; and
- (b) (i) those criminal proceedings remain pending; or
- (ii) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under Part XIV in respect of the same conduct.

### 284. Market misconduct regarded as contravention of provisions of this Part

Where a person is by reference to any conduct identified in a determination made pursuant to section 252(3)(b) as having engaged in market misconduct, the person shall be regarded as

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條文，而本條例中提述違反本條例條文之處（不論實際如何稱述），均須據此適用。

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having, by reason of the conduct, contravened the provisions of this Part, and any reference in this Ordinance to contravention of a provision of this Ordinance (however expressed) shall have application accordingly.

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**第 XIV 部****關於證券及期貨合約交易等的罪行**

(格式變更——2012 年第 2 號編輯修訂紀錄)

**第 1 分部 —— 釋義****285. 第 XIV 部的釋義**

(1) 在本部中，除文意另有所指外——

**有聯繫者** (associate) 就某人而言——

- (a) 指該人的配偶或公認配偶、與該人同居儼如配偶的人，或該人的兄弟、姊妹、父母、繼父母、親生子女、領養子女或繼子女；
- (b) 指該人擔任董事的法團；
- (c) 指該人的僱員或合夥人；
- (d) 在該人是法團的情況下，指該法團各董事、該法團各有連繫法團，以及該等有連繫法團各董事或僱員；
- (e) 在不局限 (a) 至 (d) 段適用的情況的原則下，如有關情況涉及法團的證券或其他權益，或因持有該等證券或權益而產生的權利，則指——
  - (i) 與該人訂有關於取得、持有或處置該等證券或權益的協議或安排的另一人；或
  - (ii) 與該人訂有某項協議或安排的人，而根據該項協議或安排，他們承諾在該法團的成員大會上行使投票權時行動一致；

**有關境外市場** (relevant overseas market) ——

- (a) 就證券而言，指香港以外地方的證券市場；或
- (b) 就期貨合約而言，指香港以外地方的期貨市場；

**Part XIV****Offences Relating to Dealings in Securities and Futures Contracts, etc.**

(Format changes—E.R. 2 of 2012)

**Division 1—Interpretation****285. Interpretation of Part XIV**

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

**associate** (有聯繫者), in relation to a person, means—

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



**有關認可市場** (relevant recognized market) ——

- (a) 就證券而言，指認可證券市場；或
- (b) 就期貨合約而言，指認可期貨市場；

**控制人** (controller) 就某法團而言，指符合以下情況的人 ——

- (a) 該法團的董事是慣於或有義務按照該人的指示或指令行事的；如該法團是另一法團的附屬公司，則該另一法團的董事是慣於或有義務按照該人的指示或指令行事的；或
  - (b) 該人 (不論單獨或聯同其任何有聯繫者) 有權在該法團的成員大會上行使 33% 以上的投票權或控制該數量的投票權的行使；如該法團是另一法團的附屬公司，則該人 (不論單獨或聯同其任何有聯繫者) 有權在該另一法團的成員大會上行使 33% 以上的投票權或控制該數量的投票權的行使。
- (2) 在本款及第 286 至 289 條及第 2 分部中，除文意另有所指外 ——

**上市** (listed) 指在認可證券市場上市，而就本定義而言，證券在認可證券市場暫停交易期間，須持續視為上市證券；

**上市法團** (listed corporation) 指有發行證券的法團，而在與該法團有關的違例事件發生時，該等證券是上市證券；

**上市證券** (listed securities) 指 ——

- (a) 在與某法團有關的違例事件發生時，已由該法團發行並且是上市的證券；
- (b) 在與某法團有關的違例事件發生時，已由該法團發行而沒有上市，但當時可合理預見會上市，而其後確實上市的證券；
- (c) 在與某法團有關的違例事件發生時並未由該法團發行，亦沒有上市，但當時可合理預見會如此發行及上市，而其後確實如此發行及上市的證券；

**內幕消息** (inside information) 就某法團而言，指符合以下說明的具體消息或資料 ——

- (ii) under which they undertake to act together in exercising their voting power at general meetings of the corporation;

**controller** (控制人), in relation to a corporation, means any person—

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

**relevant overseas market** (有關境外市場)——

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

**relevant recognized market** (有關認可市場)——

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

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

**derivatives** (衍生工具), in relation to listed securities, means—

- (a) rights, options or interests (whether described as units or otherwise) in, or in respect of, the listed securities;
- (b) contracts, the purpose or pretended purpose of which is to secure or increase a profit or avoid or reduce a loss,

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- (a) 關於 ——
- (i) 該法團的；
  - (ii) 該法團的股東或高級人員的；或
  - (iii) 該法團的上市證券或該等證券的衍生工具的；及
- (b) 並非普遍為慣常（或相當可能會）進行該法團上市證券交易的人所知，但該等消息或資料如普遍為他們所知，則相當可能會對該等證券的價格造成重大影響；（由 2012 年第 9 號第 9 條增補）

**衍生工具** (derivatives) 就上市證券而言，指 ——

- (a) 在該等證券中的或關乎該等證券的權利、期權或權益（不論以單位或其他方式描述）；
- (b) 任何合約，而該等合約的目的或伴稱目的是藉完全或部分參照以下項目的價格或價值，或該價格或價值的變動，以獲得或增加利潤或避免或減少損失 ——
  - (i) 該等證券；或
  - (ii) (a) 段提述的任何權利、期權或權益；
- (c) 在以下項目中的或關乎以下項目的權利、期權或權益（不論以單位或其他方式描述） ——
  - (i) (a) 段提述的任何權利、期權或權益；或
  - (ii) (b) 段提述的任何合約；
- (d) 任何產生、確認或證明 (a)、(b) 或 (c) 段提述的任何權利、期權、權益或合約的文書或其他文件，包括以下項目的權益證明書、參與證明書、臨時證明書、中期證明書，關乎以下項目的收據（包括寄存單據），以及認購或購買以下項目的權證 ——
  - (i) 該等證券；或
  - (ii) 該等權利、期權、權益或合約，

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- wholly or partly by reference to the price or value, or a change in the price or value, of—
- (i) the listed securities; or
  - (ii) any rights, options or interests referred to in paragraph (a);
- (c) rights, options or interests (whether described as units or otherwise) in, or in respect of—
- (i) any rights, options or interests referred to in paragraph (a); or
  - (ii) any contracts referred to in paragraph (b);
- (d) instruments or other documents creating, acknowledging or evidencing any rights, options or interests or any contracts referred to in paragraph (a), (b) or (c), including certificates of interest or participation in, temporary or interim certificates for, receipts (including depositary receipts) in respect of, or warrants to subscribe for or purchase—
- (i) the listed securities; or
  - (ii) the rights, options or interests or the contracts, whether or not the derivatives are listed and regardless of who issued or made them;

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

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

不論該等衍生工具是否上市的，亦不論是由何人發行或訂立的；

**違例事件** (relevant contravention) 指違反第 2 分部任何條文的事件；

**證券** (securities) 指 ——

- (a) 任何團體 (不論是否屬法團) 或政府或市政府當局的或由它發行的或可合理預見會由它發行的股份、股額、債權證、債權股額、基金、債券或票據；
  - (b) 在該等股份、股額、債權證、債權股額、基金、債券或票據中的或關乎該等股份、股額、債權證、債權股額、基金、債券或票據的權利、期權或權益 (不論以單位或其他方式描述)；
  - (c) 該等股份、股額、債權證、債權股額、基金、債券或票據的權益證明書、參與證明書、臨時證明書、中期證明書、收據，或認購或購買該等項目的權證；
  - (d) 通常稱為證券的權益、權利或財產，不論屬文書或其他形式；
  - (e) 第 392 條所指的公告訂明為按照該公告的條款視為證券的權益、權利或財產，不論屬文書或其他形式。
- (由 2012 年第 9 號第 9 條修訂)
- (3) 就第 (1) 款中**控制人**的定義而言，凡任何人有權在某法團的成員大會上行使 33% 的投票權或控制該數量的投票權的行使，而該法團有權在另一法團的成員大會上行使投票權或控制投票權的行使 (**有效投票權**)，則在該另一法團的成員大會上的有效投票權視為可由該人行使。
  - (4) 就本部而言，如法團董事按照某人以專業身分所提供的意見而行事，則不得僅以此為理由而視該法團的董事為慣常或有義務按照該人的指示或指令行事。

securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities; (*Added 9 of 2012 s. 9*)

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

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

**listed securities** (上市證券) means—

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

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

**securities** (證券) means—

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

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

(Amended 9 of 2012 s. 9)

- (3) For the purposes of the definition of **controller** in subsection (1), where a person is entitled to exercise or control the exercise of more than 33% of the voting power at general meetings of a corporation and the corporation is entitled to exercise or control the exercise of any of the voting power at general meetings of another corporation (**the effective voting power**), then the effective voting power at general meetings of the other corporation shall be regarded as exercisable by the person.
- (4) For the purposes of this Part, a person shall not be regarded as a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act by reason only that the directors of the corporation act on advice given by him in a professional capacity.

## 286. 證券權益 (內幕交易罪)

就第 285(2) 及 287 至 289 條及第 2 分部而言，凡提述證券權益，須解釋為包括該等證券中任何種類的權益，而就此而言，於

## 286. Interest in securities (insider dealing offence)

For the purposes of sections 285(2) and 287 to 289 and Division 2, a reference to an interest in securities shall be construed as

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行使依附於該權益的權利時可能受到的限制或約束，均無須理會。

## 287. 與法團有關連 (內幕交易罪)

- (1) 就第 2 分部而言，任何個人如符合以下說明，即屬與某法團有關連的人 ——
- (a) 他是該法團或其有連繫法團的董事或僱員；
  - (b) 他是該法團或其有連繫法團的大股東；
  - (c) 他身居某職位，而因以下理由可合理預期該職位給予他接觸關於該法團的內幕消息的途徑 —— (由 2012 年第 9 號第 14 條修訂)
    - (i) 在 ——
      - (A) 他本人、他的僱主、他擔任董事的法團，或他屬合夥人的商號；與
      - (B) 該法團、該法團的有連繫法團，或該法團或有連繫法團的任何高級人員或大股東，之間存在專業或業務關係；或
    - (ii) 他是該法團或其有連繫法團的大股東的董事、僱員或合夥人；
  - (d) 他有途徑接觸關於該法團的內幕消息，而 —— (由 2012 年第 9 號第 14 條修訂)
    - (i) 他有該途徑是因他身居某職位，而憑藉 (a)、(b) 或 (c) 段，該職位令他會被視為與另一法團有關連；及
    - (ii) 該內幕消息關乎涉及上述兩個法團的交易 (實際進行的或意圖進行的)，或涉及該兩個法團的其中一個與其餘一個的上市證券或其衍生工具的交易 (實際進行的或意圖進行的)，或關乎

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including an interest of any kind whatsoever in the securities, and for that purpose any restraint or restriction to which the exercise of a right attached to the interest may be subject shall be disregarded.

## 287. Connected with a corporation (insider dealing offence)

- (1) For the purposes of Division 2, a person shall be regarded as connected with a corporation if, being an individual—
- (a) he is a director or employee of the corporation or a related corporation of the corporation;
  - (b) he is a substantial shareholder of the corporation or a related corporation of the corporation;
  - (c) he occupies a position which may reasonably be expected to give him access to inside information in relation to the corporation by reason of— (*Amended 9 of 2012 s. 14*)
    - (i) a professional or business relationship existing between—
      - (A) himself, or his employer, or a corporation of which he is a director, or a firm of which he is a partner; and
      - (B) the corporation, a related corporation of the corporation, or an officer or substantial shareholder of either corporation; or
    - (ii) his being a director, employee or partner of a substantial shareholder of the corporation or a related corporation of the corporation;
  - (d) he has access to inside information in relation to the corporation and— (*Amended 9 of 2012 s. 14*)
    - (i) he has such access by reason of his being in such a position that he would be regarded as connected



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已打消進行上述交易的意圖；或 (由 2012 年第 9 號第 14 條修訂)

- (e) 在與該法團有關的違例事件發生之前 6 個月內的任何時間，憑藉 (a)、(b)、(c) 或 (d) 段他會被視為與該法團有關連的人。
- (2) 只要某法團的任何董事或僱員是憑藉第 (1) 款會被視為與另一法團有關連的人，則就第 2 分部而言，該法團即視為與該另一法團有關連的人。
- (3) 不論本條例其他條文有任何規定，在第 (1) 款中，法團的**大股東** (substantial shareholder) 指擁有該法團的有關股本中股份總數的 5% 或以上權益的人。 (由 2012 年第 28 號第 912 及 920 條修訂)

**288. 與法團有關連 —— 掌握以享有特權的身分獲得的內幕消息 (內幕交易罪)**

(由 2012 年第 9 號第 14 條修訂)

- (1) 就第 2 分部而言，任何公職人員或指明人士如以該身分接獲關於某法團的內幕消息，則視為與該法團有關連的人。 (由 2012 年第 9 號第 14 條修訂)
- (2) 在第 (1) 款中，提述指明人士之處，指 ——
- (a) 行政會議成員；

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with another corporation by virtue of paragraph (a), (b) or (c); and

- (ii) the inside information relates to a transaction (actual or contemplated) involving both those corporations or involving one of them and the listed securities of the other or their derivatives, or to the fact that the transaction is no longer contemplated; or (Amended 9 of 2012 s. 14)
- (e) he was, at any time within the 6 months preceding the relevant contravention in relation to the corporation, a person who would be regarded as connected with the corporation by virtue of paragraph (a), (b), (c) or (d).
- (2) For the purposes of Division 2, a corporation shall be regarded as a person connected with another corporation so long as any of its directors or employees is a person who would be regarded as connected with that other corporation by virtue of subsection (1).
- (3) In subsection (1), notwithstanding any other provisions of this Ordinance, **substantial shareholder** (大股東), in relation to a corporation, means a person who has an interest in 5% or more of the total number of shares comprised in the relevant share capital of the corporation. (Amended 28 of 2012 ss. 912 & 920)

**288. Connected with a corporation—possession of inside information obtained in privileged capacity (insider dealing offence)**

(Amended 9 of 2012 s. 14)

- (1) For the purposes of Division 2, where a public officer or a specified person in that capacity receives inside information in relation to a corporation, he shall be regarded as a person connected with the corporation. (Amended 9 of 2012 s. 14)

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- (b) 立法會議員；
  - (c) 由行政長官或行政長官會同行政會議或由他人代行政長官或行政長官會同行政會議根據任何條例委出的各類委員會或其他團體的成員；
  - (d) 認可交易所、認可結算所或認可控制人的高級人員或僱員；
  - (e) 交易所參與者；
  - (f) 交易所參與者的高級人員或僱員；
  - (g) 任何條例成立的法人團體的高級人員或僱員；或
  - (h) 財政司司長根據第 (3) 款指明的法人團體的高級人員或僱員，
- 不論 (就 (a)、(b)、(c)、(d)、(f)、(g) 或 (h) 段而言) 該成員、議員、高級人員或僱員 (視屬何情況而定) 是臨時的或常任的，亦不論是否獲付酬金的。
- (3) 財政司司長可為施行第 (2)(h) 款藉憲報公告指明任何法人團體。

**289. 上市證券或其衍生工具的交易 (內幕交易罪)**

就第 285(2) 條及第 2 分部而言，凡任何人 (不論以主事人或代理人身分) 售賣、購買、交換或認購任何上市證券或其衍生工具，或與別人協議售賣、購買、交換或認購任何上市證券或其衍生工具，或取得或處置任何上市證券或其衍生工具的售賣、購買、交換或認購的權利，或與別人協議取得或處置該等權利，則他視為進行上市證券或其衍生工具的交易。

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- (2) In subsection (1), a reference to a specified person means a person who is—
- (a) a member of the Executive Council;
  - (b) a member of the Legislative Council;
  - (c) a member of a board, commission, committee or other body appointed by or on behalf of the Chief Executive or the Chief Executive in Council under an Ordinance;
  - (d) an officer or employee of a recognized exchange company, a recognized clearing house or a recognized exchange controller;
  - (e) an exchange participant;
  - (f) an officer or employee of an exchange participant;
  - (g) an officer or employee of a body corporate incorporated by an Ordinance; or
  - (h) an officer or employee of a body corporate specified by the Financial Secretary under subsection (3),
- whether, in the case of paragraph (a), (b), (c), (d), (f), (g) or (h), the person is such a member, officer or employee (as the case may be) on a temporary or permanent basis, and whether he is paid or unpaid.
- (3) The Financial Secretary may, by notice published in the Gazette, specify any body corporate for the purposes of subsection (2)(h).

**289. Dealing in listed securities or their derivatives (insider dealing offence)**

For the purposes of section 285(2) and Division 2, a person shall be regarded as dealing in listed securities or their derivatives if, whether as principal or agent, he sells, purchases, exchanges or subscribes for, or agrees to sell, purchase, exchange or subscribe for, any listed securities or their derivatives or acquires or disposes

**290. 證券權益及實益擁有權等 (內幕交易罪以外的市場失當行為罪行)**

- (1) 任何人如具有處置某證券或行使處置某證券的控制權的權限 (不論是正式或非正式的, 亦不論是明示或隱含的), 或就關乎某證券的期權而言, 具有行使該期權的權限, 則就第 3 分部而言, 他視為擁有該證券的權益。
- (2) 第 (1) 款提述的人的權限即使 ——
  - (a) 受到限制或約束, 或可受到限制或約束; 或
  - (b) 須聯同另一人方可行使, 此事實無關重要。
- (3) 凡任何法團就某證券具有第 (1) 款提述的權限, 而 ——
  - (a) 該法團或其董事慣於或有義務 (不論是正式或非正式的) 按照某人的指示或指令就該證券而行事; 或
  - (b) 某人或其有聯繫者是該法團的控制人, 則該人視為就該證券具有第 (1) 款提述的權限。
- (4) 凡任何人 ——
  - (a) 已訂立合約以購買某證券, 則在他若履行合約便能如此購買的範圍內;
  - (b) 具有使某證券轉移予他或按他的命令轉移的權利, 不論該權利是現在或將來可行使的, 亦不論是否在某條件符合後方可行使的, 則在他若強制執行該權利便能令該證券如此轉移的範圍內; 或
  - (c) 具有根據一項期權取得某證券或證券權益的權利, 不論該權利是現在或將來可行使的, 亦不論是否在某條件符合後方可行使的, 則在他若行使該權利便能取得該證券或權益的範圍內, 他視為就該證券具有第 (1) 款提述的權限。

of, or agrees to acquire or dispose of, the right to sell, purchase, exchange or subscribe for, any listed securities or their derivatives.

**290. Interest in securities and beneficial ownership, etc. (market misconduct offences other than insider dealing offence)**

- (1) For the purposes of Division 3, a person shall be regarded as having an interest in securities if he has authority, whether formal or informal and whether express or implied, to dispose of or to exercise control over the disposal of the securities or, in the case of options in respect of the securities, to exercise the options.
- (2) It is immaterial that the authority of a person referred to in subsection (1)—
  - (a) is, or is capable of being made, subject to restraint or restriction; or
  - (b) is exercisable jointly with another person.
- (3) A person shall be regarded as having the authority referred to in subsection (1) where a corporation has the authority referred to in that subsection and—
  - (a) the corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions or instructions of the person in relation to the securities in question; or
  - (b) the person, or an associate of the person, is a controller of the corporation.
- (4) Where a person—
  - (a) has entered into a contract to purchase securities;
  - (b) has a right to have securities transferred to him or to his order whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or

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- (5) 凡任何證券受信託所規限，而任何不是該證券的受託人的人如憑藉第 (4)(b) 款擁有該證券的權益，則在斷定某人是否就第 3 分部而言擁有證券權益時，受託人在該證券中的權益須不予理會。
- (6) 證監會可訂立規則，訂明某人的權益或某些屬於某類別的人的權益，在斷定他或他們是否就第 3 分部而言擁有證券權益時須不予理會。
- (7) 如任何人在買賣某證券前擁有該證券的權益，而該人或其有聯繫者在買賣該證券後擁有該證券的權益，則就第 3 分部而言，買賣該證券不涉及其實益擁有權的改變。

## 第 2 分部 —— 內幕交易罪

### 291. 內幕交易的罪行

- (1) 任何人如與某上市法團有關連，並掌握他知道屬關於該法團的內幕消息的消息，則他不得 —— (由 2012 年第 9 號第 14 條修訂)

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- (c) has the right to acquire securities, or an interest in securities, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not,  
the person shall, to the extent to which he could do so on completing the contract, enforcing the right or exercising the option, be regarded as having the authority referred to in subsection (1).
- (5) Where securities are subject to a trust, and a person who is not a trustee in those securities has an interest in those securities by virtue of subsection (4)(b), the interest of a trustee in those securities shall be disregarded for the purpose of determining whether the person has an interest in securities for the purposes of Division 3.
- (6) The Commission may make rules to prescribe that an interest, being an interest of a person or of the persons included in a class of persons, shall be disregarded for the purpose of determining whether the person or the persons has or have an interest in securities for the purposes of Division 3.
- (7) For the purposes of Division 3, a sale or purchase of securities does not involve a change in their beneficial ownership if a person who had an interest in the securities before the sale or purchase, or an associate of the person, has an interest in the securities after the sale or purchase.

## Division 2—Insider dealing offence

### 291. Offence of insider dealing

- (1) A person connected with a listed corporation and having information which he knows is inside information in relation to the corporation shall not— (Amended 9 of 2012 s. 14)

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- (a) 進行該法團 (或該法團的有連繫法團) 的上市證券或其衍生工具的交易；或
  - (b) 在知道或有合理理由相信另一人會進行該等證券或工具的交易的情況下，慫使或促致該另一人進行該等交易。
- (2) 任何人如正意圖或曾意圖提出收購某上市法團的要約 (不論是否聯同別人提出)，並知道該項收購意圖的消息或已打消該意圖的消息是關於該法團的內幕消息，則他不得—— (由 2012 年第 9 號第 14 條修訂)
- (a) 為該項收購以外的目的，進行該法團 (或該法團的有連繫法團) 的上市證券或其衍生工具的交易；或
  - (b) 為該項收購以外的目的，慫使或促致另一人進行該等證券或工具的交易。
- (3) 任何人如與某上市法團有關連，而他知道某消息是關於該法團的內幕消息，並知道或有合理理由相信另一人會利用該消息而進行該法團 (或該法團的有連繫法團) 的上市證券或其衍生工具的交易，或慫使或促致他人進行該等交易，則他不得直接或間接向該另一人披露該消息。 (由 2012 年第 9 號第 14 條修訂)
- (4) 任何人如正意圖或曾意圖提出收購某上市法團的要約 (不論是否聯同別人提出)，而他知道該項收購意圖的消息或已打消該意圖的消息是關於該法團的內幕消息，並知道或有合理理由相信另一人會利用該消息而進行該法團 (或該法團的有連繫法團) 的上市證券或其衍生工具的交易，或慫使或促致他人進行該等交易，則他不得直接或間接向該另一人披露該消息。 (由 2012 年第 9 號第 14 條修訂)
- (5) 任何人如知道另一人與某上市法團有關連，並知道或有合理理由相信該另一人因該項關連而掌握關於該法團的內幕消息，而他直接或間接從該另一人收到他知道屬關於該法團的內幕消息的消息，則他不得—— (由 2012 年第 9 號第 14 條修訂)

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- (a) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or
  - (b) counsel or procure another person to deal in such listed securities or derivatives, knowing or having reasonable cause to believe that the other person will deal in them.
- (2) A person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for a listed corporation and who knows that the information that the offer is contemplated or is no longer contemplated is inside information in relation to the corporation shall not— (Amended 9 of 2012 s. 14)
- (a) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, otherwise than for the purpose of the take-over; or
  - (b) counsel or procure another person to deal in such listed securities or derivatives, otherwise than for the purpose of the take-over.
- (3) A person connected with a listed corporation and knowing that any information is inside information in relation to the corporation shall not disclose the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives. (Amended 9 of 2012 s. 14)
- (4) A person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for a listed corporation and who knows that the information



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- (a) 進行該法團 (或該法團的有連繫法團) 的上市證券或其衍生工具的交易；或
- (b) 慫使或促使他人進行該等證券或工具的交易。
- (6) 任何人如知道或有合理理由相信另一人正意圖提出收購某上市法團的要約，或已打消該意圖，而他直接或間接從該另一人收到該另一人的上述意圖或打消該意圖的消息，並知道該消息是關於該法團的內幕消息，則他不得——(由 2012 年第 9 號第 14 條修訂)
  - (a) 進行該法團 (或該法團的有連繫法團) 的上市證券或其衍生工具的交易；或
  - (b) 慫使或促使他人進行該等證券或工具的交易。
- (7) 明知而在第 (1)、(2)、(3)、(4)、(5) 或 (6) 款描述的情況下掌握關於某上市法團的內幕消息的人——(由 2012 年第 9 號第 14 條修訂)
  - (a) 如知道或有合理理由相信另一人會於香港以外地方在認可證券市場以外的證券市場進行該法團 (或該法團的有連繫法團) 的上市證券或其衍生工具的交易，則他不得慫使或促使該另一人進行該等交易；或
  - (b) 如知道或有合理理由相信另一人或他人會利用該內幕消息，於香港以外地方在認可證券市場以外的證券市場進行或慫使或促使別人如此進行該法團 (或該法團的有連繫法團) 的上市證券或其衍生工具的交易，則他不得將該內幕消息披露予該另一人。(由 2012 年第 9 號第 14 條修訂)
- (8) 除第 292、293 及 294 條另有規定外，任何人違反第 (1)、(2)、(3)、(4)、(5)、(6) 或 (7) 款，即屬犯罪。

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- that the offer is contemplated or is no longer contemplated is inside information in relation to the corporation shall not disclose the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives. (Amended 9 of 2012 s. 14)
- (5) A person who has information which he knows is inside information in relation to a listed corporation and which he received, directly or indirectly, from a person whom he knows is connected with the corporation and whom he knows or has reasonable cause to believe held the information as a result of being connected with the corporation shall not— (Amended 9 of 2012 s. 14)
  - (a) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or
  - (b) counsel or procure another person to deal in such listed securities or derivatives.
- (6) A person who has received, directly or indirectly, from a person whom he knows or has reasonable cause to believe is contemplating or is no longer contemplating making a take-over offer for a listed corporation, information to that effect which he knows is inside information in relation to the corporation shall not— (Amended 9 of 2012 s. 14)
  - (a) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or

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- (b) counsel or procure another person to deal in such listed securities or derivatives.
- (7) A person who knowingly has inside information in relation to a listed corporation in any of the circumstances described in subsection (1), (2), (3), (4), (5) or (6) shall not— (*Amended 9 of 2012 s. 14*)
  - (a) counsel or procure another person to deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, knowing or having reasonable cause to believe that the other person will deal in such listed securities or derivatives outside Hong Kong on a stock market other than a recognized stock market; or
  - (b) disclose the inside information to another person knowing or having reasonable cause to believe that the other person or some other person will make use of the inside information for the purpose of dealing, or of counselling or procuring any other person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, outside Hong Kong on a stock market other than a recognized stock market. (*Amended 9 of 2012 s. 14*)
- (8) Subject to sections 292, 293 and 294, a person who contravenes subsection (1), (2), (3), (4), (5), (6) or (7) commits an offence.

## 292. 內幕交易罪 —— 一般免責辯護

- (1) 凡任何人透過他進行或慫使或促致另一人進行上市證券或衍生工具的交易而違反第 291 條，並因此被控犯第 291(8) 條所訂罪行，如他證明 ——

## 292. Insider dealing offence—general defences

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

- (a) 他進行或慫使或促致該另一人進行有關的上市證券或衍生工具的交易 (視屬何情況而定) 的唯一目的，是取得作為某法團的董事或未來董事的資格所需的股份；
- (b) 他在真誠地履行有關的上市證券或衍生工具的包銷協議過程中進行或慫使或促致該另一人進行有關的上市證券或衍生工具的交易 (視屬何情況而定)；或
- (c) 他在真誠地執行其清盤人、接管人或破產管理人的職能的過程中進行或慫使或促致該另一人進行有關的上市證券或衍生工具的交易 (視屬何情況而定)，即可以此作為免責辯護。
- (2) 凡任何法團透過它進行或慫使或促致另一人進行上市證券或衍生工具的交易而違反第 291 條，並因此被控犯第 291(8) 條所訂罪行，如該法團證明 ——
- (a) (就有關的上市證券或衍生工具是另一法團的上市證券或另一法團的上市證券的衍生工具的情況而言) 雖然有一名或多於一名屬該法團的董事或僱員的人掌握關於該另一法團的內幕消息，但決定進行或慫使或促致該另一人進行該等上市證券或衍生工具的交易 (視屬何情況而定) 的每一個人，直至該法團進行或慫使或促致該另一人進行該等上市證券或衍生工具的交易 (視屬何情況而定) 之時 (包括該法團進行或慫使或促致該另一人進行該等上市證券或衍生工具的交易 (視屬何情況而定) 的一刻)，並沒有掌握該內幕消息；
- (b) 當時已有安排，以確保 ——
- (i) 直至該法團進行或慫使或促致該另一人進行該等上市證券或衍生工具的交易 (視屬何情況而定) 之時 (包括該法團進行或慫使或促致該另一人進行該等上市證券或衍生工具的交易 (視屬何情況而定) 的一刻)，該內幕消息不會傳達予作出該決定的人；及

defence to the charge for the person to prove that he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question (as the case may be)—

- (a) for the sole purpose of acquiring shares required for his being qualified as a director or intending director of a corporation;
- (b) in the performance in good faith of an underwriting agreement for the listed securities or derivatives in question; or
- (c) in the performance in good faith of his functions as a liquidator, receiver or trustee in bankruptcy.
- (2) Where a corporation is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through its dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the corporation to prove that—
- (a) although one or more of its directors or employees had the inside information in relation to the corporation the listed securities of which were, or the derivatives of the listed securities of which were, the listed securities or derivatives in question, each person who took the decision for it to deal in or counsel or procure the other person to deal in such listed securities or derivatives (as the case may be) did not have the inside information up to (and including) the time when it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be);
- (b) arrangements then existed to secure that—
- (i) the inside information was, up to (and including) the time when it dealt in or counselled or procured the other person to deal in such listed securities or

- (ii) 沒有任何掌握該內幕消息的該法團的董事或僱員在該法團進行或慫使或促致該另一人進行該等上市證券或衍生工具的交易(視屬何情況而定)之前任何時間,向作出該決定的人提供關於該決定的意見;及
- (c) 該內幕消息事實上沒有如此傳達予作出該決定的人,亦沒有任何掌握該內幕消息的該法團的董事或僱員如此向作出該決定的人提供意見,
- 即可以此作為免責辯護。(由 2012 年第 9 號第 14 條修訂)
- (3) 凡任何人透過他進行或慫使或促致另一人進行上市證券或衍生工具的交易或披露消息而違反第 291 條,並因此被控犯第 291(8) 條所訂罪行,如他證明他進行或慫使或促致該另一人進行有關的上市證券或衍生工具的交易或披露有關的消息(視屬何情況而定)的目的,並非在於(亦並不包括)利用內幕消息為自己或他人獲得或增加利潤或避免或減少損失,即可以此作為免責辯護。(由 2012 年第 9 號第 14 條修訂)
- (4) 凡任何人透過他進行或慫使或促致另一人進行上市證券或衍生工具的交易而違反第 291 條,並因此被控犯第 291(8) 條所訂罪行,如他證明 ——
- (a) 他是以代理人身分進行或慫使或促致該另一人進行有關的上市證券或衍生工具的交易(視屬何情況而定);
- (b) 他沒有揀選該等上市證券或衍生工具,亦沒有就揀選該等上市證券或衍生工具提供意見;及
- (c) (如他以某人的代理人身分行事)他不知道 ——
- (i) (就有關的上市證券或衍生工具是某法團的上市證券或某法團的上市證券的衍生工具的情況而言)該人是與該法團有關連的人;或
- (ii) 該人掌握有關的內幕消息,(由 2012 年第 9 號第 14 條修訂)

- derivatives (as the case may be), not communicated to any person who took the decision; and
- (ii) none of its directors or employees who had the inside information gave advice concerning the decision to any person who took the decision at any time before it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be); and
- (c) the inside information was in fact not so communicated to any person who took the decision and none of its directors or employees who had the inside information in fact so gave the advice to any person who took the decision. (Amended 9 of 2012 s. 14)
- (3) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives or his disclosure of information, it is a defence to the charge for the person to prove that the purpose for which he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question or disclosed the information in question (as the case may be) was not, or, where there was more than one purpose, the purposes for which he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question or disclosed the information in question (as the case may be) did not include, the purpose of securing or increasing a profit or avoiding or reducing a loss, whether for himself or another, by using inside information. (Amended 9 of 2012 s. 14)
- (4) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring

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即可以此作為免責辯護。

- (5) 凡任何人透過他進行或慫使或促致另一人進行上市證券或衍生工具的交易而違反第 291 條，並因此被控犯第 291(8) 條所訂罪行，如他證明 ——
- (a) 在他進行或慫使或促致該另一人進行有關的上市證券或衍生工具的交易時，有關的交易無須在認可證券市場記錄，亦無須根據認可交易所規章通知該交易所；及
- (b) (i) 就該項違反是透過他進行上市證券或衍生工具的交易而發生的情況而言 ——
- (A) 他與有關的交易的另一方直接與對方訂立該宗交易；及
- (B) 在他訂立該宗交易時，該宗交易的另一方知道或理應知道有關的內幕消息；或
- (ii) 就該項違反是透過他慫使或促致另一人進行上市證券或衍生工具的交易而發生的情況而言 ——
- (A) 他慫使或促致有關的交易的另一方直接與他訂立該宗交易；及
- (B) 在他慫使或促致該另一方訂立該宗交易時，該另一方知道或理應知道有關的內幕消息，(由 2012 年第 9 號第 14 條修訂)

即可以此作為免責辯護。

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another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that—

- (a) he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question (as the case may be) as agent;
- (b) he did not select or advise on the selection of such listed securities or derivatives; and
- (c) he—
- (i) did not know that the person for whom he acted as agent was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives; or
- (ii) did not know that the person for whom he acted as agent had the inside information in question. *(Amended 9 of 2012 s. 14)*

- (5) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that—
- (a) at the time when he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question, the dealing in question was not required to be recorded on a recognized stock market or to be notified to a recognized exchange company under its rules; and
- (b) (i) where the contravention took place through his dealing in listed securities or derivatives—



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- (6) 凡任何人透過他進行上市證券或衍生工具的交易而違反第 291 條，並因此被控犯第 291(8) 條所訂罪行，如他證明 ——
- (a) 他並非作為慫使或促致有關的交易的另一方進行上市證券或衍生工具的交易的人而訂立該宗交易；及
- (b) (就有關的上市證券或衍生工具是某法團的上市證券或某法團的上市證券的衍生工具的情況而言) 在他訂立該宗交易時，該宗交易的另一方知道或理應知道他是與該法團有關連的人，
- 即可以此作為免責辯護。
- (7) 凡任何人透過他慫使或促致另一人進行上市證券或衍生工具的交易而違反第 291 條，並因此被控犯第 291(8) 條所訂罪行，如他證明 ——
- (a) 該另一人沒有慫使或促致有關的交易的另一方進行上市證券或其衍生工具的交易；及
- (b) (就有關的上市證券或衍生工具是某法團的上市證券或某法團的上市證券的衍生工具的情況而言) 在他慫使或促致該另一人進行有關的上市證券或衍生工具的交易時，有關的交易的另一方知道或理應知道該另一人是與該法團有關連的人，
- 即可以此作為免責辯護。

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- (A) he and the other party to the dealing in question entered into the dealing directly with each other; and
- (B) at the time when he entered into the dealing, the other party to the dealing knew, or ought reasonably to have known, of the inside information in question; or
- (ii) where the contravention took place through his counselling or procuring another person to deal in listed securities or derivatives—
- (A) he counselled or procured the other party to the dealing in question to enter into the dealing directly with him; and
- (B) at the time when he counselled or procured the other party to enter into the dealing, the other party knew, or ought reasonably to have known, of the inside information in question.  
(Amended 9 of 2012 s. 14)
- (6) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in listed securities or derivatives, it is a defence to the charge for the person to prove that—
- (a) he entered into the dealing in question, otherwise than as a person who has counselled or procured the other party to the dealing to deal in listed securities or their derivatives; and
- (b) at the time when he entered into the dealing, the other party to the dealing knew, or ought reasonably to have known, that he was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, the listed securities or derivatives in question.

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- (8) 凡任何人透過他進行或慫使或促致另一人進行上市證券或衍生工具的交易而違反第 291 條，並因此被控犯第 291(8) 條所訂罪行，如他證明 ——
- (a) 他 ——
- (i) 是就任何正在考慮中或屬商議標的的上市證券交易或上市證券衍生工具交易（不論該宗交易是由他本人或另一人進行）而行事的，或是在一連串該等交易的過程中行事的；及
- (ii) 是為利便該宗交易或一連串該等交易的完成而行事的；及
- (b) 有關的內幕消息是由於他牽涉入該宗交易或一連串該等交易而直接產生的市場消息，（由 2012 年第 9 號第 14 條修訂）
- 即可以此作為免責辯護。
- (9) 凡任何人透過他進行或慫使或促致另一人進行上市證券或衍生工具的交易而違反第 291 條，並因此被控犯第 291(8) 條所訂罪行，如他證明有關的交易是一項市場合約，即可以此作為免責辯護。

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- (7) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that—
- (a) the other person did not counsel or procure the other party to the dealing in question to deal in listed securities or their derivatives; and
- (b) at the time when he counselled or procured the other person to deal in the listed securities or derivatives in question, the other party to the dealing in question knew, or ought reasonably to have known, that the other person was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives.
- (8) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that—
- (a) he acted—
- (i) in connection with any dealing in listed securities or their derivatives (whether by himself or another person) which was under consideration or was the subject of negotiation, or in the course of a series of such dealings; and
- (ii) with a view to facilitating the accomplishment of the dealing or the series of dealings; and
- (b) the inside information in question was market information arising directly out of his involvement in the

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- (10) 就第 (8) 款而言，**市場消息** (market information) 指包含以下一項或多於一項事實的消息或資料——
- (a) 曾有或將會有某類上市證券或上市證券衍生工具的交易，或有任何該等交易正在考慮中或屬商議標的；
  - (b) 未曾有或將不會有某類上市證券或上市證券衍生工具的交易；
  - (c) 現時或將會交易的上市證券或上市證券衍生工具的數量，或正在考慮中或屬商議標的的交易涉及的上市證券或上市證券衍生工具的數量；
  - (d) 上市證券或上市證券衍生工具曾經或將會進行交易的價格 (或價格範圍)，或正在考慮中或屬商議標的的交易涉及的上市證券或上市證券衍生工具所可能交易的價格 (或價格範圍)；
  - (e) 以任何身分牽涉入或可能牽涉入上市證券或上市證券衍生工具的任何交易的人的身分。

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- dealing or the series of dealings. (*Amended 9 of 2012 s. 14*)
- (9) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that the dealing in question is a market contract.
- (10) For the purposes of subsection (8), **market information** (市場消息) means information consisting of one or more of the following facts—
- (a) that there has been or is to be any dealing in listed securities or derivatives of listed securities of a particular kind, or that any such dealing is under consideration or is the subject of negotiation;
  - (b) that there has not been or is not to be any dealing in listed securities or derivatives of listed securities of a particular kind;
  - (c) the quantity of listed securities or derivatives of listed securities in which there is or is to be any dealing, or in which any dealing is under consideration or is the subject of negotiation;
  - (d) the price (or range of prices) at which listed securities or derivatives of listed securities have been or are to be dealt in, or the price (or range of prices) at which listed securities or derivatives of listed securities in which any dealing is under consideration or is the subject of negotiation may be dealt in;
  - (e) the identity of the persons involved or likely to be involved in any capacity in any dealing in listed securities or derivatives of listed securities.

**293. 內幕交易罪 —— 某些受託人及遺產代理人的免責辯護**

凡任何屬受託人或遺產代理人的人透過他進行或慫使或促致另一人進行上市證券或衍生工具的交易而違反第 291 條，並因此被控犯第 291(8) 條所訂罪行，如他證明 ——

- (a) 他當時是依照真誠地得自另一人的意見而行事的；
- (b) 他當時覺得該另一人是徵詢上述意見的適當對象；及
- (c) 他當時並不覺得假使該另一人進行有關的上市證券或衍生工具的交易，便會發生違反第 291 條之事，

即可以此作為免責辯護。

**294. 內幕交易罪 —— 某些行使認購或取得證券或衍生工具的權利的人的免責辯護**

凡任何人透過他進行上市證券或衍生工具的交易而違反第 291 條，並因此被控犯第 291(8) 條所訂罪行，如他證明 ——

- (a) 他藉着行使權利以認購或以其他方式取得該等上市證券或衍生工具而進行該等上市證券或衍生工具的交易；及
- (b) (就該等上市證券或衍生工具是某法團的上市證券或某法團的上市證券的衍生工具的情況而言) 在他知悉關於該法團的內幕消息之前，他已獲授予該權利或該權利已自他所持有的證券或其衍生工具衍生，  
(由 2012 年第 9 號第 14 條修訂)

即可以此作為免責辯護。

**293. Insider dealing offence—defences for certain trustees and personal representatives**

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

- (a) he acted on advice obtained in good faith from another person;
- (b) that other person appeared to him to be an appropriate person from whom to seek the advice; and
- (c) it did not appear to him that, had that other person dealt in the listed securities or derivatives in question, a contravention of section 291 would take place.

**294. Insider dealing offence—defences for certain persons exercising right to subscribe for or acquire securities or derivatives**

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

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

### 第 3 分部 —— 其他市場失當行為的罪行

#### 295. 虛假交易的罪行

- (1) 任何人不得意圖使某事情具有或相當可能具有造成以下表象的效果，或罔顧某事情是否具有或相當可能具有造成以下表象的效果，而在香港或其他地方作出或致使作出該事情 ——
  - (a) 在有關認可市場或透過使用認可自動化交易服務交易的證券或期貨合約交投活躍的虛假或具誤導性的表象；或
  - (b) 在有關認可市場或透過使用認可自動化交易服務交易的證券或期貨合約在行情或買賣價格方面的虛假或具誤導性的表象。
- (2) 任何人不得意圖使某事情具有或相當可能具有造成以下表象的效果，或罔顧某事情是否具有或相當可能具有造成以下表象的效果，而在香港作出或致使作出該事情 ——
  - (a) 在有關境外市場交易的證券或期貨合約交投活躍的虛假或具誤導性的表象；或
  - (b) 在有關境外市場交易的證券或期貨合約在行情或買賣價格方面的虛假或具誤導性的表象。
- (3) 任何人不得意圖使一宗或多於一宗交易（不論其中是否有證券交易或期貨合約交易）具有或相當可能具有有關效果，或罔顧該宗或該等交易是否具有或相當可能具有有關效果，而在香港或其他地方直接或間接參與、牽涉入或履行該宗或該等交易。在本款中，**有關效果**指為在有關認可市場或透過使用認可自動化交易服務交易的證券或期貨合約，設定非真實的買賣價格或維持非真實的買賣價格水平（不論該水平先前是否非真實的）。

were, such listed securities or derivatives. (*Amended 9 of 2012 s. 14*)

### Division 3—Other market misconduct offences

#### 295. Offence of false trading

- (1) A person shall not, in Hong Kong or elsewhere, do anything or cause anything to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance—
  - (a) of active trading in securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services; or
  - (b) with respect to the market for, or the price for dealings in, securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services.
- (2) A person shall not, in Hong Kong, do anything or cause anything to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance—
  - (a) of active trading in securities or futures contracts traded on a relevant overseas market; or
  - (b) with respect to the market for, or the price for dealings in, securities or futures contracts traded on a relevant overseas market.
- (3) A person shall not, in Hong Kong or elsewhere, take part in, be concerned in, or carry out, directly or indirectly, one or more transactions (whether or not any of them is a dealing in securities or futures contracts), with the intention that, or being reckless as to whether, it or they has or have, or is or are likely to have, the effect of creating an artificial price,



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- (4) 任何人不得意圖使一宗或多於一宗交易 (不論其中是否有證券交易或期貨合約交易) 具有或相當可能具有有關效果, 或罔顧該宗或該等交易是否具有或相當可能具有有關效果, 而在香港直接或間接參與、牽涉入或履行該宗或該等交易。在本款中, **有關效果**指為在有關境外市場交易的證券或期貨合約, 設定非真實的買賣價格或維持非真實的買賣價格水平 (不論該水平先前是否非真實的)。
- (5) 在不局限第 (1) 或 (2) 款的一般性的原則下, 如任何人——
- (a) 直接或間接訂立或履行證券買賣交易或看來是證券買賣交易的交易, 而該宗交易並不涉及該等證券的實益擁有權的轉變;
  - (b) 要約以某個價格售賣證券, 而該價格與該人已要約或擬要約購買同一數目或數目大致相同的證券的買入價大致相同, 或與就該人所知一名該人的有聯繫者已要約或擬要約購買同一數目或數目大致相同的證券的買入價大致相同; 或
  - (c) 要約以某個價格購買證券, 而該價格與該人已要約或擬要約售賣同一數目或數目大致相同的證券的售出價大致相同, 或與就該人所知一名該人的有聯繫者已要約或擬要約售賣同一數目或數目大致相同的證券的售出價大致相同,

則除非有關交易屬場外交易, 就第 (1) 及 (2) 款而言, 該人視為意圖使某事情具有或相當可能具有造成以下表象的效果, 或罔顧某事情是否具有或相當可能具有造成以下表象的效果, 而作出或致使作出該事情——

- (i) (就在有關認可市場或透過使用認可自動化交易服務交易的證券而言) 該等證券交投活躍的虛假或具誤導性的表象, 或該等證券在行情或買賣價格方面的虛假或具誤導性的表象; 或

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or maintaining at a level that is artificial (whether or not it was previously artificial) a price, for dealings in securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services.

- (4) A person shall not, in Hong Kong, take part in, be concerned in, or carry out, directly or indirectly, one or more transactions (whether or not any of them is a dealing in securities or futures contracts), with the intention that, or being reckless as to whether, it or they has or have, or is or are likely to have, the effect of creating an artificial price, or maintaining at a level that is artificial (whether or not it was previously artificial) a price, for dealings in securities or futures contracts traded on a relevant overseas market.
- (5) Without limiting the generality of subsection (1) or (2), where a person—
- (a) enters into or carries out, directly or indirectly, any transaction of sale or purchase, or any transaction which purports to be a transaction of sale or purchase, of securities that does not involve a change in the beneficial ownership of them;
  - (b) offers to sell securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to purchase the same or substantially the same number of them; or
  - (c) offers to purchase securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to sell the same or substantially the same number of them,

then, unless the transaction in question is an off-market transaction, the person shall, for the purposes of subsections

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- (ii) (就在有關境外市場交易的證券而言) 該等證券交投活躍的虛假或具誤導性的表象，或該等證券在行情或買賣價格方面的虛假或具誤導性的表象。
- (6) 除第 (7) 款另有規定外，任何人違反第 (1)、(2)、(3) 或 (4) 款，即屬犯罪。
- (7) 凡任何人透過作出第 (5)(a)、(b) 或 (c) 款提述的作為而違反第 (1) 或 (2) 款，並因此被控犯第 (6) 款所訂罪行，如他證明他作出該作為的目的，並非在於 (亦並不包括) 造成第 (1) 或 (2) 款 (視屬何情況而定) 所指的證券交投活躍或在行情或買賣價格方面的虛假或具誤導性的表象，即可以此作為免責辯護。
- (8) 在第 (5) 款中，**場外交易** (off-market transaction) 指符合以下說明的交易 ——
- (a) (就在有關認可市場交易的證券而言) 無須在該有關認可證券市場記錄，亦無須根據營辦該認可證券市場的人的規章而通知該人；
- (b) (就透過使用認可自動化交易服務交易的證券而言) 無須透過認可自動化交易服務記錄，亦無須根據營辦該認可自動化交易服務的人的規章而通知該人；或
- (c) (就在有關境外市場交易的證券而言) 無須在該有關境外市場記錄，亦無須根據營辦該有關境外市場的人的規章而通知該人。
- (9) 在本條中 ——
- (a) 提述證券買賣交易之處，包括提述買賣證券的要約，及以明示或隱含方式邀請他人要約買賣證券的邀請 (不論實際如何稱述)；及
- (b) 提述訂立或履行買賣交易之處，如屬 (a) 段提述的要約或邀請的情況，須解釋為作出該項要約或邀請 (視屬何情況而定)。

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- (1) and (2), be regarded as doing something or causing something to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance—
- (i) where the securities are traded on a relevant recognized market or by means of authorized automated trading services, of active trading in securities so traded or with respect to the market for, or the price for dealings in, securities so traded; or
- (ii) where the securities are traded on a relevant overseas market, of active trading in securities so traded or with respect to the market for, or the price for dealings in, securities so traded.
- (6) Subject to subsection (7), a person who contravenes subsection (1), (2), (3) or (4) commits an offence.
- (7) Where a person is charged with an offence under subsection (6) in respect of a contravention of subsection (1) or (2) taking place through the commission of an act referred to in subsection (5)(a), (b) or (c), it is a defence to the charge for the person to prove that the purpose for which he committed the act was not, or, where there was more than one purpose, the purposes for which he committed the act did not include, the purpose of creating a false or misleading appearance of active trading in securities, or with respect to the market for, or the price for dealings in, securities, referred to in subsection (1) or (2) (as the case may be).
- (8) In subsection (5), **off-market transaction** (場外交易) means a transaction which—
- (a) in the case of securities traded on a relevant recognized market, is not required to be recorded on the relevant recognized market, or to be notified, under the rules of

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## 296. 操控價格的罪行

(1) 任何人不得 ——

- (a) 在香港或其他地方直接或間接訂立或履行任何當中不涉及實益擁有權轉變的證券買賣交易，而該宗交易具有以下效果：維持、提高、降低或穩定在有關認可市場或透過使用認可自動化交易服務交易的證券的價格，或引致該等證券的價格波動；或

- the person by whom the relevant recognized market is operated, to such person;
- (b) in the case of securities traded by means of authorized automated trading services, is not required to be recorded by means of authorized automated trading services, or to be notified, under the rules of the person by whom the authorized automated trading services are operated, to such person; or
- (c) in the case of securities traded on a relevant overseas market, is not required to be recorded on the relevant overseas market, or to be notified, under the rules of the person by whom the relevant overseas market is operated, to such person.
- (9) In this section—
- (a) a reference to a transaction of sale or purchase, in relation to securities, includes an offer to sell or purchase securities and an invitation (however expressed) that expressly or impliedly invites a person to offer to sell or purchase securities; and
- (b) a reference to entering into or carrying out a transaction of sale or purchase shall, in the case of an offer or an invitation referred to in paragraph (a), be construed as a reference to making the offer or the invitation (as the case may be).

## 296. Offence of price rigging

(1) A person shall not, in Hong Kong or elsewhere—

- (a) enter into or carry out, directly or indirectly, any transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, which has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations

- (b) 意圖使任何虛構或非真實的交易或手段具有以下效果，或罔顧該交易或手段是否具有以下效果，而在香港或其他地方直接或間接訂立或履行該交易或採取該手段：維持、提高、降低或穩定在有關認可市場或透過使用認可自動化交易服務交易的證券的價格或期貨合約交易的價格，或引致該等證券的價格或期貨合約交易的價格波動。
- (2) 任何人不得 ——
- (a) 在香港直接或間接訂立或履行任何當中不涉及實益擁有權轉變的證券買賣交易，而該宗交易具有以下效果：維持、提高、降低或穩定在有關境外市場交易的證券的價格，或引致該等證券的價格波動；或
- (b) 意圖使任何虛構或非真實的交易或手段具有以下效果，或罔顧該交易或手段是否具有以下效果，而在香港直接或間接訂立或履行該交易或採取該手段：維持、提高、降低或穩定在有關境外市場交易的證券的價格或期貨合約交易的價格，或引致該等證券的價格或期貨合約交易的價格波動。
- (3) 就第 (1)(b) 及 (2)(b) 款而言，一宗交易的各方是或曾是打算該宗交易按其條款具有效力此一事實，並非斷定該宗交易是否不屬虛構或非真實的交易的決定性因素。
- (4) 除第 (5) 款另有規定外，任何人違反第 (1) 或 (2) 款，即屬犯罪。
- (5) 凡任何人透過任何證券買賣交易而違反第 (1)(a) 或 (2)(a) 款，並因此被控犯第 (4) 款所訂罪行，如他證明買賣該等證券的目的，並非在於 (亦並不包括) 就證券的價格造成虛假或具誤導性的表象，即可以此作為免責辯護。
- (6) 在本條中 ——
- (a) 提述證券買賣交易之處，包括提述買賣證券的要約，及以明示或隱含方式邀請他人要約買賣證券的邀請 (不論實際如何稱述)；及

in, the price of securities traded on a relevant recognized market or by means of authorized automated trading services; or

- (b) enter into or carry out, directly or indirectly, any fictitious or artificial transaction or device, with the intention that, or being reckless as to whether, it has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities, or the price for dealings in futures contracts, that are traded on a relevant recognized market or by means of authorized automated trading services.
- (2) A person shall not, in Hong Kong—
- (a) enter into or carry out, directly or indirectly, any transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, which has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities traded on a relevant overseas market; or
- (b) enter into or carry out, directly or indirectly, any fictitious or artificial transaction or device, with the intention that, or being reckless as to whether, it has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities, or the price for dealings in futures contracts, that are traded on a relevant overseas market.
- (3) For the purposes of subsections (1)(b) and (2)(b), the fact that a transaction is, or at any time was, intended to have effect according to its terms is not conclusive in determining whether the transaction is, or was, not fictitious or artificial.
- (4) Subject to subsection (5), a person who contravenes subsection (1) or (2) commits an offence.



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- (b) 提述訂立或履行買賣交易之處，如屬 (a) 段提述的要約或邀請的情況，須解釋為作出該項要約或邀請（視屬何情況而定）。

## 297. 披露關於受禁交易的資料的罪行

- (1) 如某資料的大意是某法團證券的價格或期貨合約交易的價格（不論該等證券或期貨合約是在有關認可市場或是透過使用認可自動化交易服務交易的），將會因或相當可能會因就該法團或其有連繫法團的證券或就該等期貨合約（視屬何情況而定）所進行的受禁交易，而得以維持、提高、降低或穩定，而某人或其有聯繫者——
- (a) 已直接或間接訂立或履行該受禁交易；或
- (b) 已由於披露、傳遞或散發上述資料而直接或間接收取利益，或預期會由於披露、傳遞或散發上述資料而直接或間接收取利益，

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- (5) Where a person is charged with an offence under subsection (4) in respect of a contravention of subsection (1)(a) or (2)(a) taking place through any transaction of sale or purchase of securities, it is a defence to the charge for the person to prove that the purpose for which the securities were sold or purchased was not, or, where there was more than one purpose, the purposes for which the securities were sold or purchased did not include, the purpose of creating a false or misleading appearance with respect to the price of securities.
- (6) In this section—
- (a) a reference to a transaction of sale or purchase, in relation to securities, includes an offer to sell or purchase securities and an invitation (however expressed) that expressly or impliedly invites a person to offer to sell or purchase securities; and
- (b) a reference to entering into or carrying out a transaction of sale or purchase shall, in the case of an offer or an invitation referred to in paragraph (a), be construed as a reference to making the offer or the invitation (as the case may be).

## 297. Offence of disclosure of information about prohibited transactions

- (1) A person shall not disclose, circulate or disseminate, or authorize or be concerned in the disclosure, circulation or dissemination of, information to the effect that the price of securities of a corporation, or the price for dealings in futures contracts, that are traded on a relevant recognized market or by means of authorized automated trading services will be maintained, increased, reduced or stabilized, or is likely to be maintained, increased, reduced or stabilized, because of a prohibited transaction relating to securities of either the corporation or a related corporation of the corporation



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

- (2) 除第 (3) 款另有規定外，任何人違反第 (1) 款，即屬犯罪。
- (3) 凡任何人基於該人或其有聯繫者直接或間接收取第 (1)(b) 款提述的利益，或預期會直接或間接收取第 (1)(b) 款提述的利益，而就違反第 (1) 款被控犯第 (2) 款所訂罪行，如該人證明——
- (a) 該人或其有聯繫者（視屬何情況而定）收取或預期會收取的利益，並非從直接或間接訂立或履行有關的受禁交易的另一人或從該另一人的有聯繫者收取的；或
- (b) 該人或其有聯繫者（視屬何情況而定）收取或預期會收取的利益，是從直接或間接訂立或履行有關的受禁交易的另一人或從該另一人的有聯繫者收取的，但直至該資料被披露、傳遞或散發之時（包括該資料被披露、傳遞或散發的一刻），該人或其有聯繫者（視屬何情況而定）是以真誠行事的，
- 即可以此作為免責辯護。
- (4) 在本條中——
- (a) 提述受禁交易之處，指構成市場失當行為的行為或交易，亦指構成違反第 2 至 4 分部任何條文的行為或交易；而
- (b) 提述任何人訂立或履行受禁交易之處，須據此解釋。

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or to the futures contracts (as the case may be), if he, or an associate of his—

- (a) has entered into or carried out, directly or indirectly, the prohibited transaction; or
- (b) has received, or expects to receive, directly or indirectly, a benefit as a result of the disclosure, circulation or dissemination of the information.
- (2) Subject to subsection (3), a person who contravenes subsection (1) commits an offence.
- (3) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) on the basis that he, or an associate of his, received, or expected to receive, directly or indirectly, a benefit referred to in subsection (1)(b), it is a defence to the charge for the person to prove that—
- (a) the benefit which he or the associate of his (as the case may be) received, or expected to receive, was not from a person who has entered into or carried out, directly or indirectly, the prohibited transaction in question, or an associate of such person; or
- (b) the benefit which he or the associate of his (as the case may be) received, or expected to receive, was from a person who has entered into or carried out, directly or indirectly, the prohibited transaction in question, or an associate of such person, but up to (and including) the time of the disclosure, circulation or dissemination of the information he has acted in good faith.
- (4) In this section—
- (a) a reference to a prohibited transaction means any conduct or transaction which constitutes market misconduct or a contravention of any of the provisions of Divisions 2 to 4; and

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## 298. 披露虛假或具誤導性的資料以誘使進行交易的罪行

- (1) 如任何資料相當可能會 ——
- (a) 誘使他人 在香港認購證券或進行期貨合約交易；
  - (b) 誘使他人 在香港售賣或購買證券；或
  - (c) 在香港維持、提高、降低或穩定證券的價格或期貨合約交易的價格，
- 則在以下情況下，任何人不得在香港或其他地方披露、傳遞或散發該資料，或授權披露、傳遞或散發該資料，或牽涉入披露、傳遞或散發該資料 ——
- (i) 該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性；及
  - (ii) 該人知道該資料屬第 (i) 段所述的資料，或罔顧該資料是否屬第 (i) 段所述的資料。
- (2) 除第 (3) 至 (5) 款另有規定外，任何人違反第 (1) 款，即屬犯罪。
- (3) 凡任何人只因任何資料的發出或複製而違反第 (1) 款，並因此被控犯第 (2) 款所訂罪行，如他證明以下各項，即可以此作為免責辯護 ——
- (a) 該資料的發出或複製是在某業務（不論是否由他經營）的日常運作過程中發生的，而該業務的主要目的，是發出或複製其他人提供的材料；
  - (b) 該資料的內容（不論是全部或其中任何部分內容）——
    - (i) （如該業務是由他經營）並非由他本人或由他的任何高級人員、僱員或代理人設定；或

- (b) a reference to any person having entered into or carried out the prohibited transaction shall be construed accordingly.

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

- (1) A person shall not, in Hong Kong or elsewhere, disclose, circulate or disseminate, or authorize or be concerned in the disclosure, circulation or dissemination of, information that is likely—
- (a) to induce another person to subscribe for securities, or deal in futures contracts, in Hong Kong;
  - (b) to induce the sale or purchase in Hong Kong of securities by another person; or
  - (c) to maintain, increase, reduce or stabilize the price of securities, or the price for dealings in futures contracts, in Hong Kong,
- if—
- (i) the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and
  - (ii) the person knows that, or is reckless as to whether, the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.
- (2) Subject to subsections (3) to (5), a person who contravenes subsection (1) commits an offence.
- (3) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the issue or reproduction of information, it is a defence to the charge for the person to prove that—

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

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

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- (d) 就該資料所作的再傳送，是附有一項大意如下的訊息的，或是在獲再傳送該資料的人確認明白以下事項之後完成的 ——
- (i) (如該業務是由他經營) 他本人或他的任何高級人員、僱員或代理人並無設定該資料的內容，而且既不就該資料負責，亦不認可其準確性；或
  - (ii) (如該業務不是由他經營) 經營該業務的人或該人的任何高級人員、僱員或代理人並無設定該資料的內容，而且既不就該資料負責，亦不認可其準確性；及
- (e) 在該資料再傳送時 ——
- (i) 他不知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性；或
  - (ii) 他知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性，但 ——
    - (A) (如該業務是由他經營) 在有關個案的情況下，按理不能期望他阻止該項再傳送；或
    - (B) (如該業務不是由他經營) 在有關個案的情況下，他已採取所有合理步驟，使某個能夠採取步驟致使阻止該項再傳送的人，知悉該資料如此屬虛假或具誤導性之事 (即使該項再傳送事實上發生)。
- (5) 凡任何人只因任何資料的直播而違反第 (1) 款，並因此被控犯第 (2) 款所訂罪行，如他證明以下各項，即可以此作為免責辯護 ——
- (a) 該資料的廣播是在某廣播業者 (不論他是否該廣播業者) 的業務的日常運作過程中發生的；

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- directly or by facilitating the establishment of links between such other persons and third parties;
- (b) the contents of the information were not, wholly or partly, devised—
    - (i) where the business was carried on by him, by himself or any officer, employee or agent of his; or
    - (ii) where the business was not carried on by him, by himself;
  - (c) for the purposes of the re-transmission—
    - (i) where the business was carried on by him, he or any officer, employee or agent of his; or
    - (ii) where the business was not carried on by him, he, did not select, add to, modify or otherwise exercise control over the contents of the information;
  - (d) the re-transmission of the information was accompanied by a message to the effect, or was effected following acknowledgment by the persons to whom it was re-transmitted of their understanding, that—
    - (i) where the business was carried on by him, he or any officer, employee or agent of his; or
    - (ii) where the business was not carried on by him, the person who carried on the business or any officer, employee or agent of that person,

did not devise the contents of the information, and neither took responsibility for it nor endorsed its accuracy; and
  - (e) at the time of the re-transmission—
    - (i) he did not know that the information was false or misleading as to a material fact or was false or



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

- misleading through the omission of a material fact; or
- (ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—
    - (A) where the business was carried on by him, in the circumstances of the case he could not reasonably be expected to prevent the re-transmission; or
    - (B) where the business was not carried on by him, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the re-transmission to be prevented (even if the re-transmission in fact took place).
- (5) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the live broadcast of information, it is a defence to the charge for the person to prove that—
- (a) the broadcast of the information took place in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);
  - (b) the contents of the information were not, wholly or partly, devised—
    - (i) where he was the broadcaster, by himself or any officer, employee or agent of his; or
    - (ii) where he was not the broadcaster, by himself;
  - (c) for the purposes of the broadcast—



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

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

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

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

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(i) where he was the broadcaster, he or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, he, did not select, add to, modify or otherwise exercise control over the contents of the information;

(d) in relation to the broadcast—

(i) where he was the broadcaster, he; or

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

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

(e) at the time of the broadcast—

(i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or

(ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—

(A) where he was the broadcaster, in the circumstances of the case he could not

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reasonably be expected to prevent the broadcast; or

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

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

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

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

## 299. 操縱證券市場的罪行

(1) 任何人不得 ——

## 299. Offence of stock market manipulation

(1) A person shall not, in Hong Kong or elsewhere—

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

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

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- (c) 意圖誘使另一人售賣、購買或認購，或不售賣、不購買或不認購某法團或其有連繫法團的證券，而在香港直接或間接訂立或履行 2 宗或多於 2 宗買賣該法團的證券的交易，而該等交易本身或連同其他交易維持或穩定或相當可能會維持或穩定在有關境外市場交易的任何證券的價格。
- (3) 任何人違反第 (1) 或 (2) 款，即屬犯罪。
- (4) 在本條中 ——
  - (a) 提述交易之處，包括提述要約及邀請（不論實際如何稱述）；及
  - (b) 提述訂立或履行交易之處，如屬 (a) 段提述的要約或邀請的情況，須解釋為作出該項要約或邀請（視屬何情況而定）。

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- themselves or in conjunction with any other transaction increase, or are likely to increase, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to purchase or subscribe for, or to refrain from selling, securities of the corporation or of a related corporation of the corporation;
- (b) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction reduce, or are likely to reduce, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to sell, or to refrain from purchasing, securities of the corporation or of a related corporation of the corporation; or
- (c) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction maintain or stabilize, or are likely to maintain or stabilize, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to sell, purchase or subscribe for, or to refrain from selling, purchasing or subscribing for, securities of the corporation or of a related corporation of the corporation.
- (3) A person who contravenes subsection (1) or (2) commits an offence.
- (4) In this section—
  - (a) a reference to a transaction includes an offer and an invitation (however expressed); and
  - (b) a reference to entering into or carrying out a transaction shall, in the case of an offer or an invitation referred to

**第 4 分部 —— 其他罪行****300. 涉及在證券、期貨合約或槓桿式外匯交易方面使用欺詐或欺騙手段等的罪行**

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

**301. 披露虛假或具誤導性的資料以誘使訂立槓桿式外匯交易合約的罪行**

- (1) 在以下情況下，任何人不得在香港或其他地方披露、傳遞或散發任何相當可能誘使另一人在香港訂立槓桿式外匯交易合約的資料，或在香港或其他地方授權披露、傳遞或散發該資料，或在香港或其他地方牽涉入披露、傳遞或散發該資料 ——
  - (a) 該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性；及
  - (b) 該人知道該資料屬 (a) 段所述的資料，或罔顧該資料是否屬 (a) 段所述的資料。

in paragraph (a), be construed as a reference to making the offer or the invitation (as the case may be).

**Division 4—Other offences****300. Offence involving fraudulent or deceptive devices, etc. in transactions in securities, futures contracts or leveraged foreign exchange trading**

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

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

- (1) A person shall not, in Hong Kong or elsewhere, disclose, circulate or disseminate, or authorize or be concerned in the disclosure, circulation or dissemination of, information that is likely to induce another person to enter into a leveraged foreign exchange contract in Hong Kong, if—
  - (a) the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and



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- (2) 除第 (3) 至 (5) 款另有規定外，任何人違反第 (1) 款，即屬犯罪。
- (3) 凡任何人只因任何資料的發出或複製而違反第 (1) 款，並因此被控犯第 (2) 款所訂罪行，如他證明以下各項，即可以此作為免責辯護——
- (a) 該資料的發出或複製是在某業務（不論是否由他經營）的日常運作過程中發生的，而該業務的主要目的，是發出或複製其他人提供的材料；
- (b) 該資料的內容（不論是全部或其中任何部分內容）——
- (i) （如該業務是由他經營）並非由他本人或由他的任何高級人員、僱員或代理人設定；或
- (ii) （如該業務不是由他經營）並非由他本人設定；
- (c) 為了該項發出或複製——
- (i) （如該業務是由他經營）他本人或他的任何高級人員、僱員或代理人；或
- (ii) （如該業務不是由他經營）他本人，並無揀選、增補、修改或以其他方式控制該資料的內容；及
- (d) 在該資料發出或複製時，他不知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性。
- (4) 凡任何人只因任何資料的再傳送而違反第 (1) 款，並因此被控犯第 (2) 款所訂罪行，如他證明以下各項，即可以此作為免責辯護——
- (a) 該資料的再傳送是在某業務（不論是否由他經營）的日常運作過程中發生的，而該業務的正常運作，涉及將資訊再傳送往資訊系統內的其他人，或將資訊從一個資訊系統再傳送往另一個資訊系統（不論位

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- (b) the person knows that, or is reckless as to whether, the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.
- (2) Subject to subsections (3) to (5), a person who contravenes subsection (1) commits an offence.
- (3) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the issue or reproduction of information, it is a defence to the charge for the person to prove that—
- (a) the issue or reproduction of the information took place in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was issuing or reproducing materials provided by others;
- (b) the contents of the information were not, wholly or partly, devised—
- (i) where the business was carried on by him, by himself or any officer, employee or agent of his; or
- (ii) where the business was not carried on by him, by himself;
- (c) for the purposes of the issue or reproduction—
- (i) where the business was carried on by him, he or any officer, employee or agent of his; or
- (ii) where the business was not carried on by him, he, did not select, add to, modify or otherwise exercise control over the contents of the information; and
- (d) at the time of the issue or reproduction, he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact.

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- 於何處)，不論是直接地再傳送或是藉利便該等其他人與第三者之間建立連結而再傳送；
- (b) 該資料的內容(不論是全部或其中任何部分內容)——
- (i) (如該業務是由他經營)並非由他本人或由他的任何高級人員、僱員或代理人設定；或
- (ii) (如該業務不是由他經營)並非由他本人設定；
- (c) 為了該項再傳送——
- (i) (如該業務是由他經營)他本人或他的任何高級人員、僱員或代理人；或
- (ii) (如該業務不是由他經營)他本人，並無揀選、增補、修改或以其他方式控制該資料的內容；
- (d) 就該資料所作的再傳送，是附有一項大意如下的訊息的，或是在獲再傳送該資料的人確認明白以下事項之後完成的——
- (i) (如該業務是由他經營)他本人或他的任何高級人員、僱員或代理人並無設定該資料的內容，而且既不就該資料負責，亦不認可其準確性；或
- (ii) (如該業務不是由他經營)經營該業務的人或該人的任何高級人員、僱員或代理人並無設定該資料的內容，而且既不就該資料負責，亦不認可其準確性；及
- (e) 在該資料再傳送時——
- (i) 他不知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性；或

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

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

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

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

- (e) 在該資料廣播時 ——
  - (i) 他不知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性；或
  - (ii) 他知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性，但 ——
    - (A) （如他是該廣播業者）在有關個案的情況下，按理不能期望他阻止該項廣播；或
    - (B) （如他不是該廣播業者）在有關個案的情況下，他已採取所有合理步驟，使某個能夠採取步驟致使阻止該項廣播的人，知悉該資料如此屬虛假或具誤導性之事（即使該項廣播事實上發生）。
- (6) 在本條中，**發出** (issue) 就任何材料（包括任何資料）而言，包括 ——
  - (a) 藉親自造訪；
  - (b) 在報章、雜誌、期刊或其他刊物；
  - (c) 藉海報、告示、啟事或通知的展示；
  - (d) 以通告、冊子、小冊子或傳單的方式；
  - (e) 藉照片展覽或放映電影片；
  - (f) 藉聲音或電視廣播；
  - (g) 藉資訊系統或其他電子器材；或

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

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- (h) 以其他方式 (不論是以機械、電子、磁力、光學、人手或其他媒介，或藉光、影像或聲音或其他媒介的產生或傳送)，  
發表、傳遞、分發或以其他方式散發該材料或其內容，  
並包括安排或授權發出該材料。

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- (i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or
- (ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—
- (A) where he was the broadcaster, in the circumstances of the case he could not reasonably be expected to prevent the broadcast; or
- (B) where he was not the broadcaster, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the broadcast to be prevented (even if the broadcast in fact took place).
- (6) In this section, **issue** (發出), in relation to any material (including any information), includes publishing, circulating, distributing or otherwise disseminating the material or the contents thereof, whether—
- (a) by any visit in person;
- (b) in a newspaper, magazine, journal or other publication;
- (c) by the display of posters or notices;
- (d) by means of circulars, brochures, pamphlets or handbills;
- (e) by an exhibition of photographs or cinematograph films;
- (f) by way of sound or television broadcasting;
- (g) by any information system or other electronic device; or



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### 302. 代他人進行期貨合約交易的虛假陳述等的罪行

- (1) 在以下情況下，任何人不得向另一人陳述謂他已代該另一人在認可期貨市場或透過使用認可自動化交易服務進行或促成或安排進行期貨合約交易——
  - (a) 他事實上沒有如此進行或促成或安排進行該等期貨合約交易；及
  - (b) 他明知他事實上沒有或罔顧他是否事實上沒有如此進行或促成或安排進行該等期貨合約交易。
- (2) 在以下情況下，任何人不得向另一人陳述謂他已代該另一人按照香港以外地方的期貨市場的規則進行期貨合約或實質上具有期貨合約特性的其他文書的交易，或謂已代該另一人促成或安排按照香港以外地方的期貨市場的規則進行期貨合約或實質上具有期貨合約特性的其他文書的交易——
  - (a) 他事實上沒有如此進行或促成或安排進行該等期貨合約或其他文書的交易；及
  - (b) 他明知他事實上沒有或罔顧他是否事實上沒有如此進行或促成或安排進行該等期貨合約或其他文書的交易。
- (3) 任何人違反第 (1) 或 (2) 款，即屬犯罪。

- (h) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,

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

### 302. Offence of falsely representing dealings in futures contracts on behalf of others, etc.

- (1) A person shall not represent to another person that he has on behalf of the other person dealt in, or facilitated or arranged for any dealing in, a futures contract traded on a recognized futures market or by means of authorized automated trading services, if—
  - (a) in fact he has not so dealt in, or facilitated or arranged for the dealing in, the futures contract; and
  - (b) he knows that, or is reckless as to whether, in fact he has not so dealt in, or facilitated or arranged for the dealing in, the futures contract.
- (2) A person shall not represent to another person that he has dealt in, or facilitated or arranged for any dealing in, a contract or other instrument substantially resembling a futures contract on behalf of the other person in accordance with the rules of a futures market outside Hong Kong, if—
  - (a) in fact he has not so dealt in, or facilitated or arranged for the dealing in, the contract or other instrument; and
  - (b) he knows that, or is reckless as to whether, in fact he has not so dealt in, or facilitated or arranged for the dealing in, the contract or other instrument.
- (3) A person who contravenes subsection (1) or (2) commits an offence.

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- (1) 任何人犯本部所訂罪行 ——
- (a) 一經循公訴程序定罪，可處罰款 \$10,000,000 及監禁 10 年；或
  - (b) 一經循簡易程序定罪，可處罰款 \$1,000,000 及監禁 3 年。
- (2) 凡任何人被裁定犯本部所訂罪行，作出該項裁定的法庭除可施加第 (1) 款指明的罰則外，亦可就該人作出一項或多於一項以下命令 ——
- (a) 命令他在該命令指明的不超過 5 年的期間內，未經該法庭許可，不得擔任或留任上市法團或其他指明法團的董事或清盤人，或擔任或留任該等法團的財產或業務的接管人或經理人，或以任何方式直接或間接關涉或參與該等法團的管理；
  - (b) 命令他在該命令指明的不超過 5 年的期間內，未經該法庭許可，不得在香港直接或間接取得、處置或以其他方式處理任何證券、期貨合約、槓桿式外匯交易合約，或任何證券、期貨合約、槓桿式外匯交易合約或集體投資計劃的權益；
  - (c) 在他是某團體的成員而該團體可針對他採取紀律行動的情況下，命令建議該團體針對他採取紀律行動；  
(由 2014 年第 6 號第 67 條修訂)
  - (d) 命令該人向政府繳付一筆款項，金額不得超逾該人因犯有關罪行而令該人獲取的利潤或避免的損失的金額。  
(由 2014 年第 6 號第 67 條增補)
- (3) 凡某人的行為 ——
- (a) 在過往導致他在香港被裁定犯某罪行；
  - (b) 在過往導致審裁處 ——

- (1) A person who commits an offence under this Part is liable—
- (a) on conviction on indictment to a fine of \$10,000,000 and to imprisonment for 10 years; or
  - (b) on summary conviction to a fine of \$1,000,000 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

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- (i) 根據第 252(3)(b) 條識辨該人曾從事市場失當行為；或
  - (ii) 根據第 307J(1)(b) 條識辨該人為違反披露規定；或 (由 2012 年第 9 號第 10 條代替)
  - (c) 在第 XIII 部生效前任何時間導致他在根據已廢除的《證券(內幕交易)條例》第 16(3) 條作出的裁定中或在根據該條例第 22(1) 條擬備和發出的報告書中被識辨為內幕交易者，
- 法庭在根據第 (2) 款就他作出命令時，可考慮該行為。
- (4) 法庭如根據第 (2)(a) 款作出命令，可藉點名或提述與其他法團的關係而指明一個法團。
  - (5) 法庭如根據第 (2)(a) 款作出命令，須在作出該命令後，在合理地切實可行的範圍內盡快將該命令送交公司註冊處處長存檔。
  - (6) 凡法庭根據第 (2)(b) 款作出命令，證監會可按該會認為適當的方式，將該命令通知任何持牌人或註冊機構。
  - (7) 任何人沒有遵從根據第 (2)(a) 或 (b) 款作出的命令，即屬犯罪——
    - (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
    - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
  - (8) 根據第 (2)(d) 款作出的命令可予強制執行，執行方式與高等法院民事審裁的判決的強制執行方式相同。(由 2014 年第 6 號第 67 條增補)

- recommended to take disciplinary action against the person; (*Amended 6 of 2014 s. 67*)
  - (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. (*Added 6 of 2014 s. 67*)
- (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

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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 \$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.
- (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. (*Added 6 of 2014 s. 67*)

### 304. 關乎違反第 2 至 4 分部之事的交易既非無效亦非可使無效

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

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

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

### 305. 就違反本部須負的民事法律責任

- (1) 除第 (2) 及 (3) 款另有規定外，任何人如違反第 2 至 4 分部任何條文，則他負有法律責任以損害賠償的方式賠償另一人因該項違反而蒙受的金錢損失，不論他是否亦根據第 303 條或其他規定招致任何其他法律責任，亦不論該損失是否由於該另一人曾以受該項違反影響的價格訂立交易所引致的。
- (2) 除非就有關個案的情況而言，某人應根據第 (1) 款作出賠償是公平、公正和合理的，否則該人無須根據該款作出賠償。
- (3) 本部所指的可用於針對違反第 2 至 4 分部任何條文而提出的控罪的免責辯護，在就同一項違反而根據第 (1) 款提起的訴訟中，亦可用作免責辯護。

### 305. Civil liability for contravention of this Part

- (1) Subject to subsections (2) and (3), a person who contravenes any of the provisions of Divisions 2 to 4 shall, whether or not he also incurs any other liability (whether under section 303 or otherwise), be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of the contravention, whether or not the loss arises from the other person having entered into a transaction or dealing at a price affected by the contravention.
- (2) No person shall be liable to pay compensation under subsection (1) unless it is fair, just and reasonable in the circumstances of the case that he should be so liable.

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- (4) 任何人即使未因違反第 2 至 4 分部任何條文而被檢控或被定罪，其他人仍可根據第 (1) 款就該項違反而針對該人提出訴訟。
- (5) 為免生疑問，凡任何法院具有司法管轄權裁定根據第 (1) 款提出的訴訟，如該法院除本條外具有司法管轄權受理強制令的申請，則可按它認為適當的條款及條件批給強制令，以附加於或取代損害賠償。
- (6) 在不損害《證據條例》(第 8 章) 第 62 條的原則下，在根據第 (1) 款提出的訴訟中 ——
- (a) 市場失當行為審裁處依據第 252(3)(a) 條裁定曾發生市場失當行為此一事實；
- (b) 市場失當行為審裁處在依據第 252(3)(b) 條所作的裁定中識辨某人 (不論該人是否在根據本條第 (1) 款提出的訴訟的一方) 曾從事市場失當行為此一事實，
- 只要該裁定仍然存在，即可在與該訴訟的任何爭議點有關的情況下獲接納為證明以下事宜的證據 ——
- (i) (就 (a) 段提述的裁定而言) 曾發生該市場失當行為；或
- (ii) (就 (b) 段提述的裁定而言) 該人曾從事該市場失當行為。
- (7) 在根據第 (1) 款提出的訴訟中，如有第 (6)(a) 或 (b) 款提述的裁定存在一事根據第 (6) 款可獲接納為證據 ——
- (a) 則 ——
- (i) 就第 (6)(a) 款提述的裁定而言，除非相反證明成立，否則該裁定針對的市場失當行為須當作曾發生；或
- (ii) 就第 (6)(b) 款提述的裁定而言，除非相反證明成立，否則該裁定針對的人須當作曾從事市場失當行為；及

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- (3) A defence under this Part to a charge for an offence in respect of a contravention of any of the provisions of Divisions 2 to 4 shall also be a defence in an action brought under subsection (1) in respect of the same contravention.
- (4) A person may bring an action under subsection (1) in respect of a contravention of any of the provisions of Divisions 2 to 4 even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of the contravention.
- (5) For the avoidance of doubt, where a court has jurisdiction to determine an action brought under subsection (1), it may, where it is, apart from this section, within its jurisdiction to entertain an application for an injunction, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.
- (6) Without prejudice to section 62 of the Evidence Ordinance (Cap. 8), in an action brought under subsection (1)—
- (a) the fact that there is a determination by the Market Misconduct Tribunal pursuant to section 252(3)(a) that market misconduct has taken place;
- (b) the fact that there is a determination by the Market Misconduct Tribunal pursuant to section 252(3)(b) identifying a person (whether or not a party to the action) as having engaged in market misconduct,
- shall, in so far the determination is still subsisting, be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in the action—
- (i) in the case of a determination referred to in paragraph (a), that the market misconduct has taken place; or
- (ii) in the case of a determination referred to in paragraph (b), that the person has engaged in market misconduct.



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- (b) 在不損害為作為該裁定的證據或為確定該裁定所依據的事實而收取任何其他可獲接納的證據的原則下，根據第 262(2)(b)(i) 條發表並載有該裁定的市場失當行為審裁處報告的內容，或根據第 (8) 款提供並載有該裁定的市場失當行為審裁處報告的文本的內容，亦可為該目的而獲接納為證據。
- (8) 在根據第 (1) 款提出的訴訟中，如 ——
- (a) 有第 (6)(a) 或 (b) 款提述的裁定存在一事根據第 (6) 款可獲接納為證據；及
- (b) 載有市場失當行為審裁處裁定的報告沒有根據第 262(2)(b)(i) 條發表，
- 則具有司法管轄權就該訴訟作出裁定的法院如認為適當的話，可要求向該法院提供該報告的文本，以供該法院為第 (7)(b) 款的目的使用；如該法院作出該要求 ——
- (i) 市場失當行為審裁處須安排向該法院提供該報告的文本，以供該法院為第 (7)(b) 款的目的使用；及
- (ii) 該報告的內容可為第 (7)(b) 款指明的目的獲接納。
- (9) 在本條中，提述交易之處，包括提述要約及邀請（不論實際如何稱述）。
- (10) 本條並不影響、限制或減免任何人根據普通法或任何其他成文法則而獲授予的權利或可招致的法律責任。

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

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Section 30614-96  
Cap. 571**306. 不構成罪行的行為**

- (1) 不論本部有任何規定，因某行為而被控犯本部 (第 300 或 302 條除外) 所訂罪行的人，如證明該行為按照在第 (2) 款下訂立的規則不得視為構成罪行，即可以此作為免責辯護。
- (2) 為施行第 (1) 款，證監會如認為訂立規則訂明在何種情況下，根據本部 (第 300 或 302 條除外) 本會構成某罪行的行為不得視為構成該罪行，是符合公眾利益的，則可在諮詢財政司司長後訂立該等規則。
- (3) 不論本部有任何規定，如 ——
  - (a) 某人因某行為而被控犯第 295、296 或 299 條所訂罪行；及
  - (b) 該項控罪是基於該行為是就在有關境外市場交易的證券或期貨合約而作出的，而非就在有關認可市場或透過使用認可自動化交易服務交易的證券或期貨合約而作出的，

除非控方證明假使該行為在該有關境外市場所在的地方作出，即構成刑事罪行，否則不得裁定該人犯該罪行。

report be made available to the court to enable it to be used for the purposes of subsection (7)(b), whereupon—

- (i) the Market Misconduct Tribunal shall cause a copy of the report to be made available to the court to enable it to be used for the purposes of subsection (7)(b); and
  - (ii) the contents of the report shall be admissible for the purpose specified in subsection (7)(b).
- (9) In this section, a reference to a transaction includes an offer and an invitation (however expressed).
  - (10) Nothing in this section affects, limits or diminishes any rights conferred on a person, or any liabilities a person may incur, under the common law or any other enactment.

**306. Conduct not to constitute offences**

- (1) Notwithstanding anything in this Part, where a person is charged with an offence under this Part (other than section 300 or 302) by reason of any conduct, it is a defence to the charge for the person to prove that the conduct is, according to the rules made under subsection (2), not to be regarded as constituting an offence.
- (2) For the purposes of subsection (1), the Commission, after consultation with the Financial Secretary, may, where it considers it is in the public interest to do so, make rules to prescribe the circumstances in which any conduct that would otherwise constitute an offence under this Part (other than section 300 or 302) shall not be regarded as constituting such an offence.
- (3) Notwithstanding anything in this Part, where—
  - (a) a person is charged with an offence under section 295, 296 or 299 by reason of any conduct; and

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

- (1) 不論本部有任何規定，在以下情況下，不得根據本部就某行為而對某人提起刑事法律程序——(由 2012 年第 9 號第 26 條修訂；由 2015 年第 19 號第 33 條修訂)
- (a) 過往已根據第 252 條就同一行為對該人提起法律程序；及
- (b) (i) 該法律程序仍待決；或
- (ii) 由於過往已提起該法律程序，因此不得根據第 252 條就同一行為再次合法地對該人提起法律程序。
- (2) 第 (1) 款不適用於任何根據第 252 條提起但沒有根據第 252A(1) 條取得律政司司長的同意的研訊程序。(由 2012 年第 9 號第 26 條增補)

**307. No further proceedings after Part XIII market misconduct proceedings**

- (1) Notwithstanding anything in this Part, no criminal proceedings may be instituted against any person under this Part in respect of any conduct if— (Amended 9 of 2012 s. 26)
- (a) proceedings have previously been instituted against the person under section 252 in respect of the same conduct; and
- (b) (i) those proceedings remain pending; or
- (ii) by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted against that person under section 252 in respect of the same conduct.
- (2) Subsection (1) does not apply in relation to any proceedings instituted under section 252 without the consent of the Secretary for Justice under section 252A(1). (Added 9 of 2012 s. 26)

## 第 XIVA 部

### 披露内幕消息

(第 XIVA 部由 2012 年第 9 號第 3 條增補)  
(格式變更——2013 年第 1 號編輯修訂紀錄)

#### 第 1 分部 —— 釋義

##### 307A. 第 XIVA 部的釋義

(1) 在本部中 ——

**上市** (listed) 指在認可證券市場上市 —— 亦見第 (3) 款；

**上市法團** (listed corporation) 指有發行證券的法團，而在違反披露規定情況就該法團而發生時，該等證券屬上市證券；

**上市證券** (listed securities) 指符合以下說明的證券 ——

- (a) 在違反披露規定情況就某法團而發生時，已由該法團發行並且屬上市的證券；
- (b) 在違反披露規定情況就某法團而發生時，已由該法團發行，而當時雖沒有上市，卻可合理預見其會上市，而其後確實上市；或
- (c) 在違反披露規定情況就某法團而發生時，並未由該法團發行，亦沒有上市，但當時可合理預見會如此發行及上市，而其後確實如此發行及上市；

**内幕消息** (inside information) 就某上市法團而言，指符合以下說明的具體消息或資料 ——

- (a) 關於 ——
  - (i) 該法團的；
  - (ii) 該法團的股東或高級人員的；或

## Part XIVA

### Disclosure of Inside Information

(Part XIVA added 9 of 2012 s. 3)  
(Format changes—E.R. 1 of 2013)

#### Division 1—Interpretation

##### 307A. Interpretation of Part XIVA

(1) In this Part—

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

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

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

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(iii) 該法團的上市證券的或該等證券的衍生工具的；及

(b) 並非普遍為慣常（或相當可能會）進行該法團上市證券交易的人所知，但該等消息或資料如普遍為他們所知，則相當可能會對該等證券的價格造成重大影響；

**衍生工具** (derivatives) 就上市證券而言，指以下任何一項（不論它們是否上市，亦不論是由何人發行或訂立）——

(a) 在該等證券中的或關乎該等證券的權利、期權或權益（不論以單位或其他方式描述）；

(b) 任何合約，而該等合約的目的或伴稱目的，是藉完全或部分參照以下項目的價格或價值，或該價格或價值的變動，以獲得或增加利潤或避免或減少損失——

(i) 該等證券；或

(ii) (a) 段提述的權利、期權或權益；

(c) 在以下項目中或關乎以下項目的權利、期權或權益（不論以單位或其他方式描述）——

(i) (a) 段提述的權利、期權或權益；或

(ii) (b) 段提述的合約；

(d) 任何產生、確認或證明 (a)、(b) 或 (c) 段提述的權利、期權、權益或合約的文書或其他文件，包括以下項目的權益證明書、參與證明書、臨時證明書、中期證明書，關乎以下項目的收據（包括寄存單據），以及認購或購買以下項目的權證——

(i) 該等證券；或

(ii) 該等權利、期權、權益或合約；

**違反披露規定** (breach of a disclosure requirement) —— 見第 (2) 款及第 307G(2) 條；

**審裁處** (Tribunal) 指根據第 251 條設立的市場失當行為審裁處；

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

(i) the listed securities; or

(ii) the rights, options or interests or the contracts;

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

(a) is about—

(i) the corporation;

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

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

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

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

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

**listed securities** (上市證券) means—

(a) securities which, at the time of a breach of a disclosure requirement in relation to a corporation, have been issued by the corporation and are listed;



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第 307A 條**證券 (securities) 指 ——**

- (a) 任何團體 (不論是否屬法團) 或政府或市政府當局的或由它發行的或可合理預見會由它發行的股份、股額、債權證、債權股額、基金、債券或票據;
  - (b) 在該等股份、股額、債權證、債權股額、基金、債券或票據中的或關乎該等股份、股額、債權證、債權股額、基金、債券或票據的權利、期權或權益 (不論以單位或其他方式描述);
  - (c) 該等股份、股額、債權證、債權股額、基金、債券或票據的權益證明書、參與證明書、臨時證明書、中期證明書、收據, 或認購或購買該等項目的權證;
  - (d) 通常被稱為證券的權益、權利或財產, 不論屬文書或其他形式; 或
  - (e) 第 392 條所指的公告訂明為按照該公告的條款視為證券的權益、權利或財產, 不論屬文書或其他形式。
- (2) 就本部而言 ——
- (a) 如第 307B 或 307C 條的任何規定就某上市法團而遭違反, 違反披露規定即告發生; 及
  - (b) 在該等情況下, 該法團即屬違反披露規定。
- 附註 ——**  
第 307G(2) 條訂明上市法團的高級人員在某些情況下亦屬違反披露規定。
- (3) 就本部而言, 在某認可證券市場上市的證券, 於該市場暫停該證券的交易的任何期間, 須持續視為上市證券。

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

**securities (證券) means—**

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

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

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第 307B 條Part XIVA—Division 2  
Section 307B14A-8  
Cap. 571**第 2 分部 —— 披露內幕消息****307B. 上市法團披露內幕消息的規定**

- (1) 上市法團須在知道任何內幕消息後，在合理地切實可行的範圍內，盡快向公眾披露該消息。
- (2) 就第 (1) 款而言，如有以下情況，上市法團即屬已知道內幕消息 ——
  - (a) 該法團的高級人員在以該法團的高級人員的身分執行職能時，知道或理應知道該消息；及
  - (b) 一名合理的人，如以該法團的高級人員的身分行事，會認為該消息屬關乎該法團的內幕消息。
- (3) 在不局限第 (1) 款的原則下，如有以下情況，上市法團即屬沒有根據該款的規定披露內幕消息 ——
  - (a) 所披露的消息或資料，在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性；及

- (2) For the purposes of this Part—

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

**Note—**

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

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

**Division 2—Disclosure of Inside Information****307B. Requirement for listed corporations to disclose inside information**

- (1) A listed corporation must, as soon as reasonably practicable after any inside information has come to its knowledge, disclose the information to the public.
- (2) For the purposes of subsection (1), inside information has come to the knowledge of a listed corporation if—
  - (a) information has, or ought reasonably to have, come to the knowledge of an officer of the corporation in the course of performing functions as an officer of the corporation; and
  - (b) a reasonable person, acting as an officer of the corporation, would consider that the information is inside information in relation to the corporation.

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- (b) 該法團的一名高級人員知道或理應知道所披露的消息或資料符合 (a) 段說明，或罔顧該消息或資料是否符合 (a) 段說明，或在該消息或資料是否符合 (a) 段說明方面有疏忽。
- (4) 本條受第 307C、307D、307E 及 307F 條規限。
- (5) 本條亦受《金融機構 (處置機制) 條例》(第 628 章) 第 150 及 153(2) 條所規限。(由 2016 年第 23 號第 216 條增補。編輯修訂——2017 年第 2 號編輯修訂紀錄)

**307C. 披露的方式**

- (1) 作出第 307B 條所指的披露的方式，須使公眾能平等、適時及有效地取得所披露的內幕消息。
- (2) 在不局限第 (1) 款所准許的披露方式的情況下，上市法團如已透過由某認可交易所營運的、用以向公眾散發消息的電子登載系統，散發根據第 307B 條的規定而須披露的內幕消息，即屬遵守該款。

**307D. 披露規定的例外情況**

- (1) 如作出某項披露是被某成文法則或法庭命令所禁止，或會構成違反某成文法則或法庭命令所施加的限制，則在

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- (3) Without limiting subsection (1), a listed corporation fails to disclose the inside information required under that subsection if—
- (a) the information disclosed is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and
- (b) an officer of the corporation knows or ought reasonably to have known that, or is reckless or negligent as to whether, the information disclosed is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.
- (4) This section is subject to sections 307C, 307D, 307E and 307F.
- (5) This section is also subject to sections 150 and 153(2) of the Financial Institutions (Resolution) Ordinance (Cap. 628). *(Added 23 of 2016 s. 216. Amended E.R. 2 of 2017)*

**307C. Manner of disclosure**

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

**307D. Exceptions to disclosure requirement**

- (1) A listed corporation is not required to disclose any inside information under section 307B if and so long as the

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- 有此情況期間上市法團無需根據第 307B 條披露該內幕消息。
- (2) 如有以下情況，則任何上市法團在以下情況持續期間無需根據第 307B 條披露內幕消息 ——
- (a) 該法團採取合理預防措施，將該消息保密；
  - (b) 該消息得以保密；及
  - (c) 以下一項或多於一項適用 ——
    - (i) 該消息關乎一項未完成的計劃或商議；
    - (ii) 該消息屬商業秘密；
    - (iii) 該消息關乎根據《外匯基金條例》(第 66 章) 設立的外匯基金或某執行中央銀行職能的機構 (包括香港以外地方的機構) 向該法團或 (如該法團為某公司集團的成員) 向該集團的任何其他成員提供流動資金支援；
    - (iv) 證監會根據第 307E(1) 條豁免該項披露，而根據第 307E(2) 條就該項豁免而施加的任何條件已獲遵從。
- (3) 就第 (2) 款而言 ——
- (a) 上市法團不會只因在日常業務過程中向符合以下說明的人披露任何內幕消息，而屬沒有採取合理預防措施將該消息保密 ——
    - (i) 該人需要該消息，以就該法團執行該人的職能；及
    - (ii) 該人憑藉任何成文法則、法律規則、合約或該法團的組織章程細則，對該法團負有不可向任何其他人士披露該消息的責任；及
  - (b) 在上述情況下，該消息須被視為得以保密。
- (4) 儘管有第 (2)(b) 款的規定，如有以下情況，上市法團並沒有就不再得以保密的內幕消息而違反披露規定 ——

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

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- (a) 該法團已採取合理措施，以監察該消息的保密情況；及
- (b) 該法團在察覺該消息不再得以保密後，在合理地切實可行的範圍內，盡快按照第 307C 條披露該消息。

**307E. 豁免**

- (1) 證監會如信納有關披露符合以下說明，則可應上市法團的申請，就根據第 307B 條的規定而須披露的任何內幕消息授予豁免——
  - (a) 該項披露被香港以外某地方的法例所禁止，或會構成違反香港以外某地方的法例所施加的限制；
  - (b) 該項披露被根據香港以外某地方的法律行使司法管轄權的法院作出的命令所禁止，或會構成違反香港以外某地方行使司法管轄權的法院作出的命令所施加的限制；
  - (c) 該項披露會構成違反香港以外某地方的執法機構所施加的限制；或

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

**307E. Waiver**

- (1) The Commission may, on an application by a listed corporation, grant a waiver in relation to the disclosure of any inside information required to be disclosed under section 307B if the Commission is satisfied that the disclosure—
  - (a) is prohibited under, or would constitute a contravention of a restriction imposed by, the legislation of a place outside Hong Kong;
  - (b) is prohibited under, or would constitute a contravention of a restriction imposed by, an order of a court exercising jurisdiction under the law of a place outside Hong Kong;



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- (d) 該項披露會構成違反香港以外某地方的政府當局行使該地方的法例所賦予的權力而施加的限制。
- (2) 證監會根據第 (1) 款授予豁免時，可就該項豁免施加其認為適當的任何條件。

**307F. 證監會可訂立規則，訂明披露規定不適用的情況**

- (1) 證監會如認為訂立規則訂明在何種情況下上市法團無需根據第 307B 條披露任何內幕消息，是符合公眾利益的，則可訂立該等規則。
- (2) 證監會在根據第 (1) 款訂立規則前，須先諮詢財政司司長。

**307G. 上市法團高級人員的責任**

- (1) 上市法團的每一高級人員，均須不時採取一切合理措施，以確保有妥善的預防措施，防止就該法團發生違反披露規定。
- (2) 如上市法團違反披露規定，在以下情況下，該法團的某高級人員亦屬違反該項披露規定 ——
- (a) 該項違反是由該人員的蓄意、罔顧後果或疏忽的行為所導致；或
- (b) 該人員沒有不時採取一切合理措施，以確保有妥善的預防措施，防止該項違反。

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

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

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

**307G. Duty of officers of listed corporations**

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

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### 第 3 分部 —— 關於披露的市場失當行為審裁處研訊程序

### Division 3—Disclosure Proceedings in Market Misconduct Tribunal

#### 307H. 審裁處根據本部具有的司法管轄權

審裁處具有司法管轄權，按照本部、第 XIII 部及附表 9 聆訊和裁定任何根據第 307I 條提起的研訊程序所引起（或與該程序有關連）的任何問題或爭議點。

#### 307H. Jurisdiction of Tribunal under this Part

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

#### 307I. 提起關於披露的研訊程序

- (1) 證監會如覺得曾發生或可能曾發生違反披露規定，則可就該事宜在審裁處提起研訊程序（**關於披露的研訊程序**）。
- (2) 證監會可藉向審裁處發出書面通知而提起關於披露的研訊程序，通知須載有陳述，指明附表 9 訂明的事宜。

#### 307I. Institution of disclosure proceedings

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

#### 307J. 關於披露的研訊程序的目的及運作

- (1) 在不局限第 307H 條的原則下，關於披露的研訊程序的目的是由審裁處裁定 ——
  - (a) 曾否發生違反披露規定；及
  - (b) 任何違反披露規定的人的身分。
- (2) 除第 261(3) 條另有規定外，在關於披露的研訊程序中，就裁定任何有待審裁處裁定的問題或爭議點時所要求的舉證準則，是適用於在法院進行的民事法律程序的舉證準則。
- (3) 第 253 及 254 條適用於關於披露的研訊程序，猶如在該等條文中提述根據第 252 條提起的研訊程序之處是提述關於披露的研訊程序一樣。

#### 307J. Object and conduct of disclosure proceedings

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

is also in breach of the disclosure requirement.

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### 307K. 陳詞權利

審裁處在 ——

- (a) 根據第 307J(1)(b) 條識辨某人前；或
- (b) 根據第 307N(1) 條就某人作出命令前，  
須給予該人合理的陳詞機會。

### 307L. 為關於披露的研訊程序的目的使用經收取的證據

- (1) 儘管本條例的其他條文有任何規定，任何人在關於披露的研訊程序中提出的或為該程序而提出的證據 (包括根據第 253 條由審裁處自該人處收取或由該人向審裁處交出的材料、紀錄或文件，及根據第 254 條由該人向審裁處提供、交出或披露的紀錄、文件或資料) ——
  - (a) 就本部的所有目的而言，包括在關於披露的研訊程序、任何由該程序引起的民事或刑事法律程序及任何根據第 307Z(1) 條提出的訴訟中，均可獲接納為證據；但
  - (b) 除第 (2) 款另有規定外，該等證據不得在任何由該人在法院提起 (或為針對該人而在法院提起) 的民事或刑事法律程序中，為任何其他目的而獲接納為針對該人的證據。
- (2) 在以下法律程序中，第 (1) 款提述的證據可獲接納為針對上述的人的證據 ——
  - (a) 根據或依據第 XI 部提起的民事法律程序；

- (3) Sections 253 and 254 apply to disclosure proceedings as if a reference in those sections to proceedings instituted under section 252 were a reference to disclosure proceedings.

### 307K. Right to be heard

Before the Tribunal—

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

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

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

- (1) Despite any other provision of this Ordinance, evidence given by any person at or for the purposes of any disclosure proceedings (including any material, record or document received by the Tribunal from the person or produced to the Tribunal by the person under section 253, and any record or document or information given, provided, produced or disclosed to the Tribunal by the person under section 254)—
  - (a) is admissible in evidence for all the purposes of this Part, including in the disclosure proceedings, any proceedings (civil or criminal) arising out of the disclosure proceedings and any action brought under section 307Z(1); but
  - (b) subject to subsection (2), is not admissible in evidence against the person for any other purposes in any other proceedings (civil or criminal) in a court of law brought by or against the person.
- (2) Evidence referred to in subsection (1) is admissible in evidence against the person—

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- (b) 因在關於披露的研訊程序中提出 ( 或為該程序的目的提出 ) 證據而引起的在法院進行的民事法律程序；或
- (c) 就該人在關於披露的研訊程序中或為該程序的目的對任何問題的回答，而檢控該人犯第 219(2)(a) 條或《刑事罪行條例》( 第 200 章 ) 第 V 部所訂罪行或作假證供罪的刑事法律程序。

**307M. 受保密權涵蓋的資料**

即使關於披露的研訊程序的標的是 ( 不論全部或有部分是 ) 某人的行為，本部、第 XIII 部或附表 9 並不規定擔任該人的銀行或財務顧問的認可財務機構，披露該人以外的該機構顧客的事務的資料。

**307N. 審裁處的命令**

- (1) 在符合第 307K 條的規定下，凡任何人在關於披露的研訊程序中，根據第 307J(1)(b) 條被識辨為違反披露規定，審裁處可在該程序完結時，就該人作出一項或多於一項以下命令——
  - (a) 命令該人在該命令指明的不超過 5 年的期間內，未經原訟法庭許可，不得——
    - (i) 擔任或留任上市法團或其他指明法團的董事或清盤人，或擔任或留任該等法團的財產或業務的接管人或經理人；或
    - (ii) 以任何方式直接或間接關涉或參與該等法團的管理；

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- (a) in civil proceedings instituted under or pursuant to Part XI;
- (b) in civil proceedings in a court of law arising out of the giving of evidence at or for the purposes of the disclosure proceedings; or
- (c) in criminal proceedings where the person is charged with an offence under section 219(2)(a), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of answers given by the person to questions put to the person at or for the purposes of the disclosure proceedings.

**307M. Privileged information**

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

**307N. Orders of Tribunal**

- (1) Subject to section 307K, at the conclusion of any disclosure proceedings the Tribunal may make one or more of the following orders in respect of a person identified under section 307J(1)(b) as being in breach of a disclosure requirement—
  - (a) an order that, for the period (not exceeding 5 years) specified in the order, the person must not, without the leave of the Court of First Instance—
    - (i) be or continue to be a director, liquidator, or receiver or manager of the property or business, of a listed corporation or any other specified corporation; or

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- (b) 命令該人在該命令指明的不超過 5 年的期間內，未經原訟法庭許可，不得在香港直接或間接取得、處置或以任何其他方式處理任何證券、期貨合約、槓桿式外匯交易合約，或任何證券、期貨合約、槓桿式外匯交易合約或集體投資計劃的權益；
- (c) 命令該人不得再作出構成違反披露規定的任何行為；
- (d) (如該人為上市法團，或以上市法團的董事或最高行政人員的身分違反披露規定) 命令該人向政府繳付一筆不超過 \$8,000,000 的規管性罰款；
- (e) 在不減損第 307P 條賦予審裁處的權力的原則下，就由政府就有關研訊程序而合理地招致或合理地附帶招致的訟費及開支，命令該人向政府繳付一筆審裁處認為數額適當的款項；
- (f) 在不減損第 307P 條賦予審裁處的權力的原則下，就由證監會就以下項目而合理地招致或合理地附帶招致的訟費及開支，命令該人向該會繳付一筆審裁處認為數額適當的款項 ——
  - (i) 該程序；
  - (ii) 在提起該程序前，對該人的行為或事務作出調查；或
  - (iii) 為該程序的目的，對該人的行為或事務作出調查；
- (g) 在該人是某團體的成員而該團體可針對其採取紀律行動的情況下，命令建議該團體針對該人採取紀律行動；
- (h) (如該人為上市法團) 審裁處認為需要的任何命令，以確保不會再就該法團發生違反披露規定，包括 (但不限於) 命令該法團委任由證監會核准的獨立專業顧問，以檢討其遵守本部的程序，或就關乎遵守本部的事宜，給予該法團意見；

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- (ii) in any way, whether directly or indirectly, be concerned or take part in the management of a listed corporation or any other specified corporation;
- (b) an order that, for the period (not exceeding 5 years) specified in the order, the person must not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities, futures contract or leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme;
- (c) an order that the person must not again perpetrate any conduct that constitutes a breach of a disclosure requirement;
- (d) if the person is a listed corporation or is in breach of the disclosure requirement as a director or chief executive of a listed corporation, an order that the person pay to the Government a regulatory fine not exceeding \$8,000,000;
- (e) without prejudice to any power of the Tribunal under section 307P, an order that the person pay to the Government the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Government in relation or incidental to the proceedings;
- (f) without prejudice to any power of the Tribunal under section 307P, an order that the person pay to the Commission the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Commission, whether in relation or incidental to—
  - (i) the proceedings;



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- (i) (如該人為上市法團的高級人員) 審裁處認為需要的任何命令，以確保該人員不會再作出構成違反披露規定的任何行為，包括(但不限於)命令該人員參加由證監會核准的關乎遵守本部、董事責任及企業管治的培訓計劃。
- (2) 凡某人的行為 ——
- (a) 在過往導致其在香港被裁定犯某罪行；
- (b) 在過往導致審裁處 ——
- (i) 根據第 252(3)(b) 條識辨該人曾從事市場失當行為；或
- (ii) 根據第 307J(1)(b) 條識辨該人為違反披露規定；或
- (c) 在第 XIII 部生效<sup>#</sup>前任何時間，導致該人在根據已廢除的《證券(內幕交易)條例》第 16(3) 條作出的裁定中(或在根據該條例第 22(1) 條擬備和發出的報告書中)被識辨為內幕交易者，
- 審裁處在根據第(1)款就該人作出命令時，可考慮該行為。
- (3) 除非在有關個案的整體情況下，根據第(1)(d)款施加的規管性罰款相對於違反披露規定一事而言，屬相稱及合理，否則審裁處不得向某人施加該罰款。為此目的而言，審裁處除可考慮第(2)款提述的行為外，亦可考慮以下任何事宜 ——
- (a) 導致該人違反披露規定的行為的嚴重性；
- (b) 該行為是否屬蓄意、罔顧後果或疏忽的；
- (c) 該行為是否可能已損害證券期貨市場的廉潔穩健；(由 2018 年第 17 號第 138 條修訂)
- (d) 該行為是否可能已損害投資大眾的利益；
- (e) 該行為是否令該人或任何其他人士得益(包括賺取利潤或避免損失)；
- (f) 該人的財務資源。

- (ii) any investigation of the person's conduct or affairs carried out before the proceedings were instituted; or
- (iii) any investigation of the person's conduct or affairs carried out for the purposes of the proceedings;
- (g) an order that any body which may take disciplinary action against the person as one of its members be recommended to take disciplinary action against the person;
- (h) if the person is a listed corporation, any order that the Tribunal considers necessary to ensure that a breach of a disclosure requirement does not again take place in respect of the corporation including, but not limited to, an order that the corporation appoint an independent professional adviser approved by the Commission to review the corporation's procedure for compliance with this Part or to advise the corporation on matters relating to compliance with this Part;
- (i) if the person is an officer of a listed corporation, any order that the Tribunal considers necessary to ensure that the officer does not again perpetrate any conduct that constitutes a breach of a disclosure requirement including, but not limited to, an order that the officer undergo a training program approved by the Commission on compliance with this Part, directors' duties and corporate governance.
- (2) When making an order in respect of a person under subsection (1), the Tribunal may take into account any conduct by the person which—
- (a) previously resulted in the person being convicted of an offence in Hong Kong;

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- (4) 根據第 (1)(a) 款作出的命令，可藉點名或提述與另一法團的關係而指明一個法團。
- (5) 除終審法院首席法官根據第 307X 條訂立的規則另有規定外，《高等法院規則》(第 4 章，附屬法例 A) 第 62 號命令適用於評定根據第 (1)(e) 或 (f) 款要求繳付的金額，作為就有關研訊程序而合理地招致或合理地附帶招致的訟費。
- (6) 在本條中 ——  
**最高行政人員** (chief executive) 具有第 308(1) 條給予該詞的涵義。

編輯附註：

# 生效日期：2003 年 4 月 1 日。

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- (b) previously resulted in the person being identified by the Tribunal—
- (i) under section 252(3)(b) as having engaged in any market misconduct; or
- (ii) under section 307J(1)(b) as being in breach of a disclosure requirement; or
- (c) at any time before the commencement<sup>#</sup> of Part XIII resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.
- (3) The Tribunal must not impose a regulatory fine on a person under subsection (1)(d) unless, in all the circumstances of the case, the fine is proportionate and reasonable in relation to the breach of the disclosure requirement. For that purpose, the Tribunal may take into account, in addition to any conduct referred to in subsection (2), any of the following matters—
- (a) the seriousness of the conduct that resulted in the person being in breach of the disclosure requirement;
- (b) whether or not that conduct was intentional, reckless or negligent;
- (c) whether that conduct may have damaged the integrity of the securities and futures market;
- (d) whether that conduct may have damaged the interest of the investing public;
- (e) whether that conduct resulted in any benefit to the person or any other person, including any profit gained or loss avoided;
- (f) the person's financial resources.

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第 307O 條Part XIVA—Division 3  
Section 307O14A-30  
Cap. 571**307O. 審裁處命令的通知及效力**

- (1) 審裁處須將根據第 307N(1) 條就某人作出的命令，以書面通知該人。
- (2) 上述命令在該人接獲關乎該命令的通知時或在該通知指明的時間（兩者以較遲者為準）生效。
- (3) 凡審裁處根據第 307N(1)(b) 條作出命令，證監會可按其認為適當的任何方式，將該命令通知任何持牌人或註冊機構。
- (4) 任何人沒有遵從根據第 307N(1)(a)、(b) 或 (c) 條作出的命令，即屬犯罪——
  - (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

- (4) An order made under subsection (1)(a) may specify a corporation by name or by reference to a relationship with any other corporation.
- (5) Subject to any rules made by the Chief Justice under section 307X, Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the taxation of any sum ordered under subsection (1)(e) or (f) for costs reasonably incurred in relation or incidental to the proceedings.
- (6) In this section—  
*chief executive* (最高行政人員) has the meaning given by section 308(1).

Editorial Note:

# Commencement date: 1 April 2003.

**307O. Notice and effect of orders of Tribunal**

- (1) The Tribunal must by notice in writing notify a person of an order made in respect of the person under section 307N(1).
- (2) The order takes effect at the time when it is notified to the person or at the time specified in the notice, whichever is the later.
- (3) If the Tribunal makes an order under section 307N(1)(b), the Commission may notify any licensed person or registered institution of the order in any manner the Commission considers appropriate.
- (4) A person who fails to comply with an order made under section 307N(1)(a), (b) or (c) commits an offence and is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

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### 307P. 訟費

- (1) 除第 (4) 款另有規定外，審裁處可於關於披露的研訊程序完結時，或於該程序結束後在合理地切實可行範圍內，盡快就以下任何人就該程序合理地招致的訟費，藉命令向其判給一筆審裁處認為數額適當的款項 ——
  - (a) 為該程序的目的而需要以或被要求以證人或其他身分出席的人；
  - (b) 行為是該程序的標的 ( 不論是標的之全部或部分 ) 的任何人。
- (2) 根據本條判給的訟費，由政府一般收入支付。
- (3) 除終審法院首席法官根據第 307X 條訂立的規則另有規定外，《高等法院規則》( 第 4 章，附屬法例 A ) 第 62 號命令適用於審裁處根據本條判給的訟費的判給和評定。
- (4) 第 (1)(a) 及 (b) 款不適用於符合以下說明的人 ——
  - (a) 該人根據第 307J(1)(b) 條被識辨為違反披露規定；
  - (b) 審裁處認為該人的行為，引致 ( 不論是完全或部分 ) 審裁處在根據關於披露的研訊程序進行期間，對其行為作出調查或考慮；或
  - (c) 審裁處認為該人的行為引致 ( 不論是完全或部分 ) 提起關於披露的研訊程序。

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

### 307P. Costs

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

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第 307Q 條Part XIVA—Division 3  
Section 307Q14A-34  
Cap. 571**307Q. 審裁處的報告**

- (1) 審裁處在進行關於披露的研訊程序後，須就該程序擬備書面報告，報告須載有——
  - (a) 審裁處根據第 307J(1) 條作出的裁定及根據第 307N 條作出的命令，以及作出該裁定及命令的理由；及
  - (b) 根據第 307P 條作出的命令，以及作出該命令的理由。
- (2) 審裁處須以下述方式，發出根據第 (1) 款擬備的報告——
  - (a) 將報告的文本交予證監會；及
  - (b) 除非審裁處閉門進行某次研訊或該研訊任何部分——
    - (i) 將報告發表，使其文本可提供予公眾；
    - (ii) 在合理地切實可行的範圍內及在有關研訊程序直接涉及某人的行為的情況下，將報告的文本交予該人；
    - (iii) (如某人根據第 307J(1)(b) 條被識辨為違反披露規定，而該人是某團體的成員而該團體可針對該人採取紀律行動) 將報告的文本交予該團體 (如審裁處認為適當的話)。
- (3) 如審裁處閉門進行某次研訊或該研訊任何部分，證監會如認為符合公眾利益，可安排以其指示的方式，將整份報告或其中任何部分，提供予公眾或某特定的人或團體。
- (4) 凡審裁處的報告根據第 (2)(b) 款發表或根據第 (3) 款提供，不得就任何人發表該報告的真實準確敘述或中肯準確撮要，而在民事或刑事法律程序中起訴該人。

- (c) a person whom the Tribunal considers has by the person's conduct caused, whether wholly or in part, the institution of the disclosure proceedings.

**307Q. Report of Tribunal**

- (1) After the conduct of any disclosure proceedings, the Tribunal must prepare a written report of the proceedings, which must contain—
  - (a) any determinations under section 307J(1) and orders under section 307N, and the reasons for making the determinations and orders; and
  - (b) any order under section 307P and the reasons for making the order.
- (2) The Tribunal must issue the report prepared under subsection (1)—
  - (a) by giving a copy of the report to the Commission; and
  - (b) except where the Tribunal sat in private for the whole or any part of its proceedings, by—
    - (i) publishing the report so that copies of the report are available to the public;
    - (ii) giving a copy of the report, so far as reasonably practicable, to any person whose conduct was directly in question in the proceedings;
    - (iii) where the Tribunal considers appropriate, giving a copy of the report to any body which may take disciplinary action against a person who is a member of the body and who is identified under section 307J(1)(b) as being in breach of a disclosure requirement.
- (3) Where the Tribunal sat in private for the whole or any part of its proceedings, the Commission may, if the Commission is



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### 307R. 審裁處命令的格式及證明

第 263 條適用於審裁處在關於披露的研訊程序中作出的命令。

### 307S. 審裁處命令的登記及存檔

- (1) 第 264(1) 條適用於審裁處在關於披露的研訊程序中作出的命令。
- (2) 審裁處須在根據第 307N(1)(a) 條作出命令後，在合理地切實可行的範圍內，盡快將該命令送交公司註冊處處長存檔。

### 307T. 擱置執行審裁處所作的命令

凡審裁處根據第 307N 或 307P 條就任何人作出命令，而該人提出申請，審裁處如認為適當，可藉命令准予擱置執行該命令，並可在訟費、繳存款項於審裁處或其他方面，定出它認為適當的條件，而有關的擱置執行須受該等條件規限。

### 307U. 向上訴法庭提出上訴

- (1) 如審裁處為關於披露的研訊程序的目的作出裁斷或裁定，而證監會或根據第 307J(1)(b) 條被識辨為違反披露規定的人對該裁斷或裁定感到不滿，則證監會或該人可在審裁

of the opinion that it is in the public interest to do so, cause the whole or any part of the report to be made available to the public or to a particular person or body in the manner the Commission directs.

- (4) A person is not liable to civil or criminal proceedings for publishing a true and accurate account or a fair and accurate summary of a report of the Tribunal issued or made available under subsection (2)(b) or (3).

### 307R. Form and proof of orders of Tribunal

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

### 307S. Registration and filing of orders of Tribunal

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

### 307T. Stay of execution of orders of Tribunal

On application by a person in respect of whom an order has been made under section 307N or 307P, the Tribunal may by order grant a stay of execution of the order, subject to any conditions as to costs, payment of money into the Tribunal or otherwise, as the Tribunal considers appropriate.

### 307U. Appeal to Court of Appeal

- (1) If the Tribunal has made any finding or determination for the purposes of any disclosure proceedings and the Commission, or a person identified under section 307J(1)(b) as being in breach of a disclosure requirement, is dissatisfied with the

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處為該程序的目的根據第 307N 或 307P 條作出命令 ( 如有的話 ) 後，針對該裁斷或裁定向上訴法庭 ——

- (a) 就法律論點；或
  - (b) ( 如獲上訴法庭許可 ) 就事實問題，提出上訴。
- (2) 凡審裁處根據第 307N 或 307P 條就某人作出命令，該人可針對該命令向上訴法庭提出上訴。

### 307V. 上訴法庭處理上訴的權力

- (1) 上訴法庭對根據第 307U(1) 條提出的上訴，可 ——
  - (a) 判上訴得直；
  - (b) 駁回上訴；
  - (c) 更改或推翻有關裁斷或裁定，及 ( 如推翻該裁斷或裁定 ) 以上訴法庭認為適當的任何其他裁斷或裁定，取代該裁斷或裁定；或
  - (d) 將有關事宜發還審裁處處處理，並給予上訴法庭認為適當的指示，包括指示審裁處重新進行有關研訊程序，以裁定上訴法庭指明的問題。
- (2) 上訴法庭對根據第 307U(2) 條提出的上訴，可 ——
  - (a) 確認、更改或推翻上訴所針對的命令；及
  - (b) ( 如推翻該命令 ) 以它認為適當的任何其他命令取代該命令。
- (3) 如上訴法庭根據第 (1)(c) 或 (2)(a) 或 (b) 款更改某裁斷、裁定或命令，或以任何其他裁斷、裁定或命令，取代某裁斷、裁定或命令，經更改的該裁斷、裁定或命令或用以取代該裁斷、裁定或命令的其他裁斷、裁定或命令，

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finding or determination, the Commission or the person may, after the Tribunal has made orders (if any) under section 307N or 307P for the purposes of the proceedings, appeal to the Court of Appeal against the finding or determination—

- (a) on a point of law; or
  - (b) with the leave of the Court of Appeal, on a question of fact.
- (2) A person in respect of whom an order has been made under section 307N or 307P may appeal to the Court of Appeal against the order.

### 307V. Powers of Court of Appeal on appeal

- (1) In an appeal under section 307U(1), the Court of Appeal may—
  - (a) allow the appeal;
  - (b) dismiss the appeal;
  - (c) vary or set aside the finding or determination and, if the finding or determination is set aside, substitute for the finding or determination any other finding or determination it considers appropriate; or
  - (d) remit the matter in question to the Tribunal with the directions it considers appropriate, which may include a direction to the Tribunal to conduct the proceedings afresh for the purpose of determining any question specified by the Court of Appeal.
- (2) In an appeal under section 307U(2), the Court of Appeal may—
  - (a) confirm, vary or set aside the order appealed against; and
  - (b) if the order is set aside, substitute for the order any other order it considers appropriate.

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可以是審裁處本有權根據它據以作出該裁斷、裁定或命令的同一條文或根據其他條文而 ——

- (a) (就第 (1)(c) 款的情況而言) 就有關研訊程序作出的任何裁斷或裁定 (不論較嚴苛或寬鬆); 或
  - (b) (就第 (2)(a) 或 (b) 款的情況而言) 就上訴人作出的任何命令 (不論較嚴苛或寬鬆)。
- (4) 如上訴法庭根據第 (1)(d) 款將某事宜發還審裁處處理, 除非上訴法庭另有指示, 否則處置該事宜的審裁處, 可由與原來處理該事宜的相同成員或不同的成員組成。
- (5) 上訴法庭對根據第 307U 條提出的上訴, 可就訟費作出它認為適當的命令。

### 307W. 上訴不擱置執行

- (1) 在不損害第 307T 條的原則下, 除非上訴法庭另有命令, 否則根據第 307U 條提出上訴或送交上訴許可申請書存檔, 本身並不具有擱置執行審裁處的裁斷、裁定或命令的效力。
- (2) 上訴法庭如根據第 (1) 款命令擱置執行, 可在訟費、繳存款項於審裁處或其他方面, 定出它認為適當的條件, 而有關的擱置執行須受該等條件規限。

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

### 307W. No stay of execution on appeal

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

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the Tribunal or otherwise, as the Court of Appeal considers appropriate.

**307X. 終審法院首席法官訂立的規則**

終審法院首席法官可訂立規則——

- (a) 對須根據第 307N(1)(e) 或 (f) 條提述的命令繳付的訟費的評定，以及對根據第 307P 條判給訟費及對該等訟費的評定作出規定；
- (b) 規管——
  - (i) 根據第 307U 條申請上訴許可的程序及該等申請的聆訊程序；及
  - (ii) 根據該條提出的上訴的聆訊程序；
- (c) 規定繳付在規則中與關於披露的研訊程序有關的任何事宜而指明的費用；
- (d) 對本部、第 XIII 部或附表 9 沒有作出規定而與關於披露的研訊程序有關的程序事宜或其他事宜作出規定；
- (e) 就為施行本部或附表 9 發出或送達任何文件（不論實際如何稱述）作出規定；及
- (f) 訂明本部規定由或可由終審法院首席法官藉規則訂明的事宜。

**第 4 分部 —— 違反披露規定的民事法律責任****307Y. 釋義及適用範圍**

(1) 在本分部中——

**交易** (transaction) 包括要約及邀請（不論實際如何稱述）。

**307X. Rules by Chief Justice**

The Chief Justice may make rules—

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

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

(1) In this Division—

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

### 307Z. 就違反披露規定須負的民事法律責任

- (1) 除第 (2) 款另有規定外，任何違反披露規定的人，負有法律責任以損害賠償的方式，賠償另一人因該項違反而蒙受的金錢損失。
- (2) 除非就有關個案的情況而言，某人應根據第 (1) 款負有法律責任作出賠償是公平、公正和合理的，否則該人沒有法律責任根據該款作出賠償。
- (3) 不論 ——
- (a) 有關損失是否由於上述的另一人曾以受該項違反披露規定影響的價格訂立交易所引致的；及
- (b) 該項違反披露規定的人是否亦根據本部或其他規定招致任何其他法律責任，
- 第 (1) 款仍適用。
- (4) 為免生疑問，凡任何法院具有司法管轄權裁定根據第 (1) 款提出的訴訟，如該法院除本條外具有司法管轄權批給強制令，則該法院可按它認為適當的任何條款及條件批給強制令，以附加於或取代損害賠償。

### 307ZA. 證據條文

- (1) 在根據第 307Z(1) 條提出的訴訟中 ——

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*transaction* (交易) includes an offer and an invitation (however expressed).

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

### 307Z. Civil liability for breach of a disclosure requirement

- (1) Subject to subsection (2), a person who is in breach of a disclosure requirement is liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of the breach.
- (2) A person is not liable to pay compensation under subsection (1) unless it is fair, just and reasonable in the circumstances of the case that the person should be so liable.
- (3) Subsection (1) applies—
- (a) whether or not the loss arises from the other person having entered into a transaction or dealing at a price affected by the breach of the disclosure requirement; and
- (b) whether or not the person who is in breach of the disclosure requirement incurs any other liability (under this Part or otherwise).
- (4) To avoid doubt, a court that has jurisdiction to determine an action brought under subsection (1) may grant an injunction in addition to, or in substitution for, damages, on any terms and conditions that it considers appropriate, if apart from this section the court has jurisdiction to grant an injunction.

### 307ZA. Evidentiary provisions

- (1) In an action brought under section 307Z(1)—
- (a) the fact that there is a determination by the Tribunal under section 307J(1)(a) that a breach of a disclosure



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- (a) 審裁處根據第 307J(1)(a) 條裁定曾發生違反披露規定此一事實，可獲接納為證據，以證明曾發生違反披露規定；及
- (b) 審裁處在根據第 307J(1)(b) 條所作的裁定中識辨某人為違反披露規定此一事實，可獲接納為證據，以證明該人違反披露規定。
- (2) 在根據第 307Z(1) 條提出的訴訟中，如有第 (1) 款提述的裁定根據該款可獲接納為證據，則 ——
  - (a) 就 ——
    - (i) 第 (1)(a) 款提述的裁定而言，除非相反證明成立，否則該裁定所針對的違反須當作已發生；及
    - (ii) 第 (1)(b) 款提述的裁定而言，除非相反證明成立，否則該裁定所針對的人須當作違反披露規定；及
  - (b) 為識辨該裁定所依據的事實，以下兩項其中一項的內容可獲接納為證據 ——
    - (i) 根據第 307Q(2)(b)(i) 條發表並載有該裁定的審裁處報告的內容；或
    - (ii) 根據第 (4) 款提供並載有該裁定的審裁處報告的文本的內容。
- (3) 凡為了作為有關裁定的證據或為了識辨該裁定所依據的事實，而收取任何其他可獲接納的證據，第 (2)(b) 款並不損害該項證據的收取。
- (4) 在根據第 307Z(1) 條提出的訴訟中，如 ——
  - (a) 有第 (1) 款提述的裁定一事可根據該款獲接納為證據；及
  - (b) 載有審裁處裁定的報告沒有根據第 307Q(2)(b)(i) 條發表，

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- requirement has taken place is admissible in evidence for the purpose of proving that a breach of a disclosure requirement has taken place; and
- (b) the fact that there is a determination by the Tribunal under section 307J(1)(b) identifying a person as being in breach of a disclosure requirement is admissible in evidence for the purpose of proving that the person is in breach of a disclosure requirement.
- (2) In an action brought under section 307Z(1), if the fact that there is a determination referred to in subsection (1) is admissible in evidence under that subsection—
  - (a) then—
    - (i) in the case of a determination referred to in subsection (1)(a), the breach that is the subject of the determination is to be taken, unless the contrary is proved, to have taken place; and
    - (ii) in the case of a determination referred to in subsection (1)(b), the person who is the subject of the determination is to be taken, unless the contrary is proved, to be in breach of the disclosure requirement; and
  - (b) the contents of either of the following are admissible in evidence for the purpose of identifying the facts on which the determination was based—
    - (i) a report of the Tribunal containing the determination and published under section 307Q(2)(b)(i); or
    - (ii) a copy of a report of the Tribunal containing the determination and made available under subsection (4).

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則法院可要求向該法院提供該報告的文本，以供該法院為第 (2)(b) 款目的使用，而審裁處須據此安排向該法院提供該報告的文本。

- (5) 本條的規定並不局限《證據條例》(第 8 章) 第 62 條。
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- (3) Subsection (2)(b) is without prejudice to the reception of any other admissible evidence as evidence of the determination or for the purpose of identifying the facts on which the determination was based.
- (4) If, in an action brought under section 307Z(1)—
- (a) the fact that there is a determination referred to in subsection (1) is admissible in evidence under that subsection; and
- (b) a report of the Tribunal containing the determination has not been published under section 307Q(2)(b)(i),
- the court may require that a copy of the report be made available to the court to enable it to be used for the purposes of subsection (2)(b) and the Tribunal must cause a copy of the report to be made available to the court accordingly.
- (5) Nothing in this section limits section 62 of the Evidence Ordinance (Cap. 8).
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## 第 XV 部

## 權益披露

(格式變更——2012 年第 2 號編輯修訂紀錄)

## 第 1 分部 —— 導言

## 308. 第 XV 部的釋義

(1) 在本部中，除文意另有所指外——

**上市** (listed) 指在認可證券市場上市；**上市法團** (listed corporation) 指本身的任何證券有上市的法團；**已發行的有投票權股份** (issued voting shares) 就上市法團而言，指該法團的某類別已發行股份，而該類別股份是帶有在所有情況下均可在該法團的成員大會上投票的權利的；(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告增補)**目標法團** (target corporation) 就第 317 條適用的以某一上市法團為目標法團的協議而言，指該上市法團；**交付** (deliver) 就任何股份或債權證而言，指實物交付或藉電子方法交付該股份或債權證，如屬未發行股份，則指在發行該等股份後交付，而**提取** (take delivery) 須據此解釋；**交易所公司** (Exchange Company) 指已廢除的《證券(披露權益)條例》所指的交易所公司；**合約乘數** (contract multiplier) 就於某期貨市場買賣的股票期貨合約而言，指由營辦該市場的認可交易所根據其規章指明為該合約的合約乘數的數目；

## Part XV

## Disclosure of Interests

(Format changes—E.R. 2 of 2012)

## Division 1—Preliminary

## 308. Interpretation of Part XV

(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 number one-fifth of the number of the issued shares of that class; (Amended 28 of 2012 ss. 912 &amp; 920 and L.N. 162 of 2013)

**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

**合資格借出人 (qualified lender) 指 ——**

- (a) 認可財務機構；
- (b) 根據《保險業條例》(第 41 章) 獲授權的保險人；(由 2015 年第 12 號第 141 條修訂)
- (c) 認可交易所的交易參與者；
- (d) 就第 1 或 8 類受規管活動獲發牌或獲註冊的中介人；或
- (e) 根據香港以外任何地方的法律獲授權，並獲證監會為施行第 313(13)、317(6)、323(6) 或 (7) 或 341(5) 條而認可的經營以下形式的業務的法團 ——
  - (i) 銀行；
  - (ii) 保險公司；或
  - (iii) 證監會認為相等於任何一類由 (d) 段提述的中介人經營的受規管活動的活動；

**成立人 (founder) 就任何酌情信託而言，指作出以下作為的人 ——**

- (a) 已直接或間接為該信託的目的提供財產，或已承諾為該目的提供財產；或
- (b) 已與另一人訂立或達成直接或間接引致設立該信託的交互安排或共識 (不論該項安排或共識是否具法律效力)；或已直接或間接促使另一人設立該信託，

而受託人就有關信託財產行使酌情權時須遵從的一項條件 (不論是否具法律效力) 是須取得該人的同意，或受託人是慣於按照或被期望會按照該人的意願 (不論是否具法律效力) 行事的；

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);

**有投票權股份** (voting shares) 就上市法團而言 ——

- (a) 指該法團已發行的有投票權股份；及
- (b) 包括該法團某類別的未發行股份，而該等股份一旦發行，便會帶有在所有情況下均可在該法團的成員大會上投票的權利；(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告增補)

**有關交易所公司** (relevant exchange company) 指聯交所；(由 2014 年第 6 號第 63 條代替)

**有關事件** (relevant event) ——

- (a) 為施行第 2 至 6 分部及就在其他方面與該等分部有關的情況而言 ——
  - (i) 如屬第 310(1)(a) 或 (b) 或 (4)(a) 或 (b) 條所指的情況，指該條提述的事件或改變；
  - (ii) 如屬第 310(2)(a) 條所指的情況，指引致法團成為上市法團的事件；
  - (iii) 如屬第 310(2)(b) 條所指的情況，指引致上市法團的某一類別股份成為有投票權股份的事件；(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)
  - (iv) 如屬第 310(2)(c) 或 (5) 條所指的情況，指本部的生效；或
  - (v) 如屬第 310(3) 或 (6) 條所指的情況，指就該條提述的調低作出規定的規例的生效；或

- (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—



- (b) 為施行第 7 至 10 分部及就在其他方面與該等分部有關的情況而言 ——
- (i) 如屬第 341(1)(a)、(b)、(c)、(d)、(e) 或 (f) 條所指的情況，指該條提述的事件；
  - (ii) 如屬第 341(2)(a) 條所指的情況，指引致法團成為上市法團的事件；
  - (iii) 如屬第 341(2)(b) 條所指的情況，指本部的生效；
  - (iv) 如屬第 341(2)(c) 條所指的情況，指引致某人成為上市法團的董事或最高行政人員的事件；或
  - (v) 如屬第 341(2)(d) 條所指的情況，指引致法團成為上市法團的相聯法團的事件；

**有關時間** (relevant time) 指有關事件的發生時間；

**供股** (rights issue) 指上市法團於某日依照所有持有該法團已發行股份的人在該日所持有的該等股份的數目，按比例向該等持有人提出該法團的股份 (不論是已發行或未發行的) 要約或發行該法團的股份 (不論是已發行或未發行的)；但如某人的地址所在地的法律不允許進行上述股份要約或發行，則上述持有人並不包括該人；而上述股份要約或發行亦不包括為代替全部或部分現金股息而進行的該上市法團的股份要約或發行；

**披露責任** (duty of disclosure) ——

- (a) 為施行第 2 至 6 分部及就在其他方面與該等分部有關的情況而言，指根據第 310 條產生並須按照第 324 條履行的責任；或
- (b) 為施行第 7 至 10 分部及就在其他方面與該等分部有關的情況而言，指根據第 341 條產生並須按照第 347 條履行的責任；

- (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 voting shares** (已發行的有投票權股份), in relation to a listed corporation, means the listed corporation's issued shares of a class which carry rights to vote in all circumstances at general meetings of the corporation; (*Added 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)

**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-

**股本衍生工具** (equity derivatives) 指 ——

- (a) 在任何相關股份中的或關乎該等股份的權利、期權或權益 (不論以單位或其他方式描述)；
- (b) 任何合約，而該等合約的目的或伴稱目的是藉完全或部分參照以下項目的價格或價值，或該價格或價值的變動，以獲得或增加利潤或避免或減少損失 ——
  - (i) 相關股份；或
  - (ii) (a) 段提述的任何權利、期權或權益；
- (c) 在以下項目中的或關乎該等項目的權利、期權或權益 (不論以單位或其他方式描述) ——
  - (i) (a) 段提述的任何權利、期權或權益；或
  - (ii) (b) 段提述的任何合約；或
- (d) 任何產生、確認或證明 (a)、(b) 或 (c) 段提述的任何權利、期權、權益或合約的文書或其他文件，包括以下項目的股票期貨合約、權益證明書、參與證明書、臨時證明書、中期證明書、關乎以下項目的收據 (包括寄存單據)，以及認購或購買以下項目的權證 —— (由 2014 年第 18 號第 173 條修訂)
  - (i) 相關股份；或
  - (ii) 該等權利、期權、權益或合約，

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 Ordinance (Cap. 41); (*Amended 12 of 2015 s. 141*)
- (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);

而 ——

- (i) 不論該等權利、期權或權益，或該等合約、文書或文件是否在認可證券市場或認可期貨市場進行交易；
- (ii) 在該等相關股份是任何上市法團的股份的情況下，不論該等權利、期權或權益，或該等合約、文書或文件是否由該法團發行或提供；或
- (iii) 不論在該等權利、期權或權益，或該等合約、文書或文件下的義務是否以支付現金、交付相關股份或其他方式履行；

**股份權益及淡倉登記冊** (register of interests in shares and short positions) 指根據第 336 條備存的登記冊，而除文意另有所指外，亦包括該登記冊中根據第 337 條備存的部分；

**股票期貨合約** (stock futures contract) 指屬於獲證監會批准在認可期貨市場以股票期貨合約形式進行買賣的類別的合約；

**保管人** (custodian) 指主要業務是作為另一人的證券或其他財產的保管人的法團，不論是以信託或合約形式進行；

**指明百分率水平** (specified percentage level) 具有第 315(2) 條給予該詞的涵義；

**相聯法團** (associated corporation) 就任何上市法團而言，指符合以下說明的另一法團 ——

- (a) 該另一法團是該上市法團的附屬公司或控權公司，或是該上市法團的控權公司的附屬公司；或
- (b) 該另一法團並非該上市法團的附屬公司，但該上市法團擁有該另一法團股本中某類別股份的權益，而該等股份的數目超逾該類別股份的已發行股份數目的五分之一；(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)

**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 shares of a particular class become voting shares; (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
  - (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;

**相關股份** (underlying shares) 就任何股本衍生工具而言，除第(5)款另有規定外 ——

- (a) 為施行第 2 至 6 分部及就在其他方面與該等分部有關的情況而言，指 ——
  - (i) 有關上市法團的有投票權股份，而該等有投票權股份是在行使該等工具下的權利或履行該等工具下的義務（不論該等權利或義務在任何情況下是附有條件或是絕對的）時，可能須交付予該等工具的持有人、賣方或發行人，或由該持有人、賣方或發行人交付他人的；或
  - (ii) 有關上市法團的有投票權股份，而該等工具的價格或價值，是完全或部分參照該等有投票權股份的價格或價值而得出或釐定的；或（由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂；由 2015 年第 19 號第 2 條修訂）
- (b) 為施行第 7 至 10 分部及就在其他方面與該等分部有關的情況而言，指 ——
  - (i) 有關上市法團或其任何相聯法團的股份，而該等股份是在行使該等工具下的權利或履行該等工具下的義務（不論該等權利或義務在任何情況下是附有條件或是絕對的）時，可能須交付予該等工具的持有人、賣方或發行人，或由該持有人、賣方或發行人交付他人的；或
  - (ii) 有關上市法團或其任何相聯法團的股份，而該等工具的價格或價值，是完全或部分參照該等股份的價格或價值而得出或釐定的，  
而不論該等股份屬已發行或未發行者；

- (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) means the Stock Exchange Company; (*Replaced 6 of 2014 s. 63*)

**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;



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**香港登記冊** (Hong Kong register) 就任何上市法團而言，指在香港備存的該法團的成員登記冊或成員登記支冊；

**淡倉** (short position) 指 ——

- (a) 任何股本衍生工具的持有人、賣方或發行人擁有的持倉，而憑藉該持倉，他 ——
  - (i) 有權要求另一人在某日期或之前或某期間內，提取該等工具的相關股份；
  - (ii) 有義務在被要求時，在某日期或之前或某期間內，將該等工具的相關股份交付另一人；
  - (iii) 在該等工具的相關股份的價格在某日期或之前或某期間內下跌時，有權從另一人收取一筆款額；或
  - (iv) 在該等工具的相關股份的價格在某日期或之前或某期間內下跌時，有權避免或減少損失，
 而不論上述權利或義務在任何情況下是附有條件或是絕對的；或
- (b) 作為證券借貸協議下的股份借用人的人擁有的持倉，而憑藉該協議，他有義務在被要求時，在某日期或之前或某期間內，將股份交付予借出股份的人，不論該項交付股份的義務是否會以支付現金、交付股份或是其他方式履行；

**現金結算股本衍生工具** (cash settled equity derivatives) 指實物結算股本衍生工具以外的股本衍生工具；

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- (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—



**規例** (regulations) 指根據第 376 條訂立的規例；

**最高行政人員** (chief executive) 指受僱於或以其他方式受聘於任何法團的人，而他是在或將會在其董事局的直接授權下，單獨或聯同其他人負責主持該法團業務；

**場內交易** (on-exchange transaction) 指在認可證券市場或認可期貨市場進行的任何交易，而有人藉該交易而變為擁有股份權益，或不再擁有股份權益；

**場外交易** (off-exchange transaction) 指場內交易以外的任何交易、安排或某事件的發生，而有人藉此而變為擁有股份權益，或不再擁有股份權益；

**須具報百分率水平** (notifiable percentage level) 具有第 315(1) 條給予該詞的涵義；

**須具報權益** (notifiable interest) 具有第 311(3) 條給予該詞的涵義；

**董事及最高行政人員權益及淡倉登記冊** (register of directors' and chief executives' interests and short positions) 指根據第 352 條備存的登記冊；

**實物結算股本衍生工具** (physically settled equity derivatives) 指藉或將會藉交付相關股份而結算的股本衍生工具，包括符合以下說明的股本衍生工具：就該等股本衍生工具而言，其持有人、賣方或發行人可選擇藉支付現金或是藉交付相關股份以作結算；

**審查員** (inspector) 指根據第 356 或 357 條委任的審查員。

(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)

(a) for the purposes of, and otherwise in relation to, Divisions 2 to 6—

(i) the voting shares in 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 voting shares in 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;  
(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

**voting shares** (有投票權股份), in relation to a listed corporation—

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- (2) 即使上市法團已發行股份中某類別股份中某些股份所帶有的投票權被暫時中止，本部仍就該等股份或該類別股份中其他股份的權益而適用。(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)
- (3) 在第 317 條中，以及在本部其他條文對第 317 條適用的協議的提述中，**協議** (agreement) 一詞包括任何協議或安排，而在第 317 條中對協議條文的提述 ——
- (a) 據此包括提述根據任何安排而生效的承諾、期望或共識；及
- (b) 在不損害 (a) 段的原則下，亦包括提述任何條文，不論是明訂或隱含的，亦不論是否絕對的。
- (4) 就本部任何條文而言，凡該條文規定違責的法團高級人員可被處以罰款或刑罰，則**其每名違責的高級人員** (every officer of it who is in default) 指明知而故意地批准或准許該條文提述的違責、拒絕或違反的該法團的每一名高級人員。
- (5) 就股本衍生工具而言 ——
- (a) 凡 ——
- (i) 不少於 5 個上市法團的股份，會在行使該等衍生工具下的權利或履行該等衍生工具下的義務時，須予交付；及
- (ii) 在發行該等衍生工具時，所有若無本款規定即屬該等衍生工具的相關股份的股份的價值中不超過有關百分率的部分，是由該等上市法團中的任何一個的股份所代表，而 ——
- (A) 除 (B) 分節另有規定外，上述有關百分率為 30%；或

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- (a) means the listed corporation's issued voting shares; and
- (b) includes the listed corporation's unissued shares of a class which, if issued, would carry rights to vote in all circumstances at general meetings of the corporation. (Added 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (2) The temporary suspension of voting rights in respect of shares comprised in a class of the issued shares in 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. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (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—

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- (B) 在規例有為施行本款而訂明其他百分率的情況下，上述有關百分率為該其他百分率；或
- (b) 凡 ——
- (i) 不少於 5 個上市法團的股份的價格或價值，在得出或釐定該等衍生工具的價格或價值的過程中發揮影響；及
- (ii) 在發行該等衍生工具時，其價格或價值中不超過有關百分率的部分，是從該等上市法團中的任何一個的股份的價格或價值所得出或釐定的，而 ——
- (A) 除 (B) 分節另有規定外，上述有關百分率為 30%；或
- (B) 在規例有為施行本款而訂明其他百分率的情況下，上述有關百分率為該其他百分率，
- 該等股本衍生工具須視為沒有相關股份。
- (6) 在第 (5) 款中，提述股份之處 ——
- (a) 為施行第 2 至 6 分部及在其他方面就第 2 至 6 分部而言，須解釋為提述有關上市法團的有投票權股份；或 (由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)
- (b) 為施行第 7 至 10 分部及在其他方面就第 7 至 10 分部而言，須解釋為有關上市法團的股份。
- (7) 在第 (5) 及 (6) 款中，提述上市法團之處，包括提述在指明證券交易所上市的法團。
- (編輯修訂 —— 2012 年第 2 號編輯修訂紀錄)

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- (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.

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### 309. 豁免

- (1) 證監會可在諮詢財政司司長後，發表關於豁免任何人使他不受本部所有或任何條文規限的指引。
- (2) 證監會可應任何法團的申請，在顧及根據第 (1) 款發表的指引後及在施加該會認為適當的條件下，豁免該申請法團及與該法團有關的任何其他人，使其不受本部所有或任何條文規限。
- (3) 證監會可應任何股本衍生工具的持有人、賣方或發行人的申請，或應任何股本衍生工具的準持有人、賣方或發行人的申請，在顧及根據第 (1) 款發表的指引後及在施加該會認為適當的條件下，豁免申請人，以及憑藉持有、售賣或發行該等工具而視為擁有該等工具的相關股份的權益或持有該等股份的淡倉的任何其他人，使其不受本部中所有或任何條文規限。
- (4) 證監會可不時 ——
  - (a) 以批給豁免的規限條件未獲遵從為理由，或以該會認為適當的其他理由，撤回或暫時撤銷根據第 (2) 或 (3) 款批給的豁免；或

- (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 voting shares in the listed corporation concerned; or (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
  - (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.

### 309. Exemptions

- (1) The Commission may, after consultation with the Financial Secretary, publish guidelines for the exemption of any person from all or any of the provisions of this Part.
- (2) The Commission may, upon the application of a corporation, having regard to the guidelines published under subsection (1) and imposing such conditions as it considers appropriate, exempt the applicant corporation, and any other person in relation to that corporation, from all or any of the provisions of this Part.
- (3) The Commission may, upon the application of the holder, writer or issuer, or the prospective holder, writer or issuer, of any equity derivatives, having regard to the guidelines published under subsection (1) and imposing such conditions as it considers appropriate, exempt the applicant, and any other person who is taken to have an interest or short position in the underlying shares of the equity derivatives by virtue of the holding, writing or issuing of the equity derivatives, from all or any of the provisions of this Part.

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- (b) 修訂根據第 (2) 或 (3) 款施加的任何條件。
- (5) 證監會須藉使用互聯網，發表關於根據本條批給、撤回或暫時撤銷的豁免而該會認為適宜發表的詳情。(由 2012 年第 9 號第 43 條修訂)
- (6) 根據第 (1) 款發表的指引不是附屬法例。

## 第 2 分部 —— 須具報權益及淡倉的披露

### 310. 可能產生披露責任的情況

- (1) 凡 ——
- (a) 任何人取得或不再擁有某上市法團的有投票權股份權益 (不論是否擁有或保留該法團的其他有投票權股份權益)；或
- (b) 有任何改變發生，而受該項改變影響的事實，關乎第 313 條對某人擁有的上市法團任何種類股份的現有權益 (或其部分) 的適用情況，
- 則在第 313(1) 條指明的情況下，該人有披露責任。
- (2) 凡任何人 ——
- (a) 在某法團上市時擁有該法團的有投票權股份權益；
- (b) 在某上市法團的某類別股份成為有投票權股份時，擁有該類別股份權益；或

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- (4) The Commission may from time to time—
- (a) suspend or withdraw an exemption granted under subsection (2) or (3) on the ground that the conditions subject to which the exemption was granted have not been complied with or on such other ground as the Commission considers appropriate; or
- (b) amend any condition imposed under subsection (2) or (3).
- (5) The Commission shall publish, by the use of the Internet, such particulars of the exemptions granted, suspended or withdrawn under this section as it considers appropriate. (Amended 9 of 2012 s. 43)
- (6) Guidelines published under subsection (1) are not subsidiary legislation.

## Division 2—Disclosure of interests and short positions

### 310. Duty of disclosure: cases in which it may arise

- (1) Where—
- (a) a person acquires an interest in, or ceases to be interested in, voting shares in a listed corporation (whether or not having or retaining an interest in other voting shares in the listed corporation); or
- (b) any change occurs affecting facts relevant to the application of section 313 to a person's existing interest (or part thereof) in shares of any description in a listed corporation,
- then in the circumstances specified in section 313(1), he comes under the duty of disclosure.
- (2) Where a person is—



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- (c) 在本部生效時，擁有某上市法團的有投票權股份權益，而該項權益過往在《證券(披露權益)條例》(第 396 章)被第 406 條廢除前未曾根據該條例向該法團及交易所公司披露，
- 則在第 313(2) 條指明的情況下，該人有披露責任。
- (3) 凡任何人在須具報百分率水平經規例調低時，擁有上市法團的有投票權股份權益，則在第 313(3) 條指明的情況下，該人有披露責任。
- (4) 凡 ——
- (a) 任何人變為持有或不再持有某上市法團的有投票權股份的淡倉(不論是否持有或保留該法團的其他有投票權股份的淡倉)；或
- (b) 有任何改變發生，而受該項改變影響的事實，關乎第 313 條對某人現時持有的上市法團任何種類股份的淡倉(或其部分)的適用情況，
- 則在第 313(4) 條指明的情況下，該人有披露責任。
- (5) 凡任何人在本部生效時，持有某上市法團的有投票權股份的淡倉，則在第 313(5) 條指明的情況下，該人有披露責任。
- (6) 凡任何人在指明百分率水平經規例調低時，持有上市法團的有投票權股份的淡倉，則在第 313(6) 條指明的情況下，該人有披露責任。
- (7) 在個別個案中是否有披露責任存在，部分視乎在該個案的有關時間之前和之後存在的情況。
- (8) 本條受《金融機構(處置機制)條例》(第 628 章)第 151 及 153(3) 條所規限。(由 2016 年第 23 號第 217 條增補。編輯修訂——2017 年第 2 號編輯修訂紀錄)
- (由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)

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- (a) interested in voting shares in a corporation at the time when the corporation becomes a listed corporation;
- (b) interested in a listed corporation's shares of a particular class at the time when the listed corporation's shares of that class become voting shares; or
- (c) interested in voting shares in a listed corporation at the commencement of this Part, if such interest has not previously been disclosed to the listed corporation and the Exchange Company under the Securities (Disclosure of Interests) Ordinance (Cap. 396) before its repeal under section 406,
- then in the circumstances specified in section 313(2), he comes under the duty of disclosure.
- (3) Where a person is interested in voting shares in a listed corporation at the time when there is a reduction in the notifiable percentage level made by regulations, then in the circumstances specified in section 313(3), he comes under the duty of disclosure.
- (4) Where—
- (a) a person comes to have, or ceases to have, a short position in voting shares in a listed corporation (whether or not having or retaining a short position in other voting shares in the listed corporation); or
- (b) any change occurs affecting facts relevant to the application of section 313 to a person's existing short position (or part thereof) in shares of any description in a listed corporation,
- then in the circumstances specified in section 313(4), he comes under the duty of disclosure.
- (5) Where a person has a short position in voting shares in a listed corporation at the commencement of this Part, then in

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### 311. 須披露的權益

- (1) 在不抵觸第(2)款的條文下，就根據第310條而產生的披露責任而言，須顧及的權益為有關上市法團的有投票權股份權益。
- (2) 在第(1)款中凡提述有關上市法團的有投票權股份權益，包括提述任何人憑藉以下情況而擁有（或不再擁有）的上述有投票權股份中屬股本衍生工具的相關股份的股份權益——（由2012年第28號第912及920條及2013年第162號法律公告修訂）
  - (a) 他持有、售賣或發行該等工具；
  - (b) 他行使該等工具下的權利，或該等工具下的權利對他而行使；或
  - (c) 他轉讓該等工具下的權利，或該等權利在未被行使的情況下失效。
- (3) 如在任何時間，某人擁有權益的有關上市法團的有投票權股份的總數（以該數目在該法團當時已發行的有投票

the circumstances specified in section 313(5), he comes under the duty of disclosure.

- (6) Where a person has a short position in voting shares in a listed corporation at the time when there is a reduction in the specified percentage level made by regulations, then in the circumstances specified in section 313(6), he comes under the duty of disclosure.
- (7) The existence of the duty of disclosure in a particular case depends (in part) on the circumstances obtaining before and after whatever is in that case the relevant time.
- (8) This section is subject to sections 151 and 153(3) of the Financial Institutions (Resolution) Ordinance (Cap. 628). *(Added 23 of 2016 s. 217. Amended E.R. 2 of 2017)*  
*(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

### 311. Interests to be disclosed

- (1) Subject to subsection (2), the interests to be taken into account for the purposes of the duty of disclosure arising under section 310 are those in voting shares in the listed corporation concerned.
- (2) In subsection (1), a reference to interests in voting shares in the listed corporation concerned includes a reference to interests in such voting shares, which are the underlying shares of equity derivatives, that a person has, or ceases to have, by virtue of— *(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*
  - (a) the holding, writing or issuing by him of the equity derivatives;
  - (b) the exercise by, or against, him of rights under the equity derivatives; or

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權股份數目中所佔的百分率表示者)，相等於或高於當其時的須具報百分率水平，該人即屬在該時間擁有一項須具報權益。

(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)

### 312. 須披露的淡倉

就根據第 310 條產生的披露責任而言，須顧及的淡倉，為有關上市法團的有投票權股份的淡倉。

(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)

### 313. 產生披露責任的情況

(1) 第 310(1) 條提述的情況為以下情況 ——

- (a) 有關的人在緊接有關時間之後擁有須具報權益，但在緊接有關時間之前並無擁有須具報權益；
- (b) 他在緊接有關時間之前擁有須具報權益，但在緊接有關時間之後並無擁有須具報權益；
- (c) 他在緊接有關時間之前及之後均擁有須具報權益，但在該兩個時刻該項權益的百分率水平並不相同；或
- (d) 他在緊接有關時間之前及之後均擁有須具報權益，但在該兩個時刻該項權益（或其部分）的性質並不相同。

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(c) the assignment by him, or the lapsing without exercise, of rights under the equity derivatives.

- (3) A person has a notifiable interest at any time when the aggregate number of voting shares in the listed corporation concerned in which the person is interested, when expressed as a percentage of the number of issued voting shares in the listed corporation at that time, is equal to or more than the notifiable percentage level for the time being.

(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

### 312. Short positions to be disclosed

The short positions to be taken into account for the purposes of the duty of disclosure arising under section 310 are those in voting shares in the listed corporation concerned.

(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

### 313. Circumstances in which duty of disclosure arises

(1) The circumstances referred to in section 310(1) are those where—

- (a) the person has a notifiable interest immediately after the relevant time, but did not have a notifiable interest immediately before the relevant time;
- (b) the person had a notifiable interest immediately before the relevant time, but does not have a notifiable interest immediately after the relevant time;
- (c) the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time, but the percentage levels of his interest immediately before and immediately after the relevant time are not the same; or

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- (2) 第 310(2) 條提述的情況為：有關的人在緊接有關時間之後擁有須具報權益。
- (3) 第 310(3) 條提述的情況為：有關的人在緊接有關時間之後擁有須具報權益，但在緊接有關時間之前並無擁有須具報權益。
- (4) 第 310(4) 條提述的情況為：有關的人在緊接有關時間之前及之後均擁有須具報權益，而且 ——
  - (a) 他 ——
    - (i) 在緊接有關時間之前並無持有有關上市法團的有投票權股份的淡倉；或
    - (ii) 在緊接有關時間之前持有的上述有投票權股份的淡倉的百分率水平，低於指明百分率水平，  
但他在緊接有關時間之後持有的上述有投票權股份的淡倉，而該淡倉的百分率水平，相等於或高於指明百分率水平；
  - (b) 他在緊接有關時間之前持有上述有投票權股份的淡倉，而該淡倉的百分率水平，相等於或高於指明百分率水平，但在緊接有關時間之後，並無持有相等於或高於指明百分率水平的上述有投票權股份的淡倉；或
  - (c) 他在緊接有關時間之前及之後均持有上述有投票權股份的淡倉，而在該兩個時刻的該淡倉的百分率水平，均相等於或高於指明百分率水平，但在該兩個時刻的該淡倉的百分率水平並不相同。

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- (d) the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time, but the nature of his interest (or part thereof) immediately before and immediately after the relevant time is not the same.
- (2) The circumstances referred to in section 310(2) are those where the person has a notifiable interest immediately after the relevant time.
- (3) The circumstances referred to in section 310(3) are those where the person has a notifiable interest immediately after the relevant time, but did not have a notifiable interest immediately before the relevant time.
- (4) The circumstances referred to in section 310(4) are those where the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time, and—
  - (a) the person—
    - (i) did not have a short position in voting shares in the listed corporation concerned immediately before the relevant time; or
    - (ii) had a short position in such voting shares immediately before the relevant time of a percentage level less than the specified percentage level,  
but has a short position in such voting shares immediately after the relevant time of a percentage level equal to or more than the specified percentage level;
  - (b) the person had a short position in such voting shares immediately before the relevant time of a percentage level equal to or more than the specified percentage level, but does not have a short position in such voting shares immediately after the relevant time of

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- (5) 第 310(5) 條提述的情況為：有關的人在緊接有關時間之後擁有須具報權益，並在緊接有關時間之後持有有關上市法團的有投票權股份的淡倉，而該等淡倉的百分率水平相等於或高於指明百分率水平。
- (6) 第 310(6) 條提述的情況為 ——
- (a) 有關的人在緊接有關時間之前及之後均擁有須具報權益；及
- (b) 他在緊接有關時間之前持有有關上市法團的有投票權股份的淡倉，而該淡倉的百分率水平，低於指明百分率水平，而他在緊接有關時間之後亦持有的上述有投票權股份的淡倉，但該淡倉的百分率水平，相等於或高於指明百分率水平。
- (7) 在第 (1)(c) 款指明的情況下本應有披露責任的人，在以下情況下不負有該責任 ——
- (a) 他在緊接有關時間之後擁有的有關上市法團的有投票權股份權益的百分率水平，如按照第 314(1) 條計算，相等於或低於對上一次因第 (1)(c) 款指明的情況以致有披露責任產生時，他在導致他所作出具報的有關事件發生時所擁有的上述有投票權股份權益的百分率水平；及
- (b) 以下兩者之間相差少於 0.5% ——
- (i) 於對上一次因第 (1)(c) 款指明的情況以致有披露責任產生的情況下在導致他所作出的具報的有關事件發生後的所有時間，按照第 (14)(a) 款計算的他所擁有的上述有投票權股份權益的百分率數字；及 (由 2005 年第 10 號第 200 條修訂)

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- a percentage level equal to or more than the specified percentage level; or
- (c) the person had a short position in such voting shares immediately before the relevant time of a percentage level equal to or more than the specified percentage level, and has a short position in such voting shares immediately after the relevant time of a percentage level equal to or more than the specified percentage level, but the percentage levels of his short position immediately before and immediately after the relevant time are not the same. (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
- (5) The circumstances referred to in section 310(5) are those where the person has a notifiable interest immediately after the relevant time, and has a short position in voting shares in the listed corporation concerned immediately after the relevant time of a percentage level equal to or more than the specified percentage level. (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
- (6) The circumstances referred to in section 310(6) are those where—
- (a) the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time; and
- (b) the person had a short position in voting shares in the listed corporation concerned immediately before the relevant time of a percentage level less than the specified percentage level, but has a short position in such voting shares immediately after the relevant time of a percentage level equal to or more than the specified percentage level. (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)



- (ii) 他在對上一次因第 (1)(c) 款指明的情況以致有披露責任產生時，在他所作出的具報中披露的他所擁有的上述有投票權股份權益的百分率數字。
- (8) 在第 (1)(d) 款指明的情況下本應有披露責任的人，在以下情況下不負有該責任：他在緊接有關時間之後擁有的有關上市法團的有投票權股份權益（撇除其權益中在緊接有關時間之後性質有所改變的部分）的百分率水平，如按照第 314(1) 條計算（在計算時，該條中提述某人擁有權益的所有有投票權股份的總數之處，須解釋為提述該本應有責任的人擁有權益的有投票權股份中性質沒有改變者的總數）——（由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂）
- (a) 相等於對上一次因第 (1)(a)、(c) 或 (d) 款指明的情況（以較遲者為準）以致有披露責任產生時，他在導致他所作出的具報的有關事件發生時所擁有的上述有投票權股份權益的百分率水平；或
- (b) 相等於或低於對上一次因第 (1)(c) 款指明的情況以致有披露責任產生時，他在導致他所作出的具報的有關事件發生時所擁有的上述有投票權股份權益的百分率水平，而以下兩者之間相差少於 0.5% ——（由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂）
- (i) 於因第 (1)(c) 款指明的情況以致有披露責任產生的情況下在導致他所作出的具報的有關事件發生後的所有時間，按照第 (14)(a) 款計算（在計算時，該款中對第 314(1) 條的提述，須以本款上文所述的方式解釋）的他所擁有的上述有投票權股份權益的百分率數字；及

- (7) A person who would otherwise come under a duty of disclosure in the circumstances specified in subsection (1)(c) is not under such a duty where—
- (a) the percentage level of his interest in voting shares in the listed corporation concerned, calculated in accordance with section 314(1), immediately after the relevant time is the same as or less than the percentage level of his interest in such voting shares at the time of the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c); and
- (b) the difference between—
- (i) the percentage figure of his interest in such voting shares, calculated in accordance with subsection (14)(a), at all times since the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c); and
- (ii) the percentage figure of his interest in such voting shares disclosed in the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c),
- is less than 0.5%. (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
- (8) A person who would otherwise come under a duty of disclosure in the circumstances specified in subsection (1)(d) is not under such a duty where the percentage level of his interest (excluding that part of his interest the nature of which has changed immediately after the relevant time) in voting shares in the listed corporation concerned, calculated in accordance with section 314(1) (by construing the reference in that section to the aggregate number of all the voting

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- (ii) 他在對上一次因第 (1)(c) 款指明的情況以致有披露責任產生時，在他所作出的具報中披露的他所擁有的上述有投票權股份權益的百分率數字。
- (9) 在第 (4)(c) 款指明的情況下本應有披露責任的人，在以下情況下不負有該責任 ——
- (a) 他在緊接有關時間之後持有的有關上市法團的有投票權股份的淡倉的百分率水平，如按照第 314(4) 條計算，相等於或低於對上一次因第 (4)(c) 款指明的情況以致有披露責任產生時，他在導致他所作出的具報的有關事件發生時所持有的上述有投票權股份的淡倉的百分率水平；及
- (b) 以下兩者之間相差少於 0.5% ——
- (i) 按照第 (14)(b) 款計算的、他在對上一次因第 (4)(c) 款指明的情況以致有披露責任產生時，在導致他所作出的具報的有關事件發生後的所有時間持有的上述有投票權股份的淡倉的百分率數字；及
- (ii) 他在對上一次因第 (4)(c) 款指明的情況以致有披露責任產生時，在他所作出的具報中披露的他所擁有的上述有投票權股份的淡倉的百分率數字。
- (10) 在第 (11) 款的規限下，如在第 (1) 或 (4) 款指明的情況下本應有披露責任的合資格法團的控權公司 (如該法團的控權公司是另一控權公司的合資格法團，則指該另一控權公司) 符合以下說明，則該法團不負有該責任 —— (由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)

shares in which a person is interested as a reference to the aggregate number of the voting shares the nature of the person's interest in which has not changed), immediately after the relevant time— (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)

- (a) is the same as the percentage level of his interest in such voting shares at the time of the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(a), (c) or (d) (whichever is the latest); or
- (b) is the same as or less than the percentage level of his interest in such voting shares at the time of the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c), and the difference between— (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
- (i) the percentage figure of his interest in such voting shares, calculated in accordance with subsection (14)(a) (by construing the reference in that subsection to section 314(1) in the manner aforementioned in this subsection), at all times since the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c); and
- (ii) the percentage figure of his interest in such voting shares disclosed in the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c),
- is less than 0.5%. (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)

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- (a) 在有關時間根據第 316(2) 條被視為 ——
- (i) 擁有在該合資格法團擁有權益的有投票權股份中的權益；及
  - (ii) 持有在該合資格法團持有淡倉的有投票權股份的淡倉；及 (由 2015 年第 19 號第 2 條修訂)
- (b) 據此履行披露責任。
- (11) 如某法團不再是其控權公司的合資格法團，而在該情況下，該控權公司根據第 316(6) 條被視為不再擁有有投票權股份的權益或不再持有有投票權股份的淡倉，該法團須視為已取得該權益或持有該淡倉 (視屬何情況而定)。(由 2015 年第 19 號第 2 條修訂)
- (12) 在第 (10)、(11) 及 (13) 款中，**合資格法團** (qualified corporation) 就控權公司而言，指該控權公司 (不論該控權公司本身是否另一控權公司的全資附屬公司) 的全資附屬公司。
- (13) 在第 (1)(d) 款中，提述任何人擁有的權益的性質有不相同之處，包括提述 ——
- (a) 他對有關上市法團的有投票權股份的所有權的性質的改變；
  - (b) 他在法律上或衡平法上擁有的上述有投票權股份權益的性質的改變；
  - (c) 在他行使以他擁有的上述有投票權股份為相關股份的股本衍生工具下的權利時，或在該等工具下的權利針對他而行使時，他擁有的上述有投票權股份的權益的性質的改變；或
  - (d) 他在根據第 377 條為施行本條而訂立的規則訂明的情況下擁有的上述有投票權股份權益的性質的改變，

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- (9) A person who would otherwise come under a duty of disclosure in the circumstances specified in subsection (4)(c) is not under such a duty where—
- (a) the percentage level of his short position in voting shares in the listed corporation concerned, calculated in accordance with section 314(4), immediately after the relevant time is the same as or less than the percentage level of his short position in such voting shares at the time of the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (4)(c); and
  - (b) the difference between—
    - (i) the percentage figure of his short position in such voting shares calculated in accordance with subsection (14)(b) at all times since the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (4)(c); and
    - (ii) the percentage figure of his short position in such voting shares disclosed in the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (4)(c),
 is less than 0.5%. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (10) Subject to subsection (11), a qualified corporation which would otherwise come under a duty of disclosure in the circumstances specified in subsection (1) or (4) is not under such a duty if its holding company (or where its holding company is a qualified corporation of another holding company, that other holding company)—
- (a) is, at the relevant time, taken under section 316(2)—

但不包括提述以下改變 ——

- (i) 在上述有投票權股份交付他時，他擁有的上述有投票權股份權益的性質的改變，但前提是根據本分部或第 3 或 4 分部的任何條文，他在衡平法上擁有的上述有投票權股份權益是須具報的，或他過往曾根據上述的任何條文，將該等權益向有關上市法團及有關交易所公司具報；
- (ii) 他擁有的上述有投票權股份權益的性質改變，而該項改變是因在任何股本衍生工具下的權利的行使條款改變所致，而該項條款改變，則是由於有關的相關股份的數目有所改變而引致的；
- (iii) 在以下情況下發生時他擁有的上述有投票權股份權益的性質的改變 —— (由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)
  - (A) 他作為供股的一部分而行使批予他的認購有投票權股份的權利；或
  - (B) 有投票權股份依據某項供股而向他交付；(由 2015 年第 19 號第 2 條修訂)
- (iv) 在以下情況下發生的他擁有的上述有投票權股份權益的性質的改變：屬合資格借出人的另一人以抵押方式，擁有上述有投票權股份的權益；或 (由 2015 年第 19 號第 2 條修訂)
- (v) (在該人是控權公司的情況下) 因為該人的一個合資格法團自該人的另一個合資格法團處取得上述有投票權股份的權益而導致的該人擁有的上述有投票權股份權益的性質的改變。

- (i) to be interested in any voting shares in which the qualified corporation is interested; and
- (ii) to have a short position in any voting shares in which the qualified corporation has a short position; and (*Amended 19 of 2015 s. 2*)
- (b) accordingly complies with the duty of disclosure.
- (11) If a corporation ceases to be a qualified corporation of its holding company and in such circumstances the holding company is regarded as having ceased to be interested, or have a short position, in voting shares under section 316(6), the corporation is taken to have acquired that interest or come to have that short position (as the case may be). (*Amended 19 of 2015 s. 2*)
- (12) In subsections (10), (11) and (13), **qualified corporation** (合資格法團), in relation to a holding company, means a wholly owned subsidiary of the holding company (whether or not the holding company is itself a wholly owned subsidiary of another holding company).
- (13) In subsection (1)(d), a reference to the nature of a person's interest as being not the same includes a reference to a change in the nature of—
  - (a) the person's title to voting shares in the listed corporation concerned;
  - (b) any of the person's interest whether legal or equitable in such voting shares;
  - (c) any of the person's interest in such voting shares, which are the underlying shares of equity derivatives, on the exercise by, or against, him of rights under the equity derivatives; or
  - (d) any of the person's interest in such voting shares in such other circumstances as are prescribed by rules



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- (14) (a) 就第 (7)(b) 及 (8)(b) 款及第 326(1)(b) 條而言，**百分率數字** (percentage figure) 指在 (如適用的話) 調低至最接近的整數之前的第 314(1) 條提述的百分率數字。
- (b) 就第 (9)(b) 款及第 326(1)(c) 條而言，**百分率數字** (percentage figure) 指在 (如適用的話) 調低至最接近的整數之前的第 314(4) 條提述的百分率數字。
- (由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)

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- made under section 377 for the purposes of this section, (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
- but does not include a reference to a change in the nature of the person's interest in such voting shares— (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
- (i) on delivery of the voting shares to him, if his equitable interest in those voting shares is notifiable, or has previously been notified to the listed corporation concerned and the relevant exchange company, under any provision of this Division or Division 3 or 4;
- (ii) due to a change in the terms on which rights under any equity derivatives may be exercised resulting from a change in the number of the underlying shares in issue;
- (iii) on—
- (A) the exercise of rights to subscribe for voting shares granted to him as part of a rights issue; or
- (B) delivery of voting shares to him pursuant to a rights issue;
- (iv) where another person, being a qualified lender, comes to have an interest in those voting shares by way of security; or
- (v) where the person is a holding company, due to the acquisition of an interest in those voting shares by a qualified corporation of the person from another qualified corporation of the person. (*Amended 19 of 2015 s. 2*)
- (14) For the purposes of—
- (a) subsections (7)(b) and (8)(b) and section 326(1)(b), **percentage figure** (百分率數字) means the percentage



**314. 關於須具報權益及淡倉的百分率水平**

- (1) 在不抵觸第 (2)、(3) 及 (5) 款的條文下，在第 313(1)(c)、(7) 及 (8) 條中，**百分率水平** (percentage level) 指以下述方式表達的百分率數字：有關的人在緊接有關時間之前或之後（視屬何情況而定）擁有權益的有關上市法團的所有有投票權股份的總數，在該法團的已發行的有投票權股份數目中所佔的百分率；如該數字並非整數，則調低至最接近的整數。
- (2) 為施行第 (1) 款及第 311(3) 條，凡有關上市法團作為供股的一部分，而批予有關的人認購該法團的有投票權股份的權利，或向有關的人提出該法團的有投票權股份的要約，則該法團的已發行的有投票權股份自作出該項批予或提出該項要約（視屬何情況而定）開始至該項供股完成或終止（以較早者為準）之間所有時間的數目，須視為以下數目的總和——（由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂）
- (a) 在緊接作出該項批予或提出該項要約（視屬何情況而定）之前該法團的已發行的有投票權股份的數目；及
- (b) 在完成該項供股時將予以發行的新的有投票權股份的數目。
- (3) 為施行第 (1) 款及第 311(3) 條，如在釐定有關的人擁有權益的有關上市法團的有投票權股份的總數時，將他持有的任何上述有投票權股份的淡倉計算在內，是會減低上述有投票權股份的總數的，則不得將該等淡倉計算在內。

figure referred to in section 314(1) before rounding down, if applicable, to the next whole number; and

- (b) subsection (9)(b) and section 326(1)(c), **percentage figure** (百分率數字) means the percentage figure referred to in section 314(4) before rounding down, if applicable, to the next whole number.

**314. Percentage level in relation to notifiable interests and short positions**

- (1) Subject to subsections (2), (3) and (5), **percentage level** (百分率水平), in section 313(1)(c), (7) and (8), means the percentage figure found by expressing the aggregate number of all the voting shares in the listed corporation concerned in which the person is interested immediately before or immediately after (as the case may be) the relevant time as a percentage of the number of issued voting shares in that listed corporation and rounding that figure down, if it is not a whole number, to the next whole number.
- (2) For the purposes of subsection (1) and section 311(3), where the listed corporation concerned grants to the person rights to subscribe for, or offers to the person, as part of a rights issue, voting shares, the number of issued voting shares in the listed corporation at all times from the grant or offer (as the case may be) up to the completion or termination of the rights issue (whichever is the earlier) is taken to be the aggregate of— (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
- (a) the number of issued voting shares in the listed corporation immediately before the grant or offer (as the case may be); and
- (b) the number of new voting shares to be issued upon the completion of the rights issue.

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- (4) 在不抵觸第(5)款的條文下，在第313(4)、(5)、(6)及(9)、325(3)及326(1)(j)條中，**百分率水平** (percentage level) 指以下述方式表達的百分率數字：在緊接有關時間之前或之後（視屬何情況而定）由有關的人持有淡倉的有關上市法團的所有有投票權股份的總數，在該法團的已發行的有投票權股份的數目中所佔的百分率；如該數字並非整數，則調低至最接近的整數。
- (5) 凡上市法團的股本分為不同類別的股份——
- (a) 在本條及第311(3)條中，凡提述某人擁有權益的或持有淡倉的該法團的有投票權股份的總數，須解釋為提述分開處理的每一該等類別中的有投票權股份的總數；及
- (b) 在本條中，凡提述該法團的已發行的有投票權股份的數目的一個百分率，須解釋為提述分開處理的每一該等類別中，已發行的有投票權股份的數目的一個百分率。
- (6) 在第(2)款中，**完成** (completion) 就某項供股而言，指依據該項供股而發行有關上市法團的有投票權股份。
- (由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)

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- (3) In determining the aggregate number of voting shares in the listed corporation in which a person is interested for the purposes of subsection (1) and section 311(3), there shall be disregarded any short position which that person has in such voting shares which, if included in the calculation of the aggregate number of such voting shares in which the person is interested, would reduce the aggregate number of such voting shares.
- (4) Subject to subsection (5), **percentage level** (百分率水平), in sections 313(4), (5), (6) and (9), 325(3) and 326(1)(j), means the percentage figure found by expressing the aggregate number of all the voting shares in the listed corporation concerned in which the person has a short position immediately before or immediately after (as the case may be) the relevant time as a percentage of the number of issued voting shares in that listed corporation and rounding that figure down, if it is not a whole number, to the next whole number.
- (5) Where the listed corporation's share capital is divided into different classes of shares—
- (a) a reference in this section and section 311(3) to the aggregate number of voting shares in the listed corporation in which the person is interested or has a short position shall be construed as a reference to the aggregate number of the voting shares in each of the classes taken separately; and
- (b) a reference in this section to a percentage of the number of the listed corporation's issued voting shares is to be construed as a reference to a percentage of the number of the issued voting shares in each of the classes taken separately.

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### 315. 須具報百分率水平及指明百分率水平

- (1) 在本部中，提述須具報百分率水平之處 ——
  - (a) 除 (b) 段另有規定外，須解釋為提述 5%；或
  - (b) 凡規例為施行本款而訂明任何其他百分率，則須解釋為提述該其他百分率，而規例可就不同類別或種類的法團訂明不同的百分率。
- (2) 在本部中，提述指明百分率水平之處 ——
  - (a) 除 (b) 段另有規定外，須解釋為提述 1%；或
  - (b) 凡規例為施行本款而訂明任何其他百分率，則須解釋為提述該其他百分率。

### 316. 就家屬及法團的權益以及淡倉作出具報

- (1) 為施行本分部及第 3 及 4 分部，任何人的配偶或其任何未成年子女（不論親生或領養）——
  - (a) 擁有的任何有投票權股份權益，須視為該人擁有的權益；及
  - (b) 持有的任何有投票權股份的淡倉，須視為該人持有的淡倉。
- (2) 為施行本分部及第 3 及 4 分部，如任何法團 ——
  - (a) 擁有任何有投票權股份權益；或

- (6) In subsection (2), **completion** (完成), in relation to a rights issue, means the issue of voting shares in the listed corporation pursuant to the rights issue.

*(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)*

### 315. Notifiable percentage level and specified percentage level

- (1) A reference to notifiable percentage level in this Part shall be construed as a reference to—
  - (a) subject to paragraph (b), 5%; or
  - (b) where any other percentage is prescribed by regulations for the purposes of this subsection, such other percentage,
 and different percentages may be prescribed in relation to corporations of different classes or descriptions.
- (2) A reference to specified percentage level in this Part shall be construed as a reference to—
  - (a) subject to paragraph (b), 1%; or
  - (b) where any other percentage is prescribed by regulations for the purposes of this subsection, such other percentage.

### 316. Notification of family and corporate interests and short positions

- (1) For the purposes of this Division and Divisions 3 and 4, a person is taken—
  - (a) to be interested in any voting shares in which his spouse, or any minor child (natural or adopted) of his, is interested; and
  - (b) to have a short position in any voting shares in which his spouse, or any minor child (natural or adopted) of his, has a short position.

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- (b) 持有任何有投票權股份的淡倉，  
而 ——
- (i) 該法團或其董事慣於或有義務按照某人的指令或指示行事；或
- (ii) (在不抵觸第(5)款的條文下) 某人有權在該法團的成員大會上行使不少於三分之一的投票權或控制該數量的投票權的行使，  
則該人須視為擁有該等權益或持有該等淡倉(視屬何情況而定)。
- (3) 凡 ——
- (a) 任何人有權在某法團的成員大會上行使不少於三分之一的投票權或控制該數量的投票權的行使；而
- (b) 該法團有權在另一法團的成員大會上行使任何投票權或控制任何投票權的行使(有效投票權)，  
則就第(2)(ii)款而言，有效投票權須視為可由該人行使。
- (4) 就第(2)及(3)款而言，如任何人 ——
- (a) 擁有一項權利(不論是否受條件規限)，而行使該項權利會令他有權行使投票權或控制投票權的行使；或
- (b) 負有一項義務(不論是否受條件規限)，而履行該項義務會令他有權行使投票權或控制投票權的行使，  
則他即屬有權行使該投票權或控制該投票權的行使。
- (5) 就第(2)及(3)款而言，如任何法團 ——
- (a) 擁有任何有投票權股份權益；或
- (b) 持有任何有投票權股份的淡倉，  
而有關條件獲符合，則任何人不得視為擁有該等權益或持有該等淡倉(視屬何情況而定)；上述有關條件為 ——
- (i) 該法團擁有該等權益或持有該等淡倉(視屬何情況而定)，純粹因該法團作為投資經理、保管人或受託

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- (2) For the purposes of this Division and Divisions 3 and 4, a person is taken—
- (a) to be interested in any voting shares in which a corporation is interested; and
- (b) to have a short position in any voting shares in which a corporation has a short position,  
if—
- (i) that corporation or its directors are accustomed or obliged to act in accordance with his directions or instructions; or
- (ii) subject to subsection (5), he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that corporation.
- (3) Where—
- (a) a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a corporation; and
- (b) that corporation is entitled to exercise or control the exercise of any of the voting power at general meetings of another corporation (*the effective voting power*),  
then, for the purposes of subsection (2)(ii), the effective voting power is taken as exercisable by that person.
- (4) For the purposes of subsections (2) and (3), a person is entitled to exercise or control the exercise of voting power if—
- (a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or
- (b) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.

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- 人而在其日常業務運作中有義務或權力代其客戶投資於、管理或買賣該等有投票權股份或持有該等有投票權股份權益；
- (ii) 該法團因其投資經理、保管人或受託人的身分，以致有任何權利或權力就該等有投票權股份投票，而該項權利或權力可由該法團獨立行使而無須交由該人或該人的任何有連繫法團進行；及
- (iii) 該法團在執行其作為投資經理、保管人或受託人的職能時，可獨立行使投資於、管理或買賣該等有投票權股份的權力，或持有該等有投票權股份權益的權力而無須交由該人或該人的任何有連繫法團進行。
- (6) 任何人如根據第 (2) 款視為擁有某些有投票權股份的權益或持有某些有投票權股份的淡倉，則在第 (2)(i) 或 (ii) 款不再適用時，須視為不再擁有該等權益或不再持有該等淡倉（視屬何情況而定）。
- (7) 在第 (5) 款中 ——
- (a) **投資經理** (investment manager) 指符合以下說明，並根據書面協議獲授權為另一人管理證券投資的法團 ——
- (i) 屬就第 9 類受規管活動獲發牌或獲註冊的中介人；或
- (ii) 屬在證監會就本條而認可的香港以外地方獲發牌、獲註冊或獲豁免領牌進行相當於第 9 類受規管活動的活动的法團；及
- (b) **受託人** (trustee) 指以根據信託契據持有屬於另一人的財產為主要業務的法團。

(由 2015 年第 19 號第 2 條修訂)

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- (5) For the purposes of subsections (2) and (3), a person is not taken—
- (a) to be interested in any voting shares in which a corporation is interested; or
- (b) to have a short position in any voting shares in which a corporation has a short position,
- if—
- (i) that corporation is interested in those voting shares or has a short position in those voting shares (as the case may be) by reason only of its obligation or power to invest in, manage, deal in or hold interests in those voting shares on behalf of its customers in the ordinary course of its business as an investment manager, custodian or trustee;
- (ii) to the extent that the corporation has any right or power to vote in respect of those voting shares arising from or by reason of its capacity as an investment manager, custodian or trustee, such right or power is exercisable by that corporation independently without any reference to the person or any related corporation of the person; and
- (iii) when performing its functions as an investment manager, custodian or trustee, the power of that corporation to invest in, manage, deal in or hold interests in those voting shares is exercised by that corporation independently without any reference to the person or any related corporation of the person.
- (6) A person who is taken to be interested, or have a short position, in voting shares under subsection (2) shall be regarded as having ceased to be interested, or have a short position, in the voting shares if subsection (2)(i) or (ii) no longer applies.



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### 317. 取得特定上市法團的權益的協議

- (1) 如多於一人訂立協議，而該協議中有條文訂定由其中一人或多於一人取得某一特定上市法團( **目標法團** ) 的有投票權股份權益，並且 —— ( 由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂 )
- (a) 該協議訂有條文，對於該協議任何一方或多於一方在運用、保留或處置他們依據該協議取得的該法團的有投票權股份權益方面 ( 不論是否連同他們在該等有投票權股份的任何其他權益一併運用、保留或處置 ) 施加義務或限制；或
- (b) 該協議訂有條文，由該法團的控權人士或董事向任何人作出貸款或提供貸款保證，而該協議各方具有共識或知道該項貸款 ( 或其部分 ) 將會用於取得該法團的有投票權股份權益，

(7) In subsection (5)—

(a) **investment manager** (投資經理) means—

- (i) an intermediary licensed or registered for Type 9 regulated activity; or
- (ii) a corporation which is licensed, registered or exempt in a place outside Hong Kong recognized for the purposes of this section by the Commission for an activity which is equivalent to Type 9 regulated activity,

and is authorized to manage investments in securities for another person under a written agreement; and

(b) **trustee** (受託人) means a corporation the principal business of which is to hold property belonging to another person under the provisions of a trust deed.

(Amended 19 of 2015 s. 2)

### 317. Agreement to acquire interests in particular listed corporation

- (1) This section applies in relation to an agreement between 2 or more persons which includes provisions for the acquisition by any one or more of them of interests in voting shares in a particular listed corporation (**the target corporation**), if— (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (a) the agreement also includes provisions imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of their interests in voting shares in the target corporation acquired in pursuance of the agreement (whether or not together with any other interests of theirs in the voting shares in the target corporation to which the agreement relates); or

而該協議的任何一方事實上依據該協議取得該法團的有投票權股份權益，則本條適用於該協議。(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)

- (2) 在第 (1)(a) 款中，凡提述運用目標法團的有投票權股份權益，須解釋為提述行使由該等權益產生的權利或運用由該等權益產生的控制權或影響力，包括訂立由另一人行使或運用上述任何權利(或由另一人控制該等權利的行使或運用)的任何協議的權利。(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)
- (3) 在依據本條適用的協議取得目標法團的有投票權股份權益後，在該協議繼續訂有第 (1)(a) 或 (b) 款提述的條文的期間內，本條繼續適用於該協議，而不論 —— (由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)
  - (a) 是否有依據該協議進一步取得該法團的有投票權股份權益；(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)
  - (b) 身為該協議當其時的各方的人是否有任何轉換；及
  - (c) 該協議是否有任何更改。
- (4) 在第 (3) 款中，凡提述協議，即包括提述具有直接或間接取代一項較早協議的效力的任何協議。
- (5) 在第 (1)(a) 款適用的範圍內，在第 (1) 款中，凡提述協議，均不包括提述以下協議 ——
  - (a) 在法律上無約束力的協議，但如該協議涉及協議各方之間的相互承諾、期望或共識，則屬例外；及
  - (b) 包銷或分包銷任何法團有投票權股份要約的協議，而該協議的內容是只限於該目的及其任何附帶事宜的。(由 2015 年第 19 號第 2 條修訂)
- (6) 在第 (1)(b) 款適用的範圍內，在第 (1) 款中，凡提述協議，均不包括提述目標法團的控權人士或董事在其日常業務運作過程中，以合資格借出人的身分作出貸款的協議。

- (b) the agreement provides for the making of a loan, or the providing of security for a loan, by a controlling person or a director of the target corporation to any person on the understanding or with the knowledge that such loan (or part thereof) would be used or applied for the acquisition of an interest in voting shares in the target corporation,

and an interest in voting shares in the target corporation is in fact acquired by any of the parties in pursuance of such agreement. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

- (2) In subsection (1)(a), a reference to the use of interests in voting shares in the target corporation shall be construed as a reference to the exercise of any rights, or of any control or influence, arising from those interests (including the right to enter into any agreement for the exercise, or for the control of the exercise, of any of those rights by another person). (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (3) Once any interest in voting shares in the target corporation has been acquired in pursuance of an agreement to which this section applies, this section continues to apply to the agreement irrespective of— (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
  - (a) whether or not any further acquisitions of interests in voting shares in the target corporation take place in pursuance of the agreement; (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
  - (b) any change in the persons who are for the time being parties to it; and
  - (c) any variation of the agreement,
 so long as the agreement continues to include provisions of any description referred to in subsection (1)(a) or (b).

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- (7) 為本條的目的及就任何法團而言，**控權人士** (controlling person) 指單獨或聯同其有聯繫者擁有以下權利的人 ——
- (a) 有權在該法團的成員大會上行使不少於以下百分率的投票權或控制不少於該百分率的投票權的行使 ——
- (i) 除第 (ii) 節另有規定外，30%；或
- (ii) 凡為施行本款而藉根據第 397 條訂立的規則訂明另一百分率，該百分率；
- (b) 有提名任何人為該法團的董事的權利；或
- (c) 擁有該法團的股份權益，而該等股份帶有在該法團的成員大會上 ——
- (i) 否決任何決議的權利；或
- (ii) 對任何決議作出修訂、修改、限制或施加條件的權利。

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- (4) In subsection (3), a reference to the agreement includes a reference to any agreement having effect (whether directly or indirectly) in substitution for an earlier agreement.
- (5) In subsection (1), a reference to an agreement, in so far as subsection (1)(a) applies, does not include—
- (a) a reference to an agreement which is not legally binding unless it involves mutuality in the undertakings, expectations or understandings of the parties to it; and
- (b) a reference to an agreement to underwrite or sub-underwrite any offer of voting shares in a corporation, if the agreement is confined to that purpose and any matters incidental to it. (*Amended 19 of 2015 s. 2*)
- (6) In subsection (1), a reference to an agreement, in so far as subsection (1)(b) applies, does not include a reference to an agreement under which a controlling person or a director of the target corporation makes the loan in the ordinary course of his business as a qualified lender.
- (7) For the purposes of this section, **controlling person** (控權人士), 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), 30%; or
- (ii) where any other percentage is prescribed by rules made under section 397 for the purposes of this subsection, 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—

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### 318. 協議各方的權益

- (1) 就披露責任而言，第 317 條適用的任何協議的每一方，均須視為擁有任何其他一方在該協議之外擁有的目標法團的任何有投票權股份權益，不論該其他一方的權益是否依據該協議取得，亦不論該等權益是否包括依據該協議取得的任何權益。
- (2) 就第 (1) 款及第 319 及 326(6)(b) 條而言，協議一方擁有的目標法團的有投票權股份權益，如非因第 317 條及本條適用於該協議而擁有的，即屬在該協議之外擁有的權益。
- (3) 據此，就第 (1) 款及第 319 條而言，協議一方在該協議之外擁有的任何權益，包括根據第 316 條視為由他擁有的任何權益；如他亦是關乎目標法團的有投票權股份的其他協議的一方，而任何其他權益由於本條及第 317 條適用於該其他協議而視為由他擁有，則就第 (1) 款而言，他在協議之外擁有的權益亦包括該等其他權益。

(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)

### 319. 共同行事的協議各方互相告知的責任

- (1) 如在任何時間有以下情況出現，則屬第 317 條適用的協議的一方的人須受本條的規定所規限 ——

- (i) veto any resolution; or
  - (ii) amend, modify, limit or add conditions to any resolution,
- at general meetings of the corporation.

### 318. Interests of parties to agreement

- (1) In the case of an agreement to which section 317 applies, each party to the agreement is taken (for the purposes of the duty of disclosure) to be interested in any voting shares in the target corporation in which any other party to the agreement is interested apart from the agreement (whether or not the interest of the other party in question was acquired, or includes any interest which was acquired, in pursuance of the agreement).
- (2) For the purposes of subsection (1) and sections 319 and 326(6)(b), an interest of a party to such an agreement in voting shares in the target corporation is an interest apart from the agreement if he is interested in those voting shares otherwise than by the application of this section and section 317 in relation to the agreement. (*Amended 19 of 2015 s. 2*)
- (3) Accordingly, any such interest of the party to the agreement (apart from the agreement) includes, for the purposes of subsection (1) and section 319, any interest which he is taken to have under section 316 or by the application of this section and section 317 in relation to any other agreement with respect to voting shares in the target corporation to which he is a party.

(*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)

### 319. Duty of parties to agreement acting together to keep each other informed

- (1) A person who is a party to an agreement to which section 317



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- (a) 目標法團是上市法團，而他知道該事實；
  - (b) 協議所關乎的目標法團股份，由該法團的有投票權股份組成，或包括該法團的有投票權股份，而他知道情況如此；及 (由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)
  - (c) 他知道令第 317 條適用於該協議的事實。
- (2) 受本條的規定所規限的人有責任在以下時間，向協議其他每一方具報他在該協議之外擁有的目標法團的有投票權股份權益 (如有的話) 的有關詳情 —— (由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)
- (a) 他最初受到本條的規定所規限時；及
  - (b) 其後在他仍受本條的規定所規限期間，每當第 310(1)、(2) 或 (3) 條提述的任何事件發生時或情況發生任何改變時 (而該等條文適用於他的情況，與他因第 318 條適用於該協議而被視為擁有的權益無關)。
- (3) 假如有責任根據第 (2) 款作出具報的人在緊接該責任產生後，亦有責任披露他在有關協議以外擁有的目標法團的有投票權股份權益 (如有的話)，而他需要述明的權益為該等有投票權股份的數目的話，則根據第 (2) 款須具報的有關詳情為該有投票權股份數目。 (由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂；由 2015 年第 19 號第 2 條修訂)
- (4) 屬第 317 條適用的協議的一方的人有責任在以下時間，向協議其他每一方具報他當時的地址 ——
- (a) 他最初受到本條的規定所規限時；及
  - (b) 其後在他仍受本條的規定所規限期間，他的地址有任何改變時。
- (5) 如某人向其他人作出本條規定的具報的責任在某日產生，則該具報須在該日後 3 個營業日內作出。

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- applies is subject to the requirements of this section at any time when—
- (a) the target corporation is a listed corporation, and he knows it to be so;
  - (b) the shares in the target corporation to which the agreement relates consist of or include voting shares in the target corporation, and he knows that to be the case; and (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
  - (c) he knows the facts which make the agreement one to which section 317 applies.
- (2) A person who is subject to the requirements of this section is under a duty to give notification to every other party to the agreement of the relevant particulars of his interest apart from the agreement (if any) in voting shares in the target corporation— (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
- (a) on his first becoming subject to the requirements of this section; and
  - (b) on each occurrence after that time and while he is still subject to those requirements of any event or change referred to in section 310(1), (2) or (3) (as it applies to his case otherwise than by reference to interests which he is taken to have under section 318 as applying to that agreement).
- (3) The relevant particulars to be notified under subsection (2) are the number of voting shares (if any) in the target corporation which the person giving the notification would be required to state as his interest if he were under the duty of disclosure with respect to that interest (apart from the agreement) immediately after the time when the duty to give notification



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under subsection (2) arose. (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)

- (4) A person who is a party to an agreement to which section 317 applies is under a duty to give notification to every other party to the agreement of his current address—
- (a) on his first becoming subject to the requirements of this section; and
- (b) on any change in his address occurring after that time and while he is still subject to those requirements.
- (5) If a person is under a duty to give any notification required by this section to any other person, the notification shall be given within 3 business days after the day on which that duty arises.

### 320. 任何人藉歸屬方式擁有有投票權股份權益或淡倉的情況

(由 2015 年第 19 號第 2 條修訂)

- (1) 在第 310 至 313 條中 ——
- (a) 凡提述任何人取得或不再擁有某上市法團的有投票權股份權益，即包括提述他憑藉另一人的權益而變為擁有或不再擁有該等有投票權股份權益；
- (b) 凡提述任何人擁有的某上市法團的有投票權股份權益的性質有不相同之處，即包括提述該等有投票權股份權益的性質憑藉另一人的權益的性質的改變以致亦有所改變；及
- (c) 凡提述任何人變為持有或不再持有某上市法團的有投票權股份的淡倉，即包括提述他憑藉另一人的淡倉而變為持有或不再持有該等有投票權股份的淡倉。
- (2) 凡根據第 316 或 318 條 (視屬何情況而定) ——
- (a) 任何人變為擁有或不再擁有上市法團的有投票權股份權益；

### 320. Circumstances in which persons have interests or short positions in voting shares by attribution

(*Amended 19 of 2015 s. 2*)

- (1) In sections 310 to 313—
- (a) a reference to a person acquiring an interest in, or ceasing to be interested in, voting shares in a listed corporation includes a reference to his becoming or ceasing to be interested in those voting shares by virtue of another person's interest;
- (b) a reference to the nature of a person's interest in voting shares in a listed corporation as being not the same includes a reference to a change in the nature of his interest in those voting shares by virtue of a change in the nature of another person's interest; and
- (c) a reference to a person coming to have a short position in, or ceasing to have a short position in, voting shares in a listed corporation includes a reference to his

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- (b) 他擁有的上述有投票權股份權益的性質有所改變；或
- (c) 他變為持有或不再持有上述有投票權股份的淡倉，第 (1) 款均適用，而不論上述情況是因以下哪一項而引致的——
- (i) 他藉參照某種人的該等有投票權股份權益或該等有投票權股份的淡倉而根據第 316 或 318 條視為擁有該等權益或持有該等淡倉（視屬何情況而定），而擁有該等有投票權股份權益或持有該等有投票權股份的淡倉的另一人成為或不再是該種人；
- (ii) 由於該另一人已變為擁有或已不再擁有該等有投票權股份權益，或該另一人擁有的該等有投票權股份權益的性質已改變，或該另一人已變為持有或已不再持有該等有投票權股份的淡倉（視屬何情況而定）；
- (iii) 由於他本身成為或不再是第 317 條適用的協議（擁有該等有投票權股份權益的該另一人當其時亦屬其中一方者）的一方；或
- (iv) 由於他及該另一人均屬協議一方的協議，成為或不再是第 317 條適用的協議。
- (3) 凡在第 (2) 款指明的情況下，任何人（視屬何情況而定）——
- (a) 變為擁有或不再擁有上市法團的有投票權股份權益；
- (b) 擁有的上述有投票權股份權益的性質有改變；或
- (c) 變為持有或不再持有上述有投票權股份的淡倉，
- 則當該人知道以下兩項事實時，該人須當作知道他已取得或已不再擁有該等有投票權股份權益，或他擁有的該等有投票權股份權益的性質已有所改變，或他已變為持有或不再持有該等有投票權股份的淡倉（視屬何情況而定）——（由 2015 年第 19 號第 2 條修訂）

coming to have or ceasing to have a short position in those voting shares by virtue of another person's short position. (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)

- (2) Subsection (1) applies where—
- (a) a person becomes or ceases to be interested in voting shares in a listed corporation;
- (b) the nature of a person's interest in such voting shares changes; or
- (c) a person comes to have or ceases to have a short position in such voting shares, (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
- under section 316 or 318 (as the case may be) whether—
- (i) by virtue of the fact that the other person who is interested, or has a short position, in those voting shares becomes or ceases to be a person by reference to whose interests or short positions (if any) he is taken to have an interest or short position (as the case may be) under section 316 or 318;
- (ii) in consequence of the fact that the other person has become or ceased to be interested in those voting shares, the nature of the other person's interest in those voting shares has changed, or the other person has come to have or ceased to have a short position in those voting shares (as the case may be);
- (iii) in consequence of the fact that he himself becomes or ceases to be a party to an agreement to which section 317 applies to which the other person interested in those voting shares is for the time being a party; or

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- (i) 與有關的另一人擁有該等有投票權股份權益或持有該等有投票權股份的淡倉 (視屬何情況而定) 有關的事實; 及
- (ii) 一些有關事實, 而憑藉該等事實該人根據第 316 或 318 條已變為擁有或不再擁有該等有投票權股份權益, 或變為持有或不再持有該等有投票權股份的淡倉 (視屬何情況而定)。
- (4) 如任何人知道以下其中一項事實 (不論是否同時知道), 則該人即屬知道第 (3)(i) 款提述的事實 ——
  - (a) 在任何關鍵時間, 有關的另一人擁有上市法團的有投票權股份權益, 或該另一人擁有的該等有投票權股份權益的性質有所改變, 或該另一人持有該等有投票權股份的淡倉 (視屬何情況而定); 或
  - (b) 在任何關鍵時間, 該另一人已變為擁有或已不再擁有該等有投票權股份權益, 或該另一人擁有的該等有投票權股份權益的性質已改變, 或該另一人已變為持有或已不再持有該等有投票權股份的淡倉 (視屬何情況而定)。
- (5) 如任何人根據第 319 條獲具報一些事實, 顯示有關的另一人擁有、已變為擁有或已不再擁有上市法團的有投票權股份權益, 或該另一人擁有的該等有投票權股份權益的性質有所改變或已改變 (視屬何情況而定), 則不論上述事實是由於該另一人本身還是憑藉第三方擁有的該等有投票權股份權益所致, 該人均須當作知道以下事實 —— (由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂; 由 2015 年第 19 號第 2 條修訂)
  - (a) 該另一人擁有該等有投票權股份權益, 或該另一人擁有的該等有投票權股份權益的性質有所改變 (視屬何情況而定); 或
  - (b) 該另一人已變為擁有或已不再擁有該等有投票權股份權益, 或該另一人擁有的該等有投票權股份權益的性質已改變 (視屬何情況而定)。

- (iv) in consequence of the fact that an agreement to which both he and the other person are parties becomes or ceases to be one to which section 317 applies.
- (3) Upon—
  - (a) a person becoming or ceasing to be interested in voting shares in a listed corporation;
  - (b) a change in the nature of a person's interest in such voting shares; or
  - (c) a person coming to have or ceasing to have a short position in such voting shares, (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
 (as the case may be) in the circumstances specified in subsection (2), the person shall be deemed to know that he has acquired an interest in those voting shares or has ceased to be interested in those voting shares, or that the nature of his interest in those voting shares has changed, or that he has come to have a short position in those voting shares or has ceased to have a short position in those voting shares (as the case may be), when he knows both— (*Amended 19 of 2015 s. 2*)
  - (i) the relevant facts with respect to the other person's interest or short position (as the case may be) in those voting shares; and
  - (ii) the relevant facts by virtue of which he himself has become or ceased to be interested, or come to have or ceased to have a short position (as the case may be) in those voting shares under section 316 or 318.
- (4) A person has the knowledge referred to in subsection (3)(i) if he knows (whether contemporaneously or not) either—
  - (a) of the fact that the other person is interested in those voting shares, or the nature of the other person's interest

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- (6) 在第 (4) 款中，**關鍵時間** (material time) 指有關的人的權益或淡倉 (視屬何情況而定) 根據第 316 或 318 條而視為或已視為由他擁有或持有 (視屬何情況而定) 的任何時間。  
(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂；由 2015 年第 19 號第 2 條修訂)

**321. 代理人所作的具報**  
如任何人授權另一人 (**代理人**) 代他 ——

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- in those voting shares changes, or the other person has a short position in those voting shares (as the case may be) at any material time; or
- (b) of the fact that the other person has become or ceased to be interested in those voting shares, or the nature of the other person's interest in those voting shares has changed, or the other person has come to have or ceased to have a short position in those voting shares (as the case may be) at any material time.
- (5) A person shall be deemed to know of the fact that—
- (a) the other person is interested in those voting shares or the nature of the other person's interest in those voting shares changes (as the case may be); or
- (b) the other person has become or ceased to be interested in those voting shares or the nature of the other person's interest in those voting shares has changed (as the case may be),
- if he has been notified under section 319 of facts which indicate that the other person is or has become or ceased to be interested in those voting shares or the nature of the other person's interest in those voting shares changes or has changed (as the case may be), whether on the other person's own account or by virtue of a third party's interest in them.
- (6) In subsection (4), **material time** (**關鍵時間**) means any time at which the interests or short positions (as the case may be) of the person concerned which are taken to be his under section 316 or 318 fall or fell to be so taken.

(Amended 19 of 2015 s. 2)

**321. Notification by agents**  
Where a person authorizes another person (**the agent**)—

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- (a) 取得或處置任何上市法團的有投票權股份權益；或
- (b) 持有或不再持有上述有投票權股份的淡倉，

他須確保凡該代理人代他如此行事，而上述作為會導致或可能導致披露責任或具報責任根據本分部（或第 3 或 4 分部）的任何條文就他擁有的該等權益或持有的該等淡倉產生，該代理人均須立即通知他。

(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)

### 第 3 分部 —— 須具報或無須理會的權益及淡倉

#### 322. 就具報而言須予顧及的權益及淡倉

- (1) 在不抵觸第 323 條的情況下，本條適用於斷定任何人就第 2、4 及 5 分部而言，是擁有抑或不再擁有須具報的上市法團的有投票權股份的權益，或是持有抑或不再持有須具報的上市法團的有投票權股份的淡倉。(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)
- (2) 凡提述有投票權股份的權益，須解釋為包括提述有投票權股份中任何種類的權益；而為該目的，行使附於該等權益的任何權利所受到或可能受到的約束或限制，無須理會。
- (3) 在解釋對有投票權股份的淡倉的提述時，憑藉該淡倉行使權利或履行義務所可能受到的約束或限制，無須理會。
- (4) 凡以信託方式持有的財產包含任何有投票權股份的權益或淡倉 —— (由 2015 年第 19 號第 2 條修訂)

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- (a) to acquire or dispose of, on his behalf, interests in voting shares in a listed corporation; or
- (b) to have or cease to have, on his behalf, short positions in such voting shares,

he shall secure that the agent notifies him immediately of acquisitions or disposals of interests, or having or ceasing to have short positions, effected by the agent which will or may give rise to any duty of disclosure or any duty to give notification under any provision of this Division or Division 3 or 4 with respect to his interests or short positions in those voting shares.

(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013; 19 of 2015 s. 2)

### Division 3—Interests and short positions to be notified or disregarded

#### 322. Interests and short positions to be taken into account for the purpose of notification

- (1) This section applies, subject to section 323, in determining for the purposes of Divisions 2, 4 and 5 whether a person has, or ceases to have, an interest or short position in voting shares in a listed corporation that is notifiable. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (2) A reference to an interest in voting shares shall be construed as including a reference to an interest of any kind whatsoever in the voting shares, and for that purpose any restraint or restriction to which the exercise of a right attached to the interest may be subject shall be disregarded.
- (3) In construing a reference to a short position in voting shares, any restraint or restriction to which the exercise of a right or the settlement of an obligation, by virtue of the short position, may be subject shall be disregarded.



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- (a) 而該信託的受益人除根據本條外並不擁有該等權益或持有該等淡倉，該受益人須視為擁有該等權益或持有該等淡倉（視屬何情況而定）；及
- (b) 而該信託屬酌情信託，該信託的成立人須視為擁有該等權益或持有該等淡倉（視屬何情況而定）。
- (5) 任何人如有以下情況，須視為擁有有投票權股份的權益——（由 2015 年第 19 號第 2 條修訂）
- (a) 他訂立購買（不論以現金或其他代價）該等有投票權股份的合約；或
- (b) 他有權——
- (i) 行使因持有該等有投票權股份而獲賦予的任何權利；或
- (ii) 控制該等權利的行使。
- (6) 就第 (5)(b) 款而言，任何人如有以下情況，須視為有權行使因持有有投票權股份而獲賦予的任何權利或控制該等權利的行使——（由 2015 年第 19 號第 2 條修訂）
- (a) 他擁有一項權利（不論是否受條件規限），而行使該權利會使他有權行使該等權利或控制其行使；或
- (b) 他負有一項義務（不論是否受條件規限），而履行該義務會使他有權行使該等權利或控制其行使。
- (7) 凡任何人——
- (a) 有權認購有投票權股份或要求將有投票權股份交付他本人或依照他的指示交付；或
- (b) 有權取得有投票權股份的權益，或有義務提取有投票權股份，
- 而他並非憑藉擁有某項信託下的權益而享有上述權利，則不論上述權利或義務是否在任何情況下附有條件，他均須視為擁有該等有投票權股份的權益。
- (8) 任何股本衍生工具的持有人、賣方或發行人如憑藉持有、售賣或發行（視屬何情況而定）該等工具而——

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- (4) Where property is held on trust and an interest, or short position, in voting shares is comprised in that property—*(Amended 19 of 2015 s. 2)*
- (a) a beneficiary of the trust who apart from this section does not have an interest, or short position, in the voting shares is taken to have such an interest or short position (as the case may be); and
- (b) in the case of a discretionary trust, the founder of the trust is taken to have an interest or short position (as the case may be) in the voting shares.
- (5) A person is taken to have an interest in voting shares if—*(Amended 19 of 2015 s. 2)*
- (a) he enters into a contract for their purchase by him (whether for cash or other consideration); or
- (b) he is entitled to—
- (i) exercise any right conferred by the holding of the voting shares; or
- (ii) control the exercise of any such right.
- (6) For the purposes of subsection (5)(b), a person is taken to be entitled to exercise or control the exercise of any right conferred by the holding of voting shares if—*(Amended 19 of 2015 s. 2)*
- (a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or
- (b) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.
- (7) A person is taken to have an interest in voting shares if, otherwise than by virtue of having an interest under a trust—*(Amended 19 of 2015 s. 2)*

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- (a) 有權要求另一人在某日期或之前或某期間內，向他交付該等工具的相關股份；
- (b) 有義務在某日期或之前或某期間內，提取該等相關股份；
- (c) 在該等相關股份的價格在某日期或之前或某期間內上升的情況下，有權從另一人收取一筆款項；或
- (d) 在該等相關股份的價格在某日期或之前或某期間內上升的情況下，有權避免或減少損失，
- 則不論上述權利或義務是否在任何情況下附有條件，他均須視為擁有屬該等相關股份的有投票權股份的權益。
- (9) 任何人根據第 (8) 款須視為擁有權益的有投票權股份的數目 —— (由 2015 年第 19 號第 2 條修訂)
- (a) (i) 是他有權要求另一人向他交付的有關相關股份的數目；或
- (ii) 是他有義務提取的該等相關股份的數目；
- (b) 是該等相關股份的數目，而他憑藉持有、售賣或發行有關股本衍生工具而有權收取的款項或有權避免或減少的損失，是完全或部分參照該數目而得出或釐定的；或
- (c) 如屬股票期貨合約的情況，則為用以計算他可就持有的股票期貨合約收取的款項的合約乘數，
- 不論上述權利或義務是否在任何情況下附有條件。(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)
- (10) 如有以下情況，任何人即視為已不再擁有有投票權股份的權益 —— (由 2015 年第 19 號第 2 條修訂)
- (a) 他將該等有投票權股份交付另一人或依照另一人的指示將該等有投票權股份交付 —— (由 2015 年第 19 號第 2 條修訂)

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- (a) he has a right to subscribe for the voting shares or call for delivery of the voting shares to himself or to his order; or
- (b) he has a right to acquire an interest in the voting shares or is under an obligation to take delivery of the voting shares,
- whether in any case the right or obligation is conditional or absolute.
- (8) A person who is the holder, writer or issuer of equity derivatives is taken to have an interest in voting shares which are the underlying shares of the equity derivatives if, by virtue of his holding, writing or issuing of the equity derivatives— (Amended 19 of 2015 s. 2)
- (a) he has a right to require another person to deliver the underlying shares to him;
- (b) he is under an obligation to take delivery of the underlying shares;
- (c) he has a right to receive from another person an amount if the price of the underlying shares increases; or
- (d) he has a right to avoid or reduce a loss if the price of the underlying shares increases,
- before or on a certain date or within a certain period, whether in any case the right or obligation is conditional or absolute.
- (9) The number of voting shares in which a person is taken to be interested under subsection (8) is— (Amended 19 of 2015 s. 2)
- (a) the number of the underlying shares of the equity derivatives—
- (i) which he has a right to require another person to deliver to him; or
- (ii) of which he is under an obligation to take delivery;

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- (i) 而他是按照他同意將該等有投票權股份售予該另一人的合約如此行事的；
- (ii) 以履行他在該另一人要求他交付該等有投票權股份時須如此行事的義務；或
- (iii) 而他是依據一項要求另一人提取該等有投票權股份的權利而如此行事的；
- (b) 他認購或要求交付該等有投票權股份的權利已失時效或他將該權利轉讓予另一人；
- (c) 他須提取該等有投票權股份的義務已失時效或他將該義務轉讓予另一人；或
- (d) 他在轉讓或結算任何現金結算股本衍生工具時，向另一人收取一筆款項或得以藉此避免或減少損失。
- (11) 任何人根據第(10)(d)款視為已不再擁有權益的有投票權股份的數目 —— (由 2015 年第 19 號第 2 條修訂)
  - (a) 是將用以計算他可收取的款項或他可避免或減少的損失的相關股份數目；或
  - (b) 如屬股票期貨合約的情況，則為將用以計算他可就持有的股票期貨合約收取的款項的合約乘數。(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)
- (12) 任何人憑藉持有、售賣或發行股本衍生工具而須視為持有淡倉的有投票權股份的數目 —— (由 2015 年第 19 號第 2 條修訂)
  - (a) 是他有權交付或可能須交付的該等工具的相關股份的數目；
  - (b) 如屬現金結算股本衍生工具的情況，則為將用以計算他可收取的款項或他可避免或減少的損失的相關股份的數目；或
  - (c) 如屬股票期貨合約的情況，則為將用以計算他可就持有的股票期貨合約收取的款項的合約乘數。(由

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- (b) the number of the underlying shares of the equity derivatives by reference to which, wholly or partly, the amount which he has a right to receive or the loss which he has a right to avoid or reduce, by virtue of his holding, writing or issuing of the equity derivatives, is derived or determined; or
  - (c) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract,
- whether in any case the right or obligation is conditional or absolute. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (10) A person shall be regarded as having ceased to be interested in voting shares if— (Amended 19 of 2015 s. 2)
  - (a) he delivers the voting shares to another person or to another person's order— (Amended 19 of 2015 s. 2)
    - (i) in accordance with a contract under which he agreed to sell the voting shares to the other person;
    - (ii) in fulfilling an obligation to do so when called upon by the other person to deliver the voting shares; or
    - (iii) pursuant to a right to require the other person to take delivery of the voting shares;
  - (b) his right to subscribe for or call for delivery of the voting shares lapses or he assigns such a right to another person;
  - (c) his obligation to take delivery of the voting shares lapses or he assigns such an obligation to another person; or

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2012 年第 28 號第 912 及 920 條及 2013 年第 162 號  
法律公告修訂)

- (13) 任何人根據證券借貸協議而須視為持有淡倉的有投票權股份的數目，是他在被要求時有義務根據該協議交付的有投票權股份的數目，不論該交付有投票權股份的義務可否以支付現金、交付有投票權股份或其他方式履行。  
(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)
- (14) 如有多於一人共同擁有一項權益或持有同一淡倉，他們當中的每一人均須視為擁有該項權益或持有該淡倉（視屬何情況而定）。
- (15) 任何人擁有權益的有投票權股份或持有淡倉所涉的有投票權股份並非可識辨一事，屬無關重要。

(由 2015 年第 19 號第 2 條修訂)

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- (d) he receives from another person an amount, or avoids or reduces a loss, on assignment or settlement of any cash settled equity derivatives.
- (11) The number of voting shares in which a person is regarded as having ceased to be interested under subsection (10)(d) is—  
(Amended 19 of 2015 s. 2)
- (a) the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or
- (b) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (12) The number of voting shares in which a person is regarded as having a short position by virtue of his holding, writing or issuing of any equity derivatives is— (Amended 19 of 2015 s. 2)
- (a) the number of the underlying shares of the equity derivatives which he is entitled, or may be required, to deliver;
- (b) in the case of cash settled equity derivatives, the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or
- (c) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (13) The number of voting shares in which a person is regarded as having a short position under a securities borrowing and

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### 323. 就具報而言無須理會的權益及淡倉

- (1) 就第 2 至 4 分部而言，以下的上市法團的有投票權股份權益及淡倉無須理會 —— (由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)
- (a) 如屬有關財產是以信託方式持有而該財產包含任何有投票權股份權益的情況 —— (由 2015 年第 19 號第 2 條修訂)
- (i) 復歸權益或剩餘權益；
  - (ii) 被動受託人的權益；及
  - (iii) 任何酌情權益；
- (b) 獲豁免保管人權益；
- (c) 除第 (4) 款另有規定外，由 ——
- (i) 根據第 104 條認可的集體投資計劃；
  - (ii) 根據《強制性公積金計劃條例》(第 485 章) 第 21 或 21A 條註冊的公積金計劃或退休金計劃；或
  - (iii) 合資格海外計劃，

lending agreement is the number of voting shares which he is obliged to deliver under the securities borrowing and lending agreement, if called upon to do so, whether or not the obligation to deliver voting shares may be settled by payment of cash or by delivery of voting shares or otherwise. (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)

- (14) Persons having a joint interest or short position are taken each of them to have that interest or short position (as the case may be).
- (15) It is immaterial that voting shares in which a person has an interest or short position are unidentifiable.

(*Amended 19 of 2015 s. 2*)

### 323. Interests and short positions to be disregarded for the purpose of notification

- (1) The following interests, and short positions, in voting shares in a listed corporation shall be disregarded for the purposes of Divisions 2 to 4— (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
- (a) where property is held on trust and an interest in voting shares is comprised in that property— (*Amended 19 of 2015 s. 2*)
- (i) an interest in reversion or remainder;
  - (ii) an interest of a bare trustee; and
  - (iii) any discretionary interest;
- (b) an exempt custodian interest;
- (c) subject to subsection (4), an interest in voting shares comprised in the property under— (*Amended 19 of 2015 s. 2*)
- (i) a collective investment scheme authorized under section 104;



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- 的持有人、受託人或保管人擁有的在該計劃下的財產中的有投票權股份的權益；
- (d) 憑藉以下形式而存續的屬於任何人的權益 ——
- (i) 藉具有司法管轄權的法院的命令而成立的慈善計劃；或
  - (ii) 死者遺產在死者去世至授予遺產管理書期間歸屬司法人員；
- (e) 任何人根據一項授產安排而在他本人或另一人在生時享有的權益，而該項安排中的財產是由有投票權股份組成或包含有投票權股份，並符合以下條件 —— (由 2015 年第 19 號第 2 條修訂)
- (i) 該項安排是不可撤銷的；及
  - (ii) 財產授予人並無擁有該項安排所產生的任何收入或其中的財產的權益；
- (f) 獲豁免的保證權益；
- (g) 認可結算所的有投票權股份權益；
- (h) 高等法院司法常務官以該身分持有的有投票權股份權益；
- (i) 屬於就第 1 類受規管活動獲發牌或獲註冊的中介人的有投票權股份權益，而 —— (由 2015 年第 19 號第 2 條修訂)
- (i) 該權益是該中介人純粹以代理人身分為在其日常業務運作過程中訂立的交易而取得的；
  - (ii) 該宗交易中的主事人並非該中介人的有連繫法團；
  - (iii) 該權益是取自並非該中介人的有連繫法團的人；及
  - (iv) 該中介人曾擁有該權益不超過 3 個營業日；

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- (ii) a pension scheme or a provident fund scheme registered under section 21 or 21A of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); or
  - (iii) a qualified overseas scheme, of a holder, trustee or custodian of the scheme;
- (d) an interest of a person subsisting by virtue of—
- (i) a charitable scheme made by order of any court of competent jurisdiction; or
  - (ii) the vesting of a deceased's estate in any judicial officer between the time of death of the deceased and the grant of letters of administration;
- (e) an interest for the life of himself, or of another, of a person under a settlement in the case of which the property comprised in the settlement consists of or includes voting shares, and the following conditions are satisfied— (*Amended 19 of 2015 s. 2*)
- (i) the settlement is irrevocable; and
  - (ii) the settlor has no interest in any income arising under, or property comprised in, the settlement;
- (f) an exempt security interest;
- (g) an interest in voting shares of a recognized clearing house; (*Amended 19 of 2015 s. 2*)
- (h) an interest in voting shares of the Registrar of the High Court held in his official capacity; (*Amended 19 of 2015 s. 2*)
- (i) an interest in voting shares of an intermediary licensed or registered for Type 1 regulated activity where— (*Amended 19 of 2015 s. 2*)

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- (j) 規例為施行本條而訂明的權益或淡倉，或屬於如此訂明的類別的權益或淡倉；及
- (k) 在符合第 377 條的規定下，為施行本條而藉根據第 377 條訂立的規則訂明的權益或淡倉，或屬於如此訂明的類別的權益或淡倉。
- (2) 任何人不得僅因有以下情況而視為根據第 322(5)(b) 條擁有投票權股份權益——(由 2015 年第 19 號第 2 條修訂)
  - (a) 他獲委任在某上市法團或其任何類別成員的某指明會議上，以及在該會議的延會上，以代表身分投票；或
  - (b) 該人獲任何法團委任在某上市法團或其任何類別成員的會議上，以該法團的代表身分行事。
- (3) 為施行第 (1)(b) 款，如——
  - (a) 有投票權股份權益是由某法團持有，而該法團所經營的業務，是為另一人（不論以信託或合約形式）持有證券以作保管；及
  - (b) 該法團在進行該權益的交易時或在行使附於該權益的權利時，並沒有行使酌情權的權限，  
該權益即屬獲豁免保管人權益。
- (4) 如第 (1)(c)(i)、(ii) 或 (iii) 款提述的計劃的持有人、受託人或保管人（視屬何情況而定）亦是該計劃的管理人，則他所擁有的在該計劃下的財產中的有投票權股份權益不得根據第 (1)(c) 款不予理會。
- (5) 就第 (1)(c) 款而言，**合資格海外計劃** (qualified overseas scheme) 指符合以下說明的集體投資計劃、退休金計劃或公積金計劃——
  - (a) 在香港以外地方成立，並獲證監會為施行本條藉憲報公告認可；及

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- (i) the interest is acquired by the intermediary as an agent only for the purposes of a transaction entered into in the ordinary course of his business as such an intermediary;
- (ii) the principal in that transaction is a person other than a related corporation of the intermediary;
- (iii) the interest is acquired from a person other than a related corporation of the intermediary; and
- (iv) the intermediary has been interested in the voting shares for not more than 3 business days; (*Amended 19 of 2015 s. 2*)
- (j) such interests or interests of such a class, or such short positions or short positions of such a class, as are prescribed by regulations for the purposes of this section; and
- (k) subject to section 377, such interests or interests of such a class, or such short positions or short positions of such a class, as are prescribed by rules made under section 377 for the purposes of this section.
- (2) A person is not taken to be interested in voting shares under section 322(5)(b) by reason only that he— (*Amended 19 of 2015 s. 2*)
  - (a) has been appointed as a proxy to vote at a specified meeting of the listed corporation or of any class of its members and at any adjournment of that meeting; or
  - (b) has been appointed by a corporation to act as its representative at a meeting of the listed corporation or of any class of its members.
- (3) For the purposes of subsection (1)(b), an interest in voting shares is an exempt custodian interest if— (*Amended 19 of 2015 s. 2*)

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- (b) 已獲該計劃成立所在地地方負責認可或註冊該等計劃的主管當局 (如有的話) 認可或註冊, 並符合該當局的規定,
- 但不包括 ——
- (i) 由任何人並非以業務形式營辦的安排;
- (ii) 符合以下說明的安排: 在該安排下, 少於 100 人擁有權益 (不論是否以單位描述) 或有權成為權益 (不論是否以單位描述) 的擁有人, 而該權益令擁有人直接或間接對該安排的人息或財產有權利;
- (iii) 符合以下說明的安排: 在該安排下, 少於 50 人擁有權益 (不論是否以單位描述) 或有權成為權益 (不論是否以單位描述) 的擁有人, 而該權益令擁有人直接或間接對該安排的不少於 75% 的人息或財產有權利; 及
- (iv) 證監會藉憲報公告指明的其他安排。
- (6) 如任何有投票權股份權益是由合資格借出人擁有, 而該人擁有該項權益, 只是作為一宗他在日常業務運作過程中以合資格借出人身分訂立的交易的保證而擁有的, 則就第 (1)(f) 款而言, 該項權益即屬獲豁免的保證權益。
- (7) 如有以下情況, 則就第 (1)(f) 款而言, 任何有投票權股份權益不再是獲豁免的保證權益, 而以保證形式擁有該項有投票權股份權益的合資格借出人就第 2 至 5 分部而言, 須視為已取得該項有投票權股份權益 —— (由 2015 年第 19 號 2 條修訂)
- (a) 該合資格借出人 ——
- (i) 由於或隨著提供有投票權股份權益作為保證的人違責, 以致成為有權就所擁有作為保證的有投票權股份權益行使投票權; 及
- (ii) 已 ——
- (A) 表露行使該等投票權或控制其行使的意向; 或

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- (a) it is held by a corporation which carries on a business of holding securities in custody for another person, whether on trust or by contract; and
- (b) the corporation has no authority to exercise discretion in dealing in the interest, or in exercising rights attached to the interest.
- (4) An interest in voting shares of a holder, trustee or custodian of a scheme referred to in subsection (1)(c)(i), (ii) or (iii), comprised in the property under the scheme, shall not be disregarded under subsection (1)(c) if the holder, trustee or custodian (as the case may be) is also a manager of the scheme. (*Amended 19 of 2015 s. 2*)
- (5) For the purposes of subsection (1)(c), **qualified overseas scheme** (合資格海外計劃) means a collective investment scheme, pension scheme or provident fund scheme which—
- (a) is established in a place outside Hong Kong recognized for the purposes of this section by the Commission by notice published in the Gazette; and
- (b) is authorized by or registered with the authority (if any) responsible for the authorization or registration of such scheme in the place where it is established, and complies with the requirements of such authority,
- but does not include—
- (i) an arrangement operated by a person otherwise than by way of business;
- (ii) an arrangement under which less than 100 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders, directly or indirectly, to the income or property of the arrangement;

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- (B) 採取行動以行使該等投票權或控制其行使；或
- (b) 關乎所持有作為保證的有投票權股份權益的售賣權力可予行使，而該合資格借出人或其代理人將該項擁有作為保證的有投票權股份權益或該項權益的任何部分要約售賣。
- (8) 為施行第 (1) 款，某人不得僅因以下理由而不被視為任何財產的被動受託人 ——
- (a) 該財產是為另一人的利益而持有的，而僅因該另一人是未成年人或無行為能力的人，以致相對於受託人而言該另一人對該財產沒有絕對享有權；或
- (b) 受託人有權使用該財產，以清償任何尚未清償的押記，解除任何尚未解決的留置權，或繳付任何稅項、稅款、費用或其他開支。
- (9) 依據第 (5)(a) 或 (iv) 款刊登的公告不是附屬法例。

(由 2015 年第 19 號第 2 條修訂)

- (iii) an arrangement under which less than 50 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders, directly or indirectly, to 75% or more of the income or property of the arrangement; and
- (iv) such other arrangement as may be specified by the Commission by notice published in the Gazette.
- (6) An interest in voting shares is an exempt security interest for the purposes of subsection (1)(f) if it is held by a qualified lender by way of security only for the purposes of a transaction entered into in the ordinary course of his business as such a qualified lender. *(Amended 19 of 2015 s. 2)*
- (7) An interest in voting shares shall cease to be an exempt security interest for the purposes of subsection (1)(f), and the qualified lender holding the interest in the voting shares by way of security shall be taken to have acquired that interest for the purposes of Divisions 2 to 5, when— *(Amended 19 of 2015 s. 2)*
- (a) the qualified lender—
- (i) becomes entitled to exercise voting rights in respect of the interest in the voting shares held as security as a result of, or following, a default by the person giving the interest in the voting shares as security; and
- (ii) has—
- (A) evidenced an intention to exercise the voting rights or control their exercise; or
- (B) taken any step to exercise the voting rights or control their exercise; or
- (b) the power of sale in respect of the interest in the voting shares held as security becomes exercisable, and the

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## 第 4 分部 —— 作出具報的規定

### 324. 須作出的具報

- (1) 凡任何人根據第 310 條有披露責任，他須就以下事項向有關上市法團及有關交易所公司作出具報 ——
  - (a) 他擁有或不再擁有的該法團的有投票權股份權益；及
  - (b) 他持有或不再持有的上述有投票權股份的淡倉（如有的話）。（由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂）
- (2) 任何本條規定的具報，須同時向有關上市法團及有關交易所公司作出，如上述做法並不切實可行，則須在緊接向該法團或該公司作出後，向另一方作出。

qualified lender or its agent offers the interest in the voting shares held as security, or any part of that interest, for sale. (*Amended 19 of 2015 s. 2*)

- (8) For the purposes of subsection (1), a person shall not be considered as not being a bare trustee in respect of any property by reason only that—
  - (a) the person for whose benefit the property is held is not absolutely entitled thereto as against the trustee only because he is a minor or is a person under a disability; or
  - (b) the trustee has the right to resort to the property to satisfy any outstanding charge or lien or for the payment of any duty, tax, cost or other outgoings.
- (9) A notice published pursuant to subsection (5)(a) or (iv) is not subsidiary legislation.

## Division 4—Requirements for giving notification

### 324. Notification to be given

- (1) Where a person comes under a duty of disclosure under section 310, he shall give notification to the listed corporation concerned and to the relevant exchange company of—
  - (a) the interests which he has, or ceases to have, in voting shares in the listed corporation; and
  - (b) the short position (if any) which he has, or ceases to have, in such voting shares. (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
- (2) A notification required by this section shall be given to the listed corporation concerned and the relevant exchange company at the same time or (if it is not practicable to do so) one immediately after the other.



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- (3) 證監會可藉憲報公告，一般地或就任何個別個案指明本條規定的具報所採用的表格，並在不局限上文的一般性的原則下，該會可在表格中 ——
- (a) (不論第 397(1) 條有任何規定) 附有關乎填具、簽署、簽立及認證該表格的方式的指令及指示；及
- (b) 指明須隨附該表格的文件。
- (4) 為施行第 (3) 款，證監會可藉在於憲報刊登的公告中提述以證監會認為適當的電子方式另行發布的表格，指明該表格，以代替在於憲報刊登的公告中列明該表格。凡證監會以上述方法指明表格，則就所有目的而言，證監會須視為已妥善地根據第 (3) 款指明該表格。
- (5) 為施行第 (3) 款，證監會可指明在不同情況下採用不同表格。
- (6) 除第 (7) 款另有規定外，凡證監會已根據第 (3) 款，就本條規定須在一項披露責任根據第 310 條產生時作出的具報指明表格，則除非該具報符合以下條件，否則該責任不得視為已履行 ——
- (a) 採用指明的表格；
- (b) 按照附於該表格的指示及指令填具、簽署、簽立及認證；及
- (c) 附有該表格指明的隨附文件。
- (7) 任何本條規定的具報不得由於偏離第 (3) 款提述的公告指明的表格的格式而不被視為採用該表格，但前提是該項偏離不影響該表格的實質內容。
- (8) 第 (3) 款提述的公告不是附屬法例。

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- (3) The Commission may, by notice published in the Gazette, specify the form in respect of a notification required by this section, either generally or in any particular case, and, without limiting the generality of the foregoing, may in the form—
- (a) notwithstanding section 397(1), include directions and instructions relating to the manner in which the form is to be completed, signed, executed and authenticated; and
- (b) specify documents by which it is to be accompanied.
- (4) For the purposes of subsection (3), the Commission may specify any form by referring in a notice published in the Gazette to the form as separately published by such electronic means as the Commission considers appropriate, instead of setting out the form in a notice published in the Gazette, whereupon the Commission shall for all purposes be regarded as having duly specified the form under subsection (3).
- (5) For the purposes of subsection (3), the Commission may specify that different forms are to be used in different circumstances.
- (6) Subject to subsection (7), where the Commission has specified any form under subsection (3) in respect of a notification required by this section to be given when a duty of disclosure arises under section 310, the duty shall not be regarded as having been performed unless the notification—
- (a) is in the form specified;
- (b) is completed, signed, executed and authenticated in accordance with such directions and instructions as are included in the form; and
- (c) is accompanied by such documents as are specified in the form.
- (7) A notification required by this section shall not by reason of any deviation from a form specified in respect of it by notice

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Section 32515-100  
Cap. 571**325. 作出具報的時間**

- (1) 凡披露責任是根據第 310(1) 或 (4) 條產生的，第 324 條規定的具報須 ——
  - (a) (如在有關事件發生時有關的人知道有此事發生) 在有關事件發生當日後 3 個營業日內作出；或
  - (b) (如屬其他情況) 在有關的人知道有關事件發生當日後 3 個營業日內作出。
- (2) 凡披露責任是根據第 310(2) 或 (3) 條產生的，第 324 條規定的具報須 ——
  - (a) 在有關事件發生當日後 10 個營業日內作出；或
  - (b) (如在有關事件發生時，有關的人不察覺他擁有一項須具報權益) 在有關的人察覺他擁有該項權益當日後 10 個營業日內作出。
- (3) 凡披露責任是根據第 310(5) 或 (6) 條產生的，第 324 條規定的具報須 ——
  - (a) 在有關事件發生當日後 10 個營業日內作出；或
  - (b) (如在有關事件發生時，有關人士不察覺他持有某個百分率水平的淡倉，而該百分率是相等於或高於指明百分率水平) 在有關的人察覺他持有該淡倉當日後 10 個營業日內作出。

published pursuant to subsection (3) cease to be regarded as being in that form, if the deviation does not affect the substance of the form.

- (8) A notice published pursuant to subsection (3) is not subsidiary legislation.

**325. Time of notification**

- (1) A notification required by section 324 shall be given, where the duty of disclosure arises under section 310(1) or (4)—
  - (a) in the case that at the time at which the relevant event occurs the person concerned knows of its occurrence, within 3 business days after the day on which the relevant event occurs; or
  - (b) otherwise, within 3 business days after the day on which the occurrence of the relevant event comes to his knowledge.
- (2) A notification required by section 324 shall be given, where the duty of disclosure arises under section 310(2) or (3)—
  - (a) within 10 business days after the day on which the relevant event occurs; or
  - (b) in the case that at the time at which the relevant event occurs the person concerned is not aware that he has a notifiable interest, within 10 business days after the day on which he becomes aware that he has such an interest.
- (3) A notification required by section 324 shall be given, where the duty of disclosure arises under section 310(5) or (6)—
  - (a) within 10 business days after the day on which the relevant event occurs; or
  - (b) in the case that at the time at which the relevant event occurs the person concerned is not aware that he has a short position of a percentage level equal to or more

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than the specified percentage level, within 10 business days after the day on which he becomes aware that he has such a short position.

**326. 具報須載有的詳情**

- (1) 凡有披露責任根據第 310 條產生，任何人在履行該等責任時，須在有關具報中指明自己的姓名或名稱及地址，以及（就他所知）——
  - (a) 指明有關事件發生的日期，及 ——
    - (i) 他察覺有關事件發生的日期（如他是在較後的日期才察覺的話）；或
    - (ii) （如屬第 325(2)(b) 或 (3)(b) 條提述的情況）他察覺他擁有有關上市法團的有投票權股份權益或持有該等有投票權股份的淡倉（視屬何情況而定）的日期；（由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂）
  - (b) 指明以下有投票權股份的總數及類別 ——（由 2015 年第 19 號第 2 條修訂）
    - (i) 他在緊接有關時間之前擁有權益的有關上市法團的有投票權股份，並指明他擁有的每一類別該等有投票權股份權益所佔的百分率數字；及
    - (ii) 他在緊接有關時間之後擁有權益的上述有投票權股份，並指明他擁有的每一類別該等有投票權股份權益所佔的百分率數字；（由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂）
  - (c) 指明以下有投票權股份的總數及類別 ——（由 2015 年第 19 號第 2 條修訂）
    - (i) 他在緊接有關時間之前持有淡倉的有關上市法團的有投票權股份，並指明他持有的每一類別

**326. Particulars to be contained in notification**

- (1) Where a duty of disclosure arises under section 310, a person shall, in performing the duty of disclosure, specify in the notification his name and address, and (so far as he is aware)—
  - (a) the date on which the relevant event occurred and—
    - (i) the date (if later) on which he became aware of the occurrence of the relevant event; or
    - (ii) in the case referred to in section 325(2)(b) or (3)(b), the date on which he became aware that he has the interest or short position (as the case may be) in the voting shares in the listed corporation concerned; (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
  - (b) the total number and class of—
    - (i) voting shares in the listed corporation concerned in which he was interested immediately before the relevant time specifying the percentage figure of his interest in the voting shares in each class; and
    - (ii) such voting shares in which he is interested immediately after the relevant time specifying the percentage figure of his interest in the voting shares in each class; (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
  - (c) the total number and class of—
    - (i) voting shares in the listed corporation concerned in which he had a short position immediately before

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- 該等有投票權股份的淡倉所佔的百分率數字；及
- (ii) 他在緊接有關時間之後持有淡倉的上述有投票權股份，並指明他持有的每一類別該等有投票權股份的淡倉所佔的百分率數字；(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)
  - (d) 指明導致產生披露責任的情況；
  - (e) 凡披露責任是根據第 310(1) 或 (4) 條產生的，指明符合以下說明的有關上市法團的有投票權股份的總數及類別 —— (由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)
    - (i) 他在有關時間已取得該等有投票權股份的權益或不再擁有該等有投票權股份的權益；
    - (ii) 他在有關時間已持有該等有投票權股份的淡倉或不再持有該等有投票權股份的淡倉；或
    - (iii) 他在該等有投票權股份中擁有的權益的性質在有關時間有所改變；
  - (f) 如他是 ——
    - (i) 透過場內交易而取得或處置 (e)(i) 段提述的權益，則指明他為該等權益而支付或收取的以每一股有投票權股份計算的最高價格及平均價格 (如並無支付或收取任何價格，則指明此一事實)；或
    - (ii) 透過場外交易而取得或處置 (e)(i) 段提述的權益，則指明他為該等權益而付出或收取的代價的性質，及為該等權益而付出或收取的以每一股有投票權股份計算的該代價的最高數額及平均數額 (如並無付出或收取任何代價，則指明此一事實)；

- the relevant time specifying the percentage figure of his short position in the voting shares in each class; and
- (ii) such voting shares in which he has a short position immediately after the relevant time specifying the percentage figure of his short position in the voting shares in each class; (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
  - (d) the circumstances in which he comes under the duty of disclosure;
  - (e) where the duty of disclosure arises under section 310(1) or (4), the total number and class of voting shares in the listed corporation in which— (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
    - (i) he has acquired an interest, or ceased to have an interest, at the relevant time;
    - (ii) he has come to have, or ceased to have, a short position at the relevant time; or
    - (iii) the nature of his interest changes at the relevant time;
  - (f) where he acquires or disposes of the interest referred to in paragraph (e)(i)—
    - (i) through an on-exchange transaction, the highest price and the average price paid or received per voting share for the interest he acquires or disposes of (or, in the case that no price is paid or received, that fact); or
    - (ii) through an off-exchange transaction, the nature of the consideration given or received, and the highest amount and the average amount of the consideration given or received per voting share,



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- (g) 指明他是以哪種身分在緊接有關時間之後擁有有關上市法團的有投票權股份權益或持有該等有投票權股份的淡倉；如該等權益或淡倉是以多於一種身分擁有或持有，則指明以每種身分擁有權益或持有淡倉所涉的有投票權股份數目；(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)
- (h) 凡在某情況下，他擁有的有關上市法團的有投票權股份權益的性質在緊接有關時間之前和之後並不相同，而披露責任在該情況下產生，則指明他擁有的該等權益在緊接有關時間之前和之後的性質；(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)
- (i) 凡他根據第 316(1)、316(2) 或 322(14) 條須視為擁有有關上市法團的有投票權股份權益或持有該等有投票權股份的淡倉，則須就該三條條文中的每一條分別指明 ——(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂；由 2015 年第 19 號第 2 條修訂)
- (i) 關乎該條的該等有投票權股份的數目及類別；及
- (ii) 每名亦擁有關乎該條的該等有投票權股份的權益或持有該等淡倉的其他人的姓名或名稱及地址，及他與該其他人的關係；
- (j) 凡 ——
- (i) 他不再擁有須具報權益；或
- (ii) 他擁有須具報權益，但他不再持有達到相等於或高於指明百分率水平的百分率水平的淡倉，則指明他不再擁有須具報權益或持有淡倉此一事實；及
- (k) 指明為此目的而指明的表格或格式規定須載有的其他資料。

for the interest he acquires or disposes of (or, in the case that no consideration is given or received, that fact);

- (g) the capacity in which the interest, or short position, in voting shares in the listed corporation is held immediately after the relevant time and, if the interest or short position in the voting shares is held in more than one capacity, the number of voting shares held in each capacity; (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
- (h) where the duty of disclosure arises in the circumstances in which the nature of his interest in voting shares in the listed corporation is not the same immediately before and immediately after the relevant time, the nature of his interest immediately before and immediately after the relevant time; (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
- (i) where he is taken to be interested or have a short position in voting shares in the listed corporation under section 316(1), 316(2) or 322(14)— (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
- (i) the number and class of the voting shares; and
- (ii) the name and address of, and his relationship with, each of the other persons having an interest or short position in the voting shares,
- in which he is so taken to be interested or have a short position under each of those sections taken separately;
- (j) where—
- (i) he no longer has a notifiable interest; or



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- (2) 凡某人根據第 (1)(b)、(c)、(e)、(h) 或 (i) 款須在具報中指明詳情的有投票權股份是股本衍生工具的相關股份，他亦須在該具報中另外指明以下有投票權股份的總數 —— (由 2015 年第 19 號第 2 條修訂)
- (a) 屬以下任何一類在認可證券市場上市或買賣或在認可期貨市場買賣的股本衍生工具的相關股份的有投票權股份 —— (由 2015 年第 19 號第 2 條修訂)
- (i) 現金結算股本衍生工具；或
- (ii) 實物結算股本衍生工具，
- 而他在緊接有關時間之前擁有該等有投票權股份的權益或持有該等有投票權股份的淡倉；
- (b) 屬以下任何一類既無在認可證券市場上市或買賣亦無在認可期貨市場買賣的股本衍生工具的相關股份的有投票權股份 —— (由 2015 年第 19 號第 2 條修訂)
- (i) 現金結算股本衍生工具；或
- (ii) 實物結算股本衍生工具，
- 而他在緊接有關時間之前擁有該等有投票權股份的權益或持有該等有投票權股份的淡倉；
- (c) 屬 (a) 段提述的任何一類股本衍生工具的相關股份的有投票權股份，而該人是在緊接有關時間之後擁有該等有投票權股份的權益或持有該等有投票權股份的淡倉；及
- (d) 屬 (b) 段提述的任何一類股本衍生工具的相關股份的有投票權股份，而該人是在緊接有關時間之後擁有該等有投票權股份的權益或持有該等有投票權股份的淡倉。
- (3) 在為施行本條而釐定任何人擁有權益的有投票權股份的數目時 —— (由 2015 年第 19 號第 2 條修訂)
- (a) 如在計算他擁有權益的有投票權股份的數目時，將他持有的有投票權股份的淡倉計算在內，是會減低

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- (ii) he has a notifiable interest, but he no longer has a short position of a percentage level equal to or more than the specified percentage level,
- the fact that he no longer has such an interest or short position; and
- (k) such other information as may be required in the form specified for the purpose.
- (2) Where any voting shares the particulars of which have to be specified in a notification by a person under subsection (1)(b), (c), (e), (h) or (i) are the underlying shares of equity derivatives, the person shall also specify separately in the notification the total number of— (Amended 19 of 2015 s. 2)
- (a) voting shares which are the underlying shares of any of the following categories of equity derivatives that are listed or traded on a recognized stock market or traded on a recognized futures market, in which he was interested, or had a short position, immediately before the relevant time— (Amended 19 of 2015 s. 2)
- (i) cash settled equity derivatives; or
- (ii) physically settled equity derivatives;
- (b) voting shares which are the underlying shares of any of the following categories of equity derivatives that are neither listed or traded on a recognized stock market nor traded on a recognized futures market, in which he was interested, or had a short position, immediately before the relevant time— (Amended 19 of 2015 s. 2)
- (i) cash settled equity derivatives; or
- (ii) physically settled equity derivatives;
- (c) voting shares which are the underlying shares of any of the equity derivatives referred to in paragraph

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- 他擁有權益的有投票權股份的數目的，則無須理會該淡倉；及
- (b) 須在有關具報中另外指明他持有淡倉所涉的有投票權股份的詳情。
- (4) 任何法團除非是 ——
- (a) 上市法團；
- (b) 上市法團的全資附屬公司；
- (c) 在指明證券交易所上市的法團；或
- (d) 在指明證券交易所上市的法團的全資附屬公司，
- 否則在履行根據第 310 條產生的披露責任時，亦須在有關具報中指明它或它的董事是否慣於或有義務按照某人的指示或指令行事，並指明該人的姓名或名稱及地址。
- (5) 就第 (4) 款而言，如法團或其董事按照某人以專業身分所提供的意見行事，則不得僅以此為理由而視該法團或其董事為慣於或有義務按照該人的指示或指令行事。
- (6) 由當其時是第 317 條適用的協議的一方的人作出的具報，亦須 ——
- (a) 述明他是該協議的一方；
- (b) 包括 ——
- (i) 該協議的其他各方的姓名或名稱及 (就他所知) 地址，並註明該等人士是該協議的其他各方；及
- (ii) 每一該等其他方在該協議以外擁有權益的有投票權股份的數目及類別；
- (c) 述明該具報所關乎的任何有投票權股份是否由於第 317 及 318 條適用而屬他擁有權益的有投票權股份，如是的話，則述明該等有投票權股份的數目及類別；
- (d) 包括記錄第 317 條適用的協議的任何條款或細節的任何書面協議、合約、文件或其他文書的副本；及

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- (a) in which he is interested, or has a short position, immediately after the relevant time; and
- (d) voting shares which are the underlying shares of any of the equity derivatives referred to in paragraph (b) in which he is interested, or has a short position, immediately after the relevant time.
- (3) In determining the number of voting shares in which a person is interested for the purposes of this section— (*Amended 19 of 2015 s. 2*)
- (a) there shall be disregarded any short position which that person has in the voting shares which, if included in the calculation of the number of voting shares in which the person is interested, would reduce the number of the voting shares in which the person is interested; and
- (b) particulars of the voting shares in which that person has a short position, or has ceased to have a short position, shall be specified separately in the notification.
- (4) Unless a corporation is—
- (a) a listed corporation;
- (b) a wholly owned subsidiary of a listed corporation;
- (c) a corporation listed on a specified stock exchange; or
- (d) a wholly owned subsidiary of a corporation listed on a specified stock exchange,
- it shall, in performing a duty of disclosure arising under section 310, also specify in the notification the name and address of any person in accordance with whose directions or instructions it, or its directors, are accustomed or obliged to act.
- (5) For the purposes of subsection (4), a person shall not be regarded as a person in accordance with whose directions or instructions a corporation or its directors are accustomed

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- (e) (如並無(d)段提述的該類書面協議、合約、文件或文書，或如協議只有部分是以書面記錄的)包括記錄第 317 條適用但並非以書面記錄的協議的重要條款的書面備忘錄，內容包括(但不限於)——
- (i) 所涉及的任何現金或其他代價；及
  - (ii) 付出或收取(或擬付出或擬收取)該等現金或代價的所有人士的身分。
- (7) 凡任何人由於不再擁有任何有投票權股份權益而作出具報，而他不再如此擁有權益是憑藉他或任何其他人士已不再是第 317 條適用的協議的一方，則該具報須——(由 2015 年第 19 號第 2 條修訂)
- (a) 述明他或該另一人(視屬何情況而定)已不再是該協議的一方；及
  - (b) (如不再是該協議的一方的是該另一人)包括該另一人的姓名或名稱及(就他所知)地址。
- (8) 凡任何股本衍生工具的相關股份，是某項披露的標的之有投票權股份，第(1)或(2)款並不規定須在有關具報中，指明已就或可能須就(或已根據或可能須根據)該等工具支付的價格或付出的代價的詳情。

(由 2015 年第 19 號第 2 條修訂)

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- or obliged to act by reason only that the corporation or its directors act on advice given by him in a professional capacity.
- (6) A notification given by a person who is for the time being a party to an agreement to which section 317 applies shall also—
- (a) state that the person giving the notification is a party to such an agreement;
  - (b) include—
    - (i) the names and (so far as he is aware) the addresses of the other parties to the agreement, identifying them as such; and
    - (ii) the number and class of voting shares in which each of those other parties is interested (apart from the agreement);
  - (c) state whether or not any of the voting shares to which the notification relates are voting shares in which he is interested by the application of sections 317 and 318 and, if so, the total number and class of those voting shares;
  - (d) include a copy of any written agreement, contract, document or other instrument which records any terms or details of the agreement to which section 317 applies; and
  - (e) (where there is no written agreement, contract, document or other instrument of the type referred to in paragraph (d) or where the agreement is only partly recorded in writing) include a written memorandum recording the material terms of the agreement to which section 317 applies, which are not otherwise recorded in writing, including, but not limited to—

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- (i) any cash or other consideration involved; and
- (ii) the identity of all persons between whom such cash or other consideration is passed or is intended to pass.

- (7) A notification given by a person in consequence of his ceasing to be interested in any voting shares by virtue of the fact that he or any other person has ceased to be a party to an agreement to which section 317 applies shall also— (*Amended 19 of 2015 s. 2*)
- (a) state that he or that other person (as the case may be) has ceased to be a party to the agreement; and
  - (b) (in the latter case) include the name and (so far as he is aware) the address of that other person.
- (8) Nothing in subsection (1) or (2) shall require details of the price that has been paid or may be payable, or the consideration that has been given or may be given, for or under equity derivatives (where the underlying shares of the equity derivatives are voting shares which are the subject of the disclosure) to be specified in the notification.

(*Amended 19 of 2015 s. 2*)

**327. 將根據第 4 分部提供的資料發表及向金融管理專員作出具報的責任**

- (1) 有關交易所公司在接獲根據本分部、為施行本分部而訂立的規例或證監會為施行本分部而訂立的規則任何條文提供的資料後，須隨即按證監會批准的方式並在該會批准的期間內，發表該等資料。
- (2) 如任何上市法團是認可財務機構或該機構的控權公司，則每當該法團接獲任何人根據本分部任何條文提供的資料後，該法團有責任向金融管理專員具報該資料。(由 2012 年第 28 號第 912 及 920 條修訂)

**327. Duty to publish and notify Monetary Authority of information given under Division 4**

- (1) Upon receipt of any information under any provision of this Division or any regulations made, or rules made by the Commission, for the purposes of this Division, the relevant exchange company shall forthwith publish such information in such manner and for such period as may be approved by the Commission.
- (2) Whenever a listed corporation that is, or is the holding company of, an authorized financial institution receives information from a person under any provision of this

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- (3) 如作出第 (2) 款所規定的具報的責任於某日產生，該具報須在該日後第一個營業日內作出。
- (4) 如有違責情況以致第 (2) 或 (3) 款不獲遵守，則有關上市法團及其每名違責的高級人員均屬犯罪，一經定罪，可各處第 1 級罰款。

**328. 關乎不遵從具報規定的罪行**

任何人 ——

- (a) 無合理辯解而沒有在第 325(1)(a) 或 (b)、(2)(a) 或 (b) 或 (3)(a) 或 (b) 條 (視屬何情況而定) 指明的期間內，按照本部適用於根據第 2 分部產生的披露責任的條文，履行該責任；
- (b) 如 ——
- (i) 在看來是履行任何該責任時，向上市法團或有關交易所公司作出在要項上屬虛假或具誤導性的陳述；且
- (ii) 知道該陳述在要項上屬虛假或具誤導性，或罔顧該陳述是否在要項上屬虛假或具誤導性；
- (c) 無合理辯解而沒有在第 319(5) 條指明的期間內，按照本部適用於向另一人作出第 319 條所規定的具報的責任的條文，履行該責任；或
- (d) 無合理辯解而沒有遵守第 321 條確保代理人向他發出通知的規定，

即屬犯罪 ——

- (i) 一經循公訴程序定罪，可處第 6 級罰款及監禁 2 年；或

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Division, the listed corporation is under a duty to notify the Monetary Authority of that information.

- (3) If a listed corporation is under a duty to give any notification required by subsection (2), the notification shall be given before the end of the business day after the day on which that duty arises.
- (4) If default is made in complying with subsection (2) or (3), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1.

**328. Offences for non-compliance with notification requirements**

A person—

- (a) who, without reasonable excuse, fails to perform, within the period specified in section 325(1)(a) or (b), (2)(a) or (b) or (3)(a) or (b) (as the case may be), a duty of disclosure arising under Division 2 in accordance with the provisions of this Part applicable to that duty;
- (b) who—
- (i) in purported performance of any such duty makes to a listed corporation or to the relevant exchange company a statement which is false or misleading in a material particular; and
- (ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular;
- (c) who, without reasonable excuse, fails to perform, within the period specified in section 319(5), a duty to give another person a notification required by section 319 in accordance with the provisions of this Part applicable to that duty; or



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- (ii) 一經循簡易程序定罪，可處第3級罰款及監禁6個月。

## 第 5 分部 —— 上市法團調查擁有權的權力

### 329. 上市法團就其有投票權股份權益的擁有權等進行調查的權力

(1) 上市法團可就 ——

- (a) 其有投票權股份權益；
- (b) 其有投票權股份的淡倉；或
- (c) 以其有投票權股份為相關股份的股本衍生工具的權益，(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)

進行調查，調查方式是發出通知予它知道或有合理因由相信屬當時擁有或持有，或在緊接發出該通知的日期前的 3 年內任何時間曾擁有該等權益或持有該等淡倉的人 ——

- (i) 要求他確認該事實或表明情況是否如此 (視屬何情況而定)；及
  - (ii) 如該人擁有或持有或在上述期間內曾擁有該等權益或持有該等淡倉，則要求他提供可按照第 (2) 款要求提供的進一步資料。
- (2) 第 (1) 款所指的通知 ——
- (a) 可要求收件人提供他本人 ——

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- (d) who, without reasonable excuse, fails to comply with section 321 to secure the giving of notification to him by the agent,

commits an offence and is liable—

- (i) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or
- (ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

## Division 5—Listed corporation's powers to investigate ownership

### 329. Power of listed corporation to investigate ownership of interests in its voting shares, etc.

(1) A listed corporation may carry out an investigation in relation to—

- (a) any interest in its voting shares;
- (b) any short position in its voting shares; or
- (c) where its voting shares are the underlying shares of any equity derivatives, any interest in those equity derivatives, (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)

by requiring, by notification, a person whom the listed corporation knows or has reasonable cause to believe to be interested in those voting shares or equity derivatives or have a short position in those voting shares or, at any time during the 3 years immediately before the day on which the notification is given, to have been interested in those voting shares or equity derivatives or had a short position in those voting shares—

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- (i) 現時擁有的有關有投票權股份或股本衍生工具的權益或現時持有的有關有投票權股份的淡倉的詳情；或
- (ii) 過去在第 (1) 款提述的 3 年期間內任何時間擁有的該等權益或持有的該等淡倉的詳情；
- (b) 於以下情況下 ——
  - (i) 收件人擁有的有關有投票權股份或股本衍生工具的權益是一項現時權益，而任何其他人亦擁有該等有投票權股份或工具的權益；或
  - (ii) 在任何情況下，在第 (1) 款提述的 3 年期間內任何時間，當他本人擁有該等有投票權股份或工具的權益時，任何其他人亦擁有該等有投票權股份或工具的權益，

可要求收件人就他所知提供該通知所要求的、關於該其他人的權益的詳情；
- (c) 在收件人擁有的有關有投票權股份或股本衍生工具的權益是一項過去權益的情況下，可要求收件人就他所知提供在他不再擁有該等權益時擁有該等權益的人的身分詳情；
- (d) 於以下情況下 ——
  - (i) 收件人持有的有關有投票權股份的淡倉是一項現時淡倉，而任何其他人擁有該等有投票權股份權益或亦持有該等有投票權股份的淡倉；或
  - (ii) 在任何情況下，在第 (1) 款提述的 3 年期間內任何時間，當他本人持有該等有投票權股份的淡倉時，任何其他人擁有該等有投票權股份權益或亦持有該等有投票權股份的淡倉，

可要求收件人就他所知提供該通知所要求的、關於該其他人的權益或淡倉的詳情；或
- (e) 在收件人持有的有關有投票權股份的淡倉是一項過去權益的情況下，可要求收件人就他所知提供在他

- (i) to confirm that fact or to indicate whether or not it is the case (as the case may be); and
- (ii) where he has, or has during that time had, an interest in those voting shares or equity derivatives or a short position in those voting shares, to give such further information as may be required in accordance with subsection (2).
- (2) A notification under subsection (1) may require the person to whom it is addressed—
  - (a) to give particulars of—
    - (i) his own present interest in those voting shares or equity derivatives or his own present short position in those voting shares; or
    - (ii) his own past interest in those voting shares or equity derivatives or his own past short position in those voting shares (which he had at any time during the 3-year period referred to in subsection (1));
  - (b) where—
    - (i) his interest in those voting shares or equity derivatives is a present interest and any other person has an interest in those voting shares or equity derivatives; or
    - (ii) in any case, any other person had an interest in those voting shares or equity derivatives during that 3-year period at any time when he himself had an interest in those voting shares or equity derivatives,

to give (so far as he is aware) such particulars with respect to the other person's interest as may be required by the notification;

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- 不再持有該等淡倉時擁有該等有投票權股份權益或持有該等有投票權股份的淡倉的人的身分詳情。
- (3) 第 (2)(a)、(b) 及 (d) 款提述的詳情，包括 ——
- (a) 擁有有關有投票權股份權益或持有有關有投票權股份的淡倉的人的身分詳情；及
- (b) 擁有同一有投票權股份的權益的人是否或曾否為 ——
- (i) 第 317 條適用的協議的一方或各方的詳情；或
- (ii) 關乎行使因持有該等有投票權股份而獲賦予的任何權利的任何協議或安排的一方或各方的詳情。
- (4) 第 (1) 款所指的通知須要求任何為回應該通知而提供的資料，須在該通知指明的合理時間內提供。
- (5) 財政司司長可藉憲報公告豁免某人使他不受本條所規限。
- (6) 第 (5) 款提述的公告不是附屬法例。
- (7) 第 316 至 318 及 322 條 ( 但略去第 322 條中對第 323 條的提述 ) ——
- (a) 適用於解釋本條中 ——
- (i) 分別對擁有有投票權股份權益的人及對有投票權股份權益的提述；及
- (ii) 分別對持有有投票權股份的淡倉的人及對有投票權股份淡倉的提述，
- 一如該等條文適用於對第 2 及 4 分部的解釋；及
- (b) 為施行本分部而適用，猶如在該等條文中，凡提述有投票權股份權益，包括提述以有關有投票權股份為相關股份的股本衍生工具的權益。
- (8) 本條適用於現時或過往曾擁有認購某上市法團股份 ( 該等股份一旦發行即會屬該法團的有投票權股份 ) 的權利的人，以及現時或過去有權取得該權利的人，一如本條適

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- (c) where his interest in those voting shares or equity derivatives was a past interest, to give (so far as he is aware) particulars of the identity of the person who had that interest immediately upon his ceasing to have it;
- (d) where—
- (i) his short position in those voting shares is a present short position and any other person has an interest or short position in those voting shares; or
- (ii) in any case, any other person had an interest or short position in those voting shares during that 3-year period at any time when he himself had a short position in those voting shares,
- to give (so far as he is aware) such particulars with respect to the other person's interest or short position as may be required by the notification; or
- (e) where his short position in those voting shares was a past short position, to give (so far as he is aware) particulars of the identity of the person who had that short position or had an interest in those voting shares immediately upon his ceasing to have that short position.
- (3) The particulars referred to in subsection (2)(a), (b) and (d) include—
- (a) particulars of the identity of persons interested in the voting shares or equity derivatives in question, or having a short position in the voting shares in question; and
- (b) particulars of whether persons interested in the same voting shares are or were—
- (i) parties to any agreement to which section 317 applies; or

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用於現時或過去擁有上述有投票權股份權益的人；在上述情況下，在本條中，凡提述有投票權股份權益，須據此解釋為包括提述該權利，而在本條中，凡提述有投票權股份，須據此解釋為包括提述一旦發行即會屬上述有投票權股份。(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)

(由 2015 年第 19 號第 2 條修訂)

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- (ii) parties to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the voting shares.
- (4) A notification under subsection (1) shall require any information given in response to the notification to be given within such reasonable time as may be specified in the notification.
- (5) The Financial Secretary may by notice published in the Gazette exempt a person from the operation of this section.
- (6) A notice published pursuant to subsection (5) is not subsidiary legislation.
- (7) Sections 316 to 318 and 322 (with the omission of the reference in section 322 to section 323) apply—
  - (a) for the purposes of construing—
    - (i) references in this section to a person interested in voting shares and to an interest in voting shares respectively; and
    - (ii) references in this section to a person having a short position in voting shares and to a short position in voting shares respectively,
 as they apply for the purposes of Divisions 2 to 4; and
  - (b) for the purposes of this Division as if, in those sections, a reference to an interest in voting shares includes, where those voting shares are the underlying shares of any equity derivatives, an interest in those equity derivatives.
- (8) This section applies in relation to a person who has or previously had, or is or was entitled to acquire, a right to subscribe for shares in a listed corporation which would on issue be voting shares in that corporation as it applies in relation to a person who is or was interested in such voting

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shares; and in this section, a reference to an interest in voting shares and to voting shares shall be construed accordingly in any such case as including a reference respectively to any such right and shares which would on issue be such voting shares. (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)

(*Amended 19 of 2015 s. 2*)

**330. 向有關交易所公司、證監會及金融管理專員具報根據第 329 條提供的資料的責任**

- (1) 每當任何上市法團根據第 329 條施加一項要求，並依據該項要求接獲任何資料，它有責任向有關交易所公司及證監會具報該等資料。
- (2) 有關交易所公司在接獲第 (1) 款所指的任何資料後，須隨即按證監會批准的方式並在該會批准的期間內，發表該等資料。
- (3) 如任何上市法團是認可財務機構或是該機構的控權公司，而它根據第 329 條施加一項要求並依據該項要求接獲任何資料，則除第 (1) 款施加的責任外，它亦有責任向金融管理專員具報該等資料。 (*由 2012 年第 28 號第 912 及 920 條修訂*)
- (4) 如作出第 (1) 或 (3) 款所規定的具報的責任於某日產生，該具報須在該日後第一個營業日內作出。
- (5) 如有違責情況以致第 (1)、(3) 或 (4) 款不獲遵守，則有關上市法團及其每名違責的高級人員均屬犯罪，一經定罪，可各處第 1 級罰款。

**330. Duty to notify relevant exchange company, Commission and Monetary Authority of information given under section 329**

- (1) Whenever in pursuance of a requirement imposed by a listed corporation on a person under section 329 the listed corporation receives any information, the listed corporation is under a duty to notify the relevant exchange company and the Commission of that information.
- (2) Upon receipt of any information under subsection (1), the relevant exchange company shall forthwith publish such information in such manner and for such period as may be approved by the Commission.
- (3) Whenever in pursuance of a requirement imposed by a listed corporation that is, or is the holding company of, an authorized financial institution on a person under section 329 the listed corporation receives any information, the listed corporation is under a duty (in addition to the duty imposed by subsection (1)) to notify the Monetary Authority of that information.
- (4) If a listed corporation is under a duty to give any notification required by subsection (1) or (3), the notification shall be given before the end of the business day after the day on which that duty arises.
- (5) If default is made in complying with subsection (1), (3) or (4), the listed corporation concerned and every officer of it who is



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in default commit an offence and each is liable on conviction to a fine at level 1.

### 331. 上市法團須應成員的請求書就其有投票權股份等權益的擁有權進行調查

(由 2015 年第 19 號第 2 條修訂)

- (1) 如任何上市法團的成員遞交請求書，而該等成員在交存請求書當日，在該法團已發行的有投票權股份的總數中，合共持有不少於 10% 的股份，則該法團可被要求行使它在第 329 條下的權力。(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)
- (2) 請求書必須——
  - (a) 述明請求人要求該法團行使它在第 329 條下的權力；
  - (b) 指明請求人要求的行使該等權力的方式；及
  - (c) 就要求該法團按指明方式行使該等權力提出合理理由，
 而且在不抵觸第 (3) 款的條文下，必須由各請求人簽署，並交存在該法團的註冊辦事處。
- (3) 請求書可由多於一份格式相同的文件組成，每份由一名或多於一名請求人簽署。
- (4) 在符合本條規定的請求書交存後，有關法團有責任按該請求書指明的方式行使它在第 329 條下的權力。
- (5) 如有違責情況以致第 (4) 款不獲遵守，則有關上市法團及其每名違責的高級人員均屬犯罪——
  - (a) 一經循公訴程序定罪，可各處第 6 級罰款；或
  - (b) 一經循簡易程序定罪，可各處第 3 級罰款。
- (6) 在法團於香港並無註冊辦事處的情況下，在本條及第 332 及 333 條中，凡提述法團的註冊辦事處，須當作提述該法團在香港的主要營業地點。

### 331. Listed corporation to investigate ownership of interests in its voting shares, etc. on requisition by members

(Amended 19 of 2015 s. 2)

- (1) A listed corporation may be required to exercise its powers under section 329 on the requisition of members of the corporation holding, at the date of the deposit of the requisition, in aggregate not less than 10% of the total number of issued voting shares in the corporation. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (2) The requisition must—
  - (a) state that the requisitionists are requiring the listed corporation to exercise its powers under section 329;
  - (b) specify the manner in which they require those powers to be exercised; and
  - (c) give reasonable grounds for requiring the listed corporation to exercise those powers in the manner specified,
 and, subject to subsection (3), must be signed by the requisitionists and deposited at the listed corporation's registered office.
- (3) The requisition may consist of several documents in like form each signed by one or more requisitionists.
- (4) On the deposit of a requisition complying with this section, it is the duty of the listed corporation to exercise its powers under section 329 in the manner specified in the requisition.
- (5) If default is made in complying with subsection (4), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable—

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### 332. 上市法團向成員作出報告

- (1) 在依據第 331 條所指的請求書進行的調查完結後，上市法團有責任安排就根據該調查而得到的資料擬備報告。
- (2) 根據第 (1) 款擬備的報告須於調查完結後 10 個營業日內存放在該法團的註冊辦事處。
- (3) 凡 ——
  - (a) 任何上市法團依據第 331 條所指的請求書進行調查；而
  - (b) 調查未能在自交存請求書的日期翌日起計的 3 個月期間內完結，
 則該法團有責任安排就於該期間及在調查完結前每段為期 3 個月的接續期間內依據調查而得到的資料，擬備中期報告。
- (4) 每份就某期間而根據第 (3) 款擬備的報告，須 ——
  - (a) 在該期間終結後 10 個營業日內存放在該法團的註冊辦事處；及
  - (b) 按證監會藉憲報公告指明的方式，並在該會指明的時間及期間內，由有關上市法團發表。
- (5) (由 2012 年第 28 號第 912 及 920 條廢除)
- (6) 上市法團須在根據本條擬備的報告存放在其註冊辦事處後 3 個營業日內，通知有關請求人該報告已如此存放。

- (a) on conviction on indictment to a fine at level 6; or
- (b) on summary conviction to a fine at level 3.

- (6) In this section and in sections 332 and 333, a reference to a corporation's registered office shall, where the corporation does not have a registered office in Hong Kong, be deemed to be a reference to the corporation's principal place of business in Hong Kong.

### 332. Listed corporation to report to members

- (1) On the conclusion of an investigation carried out by a listed corporation in pursuance of a requisition under section 331, it is the duty of the corporation to cause a report of the information received in pursuance of that investigation to be prepared.
- (2) The report prepared under subsection (1) shall be made available at the listed corporation's registered office within 10 business days after the conclusion of the investigation.
- (3) Where—
  - (a) a listed corporation carries out an investigation in pursuance of a requisition under section 331; and
  - (b) the investigation is not concluded before the end of 3 months beginning with the day next following the date of the deposit of the requisition,
 it is the duty of the listed corporation to cause to be prepared, in respect of that period and each successive period of 3 months ending before the conclusion of the investigation, an interim report of the information received during the respective period in pursuance of the investigation.
- (4) Each report prepared under subsection (3) shall be—

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- (7) 如上市法團已作出一切就依據第 331 條所指的請求書而言屬所需或合宜的查詢，而對於每項查詢，該法團已接獲回應，或可作出回應的限期已屆滿，則就本條而言，該公司依據該請求書而進行的調查須視為已完結。
- (8) 根據本條擬備的報告 ——
- (a) 須自該報告按照第 (2) 或 (4) 款開始存放在該法團的註冊辦事處當日起備存於該辦事處，直至自該日翌日起計的 6 年屆滿為止；及
- (b) 在該報告如此備存的期間內，須按照第 335 條供人查閱。
- (9) 如有違責情況以致第 (1)、(2)、(3)、(4)(a) 或 (b)、(6) 或 (8)(a) 款不獲遵守，則有關上市法團及其每名違責的高級人員均屬犯罪 ——
- (a) 一經循公訴程序定罪，可各處第 6 級罰款；或
- (b) 一經循簡易程序定罪，可各處第 3 級罰款。
- (10) 依據第 (4)(b) 款刊登的公告不是附屬法例。

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- (a) made available at the listed corporation's registered office within 10 business days after the end of the period to which it relates; and
- (b) published by the listed corporation at such time, in such manner and for such period as may be specified by the Commission by notice published in the Gazette.
- (5) *(Repealed 28 of 2012 ss. 912 & 920)*
- (6) The listed corporation shall, within 3 business days after making any report prepared under this section available at its registered office, notify the requisitionists that the report is so available.
- (7) An investigation carried out by a listed corporation in pursuance of a requisition under section 331 shall be regarded for the purposes of this section as concluded when the listed corporation has made all such inquiries as are necessary or expedient for the purposes of the requisition and, in the case of each such inquiry, either a response has been received by the corporation or the time allowed for a response has expired.
- (8) A report prepared under this section—
- (a) shall be kept at the corporation's registered office from the day on which it is first made available there in accordance with subsection (2) or (4) until the expiry of 6 years beginning with the day next following that day; and
- (b) shall be made available for inspection in accordance with section 335 so long as it is so kept.
- (9) If default is made in complying with subsection (1), (2), (3), (4)(a) or (b), (6) or (8)(a), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable—

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**333. 將根據第 332 條擬備的報告送交有關交易所公司、證監會及金融管理專員的責任**

- (1) 每當任何上市法團根據第 332 條擬備報告，它有責任將該報告的文本送交有關交易所公司及證監會。
- (2) 有關交易所公司在接獲第 (1) 款所指的報告後，須隨即按證監會批准的方式並在該會批准的期間內，發表該報告。
- (3) 如任何上市法團是認可財務機構或是該機構的控權公司，而它根據第 332 條擬備報告，則除第 (1) 款施加的責任外，它亦有責任將該報告的文本送交金融管理專員。（由 2012 年第 28 號第 912 及 920 條修訂）
- (4) 上市法團須在有關報告開始存放在其註冊辦事處當日後第一個營業日內，履行第 (1) 及 (3) 款委予它的責任。
- (5) 如有違責情況以致第 (1)、(3) 或 (4) 款不獲遵守，則有關上市法團及其每名違責的高級人員均屬犯罪，一經定罪，可各處第 1 級罰款。

**334. 沒有提供上市法團所要求資料屬犯罪**

- (1) 除第 (2) 款另有規定外，任何人 ——

- (a) on conviction on indictment to a fine at level 6; or
  - (b) on summary conviction to a fine at level 3.
- (10) A notice published pursuant to subsection (4)(b) is not subsidiary legislation.

**333. Duty to deliver report prepared under section 332 to relevant exchange company, Commission and Monetary Authority**

- (1) Whenever a report is prepared under section 332, the listed corporation is under a duty to deliver a copy of the report to the relevant exchange company and the Commission.
- (2) Upon receipt of any report under subsection (1), the relevant exchange company shall forthwith publish such report in such manner and for such period as may be approved by the Commission.
- (3) Whenever a report is prepared under section 332 by a listed corporation that is, or is the holding company of, an authorized financial institution, the listed corporation is under a duty (in addition to the duty imposed by subsection (1)) to deliver a copy of the report to the Monetary Authority.
- (4) The duty imposed on a listed corporation by subsection (1) or (3) shall be performed before the end of the business day after the day on which the report is first made available at the corporation's registered office.
- (5) If default is made in complying with subsection (1), (3) or (4), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1.

**334. Offences for failure to provide information required by listed corporation**

- (1) Subject to subsection (2), a person—

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- (a) 無合理辯解而沒有遵從根據第 329 條發出的通知的要求；或
- (b) 如 ——
  - (i) 在看來是遵從該等要求時，作出在要項上屬虛假或具誤導性的陳述；且
  - (ii) 知道該陳述在要項上屬虛假或具誤導性，或罔顧該陳述是否在要項上屬虛假或具誤導性，
 即屬犯罪 ——
  - (i) 一經循公訴程序定罪，可處第 6 級罰款及監禁 2 年；或
  - (ii) 一經循簡易程序定罪，可處第 3 級罰款及監禁 6 個月。
- (2) 任何人如在當其時獲財政司司長根據第 329(5) 條批給豁免，即無須遵從根據第 329 條發出的通知的要求。

### 335. 查閱報告

- (1) 第 332(8)(b) 條規定須按照本條供查閱的報告，須於營業時間內（須受有關法團在成員大會上施加的合理限制所規限，但每日可供查閱的時間不得少於 2 小時）供該法團任何成員免費查閱，該等報告亦須供任何其他人查閱，但每次查閱須支付 \$10 或該法團釐定的較低款額。
- (2) 法團的任何成員或任何其他人均可在支付費用後，要求取得該報告或其任何部分的副本，收費按所需複製副本的頁數計算，每頁收取 \$2 或法團釐定的較低款額，而法團須在接獲該要求當日後 10 個營業日內，安排將該副本送交予他。
- (3) 如任何人要求查閱根據本條須供查閱的報告而被拒絕，或根據本條要求取得的副本沒有在第 (2) 款指明的期間內

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- (a) who, without reasonable excuse, fails to comply with a notification under section 329; or
- (b) who—
  - (i) in purported compliance with such a notification, makes any statement which is false or misleading in a material particular; and
  - (ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular,
 commits an offence and is liable—
  - (i) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or
  - (ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.
- (2) A person is not obliged to comply with a notification under section 329 if he is for the time being exempted by the Financial Secretary under section 329(5).

### 335. Inspection of reports

- (1) Any report which is required by section 332(8)(b) to be made available for inspection in accordance with this section shall, during business hours (subject to such reasonable restrictions as the corporation concerned may in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection), be open to inspection by any member of the corporation without charge or by any other person on payment of \$10, or such less sum as the corporation may determine, for each inspection.
- (2) Any member of the corporation or any other person may require a copy of any such report, or any part of it, on payment of \$2, or such less sum as the corporation may



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送交，則有關法團及其每名違責的高級人員均屬犯罪，一經定罪，可各處第 1 級罰款，如屬持續的罪行，則可就罪行持續期間的每一日，另各處罰款 \$200。

- (4) 如任何人要求查閱根據本條須供查閱的報告而被拒絕，原訟法庭可藉命令飭令有關法團立即將該報告交出，以供查閱。
- (5) 如根據本條要求取得的副本沒有在第 (2) 款指明的期間內送交，原訟法庭可藉命令指示將該副本送交提出要求的人。
- (6) 證監會可藉規則修訂第 (1) 或 (2) 款指明的款額。

## 第 6 分部 —— 備存登記冊

### 336. 股份權益及淡倉登記冊

- (1) 每一上市法團均須備存股份權益及淡倉登記冊。
- (2) 每當上市法團接獲任何人因履行第 2 至 5 分部任何條文委予他的責任而提供的資料時，該法團有責任在登記冊內該人的姓名或名稱旁邊，記錄接獲的資料及該記項的日期。
- (3) 在不損害第 (2) 款的原則下，凡上市法團接獲任何具報，而其中包括一項陳述，說明作出具報的人或任何其他入已不再是第 317 條適用的協議的一方，則該法團有責任

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determine, for each page required to be copied; and the corporation shall cause any copy so required by a member or person to be sent to him within 10 business days after the day on which the requirement is received by the corporation.

- (3) If an inspection of any report required under this section is refused or a copy so required is not sent within the period specified in subsection (2), the corporation and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.
- (4) In the case of a refusal of an inspection of any report required under this section, the Court of First Instance may by order compel an immediate inspection of it.
- (5) In the case of a failure to send within the period specified in subsection (2) a copy required under this section, the Court of First Instance may by order direct that the copy required shall be sent to the person requiring it.
- (6) The Commission may by rules amend the sum specified in subsection (1) or (2).

## Division 6—Keeping of register

### 336. Register of interests in shares and short positions

- (1) Every listed corporation shall keep a register of interests in shares and short positions.
- (2) Whenever a listed corporation receives information from a person given in performance of a duty imposed on him by any provision of Divisions 2 to 5, the listed corporation is under a duty to record in the register, against the person's name, the information received and the date of the entry.

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- 在登記冊內該不再屬協議一方的人的姓名或名稱以該方的名義出現的每一處(包括在另一人的姓名或名稱旁邊作出的關於該人的任何記項),記錄該項資料。
- (4) 第(2)或(3)款委予的責任,須在該責任產生當日後3個營業日內履行。
- (5) 就任何人對任何股份或股本衍生工具的權利而言,上市法團並不憑藉任何為本條的目的而作出的事情,以致因知悉該等權利而受影響或須就該等權利進行查訊。
- (6) 登記冊必須按時間順序顯示記錄在冊內各姓名或名稱旁邊的記項。
- (7) 除非登記冊本身已採用索引形式編排,否則上市法團須備存一份索引,列出已記錄在登記冊內的姓名或名稱,並就每一姓名或名稱載有足夠指示,以令查閱者容易找到記錄在該姓名或名稱旁邊的資料。
- (8) 上市法團須在將任何姓名或名稱記錄在登記冊當日後10個營業日內,對索引作出所需的更改。
- (9) 除《公司(清盤及雜項條文)條例》(第32章)第283條另有規定外,如某上市法團(非開放式基金型公司者)不再是上市法團,則該法團須在自它不再是上市法團的日期翌日起計的6年內,繼續備存登記冊及任何索引。(由2012年第28號第912及920條修訂;由2016年第16號第14條修訂)
- (10) 登記冊及任何索引 ——
- (a) 須 ——
- (i) 在法團的成員登記冊是備存於法團的註冊辦事處的情況下,備存於該辦事處;
- (ii) 在法團的成員登記冊並非如此備存的情況下,備存於法團的註冊辦事處或備存成員登記冊的地點;或
- (iii) 在法團在香港並無註冊辦事處的情況下,備存於法團在香港的主要營業地點;及

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- (3) Without prejudice to subsection (2), where a listed corporation receives a notification which includes a statement that the person giving the notification, or any other person, has ceased to be a party to an agreement to which section 317 applies, the listed corporation is under a duty to record that information against the name of the person who has ceased to be a party to that agreement in every place where his name appears in the register as a party to that agreement (including any entry relating to him made against another person's name).
- (4) A duty imposed by subsection (2) or (3) shall be performed within 3 business days after the day on which that duty arises.
- (5) A listed corporation is not, by virtue of anything done for the purposes of this section, affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares or equity derivatives.
- (6) The register must be so made up that the entries against the several names recorded in it appear in chronological order.
- (7) Unless the register is in such form as to constitute in itself an index, the listed corporation shall keep an index of the names recorded in the register which shall in respect of each name contain a sufficient indication to enable the information recorded against it to be readily found.
- (8) The listed corporation shall, within 10 business days after the day on which a name is recorded in the register, make any necessary alteration in the index.
- (9) If a listed corporation that is not an open-ended fund company ceases to be a listed corporation, it must, subject to section 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), continue to keep the register and any index until the end of the period of 6 years beginning with the day next following that on which it ceases to be a

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- (b) 須為施行第 2 至 5 分部及為以下目的 ——
- (i) 令公眾人士能夠確定 ——
- (A) 現時或曾經屬有關的上市法團的有投票權股份的真正擁有人的身分及詳情，或現時或曾經擁有該等有投票權股份的權益或持有該等有投票權股份的淡倉的人的身分及詳情；(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂；由 2015 年第 19 號第 2 條修訂)
- (B) 上述權益或淡倉的性質及詳情；及
- (C) 該人現時或曾經以甚麼身分擁有或持有上述權益或淡倉；及
- (ii) 向投資大眾提供資料，令他們能夠作出有根據的投資決定，
- 按照第 340 條供人查閱。(由 2012 年第 28 號第 912 及 920 條修訂)
- (11) (由 2012 年第 28 號第 912 及 920 條廢除)
- (12) 除非登記冊時刻均備存於法團的註冊辦事處，否則法團須就以下事項，向公司註冊處處長送交採用為施行本條而指明的表格或格式作出的通知 ——
- (a) 備存登記冊的地點；及
- (b) 該地點的任何改變。
- (13) 第 (12) 款委予的責任須在如此備存登記冊或其備存地點有所改變(視屬何情況而定)當日後 10 個營業日內履行。
- (14) 如有違責情況以致本條任何條文不獲遵守，則有關上市法團及其每名違責的高級人員均屬犯罪，一經定罪，可各處第 1 級罰款，如屬持續的罪行，則可就罪行持續期間的每一日，另各處罰款 \$200。
- (15) 為施行本條，《公司(清盤及雜項條文)條例》(第 32 章)第 283 條中凡提述簿冊及文據，須解釋為包括提述法團

listed corporation. (Amended 28 of 2012 ss. 912 & 920; 16 of 2016 s. 14)

(10) The register and any index—

- (a) shall be kept—
- (i) if the corporation's register of members is kept at its registered office, at the corporation's registered office;
- (ii) if the corporation's register of members is not so kept, at the corporation's registered office or the place where the register of members is kept; or
- (iii) if the corporation does not have a registered office in Hong Kong, at the corporation's principal place of business in Hong Kong; and
- (b) shall, for the purposes of Divisions 2 to 5 and for the purposes of—
- (i) enabling members of the public to ascertain—
- (A) the identities and the particulars of persons who are or were the true owners of, or have or had any interest or short position in, voting shares in the listed corporation; (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (B) the nature and the particulars of the interest or short position; and
- (C) the capacity in which a person holds or held the interest or short position; and
- (ii) providing the investing public with information to enable them to make informed investment decisions,
- be made available for inspection in accordance with section 340. (Amended 28 of 2012 ss. 912 & 920)

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根據本條須備存的登記冊及索引。(由 2012 年第 28 號第 912 及 920 條修訂)

### 337. 登記根據第 329 條披露的權益及淡倉

- (1) 每當任何上市法團根據第 329 條向任何人施加要求，而它依據該項要求接獲關乎它的有投票權股份的資料，它有責任於股份權益及淡倉登記冊（視屬何情況而定）的一個獨立部分，在擁有該等有投票權股份權益或持有該等有投票權股份的淡倉的人的姓名或名稱旁邊記錄——（由 2015 年第 19 號第 2 條修訂）

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- (11) *(Repealed 28 of 2012 ss. 912 & 920)*
- (12) The corporation shall send notice in the form specified by the Commission for the purposes of this section to the Registrar of Companies of—
- (a) the place where the register is kept; and
- (b) any change in that place,
- unless the register has at all times been kept at the corporation's registered office.
- (13) The duty imposed by subsection (12) shall be performed within 10 business days after the day on which the register is so kept or the change takes place (as the case may be).
- (14) If default is made in complying with any provision of this section, the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.
- (15) For the purposes of this section, a reference to books and papers in section 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) shall be construed as including a reference to the register and index required to be kept by a corporation under this section. *(Amended 28 of 2012 ss. 912 & 920)*

### 337. Registration of interests and short positions disclosed under section 329

- (1) Whenever in pursuance of a requirement imposed by a listed corporation on a person under section 329 the listed corporation receives any information, the listed corporation is under a duty to record, against the name of the person interested in those voting shares or having a short position in those voting shares (as the case may be), in a separate



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- (a) 施加該項要求一事，以及施加日期；及
  - (b) 依據該項要求而接獲的任何資料。
- (2) 第 336(4) 至 (14) 條適用於登記冊中按照第 (1) 款備存的任何部分，一如該等條文適用於登記冊的其餘部分。

**338. 將登記冊內的記項除去**

- (1) 如自於法團股份權益及淡倉登記冊內任何人的姓名或名稱旁邊作出記項的日期起計，已過了超過 6 年，並且有以下其中一種情況，則法團可將該記項除去 ——
- (a) 該記項記錄該人已不再擁有根據本分部或第 2 至 5 分部任何條文須具報的該法團的有投票權股份權益的事實；或 (由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)
  - (b) 該記項已被其後根據第 336 條在同一姓名或名稱旁邊作出的另一記項取代，
- 又如屬 (a) 段所指的情況，該法團亦可將該人的姓名或名稱從登記冊內除去。
- (2) 如任何人依據本分部或第 2 至 5 分部任何條文委予他的責任，向某上市法團提供另一人的姓名或名稱及地址，指該另一人擁有該法團的有投票權股份權益或持有上述有投票權股份的淡倉，則該法團須在接獲該等資料的日期後 10 個營業日內，通知該另一人他已被如此指名，並在通知內包括 —— (由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)
- (a) 法團因接獲該等資料而在其股份權益及淡倉登記冊內作出的關於該另一人的任何記項的詳情；及

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part of its register of interests in shares and short positions—  
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- (a) the fact that the requirement was imposed and the date on which it was imposed; and
  - (b) any information received in pursuance of the requirement.
- (2) Section 336(4) to (14) applies in relation to any part of the register kept in accordance with subsection (1) as it applies in relation to the remainder of the register.

**338. Removal of entries from register**

- (1) A corporation may remove an entry against a person's name from its register of interests in shares and short positions if more than 6 years have expired since the date of the entry being made, and either—
- (a) that entry recorded the fact that the person in question had ceased to have an interest notifiable under any provision of this Division or Divisions 2 to 5 in voting shares in the corporation; or (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
  - (b) it has been superseded by a later entry made under section 336 against the same person's name,
- and, in a case under paragraph (a), the corporation may also remove that person's name from the register.
- (2) If a person in pursuance of a duty imposed on him by any provision of this Division or Divisions 2 to 5 gives to a listed corporation the name and address of another person as being interested in voting shares in the corporation or having a short position in such voting shares, the corporation shall, within 10 business days after the day on which it was given that information, notify the other person that he has been so



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- (b) 一項陳述，告知該另一人他有權按照本條以下條文，申請將該記項除去。
- (3) 任何人如接獲上市法團依據第 (2) 款發出的通知，表示已在其股份權益及淡倉登記冊內作出關於他的記項，則他可以書面向該法團申請將該記項從該登記冊內除去。如法團信納在作出該記項時所依據的資料並不正確，則須將該記項除去。
- (4) 任何人如在某法團的股份權益及淡倉登記冊內被識別為第 317 條適用的協議的一方（不論是在他本人的姓名或名稱旁邊作出的記項，或以如第 (2)(a) 款提述在另一人的姓名或名稱旁邊作出關於他的記項的方式識別），則當他不再是該協議的一方時，可以書面向該法團申請將此項資料列入登記冊內。如該法團信納該人已不再是該協議的一方，則須於登記冊內該人的姓名或名稱以該協議一方身分出現（而又尚未記錄該項資料）的每一處，記錄該項資料。
- (5) 如根據第 (3) 款提出的申請被拒絕，或根據第 (4) 款提出的申請因有關資料已被記錄在登記冊內以外的原因而被拒絕，申請人可向原訟法庭申請命令，指示該法團將有關記項從登記冊內除去，或將有關資料列入登記冊內（視屬何情況而定）；原訟法庭如認為適當，可作出該項命令。
- (6) 凡依據第 (1) 或 (3) 款，或依據在第 (5) 款下作出的命令，將任何姓名、名稱或記項從法團的股份權益及淡倉登記冊內除去，該法團須在除去該姓名、名稱或記項的日期後 10 個營業日內，對任何有關索引作出所需的更改。
- (7) 如有違責情況以致第 (2) 或 (6) 款不獲遵守，則有關法團及其每名違責的高級人員均屬犯罪，一經定罪，可各處第 1 級罰款，如屬持續的罪行，則可就罪行持續期間的每一日，另各處罰款 \$200。

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- named and shall include in that notification— (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
- (a) particulars of any entry relating to him made, in consequence of its being given that information, by the corporation in its register of interests in shares and short positions; and
- (b) a statement informing him of his right to apply to have the entry removed in accordance with the following provisions of this section.
- (3) A person who has been notified by a listed corporation under subsection (2) that an entry relating to him has been made in the corporation's register of interests in shares and short positions may apply in writing to the corporation for the removal of that entry from the register; and the corporation shall remove the entry if satisfied that the information in pursuance of which the entry was made was incorrect.
- (4) If a person who is identified in a corporation's register of interests in shares and short positions as being a party to an agreement to which section 317 applies (whether by an entry against his own name or by an entry relating to him made against another person's name as referred to in subsection (2)(a)) ceases to be a party to that agreement, he may apply in writing to the corporation for the inclusion of that information in the register; and if the corporation is satisfied that he has ceased to be a party to that agreement, it shall record that information (if not already recorded) in every place where his name appears as a party to that agreement in the register.
- (5) If an application under subsection (3) or (4) is refused (in a case under subsection (4), otherwise than on the ground that the information has already been recorded), the applicant may apply to the Court of First Instance for an order directing the corporation to remove the entry in question from the register or to include the information in question in the register (as

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第 339 條Part XV—Division 6  
Section 33915-150  
Cap. 571**339. 不得在其他情況下除去記項**

- (1) 除按照第 338 條的規定外，法團的股份權益及淡倉登記冊內的記項不得除去。
- (2) 如有記項在違反第 (1) 款的情況下從法團的股份權益及淡倉登記冊內除去，該法團須在合理地切實可行的範圍內盡快將該記項重新記入該登記冊內。
- (3) 如有違責情況以致第 (1) 或 (2) 款不獲遵守，則有關法團及其每名違責的高級人員均屬犯罪，一經定罪，可各處第 1 級罰款，如屬持續的罪行，則可就罪行持續期間的每一日，另各處罰款 \$200。

**340. 查閱登記冊**

- (1) 任何股份權益及淡倉登記冊，須於營業時間內（須受有關法團在成員大會上施加的合理限制所規限，但每日可供

the case may be); and the Court of First Instance may, if it considers appropriate, make such an order.

- (6) Where a name or an entry is removed from a corporation's register of interests in shares and short positions in pursuance of subsection (1) or (3) or an order under subsection (5), the corporation shall within 10 business days after the date of that removal make any necessary alteration in any index.
- (7) If default is made in complying with subsection (2) or (6), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

**339. Otherwise, entries not to be removed from register**

- (1) Entries in a corporation's register of interests in shares and short positions shall not be removed except in accordance with section 338.
- (2) If an entry is removed from a corporation's register of interests in shares and short positions in contravention of subsection (1), the corporation shall restore that entry to the register as soon as reasonably practicable.
- (3) If default is made in complying with subsection (1) or (2), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

**340. Inspection of register**

- (1) Any register of interests in shares and short positions shall, during business hours (subject to such reasonable restrictions

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查閱的時間不得少於 2 小時) 供該法團任何成員免費查閱, 該登記冊亦須供任何其他人士查閱, 但每次查閱須支付 \$10 或該法團釐定的較低款額。

- (2) 法團的任何成員或任何其他人均可在支付費用後, 要求取得該登記冊或其任何部分的副本, 收費按所需複製副本的頁數計算, 每頁收取 \$2 或法團釐定的較低款額, 而法團須在接獲該要求當日後 10 個營業日內, 安排將副本送交予他。
- (3) 如任何人要求查閱根據本條須供查閱的登記冊而被拒絕, 或根據本條要求取得的副本沒有在第 (2) 款指明的期間內送交, 則有關法團及其每名違責的高級人員均屬犯罪, 一經定罪, 可各處第 1 級罰款, 如屬持續的罪行, 則可就罪行持續期間的每一日, 另各處罰款 \$200。
- (4) 如任何人要求查閱根據本條須供查閱的登記冊而被拒絕, 原訟法庭可藉命令飭令有關法團立即將該登記冊交出, 以供查閱。
- (5) 如根據本條要求取得的副本沒有在第 (2) 款指明的期間內送交, 原訟法庭可藉命令指示將該副本送交提出要求的人。
- (6) 證監會可藉規則修訂第 (1) 或 (2) 款指明的款額。

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as the corporation concerned may in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection), be open to inspection by any member of the corporation without charge or by any other person on payment of \$10, or such less sum as the corporation may determine, for each inspection.

- (2) Any member of the corporation or any other person may require a copy of any such register, or any part of it, on payment of \$2, or such less sum as the corporation may determine, for each page required to be copied; and the corporation shall cause any copy so required by a member or person to be sent to him within 10 business days after the day on which the requirement is received by the corporation.
- (3) If an inspection of the register required under this section is refused or a copy so required is not sent within the period specified in subsection (2), the corporation and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.
- (4) In the case of a refusal of an inspection of the register required under this section, the Court of First Instance may by order compel an immediate inspection of it.
- (5) In the case of a failure to send within the period specified in subsection (2) a copy required under this section, the Court of First Instance may by order direct that the copy required shall be sent to the person requiring it.
- (6) The Commission may by rules amend the sum specified in subsection (1) or (2).

## Division 7—Disclosure of interests and short positions of directors and chief executives

**341. 董事及最高行政人員的披露責任**

- (1) 如在上市法團的董事或最高行政人員任職期間內 ——
- (a) 發生任何事件，而由於該事件的發生，以致他成為擁有或不再擁有該法團或其任何相聯法團的股份或債權證的權益（不論是否擁有或保留該法團其他股份或債權證的權益）；
  - (b) 他訂立售賣任何該等股份或債權證的合約；
  - (c) 他將該法團授予他的認購該法團的股份或債權證的權利轉讓；
  - (d) 屬該法團的相聯法團的另一法團授予他認購該相聯法團的股份或債權證的權利，而他行使該項權利或將該項權利轉讓；
  - (e) 發生任何事件，而由於該事件的發生，以致他擁有的該法團或其任何相聯法團的股份或債權證的權益（或其部分）的性質有所改變，而他過往曾在有披露責任根據 (a)、(b)、(c) 或 (d) 段或第 (2) 款產生時，向該法團或有關交易所公司具報該等權益；或
  - (f) 發生任何事件，而由於該事件的發生，以致他變為持有或不再持有該法團或其任何相聯法團的股份的淡倉（不論是否持有或保留該法團的其他股份的淡倉），
- 則他有披露責任。
- (2) 如任何人 ——
- (a) 在某法團成為上市法團時是該法團的董事或最高行政人員，並於當時 ——
    - (i) 擁有該法團或其任何相聯法團的股份或債權證的權益；或
    - (ii) 持有該法團或其任何相聯法團的股份的淡倉；

**341. Duty of disclosure by director and chief executive**

- (1) A director or chief executive of a listed corporation comes under a duty of disclosure on the occurrence, while he is a director or chief executive of the listed corporation, of any of the following events—
- (a) any event in consequence of which he becomes, or ceases to be, interested in shares in or debentures of the listed corporation or any associated corporation of the listed corporation (whether or not having or retaining an interest in other shares in or debentures of that corporation);
  - (b) the entering into by him of a contract to sell any such shares or debentures;
  - (c) the assignment by him of a right granted to him by the listed corporation to subscribe for shares in or debentures of the listed corporation;
  - (d) the grant to him by another corporation, being an associated corporation of the listed corporation, of a right to subscribe for shares in or debentures of that associated corporation, the exercise of such a right granted to him and the assignment by him of such a right so granted;
  - (e) any event in consequence of which the nature of his interest (or part thereof) in shares in or debentures of the listed corporation or any associated corporation of the listed corporation, which has previously been notified to the listed corporation and the relevant exchange company where the duty of disclosure arose under paragraph (a), (b), (c) or (d) or subsection (2), changes; and



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- (b) 在本部生效時是某上市法團的董事或最高行政人員，並於當時 ——
- (i) 擁有該法團或其任何相聯法團的股份或債權證的權益，而該項權益過往未有在《證券(披露權益)條例》(第 396 章)被第 406 條廢除之前，根據該條例向該法團及交易所公司披露；或
  - (ii) 持有該法團或其任何相聯法團的股份的淡倉；
- (c) 成為某上市法團的董事或最高行政人員，並於此事發生時 ——
- (i) 擁有該法團或其任何相聯法團的股份或債權證的權益；或
  - (ii) 持有該法團或其任何相聯法團的股份的淡倉；或
- (d) 在某法團成為某上市法團的相聯法團時是該上市法團的董事或最高行政人員，並於當時 ——
- (i) 擁有該法團的股份或債權證的權益；或
  - (ii) 持有該法團的股份的淡倉，
- 則該人有披露責任。
- (3) 如任何人在他已不再是董事或最高行政人員後，才知道有任何上述事件發生，則該人並不負有本應會根據第 (2) 款而負有的披露責任。
- (4) 如某法團是另一法團的全資附屬公司，則本條的施行並不就前者的股份施加任何責任。(由 2012 年第 28 號第 912 及 920 條修訂)
- (4A) 本條受《金融機構(處置機制)條例》(第 628 章)第 151 及 153(3) 條所規限。(由 2016 年第 23 號第 218 條增補。編輯修訂——2017 年第 2 號編輯修訂紀錄)
- (5) 在第 (1)(e) 款中，凡提述任何董事或最高行政人員擁有的股份或債權證的權益的性質的改變，即包括提述 ——
- (a) 他對該等股份或債權證的所有權的性質的改變；

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- (f) any event in consequence of which he comes to have or ceases to have a short position in shares in the listed corporation or any associated corporation of the listed corporation (whether or not having or retaining a short position in other shares in that corporation).
- (2) A person who—
- (a) is a director or chief executive of a corporation when the corporation becomes a listed corporation and at that time—
    - (i) is interested in shares in or debentures of the listed corporation or any associated corporation of the listed corporation; or
    - (ii) has a short position in shares in the listed corporation or any associated corporation of the listed corporation;
  - (b) at the commencement of this Part is a director or chief executive of a listed corporation and at that time—
    - (i) is interested in shares in or debentures of the listed corporation or any associated corporation of the listed corporation, and that interest has not previously been disclosed to the listed corporation and the Exchange Company under the Securities (Disclosure of Interests) Ordinance (Cap. 396) before its repeal under section 406; or
    - (ii) has a short position in shares in the listed corporation or any associated corporation of the listed corporation;
  - (c) becomes a director or chief executive of a listed corporation and at the time when he does so—



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- (b) 他在法律上或衡平法上擁有的該等股份或債權證的權益的性質的改變；或
- (c) 在他行使以他擁有的該等股份為相關股份的股本衍生工具下的權利時，或在該等工具下的權利針對他而行使時，他擁有的該等股份的權益的性質的改變，但不包括提述——
- (i) 在該等股份或債權證交付他時，他擁有的該等股份或債權證的權益的性質的改變，但前提是根據本分部或第 8 或 9 分部的任何條文，他在衡平法上擁有的該等股份或債權證的權益是須具報的，或他過往曾根據上述的任何條文，將該等權益向有關上市法團及有關交易所公司具報；
- (ii) 可行使股本衍生工具下的權利的條款的改變所導致的他擁有的該等股份或債權證的權益的性質的改變，而該項條款改變是由於有關的相關股份的數目有所改變而引致的；或
- (iii) 他擁有的該等股份或債權證的權益的性質在以下情況出現時的改變：屬合資格借出人的另一人以抵押方式變為擁有該等股份或債權證的權益。

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- (i) is interested in shares in or debentures of the listed corporation or any associated corporation of the listed corporation; or
- (ii) has a short position in shares in the listed corporation or any associated corporation of the listed corporation; or
- (d) is a director or chief executive of a listed corporation when a corporation becomes an associated corporation of the listed corporation and at that time—
- (i) is interested in shares in or debentures of the associated corporation; or
- (ii) has a short position in shares in the associated corporation,
- comes under a duty of disclosure.
- (3) A person who would otherwise come under a duty of disclosure under subsection (2) is not under such a duty where the occurrence of the relevant event comes to his knowledge after he has ceased to be a director or chief executive.
- (4) Nothing in this section operates so as to impose a duty with respect to shares in a corporation which is the wholly owned subsidiary of another corporation. *(Amended 28 of 2012 ss. 912 & 920)*
- (4A) This section is subject to sections 151 and 153(3) of the Financial Institutions (Resolution) Ordinance (Cap. 628). *(Added 23 of 2016 s. 218. Amended E.R. 2 of 2017)*
- (5) In subsection (1)(e), a reference to a change in the nature of the interest of a director or chief executive in shares or debentures includes a reference to a change in the nature of—
- (a) his title to the shares or debentures;
- (b) any of his interest whether legal or equitable in the shares or debentures; or

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### 342. 董事及最高行政人員須披露的權益

- (1) 在不抵觸第 (2) 款的條文下，就根據第 341 條產生的披露責任而言，須顧及的權益為有關上市法團或其任何相聯法團的股份（不論是已發行或未發行的）或債權證的權益。
- (2) 在第 (1) 款中，凡提述上市法團或其任何相聯法團的股份的權益，包括提述任何人憑藉以下情況而擁有（或不再擁有）的上述股份中屬股本衍生工具的相關股份的股份權益——
  - (a) 他持有、售賣或發行該等股本衍生工具；
  - (b) 他行使該等股本衍生工具下的權利，或該等股本衍生工具下的權利針對他而行使；或

- (c) any of his interest in the shares, which are the underlying shares of equity derivatives, on the exercise by, or against, him of rights under the equity derivatives, but does not include a reference to a change in the nature of his interest in the shares or debentures—
- (i) on delivery of the shares or debentures to him, if his equitable interest in those shares or debentures is notifiable, or has previously been notified to the listed corporation concerned and the relevant exchange company, under any provision of this Division or Division 8 or 9;
- (ii) due to a change in the terms on which rights under any equity derivatives may be exercised resulting from a change in the number of the underlying shares in issue; or
- (iii) where another person, being a qualified lender, comes to have an interest in his shares or debentures by way of security.

### 342. Interests to be disclosed by director and chief executive

- (1) Subject to subsection (2), the interests to be taken into account for the purposes of the duty of disclosure arising under section 341 are those in shares in and debentures of the listed corporation concerned or any associated corporation of the listed corporation (whether issued or unissued).
- (2) In subsection (1), a reference to interests in shares in the listed corporation concerned or any associated corporation of the listed corporation includes a reference to interests in such shares, which are the underlying shares of equity derivatives, that a person has, or ceases to have, by virtue of—
  - (a) the holding, writing or issuing by him of the equity derivatives;

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- (c) 他轉讓該等股本衍生工具下的權利，或該等權利在未被行使的情況下失效。

### 343. 董事及最高行政人員須披露的淡倉

就根據第 341 條產生的披露責任而言，須顧及的淡倉為有關上市法團或其任何相聯法團的股份的淡倉。

### 344. 董事及最高行政人員須就家屬及法團的權益以及淡倉作出具報

(1) 為施行本分部及第 8 及 9 分部 ——

- (a) 任何上市法團的董事或最高行政人員的配偶（本身並非該法團的董事或最高行政人員者）——
- (i) 擁有的任何股份或債權證的權益，須視為該董事或人員（視屬何情況而定）擁有的權益；及
  - (ii) 持有的任何股份的淡倉，須視為該董事或人員（視屬何情況而定）持有的淡倉；及
- (b) 上述規定亦同樣適用於 ——
- (i) 上市法團的董事或最高行政人員的任何未成年子女（不論親生或領養，而本身並非該法團的董事或最高行政人員者）擁有的股份或債權證的權益；及
  - (ii) 上市法團的董事或最高行政人員的任何未成年子女（不論親生或領養，而本身並非該法團的董事或最高行政人員者）持有的股份的淡倉。

(2) 為施行本分部及第 8 及 9 分部 ——

- (a) 任何上市法團的董事或最高行政人員的配偶（本身並非該法團的董事或最高行政人員者）所訂立、行

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- (b) the exercise by, or against, him of rights under the equity derivatives; or
- (c) the assignment by him, or the lapsing without exercise, of rights under the equity derivatives.

### 343. Short positions to be disclosed by director and chief executive

The short positions to be taken into account for the purposes of the duty of disclosure arising under section 341 are those in shares in the listed corporation concerned or any associated corporation of the listed corporation.

### 344. Notification of family and corporate interests and short positions by director and chief executive

(1) For the purposes of this Division and Divisions 8 and 9—

- (a) a director or chief executive of a listed corporation is taken—
- (i) to be interested in any shares or debentures in which his spouse (not being herself or himself a director or chief executive of the listed corporation) is interested; and
  - (ii) to have a short position in any shares in which his spouse (not being herself or himself a director or chief executive of the listed corporation) has a short position; and
- (b) the same applies with respect to—
- (i) an interest which a minor child (natural or adopted) of a director or chief executive of a listed corporation (such child not being himself or herself a director or chief executive of the listed corporation) has in shares or debentures; and

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使或作出的任何合約、轉讓或認購權，須視為是該董事或人員所訂立、行使或作出（視屬何情況而定）的；而向該配偶作出的任何授予，亦須視為是向該董事或人員（視屬何情況而定）作出的；及

- (b) 上述規定亦同樣適用於任何上市法團的董事或最高行政人員的未成年子女（不論親生或領養，而本身並非該法團的董事或最高行政人員者）所訂立、行使或作出的任何合約、轉讓或認購權，或向該子女作出的任何授予。
- (3) 為施行本分部及第 8 及 9 分部，如任何法團 ——
- (a) 擁有任何上市法團或其任何相聯法團的股份或債權證的權益；及
- (b) 持有任何上市法團或其任何相聯法團的股份的淡倉，而 ——
- (i) 該首述法團或其董事慣於或有義務按照某人的指令或指示行事；或
- (ii) 某人有權在該首述法團的成員大會上行使不少於三分之一的投票權或控制該數量的投票權的行使，則該人須視為擁有該等權益及持有該等淡倉。
- (4) 凡 ——
- (a) 某人有權在某法團的成員大會上行使不少於三分之一的投票權或控制該數量的投票權的行使；而
- (b) 該法團有權在另一法團的成員大會上行使任何投票權或控制任何投票權的行使（**有效投票權**），則就第 (3)(ii) 款而言，有效投票權須視為可由該人行使。
- (5) 就第 (3) 及 (4) 款而言，任何人符合以下說明 ——
- (a) 有一項一旦行使便會令他有權行使投票權或控制投票權的行使的權利（不論是否受任何條件規限）；或

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- (ii) a short position which a minor child (natural or adopted) of a director or chief executive of a listed corporation (such child not being himself or herself a director or chief executive of the listed corporation) has in shares.

- (2) For the purposes of this Division and Divisions 8 and 9—
- (a) a contract, assignment or right of subscription entered into, exercised or made by, or a grant made to, the spouse of a director or chief executive of a listed corporation (not being herself or himself a director or chief executive of the listed corporation) shall be taken also to have been entered into, exercised or made by, or as having been made to (as the case may be) the director or chief executive; and
- (b) the same applies with respect to a contract, assignment or right of subscription entered into, exercised or made by, or a grant made to, a minor child (natural or adopted) of a director or chief executive of a listed corporation (such child not being himself or herself a director or chief executive of the listed corporation).
- (3) For the purposes of this Division and Divisions 8 and 9, a person is taken—
- (a) to be interested in any shares in or debentures of the listed corporation or any associated corporation of the listed corporation in which a corporation is interested; and
- (b) to have a short position in any shares in the listed corporation or any associated corporation of the listed corporation in which a corporation has a short position, if—

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- (b) 負有一項一旦履行便會令他有權行使投票權或控制投票權的行使的義務（不論是否受任何條件規限），他即屬有權行使投票權或控制投票權的行使。（由 2005 年第 10 號第 201 條修訂）
- (6) 如第 (3)(i) 或 (ii) 款不再適用，則根據第 (3) 款被視為擁有權益或持有淡倉的人，須視為不再擁有該等權益或持有該等淡倉。

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- (i) that corporation or its directors are accustomed or obliged to act in accordance with his directions or instructions; or
- (ii) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that corporation.
- (4) Where—
- (a) a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a corporation; and
- (b) that corporation is entitled to exercise or control the exercise of any of the voting power at general meetings of another corporation (*the effective voting power*),
- then, for the purposes of subsection (3)(ii), the effective voting power is taken as exercisable by that person.
- (5) For the purposes of subsections (3) and (4), a person is entitled to exercise or control the exercise of voting power if—
- (a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or
- (b) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.
- (6) A person who is taken to be interested in shares or debentures, or have a short position in shares, under subsection (3) shall be regarded as having ceased to be interested in the shares or debentures, or have a short position in the shares, if subsection (3)(i) or (ii) no longer applies.

## Division 8—Interests and short positions to be notified by director and chief executive or disregarded



**345. 就董事及最高行政人員作出的具報而言須顧及的權益及淡倉**

- (1) 在不抵觸第 346 條的情況下，本條適用於斷定任何人就第 7 及 9 分部而言，是擁有抑或不再擁有須具報的上市法團或其任何相聯法團的股份或債權證的權益，或是持有抑或不再持有須具報的上市法團或其任何相聯法團的股份的淡倉。
- (2) 凡提述股份或債權證的權益，須解釋為包括提述股份或債權證中任何種類的權益；而為該目的，行使附於該等權益的任何權利所受到或可能受到的約束或限制，無須理會。
- (3) 在解釋對股份的淡倉的提述時，憑藉該淡倉行使權利或履行義務所可能受到的約束或限制，無須理會。
- (4) 凡以信託方式持有的財產包含任何股份或債權證的權益或任何股份的淡倉——
  - (a) 而該信託的受益人除根據本條外並不擁有該等權益或持有該等淡倉，該受益人須視為擁有該等權益或持有該等淡倉（視屬何情況而定）；及
  - (b) 而該信託屬酌情信託，該信託的成立人須視為擁有該等權益或持有該等淡倉（視屬何情況而定）。
- (5) 任何人如有以下情況，須視為擁有股份或債權證的權益——
  - (a) 他訂立購買（不論以現金或其他代價）該等權益的合約；或
  - (b) 他有權——
    - (i) 行使因持有該等股份或債權證而獲賦予的任何權利；或
    - (ii) 控制該等權利的行使。

**345. Interests and short positions to be taken into account for the purpose of notification by director and chief executive**

- (1) This section applies, subject to section 346, in determining for the purposes of Divisions 7 and 9 whether a person has, or ceases to have, an interest in shares in or debentures of, or short position in shares in, a listed corporation or any associated corporation of the listed corporation that is notifiable.
- (2) A reference to an interest in shares or debentures shall be construed as including a reference to an interest of any kind whatsoever in the shares or debentures, and for that purpose any restraint or restriction to which the exercise of a right attached to the interest may be subject shall be disregarded.
- (3) In construing a reference to a short position in shares, any restraint or restriction to which the exercise of a right or the settlement of an obligation, by virtue of the short position, may be subject shall be disregarded.
- (4) Where property is held on trust and an interest in shares or debentures, or short position in shares, is comprised in that property—
  - (a) a beneficiary of the trust who apart from this section does not have an interest in the shares or debentures, or a short position in the shares, is taken to have such an interest or short position (as the case may be); and
  - (b) in the case of a discretionary trust, the founder of the trust is taken to have an interest in the shares or debentures or a short position in the shares (as the case may be).
- (5) A person is taken to have an interest in shares or debentures if—

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- (6) 就第 (5)(b) 款而言，任何人如有以下情況，須視為有權行使因持有股份或債權證而獲賦予的任何權利或控制該等權利的行使 ——
- (a) 他擁有假若行使便會使他有權行使該等權利或控制其行使的另一項權利 (不論是否受條件規限)；或
  - (b) 他負有一項義務 (不論是否受條件規限)，而履行該義務會使他有權行使該等權利或控制其行使。
- (7) 凡任何人 ——
- (a) 有權認購股份或債權證，或要求將股份或債權證交付他本人或依照他的指示交付；或
  - (b) 有權取得股份或債權證的權益，或有義務提取股份或債權證，
- 而他並非憑藉擁有某項信託下的權益而享有上述權利，則不論上述權利或義務是否在任何情況下附有條件，他均須視為擁有該等股份或債權證的權益。
- (8) 任何股本衍生工具的持有人、賣方或發行人如憑藉持有、售賣或發行 (視屬何情況而定) 該等工具而 ——
- (a) 有權要求另一人在某日期或之前或某期間內，向他交付該等工具的相關股份；
  - (b) 有義務在某日期或之前或某期間內，提取該等相關股份；
  - (c) 在該等相關股份的價格在某日期或之前或某期間內上升的情況下，有權從另一人收取一筆款項；或
  - (d) 在該等相關股份的價格在某日期或之前或某期間內上升的情況下，有權避免或減少損失，
- 則不論上述權利或義務是否在任何情況下附有條件，他均須視為擁有屬該等相關股份的股份的權益。
- (9) 任何人根據第 (8) 款須視為擁有權益的股份的數目 ——
- (a) 是 ——

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- (a) he enters into a contract for their purchase by him (whether for cash or other consideration); or
  - (b) he is entitled to—
    - (i) exercise any right conferred by the holding of the shares or debentures; or
    - (ii) control the exercise of any such right.
- (6) For the purposes of subsection (5)(b), a person is taken to be entitled to exercise or control the exercise of any right conferred by the holding of shares or debentures if—
- (a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or
  - (b) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.
- (7) A person is taken to have an interest in shares or debentures if, otherwise than by virtue of having an interest under a trust—
- (a) he has a right to subscribe for the shares or debentures or call for delivery of the shares or debentures to himself or to his order; or
  - (b) he has a right to acquire an interest in the shares or debentures or is under an obligation to take delivery of the shares or debentures,
- whether in any case the right or obligation is conditional or absolute.
- (8) A person who is the holder, writer or issuer of equity derivatives is taken to have an interest in shares which are the underlying shares of the equity derivatives if, by virtue of his holding, writing or issuing of the equity derivatives—

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- (i) 他有權要求另一人向他交付的；或
- (ii) 他有義務提取的，  
有關衍生工具的相關股份的數目；
- (b) 是該等相關股份的數目，而他憑藉持有、售賣或發行有關股本衍生工具而有權收取的款項或有權避免或減少的損失，是完全或部分參照該數目而得出或釐定的；或
- (c) 如屬股票期貨合約的情況，則為用以計算他可就持有的股票期貨合約收取的款項的合約乘數，  
不論上述權利或義務是否在任何情況下附有條件，而他被視為擁有權益的股份的總面值，須據此計算。
- (10) 如有以下情況，任何人即視為已不再擁有股份或債權證的權益 ——
  - (a) 他將該等股份或債權證交付另一人或依照另一人的指示將該等股份或債權證交付 ——
    - (i) 而他是按照他同意將該等股份或債權證售予該另一人的合約如此行事的；
    - (ii) 以履行他在該另一人要求他交付該等股份或債權證時須如此行事的義務；或
    - (iii) 而他是依據一項要求另一人提取該等股份或債權證的權利如此行事的；
  - (b) 他認購或要求交付該等股份或債權證的權利已失時效或他將該權利轉讓予另一人；
  - (c) 他須提取該等股份或債權證的義務已失時效或他將該義務轉讓予另一人；或
  - (d) 他在轉讓或結算任何現金結算股本衍生工具時，向另一人收取一筆款項或得以藉此避免或減少損失。
- (11) 任何人根據第 (10)(d) 款視為已不再擁有權益的股份的數目 ——

- (a) he has a right to require another person to deliver the underlying shares to him;
- (b) he is under an obligation to take delivery of the underlying shares;
- (c) he has a right to receive from another person an amount if the price of the underlying shares increases; or
- (d) he has a right to avoid or reduce a loss if the price of the underlying shares increases,  
before or on a certain date or within a certain period, whether in any case the right or obligation is conditional or absolute.
- (9) The number of shares in which a person is taken to be interested under subsection (8) is—
  - (a) the number of the underlying shares of the equity derivatives—
    - (i) which he has a right to require another person to deliver to him; or
    - (ii) of which he is under an obligation to take delivery;
  - (b) the number of the underlying shares of the equity derivatives by reference to which, wholly or partly, the amount which he has a right to receive or the loss which he has a right to avoid or reduce, by virtue of his holding, writing or issuing of the equity derivatives, is derived or determined; or
  - (c) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract,  
whether in any case the right or obligation is conditional or absolute.

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- (a) 是將用以計算他可收取的款項或他可避免或減少的損失的相關股份數目；或
- (b) 如屬股票期貨合約的情況，則為將用以計算他可就持有的股票期貨合約收取的款項的合約乘數。
- (12) 任何人憑藉持有、售賣或發行股本衍生工具而須視為持有淡倉的股份的數目 ——
  - (a) 是他有權交付或可能須交付的該等工具的相關股份的數目；
  - (b) 如屬現金結算股本衍生工具的情況，則為將用以計算他可收取的款項或他可避免或減少的損失的相關股份的數目；或
  - (c) 如屬股票期貨合約的情況，則為將用以計算他可就持有的股票期貨合約收取的款項的合約乘數。
- (13) 任何人根據證券借貸協議而須視為持有淡倉的股份的數目，是他在被要求時有義務根據該協議交付的股份的數目，不論該交付股份的義務可否以支付現金、交付股份或其他方式履行。
- (14) 如有多於一人共同擁有一項權益或持有同一淡倉，他們當中的每一人均須視為擁有該項權益或持有該淡倉（視屬何情況而定）。
- (15) 任何人擁有權益的股份或持有淡倉所涉的股份並非可識辨一事，屬無關重要。

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- (10) A person shall be regarded as having ceased to be interested in shares or debentures if—
  - (a) he delivers the shares or debentures to another person or to another person's order—
    - (i) in accordance with a contract under which he agreed to sell the shares or debentures to the other person;
    - (ii) in fulfilling an obligation to do so when called upon by the other person to deliver the shares or debentures; or
    - (iii) pursuant to a right to require the other person to take delivery of the shares or debentures;
  - (b) his right to subscribe for or call for delivery of the shares or debentures lapses or he assigns such a right to another person;
  - (c) his obligation to take delivery of the shares or debentures lapses or he assigns such an obligation to another person; or
  - (d) he receives from another person an amount, or avoids or reduces a loss, on assignment or settlement of any cash settled equity derivatives.
- (11) The number of shares in which a person is regarded as having ceased to be interested under subsection (10)(d) is—
  - (a) the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or
  - (b) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract.

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- (12) The number of shares in which a person is regarded as having a short position by virtue of his holding, writing or issuing of any equity derivatives is—
  - (a) the number of the underlying shares of the equity derivatives which he is entitled, or may be required, to deliver;
  - (b) in the case of cash settled equity derivatives, the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or
  - (c) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract.
- (13) The number of shares in which a person is regarded as having a short position under a securities borrowing and lending agreement is the number of shares which he is obliged to deliver under the securities borrowing and lending agreement, if called upon to do so, whether or not the obligation to deliver shares may be settled by payment of cash or by delivery of shares or otherwise.
- (14) Persons having a joint interest or short position are taken each of them to have that interest or short position (as the case may be).
- (15) It is immaterial that shares in which a person has an interest or short position are unidentifiable.

**346. 就董事及最高行政人員作出的具報而言無須理會的權益及淡倉**

- (1) 就第 7 至 9 分部而言，以下的上市法團或其任何相聯法團的股份或債權證的權益及淡倉無須理會 ——

**346. Interests and short positions to be disregarded for the purpose of notification by director and chief executive**

- (1) The following interests, and short positions, in shares in or debentures of a listed corporation or any associated



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- (a) 凡信託財產包含股份或債權證，則在有人有權在其本人或另一人在生時收取來自該信託財產的收入的情況下，無須理會該等股份或債權證的復歸權益或剩餘權益；
- (b) 就任何以被動受託人身分持有股份或債權證的人而言，在他以該身分持有該股份或債權證的期間，無須理會他擁有的該股份或債權證的權益；
- (c) 除第 (3) 款另有規定外，由 ——
- (i) 根據第 104 條認可的集體投資計劃；
  - (ii) 根據《強制性公積金計劃條例》(第 485 章) 第 21 或 21A 條註冊的退休金計劃或公積金計劃；或
  - (iii) 合資格海外計劃，
- 的持有人、受託人或保管人擁有的在該計劃下的財產中的股份或債權證的權益；
- (d) 憑藉以下形式而存續的屬於任何人的權益 ——
- (i) 藉具有司法管轄權的法院的命令而成立的慈善計劃；或
  - (ii) 死者遺產在死者去世至授予遺產管理書期間歸屬司法人員；及
- (e) 為施行本條而藉規例訂明的權益或淡倉，或屬於如此訂明的類別的權益或淡倉。
- (2) 任何人不得僅因有以下情況而視為根據第 345(5)(b) 條擁有股份或債權證的權益 ——
- (a) 他獲委任在某上市法團或相聯法團或其任何類別成員的某指明會議上，以及在該會議的延會上，以代表身分投票；或
  - (b) 該人獲任何法團委任在某上市法團或相聯法團或其任何類別成員的會議上，以該法團的代表身分行事。

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corporation of the listed corporation shall be disregarded for the purposes of Divisions 7 to 9—

- (a) so long as a person is entitled to receive income from trust property comprising shares or debentures during the lifetime of himself or another person, an interest in the shares or debentures in reversion or remainder;
- (b) an interest of a person in shares or debentures if, and so long as, he holds the shares or debentures as a bare trustee;
- (c) subject to subsection (3), an interest in shares or debentures comprised in the property under—
  - (i) a collective investment scheme authorized under section 104;
  - (ii) a pension scheme or a provident fund scheme registered under section 21 or 21A of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); or
  - (iii) a qualified overseas scheme,
 of a holder, trustee or custodian of the scheme;
- (d) an interest of a person subsisting by virtue of—
  - (i) a charitable scheme made by order of any court of competent jurisdiction; or
  - (ii) the vesting of a deceased's estate in any judicial officer between the time of death of the deceased and the grant of letters of administration; and
- (e) such interests or interests of such a class, or such short positions or short positions of such a class, as are prescribed by regulations for the purposes of this section.

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- (3) 如第 (1)(c)(i)、(ii) 或 (iii) 款提述的計劃的持有人、受託人或保管人 (視屬何情況而定) 亦是該計劃的管理人, 則他所擁有的在該計劃下的財產中的股份或債券權益不得根據第 (1)(c) 款不予理會。
- (4) 就第 (1)(c) 款而言, **合資格海外計劃** (qualified overseas scheme) 指符合以下說明的集體投資計劃、退休金計劃或公積金計劃 ——
- (a) 在香港以外地方成立, 並獲證監會為施行本條藉憲報公告認可; 及
- (b) 已獲該地方負責認可或註冊該等計劃的主管當局 (如有的話) 認可或註冊, 並符合該當局的規定, 但不包括 ——
- (i) 由任何人並非以業務形式營辦的安排;
- (ii) 符合以下說明的安排: 在該安排下, 少於 100 人擁有權益 (不論是否以單位描述) 或有權成為權益 (不論是否以單位描述) 的擁有人, 而該權益令擁有人直接或間接對該安排的人息或財產有權利;
- (iii) 符合以下說明的安排: 在該安排下, 少於 50 人擁有權益 (不論是否以單位描述) 或有權成為權益 (不論是否以單位描述) 的擁有人, 而該權益令擁有人直接或間接對該安排的不少於 75% 的人息或財產有權利; 及
- (iv) 證監會藉憲報公告指明的其他安排。
- (5) 為施行第 (1) 款, 某人不得僅因以下理由而不被視為任何財產的被動受託人 ——
- (a) 該財產是為另一人的利益而持有的, 而僅因該另一人是未成年人或無行為能力的人, 以致相對於受託人而言該另一人對該財產沒有絕對享有權; 或

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- (2) A person is not taken to be interested in shares or debentures under section 345(5)(b) by reason only that he—
- (a) has been appointed as a proxy to vote at a specified meeting of the listed corporation or associated corporation or of any class of its members and at any adjournment of that meeting; or
- (b) has been appointed by a corporation to act as its representative at a meeting of the listed corporation or associated corporation or of any class of its members.
- (3) An interest in shares or debentures of a holder, trustee or custodian of a scheme referred to in subsection (1)(c)(i), (ii) or (iii), comprised in the property under the scheme, shall not be disregarded under subsection (1)(c) if the holder, trustee or custodian (as the case may be) is also a manager of the scheme.
- (4) For the purposes of subsection (1)(c), **qualified overseas scheme** (合資格海外計劃) means a collective investment scheme, pension scheme or provident fund scheme which—
- (a) is established in a place outside Hong Kong recognized for the purposes of this section by the Commission by notice published in the Gazette; and
- (b) is authorized by or registered with the authority (if any) responsible for the authorization or registration of such scheme in the place where it is established, and complies with the requirements of such authority,
- but does not include—
- (i) an arrangement operated by a person otherwise than by way of business;
- (ii) an arrangement under which less than 100 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders,

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- (b) 受託人有權使用該財產，以清償任何尚未清償的押記，解除任何尚未解決的留置權，或繳付任何稅項、稅款、費用或其他開支。
- (6) 依據第 (4)(a) 或 (iv) 款刊登的公告不是附屬法例。

## 第 9 分部 —— 董事及最高行政人員作出具報的規定

### 347. 董事及最高行政人員須作出的具報

- (1) 凡任何人根據第 341 條有披露責任，他須就以下事項向有關上市法團及有關交易所公司作出具報 ——
- (a) 他擁有或不再擁有的該法團或其任何相聯法團的股份或債權證的權益；及

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- directly or indirectly, to the income or property of the arrangement;
- (iii) an arrangement under which less than 50 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders, directly or indirectly, to 75% or more of the income or property of the arrangement; and
- (iv) such other arrangement as may be specified by the Commission by notice published in the Gazette.
- (5) For the purposes of subsection (1), a person shall not be considered as not being a bare trustee in respect of any property by reason only that—
- (a) the person for whose benefit the property is held is not absolutely entitled thereto as against the trustee only because he is a minor or is a person under a disability; or
- (b) the trustee has the right to resort to the property to satisfy any outstanding charge or lien or for the payment of any duty, tax, cost or other outgoings.
- (6) A notice published pursuant to subsection (4)(a) or (iv) is not subsidiary legislation.

## Division 9—Requirements for giving notification by director and chief executive

### 347. Notification to be given by director and chief executive

- (1) Where a person comes under a duty of disclosure under section 341, he shall give notification to the listed corporation concerned and to the relevant exchange company of—

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- (b) 他持有或不再持有的該法團或其任何相聯法團的股份的淡倉 (如有的話)。
- (2) 任何本條規定的具報，須同時向有關上市法團及有關交易所公司作出，如上述做法並不切實可行，則須在緊接向該法團或該公司作出後，向另一方作出。(由 2005 年第 10 號第 202 條修訂)
- (3) 證監會可藉憲報公告，一般地或就任何個別個案指明本條規定的具報所採用的表格，並在不局限上文的一般性的原則下，該會可在表格中——
- (a) (不論第 397(1) 條有任何規定) 附有關乎填具、簽署、簽立及認證該表格的方式的指令及指示；及
- (b) 指明須隨附該表格的文件。
- (4) 為施行第 (3) 款，證監會可藉在於憲報刊登的公告中提述以證監會認為適當的電子方式另行發布的表格，指明該表格，以代替在於憲報刊登的公告中列明該表格。凡證監會以上述方法指明表格，則就所有目的而言，證監會須視為已妥善地根據第 (3) 款指明該表格。
- (5) 為施行第 (3) 款，證監會可指明在不同情況下採用不同表格。
- (6) 除第 (7) 款另有規定外，凡證監會已根據第 (3) 款，就本條規定須在一項披露責任根據第 341 條產生時作出的具報指明表格，則除非該具報符合以下條件，否則該責任不得視為已履行——
- (a) 採用指明的表格；
- (b) 按照附於該表格的指示及指令填具、簽署、簽立及認證；及
- (c) 附有該表格指明的隨附文件。
- (7) 任何本條規定的具報不得由於偏離第 (3) 款提述的公告指明的表格的格式而不被視為採用該表格，但前提是該項偏離不影響該表格的實質內容。

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- (a) the interests which he has, or ceases to have, in shares in or debentures of the listed corporation or any associated corporation of the listed corporation; and
- (b) the short position (if any) which he has, or ceases to have, in shares in the listed corporation or any associated corporation of the listed corporation.
- (2) A notification required by this section shall be given to the listed corporation concerned and the relevant exchange company at the same time or (if it is not practicable to do so) one immediately after the other.
- (3) The Commission may, by notice published in the Gazette, specify the form in respect of a notification required by this section, either generally or in any particular case, and, without limiting the generality of the foregoing, may in the form—
- (a) notwithstanding section 397(1), include directions and instructions relating to the manner in which the form is to be completed, signed, executed and authenticated; and
- (b) specify documents by which it is to be accompanied.
- (4) For the purposes of subsection (3), the Commission may specify any form by referring in a notice published in the Gazette to the form as separately published by such electronic means as the Commission considers appropriate, instead of setting out the form in a notice published in the Gazette, whereupon the Commission shall for all purposes be regarded as having duly specified the form under subsection (3).
- (5) For the purposes of subsection (3), the Commission may specify that different forms are to be used in different circumstances.
- (6) Subject to subsection (7), where the Commission has specified any form under subsection (3) in respect of a notification required by this section to be given when a duty of disclosure

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(8) 依據第 (3) 款刊登的公告不是附屬法例。

#### 348. 董事及最高行政人員作出具報的時間

- (1) 凡披露責任是根據第 341(1)(a)、(b)、(c)、(d)、(e) 或 (f) 條產生的，第 347 條規定的具報須 ——
  - (a) (如在有關事件發生時有關的人知道有此事發生) 在有關事件發生當日後 3 個營業日內作出；或
  - (b) (如屬其他情況) 在有關的人知道有關事件發生當日後 3 個營業日內作出。
- (2) 凡披露責任是根據第 341(2) 條產生的 ——
  - (a) 第 347 條規定的具報須在有關事件發生當日後 10 個營業日內作出；或
  - (b) 如在有關事件發生時有關的人不察覺 ——
    - (i) 他擁有有關上市法團或其任何相聯法團的股份或債權證的權益；或

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arises under section 341, the duty shall not be regarded as having been performed unless the notification—

- (a) is in the form specified;
  - (b) is completed, signed, executed and authenticated in accordance with such directions and instructions as are included in the form; and
  - (c) is accompanied by such documents as are specified in the form.
- (7) A notification required by this section shall not by reason of any deviation from a form specified in respect of it by notice published pursuant to subsection (3) cease to be regarded as being in that form, if the deviation does not affect the substance of the form.
- (8) A notice published pursuant to subsection (3) is not subsidiary legislation.

#### 348. Time of notification by director and chief executive

- (1) A notification required by section 347 shall be given, where the duty of disclosure arises under section 341(1)(a), (b), (c), (d), (e) or (f)—
  - (a) in the case that at the time at which the relevant event occurs the person concerned knows of its occurrence, within 3 business days after the day on which the relevant event occurs; or
  - (b) otherwise, within 3 business days after the day on which the occurrence of the relevant event comes to his knowledge.
- (2) A notification required by section 347 shall be given, where the duty of disclosure arises under section 341(2)—
  - (a) within 10 business days after the day on which the relevant event occurs; or



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- (ii) 他持有有關上市法團或其任何相聯法團的股份的淡倉，

則第 347 條規定的具報須在他察覺他擁有該項權益或持有該淡倉（視屬何情況而定）當日後 10 個營業日內作出。

### 349. 董事及最高行政人員作出的具報須載有的詳情

- (1) 凡有披露責任根據第 341 條產生，任何人在履行該等責任時，須在有關具報中指明自己的姓名或名稱及地址，表明自己的身分是董事或最高行政人員（視屬何情況而定），以及（盡其所知）——
- (a) 指明有關事件發生的日期，及 ——
- (i) 他察覺有關事件發生的日期（如他是在較後的日期才察覺的話）；或
- (ii) （如屬第 348(2)(b) 條提述的情況）他察覺他擁有有關上市法團或其相聯法團的股份或債權證的權益或持有該等股份的淡倉（視屬何情況而定）的日期；
- (b) 在符合第 (3) 款的規定下，指明以下股份的總數及類別 ——
- (i) 他在緊接有關時間之前擁有權益的有關上市法團及其任何相聯法團的股份，並指明他擁有的每一類別該等股份權益所佔的百分率數字；及

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- (b) in the case that at the time at which the relevant event occurs the person concerned is not aware—

- (i) that he has an interest in shares in or debentures of the listed corporation concerned or any associated corporation of the listed corporation; or
- (ii) that he has a short position in shares in the listed corporation or any associated corporation of the listed corporation,

within 10 business days after the day on which he becomes aware that he has such an interest or short position (as the case may be).

### 349. Particulars to be contained in notification by director and chief executive

- (1) Where a duty of disclosure arises under section 341, a person shall, in performing the duty of disclosure, specify in the notification his name, identifying him also as a director or chief executive (as the case may be), and his address, and (so far as he is aware)—
- (a) the date on which the relevant event occurred and—
- (i) the date (if later) on which he became aware of the occurrence of the relevant event; or
- (ii) in the case referred to in section 348(2)(b), the date on which he became aware that he has the interest in the shares in or debentures of, or the short position in the shares in, the listed corporation or the associated corporation of the listed corporation (as the case may be);
- (b) subject to subsection (3), the total number and class of—

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- (ii) 他在緊接有關時間之後擁有權益的有關上市法團及其任何相聯法團的股份，並指明他擁有的每一類別該等股份權益所佔的百分率數字；
- (c) 在符合第 (3) 款的規定下，指明以下債權證的數額 ——
  - (i) 他在緊接有關時間之前擁有權益的有關上市法團及其任何相聯法團的債權證；及
  - (ii) 他在緊接有關時間之後擁有權益的有關上市法團及其任何相聯法團的債權證；
- (d) 在符合第 (3) 款的規定下，指明以下股份的總數及類別 ——
  - (i) 他在緊接有關時間之前持有淡倉的有關上市法團及其任何相聯法團的股份，並指明他持有的每一類別該等股份的淡倉所佔的百分率數字；及
  - (ii) 他在緊接有關時間之後持有淡倉的有關上市法團及其任何相聯法團的股份，並指明他持有的每一類別該等股份的淡倉所佔的百分率數字；
- (e) 指明導致產生披露責任的情況；
- (f) 凡披露責任是根據第 341(1) 條產生的 ——
  - (i) 指明符合以下說明的有關上市法團或其任何相聯法團的股份的數目及類別 ——
    - (A) 他在有關時間已取得該等股份的權益或不再擁有該等股份的權益；
    - (B) 他在有關時間已持有該等股份的淡倉或不再持有該等股份的淡倉；或
    - (C) 他在該等股份中所擁有的權益的性質在有關時間有所改變；及

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- (i) shares in the listed corporation and any associated corporation of the listed corporation in which he was interested immediately before the relevant time specifying the percentage figure of his interest in the shares in each class; and
- (ii) shares in the listed corporation and any associated corporation of the listed corporation in which he is interested immediately after the relevant time specifying the percentage figure of his interest in the shares in each class;
- (c) subject to subsection (3), the amount of—
  - (i) debentures of the listed corporation and any associated corporation of the listed corporation in which he was interested immediately before the relevant time; and
  - (ii) debentures of the listed corporation and any associated corporation of the listed corporation in which he is interested immediately after the relevant time;
- (d) subject to subsection (3), the total number and class of—
  - (i) shares in the listed corporation and any associated corporation of the listed corporation in which he had a short position immediately before the relevant time specifying the percentage figure of his short position in the shares in each class; and
  - (ii) shares in the listed corporation and any associated corporation of the listed corporation in which he has a short position immediately after the relevant time specifying the percentage figure of his short position in the shares in each class;

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- (ii) 指明符合以下說明的有關上市法團或其任何相聯法團的債權證的數額 ——
  - (A) 他在有關時間已取得該等債權證的權益或不再擁有該等債權證的權益；或
  - (B) 他在該等債權證中所擁有的權益的性質在有關時間有所改變；
- (g) 如他是 ——
  - (i) 透過場內交易而取得或處置 (f)(i)(A) 段提述的權益，則指明他為該等權益而支付或收取的以每一股計算的最高價格及平均價格 (如並無支付或收取任何價格，則指明此一事實)；或
  - (ii) 透過場外交易而取得或處置 (f)(i)(A) 段提述的權益，則指明他為該等權益而付出或收取的代價的性質，及以每一股計算的該代價的最高數額及平均數額 (如並無付出或收取任何代價，則指明此一事實)；
- (h) 如他是 ——
  - (i) 透過場內交易而取得或處置 (f)(ii)(A) 段提述的權益，則指明他為該等權益而支付或收取的以每一單位計算的最高價格及平均價格 (如並無支付或收取任何價格，則指明此一事實)；或
  - (ii) 透過場外交易而取得或處置 (f)(ii)(A) 段提述的權益，則指明他為該等權益而付出或收取的代價的性質，及以每一單位計算的該代價的最高數額及平均數額 (如並無付出或收取任何代價，則指明此一事實)；

- (e) the circumstances in which he comes under the duty of disclosure;
- (f) where the duty of disclosure arises under section 341(1)—
  - (i) the number and class of shares in the listed corporation or any associated corporation of the listed corporation in which—
    - (A) he has acquired an interest, or ceased to have an interest, at the relevant time;
    - (B) he has come to have, or ceased to have, a short position at the relevant time; or
    - (C) the nature of his interest changes at the relevant time; and
  - (ii) the amount of debentures of the listed corporation or any associated corporation of the listed corporation in which—
    - (A) he has acquired an interest, or ceased to have an interest, at the relevant time; or
    - (B) the nature of his interest changes at the relevant time;
- (g) where he acquires or disposes of the interest referred to in paragraph (f)(i)(A)—
  - (i) through an on-exchange transaction, the highest price and the average price paid or received per share for the interest he acquires or disposes of (or, in the case that no price is paid or received, that fact); or
  - (ii) through an off-exchange transaction, the nature of the consideration given or received, and the highest amount and the average amount of the consideration given or received per share, for the

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- (i) 在符合第 (3) 款的規定下，指明他是以哪種身分在緊接有關時間之後擁有有關上市法團或其任何相聯法團的股份或債權證的權益或持有該等股份的淡倉；如該等權益或淡倉是以多於一種身分擁有或持有，則指明以每種身分擁有權益或持有淡倉所涉的股份的數目或債權證的數額；
- (j) 凡在某情況下，他擁有的有關上市法團或其任何相聯法團的股份或債權證的權益的性質在緊接有關時間之前和之後並不相同，而披露責任在該情況下產生，則在符合第 (3) 款的規定下，指明他擁有的該等股份或債權證的權益在緊接有關時間之前和之後的性質；
- (k) 凡他根據第 344(1)、344(2)、344(3) 或 345(14) 條視為擁有有關上市法團或其任何相聯法團的股份或債權證的權益或持有該等股份的淡倉，則在符合第 (3) 款的規定下，須就該四條條文中的每一條分別指明——
  - (i) 關乎該條的該等股份的數目及類別或該等債權證的數額；及
  - (ii) 每名亦擁有關乎該條的該等股份或債權證的權益或持有該等淡倉的其他人的姓名或名稱及地址，及他與該其他人的關係；
- (l) 凡他不再擁有有關上市法團或其任何相聯法團的股份或債權證的權益或不再持有該等股份的淡倉，則指明此一事實；及
- (m) 指明為此目的而指明的表格或格式規定須載有的其他資料。

- interest he acquires or disposes of (or, in the case that no consideration is given or received, that fact);
- (h) where he acquires or disposes of the interest referred to in paragraph (f)(ii)(A)—
  - (i) through an on-exchange transaction, the highest price and the average price paid or received per unit for the interest he acquires or disposes of (or, in the case that no price is paid or received, that fact); or
  - (ii) through an off-exchange transaction, the nature of the consideration given or received, and the highest amount and the average amount of the consideration given or received per unit, for the interest he acquires or disposes of (or, in the case that no consideration is given or received, that fact);
- (i) subject to subsection (3), the capacity in which the interest in shares in or debentures of, or the short position in shares in, the listed corporation or any associated corporation of the listed corporation is held immediately after the relevant time and, if the interest in the shares or debentures, or the short position in the shares, is held in more than one capacity, the number of shares or amount of debentures held in each capacity;
- (j) subject to subsection (3), where the duty of disclosure arises on the occurrence of an event in consequence of which the nature of his interest in shares in or debentures of the listed corporation or any associated corporation of the listed corporation changes, the nature of his interest immediately before and immediately after the relevant time;

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- (2) 凡某人根據第 (1)(b)、(d)、(f)、(j) 或 (k) 款須在具報中指明詳情的股份是股本衍生工具的相關股份，他亦須在符合第 (3) 款的規定下，在該具報中另外指明 ——
- (a) 屬以下任何一類在認可證券市場上市或買賣或在認可期貨市場買賣的股本衍生工具的相關股份的股份總數 ——
- (i) 現金結算股本衍生工具 (如屬期貨或期權，須另外指明)；或
- (ii) 實物結算股本衍生工具 (如屬期貨或期權，須另外指明)，
- 而他是在緊接有關時間之前擁有該等股份的權益或持有該等股份的淡倉；
- (b) 屬以下任何一類既無在認可證券市場上市或買賣亦無在認可期貨市場買賣的股本衍生工具的相關股份的股份總數 ——
- (i) 現金結算股本衍生工具 (如屬期貨或期權，須另外指明)；或
- (ii) 實物結算股本衍生工具 (如屬期貨或期權，須另外指明)，
- 而他是在緊接有關時間之前擁有該等股份的權益或持有該等股份的淡倉；
- (c) 屬 (a) 段提述的任何一類股本衍生工具的相關股份的股份總數，而該人是在緊接有關時間之後擁有該等股份的權益或持有該等股份的淡倉；

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- (k) subject to subsection (3), where he is taken to be interested in shares in or debentures of, or have a short position in shares in, the listed corporation or any associated corporation of the listed corporation under section 344(1), 344(2), 344(3) or 345(14)—
- (i) the number and class of the shares or amount of the debentures; and
- (ii) the name and address of, and his relationship with, each of the other persons having an interest in the shares or debentures or having a short position in the shares,
- in which he is so taken to be interested or have a short position under each of those sections taken separately;
- (l) where he no longer has an interest in shares in or debentures of, or a short position in shares in, the listed corporation or any associated corporation of the listed corporation, the fact that he no longer has such an interest or short position; and
- (m) such other information as may be required in the form specified for the purpose.
- (2) Where any shares the particulars of which have to be specified in a notification by a person under subsection (1)(b), (d), (f), (j) or (k) are the underlying shares of equity derivatives, the person shall also specify, subject to subsection (3), separately in the notification—
- (a) the total number of shares which are the underlying shares of any of the following categories of equity derivatives that are listed or traded on a recognized stock market or traded on a recognized futures market, in which he was interested, or had a short position, immediately before the relevant time—



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- (d) 屬 (b) 段提述的任何一類股本衍生工具的相關股份的股份總數，而該人是在緊接有關時間之後擁有該等股份的權益或持有該等股份的淡倉；
  - (e) 行使在每種股本衍生工具下的權利的限期 (**行使期**)；及
  - (f) 行使期的屆滿日期。
- (3) 凡披露責任是根據第 341(1) 條產生的 ——
- (a) 第 (1)(b)、(c) 及 (d) 款須在猶如該款中提述上市法團及其任何相聯法團之處是提述符合以下說明的法團的情況下，就有關的人而適用 ——
    - (i) 他在有關時間已取得該法團的股份或債權證的權益或不再擁有該等股份或債權證的權益；
    - (ii) 他在有關時間已持有該法團的股份或債權證的淡倉或不再持有該等股份或債權證的淡倉；或
    - (iii) 他在該法團的股份或債權證中擁有的權益的性質在有關時間有所改變；
  - (b) 第 (1)(i)、(j) 或 (k) 或 (2) 款規定指明的詳情須只關乎 ——
    - (i) 符合以下說明的股份 ——
      - (A) 他在有關時間已 (或視作已) 取得該等股份的權益或不再擁有該等股份的權益；
      - (B) 他在有關時間已 (或視作已) 持有該等股份的淡倉或不再持有該等股份的淡倉；或
      - (C) 他在該等股份中擁有的權益的性質在有關時間有所改變 (或視作有所改變)；及

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- (i) cash settled equity derivatives (specifying separately if they are futures or options); or
  - (ii) physically settled equity derivatives (specifying separately if they are futures or options);
- (b) the total number of shares which are the underlying shares of any of the following categories of equity derivatives that are neither listed or traded on a recognized stock market nor traded on a recognized futures market, in which he was interested, or had a short position, immediately before the relevant time—
- (i) cash settled equity derivatives (specifying separately if they are futures or options); or
  - (ii) physically settled equity derivatives (specifying separately if they are futures or options);
- (c) the total number of shares which are the underlying shares of any of the equity derivatives referred to in paragraph (a) in which he is interested, or has a short position, immediately after the relevant time;
- (d) the total number of shares which are the underlying shares of any of the equity derivatives referred to in paragraph (b) in which he is interested, or has a short position, immediately after the relevant time;
- (e) the period within which rights under each of the equity derivatives may be exercised (**exercise period**); and
- (f) the expiry date of the exercise period.
- (3) Where a duty of disclosure arises under section 341(1)—
- (a) subsection (1)(b), (c) and (d) shall apply in relation to a person as if a reference to the listed corporation and any associated corporation of the listed corporation in that subsection was a reference to the corporation—

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- (ii) 符合以下說明的債權證 ——
  - (A) 他在有關時間已 (或視作已) 取得該等債權證的權益或不再擁有該等債權證的權益；或
  - (B) 他在該等債權證中擁有的權益的性質在有關時間有所改變 (或視作有所改變)。
- (4) 凡有披露責任根據第 341(2)(a)(i)、(b)(i)、(c)(i) 或 (d)(i) 條產生，任何人在履行該責任時，亦須在有關具報中 ——
  - (a) 就他 ——
    - (i) 透過場內交易取得的屬該項披露的標的的股份權益，指明他在緊接有關事件發生當日之前的 4 個月內，為取得該等權益而支付的以每一股計算的最高價格及平均價格；或
    - (ii) 透過場外交易取得的屬該項披露的標的的股份權益，指明他在緊接有關事件發生當日之前的 4 個月內，為取得該等權益而付出的代價的性質，及以每一股計算的該代價的最高數額及平均數額；及
  - (b) 就他 ——
    - (i) 透過場內交易取得的屬該項披露的標的的債權證權益，指明他在緊接有關事件發生當日之前的 4 個月內，為取得該等權益而支付的以每一單位計算的最高價格及平均價格；或
    - (ii) 透過場外交易取得的屬該項披露的標的的債權證權益，指明他在緊接有關事件發生當日之前的 4 個月內，為取得該等權益而付出的代價的性質，及以每一單位計算的該代價的最高數額及平均數額。

- (i) in the shares in or debentures of which he has acquired an interest, or ceased to have an interest, at the relevant time;
- (ii) in the shares in or debentures of which he has come to have, or ceased to have, a short position at the relevant time; or
- (iii) the nature of his interest in the shares in or debentures of which changes at the relevant time;
- (b) the particulars required to be specified under subsection (1)(i), (j) or (k) or (2) shall relate only to—
  - (i) the shares in which—
    - (A) he has (or is taken to have) acquired an interest, or ceased to have an interest, at the relevant time;
    - (B) he has (or is taken to have) come to have, or ceased to have, a short position at the relevant time; or
    - (C) the nature of his interest changes (or is taken to change) at the relevant time; and
  - (ii) the debentures in which—
    - (A) he has (or is taken to have) acquired an interest, or ceased to have an interest, at the relevant time; or
    - (B) the nature of his interest changes (or is taken to change) at the relevant time.
- (4) Where a duty of disclosure arises under section 341(2)(a)(i), (b)(i), (c)(i) or (d)(i), a person shall, in performing the duty of disclosure, also specify in the notification—
  - (a) in respect of his interest in the shares which are the subject of the disclosure acquired—

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- (5) 在不抵觸第 (6) 及 (7) 款的條文下，就第 (1)(b) 款而言，**百分率數字** (percentage figure) 指以下述方式表達的百分率數字：在緊接有關時間之前或之後（視屬何情況而定）在有關上市法團或其相聯法團的股份中所有屬該人擁有權益的股份數目，在該法團或相聯法團（視屬何情況而定）的已發行股份數目中所佔的百分率。
- (6) 為施行第 (5) 款，凡有關上市法團或其相聯法團作為供股的一部分，而批予有關的人認購該上市法團或相聯法團的股份的權利，或向有關的人提出該上市法團或相聯法團的股份的要約，則該上市法團或相聯法團（視屬何情況而定）的已發行股份自作出該項批予或提出該項要約（視屬何情況而定）開始至該項供股完成或終止（以較早者為準）之間所有時間的數目，須視為以下數目的總和——
- (a) 在緊接作出該項批予或提出該項要約（視屬何情況而定）之前該上市法團或相聯法團（視屬何情況而定）的已發行股份數目；及
- (b) 在完成該項供股時將予以發行或將就其提出要約的新股份數目。
- (7) 為施行第 (5) 款，在釐定任何人擁有權益的股份的數目時——
- (a) 如在計算他擁有權益的股份的數目時，將他持有的股份的淡倉計算在內，是會減低他擁有權益的股份的數目的，則不得將該等淡倉計算在內；及
- (b) 須在有關具報中另外指明該人持有或不再持有淡倉所涉的股份的詳情。

- (i) through an on-exchange transaction, the highest price and the average price paid per share for the interest acquired within 4 months immediately before the day on which the relevant event occurred; or
- (ii) through an off-exchange transaction, the nature of the consideration given, and the highest amount and the average amount of the consideration given per share, for the interest acquired within 4 months immediately before the day on which the relevant event occurred; and
- (b) in respect of his interest in the debentures which are the subject of the disclosure acquired—
- (i) through an on-exchange transaction, the highest price and the average price paid per unit for the interest acquired within 4 months immediately before the day on which the relevant event occurred; or
- (ii) through an off-exchange transaction, the nature of the consideration given, and the highest amount and the average amount of the consideration given per unit, for the interest acquired within 4 months immediately before the day on which the relevant event occurred.
- (5) For the purposes of subsection (1)(b), **percentage figure** (百分率數字), subject to subsections (6) and (7), means the percentage figure found by expressing the number of all the shares in the listed corporation concerned or the associated corporation of the listed corporation in which the person is interested immediately before or immediately after (as the case may be) the relevant time as a percentage of the number of the issued shares in the listed corporation or associated corporation (as the case may be).

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- (8) 就第 (1)(d) 款而言，**百分率數字** (percentage figure) 指以下述方式表達的百分率數字：在緊接有關時間之前或之後（視屬何情況而定）所有由有關的人持有淡倉的有關上市法團或其相聯法團的股份的數目，在該法團或相聯法團（視屬何情況而定）的已發行股份數目中所佔的百分率。
- (9) 凡上市法團或其相聯法團的股本分為不同類別的股份——
- (a) 在本條中，凡提述某人擁有權益的該上市法團或相聯法團（視屬何情況而定）的股份或持有淡倉的該等股份的數目，須解釋為提述分開處理的每一該等類別中的股份的數目；及
- (b) 在本條中，凡提述該上市法團或相聯法團（視屬何情況而定）的已發行股份的數目的一個百分率，須解釋為提述分開處理的每一該等類別中的已發行股份的數目的一個百分率。
- (10) 在第 (6) 款中，**完成** (completion) 就某項供股而言，指依據該項供股而發行有關上市法團或其相聯法團的股份。
- (11) 凡發生某事件以致根據第 341 條任何董事或最高行政人員有披露責任，而該事件是有關上市法團或其任何相聯法團將債權證或認購債權證的權利授予他而導致，或是因行使或轉讓該等權利而導致，則具報亦須載有一項陳述，述明——
- (a) (i) 以下價格——
- (A) 就該項授予所支付或收取的價格；或
- (B) 在行使或轉讓該等權利時所支付或收取的價格，
- (如並無支付或收取任何價格，則述明此一事實)；或

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- (6) For the purposes of subsection (5), where the listed corporation concerned or the associated corporation of the listed corporation grants to the person rights to subscribe for, or offers to the person, its shares, as part of a rights issue, the number of the issued shares in the listed corporation or associated corporation (as the case may be) at all times from the grant or offer (as the case may be) up to the completion or termination of the rights issue (whichever is the earlier) is taken to be the aggregate of—
- (a) the number of the issued shares in the listed corporation or associated corporation (as the case may be) immediately before the grant or offer (as the case may be); and
- (b) the number of the new shares to be issued upon the completion of the rights issue.
- (7) For the purposes of subsection (5)—
- (a) in determining the number of shares in which a person is interested, there shall be disregarded any short position which that person has in the shares which, if included in the calculation of the number of shares in which the person is interested, would reduce the number of shares in which the person is interested; and
- (b) the particulars of the shares in which that person has a short position, or has ceased to have a short position, shall be specified separately in the notification.
- (8) For the purposes of subsection (1)(d), **percentage figure** (百分率數字) means the percentage figure found by expressing the number of all the shares in the listed corporation concerned or the associated corporation of the listed corporation in which the person has a short position immediately before or immediately after (as the case may be) the relevant time as



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- (ii) 以下代價 ——
- (A) 就該項授予所付出或收取的代價；或
- (B) 在行使或轉讓該等權利時所付出或收取的代價，
- (如並無付出或收取任何代價，則述明此一事實)，
- 視屬何情況而定；
- (b) 可行使該等權利的限期 (**行使期間**)；及
- (c) 行使期間的屆滿日期。
- (12) 凡發生某事件以致根據第 341 條任何董事或最高行政人員有披露責任，而該事件是因有關上市法團或其任何相聯法團將股本衍生工具或任何股本衍生工具下的權利授予他而導致，或是因行使或轉讓該等權利而導致，則具報亦須指明 ——
- (a) 以下價格 ——
- (i) 就該項授予所支付或收取的價格；或
- (ii) 在行使或轉讓該等權利時所支付或收取的價格，
- (如並無支付或收取任何價格，則述明此一事實)；或
- (b) 以下代價 ——
- (i) 就該項授予所付出或收取的代價；或
- (ii) 在行使或轉讓該等權利時所付出或收取的代價，
- (如並無付出或收取任何代價，則述明此一事實)，
- 視屬何情況而定；

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- a percentage of the number of the issued shares in the listed corporation or associated corporation (as the case may be).
- (9) Where the share capital of the listed corporation or the associated corporation of the listed corporation is divided into different classes of shares—
- (a) a reference in this section to the number of shares in the listed corporation or associated corporation (as the case may be) in which the person is interested or has a short position shall be construed as a reference to the number of the shares in each of the classes taken separately; and
- (b) a reference in this section to a percentage of the number of the issued shares in the listed corporation or associated corporation (as the case may be) shall be construed as a reference to a percentage of the number of the issued shares in each of the classes taken separately.
- (10) In subsection (6), **completion** (完成), in relation to a rights issue, means the issue of shares in the listed corporation or the associated corporation of the listed corporation pursuant to the rights issue.
- (11) Where an event on the occurrence of which a director or chief executive comes under a duty of disclosure under section 341 arises from the grant by the listed corporation, or any associated corporation of the listed corporation, of debentures or rights to subscribe for debentures, or the exercise or assignment of those rights so granted, the notification shall also specify—
- (a) the—
- (i) price paid or received—
- (A) for the grant of those debentures or those rights; or



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- (13) 在不抵觸第 (12) 款的條文下，凡任何股本衍生工具的相關股份是某項披露的標的的股份，本條並不規定須在有關具報中，指明已就或可能須就（或已根據或可能須根據）該等股本衍生工具支付的價格或付出的代價的詳情。

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- (B) on the exercise or assignment of those rights, (or, in the case that no price is paid or received, that fact); or
- (ii) consideration given or received—
- (A) for the grant of those debentures or those rights; or
- (B) on the exercise or assignment of those rights, (or, in the case that no consideration is given or received, that fact), (as the case may be);
- (b) the period within which those rights may be exercised (*exercise period*); and
- (c) the expiry date of the exercise period.
- (12) Where an event on the occurrence of which a director or chief executive comes under a duty of disclosure under section 341 arises from the grant by the listed corporation, or any associated corporation of the listed corporation, of equity derivatives or rights under any equity derivatives, or the exercise or assignment of those rights so granted, the notification shall also specify the—
- (a) price paid or received—
- (i) for the grant of those equity derivatives or those rights; or
- (ii) on the exercise or assignment of those rights, (or, in the case that no price is paid or received, that fact); or
- (b) consideration given or received—
- (i) for the grant of those equity derivatives or those rights; or

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**350. 將根據第 9 分部提供的資料發表及向金融管理專員作出具報的責任**

- (1) 有關交易所公司在接獲根據本分部、為施行本分部而訂立的規例或證監會為施行本分部而訂立的規則任何條文提供的資料後，須隨即按證監會批准的方式並在該會批准的期間內，發表該等資料。
- (2) 如任何上市法團是認可財務機構或該機構的控權公司，則每當該法團接獲董事或最高行政人員根據本分部任何條文提供的資料後，該法團有責任向金融管理專員具報該資料。（由 2012 年第 28 號第 912 及 920 條修訂）
- (3) 如作出第 (2) 款所規定的具報的責任於某日產生，該具報須在該日後第一個營業日內作出。
- (4) 如有違責情況以致第 (2) 或 (3) 款不獲遵守，則有關上市法團及其每名違責的高級人員均屬犯罪，一經定罪，可各處第 1 級罰款。

- (ii) on the exercise or assignment of those rights,  
(or, in the case that no consideration is given or received, that fact),  
(as the case may be);
- (13) Subject to subsection (12), nothing in this section shall require details of the price that has been paid or may be payable, or the consideration that has been given or may be given, for or under equity derivatives (where the underlying shares of the equity derivatives are shares which are the subject of the disclosure) to be specified in the notification.

**350. Duty to publish and notify Monetary Authority of information given under Division 9**

- (1) Upon receipt of any information under any provision of this Division or any regulations made, or rules made by the Commission, for the purposes of this Division, the relevant exchange company shall forthwith publish such information in such manner and for such period as may be approved by the Commission.
- (2) Whenever a listed corporation that is, or is the holding company of, an authorized financial institution receives information from a director or chief executive under any provision of this Division, the listed corporation is under a duty to notify the Monetary Authority of that information.
- (3) If a listed corporation is under a duty to give any notification required by subsection (2), the notification shall be given before the end of the business day after the day on which that duty arises.
- (4) If default is made in complying with subsection (2) or (3), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1.

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### 351. 董事及最高行政人員不遵從具報規定的罪行

任何人 ——

- (a) 無合理辯解而沒有在第 348(1)(a) 或 (b) 或 (2)(a) 或 (b) 條 (視屬何情況而定) 指明的期間內, 按照本分部適用於根據第 7 分部產生的披露責任的條文, 履行該責任; 或
- (b) 如 ——
  - (i) 在看來是履行任何該等責任時, 向上市法團或有關交易所公司作出在要項上屬虛假或具誤導性的陳述; 且
  - (ii) 知道該陳述在要項上屬虛假或具誤導性, 或罔顧該陳述是否在要項上屬虛假或具誤導性,

即屬犯罪 ——

- (i) 一經循公訴程序定罪, 可處第 6 級罰款及監禁 2 年; 或
- (ii) 一經循簡易程序定罪, 可處第 3 級罰款及監禁 6 個月。

## 第 10 分部 —— 董事及最高行政人員權益及淡倉登記冊的備存

### 352. 董事及最高行政人員權益及淡倉登記冊

- (1) 每一上市法團均須備存董事及最高行政人員權益及淡倉登記冊。
- (2) 每當上市法團接獲任何董事或最高行政人員因履行第 7 至 9 分部任何條文委予他的披露責任而提供的資料時,

### 351. Offences for non-compliance with notification requirements by director and chief executive

A person—

- (a) who, without reasonable excuse, fails to perform, within the period specified in section 348(1)(a) or (b) or (2)(a) or (b) (as the case may be), a duty of disclosure arising under Division 7 in accordance with the provisions of this Part applicable to that duty; or
- (b) who—
  - (i) in purported performance of any such duty makes to a listed corporation or to the relevant exchange company a statement which is false or misleading in a material particular; and
  - (ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular,

commits an offence and is liable—

- (i) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or
- (ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

## Division 10—Keeping of register of directors' and chief executives' interests and short positions

### 352. Register of directors' and chief executives' interests and short positions

- (1) Every listed corporation shall keep a register of directors' and chief executives' interests and short positions.

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- 該法團有責任在登記冊內該董事或人員 (視屬何情況而定) 的姓名或名稱旁邊, 記錄接獲的資料及該記項的日期。
- (3) 每當上市法團授予其任何董事或最高行政人員認購該法團的股份或債權證的權利時, 該法團亦有責任在登記冊內該董事或人員的姓名或名稱旁邊, 記錄以下資料 ——
- (a) 授予該項權利的日期;
  - (b) 可行使該項權利的期間或時間;
  - (c) 授予該項權利的代價 (如並無代價, 則說明此事實); 及
  - (d) 涉及的股份或債權證的描述、股份數目或債權證數額, 以及所須支付的價格 (如非以金錢支付, 則說明代價)。
- (4) 每當任何董事或最高行政人員行使第 (3) 款提述的權利時, 有關上市法團有責任在登記冊內該董事或人員的姓名或名稱旁邊記錄 ——
- (a) 此事實 (並指出該項權利);
  - (b) 行使該項權利所關乎的股份數目或債權證數額; 及
  - (c) 如該等股份或債權證是 ——
    - (i) 以該董事或人員的姓名或名稱登記, 則說明此事實; 或
    - (ii) 以他人姓名或名稱登記, 則註明該人或該等人的姓名或名稱; 如以多於一人的姓名或名稱登記, 則亦須註明每人名下登記的股份數目或債權證數額。
- (5) 第 (2)、(3) 或 (4) 款所委予的責任, 須在該責任產生當日後 3 個營業日內履行。
- (6) 就任何人對任何股份、債權證或股本衍生工具的權利而言, 上市法團並不憑藉任何為本條的目的而作出的事情, 以致因知悉該等權利而受影響或須就該等權利進行查訊。

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- (2) Whenever a listed corporation receives information from a director or chief executive given in performance of a duty of disclosure imposed on him by any provision of Divisions 7 to 9, the listed corporation is under a duty to record in the register, against the director's name or the chief executive's name (as the case may be), the information received and the date of the entry.
- (3) The listed corporation is also under a duty, whenever it grants to a director or chief executive a right to subscribe for shares in or debentures of the listed corporation, to record in the register against his name—
- (a) the date on which the right is granted;
  - (b) the period during which, or the time at which, the right is exercisable;
  - (c) the consideration for the grant (or, if there is no consideration, that fact); and
  - (d) the description of the shares or debentures involved, the number of those shares or amount of those debentures, and the price to be paid for them (or the consideration, if otherwise than in money).
- (4) Whenever the right referred to in subsection (3) is exercised by a director or chief executive, the listed corporation is under a duty to record in the register against his name—
- (a) that fact (identifying the right);
  - (b) the number of shares or amount of debentures in respect of which it is exercised; and
  - (c) if—
    - (i) they were registered in his name, that fact; or
    - (ii) they were not registered in his name, the name or names of the person or persons in whose name or names they were registered, together (if they

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- (7) 登記冊必須按時間順序顯示記錄在冊內各姓名或名稱旁邊的記項。
- (8) 除非登記冊本身已採用索引形式編排，否則上市法團須備存一份索引，列出已記錄在登記冊內的姓名或名稱，並就每一姓名或名稱載有足夠指示，以令查閱者容易找到記錄在該姓名或名稱旁邊的資料。
- (9) 上市法團須在將任何姓名或名稱記錄在登記冊當日後 10 個營業日內，對索引作出所需的更改。
- (10) 除《公司(清盤及雜項條文)條例》(第 32 章)第 283 條另有規定外，如某上市法團(非開放式基金型公司者)不再是上市法團，則該法團須在自它不再是上市法團的日期翌日起計的 6 年內，繼續備存登記冊及任何索引。(由 2012 年第 28 號第 912 及 920 條修訂；由 2016 年第 16 號第 15 條修訂)
- (11) 登記冊及任何索引須 ——
- (a) 備存於該法團備存其股份權益及淡倉登記冊的地方；及
- (b) 為施行第 7 至 9 分部及為以下目的，按照第 355 條供人查閱 —— (由 2012 年第 28 號第 912 及 920 條修訂)
- (i) 令公眾人士能夠確定 ——
- (A) 現時或曾經擁有或持有以下權益或淡倉的董事及最高行政人員與及他們的配偶及未成年子女的身分及詳情：有關的上市法團或任何有聯繫法團的股份的權益或淡倉，或有關的上市法團或其任何有聯繫法團的債權證的權益；
- (B) 上述權益或淡倉的性質及詳情；及
- (C) 該人現時或曾經以甚麼身分擁有或持有上述權益或淡倉；及

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- were registered in the names of 2 persons or more) with the number of the shares or amount of the debentures registered in the name of each of them.
- (5) A duty imposed by subsection (2), (3) or (4) shall be performed within 3 business days after the day on which that duty arises.
- (6) A listed corporation is not, by virtue of anything done for the purposes of this section, affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares or debentures or equity derivatives.
- (7) The register must be so made up that the entries against the several names recorded in it appear in chronological order.
- (8) Unless the register is in such form as to constitute in itself an index, the listed corporation shall keep an index of the names recorded in the register which shall in respect of each name contain a sufficient indication to enable the information recorded against it to be readily found.
- (9) The listed corporation shall, within 10 business days after the day on which a name is recorded in the register, make any necessary alteration in the index.
- (10) If a listed corporation that is not an open-ended fund company ceases to be a listed corporation, it must, subject to section 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), continue to keep the register and any index until the end of the period of 6 years beginning with the day next following that on which it ceases to be a listed corporation. (Amended 28 of 2012 ss. 912 & 920; 16 of 2016 s. 15)
- (11) The register and any index—
- (a) shall be kept at the place where the corporation's register of interests in shares and short positions is kept; and



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- (ii) 向投資大眾提供資料，令他們能夠作出有根據的投資決定。
- (12) (由 2012 年第 28 號第 912 及 920 條廢除)
- (13) 除非登記冊時刻均備存於法團的註冊辦事處，否則法團須就以下事項，向公司註冊處處長送交採用為施行本條而指明的表格或格式作出的通知——
- (a) 備存登記冊的地點；及
- (b) 該地點的任何改變。
- (14) 第 (13) 款委予的責任須在如此備存登記冊或其備存地點有所改變 (視屬何情況而定) 當日後 10 個營業日內履行。
- (15) 登記冊須在法團的周年大會開始時提交，並在大會進行期間一直公開以供出席會議的人取覽。
- (16) 如有違責情況以致本條任何條文不獲遵守，則有關上市法團及其每名違責的高級人員均屬犯罪，一經定罪，可各處第 1 級罰款，如屬持續的罪行，則可就罪行持續期間的每一日，另各處罰款 \$200。
- (17) 為施行本條，《公司 (清盤及雜項條文) 條例》(第 32 章) 第 283 條中凡提述簿冊及文據，須解釋為包括提述法團根據本條須備存的登記冊及索引。(由 2012 年第 28 號第 912 及 920 條修訂)

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- (b) shall, for the purposes of Divisions 7 to 9 and for the purposes of—
- (i) enabling members of the public to ascertain—
- (A) the identities and the particulars of directors and chief executives (as well as their spouses and minor children) who have or had any interest or short position in shares in, or any interest in debentures of, the listed corporation or any associated corporation of the listed corporation;
- (B) the nature and the particulars of the interest or short position; and
- (C) the capacity in which a person holds or held the interest or short position; and
- (ii) providing the investing public with information to enable them to make informed investment decisions,
- be made available for inspection in accordance with section 355. (Amended 28 of 2012 ss. 912 & 920)
- (12) (Repealed 28 of 2012 ss. 912 & 920)
- (13) The corporation shall send notice in the form specified by the Commission for the purposes of this section to the Registrar of Companies of—
- (a) the place where the register is kept; and
- (b) any change in that place,
- unless the register has at all times been kept at the corporation's registered office.
- (14) The duty imposed by subsection (13) shall be performed within 10 business days after the day on which the register is so kept or the change takes place (as the case may be).

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### 353. 將董事及最高行政人員權益及淡倉登記冊內的記項除去

- (1) 如自於董事及最高行政人員權益及淡倉登記冊內任何人的姓名或名稱旁邊作出記項的日期起計，已過了超過 6 年，並且有以下其中一種情況，則法團可將該記項除去——
  - (a) 該記項記錄該人已不再擁有根據本分部或第 7 至 9 分部任何條文須具報的該法團或其任何相聯法團的股份或債權證的權益的事實；或
  - (b) 該記項已被其後根據第 352 條在同一姓名或名稱旁邊作出的另一記項取代，
 如屬 (a) 段所指的情況，該法團亦可將該人的姓名或名稱從登記冊內除去。
- (2) 如任何人依據本分部或第 7 至 9 分部任何條文委予他的責任，向某上市法團提供另一人的姓名或名稱及地址，指該另一人擁有該法團或其任何相聯法團的股份或債權

- (15) The register shall be produced at the commencement of the corporation's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.
- (16) If default is made in complying with any provision of this section, the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.
- (17) For the purposes of this section, a reference to books and papers in section 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) shall be construed as including a reference to the register and index required to be kept by a corporation under this section.  
(Amended 28 of 2012 ss. 912 & 920)

### 353. Removal of entries from register of directors' and chief executives' interests and short positions

- (1) A corporation may remove an entry against a person's name from its register of directors' and chief executives' interests and short positions if more than 6 years have expired since the date of the entry being made, and either—
  - (a) that entry recorded the fact that the person in question had ceased to have an interest notifiable under any provision of this Division or Divisions 7 to 9 in shares in or debentures of the corporation or any associated corporation of the corporation; or
  - (b) it has been superseded by a later entry made under section 352 against the same person's name,
 and, in a case under paragraph (a), the corporation may also remove that person's name from the register.

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證的權益或持有該等股份的淡倉，則該法團須在接獲該等資料的日期後 10 個營業日內，通知該另一人他已被如此指名，並在通知內包括——

- (a) 法團因接獲該等資料而在其董事及最高行政人員權益及淡倉登記冊內作出的關於該另一人的任何記項的詳情；及
  - (b) 一項陳述，告知該另一人他有權按照本條以下條文，申請將該記項除去。
- (3) 任何人如接獲上市法團根據第 (2) 款發出的通知，表示已在其董事及最高行政人員權益及淡倉登記冊內作出關於他的記項，則他可以書面向該法團申請將該記項從該登記冊內除去。如法團信納在作出該記項時所依據的資料並不正確，則須將該記項除去。
  - (4) 如根據第 (3) 款提出的申請被拒絕，申請人可向原訟法庭申請命令，指示該法團將有關記項從登記冊內除去；原訟法庭如認為適當，可作出該項命令。
  - (5) 凡依據第 (1) 或 (3) 款，或依據根據第 (4) 款作出的命令，將任何姓名、名稱或記項從法團的董事及最高行政人員權益及淡倉登記冊內除去，該法團須在除去該姓名、名稱或記項的日期後 10 個營業日內，對任何有關索引作出所需的更改。
  - (6) 如有違責情況以致第 (2) 或 (5) 款不獲遵守，則有關法團及其每名違責的高級人員均屬犯罪，一經定罪，可各處第 1 級罰款，如屬持續的罪行，則可就罪行持續期間的每一日，另各處罰款 \$200。

- (2) If a person in pursuance of a duty imposed on him by any provision of this Division or Divisions 7 to 9 gives to a listed corporation the name and address of another person as being interested in shares in or debentures of, or having a short position in shares in, the corporation or any associated corporation of the corporation, the corporation shall, within 10 business days after the day on which it was given that information, notify the other person that he has been so named and shall include in that notification—
  - (a) particulars of any entry relating to him made, in consequence of its being given that information, by the corporation in its register of directors' and chief executives' interests and short positions; and
  - (b) a statement informing him of his right to apply to have the entry removed in accordance with the following provisions of this section.
- (3) A person who has been notified by a listed corporation under subsection (2) that an entry relating to him has been made in the corporation's register of directors' and chief executives' interests and short positions may apply in writing to the corporation for the removal of that entry from the register; and the corporation shall remove the entry if satisfied that the information in pursuance of which the entry was made was incorrect.
- (4) If an application under subsection (3) is refused, the applicant may apply to the Court of First Instance for an order directing the corporation to remove the entry in question from the register; and the Court of First Instance may, if it considers appropriate, make such an order.
- (5) Where a name or an entry is removed from a corporation's register of directors' and chief executives' interests and short positions in pursuance of subsection (1) or (3) or an order under subsection (4), the corporation shall within 10 business

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**354. 不得在其他情況下除去董事及最高行政人員權益及淡倉登記冊內的記項**

- (1) 除按照第 353 條的規定外，法團的董事及最高行政人員權益及淡倉登記冊內的記項不得除去。
- (2) 如有記項在違反第 (1) 款的情況下從法團的董事及最高行政人員權益及淡倉登記冊內除去，該法團須在合理地切實可行的範圍內盡快將該記項重新記入該登記冊內。
- (3) 如有違責情況以致第 (1) 或 (2) 款不獲遵守，則有關法團及其每名違責的高級人員均屬犯罪，一經定罪，可各處第 1 級罰款，如屬持續的罪行，則可就罪行持續期間的每一日，另各處罰款 \$200。

**355. 查閱董事及最高行政人員權益及淡倉登記冊**

- (1) 任何董事及最高行政人員權益及淡倉登記冊，須於營業時間內（須受有關法團在成員大會上施加的合理限制所規限，但每日可供查閱的時間不得少於 2 小時）供該法團任何成員免費查閱，該登記冊亦須供任何其他人查閱，但每次查閱須支付 \$10 或該法團釐定的較低款額。

days after the date of that removal make any necessary alteration in any index.

- (6) If default is made in complying with subsection (2) or (5), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

**354. Otherwise, entries not to be removed from register of directors' and chief executives' interests and short positions**

- (1) Entries in a corporation's register of directors' and chief executives' interests and short positions shall not be removed except in accordance with section 353.
- (2) If an entry is removed from a corporation's register of directors' and chief executives' interests and short positions in contravention of subsection (1), the corporation shall restore that entry to the register as soon as reasonably practicable.
- (3) If default is made in complying with subsection (1) or (2), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

**355. Inspection of register of directors' and chief executives' interests and short positions**

- (1) Any register of directors' and chief executives' interests and short positions shall, during business hours (subject to such reasonable restrictions as the corporation concerned may in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection), be open to inspection by any member of the corporation without charge or by any

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- (2) 法團的任何成員或任何其他人均可在支付費用後，要求取得該登記冊或其任何部分的副本，收費按所需複製副本的頁數計算，每頁收取 \$2 或法團釐定的較低款額，而法團須在接獲該要求當日後 10 個營業日內，安排將該副本送交予他。
- (3) 如任何人要求查閱根據本條須供查閱的登記冊而被拒絕，或根據本條要求取得的副本沒有在第 (2) 款指明的期間內送交，則有關法團及其每名違責的高級人員均屬犯罪，一經定罪，可各處第 1 級罰款，如屬持續的罪行，則可就罪行持續期間的每一日，另各處罰款 \$200。
- (4) 如任何人要求查閱根據本條須供查閱的登記冊而被拒絕，原訟法庭可藉命令飭令有關法團立即將該登記冊交出，以供查閱。
- (5) 如根據本條要求取得的副本沒有在第 (2) 款指明的期間內送交，原訟法庭可藉命令指示將該副本送交提出要求的人。
- (6) 證監會可藉規則修訂第 (1) 或 (2) 款指明的款額。

## 第 11 分部 —— 調查上市法團的擁有權的權力

### 356. 調查上市法團的擁有權的權力

- (1) 財政司司長如覺得有合理理由進行調查，以斷定誰人真正在某上市法團的成敗（不論是真實的或是表面的）當中

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- other person on payment of \$10, or such less sum as the corporation may determine, for each inspection.
- (2) Any member of the corporation or any other person may require a copy of any such register, or any part of it, on payment of \$2, or such less sum as the corporation may determine, for each page required to be copied; and the corporation shall cause any copy so required by a member or person to be sent to him within 10 business days after the day on which the requirement is received by the corporation.
- (3) If an inspection of the register required under this section is refused or a copy so required is not sent within the period specified in subsection (2), the corporation and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.
- (4) In the case of a refusal of an inspection of the register required under this section, the Court of First Instance may by order compel an immediate inspection of it.
- (5) In the case of a failure to send within the period specified in subsection (2) a copy required under this section, the Court of First Instance may by order direct that the copy required shall be sent to the person requiring it.
- (6) The Commission may by rules amend the sum specified in subsection (1) or (2).

## Division 11—Power to investigate listed corporation's ownership

### 356. Power to investigate ownership of listed corporation

- (1) If it appears to the Financial Secretary that there are reasonable grounds to conduct an investigation for the



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有或曾有經濟上的利害關係，或誰人真正能夠或曾經真正能夠控制或在關鍵程度上影響該法團的政策，則財政司司長可委任一名或多於一名審查員，為上述目的而就以下事宜進行調查和提交報告——

- (a) 該法團的股份或債權證的擁有權；
  - (b) 擁有或曾擁有該法團的股份或債權證的權益的人，或持有或曾持有該法團的股份的淡倉的人；
  - (c) (如該法團的股份是任何股本衍生工具的相關股份) 擁有或曾擁有該等工具的權益的人；及
  - (d) 該法團的其他方面事宜。
- (2) 財政司司長在根據本條委任審查員時，可劃定調查的範圍(不論是就調查事項、調查所針對的期間或其他方面的範圍)，並尤其可將調查局限於與某些特定股份、債權證或股本衍生工具相關的事宜。
- (3) 如某上市法團的成員向財政司司長提出申請，要求根據本條就該法團某些特定股份或債權證進行調查，或要求根據本條就以該法團的股份為相關股份的某些特定股本衍生工具進行調查，而提出申請的成員人數或他們持有的股份數目，不少於根據《公司條例》(第 622 章)第 840(2) 條申請委任審查員所需者，則財政司司長——(由 2012 年第 28 號第 912 及 920 條修訂)
- (a) 可在他信納有合理理由進行調查的情況下，委任審查員進行調查；及
  - (b) 在委任審查員時，不得將該申請所尋求調查的任何事宜摒除於調查範圍外，但如財政司司長信納調查該事宜是不合理的，則屬例外。
- (4) 除委任審查員的條款另有規定外，如有任何情況顯示有一項安排或共識的存在，而該項安排或共識雖無法律約束力，但實際上為人遵循、曾為人遵循或相當可能為人遵循，並且與調查的目的有關，則審查員的權力可擴展至調查該等情況。

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purposes of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of a listed corporation or able to control or materially influence its policy, he may appoint one or more inspectors to investigate and report for such purposes—

- (a) on the ownership of shares in or debentures of the listed corporation;
  - (b) on persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the listed corporation;
  - (c) where the shares in the listed corporation are the underlying shares of any equity derivatives, on persons who have or had an interest in those equity derivatives; and
  - (d) otherwise with respect to the listed corporation.
- (2) The Financial Secretary may, on appointing an inspector under this section, define the scope of the investigation (whether with respect to the matter or the period to which it is to extend or otherwise) and, in particular, may limit the investigation to matters connected with particular shares or debentures or equity derivatives.
- (3) If application for an investigation under this section with respect to particular shares in or debentures of a listed corporation, or particular equity derivatives the underlying shares of which are shares in a listed corporation, is made to the Financial Secretary by members of the listed corporation, and the number of applicants or the number of shares held by them is not less than the number required for an application for the appointment of inspectors under section 840(2) of the Companies Ordinance (Cap. 622)— (Amended 28 of 2012 ss. 912 & 920)

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- (5) 財政司司長在應根據第 (3) 款提出的申請而委任審查員之前 ——
- (a) 須向申請人提供一份可能就調查而招致的費用及開支的預算；及
  - (b) 可要求申請人提供一項支付調查費用及開支的保證金，款額由財政司司長指明，但該款額不得超逾預算的費用及開支。
- (6) 就任何受第 2 至 4 分部的規定所規限的人而言，第 316 至 318 及 322 條 ( 但略去第 322 條中對第 323 條的提述 ) ——
- (a) 適用於解釋 ——
    - (i) 本分部及第 12 分部中分別對擁有股份權益的人及股份權益的提述；及
    - (ii) 本分部及第 12 分部中分別對持有股份淡倉的人及股份淡倉的提述，
 一如該等條文適用於第 2 至 4 分部的解釋；及
  - (b) 為施行本分部及第 12 分部而適用，猶如在該等條文中，凡提述股份權益，包括提述以該等股份為相關股份的股本衍生工具的權益。
- (7) 就任何受第 7 至 9 分部的規定所規限的人而言，第 344 及 345 條 ( 但略去第 345 條中對第 346 條的提述 ) ——
- (a) 適用於解釋 ——
    - (i) 本分部及第 12 分部中分別對擁有股份或債權證的權益的人及股份或債權證的權益的提述；及
    - (ii) 本分部及第 12 分部中分別對持有股份淡倉的人及股份淡倉的提述，
 一如該等條文適用於第 7 至 9 分部的解釋；及
  - (b) 為施行本分部及第 12 分部而適用，猶如在該等條文中，凡提述股份權益，包括提述以該等股份為相關股份的股本衍生工具的權益。

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- (a) the Financial Secretary may appoint an inspector to conduct the investigation if he is satisfied that there are reasonable grounds for conducting the investigation; and
  - (b) the Financial Secretary shall not, on appointing an inspector, exclude from the scope of the investigation any matter which the application seeks to have included, except in so far as the Financial Secretary is satisfied that it is unreasonable for that matter to be investigated.
- (4) Subject to the terms of his appointment, an inspector's powers extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the investigation.
- (5) Before appointing an inspector upon application under subsection (3), the Financial Secretary—
- (a) shall give the applicants an estimate of the amount of the costs and expenses that may be incurred in connection with the investigation; and
  - (b) may require the applicants to give security in such amount as he may specify, which shall not be greater than the amount of the estimated costs and expenses, for payment of the costs and expenses of the investigation.
- (6) Sections 316 to 318 and 322 (with the omission of the reference in section 322 to section 323) apply, in relation to any person who is subject to the requirements of Divisions 2 to 4—
- (a) for the purposes of construing—
    - (i) references in this Division and Division 12 to a person interested in shares and to an interest in shares respectively; and

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- (ii) references in this Division and Division 12 to a person having a short position in shares and to a short position in shares respectively, as they apply for the purposes of Divisions 2 to 4; and
  - (b) for the purposes of this Division and Division 12 as if, in those sections, a reference to an interest in shares includes, where those shares are the underlying shares of any equity derivatives, an interest in those equity derivatives.
- (7) Sections 344 and 345 (with the omission of the reference in section 345 to section 346) apply, in relation to any person who is subject to the requirements of Divisions 7 to 9—
- (a) for the purposes of construing—
    - (i) references in this Division and Division 12 to a person interested in shares or debentures and to an interest in shares or debentures respectively; and
    - (ii) references in this Division and Division 12 to a person having a short position in shares and to a short position in shares respectively, as they apply for the purposes of Divisions 7 to 9; and
  - (b) for the purposes of this Division and Division 12 as if, in those sections, a reference to an interest in shares includes, where those shares are the underlying shares of any equity derivatives, an interest in those equity derivatives.

### 357. 就違反第 341 至 349 條而進行的調查

- (1) 財政司司長如覺得有情況顯示，有人可能已就上市法團的股份或債權證或以該等股份為相關股份的股本衍生工具而違反第 341 至 349 條的規定，可委任一名或多於一

### 357. Investigation of contraventions of sections 341 to 349

- (1) If it appears to the Financial Secretary that there are circumstances suggesting that contraventions of any provision of sections 341 to 349 may have occurred in relation to the shares in or debentures of a listed corporation or, where the

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名審查員進行所需的調查，以確定該等違反曾否發生，並向他報告調查結果。

- (2) 財政司司長在根據本條委任審查員時，可局限調查所針對的期間，或將調查局限於某特定類別的股份或債權證，亦可同時作出上述兩項限制。

### 358. 審查員在調查期間的權力

- (1) 如任何審查員認為為就有關上市法團（**前者**）進行調查的目的，有需要調查——
- (a) 屬或曾屬前者的相聯法團的另一法團（**後者**）的股份或債權證的擁有權；
  - (b) 擁有或曾擁有後者的股份或債權證的權益的人，或持有或曾持有後者的股份的淡倉的人；及
  - (c) 擁有或曾擁有以後者的股份為相關股份的股本衍生工具的權益的人，

則該審查員有權進行該項調查，而在他認為就該等股份、債權證或工具進行調查的結果，是與調查以下項目有關的範圍內，他須就該等股份或債權證的擁有權、擁有或曾擁有該等股份或債權證或工具的人或持有或曾持有該等股份的淡倉的人作出報告——

- (i) 前者的股份或債權證的擁有權；
- (ii) 擁有或曾擁有前者的股份或債權證的權益的人，或持有或曾持有前者的股份的淡倉的人；或
- (iii) 擁有或曾擁有以前者的股份為相關股份的股本衍生工具的權益的人。

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shares in a listed corporation are the underlying shares of any equity derivatives, to those equity derivatives, he may appoint one or more inspectors to carry out such investigations as are requisite to establish whether or not such contraventions have occurred and to report the result of the investigations to him.

- (2) The Financial Secretary may, on appointing an inspector under this section, limit the period to which the investigation is to extend or confine it to shares or debentures or equity derivatives of a particular class, or both.

### 358. Inspector's powers during investigation

- (1) If an inspector considers it necessary for the purposes of his investigation to investigate also—
- (a) the ownership of shares in or debentures of any other corporation which is or has been an associated corporation of the listed corporation concerned;
  - (b) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the other corporation; and
  - (c) where the shares in the other corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives,

he shall have power to do so, and shall report on the ownership of those shares or debentures and persons who have or had an interest in those shares or debentures or equity derivatives or a short position in those shares, so far as he considers that the results of his investigation with respect to those shares or debentures or equity derivatives are relevant to the investigation of—

- (i) the ownership of shares in or debentures of the listed corporation;

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- (2) 任何審查員可在調查過程中任何時候，無須提交中期報告而告知財政司司長他因調查而得悉的任何顯示有人犯罪的事宜。

### 359. 向審查員交出紀錄及證據

- (1) 當有審查員根據第 356 或 357 條獲委任 ——
- (a) 有關上市法團的所有高級人員及代理人；及
  - (b) 在 ——
    - (i) 另一法團的股份或債權證的權益；
    - (ii) 擁有或曾擁有另一法團的股份或債權證的權益的人，或持有或曾持有另一法團的股份的淡倉的人；或
    - (iii) 擁有或曾擁有以另一法團的股份為相關股份的股本衍生工具的權益的人，
 根據第 358 條受調查的情況下，該另一法團的所有高級人員及代理人，
- 均有責任 ——
- (i) 向審查員交出該法團或該另一法團（視屬何情況而定）的所有由他們管有的紀錄，或所有與該法團或該另一法團（視屬何情況而定）有關的並且是由他們管有的紀錄；
  - (ii) 在被要求時面見審查員；及

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- (ii) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the listed corporation; or
  - (iii) where the shares in the listed corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives.
- (2) An inspector may at any time in the course of his investigation, without the necessity of making an interim report, inform the Financial Secretary of matters coming to his knowledge as a result of the investigation tending to show that an offence has been committed.

### 359. Production of records and evidence to inspectors

- (1) When an inspector has been appointed under section 356 or 357, it is the duty of—
- (a) all officers and agents of the listed corporation concerned; and
  - (b) all officers and agents of any other corporation, if—
    - (i) the ownership of shares in or debentures of the other corporation;
    - (ii) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the other corporation; or
    - (iii) where the shares in the other corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives,
 are investigated under section 358,
- to—



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- (iii) 在其他方面就該調查向審查員提供所有他們按理能夠提供的協助。
- (2) 如審查員認為有該法團或該另一法團的高級人員或代理人以外的人管有或可能管有關於該法團或該另一法團的股份或債權證的資料，或關於以該法團或該另一法團的股份為相關股份的股本衍生工具的資料，該審查員可要求該人 ——
- (a) 向他交出任何由該人管有的該法團或該另一法團（視屬何情況而定）的紀錄或與該法團或該另一法團（視屬何情況而定）有關的紀錄；
- (b) 面見他；及
- (c) 在其他方面就該調查向他提供所有該人按理能夠提供的協助，
- 而該人有責任遵從上述要求。
- (3) 審查員可 ——
- (a) 在該法團或該另一法團的高級人員及代理人以及第(2)款提述的人作出宣誓後，就該法團或該另一法團的股份或債權證，或就以該法團或該另一法團的股份為相關股份的股本衍生工具，對他們進行訊問；及
- (b) 據此監誓。
- (4) 任何人不得僅以審查員根據本條向他提出的問題的答案可能會導致他人入罪為理由，而獲豁免回答問題，但如該答案可能會導致該人入罪，而該人在回答該問題前又聲稱如此，則該問題及答案不得在法庭進行的刑事法律程序中接納為針對該人的證據，但如該人就該答案而被控犯《刑事罪行條例》(第 200 章)第 V 部所訂罪行或被控犯作假證供罪，就該等罪行而進行的刑事法律程序則屬例外。
- (5) 凡審查員要求某人回答根據本條向該人提出的問題，審查員須確保該人事先獲告知或提醒（視屬何情況而定）第

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- (i) produce to the inspector all records of or relating to the listed corporation or the other corporation (as the case may be) which are in their possession;
- (ii) attend before the inspector when required to do so; and
- (iii) otherwise give the inspector all assistance in connection with the investigation which they are reasonably able to give.
- (2) If an inspector considers that a person other than an officer or agent of the listed corporation or the other corporation is or may be in possession of information concerning the shares in or debentures of the listed corporation or the other corporation, or the equity derivatives the underlying shares of which are shares in the listed corporation or the other corporation, he may require that person to—
- (a) produce to him any records of or relating to the listed corporation or the other corporation (as the case may be) which are in that person's possession;
- (b) attend before him; and
- (c) otherwise give him all assistance in connection with the investigation which that person is reasonably able to give,
- and it shall be the duty of that person to comply with the requirement.
- (3) An inspector may—
- (a) examine on oath the officers and agents of the listed corporation or the other corporation, and any such person referred to in subsection (2), with respect to the shares in or debentures of the listed corporation or the other corporation, or the equity derivatives the underlying shares of which are shares in the listed corporation or the other corporation; and

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- (4) 款對該項要求或有關問題及答案作為證據的可接納性所施加的限制。
- (6) 在本條及第 360 及 361 條中 ——
- (a) 凡提述高級人員或代理人，即包括提述過去及現時的高級人員或代理人（視屬何情況而定）；及
- (b) **代理人** (agents) 就任何法團而言，包括該法團的銀行及律師，以及任何受該法團僱用或以其他方式聘用的核數師，不論該等人是否該法團的高級人員。

### 360. 審查員轉授權力

- (1) 任何審查員可藉任何書面形式的文書，將第 359 條賦予的下述權力轉授予任何人：要求出示任何紀錄的權力及向高級人員及代理人提出問題的權力（但向經宣誓的高級人員及代理人提出問題的權力則除外）；審查員亦可只轉授上述兩項權力中的其中一項。

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- (b) administer an oath accordingly.
- (4) A person is not excused from answering a question put to him under this section by an inspector only on the ground that the answer might tend to incriminate the person, but if the answer might tend to incriminate him and he so claims before giving the answer, the question and answer shall not be admissible in evidence against him in criminal proceedings in a court of law other than those in which he is charged with an offence under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the answer.
- (5) Where an inspector requires a person to answer a question put to him under this section, the inspector shall ensure that the person has first been informed or reminded (as the case may be) of the limitations imposed by subsection (4) on the admissibility in evidence of the requirement and of the question and answer.
- (6) In this section and sections 360 and 361—
- (a) a reference to officers or to agents includes a reference to past, as well as present, officers or agents (as the case may be); and
- (b) **agents** (代理人), in relation to a corporation, includes its bankers and solicitors and persons employed or otherwise engaged by it as auditors, whether those persons are or are not officers of the corporation.

### 360. Delegation of powers by inspectors

- (1) An inspector may, by instrument in writing, delegate to any person the powers conferred by section 359 to require the production of any records and to put questions to officers and agents otherwise than on oath, or either of those powers.

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- (2) 凡有多於一名審查員就同一宗調查被委任，本條所賦予的權力可由其中任何一名審查員行使。

**361. 妨礙審查員**

- (1) 當有審查員根據第 356 或 357 條被委任 ——
- (a) 本條即適用於有關上市法團的任何高級人員及代理人；
  - (b) 在 ——
    - (i) 另一法團的股份或債權證的權益；
    - (ii) 擁有或曾擁有另一法團的股份或債權證的權益的人，或持有或曾持有另一法團的股份的淡倉的人；或
    - (iii) 擁有或曾擁有以另一法團的股份為相關股份的股本衍生工具的權益的人，
 根據第 358 條受調查的情況下，本條即適用於該另一法團的任何高級人員及代理人；及
  - (c) 本條即適用於第 359(2) 條提述的任何人。
- (2) 如上述的高級人員、代理人或人（視屬何情況而定）拒絕遵從審查員以下的要求 ——
- (a) 向審查員出示根據第 359 條他有責任交出的任何紀錄；
  - (b) 面見審查員；或
  - (c) 回答審查員就有關法團或有關的另一法團的股份或債權證，或就以有關法團或有關的另一法團的股份為相關股份的股本衍生工具而向他提出的任何問題，
- 則審查員可就上述拒絕一事以原訴傳票或原訴動議方式向原訟法庭提出申請。
- (3) 原訟法庭可繼而對該案進行查訊，而 ——

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- (2) Where 2 or more inspectors are appointed in respect of the same investigation, the power conferred by this section may be exercised by any of them.

**361. Obstruction of inspectors**

- (1) When an inspector is appointed under section 356 or 357, this section applies in relation to—
- (a) any officer or agent of the listed corporation concerned;
  - (b) any officer or agent of any other corporation, if—
    - (i) the ownership of shares in or debentures of the other corporation;
    - (ii) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the other corporation; or
    - (iii) where the shares in the other corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives,
 are investigated under section 358; and
  - (c) any such person referred to in section 359(2).
- (2) If that officer, agent or person (as the case may be) refuses to comply with an inspector's requirement to—
- (a) produce to the inspector any records which it is his duty under section 359 to produce;
  - (b) attend before the inspector; or
  - (c) answer any question put to him by an inspector with respect to the shares in or debentures of the listed corporation or the other corporation, or the equity derivatives the underlying shares of which are the shares in the listed corporation or the other corporation,

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- (a) 如法庭信納有關高級人員、代理人或人(視屬何情況而定)不遵從第(2)款所指的要求是無合理辯解的，可命令該高級人員、代理人或人(視屬何情況而定)在法庭指明的限期內遵從該要求；及
- (b) 如法庭信納該項拒絕是無合理辯解的，可處罰該高級人員、代理人或人(視屬何情況而定)以及任何明知而牽涉在該項拒絕中的另一人，方式猶如該高級人員、代理人或人(視屬何情況而定)及該另一人(如適用的話)犯藐視法庭罪一樣。
- (4) 在本條中，凡提述審查員，即包括提述根據第 360 條獲審查員轉授權力的任何人。

### 362. 審查員的報告

- (1) 審查員可以提交中期報告，而在財政司司長有所指示下，審查員須向他提交中期報告；審查員並須於調查完結後，向財政司司長提交最後報告。
- (2) 任何上述報告須在財政司司長指示的時間內以他指示的方式提交。
- (3) 財政司司長如認為適當，可——
  - (a) 將審查員提交的報告遞送至該報告所針對的上市法團或另一法團(視屬何情況而定)的註冊辦事處或它在香港的主要營業地點；

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- the inspector may, by originating summons or originating motion, make an application to the Court of First Instance in respect of the refusal.
- (3) The Court of First Instance may then inquire into the case and—
  - (a) if the Court is satisfied that there is no reasonable excuse for the officer, agent or person (as the case may be) not to comply with the requirement under subsection (2), order the officer, agent or person (as the case may be) to comply with the requirement within the period specified by the Court; and
  - (b) if the Court is satisfied that the refusal was without reasonable excuse, punish the officer, agent or person (as the case may be), and any other person knowingly involved in the refusal, in the same manner as if he and, where applicable, that other person had been guilty of contempt of court.
- (4) In this section, a reference to an inspector includes a reference to any person to whom the powers of an inspector are delegated under section 360.

### 362. Inspector's reports

- (1) An inspector may, and if so directed by the Financial Secretary shall, make interim reports to the Financial Secretary, and on the conclusion of an investigation shall make a final report to the Financial Secretary.
- (2) Any such report shall be made within such time and in such manner as the Financial Secretary may direct.
- (3) The Financial Secretary may, if he considers appropriate—
  - (a) forward a copy of any report made by an inspector to the registered office or principal place of business in Hong Kong of the listed corporation or the other

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- (b) 應要求並在規例為施行本條而訂明的費用獲繳付後，向以下人士提供該等報告的副本 ——
- (i) 該報告所針對的上市法團或另一法團（視屬何情況而定）的任何成員；
  - (ii) （在該報告提述任何人的行為的情況下）被提述的人；
  - (iii) 該法團或另一法團（視屬何情況而定）的核數師；
  - (iv) 有關調查的申請人；或
  - (v) 財政司司長覺得財務權益受到該報告所處理的事情影響的任何其他人，不論該人是否為該法團或另一法團（視屬何情況而定）的債權人，或具其他身分；及
- (c) 安排發表該等報告。

**363. 調查法團事務的開支**

- (1) 審查員進行調查所需及附帶的開支，須先行由政府一般收入中撥款支付；但 ——
- (a) 在因該項調查而提起的檢控中被法庭定罪的任何人，須在法庭命令的範圍內（如有的話）；
  - (b) 該項調查所處理的上市法團或另一法團（視屬何情況而定），須在財政司司長指示的範圍內（如有的話）；
  - (c) 該項調查所處理的上市法團或另一法團（視屬何情況而定）的董事和最高行政人員，須在財政司司長指示的範圍內（如有的話）；

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- corporation (as the case may be) which is the subject of the report;
- (b) on request and on payment of such fee as is prescribed by regulations for the purposes of this section, furnish a copy of any such report to—
- (i) any member of the listed corporation or the other corporation (as the case may be) which is the subject of the report;
  - (ii) any person whose conduct is referred to in the report;
  - (iii) the auditors of the listed corporation or the other corporation (as the case may be);
  - (iv) the applicants for the investigation; or
  - (v) any other person whose financial interests appear to the Financial Secretary to be affected by the matters dealt with in the report, whether as a creditor of the listed corporation or the other corporation (as the case may be) or otherwise; and
- (c) cause any such report to be published.

**363. Expenses of investigation of affairs of corporation**

- (1) The expenses of and incidental to an investigation by an inspector shall be defrayed in the first instance out of the general revenue, but the following persons shall, to the following extent, be liable to repay such expenses to the Government—
- (a) any person who is convicted by a court on a prosecution instituted as a result of the investigation shall be liable to such extent (if any) as may be ordered by such court;
  - (b) the listed corporation or the other corporation (as the case may be) dealt with by the investigation shall be



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- (d) 根據第 2 至 5 分部任何條文而須就所擁有的該項調查所處理的上市法團或另一法團(視屬何情況而定)的有投票權股份權益作出具報的任何人,或須根據該等條文而就所持有該等有投票權股份的淡倉作出具報的任何人,須在財政司司長指示的範圍內(如有的話);及(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂;由 2015 年第 19 號第 2 條修訂)
- (e) 凡審查員是根據第 356(3) 條委任的,有關調查的申請人須在財政司司長指示的範圍內(如有的話)但在根據第 356(5) 條作出的預算的限制下,負上向政府償還該等開支的法律責任。
- (2) 根據第 356(3) 條委任的審查員如認為適當,可在報告中因應其調查而包括他認為適宜根據第 (1)(b)、(c)、(d) 或 (e) 款給予的指示(如有的話)的建議;如財政司司長指示他如此行事,則他須在報告中包括上述建議。
- (3) 接獲根據第 (1)(b)、(c)、(d) 或 (e) 款給予的指示的人,可針對該項指示向原訟法庭提出上訴。
- (4) 不論《高等法院規則》(第 4 章,附屬法例 A) 第 55 號命令第 3(3) 條規則有任何規定,如有任何針對根據第 (1)(b)、(c)、(d) 或 (e) 款給予的指示的上訴根據第 (3) 款提出,則該項指示在上訴被撤回或放棄或獲裁定之前,不得生效。
- (5) 任何根據第 (1) 款 (a)、(b)、(c)、(d) 或 (e) 段負上法律責任的人,有權向根據同一段而須負上法律責任的任何其他人追討分擔款項,數額則按照在該段下該等人各自須負上的法律責任而定;如有上訴提出,則數額按照原訟法庭裁定該等人各自須負的法律責任而定。

(編輯修訂——2012 年第 2 號編輯修訂紀錄)

- liable to such extent (if any) as the Financial Secretary may direct;
- (c) the director and the chief executive of the listed corporation or the other corporation (as the case may be) dealt with by the investigation shall be liable to such extent (if any) as the Financial Secretary may direct;
- (d) any person who has an interest or short position notifiable under any provision of Divisions 2 to 5 in voting shares in the listed corporation or the other corporation (as the case may be) dealt with by the investigation shall be liable to such extent (if any) as the Financial Secretary may direct; and (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013*)
- (e) the applicants for the investigation, where the inspector was appointed under section 356(3), shall be liable to such extent (if any), subject to the limit of the estimate given under section 356(5), as the Financial Secretary may direct.
- (2) An inspector appointed under section 356(3) may, if he considers appropriate, and shall if the Financial Secretary so directs, include in a report made by him a recommendation as to the directions (if any) he considers appropriate, in the light of his investigation, to be given under subsection (1)(b), (c), (d) or (e).
- (3) A person to whom a direction is given under subsection (1)(b), (c), (d) or (e) may appeal against the direction to the Court of First Instance.
- (4) Notwithstanding rule 3(3) of Order 55 of the Rules of the High Court (Cap. 4 sub. leg. A), a direction under subsection (1)(b), (c), (d) or (e) shall not take effect, if an appeal against the direction is made under subsection (3), until the appeal is withdrawn, abandoned or determined.

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### 364. 取得擁有股份等權益的人的資料的權力

- (1) 如財政司司長覺得 ——
  - (a) 有合理理由調查 ——
    - (i) 某上市法團的股份或債權證的權益；
    - (ii) 擁有或曾擁有某上市法團的股份或債權證的權益的人，或持有或曾持有某上市法團的股份的淡倉的人；及
    - (iii) 擁有或曾擁有以某上市法團的股份為相關股份的股本衍生工具的權益的人；及
  - (b) 沒有需要為此委任審查員，  
則他可要求他有合理理由相信擁有或能夠取得關於以下事項的資料的人，向他提供該等資料 ——
    - (i) 該等股份、債權證或工具現時及過去的權益；
    - (ii) 擁有該等權益的人的姓名或名稱及地址，以及代表或曾代表擁有該等權益的人就該等股份、債權證或工具而行使的任何人的姓名或名稱及地址；
    - (iii) 該等股份的現時淡倉及過去的淡倉；或
    - (iv) 持有該等股份的淡倉的人的姓名或名稱及地址，以及代表或曾代表持有該等股份的淡倉的人就該等股份而行使的任何人的姓名或名稱及地址。
- (2) 就第 (1) 款而言，任何符合以下說明的人須當作擁有股份或債權證的權益 ——

- (5) Any person liable under paragraph (a), (b), (c), (d) or (e) of subsection (1) shall be entitled to contribution from any other person liable under the same paragraph, according to the amount of their respective liabilities thereunder or, if an appeal is made, according to the amount of their respective liabilities as determined by the Court of First Instance.

*(Amended E.R. 2 of 2012)*

### 364. Power to obtain information as to those interested in shares, etc.

- (1) If it appears to the Financial Secretary that—
  - (a) there are reasonable grounds to investigate—
    - (i) the ownership of shares in or debentures of a listed corporation;
    - (ii) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, a listed corporation; and
    - (iii) where the shares in the listed corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives; and
  - (b) it is unnecessary to appoint an inspector for the purpose, the Financial Secretary may require any person whom he has reasonable cause to believe to have, or to be able to obtain, any information as to—
    - (i) the present and past interests in those shares or debentures or equity derivatives;
    - (ii) the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to those shares or debentures or equity derivatives;

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- (a) 該人有權利 ——
  - (i) 取得或處置該等股份或債權證，或取得或處置該等股份或債權證的任何權益；或
  - (ii) 就該等股份或債權證投票；
- (b) 由其他人擁有的 (a) 段提述的權利須有該人的同意才可以行使；或
- (c) 該人可要求擁有 (a) 段提述的權利的其他人按照該人的指令或指示行使該權利，或該其他人慣於或有義務按照該人的指令或指示而行使該權利。
- (3) 就第 (1) 款而言，任何符合以下說明的人須當作擁有股本衍生工具的權益 ——
  - (a) 該人有權利取得或處置該等工具或該等工具的任何權益；
  - (b) 由其他擁有的 (a) 段提述的權利須有該人的同意才可以行使；或
  - (c) 該人可要求擁有 (a) 段提述的權利的其他人按照該人的指令或指示行使該權利，或該其他人慣於或有義務按照該人的指令或指示而行使該權利。
- (4) 任何人 ——
  - (a) 無合理辯解而沒有提供根據本條他須提供的資料；或
  - (b) 如 ——
    - (i) 在提供該等資料時，作出在要項上屬虛假或具誤導性的陳述；且
    - (ii) 知道該陳述在要項上屬虛假或具誤導性，或罔顧該陳述是否在要項上屬虛假或具誤導性，
 即屬犯罪 ——
  - (i) 一經循公訴程序定罪，可處第 6 級罰款及監禁 2 年；或

- (iii) the present and past short positions in those shares; or
- (iv) the names and addresses of the persons having those short positions and of any persons who act or have acted on their behalf in relation to those short positions, to give any such information to the Financial Secretary.
- (2) For the purposes of subsection (1), a person shall be deemed to have an interest in shares or debentures if—
  - (a) he has any right—
    - (i) to acquire or dispose of the shares or debentures or any interest in them; or
    - (ii) to vote in respect of them;
  - (b) his consent is necessary for the exercise of any right referred to in paragraph (a) of any other person; or
  - (c) any other person having any right referred to in paragraph (a) can be required, or is accustomed or obliged, to exercise the other person's right in accordance with his directions or instructions.
- (3) For the purposes of subsection (1), a person shall be deemed to have an interest in equity derivatives if—
  - (a) he has any right to acquire or dispose of the equity derivatives or any interest in them;
  - (b) his consent is necessary for the exercise of the right referred to in paragraph (a) of any other person; or
  - (c) any other person having the right referred to in paragraph (a) can be required, or is accustomed or obliged, to exercise the other person's right in accordance with his directions or instructions.
- (4) A person—
  - (a) who, without reasonable excuse, fails to give information required of him under this section; or

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(ii) 一經循簡易程序定罪，可處第3級罰款及監禁6個月。

### 365. 受保密權涵蓋的資料

第 356 至 364 條並不規定擔任任何法團的銀行或財務顧問的認可財務機構，須向財政司司長或他所委任的審查員披露該法團以外的該機構顧客的事務的資料。

## 第 12 分部 —— 向股份等施加限制的命令

### 366. 原訟法庭就沒有提供上市法團所要求資料而對有投票權股份等施加限制的權力

(由 2015 年第 19 號第 2 條修訂)

- (1) 凡 ——
- (a) 任何上市法團根據第 329 條向現時或過去擁有該法團的有投票權股份權益的人發出通知，而該等有投票權股份是在香港登記冊登記的；及
  - (b) 該人沒有在該通知指明的時間內向該法團提供該通知所要求的資料，

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- (b) who—
- (i) in giving such information makes any statement which is false or misleading in a material particular; and
  - (ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular,
- commits an offence and is liable—
- (i) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or
  - (ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

### 365. Privileged information

Nothing in sections 356 to 364 shall require disclosure to the Financial Secretary, or to an inspector appointed by him, by an authorized financial institution acting as a corporation's banker or financial adviser of information as to the affairs of any of its customers other than the corporation concerned.

## Division 12—Orders imposing restrictions on shares, etc.

### 366. Power of Court of First Instance to impose restrictions on voting shares, etc. in case of failure to provide information required by listed corporation

(Amended 19 of 2015 s. 2)

- (1) Where—
- (a) a notification is given by a listed corporation under section 329 to a person who is or was interested in voting shares in the corporation that are registered on the Hong Kong register; and

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則該法團可向原訟法庭申請一項命令，指示有關的有投票權股份須受本分部所訂的限制所規限。(由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂；由 2015 年第 19 號第 2 條修訂)

(2) 凡 ——

- (a) 任何上市法團根據第 329 條向現時或過去擁有股本衍生工具的權益的人發出通知；及
- (b) 該人沒有在該通知指明的時間內向該法團提供該通知所要求的資料，

則該法團可向原訟法庭申請一項命令，指示有關的股本衍生工具須受本分部所訂的限制規限。

(3) 即使提出申請的法團的章程載有任何權力，使該法團能對有關的有投票權股份或股本衍生工具施加相類的限制，原訟法庭仍可作出第 (1) 或 (2) 款 (視屬何情況而定) 所指的命令。(由 2012 年第 28 號第 912 及 920 條；由 2015 年第 19 號第 2 條修訂)

### 367. 財政司司長在某人被裁定犯沒有遵守具報規定的情況下對股份等施加限制的權力

- (1) 凡任何人被裁定犯第 328 或 351 條所訂罪行，財政司司長可藉命令指示以下股份須受本分部所訂的限制所規限，直至另有命令為止 ——
  - (a) 該項罪行所關乎的在香港登記冊登記的股份；或

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- (b) that person fails to give the corporation any information required by the notification within the time specified in it,

the listed corporation may apply to the Court of First Instance for an order directing that the voting shares in question be subject to the restrictions under this Division. (*Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013; 19 of 2015 s. 2*)

(2) Where—

- (a) a notification is given by a listed corporation under section 329 to a person who is or was interested in equity derivatives; and
- (b) that person fails to give the corporation any information required by the notification within the time specified in it,

the listed corporation may apply to the Court of First Instance for an order directing that the equity derivatives in question be subject to the restrictions under this Division.

- (3) An order under subsection (1) or (2) (as the case may be) may be made notwithstanding any power contained in the applicant corporation's constitution enabling the listed corporation itself to impose similar restrictions on the voting shares or equity derivatives in question. (*Amended 28 of 2012 ss. 912 & 920; 19 of 2015 s. 2*)

### 367. Power of Financial Secretary to impose restrictions on shares, etc. in case of conviction of offences for non-compliance of notification requirements

- (1) Where a person is convicted of an offence under section 328 or 351, the Financial Secretary may by order direct that—
  - (a) the shares in relation to which the offence was committed that are registered on the Hong Kong register; or



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- (b) (如該項罪行所關乎的股份屬未發行股份) 在一旦發行時須在香港登記冊登記的該等股份。
- (2) 在不損害第 (1) 款的原則下，凡任何人被裁定就某些股份犯第 328 或 351 條所訂罪行，而該等股份是任何股本衍生工具的相關股份，則財政司司長可藉命令指示該等股本衍生工具須受本分部所訂的限制所規限，直至另有命令為止。
- (3) 即使某法團的章程載有任何權力，使該法團本身能對有關股份或股本衍生工具施加相類的限制，財政司司長仍可作出第 (1) 或 (2) 款 (視屬何情況而定) 所指的命令。(由 2012 年第 28 號第 912 及 920 條修訂)

**368. 財政司司長向與調查有關的股份等施加限制的權力**

- (1) 在與根據第 356、357 或 358 條進行的調查有關連的情況下，財政司司長如覺得難以查出關於任何股份 (不論是已發行或未發行的) 的有關事實，可藉命令指示——
- (a) 在香港登記冊登記的股份；或
- (b) 在一旦發行時須在香港登記冊登記的未發行股份，須受本分部任何條文所訂的限制規限，直至另有命令為止。
- (2) 在與根據第 356、357 或 358 條進行的調查有關連的情況下，財政司司長如覺得難以查出關於任何股本衍生工具的有關事實，可藉命令指示該等股本衍生工具須受本分部任何條文所訂的限制規限，直至另有命令為止。

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- (b) if the shares in relation to which the offence was committed are unissued shares, those unissued shares which on issue are to be registered on the Hong Kong register,
- shall, until further order, be subject to the restrictions under this Division.
- (2) Without prejudice to subsection (1), where a person is convicted of an offence under section 328 or 351 and the shares in relation to which the offence was committed are the underlying shares of any equity derivatives, the Financial Secretary may by order direct that the equity derivatives shall, until further order, be subject to the restrictions under this Division.
- (3) An order under subsection (1) or (2) (as the case may be) may be made notwithstanding any power contained in a corporation's constitution enabling the corporation itself to impose similar restrictions on the shares or equity derivatives in question. (Amended 28 of 2012 ss. 912 & 920)

**368. Power of Financial Secretary to impose restrictions on shares, etc. in connection with investigation**

- (1) If, in connection with an investigation under section 356, 357 or 358, it appears to the Financial Secretary that there is difficulty in finding out the relevant facts about any shares (whether issued or unissued), he may by order direct that—
- (a) the shares registered on the Hong Kong register; or
- (b) the unissued shares which on issue are to be registered on the Hong Kong register,
- shall, until further order, be subject to the restrictions under this Division.
- (2) If, in connection with an investigation under section 356, 357 or 358, it appears to the Financial Secretary that there is

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Cap. 571**369. 發出施加限制的命令的後果**

- (1) 凡有命令指示任何股份須受本分部所訂的限制規限，則在所指示的期間內，以下作為均屬無效 ——
  - (a) 轉讓該等股份；
  - (b) 如該等股份屬未發行股份 ——
    - (i) 轉讓獲發該等股份的權利；及
    - (ii) 發行該等股份；
  - (c) 取消該等股份或該等權利的有關證明書；及
  - (d) 將該等股份的登記轉錄在香港登記冊以外的成員登記冊內。
- (2) 凡任何股份受第 (1) 款所訂的限制規限，則任何以下協議均屬無效 ( 除非該協議是在根據第 371(4) 條作出命令後訂立的售賣該等股份的協議 ) ——
  - (a) 轉讓該等股份的協議；或
  - (b) ( 如該等股份屬未發行股份 ) 轉讓獲發該等股份的權利的協議。
- (3) 凡有命令指示任何股本衍生工具須受本分部所訂的限制規限，則在所指示的期間內，以下作為均屬無效 ——
  - (a) 轉讓或移轉 ——
    - (i) 該等工具；或
    - (ii) 該等工具下的權利；
  - (b) 行使該等工具下的任何權利；及
  - (c) 將該等工具的登記轉錄在並非備存於香港的股本衍生工具持有人登記冊內。

difficulty in finding out the relevant facts about any equity derivatives, he may by order direct that the equity derivatives shall, until further order, be subject to the restrictions under this Division.

**369. Consequence of order imposing restrictions**

- (1) So long as any shares are directed to be subject to the restrictions under this Division—
  - (a) any transfer of those shares;
  - (b) in the case of unissued shares—
    - (i) any transfer of the right to be issued with those shares; and
    - (ii) any issue of those shares;
  - (c) any cancellation of those shares or of the relevant certificates for those rights; and
  - (d) any removal of the registration of those shares to a register of members other than the Hong Kong register, are void.
- (2) Where shares are subject to the restrictions of subsection (1), any agreement to transfer—
  - (a) those shares; or
  - (b) in the case of unissued shares, the right to be issued with those shares,
 is void (except an agreement to sell those shares on the making of an order under section 371(4)).
- (3) So long as any equity derivatives are directed to be subject to the restrictions under this Division—
  - (a) any transfer or assignment of—
    - (i) those equity derivatives; or

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- (4) 凡任何股本衍生工具正受第 (3) 款所訂的限制規限，則以下協議屬無效（除非該協議是在根據第 371(4) 條作出命令後訂立的售賣該等工具的協議）——
- (a) 任何轉讓或移轉以下任何一項的協議 ——
- (i) 該等工具；或
- (ii) 該等工具下的權利；或
- (b) 行使該等工具下的任何權利的協議。

### 370. 企圖規避限制屬犯罪

- (1) 任何人有以下行為，即屬犯罪，一經定罪，可處第 3 級罰款及監禁 6 個月 ——
- (a) 在他明知某些股份或股本衍生工具當其時正受本分部所訂的限制所規限的情況下，行使或看來是行使作出以下處置的權利 ——
- (i) 處置該等股份或股本衍生工具；或
- (ii) 處置獲發該等股份的權利或在該等股本衍生工具下的任何權利；或
- (b) 他擁有任何他明知當其時正受本分部所訂的限制所規限的股份或股本衍生工具的權益，或他有權憑該等股份而獲發其他股份，或他有權憑該等工具而取得在其他股本衍生工具下的權利，而他訂立任何根據第 369(2) 或 (4) 條屬無效的協議。

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- (ii) any rights under those equity derivatives;
- (b) the exercise of any rights under those equity derivatives; and
- (c) any removal of the registration of those equity derivatives to a register of holders of equity derivatives other than a register maintained in Hong Kong, are void.
- (4) Where equity derivatives are subject to the restrictions of subsection (3), any agreement to—
- (a) transfer or assign—
- (i) those equity derivatives; or
- (ii) any rights under those equity derivatives; or
- (b) exercise any rights under those equity derivatives, is void (except an agreement to sell those equity derivatives on the making of an order under section 371(4)).

### 370. Offences for attempted evasion of restrictions

- (1) A person who—
- (a) exercises or purports to exercise any right to dispose of—
- (i) any shares or equity derivatives; or
- (ii) any right to be issued with any shares or any right under any equity derivatives, knowing that such shares or equity derivatives are for the time being subject to the restrictions under this Division; or
- (b) having an interest in any shares or equity derivatives which, to his knowledge, are for the time being subject to the restrictions under this Division, or being entitled

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- (2) 如在違反本分部所訂的限制的情況下，任何法團的股份 ——
- (a) 被登記為已轉讓；
  - (b) 被發行；
  - (c) 被取消；或
  - (d) 的登記被轉錄在香港登記冊以外的成員登記冊內，則該法團及其每名違責的高級人員均屬犯罪，一經定罪，可各處第 3 級罰款及監禁 6 個月。
- (3) 如在違反本分部所訂的限制的情況下 ——
- (a) 任何股本衍生工具或在該等工具下的任何權利，被登記為已轉讓或已移轉；
  - (b) 在任何股本衍生工具下的權利被登記為已行使；或
  - (c) 將任何股本衍生工具的登記轉錄在並非備存於香港的股本衍生工具持有人登記冊內，
- 則備存該登記冊的法團及其每名違責的高級人員均屬犯罪，一經定罪，可各處第 3 級罰款及監禁 6 個月。

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- to any right to be issued with other shares or under other equity derivatives in right of them, enters into any agreement which is void under section 369(2) or (4), commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.
- (2) If—
- (a) any shares in a corporation are registered as transferred;
  - (b) any shares in a corporation are issued;
  - (c) any shares in a corporation are cancelled; or
  - (d) the registration of any shares in a corporation is removed to a register of members other than the Hong Kong register,
- in contravention of the restrictions under this Division, the corporation and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 3 and to imprisonment for 6 months.
- (3) If—
- (a) any equity derivatives, or any rights under any equity derivatives, are registered as transferred or assigned;
  - (b) any rights under any equity derivatives are registered as having been exercised; or
  - (c) the registration of any equity derivatives is removed to a register of holders of equity derivatives other than a register maintained in Hong Kong,
- in contravention of the restrictions under this Division, the corporation maintaining such register and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

**371. 限制的放寬及解除**

- (1) 凡有某項命令規定任何股份或股本衍生工具須受本分部所訂的限制規限，可（在任何情況下）向原訟法庭或（如施加限制的命令是根據第 367 或 368 條作出的）財政司司長申請一項命令，指示該等股份或工具（視屬何情況而定）不再如此受規限。
- (2) 如施加限制的命令是由 ——
  - (a) 原訟法庭根據第 366 條或第 (14)(a) 款作出的，則第 (1) 款提述的申請可由感到受屈的人或有關法團提出；或
  - (b) 財政司司長根據第 367 或 368 條作出的，則第 (1) 款提述的申請可由感到受屈的人提出。
- (3) 就根據第 (1) 款向原訟法庭提出的申請進行聆訊時，財政司司長有陳詞及提出證據的權利。
- (4) 除本條另有規定外，只有在以下情況下，原訟法庭或財政司司長才可作出命令，指示有關股份或股本衍生工具（視屬何情況而定）不再受有關限制所規限 ——
  - (a) 原訟法庭或財政司司長（視屬何情況而定）信納 ——
    - (i) 所有與該等股份或工具的權益有關的事實已向有關法團或任何審查員（視屬何情況而定）披露；及
    - (ii) 先前沒有作出該項披露，未有導致任何人在不公平的情況下獲取利益；或
  - (b) 該等股份或工具將會被售賣，且（在任何情況下）原訟法庭或（如施加限制的命令是根據第 367 或 368 條作出的）財政司司長是批准該項售賣的。
- (5) 凡任何股份或股本衍生工具因某項命令以致受本分部所訂的限制所規限，原訟法庭可應申請命令售賣該等股份或工具，但該項售賣須獲原訟法庭批准，而原訟法庭亦

**371. Relaxation and removal of restrictions**

- (1) Where shares or equity derivatives are by order made subject to the restrictions under this Division, application may be made to the Court of First Instance (in any case) or the Financial Secretary (if the order applying the restrictions was made by the Financial Secretary under section 367 or 368) for an order directing that the shares or equity derivatives (as the case may be) shall cease to be so subject.
- (2) If the order applying the restrictions was made—
  - (a) by the Court of First Instance under section 366 or subsection (14)(a), the application under subsection (1) may be made by any person aggrieved or by the corporation concerned; or
  - (b) by the Financial Secretary under section 367 or 368, the application under subsection (1) may be made by any person aggrieved.
- (3) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of the application to the Court of First Instance under subsection (1).
- (4) Subject to this section, an order of the Court of First Instance or the Financial Secretary directing that shares or equity derivatives (as the case may be) shall cease to be subject to the restrictions may be made only if—
  - (a) the Court of First Instance or the Financial Secretary (as the case may be) is satisfied that—
    - (i) all relevant facts about the interests in the shares or equity derivatives have been disclosed to the corporation concerned or an inspector (as the case may be); and



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- 可作出進一步的命令，使該等股份或工具不再受該等限制所規限。
- (6) 根據第 (5) 款向原訟法庭提出的申請 ——
- (a) 除在有關限制是由根據第 366 條或第 (14)(a) 款作出的法庭命令施加的情況下外，可由財政司司長提出；或
- (b) 可由有關法團提出。
- (7) 在就根據第 (5) 款提出的申請進行聆訊時，財政司司長有陳詞及提出證據的權利。
- (8) 原訟法庭如已根據第 (5) 款作出命令，可應申請就售賣該等股份或股本衍生工具作出它認為適當的進一步命令。
- (9) 根據第 (8) 款向原訟法庭提出的申請，可由以下人士提出 ——
- (a) 財政司司長 ( 除非有關限制是由根據第 366 條或第 (14)(a) 款作出的法庭命令施加的 ) ；
- (b) 有關法團；
- (c) 由該命令或依據該命令委任以進行售賣的人；或
- (d) 任何擁有有關股份或股本衍生工具的權益的人。
- (10) 在就根據第 (8) 款提出的申請進行聆訊時，財政司司長有陳詞及提出證據的權利。
- (11) 凡任何股本衍生工具因某項命令以致受本分部所訂的限制所規限，原訟法庭可應申請命令按原訟法庭批准的方式及時間，行使該等工具下的權利，而原訟法庭亦可作出進一步的命令，使該等工具不再受該等限制所規限。
- (12) 根據第 (11) 款提出的申請 ——
- (a) 除在有關限制是由根據第 366 條或第 (14)(a) 款作出的法庭命令施加的情況下外，可由財政司司長提出；
- (b) 可由有關法團提出；或
- (c) 可由擁有有關股本衍生工具的權益的人提出。

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- (ii) no unfair advantage has accrued to any person as a result of the earlier failure to make that disclosure; or
- (b) the shares or equity derivatives are to be sold and the Court of First Instance (in any case) or the Financial Secretary (if the order applying the restrictions was made by the Financial Secretary under section 367 or 368) approves the sale.
- (5) Where shares or equity derivatives are by order made subject to the restrictions under this Division, the Court of First Instance may on application order that the shares or equity derivatives shall be sold, subject to the Court's approval as to the sale, and may further order that the shares or equity derivatives shall cease to be subject to the restrictions.
- (6) An application to the Court of First Instance under subsection (5) may be made—
- (a) by the Financial Secretary (unless the restrictions were imposed by court order under section 366 or subsection (14)(a)); or
- (b) by the corporation concerned.
- (7) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of the application under subsection (5).
- (8) Where an order has been made under subsection (5), the Court of First Instance may on application make such further order relating to the sale of the shares or equity derivatives as it considers appropriate.
- (9) An application to the Court of First Instance under subsection (8) may be made—

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- (13) 在就根據第 (11) 款提出的申請進行聆訊時，財政司司長有陳詞及提出證據的權利。
- (14) 原訟法庭如根據第 (11) 款作出命令，飭令行使股本衍生工具下的要求交付股份的權利或要求另一人提取股份的權利，原訟法庭亦可作出進一步的命令，使在該權利行使時交付的股份在交付後 ——
- (a) 即受本分部所訂的限制所規限；或
- (b) 即予售賣。
- (15) 在本條中，**有關法團** (the corporation concerned) ——
- (a) 就受本分部所訂的限制所規限的法團的股份而言，指該法團；或
- (b) 就受本分部所訂的限制所規限的，以某法團的股份為相關股份的股本衍生工具而言，指該法團。

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- (a) by the Financial Secretary (unless the restrictions were imposed by court order under section 366 or subsection (14)(a));
- (b) by the corporation concerned;
- (c) by the person appointed by, or in pursuance of, the order to effect the sale; or
- (d) by any person interested in the shares or equity derivatives.
- (10) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of the application under subsection (8).
- (11) Where equity derivatives are by order made subject to the restrictions under this Division, the Court of First Instance may on application order that rights under the equity derivatives shall be exercised, subject to the Court's approval as to the manner in which, and the time at which, those rights are to be exercised, and may further order that the equity derivatives shall cease to be subject to the restrictions.
- (12) An application to the Court of First Instance under subsection (11) may be made—
- (a) by the Financial Secretary (unless the restrictions were imposed by court order under section 366 or subsection (14)(a));
- (b) by the corporation concerned; or
- (c) by any person interested in the equity derivatives.
- (13) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of the application under subsection (11).
- (14) Where an order has been made under subsection (11), the Court of First Instance may further order, in the case of the exercise of a right under the equity derivatives to call

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Section 37215-272  
Cap. 571**372. 關於藉法庭命令售賣受限制的股份等的其他條文**

- (1) 除第 (2) 款另有規定外，凡依據原訟法庭根據第 371 條作出的命令或在原訟法庭或財政司司長的批准下將任何股份或股本衍生工具售賣，則售賣所得收益在扣除售賣費用後，須繳存法院。
- (2) 凡股本衍生工具下的權利依據在第 371(11) 條下作出的原訟法庭命令行使，而 ——
  - (a) 在該等工具交收後收到一筆款項，則售賣所得收益在扣除行使該權利所招致的費用後，須繳存法院；或
  - (b) 有關的股份依據在第 371(14)(b) 條下作出的原訟法庭命令售賣，則售賣所得收益在扣除售賣費用及行使該權利所招致的費用後，須繳存法院。
- (3) 如售賣任何股份或股本衍生工具所得的收益已根據第 (1) 或 (2) 款繳存法院，任何在之前擁有該等股份或工具的權益的人可向原訟法庭申請，要求原訟法庭命令將該等收益的全部或部分支付給他。

for delivery of shares, or to require another person to take delivery of shares, that the shares due to be delivered on the exercise of the right shall, upon delivery, be—

- (a) subject to the restrictions under this Division; or
- (b) sold.

**(15) In this section, *the corporation concerned* (有關法團)—**

- (a) in relation to shares in a corporation that are subject to the restrictions under this Division, means that corporation; or
- (b) in relation to equity derivatives that are subject to the restrictions under this Division, where the underlying shares of those equity derivatives are shares in a corporation, means that corporation.

**372. Further provisions on sale by court order of restricted shares, etc.**

- (1) Subject to subsection (2), where shares or equity derivatives are sold in pursuance of an order of the Court of First Instance, or with the approval of the Court of First Instance or the Financial Secretary, under section 371, the proceeds of the sale, less the costs of the sale, shall be paid into court.
- (2) Where a right under equity derivatives is exercised in pursuance of an order of the Court of First Instance under section 371(11) and—
  - (a) an amount is received on settlement of the equity derivatives, the proceeds, less the costs incurred in exercising the right; or
  - (b) shares are sold in pursuance of an order of the Court of First Instance under section 371(14)(b), the proceeds of the sale, less the costs of the sale and the costs incurred in exercising the right,

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- (4) 就根據第 (3) 款提出的申請進行聆訊時，財政司司長有陳詞及提出證據的權利。
- (5) 原訟法庭在接獲根據第 (3) 款提出的申請後 ——
- (a) 如信納 ——
- (i) 在售賣有關股份或股本衍生工具時或 (如屬行使股本衍生工具下的權利的情況) 在行使該權利時，除申請人外沒有任何其他人擁有該等股份或工具的權益；及
- (ii) 所有與申請人擁有的該等股份或工具的權益有關的事實，已向有關法團或任何審查員 (視屬何情況而定) 披露，
- 則原訟法庭可作出命令，在不抵觸第 (6) 款的條文下，將售賣該等股份或工具所得的一切收益連同任何利息，支付給申請人；
- (b) 如信納 ——
- (i) 在售賣有關股份或股本衍生工具時或 (如屬行使股本衍生工具下的權利的情況) 在行使該權利時，除申請人外，另一人亦擁有該等股份或工具的權益；及
- (ii) 所有與申請人擁有的該等股份或工具的權益有關的事實，已向有關法團或任何審查員 (視屬何情況而定) 披露，
- 則原訟法庭可作出命令，在不抵觸第 (6) 款的條文下，按申請人擁有的該等股份或工具的權益的價值在該等股份或工具的總值中所佔比例，將售賣該等股份或工具所得的收益連同任何利息，支付給申請人；或
- (c) 可作出它認為適當的其他命令。
- (6) 原訟法庭在根據第 (5) 款或第 371(5)、(8)、(11) 或 (14)(b) 條作出命令時，可進一步命令申請人的費用及 (如屬適當) 財政司司長的費用由售賣所得收益撥付。

shall be paid into court.

- (3) Any person who had an interest in the shares or equity derivatives from which the proceeds, which have been paid into court under subsection (1) or (2), were derived may apply to the Court of First Instance for an order that the whole or a part of those proceeds be paid to him.
- (4) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of an application under subsection (3).
- (5) The Court of First Instance may on application under subsection (3)—
- (a) if it is satisfied that—
- (i) the applicant was interested in the shares or equity derivatives at the time of the sale or (in the case of the exercise of any right under equity derivatives) at the time of the exercise of the right, and no other person had an interest in the shares or equity derivatives at that time; and
- (ii) all relevant facts about the applicant's interest in the shares or equity derivatives have been disclosed to the corporation concerned or an inspector (as the case may be),
- order the payment to the applicant, subject to subsection (6), of the whole of the proceeds, together with any interest thereon;
- (b) if it is satisfied that—
- (i) the applicant was interested in the shares or equity derivatives at the time of the sale or (in the case of the exercise of any right under equity derivatives) at the time of the exercise of the right, and another person also had an interest in the shares or equity derivatives at that time; and

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Cap. 571**第 13 分部 —— 雜項條文****373. 成員對法團所犯罪行的法律責任**

凡任何法團的事務由其成員管理，則第 390(1) 條適用於任何成員在其管理職能上的作為及違責，猶如他是該法團的董事一樣。

**374. 具報及報告的強制性電子提交**

(1) 本條適用於以下文件 (**指明文件**) ——

- (a) 第 324 條規定的具報；
- (b) 第 327(2) 條規定的具報；
- (c) 第 330(1) 或 (3) 條規定的具報；
- (d) 第 333(1) 或 (3) 條規定須交付的報告；

- (ii) all relevant facts about the applicant's interest in the shares or equity derivatives have been disclosed to the corporation concerned or an inspector (as the case may be) by the applicant,

order the payment to the applicant, subject to subsection (6), of such part of the proceeds as is equal to the proportion which the value of the applicant's interest in the shares or equity derivatives bears to the total value of the shares or equity derivatives, together with any interest thereon; or

- (c) make such other order as it considers appropriate.

- (6) On making an order under subsection (5) or section 371(5), (8), (11) or (14)(b), the Court of First Instance may further order that the costs of the applicant, and the costs of the Financial Secretary (where appropriate), be paid out of the proceeds.

**Division 13—Miscellaneous****373. Liability of members for offences by corporations**

Where the affairs of a corporation are managed by its members, section 390(1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the corporation.

**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);



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- (e) 第 347 條規定的具報；  
 (f) 第 350(2) 條規定的具報。
- (2) 儘管有第 400 條的規定，須給予下表第 1 欄指明的人或向其交付的指明文件，只有在符合以下說明的情況下送交在該表第 2 欄中與該人相對之處所指明的人，方視為已妥為給予或交付 ——
- (a) 藉根據第 (4) 款核准的電子傳送系統送交；及  
 (b) 按照根據第 (5) 款發表的關乎該系統的使用的指示及指令送交。

## 表

第 1 欄	第 2 欄
有關交易所公司	有關交易所公司
上市法團	有關交易所公司
證監會	有關交易所公司
金融管理專員	金融管理專員
(3) 有關交易所公司收到第 (2) 款所指的指明文件後，須在切實可行範圍內，盡快以符合以下說明的方式，將該文件的文本送交證監會，以及 (在不屬第 330(1) 條所指的具報或第 333(1) 條所指的報告的情況下) 送交有關上市法團 ——	
(a) 藉根據第 (4) 款核准的電子傳送系統送交；及	
(b) 按照根據第 (5) 款發表的關乎該系統的使用的指示及指令送交。	
(4) 證監會可為第 (2) 及 (3) 款的施行，不時核准一個或多於一個電子傳送系統。	

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- (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—	

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- (5) 證監會根據第 (4) 款核准電子傳送系統後，須在切實可行範圍內，盡快以其認為合適的方式，發表關乎該系統的使用的指示及指令。
- (6) 為免生疑問，為本部的施行而須給予、作出、交付、發出或送交的文件（指明文件除外），如以第 400 條指明的方法中適用於有關情況的方法送交，須視為已妥為給予、作出、交付、發出或送交。

*(由 2014 年第 6 號第 64 條代替)***375. 登記冊及索引的形式**

- (1) 本部規定須由法團備存的任何登記冊或索引，可藉在釘裝簿冊內作出記項或以任何其他方式記錄有關事項而備存。
- (2) 為施行第 (1) 款，法團可將有關事項以並非可閱讀形式記錄，但該等紀錄須能以可閱讀形式重現。
- (3) 如本部規定須由法團備存的任何登記冊或索引，是以將有關事項以並非可閱讀形式記錄的方式備存，則本部委予法團的容許查閱登記冊或索引或其中任何部分的責任，或提交登記冊或索引或其中任何部分的副本的責任，須當作為容許查閱以可閱讀形式重現的該紀錄或其有關部分並就此提交副本的責任。

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- (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.

*(Replaced 6 of 2014 s. 64)***375. Form of registers and indices**

- (1) Any register or index required by this Part to be kept by a corporation may be kept either by making entries in a bound book or by recording the matters in question in any other manner.
- (2) For the purposes of subsection (1), the corporation may record the matters in question otherwise than in a legible form so long as the recording is capable of being reproduced in a legible form.
- (3) If any register or index required by this Part to be kept by a corporation is kept by the corporation by recording the matters in question otherwise than in a legible form, any duty imposed on the corporation by this Part to allow inspection of, or to furnish a copy of, the register or index or any part of

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- (4) 凡任何上述登記冊或索引並非藉在釘裝簿冊內作出記項而備存，而是以其他方式備存，則有關法團須採取足夠的預防措施以防止捏改和方便發現任何捏改。
- (5) 如有違責情況以致第 (4) 款不獲遵守，則有關法團及其每名違責的高級人員均屬犯罪，一經定罪，可各處第 1 級罰款，如屬持續的罪行，則可就罪行持續期間的每一日，另各處罰款 \$200。

**376. 行政長官會同行政會議訂立規例**

- (1) 行政長官會同行政會議可訂立規例 ——
- (a) 訂明根據本部任何條文規定或准許藉規例訂明的任何事情；
  - (b) 就根據本部任何條文須作出具報或發出通知的規定訂定除外情況；
  - (c) 以更佳地實現本部的目標及目的。
- (2) 在不局限根據第 (1) 款訂立的規例的一般性的原則下，該等規例可包括任何保留、過渡、附帶、補充及相應條文，以及關於證據的條文，而不論是涉及任何主體條例的條文或是涉及附屬法例的條文。

**377. 證監會訂立的規則**

證監會可在諮詢財政司司長後，訂立不抵觸行政長官會同行政會議根據第 376 條訂立的規則，以 ——

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it shall be deemed to be a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a legible form.

- (4) If any such register or index is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.
- (5) If default is made in complying with subsection (4), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

**376. Regulations by Chief Executive in Council**

- (1) The Chief Executive in Council may make regulations to—
- (a) prescribe anything required or permitted by any provision of this Part to be prescribed by regulations;
  - (b) provide for exclusions from the requirement to give notification under any provision of this Part;
  - (c) provide for any other matters for the better carrying out of the objects and purposes of this Part.
- (2) Without limiting the generality of the regulations which may be made under subsection (1), such regulations may include any savings, transitional, incidental, supplemental, evidential and consequential provisions (whether involving the provisions of any principal legislation or provisions of any subsidiary legislation).

**377. Rules by Commission**

The Commission may, after consultation with the Financial Secretary, make rules which are not inconsistent with regulations

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- (a) 訂明任何依據或將依據證券借貸協議條文處理的上市法團的有投票權股份的權益及淡倉，須在該等規則指明的條件規限下，為施行第 323 條而不予理會；
  - (b) 為施行第 313(13) 條而訂明權益的性質的改變的情況；
  - (c) 訂定在該等規則指明的條件的規限下，豁免本部任何條文就任何依據或將依據證券借貸協議條文處理的上市法團的有投票權股份的權益及淡倉作出具報的規定。
- (由 2012 年第 28 號第 912 及 920 條及 2013 年第 162 號法律公告修訂)

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made by the Chief Executive in Council under section 376, to—

- (a) prescribe interests and short positions in voting shares in a listed corporation, that are or are to be dealt with pursuant to the provisions of a securities borrowing and lending agreement, to be disregarded for the purposes of section 323 subject to such conditions as may be specified in the rules;
- (b) prescribe circumstances of change in the nature of interests for the purposes of section 313(13);
- (c) provide for exclusions, subject to such conditions as may be specified in the rules, from the requirement to give notification under any provision of this Part in respect of interests, or short positions, in voting shares in a listed corporation that are or are to be dealt with pursuant to the provisions of a securities borrowing and lending agreement.

(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

## 第 XVI 部

### 雜項條文

(格式變更——2012 年第 2 號編輯修訂紀錄)

#### 第 1 分部 —— 保密 (一般規定)、利益衝突及豁免承擔法律責任

(由 2014 年第 6 號第 38 條修訂)

##### 378. 保密等

- (1) 除第 (13A) 款另有規定外，任何指明人士除非是執行任何有關條文授予的職能，或是為施行任何有關條文而執行其職能，或是為作出根據任何有關條文規定或授權的事情而執行其職能，否則該人士 —— (由 2014 年第 6 號第 39 條修訂)
- (a) 須將他憑藉任何有關條文獲委任而獲悉，或在執行任何有關條文授予的職能或施行任何有關條文時獲悉，或在協助任何其他人士執行任何有關條文授予的職能或施行任何有關條文過程中獲悉的事宜保密，並協助將該等事宜保密；
- (b) 不得將該等事宜傳達予任何其他人士；及
- (c) 不得容受或准許任何其他人士有途徑接觸由他管有的任何紀錄或文件，而該等紀錄或文件是他憑藉該項委任，或憑藉執行或協助該其他人士執行任何該等條文授予的職能，或憑藉施行或協助該其他人士施行任何該等條文而得以管有的。

## Part XVI

### Miscellaneous

(Format changes—E.R. 2 of 2012)

#### Division 1—Secrecy (general), conflict of interests, and immunity

(Amended 6 of 2014 s. 38)

##### 378. Preservation of secrecy, etc.

- (1) Subject to subsection (13A), 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— (Amended 6 of 2014 s. 39)
- (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



## (2) 第 (1) 款不適用於 ——

- (a) 披露公眾已可得到的資料；
- (b) 為準備在香港提起任何刑事法律程序或在其他情況下為該等程序的目的，或為準備在香港進行（不論是否根據有關條文進行）任何調查或在其他情況下為該等調查的目的，而披露資料；（由 2014 年第 6 號第 39 條修訂）
- (c) 為向以專業身分行事或擬以專業身分行事的大律師、律師或其他專業顧問就根據任何有關條文引起的任何事宜徵詢意見而披露資料，或由以專業身分或擬以專業身分行事的大律師、律師或其他專業顧問為就根據任何有關條文引起的任何事宜給予意見而披露資料；
- (d) 在與某人作為其中一方的司法或其他法律程序有關連的情況下，由該人披露資料；
- (e) 按照法庭命令或按照法律或根據法律作出的要求而披露資料；
- (ea) 為使《存款保障計劃條例》（第 581 章）第 3 條所設立的香港存款保障委員會或協助該委員會根據該條例第 5(a)、(d) 及 (e) 條執行其職能，而向該委員會披露資料；（由 2004 年第 7 號第 55 條增補）
- (f) 以下述方式向下述的人或機構傳達第 381(1) 條適用的資料或意見（不論是否參照第 381(2) 條而適用）——
  - (i) 以第 381(1) 條描述的方式向證監會傳達；
  - (ii) 在第 381(4) 條適用的情況下，以該條描述的方式，向保監局或金融管理專員（視屬何情況而定）傳達。（由 2015 年第 12 號第 142 條修訂）

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 relevant provisions or otherwise, in Hong Kong; (*Amended 6 of 2014 s. 39*)
- (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))—

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(3) 不論第 (1) 款有任何規定，證監會可 ——

- (a) 以撮要形式披露資料，而該撮要是以證監會管有的資料編成，包括某些人根據任何有關條文提供的資料，而撮要的編纂手法使人無法從該撮要中確定與任何人的業務或身分或其交易有關的詳情；
- (b) 向根據《公司（清盤及雜項條文）條例》（第 32 章）獲委任為清盤人的人披露資料；（由 2012 年第 28 號第 912 及 920 條修訂）
- (ba) 向根據《開放式基金型公司規則》獲委任為清盤人的人披露資料；（由 2016 年第 16 號第 16 條增補）
- (c) 向市場失當行為審裁處披露資料；
- (d) 向上訴審裁處披露資料；
- (ea) 向根據《打擊洗錢及恐怖分子資金籌集條例》（第 615 章）第 55 條設立的打擊洗錢及恐怖分子資金籌集覆核審裁處披露資料；（由 2011 年第 15 號第 90 條增補。由 2018 年第 4 號第 45 條修訂）
- (eb) 向處置補償審裁處披露資料；（由 2016 年第 23 號第 219 條增補）
- (ec) 向處置可行性覆檢審裁處披露資料；（由 2016 年第 23 號第 219 條增補）
- (ed) 向處置機制當局披露資料，以使該當局能夠執行該當局在《金融機構（處置機制）條例》（第 628 章）下的職能，或協助該當局執行該等職能；（由 2016 年第 23 號第 219 條增補。編輯修訂——2017 年第 2 號編輯修訂紀錄）

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- (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 (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); (*Amended 28 of 2012 ss. 912 & 920*)
- (ba) to a person who is a liquidator appointed under the OFC rules; (*Added 16 of 2016 s. 16*)
- (c) to the Market Misconduct Tribunal;
- (d) to the Securities and Futures Appeals Tribunal;
- (ea) to the Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal established under section 55 of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615); (*Added 15 of 2011 s. 90. Amended 4 of 2018 s. 45*)
- (eb) to the Resolution Compensation Tribunal; (*Added 23 of 2016 s. 219*)
- (ec) to the Resolvability Review Tribunal; (*Added 23 of 2016 s. 219*)

- (e) 在以下情況下，向金融管理專員披露資料 ——
- (i) 該資料涉及 ——
    - (A) (就註冊機構而言) 構成該機構獲註冊進行的受規管活動的業務；或
    - (B) (就中介人的而本身屬認可財務機構的有聯繫實體而言) 該實體收取或持有該中介人的客戶資產的業務；或
  - (ii) 證監會認為第 (5) 款指明的條件已獲符合；
- (f) 在證監會認為第 (5) 款指明的條件已獲符合的情況下，向以下的人或機構披露資料 ——
- (i) 行政長官；
  - (ii) 財政司司長；
  - (iii) 律政司司長；
  - (iv) (由 2002 年第 106 號法律公告廢除)；
  - (v) 保監局；(由 2015 年第 12 號第 142 條修訂)
  - (vi) 公司註冊處處長；
  - (vii) 破產管理署署長；
  - (viii) 積金局；
  - (ix) 私隱專員；
  - (x) 申訴專員；
  - (xi) 財政司司長根據第 (12) 款授權的公職人員；
  - (xia) 由《財務匯報局條例》(第 588 章) 第 6(1) 條設立的財務匯報局；(由 2006 年第 18 號第 86 條增補)

- (ed) to a resolution authority, for the purpose of enabling or assisting the resolution authority to perform its functions under the Financial Institutions (Resolution) Ordinance (Cap. 628); (*Added 23 of 2016 s. 219. Amended E.R. 2 of 2017*)
- (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;

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- (xii) 獲財政司司長委任以調查法團事務的審查員；
- (xiii) 認可交易所；
- (xiv) 認可結算所；
- (xv) 認可控制人；
- (xvi) 認可投資者賠償公司；
- (xvii) 根據第 95(2) 條獲認可提供自動化交易服務的人；
- (g) 在證監會認為第 (5) 款指明的條件已獲符合的情況下——
  - (i) 向香港以外地方且是該會認為符合第 (6)(a) 及 (b) 款提述的規定的主管當局、規管機構或公司審查員披露資料；
  - (ii) 向——
    - (A) 香港會計師公會；
    - (B) 為施行本節而藉根據第 397 條訂立的規則訂明的任何其他團體，  
披露資料，以期該會或該團體針對其任何成員採取紀律行動，或在其他情況下為該會或該團體針對其任何成員採取紀律行動的目的，而向該會或該團體披露資料；
- (ga) 在以下情況下，向香港以外任何地方的任何主管當局，披露資料——
  - (i) 該當局在該地方執行的職能，與處置機制當局在香港的職能，大致相當；及

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- (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;
- (ga) to an authority in a place outside Hong Kong, if—

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- (ii) 證監會認為 ——
  - (A) 該當局受該地方足夠的保密條文所規限；及
  - (B) 為使該當局能夠在該地方執行與處置機制當局在香港的職能大致相當的職能，或為協助該當局如此執行職能，該資料屬必要；  
(由 2016 年第 23 號第 219 條增補)
- (h) 為使證監會能夠執行任何有關條文授予的職能，或為協助證監會執行該等職能，而向現時或曾經根據本條例任何條文獲委任的核數師披露資料；
- (i) 將調查員根據第 183 條取得的資料向以下的人或機構披露 ——
  - (i) 財政司司長；
  - (ii) 律政司司長；
  - (iia) 處置補償審裁處；(由 2016 年第 23 號第 219 條增補)
  - (iib) 處置可行性覆檢審裁處；(由 2016 年第 23 號第 219 條增補)
  - (iic) 處置機制當局(披露的目的，須是使該當局能夠執行該當局在《金融機構(處置機制)條例》(第 628 章)下的職能，或協助該當局執行該等職能)；(由 2016 年第 23 號第 219 條增補。編輯修訂——2017 年第 2 號編輯修訂紀錄)
  - (iii) 警務處處長；
  - (iv) 廉政專員；
  - (v) 市場失當行為審裁處；
  - (vi) 上訴審裁處；

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- (i) that authority performs functions in that place broadly comparable to those of a resolution authority in Hong Kong; and
- (ii) in the opinion of the Commission—
  - (A) that authority is subject to adequate secrecy provisions in that place; and
  - (B) the information is necessary to enable or assist that authority to perform functions in that place broadly comparable to those of a resolution authority in Hong Kong; *(Added 23 of 2016 s. 219)*
- (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;
  - (iia) the Resolution Compensation Tribunal; *(Added 23 of 2016 s. 219)*
  - (iib) the Resolvability Review Tribunal; *(Added 23 of 2016 s. 219)*
  - (iic) a resolution authority, for the purpose of enabling or assisting the resolution authority to perform its functions under the Financial Institutions (Resolution) Ordinance (Cap. 628); *(Added 23 of 2016 s. 219. Amended E.R. 2 of 2017)*
  - (iii) the Commissioner of Police;



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- (j) 為進行第 16 條規定的審計工作或為與該審計工作有關連的其他目的而披露資料；
- (k) (如證監會從某人取得或接獲任何資料) 在該人同意下披露資料，如該資料與另一人有關，則證監會亦可在該人及該另一人均同意的情況下披露該資料。
- (4) 不論第 (1) 款有任何規定，現時或曾經根據第 159 或 160 條就某持牌法團或其有聯繫實體而獲委任的核數師，以及該等核數師的現任或前任僱員或代理人，可在以下情況下或向以下的人披露他在執行上述核數師、僱員或代理人 (視屬何情況而定) 的職責的過程中取得或接獲的任何資料——
  - (a) 為因執行上述核數師、僱員或代理人 (視屬何情況而定) 的職責而產生的任何司法或其他法律程序的目的而披露該等資料；
  - (b) (就上述核數師的現任或前任僱員或代理人而言) 向該核數師披露該等資料。
- (5) 第 (3)(e)、(f) 及 (g) 款提述的條件為——
  - (a) 就維護投資大眾的利益或公眾利益而言，依據第 (3)(e)、(f) 或 (g) 款 (視屬何情況而定) 披露資料是可取或合宜的；或
  - (b) 披露資料會使該等資料的收受者能夠執行其職能或會協助該收受者執行其職能，而披露資料並不違反投資大眾的利益或公眾利益。

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- (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

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- (6) 就第 (3)(g)(i) 款而言，凡證監會信納在香港以外地方的某主管當局、規管機構或公司審查員 ——
- (a) 執行任何與證監會或公司註冊處處長的職能相似的職能，或規管、監管或調查銀行服務、保險服務或其他金融服務，或法團事務；及
- (b) 已受足夠保密條文所規限，
- 則證監會在如此信納後須在合理地切實可行的範圍內，盡快安排在憲報發表該當局、機構或審查員（視屬何情況而定）的名稱或姓名。
- (7) 凡任何指明人士已依據第 (1) 款或已在第 (2)、(3) 或 (4) 款描述的任何情況（第 (2)(a)、(3)(a)、(g)(i)、(ga) 及 (k) 及 (4)(b) 款所述情況除外）下，向某人（**該人**）披露資料，則 ——（由 2015 年第 19 號第 27 條修訂；由 2016 年第 23 號第 219 條修訂）
- (a) 該人；或
- (b) 直接或間接從該人取得或接獲該等資料的其他人，不得將該等資料或其中任何部分向他人披露，除非 ——
- (i) 證監會同意該項披露；
- (ia) （如該指明人士屬認可交易所）證監會或該交易所同意該項披露；（由 2015 年第 19 號第 27 條增補）
- (ii) 公眾已可得到該等資料或該部分資料（視屬何情況而定）；

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- (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 by a specified person 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), (ga) and (k) and (4)(b))— (*Amended 19 of 2015 s. 27; 23 of 2016 s. 219*)
- (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;
- (ia) if the specified person is a recognized exchange company, the Commission or the recognized exchange

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- (iii) 該項披露是為向以專業身分行事或擬以專業身分行事的大律師、律師或其他專業顧問就根據任何有關條文引起的任何事宜徵詢意見而作出的，或是由以專業身分或擬以專業身分行事的大律師、律師或其他專業顧問為就根據任何有關條文引起的任何事宜給予意見而作出的；
  - (iv) 該項披露是在與 (a) 或 (b) 段提述的人或其他人 (視屬何情況而定) 作為其中一方的司法或其他法律程序有關連的情況下作出的；或
  - (v) 該項披露是按照法庭命令或按照法律或根據法律作出的要求而作出的。
- (8) 凡任何資料在第 (4)(b) 款描述的情況下向某核數師披露，則 ——
- (a) 該核數師；或
  - (b) 直接或間接從該核數師取得或接獲該等資料的其他人，
- 不得將該等資料或其中任何部分向他人披露，除非 ——
- (i) (就該核數師而言) 該項披露是為第 (4)(a) 款描述的目的而作出的；
  - (ii) 證監會同意該項披露；
  - (iii) 公眾已可得到該等資料或該部分資料 (視屬何情況而定)；

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- company consents to the disclosure; (*Added 19 of 2015 s. 27*)
  - (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

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- (iv) 該項披露是為向以專業身分行事或擬以專業身分行事的大律師、律師或其他專業顧問就根據任何有關條文引起的任何事宜徵詢意見而作出的，或是由以專業身分或擬以專業身分行事的大律師、律師或其他專業顧問為就根據任何有關條文引起的任何事宜給予意見而作出的；
- (v) 該項披露是在與 (a) 或 (b) 段提述的核數師或其他人（視屬何情況而定）作為其中一方的司法或其他法律程序有關連的情況下作出的；或
- (vi) 該項披露是按照法庭命令或按照法律或根據法律作出的要求而作出的。
- (9) 證監會在第 (3) 款描述的任何情況下披露任何資料時，或在依據第 (7)(i) 或 (ia) 或 (8)(ii) 款批給同意時，可施加該會認為適當的條件。（由 2015 年第 19 號第 27 條修訂）
- (9A) 認可交易所在依據第 (7)(ia) 款批給同意時，可施加該交易所認為適當的任何條件。（由 2015 年第 19 號第 27 條增補）
- (10) 任何人違反第 (1) 款，即屬犯罪 ——
  - (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

- 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 (ia) or (8)(ii), may impose such conditions as it considers appropriate. (*Amended 19 of 2015 s. 27*)
- (9A) A recognized exchange company, in granting a consent pursuant to subsection (7)(ia), may impose any condition that it considers appropriate. (*Added 19 of 2015 s. 27*)
- (10) A person who contravenes subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; 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 disclosure— (*Amended 6 of 2014 s. 39 and E.R. 2 of 2015*)
  - (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

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- (11) 如任何人在違反第 (7) 或 (8) 款的情況下披露任何資料，而在披露該資料的時候 —— (由 2014 年第 6 號第 39 條修訂)
- (a) (如屬違反第 (7) 款) 該人知道或理應知道，該等資料已依據第 (1) 款，或已在第 (2)、(3) 或 (4) 款 (第 (2)(a)、(3)(a)、(g)(i)、(ga) 及 (k) 及 (4)(b) 款描述的情況除外) 描述的任何情況下，向該人或任何其他人士 (視屬何情況而定) 披露，則該人除非證明自己有合理理由相信，第 (7)(i)、(ia)、(ii)、(iii)、(iv) 或 (v) 款適用於自己所作的該項披露，否則即屬犯罪；或 (由 2015 年第 19 號第 27 條修訂；由 2016 年第 23 號第 219 條修訂)
- (b) (如屬違反第 (8) 款) 該人知道或理應知道，該等資料已在第 (4)(b) 款描述的情況下，向該人或某核數師 (視屬何情況而定) 披露，則該人除非證明自己有合理理由相信，第 (8)(i)、(ii)、(iii)、(iv)、(v) 或 (vi) 款適用於自己所作的該項披露，否則即屬犯罪，
- 該人 —— (由 2014 年第 6 號第 39 條修訂)
- (i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
- (ii) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (12) 財政司司長可授權任何公職人員為證監會可根據第 (3)(f)(xi) 款披露資料的對象。
- (13) 根據第 (6) 款發表的事項不是附屬法例。
- (13A) 本條不就下述事宜而適用於第 381A(1) 條提述的人 ——
- (a) 該人 ——
- (i) 由於第 381A(2)(a)(i) 條提述的原因而獲悉的事宜；或
- (ii) 如第 381A(2)(a)(ii) 或 (iii) 條描述般獲悉的事宜；或

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- subsection (1) or in any of the circumstances described in subsection (2), (3) or (4) (other than subsections (2)(a), (3)(a), (g)(i), (ga) and (k) and (4)(b)), unless the person proves that the person had reasonable grounds to believe that subsection (7)(i), (ia), (ii), (iii), (iv) or (v) applied to the disclosure of the information by the person; or (Amended 19 of 2015 s. 27; 23 of 2016 s. 219)
- (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 an offence and is liable— (Amended 6 of 2014 s. 39 and E.R. 2 of 2015)
- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (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.
- (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



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- (b) 該人由於第 381A(2)(c)(i)、(ii) 或 (iii) 條提述的原因而得以管有的紀錄或文件。(由 2014 年第 6 號第 39 條增補)
- (14) (由 2012 年第 9 號第 44 條廢除)
- (15) 在本條中 ——
- 公司審查員** (companies inspector) 就香港以外任何地方而言，指根據該地方的法律，所具有的職能及職責包括調查在該地方經營業務的法團的事務的人；
- 指明人士** (specified person) 指 ——
- (a) 證監會；
- (b) 現時或曾經是證監會成員、僱員、顧問或代理人的人；或
- (c) 現時或曾經 ——
- (i) 根據任何有關條文獲委任的人；
- (ii) 執行任何有關條文授予的職能或施行任何有關條文的人；或
- (iii) 協助他人執行任何有關條文授予的職能或施行任何有關條文的人。

**379. 避免利益衝突**

- (1) 除第 (2) 款另有規定外，證監會成員或任何執行任何有關條文授予的職能的人，不得在以下情況下為其本人或為他人的利益而直接或間接達成或安排達成關於任何證券、結構性產品、期貨合約、槓桿式外匯交易合約，或關於任何證券、結構性產品、期貨合約、槓桿式外匯交易合

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- (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). (Added 6 of 2014 s. 39)
- (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.

**379. Avoidance of conflict of interests**

- (1) Subject to subsection (2), any member of the Commission or any person performing any function under any of the relevant provisions shall not directly or indirectly effect or cause to be effected, on his own account or for the benefit of any other person, a transaction regarding any securities, structured product, futures contract, leveraged foreign exchange contract,

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約或集體投資計劃的權益的交易 —— (由 2011 年第 8 號第 11 條修訂)

- (a) 他知道該宗交易是證監會根據任何有關條文進行的調查或程序的對象，或是與該等調查或程序所針對的交易或人有關連，或是根據本條例任何條文進行的其他程序的對象，或是與該等其他程序所針對的交易或人有關連；或
  - (b) 他知道證監會在其他情況下正在考慮該宗交易。
- (2) 第 (1) 款不適用於證券或結構性產品持有人以其持有人身分憑藉作出以下事情的權利而達成或安排達成的任何交易 —— (由 2011 年第 8 號第 11 條修訂)
- (a) 交換該等證券或結構性產品，或將之轉換為另一形式的證券或結構性產品；(由 2011 年第 8 號第 11 條代替)
  - (b) 參與原訟法庭根據《開放式基金型公司規則》、《公司條例》(第 622 章) 或《有關條例》認許的債務償還安排；(由 2012 年第 28 號第 912 及 920 條修訂；由 2016 年第 16 號第 17 條修訂)
  - (c) 認購其他證券或其他結構性產品，或處置認購其他證券或其他結構性產品的權利；
  - (d) 將該等證券或結構性產品作為押記或質押，以保證款項的償還；
  - (e) 將該等證券或結構性產品變現，以償還根據 (d) 段保證的款項；或
  - (f) 在履行法律委予的責任的過程中，將該等證券或結構性產品變現。(由 2011 年第 8 號第 11 條修訂)
- (3) 證監會成員或任何執行任何有關條文授予的職能的人，如在執行任何有關條文授予的職能的過程中須考慮符合以下說明的任何事宜，則他須立即通知證監會 ——
- (a) 關乎任何證券、期貨合約、槓桿式外匯交易合約、結構性產品，或關乎任何證券、期貨合約、槓桿式

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or an interest in any securities, structured product, futures contract, leveraged foreign exchange contract or collective investment scheme— (Amended 8 of 2011 s. 11)

- (a) which transaction he knows is or is connected with a transaction or a person that is the subject of any investigation or proceedings by the Commission under any of the relevant provisions or the subject of other proceedings under any provision of this Ordinance; or
  - (b) which transaction he knows is otherwise being considered by the Commission.
- (2) Subsection (1) does not apply to any transaction which a holder of securities or a structured product effects or causes to be effected by reference to any of his rights as such holder— (Amended 8 of 2011 s. 11)
- (a) to exchange the securities or structured product or to convert the securities or structured product to another form of securities or structured product; (Replaced 8 of 2011 s. 11)
  - (b) to participate in a scheme of arrangement sanctioned by the Court of First Instance under the OFC rules, the Companies Ordinance (Cap. 622) or the relevant Ordinance; (Amended 28 of 2012 ss. 912 & 920; 16 of 2016 s. 17)
  - (c) to subscribe for other securities or another structured product or dispose of a right to subscribe for other securities or another structured product;
  - (d) to charge or pledge the securities or structured product to secure the repayment of money;
  - (e) to realize the securities or structured product for the purpose of repaying money secured under paragraph (d); or

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外匯交易合約、集體投資計劃或結構性產品的權益，而 —— (由 2011 年第 8 號第 11 條修訂)

- (i) 他擁有上述項目的權益；
- (ii) 他擁有某法團的股份的權益，而該法團擁有上述項目的權益；或
- (iii) (A) 就證券而言，該等證券與他擁有權益的證券屬同一類別，並且是屬於同一發行人或由同一發行人發行的；(由 2011 年第 8 號第 11 條修訂)
- (B) 就期貨合約而言，該等合約是以某些證券為基礎的權益、權利或財產，而該等證券與他擁有權益的證券屬同一類別，並且是屬於同一發行人或由同一發行人發行的；或
- (C) 就結構性產品而言，該等產品是以某結構性產品為基礎的權益、權利或財產，而該等產品與他擁有權益的產品屬同一類別，並且是屬於同一發行人或由同一發行人發行的；或 (由 2011 年第 8 號第 11 條增補)

(b) 關乎某人，而 ——

- (i) 他現時或曾經受僱於該人；
- (ii) 他是或曾是該人的客戶；
- (iii) 該人是或曾是他的有聯繫者；或
- (iv) 他知道該人是或曾是另一人的客戶，而該另一人現時或曾經僱用他，或是或曾是他的有聯繫者。

(4) 任何人無合理辯解而違反第 (1) 或 (3) 款，即屬犯罪 ——

- (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

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(f) to realize the securities or structured product in the course of performing a duty imposed by law. (Amended 8 of 2011 s. 11)

(3) Any member of the Commission or any person performing any function under any of the relevant provisions shall forthwith inform the Commission if, in the course of performing any function under any such provisions, he is required to consider any matter relating to—

(a) any securities, futures contract, leveraged foreign exchange contract, structured product, or an interest in any securities, futures contract, leveraged foreign exchange contract, collective investment scheme or structured product— (Amended 8 of 2011 s. 11)

- (i) in which he has an interest;
- (ii) in which a corporation, in the shares of which he has an interest, has an interest; or

(iii) which—

(A) in the case of securities, is of or issued by the same issuer, and of the same class, as those in which he has an interest; (Amended 8 of 2011 s. 11)

(B) in the case of a futures contract, is interests, rights or property based upon securities of or issued by the same issuer, and of the same class, as those in which he has an interest; or

(C) in the case of a structured product, is interests, rights or property based on a structured product of or issued by the same issuer, and of the same class, as that in which he has an interest; or (Added 8 of 2011 s. 11)

(b) a person—

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### 380. 豁免承擔法律責任

- (1) 任何人不得僅因以下理由而就任何作為或不作為招致任何民事法律責任（不論是在合約法、侵權法、誹謗法、衡平法或是在其他法律下產生的民事法律責任）——
  - (a) 真誠地執行或其本意是真誠地執行任何有關條文授予的職能（包括第 5(1) 條各段授予的職能）；或
  - (b) 依據行政長官根據第 11 條發出的任何書面指示或因應該項指示，而真誠地達致或其本意是真誠地達致某規管目標，或真誠地執行或其本意是真誠地執行某項職能。
- (2) 第 (1) 款不適用於根據第 153 條委任的核數師。
- (3) 遵從根據本條例任何條文作出的要求的人，不得僅因該項遵從而招致對任何人負有任何民事法律責任（不論是在合約法、侵權法、誹謗法、衡平法或是在其他法律下產生的民事法律責任）。

- (i) by whom he is or was employed;
- (ii) of whom he is or was a client;
- (iii) who is or was his associate; or
- (iv) whom he knows is or was a client of a person with whom he is or was employed or who is or was his associate.

- (4) A person who, without reasonable excuse, contravenes subsection (1) or (3) commits an offence and is liable—
  - (a) on conviction on indictment to a fine of \$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.

### 380. Immunity

- (1) A person shall not incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, in respect of any act done or any omission made by reason only of—
  - (a) his performance or purported performance in good faith of any function (including that under each of the paragraphs of section 5(1)) under any of the relevant provisions; or
  - (b) his furtherance or purported furtherance in good faith of any regulatory objective, or performance or purported performance in good faith of any function, pursuant to or consequent upon any written direction given by the Chief Executive under section 11.
- (2) Nothing in subsection (1) applies to a person appointed as an auditor under section 153.
- (3) A person who complies with a requirement made under any provision of this Ordinance shall not incur any civil liability,

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- (4) 除第 (5) 款另有規定外，本條例不影響除本條例外可基於法律專業保密權的理由而產生的任何聲稱、權利或享有權。
- (5) 第 (4) 款不影響根據本條例要求披露法律執業者 (不論該法律執業者是否在香港取得資格以大律師身分執業或以律師身分行事) 的客戶的姓名或名稱及地址。

### 381. 就上市法團的核數師等與證監會之間的通訊豁免承擔法律責任

- (1) 在不損害第 380 條的原則下，現時或曾經是一間現時是上市法團的法團的核數師或該法團的相聯法團的核數師的人，不得僅因他向證監會真誠地傳達任何關於他以該核數師身分察覺並認為顯示以下情況的事宜的資料或意見，而招致任何民事法律責任 (不論是在合約法、侵權法、誹謗法、衡平法或是在其他法律下產生的民事法律責任) ——
  - (a) 在該法團組成之後，該法團的業務曾於任何時間在以下情況下經營 ——
    - (i) 用意在詐騙其債權人或其他人的債權人；
    - (ii) 是為欺詐性或非法目的而經營的；或
    - (iii) 是以欺壓該法團的成員或任何部分成員的方式而經營的；
  - (b) 該法團是為欺詐性或非法目的而組成的；
  - (c) 與該法團上市過程 (包括在該過程中向公眾提供該法團的證券的過程) 有關的人，曾經在與該過程有

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whether arising in contract, tort, defamation, equity or otherwise, to any person by reason only of that compliance.

- (4) Subject to subsection (5), nothing in this Ordinance affects any claims, rights or entitlements which would, apart from this Ordinance, arise on the ground of legal professional privilege.
- (5) Nothing in subsection (4) affects any requirement under this Ordinance to disclose the name and address of a client of a legal practitioner (whether or not the legal practitioner is qualified in Hong Kong to practise as counsel or to act as a solicitor).

### 381. Immunity in respect of communication with Commission by auditors of listed corporations, etc.

- (1) Without prejudice to section 380, a person who is or was an auditor of a corporation which is listed, or of any associated corporation of the corporation, shall not incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, by reason only of his communicating in good faith to the Commission any information or opinion on a matter of which he becomes or became aware in his capacity as such auditor, being a matter which in his opinion suggests—
  - (a) that at any time since the formation of the corporation the business of the corporation has been conducted—
    - (i) with intent to defraud its creditors, or the creditors of any other person;
    - (ii) for any fraudulent or unlawful purpose; or
    - (iii) in a manner oppressive to its members or any part of its members;
  - (b) that the corporation was formed for any fraudulent or unlawful purpose;



- 關的情況下作出虧空、欺詐、不當行為或其他失當行為；
- (d) 在該法團組成之後，與該法團事務的管理有關的人，曾於任何時間在與該等事務的管理有關的情況下對該法團或其成員或任何部分成員作出虧空、欺詐、不當行為或其他失當行為；或
- (e) 在該法團組成之後，該法團的成員或任何部分成員曾於任何時間未獲提供他們可合理期望獲得的關於該法團事務的所有資料。
- (2) 第 (1) 款除適用於現時或曾經是一間現時是上市法團的法團的核數師或該法團的相聯法團的核數師的人外，亦適用於以下的人 ——
- (a) 該人現時或曾經是一間曾經是上市法團的法團 (**有關法團**) 的核數師，或是其相聯法團的核數師，而在此情況下，該款提述“事宜”之處，須基於以下兩點予以解釋 ——
- (i) 該事宜包括在有關法團不再是上市法團之前或之後發生的任何事宜；
- (ii) 根據該款 (a)、(b)、(c)、(d) 或 (e) 段該事宜須顯示的情況，是與有關法團有關，而並非與該段提述的法團有關；及
- (iii) 根據該款 (a)、(d) 或 (e) 段該事宜須顯示的情況，在有關法團組成之後但在不再是上市法團之前任何時間發生；及
- (b) 該人現時或曾經是一間法團 (**有關法團**) 的核數師，而有關法團曾經是某現時是上市法團的法團 (**該上市法團**) 的相聯法團，在此情況下，該款提述“事宜”之處，須基於以下兩點予以解釋 ——
- (i) 該事宜包括在有關法團不再是該上市法團的相聯法團之前或之後發生的任何事宜；及

- (c) that persons concerned in the process by which the corporation became listed (including that for making the securities of the corporation available to the public in the course of such process) have engaged, in relation to such process, in defalcation, fraud, misfeasance or other misconduct;
- (d) that at any time since the formation of the corporation persons involved in the management of the affairs of the corporation have engaged, in relation to such management, in defalcation, fraud, misfeasance or other misconduct towards it or its members or any part of its members; or
- (e) that at any time since the formation of the corporation members of the corporation or any part of its members have not been given all the information with respect to its affairs that they might reasonably expect.
- (2) In addition to applying to a person who is or was an auditor of a corporation which is listed, or of any associated corporation of the corporation, subsection (1) also applies to—
- (a) a person who is or was an auditor of a corporation which was formerly listed, or of any associated corporation of that corporation, in which case a reference to matter in that subsection shall be construed on the basis that—
- (i) it includes any matter occurring at any time whether before or after the corporation first referred to in this paragraph ceased to remain listed;
- (ii) the circumstances required to be suggested by the matter under paragraph (a), (b), (c), (d) or (e) of that subsection relate, instead of to the corporation

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- (ii) 根據該款 (a)、(b)、(c)、(d) 或 (e) 段該事宜須顯示的情況，是與該上市法團有關，而並非與該段提述的法團有關。
- (3) 不論第(1)款是否參照第(2)款而適用於某人，他在以第(1)款提述的方式傳達第(1)款適用 (不論是否參照第(2)款而適用) 的任何資料或意見前曾將該等資料或意見傳達予他人，並不影響第(1)款適用於他。
- (4) 在不損害第(1)款的原則下，凡擔任或曾任某法團的核數師的人，以該款描述的方式，傳達該款適用 (不論是否參照第(2)款而適用) 的任何資料或意見 ——
- (a) 如該法團是或曾是根據《保險業條例》(第 41 章) 獲授權的保險人，則他須同時將該等資料或意見傳達予保監局；或 (由 2015 年第 12 號第 143 條修訂)
- (b) 如該法團是或曾是認可財務機構，則他須同時將該等資料或意見傳達予金融管理專員。
- (5) 在本條中 ——
- 相聯法團** (associated corporation) 就某法團而言，指 ——
- (a) 該法團的附屬公司；
- (b) 該法團擁有權益的法團 (不論該權益是直接持有或透過一個或多於一個其他法團間接持有)，而該權益已由該法團採用一般稱為權益會計的方法在其帳目內妥為記帳；或
- (c) 由該法團的大股東擔任大股東的其他法團；

**核數師** (auditor) 就某法團而言，指 ——

- (a) 為任何條例的目的而委任為該法團的核數師的人，或在其他情況下為審計該法團的帳目而委任的人 (不論該人是根據《專業會計師條例》(第 50 章) 有資格獲委任，或是在其他情況下有資格獲委任的)；或
- (b) 為香港以外某地方的成文法則的目的而委任為該法團的核數師的人，而該成文法則施加於該人的責任，

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- referred to in such paragraph, to the corporation first referred to in this paragraph; and
- (iii) the circumstances required to be suggested by the matter under paragraph (a), (d) or (e) of that subsection occurred at any time since the formation of the corporation but before the corporation ceased to remain listed; and
- (b) a person who is or was an auditor of a corporation which was formerly an associated corporation of a corporation which is listed, in which case a reference to matter in that subsection shall be construed on the basis that—
- (i) it includes any matter occurring at any time whether before or after the corporation first referred to in this paragraph ceased to remain an associated corporation of the corporation which is listed; and
- (ii) the circumstances required to be suggested by the matter under paragraph (a), (b), (c), (d) or (e) of that subsection relate, instead of to the corporation referred to in such paragraph, to the corporation of which the corporation first referred to in this paragraph was formerly an associated corporation.
- (3) The application of subsection (1) to any person (whether with or without reference to subsection (2)) is not affected by the fact that the person has, before communicating in the manner described in subsection (1) any information or opinion to which subsection (1) applies (whether with or without reference to subsection (2)), previously communicated such information or opinion to any other person.
- (4) Without prejudice to subsection (1), where a person communicates in the manner described in that subsection

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相當於《公司條例》(第 622 章)施加於核數師者。(由 2012 年第 28 號第 912 及 920 條修訂)

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any information or opinion to which that subsection applies (whether with or without reference to subsection (2)), he shall at the same time communicate the information or opinion to—

- (a) where the corporation of which he is or was an auditor is or was an insurer authorized under the Insurance Ordinance (Cap. 41), the Insurance Authority; or (*Amended 12 of 2015 s. 143*)
- (b) where the corporation of which he is or was an auditor is or was an authorized financial institution, the Monetary Authority.

(5) In this section—

**associated corporation** (相聯法團), in relation to a corporation, means—

- (a) a subsidiary of that corporation;
- (b) a corporation in which that corporation has an interest (whether held by that corporation directly or indirectly through any other corporation or corporations), which is properly accounted for by that corporation in its accounts using the method generally known as equity accounting; or
- (c) a corporation a substantial shareholder of which is also a substantial shareholder of that corporation;

**auditor** (核數師), in relation to a corporation, means—

- (a) a person appointed to be an auditor of the corporation for the purposes of any Ordinance, or otherwise for the purposes of auditing the accounts of the corporation (irrespective of whether such person is qualified for the appointment under the Professional Accountants Ordinance (Cap. 50) or is otherwise qualified for the appointment); or

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## 第 1A 分部 —— 關於金融管理專員根據指明條文行使職能的保密事宜等

(第 1A 分部由 2014 年第 6 號第 40 條增補)

### 381A. 保密

- (1) 本條適用於 ——
  - (a) 專員及曾經是專員的人；及
  - (b) 現時或曾經 ——
    - (i) 是專員的顧問或代理人的人；
    - (ii) 根據《外匯基金條例》(第 66 章)第 5A(3) 條獲委任的人；
    - (iii) 專員根據指明條文委任的人；或
    - (iv) 協助專員執行任何指明條文授予的職能或施行任何指明條文的人。
- (2) 任何本條適用的人除非是執行任何指明條文授予的職能，或是為施行任何指明條文而執行其職能，或是為作出根據任何指明條文規定或授權的事情而執行其職能，否則該人 ——
  - (a) 須將以下事宜保密，並協助將以下事宜保密 ——
    - (i) 該人因根據任何指明條文獲委任而獲悉的事宜；
    - (ii) 該人在執行任何指明條文授予的職能時 (或在施行任何指明條文時) 獲悉的事宜；或

- (b) a person appointed to be an auditor of the corporation for the purposes of any enactment of a place outside Hong Kong which imposes on such person responsibilities comparable to those imposed on an auditor by the Companies Ordinance (Cap. 622).  
(Amended 28 of 2012 ss. 912 & 920)

## Division 1A—Secrecy, etc. Relating to Monetary Authority's Functions under Specified Provisions

(Division 1A added 6 of 2014 s. 40)

### 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—

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- (iii) 該人在協助任何其他人執行任何指明條文授予的職能的過程中 (或在協助任何其他人施行任何指明條文的過程中) 獲悉的事宜;
- (b) 不得將 (a) 段提述的事宜, 傳達予任何其他人; 及
- (c) 不得容受或准許任何其他人有途徑接觸由該人管有的以下紀錄或文件 ——
  - (i) 該人因根據任何指明條文獲委任而得以管有的紀錄或文件;
  - (ii) 該人因執行任何指明條文授予的職能, 或因施行任何指明條文, 而得以管有的紀錄或文件; 或
  - (iii) 該人因協助任何其他人執行任何指明條文授予的職能, 或因協助任何其他人施行任何指明條文, 而得以管有的紀錄或文件。
- (3) 如資料屬公眾已可得到的, 第 (2) 款的規定不適用於披露該資料。
- (4) 第 (2) 款的規定, 不適用於下述情況 ——
  - (a) 為準備在香港提起任何刑事法律程序, 或在其他情況下為該等程序的目的而披露資料;
  - (b) 為準備開展在香港進行的調查 (不論是否根據任何指明條文進行的), 或在其他情況下為該等調查的目的而披露資料;
  - (c) 為向以專業身分行事 (或擬以專業身分行事) 的大律師、律師或其他專業顧問, 就根據任何指明條文引起的事宜徵詢意見而披露資料, 或由以專業身分行事 (或擬以專業身分行事) 的大律師、律師或其他專業顧問, 為就根據任何指明條文引起的事宜給予意見而披露資料;
  - (d) 在與有關的人作為其中一方的司法或其他法律程序有關連的情況下披露資料;

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- (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;



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- (e) 按照法庭命令，或按照法律或根據法律作出的要求而披露資料；
  - (f) (如披露資料會使根據《外匯基金條例》(第 66 章)第 5A(3) 條獲委任的人能夠協助專員執行該條提述的任何職能，或會協助該人協助專員執行該等職能)向該人作出該項披露；或
  - (g) 為使根據《存款保障計劃條例》(第 581 章)第 3 條設立的香港存款保障委員會能夠根據該條例執行其職能，或協助該委員會根據該條例執行其職能，向該委員會披露資料。
- (5) 任何人違反第 (2) 款，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (6) 在本條中 ——
- 專員**指金融管理專員；
- 資料** (information) 指第 (2)(a) 款提述的事宜，亦指第 (2)(c) 款提述的紀錄或文件。

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- (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. 由金融管理專員作出的披露**

- (1) 儘管有第 381A(2) 條的規定，專員可 ——
- (a) 在執行任何條例 ( 本條例除外 ) 授予的職能時，或在為施行任何條例 ( 本條例除外 ) 而執行其職能時，或在為作出根據任何條例 ( 本條例除外 ) 規定或授權的事情而執行其職能時，披露資料；
  - (b) 向根據《公司 ( 清盤及雜項條文 ) 條例》( 第 32 章 ) 獲委任為清盤人的人披露資料；
  - (c) 向上訴審裁處披露資料；
  - (d) 向市場失當行為審裁處披露資料；
  - (e) 向根據《銀行業條例》( 第 155 章 ) 第 101A 條設立的銀行業覆核審裁處披露資料；
  - (ea) 向處置補償審裁處披露資料；( 由 2016 年第 23 號第 220 條增補 )
  - (eb) 向處置可行性覆檢審裁處披露資料；( 由 2016 年第 23 號第 220 條增補 )
  - (ec) 為使處置機制當局能夠執行該當局在《金融機構 ( 處置機制 ) 條例》( 第 628 章 ) 下的職能，或為協助該當局執行該等職能，向該當局披露資料；( 由 2016 年第 23 號第 220 條增補。編輯修訂 —— 2017 年第 2 號編輯修訂紀錄 )
  - (f) 向根據《打擊洗錢及恐怖分子資金籌集條例》( 第 615 章 ) 第 55 條設立的打擊洗錢及恐怖分子資金籌集覆核審裁處披露資料；或 ( 由 2018 年第 4 號第 46 條修訂 )
  - (g) 為使專員能夠根據指明條文執行其職能，或協助專員根據指明條文執行其職能，向以下的人的核數師或前核數師披露資料 ——
    - (i) 認可財務機構或前認可財務機構；或

**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 (Winding Up and Miscellaneous Provisions) 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);
  - (ea) to the Resolution Compensation Tribunal; (*Added 23 of 2016 s. 220*)
  - (eb) to the Resolvability Review Tribunal; (*Added 23 of 2016 s. 220*)
  - (ec) for the purpose of enabling or assisting a resolution authority to perform its functions under the Financial Institutions (Resolution) Ordinance (Cap. 628), to the resolution authority; (*Added 23 of 2016 s. 220. Amended E.R. 2 of 2017*)
  - (f) to the Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal established under section 55 of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615); or (*Amended 4 of 2018 s. 46*)
  - (g) for the purpose of enabling or assisting the Monetary Authority to perform the Monetary Authority's functions

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- (ii) 核准貨幣經紀或前核准貨幣經紀。
- (2) 儘管有第 381A(2) 條的規定，專員可將金管局調查員根據第 184B 條取得的資料，向以下的人披露 ——
- (a) 財政司司長；或
- (b) 律政司司長。
- (3) 儘管有第 381A(2) 條的規定，但在不抵觸第 381E(1) 條的情況下 ——
- (a) 專員可將關乎任何人 (認可財務機構或核准貨幣經紀除外) 的資料，向證監會披露；及
- (b) 專員如認為 ——
- (i) 就維護投資大眾的利益或公眾利益而言，將關乎某認可財務機構或核准貨幣經紀的資料，向證監會披露，是可取或合宜的；或
- (ii) 披露該等資料會使證監會能夠執行其職能，或會協助證監會執行其職能，而披露該等資料並不違反投資大眾的利益或公眾利益，
- 則可將該等資料，向證監會披露。
- (3A) 儘管第 381A(2) 條已有規定，如符合以下情況，專員可向香港以外任何地方的任何主管當局，披露資料 ——
- (a) 該當局在該地方執行的職能，與處置機制當局在香港的職能，大致相當；及
- (b) 專員認為 ——
- (i) 該當局受該地方足夠的保密條文所規限；及
- (ii) 為使該當局能夠在該地方執行與處置機制當局在香港的職能大致相當的職能，或為協助該當局如此執行職能，該資料屬必要。(由 2016 年第 23 號第 220 條增補)
- (4) 儘管有第 381A(2) 條的規定，專員可用撮要形式披露資料，而該撮要是以專員管有的資料 (包括任何人根據任何

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- 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.
- (3A) Despite section 381A(2), the Monetary Authority may disclose information to an authority in a place outside Hong Kong if—

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指明條文提供的資料)編成的,但撮要的編纂手法,須使人無法從其中確定關乎任何人的業務或身分的詳情。

- (5) 儘管有第 381A(2) 條的規定,凡專員從某人取得或接獲任何資料,專員可在該人同意下披露資料,而如該等資料關乎另一人,則專員可在該人及該另一人均同意的情況下披露該等資料。
- (6) 專員在根據本條披露資料時,可施加其認為適當的條件。
- (7) 在本條中 ——

**專員**指金融管理專員;

**資料** (information) 指第 381A(2)(a) 條提述的事宜,亦指第 381A(2)(c) 條提述的紀錄或文件。

### 381C. 在金融管理專員認為條件獲符合的情況下披露資料

- (1) 儘管有第 381A(2) 條的規定,專員如認為第 (3) 款所述的

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- (a) that authority performs functions in that place broadly comparable to those of a resolution authority in Hong Kong; and
- (b) in the opinion of the Monetary Authority—
- (i) that authority is subject to adequate secrecy provisions in that place; and
- (ii) the information is necessary to enable or assist that authority to perform functions in that place broadly comparable to those of a resolution authority in Hong Kong. (*Added 23 of 2016 s. 220*)

- (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 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

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條件獲符合，可 ——

- (a) 向行政長官披露資料；
- (b) 向財政司司長披露資料；
- (c) 向律政司司長披露資料；
- (d) 向警務處處長披露資料；
- (e) 向廉政專員披露資料；
- (f) 向保險業監督披露資料；
- (g) 向公司註冊處處長披露資料；
- (h) 向破產管理署署長披露資料；
- (i) 向積金局披露資料；
- (j) 向私隱專員披露資料；
- (k) 向申訴專員披露資料；
- (l) 向根據第 (8) 款獲授權的公職人員披露資料；
- (m) 向由《財務匯報局條例》(第 588 章) 第 6(1) 條設立的財務匯報局披露資料；
- (n) 向獲財政司司長委任以調查法團事務的審查員披露資料；
- (o) 向認可交易所披露資料；
- (p) 向認可結算所披露資料；
- (q) 向認可控制人披露資料；
- (r) 向認可投資者賠償公司披露資料；
- (s) 向根據第 95(2) 條獲認可提供認可自動化交易服務的人披露資料；或
- (t) 為準備提起紀律程序而披露資料，或在其他情況下為紀律程序的目的而披露資料，而該紀律程序是關乎認可財務機構 (或前認可財務機構) 的核數師 (或前核數師) 行使其專業職責的。

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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



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- (2) 儘管有第 381A(2) 條的規定，專員如認為第 (3) 款所述的條件獲符合，亦可向以下的機構或人士披露資料 ——
- (a) 專員認為符合第 (4) 款提述的規定的、香港以外地方的主管當局或規管機構；或
- (b) 專員認為符合第 (5) 款提述的規定的、香港以外地方的公司審查員。
- (3) 第 (1) 及 (2) 款提述的條件是 ——
- (a) 就維護投資大眾的利益或公眾利益而言，披露有關資料是可取或合宜的；或
- (b) 披露有關資料會使該等資料的收受者能夠執行其職能，或會協助該收受者執行其職能，而披露有關資料，並不違反投資大眾的利益或公眾利益。
- (4) 第 (2)(a) 款提述的規定是 ——
- (a) 有關的香港以外地方的主管當局或規管機構執行的職能，類近專員的職能，或該主管當局或規管機構規管、監管或調查銀行服務、保險服務或其他金融服務；及
- (b) 該主管當局或規管機構受足夠保密條文所規限。
- (5) 第 (2)(b) 款提述的規定是 ——
- (a) 有關的香港以外地方的公司審查員執行的職能，類近公司註冊處處長的職能，或該審查員規管、監管或調查法團事務；及
- (b) 該審查員受足夠保密條文所規限。
- (6) 專員在信納第 (4)(a) 及 (b) 或 (5)(a) 及 (b) 款提述的事宜後 (如信納的話)，須在合理地切實可行範圍內，盡快在憲報公布有關主管當局、規管機構或公司審查員的姓名或名稱。
- (7) 專員在根據本條披露資料時，可施加其認為適當的條件。
- (8) 財政司司長可授權任何公職人員為專員可根據第 (1)(I) 款披露資料的對象。

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- 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—

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- (9) 根據第 (6) 款作出的公布，不是附屬法例。
- (10) 在本條中 ——
- 公司審查員** (companies inspector) 就香港以外地方而言，具有第 378(15) 條給予該詞的涵義；
- 專員** 指金融管理專員；
- 資料** (information) 具有第 381B(7) 條給予該詞的涵義。

### 381D. 披露資料的對象作出披露的限制

- (1) 如有任何資料已依據第 381A(2) 條，或已在第 381A(4)、381B(1) 或 (2) 或 381C(1) 條描述的任何情況下，向某人 (**直接披露對象**) 披露，則除非第 (2) 款適用，否則 ——
- (a) 直接披露對象；及
- (b) 直接或間接從直接披露對象取得或接獲該等資料的任何其他人，
- 均不得將該等資料或其中任何部分，向他人披露。

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- (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,

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- (2) 在以下情況下，如第 (1) 款描述般披露的資料可披露予他人——
- (a) 金融管理專員同意該項披露；
  - (b) 公眾已可得到該等資料；
  - (c) 該等資料屬公眾已可得到的資料的一部分；
  - (d) 該項披露是為向以專業身分行事（或擬以專業身分行事）的大律師、律師或其他專業顧問，就根據任何指明條文引起的事宜徵詢意見而作出的，或是由以專業身分行事（或擬以專業身分行事）的大律師、律師或其他專業顧問，為就根據任何指明條文引起的事宜給予意見而作出的；
  - (e) 該項披露是在與司法或其他法律程序有關連的情況下作出的，而該法律程序的其中一方，是第 (1)(a) 或 (b) 款中提述的直接披露對象或提述的其他人；或
  - (f) 該項披露是按照法庭命令而作出的，或是按照法律或根據法律作出的要求而作出的。
- (3) 金融管理專員在給予第 (2)(a) 款所指的同意時，可施加該專員認為適當的條件。
- (4) 如第 (1)(a) 款提述的直接披露對象——
- (a) 在違反該款的情況下，披露資料；而
  - (b) 在作出該項披露的時候知道或理應知道，該等資料已依據第 381A(2) 條，或已在第 381A(4)、381B(1) 或 (2) 或 381C(1) 條描述的任何情況下，向該名直接披露對象披露，
- 則該名直接披露對象除非證明自己有合理理由相信，第 (2) 款適用於自己所作的該項披露，否則即屬犯罪。
- (5) 如第 (1)(b) 款提述的取得或接獲資料的人——
- (a) 在違反該款的情況下，披露資料；而
  - (b) 在作出該項披露的時候知道或理應知道，該等資料已根據第 381A(2) 條，或已在第 381A(4)、381B(1)

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- 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

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或 (2) 或 381C(1) 條描述的任何情況下，向第 (1)(a) 款提述的直接披露對象披露，

則該人除非證明自己有合理理由相信，第 (2) 款適用於自己所作的該項披露，否則即屬犯罪。

(6) 犯第 (4) 或 (5) 款所訂罪行的人 ——

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

(b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

(7) 為免生疑問 ——

(a) 本條不適用於根據本分部向證監會披露的資料；及

(b) 第 378 條適用於根據本分部向證監會披露的資料。

(8) 在本條中 ——

**資料** (information) 具有第 381B(7) 條給予該詞的涵義。

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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. 向證監會提供若干資料**

- (1) 儘管有第 381A(2) 條的規定，金融管理專員在證監會的要求下，須向證監會提供金融管理專員接獲或取得的、關乎以下事宜的資料——
- (a) 訂明人士（認可財務機構或核准貨幣經紀除外）根據第 101B(1) 條直接或間接匯報的場外衍生工具交易；
  - (b) 符合以下說明的場外衍生工具交易——
    - (i) 該項交易是由認可財務機構或核准貨幣經紀根據第 101B(1) 或 (3) 條直接或間接匯報的；及
    - (ii) 該項交易的對手方，是並非認可財務機構或核准貨幣經紀的訂明人士；或
  - (c) 認可財務機構或核准貨幣經紀根據第 101B(1) 或 (3) 條直接或間接匯報的場外衍生工具交易，而該項交易是符合以下說明的場外衍生工具產品的交易——
    - (i) 該產品的標的項目，包括證券、期貨合約、證券或期貨合約的指數，或該等項目的任何組合；或
    - (ii) 該產品是附表 1 第 1 部第 1A 條第 (1)(a)(iii) 款所指者，而有關標的項目，是任何信用事件。
- (2) 在本條中——
- 信用事件** (credit event) 就——
- (a) 附表 1 第 1 部第 1A 條第 (1)(a)(iii) 款所指的；及
  - (b) 將參照義務所涉的信用風險由一方轉移至另一方的，場外衍生工具產品的交易而言，指符合以下說明的事件：如該事件發生的話，某一方會向另一方付款；
- 信用風險** (credit risk) 指債務合約的一方的違責所產生的虧損風險；

**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—



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**參照義務** (reference obligation) 就場外衍生工具交易而言，指在該交易中指明的實體的、在該交易中指明的義務，而該交易的交收基礎，是依據該義務斷定的。

### 381F. 向執行類近職能的海外人士披露資料

- (1) 儘管有第 381A(2) 條的規定，金融管理專員如認為位於香港以外地方的某人 (**海外人士**) 符合第 (2) 款指明的規定，可將金融管理專員因匯報責任而接獲或取得的資料，向該海外人士披露。
- (2) 上述規定是有關海外人士 ——
  - (a) 執行的職能，類近金融管理專員在為匯報責任的目的而收集和備存紀錄方面的職能；
  - (b) 受根據該海外人士運作所在地方的法律作出的、屬足夠的規管和監管 (包括足夠的保密規定) 所規限；及
  - (c) 按照金融管理專員可接受的國際標準運作。
- (3) 金融管理專員在向海外人士披露資料時，可同意該海外人士在符合金融管理專員施加的條件下，向任何其他人士披露該等資料。

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**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

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- (4) 金融管理專員如就某海外人士，信納第 (2) 款提述的事宜，則須在合理地切實可行範圍內，盡快在憲報公布該海外人士的姓名或名稱。
- (5) 根據第 (4) 款作出的公布，不是附屬法例。

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### 382. 妨礙

- (1) 任何人無合理辯解而妨礙任何指明人士執行本條例任何條文授予的職能或施行本條例任何條文，即屬犯罪 ——
  - (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (2) 在本條中，**指明人士** (specified person) 指 ——
  - (a) 證監會；
  - (b) 證監會任何成員、僱員、顧問或代理人；或
  - (c) 根據第 182(1) 條獲委任調查任何事宜的人。

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- (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 reasonably practicable, publish in the Gazette the name of the overseas person.
- (5) A matter published under subsection (4) is not subsidiary legislation.

## Division 2—General provisions regarding proceedings and offences

### 382. Obstruction

- (1) A person who, without reasonable excuse, obstructs any specified person in the performance of a function under or in carrying into effect any provision of this Ordinance 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.
- (2) In this section, **specified person** (指明人士) means—
  - (a) the Commission;
  - (b) any member, employee, or consultant, agent or adviser, of the Commission; or
  - (c) any person appointed to investigate any matter under section 182(1).

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### 383. 在向證監會提出的申請中作出虛假或具誤導性的陳述

(1) 任何人 ——

(a) 作出在要項上屬虛假或具誤導性的陳述 (不論該陳述屬書面或口頭或其他形式)，以支持該人或其他人根據或依據本條例任何條文向證監會提出的申請；且

(b) 知道該陳述在要項上屬虛假或具誤導性，或罔顧該陳述是否在要項上屬虛假或具誤導性，  
即屬犯罪。

(2) 任何人犯第 (1) 款所訂罪行 ——

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

(b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

(3) 在本條中，**陳述** (representation) 指符合以下說明的陳述或表述 ——

(a) 關於現時或過往的事實；

(b) 關於未來事件；或

(c) 關於現有的意圖、意見、信念、認識或其他思想狀態。

### 384. 提供虛假或具誤導性的資料

(1) 除第 (2) 款另有規定外，任何人 ——

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### 383. False or misleading representations in applications to Commission

(1) A person commits an offence if—

(a) he, in support of any application made to the Commission under or pursuant to any provision of this Ordinance, whether for himself or for another person, makes a representation, whether in writing, orally or otherwise, that is false or misleading in a material particular; and

(b) he knows that, or is reckless as to whether, the representation is false or misleading in a material particular.

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

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

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

(3) In this section, **representation** (陳述) means a representation or statement—

(a) of a matter of fact, either present or past;

(b) about a future event; or

(c) about an existing intention, opinion, belief, knowledge or other state of mind.

### 384. Provision of false or misleading information

(1) Subject to subsection (2), a person commits an offence if—

(a) he, in purported compliance with a requirement to provide information imposed by or under any of the

- (a) 在看來是遵從任何有關條文施加或根據任何有關條文施加的提供資料要求時，向指明收受者提供在要項上屬虛假或具誤導性的資料；且
- (b) 知道該等資料在要項上屬虛假或具誤導性，或罔顧該等資料是否在要項上屬虛假或具誤導性，即屬犯罪。
- (2) 如在看來是遵從任何有關條文施加或根據任何有關條文施加的要求時提供某些在要項上屬虛假或具誤導性的資料，除因第(1)款外亦根據任何有關條文構成罪行，則第(1)款不適用於提供該等資料。
- (3) 除第(4)款另有規定外，任何人——
- (a) 並非看來是遵從任何有關條文施加或根據任何有關條文施加的提供資料要求，但卻在與指明收受者執行任何有關條文授予的職能有關連的情況下，向該收受者提供在要項上屬虛假或具誤導性的紀錄或文件；且
- (b) (i) 知道該等紀錄或文件在要項上屬虛假或具誤導性，或罔顧該等紀錄或文件是否在要項上屬虛假或具誤導性；及
- (ii) 事前曾就該項提供接獲該收受者的書面警告，該警告表明根據本款，在有關個案情況下，提供在要項上屬虛假或具誤導性的紀錄或文件會根據本款構成罪行，即屬犯罪。
- (4) 除第(5)款另有規定外，任何人不得被裁定犯第(3)款所訂罪行，除非控方證明——
- (a) 接獲有關紀錄或文件的指明收受者曾合理地依賴該紀錄或文件；或
- (b) 該人意圖使該收受者依賴該紀錄或文件。

- relevant provisions, provides to a specified recipient any information which is false or misleading in a material particular; and
- (b) he knows that, or is reckless as to whether, the information is false or misleading in a material particular.
- (2) Subsection (1) does not apply to the provision of information which is false or misleading in a material particular if the provision of such information in purported compliance with a requirement imposed by or under any of the relevant provisions would, apart from subsection (1), also constitute an offence under any of the relevant provisions.
- (3) Subject to subsection (4), a person commits an offence if—
- (a) he, otherwise than in purported compliance with a requirement to provide information imposed by or under any of the relevant provisions but in connection with the performance by a specified recipient of a function under any of the relevant provisions, provides to the specified recipient any record or document which is false or misleading in a material particular; and
- (b) he—
- (i) knows that, or is reckless as to whether, the record or document is false or misleading in a material particular; and
- (ii) has, in relation to the provision of the record or document, received prior written warning from the specified recipient to the effect that the provision of any record or document which is false or misleading in a material particular in the circumstances of the case would constitute an offence under this subsection.

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- (5) 第 (4)(a) 款並不規定證明曾合理地依賴某紀錄或文件的指明收受者因依賴該紀錄或文件而導致 ——
- (a) 被誤導；
  - (b) 蒙受任何損害；或
  - (c) 招致任何損失。
- (6) 任何人犯第 (1) 款所訂罪行 ——
- (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 1 年。
- (7) 任何人犯第 (3) 款所訂罪行 ——
- (a) 一經循公訴程序定罪，可處罰款 \$500,000 及監禁 6 個月；或
  - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
- (8) 在本條中，**指明收受者** (specified recipient) 指 ——
- (a) 證監會；
  - (b) 認可交易所；
  - (c) 認可結算所；或
  - (d) 認可控制人。

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- (4) Subject to subsection (5), no person shall be convicted of an offence under subsection (3) unless the prosecution proves that—
- (a) the specified recipient to which the record or document in question has been provided has reasonably relied on the record or document; or
  - (b) the person intended that the specified recipient would rely on the record or document.
- (5) Nothing in subsection (4)(a) requires it to be proved that the specified recipient who has reasonably relied on any record or document—
- (a) was misled;
  - (b) suffered any detriment; or
  - (c) incurred any loss,
- as a result of such reliance.
- (6) A person who commits an offence under subsection (1) is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.
- (7) A person who commits an offence under subsection (3) is liable—
- (a) on conviction on indictment to a fine of \$500,000 and to imprisonment for 6 months; or
  - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (8) In this section, **specified recipient** (指明收受者) means—
- (a) the Commission;



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### 385. 證監會介入法律程序的權力

- (1) 凡 ——
  - (a) 有任何司法或其他法律程序 ( 刑事法律程序除外 ) 涉及任何有關係文有所規定的事宜，或證監會憑藉任何有關係文授予的職能而在該程序中有利害關係；及
  - (b) 證監會信納該會介入該程序並在該程序中陳詞是符合公眾利益的，

則證監會可在諮詢財政司司長後，按照第 (2) 款向聆訊該程序或具有司法管轄權聆訊該程序的法院提出申請，要求介入該程序並在該程序中陳詞。
- (2) 為第 (1) 款的目的提出的申請，須 ——
  - (a) 以書面提出；及
  - (b) 由誓章支持，表明第 (1)(a) 及 (b) 款所列條件已獲符合。
- (3) 為第 (1) 款的目的提出的申請的文本，須於該申請提出後，在合理地切實可行的範圍內盡快送達該申請所關乎的法律程序的每一方。
- (4) 在第 (5) 款的規限下，接獲為第 (1) 款的目的提出的申請的法院可藉命令 ——
  - (a) 批准該申請，但該批准須受該法院認為公正的條款規限；或
  - (b) 拒絕批准該申請。
- (5) 法院在依據第 (4)(a) 或 (b) 款就某申請作出命令前，須給予證監會及該申請所關乎的法律程序的每一方合理的陳詞機會。

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- (b) a recognized exchange company;
- (c) a recognized clearing house; or
- (d) a recognized exchange controller.

### 385. Power of Commission to intervene in proceedings

- (1) Where—
  - (a) there are any judicial or other proceedings (other than criminal proceedings) which concern a matter provided for in any of the relevant provisions, or in which the Commission has an interest by virtue of its functions under any of the relevant provisions; and
  - (b) the Commission is satisfied that it is in the public interest for the Commission to intervene and be heard in the proceedings,

the Commission, after consultation with the Financial Secretary, may, by an application made in accordance with subsection (2) to the court hearing or otherwise having competent authority to hear the proceedings, apply to intervene and be heard in the proceedings.
- (2) An application made for the purposes of subsection (1) shall be—
  - (a) made in writing; and
  - (b) supported by an affidavit showing that the conditions set out in subsection (1)(a) and (b) are satisfied.
- (3) A copy of the application made for the purposes of subsection (1) shall be served on each of the parties to the proceedings to which the application relates as soon as reasonably practicable after the application is made.
- (4) Subject to subsection (5), the court to which an application is made for the purposes of subsection (1) may by order—

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- (6) 凡法院根據第 (4)(a) 款批准某申請，證監會在第 (4)(a) 款提述的條款的規限下 ——
- (a) 可介入該申請所關乎的法律程序並在該程序中陳詞；及
  - (b) 就所有目的而言，須視為該程序的一方，並具有該程序的一方所具有的權利、責任及法律責任。
- (7) 本條並不損害《高等法院規則》(第 4 章，附屬法例 A) 第 15 號命令第 6 條規則。
- (8) 在本條中，**法院** (court) 包括裁判官及審裁處 (市場失當行為審裁處及上訴審裁處除外)。

(編輯修訂 —— 2012 年第 2 號編輯修訂紀錄)

### 385A. 金融管理專員介入法律程序的權力

- (1) 如 ——
- (a) 有任何司法或其他法律程序 (刑事法律程序除外) 涉及任何指明條文有所規定的事宜，或專員由於任何指明條文授予的職能，而在該程序中有利害關係；及
  - (b) 專員信納專員介入該程序，並在該程序中陳詞，是符合公眾利益的，

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- (a) allow the application, subject to such terms as it considers just; or
  - (b) refuse the application.
- (5) The court to which an application is made for the purposes of subsection (1) shall not make an order pursuant to subsection (4)(a) or (b) without first giving the Commission, and each of the parties to the proceedings to which the application relates, a reasonable opportunity of being heard.
- (6) Where an application made for the purposes of subsection (1) is allowed under subsection (4)(a), the Commission, subject to the terms referred to in subsection (4)(a)—
- (a) may intervene and be heard in the proceedings to which the application relates; and
  - (b) shall be regarded for all purposes as a party to the proceedings and shall have the rights, duties and liabilities of such a party.
- (7) Nothing in this section prejudices Order 15, rule 6 of the Rules of the High Court (Cap. 4 sub. leg. A).
- (8) 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.

(Amended E.R. 2 of 2012)

### 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

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- 則專員可在諮詢財政司司長後，提出申請，要求介入該程序並在該程序中陳詞。
- (2) 以下規定適用於為施行第 (1) 款而提出的申請 ——
- (a) 申請須向聆訊有關法律程序或在其他方面具有司法管轄權聆訊該程序的法院提出；
- (b) 申請須 ——
- (i) 以書面提出；及
- (ii) 由誓章支持，表明第 (1)(a) 及 (b) 款所列條件獲符合；及
- (c) 申請的文本須於申請提出後，在合理地切實可行範圍內，盡快送達該程序的每一方。
- (3) 接獲有關申請的法院 ——
- (a) 可藉命令 ——
- (i) 在該法院認為公正的條款規限下，批准該申請；或
- (ii) 拒絕批准該申請；及
- (b) 須在根據 (a) 段作出命令前，給予專員及有關法律程序的每一方合理的陳詞機會。
- (4) 如法院批准有關申請，專員在第 (3)(a)(i) 款提述的條款的規限下 ——
- (a) 可介入有關法律程序，並在該程序中陳詞；
- (b) 就所有目的而言，須視為該程序的一方；及
- (c) 具有該程序的一方所具有的所有權利、責任及法律責任。
- (5) 《高等法院規則》(第 4 章，附屬法例 A) 第 15 號命令第 6 條規則，不受本條影響。
- (6) 在本條中 ——

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- 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;

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**法院** (court) 包括裁判官及審裁處 (市場失當行為審裁處及上訴審裁處除外)；

**專員** 指金融管理專員。

(由 2014 年第 6 號第 41 條增補)

### 386. 程序不得擱置

- (1) 即使有任何司法或其他法律程序，或有任何情況顯示有人犯罪，該程序或情況本身並不構成擱置或押後已根據本條例提起的其他程序或行動的理由。
- (2) 為免生疑問，第 (1) 款 ——
  - (a) 並不影響規定擱置已根據本條例提起的程序或行動的任何其他法律，或就擱置已根據本條例提起的程序或行動訂有條文的任何其他法律；
  - (b) 並不阻止具司法管轄權的法院命令擱置或押後已根據本條例提起的程序或行動。

### 387. 舉證準則

凡證監會為任何有關條文 (關乎刑事法律程序或任何罪行的條文除外) 的目的而需證明或信納 ——

- (a) 任何人違反 ——
  - (i) 任何條例的條文；

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(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.

(Added 6 of 2014 s. 41)

### 386. Proceedings not to be stayed

- (1) The existence of any judicial or other proceedings, or circumstances that disclose the commission of an offence, shall not by itself constitute justification for any other proceedings or action under this Ordinance being stayed or deferred.
- (2) For the avoidance of doubt, nothing in subsection (1)—
  - (a) affects any other law requiring or providing for a stay of any proceedings or action under this Ordinance;
  - (b) prevents a court of competent jurisdiction from ordering that any proceedings or action under this Ordinance shall be stayed or deferred.

### 387. Standard of proof

Where it is necessary for the Commission to establish or to be satisfied, for the purposes of any of the relevant provisions (other than provisions relating to criminal proceedings or to an offence), that—

- (a) a person has contravened—

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- (ii) 根據或依據任何條例的條文給予或作出的通知、規定或要求；
  - (iii) 根據本條例批給的任何牌照或註冊的任何條款或條件；或
  - (iv) 根據或依據本條例任何條文施加的任何其他條件；
  - (b) 任何人曾對任何非法作為或不作為負有責任；
  - (c) 任何人曾輔助、慫恿、促致或誘使他人作出任何事情，因而導致 (a) 或 (b) 段提述的事宜發生；
  - (d) 任何人曾牽涉入或參與導致 (a) 或 (b) 段提述的任何事宜發生的任何事情；
  - (e) 任何人曾企圖作出或曾與他人串謀作出導致 (a) 或 (b) 段提述的任何事宜發生的任何事情；或
  - (f) (a) 至 (e) 段提述的任何事宜可能發生，
- 證監會按照適用於在法院進行的民事法律程序的舉證準則證明或信納 (a)、(b)、(c)、(d)、(e) 或 (f) 段 (視屬何情況而定) 提述的事宜，即屬足夠。

**387A. 證監會提出民事法律程序**

證監會可透過或不透過律師，開展或進行任何民事法律程序。  
(由 2012 年第 9 號第 45 條增補)

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- (i) any provision of any Ordinance;
- (ii) any notice or requirement given or made under or pursuant to any provision of any Ordinance;
- (iii) any of the terms and conditions of any licence or registration under this Ordinance; or
- (iv) any other condition imposed under or pursuant to any provision of this Ordinance;
- (b) a person has been responsible for an unlawful act or omission;
- (c) a person has assisted, counselled, procured or induced any other person to do anything which results in the occurrence of any of the matters referred to in paragraph (a) or (b);
- (d) a person has been concerned in, or a party to, anything which results in the occurrence of any of the matters referred to in paragraph (a) or (b);
- (e) a person has attempted, or conspired with any other person, to commit anything which results in the occurrence of any of the matters referred to in paragraph (a) or (b); or
- (f) any of the matters referred to in paragraphs (a) to (e) might occur,

it is sufficient for the Commission to establish, or to be satisfied as to, the matter referred to in paragraph (a), (b), (c), (d), (e) or (f) (as the case may be) on the standard of proof applicable to civil proceedings in a court of law.

**387A. Civil proceedings by Commission**

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

(Added 9 of 2012 s. 45)



**388. 證監會就某些罪行提出檢控**

- (1) 證監會可以本身的名義就任何有關條文所訂罪行及串謀犯該罪的罪行提出檢控。凡證監會根據本款就某罪行提出檢控，該罪行須作為可循簡易程序審訊的罪行而由裁判官審訊。
- (2) 為就第(1)款所述罪行而提出檢控的目的(並僅為該目的)，如非因本款則根據《法律執業者條例》(第159章)沒有資格以大律師身分執業或以律師身分行事的證監會僱員，可就他負責的案件出席審訊和在裁判官席前陳詞，並就該項檢控享有根據該條例有資格以大律師身分執業或以律師身分行事的人的所有其他權利。
- (3) 本條並不減損律政司司長就刑事罪行提出檢控的權力。
- (4) 本條不適用於第388A(1)條提述的罪行，亦不適用於串謀犯該罪的罪行。(由2014年第6號第42條增補)

**388A. 金融管理專員就罪行提出檢控**

- (1) 本條適用於——
  - (a) 第184D條所訂罪行；
  - (b) 關於執行根據金管局調查員經宣誓而作的告發而發出的手令的、第191(6)條所訂的罪行；或
  - (c) 第381D條所訂罪行。

**388. Prosecution of certain offences by Commission**

- (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.
- (4) This section does not apply to an offence referred to in section 388A(1) or conspiracy to commit such an offence. (Added 6 of 2014 s. 42)

**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.

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- (2) 金融管理專員可用本身的名義，就任何本條適用的罪行或串謀犯該罪行的罪行，提出檢控。
- (3) 根據第 (2) 款提出檢控的罪行，須作為可循簡易程序審訊的罪行，由裁判官審訊。
- (4) 凡任何人根據《外匯基金條例》(第 66 章) 第 5A(3) 條獲委任，則只為提出檢控第 (1) 或 (2) 款提述的罪行的目的，該人 ——
  - (a) 可在該人負責的案件中，出席審訊，並在裁判官席前陳詞；及
  - (b) 就該項檢控而言，享有根據《法律執業者條例》(第 159 章) 有資格以大律師身分執業或以律師身分行事的人的所有其他權利，
 即使該人根據該條例沒有資格以大律師身分執業或以律師身分行事亦然。
- (5) 本條並不減損律政司司長就刑事罪行提出檢控的權力。

*(由 2014 年第 6 號第 43 條增補)***389. 展開法律程序的時限**

- (1) 不論《裁判官條例》(第 227 章) 第 26 條有任何規定，就本條例所訂罪行 (可公訴罪行除外) 提出的告發或申訴，如在犯該罪行後 3 年內任何時間提出，均可予以審訊。
- (2) 第 388(1) 或 388A(3) 條並不影響或局限第 (1) 款提述的可公訴罪行的涵義。 *(由 2014 年第 6 號第 44 條修訂)*

**390. 法團高級人員對法團所犯罪行的法律責任，及合夥人對其他合夥人所犯罪行的法律責任**Part XVI—Division 2  
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- (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.

*(Added 6 of 2014 s. 43)***389. Limitation on commencement of proceedings**

- (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) or 388A(3) affects or limits the meaning of indictable offence referred to in subsection (1). *(Amended 6 of 2014 s. 44)*

**390. Liability of officers of corporations for offences by corporations, and of partners for offences by other partners**

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- (1) 凡任何法團所犯的本條例所訂罪行，經證明是在該法團的任何高級人員或看來是以該身分行事的人協助、教唆、慫使、促致或誘使下犯的，或是在該人的同意或縱容下犯的，或是可歸因於該人罔顧實情或罔顧後果的，則該人與該法團均屬犯該罪行，並可據此予以起訴和處罰。
- (2) 凡任何合夥的合夥人所犯的本條例所訂罪行，經證明是在該合夥的任何其他合夥人協助、教唆、慫使、促致或誘使下犯的，或是在該其他合夥人的同意或縱容下犯的，或是可歸因於該其他合夥人罔顧實情或罔顧後果的，則該其他合夥人與首述的合夥人均屬犯該罪行，並可據此予以起訴和處罰。

**391. 作出關於證券及期貨合約的虛假或具誤導性的公開通訊的民事法律責任**

- (1) 除第 (3) 至 (7) 款另有規定外，凡 ——
  - (a) 任何人對向公眾或向包含公眾 (包括上市法團股東或上市證券持有人) 的一組人士作出或發出有關通訊負有責任；
  - (b) 該有關通訊關乎證券或期貨合約，或可能影響證券的價格或期貨合約交易的價格；
  - (c) 該有關通訊在要項上屬虛假或具誤導性；及
  - (d) 該人知道該有關通訊在要項上屬虛假或具誤導性，或罔顧該有關通訊是否在要項上屬虛假或具誤導性，或在該有關通訊是否在要項上屬虛假或具誤導性方面有疏忽，

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- (1) Where the commission of an offence under this Ordinance by a corporation is proved to have been aided, abetted, counselled, procured or induced by, or committed with the consent or connivance of, or attributable to any recklessness on the part of, any officer of the corporation, or any person who was purporting to act in any such capacity, that person, as well as the corporation, is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (2) Where the commission of an offence under this Ordinance by a partner in a partnership is proved to have been aided, abetted, counselled, procured or induced by, or committed with the consent or connivance of, or attributable to any recklessness on the part of, any other partner of the partnership, that other partner, as well as the first-mentioned partner, is guilty of the offence and is liable to be proceeded against and punished accordingly.

**391. Civil liability for false or misleading public communications concerning securities and futures contracts**

- (1) Subject to subsections (3) to (7), where—
  - (a) a person is responsible for a relevant communication being made or issued to the public, or to a group of persons comprising members of the public (including the shareholders of a listed corporation or the holders of listed securities);
  - (b) the relevant communication concerns securities or futures contracts, or may affect the price of securities or the price for dealings in futures contracts;
  - (c) the relevant communication is false or misleading in a material particular; and

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- 則該人負有法律責任以損害賠償的方式，賠償另一人因依賴該有關通訊行事或不以本會採用的方式行事而蒙受的金錢損失，不論該人是否亦招致任何其他法律責任。
- (2) 就第 (1) 款而言，對作出或發出某有關通訊負有責任的人，包括 ——
- (a) 作出或發出該有關通訊的人；及
- (b) 以事關重要的方式參與或批准作出或發出該有關通訊的人。
- (3) 除非就有關個案的情況而言，某人應負有法律責任根據第 (1) 款就有關通訊向另一人作出賠償，是公平、公正和合理的，否則該人無須如此負有法律責任。
- (4) 在以下情況下，任何人不得僅因有關通訊的發出或複製，而負有法律責任根據第 (1) 款向另一人作出賠償 ——
- (a) 該有關通訊的發出或複製是在某業務（不論是否由他經營）的日常運作過程中發生的，而該業務的主要目的，是發出或複製其他人提供的材料；
- (b) 該有關通訊的內容（不論是全部或其中任何部分內容）——
- (i) （如該業務是由他經營）並非由他本人或由他的任何高級人員、僱員或代理人設定；或
- (ii) （如該業務不是由他經營）並非由他本人設定；
- (c) 為了該項發出或複製 ——
- (i) （如該業務是由他經營）他本人或他的任何高級人員、僱員或代理人；或
- (ii) （如該業務不是由他經營）他本人，並無揀選、增補、修改或以其他方式控制該有關通訊的內容；及
- (d) 在該有關通訊發出或複製時，他不知道該有關通訊在要項上屬虛假或具誤導性。

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- (d) the person knows that, or is reckless or negligent as to whether, the relevant communication is false or misleading in a material particular,
- that person shall, whether or not he also incurs any other liability, be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of his acting, or refraining from acting in a manner in which he would otherwise have acted, in reliance on the relevant communication.
- (2) For the purposes of subsection (1), a person responsible for a relevant communication being made or issued includes—
- (a) any person making or issuing it; and
- (b) any person who in a material manner participated in, or approved, the making or issuing of it.
- (3) No person shall be liable to pay compensation under subsection (1) to any other person in respect of a relevant communication unless it is fair, just and reasonable in the circumstances of the case that he should be so liable.
- (4) No person shall be liable to pay compensation under subsection (1) to any other person by reason only of the issue or reproduction of a relevant communication if—
- (a) the issue or reproduction of the relevant communication took place in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was issuing or reproducing materials provided by others;
- (b) the contents of the relevant communication 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



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- (5) 在以下情況下，任何人不得僅因有關通訊的再傳送，而負有法律責任根據第 (1) 款向另一人作出賠償 ——
- (a) 該有關通訊的再傳送是在某業務 (不論是否由他經營) 的日常運作過程中發生的，而該業務的正常運作，涉及將資訊再傳送往資訊系統內的其他人，或將資訊從一個資訊系統再傳送往另一個資訊系統 (不論位於何處)，不論是直接地再傳送或是藉利便該等其他人與第三者之間建立連結而再傳送；
  - (b) 該有關通訊的內容 (不論是全部或其中任何部分內容) ——
    - (i) (如該業務是由他經營) 並非由他本人或由他的任何高級人員、僱員或代理人設定；或
    - (ii) (如該業務不是由他經營) 並非由他本人設定；
  - (c) 為了該項再傳送 ——
    - (i) (如該業務是由他經營) 他本人或他的任何高級人員、僱員或代理人；或
    - (ii) (如該業務不是由他經營) 他本人，並無揀選、增補、修改或以其他方式控制該有關通訊的內容；
  - (d) 就該有關通訊所作的再傳送，是附有一項大意如下的訊息的，或是在獲再傳送該有關通訊的人確認明白以下事項之後完成的 ——
    - (i) (如該業務是由他經營) 他本人或他的任何高級人員、僱員或代理人並無設定該有關通訊的內容，而且既不就該有關通訊負責，亦不認可其準確性；或
    - (ii) (如該業務不是由他經營) 經營該業務的人或該人的任何高級人員、僱員或代理人並無設定該有關通訊的內容，而且既不就該有關通訊負責，亦不認可其準確性；及

- (ii) where the business was not carried on by him, by himself;
  - (c) for the purposes of the issue or reproduction—
    - (i) where the business was carried on by him, he or any officer, employee or agent of his; or
    - (ii) where the business was not carried on by him, he, did not select, add to, modify or otherwise exercise control over the contents of the relevant communication; and
  - (d) at the time of the issue or reproduction, he did not know that the relevant communication was false or misleading in a material particular.
- (5) No person shall be liable to pay compensation under subsection (1) to any other person by reason only of the re-transmission of a relevant communication if—
- (a) the re-transmission of the relevant communication took place in the ordinary course of a business (whether or not carried on by him), the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system (wherever situated), whether directly or by facilitating the establishment of links between such other persons and third parties;
  - (b) the contents of the relevant communication were not, wholly or partly, devised—
    - (i) where the business was carried on by him, by himself or any officer, employee or agent of his; or
    - (ii) where the business was not carried on by him, by himself;
  - (c) for the purposes of the re-transmission—



- (e) 在該有關通訊再傳送時 ——
- (i) 他不知道該有關通訊在要項上屬虛假或具誤導性；或
  - (ii) 他知道該有關通訊在要項上屬虛假或具誤導性，但 ——
    - (A) (如該業務是由他經營) 在有關個案的情況下，按理不能期望他阻止該項再傳送；或
    - (B) (如該業務不是由他經營) 在有關個案的情況下，他已採取所有合理步驟，使某個能夠採取步驟致使阻止該項再傳送的人，知悉該資料如此屬虛假或具誤導性之事 (即使該項再傳達事實上發生)。
- (6) 在以下情況下，任何人不得僅因有關通訊的直播，而負有法律責任根據第 (1) 款向另一人作出賠償 ——
- (a) 該有關通訊的廣播是在某廣播業者 (不論他是否該廣播業者) 的業務的日常運作過程中發生的；
  - (b) 該有關通訊的內容 (不論是全部或其中任何部分內容) ——
    - (i) (如他是該廣播業者) 並非由他本人或由他的任何高級人員、僱員或代理人設定；或
    - (ii) (如他不是該廣播業者) 並非由他本人設定；
  - (c) 為了該項廣播 ——
    - (i) (如他是該廣播業者) 他本人或他的任何高級人員、僱員或代理人；或
    - (ii) (如他不是該廣播業者) 他本人，並無揀選、增補、修改或以其他方式控制該有關通訊的內容；
  - (d) 就該項廣播而言 ——
    - (i) (如他是該廣播業者) 他；或

- (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 relevant communication;
- (d) the re-transmission of the relevant communication was accompanied by a message to the effect, or was effected following acknowledgment by the persons to whom it was re-transmitted of their understanding, that—
- (i) where the business was carried on by him, he or any officer, employee or agent of his; or
  - (ii) where the business was not carried on by him, the person who carried on the business or any officer, employee or agent of that person,
- did not devise the contents of the relevant communication, and neither took responsibility for it nor endorsed its accuracy; and
- (e) at the time of the re-transmission—
- (i) he did not know that the relevant communication was false or misleading in a material particular; or
  - (ii) he knew that the relevant communication was false or misleading in a material particular, but—
    - (A) where the business was carried on by him, in the circumstances of the case he could not reasonably be expected to prevent the re-transmission; or
    - (B) where the business was not carried on by him, in the circumstances of the case he has taken all reasonable steps to bring the fact that the relevant communication was so false or misleading to the attention of a person

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- (ii) (如他不是該廣播業者)他相信並有合理理由相信該廣播業者，  
按照使他或該廣播業者(視屬何情況而定)有權以廣播業者身分廣播的牌照(如有的話)的條款及條件，及按照任何根據或依據《電訊條例》(第 106 章)或《廣播條例》(第 562 章)發出並以廣播業者身分適用於他或該廣播業者(視屬何情況而定)的業務守則或指引(不論實際如何稱述)而行事；及
- (e) 在有關通訊廣播時 ——
- (i) 他不知道該有關通訊在要項上屬虛假或具誤導性；或
- (ii) 他知道該有關通訊在要項上屬虛假或具誤導性，但 ——
- (A) (如他是該廣播業者)在有關個案的情況下，按理不能期望他阻止該項廣播；或
- (B) (如他不是該廣播業者)在有關個案的情況下，他已採取所有合理步驟，使某個能夠採取步驟致使阻止該項廣播的人，知悉該有關通訊如此屬虛假或具誤導性之事(即使該項廣播事實上發生)。
- (7) 在憑藉第(2)(b)款而根據第(1)款就任何有關通訊針對某人提出的訴訟中，如該人證明以下情況，即可以此作為免責辯護 ——
- (a) 該人只參與或批准作出或發出該有關通訊的一部分，而該部分當時並非在要項上屬虛假或具誤導性的；或
- (b) (如該訴訟是基於該人參與作出或發出該有關通訊而提出的)該人在該有關通訊作出或發出時，以該有關通訊在要項上屬虛假或具誤導性為理由，反對作出或發出該有關通訊。

- in a position to take steps to cause the re-transmission to be prevented (even if the re-transmission in fact took place).
- (6) No person shall be liable to pay compensation under subsection (1) to any other person by reason only of the live broadcast of a relevant communication if—
- (a) the broadcast of the relevant communication took place in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);
- (b) the contents of the relevant communication were not, wholly or partly, devised—
- (i) where he was the broadcaster, by himself or any officer, employee or agent of his; or
- (ii) where he was not the broadcaster, by himself;
- (c) for the purposes of the broadcast—
- (i) where he was the broadcaster, he or any officer, employee or agent of his; or
- (ii) where he was not the broadcaster, he, did not select, add to, modify or otherwise exercise control over the contents of the relevant communication;
- (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

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- (8) 為免生疑問，凡任何法院具有司法管轄權裁定根據第 (1) 款提出的訴訟，如該法院除本條外具有司法管轄權受理強制令的申請，則可按它認為適當的條款及條件批給強制令，以附加於或取代損害賠償。
- (9) 本條並不授予在《公司 (清盤及雜項條文) 條例》(第 32 章) 第 40 條適用 (不論是否參照該條例第 342E 條而適用) 或本條例第 108 條適用的個案中提出訴訟的權利。(由 2012 年第 28 號第 912 及 920 條修訂)
- (10) 本條並不影響、限制或減免任何人根據普通法或任何其他成文法則而獲授予的權利或可招致的法律責任。
- (11) 在本條中 ——

**有關通訊** (relevant communication) 指任何通訊，包括公告、披露、陳述，以及上述項目的任何組合；

**發出** (issue) 就任何材料 (包括任何有關通訊) 而言，包括 ——

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

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

Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster; and

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

- (7) Where an action is brought against a person under subsection (1) by reference to subsection (2)(b) in respect of a relevant communication, it is a defence for the person to prove—
- (a) that he only participated in, or approved, the making or issuing of a part of the relevant communication and that the part was not false or misleading in a material particular; or
  - (b) where the action is brought on the basis that he participated in the making or issuing of the relevant communication, that at the time when it was made or

issued, he opposed the making or issuing of it because it was false or misleading in a material particular.

- (8) For the avoidance of doubt, where a court has jurisdiction to determine an action brought under subsection (1), it may, where it is, apart from this section, within its jurisdiction to entertain an application for an injunction, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.
- (9) This section does not confer a right of action in any case to which section 40 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (whether with or without reference to section 342E of that Ordinance) or section 108 applies. (*Amended 28 of 2012 ss. 912 & 920*)
- (10) Nothing in this section affects, limits or diminishes any rights conferred on a person, or any liabilities a person may incur, under the common law or any other enactment.
- (11) In this section—
- issue** (發出), in relation to any material (including any relevant communication), includes publishing, circulating, distributing or otherwise disseminating the material or the contents thereof, whether—
- (a) by any visit in person;
  - (b) in a newspaper, magazine, journal or other publication;
  - (c) by the display of posters or notices;
  - (d) by means of circulars, brochures, pamphlets or handbills;
  - (e) by an exhibition of photographs or cinematograph films;
  - (f) by way of sound or television broadcasting;
  - (g) by any information system or other electronic device; or
  - (h) by any other means, whether mechanically, electronically, magnetically, optically, manually or

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## 第 3 分部 —— 訂立規則、守則或指引等的權力

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

## 392. 財政司司長訂明某些權益等為證券等

- (1) 為施行本條例，財政司司長可藉於憲報刊登的公告，一般地或就個別個案訂明某些、某類別或某種類權益、權利或財產（不論屬文書或其他形式）——
- (a) 須視為 ——
- (i) 貨幣掛鈎票據；
  - (ii) 貨幣及利率掛鈎票據；
  - (iii) 期貨合約；
  - (iv) 利率掛鈎票據；
  - (v) 證券；
  - (vi) 結構性產品；或
  - (vii) 場外衍生工具產品；或（由 2014 年第 6 號第 45 條增補）
- (b) 不得視為 ——
- (i) 貨幣掛鈎票據；
  - (ii) 貨幣及利率掛鈎票據；
  - (iii) 期貨合約；

## 392. Financial Secretary to prescribe interests, etc. as securities, etc.

- (1) For the purposes of this Ordinance, the Financial Secretary may, by notice published in the Gazette, prescribe, either generally or in a particular case, that—
- (a) any interests, rights or property, whether in the form of an instrument or otherwise, or any class or description of any such interests, rights or property, 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;
  - (vi) structured products; or
  - (vii) OTC derivative products; or (*Added 6 of 2014 s. 45*)
- (b) any interests, rights or property, whether in the form of an instrument or otherwise, or any class or description



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- (iv) 利率掛鈎票據；
  - (v) 證券；
  - (vi) 結構性產品；或
  - (vii) 場外衍生工具產品。(由 2014 年第 6 號第 45 條增補)
- (2) 在不局限第 (1) 款的原則下，該款提述的公告可訂明在何種情況下或為何種目的，而須將或不得將該公告提述的任何權益、權利或財產或任何類別或種類的權益、權利或財產視為——
- (a) 貨幣掛鈎票據；
  - (b) 貨幣及利率掛鈎票據；
  - (c) 期貨合約；
  - (d) 利率掛鈎票據；
  - (e) 證券；
  - (f) 結構性產品；或
  - (g) 場外衍生工具產品。(由 2014 年第 6 號第 45 條增補)
- (由 2011 年第 8 號第 12 條代替。由 2014 年第 6 號第 45 條修訂)

**392A. 財政司司長訂明市場、文書等**

財政司司長可藉於憲報刊登的公告——

- (a) 為施行附表 1 第 1 部第 1B(2)(c) 條，訂明任何證券市場、期貨市場或結算所；或

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- 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;
  - (vi) structured products; or
  - (vii) OTC derivative products. *(Added 6 of 2014 s. 45)*
- (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;
  - (f) structured products; or
  - (g) OTC derivative products. *(Added 6 of 2014 s. 45)*
- (Replaced 8 of 2011 s. 12. Amended 6 of 2014 s. 45)*

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

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

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- (b) 為施行附表 1 第 1 部第 1B(2)(f)(i) 條，訂明任何類型的文書。

(由 2014 年第 6 號第 46 條增補)

### 393. 財政司司長訂明某些安排為集體投資計劃

- (1) 為施行本條例 ——

- (a) 如任何安排或任何類別或種類的安排 ——

- (i) 是在業務過程中提供的，而其目的或作用或其伴稱的目的或作用，是使參與者能夠 ——

(A) 以有值代價取得任何財產的任何權利、權益、所有權或利益；

(B) 延遲管有該財產；及

(C) 將該財產的任何權利、權益、所有權或利益轉讓或再轉讓予屬該安排的一方的人或屬該安排所提述的人；或

- (ii) 的目的或作用或其伴稱的目的或作用，是使參與者 (不論以取得任何財產或其任何部分的任何權利、權益、所有權或利益的方式或以其他方式) 能夠分享或收取 ——

(A) 聲稱從或聲稱相當可能會從該財產或其任何部分的取得、持有、管理或處置而產生的利潤、收益或其他回報，或聲稱從或聲稱相當可能會從任何該等利潤、收益或回報支付的款項；或

(B) 從該財產或其任何部分的任何權利、權益、所有權或利益的取得、持有、處置或贖回而產生的，或因行使該等權利、權益、所有權或利益的任何權利而產生的，

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- (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.

(Added 6 of 2014 s. 46)

### 393. Financial Secretary to prescribe arrangements as collective investment schemes

- (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 arrangements, or any class or description of arrangements, is to be regarded as collective investment schemes, where the arrangements—

- (i) are made available in the course of business and have the purpose or effect, or pretended purpose or effect, of enabling the participating persons—

(A) to acquire any right, interest, title or benefit in any property for valuable consideration;

(B) to defer taking possession of the property; and

(C) to transfer or retransfer any right, interest, title or benefit in the property to a person who is a party to, or is referred to in, the arrangements; or

- (ii) have the purpose or effect, or pretended purpose or effect, of enabling the participating persons, whether by acquiring any right, interest, title or benefit in any property or any part of the property or otherwise, to participate in or receive—

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或因該等權利、權益、所有權或利益屆滿而產生的款項或其他回報，

則財政司司長可藉憲報公告一般地或就任何個別個案訂明該安排或該類別或種類的安排（視屬何情況而定）須視為集體投資計劃；

- (b) 財政司司長可藉憲報公告一般地或就任何個別個案訂明任何安排或任何類別或種類的安排不得視為集體投資計劃。
- (2) 在不局限第(1)款的一般性的原則下，該款提述的公告可訂明在何種情況下或為何種目的，而將或不將該公告提述的任何安排或任何類別或種類的安排視為集體投資計劃。

### 394. 行政長官會同行政會議就徵費作出命令

- (1) 行政長官會同行政會議藉在憲報刊登的命令指明的人，須就以下買賣向證監會支付徵費（如有規定的話），徵費率由行政長官會同行政會議藉在憲報刊登的命令指明——
- (a) 根據認可交易所規章在認可證券市場記錄或通知該交易所的每宗證券買賣；
- (b) 在認可期貨市場交易的每宗期貨合約買賣；及

- (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;

- (b) any arrangements, or any class or description of arrangements, is not to be regarded as collective investment schemes.

- (2) Without limiting the generality of subsection (1), a notice under that subsection may prescribe the circumstances under which or the purposes for which any arrangements, or any class or description of arrangements, referred to in the notice is to be regarded, or not to be regarded, as collective investment schemes.

### 394. Orders by Chief Executive in Council for levies

- (1) A levy (if any) at the rate specified by the Chief Executive in Council by order published in the Gazette shall be payable to the Commission by the person or persons so specified by the Chief Executive in Council for—
- (a) every sale and purchase of any securities which is recorded on a recognized stock market or notified to a recognized exchange company under its rules;

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- (c) 透過使用認可自動化交易服務交易的每宗證券或期貨合約買賣。
- (2) 為施行第 (1) 款，行政長官會同行政會議 ——
- (a) 可指明根據該款須就任何買賣繳付的徵費率或款額為 ——
- (i) 該宗買賣的成交價的一個百分率；
- (ii) 某固定款額；
- (iii) 零比率、零百分率或零款額；或
- (iv) 以該命令中指明的其他方式計算的徵費率或款額；
- (b) 可就不同類別的證券或期貨合約指明不同的徵費率。
- (3) 每間認可交易所及每名獲認可提供自動化交易服務的人，均須收取根據第 (1) 款須繳付的徵費（如有的話），並將徵費付予證監會及就徵費向該會作出交代。
- (4) 證監會可將根據本條須繳付的徵費款額，作為拖欠該會的民事債項予以追討。
- (5) 行政長官會同行政會議可就以下事宜訂立規則 ——
- (a) 繳付根據本條須付的徵費；
- (b) 對逾期繳付徵費徵收費用或作出處罰；
- (c) 認可交易所及獲認可提供認可自動化交易服務的人就上述徵費的收取和付予證監會而設的帳目的備存、審查及審計。
- (6) 第 (1) 款並不規定行政長官會同行政會議就該款適用的任何個別買賣或任何類別的買賣指明徵費率或款額。

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- (b) every sale and purchase of any futures contract traded on a recognized futures market; and
- (c) every sale and purchase of any securities or futures contracts traded by means of authorized automated trading services.
- (2) For the purposes of subsection (1), the Chief Executive in Council may—
- (a) specify the rate or amount of the levy payable under that subsection for any sale and purchase—
- (i) as a percentage of the consideration for the sale and purchase;
- (ii) as a fixed amount;
- (iii) as a nil rate, nil percentage or nil amount; or
- (iv) as to be calculated in any other manner specified in the order;
- (b) specify different rates for different classes of securities or futures contracts.
- (3) Each recognized exchange company, and each person authorized to provide authorized automated trading services, shall collect, account for, and pay to the Commission, the levy (if any) payable under subsection (1).
- (4) The Commission may recover the amount of any levy payable under this section as a civil debt due to it.
- (5) The Chief Executive in Council may make rules for—
- (a) the payment of levies under this section;
- (b) the imposition of charges or penalties for late payment of such levies;
- (c) the keeping, examination and audit of the accounts of recognized exchange companies, and of persons authorized to provide authorized automated trading

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### 395. 行政長官會同行政會議就繳付費用而訂立規則

- (1) 行政長官會同行政會議可在諮詢證監會後訂立規則 ——
- (a) 規定就以下事宜向證監會繳付費用，並訂明該等費用 ——
- (i) 根據或依據任何有關條文向該會提出的申請；
  - (ii) 該會或根據第 8 條設立的委員會在執行與收購、合併或股份回購有關的職能時作出的任何事情；  
(由 2012 年第 28 號第 912 及 920 條修訂)
  - (iii) 該會、根據第 8 條設立的委員會或金融管理專員在執行任何有關條文授予的職能 (但並非第 (ii) 節提述的職能) 時作出的任何事情；
  - (iv) 與任何有關條文所作規定或與根據任何有關條文所作規定有關的任何其他事宜；
- (b) 規定向證監會繳付本條例規定藉或可藉根據本條訂立的規則訂明、指明或規定的費用 (不論實際如何稱述)，並訂明該等費用。
- (2) 在不損害第 (3) 款的原則下，根據本條訂立的規則所訂明的費用，可定於足以收回證監會、根據第 8 條設立的委員會或金融管理專員因提供與該等費用有關的服務或執行與該等費用有關的職能而招致或相當可能招致的開支的水平，但在釐定該等費用的水平時，不得將根據第 14 條所撥款項計算在內。

services, relating to the collection and payment to the Commission of such levies.

- (6) Nothing in subsection (1) requires the Chief Executive in Council to specify a rate or amount of levy in any particular sale and purchase to which that subsection applies or in any particular class of sales and purchases to which that subsection applies.

### 395. Rules by Chief Executive in Council for payment of fees

- (1) The Chief Executive in Council may, after consultation with the Commission, make rules to—
- (a) require and provide for the payment to the Commission of, and prescribe, fees—
- (i) for an application to the Commission under or pursuant to any of the relevant provisions;
  - (ii) for anything done by the Commission or a committee established under section 8 in the performance of a function relating to takeovers and mergers or to share buy-backs; (*Amended 28 of 2012 ss. 912 & 920*)
  - (iii) for anything done by the Commission or a committee established under section 8 or the Monetary Authority in the performance of a function under any of the relevant provisions (other than the function referred to in subparagraph (ii));
  - (iv) for any other matter with regard to which provision is made by or under any of the relevant provisions;
- (b) provide for the payment to the Commission of, and prescribe, fees (however described) which this Ordinance provides are, or may be, prescribed, specified or provided for by rules made under this section.



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- (3) 根據本條訂立的規則所訂明的費用，不得局限於參照證監會、根據第 8 條設立的委員會或金融管理專員因提供與該等費用有關的服務或執行與該等費用有關的職能而招致或相當可能招致的行政費或其他費用的款額。
- (4) 根據本條訂立的規則，可規定 ——
- (a) 費用的款額須參照規則內列明的收費表而釐定；
  - (b) 不同類別或種類的人繳付不同的費用，或就不同類別或種類的個案而繳付不同的費用；
  - (c) 一般地或就個別個案豁免繳付任何費用，不論是否指明在其他情況下須根據本條例其他條文繳付；
  - (d) 每年或每隔一段其他期間繳付費用。
- (5) 證監會可向金融管理專員繳付一筆該會按照在本條下訂立的規則獲繳付的費用，而該費用是該會認為相當於金融管理專員因提供與該等費用有關的服務或執行與該等費用有關的職能而招致或相當可能招致的開支或費用。
- (6) 證監會可將根據在本條下訂立的規則須繳付的任何費用，作為拖欠該會的民事債項予以追討。
- (7) 本條增補而非減損《釋義及通則條例》(第 1 章) 第 29 及 29A 條。

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- (2) Without prejudice to subsection (3), fees prescribed by rules made under this section may be fixed at levels sufficient to recover expenditure incurred, or likely to be incurred, by the Commission or a committee established under section 8 or the Monetary Authority in providing the services or performing the functions to which the fees relate, but in fixing the level of the fees appropriations under section 14 shall not be taken into account.
- (3) Fees prescribed by rules made under this section shall not be limited by reference to the amount of the administrative or other costs incurred, or likely to be incurred, by the Commission or a committee established under section 8 or the Monetary Authority in providing the services or performing the functions to which the fees relate.
- (4) Rules made under this section may provide—
- (a) that the amount of any fee shall be fixed by reference to a scale set out in the rules;
  - (b) for the payment of different fees by or in relation to persons or cases of different classes or descriptions;
  - (c) that the payment of any fee shall be waived, either generally or in a particular case, whether or not it is otherwise specified as being payable under any provision of this Ordinance;
  - (d) for the payment of fees annually or at other intervals.
- (5) The Commission may pay to the Monetary Authority such of the fees paid to it in accordance with the rules made under this section that in the opinion of the Commission represent the expenditure or costs incurred, or likely to be incurred, by the Monetary Authority in providing the services or performing the functions to which the fees relate.

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### 396. 減低徵費

- (1) 如在證監會某財政年度中 ——
  - (a) 該會的儲備金在扣除折舊及所有準備金後，為數超逾該財政年度預算營運開支的兩倍；及
  - (b) 該會沒有未清償債項，則該會須諮詢財政司司長，以向行政長官會同行政會議建議根據第 394 條減低徵費率或款額。
- (2) 證監會可在根據第 (1) 款諮詢財政司司長後，向行政長官會同行政會議建議根據第 394 條減低徵費率或款額。

### 397. 證監會訂立規則

- (1) 證監會可訂立規則 ——
  - (a) 就牌照及註冊的申請、印刷本牌照及註冊證明書的批給以及附帶事宜訂定條文；(由 2015 年第 19 號第 11 條修訂)
  - (b) 規定以指明方式在指明情況下於指明地方展示印刷本牌照及註冊證明書，並規定在指明情況(本條例任何條文指明的情況除外)下須為任何指明目的將印刷本牌照及註冊證明書交回證監會；(由 2015 年第 19 號第 11 條修訂)

- (6) The Commission may recover the amount of any fees payable under the rules made under this section as a civil debt due to it.
- (7) This section is in addition to and not in derogation of sections 29 and 29A of the Interpretation and General Clauses Ordinance (Cap. 1).

### 396. Reduction of levy

- (1) If during a financial year of the Commission—
  - (a) the reserves of the Commission, after deducting depreciation and all provisions, are more than twice its estimated operating expenses for the financial year; and
  - (b) the Commission has no outstanding borrowings,the Commission shall consult the Financial Secretary with a view to recommending to the Chief Executive in Council that the rate or amount of a levy be reduced under section 394.
- (2) The Commission may, after consultation with the Financial Secretary under subsection (1), recommend to the Chief Executive in Council that the rate or amount of a levy be reduced under section 394.

### 397. Rules by Commission

- (1) The Commission may make rules to—
  - (a) provide for applications for licence and registration, the issue of printed licences and certificates of registration, and incidental matters; (*Amended 19 of 2015 s. 11*)
  - (b) require the display of printed licences and certificates of registration in the specified manner and circumstances and at specified places, and require that printed licences and certificates of registration are in specified circumstances, other than those specified in any

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- (c) 規定中介人就指明類別的人以指明方式在指明情況下經營業務；
- (d) 訂明中介人僱用或聘用的人在資歷、經驗及訓練方面須符合的規定，並就與該等規定有關而施加於該等人或該等中介人的責任、就申請牌照或註冊的人須參加的考試，以及就他們可在何種情況下獲豁免而無須遵從該等規定，訂定條文；
- (e) 就更正證監會根據第 136 條備存的登記冊內的錯誤，訂定條文；
- (f) 就證監會備存的指明紀錄及該等紀錄的摘錄在司法或其他法律程序中作為證據的可接納性，訂定條文；
- (g) 規定為本條例任何條文的目的是而須提交、送交存檔、呈交或保留的文件及資料，以指明方式（不論以電子或其他方法）提交、送交存檔、呈交或保留；
- (h) 規定為本條例任何條文的目的是以指明方式提交、送交存檔、呈交或保留的文件及資料，以指明表格或格式及方式填具、簽署、簽立及認證；
- (i) 指明為本條例任何條文的目的是，是否和何時和在何種情況下可接受以指明表格或格式或方式編纂的紀錄，或以指明表格或格式或方式填具、簽署、簽立或認證的文件或資料，以及是否和何時和在何種情況下須以指明表格或格式或方式編纂紀錄，或以指明表格或格式或方式填具、簽署、簽立或認證文件或資料；
- (j) 規定支付根據本條例委任的核數師的報酬及支付根據本條例任何條文進行的審計的費用，並就與該等報酬及審計有關的事宜訂定條文；
- (k) 規定指明種類的人透過某交易所參與者在或透過認可證券市場售賣證券時，如該人將證券歸屬購買人的權利（或凡該人以代理人身分行事，則為該人的主事人將證券歸屬購買人的權利）是由指明的一類安排衍生，則須將證券歸屬購買人的權利是由該項

provision of this Ordinance, to be returned to the Commission for any specified purpose; (*Amended 19 of 2015 s. 11*)

- (c) require intermediaries to carry on business in relation to a specified class of persons, and in the specified manner and circumstances;
- (d) prescribe the qualifications, experience and training required of any persons employed or engaged by intermediaries, and provide for the obligations imposed on the persons and the intermediaries in relation to such requirements, the examinations that applicants for licence or registration are required to take, and the circumstances in which they may be exempted from such requirements;
- (e) provide for the correction of errors in the register maintained by the Commission under section 136;
- (f) provide for the admissibility in evidence in judicial or other proceedings of specified records, and extracts from specified records, kept by the Commission;
- (g) require documents and information required to be lodged, filed, submitted or retained for the purposes of any provision of this Ordinance to be so lodged, filed, submitted or retained in the specified manner, whether by electronic or other means;
- (h) require documents and information lodged, filed, submitted or retained for the purposes of any provision of this Ordinance in any specified manner to be completed, signed, executed and authenticated in the specified form and manner;
- (i) specify whether, when and the circumstances in which records compiled in any specified form or manner, or documents or information completed, signed, executed

安排衍生的事實通知該交易所參與者，並規定該人在依據該項安排售賣該等證券後，在為履行他於該項安排下的全部或部分義務而透過某交易所參與者在或透過認可證券市場購買證券時，須將該事實通知該交易所參與者；

- (l) 規定證券借貸協議下的借出人 ——
    - (i) 以指明表格或格式及方式備存指明紀錄或文件；及
    - (ii) 應證監會的要求，在指明時間內以指明形式及方式向該會提供上述紀錄或文件；
  - (m) 規定中介人在指明時間（不論是否定期）向證監會呈交申報表，以及就該等申報表須載有的詳情或詳情性質、該等申報表須由何人在何種情況下以何種方式呈交及與該等申報表相關的其他事宜，訂定條文；
  - (n) 規定根據本條例任何條文須呈交的表格或申報表不得遲於指明時間或在指明時間內交到證監會；
  - (o) 訂明或指明本條例規定由或可藉根據本條訂立的規則訂明、指明或規定的事宜，或就該等事宜訂定條文；
  - (p) 為更佳地實現本條例的宗旨及目的而就其他事宜訂定條文。
- (2) 證監會除有權根據第 (1) 款訂立規則外，亦可在諮詢財政司司長後，訂立達致其任何規管目標及執行其任何職能所需的其他規則。
- (3) 不論本條有任何規定 ——
- (a) 證監會根據本條就中介人訂立規則的權力，在該等中介人屬註冊機構的情況下，須視為只就該等中介人訂立與構成他們作為註冊機構獲註冊進行的任何受規管活動的業務有關的規則的權力；
  - (b) 證監會根據本條就中介人的有聯繫實體訂立規則的權力，在該等實體屬認可財務機構的情況下，須視

or authenticated in any specified form or manner, are acceptable or required for the purposes of any provision of this Ordinance;

- (j) require the payment of remuneration to any auditor appointed, and the costs of an audit carried out, under any provision of this Ordinance, and provide for matters relating to such remuneration and costs;
- (k) require a person of a specified description, when selling securities at or through a recognized stock market where his right to vest the securities in the purchaser (or, where he is acting as agent, his principal's right to do so) is derived from an arrangement of a specified kind, to notify the exchange participant through whom the sale is being effected of the fact that the right to vest the securities in the purchaser is derived from such an arrangement, and require the person who, having sold such securities pursuant to such an arrangement, purchases securities at or through a recognized stock market in satisfaction, in whole or in part, of his obligations under the arrangement to notify the exchange participant through whom the purchase or purchases is or are being effected of that fact;
- (l) require a lender under a securities borrowing and lending agreement to—
  - (i) keep specified records or documents in the specified form and manner; and
  - (ii) give copies of such records or documents to the Commission at its request in the specified form and manner and within the specified time;
- (m) require intermediaries to make returns at specified times (whether at regular intervals or otherwise) to the Commission, and provide for the particulars, or the

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為只就該等實體訂立與他們收取或持有中介人的客戶資產的業務有關的規則的權力。

- (4) 為免生疑問，證監會根據本條訂立規則的權力，增補而非減損該會根據本條例或其他條例的條文訂立規則的其他權力。

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nature of particulars, to be contained therein, the person by whom, and the manner and circumstances in which they are to be made, and other matters related to such returns;

- (n) require a form or return required to be submitted under any provision of this Ordinance to be received by the Commission by or within the specified time;
  - (o) prescribe, specify or provide for any matter which this Ordinance provides is, or may be, prescribed, specified or provided for by rules made under this section;
  - (p) provide for any other matters for the better carrying out of the objects and purposes of this Ordinance.
- (2) In addition to the power to make rules under subsection (1), the Commission may, after consultation with the Financial Secretary, make such other rules as are necessary for the furtherance of any of its regulatory objectives and the performance of any of its functions.
- (3) Notwithstanding anything in this section—
- (a) the power of the Commission to make rules under this section in respect of any persons as intermediaries shall, where the intermediaries are registered institutions, be regarded as the power to make rules in respect of the intermediaries only in relation to the businesses which constitute any regulated activities for which they are registered;
  - (b) the power of the Commission to make rules under this section in respect of any persons as associated entities shall, where the associated entities are authorized financial institutions, be regarded as the power to make rules in respect of the associated entities only in relation to their businesses of receiving or holding client assets of intermediaries of which they are associated entities.



**398. 證監會訂立規則的一般條文**

- (1) 不論本條例其他條文有任何規定，除第 (3) 款另有規定外，凡證監會擬根據本條例任何條文訂立規則，須以該會認為適當的方式發表規則草擬本，以邀請公眾就該等規則作出申述。
- (2) 凡證監會在根據第 (1) 款就某規則發表草擬本後根據本條例任何條文訂立該等規則，該會須 ——
  - (a) 以該會認為適當的方式發表報告，以概括字句列出 ——
    - (i) 就該草擬本所作的申述；及
    - (ii) 該會對該等申述的回應；及
  - (b) (如該等規則經過修改，而該會認為該等修改導致該等規則與草擬本有重大差異) 以該會認為適當的方式發表該等差異的細節。
- (3) 如證監會認為在有關個案的情況下 ——
  - (a) 第 (1) 及 (2) 款的適用是不適當或無需要的；或
  - (b) 為遵從第 (1) 及 (2) 款而涉及的任何延擱，並不符合 ——
    - (i) 投資大眾的利益；或
    - (ii) 公眾利益，
 則第 (1) 及 (2) 款不適用。
- (4) 不論本條例其他條文有任何規定，如證監會擬根據本條例任何條文 (不包括屬須獲金融管理專員同意的條文) 訂立的某些規則，因某些認可財務機構屬註冊機構或屬中介人的有聯繫實體而適用於該等認可財務機構，則在該

- (4) For the avoidance of doubt, the powers of the Commission to make rules under this section are in addition to and not in derogation of any other power of the Commission to make rules under any provision of this or any other Ordinance.

**398. General provisions for rules by Commission**

- (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—

範圍內，證監會須就該等規則諮詢金融管理專員。（由 2014 年第 6 號第 47 條修訂）

- (5) 為免生疑問，第 (1) 至 (4) 款不影響除該等條文外適用於根據本條例任何條文訂立任何規則的規定。
- (6) 凡證監會根據本條例任何條文訂立規則，而本條例沒有規定該等規則可訂定違反該等規則的指明條文即構成罪行，則行政長官會同行政會議可訂立規例，訂定任何人違反該等規則中適用於該人的指明條文，即屬犯罪——
- (a) 一經循公訴程序定罪，可處不超過罰款 \$500,000 及監禁 2 年的指明罰則；
- (b) 一經循簡易程序定罪，可處不超過第 6 級罰款及監禁 6 個月的指明罰則。
- (7) 除本條例其他條文另有規定外，證監會根據本條例任何條文訂立的規則，可規定在該等規則指明的條款及條件的規限下——
- (a) 該等規則指明的本條例條文就以下指明人士或屬以下指明類別人士的人而言不具效力，或只具指明程度的效力——
- (i) 只因作出任何附帶於另一業務的事情而須或可能須獲發牌的人；
- (ii) 並非代表任何其他人進行證券或期貨合約交易，或買賣集體投資計劃或槓桿式外匯交易合約的權益的人；或
- (iii) 只因訂立一宗屬指明類別的交易而須或可能須獲發牌的人；
- (b) 該等規則指明的本條例條文就任何指明人士或指明類別人士訂立的指明交易或指明類別的交易而言不具效力；
- (c) 凡該等規則指明的本條例條文規定任何申請、陳述、通知或其他文件（不論實際如何稱述）須提交或呈交證監會或送交證監會存檔，如該申請、陳述、通知

- (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, other than a provision that requires the consent of the Monetary Authority, in so far as such rules apply to authorized financial institutions by reason of their being registered institutions, or associated entities of intermediaries. (Amended 6 of 2014 s. 47)
- (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 \$500,000 and a term of imprisonment of 2 years;
- (b) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.
- (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—

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或文件(視屬何情況而定)已提交或呈交任何其他指明人士或送交任何其他指明人士存檔，則該等條文須視為已獲遵守。

- (8) 除本條例其他條文另有規定外，證監會根據本條例任何條文訂立的規則——
- (a) 可一般地適用或適用於特別情況，並可只於指明的情況下適用；
  - (b) 可就不同情況訂定不同條文，並可就不同個案或不同類別的個案訂定條文；
  - (c) 可授權將任何事宜或事情交由指明人士決定、施行、應用或規管；
  - (d) 可就在指明個案中行使酌情決定權，訂定條文；
  - (e) 為更佳和更有效地施行本條例或該等規則的任何條文，可納入保留條文、過渡性條文、附帶條文、增補條文、證據條文及相應條文(不論是否涉及任何主體條例的條文或任何附屬法例的條文)。

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- (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;

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### 399. 證監會訂立守則或指引

- (1) 證監會可在憲報刊登及以該會認為適當的任何其他方式發表該會認為適當的守則及指引，就以下事宜提供指引——
  - (a) 達致該會的任何規管目標；
  - (b) 關乎任何有關條文授予該會的職能的任何事宜；
  - (c) 本條例任何條文的施行。
- (2) 在不局限第 (1) 款的一般性的原則下，證監會可根據該款刊登或發表——
  - (a) 一份守則，就與收購及合併有關的事宜以及附帶事宜，訂定條文；
  - (b) 一份守則，就與股份回購有關的事宜以及附帶事宜，訂定條文。(由 2012 年第 28 號第 912 及 920 條修訂)
- (3) 不論本條有任何規定——
  - (a) 證監會根據本條就中介人刊登或發表守則或指引的權力，在該等中介人屬註冊機構的情況下，須視為只就該等中介人刊登或發表與構成他們作為註冊機構獲註冊進行的任何受規管活動的業務有關的守則或指引的權力；

- (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).

### 399. Codes or guidelines by Commission

- (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 buy-backs and matters incidental thereto. (Amended 28 of 2012 ss. 912 & 920)
- (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



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- (b) 證監會根據本條就中介人的有聯繫實體刊登或發表守則或指引的權力，在該等有聯繫實體屬認可財務機構的情況下，須視為只就該等有聯繫實體刊登或發表與他們收取或持有中介人的客戶資產的業務有關的守則或指引的權力。
- (4) 為免生疑問，證監會根據本條刊登或發表守則或指引的權力，增補而非減損該會根據本條例或其他條例發表守則或指引的其他權力。
- (5) 證監會可不時修訂根據本條（或根據本條例的任何其他條文）刊登或發表的守則或指引的全部或部分，修訂的方式，須與該會根據本條（或根據本條例的任何其他條文）刊登或發表該守則或指引的權力相符，而——（由 2014 年第 6 號第 48 條修訂）
- (a) 本條或有關條文的其他條文在經必要的變通後，適用於該等守則或指引的修訂條文，一如該等條文適用於該等守則或指引；及（由 2014 年第 6 號第 48 條修訂）
- (b) 本條例或其他條例中提述該等守則或指引（不論實際如何稱述）之處，除非文意另有所指，否則須解釋為提述經如此修訂的該等守則或指引。
- (6) 如任何人沒有遵守根據本條（或根據本條例的任何其他條文）刊登或發表的守則或指引內列出並適用於他的條文，此事本身不會令致他可在任何司法或其他法律程序中被起訴，但在根據本條例提起而於任何法庭進行的法律程序中，該守則或指引可獲接納為證據，如該法庭覺得該守則或指引內所列條文與該法律程序中產生的問題有關，在裁定該問題時，須考慮該條文。（由 2014 年第 6 號第 48 條修訂）
- (7) 根據本條（或根據本條例的任何其他條文）刊登或發表的守則或指引——（由 2014 年第 6 號第 48 條修訂）
- (a) 可一般地適用或適用於特別情況，並可只於指明的情況下適用；

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- 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 or any other provision of this Ordinance in a manner consistent with the power to publish the code or guideline under this section or that other provision, and— (*Amended 6 of 2014 s. 48*)
- (a) the other provisions of this section or the provision concerned apply, with necessary modifications, to such amendments to the code or guideline as they apply to the code or guideline; and (*Amended 6 of 2014 s. 48*)
- (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.



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- (b) 可就不同情況訂定不同條文，並可就不同個案或不同類別的個案訂定條文。
- (8) 根據本條刊登或發表的守則或指引不是附屬法例。
- (9) 不論本條例其他條文有任何規定，如證監會擬根據本條或本條例其他條文刊登或發表的某些守則或指引或對某些守則或指引的修訂，因某些認可財務機構屬註冊機構或屬中介人的有聯繫實體而適用於該等認可財務機構，則在該範圍內，該會須就該等守則或指引或該等修訂（視屬何情況而定）諮詢金融管理專員。

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- (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 or any other provision of this Ordinance 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. *(Amended 6 of 2014 s. 48)*
- (7) Any code or guideline published under this section or any other provision of this Ordinance— *(Amended 6 of 2014 s. 48)*
- (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)*

## 第 4 分部 —— 雜項條文

## Division 4—Miscellaneous

## 400. 通知等的送達

- (1) 除第 111、141 及 374 條及根據第 233 或 269 條訂立的任何規則另有規定外，為本條例的目的向任何人（證監會除外）或須向任何人（證監會除外）發出或送達（不論實際如何稱述）的任何書面通知、指示或其他文件（不論實際如何稱述），就所有目的而言，在以下情況下，須視為已妥為發出或送達——（由 2012 年第 28 號第 912 及 920 條修訂）
- (a) 就個人而言，該通知、指示或文件——
- (i) 由專人交付他本人；
  - (ii) 留在或郵寄往他最後為人所知的營業或居住地址；
  - (iii) 藉傳真傳送往他最後為人所知的傳真號碼；或
  - (iv) 藉電子郵遞傳送往他最後為人所知的電子郵件地址；
- (b) 就公司而言，該通知、指示或文件——
- (i) 由專人交付該公司的任何高級人員；
  - (ii) 留在或郵寄往該公司在香港的註冊辦事處；（由 2012 年第 28 號第 912 及 920 條修訂）
  - (iii) 藉傳真傳送往該公司最後為人所知的傳真號碼；或
  - (iv) 藉電子郵遞傳送往該公司最後為人所知的電子郵件地址；
- (ba) 就開放式基金型公司而言，該通知、指示或文件——
- (i) 由專人交付該公司的任何高級人員；
  - (ii) 留在或郵寄往該公司在香港的註冊辦事處；

## 400. Service of notices, etc.

- (1) Subject to sections 111, 141 and 374 and any rules made under section 233 or 269, any written notice or direction or other document (however described) to be, or required to be, issued or served (however described) to or on any person, other than the Commission, for the purposes of this Ordinance shall for all purposes be regarded as duly issued or served if— (*Amended 28 of 2012 ss. 912 & 920*)
- (a) in the case of an individual, it is—
- (i) delivered to him by hand;
  - (ii) left at, or sent by post to, his last known business or residential address;
  - (iii) sent by facsimile transmission to his last known facsimile number; or
  - (iv) sent by electronic mail transmission to his last known electronic mail address;
- (b) in the case of a company, it is—
- (i) delivered to any officer of the company by hand;
  - (ii) left at, or sent by post to, the company's registered office in Hong Kong; (*Amended 28 of 2012 ss. 912 & 920*)
  - (iii) sent by facsimile transmission to its last known facsimile number; or
  - (iv) sent by electronic mail transmission to its last known electronic mail address;
- (ba) in the case of an open-ended fund company, it is—
- (i) delivered to any officer of the company by hand;

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- (iii) 藉傳真傳送往該公司最後為人所知的傳真號碼；或
- (iv) 藉電子郵遞傳送往該公司最後為人所知的電子郵件地址；(由 2016 年第 16 號第 18 條增補)
- (c) 就《公司條例》(第 622 章)第 2(1) 條所界定的註冊非香港公司而言，該通知、指示或文件——(由 2004 年第 30 號第 3 條修訂；由 2012 年第 28 號第 912 及 920 條修訂)
  - (i) 由專人在公司登記冊所示的獲授權代表的地址交付該獲授權代表，或郵寄往該地址給該獲授權代表；(由 2012 年第 28 號第 912 及 920 條修訂)
  - (ii) 藉傳真傳送往該人最後為人所知的傳真號碼；或
  - (iii) 藉電子郵遞傳送往該人最後為人所知的電子郵件地址；
- (d) 就合夥而言，該通知、指示或文件——
  - (i) 由專人交付該合夥的任何合夥人；
  - (ii) 留在或郵寄往該合夥最後為人所知的主要營業地點；
  - (iii) 藉傳真傳送往該合夥最後為人所知的傳真號碼；或
  - (iv) 藉電子郵遞傳送往該合夥最後為人所知的電子郵件地址；或
- (e) 就不是公司、開放式基金型公司、《公司條例》(第 622 章)第 2(1) 條所界定的註冊非香港公司或證監會的法人團體而言，或就不是合夥的非法團團體而言，或就審裁處而言，該通知、指示或文件——(由 2004 年第 30 號第 3 條修訂；由 2012 年第 28 號第 912 及 920 條修訂；由 2016 年第 16 號第 18 條修訂)

- (ii) left at, or sent by post to, the company's registered office in Hong Kong;
- (iii) sent by facsimile transmission to its last known facsimile number; or
- (iv) sent by electronic mail transmission to its last known electronic mail address; (*Added 16 of 2016 s. 18*)
- (c) in the case of a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622), it is— (*Amended 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920*)
  - (i) delivered by hand to, or sent by post to, the authorized representative at the representative's address as shown in the Companies Register; (*Amended 28 of 2012 ss. 912 & 920*)
  - (ii) sent by facsimile transmission to the last known facsimile number of the person; or
  - (iii) sent by electronic mail transmission to the last known electronic mail address of the person;
- (d) in the case of a partnership, it is—
  - (i) delivered to any partner of the partnership by hand;
  - (ii) left at, or sent by post to, the last known principal place of business of the partnership;
  - (iii) sent by facsimile transmission to the last known facsimile number of the partnership; or
  - (iv) sent by electronic mail transmission to the last known electronic mail address of the partnership; or
- (e) in the case of a body corporate (other than a company, an open-ended fund company, a registered non-Hong

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- (i) 由專人交付該團體或審裁處 (視屬何情況而定) 的高級人員;
- (ii) 留在或郵寄往該團體或審裁處 (視屬何情況而定) 最後為人所知的主要業務地點;
- (iii) (就該團體而言) 藉傳真傳送往該團體最後為人所知的傳真號碼; 或
- (iv) (就該團體而言) 藉電子郵件傳送往該團體最後為人所知的電子郵件地址。

(2) 在本條中 ——

**公司登記冊** (Companies Register) 具有《公司條例》(第 622 章) 第 2(1) 條給予該詞的涵義;

**獲授權代表** (authorized representative) 指《公司條例》(第 622 章) 第 774(1) 條所界定的獲授權代表。(由 2012 年第 28 號第 912 及 920 條增補)

#### 401. 關乎證監會的紀錄或文件的證據

任何紀錄或文件，如看來是由證監會或由他人代該會簽署、簽立或發出的，並看來是由該會的任何成員或執行任何有關條文授予的職能的人所簽署或簡簽的，則該紀錄或文件，或該紀錄或文件的副本，在任何程序中均可獲接納為其中所述事實的證據，而無須證明其上的簽署或簡簽確屬看來是簽署或簡簽該紀錄或文件的人的簽署或簡簽。

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Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622) or the Commission) or an unincorporated body (other than a partnership), or a tribunal, it is— (*Amended 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920; 16 of 2016 s. 18*)

- (i) delivered to any officer of the body or the tribunal (as the case may be) by hand;
- (ii) left at, or sent by post to, the last known principal place of business of the body or the tribunal (as the case may be);
- (iii) in the case of the body, sent by facsimile transmission to the last known facsimile number of the body; or
- (iv) in the case of the body, sent by electronic mail transmission to the last known electronic mail address of the body.

(2) In this section—

**authorized representative** (獲授權代表) means an authorized representative as defined by section 774(1) of the Companies Ordinance (Cap. 622);

**Companies Register** (公司登記冊) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622). (*Added 28 of 2012 ss. 912 & 920*)

#### 401. Evidence regarding Commission's records or documents

A record or document purporting to be a record or document, or a copy of a record or document, signed, executed or issued by or on behalf of the Commission and purporting to be signed or initialled by any member of the Commission or any person performing any function under any of the relevant provisions shall in any proceedings be admissible as evidence of the facts stated in it,

without proof of the signature or initials of the person purporting to sign or initial the record or document.

#### 402. 提交證監會的文件的一般規定

- (1) 除第 324 及 347 條另有規定外，證監會可藉憲報公告，一般地或就任何個別個案就為本條例任何條文的目的是而須提交或呈交該會或送交該會存檔的申請、陳述、通知、報表或其他文件（不論實際如何稱述）指明表格，並在不局限上文的一般性的原則下，該會可在表格中——
  - (a) 附有關於該申請、陳述、通知、報表或其他文件（視屬何情況而定）的編纂的指示及指令；
  - (b) 附有關於在該申請、陳述、通知、報表或其他文件（視屬何情況而定）中附有就該申請、陳述、通知、報表或其他文件（視屬何情況而定）的詳情作出法定聲明的指示及指令；及
  - (c) 指明須隨附該申請、陳述、通知、報表或其他文件（視屬何情況而定）的文件。
- (2) 就第 (1) 款而言，證監會可藉在憲報公告中提述某個以該會認為適當的電子方式另行發表的表格，而指明任何表格，以代替在憲報公告中列出該表格，而就所有目的而言，證監會視為已根據第 (1) 款妥為指明該表格。
- (3) 為施行第 (1) 款，證監會可指明在不同情況下採用不同表格。
- (4) 除第 (5) 及 (6) 款另有規定外，凡——
  - (a) 任何申請、陳述、通知、報表或其他文件（不論實際如何稱述）須為本條例任何條文的目的是提交或呈交證監會或送交該會存檔；及
  - (b) 該會已根據第 (1) 款就該申請、陳述、通知、報表或其他文件（視屬何情況而定）指明表格，

#### 402. General requirements for documents lodged with Commission

- (1) Except as otherwise provided in sections 324 and 347, the Commission may, by notice published in the Gazette, specify any form in respect of any application, statement, notice, return or other document (however described) required to be lodged, filed or submitted with or to the Commission for the purposes of any provision of this Ordinance, either generally or in any particular case, and, without limiting the generality of the foregoing, may in the form—
  - (a) include directions and instructions relating to the compilation of the application, statement, notice, return or other document (as the case may be);
  - (b) include directions and instructions relating to the inclusion of statutory declarations made in respect of the particulars in it; and
  - (c) specify documents by which it is to be accompanied.
- (2) For the purposes of subsection (1), the Commission may specify any form by referring in a notice published in the Gazette to the form as separately published by such electronic means as the Commission considers appropriate, instead of setting out the form in a notice published in the Gazette, whereupon the Commission shall for all purposes be regarded as having duly specified the form under subsection (1).
- (3) For the purposes of subsection (1), the Commission may specify that different forms are to be used in different circumstances.
- (4) Subject to subsections (5) and (6), where—
  - (a) there is any requirement for any application, statement, notice, return or other document (however described) to



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則除非該申請、陳述、通知、報表或其他文件（視屬何情況而定）符合以下條件，否則不得視作已符合提交、送交存檔或呈交的規定——

- (i) 採用指明的表格；
  - (ii) 按照附於該表格的指示及指令編纂；
  - (iii) 按照附於該表格的指示或指令而附有法定聲明；及
  - (iv) 附有該表格指明的隨附文件。
- (5) 任何申請、陳述、通知、報表或其他文件不得由於偏離藉第 (1) 款指明的表格的格式而不被視為採用該表格，但前提是該項偏離不影響該表格的內容實質。
- (6) 證監會如信納任何人在遵從第 (4)(i)、(ii)、(iii) 或 (iv) 款提述的規定方面有極大實際困難，可就該人的個案按該會認為需要的範圍而酌情免除該規定。
- (7) 第 (1) 款提述的公告不是附屬法例。

#### 403. 關乎證監會的批准或核准的一般條文

凡本條例任何條文規定，除非獲證監會以書面或其他方式批准或核准，否則不可作出某作為或有某項不作為，則——

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be lodged, filed or submitted with or to the Commission for the purposes of any provision of this Ordinance; and

- (b) the Commission has specified any form in respect of it under subsection (1),

the requirement shall not be regarded as having been complied with unless it—

- (i) is in the form specified;
- (ii) is compiled in accordance with such directions and instructions as are included in the form;
- (iii) contains statutory declarations in accordance with such directions and instructions as are included in the form; and

- (iv) is accompanied by such documents as are specified in the form.

- (5) An application, statement, notice, return or other document shall not by reason of any deviation from a form specified in respect of it under subsection (1) cease to be regarded as being in that form, if the deviation does not affect the substance of the form.
- (6) Where the Commission is satisfied that a person has substantial practical difficulties in complying with any of the requirements referred to in subsection (4)(i), (ii), (iii) or (iv), it may in its discretion dispense with the requirements in the case of the person to such extent as it considers necessary.
- (7) A notice published pursuant to subsection (1) is not subsidiary legislation.

#### 403. General provisions for approvals by Commission

Where under any provision of this Ordinance, an act cannot be done, or an omission cannot be made, except with the approval, whether in writing or otherwise, of the Commission—

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- (a) 在不損害本條例中關乎施加條件的明訂條文的原則下，該會在作出有關批准或核准時可就該項批准或核准指明條件（如有的話），以作規限，其中可包括述明若不獲遵從會致使該項批准或核准失效的條件；及
- (b) 為可就未經該會書面批准或核准的作為或不作為而根據本條例任何條文判處的金錢上的、扣留性的或其他性質的處罰的目的，在該作為並非按照該等條件作出或該項不作為並非按照該等條件而有（視屬何情況而定）的範圍內，該項批准或核准並無效力。

#### 404. 《賭博條例》條文不適用

- (1) 除第(2)款另有規定外，《賭博條例》(第148章)不適用於本條例規管或根據本條例規管的交易或活動，亦不適用於在符合本條例的規定下進行的交易或活動。
- (2) 證監會可訂立規則，以提述交易或活動的本質或交易或活動的所有或任何一方或所涉及的所有或任何人或其他方式，訂明若非因本條例《賭博條例》(第148章)本會適用的任何類別的交易或活動為該條例適用的類別的交易或活動，而凡證監會訂立該等規則，該條例即據此適用。

#### 405. 《稅務條例》不受影響

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- (a) without prejudice to any express provisions in this Ordinance relating to imposition of conditions, the approval may be given subject to such conditions (if any) as the Commission may specify in giving the approval (including conditions which provide that failure to comply with the conditions causes the approval to lapse); and
- (b) for the purposes of any pecuniary, custodial or other sanction which may be imposed under any provision of this Ordinance in relation to any such act done or omission made without such approval, the approval shall have no effect to the extent that the act is done or the omission is made (as the case may be) otherwise than in accordance with any such conditions.

#### 404. Exclusions of provisions of Gambling Ordinance

- (1) Subject to subsection (2), the Gambling Ordinance (Cap. 148) shall not apply to any transaction or activity which is regulated by or under, or which is carried out in compliance with, this Ordinance.
- (2) The Commission may make rules to prescribe any class of transactions or activities (being transactions or activities to which the Gambling Ordinance (Cap. 148) would apart from this section apply), whether by reference to the nature of the transactions or activities or all or any of the parties to or persons involved in the transactions or activities or otherwise, as a class of transactions or activities to which that Ordinance shall apply, whereupon that Ordinance shall have application accordingly.

#### 405. Inland Revenue Ordinance not affected

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本條例不影響《稅務條例》( 第 112 章 ) 第 4 條。

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Nothing in this Ordinance affects section 4 of the Inland Revenue Ordinance (Cap. 112).

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**第 XVII 部****廢除及有關係文***(格式變更——2012 年第 2 號編輯修訂紀錄)***406. 廢除**

- #(1) 以下條例自財經事務及庫務局局長藉憲報公告指定的日期起廢除——(由 2002 年第 106 號法律公告修訂)
- (a) 《證券及期貨事務監察委員會條例》(第 24 章)；
  - (b) 《商品交易條例》(第 250 章)；
  - (c) 《證券條例》(第 333 章)；
  - (d) 《保障投資者條例》(第 335 章)；
  - (e) 《證券交易所合併條例》(第 361 章)；
  - (f) 《證券(內幕交易)條例》(第 395 章)；
  - (g) 《證券(披露權益)條例》(第 396 章)；
  - (h) 《證券及期貨(結算所)條例》(第 420 章)；
  - (i) 《槓桿式外匯買賣條例》(第 451 章)；
  - (j) 《交易所及結算所(合併)條例》(第 555 章)。
- (2) 根據本條而作出的廢除受以下項目規限——
- (a) 本部其他條文；及
  - (b) 附表 10。
- (3) 在不局限附表 1 第 1 部第 12 條的一般性的原則下，本條中凡提述任何條例，包括根據該等條例訂立的附屬法例。

編輯附註：

# 2003 年 4 月 1 日為根據本款指定的日期——見 2003 年第 13 號法律公告。

**Part XVII****Repeals and Related Provisions***(Format changes—E.R. 2 of 2012)***406. Repeals**

- #(1) Each of the following shall be repealed from a day appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette— *(Amended L.N. 106 of 2002)*
- (a) the Securities and Futures Commission Ordinance (Cap. 24);
  - (b) the Commodities Trading Ordinance (Cap. 250);
  - (c) the Securities Ordinance (Cap. 333);
  - (d) the Protection of Investors Ordinance (Cap. 335);
  - (e) the Stock Exchanges Unification Ordinance (Cap. 361);
  - (f) the Securities (Insider Dealing) Ordinance (Cap. 395);
  - (g) the Securities (Disclosure of Interests) Ordinance (Cap. 396);
  - (h) the Securities and Futures (Clearing Houses) Ordinance (Cap. 420);
  - (i) the Leveraged Foreign Exchange Trading Ordinance (Cap. 451);
  - (j) the Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555).
- (2) Any repeal under this section is subject to—
- (a) the other provisions of this Part; and
  - (b) Schedule 10.

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第 407 條Part XVII  
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Cap. 571**407. 保留、過渡性、相應及有關條文等**

- (1) 附表 10 第 1 部訂定於本條例或本條例任何部分生效時適用或關乎該項生效的保留條文及過渡性及補充安排。
- (2) 附表 10 第 2 部訂定於本條例或本條例任何部分生效時適用或關乎該項生效的相應及補充修訂，該部第 2 欄指明的成文法則，按該部第 3 欄所列的方式修訂。
- (3) 附表 10 第 3 部就於《2011 年證券及期貨和公司法例（結構性產品修訂）條例》（2011 年第 8 號）生效<sup>#</sup>時適用或關乎該條例的生效的保留條文及過渡性安排，訂定條文。  
(由 2011 年第 8 號第 13 條增補)
- (4) 附表 10 第 4 部訂定於《2012 年證券及期貨（修訂）條例》（2012 年第 9 號）或該條例任何部分生效時適用或關乎該項生效的保留條文及過渡性安排。  
(由 2012 年第 9 號第 46 條增補)
- (5) 附表 10 第 5 部就於《公司條例》（第 622 章）附表 11 第 78 條生效<sup>@</sup>時適用或關乎該條的生效的保留條文及過渡性安排，訂定條文。  
(由 2012 年第 28 號第 912 及 920 條增補)  
(由 2012 年第 9 號第 46 條修訂)

編輯附註：

<sup>#</sup> 生效日期：2011 年 5 月 13 日。<sup>@</sup> 生效日期：2014 年 3 月 3 日。

- (3) Without limiting the generality to section 12 of Part 1 of Schedule 1, a reference to any Ordinance in this section includes any subsidiary legislation made under such Ordinance.

Editorial Note:

<sup>#</sup> 1 April 2003 was the day appointed under this subsection — see L.N. 13 of 2003.**407. Savings, transitional, consequential and related provisions, etc.**

- (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<sup>#</sup> 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)*
- (5) Part 5 of Schedule 10 provides for the savings and transitional arrangements that apply on, or relate to, the commencement<sup>@</sup> of section 78 of Schedule 11 to the Companies Ordinance (Cap. 622). *(Added 28 of 2012 ss. 912 & 920)*



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第 571 章

第 XVII 部  
第 408 條

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**408. 第 XVII 部的條文等並不減損《釋義及通則條例》第 23 條的效力**

除本部或附表 10 另有規定外，本部及附表 10 的條文增補而非減損《釋義及通則條例》(第 1 章)第 23 條。

**409. 附表 10 的修訂**

行政長官會同行政會議可藉在憲報刊登的命令修訂附表 10。

Editorial Note:

# Commencement date: 13 May 2011.

@ Commencement date : 3 March 2014.

**408. Provisions of Part XVII, etc. not to derogate from section 23 of Interpretation and General Clauses Ordinance**

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).

**409. Amendment of Schedule 10**

The Chief Executive in Council may, by order published in the Gazette, amend Schedule 10.

*(Amended L.N. 29 of 2004)*

**附表 1**

[ 第 2、19、66、101A、  
102、164、171、174、175、  
202、381E、392A 及 406 條  
及附表 9 及 10]

(由 2011 年第 8 號第 14 條修訂；由 2014 年第 6 號第 52 條修訂)

**釋義及一般條文**

(格式變更——2012 年第 2 號編輯修訂紀錄)

**第 1 部****釋義****1. 本條例的釋義**

在本條例中，除另予界定、另被豁除或文意另有所指外——

**上市** (listed) 指在認可證券市場上市，而就本定義而言——

- (a) 如某法團的任何證券屬上市證券，則該法團須視為上市法團；
- (b) 如認可交易所應發行有關證券的法團或有關證券的持有人的申請，同意在符合本條例的規定下，容許該等證券在認可證券市場交易，則該等證券須視為上市證券，而在該等證券在該認可證券市場暫停交易期間，須持續視為上市證券；

**上市** (listing) 作為名詞使用時，就任何證券而言，指該等證券上市的程序；

**Schedule 1**

[ss. 2, 19, 66, 101A, 102, 164,  
171, 174, 175, 202, 381E,  
392A & 406 & Schs. 9 & 10]

(Amended 8 of 2011 s. 14; 6 of 2014 s. 52)

**Interpretation and General Provisions**

(Format changes—E.R. 2 of 2012)

**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;

**affiliated operational entity** (相聯營運實體) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628); (Added 23 of 2016 s. 221. Amended E.R. 2 of 2017)

**approved money broker** (核准貨幣經紀) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155); (Added 6 of 2014 s. 52)

**associate** (有聯繫者), in relation to a person, means—

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第 571 章附表 1 —— 第 1 部  
第 1 條

**上訴審裁處** (Securities and Futures Appeals Tribunal) 指本條例第 216 條設立的證券及期貨事務上訴審裁處；

**已廢除的《交易所及結算所 (合併) 條例》** (repealed Exchanges and Clearing Houses (Merger) Ordinance) 指根據本條例第 406 條廢除的《交易所及結算所 (合併) 條例》(第 555 章)；

**已廢除的《保障投資者條例》** (repealed Protection of Investors Ordinance) 指根據本條例第 406 條廢除的《保障投資者條例》(第 335 章)；

**已廢除的《商品交易條例》** (repealed Commodities Trading Ordinance) 指根據本條例第 406 條廢除的《商品交易條例》(第 250 章)；

**已廢除的《槓桿式外匯買賣條例》** (repealed Leveraged Foreign Exchange Trading Ordinance) 指根據本條例第 406 條廢除的《槓桿式外匯買賣條例》(第 451 章)；

**已廢除的《證券 (內幕交易) 條例》** (repealed Securities (Insider Dealing) Ordinance) 指根據本條例第 406 條廢除的《證券 (內幕交易) 條例》(第 395 章)；

**已廢除的《證券及期貨事務監察委員會條例》** (repealed Securities and Futures Commission Ordinance) 指根據本條例第 406 條廢除的《證券及期貨事務監察委員會條例》(第 24 章)；

**已廢除的《證券及期貨 (結算所) 條例》** (repealed Securities and Futures (Clearing Houses) Ordinance) 指根據本條例第 406 條廢除的《證券及期貨 (結算所) 條例》(第 420 章)；

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- (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

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第 1 條

**已廢除的《證券交易所合併條例》** (repealed Stock Exchanges Unification Ordinance) 指根據本條例第 406 條廢除的《證券交易所合併條例》(第 361 章)；

**已廢除的《證券(披露權益)條例》** (repealed Securities (Disclosure of Interests) Ordinance) 指根據本條例第 406 條廢除的《證券(披露權益)條例》(第 396 章)；

**已廢除的《證券條例》** (repealed Securities Ordinance) 指根據本條例第 406 條廢除的《證券條例》(第 333 章)；

**不當行為** (misfeasance) 指以不當方式作出在其他方面屬合法的作為；

**中介人** (intermediary) 指持牌法團或註冊機構；

**公司** (company) 指《公司條例》(第 622 章)第 2(1) 條界定的公司；(由 2012 年第 28 號第 912 及 920 條修訂)

**公司註冊處處長** (Registrar of Companies) 指根據《公司條例》(第 622 章)第 21(1) 條委任的公司註冊處處長；(由 2012 年第 28 號第 912 及 920 條修訂)

**公司集團** (group of companies) 指 2 個或多於 2 個的法團，而其中 1 個是其餘法團的控權公司；(由 2012 年第 28 號第 912 及 920 條修訂)

**公眾、大眾** (public) 指香港的公眾，並包括任何一類該等公眾人士；

**文件** (document) 包括註冊紀錄冊、登記冊、簿冊、紀錄帶、任何形式的資訊系統輸入或輸出資料，以及其他文件或類似的材料(不論是以機械、電子、磁力、光學、人手或其他方式製作的)；

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(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 registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622), which— (*Amended 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920*)

(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;

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第 571 章附表 1 —— 第 1 部  
第 1 條**主管人員** (executive officer) ——

- (a) 就某持牌法團而言，指該法團的負責人員；
- (b) 就某註冊機構而言，指根據《銀行業條例》(第 155 章) 屬該機構的主管人員的人；或
- (c) 就中介人的有聯繫實體而言，指負責直接監管該實體收取或持有該中介人的客戶資產的該實體的董事；

**司法或其他法律程序** (judicial or other proceedings) 指任何法律程序，不論屬司法程序性質或其他性質；**市場失當行為** (market misconduct) 具有本條例第 245(1) 條給予該詞的涵義；**市場失當行為審裁處** (Market Misconduct Tribunal) 指本條例第 251 條設立的市場失當行為審裁處；**市場合約** (market contract) 指 ——

- (a) 符合以下說明的合約：由認可結算所不論是否依據一項約務更替，而與結算所參與者為結算及交收符合以下說明的證券或期貨合約交易而訂立的，並受該結算所的規章所規限 ——
  - (i) 在認可證券市場或認可期貨市場達成；或
  - (ii) 受認可交易所的規章所規限；
- (b) 符合以下說明的合約：由認可結算所不論是否依據一項約務更替，而與結算所參與者為結算及交收場外衍生工具交易而訂立的，並受該結算所的規章所規限；或

Schedule 1—Part 1  
Section 1S1-8  
Cap. 571**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;



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第 1 條Schedule 1—Part 1  
Section 1S1-10  
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<sup>#</sup>(c) 符合以下說明的合約 ——

- (i) 受符合以下說明的指定中央對手方 ( 本條例第 101A 條所界定者 ) 的規章所規限：該對手方為證監會根據第 1C 條藉於憲報刊登的公告指明的、屬認可自動化交易服務的提供者；及
- (ii) 由該對手方不論是否依據一項約務更替，而與其任何一名成員為結算及交收場外衍生工具交易而訂立的；( 由 2014 年第 6 號第 52 條代替 )

**未成年** (minor) 就任何人而言，指未滿 18 歲；

**申訴專員** (Ombudsman) 指《申訴專員條例》( 第 397 章 ) 第 3(1) 條提述的申訴專員；

**交易** (dealing) ——

- (a) 就證券而言，指不論以主事人或代理人身分而與另一人訂立或要約與另一人訂立協議，或誘使或企圖誘使另一人訂立或要約訂立協議，而 ——
  - (i) 目的是或旨在取得、處置、認購或包銷證券；或
  - (ii) 該等協議的目的或佯稱目的是使任何一方從證券的收益或參照證券價值的波動獲得利潤；或

**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

編輯附註：

<sup>#</sup> 尚未實施

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第 1 條

- (b) 就期貨合約而言，指不論以主事人或代理人身分而——
- (i) 為訂立、取得或處置期貨合約而與另一人訂立或要約與另一人訂立協議；
  - (ii) 誘使或企圖誘使另一人訂立或要約訂立期貨合約；或
  - (iii) 誘使或企圖誘使另一人取得或處置期貨合約；

**交易所參與者** (exchange participant) 指符合以下說明的人——

- (a) 根據認可交易所規章，可透過該交易所或在該交易所營辦的認可證券市場或認可期貨市場進行交易；及
- (b) 其姓名或名稱已記入在由該交易所備存的、以記錄可透過該交易所或在該交易所營辦的認可證券市場或認可期貨市場進行交易的人的列表、名冊或登記冊內；

**交易權** (trading right) 就認可交易所而言，指有資格透過該交易所或在該交易所營辦的認可證券市場或認可期貨市場進行交易的權利，且該權利已記入該交易所備存的列表、名冊或登記冊內；

**印刷本牌照** (printed licence) 指印在紙張上或屬其他實物形式的證明書，證明某牌照的批給（不論是在《2015 年證券及期貨（修訂）條例》（2015 年第 19 號）第 2 部的生效日期<sup>s</sup>之前、當日或之後發給的）；（由 2015 年第 19 號第 12 條增補）

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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 obligation** (結算責任) has the meaning given by section 101A of this Ordinance; (*Added 6 of 2014 s. 52*)

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

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第 571 章附表 1 —— 第 1 部  
第 1 條**合資格信貸評級** (qualifying credit rating) 指 ——

- (a) 第 5 部指明的信貸評級；或
- (b) 證監會認為是相等於第 5 部某一指明的信貸評級的信貸評級；

**在香港以外地方成立為法團的銀行** (bank incorporated outside Hong Kong) 指在香港以外地方成立為法團而並非認可財務機構的銀行；**多邊機構** (multilateral agency) 指第 4 部指明的團體；**存款證** (certificate of deposit) 指存放在發證人或其他人而與金錢 (不論屬何種貨幣) 有關的文件，而該文件承認有將一筆指定數額的款項 (不論是否連同利息) 付給持證人或文件上的指定人的義務，亦不論該文件有無背書，均可憑該文件的交付而將收取該筆款項 (不論是否連同利息) 的權利轉讓；任何該等文件如憑藉《銀行業條例》(第 155 章) 第 137B(1) 條中**訂明票據**的定義的 (a) 段而屬訂明票據，則該文件包括在該定義的 (b) 段就該文件而提述的任何權利或權益；**成立**、**成立為法團** (incorporated) 包括以任何方式組成或設立；**成員** (member) 就證監會而言，指 —— (由 2006 年第 15 號第 5 條修訂)

- (a) 證監會主席；或
- (b) 證監會行政總裁或該會的任何其他執行董事或非執行董事 (不論是否根據本條例附表 2 第 1 部以任何其他身分行事)；(由 2006 年第 15 號第 5 條修訂)

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- (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

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第 1 條

**收購要約** (take-over offer) 就法團而言，指向法團的股份的所有持有人 (或提出要約的人及其代名人以外的所有持有人) 提出為取得該等股份或某一指明比例的該等股份而提出的要約，或向該等股份的某一類別的所有持有人 (或提出要約的人及其代名人以外的該類別股份的所有持有人) 提出為取得該類別股份或某一指明比例的該類別股份而提出的要約；

**有聯繫者** (associate) 就某人而言 ——

- (a) 指該人的配偶、親生或領養的未成年子女，或未成年繼子女；
- (b) 指該人擔任董事的法團；
- (c) 指該人的僱員或合夥人；
- (d) 指某信託的受託人，而該人、其配偶、其親生或領養的未成年子女或其未成年繼子女是該信託的受益人或酌情對象；
- (e) 指另一人而該人慣於或有義務按照該另一人的指示或指令行事；
- (f) 指慣於或有義務按照該人的指示或指令行事的另一人；
- (g) 指任何法團而該人慣於或有義務按照該法團 (或該法團的董事) 的指示或指令行事；
- (h) 指任何法團而該法團 (或該法團的董事) 慣於或有義務按照該人的指示或指令行事；
- (i) 指任何法團而該人 (不論單獨或聯同另一人) 有權在該法團的成員大會上直接或間接行使不少於 33% 的投票權或控制該數量的投票權的行使；

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- (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,

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- (j) 指任何法團而該人控制該法團董事局的組成；
- (k) 在該人是法團的情況下，指——
  - (i) 該法團各董事、該法團各有連繫法團，以及該等有連繫法團各董事或僱員；及
  - (ii) 該法團（或該法團的有連繫法團）的退休金計劃、公積金計劃或僱員股份計劃；
- (l) 在不局限 (a) 至 (k) 段適用的情況的原則下，如有關情況涉及法團的證券或其他權益，或因持有該等證券或權益而產生的權利，則指——
  - (i) 與該人訂有關於取得、持有或處置該等證券或權益的協議或安排的另一人；或
  - (ii) 與該人訂有某項協議或安排的人，而根據該項協議或安排，他們承諾在該法團的成員大會上行使投票權時行動一致；

**有聯繫實體** (associated entity) 就某中介人而言，指符合以下說明的公司或《公司條例》(第 622 章) 第 2(1) 條所界定的註冊非香港公司——（由 2004 年第 30 號第 3 條修訂；由 2012 年第 28 號第 912 及 920 條修訂）

- (a) 和該中介人有控權實體關係；及
- (b) 在香港收取或持有該中介人的客戶資產；

**有關股本** (relevant share capital) 指法團某類別已發行股本，而該類別股本是帶有在所有情況下均可在該法團成員大會上投票的權利的；

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;



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第 1 條Schedule 1—Part 1  
Section 1S1-20  
Cap. 571**有關條文** (relevant provisions) 指 ——

- (a) 本條例的條文；
- (b) 《公司(清盤及雜項條文)條例》(第 32 章)第 II 及 XII 部的條文，但只限於該兩部中直接或間接關乎執行與招股章程有關的職能的範疇，(由 2012 年第 28 號第 912 及 920 條修訂)  
不論該等職能是否已藉根據本條例第 25 或 68 條作出的轉移令轉移；
- (ba) 《公司條例》(第 622 章)第 5 部的條文，但只限於該部中直接或間接關乎執行與下述事宜有關的職能的範疇 ——
  - (i) 法團回購本身股份；或
  - (ii) 法團為收購本身股份而提供資助，  
不論該等職能是否已藉根據本條例第 25 或 68 條作出的轉移令轉移；(由 2012 年第 28 號第 912 及 920 條增補)
- (c) (僅為施行本條例第 213 條)《公司(清盤及雜項條文)條例》(第 32 章)第 II 及 XII 部的條文，但只限於該兩部直接或間接關乎該條例第 38B(1) 條所述的廣告的範圍內；(由 2004 年第 30 號第 3 條增補。由 2012 年第 28 號第 912 及 920 條修訂)
- (d) 《打擊洗錢及恐怖分子資金籌集條例》(第 615 章)第 2 部(第 6 條除外)；(由 2011 年第 15 號第 91 條增補。由 2018 年第 4 號第 47 條修訂)

- (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,

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第 1 條

**《有關條例》**(relevant Ordinance) 指在《公司條例》(第 622 章) 附表 9 第 2 條的生效日期<sup>##</sup>之前不時有效的《公司條例》(第 32 章)；(由 2012 年第 28 號第 912 及 920 條增補)

**自動化交易服務**(automated trading services) 具有本條例附表 5 第 2 部給予該詞的涵義；

**行為**(conduct) 包括任何作為或不作為，以及任何一連串的作為或不作為；

**利率掛鈎票據**(interest rate-linked instrument) 指 ——

- (a) 僅因其部分或全部回報或到期金額 (或回報及到期金額) 或其結算方法是參照以下一項或多於一項因素釐定而屬結構性產品的票據 ——
  - (i) 任何一個或多於一個的利率或利率指數的價值或水平 (或在該價值或水平的某一幅度內) 的變動；或
  - (ii) 關於任何一個或多於一個的利率或利率指數的任何指明事件的發生或不發生；或
- (b) 由本條例第 392 條提述的公告訂明為按照該公告視為利率掛鈎票據的權益、權利或財產，或屬如此訂明為如此視為利率掛鈎票據的類別或種類的權益、權利或財產，

但不包括由本條例第 392 條提述的公告訂明為按照該公告不視為利率掛鈎票據的權益、權利或財產，或屬如此訂明為如此不視為利率掛鈎票據的類別或種類的權益、權利或財產；(由 2011 年第 8 號第 14 條增補)

**私隱專員**(Privacy Commissioner for Personal Data) 指《個人資料 (私隱) 條例》(第 486 章) 第 5(1) 條設立的個人資料私隱專員；

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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;

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第 1 條**其他抵押品 (other collateral) ——**

- (a) 就某持牌法團而言，指任何符合以下說明的、屬證券及金錢以外的財產 ——
- (i) 存放於該法團，或由該法團的客戶或代該法團的客戶以其他方式向該法團提供的；或
  - (ii) 存放於任何人或中介人，或由該法團的客戶或代該法團的客戶以其他方式向該人或中介人提供的，
- 而該財產是 ——
- (A) 為獲得該法團提供財務通融而如此存放或提供作為保證的；或
  - (B) 為利便獲得該法團根據某項安排提供財務通融而如此存放或提供的，而在該項安排下，該法團對抵押予它的該財產享有權益；或
- (b) 就某註冊機構而言，指任何符合以下說明的、屬證券及金錢以外的財產 ——
- (i) 在進行該機構獲註冊進行的任何受規管活動的過程中存放於該機構，或由該機構的客戶或代該機構的客戶以其他方式向該機構提供的；或
  - (ii) 就進行該受規管活動而存放於任何人或中介人，或由該機構的客戶或代該機構的客戶以其他方式向該人或中介人提供的，

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- (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. 622); (*Amended 28 of 2012 ss. 912 & 920*)

**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—

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第 1 條

而該財產是 ——

- (A) 為獲得該機構提供財務通融而如此存放或提供作為保證的；或
- (B) 為利便獲得該機構根據某項安排提供財務通融而如此存放和提供的，而在該項安排下，該機構對抵押予它的該財產享有權益；

**受涵蓋金融機構** (within scope financial institution) 具有《金融機構 (處置機制) 條例》(第 628 章) 第 2(1) 條所給予的涵義；(由 2016 年第 23 號第 221 條增補。編輯修訂——2017 年第 2 號編輯修訂紀錄)

**受規管投資協議** (regulated investment agreement) 指某項協議，而該項協議的目的或作用或其伴稱的目的或作用，是向協議的任何一方提供 (不論是否附有條件) 藉參照任何財產 (集體投資計劃的權益除外) 的價值的變動而計算的利潤、收益或其他回報；

**受規管活動** (regulated activity) 指本條例附表 5 第 1 部指明的任何一類受規管活動，而凡提述某類受規管活動，即指該部指明的該類受規管活動；

**招股章程** (prospectus) 指《公司 (清盤及雜項條文) 條例》(第 32 章) 第 2(1) 條所界定的招股章程；(由 2004 年第 30 號第 3 條代替。由 2012 年第 28 號第 912 及 920 條修訂)

**押記** (charge) 包括任何形式的保證 (包括按揭)；

**法庭、法院** (court) 包括裁判官及審裁處；

**法團** (corporation) 指在香港或其他地方成立的公司或其他法人團體，但不包括為本定義的目的而藉根據本條例第 397 條訂立的規則豁免遵守本條例條文的公司或其他法人團體，而就獲如此豁免遵守本條例任何條文的公司或其他法人團體而言，**法團**一詞在該豁免範圍內不包括該公司或法人團體；

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- (a) where the corporation is a company, the articles of association of the corporation; or (*Amended 28 of 2012 ss. 912 & 920*)
- (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



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**直播** (live broadcast) 就材料 (不論實際如何稱述) 而言, 指事先未經灌錄或攝錄而將該材料廣播;

**股份** (share) 指法團股本中的股份, 而除非股額與股份之間有明示或隱含的分別, 否則亦包括股額;

**金管局調查員** (MA investigator) 具有本條例第 178 條給予該詞的涵義; (由 2014 年第 6 號第 52 條增補)

**金融產品** (financial product) 指 ——

- (a) 證券;
- (b) 期貨合約;
- (c) 集體投資計劃;
- (d) 槓桿式外匯交易合約;
- (e) 結構性產品; (由 2011 年第 8 號第 14 條增補)

**金融管理專員** (Monetary Authority) 指根據《外匯基金條例》(第 66 章) 第 5A 條委任的金融管理專員;

**非香港公司** (non-Hong Kong company) 具有《公司條例》(第 622 章) 第 2(1) 條給予該詞的涵義; (由 2004 年第 30 號第 3 條增補。由 2012 年第 28 號第 912 及 920 條修訂)

**非執行董事** (non-executive director) 就證監會而言, 指根據本條例附表 2 第 1 部第 1 條委任為該會非執行董事的人 (不論是否根據該部以任何其他身分行事); (由 2006 年第 15 號第 5 條修訂)

**保監局** (Insurance Authority) 指根據《保險業條例》(第 41 章) 第 4AAA 條設立的保險業監管局; (由 2015 年第 12 號第 144 條增補)

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- (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



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**保險人** (insurer) 指《保險業條例》(第 41 章) 第 2(1) 條界定的保險人；(由 2015 年第 12 號第 144 條修訂)

**客戶** (client) 就某中介人而言，在該中介人向任何人提供服務而該項提供構成受規管活動的情況下，指該人，並 ——

- (a) 包括存放以下項目於該中介人處 ——
  - (i) 證券；
  - (ii) 金錢；或
  - (iii) 任何財產作為抵押品，
 的另一中介人；但
- (b) 在與槓桿式外匯交易合約有關連的情況下，不包括認可對手方；

**客戶抵押品** (client collateral) 指 ——

- (a) 證券抵押品；及
- (b) 其他抵押品；

**客戶款項** (client money) ——

- (a) 就某持牌法團而言，指 ——
  - (i) 由該法團或代該法團收取或持有的款項；或
  - (ii) 由任何或代任何和該法團有控權實體關係的另一法團收取或持有的款項，
 而該等款項是代該法團的客戶如此收取或持有的，或該法團的客戶對該等款項是擁有法律上或衡平法上的權益的；客戶款項並包括上述款項以資本或收入形式出現的任何增益；或

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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

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(b) 就某註冊機構而言，指 ——

- (i) 在進行該機構獲註冊進行的任何受規管活動的過程中，由該機構或代該機構收取或持有的款項；或
- (ii) 與進行該受規管活動有關的，由任何或代任何和該機構有控權實體關係的任何法團收取或持有的款項，

而該等款項是代該機構的客戶如此收取或持有的，或該機構的客戶對該等款項是擁有法律上或衡平法上的權益的；客戶款項並包括上述款項以資本或收入形式出現的任何增益；

**客戶資產** (client assets) 指 ——

- (a) 客戶證券及抵押品；及
- (b) 客戶款項；

**客戶證券** (client securities) ——

- (a) 就某持牌法團而言，指任何符合以下說明的、屬證券抵押品以外的證券 ——
  - (i) 由該法團或代該法團收取或持有的；或
  - (ii) 由任何或代任何和該法團有控權實體關係的另一法團收取或持有的，

而該等證券是代該法團的客戶如此收取或持有的，或該法團的客戶對該等證券是擁有法律上或衡平法上的權益的；或

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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)

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- (b) 就某註冊機構而言，指任何符合以下說明的、屬證券抵押品以外的證券 ——
- (i) 在進行該機構獲註冊進行的任何受規管活動的過程中，由該機構或代該機構收取或持有的；或
  - (ii) 與進行該受規管活動有關的，由任何或代任何和該機構有控權實體關係的法團收取或持有的，而該等證券是代該機構的客戶如此收取或持有的，或該機構的客戶對該等證券是擁有法律上或衡平法上的權益的；

**客戶證券及抵押品** (client securities and collateral) 指 ——

- (a) 客戶證券；及
- (b) 客戶抵押品；

**律政人員** (legal officer) 指《律政人員條例》(第 87 章) 第 2 條界定的律政人員；

**持有** (hold) 就財產而言，包括 ——

- (a) 管有該財產；
- (b) 在為指明誰人擁有該財產的所有權或誰人有權收取該財產而設置或製作的登記冊或其他紀錄 (不論以何種方式編纂或貯存) 中，登記或以其他方式記錄為擁有該財產的所有權或有權收取該財產；及

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**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—

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

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

**executive officer** (主管人員)—

- (a) in relation to a licensed corporation, means a responsible officer of the licensed corporation;

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- (c) (就經營業務的人而言) 可在以下情況下將該財產轉移予他本人或以其他方式收取該財產的利益 ——
- (i) 另一人擁有該財產的法律上或衡平法上的權益；
  - (ii) 該財產與他經營的業務有關連；及
  - (iii) 不論該人將該財產轉移予他本人或以其他方式收取該財產的利益是否合法，

但就付款予另一人的支票或其他付款單而言，不包括在將該支票或付款單發送予或交付該另一人或代該另一人發送予或交付其他人的過程中管有該支票或付款單；

**持牌人** (licensed person) 指持牌法團或持牌代表；

**持牌代表** (licensed representative) 指根據本條例第 120 或 121 條獲批給牌照的個人；

**持牌法團** (licensed corporation) 指根據本條例第 116 或 117 條獲批給牌照的法團；

**指明條文** (specified provision) 指下述每項 ——

- (a) 本條例第 IIIA 部及根據該部訂立的附屬法例；
- (b) 本條例第 VIII 部第 3A 分部；
- (c) 本條例第 185、187、190 及 191 條 (在它們關乎本條例第 184A 條所指的任何事宜的調查的範圍內)；
- (d) 本條例第 186A、385A 及 388A 條；
- (e) 本條例第 IX 部第 4 及 5 分部；
- (f) 本條例第 XVI 部第 1A 分部；(由 2014 年第 6 號第 52 條增補)

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

**fee** (費用) includes a charge;

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

**financial product** (金融產品) means—

- (a) any securities;
- (b) any futures contract;
- (c) any collective investment scheme;
- (d) any leveraged foreign exchange contract;
- (e) any structured product; (*Added 8 of 2011 s. 14*)

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

**financial year** (財政年度)—

- (a) in relation to the Commission, means the financial year referred to in section 13(1) of this Ordinance; or
- (b) in relation to an intermediary, or an associated entity of an intermediary, means—

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**指明期貨交易所** (specified futures exchange) 指第 2 部指明的期貨交易所；

**指明債務證券** (specified debt securities) 指符合以下說明的債權股證、債權股額、債權證、債券、票據、指數債券、可轉換債務證券、附認股權證債券、無息債務證券及其他確認、證明或產生債務的證券或文書 ——

- (a) 由政府發行或作出擔保的；
- (b) 由某發行人發行的，而該發行人發行的債務票據具有合資格信貸評級；或
- (c) 由其他獲證監會就個別個案以書面核准的發行人發行的；

**指明證券交易所** (specified stock exchange) 指第 3 部指明的證券交易所；

**洗錢活動** (money laundering activities) 指在有意圖達致下述效果下進行的活動：使 ——

- (a) 因犯了香港法律所訂罪行或因作出某行為 (假使在香港發生即屬犯香港法律所訂罪行) 而獲取的收益的任何財產；或
- (b) 全部或部分、直接或間接代表該等收益的任何財產，看似並非該等收益或不如此代表該等收益；

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- (i) the financial year in respect of which notification is given to the Commission under section 155(1) of this Ordinance or, where an approval is granted under section 155(3)(a) of this Ordinance, the financial year in respect of which the approval is granted;
- (ii) the financial year in respect of which notification is given to the Monetary Authority under section 59B(1) of the Banking Ordinance (Cap. 155) or, where an approval is granted under section 59B(3)(a) of that Ordinance, the financial year in respect of which the approval is granted; or
- (iii) in any other case, a period of 12 consecutive months ending on 31 March in a calendar year;

**function** (職能) includes power and duty;

**futures contract** (期貨合約) means—

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

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

**Futures Exchange Company** (期交所) means the company incorporated, and registered by the name Hong Kong Futures Exchange Limited, under the relevant Ordinance; (*Amended 28 of 2012 ss. 912 & 920*)



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第 1 條

**相聯營運實體** (affiliated operational entity) 具有《金融機構 (處置機制) 條例》(第 628 章) 第 2(1) 條所給予的涵義；(由 2016 年第 23 號第 221 條增補。編輯修訂——2017 年第 2 號編輯修訂紀錄)

**紀錄** (record) 指不論以何種方式編纂或貯存的資料紀錄，並包括——

- (a) 簿冊、契據、合約、協議、憑單、收據或數據材料，或並非以可閱讀形式記錄但能夠以可閱讀形式重現的資料；及
- (b) 包含聲音或其他非視覺影像的數據以便能夠使該等聲音或數據重播或重現 (不論是否藉其他設備的輔助) 的文件、紀錄碟、紀錄帶、聲軌或其他器材，以及載有視覺影像以便能夠使該等影像重現 (不論是否藉其他設備的輔助) 的影片 (包括微縮影片)、錄影帶或其他器材；

**計劃財產** (scheme property) 具有本條例第 112A 條所給予的涵義；(由 2016 年第 16 號第 19 條增補)

**訂明人士** (prescribed person) 具有本條例第 101A 條給予該詞的涵義；(由 2014 年第 6 號第 52 條增補)

**負責人員** (responsible officer) 就某持牌法團而言，指獲證監會根據本條例第 126(1) 條核准為該法團的負責人員的個人；

**風險管理委員會** (Risk Management Committee) 就某認可控制人而言，指該控制人根據本條例第 65(1) 條設立，並以風險管理委員會為名的委員會；

**核准貨幣經紀** (approved money broker) 具有《銀行業條例》(第 155 章) 第 2(1) 條給予該詞的涵義；(由 2014 年第 6 號第 52 條增補)

**核數師** (auditor) 指《專業會計師條例》(第 50 章) 所界定的執業會計師，或為本定義的目的而藉根據本條例第 397 條訂立的規則訂明的其他人；(由 2004 年第 23 號第 56 條修訂)

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**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—

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第 1 條

**破產管理署署長** (Official Receiver) 指根據《破產條例》(第 6 章) 第 75 條委任的破產管理署署長；

**財政年度** (financial year) ——

- (a) 就證監會而言，指本條例第 13(1) 條提述的財政年度；或
- (b) 就中介人或中介人的有聯繫實體而言 ——
  - (i) 指證監會根據本條例第 155(1) 條獲告知的財政年度；如該會根據本條例第 155(3)(a) 條就某財政年度給予批准，則指該財政年度；
  - (ii) 指金融管理專員根據《銀行業條例》(第 155 章) 第 59B(1) 條獲告知的財政年度；如金融管理專員根據該條例第 59B(3)(a) 條就某財政年度給予批准，則指該財政年度；或
  - (iii) 在其他情況下，指截至一個公曆年的 3 月 31 日為止的一段連續 12 個月的期間；

**財政資源規則** (financial resources rules) 指根據本條例第 145 條訂立的規則；

**財務通融** (financial accommodation) 指直接或透過第三者令某人獲提供或將會獲提供信貸的任何貸款或其他安排，尤其包括透支、已貼現可流轉票據、擔保及延期強制執行償還實質上是一項貸款的債項，亦包括保證任何該等通融的付款或還款的協議；

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- (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) means, in relation to a corporation, any other corporation of which it is a subsidiary; (*Replaced 28 of 2012 ss. 912 & 920*)

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

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第 1 條**財產** (property) 包括 ——

- (a) 金錢、貨物、據法權產和土地，不論是在香港的或在其他地方的；及
- (b) (a) 段界定的財產所產生或附帶的義務、地役權和各類產業、權益及利潤，不論是現存的或是將來的、是既有的或是或然的；

**送達** (served) 包括給予；**高級人員** (officer) ——

- (a) 就某法團而言，指其董事、經理或秘書，或其他參與其管理的人；或
- (b) 就不是法團的團體而言，指其管治團體的成員；

**執行** (performance) 就職能而言，包括履行及行使；**執行董事** (executive director) 就證監會而言，指證監會行政總裁或根據本條例附表 2 第 1 部第 1 條委任為該會執行董事的任何其他人 (不論是否根據該部以任何其他身分行事)；(由 2006 年第 15 號第 5 條修訂)**專業投資者** (professional investor) 指 ——

- (a) 認可交易所、認可結算所、認可控制人或認可投資者賠償公司，或根據本條例第 95(2) 條獲認可提供自動化交易服務的人；
- (b) 中介人，或經營提供投資服務的業務並受香港以外地方的法律規管的其他人；
- (c) 認可財務機構，或並非認可財務機構但受香港以外地方的法律規管的銀行；

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Section 1S1-44  
Cap. 571**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** (保監局) means the Insurance Authority established under section 4AAA of the Insurance Ordinance (Cap. 41); (Replaced 12 of 2015 s. 144)**insurer** (保險人) means an insurer as defined in section 2(1) of the Insurance Ordinance (Cap. 41); (Amended 12 of 2015 s. 144)**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)

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第 1 條

- (d) 根據《保險業條例》(第 41 章)獲授權的保險人，或經營保險業務並受香港以外地方的法律規管的其他人；(由 2015 年第 12 號第 144 條修訂)
- (e) 符合以下說明的計劃 ——
- (i) 屬根據本條例第 104 條獲認可的集體投資計劃；或
  - (ii) 以相似的方式根據香港以外地方的法律成立，並(如受該地方的法律規管)根據該地方的法律獲准許營辦，或營辦任何該等計劃的人；
- (f) 《強制性公積金計劃條例》(第 485 章)第 2(1) 條界定的註冊計劃，或《強制性公積金計劃(一般)規例》(第 485 章，附屬法例 A)第 2 條界定的該等計劃的成分基金，或就任何該等計劃而言屬該條例第 2(1) 條界定的核准受託人或服務提供者或屬任何該等計劃或基金的投資經理的人；
- (g) 符合以下說明的計劃 ——
- (i) 屬《職業退休計劃條例》(第 426 章)第 2(1) 條界定的註冊計劃；或
  - (ii) 屬該條例第 2(1) 條界定的離岸計劃，並(如以某地方為本籍而受該地方的法律規管)根據該地方的法律獲准許營辦，或就任何該等計劃而言屬該條例第 2(1) 條界定的管理人的；

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- 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



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第 1 條

- (h) 任何政府(市政府當局除外)、執行中央銀行職能的任何機構,或任何多邊機構;
- (i) (除為施行本條例附表 5 外)符合以下說明的法團——
  - (i) 屬下述者的全資附屬公司——
    - (A) 中介人,或經營提供投資服務的業務並受香港以外地方的法律規管的其他人;或
    - (B) 認可財務機構,或並非認可財務機構但受香港以外地方的法律規管的銀行;
  - (ii) 屬持有下述者的所有已發行股本的控權公司——(由 2012 年第 28 號第 912 及 920 條修訂)
    - (A) 中介人,或經營提供投資服務的業務並受香港以外地方的法律規管的其他人;或
    - (B) 認可財務機構,或並非認可財務機構但受香港以外地方的法律規管的銀行;或
  - (iii) 屬第(ii)節提述的控權公司的任何其他全資附屬公司;或(由 2012 年第 28 號第 912 及 920 條修訂)
- (j) 屬於為施行本段而藉根據本條例第 397 條訂立的規則訂明為就本條例條文屬本定義所指的類別的人,或(如為施行本段而藉如此訂立的規則訂明某類別為就本條例任何條文屬本定義所指的類別)在該範圍內屬於該類別的人;

**控權公司** (holding company) 就某法團而言,指以該法團作為附屬公司的另一法團;(由 2012 年第 28 號第 912 及 920 條增補)

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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;

**MA investigator** (金管局調查員) has the meaning given by section 178 of this Ordinance; (Added 6 of 2014 s. 52)

**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) a contract that is subject to the rules of a recognized clearing house and entered into by the clearing house with a clearing participant, whether or not pursuant to a novation, for the purpose of the clearing and settlement of a transaction in securities or futures contracts that is—
  - (i) effected on a recognized stock market or a recognized futures market; or
  - (ii) subject to the rules of a recognized exchange company;
- (b) a contract that is subject to the rules of a recognized clearing house and entered into by the clearing house with a clearing participant, whether or not pursuant to a



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**控權實體** (controlling entity) 就某法團而言，指任何符合以下說明的人 ——

- (a) (不論單獨或聯同其任何有聯繫者) 有權在該法團的成員大會上行使不少於以下百分率的投票權，或控制不少於以下百分率的投票權的行使 ——
  - (i) (除第 (ii) 節另有規定外) 20%；或
  - (ii) 如為本定義的目的而藉根據本條例第 397 條訂立的規則訂明其他百分率，則為該其他百分率；
- (b) (不論單獨或聯同其任何有聯繫者) 擁有提名該法團任何董事的權利；或
- (c) (不論單獨或聯同其任何有聯繫者) 擁有股份的權益，而該等股份帶有以下權利 ——
  - (i) 在該法團的成員大會上否決任何決議的權利；或
  - (ii) 在該法團的成員大會上修訂、修改、限制任何決議，或對任何決議附加條件的權利；

**控權實體關係** (controlling entity relationship) 就某法團而言，指該法團和任何中介人之間憑藉以下情況而有的關係 ——

- (a) 該中介人是該法團的控權實體；
- (b) 該法團是該中介人的控權實體；或
- (c) 另一人同時是該中介人及該法團的控權實體；

**清盤人** (liquidator) 包括臨時清盤人；

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novation, for the purpose of the clearing and settlement of an OTC derivative transaction; or

- #(c) a contract that is—
  - (i) subject to the rules of 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; and
  - (ii) entered into by the designated CCP with any one of its members, whether or not pursuant to a novation, for the purpose of the clearing and settlement of an OTC derivative transaction; (*Replaced 6 of 2014 s. 52*)

**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*)

**minor** (未成年), in relation to a person, means not having attained the age of 18 years;

Editorial Note:

# Not yet commenced.

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第 571 章附表 1 —— 第 1 部  
第 1 條**處置可行性覆檢審裁處** (Resolvability Review Tribunal) 指 ——

- (a) 《金融機構(處置機制)條例》(第 628 章)第 110(1)條所設立的審裁處；或(編輯修訂——2017 年第 2 號編輯修訂紀錄)
- (b) 根據該條例第 111(1)條增設的審裁處；(由 2016 年第 23 號第 221 條增補)

**處置補償審裁處** (Resolution Compensation Tribunal) 指 ——

- (a) 《金融機構(處置機制)條例》(第 628 章)第 127(1)條所設立的審裁處；或(編輯修訂——2017 年第 2 號編輯修訂紀錄)
- (b) 根據該條例第 128(1)條增設的審裁處；(由 2016 年第 23 號第 221 條增補)

**處置機制當局** (resolution authority) 具有《金融機構(處置機制)條例》(第 628 章)第 2(1)條所給予的涵義；(由 2016 年第 23 號第 221 條增補。編輯修訂——2017 年第 2 號編輯修訂紀錄)**規章** (rules) ——

- (a) 就某認可交易所而言，指管限以下各項的規則、規例及指示(不論實際如何稱述，亦不論載於何處)——
  - (i) 其交易所參與者；
  - (ii) 可參與該交易所提供的服務的人；
  - (iii) 費用的訂定及徵收；
  - (iv) 證券的上市；
  - (v) 證券或期貨合約的交易；
  - (vi) 其他服務的提供；或
  - (vii) 概括而言，其管理、運作或程序，而就本條例第 24 及 92 條而言，包括其章程；

Schedule 1—Part 1  
Section 1S1-52  
Cap. 571**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 given by section 2(1) of the Companies Ordinance (Cap. 622); (Added 30 of 2004 s. 3. Amended 28 of 2012 ss. 912 & 920)**number** (數目), in relation to shares which in the context can be construed to include stock, includes amount;**OFC rules** (《開放式基金型公司規則》) has the meaning given by section 112A of this Ordinance; (Added 16 of 2016 s. 19)**officer** (高級人員) —

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第 571 章附表 1 —— 第 1 部  
第 1 條

- (b) 就某認可結算所而言，指管限以下各項的規則、規例及指示（不論實際如何稱述，亦不論載於何處）——
- (i) 其結算所參與者；
  - (ii) 可參與該結算所提供的服務的人；
  - (iii) 費用的訂定及徵收；
  - (iv) 結算與交收服務的提供，以及上述服務的暫停或撤回；
  - (v) 其他服務的提供；或
  - (vi) 概括而言，其管理、運作或程序，而就本條例第 41 及 92 條而言，包括其章程；
- (c) 就某認可控制人而言，指 ——
- (i) 其章程；或
  - (ii) 管限下述者的行為或程序的規則、規例及指示（不論實際如何稱述，亦不論載於何處）——
    - (A) 認可控制人；
    - (B) 風險管理委員會；或
    - (C) 本條例第 66(2) 條所指的公告宣布為本分節適用的人或團體；或
- (d) 就認可投資者賠償公司而言，指 ——
- (i) 其章程；或
  - (ii) 管限其管理、運作或程序或其服務的提供的規則、規例及指示（不論實際如何稱述，亦不論載於何處）；

**貨幣及利率掛鈎票據** (currency and interest rate-linked instrument) 指 ——

Schedule 1—Part 1  
Section 1S1-54  
Cap. 571

- (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);

**open-ended fund company** (開放式基金型公司) has the meaning given by section 112A of this Ordinance; (*Added 16 of 2016 s. 19*)

**OTC derivative product** (場外衍生工具產品) has the meaning given by section 1B; (*Added 6 of 2014 s. 52*)

**OTC derivative transaction** (場外衍生工具交易) means a transaction in an OTC derivative product; (*Added 6 of 2014 s. 52*)

**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——

S1-55  
第 571 章附表 1 —— 第 1 部  
第 1 條Schedule 1—Part 1  
Section 1S1-56  
Cap. 571

- (a) 僅因其部分或全部回報或到期金額 (或回報及到期金額) 或其結算方法是參照以下因素的組合釐定而屬結構性產品的票據 ——
- (i) 任何一個或多於一個的貨幣兌換率或貨幣兌換率指數的價值或水平 (或在該價值或水平的某一幅度內) 的變動, 或關於任何一個或多於一個的貨幣兌換率或貨幣兌換率指數的任何指明事件的發生或不發生; 及

- (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;

**prescribed person** (訂明人士) has the meaning given by section 101A of this Ordinance; (*Added 6 of 2014 s. 52*)

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第 571 章附表 1 —— 第 1 部  
第 1 條Schedule 1—Part 1  
Section 1S1-58  
Cap. 571

- (ii) 任何一個或多於一個的利率或利率指數的價值或水平 (或在該價值或水平的某一幅度內) 的變動, 或關於任何一個或多於一個的利率或利率指數的任何指明事件的發生或不發生; 或
- (b) 由本條例第 392 條提述的公告訂明為按照該公告視為貨幣及利率掛鈎票據的權益、權利或財產, 或屬如此訂明為如此視為貨幣及利率掛鈎票據的類別或種類的權益、權利或財產,

但不包括由本條例第 392 條提述的公告訂明為按照該公告不視為貨幣及利率掛鈎票據的權益、權利或財產, 或屬如此訂明為如此不視為貨幣及利率掛鈎票據的類別或種類的權益、權利或財產; (由 2011 年第 8 號第 14 條增補)

**貨幣掛鈎票據** (currency-linked instrument) 指 ——

- (a) 僅因其部分或全部回報或到期金額 (或回報及到期金額) 或其結算方法是參照以下一項或多於一項因素釐定而屬結構性產品的票據 ——
- (i) 任何一個或多於一個的貨幣兌換率或貨幣兌換率指數的價值或水平 (或在該價值或水平的某一幅度內) 的變動; 或

**printed licence** (印刷本牌照) means a certificate printed on paper or in any other physical form certifying the grant of a licence (whether issued before, on or after the commencement date<sup>s</sup> of Part 2 of the Securities and Futures (Amendment) Ordinance 2015 (19 of 2015)); (*Added 19 of 2015 s. 12*)

**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 Ordinance (Cap. 41), or any other person carrying on insurance business and regulated under the law of any place outside Hong Kong; (*Amended 12 of 2015 s. 144*)
- (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



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第 571 章附表 1 —— 第 1 部  
第 1 條Schedule 1—Part 1  
Section 1S1-60  
Cap. 571

(ii) 關於任何一個或多於一個的貨幣兌換率或貨幣兌換率指數的任何指明事件的發生或不發生；或

(b) 由本條例第 392 條提述的公告訂明為按照該公告視為貨幣掛鈎票據的權益、權利或財產，或屬如此訂明為如此視為貨幣掛鈎票據的類別或種類的權益、權利或財產，

但不包括由本條例第 392 條提述的公告訂明為按照該公告不視為貨幣掛鈎票據的權益、權利或財產，或屬如此訂明為如此不視為貨幣掛鈎票據的類別或種類的權益、權利或財產；(由 2011 年第 8 號第 14 條增補)

**章程** (constitution) 就某法團 (包括認可交易所、認可結算所、認可控制人或認可投資者賠償公司) 而言 ——

(a) 如該法團是公司，指該法團的組織章程細則；或 (由 2012 年第 28 號第 912 及 920 條修訂)

(b) 在其他情況下，指訂定該法團的章程的其他文書；

**備存紀錄責任** (record keeping obligation) 具有本條例第 101A 條給予該詞的涵義；(由 2014 年第 6 號第 52 條增補)

**報酬** (remuneration) 包括金錢、代價、財務通融或利益，不論是直接或間接支付、提供或供給的；

**場外衍生工具交易** (OTC derivative transaction) 指場外衍生工具產品的交易；(由 2014 年第 6 號第 52 條增補)

**場外衍生工具產品** (OTC derivative product) 具有第 1B 條給予該詞的涵義；(由 2014 年第 6 號第 52 條增補)

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

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第 571 章附表 1 —— 第 1 部  
第 1 條Schedule 1—Part 1  
Section 1S1-62  
Cap. 571

**期交所** (Futures Exchange Company) 指根據《有關條例》成立為法團，並根據該條例以“香港期貨交易所有限公司”名稱註冊的公司；(由 2012 年第 28 號第 912 及 920 條修訂)

**期貨市場** (futures market) 指提供設施以供人洽商或完成以下項目的買賣或供以下項目的買賣雙方經常性地聯結的地方 (但不包括認可結算所的辦事處) ——

- (a) 具有以下效力的合約 ——
  - (i) 合約一方同意以議定價格在議定的將來某個時間，向合約另一方交付議定的財產或議定數量的財產；或
  - (ii) 合約雙方將會在議定的將來某個時間在彼此之間作出調整，而該調整是按照議定財產當時的價值相對於在訂立該合約時所議定的價值的增加或減少而作出的，或是按照當時某個指數或其他系數所處水平相對於在訂立該合約時所議定的水平的上升或下降而作出的；或
- (b) (a) 段所描述的類別的合約的期權，而 ——
  - (i) (a) 或 (b) 段所描述的類別的合約或期權由中央對手方根據進行該等合約或期權買賣的市場的規則或慣例作出更替或擔保；或
  - (ii) 在 (a) 或 (b) 段所描述的類別的合約或期權下的合約義務，通常在合約到期日之前根據進行該等合約或期權買賣的市場的規則或慣例解除；

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

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第 571 章附表 1 —— 第 1 部  
第 1 條Schedule 1—Part 1  
Section 1S1-64  
Cap. 571**期貨合約** (futures contract) 指 ——

- (a) 根據期貨市場的規則或慣例訂立的合約，或該等合約的期權；
- (b) 本條例第 392 條提述的公告訂明為按照該公告的條款視為期貨合約的權益、權利或財產，或屬於如此訂明為如此視為期貨合約的類別或種類的權益、權利或財產，

但不包括本條例第 392 條提述的公告訂明為按照該公告的條款不視為期貨合約的權益、權利或財產，或屬於如此訂明為如此不視為期貨合約的類別或種類的權益、權利或財產；

**牌、牌照** (licence) 指根據本條例第 116、117、120 或 121 條批給的牌照，而**獲發牌、持牌** (licensed) 須據此解釋；

**結構性產品** (structured product) 具有本部第 1A 條給予該詞的涵義；(由 2011 年第 8 號第 14 條增補)

**結算所** (clearing house) 指符合以下說明的人 ——

- (a) 業務或宗旨包括為在認可證券市場達成 (或在認可交易所規章的規限下達成) 的證券交易提供結算及交收服務；
- (b) 業務或宗旨包括 ——
  - (i) 就在認可期貨市場達成 (或在認可交易所規章的規限下達成) 的期貨合約交易提供結算及交收服務；或

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 (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); (*Replaced 30 of 2004 s. 3. Amended 28 of 2012 ss. 912 & 920*)

**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;

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第 571 章附表 1 —— 第 1 部  
第 1 條

(ii) 提供就在認可期貨市場交易 (或在認可交易所規章的規限下交易) 的期貨合約的損益風險作出逐日調整的服務；或

(c) 擔保 (a) 或 (b) 段提述的交易的交收，  
但不包括由政府或代政府營辦的法團；

**結算所參與者** (clearing participant) 指符合以下說明的人 ——

- (a) 根據認可結算所的規章，可參與該結算所以結算所身分提供的一項或多於一項服務；及
- (b) 其姓名或名稱已記入在由該結算所備存的、以記錄可參與該結算所提供的一項或多於一項服務的人的列表、名冊或登記冊內；

**結算責任** (clearing obligation) 具有本條例第 101A 條給予該詞的涵義；(由 2014 年第 6 號第 52 條增補)

**註冊** (registered, registration) 指根據本條例第 119 條註冊；

**註冊機構** (registered institution) 指根據本條例第 119 條註冊的認可財務機構；

**費用** (fee) 包括收費；

**買、購買** (purchase) 就證券而言，包括認購或取得證券，不論所付代價屬何形式；

Schedule 1—Part 1  
Section 1S1-66  
Cap. 571

**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;

**record keeping obligation** (備存紀錄責任) has the meaning given by section 101A of this Ordinance; (Added 6 of 2014 s. 52)

**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;



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第 1 條

**開放式基金型公司** (open-ended fund company) 具有本條例第 112A 條所給予的涵義；(由 2016 年第 16 號第 19 條增補)

**《開放式基金型公司規則》** (OFC rules) 具有本條例第 112A 條所給予的涵義；(由 2016 年第 16 號第 19 條增補)

**集體投資計劃** (collective investment scheme) 指 ——

(a) 就財產而作出並符合以下說明的安排 ——

(i) 根據有關安排，參與者對所涉財產的管理並無日常控制，不論他們是否有權就上述管理獲諮詢或有權就上述管理發出指示；

(ii) 根據有關安排 ——

(A) 上述財產整體上是由營辦該安排的人或代該人管理的；

(B) 參與者的供款和用以付款給他們的利潤或收益是匯集的；或

(C) 上述財產整體上是由營辦該安排的人或代該人管理的，而參與者的供款和用以付款給他們的利潤或收益是匯集的；及

(iii) 有關安排的目的或作用或其伴稱的目的或作用，是使參與者（不論以取得上述財產或其任何部分的任何權利、權益、所有權或利益的方式或以其他方式）能夠分享或收取 ——

(A) 聲稱從或聲稱相當可能會從上述財產或其任何部分的取得、持有、管理或處置而產生的利潤、收益或其他回報，或聲稱從或聲稱相當可能會從任何該等利潤、收益或其他回報支付的款項；或

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**Registrar of Companies** (公司註冊處處長) means the Registrar of Companies appointed under section 21(1) of the Companies Ordinance (Cap. 622); (Amended 28 of 2012 ss. 912 & 920)

**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 Ordinance** (《有關條例》) means the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date<sup>##</sup> of section 2 of Schedule 9 to the Companies Ordinance (Cap. 622); (Added 28 of 2012 ss. 912 & 920)

**relevant provisions** (有關條文) means the provisions of—

(a) this Ordinance;

(b) Parts II and XII of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), so far as those Parts relate, directly or indirectly, to the performance of functions relating to prospectuses, whether or not such functions have been made the subject of a transfer order under section 25 or 68 of this Ordinance; (Amended 28 of 2012 ss. 912 & 920)

(ba) Part 5 of the Companies Ordinance (Cap. 622), so far as that Part relates, directly or indirectly, to the performance of functions relating to—



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第 1 條Schedule 1—Part 1  
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- (B) 從上述財產或其任何部分的任何權利、權益、所有權或利益的取得、持有、處置或贖回而產生的，或因行使該等權利、權益、所有權或利益的任何權利而產生的，或因該等權利、權益、所有權或利益屆滿而產生的款項或其他回報；或
- (b) 本條例第 393 條提述的公告訂明為按照該公告的條款視為集體投資計劃的安排，或屬於如此訂明為如此視為集體投資計劃的類別或種類的安排，但不包括 ——
- (i) 任何人以並非經營業務的方式營辦的安排；
  - (ii) 符合以下說明的安排：其每名參與者均是營辦該安排的人所屬的同一公司集團中的法團；
  - (iii) 符合以下說明的安排：其每名參與者均是營辦該安排的人所屬的同一公司集團中的法團的真正僱員或前僱員，或該等僱員的配偶、遺孀、鰥夫、親生或領養的未成年子女，或未成年繼子女；
  - (iv) 符合以下說明的專營權安排：發出專營權或獲發給專營權的人根據該安排，藉利用該安排所授予的權利使用某一商標名稱或設計或其他知識產權或附於其中的商譽，而賺取利潤或收益；
  - (v) 讓在日常業務過程中以專業身分行事的律師從其客戶取得金錢或以保證金保存人身份取得金錢的安排；

- (i) the buy-back by a corporation of its own shares; or
  - (ii) 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; (*Added 28 of 2012 ss. 912 & 920*)
- (c) Parts II and XII of the Companies (Winding Up and Miscellaneous Provisions) 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. Amended 28 of 2012 ss. 912 & 920*)
- (d) Part 2 (except section 6) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615); (*Added 15 of 2011 s. 91. Amended 4 of 2018 s. 47*)

**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

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第 1 條

- (vi) 為以下基金或計劃的目的作出的安排：證監會、認可交易所、認可結算所、認可控制人或認可投資者賠償公司根據本條例任何條文為在交易所參與者或結算所參與者一旦違責時提供賠償而維持的基金或計劃；
  - (vii) 任何儲蓄互助社按照其宗旨作出的安排；
  - (viii) 為根據《銀會經營(禁止)條例》(第 262 章)獲准許營辦的銀會的目的作出的安排；
  - (ix) 為《外匯基金條例》(第 66 章)設立的外匯基金的目的作出的安排；
  - (x) 本條例第 393 條提述的公告訂明為按照該公告的條款不視為集體投資計劃的安排，或屬於如此訂明為如此不視為集體投資計劃的類別或種類的安排；
- 債權證** (debenture) 包括法團的債權股證、債券及其他債務證券，不論它是否構成對該法團的資產的押記；(由 2011 年第 8 號第 14 條修訂)
- 匯報責任** (reporting obligation) 具有本條例第 101A 條給予該詞的涵義；(由 2014 年第 6 號第 52 條增補)
- 廉政專員** (Commissioner of the Independent Commission Against Corruption) 指依據《廉政公署條例》(第 204 章)第 5 條擔任廉政專員職位的人；(由 2003 年第 14 號第 24 條代替)
- 會計師** (certified public accountant) 指《專業會計師條例》(第 50 章)第 2 條所界定的會計師；(由 2004 年第 23 號第 56 條代替)

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- 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;
- reporting obligation** (匯報責任) has the meaning given by section 101A of this Ordinance; (Added 6 of 2014 s. 52)

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第 1 條

**董事** (director) 包括幕後董事，及身居董事職位的人 (不論該人實際職銜為何)；

**資訊系統** (information system) 指《電子交易條例》(第 553 章) 第 2(1) 條界定的資訊系統；

**資訊、資料、消息** (information) 包括數據、文字、影像、聲音編碼、電腦程式、軟件及數據庫，以及以上項目的任何組合；

**幕後董事** (shadow director) 在法團董事慣於或有義務按照某人的指示或指令行事的情況下，指該人，但如某人以專業身分提供意見而董事按該等意見行事，則該人不得僅因此而視為幕後董事；

**槓桿式外匯交易** (leveraged foreign exchange trading) 具有本條例附表 5 第 2 部給予該詞的涵義；

**槓桿式外匯交易合約** (leveraged foreign exchange contract) 具有本條例附表 5 第 2 部給予該詞的涵義；

**稱銜** (title) 包括名稱或稱謂；

**管有** (possession) 就任何事物而言，包括保管和控制該事物，以及對該事物具有權力；

**認可交易所** (recognized exchange company) 指根據本條例第 19(2) 條認可為交易所公司的公司；

**認可自動化交易服務** (authorized automated trading services) 指根據本條例第 95(2) 條獲認可提供的自動化交易服務；

**認可投資者賠償公司** (recognized investor compensation company) 指根據本條例第 79(1) 條認可為投資者賠償公司的公司；

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**resolution authority** (處置機制當局) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628); (*Added 23 of 2016 s. 221. Amended E.R. 2 of 2017*)

**Resolution Compensation Tribunal** (處置補償審裁處) means—

- (a) the Tribunal established by section 127(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628); or (*Amended E.R. 2 of 2017*)
- (b) an additional tribunal established under section 128(1) of that Ordinance; (*Added 23 of 2016 s. 221*)

**Resolvability Review Tribunal** (處置可行性覆檢審裁處) means—

- (a) the Tribunal established by section 110(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628); or (*Amended E.R. 2 of 2017*)
- (b) an additional tribunal established under section 111(1) of that Ordinance; (*Added 23 of 2016 s. 221*)

**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;

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第 571 章附表 1 —— 第 1 部  
第 1 條

**認可財務機構** (authorized financial institution) 指《銀行業條例》(第 155 章) 第 2(1) 條界定的認可機構；

**認可控制人** (recognized exchange controller) 指根據本條例第 59(2) 條認可為交易所控制人的公司；

**認可期貨市場** (recognized futures market) 指認可交易所營辦的期貨市場；

**認可結算所** (recognized clearing house) 指根據本條例第 37(1) 條認可為結算所的公司；

**認可對手方** (recognized counterparty) ——

- (a) 指認可財務機構；
- (b) 就任何就第 3 類受規管活動獲發牌的法團所進行的個別交易而言，指同樣如此獲發牌的另一法團；或
- (c) 指為本定義的目的而藉根據本條例第 397 條訂立的規則訂明為認可對手方的機構；

**認可證券市場** (recognized stock market) 指認可交易所營辦的證券市場；

**銀行** (bank, banker) 指經營的業務與認可財務機構經營的以下業務相似的機構，不論該機構是否認可財務機構 ——

- (a) 《銀行業條例》(第 155 章) 所指的銀行業務；或
- (b) 該條例所指的接受存款業務；

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- (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;



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第 571 章附表 1 —— 第 1 部  
第 1 條**銀行簿冊** (banker's books) 包括 ——

- (a) 銀行的簿冊；
- (b) 由銀行管有的支票、付款用的本票、匯票及承付票；
- (c) 由銀行管有的證券，不論是否作為質押；及
- (d) 記錄著資料 (不論以何種方式編纂或貯存，亦不論以可閱讀形式記錄或並非以可閱讀形式記錄但能夠以可閱讀形式重現) 且在銀行日常業務過程中使用的任何材料；

**廣播** (broadcast) 就材料 (不論實際如何稱述) 而言，包括將該材料所載資料廣播；**廣播業者** (broadcaster) 指合法地作出以下作為的人 ——

- (a) 設置與維持《電訊條例》(第 106 章) 第 3A 部所指的廣播服務；或
- (b) 提供《廣播條例》(第 562 章) 第 2(1) 條界定的廣播服務；

**數目** (number) 就按照文意可解釋作包括股額的股份而言，包括款額；**數據材料** (data material) 指與任何資訊系統並用或以任何資訊系統製作的文件或其他材料；**賠償基金** (compensation fund) 指根據本條例第 236 條設立的投資者賠償基金；Schedule 1—Part 1  
Section 1S1-78  
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(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;

**scheme property** (計劃財產) has the meaning given by section 112A of this Ordinance; (*Added 16 of 2016 s. 19*)**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;



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第 1 條Schedule 1—Part 1  
Section 1S1-80  
Cap. 571**賣空指示** (short selling order) ——

- (a) 除 (b) 段另有規定外，指為某賣方或為某人的利益或代該人而作出的售賣證券(在本定義中稱為**有關證券**)的指示，而就有關證券而言，該賣方或該人憑藉以下事實而擁有一項即時可行使而不附有條件的權利，以將有關證券轉歸於其購買人名下 ——
- (i) 該賣方或該人已根據某證券借貸協議 ——
- (A) 借用有關證券；或
- (B) 獲得該協議的對手方確認該方備有有關證券以借給他；
- (ii) 該賣方或該人擁有可用以轉換為或換取有關證券的其他證券的所有權；
- (iii) 該賣方或該人擁有可取得有關證券的期權；
- (iv) 該賣方或該人擁有可認購及可收取有關證券的權利或認購證；或
- (v) 該賣方或該人已與另一人訂立屬於為施行本節而藉根據本條例第 397 條訂立的規則訂明的種類的協議或安排；
- (b) 在該賣方或該人已於作出售賣有關證券的指示時，發出不附有條件的獲取有關證券的指示的情況下，就 (a)(ii)、(iii)、(iv) 或 (v) 段而言，不包括該項指示；

- (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 11 of the Companies Ordinance (Cap. 622); (*Amended 28 of 2012 ss. 912 & 920*)
- (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 Schedule 1 to the

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第 1 條

**積金局** (Mandatory Provident Fund Schemes Authority) 指《強制性公積金計劃條例》(第 485 章) 第 6 條設立的強制性公積金計劃管理局；

**諮詢委員會** (Advisory Committee) 指本條例第 7 條提述的諮詢委員會；

**儲蓄互助社** (credit union) 指根據《儲蓄互助社條例》(第 119 章) 註冊的儲蓄互助社；

**營業日** (business day) 指不屬以下任何日子的日子 ——

- (a) 公眾假日；
- (ab) 星期六；及 (由 2012 年第 9 號第 53 條增補)
- (b) 《釋義及通則條例》(第 1 章) 第 71(2) 條界定的烈風警告日或黑色暴雨警告日；

**聯交所** (Stock Exchange Company) 指根據《有關條例》成立為法團，並根據該條例以“香港聯合交易所有限公司”名稱註冊的公司；(由 2012 年第 28 號第 912 及 920 條修訂)

**虧空** (defalcation) 指不當地運用 (包括挪用) 任何財產；

**隸屬** (accredited) 指根據本條例第 122 條獲證監會批准隸屬某持牌法團；

**職能** (function) 包括權力及責任；

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Insurance Ordinance (Cap. 41); (*Amended 12 of 2015 s. 144*)

- (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;

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**穩定措施** (stabilization option) 具有金融機構 (處置機制) 條例》(第 628 章) 第 2(1) 條所給予的涵義；(由 2016 年第 23 號第 221 條增補。編輯修訂——2017 年第 2 號編輯修訂紀錄)

**簿冊** (books) 包括 ——

- (a) 帳目及任何會計資料；及
- (b) (就銀行而言) 銀行簿冊，

不論以何種方式編纂或貯存，亦不論以可閱讀形式記錄或並非以可閱讀形式記錄但能夠以可閱讀形式重現；

**證券** (securities) 指 ——

- (a) 任何團體 (不論是否屬法團) 或政府或市政府當局的或由它發行的股份、股額、債權證、債權股額、基金、債券或票據；
- (b) 在 (a) 段所述各項目中的或關乎該等項目的權利、期權或權益 (不論以單位或其他方式描述)；
- (c) (a) 段所述各項目的權益證明書、參與證明書、臨時證明書、中期證明書、收據，或認購或購買該等項目的權證；
- (d) 在集體投資計劃中的權益；
- (e) 通常稱為證券的權益、權利或財產，不論屬文書或其他形式；
- (f) 本條例第 392 條提述的公告訂明為按照該公告的條款視為證券的權益、權利或財產，或屬於如此訂明為如此視為證券的類別或種類的權益、權利或財產；(由 2011 年第 8 號第 14 條修訂)
- (g) 不屬 (a) 至 (f) 段任何一段所述的結構性產品，但就該產品發出載有請公眾作出本條例第 103(1)(a) 條提述的作為的邀請 (或屬該等邀請) 的廣告、邀請或文件，已根據本條例第 105(1) 條獲認可，或須獲如此認可，(由 2011 年第 8 號第 14 條增補)

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**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—

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但不包括 ——

- (i) 《公司條例》(第 622 章) 第 11 條所指的私人公司的股份或債權證；(由 2012 年第 28 號第 912 及 920 條修訂)
- (ii) 在以下屬集體投資計劃的項目中的權益 ——
  - (A) 《強制性公積金計劃條例》(第 485 章) 第 2(1) 條界定的註冊計劃，或《強制性公積金計劃 (一般) 規例》(第 485 章，附屬法例 A) 第 2 條界定的該等註冊計劃的成分基金；
  - (B) 《職業退休計劃條例》(第 426 章) 第 2(1) 條界定的職業退休計劃；或
  - (C) 與《保險業條例》(第 41 章) 附表 1 指明的保險業務類別有關的保險合約；(由 2015 年第 12 號第 144 條修訂)
- (iii) 根據一般合夥協議或建議的一般合夥協議而產生的權益，除非該協議或建議的協議是關乎由任何人或代任何人所推銷的業務、計劃、企業或投資合約的，而該人的日常業務是推銷或包括推銷同類業務、計劃、企業或投資合約的 (不論該人是否已屬或是否會成為協議或建議的協議的一方)；
- (iv) 證明一筆存款的可流轉收據或其他可流轉的證明書或文件，或根據該收據、證明書或文件而產生的任何權利或權益；
- (v) 《匯票條例》(第 19 章) 第 3 條所指的匯票及該條例第 89 條所指的承付票；

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- (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

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- (vi) 明確規定本身屬不可流轉或不可轉讓的債權證 ( 但符合以下說明的債權證除外：債權證是結構性產品，而就該產品發出載有請公眾作出本條例第 103(1)(a) 條提述的作為的邀請 ( 或屬該等邀請 ) 的廣告、邀請或文件，已根據本條例第 105(1) 條獲認可，或須獲如此認可 )；( 由 2011 年第 8 號第 14 條修訂 )
- (vii) 本條例第 392 條提述的公告訂明為按照該公告的條款不視為證券的權益、權利或財產，或屬於如此訂明為如此不視為證券的類別或種類的權益、權利或財產；

**證券市場** (stock market) 指供人經常會面洽商證券的買賣 ( 包括價格 ) 或提供設施供證券買賣雙方聯結的地方，但不包括 ——

- (a) 可營辦證券市場的認可交易所的交易所參與者的辦事處；或
- (b) 認可結算所的辦事處；

**證券抵押品** (securities collateral) ——

- (a) 就某持牌法團而言，指任何符合以下說明的證券 ——

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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



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- (i) 存放於該法團，或由該法團的客戶或代該法團的客戶以其他方式向該法團提供的；或
  - (ii) 存放於任何人或中介人，或由該法團的客戶或代該法團的客戶以其他方式向該人或中介人提供的，
- 而該等證券是 ——
- (A) 為獲得該法團提供財務通融而如此存放或提供作為保證的；或
  - (B) 為利便獲得該法團根據某項安排提供財務通融而如此存放或提供的，而在該項安排下，該法團對抵押予它的該等證券享有權益；或
- (b) 就某註冊機構而言，指任何符合以下說明的證券 ——
- (i) 在進行該機構獲註冊進行的任何受規管活動的過程中存放於該機構，或由該機構的客戶或代該機構的客戶以其他方式向該機構提供的；或
  - (ii) 就進行該受規管活動而存放於任何人或中介人，或由該機構的客戶或代該機構的客戶以其他方式向該人或中介人提供的，
- 而該等證券是 ——
- (A) 為獲得該機構提供財務通融而如此存放或提供作為保證的；或
  - (B) 為利便獲得該機構根據某項安排提供財務通融而如此存放或提供的，而在該項安排下，該機構對抵押予它的該等證券享有權益；

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 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; (*Added 6 of 2014 s. 52*)

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

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**證券保證金融資** (securities margin financing) 具有本條例附表 5 第 2 部給予該詞的涵義；

**證券借貸協議** (securities borrowing and lending agreement) 指任何人所訂立藉以依據某項安排借用或借出證券的協議，而在該項安排下，借用人承諾向借出人交還名稱與所借用的證券相同的證券、或向借出人支付與所借用的證券的價值相等的款項；該詞的涵義亦包括《印花稅條例》(第 117 章) 第 19(16) 條所指的證券借用；

**證券期貨市場** (securities and futures market) 指利便與金融產品有關的交易的各方經常性地聯結的市場、交易所、地方或服務；

**證券期貨業** (securities and futures industry) 指證券期貨市場及其中並非投資者的參與者 (包括認可交易所、認可結算所、認可控制人、認可投資者賠償公司，及進行受規管活動的人)，以及與金融產品有關而在上述證券期貨市場或由上述參與者進行的活動；

**證監會** (Commission) 指本條例第 3(1) 條提述的證券及期貨事務監察委員會；

**關於披露的研訊程序** (disclosure proceedings) 具有第 307I(1) 條給予該詞的涵義。(由 2012 年第 9 號第 11 條增補)

(由 2004 年第 23 號第 56 條修訂；由 2004 年第 30 號第 3 條修訂；編輯修訂——2013 年第 1 號編輯修訂紀錄；由 2012 年第 28 號第 912 及 920 條修訂；由 2015 年第 12 號第 144 條修訂)

編輯附註：

§ 生效日期：2015 年 11 月 13 日。

## 生效日期：2014 年 3 月 3 日

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**stabilization option** (穩定措施) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628); (Added 23 of 2016 s. 221. Amended E.R. 2 of 2017)

**Stock Exchange Company** (聯交所) means the company incorporated, and registered by the name The Stock Exchange of Hong Kong Limited, under the relevant Ordinance; (Amended 28 of 2012 ss. 912 & 920)

**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

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Section 1AS1-94  
Cap. 571**1A. 結構性產品的涵義**

- (1) 在本條例中，除第(2)款另有規定外，**結構性產品** (structured product) 指 ——
- (a) 一種其部分或全部回報或到期金額 (或回報及到期金額) 或其結算方法是參照以下一項或多於一項因素而釐定的票據 ——
- (i) 任何類型的證券、商品、指數、財產、利率、貨幣兌換率或期貨合約或任何類型的該等項目的組合的價格、價值或水平 (或在該價格、價值或水平的某一幅度內) 的變動；
  - (ii) 任何一籃子多於一種類型的證券、商品、指數、財產、利率、貨幣兌換率或期貨合約或多於一種類型的該等項目的組合的價格、價值或水平 (或在該價格、價值或水平的某一幅度內) 的變動；或
  - (iii) 任何指明事件 (不包括任何只關於票據的發行人或擔保人，或它們兩者的事件) 的發生或不發生；

company and entered as such a right in a list, roll or register kept by that exchange company.

**within scope financial institution** (受涵蓋金融機構) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628). (*Added 23 of 2016 s. 221. Amended E.R. 2 of 2017*)

(*Amended 23 of 2004 s. 56; 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920*)

Editorial Note:

§ Commencement date: 13 November 2015.

## Commencement date : 3 March 2014.

**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

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- (b) 受規管投資協議；或
- (c) 由本條例第 392 條提述的公告訂明為按照該公告視為結構性產品的權益、權利或財產，或屬如此訂明為如此視為結構性產品的類別或種類的權益、權利或財產。
- (2) **結構性產品** 不包括 ——
  - (a) 為籌集資本資金而發行的債權證，而該債權證可轉換為或換取該債權證的發行人或其有連繫法團的股份（不論屬已發行的或未發行的）；
  - (b) 為籌集資本資金而發行，並令其持有人有權認購其發行人或其有連繫法團的股份（不論屬已發行的或未發行的）的公司認股證；
  - (c) 集體投資計劃；
  - (d) 寄存單據；
  - (e) 僅因具有一個符合以下說明的可變利率而屬第 (1)(a) 款所指的債權證：該利率會被定期重設的，使之相等於一個廣泛套用的資金市場利率或銀行同業參考利率（不論是否受制於預設的最高或最低利率）加或減一個指明利率（如有的話）；
  - (f) 符合以下說明的產品：只由法團向以下人士發行 ——
    - (i) 該法團或其有連繫法團的真正僱員或前僱員；或
    - (ii) 第 (i) 節提述的人的配偶、遺孀、鰥夫、親生或領養的未成年子女，或未成年繼子女，
 而該產品的部分或全部回報或到期金額（或回報及到期金額）或其結算方法，是參照該法團或其有連繫法團的證券而釐定的；
  - (g) 只可根據 ——

- 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—

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第 571 章附表 1 —— 第 1 部  
第 1B 條

- (i) 《博彩稅條例》(第 108 章)或《賭博條例》(第 148 章)所指的牌照、准許或其他批准；或
- (ii) 《政府獎券條例》(第 334 章)，  
管有、推廣、作出要約、售賣、印製或發布的產品；
- (h) 就 ——
  - (i) 根據《廣播條例》(第 562 章)第 37 條批准的競賽；或
  - (ii) 根據《電訊條例》(第 106 章)第 3A 部而領牌的服務所包括的競賽，  
而發行的票據；
- (i) 關於《保險業條例》(第 41 章)附表 1 所指明的任何保險業務類別的保險合約；或 (由 2015 年第 12 號第 144 條修訂)
- (j) 由本條例第 392 條提述的公告訂明為按照該公告不視為結構性產品的權益、權利或財產，或屬如此訂明為如此不視為結構性產品的類別或種類的權益、權利或財產。

(由 2011 年第 8 號第 14 條增補)

**1B. 場外衍生工具產品的涵義**

(1) 在本條例中，在不抵觸第 (2) 及 (3) 款的規定下 ——

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- (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 Schedule 1 to the Insurance Ordinance (Cap. 41); or (*Amended 12 of 2015 s. 144*)
- (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)

**1B. Meaning of OTC derivative product**

(1) In this Ordinance, subject to subsections (2) and (3)—



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**場外衍生工具產品** (OTC derivative product) 指任何結構性產品。

(2) **場外衍生工具產品** 不包括 ——

- (a) 在認可證券市場交易的證券；
- (b) 在認可期貨市場交易的期貨合約；
- (c) 符合以下說明的證券或期貨合約 ——
  - (i) 在根據本條例第 392A 條訂明的證券市場或期貨市場交易；及
  - (ii) 透過根據該條訂明的結算所結算；
- (d) 向公眾要約的結構性產品，而發出關乎該要約的任何廣告、邀請或文件，是根據本條例第 105(1) 條認可的；
- (e) 屬債務證券形式的結構性產品，而根據該產品所作的付款，是以相關資產組合產生的現金流支付的；
- (f) 符合以下說明的文書 ——
  - (i) 屬股份、股額、債權證、債權股額、基金、債券、票據、存款或存款證的形式，或屬根據本條例第 392A 條訂明的任何其他種類的文書的形式；及
  - (ii) 具有使其成為結構性產品的包含的特徵；
- (g) 現貨合約；
- (h) 符合以下說明的結構性產品 ——
  - (i) 該產品的要約，是在不超過 2 個星期的要約期內作出的；及
  - (ii) 該產品的要約，是向多人以相同條款（就該產品須予支付的代價除外）作出的；或
- (i) 根據本條例第 392(1)(b)(vii) 條訂明為按照有關公告屬不得視為場外衍生工具產品的產品的結構性產品，或屬如此訂明為按照有關公告不得視為場外衍生工具產品的產品類別或種類的結構性產品。

**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—

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- (3) 場外衍生工具產品，亦包括根據本條例第 392(1)(a)(vii) 條藉公告訂明為按照有關公告屬須視為場外衍生工具產品的產品。
- (4) 在本條中 ——
- 現貨合約** (spot contract) 指售賣任何類型的證券、商品、指數、財產、利率或貨幣兌換率 (或任何類型的該等項目的組合) 的合約，而根據該合約的條款，合約的交收編定為於下述期間中的較長者之內作出 ——
- (a) 如合約是 ——
- (i) 在香港訂立的，在訂立合約日期後的 2 個營業日；或
- (ii) 在香港以外地方交收的，在訂立合約日期後，每項交收該項交易所需的交收設施有開放營業的 2 日；
- (b) 市場上普遍接受為就該類型的證券、商品、指數、財產、利率或貨幣兌換率而言 (或就該類型的該等項目的組合而言) 屬標準的交付期間。

(由 2014 年第 6 號第 52 條增補)

- (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.

(Added 6 of 2014 s. 52)

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第 2 條Schedule 1—Part 1  
Section 2S1-104  
Cap. 571**2. 對附屬公司的提述**

- (1) 就本條例而言，在以下情況下，一個法團 (**前者**) 須視為另一法團 (**後者**) 的附屬公司 ——
- (a) 後者 ——
- (i) 控制前者的董事局的組成；
  - (ii) 控制前者在成員大會上的過半數投票權；或
  - (iii) 持有前者的過半數已發行股本，但就本節而言，如該等股本有任何部分在分配利潤或資本時無權分享超過某指明款額，則該部分股本不包括在內；或
- (b) 前者是某法團的附屬公司，而該法團是後者的附屬公司。
- (2) 就第(1)款而言，在斷定一個法團 (**前者**) 是否另一法團 (**後者**) 的附屬公司時 ——
- (a) 後者以受信人身分持有的股份或可行使的權力，須視為並非由後者持有或可由後者行使；
- (b) 除 (c) 及 (d) 段另有規定外 ——
- (i) 由代名人為後者持有的股份，或可由代名人為後者行使的權力 (如後者只以受信人身分涉及該等股份或權力則除外)；或
  - (ii) 由後者的附屬公司或由代名人為該公司持有的股份，或可由該公司或由代名人為該公司行使的權力 (而該公司並非只以受信人身分涉及該等股份或權力)，
- 須視為由後者持有或可由後者行使；
- (c) 任何人根據前者的債權證或根據為發行該等債權證作保證的信託契據而持有的股份或可行使的權力，須不予理會；及

**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,

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第 3 條

- (d) 後者或其附屬公司的日常業務如包括借出款項，而後者或其附屬公司（視屬何情況而定）持有的股份或可行使的權力，只是為一宗在該業務過程中訂立的交易作保證而持有或可行使的，則由後者或其附屬公司（視屬何情況而定）或由代名人為後者或其附屬公司（視屬何情況而定）持有的該等股份，或可由後者或其附屬公司（視屬何情況而定）或可由代名人為後者或其附屬公司（視屬何情況而定）行使的該等權力（按 (c) 段所述持有的或可行使者除外），須視為並非由後者持有或可由後者行使。

### 3. 對有連繫法團的提述

就本條例而言 ——

- (a) 如有多於一個法團，而其中一個 ——
- (i) 是其餘法團的控權公司；
  - (ii) 是其餘法團的附屬公司；或
  - (iii) 是其餘法團所屬的控權公司的附屬公司，（由 2012 年第 28 號第 912 及 920 條修訂）
- 則該等法團須視為彼此的有連繫法團；
- (b) 任何個人如 ——
- (i) 控制一個或多於一個法團的董事局的組成；
  - (ii) 控制一個或多於一個法團在成員大會上的過半數投票權；或

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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

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第 4 條Schedule 1—Part 1  
Section 4S1-108  
Cap. 571

(iii) 持有一個或多於一個法團的過半數已發行股本（但就本節而言，如該等股本有任何部分在分配利潤或資本時無權分享超過某指明款額，則該部分股本不包括在內），

則第 (i)、(ii) 或 (iii) 節提述的每一個法團及其每一附屬公司，須視為彼此的有連繫法團。

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. 對控制法團董事局的組成的提述

- (1) 就本條例而言，如一個法團（**前者**）能夠在沒有其他人的同意或贊成下，藉行使某些它可行使的權力而委任或免任另一法團（**後者**）的所有或過半數董事，則後者的董事局的組成，須視為由前者控制。
- (2) 就第 (1) 款而言，在以下情況下，一個法團（**前者**）須視為能夠委任或免任另一法團（**後者**）的董事——
  - (a) 除非前者行使權力，否則該項委任或免任不能發生；或
  - (b) 某人獲委任為後者的董事，是他擔任前者的董事或其他高級人員的必然後果。
- (3) 就本條例而言，如一名個人能夠在沒有其他人的同意或贊成下，藉行使某些他可行使的權力而委任或免任一個法團的所有或過半數董事，則該法團的董事局的組成，須視為由他控制。
- (4) 就第 (3) 款而言，在以下情況下，一名個人須視為能夠委任或免任一個法團的董事——
  - (a) 除非該名個人行使權力，否則該項委任或免任不能發生；或
  - (b) 某人獲委任為該法團的董事，是他擔任另一法團的董事或其他高級人員的必然後果，而除非該名個人行使權力，否則他不能獲委任為該另一法團的董事或高級人員。

#### 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.



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第 571 章附表 1 —— 第 1 部  
第 5 條Schedule 1—Part 1  
Section 5S1-110  
Cap. 571**5. 對全資附屬公司的提述**

就本條例而言，在以下情況下，一個法人團體（**前者**）須視為另一法人團體（**後者**）的全資附屬公司：前者的成員只有後者、後者的代名人、後者的全資附屬公司（按本條解釋）、該等全資附屬公司的代名人，或上述四者的任何組合。

**6. 對大股東的提述**

- (1) 就本條例而言，如任何人符合以下說明，則他須視為某法團（**首述法團**）的大股東——
- (a) 單獨或聯同其任何有聯繫者擁有首述法團的股份權益，而——
    - (i) 該等股份的總數相等於首述法團已發行股份的總數的 10% 以上；或（由 2012 年第 28 號第 912 及 920 條修訂）
    - (ii) 該項擁有使他（不論單獨或聯同其任何有聯繫者）有權在首述法團的成員大會上直接或間接行使 10% 以上的投票權或控制該數量的投票權的行使；或

- (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 aggregate number of which shares is equal to more than 10% of the total number of issued shares of the corporation; or (*Amended 28 of 2012 ss. 912 & 920*)
    - (ii) which entitles the person, either alone or with any of his associates and either directly or indirectly, to

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第 7 條Schedule 1—Part 1  
Section 7S1-112  
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- (b) 單獨或聯同其任何有聯繫者持有另一法團的股份，而該項持有使該人（不論單獨或聯同其任何有聯繫者）有權在該另一法團或其他法團的成員大會上直接或間接行使不少於 35% 的投票權或控制該數量的投票權的行使；而該另一法團或其他法團則本身（不論單獨或聯同其任何有聯繫者）有權在首述法團的成員大會上直接或間接行使 10% 以上的投票權或控制該數量的投票權的行使。
- (2) 就第 (1) 款而言，如任何人單獨或聯同其任何有聯繫者擁有某法團的股份權益，而該項擁有使該人（不論單獨或聯同其任何有聯繫者）有權在該法團的成員大會上行使不少於 35% 的投票權或控制該數量的投票權的行使，而該法團本身（不論單獨或聯同其任何有聯繫者）有權在另一法團的成員大會上行使不少於 35% 的投票權或控制該數量的投票權的行使，則該人須視為有權在該另一法團的成員大會上間接行使不少於 35% 的投票權或控制該數量的投票權的行使。

## 7. 對法團的證券的提述

在本條例中，除文意另有所指外，凡提述法團的證券（不論實際如何稱述），須解釋為提述具有適用的涵義（不論是否根據第 1 條而適用）並符合以下說明的證券——

- (a) 由該法團發行、提供或批給的；
- (b) 擬由該法團發行、提供或批給的；或
- (c) 擬在該法團成立時由該法團發行、提供或批給的。

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

S1-113  
第 571 章附表 1 —— 第 1 部  
第 8 條Schedule 1—Part 1  
Section 8S1-114  
Cap. 571**8. 對投資大眾的利益的提述**

如將某項利益列入考慮之列是或相當可能是違反公眾利益的，則在本條例中，凡提述投資大眾的利益，均不包括該項利益。

**9. 對條件的提述**

在本條例中，除文意另有所指外，凡提述根據或依據本條例任何條文施加的條件，在該條件根據或依據本條例任何條文被修訂（不論實際如何稱述）的情況下，須解釋為提述經如此修訂的條件。

**10. 有關受規管活動的提述**

在本條例中——

- (a) 除另予界定、另被豁除或文意另有所指外，任何人如——
  - (i) 經營某類受規管活動的業務；或
  - (ii) 為經營某類受規管活動的業務的另一人，或代該另一人或藉與該另一人訂立的安排，而就該活動執行本條例第 113(1) 條界定的受規管職能，該人須視為進行受規管活動；
- (b) 任何人如為中介人、代中介人或藉與中介人訂立的安排，而就某類受規管活動執行本條例第 113(1) 條界定的受規管職能，該人須視為進行受規管活動；
- (c) (i) 如任何法團根據本條例第 116 或 117 條獲發牌進行某類受規管活動，則它須視為就該類活動獲發牌；

- (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;

S1-115  
第 571 章附表 1 —— 第 1 部  
第 11 條Schedule 1—Part 1  
Section 11S1-116  
Cap. 571

- (ii) 如任何個人根據本條例第 120 或 121 條獲發牌為某持牌法團進行某類受規管活動，則他須視為就該類活動獲發牌。

- (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. 對違反等的提述

在本條例中，除文意另有所指外——

- (a) 凡提述違反——
- (i) 須解釋為包括提述沒有遵守或沒有遵從；及
- (ii) 就任何條例的條文而言，須解釋為包括提述犯該等條文所訂罪行；
- (b) 凡提述沒有遵守或沒有遵從——
- (i) 須解釋為包括提述違反；及
- (ii) 就任何條例的條文而言，須解釋為包括提述犯該等條文所訂罪行。

## 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. 對條例的提述

為免生疑問，在本條例中，除文意另有所指外，凡提述本條例或其他條例，不論是一般地提述或特定提述，亦不論是否藉提述條例的簡稱，均須解釋為包括提述根據本條例或該其他條例（視屬何情況而定）訂立的附屬法例。

## 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).

S1-117  
第 571 章附表 1 —— 第 2 部  
第 1 條Schedule 1—Part 2  
Section 1S1-118  
Cap. 571**13. 條例中的附註**

在本條例文本中的附註只供備知，而並無立法效力。

(由 2012 年第 9 號第 11 條增補)

**14. 附屬法例的生效日期**

在不局限《釋義及通則條例》(第 1 章)第 28(5) 條的原則下，如根據本條例訂立的任何附屬法例，須在憲報所公告的某日期起實施——

- (a) 有關公告可為不同的目的，就該附屬法例的任何條文，訂定不同的生效日期；及
- (b) 不同的公告可為不同的目的，就該條文訂定不同的生效日期。

(由 2015 年第 5 號第 17 條增補)

**第 2 部****指明期貨交易所**

1. ASX 有限公司
2. 澳大利亞證券交易所有限公司
3. 巴西證券期貨交易所股份有限公司
4. 芝加哥城交易所有限公司
5. 芝加哥期權交易所有限公司

**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)

**14. Commencement of subsidiary legislation**

Without limiting section 28(5) of the Interpretation and General Clauses Ordinance (Cap. 1), if any subsidiary legislation made under this Ordinance is to come into operation on a day to be notified in the Gazette—

- (a) the notice may fix different days for a provision of the subsidiary legislation to come into operation for different purposes; and
- (b) different notices may fix different days for the provision to come into operation for different purposes.

(Added 5 of 2015 s. 17)

**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



S1-119  
第 571 章附表 1 —— 第 2 部  
第 6 條Schedule 1—Part 2  
Section 6S1-120  
Cap. 571

6. 芝加哥商品交易所有限公司
7. 中國金融期貨交易所
8. 商品交易所有限公司
9. 大連商品交易所
10. 歐洲期貨及期權交易所法蘭克福股份公司
11. 歐洲期貨及期權交易所蘇黎世股份公司
12. Euronext 阿姆斯特丹公眾有限公司
13. Euronext 巴黎股份有限公司
14. 香港期貨交易所有限公司
15. 洲際交易所加拿大期貨有限公司
16. 洲際交易所美國期貨有限公司
17. 韓國交易所有限公司
18. 倫敦國際金融期貨及期權交易所行政及管理公司
19. 蒙特利爾交易所有限公司
20. 印度多種商品交易所有限公司

6. Chicago Mercantile Exchange Inc.
7. China Financial Futures Exchange
8. Commodity Exchange, Inc.
9. Dalian Commodity Exchange
10. Eurex Frankfurt AG
11. Eurex Zürich 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. Montréal Exchange Inc.
20. Multi Commodity Exchange of India Limited

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第 571 章

附表 1 —— 第 3 部

Schedule 1—Part 3

S1-122  
Cap. 571

21. 全國商品及衍生產品交易所有限公司
22. 納斯達克 OMX 費城交易所有限責任公司
23. 納斯達克 OMX 斯德哥爾摩有限公司
24. 紐約商品交易所有限公司
25. 新西蘭期貨及期權交易所有限公司
26. 紐約證券交易所 Arca 有限公司
27. 大阪證券交易所有限公司
28. 上海期貨交易所
29. 新加坡衍生商品交易所有限公司
30. 倫敦金屬交易所有限公司
31. 東京金融交易所有限公司
32. 東京穀物交易所有限公司
33. 東京證券交易所有限公司
34. 鄭州商品交易所

(第 2 部由 2012 年第 94 號法律公告代替)

**第 3 部**

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

(Part 2 Replaced L.N. 94 of 2012)

**Part 3**

S1-123  
第 571 章附表 1 —— 第 3 部  
第 1 條Schedule 1—Part 3  
Section 1S1-124  
Cap. 571**指明證券交易所**

1. ASX 有限公司
2. BSE 有限公司
3. 意大利交易所股份公司
4. 馬來西亞證券交易所有限公司
5. 德國交易所股份公司
6. Euronext 阿姆斯特丹公眾有限公司
7. Euronext 布魯塞爾股份有限公司 / 公眾有限公司
8. Euronext 巴黎股份有限公司
9. 韓國交易所有限公司
10. 倫敦證券交易所公眾有限公司
11. 蒙特利爾交易所有限公司
12. 名古屋證券交易所有限公司
13. 納斯達克 OMX 哥本哈根股份有限公司
14. 納斯達克 OMX 赫爾辛基有限公司

**Specified Stock Exchanges**

1. ASX Limited
2. BSE Limited
3. Borsa Italiana S.p.A.
4. Bursa Malaysia Securities Berhad
5. Deutsche Börse 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. Montréal Exchange Inc.
12. Nagoya Stock Exchange, Inc.
13. NASDAQ OMX Copenhagen A/S
14. NASDAQ OMX Helsinki Ltd

S1-125  
第 571 章附表 1 —— 第 3 部  
第 15 條Schedule 1—Part 3  
Section 15S1-126  
Cap. 571

15.	納斯達克 OMX 斯德哥爾摩有限公司	15.	NASDAQ OMX Stockholm AB
16.	印度國家證券交易所有限公司	16.	National Stock Exchange of India Limited
17.	紐約證券交易所有限責任公司	17.	New York Stock Exchange LLC
18.	紐約證券交易所 Amex 有限責任公司	18.	NYSE Amex LLC
19.	NZX 有限公司	19.	NZX Limited
20.	大阪證券交易所有限公司	20.	Osaka Securities Exchange Co., Ltd.
21.	奧斯陸證券交易所公眾有限責任公司	21.	Oslo Børs ASA
22.	新加坡證券交易所有限公司	22.	Singapore Exchange Securities Trading Limited
23.	SIX 瑞士交易所股份公司	23.	SIX Swiss Exchange AG
24.	馬德里證券交易所理事會股份有限公司 ( 單一股東公司 )	24.	Sociedad Rectora de la Bolsa de Valores de Madrid, S.A. (Sociedad Unipersonal)
25.	盧森堡證券交易所股份有限公司	25.	Société de la Bourse de Luxembourg S.A.
26.	納斯達克證券市場有限責任公司	26.	The NASDAQ Stock Market LLC
27.	菲律賓證券交易所有限公司	27.	The Philippine Stock Exchange, Inc.
28.	香港聯合交易所有限公司	28.	The Stock Exchange of Hong Kong Limited
29.	泰國證券交易所	29.	The Stock Exchange of Thailand

S1-127  
第 571 章附表 1 —— 第 4 部  
第 1 條Schedule 1—Part 4  
Section 1S1-128  
Cap. 571

30. 東京證券交易所有限公司

30. Tokyo Stock Exchange, Inc.

31. TSX 有限公司

31. TSX Inc.

32. 維也納交易所股份公司

32. Wiener Börse AG

(第 3 部由 2012 年第 94 號法律公告代替)

(Part 3 Replaced L.N. 94 of 2012)

**第 4 部****Part 4****多邊機構****Multilateral Agencies**

1. 非洲開發銀行

1. The African Development Bank

2. 亞洲開發銀行

2. The Asian Development Bank

3. 歐洲復興開發銀行

3. The European Bank for Reconstruction and Development

4. 歐洲投資銀行

4. The European Investment Bank

5. 美洲開發銀行

5. The Inter-American Development Bank

6. 國際復興開發銀行 (通常稱為世界銀行)

6. The International Bank for Reconstruction and Development  
(commonly known as the World Bank)

7. 國際金融公司 (世界銀行附屬機構)

7. The International Finance Corporation (an affiliate of the World Bank)

8. 亞洲基礎設施投資銀行 (由 2016 年第 59 號法律公告增補)

8. The Asian Infrastructure Investment Bank (Added L.N. 59 of 2016)

**第 5 部****Part 5**



S1-129  
第 571 章

附表 1 —— 第 5 部  
第 1 條

Schedule 1—Part 5  
Section 1

S1-130  
Cap. 571

## 合資格信貸評級

1. 就 ——
  - (a) 長期債項而言，經穆迪投資者服務公司評定為 A3 級或以上；或
  - (b) 短期債項而言，經穆迪投資者服務公司評定為優質-3 級或以上。
2. 就 ——
  - (a) 長期債項而言，經標準普爾公司評定為 A 級或以上；或
  - (b) 短期債項而言，經標準普爾公司評定為 A-3 級或以上。

( 編輯修訂 —— 2012 年第 2 號編輯修訂紀錄 )

## 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)

S2-1  
第 571 章

附表 2 —— 第 1 部  
第 1 條

Schedule 2—Part 1  
Section 1

S2-2  
Cap. 571

## 附表 2

[ 第 3、7 及 10 條及 附表 1  
及 10]

### 證券及期貨事務監察委員會

( 格式變更 —— 2012 年第 2 號編輯修訂紀錄 )

#### 第 1 部

#### 證監會的組成及處事程序等

##### 證監會的主席、行政總裁及其他成員

( 由 2006 年第 15 號第 6 條修訂 )

1. 證監會由一名主席、一名行政總裁及眾其他執行董事及非執行董事組成，均由行政長官委任，執行董事及非執行董事的人數亦由行政長官決定，而 —— ( 由 2006 年第 15 號第 6 條修訂 )
  - (a) 證監會成員人數不得少於 8 名；及
  - (b) 證監會非執行董事的人數須超逾該會執行董事的人數。 ( 由 2006 年第 15 號第 6 條代替 )

2. ( 由 2006 年第 15 號第 6 條廢除 )

## Schedule 2

[ss. 3, 7 & 10 & Schs. 1 &  
10]

### Securities and Futures Commission

(Format changes—E.R. 2 of 2012)

#### Part 1

#### Constitution and Proceedings of Commission, etc.

##### Chairman, chief executive officer and other members of Commission

(Amended 15 of 2006 s. 6)

1. The Commission shall consist of a chairman, a chief executive officer and such number of other executive directors and non-executive directors as is determined by the Chief Executive, all of whom shall be appointed by the Chief Executive as follows— (Amended 15 of 2006 s. 6)
  - (a) the number of members of the Commission shall not be less than 8; and
  - (b) the number of non-executive directors of the Commission shall exceed the number of executive directors of the Commission. (Replaced 15 of 2006 s. 6)

2. (Repealed 15 of 2006 s. 6)

S2-3  
第 571 章附表 2 —— 第 1 部  
第 3 條

3. 當證監會的組成不再符合第 1 條的規定時，行政長官須隨即在合理地切實可行的範圍內盡快作出所需的委任，以使該會的組成符合第 1 條的規定。

#### 副主席，及主席或副主席職位出缺

4. 行政長官可委任一名證監會執行董事或非執行董事為該會副主席。(由 2006 年第 15 號第 6 條修訂)
5. 如證監會主席的職位出缺，或證監會主席因傷病、不在香港或其他因由而不能擔任主席，則由根據第 4 條委任的副主席署理主席職位。
6. 即使已根據第 4 條委任證監會副主席，如證監會主席及副主席在任何期間均因傷病、不在香港或其他因由而不能擔任主席，而當時亦無有效的根據第 7 條作出的指定，則證監會主席可指定一名證監會執行董事或非執行董事在該段期間署理證監會主席職位；證監會主席亦可隨時撤銷任何該等指定。(由 2006 年第 15 號第 6 條修訂)

7. 如 ——

Schedule 2—Part 1  
Section 3S2-4  
Cap. 571

3. When the membership of the Commission ceases to comply with the requirements of section 1, the Chief Executive shall as soon as reasonably practicable thereafter make the necessary appointment to ensure that the requirements are complied with.

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

4. The Chief Executive may appoint an executive director or non-executive director of the Commission to be the deputy chairman of the Commission. (Amended 15 of 2006 s. 6)
5. If the office of chairman of the Commission is vacant or the chairman of the Commission is unable to act as chairman due to illness, absence from Hong Kong or any other cause, the deputy chairman appointed under section 4 shall act as chairman in his place.
6. Notwithstanding that a deputy chairman has been appointed under section 4, the chairman of the Commission may, where there is no designation under section 7, designate an executive director or non-executive director of the Commission to act as chairman of the Commission for any period during which both he and the deputy chairman are unable to act as chairman due to illness, absence from Hong Kong or any other cause, and may at any time revoke any such designation. (Amended 15 of 2006 s. 6)

7. If—

S2-5  
第 571 章附表 2 —— 第 1 部  
第 8 條

- (a) 沒有根據第 4 條委任證監會副主席，或證監會副主席的職位出缺；或
- (b) 根據第 4 條委任的證監會副主席因傷病、不在香港或其他因由而不能署理主席職位，而證監會主席沒有根據第 6 條作出指定，

則財政司司長可指定一名證監會執行董事或非執行董事，在證監會主席因傷病、不在香港或其他因由而不能擔任主席的期間，署理證監會主席職位。(由 2006 年第 15 號第 6 條修訂)

8. 根據第 7 條作出的指定在以下情況出現時停止有效 ——
- (a) 財政司司長撤銷該指定；
  - (b) (如該指定是根據第 7(a) 條作出的) 行政長官根據第 4 條作出委任；或
  - (c) (如該指定是根據第 7(b) 條作出的) 根據第 4 條委任的副主席能署理主席職位，
- 以較早者為準。

9. 根據第 5 條署理證監會主席職位的該會副主席，或按照根據第 6 或 7 條作出的指定而署理證監會主席職位的該會執行董事或非執行董事，就所有目的而言，須當作證監會主席。(由 2006 年第 15 號第 6 條代替)

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- (a) no deputy chairman has been appointed under section 4 or the office of deputy chairman of the Commission is vacant; or
- (b) the deputy chairman appointed under section 4 is unable to act as chairman due to illness, absence from Hong Kong or any other cause, and there is no designation under section 6,

the Financial Secretary may designate an executive director or non-executive director of the Commission to act as chairman of the Commission for any period during which the chairman of the Commission is unable to act as chairman due to illness, absence from Hong Kong or any other cause. (Amended 15 of 2006 s. 6)

8. A designation under section 7 ceases to have effect when—
- (a) it is revoked by the Financial Secretary;
  - (b) where the designation is under section 7(a), an appointment is made under section 4; or
  - (c) where the designation is under section 7(b), the deputy chairman appointed under section 4 is able to act as chairman,
- whichever is the earlier.

9. A deputy chairman of the Commission who acts as chairman of the Commission under section 5, or an executive director or non-executive director of the Commission who acts as chairman of the Commission in accordance with a designation under section 6 or 7, shall be deemed for all purposes to be the chairman of the Commission. (Replaced 15 of 2006 s. 6)

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第 9A 條Schedule 2—Part 1  
Section 9AS2-8  
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9A. 儘管有第 9 條的規定 ——

- (a) 不得僅因某證監會執行董事署理該會主席職位而不再視他為該會執行董事；及
- (b) 不得僅因某證監會非執行董事署理該會主席職位而不再視他為該會非執行董事。(由 2006 年第 15 號第 6 條增補)

**行政總裁職位出缺**

(由 2006 年第 15 號第 6 條增補)

9B. 如證監會行政總裁在任何期間因傷病、不在香港或其他因由而不能擔任行政總裁，行政長官可指定一名證監會執行董事在該段期間署理證監會行政總裁職位；行政長官亦可隨時撤銷該指定。(由 2006 年第 15 號第 6 條增補)

9C. 署理證監會行政總裁職位的證監會執行董事，就所有目的而言，須當作證監會行政總裁。(由 2006 年第 15 號第 6 條增補)

**成員的職能及任免等**

(由 2006 年第 15 號第 6 條修訂)

9A. Notwithstanding section 9—

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

**Vacancy in office of chief executive officer***(Added 15 of 2006 s. 6)*

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

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

**Functions and office of members, etc.***(Amended 15 of 2006 s. 6)*



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附表 2 —— 第 1 部  
第 10 條

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- 9D. 在本條例其他條文的規限下，證監會主席、副主席及行政總裁具有該會指派予他們的職能。(由 2006 年第 15 號第 6 條增補)
10. 證監會成員(不論是主席、副主席、行政總裁或其他成員)的任職條款及條件由行政長官決定。(由 2006 年第 15 號第 6 條修訂)
11. 證監會成員(不論是主席、副主席、行政總裁或其他成員)可隨時以書面通知行政長官而辭職。(由 2006 年第 15 號第 6 條修訂)
12. 證監會須向其成員(不論是主席、副主席、行政總裁或其他成員)支付行政長官釐定的報酬、津貼或開支。(由 2006 年第 15 號第 6 條修訂)
13. 行政長官如覺得將證監會任何成員(不論是主席、副主席、行政總裁或其他成員)免任，就該會有效執行其職能而言是可取的，則可以書面通知將該成員免任。(由 2006 年第 15 號第 6 條修訂)

- 9D. Subject to the other provisions of this Ordinance, the chairman, deputy chairman and chief executive officer of the Commission shall have such functions as are assigned to them by the Commission. *(Added 15 of 2006 s. 6)*
10. The terms and conditions of the office of a member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) shall be determined by the Chief Executive. *(Amended 15 of 2006 s. 6)*
11. A member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) may at any time resign his office by notice in writing to the Chief Executive. *(Amended 15 of 2006 s. 6)*
12. A member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) shall be paid by the Commission such remuneration, allowances or expenses as the Chief Executive may determine. *(Amended 15 of 2006 s. 6)*
13. The Chief Executive may by notice in writing remove from office any member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) whose removal appears to him to be desirable for the effective performance by the Commission of its functions. *(Amended 15 of 2006 s. 6)*

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附表 2 —— 第 1 部  
第 14 條

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### 會議

### Meetings

14. 證監會須視乎執行其職能所需而隨時召開會議，會議可由證監會主席、副主席、行政總裁或任何 2 名其他成員召開。（由 2006 年第 15 號第 6 條修訂）

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

15. 在證監會會議中 ——

- (a) 如證監會主席有出席，則他須擔任會議主席；
- (b) 如證監會主席缺席，但證監會副主席有出席，則證監會副主席須擔任會議主席；或
- (c) 如證監會主席及副主席均缺席，則須由出席會議的證監會成員互選一人擔任會議主席。

15. At a meeting of the Commission—

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

16. 證監會會議的法定人數為該會不少於三分之一的執行董事及不少於三分之一的非執行董事。

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

16A. 為根據第 16 條組成法定人數的目的 ——

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

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- (a) 除 (b) 段另有規定外，證監會主席須作為一名該會非執行董事計算；及
- (b) 儘管有第 9 及 9A 條的規定 ——
  - (i) 署理證監會主席職位的該會執行董事須僅作為一名該會執行董事計算；及
  - (ii) 署理證監會主席職位的該會非執行董事須僅作為一名該會非執行董事計算。(由 2006 年第 15 號第 6 條增補)

17. 證監會成員如透過電話、視像會議或其他電子模式參與證監會會議，須視為出席該會議，但前提是他須能聽到其他出席會議的成員的發言，而他們須能聽到他的發言。
18. 每名出席證監會會議的證監會成員在投票時均有一票。
19. 在證監會會議中，每項有待決定的問題須取決於出席會議的成員所投的過半數票；如票數相等，則在符合第 20 條的規定下，會議主席有權投決定票。

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

17. A member of the Commission shall be regarded as being present at a meeting of the Commission if he participates in the meeting by telephone, video conferencing or other electronic means, provided he is able to hear the other members present at the meeting and they are able to hear him.
18. Each member of the Commission present at a meeting of the Commission has one vote.
19. Every question for decision at a meeting of the Commission shall be determined by a majority of votes of its members present and, in the event that voting is equally divided, the chairman of the meeting shall, subject to section 20, have a casting vote.

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20. 會議主席須在已就有待決定的問題諮詢財政司司長後，方可投決定票。

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

### 書面決議

### Written resolution

21. 凡決議是 ——
- (a) 以書面作出；及
  - (b) 由某數目的證監會成員簽署，而該數目的成員 ——
    - (i) 會包括所有在該項決議可供簽署的任何時候身在香港且有能力簽署該項決議的證監會成員；且
    - (ii) 為該會不少於三分之一的執行董事及不少於三分之一的非執行董事，
- 則其有效性和效用，即猶如是在按照本條例召開和進行的證監會會議上通過的一樣。

21. Where a resolution—
- (a) is in writing; and
  - (b) is signed by such number of members of the Commission as—
    - (i) would include all of the members of the Commission who are, at any time when the resolution is made available for signature, present in Hong Kong and capable of signing the resolution; and
    - (ii) is also not less than one third of the executive directors of the Commission and not less than one third of the non-executive directors of the Commission,
- the resolution shall be as valid and effectual as if it had been passed at a meeting of the Commission convened and conducted in accordance with this Ordinance.

22. 就第 21 條而言，該條適用的決議可 ——
- (a) 以一份文件形式作出；或

22. For the purposes of section 21, a resolution to which that section applies may be—
- (a) in the form of one document; or

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(b) 以多於一份文件形式作出，而每份該等文件採用相近的格式，並由一名或多於一名證監會成員簽署。

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

23. 凡決議是以第 22(b) 條描述的多於一份文件形式作出，如該等文件合共由第 21(b)(i) 及 (ii) 條指明的某數目的證監會成員簽署，則須視為已符合第 21(b) 條的規定。

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

24. 就第 21 至 23 條而言 ——

- (a) 如任何文件附有證監會任何成員的簽署，且由專線電報、電報、圖文傳真或電子方式傳送，則該文件須視為已由該成員簽署；及
- (b) 最後一名證監會成員以其成員身分為第 21 條的目的簽署該條適用的決議的日期，須視為該項決議作出的日期。

24. For the purposes of sections 21 to 23—

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

### 印章、行政的規管等

### Seal, and regulation of administration, etc.

25. 證監會具有印章，使用該印章蓋印須由證監會主席或副主席簽署認證，或由該會為此授權的其他成員簽署認證。

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



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第 26 條

26. 證監會須以該會認為在符合本條例的規定下最能確保其職能得以執行的方式，組織和規管其本身的行政管理、處事程序和事務。

## 諮詢委員會

27. 諮詢委員會由以下人士組成 ——
- (a) 證監會主席；
  - (aa) 證監會行政總裁；(由 2006 年第 15 號第 6 條增補)
  - (b) 1 或 2 名證監會其他執行董事，由證監會委任；
  - (c) 8 至 12 名其他成員，由行政長官在諮詢證監會後委任。
28. 諮詢委員會會議可由以下人士召開 ——
- (a) 證監會主席；(由 2006 年第 15 號第 6 條修訂)
  - (aa) 證監會行政總裁；或 (由 2006 年第 15 號第 6 條增補)
  - (b) 任何 3 名諮詢委員會其他成員。
29. 在諮詢委員會會議中 ——
- (a) 如證監會主席有出席，則他須擔任會議主席；或

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

## Advisory Committee

27. The Advisory Committee shall consist of—
- (a) the chairman of the Commission;
  - (aa) the chief executive officer of the Commission; (*Added 15 of 2006 s. 6*)
  - (b) not more than 2 other executive directors of the Commission who shall be appointed by the Commission;
  - (c) not less than 8 (but not more than 12) other members who shall be appointed by the Chief Executive after consultation with the Commission.
28. A meeting of the Advisory Committee may be convened by—
- (a) the chairman of the Commission; (*Amended 15 of 2006 s. 6*)
  - (aa) the chief executive officer of the Commission; or (*Added 15 of 2006 s. 6*)
  - (b) any 3 other members of the Advisory Committee.
29. At a meeting of the Advisory Committee—
- (a) if the chairman of the Commission is present, he shall be the chairman of the meeting; or

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(b) 如證監會主席缺席，則須由出席會議的成員互選一人擔任會議主席。

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

30. 根據第 27(b) 條委任的諮詢委員會成員在停任證監會執行董事時，即停任諮詢委員會成員。

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

31. 根據第 27(b) 或 (c) 條委任的諮詢委員會成員，可隨時 ——  
(a) (如根據第 27(b) 條委任該成員) 以書面通知證監會而辭職；  
(b) (如根據第 27(c) 條委任該成員) 以書面通知行政長官而辭職。

31. A member of the Advisory Committee appointed under section 27(b) or (c) may at any time resign his office by notice in writing to—  
(a) where he has been appointed under section 27(b), the Commission; or  
(b) where he has been appointed under section 27(c), the Chief Executive.

32. 行政長官可以書面通知將根據第 27(c) 條委任的諮詢委員會任何成員免任。

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

## 第 2 部

### 不得轉授的證監會職能

1. 證監會根據或依據任何條例訂立附屬法例的職能。

## Part 2

### Non-Delegable Functions of Commission

1. Any function of the Commission to make subsidiary legislation

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第 2 條

## 2. 證監會的以下職能 ——

- (1) 根據本條例第 5(4)(d) 條借入款項；
- (1A) 根據本條例第 5(4)(da) 條，成立全資附屬公司；*(由 2012 年第 9 號第 33 條增補)*
- (2) *(由 2015 年第 19 號第 28 條廢除)*
- (3) 根據本條例第 8(1) 條設立任何委員會；
- (4) 根據本條例第 8(2) 條將任何事宜交付委員會；
- (5) 根據本條例第 8(3) 條委任某人擔任委員會的委員或主席；
- (6) 根據本條例第 8(5) 條撤回向委員會作出的交付，或撤銷委員會委員或主席的委任；
- (7) 根據本條例第 13(2) 條向行政長官呈交預算；
- (8) 根據本條例第 15(2) 條擬備財務報表；
- (9) 根據本條例第 15(3) 條擬備報告；
- (10) 根據本條例第 16(1) 條委任核數師；
- (11) *(由 2012 年第 9 號第 47 條廢除)*
- (12) 根據本條例第 19(2) 條認可某公司為交易所公司，或依據該條施加條件；
- (13) 根據本條例第 19(3) 條修訂或撤銷條件或施加新的條件；

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under or pursuant to any Ordinance.

## 2. The following functions of the Commission—

- (1) to borrow money, under section 5(4)(d) of this Ordinance;
- (1A) to establish a wholly owned subsidiary, under section 5(4)(da) of this Ordinance; *(Added 9 of 2012 s. 33)*
- (2) *(Repealed 19 of 2015 s. 28)*
- (3) to establish any committee, under section 8(1) of this Ordinance;
- (4) to refer any matter to a committee, under section 8(2) of this Ordinance;
- (5) to appoint a person to be a member or chairman of a committee, under section 8(3) of this Ordinance;
- (6) to withdraw a reference from a committee, or to revoke an appointment of a member or chairman of a committee, under section 8(5) of this Ordinance;
- (7) to submit to the Chief Executive estimates, under section 13(2) of this Ordinance;
- (8) to prepare any financial statements, under section 15(2) of this Ordinance;
- (9) to prepare any report, under section 15(3) of this Ordinance;
- (10) to appoint auditors, under section 16(1) of this Ordinance;
- (11) *(Repealed 9 of 2012 s. 47)*
- (12) to recognize a company as an exchange company under, or to impose conditions pursuant to, section 19(2) of this Ordinance;
- (13) to amend or revoke conditions, or impose new conditions, under section 19(3) of this Ordinance;

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第 2 條

- (14) 根據本條例第 19(7) 條給予公司合理的陳詞機會；
- (15) 根據本條例第 23(3) 條要求認可交易所訂立或修訂規章；
- (16) 根據本條例第 24(3) 條拒絕批准任何規章或對任何規章的修訂或其中任何部分；
- (17) 依據本條例第 24(6) 條建議財政司司長延展期限；
- (18) 根據本條例第 24(7) 條宣布某類別的規章無須獲批准；
- (19) 根據本條例第 25(1) 條請求行政長官會同行政會議將證監會的職能轉移；
- (20) 依據本條例第 25(7) 條請求行政長官會同行政會議命令證監會收回任何職能；
- (21) 依據本條例第 26 條核准委任某人擔任最高行政人員；
- (22) 根據本條例第 28(1)(a) 條撤回對認可交易所的認可；
- (23) 根據本條例第 28(1)(b) 條指令認可交易所停止提供或運作設施或停止提供服務；
- (24) 根據本條例第 29(1) 條指令認可交易所停止提供或運作設施或停止提供服務；
- (25) 根據本條例第 29(3) 條將指令所涉的期間延展；

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- (14) to give a company a reasonable opportunity of being heard, under section 19(7) of this Ordinance;
- (15) to request a recognized exchange company to make or amend rules, under section 23(3) of this Ordinance;
- (16) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 24(3) of this Ordinance;
- (17) to advise the Financial Secretary to extend time, pursuant to section 24(6) of this Ordinance;
- (18) to declare any class of rules to be a class of rules which are not required to be approved, under section 24(7) of this Ordinance;
- (19) to request the Chief Executive in Council to transfer any function of the Commission, under section 25(1) of this Ordinance;
- (20) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 25(7) of this Ordinance;
- (21) to approve the appointment of a person as chief executive, pursuant to section 26 of this Ordinance;
- (22) to withdraw recognition of a recognized exchange company, under section 28(1)(a) of this Ordinance;
- (23) to direct a recognized exchange company to cease to provide or operate facilities or to cease to provide services, under section 28(1)(b) of this Ordinance;
- (24) to direct a recognized exchange company to cease to provide or operate facilities or to cease to provide services, under section 29(1) of this Ordinance;
- (25) to extend a direction, under section 29(3) of this Ordinance;

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第 571 章附表 2 —— 第 2 部  
第 2 條

- (26) 根據本條例第 37(1) 條認可某公司為結算所，或依據該條施加條件；
- (27) 根據本條例第 37(2) 條修訂或撤銷條件或施加新的條件；
- (28) 根據本條例第 37(5) 條給予公司合理的陳詞機會；
- (29) 根據本條例第 40(4) 條要求認可結算所訂立或修訂規章；
- (30) 根據本條例第 41(3) 條拒絕批准任何規章或對任何規章的修訂或其中任何部分；
- (31) 依據本條例第 41(6) 條建議財政司司長延展期限；
- (32) 根據本條例第 41(7) 條宣布某類別的規章無須獲批准；
- (33) 根據本條例第 43(1)(a) 條撤回對認可結算所的認可；
- (34) 根據本條例第 43(1)(b) 條指令認可結算所停止提供或運作設施；
- (35) 根據本條例第 59(2) 條認可某公司為交易所控制人，或依據該條施加條件；
- (36) 根據本條例第 59(3) 條修訂或撤銷條件或施加新的條件；
- (37) 根據本條例第 59(9)(c) 條指令某人採取指明步驟；
- (38) 根據本條例第 59(18) 條給予公司合理的陳詞機會；

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- (26) to recognize a company as a clearing house under, or to impose conditions pursuant to, section 37(1) of this Ordinance;
- (27) to amend or revoke conditions, or impose new conditions, under section 37(2) of this Ordinance;
- (28) to give a company a reasonable opportunity of being heard, under section 37(5) of this Ordinance;
- (29) to request a recognized clearing house to make or amend rules, under section 40(4) of this Ordinance;
- (30) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 41(3) of this Ordinance;
- (31) to advise the Financial Secretary to extend time, pursuant to section 41(6) of this Ordinance;
- (32) to declare any class of rules to be a class of rules which are not required to be approved, under section 41(7) of this Ordinance;
- (33) to withdraw recognition of a recognized clearing house, under section 43(1)(a) of this Ordinance;
- (34) to direct a recognized clearing house to cease to provide or operate facilities, under section 43(1)(b) of this Ordinance;
- (35) to recognize a company as an exchange controller under, or to impose conditions pursuant to, section 59(2) of this Ordinance;
- (36) to amend or revoke conditions, or impose new conditions, under section 59(3) of this Ordinance;
- (37) to direct a person to take specified steps, under section 59(9)(c) of this Ordinance;
- (38) to give a company a reasonable opportunity of being heard, under section 59(18) of this Ordinance;



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第 571 章附表 2 —— 第 2 部  
第 2 條

- (39) 依據本條例第 60(a) 條批准認可控制人增加或減少擁有的認可交易所或認可結算所權益；
- (40) 依據本條例第 61(1) 條核准某人成為認可控制人、認可交易所或認可結算所的次要控制人；
- (41) 根據本條例第 67(3) 條拒絕批准任何規章或對任何規章的修訂或其中任何部分；
- (42) 依據本條例第 67(6) 條建議財政司司長延展期限；
- (43) 根據本條例第 67(7) 條宣布某類別的規章無須獲批准；
- (44) 根據本條例第 68(1) 條請求行政長官會同行政會議將證監會的職能轉移；
- (45) 依據本條例第 68(7) 條請求行政長官會同行政會議命令證監會收回任何職能；
- (46) 依據本條例第 70(1) 條核准委任某人擔任最高行政人員或最高營運人員；
- (47) 根據本條例第 70(2) 條免除某人的最高行政人員或最高營運人員的職位；
- (48) 根據本條例第 72(1)(i) 條撤回對認可控制人的認可；
- (49) 根據本條例第 72(1)(ii) 條指令某公司採取指明步驟；

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Section 2S2-30  
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- (39) to approve the increase or decrease of any interest a recognized exchange controller has in a recognized exchange company or recognized clearing house, pursuant to section 60(a) of this Ordinance;
- (40) to approve a person for becoming a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house, pursuant to section 61(1) of this Ordinance;
- (41) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 67(3) of this Ordinance;
- (42) to advise the Financial Secretary to extend time, pursuant to section 67(6) of this Ordinance;
- (43) to declare any class of rules to be a class of rules which are not required to be approved, under section 67(7) of this Ordinance;
- (44) to request the Chief Executive in Council to transfer any function of the Commission, under section 68(1) of this Ordinance;
- (45) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 68(7) of this Ordinance;
- (46) to approve the appointment of a person as chief executive or chief operating officer, pursuant to section 70(1) of this Ordinance;
- (47) to remove a person from the office of a chief executive or chief operating officer, under section 70(2) of this Ordinance;
- (48) to withdraw recognition of a recognized exchange controller, under section 72(1)(i) of this Ordinance;
- (49) to direct a company to take specified steps, under section 72(1)(ii) of this Ordinance;

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第 571 章附表 2 —— 第 2 部  
第 2 條

- (50) 依據本條例第 72(2) 條給予認可控制人合理的陳詞機會；
- (51) 依據本條例第 74(1) 條作出書面述明；
- (52) 根據本條例第 75(1) 條指令認可控制人或相關法團採取指明步驟；
- (53) 依據本條例第 76(1) 條批准費用；
- (54) 根據本條例第 79(1) 條認可某公司為投資者賠償公司，或依據該條施加條件；
- (55) 根據本條例第 79(2) 條修訂或撤銷條件或施加新的條件；
- (56) 根據本條例第 79(5) 條給予公司合理的陳詞機會；
- (57) 根據本條例第 80(1) 條請求行政長官會同行政會議將證監會的職能轉移；
- (58) 依據本條例第 80(7) 條請求行政長官會同行政會議命令證監會收回任何職能；
- (59) 根據本條例第 83(3) 條拒絕批准任何規章或對任何規章的修訂或其中任何部分；
- (60) 依據本條例第 83(6) 條建議財政司司長延展期限；
- (61) 根據本條例第 83(7) 條宣布某類別的規章無須獲批准；

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Section 2S2-32  
Cap. 571

- (50) to give a recognized exchange controller a reasonable opportunity of being heard, pursuant to section 72(2) of this Ordinance;
- (51) to make statement in writing, pursuant to section 74(1) of this Ordinance;
- (52) to direct a recognized exchange controller or a relevant corporation to take specified steps, under section 75(1) of this Ordinance;
- (53) to approve a fee, pursuant to section 76(1) of this Ordinance;
- (54) to recognize a company as an investor compensation company under, or to impose conditions pursuant to, section 79(1) of this Ordinance;
- (55) to amend or revoke conditions, or impose new conditions, under section 79(2) of this Ordinance;
- (56) to give a company a reasonable opportunity of being heard, under section 79(5) of this Ordinance;
- (57) to request the Chief Executive in Council to transfer any function of the Commission, under section 80(1) of this Ordinance;
- (58) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 80(7) of this Ordinance;
- (59) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 83(3) of this Ordinance;
- (60) to advise the Financial Secretary to extend time, pursuant to section 83(6) of this Ordinance;
- (61) to declare any class of rules to be a class of rules which are not required to be approved, under section 83(7) of this Ordinance;

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第 571 章附表 2 —— 第 2 部  
第 2 條

- (62) 根據本條例第 85(1) 條撤回對認可投資者賠償公司的認可；
- (63) 依據本條例第 90(1) 條批准進行活動或業務；
- (64) 根據本條例第 92(1) 條送達通知；
- (65) 根據本條例第 92(7) 條延展限制通知的有效期；
- (66) 依據本條例第 92(9) 條向原訟法庭提出申請；
- (67) 根據本條例第 93(1) 條作出暫停職能令；
- (68) 根據本條例第 93(9) 條延展暫停職能令的有效期；
- (69) 根據本條例第 182(1) 條委任非證監會僱員的人，調查本條例第 182(1)(a) 至 (g) 條提述的任何事宜；
- (70) 根據本條例第 183(6) 條安排發表報告；
- (71) 根據本條例第 204、205 或 206 條施加禁止或要求；
- (72) 根據本條例第 208(1) 條撤回、取代或更改某項禁止或要求；
- (73) 根據本條例第 212 條提出呈請；
- (74) 依據本條例第 213(1) 或 (3A) 條向原訟法庭提出申請；(由 2016 年第 16 號第 20 條修訂)
- (75) 根據本條例第 214(1) 條向原訟法庭提出申請；

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Section 2S2-34  
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- (62) to withdraw recognition of a recognized investor compensation company, under section 85(1) of this Ordinance;
- (63) to approve the conduct of activities or businesses, pursuant to section 90(1) of this Ordinance;
- (64) to serve a notice, under section 92(1) of this Ordinance;
- (65) to extend the period during which a restriction notice is to remain in force, under section 92(7) of this Ordinance;
- (66) to apply to the Court of First Instance, pursuant to section 92(9) of this Ordinance;
- (67) to make a suspension order, under section 93(1) of this Ordinance;
- (68) to extend the period during which a suspension order is to remain in force, under section 93(9) of this Ordinance;
- (69) to appoint any person, other than an employee of the Commission, to investigate any of the matters referred to in section 182(1)(a) to (g) of this Ordinance, under section 182(1) of this Ordinance;
- (70) to cause a report to be published, under section 183(6) of this Ordinance;
- (71) to impose a prohibition or requirement, under section 204, 205 or 206 of this Ordinance;
- (72) to withdraw, substitute or vary a prohibition or requirement, under section 208(1) of this Ordinance;
- (73) to present a petition, under section 212 of this Ordinance;
- (74) to apply to the Court of First Instance, pursuant to section 213(1) or (3A) of this Ordinance; (*Amended 16 of 2016 s. 20*)
- (75) to apply to the Court of First Instance, under section 214(1) of this Ordinance;

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第 571 章附表 2 —— 第 2 部  
第 2 條

- (75A) 根據本條例第 214A(1) 條向原訟法庭提出申請；(由 2016 年第 16 號第 20 條增補)
- (76) 根據本條例第 232(3) 條指明某指明決定的生效時間；
- (77) 根據本條例第 236 條設立賠償基金；
- (78) 根據本條例第 237(2)(a) 條借入款項，或將投資項目作為押記，用以擔保借貸；
- (79) 根據本條例第 240(5) 條委任核數師；
- (80) (由 2012 年第 9 號第 47 條廢除)
- (81) 根據本條例第 252(1) 條在市場失當行為審裁處提起研訊程序；(由 2012 年第 9 號第 27 條代替)
- (81A) 根據本條例第 307I(1) 條提起關於披露的研訊程序；(由 2012 年第 9 號第 12 條增補)
- (82) 根據本條例第 309(1) 條發表指引；
- (83) 依據本條例第 385(1) 條提出申請；
- (84) 根據本條例第 396(1) 條諮詢財政司司長；
- (85) 根據本條例第 396(2) 條向行政長官會同行政會議作出建議；
- (86) 根據第 1 部第 27(b) 條委任諮詢委員會成員；
- (87) 根據本條例附表 3 第 6 部第 1(2) 條指令任何指明證券須受限制；
- (88) 依據本條例附表 3 第 6 部第 1(6)(a) 條向原訟法庭提出申請；
- (89) 依據本條例附表 3 第 6 部第 1(7) 條向原訟法庭提出申請；(由 2016 年第 23 號第 222 條修訂)

Schedule 2—Part 2  
Section 2S2-36  
Cap. 571

- (75A) to apply to the Court of First Instance, under section 214A(1) of this Ordinance; (Added 16 of 2016 s. 20)
- (76) to specify the time at which a specified decision is to take effect, under section 232(3) of this Ordinance;
- (77) to establish a compensation fund, under section 236 of this Ordinance;
- (78) to borrow, or to charge any investments by way of security, under section 237(2)(a) of this Ordinance;
- (79) to appoint an auditor, under section 240(5) of this Ordinance;
- (80) (Repealed 9 of 2012 s. 47)
- (81) to institute proceedings in the Market Misconduct Tribunal under section 252(1) of this Ordinance (Replaced 9 of 2012 s. 27)
- (81A) to institute disclosure proceedings under section 307I(1) of this Ordinance; (Added 9 of 2012 s. 12)
- (82) to publish guidelines, under section 309(1) of this Ordinance;
- (83) to make an application, pursuant to section 385(1) of this Ordinance;
- (84) to consult the Financial Secretary, under section 396(1) of this Ordinance;
- (85) to make recommendation to the Chief Executive in Council, under section 396(2) of this Ordinance;
- (86) to appoint members of the Advisory Committee, under section 27(b) of Part 1;
- (87) to direct any specified securities to be subject to restrictions, under section 1(2) of Part 6 of Schedule 3 to this Ordinance;
- (88) to apply to the Court of First Instance, pursuant to section 1(6)(a) of Part 6 of Schedule 3 to this Ordinance;

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第 571 章

附表 2 —— 第 3 部

- (90) 根據《金融機構(處置機制)條例》(第 628 章)第 6(1)(b)條，建議指定認可交易所為受涵蓋金融機構；(由 2016 年第 23 號第 222 條增補。編輯修訂——2017 年第 2 號編輯修訂紀錄)
- (91) 根據《金融機構(處置機制)條例》(第 628 章)第 145(1)條，提出申請；(由 2016 年第 23 號第 222 條增補。編輯修訂——2017 年第 2 號編輯修訂紀錄)
- (92) 根據《金融機構(處置機制)條例》(第 628 章)第 196 條，發出《實務守則》。(由 2016 年第 23 號第 222 條增補。編輯修訂——2017 年第 2 號編輯修訂紀錄)

### 第 3 部

#### 可為處置而轉授的證監會職能

(第 3 部由 2016 年第 23 號第 222 條增補)

第 2 部第 2(12)、(13)、(14)、(21)、(22)、(23)、(24)、(25)、(26)、(27)、(28)、(33)、(34)、(35)、(36)、(37)、(38)、(39)、(40)、(46)、(47)、(48)、(49) 或 (50) 條所述的職能。

Schedule 2—Part 3

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Cap. 571

- (89) to apply to the Court of First Instance, pursuant to section 1(7) of Part 6 of Schedule 3 to this Ordinance; (Amended 23 of 2016 s. 222)
- (90) to recommend the designation of a recognized exchange company as a within scope financial institution under section 6(1)(b) of the Financial Institutions (Resolution) Ordinance (Cap. 628); (Added 23 of 2016 s. 222. Amended E.R. 2 of 2017)
- (91) to make an application under section 145(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628); (Added 23 of 2016 s. 222. Amended E.R. 2 of 2017)
- (92) to issue a code of practice under section 196 of the Financial Institutions (Resolution) Ordinance (Cap. 628). (Added 23 of 2016 s. 222. Amended E.R. 2 of 2017)

### Part 3

#### Functions of Commission Delegable for Resolution

(Part 3 added 23 of 2016 s. 222)

A function mentioned in section 2(12), (13), (14), (21), (22), (23), (24), (25), (26), (27), (28), (33), (34), (35), (36), (37), (38), (39), (40), (46), (47), (48), (49) or (50) of Part 2.



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第 571 章附表 3 —— 第 1 部  
第 1 條Schedule 3—Part 1  
Section 1S3-2  
Cap. 571

## 附表 3

[ 第 18、40、58、59、61、  
62、72 及 78 條及附表 2]

## 交易所、結算所及交易所控制人

( 格式變更 —— 2013 年第 1 號編輯修訂紀錄 )

## 第 1 部

## 定義

1. 在本附表中，除文意另有所指外，**市場抵押品** (market collateral)、**市場押記** (market charge)、**股東控制人** (shareholder controller)、**相聯者** (associated person)、**控制人** (controller)、**間接控制人** (indirect controller) 及 **違責處理規則** (default rules) 具有本條例第 18 條分別給予該等詞語的涵義。

## 第 2 部

## 指明為相聯者的人

## 第 3 部

## 指明為不是相聯者的人

1. 就本條例第 III 部第 4 分部所有條文而言，凡 ——

## Schedule 3

[ss. 18, 40, 58, 59, 61, 62, 72  
& 78 & Sch. 2]Exchange Companies, Clearing Houses and Exchange  
Controllers

(Format changes—E.R. 1 of 2013)

## 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

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第 571 章附表 3 —— 第 4 部  
第 1 條

- (a) 一間認可結算所或其代名人以其身分行事，則該結算所或該代名人（視屬何情況而定）不是任何人的相聯者；
- (b) 某法團某次成員大會上的主席由於某人委任他為投票代表以致有權就該法團行使投票權，而該委任——
  - (i) 只就該次大會有效；及
  - (ii) 不牽涉任何有值代價，則該主席並非該人的相聯者；或
- (c) 某人（**前者**）與另一人（**後者**）如均委任某法團某次成員大會上的主席為投票代表，就該法團行使投票權，而前者及後者所作的委任——
  - (i) 均只就該次大會有效；及
  - (ii) 不牽涉任何有值代價，則前者並非後者的相聯者。

2. 就本條例第 61 條而言，在以下情況下，某人（**前者**）不會僅因為他與另一人（**後者**）均委任同一第三者為投票代表在某法團某次成員大會上就該法團行使投票權，而成為後者的相聯者——

- (a) 前者及後者所作的委任只就該次大會有效；及
- (b) 上述每一項委任均不牽涉任何有值代價。

## 第 4 部

### 指明為不是間接控制人的人

1. 就本條例第 III 部第 4 分部所有條文而言，如任何法團的董事（或以該法團為附屬公司的另一法團的董事）慣於或有義務按

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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

S3-5  
第 571 章附表 3 —— 第 5 部  
第 1 條

照任何人的指示或指令行事，僅是因為該等董事參照該人以專業身分提供的意見而行事，則該人不屬該法團的間接控制人。

## 第 5 部

### 認可結算所違責處理規則須有的規定

1. 凡認可結算所須訂有規則，以訂定當結算所參與者看來沒有能力或可能變為沒有能力履行他身為合約一方的所有未交收或未平倉市場合約的義務時，須採取處理程序或其他行動，該等規則須——
  - (a) 使所有該等合約得以交收或藉抵銷得以平倉；
  - (b) 為 (a) 段的目的，訂定就每份該等合約須由該參與者支付或須支付予他的款項；而該款項須否支付及其數目，是在考慮他根據或就有關合約的所有權利及法律責任後計算所得的；
  - (c) 使所有按照 (b) 段釐定的須由該參與者支付或須支付予他的款項，得以合共計算或互相抵銷，以計算出 (如有的話) 須由他支付或須支付予他的淨款額；
  - (d) 訂定如 (c) 段所指的淨款額須由該參與者支付時，則把該淨款額與他的受市場押記限制或已提供作市場抵押品的所有財產互相抵銷 (或與該等財產的變現得益互相抵銷)，以計算出 (如有的話) 須由他支付或須支付予他的另一淨款額；
  - (e) 訂定如 (c) 段所指的淨款額須支付予該參與者時，則他的所有受市場押記限制的財產，即不再受該押記限制 (但不影響該財產受任何其他形式的押記限制)，

Schedule 3—Part 5  
Section 1S3-6  
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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

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第 571 章附表 3 —— 第 5 部  
第 2 條Schedule 3—Part 5  
Section 2S3-8  
Cap. 571

而他的已提供作市場抵押品的財產，則不再作為市場抵押品（但不影響該財產被提供作任何其他形式的抵押品）；及

- (f) 訂定 (c) 段所指的須支付予該參與者的淨款額，或 (d) 段所指的須由他支付或須支付予他（視屬何情況而定）的另一淨款額，均須由該結算所加以證明；如無須支付該等款額，亦須由該結算所證明該事實。

2. 如 ——

- (a) 《認可結算所規章》預期結算所參與者可以第 3 條所述的獨立身分記錄市場合約；而
- (b) 有關認可結算所運作的方式，使第 1 條 (a)、(b)、(c)、(d)、(e) 及 (f) 段的規定可分別就每一身分而獲遵守，

則第 1 條 (a)、(b)、(c)、(d)、(e) 及 (f) 段的規定，須分別就每一身分而獲遵守。

(由 2014 年第 6 號第 61 條增補)

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.

2. If—

- (a) the RCH rules envisage that a clearing participant may record market contracts in separate capacities, as referred to in section 3; and
- (b) the recognized clearing house operates in such a manner that paragraphs (a), (b), (c), (d), (e) and (f) of section 1 may be complied with separately in respect of each of the capacities,

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第 571 章附表 3 —— 第 5 部  
第 3 條Schedule 3—Part 5  
Section 3S3-10  
Cap. 571

paragraphs (a), (b), (c), (d), (e) and (f) of section 1 must be complied with separately in respect of each capacity.

*(Added 6 of 2014 s. 61)*

### 3. 就第 2 條而言 ——

- (a) 在以下情況下，結算所參與者將會視為就其結算所帳戶及其每一客戶帳戶以獨立身分記錄市場合約 ——
  - (i) 就結算所帳戶而言 ——《認可結算所規章》規定或准許在結算所參與者於有關認可結算所的任何結算所帳戶內記錄的交易，已以獨立身分記錄；及
  - (ii) 就每一客戶帳戶而言 ——《認可結算所規章》規定或准許在結算所參與者於該結算所的任何客戶帳戶內記錄的交易，已以獨立身分記錄；
- (b) 須就記錄在某客戶帳戶內的交易而付予結算所參與者的淨款額（根據第 1(c) 條計算所得者），不得與結算所參與者須就記錄在任何結算所帳戶內的交易支付的淨款額（根據該條計算所得者）互相抵銷，即使在《認可結算所規章》內有相反的條文規定亦然；
- (c) 須就記錄在結算所帳戶內的交易而付予結算所參與者的淨款額（根據第 1(c) 條計算所得者），如《認可結算所規章》訂定或准許的話，可與結算所參與者須就記錄在任何客戶帳戶內的交易支付的淨款額（根據該條計算所得者）互相抵銷；
- (d) 如《認可結算所規章》有此訂定的話，須就記錄在某客戶帳戶內的交易而付予結算所參與者的淨款額（根據第 1(c) 條計算所得者），不得與結算所參與者須就記錄在任何其他客戶帳戶內的交易支付的淨款額（根據該條計算所得者）互相抵銷。

### 3. For the purposes of section 2—

- (a) a clearing participant will be regarded as recording market contracts in a separate capacity in respect of its house accounts and each of its client accounts if—
  - (i) for house accounts—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 have been so recorded; and
  - (ii) for each client account—transactions that are required or permitted by the RCH rules to be recorded in any of the clearing participant's client accounts with the clearing house have been so recorded;
- (b) any net sum payable to the clearing participant in respect of transactions recorded in a client account, 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



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第 571 章附表 3 —— 第 5 部  
第 4 條Schedule 3—Part 5  
Section 4S3-12  
Cap. 571*(由 2014 年第 6 號第 61 條增補)*

## 4. 為免生疑問——

- (a) 將違責參與者在某客戶帳戶內的未交收市場合約的持倉量及抵押品，按照《認可結算所規章》轉移予該認可結算所的一名或多於一名其他結算所參與者的作為，就第 1(a) 條而言，即構成該合約的交收；及
- (b) 在不局限第 1(b) 條的原則下，在該條中，凡提述結算所參與者根據有關合約或就有關合約而有的權利及法律責任，即包括根據《認可結算所規章》採取行動所引起的權利及法律責任（該行動授權或准許該結算所參與者根據有關合約將在某客戶帳戶內的持倉量及抵押品，轉移予該認可結算所的一名或多於一名其他結算所參與者）。

*(由 2014 年第 6 號第 61 條增補)*

under that section, if the RCH rules so provide or permit;

- (d) any net sum payable to the clearing participant in respect of transactions recorded in a client account, as calculated under section 1(c), may not be set-off against any net sum payable by the clearing participant in respect of transactions recorded in any other client account, as calculated under that section, if the RCH rules so provide.

*(Added 6 of 2014 s. 61)*

## 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 or permitting 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.

*(Added 6 of 2014 s. 61)*

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第 571 章附表 3 —— 第 5 部  
第 5 條Schedule 3—Part 5  
Section 5S3-14  
Cap. 571

5. 儘管有本條例第 55 條的規定，第 1、2、3 及 4 條仍然適用。  
(由 2014 年第 6 號第 61 條增補)
6. 在本部中，凡提述互相抵銷或抵銷，即包括淨額計算安排。  
(由 2014 年第 6 號第 61 條增補)
7. 為施行本部，須由任何人支付或須付予任何人的款項，包括根據該人作為其中一方的淨額計算安排須計算的價值。  
(由 2014 年第 6 號第 61 條增補)
8. 在本部中 ——  
**客戶帳戶** (client account) 就任何結算所參與者而言，指以該結算所參與者名義在任何認可結算所持有的帳戶 (記錄持倉量或抵押品的結算所帳戶除外)；  
**淨額計算** (netting) 指藉計算歸予任何加快付款或終止付款或任何交付義務或享有權的價值 (不論屬正數或負數)，而釐定任何淨餘額；  
**結算所帳戶** (house account) 就任何結算所參與者而言，指符合以下說明的帳戶 ——  
 (a) 以該結算所參與者名義在任何認可結算所持有；及  
 (b) 記錄下述項目 ——  
 (i) 該結算所參與者本身的持倉量或抵押品；

5. Sections 1, 2, 3 and 4 apply despite section 55 of this Ordinance.  
(Added 6 of 2014 s. 61)
6. In this Part, a reference to a set-off or offset includes a netting arrangement.  
(Added 6 of 2014 s. 61)
7. For the purposes of this Part, a sum of money payable by, or payable to, a person includes a value to be taken into account under a netting arrangement to which the person is a party.  
(Added 6 of 2014 s. 61)
8. In this Part—  
**client account** (客戶帳戶), in relation to a clearing participant, means an account held with a recognized clearing house in the name of the 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) which is held with a 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 or collateral;

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第 1 條

- (ii) 《認可結算所規章》視為屬該結算所參與者本身的持倉量或抵押品的其他人士的持倉量或抵押品；

**《認可結算所規章》** (RCH rules) 就任何認可結算所而言，指第 1 條提述的結算所的規則。

(由 2014 年第 6 號第 61 條增補)

## 第 6 部

### 在有人沒有遵從根據本條例第 59(9)(c)、61(9)(b) 或 72(1) 條送達的通知時適用的條文

#### 1. 對證券的限制及證券的售賣

- (1) 凡任何人沒有遵從根據本條例第 59(9)(c)、61(9)(b) 或 72(1) 條送達的通知，則本條賦予的權力可予行使。
- (2) 證監會可藉送達書面通知予有關的人，指令任何本條適用並經指明的證券須受以下一項或多於一項的限制所規限，直至另行通知為止——
  - (a) 轉讓該等證券或 (如證券屬未發行證券) 轉讓獲發該等未發行證券的權利，以及發行該等未發行證券，均屬無效；
  - (b) 不得就該等證券行使投票權；
  - (c) 不得依憑該等證券或依據向該等證券的持有人提出的要約，而再發行證券；

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- (ii) the positions or collateral of other persons that are regarded by the RCH rules to be the clearing participant's own positions or collateral;

**netting** (淨額計算) means the determination of a net balance by taking account of the values (whether positive or negative) attributed to an accelerated or terminated payment, or to a delivery obligation or entitlement;

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

(Added 6 of 2014 s. 61)

## 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;

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第 1 條

- (d) 除非在清盤的情況下，否則不得就有關法團在證券方面欠付的任何款項而付款，不論該等款項是否就股本而支付；
- (e) 該等證券的持有人須安排該等證券在該通知指明的限期內轉讓予該通知指明的證監會代名人。
- (3) 凡任何證券受第 (2)(a) 款所指的限制所規限，則任何轉讓該等證券的協議或（如證券屬未發行證券）轉讓獲發該等未發行證券的權利的協議，均屬無效。
- (4) 凡任何證券受第 (2)(c) 或 (d) 款所指的限制所規限，則任何轉讓依憑該等證券而獲發其他證券的權利的協議，或任何轉讓在非清盤情況下就該等證券收取款項的權利的協議，均屬無效。
- (5) 凡任何證券受第 (2) 款所指的限制所規限，任何受該等限制影響的人，可要求證監會就該等證券而提出第 (6)(a) 款提述的申請；凡有該等要求提出，該會須在該等要求提出後 30 日內——
  - (a) 順應該要求行事；或
  - (b) 藉送達書面通知予該人，述明該會不擬順應該要求行事。
- (6) 原訟法庭可——
  - (a) 應證監會的申請，命令售賣任何本條適用並經指明的證券，如該等證券當其時正受第 (2) 款所指的任何限制所規限，則原訟法庭可命令該等證券不再如此受規限；
  - (b) 應一名已根據第 (5) 款提出要求並就該項要求根據該款 (b) 段獲送達通知的人的申請，命令與該項要求有關的任何指明證券須予售賣並且不再受第 (2) 款所指的任何限制所規限。
- (7) 原訟法庭如已根據第 (6) 款就證券作出命令，可應證監會的申請，作出原訟法庭認為適當並與該等證券的售賣或轉讓有關的進一步命令。

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- (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,

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第 1 條Schedule 3—Part 6  
Section 1S3-20  
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- (8) 凡任何證券依據本條所指的命令售出，則該項售賣的收益在減去該項售賣的費用後，除原訟法庭另有指明外，須為享有該等收益的實益權益的人的利益而繳存於法院，而任何該等人可向原訟法庭申請作出命令，將該等收益的全部或部分支付予他。
- (9) 本條的適用範圍如下 ——
- (a) 在有關的人憑藉有關法團的證券而成為該法團的股東控制人或本條例第 61 條界定的次要控制人的情況下，本條適用於所有由該人或其任何相聯者所持有的、但在緊接該人成為該等控制人之前並不是由該人或其任何相聯者所持有的該法團的證券；及
- (b) 在有關的人憑藉他本人或其任何相聯者所取得的另一法團的證券而成為有關法團的股東控制人或本條例第 61 條界定的次要控制人的情況下，本條適用於所有由該人或其任何相聯者所持有的、但在緊接該人成為該等控制人之前並不是由該人或其任何相聯者所持有的該另一法團的證券。
- (10) 關乎某法團的證券並根據第 (2) 款送達有關的人的通知的副本，須送達該法團，如通知所關乎的證券由該人的相聯者持有，則另須將該通知的副本送達該相聯者。
- (11) 終審法院首席法官可訂立規則，規管與根據第 (6) 款提出的申請 ( 包括任何類別的申請 ) 有關的實務及程序。
- (12) 現宣布任何人不會僅因為第 (2)(b) 或 (e) 款的施行而違反本條例第 59(1) 或 61(1) 條。

- 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



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第 571 章附表 3 —— 第 6 部  
第 2 條Schedule 3—Part 6  
Section 2S3-22  
Cap. 571**2. 對企圖規避限制的懲罰**

## (1) 任何人 ——

- (a) 行使或其本意是行使任何權利，以處置任何證券或處置獲發該等證券的權利，而他知道如此行事，是違反第 1(2) 條所指的規限該等證券的限制的；
- (b) 以持有人或投票代表的身分就任何該等證券投票，而他知道如此行事，是違反 (a) 段所述的限制的；
- (c) 就任何該等證券委任投票代表，而他知道就任何該等證券投票，是違反 (a) 段所述的限制的；
- (d) 本身是任何該等證券的持有人，但沒有將該等證券受 (a) 段所述的限制所規限一事，通知任何他不知道是察覺該事的、但他知道是有權 (假若沒有該等限制) 以持有人或投票代表身分就該等證券投票的人；
- (e) 本身是任何該等證券的持有人，或本身是有權依憑該等證券而獲發其他證券的人，或本身是有權在非

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

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第 571 章附表 3 —— 第 6 部  
第 3 條

清盤情況下就該等證券收取任何款項的人，而訂立根據第 1(3) 或 (4) 條屬無效的協議；或

- (f) 無合理辯解而沒有遵從第 1(2)(e) 條所指的規限該等證券的限制，

即屬犯罪 ——

- (i) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
- (ii) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。
- (2) 凡任何法團的證券在違反第 1(2) 條所指的限制下發行，或任何法團在違反該等限制下支付款項，則該法團的每名董事及每名管理人如明知並故意容許該項發行或支付 (視屬何情況而定)，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

### 3. 禁制某些人以間接控制人的身分行事

- (1) 在本條中，**受禁制人士** (prohibited person) 就任何法團而言，在根據本條例第 59(9)(c) 或 72(1) 條送達的通知關乎

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Section 3S3-24  
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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 \$1,000,000 and to imprisonment for 2 years; or
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

- (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 \$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.

### 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

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第 571 章附表 3 —— 第 6 部  
第 3 條

間接控制人的範圍內，指任何就該法團沒有遵從該通知的人。

- (2) 凡任何人就某法團而言是或可能成為受禁制人士，證監會須向該法團送達根據本條例第 59(9)(c) 或 72(1) 條送達的有關通知的副本。
- (3) 任何人如就某法團而言屬受禁制人士，則不得以或繼續以（視屬何情況而定）該法團的間接控制人的身分行事，據此，該人不得以或須停止以（視屬何情況而定）該等控制人的身分向該法團的董事，或向以該法團為附屬公司的另一法團的董事，發出任何指示或指令。
- (4) 法團的任何董事，或以該法團為附屬公司的另一法團的任何董事，如接獲（不論直接或間接）任何指示或指令——
  - (a) 而該董事知道或理應知道發出該等指示或指令的人就首述法團而言，是一名受禁制人士；而
  - (b) 憑藉第 (3) 款，該等指示或指令是禁止如此發出的，或可合理地解釋為是禁止如此發出的，
 則該董事須立即將該等指示或指令以及它發出的情況，通知證監會。
- (5) 任何受禁制人士違反第 (3) 款，即屬犯罪——
  - (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$10,000；或
  - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$10,000。
- (6) 任何董事無合理辯解而違反第 (4) 款，即屬犯罪——
  - (a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$10,000；或

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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 \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or

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第 1 條

- (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$10,000。
- (7) 在本條中提述的持續罪行，指由任何人持續沒有遵從、拒絕遵從或以其他方式違反第 (3) 或 (4) 款的規定所構成的罪行，即使該款指明的遵從該款的限期（不論該限期是如何表達）已屆滿。（由 2005 年第 10 號第 204 條修訂）

## 第 7 部

### 指明為不是次要控制人的人

1. 就本條例第 III 部第 4 分部而言，凡 ——
- (a) 任何認可結算所或其代名人以其身分行事，則該結算所或該代名人（視屬何情況而定）不是次要控制人；或
- (b) 某法團某次成員大會上的主席由於被委任為投票代表以致有權就該法團行使投票權，而該委任 ——
- (i) 只就該次大會有效；及

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Section 1S3-28  
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- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.
- (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 \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.
- (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

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第 1 條

- (ii) 不牽涉任何有值代價，  
則該主席不是次要控制人。

2. 就本條例第 III 部第 4 分部所有條文而言，在以下情況下，任何人不會僅因為被委任為投票代表以致有權就某法團行使投票權，而成為該法團的次要控制人 ——

- (a) 該委任只就該法團某一次的成員大會有效；及  
(b) 該委任不牽涉任何有值代價。

## 第 8 部

### 豁免而不受本條例第 59(1) 條的規限

1. 凡 ——

- (a) 任何認可結算所或其代名人以其身分行事，則該結算所或該代名人（視屬何情況而定）獲豁免而不受本條例第 59(1) 條規限；或  
(b) 某法團某次成員大會上的主席僅因為其被委任為投票代表以致有權就該法團行使投票權，而成為該法團的控制人，且該委任 ——  
(i) 只就該次大會有效；及  
(ii) 不牽涉任何有值代價，  
則該主席獲豁免而不受本條例第 59(1) 條規限。

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- (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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第 571 章

附表 4 —— 第 1 部  
第 1 條

Schedule 4—Part 1  
Section 1

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## 附表 4

[第 102、103、110 及 112 條]

### 投資要約

(格式變更——2013 年第 1 號編輯修訂紀錄)

#### 第 1 部

##### 為施行本條例第 103(3)(f)(i) 及 (g) 條而指明的金額

\$1,000,000 或等值外幣。

#### 第 2 部

##### 為施行本條例第 103(3)(g) 條而指明的票據

1. 《匯票條例》(第 19 章) 第 3 條所指的匯票。
2. 《匯票條例》(第 19 章) 第 89 條所指的承付票。
3. 符合以下說明的任何其他票據：該票據證明有將指定款額（不論是否連同利息）在指定時間或之前付給持票人或票據上指定的人的義務、而收取該指定款額（不論是否連同利息）的權利，是可藉該票據的交付（不論有沒有背書）而轉讓的；如任何該等票據憑藉《銀行業條例》(第 155 章) 第 137B(1) 條中訂明票

## Schedule 4

[ss. 102, 103, 110 & 112]

### Offers of Investments

(Format changes—E.R. 1 of 2013)

#### Part 1

##### Sum Specified for Purposes of Section 103(3)(f)(i) and (g) of this Ordinance

\$1 million or its equivalent in any foreign currency.

#### Part 2

##### Instruments Specified for Purposes of Section 103(3)(g) of this Ordinance

1. A bill of exchange within the meaning of section 3 of the Bills of Exchange Ordinance (Cap. 19).
2. A promissory note within the meaning of section 89 of the Bills of Exchange Ordinance (Cap. 19).
3. Any other instrument which evidences an obligation to pay a stated amount to bearer or to order, on or before a fixed time, with or without interest, being an instrument 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 instrument which is a prescribed instrument by virtue of

S4-3  
第 571 章附表 4 —— 第 3 部  
第 1 條

據的定義的 (a) 段而屬訂明票據，則該票據包括在該定義的 (b) 段就該票據提述的權利或權益。

### 第 3 部

#### 獲豁免團體

1. 政府。
2. 香港房屋委員會。
3. 機場管理局。
4. 九廣鐵路公司。
5. 市區重建局。
6. 香港出口信用保險局。
7. 香港科技園公司。
8. 香港生產力促進局。
9. 香港旅遊發展局。
10. 香港貿易發展局。

Schedule 4—Part 3  
Section 1S4-4  
Cap. 571

paragraph (a) of the definition of *prescribed instrument* in section 137B(1) of the Banking Ordinance (Cap. 155), such instrument includes any right or interest referred to in paragraph (b) of that definition in respect of such instrument).

### Part 3

#### Exempted Bodies

1. The Government.
2. Hong Kong Housing Authority.
3. Airport Authority.
4. Kowloon-Canton Railway Corporation.
5. Urban Renewal Authority.
6. Hong Kong Export Credit Insurance Corporation.
7. Hong Kong Science and Technology Parks Corporation.
8. Hong Kong Productivity Council.
9. Hong Kong Tourism Board.
10. Hong Kong Trade Development Council.

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第 571 章

附表 4 —— 第 4 部

- 
11. 任何其他有任何股份上市的法團，以及該等法團的任何全資附屬公司，不論是在香港或其他地方成立為法團的。

## 第 4 部

就本條例第 103(12) 條中有關條件的定義而指明的金額

\$100,000,000 或等值外幣。

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Schedule 4—Part 4

S4-6  
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- 
11. Any other corporation which has any of its shares listed and any wholly owned subsidiary of such a corporation, whether incorporated in Hong Kong or elsewhere.

## Part 4

**Sum Specified for Purposes of Definition of *Relevant Condition* in Section 103(12) of this Ordinance**

\$100 million or its equivalent in any foreign currency.

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S5-1  
第 571 章

附表 5 —— 第 1 部

Schedule 5—Part 1

S5-2  
Cap. 571**附表 5**[ 第 114、118、139 及 142  
條及附表 1]**Schedule 5**[ss. 114, 118, 139 & 142 &  
Sch. 1]**受規管活動**

(格式變更——2013 年第 1 號編輯修訂紀錄)

**Regulated Activities**

(Format changes—E.R. 1 of 2013)

**第 1 部**

以下各項為受規管活動——

**Part 1**

The following are regulated activities—

- 第 1 類：證券交易；
- 第 2 類：期貨合約交易；
- 第 3 類：槓桿式外匯交易；
- 第 4 類：就證券提供意見；
- 第 5 類：就期貨合約提供意見；
- 第 6 類：就機構融資提供意見；
- 第 7 類：提供自動化交易服務；
- 第 8 類：提供證券保證金融資；
- 第 9 類：提供資產管理；(由 2011 年第 28 號法律公告修訂)
- 第 10 類：提供信貸評級服務；(由 2011 年第 28 號法律公告增補；由 2014 年第 6 號第 53 條修訂)
- # 第 11 類：場外衍生工具產品交易或就場外衍生工具產品提供意見；(由 2014 年第 6 號第 53 條增補)
- @ 第 12 類：為場外衍生工具交易提供客戶結算服務。(由 2014 年第 6 號第 53 條增補)

- 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. Amended 6 of 2014 s. 53)
- #Type 11 : dealing in OTC derivative products or advising on OTC derivative products; (Added 6 of 2014 s. 53)
- @Type 12 : providing client clearing services for OTC derivative transactions. (Added 6 of 2014 s. 53)

編輯附註：

# 尚未實施。

@ 由《2014 年證券及期貨(修訂)條例》(2014 年第 6 號)新增的附表 5 第 1 部第 12 類記項，在該記項關乎附表 5 第 2 部的新的~~豁免服務~~的定義的(c)段的範圍內，於

Editorial Note:

# Not yet in operation.

@ The new Type 12, Part 1, Schedule 5 added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on 1 September 2016, in so far as it relates to paragraph (c) of the new definition of **excluded**

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附表 5 —— 第 2 部

2016 年 9 月 1 日開始實施。請參閱《2016 年〈2014 年證券及期貨（修訂）條例〉（生效日期）公告》（2016 年第 27 號法律公告）(g) 段。

## 第 2 部

在本附表中 ——

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

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

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

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

- (a) 買賣任何證券或期貨合約的要約經常以某種方式被提出或接受，而按照已確立的方法（包括證券市場或期貨市場一般採用的方法），以該種方式提出或接受該等要約構成具約束力的交易或導致具約束力的交易產生；

<sup>+</sup>(ab) 訂立場外衍生工具交易的要約，恆常地以某種方式被提出或接受，而按照已確立的方法，以該種方式

編輯附註：

<sup>+</sup> 由《2014 年證券及期貨（修訂）條例》（2014 年第 6 號）新增的附表 5 第 2 部**自動化交易服務**的定義的 (ab) 段於 2016 年 9 月 1 日開始實施，但限於關乎**自動化交易服務**的定義的新的 (d) 段的範圍內。請參閱《2016 年〈2014 年證券及期貨（修訂）條例〉（生效日期）公告》（2016 年第 27 號法律公告）(h) 段。

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**services** in Part 2 of Schedule 5. Please see paragraph (g) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

## 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;



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附表 5 —— 第 2 部

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提出或接受該等要約，構成具約束力的交易，或導致具約束力的交易產生；(由 2014 年第 6 號第 53 條增補)

- (b) 人與人之間經常互相介紹或認識，從而洽商或完成任何證券或期貨合約的買賣，或在有他們將會以某種方式洽商或完成任何證券或期貨合約的買賣的合理期望的情況下經常互相介紹或認識，而按照已確立的方法(包括證券市場或期貨市場一般採用的方法)，以該種方式洽商或完成該等買賣構成具約束力的交易或導致具約束力的交易產生；

@(ba) 不同的人恆常地被介紹建立關係，或向其他人點明身分——

- (i) 從而以某種方式洽商或完成場外衍生工具交易；或
- (ii) 而此事是在他們將會以某種方式洽商或完成該等交易的合理期望下進行，

而按照已確立的方法，以該種方式洽商或完成該等交易，構成具約束力的交易，或導致具約束力的交易產生；(由 2014 年第 6 號第 53 條增補)

- (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 8 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—

編輯附註：

@ 由《2014 年證券及期貨(修訂)條例》(2014 年第 6 號)新增的附表 5 第 2 部**自動化交易服務**的定義的(ba)段於 2016 年 9 月 1 日開始實施，但限於關乎**自動化交易服務**的定義的新的(d)段的範圍內。請參閱《2016 年〈2014 年證券及期貨(修訂)條例〉(生效日期)公告》(2016 年第 27 號法律公告)(j)段。

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- (c) 符合以下說明的交易得以更替、結算、交收或獲得擔保 ——
- (i) (a) 段提述的；
  - (ii) 由 (b) 段提述的活動而產生的；或
  - (iii) 在證券市場或期貨市場或在該等市場的規則的規限下完成的；或
- <sup>##</sup>(d) 符合以下說明的交易得以更替、結算、交收或獲得擔保 ——
- (i) (ab) 段提述的；或
  - (ii) 由 (ba) 段提述的活動而產生的，(由 2014 年第 6 號第 53 條增補)
- 但不包括由政府或代政府營辦的法團所提供的該等服務或任何豁除服務；(由 2014 年第 6 號第 53 條修訂)
- 房地產投資計劃管理** (real estate investment scheme management) 就任何人而言，指該人為另一人提供營辦集體投資計劃的服務，而 ——
- (a) 在該計劃下管理的財產主要由不動產組成；及
  - (b) 該計劃是根據本條例第 104 條獲認可的；(由 2005 年第 197 號法律公告增補)

- (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

編輯附註：

<sup>##</sup> 由《2014 年證券及期貨(修訂)條例》(2014 年第 6 號) 新增的附表 5 第 2 部 **自動化交易服務** 的定義的 (d) 段於 2016 年 9 月 1 日開始實施，但關乎《證券及期貨條例》(第 571 章) 所指的第 7 類受規管活動的範圍內除外。請參閱《2016 年〈2014 年證券及期貨(修訂)條例〉(生效日期)公告》(2016 年第 27 號法律公告) (I) 段。

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附表 5 —— 第 2 部

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- (a) 任何不屬個人的人；
- (b) 債務證券；
- (c) 優先證券；或
- (d) 任何提供信貸協議，  
的信用可靠性以已界定的評級系統表達的意見；(由 2011  
年第 28 號法律公告增補)

§ **為場外衍生工具交易提供客戶結算服務** (providing client clearing services for OTC derivative transactions) 就任何人而言，在不抵觸第 2A 部的規定下，指不論是否作為中央對手方成員而向另一人就透過中央對手方(不論是位於香港或在其他地方)結算及交收場外衍生工具交易而提供服務；(由 2014 年第 6 號第 53 條增補)

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

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

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 that the person is permitted to provide under that licence or registration; and (*Amended 6 of 2014 s. 53*)
  - (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

編輯附註：

§ 由《2014 年證券及期貨(修訂)條例》(2014 年第 6 號)新增的附表 5 第 2 部**為場外衍生工具交易提供客戶結算服務**的定義於 2016 年 9 月 1 日開始實施，但在該定義關乎新的**豁除服務**的定義的(c)段的範圍內。請參閱《2016 年〈2014 年證券及期貨(修訂)條例〉(生效日期)公告》(2016 年第 27 號法律公告)(n)(ii)段。

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- (i) 是否訂立期貨合約；
  - (ii) 須訂立哪些期貨合約；
  - (iii) 於何時訂立期貨合約；或
  - (iv) 按哪些條款或條件訂立期貨合約，
- 但不包括在以下情況提供的意見或發出的分析或報告——
- (i) 任何法團純粹向其任何全資附屬公司、持有其所有已發行股份的控權公司，或該控權公司的其他全資附屬公司提供上述意見或發出上述分析或報告；(由 2012 年第 28 號第 912 及 920 條修訂)
  - (ii) 就第 2 類受規管活動獲發牌的人完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告；
  - (iii) 就第 2 類受規管活動獲註冊的認可財務機構完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告；
  - (iv) 任何符合以下說明的個人——
    - (A) 名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示為就第 2 類受規管活動受聘於就該類活動獲註冊的認可財務機構的；及
    - (B) 完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告的；

- 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 8 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

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- (iva) 任何符合以下說明的人 ——
- (A) 就第 9 類受規管活動獲發牌或獲註冊的；
  - (B) 為另一人提供管理在集體投資計劃下的期貨合約投資組合的服務的，而根據有關牌照或註冊，該人是獲准許提供該項服務的；及 (由 2014 年第 6 號第 53 條修訂)
  - (C) 純粹為提供 (B) 節描述的服務而提供上述意見或發出上述分析或報告的；(由 2005 年第 197 號法律公告增補)
- (v) 律師完全因為在《法律執業者條例》(第 159 章)所指的香港律師行或外地律師行以律師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；
- (vi) 大律師完全因為以大律師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；
- (vii) 會計師完全因為在《專業會計師條例》(第 50 章)所指的執業單位以會計師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；(由 2004 年第 23 號第 56 條修訂)
- (viii) 根據《受託人條例》(第 29 章)第 8 部註冊的信託公司完全因為履行它作為註冊信託公司的職責而附帶提供上述意見或發出上述分析或報告；或

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- (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



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(ix) 任何人透過 ——

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

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

- (a) 對根據本條例第 23 或 36 條訂立的關於管限證券上市的規章或規則及根據本條例第 399(2)(a) 或 (b) 條刊登或發表的守則的遵守問題或就該等規章、規則或守則提供意見；
- (b) 提供關於以下各項的意見 ——
  - (i) 處置證券而將之轉予公眾的要約；
  - (ii) 從公眾取得證券的要約；或
  - (iii) 接受第 (i) 或 (ii) 節提述的任何要約，但以意見是普遍地提供予證券或某類別證券的持有人為限；或
- (c) 向上市法團、公眾公司或該法團或公司的附屬公司，或向該法團、公司或附屬公司的高級人員或股東提供關於機構重組而在證券方面（包括發行、撤銷或更改附於任何證券的權利）的意見，

(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 that the person is permitted to provide under that licence or registration; and (*Amended 6 of 2014 s. 53*)
- (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 8 of the Trustee Ordinance (Cap. 29) which gives such advice or issues

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但不包括在以下情況提供的意見 ——

- (i) 任何法團純粹向其任何全資附屬公司、持有其所有已發行股份的控權公司，或該控權公司的其他全資附屬公司提供上述意見；(由 2012 年第 28 號第 912 及 920 條修訂)
- (ii) 就第 1 類受規管活動獲發牌的人完全因為進行該類活動而附帶提供上述意見；
- (iii) 就第 1 類受規管活動獲註冊的認可財務機構完全因為進行該類活動而附帶提供上述意見；
- (iv) 任何符合以下說明的個人 ——
  - (A) 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為就第 1 類受規管活動受聘於就該類活動獲註冊的認可財務機構的；及
  - (B) 完全因為進行該類活動而附帶提供上述意見的；
- (v) 律師完全因為在《法律執業者條例》(第 159 章) 所指的香港律師行或外地律師行以律師身分執業而附帶提供上述意見；
- (vi) 大律師完全因為以大律師身分執業而附帶提供上述意見；
- (vii) 會計師完全因為在《專業會計師條例》(第 50 章) 所指的執業單位以會計師身分執業而附帶提供上述意見；(由 2004 年第 23 號第 56 條修訂)

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 or issuing of such analyses or reports that falls within the meaning of **advising on corporate finance** or **providing credit rating services**; (Amended L.N. 28 of 2011; 6 of 2014 s. 53)

**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;

- (viii) 根據《受託人條例》(第 29 章)第 8 部註冊的信託公司完全因為履行它作為註冊信託公司的職責而附帶提供上述意見；或
- (ix) 任何人透過 ——
  - (A) 普遍地提供予公眾閱覽的報章、雜誌、書籍或其他刊物提供上述意見；或
  - (B) 供公眾接收 (不論是否需付收看費) 的電視廣播或無線電廣播提供上述意見；

**就證券提供意見 (advising on securities) 指 ——**

- (a) 就以下各項提供意見 ——
  - (i) 應否取得或處置證券；
  - (ii) 應取得或處置哪些證券；
  - (iii) 應於何時取得或處置證券；或
  - (iv) 應按哪些條款或條件取得或處置證券；或
- (b) 發出分析或報告，而目的是為利便該等分析或報告的受眾就以下各項作出決定 ——
  - (i) 是否取得或處置證券；
  - (ii) 須取得或處置哪些證券；
  - (iii) 於何時取得或處置證券；或
  - (iv) 按哪些條款或條件取得或處置證券；

- <sup>+</sup>(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; (*Added 6 of 2014 s. 53*)
- (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; (*Amended 6 of 2014 s. 53*)
- <sup>@</sup>(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; (*Added 6 of 2014 s. 53*)

**Editorial Note:**

<sup>+</sup> The new paragraph (ab) in the definition of **automated trading services**, Part 2, Schedule 5 added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on 1 September 2016, in so far as it relates to the new paragraph (d) of the definition of **automated trading services**. Please see paragraph (h) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

**Editorial Note:**

<sup>@</sup> The new paragraph (ba) in the definition of **automated trading services**, Part 2, Schedule 5 added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on 1 September 2016, in so far as it relates to the new paragraph (d) of the definition of **automated trading services**. Please see paragraph (j) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

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但不包括在以下情況提供的意見或發出的分析或報告——

- (i) 任何法團純粹向其任何全資附屬公司、持有其所有已發行股份的控權公司，或該控權公司的其他全資附屬公司提供上述意見或發出上述分析或報告；(由 2012 年第 28 號第 912 及 920 條修訂)
- (ii) 就第 1 類受規管活動獲發牌的人完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告；
- (iii) 就第 1 類受規管活動獲註冊的認可財務機構完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告；
- (iv) 任何符合以下說明的個人——
  - (A) 名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示為就第 1 類受規管活動受聘於就該類活動獲註冊的認可財務機構的；及
  - (B) 完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告的；
- (iva) 任何符合以下說明的人——
  - (A) 就第 9 類受規管活動獲發牌或獲註冊的；
  - (B) 為另一人提供管理在集體投資計劃下的證券投資組合的服務的，而根據有關牌照或註冊，該人是獲准許提供該項服務的；及 (由 2014 年第 6 號第 53 條修訂)

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- (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; or
  - <sup>###</sup>(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, (*Added 6 of 2014 s. 53*)
- but does not include such services provided by a corporation operated by or on behalf of the Government or any excluded services; (*Amended 6 of 2014 s. 53*)
- 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*)

## Editorial Note:

<sup>###</sup> The new paragraph (d) in the definition of **automated trading services**, Part 2, Schedule 5 added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on 1 September 2016, except in so far as it relates to Type 7 regulated activity under the Securities and Futures Ordinance (Cap. 571). Please see paragraph (I) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

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- (C) 純粹為提供 (B) 節描述的服務而提供上述意見或發出上述分析或報告的；(由 2005 年第 197 號法律公告增補)
- (v) 律師完全因為在《法律執業者條例》(第 159 章)所指的香港律師行或外地律師行以律師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；
- (vi) 大律師完全因為以大律師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；
- (vii) 會計師完全因為在《專業會計師條例》(第 50 章)所指的執業單位以會計師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；(由 2004 年第 23 號第 56 條修訂)
- (viii) 根據《受託人條例》(第 29 章)第 8 部註冊的信託公司完全因為履行它作為註冊信託公司的職責而附帶提供上述意見或發出上述分析或報告；或
- (ix) 任何人透過 ——
- (A) 普遍地提供予公眾閱覽的報章、雜誌、書籍或其他刊物提供上述意見或發出上述分析或報告；或
- (B) 供公眾接收 (不論是否需付收看費) 的電視廣播或無線電廣播提供上述意見或發出上述分析或報告，

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*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



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但如提供上述意見或發出上述分析或報告，符合**就機構融資提供意見或提供信貸評級服務**的涵義，則**就證券提供意見**不包括提供該意見或發出該等分析或報告；(由 2011 年第 28 號法律公告修訂；由 2014 年第 6 號第 53 條修訂)

**提供信貸評級服務** (providing credit rating services) 指 ——

- (a) 在 ——
  - (i) 以向公眾 (不論在香港或其他地方) 散發信貸評級為目的之情況下，擬備該等信貸評級；或
  - (ii) 信貸評級會如此散發的合理期望下，擬備該等信貸評級；或
- (b) 在 ——
  - (i) 以訂閱方式 (不論在香港或其他地方) 分發信貸評級為目的之情況下，擬備該等信貸評級；或
  - (ii) 信貸評級會如此分發的合理期望下，擬備該等信貸評級，

但不包括 ——

- (c) 依據某人作出的要求而專為該人擬備並只提供予該人的信貸評級，而該項評級並非擬向公眾 (不論在香港或其他地方) 散發或以訂閱方式 (不論在香港或其他地方) 分發，亦無合理期望該項評級會如此散發或分發；或

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- 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

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- (d) 收集、整理、散發或分發關乎任何人的負債或信貸歷史的資料；(由 2011 年第 28 號法律公告增補)

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

- (a) 為訂立、取得或處置期貨合約而與另一人訂立或要約與另一人訂立協議；
  - (b) 誘使或企圖誘使另一人訂立或要約訂立期貨合約；或
  - (c) 誘使或企圖誘使另一人取得或處置期貨合約，但不包括該人在以下情況進行的期貨合約交易——
    - (i) 該人以認可結算所身分執行其職能；
    - (ii) 該人透過另一人 (**該交易商**) 作出 (a)、(b) 或 (c) 段提述的作為，而該交易商是——
      - (A) 就第 2 類受規管活動獲發牌或獲註冊的；或
      - (B) 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為就第 2 類受規管活動受聘於就該類活動獲註冊的認可財務機構的，
- 但如該人是為賺取佣金、回佣或其他報酬而進行以下事項，則須視為進行期貨合約交易——

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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

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- (I) 從第三者接收為訂立期貨合約而提出的要約或邀請，並以他本人或該第三者的名義將該要約或邀請傳達予該交易商；
- (II) 使該交易商或其代表與第三者互相介紹，以使該第三者可與該交易商訂立期貨合約或提出與該交易商訂立期貨合約的要約或邀請；
- (III) 透過該交易商為第三者達成期貨合約的取得或處置；
- (IV) 為該交易商向第三者提出取得或處置期貨合約的要約；或
- (V) 為該交易商接受第三者提出的取得或處置期貨合約的要約；
- (iii) 該人只在《商品交易所（禁止經營）條例》（第 82 章）第 3(a)、(b) 或 (c) 條提述的市場作出 (a)、(b) 或 (c) 段提述的作為；
- (iv) 該人屬《商品交易所（禁止經營）條例》（第 82 章）第 3(d) 條提述的商品交易所的成員，並且只在該交易所作出 (a)、(b) 或 (c) 段提述的作為；
- (v) 該人訂立市場合約；
- (vi) 該人就第 9 類受規管活動獲發牌或獲註冊，並純粹為進行該類活動而作出 (a)、(b) 或 (c) 段提述的作為；或

- 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 (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance; (*Amended 28 of 2012 ss. 912 & 920*)

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- (vii) 該人以主事人身分並透過與另一人交易而就並非在認可期貨市場交易的期貨合約作出 (a)、(b) 或 (c) 段提述的作為，而該另一人是專業投資者 (不論以主事人或代理人身分行事)；

**債務證券** (debt securities) 指債權股證、債權股額、債權證、債券、票據、指數債券、可轉換債務證券、附認股權證債券、無息債務證券及其他確認、證明或產生債務的證券或文書；(由 2011 年第 28 號法律公告增補)

**資產管理** (asset management) 指 ——

- (a) 房地產投資計劃管理；或
- (b) 證券或期貨合約管理；

(由 2005 年第 197 號法律公告增補)

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

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

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- (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 (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) applies, or would apply if not excluded by section 38(5)(b) or 38A of that Ordinance; and (*Amended 28 of 2012 ss. 912 & 920*)
  - (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 (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance; or (*Amended 28 of 2012 ss. 912 & 920*)
  - (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 (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) in relation to a collective

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

- (i) 完全關於以公平價值或市場價值提供財產（貨幣除外）、服務或職位的；
- (ia) 由任何人為執行該人作為認可結算所的職能而作出的；（由 2014 年第 6 號第 53 條增補）
- (ii) 凡該等合約或安排是由一個法團訂立的，而——
  - (A) 該法團的主要業務並不包括任何形式的貨幣交易；
  - (B) 該法團訂立該等合約或安排的目的，是對沖它就其業務所承受的貨幣兌換風險；及
  - (C) 該等合約或安排是與另一個法團訂立的；
- (iii) 屬《貨幣兌換商條例》（第 34 章）所指的兌換交易；
- (iv) 由核准貨幣經紀安排，而有關合約或安排的各方均是法團或根據《有限責任合夥條例》（第 37 章）註冊的有限責任合夥；（由 2014 年第 6 號第 53 條修訂）
- (v) 屬保險人純粹為了其保險業務而進行的交易，而該保險人是根據《保險業條例》（第 41 章）（**第 41 章**）第 8 條獲授權經營保險業務的，或是根據下述條文當作如此獲授權的：在緊接《2015 年保險公司（修訂）條例》（2015 年第 12 號）第 10 條的生效日期之前有效，並因第 41 章附表 11 第 2(7) 條的施行而具有持續效力的第 41 章第 61(1) 或 (2) 條；（由 2015 年第 12 號第 145 條修訂）

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investment scheme that is a corporation— (*Amended 28 of 2012 ss. 912 & 920*)

- (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;
  - (xia) being an open-ended fund company, issues any advertisement, invitation or document in respect of the shares in the company; (*Added 16 of 2016 s. 21*)
  - (xii) is a trust company registered under Part 8 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



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- (vi) 屬由任何就第 2 類受規管活動獲發牌或獲註冊的人或透過該人在指明期貨交易所執行的合約，或屬完全附帶於一份或多於一份該類合約或一系列該類合約的合約；
- (vii) 由以下團體或機構所安排的 ——
  - (A) 金融管理專員認為屬以下性質的團體 ——
    - (I) 中央銀行；或
    - (II) 執行中央銀行職能的機構；或
  - (B) 獲金融管理專員批准以代 (A) 節提述的團體行事的機構；
- (viii) 屬由任何就第 1 類受規管活動獲發牌或獲註冊的人或透過該人在指明證券交易所執行的交易，或屬完全附帶於一宗或多於一宗該類交易或一系列該類交易的交易；
- (ix) 屬由任何就第 7 類受規管活動獲發牌或獲註冊的人或透過該人執行的交易，或屬完全附帶於一宗或多於一宗該類交易或一系列該類交易的交易；
- (x) 屬就證監會根據本條例第 104 條認可的集體投資計劃的一項或多於一項權益而作出的交易；
- (xi) 屬完全附帶於一宗或多於一宗就指明債務證券作出的交易或一系列該類交易的交易；

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 and performs the act for each of the parties to the transaction or proposed transaction; (*Added L.N. 197 of 2005. Amended 6 of 2014 s. 53*)

**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*)

**excluded services** (豁除服務) means—

- <sup>#</sup>(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;
- <sup>#</sup>(b) services for clearing OTC derivative products that—
  - (i) also constitute Type 12 regulated activity; and

Editorial Note:

<sup>#</sup> Not yet in operation.

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- #(xia) 符合以下說明的場外衍生工具交易作為：由就第 12 類受規管活動獲發牌的人作出，而該作為的作出，是完全附帶於該類受規管活動的進行的；(由 2014 年第 6 號第 53 條增補)
- (xib) 屬構成訂立市場合約的作為；(由 2014 年第 6 號第 53 條增補)
- (xii) 由認可財務機構作出的；
- (xiii) 由任何屬某類別人士的人或從事某類業務的人作出的，而該類別人士或該類業務是由證監會為施行本段而藉根據本條例第 397 條訂立的規則訂明的；
- (xiv) 由任何人透過交易商作出的，但如該人是為賺取佣金、回佣或其他報酬而進行以下事項，則須視為進行槓桿式外匯交易 ——
- (A) 該人從另一人接收為進行以下各項而提出的要約或邀請 ——
- (I) 訂立槓桿式外匯交易合約；或
- (II) 使用任何財務通融以便利進行外匯交易或訂立槓桿式外匯交易合約，
- 並以他本人或該另一人的名義將該要約或邀請傳達予該交易商；

- (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; (Added 6 of 2014 s. 53)

**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

編輯附註：  
# 尚未實施。

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- (B) 該人使另一人與該交易商或其代表互相介紹，以使該另一人可 ——
- (I) 與該交易商訂立槓桿式外匯交易合約；或
- (II) 使用由該交易商提供的任何財務通融以便利進行外匯交易或訂立槓桿式外匯交易合約；或

- (C) 該人透過該交易商而為另一人達成槓桿式外匯交易合約的訂立，

在本段中，**交易商** (trader) 指認可財務機構或就第 3 類受規管活動獲發牌的法團；或

(xv) 由 ——

- (A) 證監會根據本條例第 104 條認可的集體投資計劃作出的；或
- (B) 任何人為營辦證監會根據本條例第 104 條認可的集體投資計劃而在業務過程中作出的；

**槓桿式外匯交易合約** (leveraged foreign exchange contract) 指任何合約或安排，其效果是該合約或安排的一方同意或承諾 ——

- (a) 在他本人與協議的另一方或在他本人與另一人之間，按照某貨幣相對於另一貨幣的增值或減值 (視屬何情況而定) 作出調整；
- (b) 向協議的另一方或向另一人支付某數額的款項或交付某數量的商品，而該數額或該數量是按照或將會按照某貨幣相對於另一貨幣在幣值上的變動而釐定的；或

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;
- (ia) by a person for the purpose of performing the person's functions as a recognized clearing house; (*Added 6 of 2014 s. 53*)
- (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;

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- (c) 在議定的將來某個時間，將一筆按議定代價計算的議定數額的貨幣，交付協議的另一方或交付另一人；
- 優先證券** (preferred securities) 指優先股、有優先權的股份或有優先權的股額；(由 2011 年第 28 號法律公告增補)

**豁除服務** (excluded services) 指 ——

- <sup>#</sup>(a) 不屬**自動化交易服務**的定義的 (a)、(b) 或 (c) 段所指的就場外衍生工具產品的交易而提供、並符合以下說明的服務 ——
- (i) 由認可財務機構或核准貨幣經紀提供的；
  - (ii) 藉電子設施提供的；及
  - (iii) 完全附帶於下述作為的作出而提供的：該項作為若非因第 2A 部第 2(f) 條所指的豁除的話，即會構成場外衍生工具產品交易；
- <sup>#</sup>(b) 就結算場外衍生工具產品提供的、符合以下說明的服務 ——
- (i) 該項服務亦構成第 12 類受規管活動；及
  - (ii) 該項服務是由就該類受規管活動獲發牌的人提供的；及
- (c) 就結算場外衍生工具產品提供的、符合以下說明的服務 ——
- (i) 該項服務若非因第 2A 部第 4(b) 條所指的豁除的話，即會構成第 12 類受規管活動；及
  - (ii) 該項服務是由認可財務機構或核准貨幣經紀提供的；(由 2014 年第 6 號第 53 條增補)

- (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 and every party to which is a corporation or a limited partnership registered under the Limited Partnerships Ordinance (Cap. 37); (*Amended 6 of 2014 s. 53*)
- (v) that is a transaction executed solely for the purpose of its insurance business by an insurer authorized under section 8 of the Insurance Ordinance (Cap. 41) (**Cap. 41**) to carry on insurance business, or deemed to be so authorized under section 61(1) or (2) of Cap. 41 as in force immediately before the commencement date of section 10 of the Insurance Companies (Amendment) Ordinance 2015 (12 of 2015) having continuing effect by the operation of section 2(7) of Schedule 11 to Cap. 41; (*Amended 12 of 2015 s. 145*)
- (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

編輯附註：  
# 尚未實施。

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

- (a) 目的是或旨在取得、處置、認購或包銷證券；或
- (b) 該等協議的目的或伴稱目的是使任何一方從證券的收益或參照證券價值的波動獲得利潤，  
但不包括該人在以下情況進行的證券交易 ——
- (i) 該人是營辦證券市場的認可交易所；
- (ii) 該人是一間認可結算所；
- (iii) 該人是根據本條例第 95(2) 條獲認可提供自動化交易服務的法團；
- (iv) 該人透過另一人 (**該交易商**) 作出有關作為，而該交易商是 ——

- (A) 就第 1 類受規管活動獲發牌或獲註冊的；或
- (B) 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為就第 1 類受規管活動受聘於就該類活動獲註冊的認可財務機構的，

但如該人是為賺取佣金、回佣或其他報酬而進行以下事項，則須視為進行證券交易 ——

- (I) 從第三者接收為訂立 (a) 或 (b) 段提述的協議而提出的要約或邀請，並以他本人或該第三者的名義將該要約或邀請傳達予該交易商；
- (II) 使該交易商或其代表與第三者互相介紹，以使該第三者可與該交易商訂立 (a) 或 (b) 段提述的協議，或提出與該交易商訂立 (a) 或 (b) 段提述的協議的要約或邀請；
- (III) 透過該交易商代第三者達成 (a) 或 (b) 段提述的協議；

(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;
- <sup>#</sup>(xii) 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; (*Added 6 of 2014 s. 53*)
- (xib) that is an act that constitutes entering into a market contract; (*Added 6 of 2014 s. 53*)
- (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;

Editorial Note:

<sup>#</sup> Not yet in operation.



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- (IV) 代第三者向該交易商提出取得或處置證券的要約；或
- (V) 為該交易商接受第三者提出的訂立 (a) 或 (b) 段提述的協議的要約；
- (v) 該人以主事人身分進行以下事項 ——
  - (A) 透過與另一人交易而作出有關作為，而該另一人是專業投資者（不論以主事人或代理人身分行事）；或
  - (B) 取得、處置、認購或包銷證券；
- (vi) 該人訂立市場合約；
- (vii) 該人發出符合或獲豁免而無需符合《公司（清盤及雜項條文）條例》（第 32 章）第 II 部的招股章程，如該人是在香港以外地方成立的法團，則指發出符合或獲豁免而無需符合該條例第 XII 部的招股章程；（由 2012 年第 28 號第 912 及 920 條修訂）
- (viii) 該人發出關於在香港成立但並非公司的法團的證券的文件，而 ——
  - (A) 假若該法團是一間公司，則該文件便會是《公司（清盤及雜項條文）條例》（第 32 章）第 38 條適用或（若該文件沒有被該條例第 38(5)(b) 或 38A 條豁除）會適用的招股章程；及（由 2012 年第 28 號第 912 及 920 條修訂）
  - (B) 假若該法團是在香港以外地方成立的法團，而該文件是該法團發出的招股章程的話，則該文件已載有該條例第 XII 部規定該文件須載有的所有事項；
- (ix) 該人發出申請某法團的股份或債權證的表格，而該表格連同 ——
  - (A) 符合或獲豁免而無需符合《公司（清盤及雜項條文）條例》（第 32 章）第 II 部的招股章程，或（如該法團是在香港以外地方成立的法團）符合或

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- (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

獲豁免而無需符合該條例第 XII 部的招股章程；  
或 (由 2012 年第 28 號第 912 及 920 條修訂)

- (B) (如該法團是在香港成立的不是公司的法團) 載有第 (viii)(B) 段指明的事項的文件；
- (x) 該人就某屬法團的集體投資計劃發出已獲證監會根據《公司 (清盤及雜項條文) 條例》(第 32 章) 第 342C 條批准註冊的招股章程，或連同該章程發出該法團的股份的申請表格，而 —— (由 2012 年第 28 號第 912 及 920 條修訂)
- (A) 該法團主要是從事或顯示本身主要是從事投資、再投資或買賣任何財產 (包括證券及期貨合約) 的業務的；及
- (B) 該法團的股份純粹是或主要是可贖回股份；
- (xi) 該人發出已獲根據本條例第 105 條認可發出的廣告、邀請或文件；
- (xia) 該人身為開放式基金型公司而就該公司的股份發出任何廣告、邀請或文件；(由 2016 年第 16 號第 21 條增補)
- (xii) 該人是以某集體投資計劃的代理人身分行事的、根據《受託人條例》(第 29 章) 第 8 部註冊的信託公司，該公司藉作出有關作為而代其主事人執行派發申請表格、贖回通知、轉換通知及成交單據，以及收受金錢及發出收據等職能；
- (xiii) 該人就第 4 或 6 類受規管活動獲發牌或獲註冊，並純粹為進行該類活動而根據本條例第 175(1)(a)(i) 或 (ii) 條發出一份文件，而該文件的內容是符合本條例第 175(1)(b) 及 (c) 條的規定的；(由 2005 年第 197 號法律公告修訂)
- (xiv) 該人就第 9 類受規管活動獲發牌或獲註冊，並純粹為進行該類活動而作出有關作為；或 (由 2005 年第 197 號法律公告修訂)

- (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 client clearing services for OTC derivative transactions** (為場外衍生工具交易提供客戶結算服務), in relation to a person and subject to Part 2A, means providing services to another person for the clearing and settlement of OTC derivative transactions through a central counterparty (whether located in Hong Kong or elsewhere), whether or not as a member of the central counterparty; (Added 6 of 2014 s. 53)

**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,

Editorial Note:

§ The new definition of **providing client clearing services for OTC derivative transactions**, Part 2, Schedule 5 added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on 1 September 2016, in so far as it relates to paragraph (c) of the new definition of **excluded services**. Please see paragraph (n)(ii) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

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- (xv) (凡任何證券根據某交易或將會根據某建議交易而按(a)段描述的方式被取得、處置、認購或包銷，而該交易或建議交易的每一方均是認可財務機構)該人是核准貨幣經紀，並為該交易或建議交易的每一方而作出有關作為；(由 2005 年第 197 號法律公告增補。由 2014 年第 6 號第 53 條修訂)

**證券或期貨合約管理** (securities or futures contracts management) 就任何人而言，指該人為另一人提供管理證券或期貨合約投資組合的服務，但不包括在以下情況提供的服務——(由 2005 年第 197 號法律公告修訂)

- (a) 任何法團純粹向其任何全資附屬公司、持有其所有已發行股份的控權公司，或該控權公司的其他全資附屬公司提供上述服務；(由 2012 年第 28 號第 912 及 920 條修訂)
- (b) 就第 1 或 2 類受規管活動獲發牌的人完全因為進行該類活動而附帶提供上述服務；
- (c) 就第 1 或 2 類受規管活動獲註冊的認可財務機構完全因為進行該類活動而附帶提供上述服務；
- (d) 任何符合以下說明的個人——
  - (i) 名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示為就第 1 或 2 類(視屬何情況而定)受規管活動受聘於就該類活動獲註冊的認可財務機構的；及
  - (ii) 完全因為進行該類活動而附帶提供上述服務的；
- (e) 律師完全因為在《法律執業者條例》(第 159 章)所指的香港律師行或外地律師行以律師身分執業而附帶提供上述服務；
- (f) 大律師完全因為以大律師身分執業而附帶提供上述服務；

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—

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- (g) 會計師完全因為在《專業會計師條例》(第 50 章)所指的執業單位以會計師身分執業而附帶提供上述服務；或(由 2004 年第 23 號第 56 條修訂)
- (h) 根據《受託人條例》(第 29 章)第 8 部註冊的信託公司完全因為履行它作為註冊信託公司的職責而附帶提供上述服務；

**證券保證金融資** (securities margin financing) 指提供財務通融，以利便 ——

- (a) 取得在任何證券市場(不論是認可證券市場或香港以外地方的任何其他證券市場)上市的證券；及
- (b) (如適用的話)繼續持有該等證券，而不論該等證券或其他證券是否被質押作為該項通融的抵押，但不包括以下各項 ——
  - (i) 提供組成某項包銷或分包銷證券安排的一部分的財務通融；
  - (ii) 提供財務通融以利便按照某招股章程的條款取得證券，不論認購有關證券的要約是在香港或其他地方提出的；
  - (iii) 由任何就第 1 類受規管活動獲發牌或獲註冊的人提供的、以利便該人為其客戶取得或持有證券的財務通融；
  - (iv) 由屬法團的集體投資計劃提供的、對投資於它所發行的集體投資計劃的任何權益的投資提供財務通融，而 ——
    - (A) 該法團主要是從事或顯示本身主要是從事投資、再投資或買賣任何財產(包括證券及期貨合約)的業務的；及
    - (B) 該法團的股份純粹是或主要是可贖回股份；
  - (v) 由某認可財務機構提供的、以利便該機構的客戶取得或持有證券的財務通融；

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- (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 shares to facilitate acquisitions or holdings of securities; or (*Amended 28 of 2012 ss. 912 & 920*)
- (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



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- (vi) 由持有某公司不少於 10% 已發行股份的個人向該公司提供的、以便利取得或持有證券的財務通融；或  
(由 2012 年第 28 號第 912 及 920 條修訂)
- (vii) 由某中介人藉使某人與該中介人的有連繫法團互相介紹以使該法團可提供財務通融予該人的方式提供的財務通融。
- (編輯修訂——2013 年第 1 號編輯修訂紀錄；編輯修訂——2014 年第 2 號編輯修訂紀錄)

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- 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



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## 第 2A 部

- #1. 在第 2 部中，**就場外衍生工具產品提供意見**並不包括 ——
- (a) 屬 ——
    - (i) 第 4 類受規管活動的作為，而該作為是由獲發牌進行該類受規管活動的人作出的；或
    - (ii) 第 5 類受規管活動的作為，而該作為是由獲發牌進行該類受規管活動的人作出的；
  - (b) 根據在第 2 部中**就期貨合約提供意見**的定義的第 (ii) 段而不包括在該定義的範圍內的作為；
  - (c) 根據在第 2 部中**就證券提供意見**的定義的第 (ii) 段而不包括在該定義的範圍內的作為；
  - (d) 下述人士在日常業務過程中作出的就場外衍生工具提供意見作為 ——
    - (i) 認可財務機構；或
    - (ii) 核准貨幣經紀；
  - (e) 就第 9 類受規管活動獲發牌的人作出的就場外衍生工具提供意見作為，而該人 ——
    - (i) 提供場外衍生工具產品管理的服務 ( 根據該牌照該人是獲准許提供該項服務的 ) ；及

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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 8 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*)

(*Amended E.R. 2 of 2014*)

## 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;

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- (ii) 純粹為提供該項服務，而作出該作為；
- (f) 由符合以下說明的人作出的就場外衍生工具提供意見作為 ——
  - (i) 該人屬根據本條例第 397 條訂立的規則為施行本段而訂明的某類別人士；或
  - (ii) 該人是進行上述規則所訂明的某類型或種類的業務的；
- (g) 由任何法團作出的、符合以下說明的就場外衍生工具提供意見作為：構成該作為的提供意見或發出分析或報告，純粹是以下述公司為對象的 ——
  - (i) 該法團的任何全資附屬公司；或
  - (ii) 持有該法團的所有已發行股份的控權公司，或該控權公司的其他全資附屬公司；
- (h) 下述人士在下述情況下作出的就場外衍生工具提供意見作為 ——
  - (i) 律師在完全因為其在香港律師行或外地律師行（**香港律師行及外地律師行**二詞屬《法律執業者條例》（第 159 章）第 2(1) 條所界定者）以律師身分執業的情況下，附帶作出該作為；
  - (ii) 大律師在完全因為其以大律師身分執業的情況下，附帶作出該作為；
  - (iii) 會計師在完全因為其在執業單位（**執業單位**屬《專業會計師條例》（第 50 章）第 2(1) 條所界定者）以會計師身分執業的情況下，附帶作出該作為；或
  - (iv) 根據《受託人條例》（第 29 章）第 VIII 部註冊的信託公司，在完全因為履行它作為註冊信託公司的職責的情況下，附帶作出該作為；
- (i) 任何人透過 ——

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- (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;

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- (i) 普遍地提供予公眾閱覽的報章、雜誌、書籍或其他刊物作出的就場外衍生工具提供意見作為；或
- (ii) 供公眾接收（不論是否收費）的電視廣播或無線電廣播作出的就場外衍生工具提供意見作為。

#2. 在第 2 部中，**場外衍生工具產品交易**並不包括 ——

- (a) 屬 ——
  - (i) 第 1 類受規管活動的作為，而該作為是由獲發牌進行該類受規管活動的人作出的；
  - (ii) 第 2 類受規管活動的作為，而該作為是由獲發牌進行該類受規管活動的人作出的；或
  - (iii) 第 3 類受規管活動的作為，而該作為是由獲發牌進行該類受規管活動的人作出的；
- (b) 根據第 2 部**證券交易**的定義的第 (iv) 或 (xiii) 段而不包括在該定義的範圍內的作為

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- (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;

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- (c) 根據第 2 部**期貨合約交易**的定義的第 (ii) 段而不包括在該定義的範圍內的作為；
- (d) 根據第 2 部**槓桿式外匯交易**的定義的第 (i)、(iii)、(vii) 或 (xiv) 段而不包括在該定義的範圍內的作為；
- (e) 下述人士為執行其職能而作出的作為 ——
  - (i) 認可結算所；
  - (ii) 認可交易所；或
  - (iii) 根據本條例第 95(2) 條獲認可的自動化交易服務的提供者；
- (f) 下述人士在日常業務過程中作出的作為 ——
  - (i) 認可財務機構；或
  - (ii) 核准貨幣經紀；
- (g) 由作為受價者的人作出的第 2 部**場外衍生工具產品交易**的定義的 (a) 段提述的作為；
- (h) 就第 9 類受規管活動獲發牌的人作出的場外衍生工具交易作為，而該人 ——
  - (i) 為另一人提供管理場外衍生工具產品投資組合的服務 ( 根據有關牌照該人是獲准許提供該項服務的 ) ；及
  - (ii) 純粹為提供該項服務而作出該作為；
- (i) 符合以下說明的場外衍生工具交易作為 ——
  - (i) 由就第 12 類受規管活動獲發牌的人作出；及
  - (ii) 該作為的作出，是完全附帶於該類受規管活動的進行的；
- (j) 構成訂立市場合約的作為；
- (k) 由符合以下說明的人作出的作為 ——
  - (i) 該人屬藉根據本條例第 397 條訂立的規則，為施行本段而訂明的某類別人士；或

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- (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 act referred to in paragraph (a) of the definition of **dealing in OTC derivative products** in Part 2 that is carried out by a person as 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;

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第 2 條

- (ii) 該人進行上述規則所訂明的某類型或種類的業務；
- (l) 只在《商品交易所（禁止經營）條例》（第 82 章）第 3(a)、(b) 或 (c) 條提述的市場作出的場外衍生工具交易作為；
- (m) 由符合以下說明的人作出的場外衍生工具交易作為——
  - (i) 屬《商品交易所（禁止經營）條例》（第 82 章）第 3(d) 條提述的商品交易所的成員；及
  - (ii) 只在第 (i) 節提述的交易所作出該作為；
- (n) 由某人（**前者**）透過符合以下說明的另一人（**場外衍生工具產品交易商**）作出的場外衍生工具交易作為——
  - (i) 就第 11 類受規管活動獲發牌；
  - (ii) 屬認可財務機構；
  - (iii) 屬核准貨幣經紀；
  - (iv) 屬認可財務機構的高級人員或僱員，並以該身分作出該作為；或
  - (v) 屬核准貨幣經紀的高級人員或僱員，並以該身分作出該作為，

但如前者作出第 3 條所列的作為，是為了賺取佣金、回佣或其他報酬的話，則須視為進行場外衍生工具產品交易。

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- (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;



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第 571 章附表 5 —— 第 2A 部  
第 3 條Schedule 5—Part 2A  
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#3. 第 2(n) 條提述的作為，是該條所指的前者 ——

- (a) 從第三者接受訂立場外衍生工具交易的要約或邀請，並用前者本人或該第三者的名義，將該要約或邀請，傳達予第 2(n) 條所指的場外衍生工具產品交易商；
- (b) 介紹該場外衍生工具產品交易商或其代表與第三者建立關係，以使該第三者可與該交易商訂立一項場外衍生工具交易，或提出與該場外衍生工具產品交易商訂立場外衍生工具交易的要約或邀請；
- (c) 使第三者透過該場外衍生工具產品交易商訂立場外衍生工具交易；
- (d) 為該場外衍生工具產品交易商向第三者提出訂立場外衍生工具交易的要約；或
- (e) 為該場外衍生工具產品交易商接受第三者提出的訂立場外衍生工具交易的要約。

#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

編輯附註：  
# 尚未實施。Editorial Note:  
# Not yet in operation.

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第 4 條Schedule 5—Part 2A  
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4. 在第 2 部中，**為場外衍生工具交易提供客戶結算服務**不包括——

- #(a) 中央對手方（不論是位於香港或在其他地方）為執行該人作為中央對手方的職能而作出的作為；
- @(b) 認可財務機構或核准貨幣經紀在其日常業務過程中作出的作為；
- #(c) 位於香港的中央對手方的可接受參與者的作為；或
- #(d) 上述可接受參與者的代理人（該代理人並不處理客戶款項或客戶資產）的作為。

#5. 在第 4 條中——

**可接受參與者** (acceptable participant) 指符合以下說明的人——

- (a) 在香港並無營業地點；

編輯附註：

# 尚未實施。

@ 由《2014 年證券及期貨（修訂）條例》（2014 年第 6 號）新增的附表 5 第 2A 部第 4(b) 條於 2016 年 9 月 1 日開始實施，但在該第 4(b) 條關乎附表 5 第 2 部的新的**為場外衍生工具交易提供客戶結算服務**的定義的範圍內。請參閱《2016 年〈2014 年證券及期貨（修訂）條例〉（生效日期）公告》（2016 年第 27 號法律公告）(o) 段。

- (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 client clearing 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;

Editorial Note:

# Not yet in operation.

@ The new section 4(b), Schedule 5, Part 2A added by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) came into operation on 1 September 2016, in so far as it relates to the new definition of **providing client clearing services for OTC derivative transactions** in Part 2 of Schedule 5. Please see paragraph (o) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016 (L.N. 27 of 2016).

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- (b) 屬位於香港的中央對手方的成員，或已提出申請成為有關成員；
- (c) 除透過認可財務機構或持牌法團外，不向在香港的人推廣其服務；及
- (d) (作為中央對手方成員而直接地，或透過屬中央對手方成員的另一人而間接地) 代另一人並透過中央對手方，就場外衍生工具交易或其他相類的交易提供結算及交收服務(第 4 條提述的作為除外)的人，而該人提供上述服務，是受相若的海外司法管轄區的法律規定或規管性規定所規限的；

**相若的海外司法管轄區** (comparable overseas jurisdiction) 指符合以下說明的司法管轄區 ——

- (a) 證監會信納該司法管轄區在規管符合以下說明的服務方面，具有與香港相若的法律規定或規管性規定：該項服務是(作為中央對手方成員而直接地或透過屬中央對手方成員的另一人而間接地) 代另一人並透過中央對手方，就場外衍生工具交易或其他相類的交易結算及交收(第 4 條提述的作為除外)；及
- (b) 證監會與該司法管轄區的規管當局有足夠的互助合作安排或協議。

(第 2A 部由 2014 年第 6 號第 53 條增補)

### 第 3 部

以下是本條例第 114(5) 條提述的指明活動 ——

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- (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.

(Part 2A added 6 of 2014 s. 53)

### Part 3

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

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附表 5 —— 第 3 部

- (a) 取得在證券市場上市的證券，而此舉屬《印花稅條例》(第 117 章) 第 19(16) 條所界定的證券借用或證券交還或組成某項該等證券借用或證券交還的一部分，或屬與該等借用或交還相似的任何證券交易；或
- (b) (i) 向任何就第 1 或 8 類受規管活動獲發牌的法團或向任何認可財務機構提供的、以利便取得或持有證券的財務通融；
- (ii) 由某公司向其董事或僱員提供的、以利便取得或持有該公司本身的證券的財務通融；或
- (iii) 由某公司集團的某成員向該集團的另一成員提供的、以利便該另一成員取得或持有證券的財務通融。

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- (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.

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附表 6

Schedule 6

S6-2  
Cap. 571**附表 6**

[ 第 113、139 及 143 條 ]

**Schedule 6**

[ss. 113, 139 &amp; 143]

**指明稱銜**

( 格式變更——2013 年第 1 號編輯修訂紀錄 )

**Specified Titles**

(Format changes—E.R. 1 of 2013)

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



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附表 6

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項	條文	指明稱銜
8.	本條例第 139(8) 條	“證券保證金融資人”、“margin lender”及 “securities margin financier”

Item	Provision	Specified titles
8.	Section 139(8) of this Ordinance	“margin lender”, “securities margin financier” and “證券保證金融資人”

**附表 7**

[ 第 175 及 177 條 ]

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

( 格式變更 —— 2013 年第 1 號編輯修訂紀錄 )

**第 1 部****為取得證券而提出的要約所須符合的規定**

1. 如擬取得的證券當時是在任何證券市場 ( 不論是認可證券市場或香港以外地方的任何其他證券市場 ) 上市或報價的，則該要約 ——
  - (a) 須說明該事實，並須指明該等市場；
  - (b) 須指明該等證券在緊接該要約日期前在切實可行範圍內最近的日期，在每一該等市場上的收市價；
  - (c) 須指明該等證券在緊接該要約日期前的 6 個月內，在每一月份的最後一個交易日的收市價；
  - (d) 須指明該等證券在緊接該要約日期前的 6 個月內的最高和最低收市價；及
  - (e) 如曾是一項公開宣告 ( 不論是在報章或其他形式的資訊媒介作出的或以其他方式作出 ) 的標的，須指明該等證券在緊接該宣告前的最後一個交易日的收市價。

**Schedule 7**

[ss. 175 &amp; 177]

**Offers by Intermediaries or Representatives for Type 1,  
Type 4 or Type 6 Regulated Activity under Section 175  
of this Ordinance**

(Format changes—E.R. 1 of 2013)

**Part 1****Requirements to be Satisfied in Relation to Offers to  
Acquire Securities**

1. If the securities proposed to be acquired are currently listed or quoted on any stock market, whether a recognized stock market or any other stock market outside Hong Kong, the offer shall—
  - (a) state that fact and specify the stock markets on which the securities are currently listed or quoted;
  - (b) specify the closing price in respect of the securities on each stock market on the latest practicable date immediately preceding the date of the offer;
  - (c) specify the closing price in respect of the securities on the last trading day of each of the 6 months immediately preceding the date of the offer;
  - (d) specify the highest and the lowest closing prices in respect of the securities during the period of 6 months immediately preceding the date of the offer; and
  - (e) where the offer has been the subject of a public announcement, whether in a newspaper or any other

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第 571 章附表 7 —— 第 1 部  
第 2 條Schedule 7—Part 1  
Section 2S7-4  
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2. 如擬取得的證券沒有在任何證券市場 (不論是認可證券市場或香港以外地方的任何其他證券市場) 上市或報價的, 則該要約——
- (a) 須載有要約人所掌握的關於在緊接該要約日期前的 6 個月內該等證券在香港售出的數目、面值 (如有的話) 及成交價的所有資料; 及 (由 2012 年第 28 號第 912 及 920 條修訂)
  - (b) 須載有在有關團體的章程 (不論實際如何稱述) 中對轉讓該等證券的權利的任何限制的詳情, 該等限制的效力是規定受要約人轉讓該等證券前, 須先向該團體的成員或任何其他人提出讓他們購買該等證券的要約; 凡有該等限制, 則並須載有為使該等證券能夠依據該要約轉讓而作出的安排 (如有的話)。
3. 如因不能取得第 1 或 2 條列出的規定所規定的某些資料或詳情, 或因第 1 或 2 條列出的規定所規定的事宜不適用於有關團體, 以致不能符合該規定, 該要約須改為說明該事實及其理由; 如該團體是在香港成立的法團, 而送交公司註冊處處長

2. If the securities proposed to be acquired are not listed or quoted on any stock market, whether a recognized stock market or any other stock market outside Hong Kong, the offer shall contain—
- (a) all information that the offeror may have as to the number and nominal value (if any) of those securities that have been sold in Hong Kong during the period of 6 months immediately preceding the date of the offer and the prices yielded by those sales; and (*Amended 28 of 2012 ss. 912 & 920*)
  - (b) particulars of any restriction in the constitution, by whatever name called, of the body in question on the right to transfer the securities, that has the effect of requiring the offerees, before transferring the securities, to offer those securities for purchase to any member of the body or to any other person and, where there is any such restriction, the arrangements (if any) being made to enable the securities to be transferred in pursuance of the offer.
3. If any requirement set out in sections 1 and 2 cannot be satisfied because any of the information and particulars required are not available, or because any of the matters covered by the requirement are not applicable to the body in question, the offer shall instead state that fact and the reasons therefor; and if the body in

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第 571 章附表 7 —— 第 1 部  
第 4 條

存檔的該法團的申報表中並無提供第 2 條規定的某些資料或詳情，則該要約亦須說明該事實。

## 4. 要約 ——

- (a) 的英文本須在顯眼位置載有以下通知，印刷字體須不小於泰晤士報 8 點字 ——

“IMPORTANT

If you are in doubt as to any aspect of this offer,  
you should consult a licensed securities dealer,  
bank manager, solicitor, certified public  
accountant or other professional  
adviser.”；及

- (b) 的中文本須在顯眼位置載有以下通知，印刷字面長度須不少於 2.5 毫米 ——

“重要提示

如你對此要約的任何方面有疑問，應諮詢持牌證券交易商、銀行經理、律師、會計師或其他專業顧問。”。

(由 2004 年第 23 號第 56 條修訂)

5. (1) 在本部中，**團體** (body) 具有本條例第 175(9) 條給予該詞的涵義。

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question is a corporation incorporated in Hong Kong but any of the information and particulars required under section 2 are not available in the returns of the corporation filed with the Registrar of Companies, the offer shall also state that fact.

## 4. The offer shall contain in a prominent position—

- (a) in the case of the English text, the following notice printed in type of a size not smaller than the type known as 8 point Times—

“IMPORTANT

If you are in doubt as to any aspect of this offer,  
you should consult a licensed securities dealer,  
bank manager, solicitor, certified public  
accountant or other professional  
adviser.”；and

- (b) in the case of the Chinese text, the following notice printed in type the face of which is not less than 2.5 mm in depth—

“重要提示

如你對此要約的任何方面有疑問，應諮詢持牌證券交易商、銀行經理、律師、會計師或其他專業顧問。”。

(Amended 23 of 2004 s. 56)

5. (1) In this Part, **body** (團體) has the meaning assigned to it by section 175(9) of this Ordinance.

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附表 7 —— 第 2 部  
第 1 條

- (2) 本條例第 175(8) 條適用於在本部中提述某團體 (不論實際如何稱述) 的證券之處，一如該條適用於本條例第 175 條中提述某團體的證券之處。

## 第 2 部

### 為將證券處置而提出的要約所須符合的規定

1. 如要約所涉的證券當時在任何證券市場 (不論是認可證券市場或香港以外地方的任何其他證券市場) 上市或報價，或 (如該等證券並非如上述般上市或報價) 將會是與有關團體的且已如上述般上市或報價的證券在所有方面一致的，則該要約——
- (a) 須說明該事實，並須指明該等證券或將會是與該等證券一致的證券 (視屬何情況而定) 當時上市或報價所在的證券市場；
  - (b) 須指明該等證券或將會是與該等證券一致的證券 (視屬何情況而定) 在緊接該要約日期前在切實可行範圍內最近的日期，在每一該等市場的收市價；
  - (c) 須指明該等證券或將會是與該等證券一致的證券 (視屬何情況而定) 在緊接該要約日期前的 6 個月內，在每一月份的最後一個交易日的收市價；
  - (d) 須指明該等證券或將會是與該等證券一致的證券 (視屬何情況而定) 在緊接該要約日期前的 6 個月內的最高和最低收市價；及
  - (e) 如曾是一項公開宣告 (不論是在報章或其他形式的資訊媒介作出的或以其他方式作出) 的標的，須指明該等證券或將會是與該等證券一致的證券 (視屬何情況而定) 在緊接該宣告前的最後一個交易日的收市價。

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- (2) Section 175(8) of this Ordinance applies to a reference to securities of a body (however described) in this Part as it applies to such a reference in section 175 of this Ordinance.

## Part 2

### Requirements to be Satisfied in Relation to Offers to Dispose of Securities

1. If the securities offered are currently listed or quoted on any stock market, whether a recognized stock market or any other stock market outside Hong Kong, or, where the securities are not so listed or quoted, will be uniform in all respects with securities of the body in question that are so listed or quoted, the offer shall—
- (a) state that fact and specify the stock markets on which the securities or the securities with which they will be uniform (as the case may be) are currently listed or quoted;
  - (b) specify the closing price in respect of the securities or the securities with which they will be uniform (as the case may be) on each stock market on the latest practicable date immediately preceding the date of the offer;
  - (c) specify the closing price in respect of the securities or the securities with which they will be uniform (as the case may be) on the last trading day of each of the 6 months immediately preceding the date of the offer;
  - (d) specify the highest and the lowest closing prices in respect of the securities or the securities with which they will be uniform (as the case may be) during the period of 6 months immediately preceding the date of the offer; and



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2. 如要約所涉的證券沒有在任何證券市場 (不論是否認可證券市場或香港以外地方的任何其他證券市場) 上市或報價的, 亦並非將會與有關團體的且已如上述般上市或報價的證券在所有方面一致的, 則該要約須 ——

- (a) 載有在有關團體的章程 (不論實際如何稱述) 中對轉讓該等證券的權利的任何限制的詳情, 該等限制的效力是規定該等證券的持有人轉讓該等證券前, 須先向該團體的成員或任何其他人士提出讓他們購買該等證券的要約; 及
- (b) (i) (如該要約所涉的證券是某法團的或由某法團發行的證券) 載有第 3 條指明的詳情, 或附有一份載有該等詳情的書面陳述, 但如該要約已附有一份就該法團符合《公司 (清盤及雜項條文) 條例》(第 32 章) 第 II 或 XII 部的文件, 則屬例外; (由 2012 年第 28 號第 912 及 920 條修訂)
- (ii) (如該要約所涉的證券是某多邊機構的或由某多邊機構發行的證券) 載有第 4 條指明的詳情, 或附有一份載有該等詳情的書面陳述; 或
- (iii) (如該要約所涉的證券是某政府或市政府當局的或由某政府或市政府當局發行的證券) 載有第 5 條指明的詳情, 或附有一份載有該等詳情的書面陳述。

2. If the securities offered are not listed or quoted on any stock market, whether a recognized stock market or any other stock market outside Hong Kong, and will not be uniform in all respects with securities of the body in question that are so listed or quoted, the offer shall—

- (a) contain particulars of any restriction in the constitution, by whatever name called, of the body on the right to transfer the securities, that has the effect of requiring the holder of the securities, before transferring them, to offer them for purchase to any member of the body or to any other person; and
- (b) (i) where the securities are of, or issued by, a corporation, contain the particulars specified in section 3 or be accompanied by a statement in writing containing those particulars, unless the offer is accompanied by a document which conforms with Part II or XII of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) in relation to the corporation; (Amended 28 of 2012 ss. 912 & 920)
- (ii) where the securities are of, or issued by, a multilateral agency, contain the particulars specified

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3. 就第 2(b)(i) 條提述的法團而言，該條提述的詳情如下 ——
- (a) (i) 該法團成立的年份及成立的所在國家或地區；
  - (ii) 該法團在香港的註冊辦事處或總辦事處的地址；及
  - (iii) (如該法團是在香港以外的國家或地區成立的) 該法團在該國家或地區或其所駐的國家或地區的註冊辦事處或總辦事處的地址；
  - (b) (i) 該法團的法定資本 (如有的話) 或根據章程可發行股份的數目上限；
  - (ii) 股本中在指明日期 (即指明為該法團在緊接要約日期前 5 個財政年度內每一年度結束之日的日期) 已發行而未償的部分的款額；
  - (iii) 股本分為哪些股份類別；
  - (iv) 每一股份類別的股東在資本、股息及投票方面的權利；及
  - (v) 以現金全部或部分繳足股款而發行的股份或以非現金代價全部或部分繳足股款而發行的該法團的股份 (或該兩種股份) 各自的數目及總面值 (如有的話)；(由 2012 年第 28 號第 912 及 920 條修訂)

- in section 4 or be accompanied by a statement in writing containing those particulars; or
- (iii) where the securities are of, or issued by, a government or municipal government authority, contain the particulars specified in section 5 or be accompanied by a statement in writing containing those particulars.

3. The particulars referred to in section 2(b)(i), in relation to the corporation referred to in that section, are as follows—
- (a) (i) the year in which, and the country or territory in which, the corporation has been incorporated;
  - (ii) the address of its registered or principal office in Hong Kong; and
  - (iii) where the corporation has been incorporated outside Hong Kong, the address of its registered or principal office in the country or territory in which it is incorporated or is resident;
  - (b) (i) the authorized capital (if any), or the maximum number of shares issuable under the constitution, of the corporation;
  - (ii) the amount of share capital that has been issued and is outstanding at the date specified as being the close of the 5 financial years of the corporation immediately preceding the date of the offer;
  - (iii) the classes of shares into which the share capital is divided;

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- (c) (i) 自該法團上一個財政年度結束後發行的股份的數目及總面值 (如有的話); (*由 2012 年第 28 號第 912 及 920 條修訂*)
- (ii) 自該法團上一個財政年度結束後發行的股份分為哪些股份類別;
- (iii) 每一股份類別的股東在資本、股息及投票方面的權利;
- (iv) 自該法團上一個財政年度結束後以現金全部或部分繳足股款而發行的股份或以非現金代價全部或部分繳足股款而發行的股份 (或該兩種股份) 各自的數目及總面值 (如有的話); (*由 2012 年第 28 號第 912 及 920 條修訂*)
- (v) 自該法團上一個財政年度結束後贖回的可贖回優先股的數目和就該等贖回的股份所償付的款額; 及
- (vi) 自該法團上一個財政年度結束後合法批准的該法團的資本減少的詳情;
- (d) 該法團在其緊接要約日期前 2 個財政年度內每一年度中任何資本重組的詳情;
- (e) (i) 該法團的純利潤或淨虧損 (在計算參照該法團的利潤款額而計算的任何形式的稅項前) 的款額;
- (ii) 該法團在其緊接該要約日期前 5 個財政年度內每一年度中, 就每一類別的股份所派發的股息的百分率及款額; 及
- (iii) 如在該等年度中的任何年度並無就任何個別類別的股份支付股息, 則為說明此事的陳述;
- (f) 該法團所發行的並在要約日期前的 28 日內尚未清償的任何債權證的總款額, 以及該法團在要約日期前的 28 日內所拖欠的按揭債項、貸款或押記的總款額, 並連同就該等欠款須付的利息的利率;

- (iv) the rights, in respect of capital, dividends and voting, of holders of each of such classes of shares; and
- (v) the number and total nominal value (if any) respectively of shares of the corporation issued as fully or partly paid up for cash or as fully or partly paid up for a consideration other than cash, or both; (*Amended 28 of 2012 ss. 912 & 920*)
- (c) (i) the number and total nominal value (if any) of shares issued since the close of the last financial year of the corporation; (*Amended 28 of 2012 ss. 912 & 920*)
- (ii) the classes of shares into which the shares issued since the close of the last financial year of the corporation are divided;
- (iii) the rights, in respect of capital, dividends and voting, of holders of each of such classes of shares;
- (iv) the number and total nominal value (if any) respectively of shares issued since the close of the last financial year of the corporation as fully or partly paid up for cash or as fully or partly paid up for a consideration other than cash, or both; (*Amended 28 of 2012 ss. 912 & 920*)
- (v) the number of redeemable preference shares redeemed since the close of the last financial year of the corporation and the amounts repaid in respect of the shares so redeemed; and
- (vi) particulars of any reduction of capital lawfully authorized in respect of the corporation since the close of the last financial year of the corporation;

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- (g) 該法團的董事的姓名或名稱及地址；
- (h) 該法團的每一名董事持有或由他人代其持有的該法團的證券的數目、種類及面值（如有的話），如某董事並沒有持有任何該等證券，亦無人代其持有任何該等證券，則為說明此事的陳述；及（由 2012 年第 28 號第 912 及 920 條修訂）
- (i) 要約所涉的證券是否屬已全部繳足款額的，如所涉證券為將予發行者，則是否將會屬全部繳足款額的，而如屬非全部繳足者，則該等證券繳足款額或將會繳足款額的幅度；如該法團已定下未償催繳股款須予繳付的款額及繳款日期，則為每一該等催繳的日期及款額。

- (d) particulars of any reorganization of the capital of the corporation during each of its 2 financial years immediately preceding the date of the offer;
- (e) (i) the amount of the net profit or loss of the corporation (before taking into account any form of tax calculated by reference to the amount of profits of the corporation);
- (ii) the rate per cent and the amount of each payment of dividends made by the corporation in respect of each class of shares during each of its 5 financial years immediately preceding the date of the offer; and
- (iii) where no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;
- (f) the total amount of any debentures issued by the corporation and outstanding not more than 28 days before the date of the offer, and the total amount of mortgage debts, loans or charges due from the corporation not more than 28 days before that date, together with the rate of interest payable in respect of them;
- (g) the names and addresses of the directors of the corporation;
- (h) the number, description, and nominal value (if any) of the securities of the corporation held by or on behalf of each of its directors or, if a director does not hold any such securities and no such securities are held on his behalf, a statement to that effect; and (*Amended 28 of 2012 ss. 912 & 920*)
- (i) whether or not the securities offered are or, in the case of securities to be issued, will be fully paid up, and, if

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not, to what extent they are or will be paid up, and, if the corporation has fixed a date and amount for payment of outstanding calls, the date and amount of each such call.

4. 就第 2(b)(ii) 條提述的多邊機構而言，該條提述的詳情如下——

- (a) 該機構的組織及行政的細節；
- (b) 對該機構的事務的描述；及
- (c) 該機構的財政狀況的詳情，包括——
  - (i) 在緊接要約日期前的 2 年的收入及支出，以及當年的財政收支預測；及
  - (ii) 在緊接要約日期前的 2 年的公債。

5. 就第 2(b)(iii) 條提述的政府或市政府當局而言，該條提述的詳情如下——

- (a) 該政府或市政府當局的組織及行政的細節；
- (b) (就某地方的政府而言) 該地方的經濟狀況的詳情，包括——
  - (i) 關於該政府的一般資料；
  - (ii) 在緊接要約日期前的 2 年按經濟環節顯示的國民生產總值；

4. The particulars referred to in section 2(b)(ii), in relation to the multilateral agency referred to in that section, are as follows—

- (a) the details of the organization and administration of the multilateral agency;
- (b) the description of the activities of the multilateral agency; and
- (c) the particulars of the financial situation of the multilateral agency, including—
  - (i) the income and expenditure for the past 2 years immediately preceding the date of the offer and the budgetary forecasts for the current year; and
  - (ii) the public debt for the past 2 years immediately preceding the date of the offer.

5. The particulars referred to in section 2(b)(iii), in relation to the government or municipal government authority referred to in that section, are as follows—

- (a) the details of the organization and administration of the government or municipal government authority;
- (b) in the case of a government, the particulars of the economic situation of the place of which it is the government, including—



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- (iii) 各經濟環節在緊接要約日期前的 2 年的生產趨勢，連同主要生產分支的細目分類；
- (iv) 在緊接要約日期前的 2 年的價格、工資及就業趨勢；
- (v) 在緊接要約日期前的 2 年按經濟環節及地區顯示的出入口趨勢；
- (vi) 在緊接要約日期前的 2 年與其他地方的經濟及金融交易的收支差額；及
- (vii) 黃金及貨幣儲備；
- (c) (就某地方的市政府當局而言) 該地方的經濟狀況的詳情，包括——
  - (i) 關於該市政府當局的一般資料；
  - (ii) 主要收入來源；及
  - (iii) 各經濟環節在緊接要約日期前的 2 年的生產趨勢，連同主要生產分支的細目分類；及
- (d) 該政府或市政府當局的財政狀況的詳情，包括——
  - (i) 在緊接要約日期前的 2 年的收入及支出，以及當年的財政收支預測；及
  - (ii) 在緊接要約日期前的 2 年的公債。

- (i) general information on the government;
- (ii) the gross national product by economic sector for the past 2 years immediately preceding the date of the offer;
- (iii) the production trends in the various economic sectors with a breakdown of the principal production branches for the past 2 years immediately preceding the date of the offer;
- (iv) the price, wage and employment trends over the past 2 years immediately preceding the date of the offer;
- (v) the export and import trends by economic sector and country over the past 2 years immediately preceding the date of the offer;
- (vi) the balance of payments in respect of economic and financial transactions with other places for the past 2 years immediately preceding the date of the offer; and
- (vii) the gold and currency reserves;
- (c) in the case of a municipal government authority, the particulars of the economic situation of the place of which it is the municipal government authority, including—
  - (i) general information on the municipal government authority;
  - (ii) the principal sources of revenue; and
  - (iii) the production trends in the various economic sectors with a breakdown of the principal production branches for the past 2 years immediately preceding the date of the offer; and

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6. 如要約所涉的證券尚未由有關團體發行，則除本部適用於該等證券的規定外——

- (a) 該要約亦須說明——
  - (i) 該次發行是否需要該團體的決議作為授權依據；
  - (ii) 該等證券將會分享的首次股息派發；及
  - (iii) 就要約人所知，自該團體在其緊接要約日期前的上一個財政年度的資產負債表和損益表的日期起，該團體的財政狀況曾否有任何重大變化，如有的話，則須說明該等變化的詳情；
- (b) 該要約亦須附有以該團體在緊接要約日期前的上一個財政年度終結時的狀況為準的該團體的資產負債表和損益表的文本；
- (c) 除在以下情況下，該要約亦須附有該團體的章程（不論實際如何稱述）的文本——
  - (i) 該要約指明可供受要約人查閱該等文本的香港某地方；及
  - (ii) 該要約指明該等文本可在何時查閱；
- (d) 如該等證券將會是與該團體以往發行但當時沒有在任何證券市場（不論是認可證券市場或香港以外

6. If the securities offered are yet to be issued by a body, the offer shall, in addition to any other requirements applicable to them in this Part—

- (a) state—
  - (i) whether or not the issue requires the authority of a resolution of the body;
  - (ii) the first dividend in which the securities will participate; and
  - (iii) whether or not there has been, to the knowledge of the offeror, any material change in the financial position of the body since the date of the balance sheet and profit and loss account of the body for its financial year immediately preceding the date of the offer and, if so, the particulars of the change;
- (b) be accompanied by copies of the balance sheet and profit and loss account of the body made up to (and including) the end of the last financial year of the body immediately preceding the date of the offer;

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地方的任何其他證券市場)上市或報價的證券在所有方面一致的,該要約亦須載有要約人掌握的關於該等證券在緊接要約日期前的 6 個月內所售出的數目、面值(如有的話)及成交價的所有資料;及(由 2012 年第 28 號第 912 及 920 條修訂)

- (e) 如該等證券並非將會與該團體以往發行的證券在所有方面一致,該要約亦須說明——
- (i) 該等證券與該等以往發行的證券將會有何不同;
  - (ii) 該等證券是否將會附連任何投票權利,如附連該等權利,則須說明對該等權利的限制;及
  - (iii) 是否已經或將會向某證券市場(不論是認可證券市場或香港以外地方的任何其他證券市場)申請准許,以使該等證券得以上市或報價,如已提出上述申請,則須說明該市場的名稱。

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- (c) be accompanied by copies of the constitution, by whatever name called, of the body unless the offer specifies—
  - (i) a place in Hong Kong at which such copies may be inspected by offerees; and
  - (ii) the times at which they may be inspected;
- (d) in the case of securities which will be uniform in all respects with previously issued securities of the body that are not currently listed or quoted on any stock market, whether a recognized stock market or any other stock market outside Hong Kong, contain all information that the offeror may have as to the number and nominal value (if any) of those securities that have been sold during the period of 6 months immediately preceding the date of the offer and the prices yielded by those sales; and (*Amended 28 of 2012 ss. 912 & 920*)
- (e) in the case of securities which will not be uniform in all respects with previously issued securities of the body, state—
  - (i) the respects in which the securities will differ from the previously issued securities;
  - (ii) whether or not any voting rights will attach to the securities and, if so, the limitations on those rights; and
  - (iii) whether or not application for permission to have the securities listed or quoted has been or will be made to any stock market, whether a recognized stock market or any other stock market outside Hong Kong, and, if such an application has been made, the name of the stock market to which the application has been made.

S7-25  
第 571 章附表 7 —— 第 2 部  
第 7 條Schedule 7—Part 2  
Section 7S7-26  
Cap. 571

7. 如因不能取得第 1 至 6 條列出的規定所規定的某些資料、詳情或文件，或因第 1 至 6 條列出的規定所規定的事宜不適用於有關團體，以致不能符合該規定，該要約須改為說明該事實及其理由；如該團體是在香港成立的法團，而送交公司註冊處處長的該法團的申報表中並無提供第 2 至 6 條規定的某些資料、詳情或文件，則該要約亦須說明該事實。

8. 要約 ——

- (a) 的英文本須在顯眼位置載有以下通知，印刷字體須不小於泰晤士報 8 點字 ——

“IMPORTANT

If you are in doubt as to any aspect of this offer,  
you should consult a licensed securities dealer,  
bank manager, solicitor, certified public  
accountant or other professional  
adviser.”；及

- (b) 的中文本須在顯眼位置載有以下通知，印刷字面長度須不少於 2.5 毫米 ——

“重要提示

如你對此要約的任何方面有疑問，應諮詢持牌證券交易商、銀行經理、律師、會計師或其他專業顧問。”。

(由 2004 年第 23 號第 56 條修訂)

7. If any requirement set out in sections 1 to 6 cannot be satisfied because any of the information, particulars and documents required are not available, or because any of the matters covered by the requirement are not applicable to the body in question, the offer shall instead state that fact and the reasons therefor; and if the body in question is a corporation incorporated in Hong Kong but any of the information, particulars and documents required under sections 2 to 6 are not available in the returns of the corporation filed with the Registrar of Companies, the offer shall also state that fact.

8. The offer shall contain in a prominent position—

- (a) in the case of the English text, the following notice printed in type of a size not smaller than the type known as 8 point Times—

“IMPORTANT

If you are in doubt as to any aspect of this offer,  
you should consult a licensed securities dealer,  
bank manager, solicitor, certified public  
accountant or other professional  
adviser.”；and

- (b) in the case of the Chinese text, the following notice printed in type the face of which is not less than 2.5 mm in depth—

“重要提示

如你對此要約的任何方面有疑問，應諮詢持牌證券交易商、銀行經理、律師、會計師或其他專業顧問。”。

S7-27  
第 571 章

附表 7 —— 第 2 部  
第 9 條

Schedule 7—Part 2  
Section 9

S7-28  
Cap. 571

*(Amended 23 of 2004 s. 56)*

9. (1) 在本部中，**團體** (body) 具有本條例第 175(9) 條給予該詞的涵義。
- (2) 本條例第 175(8) 條適用於在本部中提述某團體 (不論實際如何稱述) 的證券之處，一如該條適用於本條例第 175 條中提述某團體的證券之處。
- 

9. (1) In this Part, **body** (團體) has the meaning assigned to it by section 175(9) of this Ordinance.
- (2) Section 175(8) of this Ordinance applies to a reference to securities of a body (however described) in this Part as it applies to such a reference in section 175 of this Ordinance.
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## 附表 8

[ 第 215、216、217、218、  
219、222、232、233 及 234  
條及附表 10]

## 證券及期貨事務上訴審裁處

(格式變更——2013 年第 1 號編輯修訂紀錄)

## 第 1 部

## 成員的委任及審裁處的研訊程序等

1. 在本附表中，除文意另有所指外——  
**上訴委員** (panel member) 指上訴委員會委員；  
**上訴委員會** (appeal panel) 指根據第 2 條委出的委員會；  
**主席** (chairman) 指審裁處主席；  
**各方** (parties) 具有本條例第 215 條給予該詞的涵義；  
**成員** (member) 指審裁處成員；  
**有關當局** (relevant authority) 具有本條例第 215 條給予該詞的涵義；  
**局長** (Secretary) 指財經事務及庫務局局長；(由 2002 年第 106 號法律公告修訂)  
**法官** (judge) 具有本條例第 215 條給予該詞的涵義；  
**指明決定** (specified decision) 具有本條例第 215 條給予該詞的涵義；  
**普通成員** (ordinary member) 指並非主席的成員；  
**審裁處** (Tribunal) 具有本條例第 215 條給予該詞的涵義；  
**覆核** (review) 具有本條例第 215 條給予該詞的涵義；

## Schedule 8

[ss. 215, 216, 217, 218,  
219, 222, 232, 233 & 234 &  
Sch. 10]

## Securities and Futures Appeals Tribunal

(Format changes—E.R. 1 of 2013)

## 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;

S8-3  
第 571 章附表 8 —— 第 1 部  
第 2 條

**覆核申請** (application for review) 具有本條例第 215 條給予該詞的涵義。

(編輯修訂——2013 年第 1 號編輯修訂紀錄)

### 委出上訴委員會

2. 行政長官須委出由他認為適當的數目的非公職人員組成的上訴委員會。
3. 在不抵觸第 4 及 5 條的條文下，上訴委員的任期為行政長官認為適當的期間，並可在本條例其他條文的規限下不時獲再度委任。
4. 上訴委員可隨時以書面通知行政長官而辭職。
5. 行政長官可基於某上訴委員喪失履行職務能力、破產、疏於

Schedule 8—Part 1  
Section 2S8-4  
Cap. 571

**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

S8-5  
第 571 章附表 8 —— 第 1 部  
第 6 條

職守、有利益衝突或行為失當的理由，而藉書面通知將該委員免任。

6. 為免生疑問，本條例第 216(5) 條並不規定根據第 2 條委出多於一個委員會。

### 主席的委任

7. 主席由行政長官按終審法院首席法官所作建議而委任。
8. 在不抵觸第 9 至 11 條的條文下，主席的任期為 3 年，或獲委任就指明的覆核行事，並可在本條例其他條文的規限下不時獲再度委任。
9. 主席可隨時以書面通知行政長官而辭職。
10. 行政長官可基於主席喪失履行職務能力、破產、疏於職守、有利益衝突或行為失當的理由，而在諮詢終審法院首席法官後藉書面通知將主席免任。

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Section 6S8-6  
Cap. 571

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.

S8-7  
第 571 章

附表 8 —— 第 1 部  
第 11 條

Schedule 8—Part 1  
Section 11

S8-8  
Cap. 571

11. 由審裁處展開的覆核如在主席任期屆滿之前仍未完成，行政長官可授權他繼續擔任主席，以完成該項覆核。

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.

### 普通成員的委任

### Appointment of ordinary members

12. 為裁定某項覆核，局長須按主席的建議而就該項覆核委任 2 名上訴委員為普通成員。

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. 在不抵觸第 14 及 15 條的條文下，普通成員獲委任就指明的覆核行事，並可在本條例其他條文的規限下不時獲再度委任。

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. 普通成員可隨時以書面通知局長而辭職。

14. An ordinary member may at any time resign his office by notice in writing to the Secretary.

15. 普通成員停任上訴委員時，即停任普通成員。

15. Where an ordinary member ceases to be a panel member, he ceases to be such ordinary member.

### 聆訊

### Sittings

S8-9  
第 571 章附表 8 —— 第 1 部  
第 16 條Schedule 8—Part 1  
Section 16S8-10  
Cap. 571

16. 主席須為裁定有關覆核而召開所需的審裁處聆訊。
17. 在根據第 16 條就某項覆核召開聆訊前，審裁處可就該項覆核的各方所須遵從的程序事宜，以及各方須在甚麼時間內遵從該等事宜，給予指示。
18. 除第 19 條另有規定外 ——
- (a) 主席及 2 名普通成員須出席審裁處任何聆訊；
  - (b) 審裁處任何聆訊均由主席主持；及
  - (c) 在審裁處任何聆訊中，每項有待審裁處裁定的問題，均取決於成員的多數意見，但法律問題須由主席單獨裁定。
19. 在主席根據第 31 或 32 條就任何由他以審裁處單一成員身分單獨裁定的事宜而進行的聆訊中，只有主席須出席，而每項有待審裁處裁定的問題，均由他裁定。
20. 審裁處所有聆訊均須公開進行，但如審裁處主動或應有關覆核的各方或其中一方的申請而裁定，為公正起見，某次聆訊

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



S8-11  
第 571 章附表 8 —— 第 1 部  
第 21 條Schedule 8—Part 1  
Section 21S8-12  
Cap. 571

或其中任何部分不得公開進行，則該次聆訊或該部分聆訊（視屬何情況而定）可閉門進行。

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. 凡有人依據第 20 條申請裁定某次聆訊或其中任何部分不得公開進行，該申請的聆訊須閉門進行。

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. 覆核的各方均有權在任何與該項覆核有關的審裁處聆訊中——

22. The parties to a review shall, at any sitting of the Tribunal relating to the review, be entitled to be heard—

- (a) 親自陳詞，就有關當局或任何法團而言，可由其高級人員或僱員陳詞；及
- (b) 由大律師或律師陳詞，或在審裁處許可下，由任何其他人士陳詞。

- (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. 主席須在審裁處的聆訊中擬備或安排擬備研訊程序的紀錄，該紀錄須載有他認為適當而與該程序有關的詳情。

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. 在審裁處聆訊中的研訊程序，由審裁處以對有關案件的情況屬最適當的方式決定。

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.

S8-13  
第 571 章

附表 8 —— 第 1 部  
第 25 條

Schedule 8—Part 1  
Section 25

S8-14  
Cap. 571

### 初步會議及同意令

25. 在覆核申請提出後的任何時間，主席可 ——
- (a) 主動或應該項覆核的各方中的任何一方提出的申請；
  - (b) 在經考慮該項覆核的各方就該覆核申請呈交審裁處的任何材料而認為作出以下指示是適當的情況下；及
  - (c) 在各方同意或 ( 如任何一方依據 (a) 段提出申請 ) 另一方同意的情況下，
- 指示為以下目的舉行會議，由該項覆核的各方或其代表出席，並由主席主持 ——
- (i) 使各方能夠準備進行該項覆核；
  - (ii) 協助審裁處為該項覆核的目的就爭議點作出裁定；及
  - (iii) 一般而言，使該項覆核得以在公正、迅速和合乎經濟原則的情況下進行。

26. 在按照主席根據第 25 條作出的指示而舉行會議時，主席可 ——
- (a) 給予他認為為使有關覆核得以在公正、迅速和合乎經濟原則的情況下進行而屬有需要或可取的指示；及

### 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

S8-15  
第 571 章附表 8 —— 第 1 部  
第 27 條Schedule 8—Part 1  
Section 27S8-16  
Cap. 571

- (b) 設法確保有關覆核的各方就該項覆核作出所有他們按理應作出的協議。

- (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. 在按照主席根據第 25 條作出的指示而舉行會議後，主席須向審裁處報告關乎該會議而他認為適當的事宜。

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. 在覆核申請提出後，如 ——

- (a) 該項覆核的各方請求並同意審裁處或主席根據本條作出以下命令；及

- (b) 該項覆核的各方同意以下命令的所有條款，

審裁處或主席（視屬何情況而定）可作出他根據本條例任何條文有權作出的命令，不論是否已符合在其他方面適用於該命令的規定。

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. 不論本條例第 XI 部或本附表其他條文有任何規定，凡審裁處或主席根據第 28 條作出任何命令，則該命令就所有目的而言，須視為審裁處或主席（視屬何情況而定）在符合在其他方面適用於該命令的作出的規定的情況下，根據該條文作出的。

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.

S8-17  
第 571 章附表 8 —— 第 1 部  
第 30 條Schedule 8—Part 1  
Section 30S8-18  
Cap. 571

30. 在第 28 及 29 條中，**命令** (order) 包括任何裁斷、裁定及其他決定。

30. In sections 28 and 29, **order** (命令) includes any finding, determination and any other decision.

### 主席作為審裁處單一成員

### Chairman as sole member of Tribunal

31. 在覆核申請提出後但在審裁處舉行聆訊以裁定該項覆核前，如該項覆核的各方藉給予審裁處書面通知，告知審裁處他們同意該項覆核可由主席以審裁處單一成員身分單獨裁定，則主席可以審裁處單一成員身分裁定該項覆核。

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. 凡 ——
- (a) 任何人依據本條例第 217(4) 條向審裁處申請，要求延展提出覆核申請的限期；或
  - (b) 任何人根據本條例第 227(2) 條向審裁處申請擱置某指明決定，
- 主席可以審裁處單一成員身分裁定該申請。

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. 如第 31 或 32 條適用，則由主席以審裁處單一成員身分構成的審裁處，就所有目的而言，須視為連同 2 名普通成員構成的審裁處。

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.

S8-19  
第 571 章附表 8 —— 第 1 部  
第 34 條Schedule 8—Part 1  
Section 34S8-20  
Cap. 571

34. 主席在根據第 31 條作出任何裁定或就第 32(b) 條描述的申請作出任何裁定後，須向審裁處報告作出該裁定、作出該裁定的理由及關乎該裁定而他認為適當的事宜。

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. 凡 ——

- (a) 有第 32(b) 條描述的申請；及
- (b) 主席因傷病、不在香港或其他因由而不能執行其職能，或主席認為自己就該申請執行其職能是不恰當或不可取的，

本條例第 215 條中**法官**的定義的 (a) 段所指的法官，須在獲終審法院首席法官為此目的委任後裁定該申請，猶如他是根據本條例妥為委任的主席一樣，而本條例的條文據此適用於他。

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.

### 雜項條文

### Miscellaneous

36. 除本條例另有規定外，審裁處及其成員，以及在任何覆核中的任何證人、大律師、律師、覆核的各方或所涉及的其他人，就該項覆核享有的特權和豁免權，與假若該項覆核是在原訟法庭進行的民事法律程序他們便會享有的一樣。

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.



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附表 8 —— 第 2 部

Schedule 8—Part 2

S8-22  
Cap. 571**第 2 部****指明決定****第 1 分部 —— 證監會作出的指明決定**

項	條文	決定的描述
1.	本條例第 93(12) 條	要求繳付費用或開支。
2.	本條例第 95(2) 條	拒絕給予認可；施加條件。
3.	本條例第 97(1) 條	修訂或撤銷條件，或施加新的條件。
4.	本條例第 98(1) 條	撤回認可。
4A.	本條例第 101H(1)(a) 或 (b) 條	拒絕批給豁免，或施加條件。(由 2014 年第 6 號第 54 條增補)
4B.	本條例第 101H(2)(a) 或 (b) 條	暫時撤銷或撤回豁免，或修訂條件。(由 2014 年第 6 號第 54 條增補)
4C.	本條例第 101J(1)(b) 條	拒絕指定某人為中央對手方。(由 2014 年第 6 號第 54 條增補)
4D.	本條例第 101J(5)(a) 條	施加條件。(由 2014 年第 6 號第 54 條增補)

**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.
4A.	Section 101H(1)(a) or (b) of this Ordinance	Refusal to grant an exemption, or imposition of any condition. <i>(Added 6 of 2014 s. 54)</i>
4B.	Section 101H(2)(a) or (b) of this Ordinance	Suspension or withdrawal of an exemption, or amendment of any condition. <i>(Added 6 of 2014 s. 54)</i>
4C.	Section 101J(1)(b) of this Ordinance	Refusal to designate a person as a central counterparty. <i>(Added 6 of 2014 s. 54)</i>
4D.	Section 101J(5)(a) of this Ordinance	Imposition of any condition. <i>(Added 6 of 2014 s. 54)</i>

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第 571 章

附表 8 —— 第 2 部

項	條文	決定的描述
4E.	本條例第 101J(5)(b) 或 (c) 條	修訂或撤銷條件，或施加額外條件。(由 2014 年第 6 號第 54 條增補)
4F.	本條例第 101J(5)(d) 條	撤銷指定。(由 2014 年第 6 號第 54 條增補)
5.	本條例第 104(1) 條	拒絕認可集體投資計劃；施加條件。
6.	本條例第 104(3) 條	拒絕核准就集體投資計劃而提名的人。
7.	本條例第 104(3) 條	撤回向就集體投資計劃而提名的人給予的核准。
8.	本條例第 104(4) 條	修訂或撤銷條件，或施加新的條件。
8A.	本條例第 104A(1) 條	拒絕認可結構性產品，或施加條件。(由 2011 年第 8 號第 15 條增補)
8B.	本條例第 104A(3) 條	拒絕核准就結構性產品獲提名的人。(由 2011 年第 8 號第 15 條增補)
8C.	本條例第 104A(4)(a) 條	修訂或撤銷任何條件，或施加任何新的條件。(由 2011 年第 8 號第 15 條增補)

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Item	Provision	Description of decision
4E.	Section 101J(5)(b) or (c) of this Ordinance	Amendment or revocation of any condition, or imposition of any additional condition. (Added 6 of 2014 s. 54)
4F.	Section 101J(5)(d) of this Ordinance	Revocation of a designation. (Added 6 of 2014 s. 54)
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)

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第 571 章

附表 8 —— 第 2 部

項	條文	決定的描述
8D.	本條例第 104A(4)(b) 條	撤回就某結構性產品獲提名的人的核准。(由 2011 年第 8 號第 15 條增補)
9.	本條例第 105(1) 條	拒絕認可廣告、邀請或文件的發出；施加條件。
10.	本條例第 105(3) 條	拒絕核准就廣告、邀請或文件的發出而提名的人。
11.	本條例第 105(3) 條	撤回向就廣告、邀請或文件的發出而提名的人給予的核准。
12.	本條例第 105(4) 條	修訂或撤銷條件，或施加新的條件。
13.	本條例第 106(1) 條	撤回認可。
14.	本條例第 106(3) 條	拒絕撤回認可。
15.	本條例第 106(4) 條	施加條件。
15A.	本條例第 112D(1) 條	拒絕註冊擬成立公司。(由 2016 年第 16 號第 22 條增補)
15B.	本條例第 112D(6) 條	施加條件。(由 2016 年第 16 號第 22 條增補)

Schedule 8—Part 2

S8-26  
Cap. 571

Item	Provision	Description of decision
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.
14.	Section 106(3) of this Ordinance	Refusal to withdraw an authorization.
15.	Section 106(4) of this Ordinance	Imposition of any condition.
15A.	Section 112D(1) of this Ordinance	Refusal to register a proposed company. (Added 16 of 2016 s. 22)
15B.	Section 112D(6) of this Ordinance	Imposition of any condition. (Added 16 of 2016 s. 22)

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第 571 章

附表 8 —— 第 2 部

項	條文	決定的描述
15C.	本條例第 112F 條	修訂或撤銷條件，或施加新的條件。(由 2016 年第 16 號第 22 條增補)
15D.	本條例第 112ZF(1) 條	向某人發出指示。(由 2016 年第 16 號第 22 條增補)
15E.	本條例第 112ZF(3) 條	修訂指示。(由 2016 年第 16 號第 22 條增補)
15F.	本條例第 112ZH(2) 條	拒絕取消註冊。(由 2016 年第 16 號第 22 條增補)
15G.	本條例第 112ZH(3) 條	施加條件。(由 2016 年第 16 號第 22 條增補)
15H.	本條例第 112ZH(4) 條	修訂或撤銷條件，或施加新的條件。(由 2016 年第 16 號第 22 條增補)
15I.	本條例第 112ZI(1) 條	取消註冊。(由 2016 年第 16 號第 22 條增補)
15J.	本條例第 112ZI(2) 條	施加條件。(由 2016 年第 16 號第 22 條增補)
15K.	本條例第 112ZI(3) 條	修訂或撤銷條件，或施加新的條件。(由 2016 年第 16 號第 22 條增補)
15L.	本條例第 112ZJ(3) 條	施加條件。(由 2016 年第 16 號第 22 條增補)
15M.	本條例第 112ZJ(6) 條	修訂或撤銷條件，或施加新的條件。(由 2016 年第 16 號第 22 條增補)
15N.	本條例第 112ZO(6) 條	施加條件。(由 2016 年第 16 號第 22 條增補)

Schedule 8—Part 2

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Cap. 571

Item	Provision	Description of decision
15C.	Section 112F of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition. (Added 16 of 2016 s. 22)
15D.	Section 112ZF(1) of this Ordinance	Direction to a person. (Added 16 of 2016 s. 22)
15E.	Section 112ZF(3) of this Ordinance	Amendment of any direction. (Added 16 of 2016 s. 22)
15F.	Section 112ZH(2) of this Ordinance	Refusal to cancel registration. (Added 16 of 2016 s. 22)
15G.	Section 112ZH(3) of this Ordinance	Imposition of any condition. (Added 16 of 2016 s. 22)
15H.	Section 112ZH(4) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition. (Added 16 of 2016 s. 22)
15I.	Section 112ZI(1) of this Ordinance	Cancellation of registration. (Added 16 of 2016 s. 22)
15J.	Section 112ZI(2) of this Ordinance	Imposition of any condition. (Added 16 of 2016 s. 22)
15K.	Section 112ZI(3) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition. (Added 16 of 2016 s. 22)
15L.	Section 112ZJ(3) of this Ordinance	Imposition of any condition. (Added 16 of 2016 s. 22)
15M.	Section 112ZJ(6) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition. (Added 16 of 2016 s. 22)
15N.	Section 112ZO(6) of this Ordinance	Imposition of any condition. (Added 16 of 2016 s. 22)

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第 571 章

附表 8 —— 第 2 部

項	條文	決定的描述
15O.	本條例第 112ZO(7) 條	修訂或撤銷修改或寬免。(由 2016 年第 16 號第 22 條增補)
15P.	本條例第 112ZO(8) 條	修訂或撤銷條件，或施加新的條件。(由 2016 年第 16 號第 22 條增補)
16.	本條例第 116(1) 條	拒絕批給牌照。
17.	本條例第 116(6) 條	施加、修訂或撤銷條件，或施加新的條件。
18.	本條例第 117(1) 條	拒絕批給不超過 3 個月期的牌照。
19.	本條例第 117(3) 條	施加、修訂或撤銷條件，或施加新的條件。
20.	本條例第 119(1) 條	拒絕批給註冊。
21.	本條例第 119(5) 條	施加、修訂或撤銷條件，或施加新的條件。
22.	本條例第 120(1) 條	拒絕批給牌照。
23.	本條例第 120(5) 條	施加條件。
24.	本條例第 120(7) 條	修訂或撤銷條件，或施加新的條件。

Schedule 8—Part 2

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Item	Provision	Description of decision
15O.	Section 112ZO(7) of this Ordinance	Amendment or revocation of a modification or waiver. (Added 16 of 2016 s. 22)
15P.	Section 112ZO(8) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition. (Added 16 of 2016 s. 22)
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.



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第 571 章

附表 8 —— 第 2 部

項	條文	決定的描述
25.	本條例第 121(1) 條	拒絕批給不超過 3 個月期的牌照。
26.	本條例第 121(3) 條	施加條件。
27.	本條例第 121(5) 條	修訂或撤銷條件，或施加新的條件。
28.	本條例第 122(1) 條	拒絕批准某隸屬關係。
29.	本條例第 122(2) 條	拒絕批准轉移某隸屬關係。
30.	本條例第 124(1) 條	拒絕發出印刷本牌照或註冊證明書的複本。(由 2015 年第 19 號第 13 條修訂)
31.	本條例第 126(1) 條	拒絕核准某人成為負責人員。
32.	本條例第 126(3) 條	施加、修訂或撤銷條件，或施加新的條件。
33.	本條例第 127(1) 條	拒絕更改受規管活動。
34.	本條例第 130(1) 條	拒絕批准某處所。
35.	本條例第 132(1) 條	拒絕核准某人成為或繼續作為大股東。
36.	本條例第 132(3) 條	施加、修訂或撤銷條件，或施加新的條件。

Schedule 8—Part 2

S8-32  
Cap. 571

Item	Provision	Description of decision
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 printed licence or certificate of registration. (Amended 19 of 2015 s. 13)
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.

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第 571 章

附表 8 —— 第 2 部

項	條文	決定的描述
37.	本條例第 133(1) 條	向持牌法團發出指示。
38.	本條例第 133(2) 條	向某人發出指示。
39.	本條例第 134(1)(a)、 (b)、(c)、(d)、(e)、 (f)、(g)、(h)、(i) 或 (j) 條	拒絕作出修改或寬免。
40.	本條例第 134(4) 條	修訂某項修改或寬免；施加、修訂 或撤銷條件，或施加新的條件。
40A.	本條例第 145A(1) 條	更改財政資源規則。(由 2014 年 第 6 號第 54 條增補)
41.	本條例第 146(2) 或 (5)(b) 條	施加條件。
42.	本條例第 146(5)(a) 條	暫時吊銷牌照。
43.	本條例第 146(6) 或 (7) 條	修訂條件。
44.	本條例第 147(3)(a) 條	暫時吊銷牌照。
45.	本條例第 147(3)(b) 條	施加條件。
46.	本條例第 147(4) 或 (5) 條	修訂條件。
47.	本條例第 159(1) 條	委任核數師。

Schedule 8—Part 2

S8-34  
Cap. 571

Item	Provision	Description of decision
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.
40A.	Section 145A(1) of this Ordinance	Variation of any financial resources rule. (Added 6 of 2014 s. 54)
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.

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第 571 章

附表 8 —— 第 2 部

項	條文	決定的描述
48.	本條例第 159(4) 條	指示支付審查及審計的任何費用及開支。
49.	本條例第 160(1) 條	委任核數師。
50.	本條例第 160(8) 條	指示支付審查及審計的任何費用及開支。
51.	本條例第 194(1)(i)、(ii)、(iii) 或 (iv) 條	行使權力，撤銷或暫時吊銷牌照或撤銷或暫時撤銷就某人作為負責人員而給予的核准，公開地或非公開地譴責某人，或向某人施加禁止。
52.	本條例第 194(2) 條	命令繳付罰款。
53.	本條例第 195(1)(a)、(b) 或 (c) 條	撤銷或暫時吊銷牌照。
54.	本條例第 195(2) 條	撤銷牌照。
55.	本條例第 195(7) 條	撤銷或暫時撤銷就某人成為負責人員而給予的核准。
56.	本條例第 196(1)(i)、(ii) 或 (iii) 條	行使權力，撤銷或暫時撤銷註冊、公開地或非公開地譴責某人，或向某人施加禁止。
57.	本條例第 196(2) 條	命令繳付罰款。

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S8-36  
Cap. 571

Item	Provision	Description of decision
48.	Section 159(4) of this Ordinance	Direction to pay any of the costs and expenses of any examination and audit.
49.	Section 160(1) of this Ordinance	Appointment of an auditor.
50.	Section 160(8) of this Ordinance	Direction to pay any of the costs and expenses of any examination and audit.
51.	Section 194(1)(i), (ii), (iii) or (iv) of this Ordinance	Exercise of power to revoke or suspend a licence or the approval of a person as a responsible officer, to publicly or privately reprimand a person, or to impose a prohibition on a person.
52.	Section 194(2) of this Ordinance	Order to pay a pecuniary penalty.
53.	Section 195(1)(a), (b) or (c) of this Ordinance	Revocation or suspension of a licence.
54.	Section 195(2) of this Ordinance	Revocation of a licence.
55.	Section 195(7) of this Ordinance	Revocation or suspension of the approval of a person as a responsible officer.
56.	Section 196(1)(i), (ii) or (iii) of this Ordinance	Exercise of power to revoke or suspend any registration, to publicly or privately reprimand a person, or to impose a prohibition on a person.
57.	Section 196(2) of this Ordinance	Order to pay a pecuniary penalty.

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附表 8 —— 第 2 部

項	條文	決定的描述
58.	本條例第 197(1)(a) 或 (b) 條	撤銷或暫時撤銷註冊。
59.	本條例第 197(2) 條	撤銷註冊。
60.	本條例第 202(1) 條	要求轉移紀錄。
61.	本條例第 203(1F) 條	施加條件。(由 2015 年第 19 號第 26 條修訂)
62.	本條例第 204(1)(a) 或 (b) 條	對持牌法團施加與交易等有關的禁止或要求。
63.	本條例第 205(1)(a) 或 (b) 條	對持牌法團施加與有關財產有關的禁止或要求。
64.	本條例第 206(1) 條	要求持牌法團保存財產。
65.	本條例第 208(1)(b) 條	取代或更改根據本條例第 204、205 或 206 條施加的禁止或要求。
66.	本條例第 208(1) 條	拒絕撤回、取代或更改根據本條例第 204、205 或 206 條施加的禁止或要求。
67.	本條例第 309(2) 條	拒絕批給豁免；施加條件。
68.	本條例第 309(3) 條	拒絕批給豁免；施加條件。

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Item	Provision	Description of decision
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(1F) of this Ordinance	Imposition of any condition. (Amended 19 of 2015 s. 26)
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.

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第 571 章

附表 8 —— 第 2 部

項	條文	決定的描述
69.	本條例第 309(4)(a) 或 (b) 條	撤回或暫時撤銷豁免；修訂條件。
70.	本條例第 403 條	施加條件。
71.	《公司 (清盤及雜項條文) 條例》(第 32 章) 第 38A(1) 條	拒絕發出豁免證明書；施加條件。 (由 2012 年第 28 號第 912 及 920 條修訂)
72.	《公司 (清盤及雜項條文) 條例》(第 32 章) 第 342A(1) 條	拒絕發出豁免證明書；施加條件。 (由 2012 年第 28 號第 912 及 920 條修訂)
73.	《證券及期貨 (在證券市場上市) 規則》(第 571 章，附屬法例 V) 第 6(2) 條	反對某項證券上市。(由 2002 年第 231 號法律公告增補)
74.	《證券及期貨 (在證券市場上市) 規則》(第 571 章，附屬法例 V) 第 6(3)(b) 條	施加條件。(由 2002 年第 231 號法律公告增補)

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Item	Provision	Description of decision
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 (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)	Refusal to issue a certificate of exemption, or imposition of any condition. (Amended 28 of 2012 ss. 912 & 920)
72.	Section 342A(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)	Refusal to issue a certificate of exemption, or imposition of any condition. (Amended 28 of 2012 ss. 912 & 920)
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)



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附表 8 —— 第 2 部

項	條文	決定的描述
75.	《證券及期貨(權益披露——證券借貸)規則》(第 571 章, 附屬法例 X) 第 8(3) 條	拒絕核准某法團作為核准借出代理人。(由 2002 年第 231 號法律公告增補)
76.	《證券及期貨(權益披露——證券借貸)規則》(第 571 章, 附屬法例 X) 第 8(4) 條	施加條件。(由 2002 年第 231 號法律公告增補)
77.	《證券及期貨(權益披露——證券借貸)規則》(第 571 章, 附屬法例 X) 第 8(6) 條	撤回核准。(由 2002 年第 231 號法律公告增補)
78.	《證券及期貨(合約限量及須申報的持倉量)規則》(第 571 章, 附屬法例 Y) 第 4(4)(c) 條	拒絕發出通知。(由 2002 年第 231 號法律公告增補)

## 第 2 分部 —— 金融管理專員作出的指明決定

Schedule 8—Part 2

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Cap. 571

Item	Provision	Description of decision
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. <i>(Added L.N. 231 of 2002)</i>
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. <i>(Added L.N. 231 of 2002)</i>
77.	Section 8(6) of the Securities and Futures (Disclosure of Interests-Securities Borrowing and Lending) Rules (Cap. 571 sub. leg. X)	Withdrawal of an approval. <i>(Added L.N. 231 of 2002)</i>
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. <i>(Added L.N. 231 of 2002)</i>

## Division 2—Specified Decisions Made by Monetary Authority

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第 571 章

附表 8 —— 第 2 部

項	條文	決定的描述
1.	《銀行業條例》(第 155 章) 第 58A(1)(c) 或 (d) 條	將有關人士的有關資料自紀錄冊刪除或暫時中止載在紀錄冊中。
2.	《銀行業條例》(第 155 章) 第 71C(1) 條	拒絕給予同意。
3.	《銀行業條例》(第 155 章) 第 71C(2)(b) 條	附加任何條件。
4.	《銀行業條例》(第 155 章) 第 71C(4)(c) 或 (d) 條	撤回或暫時撤回同意。
5.	《銀行業條例》(第 155 章) 第 71C(9) 條	附加或修訂任何條件。
6.	《銀行業條例》(第 155 章) 第 71E(3) 條	附加或修訂任何條件。
7.	本條例第 203A(1)(a)、(b) 或 (c) 條	行使權力，公開地或非公開地譴責某人、向某人施加禁止，或命令繳付罰款。(由 2014 年第 6 號第 54 條增補)

## 第 3 分部 —— 證監會或認可投資者賠償公司作出的指明決定

Schedule 8—Part 2

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Cap. 571

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.
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. (Added 6 of 2014 s. 54)

## Division 3—Specified Decisions Made by Commission or Recognized Investor Compensation Company

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第 571 章

附表 8 —— 第 2 部

項	條文	決定的描述
1.	《證券及期貨(投資者賠償——申索)規則》(第 571 章, 附屬法例 T) 第 4(4) 條	拒絕裁定沒有在《證券及期貨(投資者賠償——申索)規則》(第 571 章, 附屬法例 T) 第 4(3) 條訂定的限期內提交的申索並非禁止提出。(由 2002 年第 231 號法律公告增補)
2.	《證券及期貨(投資者賠償——申索)規則》(第 571 章, 附屬法例 T) 第 7(1)(a)、(b) 或 (c) 條	是否犯有違責、違責的日期或申索人是否有權獲得賠償的裁定。(由 2002 年第 231 號法律公告增補)
3.	《證券及期貨(投資者賠償——申索)規則》(第 571 章, 附屬法例 T) 第 7(2) 條	暫定賠償款額的裁定。(由 2002 年第 231 號法律公告增補)
4.	《證券及期貨(投資者賠償——申索)規則》(第 571 章, 附屬法例 T) 第 9(3) 條	將獨立申索或該等申索的某些部分合併計算。(由 2002 年第 231 號法律公告增補)

Schedule 8—Part 2

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Cap. 571

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)

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附表 8 —— 第 3 部

Schedule 8—Part 3

S8-48  
Cap. 571**第 3 部****第 1 分部 —— 本條例第 217(3)(b) 條提述的指明決定**

項	指明決定的描述	條文
1.	第 2 部第 1 分部第 41 或 43 項所列的指明決定。	本條例第 146(10) 條。
2.	第 2 部第 1 分部第 45 或 46 項所列的指明決定。	本條例第 147(8) 條。

**第 2 分部 —— 本條例第 218(4)(a) 條提述的指明決定**

項	指明決定的描述	條文
1.	第 2 部第 1 分部第 56 或 57 項所列的指明決定。	《銀行業條例》(第 155 章) 第 58A(1) 及 71C(4) 條。

**第 3 分部 —— 本條例第 218(4)(b) 條提述的指明決定**

項	指明決定的描述	條文
1.	第 2 部第 2 分部第 1 或 4 項所列的指明決定。	本條例第 196(1) 及 (2) 條。

**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.

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附表 8 —— 第 3 部

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Cap. 571**第 4 分部 —— 本條例第 232(1) 條提述的指明決定**

項	指明決定的描述	條文
1.	第 2 部第 1 分部第 41 或 43 項所列的指明決定。	本條例第 146(10) 條。
2.	第 2 部第 1 分部第 45 或 46 項所列的指明決定。	本條例第 147(8) 條。

**第 5 分部 —— 本條例第 232(2) 條提述的指明決定**

項	指明決定的描述	條文
1.	第 2 部第 1 分部第 3 項所列的指明決定。	本條例第 97(2) 條。
2.	第 2 部第 1 分部第 4 項所列的指明決定。	本條例第 98(6) 條。
2A.	第 2 部第 1 分部第 4E 項所列的指明決定。	本條例第 101J(7) 條。(由 2014 年第 6 號第 54 條增補)
2B.	第 2 部第 1 分部第 4F 項所列的指明決定。	本條例第 101J(8) 條。(由 2014 年第 6 號第 54 條增補)
2A.	第 2 部第 1 分部第 15D 項所列的指明決定。	本條例第 112ZF(4) 條。(由 2016 年第 16 號第 22 條增補)
2B.	第 2 部第 1 分部第 15E 項所列的指明決定。	本條例第 112ZF(4) 條。(由 2016 年第 16 號第 22 條增補)

**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.
2A.	A specified decision set out in item 4E of Division 1 of Part 2.	Section 101J(7) of this Ordinance. (Added 6 of 2014 s. 54)
2B.	A specified decision set out in item 4F of Division 1 of Part 2.	Section 101J(8) of this Ordinance. (Added 6 of 2014 s. 54)
2A.	A specified decision set out in item 15D of Division 1 of Part 2.	Section 112ZF(4) of this Ordinance. (Added 16 of 2016 s. 22)



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附表 8 —— 第 3 部

項	指明決定的描述	條文
2C.	第 2 部第 1 分部第 15L 項所列的指明決定。	本條例第 112ZJ(5) 條。(由 2016 年第 16 號第 22 條增補)
2D.	第 2 部第 1 分部第 15M 項所列的指明決定。	本條例第 112ZJ(7) 條。(由 2016 年第 16 號第 22 條增補)
3.	第 2 部第 1 分部第 17 項所列的指明決定。	本條例第 116(7) 條。
4.	第 2 部第 1 分部第 19 項所列的指明決定。	本條例第 117(4) 條。
5.	第 2 部第 1 分部第 21 項所列的指明決定。	本條例第 119(6) 條。
6.	第 2 部第 1 分部第 24 項所列的指明決定。	本條例第 120(8) 條。
7.	第 2 部第 1 分部第 27 項所列的指明決定。	本條例第 121(6) 條。
8.	第 2 部第 1 分部第 36 項所列的指明決定。	本條例第 132(4) 條。
8A.	第 2 部第 1 分部第 40A 項所列的指明決定。	本條例第 145A(8) 條。(由 2014 年第 6 號第 54 條增補)
9.	第 2 部第 1 分部第 42 項所列的指明決定。	本條例第 146(9) 條。
10.	第 2 部第 1 分部第 41 或 43 項所列的指明決定。	本條例第 146(10) 條。
11.	第 2 部第 1 分部第 44 項所列的指明決定。	本條例第 147(7) 條。
12.	第 2 部第 1 分部第 45 或 46 項所列的指明決定。	本條例第 147(8) 條。
13.	第 2 部第 1 分部第 61 項所列的指明決定。	本條例第 203(3) 條。

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Item	Description of specified decision	Provision
2B.	A specified decision set out in item 15E of Division 1 of Part 2.	Section 112ZF(4) of this Ordinance. (Added 16 of 2016 s. 22)
2C.	A specified decision set out in item 15L of Division 1 of Part 2.	Section 112ZJ(5) of this Ordinance. (Added 16 of 2016 s. 22)
2D.	A specified decision set out in item 15M of Division 1 of Part 2.	Section 112ZJ(7) of this Ordinance. (Added 16 of 2016 s. 22)
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 Part 2.	Section 120(8) of this Ordinance.
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.
8A.	A specified decision set out in item 40A of Division 1 of Part 2.	Section 145A(8) of this Ordinance. (Added 6 of 2014 s. 54)
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.

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附表 8 —— 第 3 部

項	指明決定的描述	條文
14.	第 2 部第 1 分部第 62、63、64 或 65 項所列的指明決定。	本條例第 209(1) 條。
15.	第 2 部第 2 分部第 6 項所列的指明決定。	《銀行業條例》(第 155 章)第 71E(4) 條。
16.	第 2 部第 1 分部第 73 項所列的指明決定。	《證券及期貨 (在證券市場上市) 規則》(第 571 章, 附屬法例 V) 第 6(5) 條。(由 2002 年第 231 號法律公告增補)
17.	第 2 部第 1 分部第 74 項所列的指明決定。	《證券及期貨 (在證券市場上市) 規則》(第 571 章, 附屬法例 V) 第 6(5) 條。(由 2002 年第 231 號法律公告增補)

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Item	Description of specified decision	Provision
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). ( <i>Added L.N. 231 of 2002</i> )
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). ( <i>Added L.N. 231 of 2002</i> )

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第 571 章附表 9  
第 1 條Schedule 9  
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## 附表 9

[ 第 251、252、253、256、  
269、307H、307I、307M 及  
307X 條 ]

(由 2012 年第 9 號第 13 條修訂)

## 市場失當行為審裁處

(格式變更——2012 年第 2 號編輯修訂紀錄)

1. 在本附表中，除文意另有所指外——
- 一方** (party) 就研訊程序而言，指——
- (a) 證監會；或
  - (b) 在研訊程序中被識辨的人；(由 2012 年第 9 號第 13 條代替)

(由 2012 年第 9 號第 28 條增補)

**主席** (chairman) 指審裁處主席；**成員** (member) 指審裁處成員；**法官** (judge) 具有本條例第 245(1) 條給予該詞的涵義；**研訊程序** (proceedings) 指根據本條例第 252 條提起的研訊程序或關於披露的研訊程序；(由 2012 年第 9 號第 13 條修訂)**被識辨的人** (identified person) 就——

- (a) 根據本條例第 252 條提起的研訊程序而言，指根據第 13(b) 條在第 13 條描述的就該程序而作的陳述中被指明身分的人；
- (b) 關於披露的研訊程序而言，指根據第 14A(b) 條在第 14A 條描述的就該程序而作的陳述中被指明身分的人；(由 2012 年第 9 號第 13 條增補)

**提控官** (Presenting Officer) 具有本條例第 245(1) 條給予該詞的涵義；

## Schedule 9

[ss. 251, 252, 253, 256, 269,  
307H, 307I, 307M & 307X]

(Amended 9 of 2012 s. 13)

## Market Misconduct Tribunal

(Format changes—E.R. 2 of 2012)

1. In this Schedule, unless the context otherwise requires—
- chairman** (主席) means the chairman of the Tribunal;
- identified person** (被識辨的人) means—
- (a) for proceedings instituted under section 252 of this Ordinance, a person whose identity is specified under section 13(b) in the statement for the proceedings as described in section 13;
  - (b) for disclosure proceedings, a person whose identity is specified under section 14A(b) in the statement for the proceedings as described in section 14A; (Added 9 of 2012 s. 13)
- judge** (法官) has the meaning assigned to it by section 245(1) of this Ordinance;
- member** (成員) means a member of the Tribunal;
- ordinary member** (普通成員) means a member other than the chairman;
- party** (一方), in relation to proceedings, means—
- (a) the Commission; or
  - (b) any identified person for the proceedings; (Replaced 9 of 2012 s. 13)

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**普通成員** (ordinary member) 指並非主席的成員；  
**審裁處** (Tribunal) 具有本條例第 245(1) 條給予該詞的涵義。

(Added 9 of 2012 s. 28)

**Presenting Officer** (提控官) has the meaning assigned to it by section 245(1) of this Ordinance;

**proceedings** (研訊程序) means proceedings instituted under section 252 of this Ordinance or disclosure proceedings;  
(Amended 9 of 2012 s. 13)

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

### 成員的委任

### Appointment of Members

2. 主席由行政長官按終審法院首席法官所作建議而委任。
3. 在不抵觸第 6、7 及 9 條的條文下，主席的任期為 3 年，或獲委任就指明的研訊程序行事，並可在本條例其他條文的規限下不時獲再度委任。
4. 普通成員由行政長官委任。
5. 在不抵觸第 6 及 8 條的條文下，普通成員獲委任就指明的研訊程序行事，並可在本條例其他條文的規限下不時獲再度委任。

2. The chairman shall be appointed by the Chief Executive on the recommendation of the Chief Justice.
3. Subject to sections 6, 7 and 9, the chairman shall be appointed for a term of 3 years or appointed to act in relation to any specified proceedings, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.
4. The ordinary members shall be appointed by the Chief Executive.
5. Subject to sections 6 and 8, an ordinary member shall be appointed to act in relation to any specified proceedings, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

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第 6 條Schedule 9  
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6. 成員可隨時以書面通知行政長官而辭職。
7. 行政長官可基於主席喪失履行職務能力、破產、疏於職守、有利益衝突或行為失當的理由，而在諮詢終審法院首席法官後藉書面通知將主席免任。
8. 行政長官可基於某普通成員喪失履行職務能力、破產、疏於職守、有利益衝突或行為失當的理由，而藉書面通知將該成員免任。
9. 由審裁處展開的研訊程序如在主席任期屆滿之前仍未完成，行政長官可授權他繼續擔任主席，以完成該程序。

6. A member may at any time resign his office by notice in writing to the Chief Executive.
7. The Chief Executive, after consultation with the Chief Justice, may by notice in writing remove the chairman from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.
8. The Chief Executive may by notice in writing remove an ordinary member from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.
9. If any proceedings have been commenced by the Tribunal but not completed before the expiry of the chairman's term of office, the Chief Executive may authorize the chairman to continue to act as the chairman for the purpose of completing the proceedings.

#### 委任代替普通成員的人

#### Appointment of Persons to Replace Ordinary Members

10. 在不抵觸第 11 條的條文下，如某普通成員已死亡、根據第 6 條辭職或根據第 8 條被免任，則行政長官可委任一名不是公職人員的人代替該普通成員，而該人可在本條例其他條文的規限下不時獲再度委任。

10. Subject to section 11, the Chief Executive may appoint a person, who is not a public officer, to replace an ordinary member if the ordinary member has died, or has resigned from office under section 6 or has been removed from office under section 8, and the person may, subject to the other provisions of this Ordinance, from time to time be reappointed.



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第 11 條Schedule 9  
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11. 除非符合以下條件，否則行政長官不得根據第 10 條委任某人代替審裁處某普通成員 ——
- (a) 審裁處主席已在顧及公正原則後建議應如此委任該人；及
  - (b) 審裁處主席已給予以下的人合理的陳詞機會 ——
    - (i) 在有關研訊程序中被識辨的人；及 (由 2012 年第 9 號第 13 條代替)
    - (ii) 就有關研訊程序委任的提控官。

12. 根據第 10 條獲委任代替某普通成員的人就所有目的而言，須當作該普通成員。

### 為提起研訊程序而作的陳述

13. 證監會根據本條例第 252(2) 條發出的通知須載有的陳述，須指明 —— (由 2012 年第 9 號第 28 條修訂)
- (a) 依據本條例第 XIII 部哪項或哪些條文，指某人看來曾作出構成市場失當行為的行為；及
  - (b) 該人的身分，及足以披露關於上述行為的性質及要素的合理資料的概要。

11. The Chief Executive shall not appoint a person to replace an ordinary member of the Tribunal under section 10 unless the chairman of the Tribunal—
- (a) has recommended that a person should be so appointed having regard to the interests of justice; and
  - (b) has given a reasonable opportunity of being heard to—
    - (i) any identified person for the proceedings; and (Replaced 9 of 2012 s. 13)
    - (ii) the Presenting Officer appointed for the proceedings.

12. A person appointed to replace an ordinary member under section 10 shall be deemed for all purposes to be the ordinary member.

### Statements for Institution of Proceedings

13. The statement required to be contained in a notice given by the Commission under section 252(2) of this Ordinance shall specify— (Amended 9 of 2012 s. 28)
- (a) the provision or provisions of Part XIII of this Ordinance by reference to which any person appears to have perpetrated any conduct which constitutes market misconduct; and
  - (b) the identity of the person, and such brief particulars as are sufficient to disclose reasonable information concerning the nature and essential elements of the market misconduct.

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14. 如證監會覺得依據本條例第 XIII 部某些條文，某人可能曾作出構成市場失當行為的行為，則第 13 條描述的陳述可逐一或以交替形式依據該等條文指明該等行為。

(由 2012 年第 9 號第 28 條修訂)

- 14A. 證監會根據本條例第 307I(2) 條發出的通知須載有的陳述，須指明——

- (a) 根據本條例第 XIVA 部哪項或哪些條文，指某人看來違反披露規定；及
- (b) 該人的身分，及足以披露關於上述違反的性質及要素的合理資料的概要。

(由 2012 年第 9 號第 13 條增補)

15. 在根據本條例第 252 條提起的研訊程序進行期間，審裁處可隨時命令提控官按審裁處認為適當的方式，修訂第 13 條描述的就該程序而作的陳述，但——

- (a) 不得修訂在該程序中被識辨的人的身分；及
- (b) 在修訂作出後，該陳述中指明屬任何市場失當行為的標的的金融產品，須維持與該陳述中原來指明屬該市場失當行為的標的的金融產品相同。

(由 2012 年第 9 號第 13 條代替)

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

(Amended 9 of 2012 s. 28)

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

- (a) the provision or provisions of Part XIVA of this Ordinance by reference to which a person appears to be in breach of a disclosure requirement; and
- (b) the identity of the person, and brief particulars that are sufficient to disclose reasonable information concerning the nature and essential elements of the breach.

(Added 9 of 2012 s. 13)

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

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

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which is the subject of the market misconduct originally specified in the statement.

*(Replaced 9 of 2012 s. 13)*

15A. 在關於披露的研訊程序進行期間，審裁處可隨時命令提控官按審裁處認為適當的方式，修訂第 14A 條描述的就該程序而作的陳述，但不得修訂在該程序中被識辨的人的身分。

*(由 2012 年第 9 號第 13 條增補)*

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

*(Added 9 of 2012 s. 13)*

16. 為免生疑問——

- (a) 審裁處具有可按根據第 15 條修訂的陳述而行使的司法管轄權，一如其可按第 13 條描述的陳述而行使的司法管轄權；及
- (b) 審裁處具有可按根據第 15A 條修訂的陳述而行使的司法管轄權，一如其可按第 14A 條描述的陳述而行使的司法管轄權。

*(由 2012 年第 9 號第 13 條代替)*

16. To avoid doubt—

- (a) the Tribunal has jurisdiction exercisable by reference to a statement as amended under section 15 in the same manner as it has jurisdiction exercisable by reference to a statement described in section 13; and
- (b) the Tribunal has jurisdiction exercisable by reference to a statement as amended under section 15A in the same manner as it has jurisdiction exercisable by reference to a statement described in section 14A.

*(Replaced 9 of 2012 s. 13)*

17. 儘管本條例第 XIII 或 XIVA 部有任何規定——

17. Despite anything in Part XIII or XIVA of this Ordinance—

- (a) unless the identity of a person is specified under section 13(b) in a statement as described in section 13 for

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第 18 條Schedule 9  
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- (a) 除非在第 13 條描述的為根據本條例第 252 條提起的研訊程序而作的陳述中某人的身分根據第 13(b) 條而被指明，否則 ——
- (i) 不得在該等程序中，根據本條例第 252(3)(b) 條識辨該人曾從事市場失當行為；及
  - (ii) 不得在該等程序中，根據本條例第 257 或 258 條就該人作出命令；及
- (b) 除非在第 14A 條描述的為關於披露的研訊程序而作的陳述中某人的身分根據第 14A(b) 條而被指明，否則 ——
- (i) 不得在該等程序中，根據本條例第 307J(1)(b) 條識辨該人為違反披露規定；及
  - (ii) 不得在該等程序中，根據本條例第 307N 條就該人作出命令。

*(由 2012 年第 9 號第 13 條代替)*

18. 任何在研訊程序中被識辨的人，須按審裁處指示的方式，獲提供如第 13 或 14A 條（視屬何情況而定）所描述而識辨他們的陳述的文本；又如該陳述根據第 15 或 15A 條被修訂，則該人須按審裁處指示的方式，獲提供被如此修訂的該陳述的文本。

*(由 2012 年第 9 號第 13 條代替)*

any proceedings instituted under section 252 of this Ordinance—

- (i) the person must not be identified in those proceedings under section 252(3)(b) of this Ordinance as having engaged in market misconduct; and
  - (ii) an order must not be made in those proceedings under section 257 or 258 of this Ordinance in respect of the person; and
- (b) unless the identity of a person is specified under section 14A(b) in a statement as described in section 14A for any disclosure proceedings—
- (i) the person must not be identified in those proceedings under section 307J(1)(b) of this Ordinance as being in breach of a disclosure requirement; and
  - (ii) an order must not be made in those proceedings under section 307N of this Ordinance in respect of the person.

*(Replaced 9 of 2012 s. 13)*

18. Any identified person for proceedings is to be provided with a copy of the statement identifying them as described in section 13 or 14A (as the case may be) and, if the statement has been amended under section 15 or 15A, of the statement as so amended, in the manner directed by the Tribunal.

*(Replaced 9 of 2012 s. 13)*

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第 19 條Schedule 9  
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19. 在進行根據本條例第 252 條提起的研訊程序後，凡審裁處覺得因任何人的行為而曾發生或可能發生市場失當行為，審裁處如認為適當，可在它根據本條例第 262(1) 條就該程序擬備的報告中，向證監會建議根據本條例第 252 條就該事宜提起研訊程序。

(由 2012 年第 9 號第 28 條修訂)

- 19A. 在進行關於披露的研訊程序後，如審裁處覺得因任何人的行為而曾發生或可能曾發生違反披露規定，審裁處如認為適當，可在其根據本條例第 307Q(1) 條就該程序擬備的報告中，向證監會建議就該事宜提起關於披露的研訊程序。

(由 2012 年第 9 號第 13 條增補)

20. 在第 15 條中，**金融產品** (financial product) 指 ——
- (a) (如有關市場失當行為是內幕交易) 本條例第 245(2) 條界定的上市證券或上市證券衍生工具；或
  - (b) (如有關市場失當行為是任何其他市場失當行為) 本條例附表 1 界定的證券或期貨合約。

提控官

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

(Amended 9 of 2012 s. 28)

- 19A. After the conduct of any disclosure proceedings, where it appears to the Tribunal that a breach of a disclosure requirement has or may have taken place by reference to the conduct of any person, it may, where it considers appropriate, include in the report prepared by it in respect of the proceedings under section 307Q(1) of this Ordinance, a recommendation to the Commission to institute disclosure proceedings concerning the matter.

(Added 9 of 2012 s. 13)

20. In section 15, **financial product** (金融產品) means—
- (a) where the market misconduct in question is an insider dealing, listed securities or derivatives of listed securities as defined in section 245(2) of this Ordinance; or
  - (b) where the market misconduct in question is any other market misconduct, securities or futures contracts as defined in Schedule 1 to this Ordinance.

Presenting Officer



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附表 9  
第 21 條

21. 在不損害本條例第 XIII 部授予提控官的權力及職能的原則下，在任何根據本條例第 252 條提起的研訊程序中，提控官——(由 2012 年第 9 號第 13 條修訂)
- (a) 代表證監會；及
  - (b) 須向審裁處提交證監會可得的任何證據，包括審裁處要求該提控官提交的證據，以及作出陳詞，以使審裁處能夠就是否曾有市場失當行為發生及(如有的話)該行為的性質，作出有根據的決定。(由 2012 年第 9 號第 28 條代替)
- 21A. 在不損害本條例第 XIII 或 XIVA 部授予提控官的權力及職能的原則下，提控官在關於披露的研訊程序中——
- (a) 代表證監會；及
  - (b) 須向審裁處提交證監會可得的任何證據，包括審裁處要求提控官提交的證據，及作出陳詞，以使審裁處能夠就曾否發生違反披露規定及(如有的話)該項違反的性質，作出有根據的決定。
- (由 2012 年第 9 號第 13 條增補)
22. 證監會可隨時更換提控官或獲委任協助提控官的人。
- (由 2012 年第 9 號第 28 條修訂)

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21. Without prejudice to a Presenting Officer's powers and functions under Part XIII of this Ordinance, in any proceedings instituted under section 252 of this Ordinance, the Presenting Officer— (*Amended 9 of 2012 s. 13*)
- (a) represents the Commission; and
  - (b) must present to the Tribunal any evidence available to the Commission, including any evidence that the Tribunal requests the Presenting Officer to present, and make any submissions, that will enable the Tribunal to reach an informed decision as to whether market misconduct has taken place and, if so, the nature of the market misconduct. (*Replaced 9 of 2012 s. 28*)
- 21A. Without prejudice to a Presenting Officer's powers and functions under Part XIII or XIVA of this Ordinance, in any disclosure proceedings, the Presenting Officer—
- (a) represents the Commission; and
  - (b) must present to the Tribunal any evidence available to the Commission, including any evidence that the Tribunal requests the Presenting Officer to present, and make any submissions, that will enable the Tribunal to reach an informed decision as to whether a breach of a disclosure requirement has taken place and, if so, the nature of the breach.
- (*Added 9 of 2012 s. 13*)
22. The Commission may at any time replace a Presenting Officer or any person appointed to assist a Presenting Officer.

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第 571 章附表 9  
第 23 條Schedule 9  
Section 23S9-20  
Cap. 571*(Amended 9 of 2012 s. 28)***聆訊**

23. 主席須為聆聽和裁定研訊程序所引起或在與該程序有關連的情況下產生的任何問題或爭議點，而召開所需的審裁處聆訊。
24. 除第 25 條另有規定外 ——
- (a) 主席及 2 名普通成員須出席審裁處任何聆訊；
  - (b) 審裁處任何聆訊均由主席主持；及
  - (c) 在審裁處任何聆訊中，每項有待審裁處裁定的問題，均取決於成員的多數意見，但法律問題須由主席單獨裁定。
25. 在主席根據第 36 條就任何由他以審裁處單一成員身分單獨裁定的事宜而進行的聆訊中，只有主席須出席，而每項有待審裁處裁定的問題，均由他裁定。
26. 審裁處所有聆訊均須公開進行，但如審裁處 ——
- (a) 主動；或
  - (b) 應以下的人提出的申請 ——
    - (i) 在有關的研訊程序中被識辨的人；或 (由 2012 年第 9 號第 13 條代替)

**Sittings**

23. The chairman shall convene such sittings of the Tribunal as are necessary to hear and determine any question or issue arising out of or in connection with the proceedings.
24. Subject to section 25, at any sitting of the Tribunal—
- (a) the chairman and 2 ordinary members shall be present;
  - (b) the chairman shall preside; and
  - (c) every question before the Tribunal shall be determined by the opinion of the majority of the members except a question of law which shall be determined by the chairman alone.
25. At any sitting of the Tribunal held in respect of any matter which is determined by the chairman alone as the sole member of the Tribunal under section 36, the chairman only shall be present, and every question before the Tribunal shall be determined by him.
26. Every sitting of the Tribunal shall be held in public unless the Tribunal—
- (a) on its own motion; or
  - (b) on the application of—

S9-21  
第 571 章附表 9  
第 27 條Schedule 9  
Section 27S9-22  
Cap. 571

(ii) 就有關研訊程序委任的提控官，  
裁定為公正起見，某次聆訊或其中任何部分不得公開進行，  
則該次聆訊或該部分聆訊（視屬何情況而定）可閉門進行。

- (i) any identified person for the proceedings; or  
(*Replaced 9 of 2012 s. 13*)  
(ii) the Presenting Officer appointed for the  
proceedings,

determines that in the interests of justice a sitting or any part  
thereof shall not be held in public in which case it may hold the  
sitting or the part thereof (as the case may be) in private.

27. 凡有人依據第 26 條申請裁定某次聆訊或其中任何部分不得公  
開進行，該申請的聆訊須閉門進行。

27. Where an application is made pursuant to section 26 for a  
determination that a sitting or any part thereof shall not be held in  
public, any hearing of the application shall be held in private.

28. 在任何與任何研訊程序有關的審裁處聆訊中，在該程序中被  
識辨的人有權——（由 2012 年第 9 號第 13 條修訂）

28. At any sitting of the Tribunal relating to any proceedings,  
an identified person for the proceedings is entitled to be  
heard— (*Amended 9 of 2012 s. 13*)

- (a) 親自陳詞，就法團而言，可由該法團的高級人員或  
僱員陳詞；及  
(b) 由大律師或律師陳詞，或在審裁處許可下，由任何  
其他人陳詞。

- (a) in person or, in the case of a corporation, through an  
officer or employee of the corporation; and  
(b) through counsel or a solicitor or, with the leave of the  
Tribunal, through any other person.

29. 主席須在審裁處的聆訊中擬備或安排擬備研訊程序的紀錄，  
該紀錄須載有他認為適當而與該程序有關的詳情。

29. The chairman shall prepare or cause to be prepared a record of the  
proceedings at any sitting of the Tribunal, which shall contain such  
particulars relating to the proceedings as he considers appropriate.

### 初步會議及同意令

### Preliminary Conferences and Consent Orders

S9-23  
第 571 章附表 9  
第 30 條

30. 在研訊程序提起後的任何時間，主席可 —— (由 2012 年第 9 號第 13 條修訂)

- (a) 主動或應以下的人提出的申請 ——
  - (i) 在有關的研訊程序中被識辨的人；或 (由 2012 年第 9 號第 13 條代替)
  - (ii) 就該程序委任的提控官；
- (b) 在經考慮依據 (a)(i) 或 (ii) 段有權提出申請的任何人就該程序呈交審裁處的任何材料而認為作出以下指示是適當的情況下；及
- (c) 在所有依據 (a)(i) 或 (ii) 段有權提出但沒有提出申請的人同意的情況下，

指示為以下目的舉行會議，由該程序的各方或其代表出席，並由主席主持 ——

- (i) 使各方能夠準備進行該程序；
- (ii) 協助審裁處為該程序的目的就爭議點作出裁定；及
- (iii) 一般而言，使該程序得以在公正、迅速和合乎經濟原則的情況下進行。

31. 在按照主席根據第 30 條作出的指示而舉行會議時，主席可 ——

Schedule 9  
Section 30S9-24  
Cap. 571

30. At any time after any proceedings have been instituted, the chairman may— (*Amended 9 of 2012 s. 13*)

- (a) on his own motion or on the application of—
  - (i) any identified person for the proceedings; or (*Replaced 9 of 2012 s. 13*)
  - (ii) the Presenting Officer appointed for the proceedings;
- (b) if he considers it appropriate to do so, after consideration of any material that has been submitted to the Tribunal in relation to the proceedings by any person who is entitled to make an application pursuant to paragraph (a)(i) or (ii); and
- (c) if all persons who are entitled to make, but have not made, an application pursuant to paragraph (a)(i) or (ii) agree,

direct that a conference, to be attended by the parties to the proceedings or their representatives and presided over by the chairman, shall be held for the purposes of—

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

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

S9-25  
第 571 章

附表 9  
第 32 條

Schedule 9  
Section 32

S9-26  
Cap. 571

- (a) 給予他認為為使有關研訊程序得以在公正、迅速和合乎經濟原則的情況下進行而屬有需要或可取的指示；及
- (b) 設法確保有關研訊程序的各方就該程序作出所有他們按理應作出的協議。

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

32. 在按照主席根據第 30 條作出的指示而舉行會議後，主席須向審裁處報告關乎該會議而他認為適當的事宜。

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

32A. 在研訊程序提起後，但在審裁處舉行聆訊以聆聽和裁定該程序所引起或與該程序有關連的問題或爭議點前（按照主席根據第 30 條作出的指示而舉行的會議除外），證監會可將有關撤回或終止研訊的書面通知送達以下人士，藉以撤回或終止該研訊或其任何部分——（由 2012 年第 9 號第 13 條修訂）

32A. At any time after proceedings have been instituted but before any sitting of the Tribunal is held to hear and determine any question or issue arising out of or in connection with the proceedings (other than a conference held in accordance with a direction of the chairman under section 30), the Commission may withdraw or discontinue the proceedings, or any part of them, by serving written notice of withdrawal or discontinuance on— (*Amended 9 of 2012 s. 13*)

- (a) 在該項遭撤回或遭終止的研訊或研訊的部分的一方；及
- (b) 審裁處。

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

(由 2012 年第 9 號第 28 條增補)

(*Added 9 of 2012 s. 28*)

33. 在研訊程序提起後，如——（由 2012 年第 9 號第 13 條修訂）

33. At any time after any proceedings have been instituted, the



S9-27  
第 571 章附表 9  
第 34 條Schedule 9  
Section 34S9-28  
Cap. 571

(a) 該程序的各方請求並同意審裁處或主席根據本條作出以下命令；及

(b) 該程序的各方同意以下命令的所有條款，  
審裁處或主席（視屬何情況而定）可作出他根據本條例任何條文有權作出的命令，不論是否已符合在其他方面適用於該命令的規定。

34. 不論本條例第 XIII 部或第 XIVA 部或本附表其他條文有任何規定，凡審裁處或主席根據第 33 條作出任何命令，則該命令就所有目的而言，須視為審裁處或主席（視屬何情況而定）在符合在其他方面適用於該命令的作出的規定的情況下，根據該條文作出的。

(由 2012 年第 9 號第 13 條修訂)

35. 在第 33 及 34 條中，**命令** (order) 包括任何裁斷、裁定及其他決定。

#### 主席作為審裁處單一成員

36. 在研訊程序提起後但在審裁處舉行聆訊以聆聽和裁定該程序所引起或與該程序有關連的問題或爭議點前，如該程序的各方藉給予審裁處書面通知，告知審裁處他們同意任何該等問題或爭議點可由主席以審裁處單一成員身分單獨裁定，則主席可以審裁處單一成員身分裁定該問題或爭議點。

(由 2012 年第 9 號第 13 條修訂)

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— (*Amended 9 of 2012 s. 13*)

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

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

(*Amended 9 of 2012 s. 13*)

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

#### Chairman as Sole Member of Tribunal

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

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第 571 章附表 9  
第 37 條Schedule 9  
Section 37S9-30  
Cap. 571

may determine the question or issue as the sole member of the Tribunal.

*(Amended 9 of 2012 s. 13)*

37. 如第 36 條適用，則由主席以審裁處單一成員身分構成的審裁處，就所有目的而言，須視為連同 2 名普通成員構成的審裁處。

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

38. 主席在根據第 36 條作出任何裁定後，須向審裁處報告作出該裁定、作出該裁定的理由及關乎該裁定而他認為適當的事宜。

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

### 雜項條文

### Miscellaneous

39. 除本條例另有規定外，審裁處及其成員、任何提控官，以及在研訊程序中的任何一方、證人、大律師、律師或所涉及的其他人，就該程序享有的特權和豁免權，與假若該程序是在原訟法庭進行的民事法律程序他們便會享有的一樣。

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

40. 審裁處可隨時 ——  
(a) 將研訊程序合併；或  
(b) 命令研訊程序須予同時聆訊。

40. The Tribunal may, at any time—  
(a) consolidate proceedings; or  
(b) order that proceedings be heard together.

*(由 2012 年第 9 號第 13 條增補)*

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第 571 章

附表 9  
第 40 條

Schedule 9  
Section 40

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Cap. 571

(編輯修訂——2012 年第 2 號編輯修訂紀錄)

(Added 9 of 2012 s. 13)

S10-1  
第 571 章

附表 10 —— 第 1 部  
第 1 條

Schedule 10—Part 1  
Section 1

S10-2  
Cap. 571

## 附表 10

[ 第 237、240、242、406、  
407、408 及 409 條 ]

### 保留、過渡性、相應及有關條文等

( 格式變更 — 2012 年第 2 號編輯修訂紀錄 )

#### 第 1 部

#### 保留條文，及過渡性及補充安排

##### 第 1 部的釋義

1. 本部條文的標題並無立法效力，亦不在任何方面更改、限制或擴大本部任何條文的釋義。

#### 本條例第 II 部 ( 證券及期貨事務監察委員會 )

2. 在不損害本條例第 3 條的原則下 —
  - (a) 任何在本條例第 II 部生效前由證監會根據或憑藉已廢除的《證券及期貨事務監察委員會條例》作出的或就證監會而根據或憑藉該條例作出的、且在緊接該部生效前具有效力的事情，在該事情是可在該部生效後根據或憑藉該部任何條文作出的範圍內，在該部生效時繼續有效，並當作已根據或憑藉該條文作出；
  - (b) 任何在緊接本條例第 II 部生效前正由證監會根據或憑藉已廢除的《證券及期貨事務監察委員會條例》進

## Schedule 10

[ss. 237, 240, 242, 406, 407,  
408 & 409]

### Savings, Transitional, Consequential and Related Provisions, etc.

(Format changes—E.R. 2 of 2012)

#### 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;

S10-3  
第 571 章附表 10 —— 第 1 部  
第 2 條

行的或正就證監會而根據或憑藉該條例進行的事情，在該事情是可在該部生效後根據或憑藉該部任何條文作出的範圍內，在該部生效時可根據或憑藉該條文繼續進行；

- (c) 任何在緊接本條例第 II 部生效前擔任證監會的主席、副主席、執行理事或非執行理事職位的人，在該部生效時繼續根據該部及本條例附表 2 擔任相應職位，並當作已按假若本條例未曾制定則本會適用的條款及條件，而根據該部及本條例附表 2 獲委擔任相應職位；
- (d) 在緊接本條例第 II 部生效前根據已廢除的《證券及期貨事務監察委員會條例》第 10 條組成的諮詢委員會，在該部生效時繼續存在，並當作已根據本條例第 7 條及本條例附表 2 組成；
- (e) 任何根據已廢除的《證券及期貨事務監察委員會條例》第 6 條成立並在緊接本條例第 II 部生效前存在的委員會，在該部生效時繼續存在，並當作已根據本條例第 8 條設立；
- (f) 任何在緊接本條例第 II 部生效前擔任 (d) 段提述的諮詢委員會或 (e) 段提述的委員會的委員職位的人，在該部生效時繼續根據該部及本條例附表 2 擔任相應職位，並當作已按假若本條例未曾制定則本會適用的條款及條件，而根據該部及本條例附表 2 獲委擔任相應職位；
- (g) 任何在緊接本條例第 II 部生效前由證監會根據或依據已廢除的《證券及期貨事務監察委員會條例》任何條文僱用或聘用擔任任何職位的人 ((c) 或 (f) 段提述的職位除外)，在該部生效時繼續根據或依據該部受僱或受聘於同一職位，並當作已按假若本條例未曾制定則本會適用的條款及條件，而根據或依據該部受僱或受聘於同一職位。

Schedule 10—Part 1  
Section 2S10-4  
Cap. 571

- (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;



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第 571 章附表 10 —— 第 1 部  
第 3 條Schedule 10—Part 1  
Section 3S10-6  
Cap. 571

- (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.

### 本條例第 III 部 (交易所、結算所及投資者賠償公司)

3. 在第 6 及 9 條中 —

**香港結算公司** (HKSCC) 指根據《有關條例》成立並根據該條例以“香港中央結算有限公司”的名稱註冊的公司；(由 2012 年第 28 號第 912 及 920 條修訂)

**期貨結算公司** (HKFECC) 指根據《有關條例》成立並根據該條例以“香港期貨結算有限公司”的名稱註冊的公司；(由 2012 年第 28 號第 912 及 920 條修訂)

### 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, and registered by the name HKFE Clearing Corporation Limited, under the relevant Ordinance; (Amended 28 of 2012 ss. 912 & 920)

**HKSCC** (香港結算公司) means the company incorporated, and registered by the name Hong Kong Securities Clearing

S10-7  
第 571 章附表 10 —— 第 1 部  
第 4 條Schedule 10—Part 1  
Section 4S10-8  
Cap. 571

**期權結算公司** (SEOCH) 指根據《有關條例》成立並根據該條例以“香港聯合交易所期權結算所有限公司”的名稱註冊的公司。(由 2012 年第 28 號第 912 及 920 條修訂)

Company Limited, under the relevant Ordinance; (*Amended 28 of 2012 ss. 912 & 920*)

**SEOCH** (期權結算公司) means the company incorporated, and registered by the name The SEHK Options Clearing House Limited, under the relevant Ordinance. (*Amended 28 of 2012 ss. 912 & 920*)

4. 在第 10 及 13 條中 —

**交易結算公司** (HKEC) 指根據《有關條例》成立並根據該條例以“香港交易及結算所有限公司”的名稱註冊的公司。(由 2012 年第 28 號第 912 及 920 條修訂)

4. In sections 10 and 13—

**HKEC** (交易結算公司) means the company incorporated, and registered by the name Hong Kong Exchanges and Clearing Limited, under the relevant Ordinance. (*Amended 28 of 2012 ss. 912 & 920*)

5. 在本條例第 III 部第 2 分部生效時 —

- (a) 聯交所及期交所各自當作已根據本條例第 19(2) 條獲認可為交易所公司；
- (b) 在緊接該分部生效前有效的 —
  - (i) 根據已廢除的《證券交易所合併條例》第 34 條 (第 (1)(b) 款除外) 訂立及根據該條例第 35 條獲批准的聯交所規則；及
  - (ii) 根據已廢除的《商品交易條例》第 14 條獲批准的期交所規則，
 在該分部生效時繼續有效，並當作已根據本條例第 23 條訂立並根據本條例第 24(3) 條獲批准；
- (c) 在緊接該分部生效前有效的聯交所章程及期交所章程，在該分部生效時繼續有效，並當作已根據本條例第 24(3) 條獲批准；及

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,

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- (d) 任何在緊接該分部生效前有效的聯交所或期交所的最高行政人員的委任，在該分部生效時繼續有效，並當作已根據本條例第 26 條獲批准。

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. 在本條例第 III 部第 3 分部生效時，香港結算公司、期貨結算公司及期權結算公司各自當作已根據本條例第 37(1) 條獲認可為結算所。

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. 在本條例第 III 部第 3 分部生效前根據或憑藉已廢除的《證券及期貨（結算所）條例》作出的、且在緊接該分部生效前具有效力的任何事情，在該事情是可在該分部生效後根據或憑藉該分部任何條文作出的範圍內，在該分部生效時繼續有效，並當作是根據或憑藉該條文作出的。

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

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to have effect and be deemed to have been done under or by virtue of that provision.

8. 在緊接本條例第 III 部第 3 分部生效前根據或憑藉已廢除的《證券及期貨(結算所)條例》正在進行的任何事情，在該事情是可在該分部生效後根據或憑藉該分部任何條文作出的範圍內，在該分部生效時可根據或憑藉該條文繼續進行。

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. 在不局限第 7 條的一般性的原則下 —

- (a) 在緊接本條例第 III 部第 3 分部生效前根據已廢除的《證券及期貨(結算所)條例》第 4(4) 條刊登並在當時有效的公告，在該分部生效時繼續有效，並當作是本條例第 41(7) 條提述的公告；及
- (b) 在緊接本條例第 III 部第 3 分部生效前有效的香港結算公司規則、期貨結算公司規則及期權結算公司規則如是 —
  - (i) 根據已廢除的《證券及期貨(結算所)條例》第 4(7) 條獲批准的；或
  - (ii) 已根據該條例第 4(5) 條呈交或安排呈交的，在該分部生效時繼續有效，並當作 —
    - (A) (如屬第 (i) 節的情況) 已根據本條例第 41(3) 條獲批准；或
    - (B) (如屬第 (ii) 節的情況) 已根據本條例第 41(2)(b) 條呈交或安排呈交。

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

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第 10 條

Schedule 10—Part 1  
Section 10

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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. 在本條例第 III 部第 4 分部生效時，交易結算公司當作已根據本條例第 59(2) 條獲認可為交易所控制人。

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. 在本條例第 III 部第 4 分部生效前根據或憑藉已廢除的《交易所及結算所 (合併) 條例》作出的、且在緊接該分部生效前具有效力的任何事情，在該事情是可在該分部生效後根據或憑藉該分部任何條文作出的範圍內，在該分部生效時繼續有效，並當作是根據或憑藉該條文作出的。

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. 在緊接本條例第 III 部第 4 分部生效前根據或憑藉已廢除的《交易所及結算所 (合併) 條例》正在進行的任何事情，在該事情是可在該分部生效後根據或憑藉該分部任何條文作出的範圍內，在該分部生效時可根據或憑藉該條文繼續進行。

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



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第 13 條Schedule 10—Part 1  
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in that Division, be continued upon such commencement under or by virtue of that provision.

13. 在不局限第 11 條的一般性的原則下 —

- (a) 在緊接本條例第 III 部第 4 分部生效前根據已廢除的《交易所及結算所 (合併) 條例》第 10(6) 條刊登並在當時有效的公告，在該分部生效時繼續有效，並當作是本條例第 67(7) 條提述的公告；
- (b) 在緊接本條例第 III 部第 4 分部生效前根據已廢除的《交易所及結算所 (合併) 條例》第 10(3) 條獲批准的並在當時有效的交易結算公司的規章，在該分部生效時繼續有效，並當作已根據本條例第 67(3) 條獲批准；
- (c) 任何在緊接本條例第 III 部第 4 分部生效前根據已廢除的《交易所及結算所 (合併) 條例》第 6(2) 條批予並在當時有效的批准，在該分部生效時繼續有效，並當作是根據本條例第 61(1) 條批予的；
- (d) 任何在緊接本條例第 III 部第 4 分部生效前有效的批准某人擔任某認可控制人的主席的職位的行政長官書面批准，在該分部生效時繼續有效，並當作是根據本條例第 69 條給予的；
- (e) 在緊接本條例第 III 部第 4 分部生效前有效的某認可控制人的最高行政人員或最高營運人員的任何委任，在該分部生效時繼續有效，並當作已根據本條例第 70 條獲核准；及
- (f) 根據已廢除的《交易所及結算所 (合併) 條例》第 9 條設立的風險管理委員會，在本條例第 III 部第 4 分部生效時繼續存在，並當作是根據本條例第 65 條設立的。

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

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第 571 章附表 10 —— 第 1 部  
第 14 條Schedule 10—Part 1  
Section 14S10-18  
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## 14. 在 —

- (a) 本條例第 92 條生效前根據或憑藉已廢除的《證券及期貨事務監察委員會條例》第 50 條作出的、且在緊接該條生效前具有效力的任何事情；或
- (b) 本條例第 93 條生效前根據或憑藉已廢除的《證券及期貨事務監察委員會條例》第 51 條作出的、且在緊接該條生效前具有效力的任何事情，

在該事情是可在本條例第 92 或 93 條 (視屬何情況而定) 生效後根據或憑藉本條例第 92 或 93 條作出的範圍內，在本條例第 92 或 93 條 (視屬何情況而定) 生效時繼續有效，並當作是根據或憑藉該條作出的。

## 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).

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第 571 章附表 10 —— 第 1 部  
第 15 條Schedule 10—Part 1  
Section 15S10-20  
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15. 在 —

- (a) 緊接本條例第 92 條生效前根據或憑藉已廢除的《證券及期貨事務監察委員會條例》第 50 條正在進行的任何事情；或
- (b) 緊接本條例第 93 條生效前根據或憑藉已廢除的《證券及期貨事務監察委員會條例》第 51 條正在進行的任何事情，

在該事情是可在本條例第 92 或 93 條 (視屬何情況而定) 生效後根據或憑藉本條例第 92 或 93 條作出的範圍內，在本條例第 92 或 93 條 (視屬何情況而定) 生效時可根據或憑藉該條繼續進行。

#### 本條例第 IV 部 (投資要約)

16. 除第 18 及 19 條另有規定外 —

- (a) 在緊接本條例第 IV 部生效前根據已廢除的《證券條例》第 15 條獲認可為互惠基金法團或單位信託的任何法團或安排；或
- (b) 在緊接本條例第 IV 部生效前依據已廢除的《保障投資者條例》第 4(2)(g) 條獲認可發出的廣告、邀請或文件所關乎的任何項目，

如其名稱在該部生效當日列於證監會為施行本條而發表的名單內，則在該部生效時當作已根據本條例第 104 條獲認可為集體投資計劃，但須受假若本條例未曾制定則本會適用的條件規限。

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

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collective investment scheme, subject to the same conditions as were applicable had this Ordinance not been enacted.

17. 除第 18 及 19 條另有規定外，任何廣告、邀請或文件的發出如在緊接本條例第 IV 部生效前依據已廢除的《保障投資者條例》第 4(2)(g) 條獲認可，則在該部生效時當作已根據本條例第 105 條獲認可，但須受假若本條例未曾制定則本會適用的條件規限。

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. 如在自本條例第 IV 部的生效日期起計的 6 個月內，沒有任何個人依據本條例第 104(3) 或 105(3) 條獲提名，則憑藉第 16 或 17 條具有效力的認可，在該段期間屆滿時不再有效。

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. 如在自本條例第 IV 部的生效日期起計的 6 個月內，有任何個人依據本條例第 104(3) 或 105(3) 條獲提名，則憑藉第 16 或 17 條具有效力的認可，繼續具有效力，直至證監會另作決定為止。

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. 如在本條例第 IV 部生效前有申請提出，要求 —

20. Where an application for—

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第 571 章附表 10 —— 第 1 部  
第 21 條Schedule 10—Part 1  
Section 21S10-24  
Cap. 571

- (a) 根據已廢除的《證券條例》第 15 條認可任何法團或安排為互惠基金法團或單位信託；或
- (b) 依據已廢除的《保障投資者條例》第 4(2)(g) 條認可任何廣告、邀請或文件的發出，

但證監會在該部生效前尚未作最終決定，則在該部生效時，該申請 —

- (i) (如屬(a)段的情況)當作為要求根據本條例第 104 條認可為集體投資計劃的申請；
- (ii) (如屬(b)段的情況)當作為要求根據本條例第 104 條認可為集體投資計劃的申請，或根據本條例第 105 條認可有關廣告、邀請或文件的發出的申請，視乎證監會認為何者適當而定。

21. 依據第 16 條發表的名單不是附屬法例。

### 本條例第 V 部 (發牌及註冊)

並非獲豁免交易商及獲豁免投資顧問  
的法團

22. 在符合第 55 條的規定下，在緊接本條例第 V 部生效前 —

- (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—



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第 571 章附表 10 —— 第 1 部  
第 22 條Schedule 10—Part 1  
Section 22S10-26  
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- (a) 根據已廢除的《證券條例》獲註冊為交易商的法團，在該部生效時當作已根據本條例第 116(1) 條就第 1、4、6 及 9 類受規管活動 (第 9 類須受第 51 條指明的條件規限) 獲發牌；
- (b) 根據已廢除的《證券條例》獲註冊為投資顧問的法團，在該部生效時當作已根據本條例第 116(1) 條就第 4、6 及 9 類受規管活動 (第 9 類須受第 51 條指明的條件規限) 獲發牌；
- (c) 根據已廢除的《證券條例》獲註冊為證券保證金融資人的法團，在該部生效時當作已根據本條例第 116(1) 條就第 8 類受規管活動獲發牌；
- (d) 根據已廢除的《商品交易條例》獲註冊為交易商的法團，在該部生效時當作已根據本條例第 116(1) 條就第 2、5 及 9 類受規管活動 (第 9 類須受第 52 條指明的條件規限) 獲發牌；
- (e) 根據已廢除的《商品交易條例》獲註冊為商品交易顧問的法團，在該部生效時當作已根據本條例第 116(1) 條就第 5 及 9 類受規管活動 (第 9 類須受第 52 條指明的條件規限) 獲發牌；
- (f) 根據已廢除的《槓桿式外匯買賣條例》獲發牌為槓桿式外匯買賣商的法團，在該部生效時當作已根據本條例第 116(1) 條就第 3 類受規管活動獲發牌，

以及當作已遵守本條例第 125(1)(a) 及 (b) 條的規定，而在符合第 53 條的規定下，該法團須在自該部生效日期起計的 2 年內當作如此獲發牌及遵守該等規定。

- (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

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23. 在符合第 55 條的規定下，凡某法團根據第 22 條當作已獲發牌，在緊接本條例第 V 部生效前 —
- (a) 根據已廢除的《證券條例》獲註冊為該法團的交易商並屬個人的該法團董事，在該部生效時當作已根據本條例第 120(1) 條就第 1、4、6 及 9 類受規管活動(第 9 類須受第 51 條指明的條件規限)獲發牌為持牌代表，並當作已隸屬該法團；
  - (b) 根據已廢除的《證券條例》獲註冊為該法團的投資顧問並屬個人的該法團董事，在該部生效時當作已根據本條例第 120(1) 條就第 4、6 及 9 類受規管活動(第 9 類須受第 51 條指明的條件規限)獲發牌為持牌代表，並當作已隸屬該法團；
  - (c) 根據已廢除的《證券條例》獲註冊為該法團的證券保證金融資人代表並屬個人的該法團董事，在該部生效時當作已根據本條例第 120(1) 條就第 8 類受規管活動獲發牌為持牌代表，並當作已隸屬該法團；
  - (d) 根據已廢除的《商品交易條例》獲註冊為該法團的交易商並屬個人的該法團董事，在該部生效時當作已根據本條例第 120(1) 條就第 2、5 及 9 類受規管活動(第 9 類須受第 52 條指明的條件規限)獲發牌為持牌代表，並當作已隸屬該法團；
  - (e) 根據已廢除的《商品交易條例》獲註冊為該法團的商品交易顧問並屬個人的該法團董事，在該部生效時當作已根據本條例第 120(1) 條就第 5 及 9 類受規管

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;

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第 24 條

活動 (第 9 類須受第 52 條指明的條件規限) 獲發牌為持牌代表，並當作已隸屬該法團；

- (f) 根據已廢除的《槓桿式外匯買賣條例》獲發牌為該法團的代表並屬個人的該法團的董事，在該部生效時當作已根據本條例第 120(1) 條就第 3 類受規管活動獲發牌為持牌代表，並當作已隸屬該法團，

以及當作已根據本條例第 126(1) 條獲核准為該法團的負責人員，而在符合第 53 條的規定下，該董事須在自該部生效日期起計的 2 年內當作如此獲發牌、隸屬及獲核准。

24. 在符合第 55 條的規定下，凡某法團根據第 22 條當作已獲發牌，在緊接本條例第 V 部生效前 —

- (a) 根據已廢除的《證券條例》獲註冊為該法團的交易商代表而並非該法團董事的個人，在該部生效時當作已根據本條例第 120(1) 條就第 1、4、6 及 9 類受規

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- (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

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第 24 條

管活動 (第 9 類須受第 51 條指明的條件規限) 獲發牌為持牌代表，並當作已隸屬該法團；

- (b) 根據已廢除的《證券條例》獲註冊為該法團的投資代表而並非該法團董事的個人，在該部生效時當作已根據本條例第 120(1) 條就第 4、6 及 9 類受規管活動 (第 9 類須受第 51 條指明的條件規限) 獲發牌為持牌代表，並當作已隸屬該法團；
- (c) 根據已廢除的《證券條例》獲註冊為該法團的證券保證金融資人代表而並非該法團董事的個人，在該部生效時當作已根據本條例第 120(1) 條就第 8 類受規管活動獲發牌為持牌代表，並當作已隸屬該法團；
- (d) 根據已廢除的《商品交易條例》獲註冊為該法團的交易所代表而並非該法團董事的個人，在該部生效時當作已根據本條例第 120(1) 條就第 2、5 及 9 類受規管活動 (第 9 類須受第 52 條指明的條件規限) 獲發牌為持牌代表，並當作已隸屬該法團；
- (e) 根據已廢除的《商品交易條例》獲註冊為該法團的商品交易顧問代表而並非該法團董事的個人，在該部生效時當作已根據本條例第 120(1) 條就第 5 及 9 類受規管活動 (第 9 類須受第 52 條指明的條件規限) 獲發牌為持牌代表，並當作已隸屬該法團；
- (f) 根據已廢除的《槓桿式外匯買賣條例》獲發牌為該法團的代表而並非該法團董事的個人，在該部生效時當作已根據本條例第 120(1) 條就第 3 類受規管活動獲發牌為持牌代表，並當作已隸屬該法團；

而在符合第 53 條的規定下，該人須在自該部生效日期起計的 2 年內當作如此獲發牌及隸屬。

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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;



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屬獲豁免交易商或獲豁免投資顧問的人

Persons who are exempt dealers or exempt  
investment advisers

25. 在符合第 55 條的規定下 —

25. Subject to section 55—

(a) 在緊接本條例第 V 部生效前 —

- (i) 屬已廢除的《證券條例》所指的獲豁免交易商的認可財務機構，在該部生效時當作已根據本條例第 119(1) 條就第 1、4、6 及 9 類受規管活動 (第 9 類須受第 51 條指明的條件規限) 獲註冊；
- (ii) 屬已廢除的《證券條例》所指的獲豁免投資顧問的認可財務機構，在該部生效時當作已根據本條例第 119(1) 條就第 4、6 及 9 類受規管活動 (第 9 類須受第 51 條指明的條件規限) 獲註冊；

而在符合第 53 條的規定下，該機構須在自該部生效日期起計的 2 年內當作如此獲註冊；

(b) 在緊接本條例第 V 部生效前 —

- (i) 屬已廢除的《證券條例》所指的獲豁免交易商的法團 (認可財務機構除外)、合夥或個人，在該部生效時當作為已根據本條例第 116(1) 條就第 1、4、6 及 9 類受規管活動 (第 9 類須受第 51 條指明的條件規限) 獲發牌的持牌法團；
- (ii) 屬已廢除的《證券條例》所指的獲豁免投資顧問的法團 (認可財務機構除外)、合夥或個人，在

- (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.

- (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



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該部生效時當作為已根據本條例第 116(1) 條就第 4、6 及 9 類受規管活動 (第 9 類須受第 51 條指明的條件規限) 獲發牌的持牌法團，

而在符合第 53 條的規定下，該法團、合夥或個人須在自該部生效日期起計的 2 年內當作為如此獲發牌的持牌法團；而在該法團、合夥或個人被當作為如此獲發牌的持牌法團的期間內，本條例第 125(1)(a) 及 (b) 及 131(1) 條不適用於該法團、合夥或個人。

26. 凡某名個人在緊接本條例第 V 部生效前受聘於 —

- (a) 某認可財務機構；或
- (b) 某法團 (認可財務機構除外)、合夥或個人，

而他受聘以作出的任何作為在該部生效後，便會構成就該機構根據第 25(a) 條當作已獲註冊進行的某類受規管活動而言的受規管職能，或構成就該法團、合夥或個人根據第 25(b) 條當作已獲發牌進行的某類受規管活動而言的受規管職能 (視屬何情況而定)，則首述的個人在該部生效時 —

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

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- (i) (如(a)段適用於首述的個人)當作為已名列於金融管理專員根據《銀行業條例》(第155章)第20條備存的紀錄冊並顯示為就該類活動受聘於該機構的人;
- (ii) (如(b)段適用於首述的個人)當作已根據本條例第120(1)條就該類活動(該類活動須受第51條指明的條件規限)獲發牌為持牌代表,並當作已隸屬(憑藉第25(b)條具有持牌法團身分的)該法團、合夥或個人,

而在符合第53條的規定下,該人須在自該部生效日期起計的2年內當作如此獲發牌、列名及隸屬(視屬何情況而定)。

## 合夥

27. 在符合第55條的規定下,在緊接本條例第V部生效前—
- (a) 根據已廢除的《證券條例》獲註冊為交易商的合夥,在該部生效時當作為已根據本條例第116(1)條就第1、4、6及9類受規管活動(第9類須受第51條指明的條件規限)獲發牌的持牌法團;
  - (b) 根據已廢除的《證券條例》獲註冊為投資顧問的合夥,在該部生效時當作為已根據本條例第116(1)條就第4、6及9類受規管活動(第9類須受第51條指明的條件規限)獲發牌的持牌法團;

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

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第 28 條Schedule 10—Part 1  
Section 28S10-40  
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- (c) 根據已廢除的《商品交易條例》獲註冊為交易商的合夥，在該部生效時當作為已根據本條例第 116(1) 條就第 2、5 及 9 類受規管活動 (第 9 類須受第 52 條指明的條件規限) 獲發牌的持牌法團；
- (d) 根據已廢除的《商品交易條例》獲註冊為商品交易顧問的合夥，在該部生效時當作為已根據本條例第 116(1) 條就第 5 及 9 類受規管活動 (第 9 類須受第 52 條指明的條件規限) 獲發牌的持牌法團，

以及當作已遵守本條例第 125(1)(a) 及 (b) 條的規定，而在符合第 53 條的規定下，該合夥須在自該部生效日期起計的 2 年內當作為如此獲發牌的持牌法團及當作遵守該等規定。

28. 在符合第 55 條的規定下，凡某合夥根據第 27 條當作為持牌法團，在緊接本條例第 V 部生效前 —
- (a) 根據已廢除的《證券條例》獲註冊為該合夥的交易商的該合夥的任何合夥人，在該部生效時當作已根據本條例第 120(1) 條就第 1、4、6 及 9 類受規管活動 (第 9 類須受第 51 條指明的條件規限) 獲發牌為持牌代表，並當作已隸屬該持牌法團；
  - (b) 根據已廢除的《證券條例》獲註冊為該合夥的投資顧問的該合夥的任何合夥人，在該部生效時當作已根據本條例第 120(1) 條就第 4、6 及 9 類受規管活動 (第

- 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;

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第 29 條Schedule 10—Part 1  
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9 類須受第 51 條指明的條件規限) 獲發牌為持牌代表，並當作已隸屬該持牌法團；

- (c) 根據已廢除的《商品交易條例》獲註冊為該合夥的交易商的該合夥的任何合夥人，在該部生效時當作已根據本條例第 120(1) 條就第 2、5 及 9 類受規管活動 (第 9 類須受第 52 條指明的條件規限) 獲發牌為持牌代表，並當作已隸屬該持牌法團；
- (d) 根據已廢除的《商品交易條例》獲註冊為該合夥的商品交易顧問的該合夥的任何合夥人，在該部生效時當作已根據本條例第 120(1) 條就第 5 及 9 類受規管活動 (第 9 類須受第 52 條指明的條件規限) 獲發牌為持牌代表，並當作已隸屬該持牌法團，

以及當作已根據本條例第 126(1) 條獲核准為該法團的負責人員，而在符合第 53 條的規定下，該合夥人須在自該部生效日期起計的 2 年內當作如此獲發牌、隸屬及獲核准。

- (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. 在符合第 55 條的規定下，凡某合夥根據第 27 條當作為持牌法團，在緊接本條例第 V 部生效前 —

- (a) 根據已廢除的《證券條例》獲註冊為該合夥的交易商代表的個人，在該部生效時當作已根據本條例第 120(1) 條就第 1、4、6 及 9 類受規管活動 (第 9 類須

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—

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第 29 條Schedule 10—Part 1  
Section 29S10-44  
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受第 51 條指明的條件規限) 獲發牌為持牌代表，並當作已隸屬該持牌法團；

- (b) 根據已廢除的《證券條例》獲註冊為該合夥的投資代表的個人，在該部生效時當作已根據本條例第 120(1) 條就第 4、6 及 9 類受規管活動(第 9 類須受第 51 條指明的條件規限) 獲發牌為持牌代表，並當作已隸屬該持牌法團；
- (c) 根據已廢除的《商品交易條例》獲註冊為該合夥的交易所代表的個人，在該部生效時當作已根據本條例第 120(1) 條就第 2、5 及 9 類受規管活動(第 9 類須受第 52 條指明的條件規限) 獲發牌為持牌代表，並當作已隸屬該持牌法團；
- (d) 根據已廢除的《商品交易條例》獲註冊為該合夥的商品交易顧問代表的個人，在該部生效時當作已根據本條例第 120(1) 條就第 5 及 9 類受規管活動(第 9 類須受第 52 條指明的條件規限) 獲發牌為持牌代表，並當作已隸屬該持牌法團，

而在符合第 53 條的規定下，該人須在自該部生效日期起計的 2 年內當作如此獲發牌及隸屬。

獨資經營

- (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



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第 571 章附表 10 —— 第 1 部  
第 30 條Schedule 10—Part 1  
Section 30S10-46  
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30. 在符合第 55 條的規定下，在緊接本條例第 V 部生效前 —
- (a) 根據已廢除的《證券條例》獲註冊為交易商的個人，在該部生效時 —
    - (i) 當作為已根據本條例第 116(1) 條就第 1、4、6 及 9 類受規管活動 (第 9 類須受第 51 條指明的條件規限) 獲發牌的持牌法團；
    - (ii) 當作已根據本條例第 120(1) 條就第 1、4、6 及 9 類受規管活動 (第 9 類須受第 51 條指明的條件規限) 獲發牌為持牌代表，並當作已隸屬該持牌法團；及
    - (iii) 當作已根據本條例第 126(1) 條獲核准為該持牌法團的負責人員；
  - (b) 根據已廢除的《證券條例》獲註冊為投資顧問的個人，在該部生效時 —
    - (i) 當作為已根據本條例第 116(1) 條就第 4、6 及 9 類受規管活動 (第 9 類須受第 51 條指明的條件規限) 獲發牌的持牌法團；
    - (ii) 當作已根據本條例第 120(1) 條就第 4、6 及 9 類受規管活動 (第 9 類須受第 51 條指明的條件規限) 獲發牌為持牌代表，並當作已隸屬該持牌法團；及
    - (iii) 當作已根據本條例第 126(1) 條獲核准為該持牌法團的負責人員；
  - (c) 根據已廢除的《商品交易條例》獲註冊為交易商的個人，在該部生效時 —
    - (i) 當作為已根據本條例第 116(1) 條就第 2、5 及 9 類受規管活動 (第 9 類須受第 52 條指明的條件規限) 獲發牌的持牌法團；
    - (ii) 當作已根據本條例第 120(1) 條就第 2、5 及 9 類受規管活動 (第 9 類須受第 52 條指明的條件規

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;

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第 571 章附表 10 —— 第 1 部  
第 30 條Schedule 10—Part 1  
Section 30S10-48  
Cap. 571

- 限)獲發牌為持牌代表，並當作已隸屬該持牌法團；及
- (iii) 當作已根據本條例第 126(1) 條獲核准為該持牌法團的負責人員；
- (d) 根據已廢除的《商品交易條例》獲註冊為商品交易顧問的個人，在該部生效時 —
- (i) 當作為已根據本條例第 116(1) 條就第 5 及 9 類受規管活動(第 9 類須受第 52 條指明的條件規限)獲發牌的持牌法團；
- (ii) 當作已根據本條例第 120(1) 條就第 5 及 9 類受規管活動(第 9 類須受第 52 條指明的條件規限)獲發牌為持牌代表，並當作已隸屬該持牌法團；及
- (iii) 當作已根據本條例第 126(1) 條獲核准為該持牌法團的負責人員，

以及當作已遵守本條例第 125(1)(a) 及 (b) 條的規定，而在符合第 53 條的規定下，該人須在自該部生效日期起計的 2 年內當作如此獲發牌、隸屬、獲核准及遵守該等規定。

- (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.

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第 571 章附表 10 — 第 1 部  
第 31 條Schedule 10—Part 1  
Section 31S10-50  
Cap. 571

31. 在符合第 55 條的規定下，凡某名個人根據第 30 條當作為持牌法團，在緊接本條例第 V 部生效前 —

- (a) 根據已廢除的《證券條例》獲註冊為該名個人的交易商代表的另一名個人，在該部生效時當作已根據本條例第 120(1) 條就第 1、4、6 及 9 類受規管活動 (第 9 類須受第 51 條指明的條件規限) 獲發牌為持牌代表，並當作已隸屬該持牌法團；
- (b) 根據已廢除的《證券條例》獲註冊為該名個人的投資代表的另一名個人，在該部生效時當作已根據本條例第 120(1) 條就第 4、6 及 9 類受規管活動 (第 9 類須受第 51 條指明的條件規限) 獲發牌為持牌代表，並當作已隸屬該持牌法團；
- (c) 根據已廢除的《商品交易條例》獲註冊為該名個人的交易商代表的另一名個人，在該部生效時當作已根據本條例第 120(1) 條就第 2、5 及 9 類受規管活動 (第 9 類須受第 52 條指明的條件規限) 獲發牌為持牌代表，並當作已隸屬該持牌法團；
- (d) 根據已廢除的《商品交易條例》獲註冊為該名個人的商品交易顧問代表的另一名個人，在該部生效時當作已根據本條例第 120(1) 條就第 5 及 9 類受規管活動 (第 9 類須受第 52 條指明的條件規限) 獲發牌為持牌代表，並當作已隸屬該持牌法團，

而在符合第 53 條的規定下，該另一名個人須在自該部生效日期起計的 2 年內當作如此獲發牌及隸屬。

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

S10-51  
第 571 章附表 10 —— 第 1 部  
第 32 條Schedule 10—Part 1  
Section 32S10-52  
Cap. 571

## 持牌銀行

## Licensed banks

32. 在緊接本條例第 V 部生效前如非因已廢除的《證券條例》第 2(1) 條中**投資顧問**的定義的第 (i) 段便會符合該定義的持牌銀行，在該部生效時當作已根據本條例第 119(1) 條就第 4、6 及 9 類受規管活動 (第 9 類須受第 51 條指明的條件規限) 獲註冊，而在符合第 53 條的規定下，該銀行須在自該部生效日期起計的 2 年內當作如此獲註冊。
33. 凡某名個人在緊接本條例第 V 部生效前受聘於某持牌銀行，而他受聘以作出的任何作為在該部生效後，便會構成就該銀行根據第 32 條當作已獲註冊進行的某類受規管活動而言的受規管職能，他在該部生效時當作為已名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為就該類活動受聘於該銀行的人，而在符合第 53 條的規定下，他須在自該部生效日期起計的 2 年內當作如此列名。

- 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.

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.

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第 571 章附表 10 —— 第 1 部  
第 34 條Schedule 10—Part 1  
Section 34S10-54  
Cap. 571

## 提供自動化交易服務的人

## Persons providing automated trading services

34. 凡任何人在緊接本條例第 V 部生效前經營提供自動化交易服務的業務，而該人是 —

- (a) 第 22(a) 或 (d) 或 25(b)(i) 條適用的法團；
- (b) 第 25(b)(i) 或 27(a) 或 (c) 條適用的合夥；或
- (c) 第 25(b)(i) 或 30(a) 或 (c) 條適用的個人，

則就該人而言，適用於作為該法團、合夥或個人（視屬何情況而定）的該人的任何該等條文，須在猶如第 7 類受規管活動已加入該人被當作已（憑藉該條以持牌法團的身分）獲發牌進行的受規管活動中的情況下理解和解釋，而第 22 至 60 條的條文須據此解釋。

35. 凡第 34 條適用於任何法團、合夥或個人（**首述的個人**），則就以下的人而言 —

- (a) 第 23(a) 或 (d) 條適用的法團的董事；
- (b) 第 24(a) 或 (d) 條適用的法團的並非董事的個人；
- (c) 第 28(a) 或 (c) 條適用的合夥的合夥人；
- (d) 第 29(a) 或 (c) 條適用的合夥的並非合夥人的個人；
- (e) 第 30(a)(ii) 及 (iii) 或 (c)(ii) 及 (iii) 條適用的首述的個人；

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;



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第 571 章附表 10 —— 第 1 部  
第 36 條

- (f) 就首述的個人而言，第 31(a) 或 (c) 條適用的個人；或
- (g) 就該法團、合夥或首述的個人而言，第 26(ii) 條適用的個人，

適用於該董事、合夥人或個人 (包括首述的個人) (視屬何情況而定) 的任何該等條文，須在猶如第 7 類受規管活動已加入該董事、合夥人或個人被當作已 (憑藉該條以持牌代表的身分) 獲發牌或 (憑藉該條以負責人員的身分) 獲核准進行的受規管活動中的情況下理解和解釋，而第 22 至 60 條的條文須據此解釋。

36. 凡任何人在緊接本條例第 V 部生效前經營提供自動化交易服務的業務，而該人是第 25(a)(i) 條適用的認可財務機構，則就該機構而言，該條須在猶如第 7 類受規管活動已加入該機構被當作獲註冊進行的受規管活動中的情況下理解和解釋，而第 22 至 60 條的條文須據此解釋。

37. 凡任何人在緊接本條例第 V 部生效前經營提供自動化交易服務的業務，而就該人而言，第 34、35 及 36 條均不適用，則該

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- (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

S10-57  
第 571 章附表 10 —— 第 1 部  
第 38 條

人可在自該部生效日期起計的 6 個月內繼續經營該業務，而為此目的，本條例在該段期間屆滿前不適用於 —

- (a) 該人；及
- (b) 受聘於該人以在該業務中提供自動化交易服務的過程中作出任何作為的個人。

就集體投資計劃中某些權益進行交易的人

38. 為施行第 39、40、41、42、43 及 44 條，**豁除權益** (excluded interests) 指任何集體投資計劃中的權益，而該權益並不符合已廢除的《證券條例》第 2(1) 條所界定的**證券**的涵義。

39. 凡任何人在緊接本條例第 V 部生效前 —

- (a) 經營豁除權益的交易的業務；及
- (b) 根據已廢除的《商品交易條例》獲註冊為交易商，但並非以下列人士的身分獲註冊為該交易商 —
  - (i) 根據已廢除的《商品交易條例》獲註冊為交易商的法團的董事；或
  - (ii) 根據已廢除的《商品交易條例》獲註冊為交易商的合夥的合夥人，

Schedule 10—Part 1  
Section 38S10-58  
Cap. 571

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,

S10-59  
第 571 章附表 10 —— 第 1 部  
第 40 條Schedule 10—Part 1  
Section 40S10-60  
Cap. 571

則該人可在自該部生效日期起計的 2 年內繼續經營 (a) 段所述的業務，而僅為此目的，本條例在該段期間屆滿前不適用於該人。

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. 凡第 39 條適用於某人，而在緊接本條例第 V 部生效前 —
- (a) (如該人是法團) 該人的董事根據已廢除的《商品交易條例》獲註冊為該人的交易商；
  - (b) (如該人是合夥) 該人的合夥人根據已廢除的《商品交易條例》獲註冊為該人的交易商；
  - (c) 任何個人根據已廢除的《商品交易條例》獲註冊為該人的交易商代表，

則該董事、合夥人或個人可在自該部生效日期起計的 2 年內就該人經營的業務中的豁除權益進行交易，而僅為此目的，本條例在該段期間屆滿前不適用於該董事、合夥人或個人。

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. 凡任何人在緊接本條例第 V 部生效前經營豁除權益的交易的業務，而就該人而言，第 39 及 40 條均不適用，則該人可在自該部生效日期起計的 6 個月內繼續經營豁除權益的交易的業務，而僅為此目的，本條例在該段期間屆滿前不適用於 —
- (a) 該人；及
  - (b) 受聘於該人以在該業務的過程中進行豁除權益的交易的人。

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—

S10-61  
第 571 章附表 10 —— 第 1 部  
第 42 條Schedule 10—Part 1  
Section 42S10-62  
Cap. 571

就集體投資計劃中某些權益提供意見的人

- (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. 凡任何人在緊接本條例第 V 部生效前 —

- (a) 經營就豁除權益 (第 38 條所界定者) 提供意見的業務；及
- (b) 根據已廢除的《商品交易條例》獲註冊為商品交易顧問，但並非以下列人士的身分獲註冊為該顧問 —
  - (i) 根據已廢除的《商品交易條例》獲註冊為商品交易顧問的法團的董事；或
  - (ii) 根據已廢除的《商品交易條例》獲註冊為商品交易顧問的合夥的合夥人，

則該人可在自該部生效日期起計的 2 年內繼續經營 (a) 段提述的業務，而僅為此目的，本條例在該段期間屆滿前不適用於該人。

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. 凡第 42 條適用於某人，而在緊接本條例第 V 部生效前 —

- (a) (如該人是法團) 該人的董事根據已廢除的《商品交易條例》獲註冊為該人的商品交易顧問；

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;

S10-63  
第 571 章附表 10 —— 第 1 部  
第 44 條

- (b) (如該人是合夥) 該人的合夥人根據已廢除的《商品交易條例》獲註冊為該人的商品交易顧問；
- (c) 任何個人根據已廢除的《商品交易條例》獲註冊為該人的商品交易顧問代表，

則該董事、合夥人或個人可在自該部生效日期起計的 2 年內在該人經營的業務中就豁除權益提供意見，而僅為此目的，本條例在該段期間屆滿前不適用於該董事、合夥人或個人。

44. 凡任何人在緊接本條例第 V 部生效前經營就豁除權益提供意見的業務，而就該人而言，第 42 及 43 條均不適用，則該人可在自該部生效日期起計的 6 個月內繼續經營就豁除權益提供意見的業務，而僅為此目的，本條例在該段期間屆滿前不適用於 —
- (a) 該人；及
- (b) 受聘於該人以在該業務中就豁除權益提供意見的個人。

僅與在香港以外的人進行期貨合約交易的人

45. 為施行第 47、48、49 及 50 條，**豁除客戶** (excluded clients) 指在香港以外的人。

Schedule 10—Part 1  
Section 44S10-64  
Cap. 571

- (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.



S10-65  
第 571 章附表 10 —— 第 1 部  
第 46 條Schedule 10—Part 1  
Section 46S10-66  
Cap. 571

46. 為施行第 48、49 及 50 條，**期貨合約交易** (dealing in futures contracts) 具有本條例附表 5 第 2 部給予該詞的涵義。

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. 凡任何人在緊接本條例第 V 部生效前 —

- (a) 經營一項商品期貨合約交易業務，而該業務僅因為該人在從事該業務時僅與豁除客戶進行交易，而不符合已廢除的《商品交易條例》第 2(1) 條所界定的**商品期貨合約的交易**的涵義；及
- (b) (i) 根據已廢除的《證券條例》獲註冊為交易商，但並非以下列人士的身分獲註冊為該交易商 —
  - (A) 根據已廢除的《證券條例》獲註冊為交易商的法團的董事；或
  - (B) 根據已廢除的《證券條例》獲註冊為交易商的合夥的合夥人；或
- (ii) 根據已廢除的《證券條例》獲宣布為獲豁免交易商，

則該人可在自該部生效日期起計的 2 年內繼續經營 (a) 段提述的業務，而僅為此目的，本條例在該段期間屆滿前不適用於該人。

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.

S10-67  
第 571 章附表 10 —— 第 1 部  
第 48 條

48. 凡第 47 條適用於符合第 47(b)(i) 條的描述的人，而在緊接本條例第 V 部生效前 —

- (a) (如該人是法團) 該人的董事根據已廢除的《證券條例》獲註冊為該人的交易商；
- (b) (如該人是合夥) 該人的合夥人根據已廢除的《證券條例》獲註冊為該人的交易商；
- (c) 任何個人根據已廢除的《證券條例》獲註冊為該人的交易商代表，

則該董事、合夥人或個人可在自該部生效日期起計的 2 年內在該人經營的業務中僅與豁除客戶進行期貨合約交易，而僅為此目的，本條例在該段期間屆滿前不適用於該董事、合夥人或個人。

49. 凡第 47 條適用於符合第 47(b)(ii) 條的描述的人，而在緊接本條例第 V 部生效前，某名個人受聘於該人以在第 47(a) 條提述的該人的業務中僅與豁除客戶進行交易，則該名個人可在自該部生效日期起計的 2 年內在該業務中僅與豁除客戶進行期貨合約交易，而僅為此目的，本條例在該段期間屆滿前不適用於該人。

50. 凡任何人在緊接本條例第 V 部生效前 —

Schedule 10—Part 1  
Section 48S10-68  
Cap. 571

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—

S10-69  
第 571 章附表 10 —— 第 1 部  
第 51 條Schedule 10—Part 1  
Section 51S10-70  
Cap. 571

- (a) 經營一項商品期貨合約交易業務，而該業務僅因為該人在從事該業務時僅與豁除客戶進行交易，而不符合已廢除的《商品交易條例》第 2(1) 條所界定的**商品期貨合約的交易**的涵義；而
- (b) 第 47、48 及 49 條均不適用於該人，
- 則該人可在自該部生效日期起計的 6 個月內繼續經營 (a) 段提述的業務，而僅為此目的，本條例在該段期間屆滿前不適用於 —
- (i) 該人；及
- (ii) 受聘於該人以在該業務中僅與豁除客戶進行期貨合約交易的個人。

規限第 9 類受規管活動的當作條件

51. 凡任何人 —

- (a) 在緊接本條例第 V 部生效前 —
- (i) 根據已廢除的《證券條例》獲註冊為交易商、投資顧問、交易商代表或投資代表；
- (ii) 根據已廢除的《證券條例》獲宣布為獲豁免交易商或獲豁免投資顧問；或
- (iii) 是第 32 條提述的持牌銀行；及
- (b) 根據第 22、23、24、25、26、27、28、29、30、31 或 32 條當作已根據本條例第 V 部就第 9 類受規管活動獲發牌或獲註冊，

- (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

S10-71  
第 571 章附表 10 —— 第 1 部  
第 52 條

則在不損害第 55 條的原則下，(b) 段提述的牌照或註冊須受以下條件規限：該人不得提供為他人管理期貨合約投資組合的服務。

52. 凡任何人 —

- (a) 在緊接本條例第 V 部生效前根據已廢除的《商品交易條例》獲註冊為交易商、商品交易顧問、交易商代表或商品交易顧問代表；及
- (b) 根據第 22、23、24、27、28、29、30 或 31 條當作已根據本條例第 V 部就第 9 類受規管活動獲發牌，

則在不損害第 55 條的原則下，(b) 段提述的牌照須受以下條件規限：該人不得提供為他人管理證券投資組合的服務。

關於過渡期間的進一步規定

53. (1) 凡在自本條例第 V 部的生效日期起計的 2 年內 —

- (a) 根據第 22 或 25(b) 條當作已就某類受規管活動獲發牌的法團根據本條例第 116(1) 條申請就該類活動獲發牌，則在不損害第 (3)(C) 款的原則下，該法團須當作 —

Schedule 10—Part 1  
Section 52S10-72  
Cap. 571

- (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)

S10-73  
第 571 章附表 10 —— 第 1 部  
第 53 條Schedule 10—Part 1  
Section 53S10-74  
Cap. 571

- (i) 已獲如此發牌；及
- (ii) (就根據第 22 條當作已獲發牌的法團而言) 已就該類活動遵守本條例第 125(1)(a) 及 (b) 條的規定，

直至申請人獲批給所申請的牌照或證監會拒絕批給該牌照而該項拒絕根據本條例第 232 條作為指明決定而生效 (視屬何情況而定) 為止；

- (b) 任何公司或《公司條例》(第 622 章) 第 2(1) 條所界定的註冊非香港公司根據本條例第 116(1) 條申請就某類受規管活動獲發牌，而 — (由 2004 年第 30 號第 3 條修訂；由 2012 年第 28 號第 912 及 920 條修訂)

- (i) 根據第 25(b) 或 27 條當作已就該類活動獲發牌的合夥的所有合夥人均為申請人的股東；
- (ii) 假設該等合夥人是申請人的單一股東的話，他們擁有的股份總和會使他們成為申請人的持股量超過半數的股東；及

- (iii) 申請人使證監會信納 —

- (A) 申請人是為承接該合夥所經營的該類活動的業務而成立的；及
- (B) 已經或將會作出充分的安排，以將該業務從該合夥轉移至申請人，

則在不損害第 (3)(C) 款的原則下，該合夥須當作 —

- (A) 已獲如此發牌；及
- (B) (就根據第 27 條當作已獲發牌的合夥而言) 已就該類活動遵守本條例第 125(1)(a) 及 (b) 條的規定，

直至申請人獲批給所申請的牌照或證監會拒絕批給該牌照而該項拒絕根據本條例第 232 條作為指明決定而生效 (視屬何情況而定) 為止；

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 registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622), applies to be licensed under section 116(1) of this Ordinance for a regulated activity and— (*Amended 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920*)

- (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,



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- (c) 任何公司或《公司條例》(第 622 章)第 2(1) 條所界定的註冊非香港公司根據本條例第 116(1) 條申請就某類受規管活動獲發牌，而 — (由 2004 年第 30 號第 3 條修訂；由 2012 年第 28 號第 912 及 920 條修訂)
- (i) 根據第 25(b) 或 30 條當作已就該類活動獲發牌的個人是申請人的持股量超過半數的股東；及
- (ii) 申請人使證監會信納 —
- (A) 申請人是為承接該名個人所經營的該類活動的業務而成立的；及
- (B) 已經或將會作出充分的安排，以將該業務從該名個人轉移至申請人，
- 則在不損害第 (3)(C) 款的原則下，該名個人須當作 —
- (A) 已獲如此發牌；
- (B) (就根據第 30 條當作已獲發牌的個人而言) 已就該類活動遵守本條例第 125(1)(a) 及 (b) 條的規定；及
- (C) (就根據第 30 條當作已獲發牌的個人而言) 已根據本條例第 126(1) 條獲核准為有關持牌法團的負責人員，
- 直至申請人獲批給所申請的牌照或證監會拒絕批給該牌照而該項拒絕根據本條例第 232 條作為指明決定而生效 (視屬何情況而定) 為止；
- (d) 根據第 23 條當作符合以下說明的董事，或根據第 28 條當作符合以下說明的合夥人 —
- (i) 已就某類受規管活動獲發牌並隸屬某法團；及
- (ii) 已獲核准為該法團的負責人員，
- 根據本條例第 120(1) 條申請就該類活動獲發牌，在符合第 (6) 款的規定下，他須當作符合以上說明，直至申請人獲批給所申請的牌照或證監會拒絕批給該

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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 registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622), applies to be licensed under section 116(1) of this Ordinance for a regulated activity and— (*Amended 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920*)
- (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;

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牌照而該項拒絕根據本條例第 232 條作為指明決定而生效 (視屬何情況而定) 為止；

- (e) 根據第 24、26(ii)、29 或 31 條當作已就某類受規管活動獲發牌並隸屬某法團的個人根據本條例第 120(1) 條申請就該類活動獲發牌，在符合第 (6) 款的規定下，他須當作如此獲發牌及隸屬，直至申請人獲批給所申請的牌照或證監會拒絕批給該牌照而該項拒絕根據本條例第 232 條作為指明決定而生效 (視屬何情況而定) 為止。
- (2) 凡在自本條例第 V 部的生效日期起計的 2 年內，根據第 25(a) 條當作已就某類受規管活動獲註冊的認可財務機構或根據第 32 條當作已就某類受規管活動獲註冊的持牌銀行根據本條例第 119(1) 條申請就該類活動獲註冊，則在不損害第 (3)(C) 款的原則下 —
- (a) 它須當作已如此獲註冊；及
- (b) 在符合第 (6) 款的規定下，根據第 26(i) 或 33 條當作已名列於該條提述的紀錄冊並顯示為就該類活動受聘於該機構或銀行 (視屬何情況而定) 的個人，須當作如此列名，
- 直至申請人依據該項申請獲註冊或證監會拒絕將申請人註冊而該項拒絕根據本條例第 232 條作為指明決定而生效 (視屬何情況而定) 為止。
- (3) 凡 —
- (a) 第 (1)(a)、(b) 或 (c) 或 (2) 款提述的關於某類受規管活動的申請被拒絕；或
- (b) 該申請被拒絕而申請人根據本條例第 217 條提出申請要求就該項拒絕進行覆核，而上訴審裁處確認該項拒絕，
- 則 —
- (i) (就第 (1)(a) 或 (2) 款提述的申請而言) 該申請人；

- (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

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- (ii) (就第(1)(b)款提述的申請而言)經營該申請人擬承接的該類活動的業務的合夥；或
- (iii) (就第(1)(c)款提述的申請而言)經營該申請人擬承接的該類活動的業務的個人，

須 —

- (A) 在該項拒絕或確認(視屬何情況而定)作出後 21 日內或在證監會以書面通知該申請人、合夥或個人(視屬何情況而定)的較長期間內終止進行該類活動；
- (B) 遵從證監會就該項終止施加的合理條件；及
- (C) 在該項終止前(但無論如何須在(A)段提述的 21 日或較長期間內)並純粹為了結束其經營的該類活動的業務，當作已獲發牌或獲註冊、已遵守本條例第 125(1)(a) 及 (b) 條的規定或已為(或就)該類活動獲核准為負責人員(視何者適用而定)，

並可成為證監會行使在本條例第 201 條下的權力的對象，猶如(C)段就該申請人、合夥或個人(視屬何情況而定)提述的牌照或註冊在(a)及(b)段(視何者適用而定)指明的情況發生時已被撤銷一樣。

- (4) 凡任何人根據第 22、23、24、25、26、27、28、29、30、31 或 32 條當作已就某類受規管活動獲發牌或獲註冊或獲核准為負責人員，則本條例的條文 —
  - (a) 適用於該人，或在與該人有關的情況下適用，一如該等條文適用於就該類活動獲發牌或獲註冊或獲核准為負責人員(視屬何情況而定)的人，或在與就該類活動獲發牌或獲註冊或獲核准為負責人員(視屬何情況而定)的人有關的情況下適用；及
  - (b) (在該人是經營該類活動的業務的合夥或個人(視屬何情況而定)的情況下)在經根據本條例第 134 條作出必要的變通後如此適用。
- (5) 凡某名個人根據 —
  - (a) 第 26(i) 條；或

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;

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(b) 第 33 條，

當作已名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示為就某類受規管活動受聘於有關機構或有關銀行，則本條例的條文適用於該名個人，或在與該名個人有關的情況下適用，一如該等條文適用於就該類活動名列於該紀錄冊的個人，或在與就該類活動名列於該紀錄冊的個人有關的情況下適用，而該等條文須理解為已根據本條例第 134 條作出必要的變通。

(6) 如 —

(a) 某法團的董事根據第 23 條 —

(i) 當作已獲發牌為持牌代表，並當作已隸屬該法團；及

(ii) 當作已根據本條例第 126(1) 條獲核准為該法團的負責人員，

則在他終止擔任該法團的董事時，他即終止被當作已如此獲發牌、隸屬及獲核准；

(b) 某根據第 27 條當作為持牌法團的合夥的合夥人根據第 28 條 —

(i) 當作已獲發牌為持牌代表，並當作已隸屬該法團；及

(ii) 當作已根據本條例第 126(1) 條獲核准為該法團的負責人員，

則在他終止作為該合夥的合夥人時，他即終止被當作已如此獲發牌、隸屬及獲核准；

(c) 某名個人根據第 24、26(ii)、29 或 31 條當作已就某類受規管活動獲發牌為持牌代表，並當作已隸屬於某持牌人，則在他終止就該類活動為該持牌人或代該持牌人行事時，他即終止被當作已如此獲發牌及隸屬；

(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



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- (d) 某名個人根據第 26(i) 或 33 條當作為已名列於該條提述的紀錄冊的人，則在他終止受聘於有關機構或有關銀行以進行構成就有關受規管活動而言的受規管職能的作為時，他即終止被當作如此列名。

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,



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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.

若干未註冊人士獲准經營有限度業務

Certain unregistered persons to be permitted to carry on limited business

54. 任何人如 —

(a) 在緊接已廢除的《證券條例》第 XA 部生效前經營證券保證金融資業務；及

54. A person who—

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- (b) 就根據該部生效前批出的財務通融而借出的款項，繼續收取所孳生或已孳生的利息，

而除 (b) 段提述的業務外，他既不經營任何其他證券保證金融資業務，亦不顯示自己正經營任何其他證券保證金融資業務，則他不得就本條例第 114(1) 條而言當作經營第 8 類受規管活動的業務。

## 雜項

55. 凡任何人 —

- (a) 在緊接本條例第 V 部生效前是 —

- (i) 根據已廢除的《證券條例》獲註冊為交易商、投資顧問、證券保證金融資人、交易商代表、投資代表或證券保證金融資人代表；
- (ii) 根據已廢除的《證券條例》獲宣布為獲豁免交易商或獲豁免投資顧問；
- (iii) 根據已廢除的《商品交易條例》獲註冊為交易商、商品交易顧問、交易商代表或商品交易顧問代表；或
- (iv) 根據已廢除的《槓桿式外匯買賣條例》獲發牌為槓桿式外匯買賣商或代表；及

- (b) 根據第 22、23、24、25、27、28、29、30、31 或 32 條當作已根據本條例第 V 部獲發牌或獲註冊，

由證監會附加或施加於 (a) 段提述的有關註冊、豁免或牌照的條件如在緊接該部生效前是有效的，則在該部生效時，當作已就 (b) 段提述的有關牌照或註冊而施加。

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- (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

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56. 凡 —

- (a) 證監會已根據已廢除的《證券及期貨事務監察委員會條例》或已廢除的《槓桿式外匯買賣條例》批准將某處所用作存放紀錄或文件；及
- (b) 在緊接本條例第 V 部生效前，該項批准是有效的，則在該部生效時，該項批准當作已根據本條例第 130(1) 條給予。

57. 凡 —

- (a) 證監會已根據被本條例第 406 條廢除的《財政資源規則》(第 24 章，附屬法例 J) 或被如此廢除的《槓桿式外匯買賣 (財政資源) 規則》(第 451 章，附屬法例 G) 核准某項附屬貸款；及
- (b) 在緊接本條例第 V 部生效前，該項核准是有效的，則在該部生效時，該項核准當作已根據本條例批予。

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. J) 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

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第 571 章

附表 10 —— 第 1 部  
第 58 條

Schedule 10—Part 1  
Section 58

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(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. 凡 —

- (a) 證監會已根據已廢除的《證券及期貨事務監察委員會條例》或已廢除的《槓桿式外匯買賣條例》批准某人作為大股東；及
- (b) 在緊接本條例第 V 部生效前，該項批准是有效的，則在該部生效時，該項批准當作已根據本條例第 132 條給予。

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. 凡 —

- (a) 在本條例第 V 部生效前，有人根據已廢除的《證券及期貨事務監察委員會條例》第 26A 條或已廢除的《槓桿式外匯買賣條例》第 14A 條提出申請，要求批准他作為大股東；及
  - (b) 在緊接該部生效前，該項申請未被批准、拒絕或撤回，
- 則在該部生效時，該項申請即視作根據本條例第 132 條提出的成為大股東的申請處理。

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.

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第 571 章附表 10 —— 第 1 部  
第 60 條Schedule 10—Part 1  
Section 60S10-94  
Cap. 571

60. (1) 凡 —
- (a) 在本條例第 V 部生效前，有人以列表第 2 欄指明的身分申請 —
- (i) 註冊；或
- (ii) 牌照；而
- (b) 在緊接該部生效前，該申請未被批准、拒絕或撤回，則在該部生效時，該申請即視作申領在列表第 3 欄中相對之處指明的牌照的申請處理，而證監會有權據此對該申請作出決定。

**列表**

項	在本條例第 V 部生效時 仍屬待決的申請	須視作申領以下 牌照的申請
1.	由以下人士根據已廢除的《證券條例》提出的註冊為交易商的申請 —	

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—	



S10-95  
第 571 章附表 10 —— 第 1 部  
第 60 條Schedule 10—Part 1  
Section 60S10-96  
Cap. 571

項	在本條例第 V 部生效時 仍屬待決的申請	須視作申領以下 牌照的申請	Item	Application pending at commencement of Part V of this Ordinance	To be treated as application for a licence
(a) 法團		(a) 根據本條例第 116(1) 條就第 1、4、6、7 及 9 類受規管活動(或其中任何一類或多於一類受規管活動,視何者適用而定)批給的牌照		(a) a corporation	(a) Under section 116(1) of this Ordinance for Type 1, Type 4, Type 6, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
(b) 個人		(b) 根據本條例第 120(1) 條就第 1、4、6、7 及 9 類受規管活動(或其中任何一類或多於一類受規管活動,視何者適用而定)批給的牌照		(b) an individual	(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. 由以下人士根據已廢除的《證券條例》提出的註冊為投資顧問的申請 —			2.	For registration as an investment adviser under the repealed Securities Ordinance, by—	
(a) 法團		(a) 根據本條例第 116(1) 條就第 4、6 及 9 類受規管活動(或其中任何一類或多於一類受規管活動,視何者適用而定)批給的牌照		(a) a corporation	(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

S10-97  
第 571 章附表 10 —— 第 1 部  
第 60 條Schedule 10—Part 1  
Section 60S10-98  
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項	在本條例第 V 部生效時 仍屬待決的申請	須視作申領以下 牌照的申請	Item	Application pending at commencement of Part V of this Ordinance	To be treated as application for a licence
	(b) 個人	(b) 根據本條例第 120(1) 條就第 4、6 及 9 類 受規管活動 (或其中 任何一類或多於一類 受規管活動, 視何者 適用而定) 批給的牌 照		(b) an individual	(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.	根據已廢除的《證券條 例》提出的註冊為交易 商代表的申請	根據本條例第 120(1) 條 就第 1、4、6、7 及 9 類 受規管活動 (或其中任何 一類或多於一類受規管活 動, 視何者適用而定) 批 給的牌照	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.	根據已廢除的《證券條 例》提出的註冊為投資 代表的申請	根據本條例第 120(1) 條 就第 4、6 及 9 類受規管 活動 (或其中任何一類或 多於一類受規管活動, 視 何者適用而定) 批給的牌 照	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.	由以下人士根據已廢除 的《商品交易條例》提出 的註冊為交易商的申請 —		5.	For registration as a dealer under the repealed Commodities Trading Ordinance, by—	

S10-99  
第 571 章附表 10 —— 第 1 部  
第 60 條Schedule 10—Part 1  
Section 60S10-100  
Cap. 571

項	在本條例第 V 部生效時 仍屬待決的申請	須視作申領以下 牌照的申請	Item	Application pending at commencement of Part V of this Ordinance	To be treated as application for a licence
	(a) 法團	(a) 根據本條例第 116(1) 條就第 2、5、7 及 9 類受規管活動 (或其中 任何一類或多於一 類受規管活動, 視何 者適用而定) 批給的 牌照		(a) a corporation	(a) Under section 116(1) of this Ordinance for Type 2, Type 5, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
	(b) 個人	(b) 根據本條例第 120(1) 條就第 2、5、7 及 9 類受規管活動 (或其中 任何一類或多於一 類受規管活動, 視何 者適用而定) 批給的 牌照		(b) an individual	(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.	由以下人士根據已廢除 的《商品交易條例》提出 的註冊為商品交易顧問 的申請 —		6.	For registration as a commodity trading adviser under the repealed Commodities Trading Ordinance, by—	
	(a) 法團	(a) 根據本條例第 116(1) 條就第 5 及 9 類受規 管活動 (或其中任何 一類受規管活動, 視 何者適用而定) 批給 的牌照		(a) a corporation	(a) Under section 116(1) of this Ordinance for Type 5 and Type 9 regulated activities, or any one of them, as may be applicable

S10-101  
第 571 章附表 10 —— 第 1 部  
第 60 條Schedule 10—Part 1  
Section 60S10-102  
Cap. 571

項	在本條例第 V 部生效時 仍屬待決的申請	須視作申領以下 牌照的申請
	(b) 個人	(b) 根據本條例第 120(1) 條就第 5 及 9 類受規管活動 (或其中任何一類受規管活動, 視何者適用而定) 批給的牌照
7.	根據已廢除的《商品交易條例》提出的註冊為交易商代表的申請	根據本條例第 120(1) 條就第 2、5、7 及 9 類受規管活動 (或其中任何一類或多於一類受規管活動, 視何者適用而定) 批給的牌照
8.	根據已廢除的《商品交易條例》提出的註冊為商品交易顧問代表的申請	根據本條例第 120(1) 條就第 5 及 9 類受規管活動 (或其中任何一類受規管活動, 視何者適用而定) 批給的牌照
9.	根據已廢除的《槓桿式外匯買賣條例》提出的申領槓桿式外匯買賣商牌照的申請	根據本條例第 116(1) 條就第 3 類受規管活動批給的牌照

Item	Application pending at commencement of Part V of this Ordinance	To be treated as application for a licence
	(b) an individual	(b) Under section 120(1) of this Ordinance for Type 5 and Type 9 regulated activities, or any one of them, as may be applicable
7.	For registration as a dealer's representative under the repealed Commodities Trading Ordinance	Under section 120(1) of this Ordinance for Type 2, Type 5, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
8.	For registration as a commodity trading adviser's representative under the repealed Commodities Trading Ordinance	Under section 120(1) of this Ordinance for Type 5 and Type 9 regulated activities, or any one of them, as may be applicable
9.	For a licence as a leveraged foreign exchange trader under the repealed Leveraged Foreign Exchange Trading Ordinance	Under section 116(1) of this Ordinance for Type 3 regulated activity

S10-103  
第 571 章附表 10 —— 第 1 部  
第 60 條Schedule 10—Part 1  
Section 60S10-104  
Cap. 571

項	在本條例第 V 部生效時 仍屬待決的申請	須視作申領以下 牌照的申請
10.	根據已廢除的《槓桿式 外匯買賣條例》提出的 申領代表牌照的申請	根據本條例第 120(1) 條 就第 3 類受規管活動批給 的牌照
11.	根據已廢除的《證券條 例》提出的註冊為證券 保證金融資人的申請	根據本條例第 116(1) 條 就第 8 類受規管活動批給 的牌照
12.	根據已廢除的《證券條 例》提出的註冊為證券 保證金融資人代表的申 請	根據本條例第 120(1) 條 就第 8 類受規管活動批給 的牌照
(2)	凡 —	
(a)	在本條例第 V 部生效前，有人根據已廢除的《證券 條例》提出申請，要求獲宣布為獲豁免交易商；及	
(b)	在緊接該部生效前，該項申請未被批准、拒絕或撤 回，	
	該申請如 —	
(i)	是由認可財務機構提出的，則在該部生效時，即視 作根據本條例第 119(1) 條就第 1、4、6 及 9 類受規 管活動申請註冊的申請處理；或	
(ii)	並非由認可財務機構提出的，則在該部生效時，即 視作根據本條例第 116(1) 條就第 1、4、6 及 9 類受 規管活動提出的申請處理。	

Item	Application pending at commencement of Part V of this Ordinance	To be treated as application for a licence
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	



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第 571 章附表 10 — 第 1 部  
第 61 條Schedule 10—Part 1  
Section 61S10-106  
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(3) 凡 —

- (a) 在本條例第 V 部生效前，有人根據已廢除的《證券條例》提出申請，要求獲宣布為獲豁免投資顧問；及
  - (b) 在緊接該部生效前，該項申請未被批准、拒絕或撤回，
- 該申請如 —
- (i) 是由認可財務機構提出的，則在該部生效時，即視作根據本條例第 119(1) 條就第 4、6 及 9 類受規管活動申請註冊的申請處理；或
  - (ii) 並非由認可財務機構提出的，則在該部生效時，即視作根據本條例第 116(1) 條就第 4、6 及 9 類受規管活動提出的申請處理。

**本條例第 VI 部 ( 關乎中介人的資本規定、客戶資產、紀錄及審計 )**

61. 凡 —

- (a) 在本條例第 VI 部生效前，某項權力本可根據以下條文行使，但沒有如此行使 —
  - (i) 已廢除的《商品交易條例》第 52 或 53 條；
  - (ii) 已廢除的《證券條例》第 90、91、121AW 或 121AX 條；或
  - (iii) 已廢除的《槓桿式外匯買賣條例》第 33 或 34 條；或

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

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第 571 章附表 10 —— 第 1 部  
第 62 條Schedule 10—Part 1  
Section 62S10-108  
Cap. 571

- (b) 在該部生效前，某項權力已根據 (a)(i)、(ii) 及 (iii) 段提述的任何條文行使，而若非有制定本條例，該項權力的行使便會在該部生效時及之後繼續具有效力及作用，
- 則 —
- (i) 在 —
- (A) (a) 段適用的情況下，該項權力可予以行使；或
- (B) (b) 段適用的情況下，該項權力的行使繼續具有效力及作用，
- 猶如本條例未曾制定一樣；及
- (ii) 已廢除的《商品交易條例》、已廢除的《證券條例》或已廢除的《槓桿式外匯買賣條例》(視屬何情況而定) 的條文，繼續適用於該項權力的行使及與此有關的任何事宜 (包括進一步行使權力)，猶如本條例未曾制定一樣。

**本條例第 VIII 部 (監管及調查)**

62. 凡 —

- (a) 在本條例第 VIII 部生效前，某項權力本可根據以下條文行使，但沒有如此行使 —
- (i) 已廢除的《證券及期貨事務監察委員會條例》第 29A、30、31、33 或 36 條；或
- (ii) 已廢除的《槓桿式外匯買賣條例》第 12、41、42、44 或 47 條；或

- (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

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第 571 章附表 10 — 第 1 部  
第 63 條Schedule 10—Part 1  
Section 63S10-110  
Cap. 571

- (b) 在該部生效前，某項權力已根據 (a)(i) 及 (ii) 段提述的任何條文行使，而若非有制定本條例，該項權力的行使便會在該部生效時及之後繼續具有效力及作用，
- 則 —
- (i) 在 —
- (A) (a) 段適用的情況下，該項權力可予以行使；或
- (B) (b) 段適用的情況下，該項權力的行使繼續具有效力及作用，
- 猶如本條例未曾制定一樣；及
- (ii) 已廢除的《證券及期貨事務監察委員會條例》或已廢除的《槓桿式外匯買賣條例》(視屬何情況而定) 的條文，繼續適用於該項權力的行使及與此有關的任何事宜 (包括進一步行使權力)，猶如本條例未曾制定一樣。

63. 在不損害第 62 條的原則下，本條例第 179 條在以下情況下仍然適用 —
- (a) 就本條例第 179 條第 (1)(a)、(b)、(c)、(d) 或 (e) 款而言，該款提述的情況所顯示的並在該款描述的事宜，在本條例第 VIII 部生效前已發生，或證監會覺得該事宜在該部生效前正在發生；或

- (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

S10-111  
第 571 章附表 10 —— 第 1 部  
第 64 條Schedule 10—Part 1  
Section 64S10-112  
Cap. 571

- (b) 就本條例第 179 條第 (1)(f) 款而言，證監會決定根據本條例第 186 條協助調查的事宜，在本條例第 VIII 部生效前已發生，或證監會覺得該事宜在該部生效前正在發生。

- (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.

**本條例第 IX 部 (紀律等)****Part IX of this Ordinance (Discipline, etc.)**

64. 凡 —

64. Where—

- (a) 在本條例第 IX 部生效前，某項權力本可根據以下條文行使，但沒有如此行使 —
- (i) 已廢除的《商品交易條例》第 35 或 36 條；
  - (ii) 已廢除的《證券條例》第 55、56、60(5)、61(2)、121R、121S、121T、121U、121V 或 121X 條；或
  - (iii) 已廢除的《槓桿式外匯買賣條例》第 11 或 12 條；或
- (b) 在該部生效前，某項權力已根據 (a)(i)、(ii) 及 (iii) 段提述的任何條文行使，而若非有制定本條例，該項權力的行使便會在該部生效時及之後繼續具有效力及作用，

- (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,

則 —

then—

- (i) 在 —
  - (A) (a) 段適用的情況下，該項權力可予以行使；或
  - (B) (b) 段適用的情況下，該項權力的行使繼續具有效力及作用，
 猶如本條例未曾制定一樣；及
- (ii) 除第 66 條另有規定外，已廢除的《商品交易條例》、已廢除的《證券條例》或已廢除的《槓桿式外匯買賣條例》(視屬何情況而定) 及已廢除的《證券及期貨事

- (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

S10-113  
第 571 章附表 10 —— 第 1 部  
第 65 條Schedule 10—Part 1  
Section 65S10-114  
Cap. 571

務監察委員會條例》(如適用的話)的條文，繼續適用於該項權力的行使及與此有關的上訴及其他事宜(包括進一步行使權力)，猶如本條例未曾制定一樣。

- (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. 凡 —

- (a) 根據第 64 條行使權力而導致任何人的任何豁免書被撤銷或任何註冊或牌照被撤銷或暫時撤銷或暫時吊銷，或任何該等註冊或牌照的暫時撤銷或暫時吊銷憑藉該條繼續具有效力及作用；及
- (b) 該人因 (a) 段提述的豁免書或註冊或牌照而根據第 22 至 37 條的任何條文當作已根據本條例獲註冊或獲發牌，

則不論第 22 至 37 條有任何規定，該人根據本條例辦理的該項註冊或根據本條例獲發的該牌照，視為已按撤銷或暫時撤銷或暫時吊銷 (a) 段提述的豁免書或註冊或牌照時所按的相同條款及條件，被撤銷或暫時撤銷或暫時吊銷 (視屬何情況而定)，而本條例第 200(1) 至 (3)、201(2) 及 (5)、202 及 203 條在作出必要的變通後，就該項撤銷或暫時撤銷或暫時吊銷而適用，猶如該項撤銷或暫時撤銷或暫時吊銷是根據本條例第 IX 部作出的一樣。

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.



S10-115  
第 571 章附表 10 —— 第 1 部  
第 66 條Schedule 10—Part 1  
Section 66S10-116  
Cap. 571

66. 凡針對第 64 條所指的任何權力的行使而提出的上訴，若非有本條便可向已廢除的《證券及期貨事務監察委員會條例》第 18 條設立的證券及期貨事務上訴委員會提出，則可就該項權力的行使而向上訴審裁處提出覆核申請（但非上述向證券及期貨事務上訴委員會提出的上訴），而就各方面而言，該申請可予以處置，猶如該項權力的行使是本條例第 215 條及本條例附表 8 第 1 條界定的指明決定一樣，而本條例其他條文在作出必要的變通後據此適用。

#### 本條例第 X 部（干預的權力及法律程序）

67. 凡 —
- (a) 在本條例第 X 部生效前，某項權力本可根據以下條文行使，但沒有如此行使 —
    - (i) 已廢除的《證券及期貨事務監察委員會條例》第 39、40、41 或 43 條；或
    - (ii) 已廢除的《槓桿式外匯買賣條例》第 50、51、52 或 54 條；或
  - (b) 在該部生效前，某項權力已根據 (a)(i) 及 (ii) 段提述的任何條文行使，而若非有制定本條例，該項權力的行使便會在該部生效時及之後繼續具有效力及作用，
- 則 —
- (i) 在 —
  - (A) (a) 段適用的情況下，該項權力可予以行使；或

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—

S10-117  
第 571 章附表 10 —— 第 1 部  
第 68 條Schedule 10—Part 1  
Section 68S10-118  
Cap. 571

(B) (b) 段適用的情況下，該項權力的行使繼續具有效力及作用，

猶如本條例未曾制定一樣；及

- (ii) 除第 68 條另有規定外，已廢除的《證券及期貨事務監察委員會條例》或該條例連同已廢除的《槓桿式外匯買賣條例》(視屬何情況而定)的條文，繼續適用於該項權力的行使及與此有關的上訴及其他事宜(包括進一步行使權力)，猶如本條例未曾制定一樣。

(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. 凡針對第 67 條所指的任何權力的行使而提出的上訴，若非有本條便可向已廢除的《證券及期貨事務監察委員會條例》第 18 條設立的證券及期貨事務上訴委員會提出，則可就該項權力的行使而向上訴審裁處提出覆核申請(但非上述向證券及期貨事務上訴委員會提出的上訴)，而就各方面而言，該申請可予以處置，猶如該項權力的行使是本條例第 215 條及本條例附表 8 第 1 條界定的指明決定一樣，而本條例其他條文在作出必要的變通後據此適用。

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. 即使有關的業務或事務的經營或處理在本條例第 X 部生效前已發生，或證監會覺得該業務或事務的經營或處理在該部生

69. Section 214 of this Ordinance applies even if the conduct of business or affairs in question has occurred, or appears to the

S10-119  
第 571 章附表 10 —— 第 1 部  
第 70 條Schedule 10—Part 1  
Section 70S10-120  
Cap. 571

效前正在發生，本條例第 214 條仍然適用。

Commission as occurring, before the commencement of Part X of this Ordinance.

### 本條例第 XI 部 (證券及期貨事務上訴審裁處)

### Part XI of this Ordinance (Securities and Futures Appeals Tribunal)

70. 凡在本條例第 XI 部生效前，某人已根據以下條文向證券及期貨事務上訴委員會提出上訴 —

- (a) 已廢除的《證券及期貨事務監察委員會條例》第 III 部；或
- (b) 已廢除的《槓桿式外匯買賣條例》第 IX 部，

而該上訴在該部生效前尚未獲最終裁定，則就各方面而言，該上訴可繼續進行和予以處置（在不局限上文的一般性的原則下，委任任何人擔任證券及期貨事務上訴委員會委員（不論是主席、副主席或其他委員）或根據 (a) 及 (b) 段提述的任何條文委出的審裁小組的成員的權力，可為該上訴的目的予以行使），猶如本條例未曾制定一樣。

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. 凡 —

- (a) 在本條例第 XI 部生效前，某人沒有根據以下條文向證券及期貨事務上訴委員會提出上訴 —
  - (i) 已廢除的《證券及期貨事務監察委員會條例》第 III 部；或
  - (ii) 已廢除的《槓桿式外匯買賣條例》第 IX 部；及
- (b) 在本條例第 XI 部生效時，可根據上述條文提出上訴的時限仍然有效且尚未屆滿，

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

S10-121  
第 571 章附表 10 —— 第 1 部  
第 72 條Schedule 10—Part 1  
Section 72S10-122  
Cap. 571

該人可向證券及期貨事務上訴委員會提出上訴，而就各方面而言，該上訴可予以處置（在不局限上文的一般性的原則下，委任任何人擔任證券及期貨事務上訴委員會委員（不論是主席、副主席或其他委員）或根據 (a)(i) 及 (ii) 段提述的任何條文委出的審裁小組的成員的權力，可為該上訴的目的予以行使），猶如本條例未曾制定一樣。

- (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. 凡有上訴憑藉第 70 或 71 條而根據或擬根據以下條文提出和處置或繼續和處置 —

- (a) 已廢除的《證券及期貨事務監察委員會條例》第 III 部；或  
(b) 已廢除的《槓桿式外匯買賣條例》第 IX 部，

則在不局限第 70 及 71 條的一般性（包括行使權力以委任任何人擔任已廢除的《證券及期貨事務監察委員會條例》第 18 條設立的證券及期貨事務上訴委員會的委員（不論是主席、副主席或其他委員），或擔任根據 (a) 及 (b) 段提述的任何條文委出的審裁小組的成員）的原則下 —

- (i) 任何人如在緊接本條例第 XI 部生效前擔任證券及期貨事務上訴委員會委員（不論是主席、副主席或其他委員）職位，或擔任根據該條例委出以對該上訴作出裁定的審裁小組成員職位，則就該上訴而言，該人繼續按相同條款及條件擔任該職位，猶如本條例未曾制定一樣；及  
(ii) 就該上訴而言，證券及期貨事務上訴委員會及該審裁小組繼續存在，猶如本條例未曾制定一樣。

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

S10-123  
第 571 章附表 10 —— 第 1 部  
第 73 條Schedule 10—Part 1  
Section 73S10-124  
Cap. 571

## 本條例第 XII 部 (對投資者的賠償)

73. (1) 在第 74 至 76 條中 —
- 已廢除的《合約徵費規則》** (repealed Contract Levy Rules) 指根據本條例第 406 條被廢除的《商品交易 (合約徵費) 規則》(第 250 章, 附屬法例 C);
- 已廢除的《商品交易規則》** (repealed Commodities Trading Rules) 指根據本條例第 406 條被廢除的《商品交易 (交易商、商品交易顧問及代表) 規則》(第 250 章, 附屬法例 A);
- 已廢除的《證券規則》** (repealed Securities Rules) 指根據本條例第 406 條被廢除的《證券 (雜項) 規則》(第 333 章, 附屬法例 A);
- 期交所賠償基金** (Futures Exchange Compensation Fund) 及 **聯交所賠償基金** (Unified Exchange Compensation Fund) 具有本條例第 235 條分別給予該兩詞的涵義。
- (2) 為免生疑問, 現宣布第 74 至 76 條不得解釋為可使根據任何成文法則或法律規則而禁止提出的申索得以提出。

## 聯交所賠償基金

74. (1) 儘管有本條例第 406 條訂定的廢除, 除本條另有規定外,

- 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,



S10-125  
第 571 章附表 10 —— 第 1 部  
第 74 條

已廢除的《證券條例》第 X 部繼續適用於以下事宜並就以下事宜而適用，猶如該第 406 條未曾制定一樣 —

- (a) 任何在指定日期前根據該部向聯交所賠償基金提出的賠償申索；或
- (b) 在指定日期前發生的違責，  
但該部須作出下述變通 —
  - (i) 該部第 112 條由指定日期起不再適用；
  - (ii) 對聯合交易所的提述，須代以對本條例所指的認可證券市場的提述；
  - (iii) 對交易所公司的提述，須代以對本條例所指的聯交所的提述；
  - (iv) **證券交易**須按照本條例附表 5 第 2 部解釋；及
  - (v) **交易所參與者、上市、證券及交易權**須分別按照本條例解釋。
- (2) 證監會可在指定日期後從聯交所賠償基金撥出該會在顧及下述款額後認為適當的款額，將之撥入賠償基金 —
  - (a) 證監會認為為應付針對聯交所賠償基金的申索或可能有的該等申索所需的款額；及
  - (b) 根據已廢除的《證券條例》第 104 條以現金繳存但未在先前根據本條付還的款額。
- (3) 凡證監會認為聯交所賠償基金的貸方款額，超逾該會認為應付針對該基金的申索或可能有的該等申索所需的總款額，則該會可在指定日期後，將超逾之數用於付還聯交所（如該所正進行清盤，則付還該所的清盤人）根據已廢除的《證券條例》第 104 條以現金繳存的款額。
- (4) 聯交所須於指定日期後在合理地切實可行的範圍內，盡快在香港每日出版且普遍行銷的中文及英文報章各一份或多於一份刊登公告，指明一個於該公告刊登後 3 個月之後的日期，而任何人可於該日期當日或之前向聯交所賠償基金提出賠償申索。

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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

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Section 74S10-128  
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- (5) 凡有人擬就在指定日期前發生的違責而向聯交所賠償基金提出賠償申索，該人須在 —
- (a) (如第(4)款所指公告已刊登)該公告所指明的日期當日或之前向聯交所提交書面申索；或
- (b) (如沒有刊登該公告)在申索人察覺該項引致該申索的違責後的6個月內向聯交所提交書面申索。
- (6) 根據第(5)款提出的申索，須視為根據已廢除的《證券條例》第109條提出的申索，而該條例第X部的其他條文據此適用。
- (7) 除非聯交所另有決定，否則沒有在第(5)款所限定的時間內提出的申索，不得提出。
- (8) 在 —
- (a) 所有根據本條提出或繼續進行的申索處理完畢後；及
- (b) 清償聯交所賠償基金的一切未償還債務後，證監會須按照第(9)款運用該基金的餘款。
- (9) 第(8)款所述的餘款 —
- (a) 須用以付還聯交所(如該所正進行清盤，則付還該所的清盤人)根據已廢除的《證券條例》第104條以現金繳存但未有在先前根據本條付還的款額；及
- (b) 餘款(如有的話)須撥入賠償基金。
- (10) 任何第(3)或(9)(a)款提述的付還一經作出，付還的款額即屬聯交所資產的一部分，如該所正進行清盤，則其清盤人可將該等款額按照《公司(清盤及雜項條文)條例》(第32章)分派。(由2012年第28號第912及920條修訂)
- (11) 凡向聯交所賠償基金提出的賠償申索准予撥款支付(不論是全數或部分)，但因證監會不能確定其申索人的所在而不能將准予撥款支付的款項支付予該申索人，則證監會須在自准予撥款日期起計的3年內代該申索人保管該筆款項，隨後證監會須按照第(9)款運用該筆款項。

- (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

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- (12) 除本條另有規定外，任何人不得在指定日期後向聯交所賠償基金提出賠償申索。
- #(13) 財經事務及庫務局局長可為施行本條而藉憲報公告指定某一個日期為指定日期。(由 2002 年第 106 號法律公告修訂)
- (14) 在本條中 —  
**指定日期** (appointed day) 指根據第 (13) 款指定的日期；  
**違責** (default) 指已廢除的《證券條例》第 109(1) 條提述的作為。

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- 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 (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32). (Amended 28 of 2012 ss. 912 & 920)
- (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

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第 75 條Schedule 10—Part 1  
Section 75S10-132  
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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.

<sup>#</sup>(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 an act referred to in section 109(1) of the repealed Securities Ordinance.

## 期交所賠償基金

## Futures Exchange Compensation Fund

75. (1) 儘管有本條例第 406 條訂定的廢除，除本條另有規定外，已廢除的《商品交易條例》第 VIII 部及已廢除的《合約徵費規則》繼續適用於以下事宜並就以下事宜而適用，猶如該第 406 條未曾制定一樣 —
- (a) 任何在指定日期前根據該部向期交所賠償基金提出的賠償申索；或
  - (b) 在指定日期前發生的違責，  
但該部及該規則須作出下述變通 —
    - (i) 該部第 89 條由指定日期起不再適用；
    - (ii) 對商品交易所的提述，須代以對本條例所指的認可期貨市場的提述；

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—



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- (iii) 對交易所公司的提述，須代以對本條例所指的期交所的提述；及
- (iv) **交易所參與者、期貨合約及交易權**須分別按照本條例解釋。
- (2) 證監會可在指定日期後從期交所賠償基金撥出該會在顧及下述款額後認為適當的款額，將之撥入賠償基金 —
  - (a) 證監會認為為應付針對期交所賠償基金的申索或可能有的該等申索所需的款額；及
  - (b) 根據已廢除的《商品交易條例》第 82 條以現金繳存但未有在先前根據本條付還的款額。
- (3) 凡證監會認為期交所賠償基金的貸方款額，超逾該會認為應付針對該基金的申索或可能有的該等申索所需的總款額，則該會可在指定日期後，將超逾之數用於付還期交所（如該所正進行清盤，則付還該所的清盤人）根據已廢除的《商品交易條例》第 82 條以現金繳存的款額。
- (4) 期交所須於指定日期後在合理地切實可行的範圍內，盡快在香港每日出版且普遍行銷的中文及英文報章各一份或多於一份刊登公告，指明一個於該公告刊登後 3 個月之後的日期，而任何人可於該日期當日或之前向期交所賠償基金提出賠償申索。
- (5) 凡有人擬就在指定日期前發生的違責而向期交所賠償基金提出賠償申索，該人須在 —
  - (a) （如第 (4) 款所指公告已刊登）該公告所指明的日期當日或之前向期交所提交書面申索；或
  - (b) （如沒有刊登該公告）在申索人察覺該項引致該申索的違責後的 6 個月內向期交所提交書面申索。
- (6) 根據第 (5) 款提出的申索，須視為根據已廢除的《商品交易條例》第 87 條提出的申索，而該條例第 VIII 部的其他條文據此適用。
- (7) 除非期交所另有決定，否則沒有在第 (5) 款所限定的時間內提出的申索，不得提出。

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- (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.



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- (8) 在 —
- (a) 所有根據本條提出或繼續進行的申索處理完畢後；及
- (b) 清償期交所賠償基金的一切未償還債務後，證監會須按照第 (9) 款運用該基金的餘款。
- (9) 第 (8) 款所述的餘款 —
- (a) 須用以付還期交所 (如該所正進行清盤，則付還該所的清盤人) 根據已廢除的《商品交易條例》第 82 條以現金繳存但未有在先前根據本條付還的款額；及
- (b) 餘款 (如有的話) 須撥入賠償基金。
- (10) 任何第 (3) 或 (9)(a) 款提述的付還一經作出，付還的款額即屬期交所資產的一部分，如該所正進行清盤，則其清盤人可將該等款額按照《公司 (清盤及雜項條文) 條例》(第 32 章) 分派。(由 2012 年第 28 號第 912 及 920 條修訂)
- (11) 凡向期交所賠償基金提出的賠償申索准予撥款支付 (不論是全數或部分)，但因證監會不能確定其申索人的所在而不能將准予撥款支付的款項支付予該申索人，則證監會須在自准予撥款日期起計的 3 年內代該申索人保管該筆款項，隨後證監會須按照第 (9) 款運用該筆款項。
- (12) 除本條另有規定外，任何人不得在指定日期後向期交所賠償基金提出賠償申索。
- ①(13) 財經事務及庫務局局長可為施行本條而藉憲報公告指定某一個日期為指定日期。(由 2002 年第 106 號法律公告修訂)
- (14) 在本條中 —
- 指定日期** (appointed day) 指根據第 (13) 款指定的日期；
- 違責** (default) 指已廢除的《商品交易條例》第 87(1) 條提述的失責。

- (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).

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附表 10 —— 第 1 部

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Section 75

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- (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 (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32). *(Amended 28 of 2012 ss. 912 & 920)*
- (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.
- <sup>@</sup>(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—

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第 76 條Schedule 10—Part 1  
Section 76S10-140  
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## 交易商按金計劃

## Dealers Deposit Scheme

76. (1) 儘管有本條例第 406 條訂定的廢除，為施行本條，下述條文在本條的規限下繼續適用，猶如該第 406 條未曾制定一樣 —
- (a) 已廢除的《證券條例》第 52(第(1)、(1A)及(6)款除外) 及 52A 條；
  - (b) 已廢除的《證券規則》第 2、4、5、6(第 6(4) 條除外)、6B、6C、6D、6E、6F 及 6G(第 6G(4) 條除外) 條；
  - (c) 已廢除的《商品交易條例》第 33 條；及
  - (d) 已廢除的《商品交易規則》第 III 部(第 15(5) 條除外)。
- (2) 凡在指定日期前 —
- (a) 出現已廢除的《證券條例》第 52(2) 或 (11) 條、已廢除的《商品交易條例》第 33(1) 或 (11) 條或已廢除的《證券規則》第 6D(1)、6E 或 6G(1) 條所描述的情況；及
  - (b) 未有根據任何上述條文，將有關交易商或註冊融資人所繳付、繳存或交存的按金或保證(視屬何情況而定)轉撥、支付或沒收；亦沒有提出申請，要求發還該按金或保證(視屬何情況而定)，
- 則可根據第(1)款指明的適用條文，作出上述的轉撥、支付、沒收或提出要求發還該按金或保證的申請，以及在其後運用該按金或保證。
- (3) 就在指定日期前發生的違責而在該日期前提出但尚未處理完畢的賠償申索，可根據第(1)款繼續進行並予以處理。

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;
  - (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

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- (4) 證監會須於指定日期後在合理地切實可行的範圍內，盡快在香港每日出版且普遍行銷的中文及英文報章各一份或多於一份刊登公告，指明一個於該公告刊登後 3 個月之後的日期，而任何人可於該日期當日或之前，針對根據已廢除的《證券條例》第 52(2)(c) 條或已廢除的《商品交易條例》第 33(1)(c) 條沒收的按金或根據已廢除的《證券條例》第 121K(1) 條交存的保證，提出賠償申索。
- (5) 凡有人擬就在指定日期前發生的違責，而針對第 (4) 款所述的按金或保證提出賠償申索，該人須在 —
- (a) (如第 (4) 款所指公告已刊登) 該公告所指明的日期當日或之前向證監會提交書面申索；或
- (b) (如沒有刊登該公告) 在申索人察覺該項引致該申索的違責後的 6 個月內向證監會提交書面申索。
- (6) 根據第 (5) 款提出的申索，須視為根據已廢除的《證券規則》第 6(5) 或 6G(5) 條或已廢除的《商品交易規則》第 15(6) 條 (視屬何情況而定) 提出的申索，而該等規則的其他條文據此適用。
- (7) 除非證監會另有決定，否則沒有在第 (5) 款所限定的時間內提出的申索，不得提出。
- (8) 凡根據本條提出或繼續進行的申索不獲准予撥款支付，或裁定為須予支付賠償的款額並不超逾有關按金或保證的款額，則證監會須將該申索所關乎的按金、保證或其餘款 (視屬何情況而定)，退回予有關的交易商或註冊融資人。
- (9) 凡 —
- (a) 根據已廢除的《證券條例》第 52 條所繳存的按金或根據已廢除的《商品交易條例》第 31 條所繳付的按金或根據已廢除的《證券條例》第 121K(1) 條交存的保證，並沒有根據該等條例予以處置，或該等條例並無規定須予處置；及
- (b) 本條並無規定須以其他方式處置該等按金或保證，

financier concerned has been made under any of those sections or rules,

- then a transfer, payment, forfeiture or application for release and any subsequent application of the deposit or security may be made under the applicable provisions specified in subsection (1).
- (3) 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.
- (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—
- (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

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則證監會須將該等按金或保證，退回予有關的交易商或註冊融資人。

- (10) 凡根據本條提出或繼續進行的賠償申索准予撥款支付 (不論是全數或部分)，但因證監會不能確定其中索人的所在而不能將准予撥款支付的款項支付予該申索人，則證監會須在自准予撥款日期起計的 3 年內代該申索人保管該筆款項，隨後證監會須將該筆款項，退回予有關的交易商或註冊融資人。
- (11) 凡 —
- (a) 根據第 (8) 或 (9) 款規定須將按金、保證或其餘款，退回予交易商或註冊融資人，或根據第 (10) 款規定須將任何款項，退回予交易商或註冊融資人；但
- (b) 證監會在自 —
- (i) (如屬第 (8) 款的情況) 有關申索獲裁定的日期；
- (ii) (如屬第 (9) 款的情況) 指定日期；或
- (iii) (如屬第 (10) 款的情況) 該款提述的 3 年期間屆滿，
- 起計的 3 年內，仍不能為作上述退回而確定有關交易商或註冊融資人的所在，
- 則證監會須將該按金、保證或其餘款或該款項 (視屬何情況而定) 撥入賠償基金。
- (12) 除本條另有規定外，在指定日期後，任何人不得就根據已廢除的《證券條例》第 52(2)(c) 條或已廢除的《商品交易條例》第 33(1)(c) 條沒收的按金提出賠償申索，亦不得就根據已廢除的《證券條例》第 121K(1) 條交存的任何保證提出賠償申索。
- (13) 財經事務及庫務局局長可為施行本條而藉憲報公告指定某一個日期為指定日期。(由 2002 年第 106 號法律公告修訂)
- (14) 在本條中 —

Securities Rules or rule 15(6) of the repealed Commodities Trading Rules (as the case may be), and other provisions of the Rules shall apply accordingly.

- (7) A claim that is not made within the time limited by subsection (5) shall, unless the Commission otherwise determines, be barred.
- (8) Where a claim made or continued under this section is not allowed or the amount or amounts determined to be payable as compensation do not exceed the amount of the deposit 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.
- (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.
- (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.



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第 571 章

附表 10 —— 第 1 部  
第 76 條

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**指定日期** (appointed day) 指根據第 (13) 款指定的日期；

**違責** (default) 指已廢除的《證券規則》第 6(2) 或 6G(2) 條或已廢除的《商品交易規則》第 15(2) 條提述的失責。

(由 2012 年第 9 號第 48 條修訂)

(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.

- (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.
- (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);

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第 571 章附表 10 —— 第 1 部  
第 77 條Schedule 10—Part 1  
Section 77S10-148  
Cap. 571**本條例第 XIII 部 (市場失當行為審裁處)**

77. 凡 —

- (a) 若非有制定本條例，已廢除的《證券(內幕交易)條例》本會就該條例所指的某宗內幕交易具有效力；及
- (b) 該宗交易在本條例第 XIII 部生效前已發生，

而財政司司長在本條例第 XIII 部生效前已就該宗交易根據已廢除的《證券(內幕交易)條例》第 16(2) 條展開研訊，則已廢除的《證券(內幕交易)條例》繼續就該宗交易及與該宗交易有關的任何研訊、上訴及其他事宜而適用(在不局限上文的一般性的原則下，包括行使權力以為有關研訊的目的委任任何人擔任該條例第 15 條提述的內幕交易審裁處的成員(不論是主席或其他成員)或臨時成員)，猶如本條例未曾制定一樣。

78. 凡 —

*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—

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第 571 章附表 10 —— 第 1 部  
第 79 條Schedule 10—Part 1  
Section 79S10-150  
Cap. 571

- (a) 若非有制定本條例，已廢除的《證券(內幕交易)條例》本會就該條例所指的某宗內幕交易具有效力；及
- (b) 該宗交易完全或有部分在本條例第 XIII 部生效前已發生，

但財政司司長沒有在本條例第 XIII 部生效前就該宗交易根據已廢除的《證券(內幕交易)條例》第 16(2) 條展開研訊，則已廢除的《證券(內幕交易)條例》繼續就該宗交易及與該宗交易有關的任何研訊、上訴及其他事宜而適用(在不局限上文的一般性的原則下，包括行使權力以為有關研訊的目的委任任何人擔任該條例第 15 條提述的內幕交易審裁處的成員(不論是主席或其他成員)或臨時成員)，猶如 —

- (i) 本條例未曾制定一樣；及
- (ii) 已廢除的《證券(內幕交易)條例》已按第 80 條描述的方式修訂一樣。

79. 就第 78 條而言，凡 —

- (a) 某一連串的行為有部分在本條例第 XIII 部生效前已發生，有部分在該部生效時或之後發生；
- (b) 除本條外，該一連串的行為 —
  - (i) 由於在本條例第 XIII 部生效前已發生的該部分，會因某構成已廢除的《證券(內幕交易)條例》

- (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—

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第 571 章附表 10 —— 第 1 部  
第 80 條Schedule 10—Part 1  
Section 80S10-152  
Cap. 571

例》第 9(1)(a)、(b)、(c)、(d)、(e) 或 (f) 或 (2) 條所指的有關消息的消息，而構成在已廢除的《證券(內幕交易)條例》下發生的一宗或多於一宗的內幕交易；及

- (ii) 由於在本條例第 XIII 部生效時或之後發生的該部分，若非有制定本條例，亦會因某構成已廢除的《證券(內幕交易)條例》第 9(1)(a)、(b)、(c)、(d)、(e) 或 (f) 或 (2) 條所指的有關消息的消息，而構成在已廢除的《證券(內幕交易)條例》下發生的一宗或多於一宗的內幕交易；及

- (c) (b)(i) 及 (ii) 段提述的消息是同一或實質上同一的消息，

則該一連串的行為，視為第 78 條所指的而有部分在本條例第 XIII 部生效前已發生的內幕交易。

80. 如第 78 條適用，已廢除的《證券(內幕交易)條例》須在猶如已作出以下修訂的情況下適用 —

- (a) 加入 —

“27A. 向財政司司長建議展開研訊

- (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

S10-153  
第 571 章附表 10 —— 第 1 部  
第 81 條Schedule 10—Part 1  
Section 81S10-154  
Cap. 571

凡審裁處覺得因任何人的行為而曾發生或可能已發生內幕交易，審裁處如認為適當，則可在研訊結束時或在研訊結束後在合理地切實可行的範圍內盡快向財政司司長建議根據第 16 條展開研訊，以研訊該事宜。”；

- (b) 在附表中，在第 17 段中，在“決定”之前加入“在就有關研訊進行的首次審裁處聆訊中，”。

81. 凡有研訊憑藉第 77 或 78 條而根據或擬根據已廢除的《證券(內幕交易)條例》展開、繼續或處置，則在不局限第 77 及 78 條的一般性(包括行使權力以委任任何人擔任該條例第 15 條所述的內幕交易審裁處的成員(不論是主席或其他成員)或臨時成員)的原則下——

- (a) 任何人如在緊接本條例第 XIII 部生效前擔任該內幕交易審裁處成員(不論是主席或其他成員)或臨時成員職位，則就該研訊而言，該人繼續按相同條款及條件擔任該職位，猶如本條例未曾制定一樣；及
- (b) 就該研訊而言，內幕交易審裁處繼續存在，猶如本條例未曾制定一樣。

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.



S10-155  
第 571 章附表 10 — 第 1 部  
第 82 條Schedule 10—Part 1  
Section 82S10-156  
Cap. 571**本條例第 XV 部 (權益披露)**

82. 《證券 (披露權益) 條例》(第 396 章) 的廢除，並不影響已根據該條例產生的披露責任或具報責任，而不論是否有以下情況，該等責任均須按照該條例履行，猶如本條例未曾制定一樣 —
- (a) 就同一事宜 (或其部分) 的披露責任或具報責任已根據本條例產生；或
  - (b) (a) 款提述的責任已按照本條例履行。
83. 任何根據已廢除的《證券 (披露權益) 條例》第 2A 條已經給予並在緊接本條例第 XV 部生效前有效的豁免，在該部生效時須當作已在假若本條例未曾制定便會適用的相同條件的規限下根據本條例第 309 條給予。
84. 凡有申請根據已廢除的《證券 (披露權益) 條例》提出但在本條例第 XV 部生效前未獲最終裁定，則該申請在該部生效時須繼續按照該條例處理，猶如本條例未曾制定一樣。

**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.

S10-157  
第 571 章附表 10 —— 第 1 部  
第 85 條Schedule 10—Part 1  
Section 85S10-158  
Cap. 571

85. 如法庭或財政司司長(視屬何情況而定)根據已廢除的《證券(披露權益)條例》施加的任何限制或作出的任何命令在緊接本條例第 XV 部生效前屬有效的，則該等限制或命令在該部生效時繼續有效，猶如本條例未曾制定一樣。
86. 凡有調查根據已廢除的《證券(披露權益)條例》進行但在本條例第 XV 部生效前尚未完結，則 —
- (a) 根據該條例可為進行該調查而行使的權力在該部生效時仍可行使，猶如本條例未曾制定一樣；及
  - (b) 已廢除的《證券(披露權益)條例》的條文繼續適用於該權力的行使及與之有關的任何其他事宜，猶如本條例未曾制定一樣。
87. 在緊接本條例第 XV 部生效前根據已廢除的《證券(披露權益)條例》備存或保持的任何登記冊(包括其任何部分及任何索引)或任何報告，在該部生效時即視為根據本條例備存的，而在第 88 條的規限下，本條例中與備存和查閱該等登記冊或報告(視屬何情況而定)有關的條文據此適用，並可據此就該等條文不獲遵守而施加罰則。

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

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apply, and the penalty for non-compliance with such provisions may be imposed, accordingly.

88. 凡有登記冊（包括其任何部分及任何索引）或報告在緊接本條例第 XV 部生效前根據已廢除的《證券（披露權益）條例》備存或保持，而該條例規定須在 6 年屆滿之前一直將該登記冊或報告備存，或規定在該限期內不得刪除該登記冊內的任何記項，則該段 6 年的限期須按照該條例的有關條文計算，猶如本條例未曾制定一樣。

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.

### 一般條文

89. 凡任何規則作為證監會根據本條例任何條文訂立的規則，而在本條例制定後但在本條例第 XVI 部生效前為《釋義及通則條例》（第 1 章）第 28(2) 條的目的而在憲報刊登，則就所有目的而言，本條例第 398(1) 至 (3) 條須當作已就該等規則而獲遵從。

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.

### General

90. 就本條例第 399 條而言 —
- (a) 由證監會發表並在緊接本條例第 XVI 部生效前使用的《公司收購及合併守則》；及
  - (b) 由證監會發表並在緊接該部生效前使用的《公司購回本身股份守則》，
- 在該部生效時，即視為分別根據本條例第 399(2)(a) 及 (b) 條發表的守則，本條例的條文據此而適用於該等守則。

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,

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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. 凡 —

- (a) 根據本條例第 406 條被廢除的條例有任何條文規定向證監會或由該會發出、提供或送達任何文件或資料 (不論是否稱為通知)；
- (b) 該文件或資料已根據或依據該條文向證監會或由該會發出、提供或送達；及
- (c) 本條例中某條文亦有規定向證監會或由該會發出、提供或送達該文件或資料，

則該文件或資料當作是根據或依據本條例的該條文向證監會或由該會發出、提供或送達。

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. 凡 —

- (a) 為施行根據本條例第 406 條被廢除的條例的任何條文 (**已廢除條文**) 而指明的任何期間在該等條文被廢除時尚未屆滿；及
- (b) 證監會認為本條例某條文 (**相應條文**) 相當於該等已廢除條文，

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

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附表 10 —— 第 2 部

第 571 章

Schedule 10—Part 2

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則在為施行該相應條文而計算該期間時，本條例在以下基礎上具有效力 —

- (i) 為施行該已廢除條文而指明的期間須適用，不論是否為施行該相應條文而有指明其他期間；及
- (ii) 除第 (i) 段另有規定外，該相應條文當作在根據該段而適用的期間開始計算時已經生效。

93. 除本部另有規定外，根據本條例第 406 條被廢除的條例的任何條文而展開的司法程序，或憑藉行使該條文授予的職能而展開的司法程序，如在該條文被廢除時仍待決或未獲最終裁定，則就各方面而言，該等程序在該條文被廢除後可繼續和予以處置，猶如本條例未曾制定一樣。

編輯附註：

# 2003 年 4 月 1 日為根據本款指定的日期—見 2003 年第 14 號法律公告。

@ 2003 年 4 月 1 日為根據本款指定的日期—見 2003 年第 15 號法律公告。

## 第 2 部

(已失時效而略去—2012 年第 2 號編輯修訂紀錄)

## 第 3 部

- (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.

Editorial Note:

# 1 April 2003 was the date appointed under this subsection - see L.N. 14 of 2003.

@ 1 April 2003 was the date appointed under this subsection - see L.N. 15 of 2003.

## Part 2

(Omitted as spent—E.R. 2 of 2012)

## Part 3



## 關於《2011 年證券及期貨和公司法例 (結構性產品修訂) 條例》的保留及過渡性條文

1. 如某結構性產品為以下文件的標的，則本條例第 103(1) 條並不就該產品而適用 —
  - (a) 在《2011 年證券及期貨和公司法例 (結構性產品修訂) 條例》(2011 年第 8 號) 第 18 條的生效日期<sup>+</sup>前，根據《有關條例》第 38D 條獲批准及註冊的計劃章程及其附錄 (如有的話) 及發行章程及其附錄 (如有的話)；或
  - (b) (就在香港以外成立為法團的公司而言) 在《2011 年證券及期貨和公司法例 (結構性產品修訂) 條例》(2011 年第 8 號) 第 19 條的生效日期<sup>+</sup>前，根據《有關條例》第 342C 條獲批准及註冊的計劃章程及其附錄 (如有的話) 及發行章程及其附錄 (如有的話)。

(由 2012 年第 28 號第 912 及 920 條修訂)
2. 第 1(a) 條自下述日期 (以較早者為準) 起不再對結構性產品有效 —
  - (a) 《公司 (清盤及雜項條文) 條例》(第 32 章) 附表 21 第 1 部第 8 條中所指明的日期中的最早的一個日期；或 (由 2012 年第 28 號第 912 及 920 條修訂)
  - (b) 在發行章程中所指明的就結構性產品向公眾要約的期間的最後一日的翌日。
3. 第 1(b) 條自下述日期 (以較早者為準) 起不再對結構性產品有效 —
  - (a) 《公司 (清盤及雜項條文) 條例》(第 32 章) 附表 21 第 2 部第 8 條中所指明的日期中的最早的一個日期；或 (由 2012 年第 28 號第 912 及 920 條修訂)

## 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<sup>+</sup> 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 relevant Ordinance; 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<sup>+</sup> 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 relevant Ordinance.

(Amended 28 of 2012 ss. 912 & 920)
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 (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or (Amended 28 of 2012 ss. 912 & 920)

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(b) 在發行章程中所指明的就結構性產品向公眾要約的期間的最後一日的翌日。

4. 如有以下情況，則在自《2011 年證券及期貨和公司法例 (結構性產品修訂) 條例》(2011 年第 8 號) 第 14(5) 條的生效日期<sup>+</sup>起計的 6 個月內，本條例第 V 部不適用於經營某受規管活動的業務 —

- (a) 在緊接該日期前，該業務已在經營中；及
- (b) 該活動只因本條例附表 1 第 1 部第 1 條中**證券**的定義的 (g) 段 (由《2011 年證券及期貨和公司法例 (結構性產品修訂) 條例》(2011 年第 8 號) 第 14(5) 條所加入) 而屬受規管活動。

(第 3 部由 2011 年第 8 號第 16 條增補)

編輯附註：

<sup>+</sup> 生效日期：2011 年 5 月 13 日。

(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 (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or (*Amended 28 of 2012 ss. 912 & 920*)
- (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<sup>+</sup> 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)

Editorial Note:

<sup>+</sup> Commencement date: 13 May 2011.

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第 571 章附表 10 — 第 4 部  
第 1 條Schedule 10—Part 4  
Section 1S10-170  
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## 第 4 部

### 關於《2012 年證券及期貨 (修訂) 條例》的保留及過渡性條文

1. 如有人根據本條例第 185 條提出申請，而在《2012 年證券及期貨 (修訂) 條例》(2012 年第 9 號) 第 40 條生效日期<sup>++</sup>之前，該申請仍屬待決或未獲最後裁斷，該申請可在該日期當日或之後繼續進行及予以裁斷，猶如《2012 年證券及期貨 (修訂) 條例》(2012 年第 9 號) 沒有制定一樣。
2. 證監會可在《2012 年證券及期貨 (修訂) 條例》(2012 年第 9 號) 第 40 條生效日期當日<sup>++</sup>或之後，根據本條例第 185 條提出申請，不論該申請的標的是在該日期之前、當日或之後產生亦然，但如已有申請在該日期之前根據本條例第 185 條就同一標的而提出，則屬例外。
3. 如有研訊程序根據本條例第 252 條提起，而在《2012 年證券及期貨 (修訂) 條例》(2012 年第 9 號) 第 3 部生效日期<sup>++</sup>之前，該程序仍屬待決或未獲最後裁斷，該程序可在該日期當日或之後繼續進行及予以裁斷，猶如《2012 年證券及期貨 (修訂) 條例》(2012 年第 9 號) 第 3 部沒有制定一樣。
4. 證監會可在《2012 年證券及期貨 (修訂) 條例》(2012 年第 9 號) 第 3 部生效日期當日<sup>++</sup>或之後，根據本條例第 252 條提起研訊程序，不論該研訊程序的標的是在該日期之前、當日或之後產生亦然，但如已有研訊程序在該日期之前根據本條例第 252 條就同一標的而提出，則屬例外。

(第 4 部由 2012 年第 9 號第 48 條增補)

編輯附註：

<sup>++</sup> 生效日期：2012 年 5 月 4 日。

最後更新日期  
3.7.2017

經核證文本

## 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<sup>++</sup> 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<sup>++</sup> 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<sup>++</sup> 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<sup>++</sup> of Part 3 of the Securities and Futures (Amendment) Ordinance 2012 (9 of 2012)

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Last updated date  
3.7.2017

S10-171  
第 571 章附表 10 —— 第 5 部  
第 1 條Schedule 10—Part 5  
Section 1S10-172  
Cap. 571**第 5 部****關於《公司條例》(第 622 章)對《證券及期貨條例》(第 571 章)的相應修訂的保留及過渡性條文**

1. 在《有關條例》第 128(3) 及 129(3) 條根據《公司條例》(第 622 章)附表 11 而就某法團的帳目持續有效的期間，儘管第 332(5) 條被廢除，第 332(5) 條就該法團的任何資料而言，仍繼續適用於根據第 332 條擬備的報告。
2. 在《有關條例》第 128(3) 及 129(3) 條根據《公司條例》(第 622 章)附表 11 而就某法團的帳目持續有效期間，儘管第 336(11) 條被廢除，第 336(11) 條就該法團的任何資料而言，仍繼續適用於股份權益及淡倉登記冊或列出已記錄在登記冊內的姓名或名稱的索引。在第 336(11) 條如此繼續適用期間，第 336(10)(b) 條受第 336(11) 條所規限。
3. 在《有關條例》第 128(3) 及 129(3) 條根據《公司條例》(第 622 章)附表 11 而就某法團的帳目持續有效期間，儘管第 352(12) 條被廢除，第 352(12) 條就該法團的任何資料而言，仍繼續適用於董事及最高行政人員權益及淡倉登記冊或列出已記錄在登記冊內的姓名或名稱的索引。在第 352(12) 條如此繼續適用期間，第 352(11)(b) 條受第 352(12) 條所規限。

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)*

Editorial Note:

<sup>++</sup> Commencement date: 4 May 2012.

**Part 5****Savings and Transitional Provisions Relating to Consequential Amendments to Securities and Futures Ordinance (Cap. 571) made by Companies Ordinance (Cap. 622)**

1. During the period during which section 128(3) and section 129(3) of the relevant Ordinance have a continuing effect under Schedule 11 to the Companies Ordinance (Cap. 622) in relation to accounts of a corporation, section 332(5), despite its repeal, continues to apply to a report prepared under section 332, in relation to any information of that corporation.
2. During the period during which section 128(3) and section 129(3) of the relevant Ordinance have a continuing effect under Schedule 11 to the Companies Ordinance (Cap. 622) in relation to accounts of a corporation, section 336(11), despite its repeal, continues to apply to a register of interests in shares and short positions or an index of the names recorded in the register, in relation to any information of that corporation. Section 336(10)(b) is subject to section 336(11) during the period during which section 336(11) so continues to apply.

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附表 10 —— 第 6 部

Schedule 10—Part 6

S10-174  
Cap. 571

(第 5 部由 2012 年第 28 號第 912 及 920 條增補)

3. During the period during which section 128(3) and section 129(3) of the relevant Ordinance have a continuing effect under Schedule 11 to the Companies Ordinance (Cap. 622) in relation to accounts of a corporation, section 352(12), despite its repeal, continues to apply to a register of directors' and chief executives' interests and short positions or an index of the names recorded in the register, in relation to any information of that corporation. Section 352(11)(b) is subject to section 352(12) during the period during which section 352(12) so continues to apply.

(Part 5 added 28 of 2012 ss. 912 &amp; 920)

**第 6 部****關於《2014 年證券及期貨 (修訂) 條例》的保留及過渡性條文**

1. 除第 2 條另有規定外，如給予或交付某指明文件的責任，是在《2014 年證券及期貨 (修訂) 條例》(2014 年第 6 號) 第 64 條的生效日期當日或之後產生的，則被該條例第 64 條取代的本條例第 374 條適用於該文件。
2. 如給予或交付某指明文件的責任，是在《2014 年證券及期貨 (修訂) 條例》(2014 年第 6 號) 第 64 條的生效日期前產生的，則在以下情況下，該文件須視為已妥為給予或交付——
  - (a) 該文件是按照在緊接該日期前有效的本條例第 374 條，在該日期當日或之後交付、留交或送交的；或
  - (b) 該文件是按照被《2014 年證券及期貨 (修訂) 條例》(2014 年第 6 號) 第 64 條取代的本條例第 374 條送交的。
3. 在本部中——

**Part 6****Savings and Transitional Provisions Relating to Securities and Futures (Amendment) Ordinance 2014**

1. Subject to section 2, section 374 of this Ordinance as substituted by section 64 of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) applies to a specified document if the duty to give or deliver the document arose on or after the commencement date of section 64 of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014).
2. If the duty to give or deliver a specified document arose before the commencement date of section 64 of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014), 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



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附表 10 —— 第 6 部

**指明文件** (specified document) 指被《2014 年證券及期貨 (修訂) 條例》(2014 年第 6 號) 第 64 條取代的本條例第 374(1) 條所提述的文件。

(第 6 部由 2014 年第 6 號第 65 條增補)

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(b) sent in accordance with section 374 of this Ordinance as substituted by section 64 of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014).

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 64 of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014).

(Part 6 added 6 of 2014 s. 65)