

SECURITIES AND FUTURES BILL

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A BILL

To

Consolidate and amend the law relating to securities, futures contracts, leveraged foreign exchange trading and other investment arrangements.

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART IPRELIMINARY

1.1 Short title and commencement

- (1) This Ordinance may be cited as the Securities and Futures Ordinance.
- (2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services by notice in the Gazette.

1.2 Interpretation

- (1) Except where the context otherwise requires, the words and phrases defined in Part 1 of Schedule 1 have the meanings set out there for the purposes of this Ordinance.
- (2) The interpretation provisions set out in Part 2 of Schedule 1 apply to the interpretation of this Ordinance.
- (3) The Commission may by order amend Parts 3, 4 and 5 of Schedule 1 for the purposes of the definitions of "qualifying credit rating", "recognized futures exchange" and "recognized stock exchange".
- (4) Parts V, VI, XI and XIII contain definitions that apply only to those Parts respectively.

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PART IISECURITIES AND FUTURES COMMISSION

2.1 Securities and Futures Commission

- (1) The Securities and Futures Commission is a body corporate with power to sue and be sued.
- (2) The receipts of the Commission are not subject to taxation under the Inland Revenue Ordinance (Cap. 112).
- (3) The Commission is constituted under this Part, and shall conduct its business in accordance with Schedule 2.

2.2 Functions of Commission

- (1) The Commission has the following functions -
 - (a) to advise the Financial Secretary on all matters relating to securities, futures contracts, leveraged foreign exchange trading arrangements and other investment arrangements;
 - (b) without prejudice to a duty imposed or power conferred on another person to enforce the law relating to securities, futures contracts, leveraged foreign exchange trading arrangements and other investment arrangements, to ensure that the relevant Ordinances, and the provisions of any other Ordinance that relate to securities, futures contracts, leveraged foreign exchange trading arrangements and other investment arrangements, are complied with;
 - (c) to supervise and monitor the activities of recognized exchange companies and clearing houses;

(d) to take all reasonable steps to safeguard the interests of investors in securities, futures contracts, investment arrangements and leveraged foreign exchange transactions;

(e) to take all reasonable steps to ensure that transactions in securities, futures contracts, investment arrangements and leveraged foreign exchange trading, and the conduct of takeovers and mergers, take place in fair, efficient, competitive and informed markets;

(f) to promote and encourage proper conduct by members of securities and futures markets and of clearing houses, and by other persons who are licensed by the Commission or who undertake activity that is authorized or regulated by the Commission;

(g) to suppress illegal, dishonourable and improper practices in dealing in securities and futures contracts and entering into investment arrangements, and in providing advice or other services relating to securities, futures contracts and investment arrangements;

(h) to promote and maintain the integrity of licensed persons and encourage the promulgation by licensed persons of balanced and informed advice to their clients and to the public generally;

(i) to consider and suggest reforms of the law relating to securities, futures contracts, investment arrangements and leveraged foreign exchange trading;

(j) to encourage the development of securities and futures markets in Hong Kong and the increased use of the markets by investors in Hong Kong and elsewhere;

(k) to promote and develop self-regulation in the securities and futures industries;

(l) to co-operate with and assist authorities or regulatory organizations, in Hong Kong or elsewhere, that are concerned with securities and futures contracts, or with banking, insurance or other financial services or with the affairs of corporations;

(m) to perform functions conferred on it under any other Ordinance.

(2) The Commission may engage consultants and advisers to assist the Commission to perform its functions.

(3) Subsection (1)(k) does not limit or otherwise affect the other functions of the Commission.

2.3 Advisory Committee

(1) An Advisory Committee is constituted under Schedule 2 and shall conduct its business in accordance with that Schedule.

(2) The Advisory Committee shall meet at least once every 3 months to advise the Commission.

(3) The Commission may request the Advisory Committee to advise it on matters of policy regarding its functions.

2.4 Commission may establish committees

(1) The Commission may -

(a) establish standing committees;

- (b) establish special committees; and
- (c) refer a matter to a committee established under this section for consideration, inquiry or

management.

(2) The Commission may appoint a person to be a member of a committee, whether the person is a director of the Commission or not, and may appoint a member of the committee to be the chairman.

(3) The Commission is not prevented from performing a function by referring the matter to a committee.

(4) The Commission may -

- (a) withdraw a reference from a committee; and
- (b) revoke an appointment of a member or chairman of a committee.

(5) A committee -

- (a) may elect one of its members -
 - (i) to be chairman if a chairman has not been appointed by the Commission; or
 - (ii) to act as chairman during a period when a chairman appointed by the

Commission is unable to act due to illness or other incapacity or is absent from Hong Kong;

- (b) may regulate its own procedure and business; and
- (c) is subject to and shall act in accordance with directions given to it by the Commission for the

purposes of this subsection.

(6) A committee shall meet when and where the chairman determines, subject to any procedure fixed by the committee under subsection (5).

2.5 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.

2.6 General powers of Commission

The Commission may do all the things that are necessary for, or incidental or conducive to, the better performance of its functions, and in particular may for the purposes of this Ordinance -

- (a) acquire, hold and dispose of property of any description;
- (b) make contracts or other agreements;
- (c) receive and expend money;
- (d) with the approval of the Financial Secretary, borrow money on security or other conditions;
- (e) print or publish material, including guidelines, indicating to licensed persons and others the

manner in which, in the absence of any particular consideration or circumstance, the Commission proposes to perform any of its functions.

2.7 Delegation and sub-delegation of Commission's functions

(1) The Commission may delegate any of its functions, other than its power under this section to delegate or a function specified in Part 2 of Schedule 2, to -

- (a) a director of the Commission;

- (b) a committee established under section 2.4; or
 - (c) an employee of the Commission.
- (2) The Commission may revoke a delegation.
- (3) Where the Commission delegates a function, it may 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) Where a person or committee purports to act pursuant to a delegation or sub-delegation, he or it is presumed, until the contrary is shown, to be acting in accordance with the terms of the delegation or sub-delegation.
- (6) The Legislative Council may by resolution amend Part 2 of Schedule 2.

2.8 Requirements and directions to Commission

- (1) The Governor may give the Commission written directions as to the performance of its functions.
- (2) The Commission shall comply with a written direction of the Governor given under subsection (1).
- (3) The Commission shall, when required by the Financial Secretary, furnish the information he specifies on the policy it is pursuing or proposes to pursue in performing its functions.

2.9 Financial year, estimates and annual report

- (1) The financial year of the Commission commences on 1 April in each year.

(2) The Commission shall, not later than 31 December each year, submit to the Governor for his approval estimates of its income and expenditure for the next financial year.

(3) The Financial Secretary shall cause the estimates as approved under subsection (2) to be laid on the table of the Legislative Council.

2.10 Appropriation

In each financial year the Government shall pay to the Commission out of the general revenue the money the Legislative Council appropriates for that purpose.

2.11 Accounts and annual report

(1) The Commission shall keep proper accounts and records of its transactions.

(2) The Commission shall, as soon as practicable after the end of each financial year, prepare a statement of the accounts of the Commission for the financial year, including an income and expenditure account and balance sheet.

(3) The chairman and 1 non-executive director of the Commission shall sign the statement of accounts.

(4) The Commission shall, as soon as practicable after the end of each financial year, 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 to be laid on the table of the Legislative Council.

2.12 Auditors and audit

(1) The Commission shall, with the approval of the Financial Secretary, appoint auditors.

(2) The Commission shall, as soon as practicable after the end of each financial year, submit the statement of the accounts prepared for the year under section 2.11(2) to the auditors for audit.

(3) The auditors shall prepare a report on the accounts and send the report to the Commission who shall, as soon as possible after its receipt, send a copy of the report and a copy of the statement of accounts to the Financial Secretary.

(4) The auditors shall include in their report -

(a) a statement whether, in their opinion, the income and expenditure account for the financial year to which the report relates gives a true and fair view of the Commission's surplus or deficit;

(b) a statement whether, in their opinion, the balance sheet for the financial year gives a true and fair view of the Commission's financial affairs at the end of that financial year.

(5) The Financial Secretary shall cause a copy of the auditors' report and a copy of the statement of accounts to be laid on the table of the Legislative Council.

(6) The Director of Audit or another public officer authorized by him for the purposes of this subsection may at any reasonable time examine an account, record or other document kept by the Commission and, if he thinks fit, make a copy of the whole or any entry in the document.

(7) An auditor appointed by the Commission has a right of access at all reasonable times to the books, accounts, vouchers and other records of 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.

2.13 Investment of funds

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

2.14 Levies

(1) For every sale and purchase of securities recorded on the Stock Exchange or notified under its rules, a levy is payable at the rate specified by order of the Governor in Council -

- (a) at a percentage of the consideration for the purchase and sale of the securities; or
- (b) as otherwise to be calculated under the order,

and the Governor in Council may specify different rates for different classes of securities.

(2) The purchaser and the seller under a leviable transaction on a futures market operated by a recognized exchange company shall each be liable to pay to the Commission a levy of the amount specified by order of the Governor in Council and the Governor in Council may specify different amounts for different leviable transactions.

(3) The Stock Exchange Company shall -

(a) collect and account to the Commission for the levy payable for transactions on the Stock Exchange; and

(b) retain the proportion of the levy collected that the Governor in Council may specify in an order referred to in subsection (1), and pay the balance to the Commission.

(4) A recognized exchange company that operates a futures market shall collect, account for and pay to the Commission the levy payable on transactions carried out on the futures market.

- (5) If during a financial year -
- (a) the Commission's liquid assets, after deducting current liabilities 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 that the Governor in Council reduce the rate or amount of a levy under this section or fees or charges under section 2.15.
- (6) The Commission may recover the amount of a levy payable under this section as a civil debt due to it.
- (7) The Governor in Council may make rules for -
- (a) the payment of the levies under this section;
 - (b) the imposition of charges for late payment of the levies; and
 - (c) the keeping, examination and audit of the accounts of recognized exchange companies for collecting and remitting the levies.
- (8) The Commission may make rules excluding a class of transaction from the levy that would otherwise be payable under subsection (1) or (2) for transactions of that class.

2.15 Fees and other charges

- (1) The Commission may, after consulting the Secretary for Financial Services, make rules for the payment to, and waiver by, the Commission of fees or other charges for -
- (a) the Commission or a committee of the Commission to perform a function relating to share repurchases, takeovers and mergers;

(b) an application to the Commission for a licence, authorization, approval, exemption, waiver or modification under the relevant Ordinances;

(c) the Commission or a committee of the Commission to perform a function under the relevant Ordinances;

(d) any other matter for which the relevant Ordinances provide.

(2) Fees or other charges prescribed may be fixed at levels sufficient to recover expenditure incurred, or likely to be incurred, by the Commission in performing its functions under the relevant Ordinances but in prescribing the level of the fees or charges the Commission shall not take account of appropriations under section 2.10.

(3) Fees or other charges prescribed need not be limited to the administrative or other costs incurred, or likely to be incurred, by the Commission in providing a service or performing a function under the relevant Ordinances for a particular person or in providing a service which is of a particular class or description.

(4) Rules made under this section may provide -

(a) that the amount of a fee or other charge may be fixed by reference to a scale set out in the rules;

(b) for the payment of different fees or other charges by or in relation to persons or cases of different classes or descriptions; and

(c) for the payment of fees at annual or other intervals.

(5) The Commission may, after consulting the Secretary for Financial Services, make rules prescribing the fee required for an application under section 3.4 for a case to be stated by a tribunal.

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PART III SECURITIES AND FUTURES APPEALS PANEL

3.1 Constitution of Appeals Panel

(1) The Securities and Futures Appeals Panel is established to provide members of the tribunals to hear appeals under this Part.

(2) The Panel consists of the following members appointed by the Governor, none of whom shall be directors or employees of the Commission -

(a) a chairman and a deputy chairman, each of whom shall be counsel or a solicitor; and

(b) members whom the Governor considers appropriate for appointment in the numbers he considers necessary for the Panel to perform its functions.

(3) A member of the Panel holds office for the period that the Governor determines and may resign his office at any time by letter sent to the Governor.

(4) The deputy chairman of the Panel shall act as its chairman if the office of chairman of the Panel is vacant or the chairman of the Panel is unable to act as chairman due to illness or other incapacity or is absent from Hong Kong.

(5) The Government shall pay a member the remuneration and allowances for sitting on a tribunal that the Financial Secretary approves.

3.2 Appeals (registration, forfeiture and notices)

(1) A person may appeal to the Panel against any matter provided for in Schedule 3.

(2) The person has 30 days within which to appeal to the Panel, beginning on the day on which the written decision or, for an appeal relating to a notice under section 7.15, 7.16, 7.17, 7.18 or 7.20, the notice, is served on the appellant.

(3) A decision or other appealable act of the Commission does not come into operation until the time for appeal has expired or, where a person appeals, the appeal is determined or withdrawn, except that -

- (a) a condition imposed under section 6.11(8) comes into operation as the decision provides;
- (b) a notice under section 7.15, 7.16, 7.17, 7.18 or 7.20 comes into operation as the notice provides;

and

(c) the Commission may, in any other case, specify a date for its decision to come into operation where the Commission determines that its decision should, in the interest of the investing public or in the public interest, come into operation before time for making an appeal expires or an appeal is determined.

3.3 Hearings of appeals by tribunal

(1) Where a person appeals to the Panel -

- (a) its chairman shall as soon as reasonably practicable appoint a tribunal to determine the appeal;
- (b) the tribunal shall as soon as reasonably practicable hear the appeal.

(2) A tribunal consists of 3 members of the Panel, who shall be -

- (a) the chairman of the Panel, the deputy chairman of the Panel or any counsel or solicitor who is a member of

the Panel and is appointed by the chairman of the Panel, to preside over the tribunal; and

(b) 2 other members of the Panel.

(3) The Governor in Council may make rules not inconsistent with Schedule 3 regulating the procedure and proceedings of a tribunal and providing for the appointment of a clerk to assist tribunals in the organization and management of their business.

(4) A tribunal shall conduct an appeal in accordance with Schedule 3 and rules made under subsection (3).

(5) A tribunal's determination of an appeal and a tribunal's order as to costs are final and are not appealable.

(6) A person commits an offence, and is liable on summary conviction to a fine at level 6 and to imprisonment for 6 months, and on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years if he, without reasonable excuse, refuses or fails -

(a) to attend and give evidence when a tribunal hearing an appeal requires him to attend; or

(b) to answer truthfully and fully questions put to him in his examination before a tribunal; or

(c) to produce a record or other document which a tribunal requires him to produce.

3.4 Case stated

(1) A tribunal hearing an appeal may refer to the Court of Appeal, for its opinion, a question of law relating to the appeal by way of a case stated.

(2) The tribunal may state a case either of its own motion or on the application of a party to the appeal.

(3) The tribunal shall not, where it states a case of its own motion, determine the appeal until after the Court of Appeal gives its opinion on the case.

(4) A party to an appeal may apply to a tribunal for it to state a case by writing to the chairman of the Panel after the determination of the appeal but within 14 days beginning on the day the appeal is determined and shall pay the prescribed fee.

(5) The party making the application shall at the same time send a copy of it to any other party to the appeal.

(6) On receipt of the application the chairman of the Panel shall reconvene the tribunal.

(7) The tribunal -

(a) shall, as soon as practicable, consider the application; and

(b) may allow or refuse it,

and its decision is final.

(8) The tribunal shall include in a case stated a statement of facts and, where appropriate, the decision of the tribunal.

(9) The person presiding at the hearing of the appeal shall sign the case stated and shall, as soon as reasonably practicable, transmit it to the Court of Appeal.

(10) The Court of Appeal may require a tribunal that states a case to amend the case as the Court specifies.

(11) Where the Court of Appeal determines a case stated, it shall send a copy of the case, together with a copy of its opinion, to the person who signed the case or, if he is not available, to the chairman of the Panel.

(12) On receiving the Court of Appeal's opinion, and if it is appropriate to reconvene the tribunal -

- (a) the person who signed the case shall reconvene the tribunal that heard the appeal; or
- (b) if that person is not available, the chairman of the Panel shall reconvene the tribunal with another member of the Panel to replace the person who signed the case.

(13) The reconvened tribunal shall, having regard to the opinion of the Court of Appeal, determine the appeal or, as may be appropriate, revise its previous determination.

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PART IV EXCHANGES

4.1 Restriction on establishment of stock or futures markets

(1) A person shall not establish or operate, or assist in the operation of, a stock market or futures market that is not operated, or to be operated -

- (a) by a recognized exchange company; and
- (b) in accordance with any conditions under section 4.2(2).

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

4.2 Recognition of exchange companies

(1) The Commission may declare by notice in the Gazette a company to be a recognized exchange company where -

- (a) it has consulted the Financial Secretary; and
- (b) it is satisfied that it is appropriate to do so in the interest of the investing public or in the public

interest, or for the proper regulation of markets in securities and futures contracts.

(2) The Commission may set conditions with which a recognized exchange company must comply in operating a stock market or futures market, as the case may be.

4.3 Stock Exchange to be only authorized stock market

Only one recognized exchange company may be authorized to operate a stock market in Hong Kong.

4.4 Transactions that may be conducted on an exchange

- (1) The transactions that may be conducted on the Stock Exchange are dealings in -
 - (a) securities; and
 - (b) other things approved in writing by the Commission, either generally or in a particular case.
- (2) The transactions that may be conducted on a futures market operated by a recognized exchange company are dealings in -
 - (a) futures contracts approved in writing by the Commission; and
 - (b) other things approved in writing by the Commission, either generally or in a particular case.
- (3) Where it approves anything under subsection (1)(b) or (2)(b), the Commission -
 - (a) shall publish notice of the approval in the Gazette as soon as practicable;
 - (b) may in the notice specify whether, and under what circumstances or for what purposes, the thing is to be treated as a security, and under what circumstances or for what purposes, it is to be treated as a futures contract.

4.5 Shareholders of recognized exchange companies and use of facilities by others

- (1) A person shall not without written authorization of the Commission become or remain a shareholder of a recognized exchange

company unless -

- (a) for the Stock Exchange Company, the person is licensed under Part VI as a securities dealer; and
- (b) for an exchange company that operates a futures market, the person is licensed under Part VI as

a futures dealer.

- (2) Where a shareholder of a recognized exchange company ceases to be licensed as a dealer under Part VI -

- (a) he shall not vote at meetings of the company while he is not licensed;
- (b) he shall immediately take steps to dispose of his shares in the company in accordance with the

rules of the company; and

- (c) if in the opinion of the company he fails to comply with paragraph (b), the company shall dispose of his shares in accordance with its rules.

- (3) This section does not prevent a person from continuing as a shareholder of a recognized exchange company if his licence as a dealer is only suspended under Part VI.

- (4) A person who is not a shareholder of a recognized exchange company may use such of the facilities of the company, and on such terms, as the company permits in accordance with its rules.

4.6 Duties of recognized exchange companies and immunity

- (1) A recognized exchange company shall ensure, so far as is reasonably practicable, an orderly and fair market in the securities, futures contracts or other things that are traded through its facilities.

- (2) In performing its duties under subsection (1), a recognized exchange company shall -
- (a) act in the interests of the public, having particular regard to the interests of the investing public;
- and
- (b) ensure that the interests referred to in paragraph (a) prevail where they conflict with any other interests the company is required to serve under any other law.
- (3) A recognized exchange company shall ensure that members of a market operated by it comply with the rules of the company.
- (4) A recognized exchange company shall notify the Commission immediately if it becomes aware -
- (a) that a member of a market operated by it is unable to comply with 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 a member is in question, or that a member may not be able to meet his legal obligations.
- (5) If a member of a market operated by a recognized exchange company is expelled or suspended, the company shall immediately inform the Commission of that fact, and of the circumstances of the expulsion or suspension.
- (6) A recognized exchange company shall provide and maintain at all times to the satisfaction of the Commission -
- (a) adequate and properly equipped premises for the conduct of its business;
 - (b) competent personnel for the conduct of its business;

(c) automated systems with adequate capacity, facilities to meet emergencies and security arrangements.

- (7) If a recognized exchange company performs or purports to perform in good faith -
- (a) a duty referred to in this section; or
 - (b) any other function of the company under this Ordinance,

the company does not incur liability for the performance or purported performance of the duty or function.

- (8) If a person acting for a recognized exchange company performs or purports to perform in good faith -
- (a) a duty referred to in this section; or
 - (b) any other function of the company under this Ordinance,

the person does not incur liability for the performance or purported performance of the duty or function.

4.7 Rules of recognized exchange companies

(1) A recognized exchange company may make rules, not inconsistent with this Ordinance, for such matters as are necessary or desirable for the proper regulation and efficient operation of a market that it operates.

- (2) Without limiting the general effect of subsection (1), the Stock Exchange Company may make rules for -
- (a) applications for listing and the requirements for listing;
 - (b) agreements to be entered into between the exchange company and other persons for listing securities and enforcing the agreements by the exchange company;

- (c) cancelling and withdrawing the listing of securities and suspending of dealings in them;
 - (d) obliging a person to observe specified standards of conduct or to perform, or refrain from performing, specified acts reasonably imposed for the listing or continued listing of securities;
 - (e) the penalties and sanctions which the exchange company may impose for a breach of its rules;
- and
- (f) procedures or conditions which may be imposed under the rules, or circumstances which are required to exist for matters which are provided for in the rules.

(3) A recognized exchange company may make rules providing for compensation arrangements for the purposes of Part X.

(4) A member of a recognized exchange company, and a director of any corporation that uses its facilities, shall if required to do so by rules of the exchange company make a statutory declaration concerning such matters as may be required by the rules.

(5) The power of the Stock Exchange Company to make rules under subsection (2)(a) includes the power to perform any function -

- (a) that is conferred on the company under the rules; or
- (b) that reasonably arises out of the administration or enforcement by the company of its rules.

(6) In making rules under subsection (2)(a), the Stock Exchange Company shall take account that a solicitor or professional accountant acting in his professional capacity in private practice has duties imposed by law and under rules of professional conduct.

(7) The Stock 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 Society of

Accountants, refer breaches of rules made under subsection (2)(a) -

(a) which are alleged to have been committed by a solicitor or professional accountant in private practice; and

(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, as the case may be, the Hong Kong Society of Accountants, for determination of whether to make a finding, impose a penalty or sanction or take other disciplinary action.

(8) A person is regarded as acting in the capacity of a solicitor or professional accountant in private practice if in the course of private practice he provides legal or professional accountancy services to a client, but is not regarded as so acting where, for a matter governed by rules made under subsection (2)(a), he is also connected with the matter in any other capacity.

4.8 Approval of amendments to rules of recognized exchange companies

(1) A recognized exchange company shall submit to the Commission -

(a) all new rules and amendments to the rules of the exchange company;

(b) with any rules and any amendments that require approval under subsection (2)(a), 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.

- (2) The rules of a recognized exchange company or an amendment to its rules do not have effect unless -
 - (a) the Commission has approved them in writing; or
 - (b) they belong to a class that the Commission has by notice in the Gazette declared to be a class that does not require its approval.
- (3) The Commission shall, within 6 weeks after receiving rules or amendments for approval, give notice in writing to the exchange company that -
 - (a) it approves them;
 - (b) it refuses to approve them;
 - (c) it approves them subject to requirements which must be satisfied before the rules have effect.
- (4) The Commission may, with the agreement of a recognized exchange company, extend the time allowed under subsection (3).
- (5) The Financial Secretary may, on the advice of the Commission and either generally or in a particular case, extend the time allowed under subsection (3).
- (6) A recognized exchange company shall submit to the Commission any rules and amendments which belong to a class the subject of a declaration under subsection (2)(b) as soon as practicable after they are made.

4.9 Fixing of trading and position limits

- (1) The Commission may make rules prescribing limits on the amount of trading which may be done, or positions which may be held, by a person on the Stock Exchange or a futures market.
- (2) Subsection (1) does not prohibit the Commission from fixing different trading or position limits for different types of transactions, or from exempting specified transactions.

(3) Without limiting the general effect of subsection (1), the Commission may make rules for the purpose of this section to prohibit a person from -

(a) directly or indirectly entering, during a prescribed period, into transactions of a specified class in excess of the prescribed amount; or

(b) directly or indirectly holding or controlling positions of a specified class in excess of a prescribed position limit.

4.10 Transfer and resumption of functions of recognized exchange company

(1) The Commission may request the Governor in Council to transfer, by order published in the Gazette, to a recognized exchange company designated by the Commission -

(a) a function to which this section applies; or

(b) that function in so far as it applies to the members or applicants for membership of the Stock

Exchange or a futures market,

if the Commission considers 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 VI;

(b) section 8.3; and

(c) Parts II and XII of the Companies Ordinance (Cap. 32).

(3) A transfer order may transfer a function either wholly or in part, and the transfer may be subject to a reservation that the Commission is to exercise the function concurrently with the designated exchange company.

(4) A transfer order may contain incidental and supplemental provisions and consequential amendments necessary or expedient to give effect to the order.

(5) The Commission shall not request that a transfer order be made for making financial resources rules unless the 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 the functions transferred by a transfer order, but the resumption takes effect only by order of the Governor in Council.

(7) The Governor in Council may order that the Commission resume a function transferred by a transfer order if the Commission requests and if it appears that a designated exchange company is unable to or unwilling to perform the function.

(8) A transfer order may provide for a designated exchange company to retain the fees charged to perform a transferred function, and an order made under subsection (6) or (7) may provide for the Commission to retain the fees, from a date specified in the order.

4.11 Appointment of chief executive to be approved by Commission

The appointment of the chief executive of a recognized exchange company does not have effect unless the appointment is approved by the Commission.

4.12 Authorized trading facilities

(1) The Commission may authorize a person to provide facilities for the trading of securities, futures contracts or other things, where it is satisfied that the provision of the facilities is in the interest of the investing public or in the public interest.

(2) The Commission may at any time -

(a) attach to an authorization under subsection (1) the conditions it considers necessary for the proper regulation of the facilities provided under the authorization;

(b) revoke or suspend the authorization if it considers it necessary to do so in the interest of the investing public or in the public interest.

4.13 Withdrawal of recognition of exchange company and directions to close facilities

(1) After consulting the Financial Secretary, the Commission may -

(a) declare by notice in the Gazette that a company has ceased to be a recognized exchange company; or

(b) direct a recognized exchange company to cease forthwith to provide or operate any facilities specified by the Commission, until the Commission revokes the direction.

(2) The Commission may only issue a declaration or direction under subsection (1) for a company that -

(a) fails to comply with the requirements of this Ordinance or with a condition imposed under section 4.2(2);

- (b) is being wound up;
- (c) ceases to operate a market that the Commission had authorized it to operate; or
- (d) requests the Commission to do so.

(3) The Commission shall give the recognized exchange company not less than 14 days notice in writing of its intention to issue a declaration or direction under subsection (1) and the grounds for doing so.

(4) A declaration or direction under this section takes effect immediately, even though an appeal has been, or may be, made under section 4.18.

4.14 Closure of markets in emergencies

(1) In addition to the power of the Commission under section 4.13, the Commission may after consulting a recognized exchange company direct it to close any facilities specified by the Commission for a period not exceeding 5 bank trading days.

(2) The Commission may give the direction if it is of the opinion that the orderly transaction of business on the trading market is being, or is likely to be, prevented 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

circumstance, which is likely to prevent orderly trading on the trading market.

(3) The Commission may extend the direction for further periods not exceeding 10 bank trading days in all.

4.15 Transactions prohibited during closure of markets

A person who deals in securities or futures contracts using any facilities that are the subject of a direction under section 4.13 or 4.14 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
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

4.16 Prevention of entry into closed trading markets

(1) The Commission may take the necessary steps to ensure compliance with a direction under section 4.13(1) or 4.14(1) and may, in particular, secure the premises and other facilities to which the direction relates against use for dealing or other purposes.

(2) A person commits an offence and is liable to a fine at level 5 if he, without the authority of the Commission, enters any premises, or makes use of any facilities, to which a direction under section 4.13(1) or 4.14(1) relates.

4.17 Publication of decisions

The Commission shall publish in the English and Chinese languages, in such manner as it thinks fit, notice of any direction under section 4.13(1) or 4.14(1).

4.18 Appeals

(1) A company may appeal to the Governor in Council against -

- (a) a declaration under section 4.13(1)(a) that a company ceases to be a recognized exchange company;

(b) a direction under section 4.14(1).

(2) A company has 14 days within which to appeal, beginning on the day it is informed in writing of the declaration or direction.

(3) After considering an appeal, the Governor in Council may confirm, reverse or vary the decision of the Commission and give such other directions as he thinks just and equitable.

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

(1) A person other than the Stock Exchange shall not, without the authorization of the Commission, take or use the title or description "stock exchange", "stock market", " ", " ", " " or " ", or anything which resembles any of them, or which so closely resembles any of them as to be calculated to deceive.

(2) A person other than a recognized exchange company that operates a futures market shall not, without the authorization of the Commission, take or use the title "commodity exchange", "futures exchange", "futures market", " ", " " or " ", or anything which resembles any of them, or which so closely resembles any of them as to be calculated to deceive.

(3) A person other than a recognized exchange company shall not take or use the title of that company.

(4) A person who contravenes this section commits an offence and is liable -

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

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

**4.20 Application of Companies Ordinance to
recognized exchange companies**

Where there is any inconsistency between the Companies Ordinance (Cap. 32) in its application to a recognized exchange company and this Ordinance, this Ordinance prevails.

**4.21 Use of proxies at elections to governing
bodies of recognized exchange companies**

(1) A shareholder in a recognized exchange company is not entitled to appoint a person as a proxy or other representative to attend and vote at proceedings for the election of the board of directors or other body, by whatever name called, having management and control of the company except as provided in subsections (2) and (3).

(2) A shareholder in a recognized exchange company may appoint to be a proxy or other representative a person who -

(a) is licensed under Part VI;

(b) is a director, partner or employee of the shareholder; and

(c) is not for the time being appointed by another shareholder as a proxy or other representative for a meeting the proposed business of which consists wholly or partly of the election of the governing body, to attend any meeting and vote at any proceedings for the election of the governing body.

(3) A shareholder who is an individual is not entitled to appoint another person to be a proxy under subsection (2) unless he is unable to attend and vote in person for any reason which is acceptable to the governing body.

(4) An instrument appointing a proxy or other representative must be in a form approved by the governing body.

(5) Sections 114C and 115 of the Companies Ordinance (Cap. 32), in their application to a recognized exchange company, are construed and have effect subject to this section.

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PART V
CLEARING HOUSES

5.1 Interpretation

(1) In this Part -

"default proceedings" () means proceedings or other action taken by a recognized clearing house under its default rules;

"default rules" (), for a recognized clearing house, means the rules of the clearing house required by section 5.3(1);

"defaulter" () means a participant who is the subject of any default proceedings;

"market charge" () means a charge, whether fixed or floating, granted in favour of a recognized clearing house -

- (a) over property, specified in Schedule 4, held by or deposited with the clearing house; and
- (b) to secure liabilities arising directly with the clearing house's ensuring the settlement of a market contract;

"market collateral" () means property, specified in Schedule 4, held by or deposited with a recognized clearing house to secure liabilities arising directly with the clearing house's ensuring the settlement of a market contract;

"participant" () means a person who, under 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;

"relevant office-holder" () means -

- (a) the Official Receiver appointed under section 75 of the Bankruptcy Ordinance (Cap. 6);
- (b) a person acting in relation to a company as its liquidator, provisional 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 under an order for the administration in bankruptcy of an insolvent estate of a deceased person;

"settlement" (), in relation to a market contract, includes partial settlement.

(2) Where a charge is granted partly for the purpose specified in the definition of "market charge" and partly for other purposes, the charge is in this Part a market charge in so far as it has effect for that specified purpose.

(3) Where collateral is granted partly for the purpose specified in the definition of "market collateral" and partly for other purposes, the collateral is in this Part market collateral in so far as it has been provided for that specified purpose.

(4) References in this Part to the law of insolvency include references to every provision made by or under -

- (a) the Bankruptcy Ordinance (Cap. 6);
- (b) the Companies Ordinance (Cap. 32); and
- (c) any other enactment which is concerned with or in any way related to the insolvency of a person.

(5) References in this Part to settlement in relation to a market contract are to the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise.

Declaration of clearing houses for purposes of this Ordinance and rules of clearing houses

5.2 Recognized clearing houses

(1) The Commission may, with the written consent of the Financial Secretary, by notice in the Gazette, declare a clearing house to be a recognized clearing house where it is satisfied that it is appropriate -

- (a) in the interest of the investing public or in the public interest; or
- (b) for the proper regulation of services for the clearing and settlement of transactions in securities

or futures contracts.

(2) The Commission shall give written notice of the declaration to the clearing house.

5.3 Rules of recognized clearing houses, etc.

(1) The rules of a recognized clearing house must include provisions -

(a) for taking action if a participant appears to be unable, or likely to become unable, to meet his obligations for unsettled or outstanding market contracts to which he is a party; and

- (b) that comply with Part 2 of Schedule 4.

(2) Where a recognized clearing house takes default proceedings, all subsequent action taken under its rules for the settlement of market contracts to which the defaulter is a party are to be treated as taken under the default rules.

(3) The rules of a clearing house in operation immediately before its declaration as a recognized clearing house continue to have effect unless otherwise specified, or until the time specified, in the notice to the clearing house under section 5.2(2).

5.4 Approval of amendments to rules of recognized clearing houses

(1) A recognized clearing house shall submit to the Commission -

- (a) all new rules and amendments to the rules of the clearing house;
- (b) with any rules and any amendments that require approval under subsection (2)(b), 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.

(2) The rules of a recognized clearing house or an amendment to its rules do not have effect unless -

- (a) they are rules referred to in section 5.3(3);
- (b) the Commission has approved them in writing; or
- (c) they belong to a class of rules (except any default rules of the clearing house) that the Commission has by notice in the Gazette declared to be a class that does not require its approval.

(3) The Commission shall, within 6 weeks after receiving rules or amendments for approval, give notice in writing to the clearing house that -

- (a) it approves them;
- (b) it refuses to approve them;
- (c) it approves them subject to requirements which must be satisfied before the rules have effect.

(4) The Commission may, with the agreement of a recognized clearing house, extend the time allowed under subsection (3).

(5) The Financial Secretary may, on the advice of the Commission and either generally or in a particular case, extend the time allowed under subsection (3).

(6) A recognized clearing house shall submit to the Commission any rules and amendments which belong to a class the subject of a declaration under subsection (2)(c) as soon as practicable after they are made.

Modifications of the law of insolvency to safeguard operations and procedures of recognized clearing houses, etc.

5.5 Proceedings of recognized clearing house take precedence over law of insolvency

(1) The following shall not be to any extent invalid at law for inconsistency with the law for distributing 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 for the settlement of a market contract;

(c) proceedings or other action taken under the rules of a recognized clearing house for the settlement of a market contract;

(d) a market charge;

(e) the default rules of a recognized clearing house; or

(f) default proceedings.

(2) A relevant office-holder, or a court acting under the law of insolvency, shall not exercise its power to prevent or interfere with -

(a) the settlement of a market contract under the rules of a recognized clearing house; or

(b) default proceedings.

(3) Subsection (2) does not operate to prevent a relevant office-holder from recovering an amount under section 5.11 after the completion of a matter referred to in section 5.11(2)(a) or (b).

5.6 Supplementary provisions as to default proceedings

(1) A relevant office-holder may apply to a court for an order to alter, or release him from complying with, the functions of his office that are affected by default proceedings if default proceedings have been, could be, or could have been, taken.

(2) The functions of the relevant office-holder shall be construed subject to an order made under subsection (1).

(3) Sections 12, 14 and 20 of the Bankruptcy Ordinance (Cap. 6) and sections 166, 181, 183, 186 and 254 of the Companies Ordinance (Cap. 32), do not prevent or interfere with any default proceedings.

5.7 Duty to report on completion of default proceedings

(1) A recognized clearing house shall, upon the completion by it of default proceedings, make a report on such proceedings stating in respect of each defaulter -

- (a) the net sum, if any, certified by the clearing house to be payable by or to the defaulter; or
- (b) the fact that no sum is so payable,

as the case may be, and the clearing house may include in that report such other particulars in respect of such proceedings as it thinks fit.

(2) A recognized clearing house which has made a report pursuant to subsection (1) shall supply the report to -

- (a) the Commission;
- (b) any relevant office-holder acting in relation to -
 - (i) the defaulter to whom the report relates; or
 - (ii) that defaulter's estate;
- (c) if there is no relevant office-holder referred to in paragraph (b), 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 thinks 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" () includes a copy of a report.

5.8 Net sum payable on completion of default proceedings

(1) This section applies to any net sum certified under section 5.7(1)(a) by a recognized clearing house, upon the completion by it of any default proceedings, to be payable by or to a defaulter.

(2) Where a receiving or winding up order has been made, or a resolution for voluntary winding up has been passed, any net sum shall, notwithstanding any of the provisions of section 34 or 35 of the Bankruptcy Ordinance (Cap. 6) or section 264 of the Companies Ordinance (Cap. 32), be -

- (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 Ordinance (Cap. 32).

5.9 Disclaimer of property, rescission of contracts, etc.

(1) Section 59 of the Bankruptcy Ordinance (Cap. 6) and section 268 of the Companies Ordinance (Cap. 32) do not apply to -

- (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 Ordinance (Cap. 32) do not apply to any act, matter or thing which has been done pursuant to -

- (a) a market contract;
- (b) a disposition of property pursuant to a market contract;
- (c) the provision of market collateral;
- (d) a contract effected by a recognized clearing house for the purpose of realizing property provided as market collateral, or any disposition of property pursuant to such a contract;
- (e) a disposition of property in accordance with the rules of a recognized clearing house as to the application of property provided as market collateral;
- (f) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;

- (g) a disposition of property made in enforcing a market charge;
- (h) a market charge; or
- (i) any default proceedings.

5.10 Adjustment of prior transactions

- (1) No order shall be made pursuant to -
 - (a) section 47, 48 or 49 of the Bankruptcy Ordinance (Cap. 6);
 - (b) section 266 of the Companies Ordinance (Cap. 32); or
 - (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 disposition of property pursuant to a market contract;
 - (c) the provision of market collateral;
 - (d) a contract effected by a recognized clearing house for the purpose of realizing property provided as market collateral;
 - (e) a disposition 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.

5.11 Right of relevant office-holder to recover certain amounts arising from certain transactions

(1) Where a participant sells securities to, or purchases securities from, a second participant in a sale or purchase at an under value or an over value in circumstances described in subsection (2), and a relevant office-holder acts for -

- (a) the second participant;
- (b) the principal of the second participant in the sale or purchase; or
- (c) the estate of the second participant or of the person referred to in paragraph (b),

then, unless a court otherwise orders, the relevant office-holder may recover, from the first participant, or the principal of the first participant, an amount equal to the prescribed gain obtained under the sale or purchase by the first participant, or the principal of the first participant. The amount is recoverable even if the sale or purchase may have been discharged according to the rules of a recognized clearing house and replaced by a market contract.

(2) The circumstances referred to in subsection (1) for a sale or purchase occur when -

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

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

(ii) for the principal of the first participant, that a prescribed event was likely to occur to the principal referred to in subparagraph (i); and

(c) the event occurs within the period of 6 months immediately following the date on which the sale or purchase was so entered into.

(3) In this section -
"prescribed event" (), in relation to a second

participant or a person who is or was, in respect of a transaction referred to in subsection (1), the principal of the second participant, means -

(a) an act of bankruptcy committed by the second participant or that person, as the case may be;
(b) the making of a statutory declaration in respect of the second participant or that person, as the case may be, pursuant to section 228A(1) of the Companies Ordinance (Cap. 32);

(c) a meeting of creditors summoned in relation to the second participant or that person, as the case may be, pursuant to section 241 of the Companies Ordinance (Cap. 32); or

(d) the presentation of a petition for the winding up of the second participant or that person, as the case may be, by a court;

"prescribed gain" (), 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.

5.12 Application of market collateral not affected by certain other interest, 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 notice of the interest, right or breach of duty, as the case may be, at the time the property was provided as market collateral.

(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.

5.13 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.

5.14 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, in so far as making the order or doing the act would be prohibited under this Ordinance for a court in Hong Kong or a relevant office-holder.

(2) In this section, "law of insolvency" (), for a place outside Hong Kong, means a law of the place which is similar to, or serves the same purposes as, any part of the law of insolvency in Hong Kong.

Miscellaneous

5.15 Participant to be party to certain transactions as principal

(1) Where a 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 as between, but only as between, the clearing house and any other person (including the participant and the person who is his principal in respect of that transaction), the participant is for all purposes (including any action, claim or demand, either civil or criminal) -

(i) deemed not to be a party to that transaction as agent; and

(ii) deemed to be a party to that transaction as principal,

notwithstanding any other enactment or rule of law.

(2) Where -

(a) 2 or more participants in their capacities as such enter into any transaction; and

(b) but for this subsection, a participant would be a party to that transaction as agent,

then the participant to whom paragraph (b) applies is for all purposes (including an action, claim or demand, either civil or criminal), except as between, but only as between, him and the person who is his principal in the transaction -

(i) deemed not to be a party to the transaction as agent; and

(ii) deemed to be party to the transaction as principal,

notwithstanding any other enactment or rule of law.

5.16 Securities deposited with recognized clearing house

(1) An action, claim or demand, either civil or criminal, for a right, title or interest held by any person in securities deposited

by a participant with a recognized clearing house in accordance with the rules of the clearing house, does not lie, and may not be commenced or allowed, against the clearing house or its nominees, notwithstanding any other enactment or rule of law.

(2) The operation of subsection (1) for securities deposited 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 section 100 of the Companies Ordinance (Cap. 32).

5.17 Immunity, etc.

(1) A recognized clearing house, its officers and employees and members of the governing body of a recognized clearing house, are not liable in damages for anything done or omitted to be done in the performance or purported performance of a function to which this subsection applies if the act or omission is shown to have been done or omitted to be done, as the case may be, with reasonable care and in good faith.

(2) The functions to which subsection (1) applies are the functions of a recognized clearing house that relate to, or arise out of -

- (a) the default rules of the clearing house; or
- (b) any obligation to which it is subject under this Ordinance.

(3) A person performing, under a delegation under the default rules of a recognized clearing house, a function of the clearing house in connection with default proceedings, and officers and employees and members of the governing body of that person, are not liable in damages for anything done or omitted to be done in the

performance or purported performance of the function if the act or omission is shown to have been done or omitted to be done with reasonable care and in good faith.

(4) A failure by a recognized clearing house to comply with its rules in relation to a matter does not prevent the matter 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 house, and believes and has reasonable grounds for believing that he is entitled to take that action, he is not liable to any person for 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.

5.18 Preservation of rights, etc.

Except to the extent that it expressly provides, this Ordinance does not operate to limit, restrict or otherwise affect -

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

5.19 Amendment of Schedule 4

- (1) The Financial Secretary may, by notice in the Gazette, amend Schedule 4.

(2) The Financial Secretary may amend Part 2 of Schedule 4 by requiring 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.

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PART VI
LICENSING OF DEALERS, TRADERS, ADVISERS
AND REPRESENTATIVES

6.1 Definitions

In this Part -

"hold" (), in relation to property, includes the control of its disposal but does not include the mere receipt and despatch or delivery of a cheque or other order made payable to another person.

6.2 Securities dealers

(1) A person commits an offence if he carries on business in Hong Kong dealing in securities, or holds himself out as carrying on that business, unless -

- (a) he is a licensed securities dealer operating in accordance with his licence; or
- (b) he is an exempt securities dealer operating in accordance with a declaration under section

6.10(1).

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

(3) A person is regarded as carrying on business dealing in securities if he (whether acting as principal or agent) for remuneration -

(a) makes or offers to make an agreement with another person, or induces or attempts to induce another person to enter into or offer to enter into an agreement, for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or

(b) manages a portfolio of securities for another person on terms under which he may hold property of the other person.

(4) A person is not regarded as carrying on business dealing in securities, or as holding himself out as carrying on that business, if -

(a) it is carrying out its functions as a recognized clearing house;

(b) he deals in securities through a licensed or exempt securities dealer, unless, in return for a commission, rebate or other remuneration, he -

(i) receives from another person an offer or invitation to effect a dealing or to acquire or dispose of securities, and communicates it, either in his name or in the name of the other person, to the licensed or exempt securities dealer or his representative;

(ii) effects an introduction between the licensed or exempt securities dealer or his representative, and another person, so that

the other person may effect a dealing or make an offer to acquire or dispose of securities; or

(iii) effects a dealing for another person through a licensed or exempt securities dealer or his representative, or makes an offer for another person to the licensed or exempt securities dealer to acquire or dispose of securities;

(c) he deals in securities as principal only with persons whose business involves the acquisition and disposal, or the holding, of securities (whether as principal or agent);

(d) he is a licensed securities adviser and, in a manner consistent with his licence, manages a portfolio of securities for another person -

(i) without holding property of the other person; and

(ii) on terms which preclude him from doing so;

(e) he enters into a market contract;

(f) he deals in securities wholly as an incident of the practice of his profession as a solicitor or professional accountant;

(g) he issues a prospectus which complies with, or is exempt from compliance with, Part II of the Companies Ordinance (Cap. 32) or, for a corporation incorporated outside Hong Kong, Part XII of that Ordinance;

(h) he issues a document relating to securities of a corporation incorporated in Hong Kong that is not a registered company, being a document which -

(i) would if the corporation were a registered company be a prospectus to which section 38 of the Companies Ordinance (Cap. 32) applies, or would apply if not excluded by section 38(5)(b) or 38A of that Ordinance; and

(ii) contains all the matters which, under Part XII of that Ordinance, it 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;

(i) he issues a form of application for shares or debentures of a corporation, together with -

(i) a prospectus which complies with, or is exempt from compliance with, Part II of the Companies Ordinance (Cap. 32) or, for a corporation incorporated outside Hong Kong, Part XII of that Ordinance;

or

(ii) in the case of a corporation incorporated in Hong Kong which is not a registered company, a document which contains the matters specified in paragraph (h)(ii);

(j) he issues a prospectus which has been approved by the Commission in relation to a mutual fund corporation or unit trust authorized by the Commission under

section 13.3, or issues together with the prospectus a form of application for shares of the mutual fund corporation or units of the unit trust;

(k) he issues any advertisement, invitation or document which has been authorized by the Commission under section 13.5(2)(j).

(5) The Commission may approve a prospectus for the purposes of subsection (4)(j) subject to the conditions it thinks fit.

6.3 Futures dealers

(1) A person commits an offence if he carries on business in Hong Kong dealing in futures contracts, or holds himself out as carrying on that business, unless he is a licensed futures dealer operating in accordance with his licence.

(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; and

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

(3) A person is regarded as carrying on business dealing in futures contracts if he (whether acting as principal or agent) for remuneration -

(a) makes or offers to make an agreement with another person or induces or attempts to induce another person to enter into or to offer to enter into a futures contract; or

(b) manages a portfolio of futures contracts for another person on terms under which he may hold property of the other person.

(4) A person is not regarded as carrying on business dealing in futures contracts, or as holding himself out as carrying on that business, if -

(a) he deals in futures contracts as principal only through a licensed futures dealer;

(b) he deals in futures contracts only on an exchange referred to in section 3(a), (b) or (c) of the Commodity Exchanges (Prohibition) Ordinance (Cap. 82);

(c) he is a member of an exchange referred to in section 3(d) of that Ordinance, and deals in futures contracts only on such an exchange; or

(d) he is a licensed futures adviser and, in a manner consistent with his licence, manages a portfolio of futures contracts for another person -

(i) without holding property of the other person; and

(ii) on terms which preclude him from so doing.

6.4 Leveraged foreign exchange traders

(1) A person commits an offence if he, whether as principal or agent, carries on a business in Hong Kong of leveraged foreign exchange trading or describes himself, or otherwise holds himself out, as carrying on a business of leveraged foreign exchange trading, unless the person is a limited company licensed as a leveraged foreign exchange trader operating in accordance with its licence.

(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 7 years; and

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

(3) A person is regarded as carrying on a business of leveraged foreign exchange trading if he for remuneration -

(a) enters into or offers to enter into, or induces or attempts to induce a person to enter into or offer to enter into, a contract or arrangement whereby any person undertakes -

(i) to make an adjustment between himself and another person according to whether a currency is worth more or less, as the case may be, in relation to another currency; or

(ii) to pay an amount of money or to deliver a quantity of any commodity determined or to be determined by reference to the change in value of a currency in relation to another currency; or

(iii) to deliver to another person at an agreed future time an agreed amount of currency at an agreed price;

(b) provides any advance, credit facility or loan directly or indirectly to facilitate foreign exchange trading, or to facilitate an act of the description mentioned in paragraph (a)(i), (ii) or (iii); or

(c) enters into or offers to enter into, or induces or attempts to induce a person to enter into, an arrangement with another person, on a discretionary basis or otherwise, to enter into contracts to facilitate an act of the description mentioned in paragraph (a)(i), (ii) or (iii) or (b).

(4) A person is not regarded as carrying on a business of leveraged foreign exchange trading, or as holding himself out as carrying on that business, by reason of any act performed for or in connection with a contract or arrangement

-

(a) wholly referable to the provision of property, other than currency, or services or employment at fair or market value;

(b) where the contract or arrangement is entered into by a limited company -

(i) the principal business of which does not include dealing in currency in any form;

(ii) for the purpose of hedging its exposure to currency exchange risks in connection with its principal business; and

(iii) with another limited company;

(c) that is an exchange transaction to which the Money Changers Ordinance (Cap. 34) applies;

(d) arranged by a member of the Hong Kong Foreign Exchange and Deposit Brokers Association and every party to which is a corporation or a limited partnership registered under the Limited Partnerships Ordinance (Cap. 37);

(e) that is a transaction executed solely for the purpose of its insurance business by an insurer authorized under section 8 of the Insurance Companies Ordinance (Cap. 41) to carry on insurance business or deemed to be so authorized under section 61(1) or (2) of that Ordinance;

(f) that is a contract executed on a recognized futures

exchange by or through a licensed futures dealer or is wholly ancillary or incidental to one or more than one such contract or a series of such contracts;

(g) arranged by -

(i) a body which, in the opinion of the Monetary Authority, is -

(A) a central bank; or

(B) an institution which performs the functions of a central bank; or

(ii) an organization which, with the approval of the Monetary Authority, is acting

on behalf of a body of the description mentioned in subparagraph (i);

(h) that is a transaction executed on a recognized stock exchange by or through a licensed securities dealer or is wholly ancillary or incidental to one or more than one such transaction or a series of such transactions;

(i) that is a transaction in units or shares respectively of a unit trust or mutual fund authorized by the Commission under section 13.3;

(j) that is wholly ancillary or incidental to one or more than one transaction in specified debt securities or a series of such transactions;

(k) by an authorized financial institution; or

(l) by any person belonging to a class of persons, or carrying on a type of business, prescribed by rules made by the Commission under section 14.13 for the purposes of this paragraph.

(5) A limited company that is licensed as a leveraged foreign exchange trader shall not carry on a business in Hong Kong of leveraged foreign exchange trading or describe itself, or hold itself out, so as to indicate that it is carrying on the business of leveraged foreign exchange trading unless every director and employee, and every person otherwise associated with it, who is actively engaged in any act that constitutes leveraged foreign exchange trading is a licensed representative accredited to the company.

(6) If a licensed leveraged foreign exchange trader contravenes subsection (5), the licensed leveraged foreign exchange trader and every director or shadow director of it commit an offence and each is liable -

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

6.5 Securities advisers

(1) A person commits an offence if he carries on business in Hong Kong giving advice on securities, or who holds himself out as carrying on that business, unless -

- (a) he is a licensed securities adviser operating in accordance with his licence; or
- (b) he is an exempt securities adviser operating in accordance with a declaration under section 6.10.

(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 2 years; and
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (3) A person is regarded as carrying on business giving advice on securities if he, for remuneration -
- (a) carries on business advising others concerning investment in securities;
 - (b) as part of a regular business that he carries on, issues analyses or reports concerning specific securities; or
 - (c) manages a portfolio of securities for another person -
 - (i) without holding property of the other person; and
 - (ii) on terms that preclude him from so doing.
- (4) A person is not regarded as carrying on business giving advice on securities, if -
- (a) he is a licensed securities dealer;
 - (b) he is an exempt securities dealer who gives advice on securities wholly as an incident of carrying on business as an exempt securities dealer;
 - (c) it is a trustee company, registered under Part VIII of the Trustee Ordinance (Cap. 29);
 - (d) he is a solicitor or professional accountant who gives advice on securities wholly as an incident of the practice of his profession;
 - (e) he gives advice on securities only in a newspaper, magazine, journal or other periodical publication -
 - (i) which is generally available to the public otherwise than on subscription; and

(ii) which does not have as its principal or only object the provision of advice, or the issue of analyses or reports, concerning securities.

6.6 Futures advisers

(1) A person commits an offence if he carries on business in Hong Kong giving advice on futures contracts, or who holds himself out as carrying on that business, unless he is a licensed futures adviser operating in accordance with his licence.

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

(3) A person is regarded as carrying on business giving advice on futures contracts if he, for remuneration -

- (a) carries on business advising others concerning investments in futures contracts;
- (b) as part of a regular business that he carries on, issues analyses or reports concerning futures

contracts; or

(c) manages a portfolio of futures contracts for another person -

- (i) without holding property of the other person; and
- (ii) on terms that preclude him from doing so.

- (4) A person is not regarded as carrying on business giving advice on futures contracts, if -
- (a) he is a licensed futures dealer;
 - (b) he gives advice on futures contracts only in a newspaper, magazine, journal or other periodical publication -
 - (i) which is generally available to the public otherwise than on subscription; and
 - (ii) which does not have as its principal or only object the provision of advice, or the issue of analyses or reports, concerning futures contracts.

6.7 Responsible officers of corporate dealers, traders and advisers

(1) A corporation shall not carry on business for which a licence is required under this Part unless there is at all times in Hong Kong at least one responsible officer of the corporation who has been approved as such by the Commission.

(2) If a corporation contravenes subsection (1), the corporation and every director and shadow director of it commit an offence and each is liable -

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

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

(3) A person is not eligible to become or remain a responsible officer of a corporation unless he is a licensed representative who is accredited to the corporation.

(4) The Commission shall refuse to approve a person as a responsible officer of a corporation unless the corporation satisfies it that he -

- (a) has sufficient educational or other qualifications or experience;
- (b) has sufficient authority within the corporation; and
- (c) is a fit and proper person,

to supervise the business for which the corporation that has nominated him is licensed or is applying to be licensed.

(5) A person who is nominated by a corporation to be a responsible officer shall supply the Commission with the information that the Commission requires to assess whether he is a fit and proper person to be a responsible officer of the corporation.

(6) Where a person is nominated as a responsible officer of a corporation, the Commission -

- (a) shall not refuse to approve him unless it has given both the corporation and the person an opportunity to be heard;
- (b) shall inform the corporation and the person in writing if it refuses to approve him.

6.8 Representatives

(1) A person commits an offence if for remuneration he deals in Hong Kong in securities on behalf of a licensed securities dealer unless he is -

(a) a licensed representative accredited to the securities dealer or to a partnership of which the dealer is a partner; or

(b) a licensed securities dealer.

(2) A person commits an offence if for remuneration he gives advice in Hong Kong on securities on behalf of a licensed securities adviser unless he is -

(a) a licensed representative accredited to the securities adviser or to a partnership of which the adviser is a partner; or

(b) a licensed securities dealer or adviser.

(3) A person commits an offence if for remuneration he deals in Hong Kong in futures contracts on behalf of a licensed futures dealer unless he is -

(a) a licensed representative accredited to the futures dealer or to a partnership of which the dealer is a partner; or

(b) a licensed futures dealer.

(4) A person commits an offence if for remuneration he gives advice in Hong Kong on futures contracts on behalf of a licensed futures adviser unless he is -

(a) a licensed representative accredited to the futures adviser or to a partnership of which the adviser is a partner; or

(b) a licensed futures dealer or adviser.

(5) A person who for remuneration engages in Hong Kong in leveraged foreign exchange trading for a licensed leveraged foreign exchange trader commits an offence unless he is a licensed representative accredited to the licensed leveraged foreign exchange trader.

- (6) 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 12 months; and
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

6.9 Accreditation of representatives

- (1) A representative is accredited to a principal for this Part only if -
 - (a) the licence of the representative states that he is accredited to the principal; and
 - (b) the representative is recorded as being accredited in the register maintained under section 6.17.
- (2) The Commission shall not issue a representative's licence to a person unless both he and the principal have notified the Commission in writing that he is, or is to be, accredited.
- (3) If a principal or representative notifies the Commission in writing that the accreditation of the representative has been terminated -
 - (a) the Commission may amend the register of licensed persons accordingly; and
 - (b) the representative shall return his licence to the Commission within 7 days of the Commission requiring him to do so.

6.10 Exempt securities dealers and exempt securities advisers

- (1) The Commission may declare a person to be an exempt securities dealer -

- (a) if it is satisfied that -
 - (i) the main business of the person consists of carrying on some business other than that for which he would be required to be licensed under this Part as a securities dealer; and
 - (ii) the business carried on by the person is unlikely to pose undue risk to the investing public; or
 - (b) if the person belongs to a class of persons, or carries on a type of business, prescribed in rules made for the purposes of this paragraph.
- (2) The Commission may declare a person to be an exempt securities adviser if it is satisfied that -
- (a) for an application by an authorized financial institution, its main business is carrying on business other than that for which it would be required to be licensed under this Part;
 - (b) for any other application, the applicant will give advice on securities only to -
 - (i) persons whose business involves acquiring and disposing, or holding, of securities; or
 - (ii) persons residing outside Hong Kong.
- (3) The Commission may attach to an exemption such reasonable conditions it considers necessary, and may, by written notice served on an exempt person, amend or cancel the conditions or attach new conditions.
- (4) The Commission may revoke a declaration made under this section -

- (a) if the Commission finds that the exempt person is guilty of misconduct, within the meaning of section 6.15(7);
 - (b) if the Commission determines that an employee or director of the exempt person is not a fit and proper person to be an employee or director in a business of the kind to which the exemption relates;
 - (c) if the exempt person no longer satisfies the requirements of subsection (1) or (2);
 - (d) on such other grounds as the Commission thinks fit.
- (5) The Commission shall not revoke a declaration unless it first gives the exempt person and, for a revocation under subsection (4)(b), the employee or director concerned, an opportunity to be heard.
- (6) The Commission may make rules requiring exempt persons to provide the Commission with such information as the Commission may require concerning their business.

6.11 Grant of licence

- (1) The Commission may license a person who applies in the prescribed manner and pays the prescribed fee, as -
- (a) a securities dealer;
 - (b) a securities adviser;
 - (c) a futures dealer;
 - (d) a futures adviser;
 - (e) a leveraged foreign exchange trader;
 - (f) a securities dealer's representative;
 - (g) a securities adviser's representative;
 - (h) a futures dealer's representative;

- (i) a futures adviser's representative;
 - (j) a leveraged foreign exchange trader's representative.
- (2) The Commission shall refuse to grant a licence unless -
- (a) the applicant satisfies the Commission -
 - (i) that he is a fit and proper person to be licensed, having regard to section 6.13(1) and (2);
 - (ii) for an application by a corporation, that at least one individual has been nominated under section 6.7(1), who is a fit and proper person, to be a responsible officer of the corporation;
 - (iii) that the applicant will be able, if licensed, to comply with the financial resources rules that will apply to him;
 - (b) for an application for a licence other than as a representative, premises have been specified under section 6.12(c) that are suitable for keeping records or other documents, having regard to section 8.2(1)(a);
 - (c) for an application for a licence as a securities dealer or futures dealer, the applicant, if not a member of the Stock Exchange or of a futures market operated by a recognized exchange company, is insured to the satisfaction of the Commission against risks prescribed by it;
 - (d) for an application for a licence as a futures dealer, the applicant is a member of a futures market operated by a recognized exchange company, or of a recognized futures exchange, or the Commission

considers that because of exceptional circumstances relating to the applicant, the applicant need not be a member;

(e) for an application for a licence as a leveraged foreign exchange trader, the applicant is a registered company that is not an unlimited company within the meaning of section 4(2)(c) of the Companies Ordinance (Cap. 32), and its sole business is leveraged foreign exchange trading;

(f) for an application for a representative's licence, the applicant is a natural person;

(g) for an applicant that is a corporation, the applicant is -

(i) a registered company; or

(ii) an overseas company to which Part XI of the Companies Ordinance (Cap. 32)

applies and which has complied with the provisions of that Part for the registration of documents.

(3) The Commission -

(a) shall not refuse an application for a licence without first giving the applicant an opportunity of being heard; and

(b) if it refuses an application, shall notify the applicant in writing of the refusal and the reasons for it.

(4) Where the business of an applicant for a licence as a securities or futures dealer, as a securities or futures adviser or as a representative of any such dealer or adviser is conducted mainly outside Hong Kong, the Commission may, unless it has reason

to believe that the applicant is not a fit and proper person to be licensed, grant a licence to the applicant for a period not exceeding 3 months if the applicant -

(a) seeks the licence solely to undertake in Hong Kong business incidental to the business outside Hong Kong; and

(b) conducts business outside Hong Kong under authorization granted by an authority -

(i) which in the Commission's opinion performs a function similar to the licensing function of the Commission under this Part;

(ii) which confirms to the satisfaction of the Commission that the applicant has been authorized; and

(iii) which the Commission is satisfied is empowered to investigate, and to take effective disciplinary action for, misconduct that may be alleged to have been committed by the applicant in Hong Kong.

(5) A person to whom a licence is granted shall not, when conducting business for which the licence is required, use a name other than the name specified in the licence.

(6) The Commission may issue a licence subject to the reasonable conditions it considers necessary.

(7) The Commission may, by written notice served on the holder of a licence, amend or cancel any of the conditions or attach new conditions.

(8) The grant of a licence to a leveraged foreign exchange trader may be subject to a condition that for a dispute between the

licence holder and a client, the licence holder shall, if the client so requires, agree to the dispute being settled by arbitration in accordance with rules made by the Commission for this subsection.

- (9) Rules made for subsection (8) may 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 1 or more deputy chairmen;
 - (c) the appointment from the arbitration panel of a tribunal to hear a dispute between the licence holder and a 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 the exercise of its functions under any Ordinance;
 - (g) the exercise of any discretion by a person under the rules.

6.12 Applicant for licence to give information

A person who applies for a licence or for an exemption under section 6.10 shall -

- (a) give the Commission information it reasonably requires -
 - (i) about the services which the applicant will hold himself out as being able to provide if the application is allowed;

(ii) about the business which the applicant proposes to carry on and to which the application relates, and about 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; and

(iii) to enable the Commission to consider the matters referred to in section 6.13(2)(b) and (c);

(b) if the applicant is a corporation, nominate at least one individual under section 6.7 who will actively participate in and who will be responsible for the supervision of that business, to be its responsible officer; and

(c) except for an application for a licence as a representative, specify the location of all premises at which the records or other documents of the business for which the application is made are to be kept.

6.13 Matters affecting Commission's determination of application

(1) In considering whether a person is a fit and proper person to be licensed, the Commission shall, in addition to any other matter that it may think relevant, but subject to section 6.20, have regard to the following circumstances of the person and any other person concerned in the management of the business for which the licence is sought and, for a corporation, of each director, shadow director and officer of the corporation -

(a) his financial status;

(b) his educational or other qualifications or experience having regard to the nature of the functions

which, if the application is allowed, he will perform;

(c) his ability to perform the functions efficiently, honestly and fairly; and

(d) his reputation, character, financial integrity and reliability.

(2) In considering an application for a licence or for an exemption under section 6.10, the Commission may -

(a) take into account a decision about the applicant made by the Monetary Authority or the Insurance Authority, or by another authority or regulatory organization, whether in Hong Kong or elsewhere, which in the Commission's opinion performs a function similar to a function of the Commission;

(b) take into account a matter concerning -

(i) a person who is or is to be employed by, or associated with, the applicant for the purposes of the proposed business to which the application relates;

(ii) a person who will be acting as a representative of the business;

(iii) a substantial shareholder, director or officer of an applicant that is a corporation, any other corporation in the same group or a director or officer of the other corporation; and

(c) have regard to any other business which the applicant carries on or proposes to carry on, and to any information in its possession whether furnished by the applicant or not.

(3) In subsection (2)(b), "substantial shareholder"() means a person who has an interest in shares in a corporation -

(a) the nominal value of which is equal to more than 10% of the issued share capital of the corporation; or

(b) which entitles the person to exercise or control the exercise of more than 10% of the voting power at a general meeting of the corporation.

6.14 Revocation and suspension of licences

(1) A licence is deemed to be revoked if -

(a) for an individual, he dies;

(b) for a corporation, it is wound up.

(2) The Commission may revoke or suspend a licence -

(a) if the licensed person does not carry on in Hong Kong business of the type for which the licence was issued;

(b) if the licensed person fails to pay the annual fee prescribed for the licence, or to make an annual return that may be prescribed;

(c) if the licensed person enters into a compromise or scheme of arrangement with creditors, commits an act of bankruptcy, fails to satisfy a levy of execution, goes into liquidation, or is ordered to be wound up;

(d) if the licensed person or, in the case of a licensed person that is a corporation, any of its directors,

suffers or appears to suffer from mental disorder within the meaning of the Mental Health

Ordinance (Cap. 136);

(e) if the licensed person or, for a corporation, any of its directors, is convicted of -

(i) an offence against a relevant Ordinance or subsidiary legislation made under

it; or

(ii) an offence, whether in Hong Kong or elsewhere, the conviction for which

involved a finding that he acted fraudulently or dishonestly;

(f) if the licensed person fails to comply with any financial resources rules;

(g) if the licensed person requests the Commission to revoke or suspend the licence;

(h) after making inquiry under section 6.15; or

(i) on any other ground on which the Commission is empowered or required by this Ordinance to

refuse to issue a licence of the same type.

(3) The Commission -

(a) shall not revoke or suspend a licence without first giving the licensed person an opportunity of

being heard; and

(b) if it revokes or suspends a licence, shall notify the licensed person in writing of the revocation or

suspension, and of -

(i) its reasons for doing so;

(ii) the date on which the revocation or suspension takes effect; and

(iii) the duration of a suspension, or the event which will terminate it.

(4) Where the Commission suspends a licence -
(a) the suspension may be for the period, or until the happening of an event, the Commission considers appropriate; and

(b) the Commission may remove the suspension if it considers it desirable to do so.

(5) A revocation or suspension of a licence does not operate so as to -
(a) avoid or affect an agreement, transaction or arrangement entered into by the licensed person whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension of the licence; or

(b) affect a right, obligation or liability arising under the agreement, transaction or arrangement.

6.15 Powers of inquiry in relation to licensed persons

(1) The Commission may inquire whether a licensed person or formerly licensed person or, for a corporation that is or was licensed, whether a responsible officer, director, or other person concerned in its management -

(a) has provided the Commission, whether before or after the grant of the licence, with the information about the licensed person, and any circumstances likely to affect the person's method of conducting business, that is required under this Ordinance;

(b) is or has been guilty of any misconduct; or

(c) is by reason of any other circumstances, a fit and proper person to remain licensed or, as the case may be, to be a responsible officer, director or other person concerned in the management of the corporation, and section 6.13 applies for the purposes of the inquiry.

(2) Where the Commission inquires under subsection (1) and has reason to suspect that a licensed or other person whom the inquiry concerns -

(a) has not provided the information referred to in subsection (1)(a);

(b) is or has been guilty of misconduct; or

(c) is not a fit and proper person to remain licensed or, as the case may be, to be a responsible officer, director or other person concerned in the management of a licensed corporation, it may require the licensed or other person to supply the Commission with the information it reasonably requires, and a person who fails to supply the information commits an offence.

(3) After inquiring under subsection (1), or where a person is deemed to be guilty of misconduct under subsection (7)(b), the Commission may if it thinks fit -

(a) revoke a licence or approval of a responsible officer;

(b) suspend a licence or approval of a responsible officer for such time, or until the happening of such event, as it determines;

(c) for misconduct specified in subsection (7)(c), impose a pecuniary penalty not exceeding \$50,000;

(d) reprimand the licensed or other person whom the inquiry concerns, or, for a corporation that is licensed, reprimand a responsible officer, director or other person concerned in its management.

(4) The Commission shall not impose a penalty under subsection (3) on a person without first giving the person an opportunity of being heard.

(5) Where the Commission imposes a penalty under subsection (3) on a person it shall notify the person in writing of the decision and the reasons for it, and may publish them once the time for an appeal has elapsed or, if there is an appeal, the appeal is disposed of.

(6) The penalties recovered under subsection (3)(c) shall be used as prescribed under Part X to compensate investors.

(7) For the purposes of this section -

(a) "misconduct" () means -

(i) the failure to comply with a requirement imposed under this Ordinance, or subsidiary legislation made under it, on licensed persons;

(ii) the failure to observe a term or condition of a licence;

(iii) an act or omission relating to the conduct of business of a licensed person,

which, in the opinion of the Commission, is or is likely to be prejudicial to the interest of the investing public or the public interest;

(b) where a person has been identified as an insider dealer in a written report of the Insider Dealing Tribunal prepared under section 11.18, the person is deemed to be guilty of misconduct;

(c) misconduct for which a pecuniary penalty may be imposed under subsection (3)(c) is -

(i) a contravention of section 6.16 (events to be reported by licensed persons), section 8.12 (auditor to be appointed), section 8.13 (financial year), section 8.14 (notification of change of auditor), or section 8.15 (audited accounts to be lodged); or

(ii) a contravention of rules made by the Commission under an Ordinance where the contravention is not an offence;

(d) the Commission may rely on findings contained in a report made by an auditor under section 8.21.

(8) This section does not affect the power of the Commission to apply to the High Court for an order under section 14.6.

(9) A person is obliged to answer questions put to him under this section by the Commission and the Commission shall, before asking any question under this section, inform the person being questioned of the limitation imposed by this section on the admissibility in evidence of the question and any answer given.

(10) If the answers might tend to incriminate a person required to answer under this section, and he so claims before answering the question, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings in respect of the answer for -

- (a) an offence under subsection (11) or section 36 of the Crimes Ordinance (Cap. 200); or
- (b) perjury.

(11) A person who fails to supply the Commission with the information the Commission may reasonably require under this section 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
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(12) This section is not to be construed as requiring an institution authorized to carry on banking business or the business of taking deposits under the Banking Ordinance (Cap. 155) to disclose any information or produce any record or other document relating to the affairs of a customer to the Commission unless -

- (a) the customer is a person whom the Commission has reason to believe may be able to give information to the inquiry; and
- (b) the Commission is satisfied that the disclosure or production is necessary for the purposes of the enquiry and certifies in writing that that is the case.

(13) An institution to which the conditions in subsection (12)(a) and (b) apply shall comply with the provisions of this section that apply in its case.

6.16 Events to be reported by licensed person

(1) A licensed person who ceases to carry on business in Hong Kong shall notify the Commission in writing of the fact as soon as is practicable and in any event within 7 days.

(2) A licensed person shall give to the Commission at least 7 days advance notice in writing of an intended change of address at which -

- (a) he carries on business for which he is licensed;
- (b) he keeps books, accounts, records or other documents for the purposes of this Ordinance.

(3) Where information required by this Ordinance or by subsidiary legislation made under it has been supplied in or in connection with an application by a person for a licence, the person shall as soon as is practicable and in any event within 7 days of a change in the information give to the Commission notice in writing of the change.

(4) A licensee shall, as soon as practicable and in any event within 7 days after a person becomes or ceases to be a representative or, if the licensee is a corporation, a director of the licensee, notify the Commission in writing of the name and address of the person and of the nature of the position to which he has been appointed or which he has ceased to occupy.

(5) A responsible officer of a licensed corporation shall report to the Commission a person who interferes, or attempts to interfere, with the proper discharge by him of his responsibilities.

(6) A person commits an offence if he, without reasonable excuse, fails to comply with this section and is liable on summary conviction to a fine at level 4 and to imprisonment for 6 months.

(7) Every director or shadow director of a corporation that fails to comply with this section commits an offence and each is liable on summary conviction to a fine at level 4 and to imprisonment for 6 months.

6.17 Commission to keep registers of licensed persons

(1) The Commission shall maintain a register of persons licensed or exempted under this Ordinance in the form it considers most appropriate.

(2) The register kept under this section shall contain in relation to a licence or exemption -

(a) the name and address of the licensed or exempt person;

(b) any conditions attached to the licence or exemption;

(c) for a licensed representative, the name of each principal to whom he is accredited;

(d) such other particulars as the Commission considers desirable or expedient in the interest of the investing or general public.

(3) The register shall, at all reasonable times and on payment of the prescribed fee, be open to inspection by members of the public.

(4) A copy of any extract of or entry in the register kept under this section, purporting to be certified by an officer of the Commission, shall be admissible as evidence in any legal proceedings.

6.18 Publication of names of licensed and exempt persons

(1) The Commission shall at least once in each year publish in the Gazette, at the time and in the manner it thinks proper, the names and addresses of all licensed and exempt persons and any conditions attached to their licences or exemptions.

(2) If the Commission amends the register kept under section 6.17 by adding or removing the name of a person, it shall publish

particulars of the amendment in the Gazette within one month after making the amendment.

6.19 False representations in obtaining licence

(1) A person commits an offence if to obtain a licence, whether for himself or for another person, he makes a representation, whether in writing, orally or otherwise, which he knows to be false or misleading as to 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; and

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

(3) For the purposes of subsection (1), "representation" (

) 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.

6.20 Waiver or modification of requirements

(1) The Commission may, in relation to a licensed person or an applicant for a licence, waive or modify the requirements of any of the following -

(a) sections 6.7(1) and 6.11(2)(a)(ii) (responsible officers of corporations);

(b) sections 6.11(2)(b) and 6.12(c) (location of records);

(c) section 6.13 (matters affecting Commission's determination of application);

(d) section 8.6 (disposition of securities);

(e) sections 8.7 (keeping of books, accounts and records) and 8.8 (preparation and production of contract notes and statements of account);

(f) section 8.9 (maintenance of segregated trust accounts);

(g) financial resources rules.

(2) In waiving or modifying a requirement under this section for a person, the Commission shall have regard to the circumstances of the person and of the particular kind of business carried on or to be carried on by him and, in particular -

(a) to whether compliance with the requirement in question would be unduly burdensome for the person; and

(b) to whether the exercise of the power in the particular case would result in undue risk to the investing or general public.

(3) On making any waiver or modification, the Commission may impose such conditions as it thinks fit.

(4) A waiver or modification of a requirement under this section continues in force until withdrawn by the Commission.

(5) A person commits an offence if he fails to comply with a condition imposed by the Commission under subsection (3) and is liable to a fine at level 6 and to imprisonment for 6 months.

6.21 Prohibition of use of certain titles

(1) A person shall not, unless he is a licensed dealer or adviser -

(a) take or use the title or description "securities dealer", "stockbroker", "futures dealer", "futures broker", "securities adviser", "investment adviser", "futures adviser", " ", " ", " ", " ", " ", " ", " " or " "; or

(b) take or use, or have attached to or exhibited at any place, any title or description that resembles those specified in paragraph (a) or so closely resembles such title as to be calculated to deceive.

(2) A person commits an offence if he contravenes this section and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

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PART VIISUPERVISION AND INVESTIGATIONS

7.1 Power to require production of records and documents concerning listed companies

- (1) Where -
- (a) it appears to the Commission that there are circumstances suggesting that the business of a corporation, which is or was at the relevant time listed, has been or is being conducted -
 - (i) with intent to defraud its creditors, or the creditors of another person;
 - (ii) for a fraudulent or unlawful purpose; or
 - (iii) in a manner oppressive to any of its members;
 - (b) it appears to the Commission that there are circumstances suggesting that a corporation was formed for a fraudulent or unlawful purpose;
 - (c) it appears to the Commission that there are circumstances suggesting that persons concerned with the formation of a corporation or the management of its affairs have in relation to the formation or management been guilty of fraud, misfeasance or other misconduct towards it or its members;
 - (d) it appears to the Commission that there are circumstances suggesting that members of a corporation have not been given all the information with respect to its affairs that they might reasonably expect; or

(e) if the Commission decides to provide assistance to investigate a matter relating to the company under section 7.3, the circumstances giving rise or pertaining to the matter are, in the opinion of the Commission, of a nature similar to the circumstances giving rise or pertaining to a matter referred to in paragraph (a), (b), (c) or (d), the Commission may give directions -

- (i) to the corporation;
- (ii) to a subsidiary of the corporation;
- (iii) to a corporation that is substantially under the control of the same person as is the corporation,

requiring it, at the time and place specified in the directions, to produce the records and documents specified in the directions.

(2) The Commission may, when acting under subsection (1), authorize a person, on producing (if required to do so) evidence of his authority, to require a corporation referred to in subsection (1) to produce to him records and documents specified by him.

(3) Where the Commission or authorized person may require production of records and documents from a corporation under this section, the Commission or authorized person may also require production of those records and documents from a person who appears to the Commission or authorized person to be in possession of them.

(4) Where the person in possession of the records and documents claims a lien on those that are produced by him, their production under this section is without prejudice to the lien.

(5) A power under this section to require a company or other person to produce records and documents includes the power -

- (a) if the records and documents are produced -

- (i) to take copies of them or extracts from them; and
 - (ii) to require that person, or any other person who is a present or past officer of the corporation, or is or was at any time employed by the corporation, to provide an explanation of any of them; or
- (b) if the records and documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(6) If a requirement to produce records or documents or provide an explanation or make a statement which is imposed under this section is not complied with, the corporation or other person on whom the requirement was so imposed commits an offence.

(7) Where a person is charged with an offence under subsection (6) for failure to produce records and documents, it is a defence to prove that they were not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirement.

(8) Where the Commission or authorized person requires a person to provide an explanation or make a statement under this section -

- (a) the person so required is obliged to provide an explanation or make a statement; and
- (b) the Commission or authorized person shall, before requiring a person to provide an explanation or make a statement under this section, inform him of the limitations imposed by subsection (9) on the

admissibility in evidence of the requirement and of any explanation provided or statement made.

(9) If the explanation or statement required might tend to incriminate the person making it, and he so claims before providing the explanation or making the statement -

(a) the requirement to provide the explanation or make the statement and the explanation or statement are not admissible in evidence against him in criminal proceedings other than for -

(i) an offence under subsection (11);

(ii) section 36 of the Crimes Ordinance (Cap. 200); or

(iii) perjury;

(b) the requirement to provide the explanation or make the statement and the explanation or statement are admissible as evidence for all purposes of Part XI.

(10) The Commission or authorized person may require, in writing, the person providing the explanation or making the statement to verify the explanation or statement by statutory declaration (which may be taken by the Commission or authorized person) within a reasonable period specified in the requirement.

(11) A person commits an offence if he, without reasonable excuse -

(a) in purported compliance with a requirement under this section, produces records or documents or provides or makes an explanation or statement which he knows to be false or misleading in a material particular; or recklessly produces records or documents or provides or makes an explanation or statement which is false or misleading in a material particular; or

(b) fails to comply with a requirement under subsection (10) or fails to do so within the period specified.

(12) The Commission's power under subsection (1) to give directions to any corporation which is an authorized financial institution may be exercised only in respect of -

(a) subsection (1)(d); or

(b) subsection (1)(e), if, and only if, the circumstances giving rise or pertaining to the matter for which assistance is to be provided under section 7.3 are of a nature similar to the circumstances giving rise or pertaining to the matter referred to in subsection (1)(d).

(13) The Commission shall not under this section require or authorize any person to require the production by a person carrying on the business of banking of a record or document relating to the affairs of a customer of his unless either it appears to the Commission that it is necessary to do so for the purpose of investigating the affairs of the person carrying on the business of banking or the customer is a person on whom a requirement has been imposed by virtue of this section.

(14) Before giving directions under subsection (1) -

(a) to a corporation which is an authorized financial institution or to a corporation which, to the knowledge of the Commission, is the controller of an authorized financial institution, has as its controller an authorized financial institution or has the same controller as an authorized financial institution, the Commission shall consult the Monetary Authority; or

(b) to any corporation that is an insurer authorized under the Insurance Companies Ordinance (Cap. 41), the Commission shall consult the Insurance Authority.

(15) In subsection (14)(a), "controller" () 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).

(16) A person who commits an offence under this section is liable -

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

7.2 Supervision of intermediaries

(1) A person authorized by the Commission for this Part may at any reasonable time, to ascertain whether an intermediary is complying or has complied with, or is likely to be able to comply with, a provision specified in subsection (2) -

- (a) enter the intermediary's premises notified to the Commission under section 6.12(c);
- (b) inspect and make copies of, or make an abstract of, or take an extract from, a record or other

document relating to -

- (i) business conducted by the intermediary; and
- (ii) a transaction carried out by a related corporation of the intermediary, or a

corporation that is substantially under the control of the same person as controls the intermediary; and

(c) make inquiries of -

- (i) the intermediary;
- (ii) a related corporation of the intermediary, or corporation that is substantially under the control of the same person as controls the intermediary;
- (iii) any other person whom the authorized person has reasonable grounds for believing is in possession of or has under his control a record or other document mentioned in paragraph (b), concerning a record or document, or concerning a transaction or activity which was undertaken in the course of, or which may affect, the intermediary's business.

(2) The specified provisions are -

- (a) this Ordinance and subsidiary legislation under this Ordinance;
- (b) a requirement under this Ordinance or under the subsidiary legislation;
- (c) a code or guideline issued under this Ordinance;
- (d) the terms and conditions of a licence or exemption issued under this Ordinance.

(3) An authorized person in exercising his powers under subsection (1)(b) and (c) may require -

- (a) the intermediary;
- (b) a related corporation of the intermediary, or a corporation that is substantially under the control of the same person as controls the intermediary; or

(c) any other person whom the authorized person has reasonable grounds for believing is in possession of or has under his control a record or other document mentioned in subsection (1)(b), to produce to him the record or document.

(4) To enable an authorized person to exercise his powers under subsection (1)(b) and (c), the intermediary, or related corporation, or other corporation or person mentioned in subsection (3)(b) or (c) -

(a) shall give an authorized person access to the records or other documents that the authorized person may reasonably require to inspect, and shall produce to the authorized person the records or other documents he may reasonably require; and

(b) shall answer truthfully and to the best of his ability a question put to him for the purposes of subsection (1)(c).

(5) Where a copy of a record or other document is supplied or made under this section and a facility of a person other than the Commission is used to make the copy, the Commission shall reimburse the expenses which, in the opinion of the Commission, have been reasonably incurred by the person in making the copy.

(6) An authorized person shall not require an authorized financial institution to produce a record or other document relating to the affairs of a customer unless the Commission has certified in writing that it is satisfied that the production is necessary for the purposes of this section.

(7) Where the Commission issues a certificate under subsection (6), the institution shall comply with the requirements under subsection (3) or (4) that apply in its case.

(8) An authorized person shall be furnished by the Commission with a copy of his authorization, and he shall, when entering any premises under this section, produce the copy of the authorization for inspection by any person who is present and who is affected by the exercise of the power.

(9) A person commits an offence if without reasonable excuse he fails to comply with a requirement made under this section to produce a record or other document or to answer an inquiry made and is liable -

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

(10) A person commits an offence if, in purported compliance with a requirement made under this section, he produces a record or other document, or provides an answer which he knows to be false or misleading in a material particular and is liable -

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

(11) A licensed person who with intent to defraud contravenes this section, and a director or employee of a licensed person who with intent to defraud, causes or allows the licensee to contravene this section commits an offence and is liable -

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; and
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(12) In this section, "intermediary" () means a licensed or exempt person and includes a person who was formerly a licensed or exempt person.

7.3 Assistance to overseas regulators

(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 -

(a) which the authority or regulatory organization enforces or administers; and

(b) which relate to such transactions regarding securities, futures contracts, leveraged foreign exchange trading, investment arrangements or other similar transactions as are regulated by the authority or regulatory organization,

the Commission may provide the assistance to investigate the matter by exercising any of its powers under sections 7.1, 7.4, 7.5, 7.6 and 14.1(2)(f), if the Commission is of the opinion that the conditions set out in subsection (3) are satisfied.

(2) Where the Commission receives from a companies inspector outside Hong Kong appointed to investigate the affairs of a corporation who, in the opinion of the Commission, satisfies the requirements referred to in subsection (5)(a) and (b), a request for assistance to investigate whether a person specified by the companies inspector has contravened or is contravening legal or regulatory requirements which relate to transactions regarding

securities, futures contracts, leveraged foreign exchange trading, investment arrangements or other similar transactions, the Commission may provide the assistance to investigate the matter by exercising any of its powers under sections 7.1, 7.4, 7.5, 7.6 and 14.1(2)(f), if the Commission is of the opinion that the conditions set out in subsection (3) are satisfied.

(3) The conditions referred to in subsections (1) and (2) are that -

(a) it is desirable or expedient that the assistance should be so provided in the interest of the investing public or the public interest; or

(b) the assistance will enable or assist the recipient of the assistance to perform its or his functions and it is not contrary to the interest of the investing public or the public interest that the assistance should be so provided.

(4) In deciding whether the conditions specified in subsection (3) are satisfied in a particular case, the Commission shall take into account -

(a) where the recipient of the assistance is an authority or regulatory organization referred to in subsection (1), whether the authority or regulatory organization will -

(i) pay to the Commission any 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;

(b) where the recipient of the assistance is a companies inspector referred to in subsection (2),
whether -

(i) the companies inspector will pay any 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 that, for the purposes of subsection (1) or (2), 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 practicable cause the name of the authority, regulatory organization or companies
inspector to be published in the Gazette.

(6) If a person is obliged to answer a question put to him by the Commission, an authorized person
authorized under section 7.1, or an investigator appointed under section 7.5, exercising a power under subsection (1) or (2)
and the answer might tend to incriminate him and he so claims before answering the question, the Commission, authorized
person or investigator shall not provide evidence of the question or answer to an authority, regulatory organization or

companies inspector outside Hong Kong for use in criminal proceedings against him in the jurisdiction of the authority, regulatory organization or companies inspector.

7.4 Information relating to transactions

(1) The Commission or a person authorized in writing by the Commission for the purposes of this section may require -

(a) a person registered as the holder of securities or futures contracts;

(b) a person whom the Commission or the person authorized has reasonable grounds to believe holds securities or futures contracts, holds an interest in investment arrangements or holds any leveraged foreign exchange trading contracts;

(c) a person whom the Commission or the person authorized has reasonable grounds to believe has a beneficial interest in securities, futures contracts, investment arrangements or a leveraged foreign exchange trading arrangement;

(d) a person whom the Commission has reasonable grounds to believe has acquired or disposed of -

(i) securities;

(ii) futures contracts;

(iii) an interest in investment arrangements;

(iv) an interest in securities or futures contracts; or

(v) a leveraged foreign exchange trading contract or an interest in a leveraged

foreign exchange trading arrangement,

directly or through a nominee, trustee, or agent, and whether as beneficial owner, nominee, trustee, agent or otherwise; or

(e) a licensed or exempt person,

to disclose to the Commission or him the information referred to in subsection (2) in relation to an acquisition, disposal or holding of securities, futures contracts or interest in investment arrangements, a leveraged foreign exchange trading contract or an interest in a leveraged foreign exchange trading arrangement.

(2) The information that may be required under subsection (1) is -

(a) the name (including any aliases), address, telephone number and occupation of the person, or other particulars that are capable of establishing the identity of the person, from, to or through whom, or on whose behalf, the securities or futures contracts or interests in investment arrangements or the leveraged foreign exchange trading contracts or arrangements were acquired, disposed of or were or are held;

(b) the quantity of securities or futures contracts or interests in investment arrangements or leveraged foreign exchange trading contracts or interests in leveraged foreign exchange trading arrangements so acquired, disposed of or held; and

(c) the instructions given to or by the person referred to in paragraph (a) in relation to the securities, futures contracts or interests in investment arrangements or interests in leveraged foreign exchange trading arrangements.

- (3) Where the Commission or an authorized person requires information under subsection (1), a person commits an offence if he -
 - (a) without reasonable excuse fails to disclose to the Commission or the authorized person information required to be disclosed under this section and which is in his possession or under his control; or
 - (b) furnishes to the Commission or the authorized person in purported compliance with the requirement information which he knows to be 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; and
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (5) A licensed person who with intent to defraud contravenes this section, and a director or employee of a licensed person who with intent to defraud causes or allows the licensed person to contravene this section, commits an offence and is liable -
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; and
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

7.5 Investigations

- (1) Where -
 - (a) the Commission has reason to believe that an offence under this Ordinance may have been committed;

(b) the Commission has reason to believe that a person may have committed a defalcation or other breach of trust, fraud or misfeasance -

(i) in dealing in securities or futures contracts or trading in leveraged foreign exchange trading contracts;

(ii) in the management of investment in securities or in futures contracts or leveraged foreign exchange arrangements;

(iii) in offering investment arrangements;

(iv) in making leveraged foreign exchange trading arrangements; or

(v) in giving advice as to the acquisition or disposal of, or otherwise investing in, securities, futures contracts, leveraged foreign exchange trading contracts or as to investment arrangements or leveraged foreign exchange trading arrangements;

(c) the Commission has reason to believe that insider dealing may have taken place;

(d) the Commission has reason to believe that the manner in which a person has engaged or is engaging in any of the following activities -

(i) the dealing or trading mentioned in paragraph (b)(i);

(ii) the management mentioned in paragraph (b)(ii);

(iii) the offering or making of investment arrangements or leveraged foreign exchange trading arrangements; or

(iv) the giving of advice described in paragraph (b)(v),

is not in the interest of the investing public or the public interest; or

(e) if the Commission decides to provide assistance to investigate a matter under section 7.3, the circumstances giving rise or pertaining to the matter are, in the opinion of the Commission, of a nature similar to the circumstances giving rise or pertaining to a matter referred to in paragraph (a), (b), (c) or (d), the Commission may in writing direct one or more of its employees or, with the consent of the Financial Secretary, appoint one or more persons to investigate any matter referred to in paragraphs (a) to (e), or in the request under section 7.3, and report to the Commission.

(2) The costs or expenses incurred by a person (other than an employee of the Commission) acting as the investigator under this section are to be paid out of moneys provided by the Legislative Council.

(3) The Commission shall furnish the investigator with a copy of his direction or appointment and he shall, before first exercising a power under this section, produce the copy to the person concerned for his inspection.

7.6 Conduct of investigations

(1) A person about whom any matter is investigated under section 7.5 is referred to in this section as "the person under investigation".

(2) The person under investigation or a person whom the investigator reasonably believes or suspects to have in his possession or under his control a record or other document which contains, or which is likely to contain, information relevant to an investigation under section 7.5, or whom the investigator so believes or suspects of otherwise having such information in his possession or under his control, shall -

(a) produce to the investigator, within the time and at the place that the investigator reasonably requires, a record or other document specified by the investigator which is, or may be, relevant to the investigation, and which is in his possession or under his control;

(b) if required by the investigator, give to him an explanation or further particulars of a record or other document produced under paragraph (a);

(c) attend before the investigator at the time and place that the investigator may require in writing, and answer truthfully and to the best of his ability the questions relating to the matters under investigation that the investigator may put to him; and

(d) give to the investigator all assistance in connection with the investigation which he is reasonably able to give.

(3) A counsel or solicitor acting for a person under investigation, or for another person referred to in subsection (2), may -

(a) attend an examination of the person for whom he is acting; and

(b) to the extent that the investigator reasonably permits -

(i) examine the person; and

(ii) address the investigator,

on matters on which the investigator or a counsel or solicitor acting for the investigator, has questioned the person.

(4) The investigator may, and if so directed by the Commission shall, make interim reports to the Commission, and on the conclusion of his investigation shall make a final report to the Commission.

(5) Even though section 14.1 would otherwise prevent the publication of reports, the Commission may, with the consent of the Attorney General, cause a report under this section to be published.

7.7 Incriminating answers

(1) Where an investigator puts questions to a person under section 7.6 -

(a) the person is obliged to answer them;

(b) the investigator shall, before asking the questions, inform the person concerned of the

limitations imposed by subsection (2) on the admissibility in evidence of the questions and the answers given.

(2) If the answer tends to incriminate the person giving it, and he so claims before answering the question the question and the answer are not admissible in evidence against him in criminal proceedings other than proceedings for -

(a) an offence under section 7.8;

(b) an offence under section 36 of the Crimes Ordinance (Cap. 200); and

(c) perjury,

but the question and answer are admissible for all the purposes of Part XI.

(3) Where a person makes or gives an explanation, particulars, answer or statement under subsection (1), the investigator may, in writing, further require the person to verify the explanation, particulars, answer or statement by statutory declaration.

(4) If the person does not give or make the explanation, particulars, answer or statement in accordance with a requirement under subsection (1) the investigator may, in writing, require the person to verify by a statutory declaration that he was unable to comply or, as the case may be, fully comply, with the requirement because the matter which he failed to furnish was not within his knowledge or was neither in his possession nor under his control.

(5) Where an investigator makes a requirement under subsection (3) or (4), the person to whom it is made shall comply with the requirement within the reasonable period that the investigator specifies in the requirement.

(6) Neither section 7.6 nor this section shall be construed as requiring an authorized financial institution to disclose information or produce a record or other document relating to the affairs of a customer to the investigator unless -

(a) the customer is a person whom the investigator has reason to believe may be able to give information relevant to the investigation; and

(b) the Commission is satisfied that the disclosure or production is necessary for the purposes of the investigation and certifies that in writing,

and, where the conditions in paragraphs (a) and (b) are met in respect of the institution, the institution shall comply with the provisions of subsection (1) or (5) that apply in its case.

7.8 Offences in relation to investigations

- (1) A person commits an offence if, without reasonable excuse, he -
 - (a) fails to produce a record or other document which he is required to produce under section 7.6(2)(a);
 - (b) fails to give an explanation or particulars required under section 7.6(2)(b);
 - (c) fails to comply with a requirement under section 7.6(2)(c) to attend before the investigator;
 - (d) fails to answer a question put to him by the investigator under section 7.6(2)(c), or in answering the question says anything which he knows to be false or misleading in a material particular or who in so answering recklessly makes a false statement;
 - (e) fails to comply with section 7.6(2)(d);
 - (f) fails to comply with a requirement under section 7.7(3) or (4), or fails to do so within the period specified in the requirement.
- (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; and
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(3) A licensed person who with intent to defraud contravenes this section, and a director or employee of a licensed person who with intent to defraud causes or allows the licensee to contravene this section commits an offence and is liable -

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; and
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(4) Where the person under investigation or another person is convicted by a court or magistrate on a prosecution instituted as a result of an investigation under section 7.5, the court or magistrate may order him to pay to the Commission the whole or part of the costs or expenses of the investigation.

(5) Where the Commission receives an amount under an order for costs or expenses which have been paid out of moneys provided by the Legislative Council, the Commission shall pay to the Financial Secretary the moneys received for costs or expenses under the order to the extent that they have already been met out of moneys provided by the Legislative Council.

(6) The Commission shall pay to the Financial Secretary an amount equal to any sum paid to the Commission for the costs and expenses referred to in section 7.3(4) if the costs and expenses have been paid out of moneys provided by the Legislative Council.

7.9 Certification to High Court relating to non-compliance under section 7.1, 7.2, 7.4 or 7.6

(1) If a person, without reasonable excuse, fails to produce any record or other document or disclose information upon being required to do so under section 7.1, 7.2, 7.4 or 7.6(2) the

Commission may certify the failure to the High Court and the High Court may inquire into the case and -

- (a) order the person to comply with the requirement within the period the High Court fixes; or
- (b) if the High Court is satisfied that the person has failed without reasonable excuse to comply with

the requirement, punish him in the same manner as if he had been guilty of contempt of court.

(2) A person shall not be punished under subsection (1) and section 7.1, 7.2, 7.4, 7.6(2) or 7.8(1) or (2) for the same failure.

7.10 Production of computerized information

Where information or matter that is required under this Part is recorded otherwise than in a legible form, the powers conferred by this Part to require the production of a record or other 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 in a legible form.

7.11 Magistrate's warrant

(1) If a magistrate is satisfied on information on oath laid by the chairman or other director of the Commission, or by an authorized person, that there are reasonable grounds for suspecting that there is, or is likely to be, on premises specified in the information a record or other document which is required under section 7.1, or relevant to an inspection under section 7.2 or an investigation under section 7.6, or which relates to an offence alleged to have been committed under Part XIII, 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 -

(a) to 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

(b) to search for, seize and remove any record or other document which the person specified in the warrant or police officer has reasonable cause to believe may be required under section 7.1, or for the purposes of the inspection or investigation, or for proceedings for an offence under Part XIII.

(2) A person specified in the warrant or a police officer or any other person authorized by the warrant may -

(a) require a person on the premises specified in the warrant whom he reasonably believes to be employed in connection with a business which is, or which has been, conducted on the premises to produce for examination a record or other document which is in the possession or under the control of the person and that he has reasonable cause to believe may be required under section 7.1, 7.2 or 7.6 or for proceedings for an offence under Part XIII;

(b) prohibit a person found on the premises specified in the warrant from -

(i) removing from the premises a record or other document produced pursuant to a requirement under paragraph (a);

(ii) erasing, adding to or otherwise altering an entry or other particular contained
in, or

otherwise interfering in any manner with, or causing or permitting another person to interfere with, the record or other document;

(c) take, in relation to a record or other document, any other step which may appear necessary for preserving it and preventing interference with it.

(3) A record or other 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 other document is required for criminal proceedings or for proceedings before an Insider Dealing Tribunal, for such longer period as may be necessary for the purposes of those proceedings.

(4) Where a person removes a record or other document under this section he shall, as soon as reasonably practicable, 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 other document at any reasonable time and to make copies of and take extracts from it.

(5) Section 102 of the Criminal Procedure Ordinance (Cap. 221) applies to property which has come into the possession of the Commission under this section as it applies to property which has come into the possession of the police.

(6) A person commits an offence if he -

(a) without reasonable excuse fails to comply with a requirement or prohibition under subsection

(2); or

(b) obstructs a person exercising a power conferred by subsection (2).

(7) A person who commits an offence under subsection (6) is liable -

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

7.12 Destruction, etc., of documents

(1) A person who destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any record or other document which is required under section 7.1 or relevant to an inspection or investigation under section 7.2 or 7.6 commits an offence unless it is shown that he had no intention of concealing from the authorized person or investigator facts capable of being disclosed by the record or other document.

(2) A person who commits an offence under this section is liable -

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

7.13 Alternative remedy in cases of unfair prejudice

(1) If it appears to the Commission from any information, record or other document obtained under this Part, that the affairs of a listed corporation are being or have been conducted in a manner unfairly prejudicial to the interests of its members generally or of some part of the members, the Commission, after consultation with the Financial Secretary, may make an application to the High Court by petition for an order under this section.

(2) If on a petition under this section the court is of the opinion that the corporation's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of its members generally or of some part of the members, whether or not the conduct consists of an isolated act or a series of acts, the court may, with a view to bringing to an end the matters complained of -

- (a) make an order restraining the carrying out of the act or conduct;
- (b) order that the corporation shall bring in its name the proceedings the court thinks fit against the persons, and on the terms, the court orders;
- (c) appoint a receiver or manager of the whole or a part of the corporation's property or business and may specify the powers and duties of the receiver or manager and fix his remuneration;
- (d) make any other order it thinks fit, whether for regulating the conduct of the corporation's affairs 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) Where an order under this section makes an alteration in or addition to the memorandum or articles of a corporation, notwithstanding any other provision of the Companies Ordinance (Cap. 32) but subject to the provisions of the order, the corporation shall not have power without the leave of the High Court to make any further alteration in or addition to the memorandum or articles inconsistent with the order.

(4) Subject to this section, the alterations or additions made by an order under subsection (3) shall have the same effect as if duly made by resolution of the corporation and the Companies Ordinance (Cap 32) applies to the memorandum or articles as altered or added to.

(5) An office copy of an order altering or adding to, or giving leave to alter or add to, a corporation's memorandum or articles shall, within 14 days after making the order or giving the leave, be delivered by the corporation to the Registrar of Companies for registration.

(6) A corporation and every officer of the corporation, as defined in section 351(2) of the Companies Ordinance (Cap. 32), commit an offence if the corporation fails to comply with subsection (5) and is liable to a fine at level 2 and to a further fine of \$200 for each day on which the default continues.

(7) Rules made under section 296 of the Companies Ordinance (Cap. 32) in relation to a winding-up petition apply, with the necessary changes, to a petition under this section.

(8) This section does not apply to an authorized financial institution.

7.14 Powers of intervention

(1) A power conferred on the Commission by section 7.15, 7.16, 7.17 or 7.18 may be exercised in relation to any licensed dealer, licensed adviser or licensed leveraged foreign exchange trader if, and only if, it appears to the Commission that -

(a) the exercise of the power is desirable in the interest of the investing public;

(b) the licensed person is not a fit and proper person (having regard, among other matters, to the matters specified in section 6.13(1)) to carry on any one or more of the businesses for which he is licensed under Part VI, to the extent to which he is carrying it on or proposes to carry it on;

(c) the licensed person has contravened or failed to comply with any of the provisions specified in section 7.2(2) or, in purported compliance with a provision, has furnished the Commission with information which, in a material particular, is false, inaccurate or misleading; or

(d) the licence of the licensed person may be revoked or suspended on any of the grounds specified in section 6.14.

(2) The powers conferred on the Commission by section 7.15, 7.16, 7.17 or 7.18 may be exercised in relation to a person whose licence is revoked or suspended under section 6.14 where an appeal is made under section 3.2 or the time for making the appeal has not expired and references in section 7.15, 7.16, 7.17 or 7.18 to a licensed person shall be construed accordingly.

(3) In exercising the powers conferred by section 7.15, 7.16, 7.17 or 7.18 the Commission shall be entitled to rely on the content of a report received by it under section 8.21 or the findings of an inquiry conducted under section 6.15.

(4) The Commission shall not exercise any power conferred on it by section 7.15, 7.16, 7.17 or 7.18 with respect to a licensed person who is a member of the Stock Exchange or of a futures market operated by a recognized exchange company or a participant of a

clearing house unless the Commission has given written notification of its intention to the exchange company or the clearing house.

7.15 Restriction of business

- (1) Subject to section 7.14, the Commission may by notice in writing -
 - (a) prohibit a licensed dealer, licensed adviser or licensed leveraged foreign exchange trader from -
 - (i) entering into transactions of a description specified in the notice, or transactions of a description other than those specified in the notice, or entering into them other than in specified circumstances or to a specified extent;
 - (ii) soliciting business from persons of a specified description or from persons other than persons of the description;
 - (iii) carrying on business as a licensed person in a specified manner, or in a manner other than that specified;
 - (b) require a licensed person to carry on business in, and only in, a specified manner.
- (2) A prohibition or requirement under this section may relate to either or both of the following -
 - (a) transactions entered into in connection with the business for which a person is licensed as a dealer, adviser or trader;
 - (b) other business which is carried on by the licensed person in connection with the business.

7.16 Restriction on dealing with assets

Subject to section 7.14, the Commission may, as regards any assets whether in Hong Kong or elsewhere or whether they are assets of a licensed person or not, by notice in writing -

- (a) prohibit a licensed dealer, licensed adviser or licensed leveraged foreign exchange trader from -
 - (i) disposing of the assets;
 - (ii) dealing with them in a manner specified in the notice; or
 - (iii) dealing with them except in a manner specified in the notice;
- (b) require a licensed person to deal with the assets in, and only in, a manner specified in the notice.

7.17 Maintenance of assets

(1) Subject to section 7.14, the Commission may by notice in writing require a licensed dealer, licensed adviser or licensed leveraged foreign exchange trader to maintain in Hong Kong and in any other place outside Hong Kong specified in the notice, in a manner that will enable the person at any time freely to transfer or otherwise dispose of them, assets of the value and of the description that appear to the Commission to be desirable with a view to ensuring that the person will be able to meet his liabilities for the business carried on by him as a licensed person.

(2) The Commission may direct that for the purposes of any requirement under this section assets of a specified description shall or shall not be taken into account.

7.18 Requirement to transfer assets

(1) Subject to section 7.14, the Commission may by notice in writing require a licensed dealer, licensed adviser or licensed leveraged foreign exchange trader, or a person to whom the licensed person is accountable to transfer control of assets of a specified class or description to the Commission as trustee, or a trustee appointed by the Commission.

(2) The licensed person or the person to whom the licensed person is accountable shall transfer the assets required to be transferred and shall assist the Commission or other trustees to discharge their functions under the requirement.

7.19 Provisions relating to notices under section 7.15, 7.16, 7.17 or 7.18

(1) A notice under section 7.15, 7.16, 7.17 or 7.18 shall remain in force until it is withdrawn by the Commission under section 7.20 by a further notice.

(2) The power under section 7.15, 7.16, 7.17 or 7.18 to impose, or under section 7.20 to withdraw, substitute or vary, a prohibition or requirement is exercisable by written notice served by the Commission on the person concerned, and the notice shall take effect at the time specified in the notice or the time when it is served, whichever is the later.

(3) A notice -

- (a) imposing a prohibition or a requirement under section 7.15, 7.16, 7.17 or 7.18; or
- (b) under section 7.20 substituting or varying such a prohibition or requirement; or
- (c) under section 7.20(2),

is to be accompanied by a statement in writing of the reasons why the prohibition or requirement was imposed, substituted or varied, or the relevant application was refused, and that an appeal may be made to the Panel against the notice by any party on whom it is served, and specify the period within which the appeal may be made.

(4) Where the reasons stated in a notice to which subsection (3) applies relate specifically to matters which -

(a) refer to a person who is identified in the notice but who is not a person on or in respect of whom the relevant prohibition or requirement was imposed; and

(b) are, in the opinion of the Commission, prejudicial to the person in any respect,

the Commission shall, if possible, serve a copy of the notice on the person.

(5) The Commission may publish in the Gazette a prohibition or requirement imposed under section 7.15, 7.16, 7.17 or 7.18 or a withdrawal, substitution or variation under section 7.20 of the prohibition or requirement and where the prohibition or requirement is published, the Commission shall also publish a subsequent withdrawal, substitution or variation of the prohibition or requirement.

(6) A notice published under subsection (5) may, if the Commission thinks fit, include a statement of the reasons for which the relevant prohibition or requirement was imposed, withdrawn, substituted or varied.

(7) Sections 7.15 to 7.20 or a notice served under section 7.15, 7.16, 7.17 or 7.18 do not render a contract unenforceable by a party to the contract if he proves that in entering into the contract he acted in good faith and, as regards any notice served, was unaware of the notice.

(8) Where under a section or notice referred to in subsection (7) a person rescinds a contract, he shall restore to any other party to the contract any money or other benefit received or obtained by him under the contract from the party.

7.20 Withdrawal, substitution or variation of notices under section 7.15, 7.16, 7.17 or 7.18

(1) Where a notice under section 7.15, 7.16, 7.17 or 7.18 is in force, the Commission may of its own volition, or on the application of the person on whom the notice was served or any other person affected by the notice, by notice in writing -

(a) withdraw the notice; or

(b) substitute another prohibition or requirement for, or vary, any prohibition or requirement contained in the notice.

(2) If, on an application made by a person under subsection (1), the Commission refuses to withdraw, substitute or vary a prohibition or requirement imposed under section 7.15, 7.16, 7.17 or 7.18, the Commission shall serve on that person a notice in writing of the refusal.

7.21 Injunctions to restrain contraventions

If on the application of the Commission the High Court is satisfied that there is a reasonable likelihood that a person will disregard a prohibition or fail to comply with a requirement imposed under section 7.15, 7.16, 7.17 or 7.18, the Court may grant an injunction restraining the act of a person or order that a person who appears to the Court to have been knowingly involved in any such conduct, take steps as the Court may direct.

7.22 Winding-up orders and receiving orders

(1) If, for a corporation which may be wound up by the High Court under the Companies Ordinance (Cap. 32), it appears to the Commission that it is expedient in the public interest that the corporation should be wound up, the Commission may present a petition for it to be wound up under that Ordinance on the ground that it is just and equitable that it should be so wound up.

(2) If it appears to the Commission that it is expedient in the public interest to do so the Commission may present a petition for a receiving order in accordance with the Bankruptcy Ordinance (Cap. 6) against a licensed person if the licensed person has committed an act of bankruptcy within the meaning of that Ordinance, and that Ordinance shall apply to the petition as it applies in relation to a petition presented by a creditor.

(3) The Commission shall not present a petition under this section against a member of the Stock Exchange or of a futures market operated by a recognized exchange company or against a participant of a clearing house unless the Commission has given written notification of its intention to the exchange company or the clearing house.

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PART VIII
BOOKS, RECORDS, CAPITAL REQUIREMENTS
ACCOUNTS AND AUDIT

8.1 Interpretation

- (1) In this Part "licensed person" () means a person licensed under this Ordinance as -
- (a) a securities dealer;
 - (b) a futures dealer;
 - (c) a securities adviser;
 - (d) a futures adviser;
 - (e) a leveraged foreign exchange trader.
- (2) In this Part, unless the context otherwise requires a reference to the accounts, records or other documents, securities, trust accounts, or business of, or in relation to, a licensed person who carries on business in partnership is construed as a reference to the accounts, records or other documents, securities, trust accounts, or business of, or in relation to the partnership.

8.2 Suitability of premises for storing books, accounts and records

- (1) Where premises are used, or are to be used, for keeping books, accounts, records or other documents under this Ordinance and are used partly or wholly for residential purposes, the Commission -
- (a) shall not regard them as being suitable for keeping books, accounts, records or other documents under this Ordinance unless the Commission is satisfied the residential use will not affect the exercise of any powers under Part VII or this Part;

(b) shall inform the person if it decides that the premises are suitable and that the premises may be entered under section 7.2 (supervision of intermediaries) and section 7.11 (magistrate's warrant).

(2) A licensed person other than a representative shall give to the Commission not less than 30 days' written notice of an intended change in the location of premises at which a record or other document relating to the business for which he is licensed is to be kept and the intended change shall not take place unless the Commission gives its prior approval to the change.

(3) The Commission may allow a shorter period of notice in a particular case if the licensed person makes an application for that purpose.

(4) Where the Commission is notified of a change in location of premises and decides that the intended premises are not suitable for keeping books, accounts, records or other documents, the Commission shall inform the licensed person of its decision in writing on or before the expiry of 15 days after the receipt of the notice.

(5) A person authorized in writing by the Commission for this section shall have access at all reasonable times to premises where a licensed person keeps books, accounts, records or other documents for this Ordinance.

8.3 Financial resources rules

(1) The Commission may make rules requiring licensed persons to have and maintain, for the businesses for which they are licensed, the financial resources set by the rules.

- (2) Financial resources rules may -
- (a) impose requirements which are absolute or which are to vary from time to time by reference to factors which either are specified in, or are to be determined in accordance with, the rules;
 - (b) impose requirements which apply differently to different classes of licensed persons and different classes of business for which they are licensed, and which take account of a business carried on by the person concerned with, or in addition to, the business referred to in subsection (1);
 - (c) provide for the assets, liabilities and other matters to be taken into account under the rules to determine a person's financial resources and the extent to which, and the manner in which, they are to be taken into account for that purpose;
 - (d) include for the assets, liabilities and other matters to be treated differently according to whether or not they are approved by the Commission or a recognized exchange company;
 - (e) provide that the rules, or a provision in them, do not apply to persons who have and 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 is similar to a function conferred on the Commission by this section, or apply to those persons with the modifications or only in the circumstances specified in the rules;

- (f) require licensed persons to submit to the Commission -
 - (i) at intervals set out in the rules, returns of their financial resources in a form set by the Commission;
 - (ii) written notice of circumstances relating to changes in the level of their financial resources prescribed in the rules.

8.4 Failure to comply with financial resources rules

- (1) If a licensed person, or a partnership of which he is a member, becomes unable to comply with financial resources rules the licensed person shall -
 - (a) notify the Commission of that fact; and
 - (b) cease conducting business for which he is licensed, otherwise than for the purpose of giving effect to an agreement or arrangement permitted under his licence and entered into before the time when he became so aware.
- (2) The duties of a licensed person under subsection (1) arise as soon as he becomes aware, or should, with the exercise of reasonable diligence, have become aware, of his inability to comply with the financial resources rules.
- (3) A licensed person that is a corporation is deemed to be aware of an inability to comply with the financial resources rules if a director or employee of it is so aware or would, with the exercise of reasonable diligence, have been aware of the inability.
- (4) Where the Commission becomes aware of an inability by a licensed person, or by a partnership of which a licensed person is a

member, to comply with financial resources rules the Commission may, whether or not notice has been given under subsection (1) -

- (a) suspend the licence; or
- (b) permit the licensed person to carry on business on the conditions, if any, the Commission

imposes.

(5) If a licensed person contravenes subsection (1), the licensed person and, if it is a corporation, every director or shadow director of it commit an offence and each is liable -

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

(6) This section shall not prejudice a requirement prescribed under section 8.3(2)(f).

8.5 Monitoring compliance with requirements as to financial resources

To ascertain whether or not a licensed person complies with rules made under section 8.3, the Commission and a person authorized by the Commission have the powers of an auditor under section 8.22.

8.6 Disposition of securities

(1) A licensed or exempt person (an "intermediary") who is accountable for securities that are the property of another person and that he or a nominee controlled by him holds, shall -

- (a) hold and account for them in the manner prescribed by rules made by the Commission;
- (b) not dispose of, assign or lend the securities or deposit them as security for loans or advances

except as prescribed by rules made by the Commission.

(2) An authorized financial institution with whom an intermediary deposits, as security for loans or advances, securities that are the property of another person shall not realize the securities for any purpose other than repayment of a specified loan or advance for which the securities are deposited as security.

(3) Where an intermediary or a nominee controlled by the intermediary is accountable for securities that are the property of another person and are registered in the name of a nominee, the intermediary shall ensure that the nominee in whose name the securities are registered maintains the same records in relation to the securities as would be required of the intermediary by section 8.7 if the securities were registered in the name of the intermediary. Section 8.7(2) and (4) applies to the nominee as it applies to the intermediary.

(4) An intermediary's nominee in whose name securities that are the property of another are registered -
(a) shall not, unless authorized in writing by the Commission, conduct any business other than that of holding securities for that intermediary; and

(b) shall for each financial year during which it holds securities for which it is accountable, prepare a true and fair balance sheet and lodge it with the Commission not later than 4 months after the end of the financial year, together with an audit report containing the information prescribed by rules made by the Commission.

(5) A person commits an offence if he, without lawful authority or reasonable excuse, contravenes subsection (1), (2), (3) or (4) and is liable -

- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years; and
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

8.7 Keeping of books, accounts and records

(1) A licensed person shall keep the books, accounts and records for its business as a licensed person that are prescribed by rules.

(2) A licensed person shall keep the books, accounts and records at such place as may be prescribed by rules and shall at all reasonable times keep them open to inspection by a person authorized for the purpose by the Commission or by an auditor appointed under section 8.19 or 8.20.

(3) A licensed person to whom financial resources rules apply shall keep his records in sufficient detail, subject to rules made under section 14.13, to establish readily whether or not the financial resources rules are being complied with.

(4) An entry in the records of a licensed person is deemed to have been made by him or with his authority unless there is evidence to the contrary.

(5) A licensed person and, if it is a corporation, every director or shadow director of it commit an offence if the licensed person contravenes subsection (1), (2) or (3), and each is liable -

- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years; and
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

- (6) A director or employee of a licensed corporation commits an offence if he, with intent to defraud, causes or allows a contravention by the licensed corporation of subsection (1), (2) or (3) and is liable -
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; and
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (7) A person commits an offence if, in a record kept under this section, he wilfully -
- (a) enters, records or stores, or causes to be entered, recorded or stored, a matter that he knows to be false or misleading in a material particular;
 - (b) destroys, removes or falsifies, or causes to be destroyed, removed or falsified, a matter that is entered, recorded or stored; or
 - (c) fails to enter, record or store a matter with intent to falsify the records or a part of the records intended to be compiled from that matter.
- (8) A person who commits an offence under subsection (7) is liable -
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; and
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

8.8 Preparation and production of contract notes and statements of account

- (1) A licensed person shall, for every transaction entered into with or on behalf of a client, make out a contract note and,

for a licensed leveraged foreign exchange trader, a statement of account which comply with rules made by the Commission, not later than the end of the next trading day after the date of execution of the contract.

(2) A licensed person shall, on being requested to do so by a client -

(a) provide the client with a copy of any contract note and, for a licensed leveraged foreign exchange trader except where rules made by the Commission otherwise provide, of any statement of account relating to the transaction; and

(b) if the Commission on the application of the client so directs, make available for inspection by the client, at all reasonable times, the licensed person's copy of the contract note and, for a leveraged foreign exchanger trader, of the statement of account.

(3) Subsection (2) does not require a licensed person to -

(a) provide, or keep available for inspection, a copy of any contract note or statement of account which relates to a contract executed more than 2 years before the date of the request; or

(b) provide a copy of, or keep available for inspection, any account which relates to a contract executed more than 7 years before the date of the request.

(4) If a licensed person contravenes subsection (1) or (2), the licensed person and, if it is a corporation, every director or shadow director of it commit an offence and each is liable -

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

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

8.9 Maintenance of segregated trust accounts

(1) A licensed person who receives client money shall, unless otherwise authorized in writing by the Commission, establish and keep one or more trust accounts, each of which shall be designated as a trust account and kept with -

- (a) an authorized financial institution in Hong Kong; or
- (b) another institution approved by the Commission for the purposes of this section.

(2) The Commission shall not approve an institution outside Hong Kong unless it is satisfied that funds placed by a licensed person in a segregated trust account of the licensed person with the institution will be held only for the clients of the licensed person and may not be used to meet liabilities of the licensed person.

(3) A licensed person shall, within one bank trading day after the receipt of client money, or such longer period as may be prescribed in rules pay it -

- (a) into a segregated trust account required by this section; or
- (b) to the client on whose account it received it or, subject to subsection (9), in accordance with the directions of the client.

(4) The amounts, in this section referred to as "client money", required to be paid into a segregated trust account by this section are -

- (a) all amounts less brokerage and other proper charges incurred by the licensed person, that are received

for the account of any client in respect of dealing in securities, dealing in futures contracts or leveraged foreign exchange trading;

(b) all other amounts received for or on account of any client;

(c) subject to any agreement to the contrary, all amounts derived by way of interest from the retention of any amount mentioned in paragraph (a) or (b);

(d) any other amount prescribed in rules made by the Commission.

(5) An amount shall not be paid into a segregated trust account unless it is -

(a) client money;

(b) received in a form in which it is aggregated with client money; or

(c) authorized to be paid into the account by the Commission in a particular case on an application being made for that purposes.

(6) All amounts paid into a segregated trust account under this section shall be retained there until -

(a) they are paid to the client on whose behalf they are being held;

(b) they are paid in accordance with the directions of the client, other than directions under which any amount may be applied to an account of any person referred to in subsection (9); or

(c) they are required in order to meet the obligations of the client to pay money in relation to securities, futures contracts or leveraged foreign exchange trading,

and, in the case of an amount that is paid with client money into a segregated trust account in accordance with subsection (5)(b), shall be paid out again within one bank trading day after receipt of the aggregated sum.

(7) A licensed person shall at least once in every month and at any time when it is requested by the Commission to do so carry out a reconciliation of payments into, and out of, each segregated trust account kept under this section, with bank statements and statements sent to its clients.

(8) A licensed person shall keep records of -

- (a) all amounts paid into any segregated trust account kept by him, specifying the persons on whose behalf the amounts are paid and the dates on which they were paid into the account;
- (b) all withdrawals from the segregated trust account, the dates of those withdrawals, and the names of the persons on whose account the withdrawals are made;
- (c) every reconciliation carried out under subsection (7); and
- (d) such other particulars, if any, as may be prescribed by rules made by the Commission for the purposes of this subsection.

(9) A licensed person shall not apply any money that is received for or on account of a client, or permit any such money to be applied, to -

- (a) an account of the licensed person unless it is money due to the licensed person trading on behalf of the client;
- (b) an account of any director or employee of the licensed person.

(10) If a licensed person contravenes this section the licensed person and, if it is a corporation, every director and shadow director of it commit an offence and each is liable on summary conviction to a fine at level 5 and to imprisonment for 1 year.

(11) A licensed person or, if it is a corporation, a director or shadow director of it who, with intent to defraud, contravenes or causes or allows a contravention of this section, commits an offence and is liable -

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; and
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

8.10 Client assets not available for payment of debts

(1) Except as provided in this Part, money held in a trust account by a licensed person and securities held by him for safe custody in a segregated account are not available for payment of the debts of the licensed person and are not liable to be paid or taken in execution under the order or process of a court or magistrate.

(2) A payment made in contravention of subsection (1) is void from the outset, and a person to whom the money is paid does not obtain any title to it.

8.11 Claims and liens not affected

This Part shall not be construed as taking away or affecting a lawful claim or lien which a person has for money held in a trust account, or for money received for a transaction in securities, futures contracts or leveraged foreign exchange trading, or from the

sale of securities or futures contracts before the money is paid into a trust account, or for any securities held for safe custody in a segregated account.

8.12 Auditor to be appointed

- (1) Within one month after he becomes licensed under Part VI, a licensed person shall -
 - (a) appoint an auditor; or
 - (b) for a partnership that carries on business for which he is licensed, ensure that an auditor is appointed,
to audit his accounts or those of the partnership (including all trust accounts required to be kept under this Part) and where for any reason the auditor ceases to act, the licensed person shall ensure that another auditor is appointed within one month.
- (2) A licensed person shall, within 7 days of the appointment of an auditor, notify the Commission in writing of the name and address of the auditor.
- (3) An auditor is not eligible for appointment under subsection (1) -
 - (a) if he is an employee or director of the licensed person whose accounts are to be audited, or is a partner in, or employee of a partnership whose accounts are to be audited, or is in the employment of an employee, director or partner; or
 - (b) if he belongs to another class of persons prescribed in rules.
- (4) If a licensed person contravenes subsection (1) or (2), the licensed person and, if it is a corporation, every director or shadow director of it commit an offence and each is liable -

- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; and
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

8.13 Financial year

(1) Within one month after he becomes licensed under Part VI, a licensed person shall give written notice to the Commission of the date on which his financial year ends or of the date, if he is a member of a partnership that carries on business for which he is licensed, on which the financial year of the partnership ends.

(2) On application in writing by a licensed person, the Commission may, subject to the conditions it thinks fit, grant permission to the licensed person to alter his financial year or that of his partnership.

(3) Except with the written permission of the Commission, the period of a licensed person's financial year or of the financial year of a partnership that carries on business for which he is licensed, shall not exceed 12 months.

(4) This section shall not prejudice the operation of section 122 of the Companies Ordinance (Cap. 32).

8.14 Notification of change of auditor

(1) A licensed person shall immediately give written notice to the Commission if -

(a) where the licensed person is a corporation, it -

(i) proposes to give notice to its shareholders of an ordinary resolution removing,

before the expiration of his term of office, an auditor appointed under section 8.12; or

(ii) gives notice to its shareholders of an ordinary resolution replacing such an auditor at the expiration of his term of office with another auditor;

(b) whether or not the licensed person is a corporation, a person appointed under section 8.12 to be an auditor ceases to be auditor, otherwise than in consequence of a resolution referred to in paragraph (a).

(2) If a licensed person contravenes subsection (1), the licensed person and, if it is a corporation, every director or shadow director of it commit an offence and each is liable -

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

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

8.15 Audited accounts to be lodged

(1) A licensed person and an exempt securities dealer or exempt securities adviser shall -

(a) for the financial year beginning on or before and ending after the day on which he commences to carry on business as a dealer or adviser; and

(b) for each subsequent financial year,

prepare a profit and loss account, a balance sheet and a cash flow statement made up to the last day of the financial year which shall show a true and fair view and contain the information prescribed by rules made by the Commission, and shall lodge those documents with the Commission not later than 3 months after the end of the

financial year, together with an auditor's report which shall express opinions on such matters as may also be prescribed by rules.

(2) A person who ceases to carry on business as a licensed person, or as an exempt securities dealer or exempt securities adviser shall prepare a profit and loss account, a balance sheet and a cash flow statement made up to the date of cessation which shall show a true and fair view and contain the information prescribed by rules made by the Commission, together with an auditor's report on the profit and loss account, balance sheet and cash flow statement, and shall cause those documents to be lodged with the Commission not later than 3 months after the date of cessation.

(3) The period within which the documents referred to in subsections (1) and (2) are required to be lodged may be extended by the Commission for the period, and subject to the conditions (if any), the Commission thinks fit where a person makes an application for the extension and the Commission is satisfied there are special reasons for requiring the extension.

(4) If a person contravenes subsection (1) or (2), the person and, if it is a corporation, every director or shadow director of it commit an offence and each is liable -

- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; and
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(5) A director or employee of a corporation commits an offence if, with intent to defraud, he causes or allows a contravention by the corporation of this section and is liable -

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

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

8.16 Publication of audited balance sheet, etc.

(1) A licensed leveraged foreign exchange trader shall, not later than 3 months after the close of each financial year, publish in one English language daily newspaper and one Chinese language daily newspaper, both of which are newspapers circulating in Hong Kong -

- (a) a copy of its audited annual balance sheet and any explanatory notes for the year, a copy of the profit and loss account and a copy of the report of the auditor made under the rules made by the Commission;
- (b) the full and correct names of all persons who are directors or shadow directors for the time being of the licensed leveraged foreign exchange trader;
- (c) the full and correct names of all subsidiaries for the time being of the licensed leveraged foreign exchange trader.

(2) A licensed leveraged foreign exchange trader shall exhibit during the next 12 months following the period referred to in subsection (1), in a conspicuous position in its principal place of business and any other place where it carries on business -

- (a) the documents listed in subsection (1)(a), (b) and (c); and
- (b) a copy of the report of the directors laid before it in general meeting in accordance with section 129D(1) of the Companies Ordinance (Cap. 32).

(3) A licensed leveraged foreign exchange trader shall lodge with the Commission, prior to the first exhibition of the documents under subsection (1), a copy of them together with a copy of the report of the directors and a list of the names of all companies of which, for the time being, its directors and shadow directors are also directors or shadow directors.

(4) The Commission may extend the period within which the licensed leveraged foreign exchange trader is to publish documents under this section for such period as it thinks fit where the licensed leveraged foreign exchange trader applies for the extension and the Commission is satisfied that there are special reasons for requiring the extension.

(5) An extension under subsection (4) may be allowed subject to such conditions, if any, as the Commission thinks fit.

(6) The Commission may require a licensed leveraged foreign exchange trader to submit such further information as it may think necessary for the proper understanding of the profit and loss account and balance sheet lodged under this section.

(7) The licensed leveraged foreign exchange trader shall submit the information required under subsection (6) within the period and in the manner the Commission requires.

(8) If a licensed leveraged foreign exchange trader contravenes subsection (1) or (2), the licensed leveraged foreign exchange trader and, if it is a corporation, every director or shadow director of it commit an offence and each is liable -

- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; and
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(9) A director or employee of a licensed leveraged foreign exchange trader commits an offence if, with intent to defraud, he causes or allows the licensed leveraged foreign exchange trader to contravene this section and is liable -

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; and
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

**8.17 Auditor to report promptly to
Commission in certain cases**

(1) If, during the performance of his duties as auditor for a licensed or exempt person, an auditor -

(a) becomes aware of any matter which in his opinion adversely affects the financial position of the licensed or exempt person to a material extent; or

(b) discovers evidence of a contravention of the financial resources rules, or of section 8.6 (disposition of securities), section 8.7 (keeping of books, accounts and records) or section 8.9 (maintenance of segregated trust accounts),

he shall as soon as is practicable, and in any event within 7 days, report it in writing to the Commission and to the licensed or exempt person.

(2) An auditor who -

- (a) resigns before the expiration of his term of office;
- (b) decides not to seek reappointment;
- (c) has his appointment terminated; or
- (d) decides to include a qualification in his report on a licensed person's accounts,

shall immediately give to the Commission written notice of that fact, stating any connected circumstances which he considers should be brought to the attention of the Commission or that there are no such circumstances.

8.18 Communication by auditor with Commission

(1) A duty which an auditor of a licensed person may be subject to is not regarded as contravened by his communicating in good faith to the Commission, whether or not in response to a request made by the Commission, information or an opinion on a matter of which he becomes aware in his capacity as auditor and which is relevant to a function of the Commission under this Ordinance.

(2) Subsection (1) applies to an auditor of a former licensed person and a former auditor as it applies to an auditor of a licensed person.

(3) In this section -
"former auditor" () means a person who was formerly the
auditor of a licensed person or former licensed person;
"former licensed person" () means a person who was
formerly a licensed person.

8.19 Power of Commission to appoint auditor

(1) Where the Commission is satisfied that it is in the interests of a licensed person, his clients or the investing or general public to do so, it may appoint in writing an auditor to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of the licensed person, and on money, securities or other property held on account of any other person by the licensed person or by a nominee controlled by the licensed person, if -

(a) the licensed person has failed to lodge an auditor's report under section 8.15;

(b) the Commission has received a report under section 8.17; or

(c) the Commission has reason to believe that the licensed person has failed to comply with financial resources rules, or with section 8.6 (disposition of securities), section 8.7 (keeping of books, accounts and records) or section 8.9 (maintenance of segregated trust accounts), or has been guilty of any misconduct, as defined in section 6.15 (powers of inquiry in relation to licensed persons).

(2) Where the Commission is of the opinion that the whole or a part of the costs and expenses of an auditor appointed by it under this section should be borne by the licensed person concerned or a recognized exchange company, it may, by order in writing, direct the licensed person or exchange company to pay a specified amount, being the whole or the part of the costs and expenses, within the time and in the manner specified.

(3) Where a licensed person or exchange company has failed to comply with an order of the Commission under subsection (2), the Commission may sue for and recover the amount specified in the order as a debt in a court.

8.20 Commission may appoint auditor on application of client

(1) On receipt of an application in writing from a person who alleges that a licensed person has failed to account to him for any money, securities or other property held or received, any futures

contract bought or sold, or any leveraged foreign exchange trading contract bought or sold, by the licensed person for the applicant, the Commission may, after first giving the licensed person an opportunity to give an explanation of the alleged failure, appoint in writing an auditor to examine, audit, and report, either generally or in relation to a particular matter, on the books, accounts and records of, and any securities held by, the licensed person.

(2) An applicant under subsection (1) shall state -

(a) the particulars of the circumstances for which the licensed person is alleged to have failed to account;

(b) the particulars of the money, securities, futures contracts, leveraged foreign exchange trading contracts and other property, and the transactions relating to them, about which the failure has occurred; and

(c) any other particulars the Commission requires.

(3) The applicant shall verify the statements in an application under subsection (1) by a statutory declaration which, if made in good faith, is privileged.

(4) The Commission shall not appoint an auditor under subsection (1) unless it is satisfied that -

(a) the applicant has a good reason for making the application; and

(b) it is in the interests of the licensed person, applicant or the investing or general public that the books, accounts and records of the licensed person should be examined, audited and reported on.

(5) Where the Commission is of the opinion that the whole or a part of the costs and expenses of an auditor appointed by it under

subsection (1) should be borne by the licensed person or applicant, or both, the Commission may, by order in writing, direct the licensed person or applicant, or each of them, to pay a specified amount being the whole or part of the costs and expenses, within the time and in the manner specified.

(6) Where a licensed person or applicant fails to comply with an order under subsection (5), the Commission may sue for and recover the amount specified in the order as a debt in a court.

8.21 Auditor to report to Commission

(1) An auditor appointed under section 8.19 or 8.20 shall make interim reports to the Commission as it may require and, on the conclusion of the examination and audit which he was appointed to carry out, shall make a final report to the Commission.

(2) An auditor appointed under section 8.19 or 8.20 or an employee or agent of the auditor shall not divulge any information which may come to his knowledge as an auditor, employee or agent to a person other than -

(a) the Commission; and

(b) for an employee or agent, the auditor by whom he is employed or for whom he acts as agent,

except to give effect to this Ordinance or for legal proceedings, whether civil or criminal.

8.22 Power of auditors appointed by Commission

(1) An auditor appointed under section 8.19 or 8.20 may -

(a) examine on oath the licensed person and, where the licensed person carries on business in partnership or is a corporation, members of the partnership or a

director or secretary of the corporation, and the licensed person's employees and agents, and any other auditor appointed under this Ordinance to audit the same books, accounts, records and securities;

(b) require the licensed person and, where the licensed person is a corporation, a director or secretary of the corporation, and the licensed person's employees and agents, to produce any books, accounts, records and securities held by or on behalf of the licensed person relating to his business;

(c) require an auditor appointed by the licensed person to produce any books, accounts, records and securities held by him relating to the business of the licensed person;

(d) require a recognized exchange company or clearing house to produce the books, accounts and records kept by it relating to the business of the licensed person;

(e) require a recognized exchange company or clearing house to provide any information in its possession relating to the business of the licensed person;

(f) employ the persons he considers necessary to assist him to carry out the examination and audit;
and

(g) authorize, in writing, a person employed by him to do, for the examination and audit, an act or thing that he could do himself as an auditor under this subsection except the examination of a person on oath.

(2) A licensed person and, where the licensed person is a corporation or carries on business in partnership, the directors of the corporation or the other members of the partnership, and the

licensed person's employees and agents and an auditor appointed by the licensed person shall answer the questions relevant to an examination and audit which are put to him by an auditor appointed under section 8.19 or 8.20 or a person authorized under subsection (1)(g).

(3) The powers exercisable under subsections (1) and (2) are, to the extent that an auditor finds it necessary to carry out an examination of the affairs of the licensed person -

(a) exercisable in relation to a business carried on by the licensed person at the same time as the business for which he is licensed under this Ordinance;

(b) where the licensed person is a corporation, exercisable in relation to a related corporation of the licensed person and a director, employee or agent of the related corporation.

(4) A person commits an offence if he, without reasonable excuse, refuses or fails to answer any question put to him, or fails to comply with any request made to him, by an auditor appointed under section 8.19 or 8.20 or person authorized under subsection (1)(g) and is liable -

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

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

(5) A director or employee of a licensed person commits an offence if he, with intent to defraud, causes or allows the licensed person to contravene this section and is liable -

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

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

(6) A recognized exchange company or clearing house commits an offence if it, without reasonable excuse, fails to comply with a request made to it by an auditor appointed under section 8.19 or 8.20, or a person authorized under subsection (1)(g), and is liable on conviction to a fine of \$1,000,000.

**8.23 Offence to destroy, conceal, or alter records
or send records or other property**

(1) A person commits an offence if, with intent to prevent, delay, or obstruct the carrying out of any examination and audit under this Part, he -

(a) destroys, mutilates, falsifies, conceals or alters a book, account, record or document relating to the business of a licensed person;

(b) sends or attempts to send, or conspires with another person to send, out of Hong Kong a book, account, record, or document relating to the business of a licensed person, or property of any description belonging to or in the possession of or under the control of a licensed person; 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; and

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

- (3) If, in a prosecution for an offence under subsection (1), it is proved that the accused person -
- (a) destroyed, mutilated, falsified, concealed or altered a book, account, record or document relating to the business of a licensed person; or
 - (b) sent or attempted to send, or conspired with another person to send, out of Hong Kong a book, account, record or document relating to the business of a licensed person or property mentioned in subsection (1)(b),
- he is, in the absence of evidence to the contrary, presumed to have done so with intent to prevent, delay or obstruct the carrying out of an examination and audit under this Part.

8.24 Additional obligations may be imposed by exchange companies on their members

This Part shall not prevent a recognized exchange company or clearing house from imposing on members of the Stock Exchange or of a futures market, or on participants of a clearing house, further obligations or requirements which the exchange company or clearing house thinks necessary for the audit of accounts, the information to be given in reports by auditors, or the keeping of accounts, books and records.

PART IX BUSINESS CONDUCT

9.1 Standards of conduct

(1) The Commission may publish, in the manner it thinks appropriate, codes or standards of conduct which licensed persons are expected to follow in conducting business.

(2) A code or standard published under subsection (1) may include compliance with a code or standard issued by another person or with requirements made under the other code or standard.

(3) Failure to comply with a code or standard published under subsection (1) does not of itself give rise to any legal liability but may lead to action by the Commission under section 6.15.

9.2 Business conduct rules

(1) The Commission may make rules prescribing the manner in which licensed or exempt persons are required to conduct business, including rules which -

(a) prohibit the use of misleading or deceptive advertisements or impose conditions for the use of advertisements;

(b) require a licensed leveraged foreign exchange trader to file with the Commission any proposed standard form agreement with a client, and the form can be used to enter into legal relations with clients;

(c) allow for the exercise of discretion by any person under the standards of conduct;

(d) prescribe matters to be provided for in the terms of any contract or arrangement between licensed persons and clients.

(2) Rules made under subsection (1) may provide that a contravention of specified provisions is an offence and may provide penalties for any breach, not exceeding a fine at level 5 and imprisonment for 6 months.

(3) Rules made under this section may be of general or special application and may make different provisions for different cases or classes of case.

(4) Rules made under this section may provide that a contract entered into in contravention of the rules is, notwithstanding anything in the contract, voidable at the option of the client.

9.3 Option trading

(1) Except as prescribed in rules made by the Commission for the purposes of this section, a licensed or exempt securities dealer shall not transact in Hong Kong, or hold himself out as being prepared to transact in Hong Kong, a dealing whereby he confers on a person an option to purchase from or sell to the dealer any securities listed on the Stock Exchange.

(2) A licensed or exempt securities dealer commits an offence if he contravenes subsection (1) and is liable to a fine at level 5 and to imprisonment for 6 months.

(3) A contract entered into in contravention of subsection (1) is not enforceable by either the dealer or the other contracting party.

9.4 Certain representations prohibited

(1) A licensed person, exempt securities dealer or exempt securities adviser shall not represent, or permit anyone to represent, in any manner and whether expressly or by implication,

that the abilities or qualifications of the licensed person, exempt securities dealer or exempt securities adviser have been approved by the Hong Kong Government or the Commission.

(2) A statement made to the effect that a person is licensed or exempt under this Ordinance is not a contravention of subsection (1).

(3) A licensed person, exempt securities dealer or exempt securities adviser commits an offence if he, without reasonable excuse, contravenes subsection (1) and is liable to a fine at level 4 and to imprisonment for 6 months.

PART XI INVESTOR COMPENSATION

10.1 Exchange companies to maintain compensation arrangements

(1) A recognized exchange company shall establish and maintain arrangements for the compensation of investors.

(2) Arrangements made under subsection (1) shall meet the requirements prescribed in rules made by the Commission.

10.2 Rules governing compensation arrangements

(1) The Commission may make rules for compensation arrangements under section 10.1 for the following matters -

- (a) the means of funding the arrangements;
- (b) the total amount of compensation to be available under the arrangements;
- (c) the accounting and auditing requirements applicable to the arrangements;
- (d) the circumstances in which a person is entitled to claim compensation and the manner in which the claim is to be made;
- (e) persons or classes of persons who are not entitled to make a claim for compensation;
- (f) the circumstances and manner in which a recognized exchange company is required to call for, determine, deal with and pay a claim for compensation;
- (g) the maximum amount of compensation that may be paid to a person making a claim for compensation;

- (h) enabling a recognized exchange company -
 - (i) to deem that the circumstances in which a claim for compensation may be paid have arisen;
 - (ii) to postpone the payment of compensation;
 - (iii) to require the assignment of a claimant's rights of action as a pre-condition for the payment of compensation; and
 - (iv) to exercise subrogated rights of action following the payment of compensation;
- (i) arrangements that are to be made when a recognized exchange company is wound up; and
- (j) prescribing any other matters required for the purposes of this Part.
- (2) Rules made by a recognized exchange company to implement arrangements required under this Part have effect only to the extent that they are not inconsistent with rules made by the Commission.

10.3 Powers of Commission in relation to compensation arrangements

- (1) Where the Commission is satisfied that a recognized exchange company has failed or refused to -
 - (a) establish or maintain the arrangements for the compensation of investors required by rules made by the Commission under this Part; or
 - (b) exercise any of its functions specified in rules made by the Commission under this Part; or
 - (c) make either a determination or a payment of a claim for compensation or has unnecessarily delayed so doing,

the Commission may exercise the functions that the recognized exchange company has failed or refused to carry out.

(2) Without limiting the Commission's powers under subsection (1), the Commission may, to establish or maintain prescribed arrangements for the compensation of investors -

- (a) levy members of the Stock Exchange or of a futures market as it sees fit;
- (b) arrange insurance cover;
- (c) borrow monies; and
- (d) utilize contract or transaction levies.

(3) The Commission may recover the cost of arranging insurance cover or borrowing monies for the purposes set out in subsection (2) from the recognized exchange company by action as for a debt due.

(4) An act done or determination made by the Commission under subsection (1) or (2) is deemed, for the purposes of this Part, to be an act done or a determination made by a recognized exchange company.

(5) For the purposes of this section a reference to a failure or refusal on the part of a recognized exchange company is deemed to include a reference to a failure or refusal by a committee established by a recognized exchange company under its constitution pursuant to a requirement to do so contained in rules made by the Commission under this Part.

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PART XI INSIDER DEALING

Interpretation

11.1 Interpretation

(1) In this Part -

"controller" (), in relation to a corporation, means a 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 to act; or

(b) who, either alone or with an associate, 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,

and references to "control" () are construed accordingly;

"derivatives" (), in relation to listed securities of a listed corporation or of a related corporation, means any -

(a) certificates of interest or participation in, temporary or interim certificates for, receipts (including depository receipts) for, or warrants to subscribe to or purchase, the listed securities;

(b) rights, options or interests in, or in respect of -

(i) the listed securities;

(ii) the instruments referred to in paragraph (a);

(c) contracts, the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to the price, or a change in the price, of -

- (i) the listed securities; or
- (ii) the instruments referred to in paragraph (a),

whether or not the derivatives are listed on the Stock Exchange and whether or not they are issued or made by the listed corporation or related corporation;

"director" () includes a shadow director;

"judge" () means -

- (a) a judge of the High Court;
- (b) a former judge of the High Court;

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

"listed securities" () means securities that are listed on the Stock Exchange, at the time of any insider dealing in relation to the corporation that has issued the securities;

"relevant information" () for a corporation means specific information about the corporation which is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but which would if it was generally known to them be likely materially to affect the price of the securities;

"securities" () means shares, stocks, debentures, loan stocks, funds, bonds, or notes of, or issued by, a body,

whether incorporated or unincorporated, or of a government or local government authority, and includes -

(a) rights, options, or interests (whether described as units or otherwise) in or in respect of shares, stocks, debentures, loan stocks, funds, bonds, or notes of, or issued by, a body, whether incorporated or unincorporated, or of a government or local government authority;

(b) certificates of interest or participation in, or temporary or interim certificates for, receipts for, or warrants to subscribe to or purchase, the rights, options or interests; or

(c) instruments commonly known as securities.

(2) For the definition of "controller", where a person is entitled to exercise, or control the exercise of 33% or more of the voting power at general meetings of a corporation and the corporation has or controls 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 is taken as exercisable by the person.

(3) In this Part a reference to an interest in securities is to be read as including an interest of any kind in the securities; and a restraint or restriction to which the exercise of a right attached to the interest may be subject is to be disregarded.

11.2 "Connected with a corporation"

(1) A person is connected with a corporation for the purposes of section 11.5 if, being a natural person -

(a) he is a director or employee of the corporation or a related corporation; or

(b) he is a substantial shareholder in the corporation or a related corporation; or

(c) he occupies a position which may reasonably be expected to give him access to relevant information concerning the corporation by reason of -

(i) a professional or business relationship existing between himself (or his employer or a corporation of which he is a director or a firm of which he is a partner) and the corporation, a related corporation or an officer or substantial shareholder in either corporation; or

(ii) his being a director, employee or partner of a substantial shareholder in the corporation or a related corporation; or

(d) he has access to relevant information about the corporation by reason of his being connected (within the meaning of paragraph (a), (b) or (c)) with another corporation, being information which relates to a transaction (actual or contemplated) involving both those corporations or involving one of them and the listed securities or their derivatives of the other or to the fact that the transaction is no longer contemplated; or

(e) he was, at any time within the 6 months preceding any insider dealing in relation to the corporation, a person connected with the corporation within the meaning of paragraph (a), (b), (c) or (d).

(2) A corporation is a person connected with a corporation for the purposes of section 11.5 so long as any of its directors or employees is a person connected with that other corporation within the meaning of subsection (1).

(3) In subsection (1), "substantial shareholder" () of a corporation means a person who has an interest in the relevant share capital of that corporation which has a nominal value equal to or more than 10% of the nominal value of the relevant share capital of the corporation.

11.3 Possession of relevant information obtained in privileged capacity

(1) A public officer or a member or employee (whether the member or employee is temporary or permanent, paid or unpaid) of a body referred to in subsection (2), who in that capacity receives relevant information concerning a corporation is deemed to be a person connected with the corporation for the purposes of section 11.5.

(2) The bodies referred to in subsection (1) are -

- (a) the Executive Council;
- (b) the Legislative Council;
- (c) a recognized exchange company or clearing house;
- (d) a board, commission, committee or other body appointed by or on behalf of the Governor or the Governor in Council under an Ordinance;
- (e) a body corporate established or incorporated by Ordinance; and
- (f) a body corporate specified by the Financial Secretary by notice published in the Gazette.

(3) For a body referred to in subsection (2) which has no members, the reference in subsection (1) to a member is construed as a reference to a member of the governing body.

11.4 Dealing in securities or their derivatives

For the purposes of this Part, a person deals in securities or their derivatives if (whether as principal or agent) he buys, sells, exchanges or subscribes for, or agrees to buy, sell, exchange or subscribe for, any securities or their derivatives or acquires or disposes of, or agrees to acquire or dispose of, the right to buy, sell, exchange or subscribe for, any securities or their derivatives.

Insider dealing

11.5 When insider dealing takes place

- (1) Insider dealing in relation to a listed corporation takes place -
- (a) when a person connected with the corporation who possesses information which he knows is relevant information about the corporation -
- (i) deals in the listed securities of the corporation or their derivatives (or in the listed securities of a related corporation or their derivatives); or
- (ii) 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 or their derivatives) knowing or having

reasonable cause to believe the other person would deal in them;

(b) when a person who is contemplating or has contemplated making (whether with or without another person) a take-over offer for the corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information about the corporation, deals in the listed securities of the corporation or their derivatives (or in the listed securities of a related corporation or their derivatives) or counsels or procures another person to deal in those listed securities or their derivatives, otherwise than for the purpose of the take-over;

(c) when a person connected with the corporation -

(i) discloses relevant information about it directly or indirectly to another person, and knows that the information is relevant information about the corporation; and

(ii) knows or has reasonable cause for believing that the other person will make use of the information for the purpose of dealing, or 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 or their derivatives);

(d) when a person who is contemplating or has contemplated making (whether with or without another person) a

take-over offer for the corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information about the corporation, discloses the information, directly or indirectly, to another person and knows or has reasonable cause for believing the other person will make use of the information for the purpose dealing, or 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 or their derivatives);

(e) when a person who has information which he knows is relevant information about the corporation and which he received (directly or indirectly) from a person -

(i) whom he knows is connected with the corporation; and

(ii) whom he knows or has reasonable cause to believe held the information as a result of being connected with the corporation,

deals in the listed securities of the corporation or their derivatives (or in the listed securities of a related corporation or their derivatives) or counsels or procures another person to deal in those listed securities or their derivatives;

(f) when 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 a take-over offer for the corporation, information to that effect and knows the

information is relevant information about the corporation, deals in the listed securities of the corporation or their derivatives (or in the listed securities of a related corporation or their derivatives) or counsels or procures another person to deal in those listed securities or their derivatives.

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

(a) counsels or procures any other person to deal in the listed securities of the corporation or their derivatives (or in the listed securities of a related corporation or their derivatives) knowing or with reasonable cause to believe the person would deal in those listed securities or their derivatives outside Hong Kong on any stock market other than the Stock Exchange; or

(b) discloses the relevant information to any other person knowing or with reasonable cause to believe the person or some other person will make use of the 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 or their derivatives) outside Hong Kong on a stock market other than the Stock Exchange.

11.6 Certain persons not insider dealers

(1) A person who enters into a transaction which is an insider dealing is not an insider dealer if he establishes that he entered into the transaction -

(a) for the sole purpose of acquiring qualification shares required by him as a director or intending director of a corporation;

(b) in the performance in good faith of an underwriting agreement for the securities to which the transaction relates; or

(c) in the exercise in good faith of his functions as a liquidator, receiver or trustee in bankruptcy.

(2) A corporation which enters into a transaction which is an insider dealing is not an insider dealer if it establishes that, although its director or employee possessed relevant information about the corporation whose securities were the subject of the insider dealing -

(a) a person other than the director or employee took the decision to enter into the transaction for it; and

(b) arrangements then existed to secure that -

(i) the information was not communicated to the director or employee; and

(ii) a person in possession of the information did not give advice about the

transaction to the director or employee; and

(c) the information was not in fact so communicated and a person in possession of the information did not in fact give any such advice.

(3) A person who enters into a transaction which is an insider dealing is not an insider dealer if he establishes that he entered into the transaction otherwise than with a view to making a profit or avoiding a loss (whether for himself or another) by using relevant information.

(4) A person who, as agent for another, enters into a transaction which is an insider dealing is not an insider dealer if he establishes that he entered into the transaction as agent for another person and he did not select or advise on the selection of the securities to which the transaction relates.

(5) A person who enters into a transaction which is an insider dealing is not an insider dealer if he establishes -

(a) that the other party to the transaction knew, or ought reasonably to have known, of the relevant information in question before entering into the transaction; and

(b) that the transaction was neither recorded on the Stock Exchange nor required to be notified to the Stock Exchange under its rules.

(6) A person who enters into a transaction which is an insider dealing in relation to a listed corporation is not an insider dealer, other than as a person who has counselled or procured another person to deal in listed securities or their derivatives, if he establishes that the other party to the transaction knew or ought reasonably to have known that he was a person connected with the corporation.

(7) A person who would otherwise be considered as an insider dealer in the listed securities of a corporation as a person who has counselled or procured another person to deal in listed securities, is not an insider dealer if he establishes that the other person is, by virtue of subsection (6), also not an insider dealer.

(8) A person who enters into a transaction which is an insider dealing is not an insider dealer if he establishes that the transaction is a market contract.

11.7 Trustees and personal representatives

A trustee or personal representative who enters into a transaction which is an insider dealing is not an insider dealer if he establishes that he acted on advice obtained in good faith from a person who -

- (a) appeared to him to be an appropriate person from whom to seek the advice; and
- (b) did not appear to him to be a person who would be held to be an insider dealer if he had entered into the transaction.

11.8 Exercise of right to subscribe for or acquire securities

A person who exercises a right to subscribe for or otherwise acquire securities of a corporation is not an insider dealer if he establishes that the right was granted to him or was derived from securities that were held by him before he became aware of any relevant information concerning the corporation.

11.9 Duty of officers of corporation

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 cause the Tribunal to identify it as an insider dealer.

11.10 Insider dealing not void or voidable

A transaction is not void or voidable only because it is an insider dealing.

Insider Dealing Tribunal

11.11 Constitution of Tribunal

(1) There continues to be a Tribunal to be known as the Insider Dealing Tribunal which, in accordance with section 11.18(1), conducts inquiries instituted under section 11.12.

(2) The Tribunal consists of a chairman appointed by the Governor and 2 other members appointed by the Financial Secretary.

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

(4) Schedule 5 has effect for the appointment of members and temporary members of the Tribunal, procedural and other matters concerning an inquiry and the Tribunal and its sittings.

(5) The Tribunal may be divided into 2 or more divisions and the provisions of this Ordinance and any other Ordinance, in relation to references to the Tribunal, apply to each division of the Tribunal.

(6) With the exception of a chairman who is a judge of the High Court, a member of the Tribunal may be paid, as a fee for his services, the amount the Financial Secretary thinks fit, and it is a charge on the general revenue.

Inquiries by Tribunal

11.12 Inquiries into insider dealing

(1) If the Financial Secretary considers, whether or not following representations by the Commission under subsection (7),

that insider dealing in relation to a listed corporation has taken place or may have taken place, he may require the Tribunal to inquire into the matter.

(2) The Financial Secretary may, by written notice to the chairman of the Tribunal containing the terms of reference of an inquiry, institute the inquiry.

(3) The object of an inquiry is to determine at the conclusion of the inquiry or as soon as is reasonably practicable after the conclusion, within the terms of reference of the inquiry -

- (a) whether insider dealing in relation to a listed securities of a corporation has taken place;
- (b) the identity of every insider dealer; and
- (c) the amount of any profit gained or loss avoided as a result of the insider dealing.

(4) The Tribunal may identify as an insider dealer an officer of a corporation to whose breach of the duty imposed on him by section 11.9 the insider dealing is directly or indirectly attributable.

(5) The Tribunal may identify as an insider dealer an officer of a corporation if the corporation undertook the insider dealing with the knowledge, consent or connivance of the officer.

(6) The Tribunal shall not identify a person as an insider dealer without first giving the person an opportunity of being heard.

(7) The Commission may report to the Financial Secretary the occurrence of a dealing in securities which it reasonably believes or suspects to be an insider dealing.

11.13 Powers of Tribunal

The Tribunal may, for an inquiry -

- (a) receive and consider any material by way of oral evidence, written statements, documents or otherwise, even if the material would not be admissible in evidence in civil or criminal proceedings in a court of law;
- (b) by notice signed by the chairman require a person to attend before it at any sitting and to give evidence and produce any article, book or other document in his possession or under his control relating to the subject matter of the inquiry;
- (c) administer oaths and affirmations;
- (d) examine on oath, affirmation or otherwise a person attending before it and may require the person to answer all questions put by or with the consent of the Tribunal;
- (e) order any person not to disclose any material the Tribunal receives;
- (f) make an order prohibiting the publication or disclosure of any material the Tribunal receives at a sitting, or part of a sitting, held in private;
- (g) determine the manner in which any material mentioned in paragraph (a) is received;
- (h) subject to any rules made by the Chief Justice under section 11.29, determine the procedure to be followed at an inquiry;
- (i) exercise such other powers as may be necessary for or ancillary to carrying out its functions.

11.14 Further powers of Tribunal to obtain information

(1) To assist the Tribunal in an inquiry, the Tribunal may authorize the Commission in writing to exercise the powers set out in subsection (2) and to provide to the Tribunal with relevant information obtained.

(2) The powers referred to in subsection (1) are -

(a) to inspect any book or other document of any person where the Tribunal has reasonable grounds to believe or suspect that the book or other document may contain information relevant to the inquiry;

(b) to make copies of and take extracts from any book or other document referred to in paragraph (a) and, subject to subsection (3), to take possession of the book or other document for the period (not exceeding 2 days) necessary to do so;

(c) to require any person to give within a specified time, an explanation or particulars concerning any book or other document referred to in paragraph (a);

(d) to require any person to give within a specified time, information as to whether or not there is at any premises any book or other document which may contain information relevant to the inquiry, and particulars as to the premises or book or other document;

(e) to require that any information or particulars furnished pursuant to this section be verified by statutory declaration and to take the declaration.

(3) The Commission shall, subject to reasonable conditions as to security or otherwise it imposes, permit a person who would be

entitled to inspect any book or other document had the Commission not taken possession of it under subsection (2)(b), to inspect it and to make copies and take extracts at all reasonable times.

(4) A person shall produce every book or other document in his custody or under his control where the Commission seeks inspection of it under this section.

(5) A person who is required under this section to disclose any information or give any explanation or particulars shall comply with the requirement so far as it lies within his power to do so and shall, if requested, verify the information, particulars or explanation by statutory declaration.

(6) A person commits an offence if he -

(a) without reasonable excuse contravenes subsection (4) or (5);

(b) without reasonable excuse, in purported compliance with subsection (4) or (5), makes any statement which he knows to be false or misleading, or recklessly makes any statement which is false or misleading, in either case in a material particular;

(c) obstructs the Commission in the exercise of its powers under this section; or

(d) destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any book or other document which is relevant to an inquiry.

(7) It is a defence to a charge under subsection (6)(d) if the person charged proves that he had no intention of concealing from the Tribunal or the Commission facts capable of being disclosed by the book or other document.

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

11.15 Use of evidence in other proceedings

(1) Evidence given by any person at and for the purposes of an inquiry instituted under this Part (including any material and documents received by, or produced to, the Tribunal under section 11.13 and any document or information furnished, produced or disclosed to the Tribunal under section 11.14) is admissible for all the purposes of this Ordinance but, subject to subsection (2), is not admissible against that person in civil or criminal proceedings in a court of law brought by or against him.

- (2) Subsection (1) does not apply to -
 - (a) civil proceedings in a court of law other than proceedings arising out of the giving of evidence at an inquiry in accordance with that subsection;
 - (b) criminal proceedings where the person is charged with an offence under section 11.14 or 11.16 or for perjury in respect of answers given by that person to questions put to him at the inquiry.

11.16 Offences

- (1) A person commits an offence if he, without reasonable excuse -
 - (a) refuses or fails -

- (i) to attend and give evidence at an inquiry when required to do so by the Tribunal;
 - (ii) to take an oath or make an affirmation at an inquiry on being required to do so by the Tribunal;
 - (iii) to answer truthfully and fully questions put to him at an inquiry by, or with the consent of, a member of the Tribunal;
 - (iv) to produce any article or book or other document in his possession or under his control, which he is required by the Tribunal to produce at an inquiry;
 - (v) to comply with any lawful order of the Tribunal;
- (b) wilfully disrupts the proceedings at an inquiry or otherwise misbehaves during any sitting of the Tribunal;
 - (c) having been required to attend before the Tribunal at an inquiry, leaves the place where the inquiry is being held without the permission of the Tribunal.
- (2) A person commits an offence if he -
- (a) wilfully hinders or deters any person from attending, giving evidence or producing any article or book or other document;
 - (b) threatens, insults or causes any loss to be suffered by any person who has attended before the Tribunal, on account of such attendance;
 - (c) threatens, insults or causes a loss to be suffered by any member of the Tribunal at any time on account of the performance of his duties as a member;

(d) publishes or otherwise discloses any material which the Tribunal had prohibited him from publishing or disclosing;

(e) publishes or otherwise discloses any material received by the Tribunal at any sitting or part of a sitting held in private, in contravention of an order made under section 11.13(f).

(3) It is a defence of a charge under subsection (2)(e) for the person charged to prove that he did not know and had no reason for knowing that the Tribunal had made an order prohibiting the publication or disclosure of the material.

(4) A person who commits an offence under this section is liable -

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

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

11.17 Privileged information

(1) This Part does not require -

(a) an authorized financial institution acting as the banker or financial adviser of a person whose conduct is the subject of an inquiry, to disclose information as to the affairs of any of its customers other than the person;

(b) a person to disclose any information (except if he is a legal practitioner, the name and address of a client) or to produce a book or other document which he would in an action in the High Court be entitled to

refuse to disclose or produce on grounds of legal professional privilege, or authorize the taking of possession of any such book or other document which is in the person's possession.

- (2) This Part does not affect section 4 of the Inland Revenue Ordinance (Cap. 112).

Report and orders of Tribunal

11.18 Report of Tribunal following inquiry

(1) The Tribunal shall conduct an inquiry instituted under section 11.12 and prepare a report in accordance with this Part.

(2) The Tribunal shall issue a written report containing the reasons for its determinations under section 11.12(3) and (4) and the reasons for any order made under section 11.19 or 11.20(1) as follows -

- (a) first by giving a copy to the Financial Secretary; and
- (b) then, except where the Tribunal sat in private, by -
 - (i) publishing the report so that copies are available to the public;
 - (ii) giving a copy, so far as is reasonably practicable, to a person whose conduct was directly in question in the inquiry;
 - (iii) giving a copy to the Commission; and
 - (iv) giving a copy to a professional body where a person identified in a determination under section 11.12(3) or (4) or in the report as an insider dealer or as an officer of a corporation to whose breach of the duty

imposed on him by section 11.9 the insider dealing is directly or indirectly attributable, is a member of the professional body.

(3) Where the Tribunal sat in private, the Financial Secretary may, in the public interest, cause the whole or any part of the report to be made available to the public or to a particular person or professional body in the manner he directs.

(4) A person is not liable to civil or criminal proceedings for publishing a true and accurate account or a fair and accurate summary of a report of the Tribunal published under subsection (2)(b) or (3).

11.19 Orders, etc. of Tribunal

(1) The Tribunal may at the end of an inquiry make an order in respect of a person identified as an insider dealer, as follows -

(a) that the person shall not, without the leave of the High Court, be a director or a liquidator or a receiver or manager of the property 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) 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 insider dealing;

(c) imposing on the person a penalty of an amount not exceeding 3 times the amount of any profit gained or loss avoided by any person as a result of the insider dealing;

(d) requiring the person to pay to the Government the sum the Tribunal thinks fit for the expenses of and incidental to the inquiry and any investigation of his conduct or affairs made for the inquiry;

(e) requiring the person to pay to the Commission the sum the Tribunal thinks fit for the expenses of any investigation of his conduct or affairs carried out before the matter was referred to the Tribunal by the Financial Secretary.

(2) The Tribunal shall not make an order in respect of a person under subsection (1) without first giving the person, and, in the case of a person that is a corporation, an officer concerned in the management of the corporation, an opportunity of being heard.

(3) For subsection (1)(a) a corporation may be specified by name or by reference to a relationship with any other corporation.

(4) The Tribunal shall notify in writing a person of an order made in respect of him under subsection (1) or under section 11.20(1).

(5) The order takes effect from the date on which it is notified to the person, or a later date specified in the notice, even if the person appeals against the decision under section 11.26 or the time to appeal has not expired.

11.20 Order against officer of corporation

(1) The Tribunal may make an order under section 11.19 against an officer of a corporation where the corporation has been identified

in a written report made under section 11.18(1) as an insider dealer and the insider dealing is directly or indirectly attributable to a breach by the officer of the corporation of his duty under section 11.9, even if the officer has not been identified as an insider dealer in the report made under section 11.18.

(2) The Tribunal shall not make an order against an officer of a corporation under subsection (1) without first giving the officer an opportunity of being heard.

11.21 Limitation on aggregate amount of penalties

The aggregate amount of the penalties imposed on 2 or more persons under section 11.19(1)(c) or under section 11.20(1), or under both sections 11.19(1)(c) and 11.20(1), is not to exceed 3 times the profit gained or loss avoided by all persons as a result of the insider dealing.

11.22 Costs

(1) At the conclusion of an inquiry or as soon as reasonably practicable after the conclusion of the inquiry, the Tribunal may award to -

- (a) any witness;
- (b) any person whose conduct is, in whole or in part, the subject of the inquiry;
- (c) the Commission,

the sum it thinks fit for the costs reasonably incurred in relation to the inquiry.

(2) Any costs awarded by the Tribunal are a charge on the general revenue.

(3) Subject to any rules made by the Chief Justice under section 11.29, Order 62 of the Rules of the Supreme Court (Cap. 4 sub. leg.) applies to the award of costs and to the taxation of any costs awarded by the Tribunal.

(4) The Tribunal may order that any costs are to be taxed on the basis of one of the scales of costs in the Schedules to Order 62 of the Rules of the Supreme Court (Cap. 4 sub. leg.).

(5) This section does not apply to any person referred to in subsection (1) who is -

- (a) a person who has been identified as an insider dealer in a determination under section 11.12(3);
- (b) an officer of a corporation who has been identified as such officer in a determination under section 11.12(4);
- (c) a person who the Tribunal considers has by his acts or omissions caused (whether wholly or in part) the Tribunal to inquire into his conduct subsequent to the institution of the inquiry under section 11.12; or
- (d) a person who the Tribunal considers has by his acts or omissions caused (whether wholly or in part) the institution of the inquiry under section 11.12.

11.23 Form and proof of order of Tribunal

(1) An order made by the Tribunal shall be in writing and signed by the chairman of the Tribunal when the order is made.

(2) A document purporting to be an order of the Tribunal and to be signed by the chairman is, in the absence of proof to the contrary, taken to be 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.

11.24 Order of Tribunal may be registered in Court

The Tribunal may register an order of the Tribunal, in the prescribed manner, in the High Court and the order shall, on registration, become for all purposes an order of the High Court made within the jurisdiction of the High Court.

11.25 Offence

A person commits an offence if he contravenes an order made under section 11.19(1)(a) and is liable -

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

Appeals

11.26 Appeal to Court of Appeal

(1) A person identified in a determination under section 11.12(3) or (4), or in a written report prepared under section 11.18(1) who is dissatisfied with a finding or determination of the Tribunal may 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 against whom an order has been made under section 11.19(1)(d) or 11.20 may appeal against the order to the Court of Appeal.

11.27 Powers of Court of Appeal on appeal

- (1) In an appeal under section 11.26(1) the Court of Appeal may -
 - (a) allow the appeal;
 - (b) dismiss the appeal; or
 - (c) remit the matter to the Tribunal with the directions it thinks fit, which may include a direction to the Tribunal to conduct the inquiry afresh for the purpose of determining any question specified by the Court of Appeal.

- (2) In an appeal under section 11.26(2) the Court of Appeal may -
 - (a) quash the order appealed against; or
 - (b) substitute another order it thinks appropriate (whether more or less onerous) being an order that the Tribunal had power to make against the appellant.

- (3) In any appeal under section 11.26 the Court of Appeal may make an order for costs it thinks appropriate.

11.28 Stay of execution on appeal

The lodging of an appeal or the filing of an application for leave to appeal under section 11.26 does not operate as a stay of execution of an order of the Tribunal unless the Court of Appeal otherwise orders and a stay of execution may be subject to conditions as to costs, payment of money into the Tribunal or otherwise as the Court of Appeal thinks fit.

Miscellaneous

11.29 Chief Justice may make rules

The Chief Justice may make rules -

- (a) regulating the procedure for -
 - (i) applying for leave to appeal, and the hearing of leave applications, under section 11.26;
 - (ii) the hearing of appeals made under section 11.26;
 - (iii) the registration of orders of the Tribunal in the High Court;
- (b) providing for matters of procedure relating to an inquiry which are not provided for in this Part;
- (c) providing for the award of costs under section 11.22 and the taxation of those costs;
- (d) prescribing the fees applicable to an inquiry.

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PART XII

MARKET MANIPULATION AND DECEPTIVE PRACTICES

Securities Trading

12.1 Interest in securities and beneficial ownership

(1) A person has an interest in securities for the purposes of this Part if he has authority (whether formal or informal or express or implied) to dispose of, or to exercise control over the disposal of, the securities or, in the case of options, to exercise them.

(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 is taken to have authority referred to in subsection (1) in any case where a corporation has the authority referred to in subsection (1) and -

(a) the corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with directions of the person in relation to the securities; or

(b) the person, or an associate of the person, has a controlling interest in 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 is, to the extent to which he could do so on completing the contract, enforcing the right or exercising the option, taken to have the authority referred to in subsection (1).

(5) Where securities are subject to a trust, the interest of a trustee in those securities are disregarded if a person who is not a trustee has an interest in those securities by virtue of subsection (4)(b).

(6) Rules made by the Commission may prescribe an interest, being an interest of a person, or of the persons included in a class of persons, that is to be disregarded for the purposes of determining whether the person has an interest in securities for the purposes of this Part.

(7) A purchase or sale of securities does not involve a change for the purposes of their beneficial ownership in this Part if a person who had an interest in the securities before the purchase or sale, or an associate of the person in relation to those securities, has an interest in the securities after the purchase or sale.

12.2 False trading in securities

(1) A person commits an offence if he, in Hong Kong or elsewhere, creates, or does anything that is intended or likely to create, a false or misleading appearance -

- (a) of active trading in securities on the Stock Exchange; or
- (b) in the price of securities traded on the Stock Exchange.

(2) A person commits an offence if in Hong Kong he creates, or does anything that is intended or likely to create, a false or misleading appearance -

- (a) of active trading in securities on a stock market outside Hong Kong; or
- (b) in the price of securities on a stock market outside Hong Kong.

(3) Without limiting the general nature of what constitutes a false or misleading appearance of active trading under subsections (1) and (2), a false or misleading appearance of active trading in securities is created for the purposes of this section if a person -

(a) carries out, either directly or indirectly, a sale or purchase of securities that does not involve a change in the beneficial ownership of them, or offers to do so;

(b) offers to sell the 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 buy the same or substantially the same, number of them; or

(c) offers to buy the 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.

(4) In a prosecution of a person for an offence under subsection (1) or (2), constituted by an act referred to in subsection (3), the defendant has a defence if he establishes that the purpose or purposes for which the person did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on a stock market.

12.3 Price rigging in securities markets

(1) A person commits an offence if he maintains, increases, reduces, or causes fluctuations in, the market price of securities by means of purchases or sales that do not involve a change in the beneficial ownership of those securities or by fictitious transactions or devices.

(2) In a prosecution for an offence under subsection (1) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, the defendant has a defence if he establishes that the purpose or purposes for which the securities were bought or sold was not, or did not include, the purpose of creating a false or misleading appearance with respect to the price of securities.

12.4 Dissemination of information about illegal transactions in securities

A person commits an offence if he disseminates, or authorizes or is concerned in the dissemination of, information to the effect that the price of securities of a corporation will rise or fall or be maintained, or is likely to do so, because of a transaction entered into, or other thing done, contrary to this Part relating to securities of either the same corporation or a related corporation, and he, or an associate of his -

- (a) has entered into a transaction or done a thing contrary to this Part; or
- (b) has received, or expects to receive, directly or indirectly, a benefit as a result of the

dissemination of the information.

12.5 Employment of fraudulent or deceptive devices in securities dealing

(1) A person commits an offence if he directly or indirectly, in a transaction for the purchase or sale of securities -

- (a) defrauds or deceives any person;
- (b) engages in an act, practice, or course of business which is fraudulent or deceptive, or is likely to

operate as a fraud or deception; or

(c) makes an untrue statement of a material fact, or omits a material fact that is necessary to prevent any statements made, in the light of the circumstances under which they were made, from being misleading.

(2) A reference in this section to a transaction includes an offer and an invitation, however expressed.

12.6 Stock market manipulation

(1) A person commits an offence if he enters into or carries out, whether in Hong Kong or elsewhere and either directly or indirectly, a transaction in securities that by itself or in conjunction with another transaction -

- (a) increases, or is likely to increase, their price on the Stock Exchange with the intention of inducing

other persons to sell or purchase, or to refrain from selling or purchasing, securities issued by the same corporation or by a related corporation;

(b) reduces, or is likely to reduce, their price on the Stock Exchange with the intention of inducing other persons to sell or purchase, or to refrain from selling or purchasing, securities issued by the same corporation or by a related corporation;

(c) stabilises, or is likely to stabilise, their price on the Stock Exchange with the intention of inducing other persons to sell or purchase, or refrain from selling or purchasing, securities issued by the same corporation or by a related corporation.

(2) A person commits an offence if he enters into or carries out in Hong Kong, either directly or indirectly, a transaction in securities that by itself or in conjunction with another transaction -

(a) increases, or is likely to increase, their price on a stock market outside Hong Kong, with the intention of inducing other persons to sell or purchase, or to refrain from selling or purchasing, securities issued by the same corporation or by a related corporation;

(b) reduces, or is likely to reduce, their price on a stock market outside Hong Kong, with the intention of inducing other persons to sell or purchase, or to refrain from selling or purchasing, securities issued by the same corporation or by a related corporation;

(c) stabilises, or is likely to stabilise, their price on a stock market outside Hong Kong, with the intention

of inducing other persons to sell or purchase, or refrain from selling or purchasing, securities issued by the same corporation or by related corporation.

- (3) A reference in this section to a transaction includes an offer and an invitation, however expressed.

12.7 False or misleading statements inducing securities transactions

A person commits an offence if, in Hong Kong or elsewhere, he disseminates information, that is false in a material particular or materially misleading and is likely -

- (a) to induce the sale or purchase in Hong Kong of securities by others; or
- (b) to raise, lower or stabilize the market price of securities in Hong Kong,

and when he disseminates the information, does not care whether the information is true or false, or knows or ought reasonably to know that the information is false in a material particular or materially misleading.

Futures trading

12.8 False trading in futures

(1) A person commits an offence if he, in Hong Kong or elsewhere, creates, or does anything that is intended or likely to create, a false or misleading appearance -

- (a) of active trading in futures contracts on a futures market in Hong Kong; or
- (b) to the market for, or the price for dealings in, futures contracts on a futures market in Hong

Kong.

(2) A person commits an offence if in Hong Kong he creates, or does anything that is intended or likely to create, a false or misleading appearance -

(a) of active trading in futures contracts on a futures market outside Hong Kong; or

(b) to the market for, or the price for dealings in, futures contracts on a futures market outside Hong Kong.

(3) A person commits an offence if he takes part in, is concerned in, or carries out, whether in Hong Kong or elsewhere and whether directly or indirectly, one or more transactions (whether any of them is a dealing in a futures contract or not) that have, are intended to have, or are likely to have, the effect of creating an artificial price for dealings in futures contracts on a futures market in Hong Kong, or maintaining at a level that is artificial (whether or not it was previously artificial) a price for dealings in futures contracts on a futures market in Hong Kong.

(4) A person commits an offence if in Hong Kong he takes part in, is concerned in, or carries out, whether directly or indirectly, one or more transactions (whether any of them is a dealing in a futures contract or not) that have, are intended to have, or are likely to have, the effect of creating an artificial price for dealings in futures contracts on a futures market outside Hong Kong, or maintaining at a level that is artificial (whether or not it was previously artificial) a price for dealings in futures contracts on a futures market outside Hong Kong.

12.9 Dissemination of information about illegal transactions in futures

A person commits an offence if he disseminates, or authorizes or is concerned in the dissemination of, information to the effect that the price for dealings in futures contracts on a futures market will rise or fall or be maintained, or is likely to do so, because of a transaction entered into, or other thing done, contrary to this Part relating to the futures contracts, and if he, or an associate of his -

- (a) has entered into a transaction or done a thing contrary to this Part; or
- (b) has received, or expects to receive, directly or indirectly, a benefit as a result of the

dissemination of the information.

12.10 Employment of fraudulent or deceptive devices in futures dealing

(1) A person commits an offence if he, directly or indirectly, in a transaction involving futures contracts -

- (a) defrauds or deceives any person;
- (b) engages in any act, practice, or course of business which is fraudulent or deceptive, or is likely

to operate as a fraud or deception; or

(c) makes an untrue statement of a material fact, or omits a material fact that is necessary to prevent any statements made, in the light of the circumstances under which they were made, from being misleading.

(2) A reference in this section to a transaction includes an offer and an invitation, however expressed.

**12.11 False or misleading information
inducing futures transactions**

A person commits an offence if he, in Hong Kong or elsewhere, disseminates information that is false in a material particular or materially misleading and is likely -

- (a) to induce other persons to deal in futures contracts on a futures market in Hong Kong; or
- (b) to raise, lower or stabilize the price for dealing in futures contracts on a futures market in Hong

Kong,

and when he disseminates the information, he does not care whether it is true or false, or knows, or ought reasonably to know, that the information is false in a material particular or is materially misleading.

12.12 Bucketing of futures contracts

A person commits an offence if he enters into, or holds himself out as having entered into, a futures contract with or on behalf of another person unless the contract is entered into -

- (a) on a futures market operated by a recognized exchange company or on facilities authorized under section 4.12; or
- (b) in accordance with the rules of a futures market outside Hong Kong.

Leveraged foreign exchange trading

12.13 Employment of fraudulent or deceptive devices, etc.

A person commits an offence if he, directly or indirectly, in connection with any leveraged foreign exchange trading -

- (a) employs any device, scheme or artifice with intent to deceive or defraud;
- (b) engages in any act, practice or course of business which is intended to operate as a fraud or deception, or is likely to operate as a fraud or deception; or
- (c) makes any untrue statement of a material fact, or omits to state a material fact that is necessary to prevent any statements made, in the light of the circumstances under which they were made, from being misleading.

Miscellaneous

12.14 Penalties

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 14 years; and
- (b) on summary conviction to a fine of \$1,000,000 and to imprisonment for 3 years.

12.15 Liability to pay compensation

(1) A person who contravenes this Part is, in addition to any penalty under section 12.14, liable to pay compensation by way of damages to a person who has sustained pecuniary loss as a result of having dealt in securities or futures contracts, or having engaged in leveraged foreign exchange trading, at a price affected by the act or transaction which comprises or is the subject of the contravention.

(2) A person may bring an action under subsection (1) for a contravention referred to in that subsection even though a person has not been charged or convicted for the contravention.

(3) This section does not lessen any liability which a person may incur under the common law.

12.16 Transactions not contravening this Part

(1) The Commission may make rules prescribing the circumstances in which an activity that would otherwise contravene this Part may be conducted without being a contravention.

(2) Even though an activity would otherwise contravene this Part, an activity does not contravene this Part if it is carried out -

(a) in accordance with rules made under subsection (1); or

(b) on a stock market or futures market, in compliance with rules of the market that permit the

activity.

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PART XIII OFFERS OF INVESTMENTS

13.1 Definitions

(1) In this Part -

"advertisement" () includes every form of advertising, whether produced mechanically, electronically, manually or by other means, and whether notified or published -

- (a) in a newspaper, magazine, journal, or other periodical publication;
- (b) by the display of posters or notices;
- (c) by means of circulars, brochures, pamphlets, or handbills;
- (d) by an exhibition of photographs or cinematography films;
- (e) by way of sound broadcasting or television; or
- (f) by computer output,

and references to the issue of an advertisement shall be construed accordingly;

"exempted body" () means an exempted body specified in Part 4 or 5 of Schedule 6;

"multilateral agency" () means any body specified in Part 3 of Schedule 6.

(2) An advertisement issued by any person by way of display or exhibition in a public place shall be treated as being issued by him on every day on which he causes or authorizes it to be displayed or exhibited.

(3) An advertisement, invitation, or document which consists of or contains information likely to lead, directly or indirectly, to the doing by the public of any act mentioned in sections 13.4(1)(a) and (b) and 13.5(1)(a) and (b) shall be treated as being an advertisement, invitation, or document which is or contains an advertisement or invitation to the public to do that act.

(4) An advertisement, invitation, or document issued by one person on behalf of another shall be treated as an advertisement, invitation, or a document, as the case may be, issued by that other person.

(5) For the purpose of this Part, a body corporate is the wholly owned subsidiary of another if it has no members except that other and that other's wholly owned subsidiaries and its or their nominees.

13.2 Investment arrangements specified by Financial Secretary

(1) The Financial Secretary may prescribe arrangements (including a class or description of arrangements) as investment arrangements for the purposes of this Ordinance where the arrangements -

(a) are made in the course of business and have the purpose or effect, or pretended purpose or effect, of enabling persons taking part in the arrangements -

(i) to obtain the ownership of property for valuable consideration;

(ii) to defer taking possession of property; and

(iii) to transfer or retransfer the ownership of the property to a person who is a party

to, or is referred to in, the arrangements; or

(b) do not enable the participating persons to have day to day control over the management of the property in question (whether or not they have the right to be consulted or to give directions) and their purpose or effect, or pretended purpose or effect, is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of the property or otherwise) to participate in or receive -

(i) profits or income alleged 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

(ii) sums to be paid or alleged to be likely to be paid out of any such profits or income,

notwithstanding that the arrangements do not require the contributions of the people participating to be pooled or that the property is not managed as a whole by or on behalf of the operator of the scheme.

(2) The Financial Secretary may prescribe arrangements (including a class or description of arrangements) as not constituting investment arrangements for the purposes of this Ordinance.

(3) The Financial Secretary shall publish an order prescribing the arrangements under subsection (1) or (2) in the Gazette.

13.3 Commission may authorize mutual fund corporations, unit trusts and investment arrangements

(1) The Commission may authorize mutual fund corporations, unit trusts and investment arrangements for the purposes of this Ordinance

subject to any conditions the Commission considers fair and reasonable.

(2) The Commission may publish a code of practice with which mutual fund corporations, unit trusts and investment arrangements are required to comply when authorized under subsection (1).

13.4 Offence fraudulently or recklessly to induce persons to invest money

(1) A person commits an offence if he, by a fraudulent or reckless misrepresentation, induces another person -

(a) to enter into or offer to enter into an agreement -

(i) to acquire, dispose of, subscribe for or underwrite securities; or

(ii) the purpose or effect, or pretended purpose or effect, of which is to secure to a party to the agreement a profit from the yield of securities or by reference to fluctuations in the value of securities or other property; or

(b) to take part in or offer to take part in investment arrangements for property other than securities.

(2) In subsection (1), "fraudulent or reckless misrepresentation" () means -

(a) a statement -

(i) which to the knowledge of its maker was false, misleading, or deceptive; or

(ii) which is false, misleading, or deceptive and was made recklessly;

(b) a promise -

- (i) which the maker of the promise had no intention of fulfilling;
- (ii) which, to the knowledge of the maker of the promise, was not capable of being fulfilled; or
- (iii) which was made recklessly;
- (c) a forecast -
 - (i) which, to the knowledge of the maker of the forecast, was not justified on the facts known to him at the time when he made it;
 - (ii) which was not justified on the facts known to the maker of the forecast at the time when he made it and was made recklessly; or
 - (iii) which was not capable of being justified or was rendered misleading or deceptive; or
- (d) a statement from which the maker of the statement intentionally or recklessly omitted a material fact, so that the statement was rendered untrue, misleading, or deceptive.
- (3) A person who commits an offence against this section is liable -
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; and
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

13.5 Offence to issue advertisements and documents relating to investments in certain cases

- (1) A person shall not issue, or have in his possession to issue, an advertisement or invitation which to his knowledge is an

invitation to the public -

(a) to enter into or offer to enter into an agreement -

(i) to acquire, dispose of, subscribe for or underwrite securities; or

(ii) the purpose or effect, or pretended purpose or effect, of which is to secure to a

party to the agreement a profit from the yield of securities or by reference to fluctuations in the value of securities or other property; or

(b) to take part in or offer to take part in investment arrangements for property other than securities.

(2) Subsection (1) does not apply to -

(a) the issue of a prospectus which complies with or is exempt from compliance with Part II or XII of the Companies Ordinance (Cap. 32) or the issue of a form of application for shares or debentures of a company together with the prospectus;

(b) an extract from or an abridged version of a prospectus referred to in paragraph (a), the publication of which would not contravene section 38B(1) of that Ordinance by the operation of section 38B(2) of that Ordinance;

(c) the issue of a form of application for the securities of a company with an invitation made in good faith to a person to enter into an underwriting agreement for the securities;

(d) for a mutual fund corporation or unit trust authorized under section 13.3, the issue of -

- (i) a prospectus which has been approved by the Commission; or
 - (ii) a form of application for shares of the mutual fund corporation or units of the unit trust together with the approved prospectus;
- (e) the issue of an advertisement, invitation or document made for the issue, whether in Hong Kong or elsewhere, of a certificate of deposit by an authorized financial institution;
- (f) the issue of an advertisement, invitation or document made for 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 6; and
 - (ii) by a multilateral agency or by an overseas bank for which 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 the place in which it is incorporated or has its principal place of business;
- (g) the issue of an advertisement, invitation or document made for the issue, whether in Hong Kong or elsewhere, of an instrument (other than a certificate of deposit) specified in Part 2 of Schedule 6 where the amount or denomination of the instrument is not less than the sum specified in Part 1 of Schedule 6 and the instrument -

(i) is issued by an authorized financial institution or a multilateral agency or by an exempted body which, if the exempted body is a corporation, or a wholly owned subsidiary of that corporation, specified in item 9 of Part 5 of Schedule 6, it 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, a multilateral agency or an exempted body other than by a corporation specified in item 9 of Part 5 of Schedule 6 which does not comply with the relevant condition, or a wholly owned subsidiary of a corporation referred to in that item; or

(iii) is issued by a wholly owned subsidiary referred to in item 9 of Part 5 of Schedule 6 and is guaranteed by the corporation of which it is the subsidiary and that corporation complies with the relevant condition;

(h) the issue of an advertisement, invitation or document complying with the rules of the Commission for advertising leveraged foreign exchange trading;

(i) the issue of an advertisement, invitation or document made for any matter, where -

(i) an application for authorization by the Commission for the issue is accompanied by

any information and documents the Commission requires; and

(ii) subject to subsection (3), the Commission before issue authorizes the advertisement, invitation or document, subject to any conditions imposed under subsection (8); or

(j) the issue of an advertisement, invitation or document made for the issue of securities the listing of which on the Stock Exchange has been approved by the Stock Exchange Company, where the advertisement, invitation or document complies with the rules of the exchange company governing the listing of securities (except to the extent that compliance is, in accordance with those rules, waived, modified or not required by the exchange company).

(3) Without limiting any other ground on which the Commission may refuse to authorize the issue of an advertisement, invitation or document under subsection (2)(i), the Commission may refuse to do so where it is satisfied that the matter to which the advertisement, invitation or document relates is not in the interest of the investing public.

(4) This section does not prohibit the issue or possession of an advertisement, invitation or document which is made -

(a) by or on behalf of a licensed or exempt securities dealer, or licensed or exempt securities adviser (whether as principal or as agent) for securities other than shares of a mutual fund corporation or the units of a unit trust which has not been authorized by the Commission under section 13.3;

- (b) by or for a corporation to holders of securities or creditors of, or servants or agents employed by, the corporation, or a corporation which is a related corporation, for securities of either corporation;
 - (c) by or for the manager or trustee of a unit trust authorized by the Commission under section 13.3 to holders of units, or creditors, of the trust, or to servants or agents employed by the manager or trustee;
 - (d) by or for the Government for securities issued by it;
 - (e) by or for a credit union for shares in the union;
 - (f) by or for a trustee of a trust (not being a unit trust) to beneficiaries under the trust;
 - (g) for securities, or investment arrangements for property other than securities, which are or are intended to be disposed of to persons outside Hong Kong, or only to persons whose business involves acquiring, disposing or holding securities, whether as principal or agent; or
 - (h) by a person who buys and sells property other than securities (either as principal or as agent), in the ordinary course of business; but this paragraph does not authorize a person to do anything for the purpose of investment arrangements for the property.
- (5) A person commits an offence if he contravenes subsection (1) and is liable -
- (a) on conviction on indictment to a fine of \$500,000 and to imprisonment for 3 years; and
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(6) A person does not contravene this section by reason only that he -

- (a) issues, or possesses for issue, to purchasers copies of a newspaper, journal, magazine, or other periodical publication of general and regular circulation, which contain an invitation to which this section relates; or
- (b) issues advertisements which contain, or issues or possesses for issue documents which contain, invitations to which this section relates to persons who are licensed or exempt securities dealers or licensed or exempt securities advisers.

(7) A person specified in an advertisement, invitation or document which is or contains an advertisement or invitation to enter into or offer to enter into an agreement referred to in subsection (1) with the person, is, subject to subsection (6), presumed to have issued the advertisement, invitation or document in the absence of evidence to the contrary.

(8) The Commission may in authorizing the issue of an advertisement, invitation or document for subsection (2)(i) impose any conditions it thinks fit (including conditions on the matter to which the advertisement, invitation or document relates).

(9) In this section -

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

"relevant condition" (), for a corporation (including a wholly owned subsidiary of a 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 6 of Schedule 6.

13.6 Order for destruction of documents

(1) When a person is convicted of an offence against this Part, a court may make an order authorizing the destruction, or the disposal in any other manner it specifies, of a document or an article containing an advertisement, invitation or document produced to the court and which it is satisfied is connected with the commission of the offence.

(2) The court shall not make an order under subsection (1) before the conclusion of the proceedings to which the order relates.

13.7 Submission of information to Commission

(1) Subject to subsections (2) and (4) -

- (a) an authorized financial institution;
- (b) an exempted body;
- (c) a multilateral agency or authorized representative of that agency; or
- (d) an overseas bank or authorized representative of that bank,

shall submit to the Commission within 10 working days after the issue by a person of an advertisement, invitation or document referred to in section 13.5(2)(e), (f) or (g) the information on the advertisement, invitation or document, and in the form, the Commission specifies by notice in the Gazette.

(2) The Commission may extend the period within which information is to be submitted under subsection (1) when the Commission is satisfied that there are special reasons for requiring the extension.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary 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.

(4) This section does not apply to the issue of an advertisement, invitation or document to which section 13.5(4) or (6) applies.

(5) In subsection (1), "authorized representative" () for the issue of an advertisement, invitation or document, means a person resident in Hong Kong who is authorized by a multilateral agency or overseas bank to act for the agency or bank for the issue.

13.8 Liability in tort for inducing persons to invest money in certain cases

(1) A person is liable to pay compensation to another person for pecuniary loss that the other person has sustained by his reliance on a misrepresentation of the first person that is fraudulent, reckless or negligent and induces the other person -

(a) 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 effect, or pretended purpose or effect, of which is to secure to any of the parties to the agreement a profit from the yield or securities or by reference to fluctuations in the value of securities or property other than securities; or

(b) to take part in any investment arrangements in property other than securities.

- (2) In subsection (1) "fraudulent, reckless or negligent misrepresentation" ()
- means -
- (a) a statement -
 - (i) which to the knowledge of its maker was false, misleading, or deceptive;
 - (ii) which is false, misleading, or deceptive and was made recklessly; or
 - (iii) which is false, misleading, or deceptive and was made without reasonable care having been taken to ensure its accuracy;
 - (b) a promise -
 - (i) which the maker of the promise had no intention of fulfilling;
 - (ii) which, to the knowledge of the maker of the promise, was not capable of being fulfilled; or
 - (iii) which was made recklessly or without reasonable care having been taken to ensure that it could be fulfilled;
 - (c) a forecast -
 - (i) which, to the knowledge of the maker of the forecast, was not justified on the facts known to him at the time when he made it;
 - (ii) which was not justified on the facts known to the maker of the forecast at the time when he made it and was made recklessly or without reasonable care having been taken to ascertain the accuracy of those facts; or

- (iii) which was not capable of being justified or was rendered misleading or deceptive; or
 - (d) a statement from which the maker of the statement intentionally or recklessly omitted a material fact, so that the statement was rendered untrue, misleading, or deceptive.
- (3) For this section -
- (a) where a statement, forecast, or promise to which this section relates was made by a company or other body corporate, every person who was a director of the company or body corporate at the time when the statement, forecast, or promise was made shall, in the absence of evidence to the contrary, be taken to have caused or authorized it to be made; and
 - (b) a person is deemed to be a director of a company or other body corporate if he occupies the position of director by whatever name he may be called, or is a shadow director.
- (4) This section does not limit or diminish any liability which a person may incur under the common law.
- (5) This section does not confer a right of action in a case to which section 40 of the Companies Ordinance (Cap. 32) applies.
- (6) An action may be brought under this section whether or not a person has been charged with or convicted of an offence under this Part.

13.9 Offers by dealers

- (1) A licensed securities dealer shall not in Hong Kong communicate an offer to acquire or dispose of securities of a

corporation unless -

(a) the offer -

(i) is written in an official language; or

(ii) if communicated verbally, is reduced to writing in an official language and

delivered to the person or persons to whom it was made not later than 24 hours after the verbal communication;

(b) the offer -

(i) specifies the name and address of the offeror and, if a person is making the

offer on behalf of the offeror, the name and address of the person;

(ii) contains a description of securities sufficient to identify them;

(iii) specifies the terms of the offer (including where appropriate the amount of

consideration proposed to be paid for securities acquired pursuant to the offer);

(iv) where a dividend has been declared or recommended for the securities, or it is

anticipated that a dividend will be declared or recommended before the transfer of the securities, states whether the

securities are to be transferred with or without the dividend;

(v) specifies whether, in the event of a person accepting the offer, the offeror will

pay any stamp duty which that person will

become liable to pay on the contract note as a result of the transaction;

(vi) bears a date which is not more than 3 days before the date on which the offer is communicated;

(vii) if the offer relates to the acquisition of securities, satisfies the requirements of Part 1 of Schedule 7;

(viii) if the offer relates to the disposal of securities, satisfies the requirements of Part 2 of Schedule 7;

(ix) 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 the consent; and

(c) where the offer is in only one official language, it includes a translation, in the other official language of all the particulars required 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) A document containing an offer to which subsection (1) relates which includes a statement purporting to be made by an expert shall not be communicated unless the expert has given and has not, before communication of a copy of the offer, withdrawn his

written consent to the communication of the offer with the inclusion of the statement in the form and context in which it is included.

(3) Subject to subsection (5), a licensed securities dealer who communicates an offer for the acquisition or disposal of securities without having complied with subsections (1) and (2) commits an offence and is liable on conviction to a fine at level 5.

(4) Where a person has accepted an offer for the disposal or acquisition of securities under this section and the offer has been made without the requirements of subsections (1) and (2) having been complied with in a material particular, the person may, subject to the rights of a purchaser in good faith of the securities for value, rescind the acceptance, by notice in writing, within 14 days after the date of the acceptance.

(5) This section does not apply to -

(a) an offer to dispose of securities of a corporation to persons who already hold securities of the corporation;

(b) an offer by a licensed securities dealer if the offer is made to a person with whom, or on whose behalf, the dealer has transacted the sale or purchase of securities on at least 3 occasions during the period of 3 years immediately preceding the offer;

(c) an offer made to -

(i) a person whose business involves the acquisition or disposal or holding of securities; or

(ii) a solicitor or professional accountant; or

(iii) any other person who belongs to a class of persons prescribed in rules for the purposes of this paragraph; or

(d) an offer made by a member of the Stock Exchange in the ordinary course of trading on the Exchange.

(6) Where a licensed securities dealer invites a person to acquire a security, or dispose of a security held by the person, in a corporation, then for the purposes of this section -

(a) the invitation is deemed to be an offer; and

(b) an offer to acquire or dispose of the security made by the person in response to the invitation is deemed to be an acceptance by the person of an offer to acquire or an offer to dispose of the security, and references in this section to "acceptance" () shall be construed accordingly.

(7) An offer to acquire or dispose of a right to acquire or dispose of a security or an interest in a security is deemed to be an offer to acquire or dispose of a security; and a reference to a person who holds securities includes a reference to a person who holds a right to acquire a security or an interest in a security.

(8) In this section, "expert" () includes an engineer, valuer, professional accountant, and solicitor, and any other person whose profession gives authority to a statement made by him.

(9) For this section an offer to acquire or dispose of securities in consideration or part consideration for other securities is deemed to be both an offer to acquire and an offer to dispose of securities.

13.10 Unsolicited calls

(1) A person shall not, whether on his own behalf or otherwise during or as a consequence of an unsolicited call -

(a) make or offer to make with a person -

(i) an agreement for the other person to purchase or sell, or with a view to having the other person purchase or sell, a futures contract, an interest in an investment arrangement, specific securities or a contract relating to leveraged foreign exchange trading;

(ii) an agreement the purpose or pretended purpose of which is to secure a profit to that other person from a futures contract, an interest in an investment arrangement, a contract relating to leveraged foreign exchange trading or from the yield of specific securities, or by reference to fluctuations in the value of specific securities or currency; or

(b) induce or attempt to induce another person to enter into an agreement of the type referred to in paragraph (a), whether or not in making an unsolicited call he does any other act or thing.

(2) A person does not contravene subsection (1) by reason only that he makes a call to another person who is a banker, solicitor, professional accountant, licensed person or exempt person or a money lender, and, whether as principal or agent, makes or offers to make with the other person an agreement referred to in subsection (1), or induces or attempts to induce the other person to enter into such an agreement.

(3) This section does not apply to -

(a) a person who belongs to a class of persons prescribed in rules made by the Commission for the purpose of this subsection;

(b) futures contracts, investment arrangements, securities or contracts relating to leveraged foreign exchange trading, which are of a class so prescribed; or

(c) calls made on a class of persons so prescribed.

(4) A person who 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; and

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

(5) In this section -

"call" () includes a visit in person and a communication by cable, facsimile, post, telegram, telephone or telex;

"futures contract" () includes 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 in rules made by the Commission for the purposes of this definition;

"money lender" () has the meaning assigned to it in section 2(1) of the Money Lenders Ordinance (Cap. 163);

"unsolicited call" () does not include a call that is made at the express invitation of the person called upon and for this purpose, the provision by that person of a cable address, a facsimile number, an address, a telephone number or a telex number does not, of itself, constitute an express invitation to call that person.

13.11 Amendment of Schedules 6 and 7

- (1) The Financial Secretary may, by notice in the Gazette, amend Part 1 of Schedule 6.
- (2) The Commission may, after consultation with the Financial Secretary, by notice in the Gazette, amend Parts 2, 3, 4, and 6 of Schedule 6.
- (3) The Governor in Council may, by order published in the Gazette, amend Schedule 7.

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PART XIV MISCELLANEOUS

14.1 Preservation of secrecy, etc.

(1) Except in the performance of a power or duty under a relevant Ordinance, a person who is appointed under a relevant Ordinance or who performs or assists any other person in the performance of a power or duty under a relevant Ordinance -

(a) shall, at all times subsequent to his appointment or after he has performed or so assisted in the performance of a power or duty (and whether or not his appointment continues or he may again perform or so assist in the performance of the power or duty), preserve and aid in preserving secrecy of any matter coming to his knowledge in the performance of, or assisting in the performance of, a power or duty under a relevant Ordinance;

(b) shall not at any such time communicate any such matter to any other person; and

(c) shall not at any such time suffer or permit any other person to have access to any record or other document which is in his possession or under his control by virtue of his being or having been so appointed or his performing or having performed, or assisting or having assisted another person in the performance of a power or duty under a relevant Ordinance.

(2) The Commission may disclose information -

(a) in the form of a summary compiled from similar or related information provided by persons under a

relevant Ordinance if the summary is so compiled as to prevent particulars relating to the business or identity, or the trading particulars, of any such person being ascertained from it;

(b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings or any investigation, whether under a relevant Ordinance or otherwise, in Hong Kong;

(c) in connection with any civil proceedings;

(d) to the Insider Dealing Tribunal;

(e) to -

(i) the Financial Secretary;

(ii) the Secretary for Financial Services;

(iii) the Monetary Authority;

(iv) the Insurance Authority;

(v) the Registrar of Companies;

(vi) a public officer authorized by the Financial Secretary for the purpose of this

paragraph;

(vii) an inspector appointed by the Financial Secretary to investigate the affairs of a

corporation;

(viii) a recognized exchange company;

(ix) a recognized clearing house,

if in the opinion of the Commission the conditions specified in subsection (3)(a) or (b) are satisfied;

(f) to an authority or regulatory organization outside Hong Kong which, or to any companies inspector outside Hong Kong appointed to investigate the affairs of a

corporation who, in the opinion of the Commission, satisfies the requirements referred to in subsection (5)(a) and (b) if the Commission is satisfied that the conditions specified in subsection (3)(a) or (b) are fulfilled;

(g) to such professional or semi-professional bodies in Hong Kong as may be specified for the purpose of this paragraph by the Commission by notice if, and only if, in the opinion of the Commission, it is desirable or expedient that the information should be so disclosed;

(h) (without prejudice to paragraph (g)) to the Hong Kong Society of Accountants with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the performance or non-performance of the professional duties of an auditor or a former auditor appointed under this Ordinance;

(i) to an auditor or a former auditor appointed under this Ordinance for the purpose of enabling or assisting the Commission to discharge its functions under the relevant Ordinances;

(j) obtained by an investigator under section 7.6 to -

(i) the Financial Secretary;

(ii) the Attorney General;

(iii) the police;

(iv) the Independent Commission Against Corruption;

(v) the Insider Dealing Tribunal;

(k) for the purpose of, or otherwise in connection with, an audit required by section 2.12;

(l) with the consent of the person from whom the information was obtained and if the information relates to a different person, also with the consent of the person to whom the information relates; or

(m) if it has been made available to the public by being disclosed in circumstances in which, or for a purpose for which, disclosure is not precluded by this section.

(3) The conditions referred to in subsection (2)(e) and (f) are that -

(a) it is desirable or expedient that the information should be so disclosed in the interest of the investing public or the public interest; or

(b) the disclosure will enable or assist the recipient of the information to perform its or his functions and it is not contrary to the interest of the investing public or the public interest that the information should be so disclosed.

(4) An auditor of a licensed person, an auditor appointed under section 8.19 or 8.20, or the employee of the auditor, may disclose information that comes to his knowledge in the course of performing his duties as an auditor under those sections -

(a) for the purpose of carrying into effect any provision of this Ordinance;

(b) so far as may be required for the purpose of any legal proceedings;

(c) to the Commission;

(d) to a recognized exchange company, where the information has been reported to the Commission by the auditor, or an employee of the auditor, under section 8.17;

(e) in the case of an employee, to the auditor by whom he is employed.

(5) Where the Commission is satisfied that, for the purposes of subsection (2)(f), an authority, regulatory organization or companies inspector -

(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 practicable cause the name of the authority, regulatory organization or companies inspector to be published in the Gazette.

(6) Where information is disclosed under subsection (1), or in any of the circumstances described in subsection (2) other than subsection (2)(a), (l) and (m), neither -

(a) the person to whom that information is disclosed; nor

(b) any person obtaining or receiving the information, whether directly or indirectly, from the person referred to in paragraph (a),

shall disclose the information, or any part thereof, to any other person without the consent of the Commission.

(7) Subject to subsection (8), the chairman or any other director of the Commission or any person employed in the administration of a provision of a relevant Ordinance 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 securities, a futures contract or investment arrangements or leveraged foreign exchange trading -

(a) which he knows to be the subject of an investigation or proceedings by the Commission under a relevant Ordinance or to be the subject of other proceedings under this Ordinance or is being otherwise considered by the Commission;

(b) which he knows to be connected with a matter which is either the subject of an investigation or proceedings mentioned in paragraph (a) or is being otherwise considered by the Commission; or

(c) for which a prospectus or any take-over document is to his knowledge, being considered for registration under the Companies Ordinance (Cap. 32).

(8) Subsection (7) does not apply to, or in respect of, any right of the holder of securities by being that holder -

(a) to exchange the securities or convert them to another form of securities;

(b) to participate in a scheme of arrangement approved by the High Court under the Companies Ordinance (Cap. 32);

(c) to subscribe for other securities or dispose of a right to subscribe for other securities;

(d) to charge or pledge the securities to secure the repayment of money;

(e) to realize the securities for the purpose of repaying money referred to in paragraph (d); or

(f) to realize the securities in the course of performing a duty imposed by law.

(9) The chairman or any other director of the Commission or a person employed in the administration of a relevant Ordinance shall forthwith inform the Commission if, in the course of his duties, he is required to consider any matter relating to -

(a) any securities or futures contract or investment arrangements or leveraged foreign exchange trading in which he has an interest or any securities or futures contract or investment arrangements or leveraged foreign exchange trading of the same class or kind;

(b) any securities or futures contract or investment arrangements or leveraged foreign exchange trading in which a company in which he has an interest has an interest;

(c) a person -

(i) with whom he is or has been employed or associated;

(ii) of whom he is or has been a client; or

(iii) who is or was a client of a person with whom he is or was employed or

associated.

(10) A person who -

(a) contravenes subsection (1) or (6); or

(b) without reasonable excuse, contravenes subsection (7) or fails to comply with any requirement of subsection (9),

commits an offence and is liable -

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

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

14.2 Information: Exchange companies and clearing houses

(1) The Commission, a recognized exchange company and a recognized clearing house have the right to supply each other with information about their affairs and -

(a) for an exchange company, the affairs of a member of the Stock Exchange or of the futures market operated by the company; and

(b) for a clearing house, the affairs of any of its participants.

(2) The Commission may by written notice require a recognized exchange company or recognized clearing house to supply it with the information the Commission reasonably requires for the performance of its functions under this Ordinance, including information in its possession or under its control relating to -

(a) for an exchange company, the affairs of a member of the Stock Exchange or of the futures market operated by the company; and

(b) for a clearing house, the affairs of any of its participants.

(3) The supply of information under subsection (1) or (2) is not publication for the purposes of the law of defamation and, subject to section 14.1, a person supplying the information does not incur liability as a consequence.

14.3 Additional powers - restriction notices relating to exchange companies and clearing houses

(1) Subject to subsections (2), (5) and (13), the Commission where it is satisfied that it is in the interest of the investing public or in the public interest, or it is appropriate for the protection of investors or for the proper regulation of a recognized exchange company or recognized clearing house, may by written notice ("restriction notice") -

- (a) require the exchange company or clearing house, before the expiry of a period set out in the notice

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- (i) to amend, withdraw or revoke, in the manner set out in the notice, a provision of its memorandum of association, articles of association, rules or regulations or other specified instrument;

- (ii) to take specified action in the management, conduct or operation of its business;

- (b) prohibit the exchange company or clearing house from doing, during a set period, a specified act or other thing in the management, conduct or operation of its business.

(2) The Commission shall not serve a restriction notice unless -

- (a) it has previously consulted the Financial Secretary;

- (b) it has previously requested in writing the exchange company or clearing house 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) set out in the request and similar in effect to the requirement or prohibition set out in the restriction notice or, where there is more than one such requirement or prohibition so set out, provisions the combined effect of all of which is similar to the combined effect of the requirements or prohibitions so set out; and

- (c) for a request under paragraph (b) which -

- (i) contains a provision requesting the exchange company or clearing house concerned to amend, withdraw or revoke any provision of

its memorandum or articles of association under subsection (1)(a)(i), the provision has not been complied with before the expiration of the period set out in the request being not less than 45 days; or

(ii) contains a provision requesting the exchange company or clearing house 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) An exchange company or clearing house may appeal to the Governor in Council against a restriction notice that requires the recognized exchange company or clearing house to amend, withdraw or revoke any provision of its memorandum of association or articles of association.

(4) An appeal under subsection (3) does not affect the coming into force of the restriction notice to which the appeal relates.

(5) A period specified in a restriction notice for a prohibition under subsection (1)(b) shall not exceed 6 months beginning on the date of the notice.

(6) The Commission may, after consultation with the Financial Secretary, by notice in writing 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.

(7) The Commission may publish in the Gazette a copy of a restriction notice issued under this section, or, as may be appropriate, particulars of an extension.

(8) A restriction notice may, on the application of the Commission to the High Court, be enforced by an order of the High Court as if it were a judgment or order of that Court.

(9) Where an exchange company or clearing house is in breach of a requirement in a restriction notice under subsection (1)(a)(i) relating to a provision of its memorandum of association, articles of association, rules or regulations or other instrument -

(a) for a requirement to amend a provision, the provision is deemed to have effect as if the requirement had been complied with;

(b) for a requirement to withdraw or revoke a provision, the provision ceases to have effect.

(10) Where -

(a) a restriction notice includes a requirement described in subsection (1)(a)(i) and the requirement relates to the memorandum of association or the articles of association of a company; and

(b) by subsection (9) the provision to which the requirement relates has effect as if the requirement had been complied with or, as the case may be, has ceased to have effect, the Commission shall give the Registrar of Companies a copy of the notice.

(11) If there is an appeal under subsection (3) against the notice and the appeal is not withdrawn, the Commission shall, as soon as may be, inform the Registrar of Companies in writing of the outcome of the appeal.

(12) An exchange company or clearing house, or any member, officer or servant of an exchange company or clearing house is not liable in damages for any act or omission done or omitted in compliance or in purported compliance with a restriction notice unless the act or omission is shown by the person claiming the damages to have been done or omitted in bad faith.

(13) This section shall not be construed as requiring the Commission to do under this section anything which may be done by the Commission by direction under section 4.13 or 4.14.

14.4 Additional powers - suspension orders relating to exchange companies and clearing houses

(1) The Commission may, after consultation with the Financial Secretary, where the Commission is satisfied that it is in the interest of the investing public or in the public interest, or it is appropriate to do so for the protection of investors or for the proper regulation of a recognized exchange company or recognized clearing house, issue a suspension order relating to all or any of the following -

- (a) the functions of the board of directors or governing body of the exchange company or clearing house;
- (b) the functions of a director of a board or a member of a body referred to in paragraph (a);
- (c) the functions of a committee (including a sub-committee) established by a board or body referred to in paragraph (a);
- (d) the functions of the chief executive officer (whether called that or not) of the exchange company or clearing house.

(2) While a suspension order is in force the following apply -

- (a) neither the exchange company or clearing house 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 to perform the function;

(c) a person referred to in paragraph (a) shall not, by act or omission, either directly or indirectly, affect the manner in which the suspended functions are performed.

(3) Subject to subsection (7), a suspension order shall continue in force for the period not exceeding 6 months specified in the order.

(4) A suspension order or an extension of it under subsection (7) shall take effect when a copy of the order or notice of the extension is served under subsection (8)(a) on the exchange company or clearing house to which the order relates.

(5) The Commission shall, if it is practical so to do, as soon as may be, 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 or clearing house to which the order relates and to the directors or members of its committee (if any) as the Commission considers appropriate in the circumstances.

(6) Nothing in subsection (5) affects subsection (4).

(7) 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.

(8) The Commission shall -

(a) forthwith serve a copy of the order or notice in writing of the extension on the exchange company or clearing house to which the order relates; and

- (b) publish in the Gazette the suspension order or, as may be appropriate, notice of its extension.
- (9) The exchange company or clearing house shall pay to the Commission on demand costs or expenses reasonably incurred by the Commission or a director or employee of the Commission in connection with a suspension order.
- (10) The amount of the costs or expenses incurred are recoverable as a civil debt.
- (11) 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; and
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

14.5 Immunity

- (1) A person shall not incur liability for anything done, or omitted to be done, by him in good faith in the performance or purported performance of any function under a relevant Ordinance.
- (2) Subject to section 14.3(12), a person who complies with a requirement made under this Ordinance shall not incur any liability to any person by reason only of that compliance.
- (3) A person who is a legal practitioner (whether or not he is qualified in Hong Kong to practise as a barrister or act as a solicitor) shall not be required under this Ordinance to disclose any information (other than the name and address of a client) or produce any record or other document which his client would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court.

(4) A person who is not a legal practitioner shall not be required under this Ordinance to disclose any information or produce any document (whether an original or a copy) if he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court.

14.6 Application by Commission to High Court

(1) If on the application of the Commission the High Court is satisfied that a person has contravened, or that there is a reasonable likelihood that he will contravene -

- (a) any provision of a relevant Ordinance;
- (b) any subsidiary legislation made under a relevant Ordinance or any notice under Part VII;
- (c) any conditions attached to a licence,

the Court may, without prejudice to any order it would be able to make otherwise than under this section, make one or more of the orders specified in subsection (2).

- (2) The orders that the High Court may make under subsection (1) are -
- (a) an injunction restraining the contravention referred to in subsection (1);
 - (b) an order that any person who appears to have been knowingly involved in the contravention take such steps as the High Court may direct to remedy it, 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 a person from acquiring, disposing of, or otherwise dealing in any securities,

futures contracts, investment arrangements, leveraged foreign exchange trading contracts or other assets, 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 securities, futures contracts, investment arrangements or leveraged foreign exchange trading transactions specified in the order to be void or voidable;

(f) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act; or

(g) any ancillary order which it considers necessary in consequence of the making of an order under paragraphs (a) to (f).

(3) The Commission shall not apply under subsection (1) for an order affecting any person who is a member of the Stock Exchange Company or of a futures market operated by a recognized exchange company unless the Commission has given written notice of its intention to the Stock Exchange Company or to the recognized exchange company that operates the futures market.

(4) The Court shall, before making an order under subsection (1), satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(5) The Court may, before making any order under subsection (1), direct that notice of the application be given to the persons it thinks fit or direct that notice of the application be published in the manner it thinks fit, or both.

(6) The Court may reverse, vary, or discharge an order made by it under this section or suspend the operation of the order.

14.7 Obstruction

A person who -

- (a) obstructs any other person in the exercise or performance of a function under this Ordinance; or
- (b) without reasonable excuse, fails to produce any books, accounts, records or documents that the

Commission or a person authorized by the Commission has, under a provision of this Ordinance, required him to produce for inspection,

commits an offence and is liable -

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

14.8 Short selling

(1) A person shall not sell any listed securities which he or his principal does not own either for his own account or for the account of another person except as prescribed in rules made by the Commission.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(3) For the purposes of subsection (1), a person sells securities if he -

- (a) sells the securities;
- (b) purports to sell the securities;
- (c) offers to sell the securities;
- (d) holds himself out as entitled to sell the securities; or
- (e) instructs a dealer to sell the securities.

- (4) For the purposes of subsection (1), a person is treated as owning securities only if -
- (a) he or his agent has the title to the securities;
 - (b) he has purchased the securities, or has entered into an unconditional contract legally binding on the seller and the purchaser to purchase the securities, even if he does not yet have title to them;
 - (c) he owns other securities convertible into or exchangeable for the securities and has tendered the other securities for conversion or exchange;
 - (d) he has an option to acquire the securities and has exercised the option; or
 - (e) he has rights or warrants to subscribe to the securities and has exercised the rights or warrants, and he or his agent has received or will receive a fixed, currently, ascertainable amount of the securities at a fixed, currently ascertainable price.

14.9 Liability of directors, etc.

- (1) In proceedings against a director or a shadow director under section 6.4(6), 6.7(2), 6.16(7), 8.4(5), 8.7(5), 8.8(4), 8.9(10), 8.12(4), 8.14(2), 8.15(4) or 8.16(8), it is a defence for the director or shadow director to show that -
- (a) he did not know and had no reason to suspect the existence of any of the circumstances giving rise to the offence; and
 - (b) he could not, by the exercise of reasonable supervision and reasonable diligence, have prevented those circumstances arising.

(2) Where the defence provided by subsection (1) involves an allegation that the circumstances giving rise to the commission of the offence were due -

- (a) to the act or default of another person; or
- (b) to reliance on information given by another person,

the defendant is not, without the leave of the court, entitled to rely on the defence unless, not less than 10 days before the hearing of the proceedings, he has served a notice in writing on the prosecutor giving all particulars -

- (i) of the person who committed the act or default or gave the information; and
- (ii) of the act, default and information of which he is aware at the time he serves notice.

(3) A person is not entitled to rely on the defence provided by subsection (1) by relying on information supplied by another person, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular -

- (a) to the steps which he took, and those which might reasonably have been taken, to verify the information; and
- (b) to whether he had any reason to disbelieve the information.

(4) Except in a case in which subsection (1) applies, where an offence under this Ordinance committed by a corporation is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, shadow director, manager, secretary, or other similar officer of the corporation, or any person who was purporting to act in any such capacity, he, as well as the corporation, is guilty of the offence and is liable to be proceeded against and punished accordingly.

(5) Where an offence committed by a partner in a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any other partner of the partnership, that other partner shall be guilty of the offence and liable to be proceeded against and punished accordingly.

14.10 Liability of principal for act of agent

For the purposes of this Ordinance an act, omission or failure of an employee, agent or other person acting for or on behalf of an individual, corporation or firm within the scope of his office or employment shall be deemed to be the act, omission or failure of the individual, corporation or firm, as well as of the employee, agent or other person.

14.11 Prosecution of certain offences by Commission

(1) An offence under a relevant Ordinance 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 the purposes of the prosecution of an offence mentioned in subsection (1) and only for those purposes, an employee of the Commission who apart from this subsection is not qualified to act as a barrister or solicitor 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 solicitor under the Legal Practitioners Ordinance (Cap. 159).

(3) This section does not derogate from the powers of the Attorney General in respect of the prosecution of criminal offences.

14.12 Limitation on commencement of proceedings

Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), an information or complaint relating to an offence under this Ordinance 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 or within 12 months after the first discovery of the commission of the offence by the prosecutor, whichever period expires first.

14.13 Rules made by Commission

- (1) The Commission may make rules for -
 - (a) applications for licences and exemptions, the issue of licences and exemptions, and incidental matters;
 - (b) the display of licences and notices of exemption, the circumstances in which they must be returned to the Commission for any purpose, and the issue of duplicates;
 - (c) prescribing the manner in which a licensed person is required to keep records and documents for the purposes of section 8.7;
 - (d) prescribing what money a licensed person is required to pay into a trust account established for the purposes of section 8.9 and how he is to account for the money and for interest on it;
 - (e) the class of persons in relation to whom, and the circumstances in which, licensed and exempt persons may carry on business;
 - (f) the qualifications, experience and training required of licensed and exempt persons, the examinations that applicants for licences or exemption may be required

to take, and the circumstances in which they may be excused from such requirements;

(g) particulars to be recorded in registers kept by the Commission under Part VI, and the correction of errors in a register;

(h) electronic and other methods of filing and storage of documents and information with the Commission and the admissibility of the records and extracts from records kept by the Commission;

(i) the making of annual or other regular returns to the Commission by licensed and exempt persons;

(j) subject to subsection (2), conditions subject to which securities may be listed and the circumstances in which dealings in listed securities shall be suspended;

(k) the particulars to be recorded in relation to accounts kept for the purposes of this Ordinance, and the particulars to be recorded in profit and loss accounts and balance sheets;

(l) the information to be contained in auditors' reports required to be lodged under this Ordinance;

(m) the remuneration of an auditor appointed, and the costs of an audit carried out, under this Ordinance;

(n) the manner and circumstances in which a person may engage in short selling;

(o) any matter which this Ordinance provides is to be, or may be, prescribed by the Commission;

(p) the better carrying out of the purposes and provisions of this Ordinance.

- (2) Rules may be made under subsection (1)(j) only after prior consultation with the Stock Exchange Company.
- (3) The rules may provide that a contravention of any specified provision shall be an offence and may provide penalties not exceeding level 4 and imprisonment for 3 months.
- (4) The rules may be of general or special application and may make different provisions for different cases or classes of case.
- (5) The rules made may provide that, subject to the terms and conditions prescribed in the rules, the provisions of this Ordinance specified in the rules -
 - (a) shall not have effect in relation to members of a specified class of persons -
 - (i) who are or may be required to be licensed under Part VI by reason only of doing anything that is incidental to another business;
 - (ii) who do not deal on behalf of anyone else in securities, futures contracts, investments arrangements or leveraged foreign exchange trading transactions; or
 - (iii) who are required to be licensed by reason only of entering into a specified class of transactions,or shall have effect in relation to any such persons only to the extent prescribed in the rules; or
 - (b) shall not have effect in relation to any specified class of transactions.
- (6) This section does not prevent a recognized exchange company from making rules as provided for in its constitution if they have

been approved by the Commission, but the rules shall have effect only to the extent that they are not repugnant to a rule made by the Commission under this Ordinance.

(7) Rules made by the Commission, whether under this or any other section, may provide for the exercise of discretion in particular cases.

14.14 Service of notices

- (1) A notice or direction required to be served under a relevant Ordinance shall be properly served if -
- (a) for an individual, it is delivered to him or, where it cannot conveniently be so delivered, it is -
 - (i) left at the address at which he ordinarily resides or carries on business or, if such an address is unknown, at his last known address; or
 - (ii) sent by post to him at any such address;
 - (b) for a company, it is delivered to an officer of the company or, where it cannot conveniently be so delivered, it is left at, or sent by post to, the company's registered office;
 - (c) for an oversea company within the meaning of the Companies Ordinance (Cap. 32), it is left with, or sent by post to, the person resident in Hong Kong who is authorized to accept service of process and notices on its behalf for the purposes of Part XI of that Ordinance;
 - (d) for a partnership, it is delivered to any partner or where it cannot conveniently be so delivered, it is

left at, or sent by post to, the address at which the partnership carries on business;

(e) for a body corporate other than a company or an unincorporated body of persons other than a partnership, it is delivered to an officer of the body, or where it cannot conveniently be so delivered, it is left at, or sent by post to, the address at which the body carries on business.

(2) For the purposes of subsection (1), a body corporate other than a company and an unincorporated body of persons not being a partnership are deemed to carry on business at its principal office or place of business.

14.15 Evidence

A record or other document purporting to be a record or other document, or a copy of a record or other document, executed, signed or issued by or on behalf of the Commission and purporting to be signed or initialed by the chairman or other director of the Commission or any person employed in the administration of a relevant Ordinance shall in any proceedings be admissible as evidence of the facts stated in it. It shall not be necessary to prove the signature or initials of the person purporting to sign or initial the record or other document.

14.16 Forms

The Commission may, by notice in the Gazette, specify forms that are required to be used for any purpose under this Ordinance.

14.17 Certain instruments not subsidiary legislation

(1) Where a relevant Ordinance, or any rules made under a relevant Ordinance, requires or enables the Commission to publish an

instrument in the Gazette, or enables the Commission to do any thing by any instrument published in the Gazette, the instrument shall not be treated as being subsidiary legislation unless the Ordinance or rules under which the instrument is published specifically provides otherwise.

(2) Rules made by a recognized exchange company or recognized clearing house under this Ordinance are not subsidiary legislation.

14.18 Exclusions of provisions of Gambling Ordinance

The Gambling Ordinance (Cap. 148) shall not apply to any transaction which is authorized by or under, or which is carried out in compliance with, this Ordinance.

14.19 Voidability and rescission

(1) Any contract or arrangement for leveraged foreign exchange trading made by any person, whether as principal or agent, who is required to hold a licence under section 6.4 or 6.8 but does not hold one shall, notwithstanding anything in the contract or arrangement, be avoidable and may be rescinded by and at the option of any other party to the contract or arrangement or by and at the option of the client as the case may be, and a person so rescinding shall be entitled to recovery of any money or other thing he may have paid or delivered under the contract or arrangement.

(2) The provisions of sections 7.14 to 7.21 or the service of a notice under section 7.15, 7.16, 7.17 or 7.18 shall not have the effect of rendering a contract or arrangement for leveraged foreign exchange trading unenforceable by any party to that contract or arrangement, if he proves that in entering into the contract or arrangement, he acted in good faith and, as regards any notice so served, was not aware of the notice or of its service.

(3) Where a contract or arrangement for leveraged foreign exchange trading is rescinded by any party to that contract or arrangement by virtue of subsection (1), he shall restore to any other party to that contract or arrangement any money or other benefit received or obtained by him under the contract or arrangement, from that party.

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PART XV

REPEALS, TRANSITIONAL PROVISIONS AND
CONSEQUENTIAL AMENDMENTS

15.1 Repeals

The following Ordinances and all subsidiary legislation made under these Ordinances are repealed -

- (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 Exchange Unification Ordinance (Cap. 361);
- (f) the Securities (Insider Dealing) Ordinance (Cap. 395);
- (g) the Securities and Futures (Clearing Houses) Ordinance (Cap. 420);
- (h) the Leveraged Foreign Exchange Trading Ordinance (Cap. 451).

15.2 Transitional provisions

Schedule 8 effects the transitional arrangements on the repeal of the Ordinances set out in section 15.1.

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Sch. 1

SCHEDULE 1

[s. 1.2]

PART 1

DEFINITIONS

In this Ordinance, unless the context otherwise requires -

"accredited" () is construed in accordance with section 6.9(1) of this Ordinance;

"adviser" () includes a securities adviser and a futures adviser;

"articles" () means, in relation to a company, its articles within the meaning of section 2(1) of the Companies Ordinance (Cap. 32);

"associate" () means -

(a) except as defined in paragraph (b) for Parts XI and XII of this Ordinance -

(i) where 2 or more corporations are related corporations, each of them;

(ii) where a person is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions of another person in relation to the disposal of any securities, each of those persons;

(iii) where a corporation or its directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions of others (including another corporation or its directors) in relation to the disposal of any securities, the corporation, its directors and those others;

(b) in Parts XI and XII of this Ordinance, for any person -

- (i) the person's spouse, reputed spouse, person cohabiting with the person as a spouse, the person's brother, sister, parent, step-parent, child (natural or adopted) or step-child;
- (ii) a corporation of which the person is a director;
- (iii) an employee or partner of the person;
- (iv) if the person is a corporation each of its directors and its related corporations and each director or employee of a related corporation; and
- (v) if the person has with any other person an agreement or arrangement for the acquisition, holding or disposal of shares or other interests in the corporation or under which they undertake to act together to exercise their voting power in it, the other person;

"associated corporation" (), in relation to a listed company, means a corporation -

- (a) which is a subsidiary or holding company of the listed company or a subsidiary of the listed company's holding company; or
- (b) for which the information required by section 129(1) or (2) of the Companies Ordinance (Cap. 32) has been stated in, or in a note on, or statement annexed to, the accounts submitted to the last annual general

meeting of the listed company or the listed company's holding company prior to the event giving rise to any relevant duty under this Part;

"auditor" () means a professional accountant registered and holding a practising certificate under the Professional Accountants Ordinance (Cap. 50);

"authorized financial institution" () has the same meaning as "authorized institution" in the Banking Ordinance (Cap. 155);

"bank trading day" () means any day on which banks are generally open for business, except Saturday;

"books" () includes -

- (a) books of a banker;
- (b) cheques, orders for the payment of money, bills of exchange, and promissory notes in the possession or under the control of a banker;
- (c) securities in the possession or under the control of a banker, whether as a pledge or otherwise;
- (d) a document or record used in the ordinary course of business of a bank;
- (e) a record used in the ordinary course of business of a bank which is kept otherwise than in a legible form and is capable of being reproduced in a legible form; and
- (f) accounts and deeds;

"certificate of deposit" () has the same meaning as in section 2 of the Inland Revenue Ordinance (Cap. 112);

"charge" () means a form of security, including a mortgage;

"chief executive" () means the person employed 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;

"clearing house" () includes a securities clearing house and a futures clearing house;

"client" () does not include a recognized counterparty;

"Commission" () means the Securities and Futures Commission referred to in section 2.1(1) of this Ordinance;

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

"controller" () and references to "control" () are defined in Part XI of this Ordinance;

"constitution" (), in relation to a corporation, including a recognized exchange company or clearing house, means the memorandum and articles of association of the corporation, or other instrument providing the constitution of the corporation;

"corporation" () means a company or other body corporate formed or incorporated either in Hong Kong or elsewhere, but does not include a corporation which has been exempted by rules from the provisions of this Ordinance or, to the extent that it is exempted from any Part of this Ordinance;

"credit union" () means a credit union registered under the Credit Unions Ordinance (Cap. 119);

"data equipment" () means equipment which -

- (a) automatically processes information;
- (b) automatically records or stores information;

(c) can be used to cause information to be automatically recorded, stored or otherwise processed on other equipment (wherever situated);

(d) can be used to retrieve information, whether the information is recorded or stored in the equipment itself or in other equipment (wherever situated);

"data material" () means a document or other material used with or produced by data equipment;

"dealer" () includes a securities dealer and a futures dealer;

"dealer's representative" () includes a securities dealer's representative and a futures dealer's representative;

"dealing in futures contracts" () is construed in accordance with section 6.3(3) and (4) of this Ordinance;

"dealing in securities" () is construed in accordance with section 6.2(3) and (4) of this Ordinance;

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

"default proceedings" () is defined in Part V of this Ordinance;

"default rules" () is defined in Part V of this Ordinance;

"defaulter" () is defined in Part V of this Ordinance;

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

"document" () includes a register, book, record, tape recording, a form of computer input or output, and any other

- document or similar material (whether produced mechanically, electronically or manually, or by any other means);
- "exempt securities adviser" () means a person declared under section 6.10 of this Ordinance to be an exempt securities adviser;
- "exempt securities dealer" () means a person declared under section 6.10 of this Ordinance to be an exempt securities dealer;
- "exempted body" () is defined in Part XIII of this Ordinance;
- "financial resources rules" () means rules made under section 8.3 of this Ordinance;
- "financial year" () means -
- (a) for a person, fund or account, a period not longer than 12 months which is adopted by or for the person, fund or account for accounting purposes;
 - (b) in any other case, a period of 12 consecutive months ending on 31 March in a calendar year;
- "foreign currency" () means any currency other than Hong Kong currency;
- "foreign exchange trading" () means, subject to section 6.4(3) of this Ordinance, the act of entering or offering to enter into, or inducing or attempting to induce a person to enter into or offer to enter into, a contract or arrangement whereby any person undertakes -
- (a) to exchange currency with another person; or
 - (b) to deliver an amount of foreign currency to another person; or
 - (c) to credit the account of an other person with a foreign currency;

"function" () includes power and duty;

"futures adviser" () means a person who acts as a futures adviser within the meaning of section 6.6 of this Ordinance;

"futures adviser's representative" () means a person in the employment of, or acting for or by arrangement with, a futures adviser, who advises on futures contracts on behalf of that futures adviser, whether he is paid a salary, wages, commission or otherwise;

"futures clearing house" () means a person whose activities or objects include the provision of services for the registration and settlement of futures contracts, and the day-to-day adjustment of the financial position of futures contracts, traded on, or subject to the rules of, a futures market;

"futures contract" () means, subject to section 4.4(3)(b) of this Ordinance -

(a) a contract the effect of which is -

(i) that one party agrees to deliver to the other party at an agreed future time an agreed commodity or other property, or quantity of a commodity or other 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 commodity or other property is worth more or less or, as the case may be, 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;

(b) an option on a contract of the kind described in paragraph (a)(i) or (ii),

being a contract or option that is executed, or capable of being executed, under the rules of a futures market or on facilities authorized by the Commission under section 4.12 of this Ordinance;

"futures dealer" () means a person who carries on a business dealing in futures contracts, or who holds himself out as carrying on such a business, within the meaning of section 6.3 of this Ordinance;

"futures dealer's representative" () means a person in the employment of, or acting for or by arrangement with, a futures dealer, who deals in futures contracts on behalf of the futures dealer, whether he is paid a salary, wages, commission or otherwise;

"futures market" () means a market, exchange, place or facility which provides for bringing together on a regular basis purchasers and sellers of futures contracts of the kind described in paragraph (a) of the definition of "futures contract", or for persons to negotiate or conclude sales and purchases of such contracts; but does not include -

(a) the office or facilities of a licensed futures dealer that are used in the ordinary course of

business;

(b) the office or facilities of a recognized clearing house; or

(c) the facilities that are provided by a person authorized to provide them under section 4.2 of this

Ordinance;

"group of companies" () has the meaning assigned to it by section 2(1) of the Companies Ordinance (Cap. 32);

"hold" () is defined in Part VI of this Ordinance;

"holding company" () means a corporation which is a holding company within the meaning of section 2 of the Companies Ordinance (Cap. 32);

"incorporated" () includes established;

"insider dealer" () means a person who performs an act which is an insider dealing within the meaning of section 11.5 of this Ordinance, and includes a person who is to be regarded as an insider dealer under section 11.12 of this Ordinance;

"insider dealing" () means an insider dealing within the meaning of section 11.5 of this Ordinance;

"Insider Dealing Tribunal" () means the Insider Dealing Tribunal referred to in section 11.11 of this Ordinance;

"investment arrangements" (), in relation to property other than securities, means -

(a) arrangements, including any class or description of arrangements, specified by the Financial Secretary by notice in the Gazette under section 13.2(1) of this Ordinance; or

(b) arrangements in which the participating persons do not have day-to-day control over the management of the property in question, whether or not they have the right to be consulted or to give directions, and -

(i) which have one or both of the characteristics that the property is

managed as a whole by or on behalf of the operator of the scheme, or the contributions of the participating persons and profits or income from which payments are made to them are pooled; and

(ii) the purpose or effect, or pretended purpose or effect, of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of the property or otherwise) to participate in or receive -

(A) profits or income alleged 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

(B) sums to be paid or alleged to be likely to be paid out of any such profits or income,

but does not include -

(i) arrangements operated by a person otherwise than by way of business;

(ii) arrangements where each of the participants carries on a business other than investment business and enters into the arrangements for commercial purposes related to that business;

(iii) arrangements where each of the participants is a corporation in the same group as the operator;

(iv) arrangements where each of the participants is a bona fide employee or former employee (or the wife, husband, widow, widower, child or step-child under the age of 18 of such an employee or former employee) of a corporation in the same group as the operator;

(v) franchise arrangements, that is to say, arrangements under which a person 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 good-will attached to it;

(vi) arrangements the predominant purpose of which is to enable persons participating in them to share in the use or enjoyment of a particular property or to make its use or enjoyment available gratuitously to other persons;

(vii) arrangements the purpose of which is the provision of clearing services and which are operated by a recognized exchange company or a clearing house;

(viii) occupational pension schemes, superannuation of provident funds;

(ix) arrangements where money is taken by a solicitor from his client, or as a stakeholder, in the ordinary course of his practice;

(x) compensation arrangements maintained by a recognized exchange company or a clearing house under this Ordinance;

(xi) credit unions registered under the Credit Unions Ordinance (Cap. 119);

- (xii) chit-funds permitted to operate under the Chit-Fund Businesses (Prohibition) Ordinance (Cap. 262);
- (xiii) the Exchange Fund established by the Exchange Fund Ordinance (Cap. 66); and
- (xiv) arrangements prescribed by the Financial Secretary under section 13.2(2) of this Ordinance;

"invitation" () includes an offer, and also includes an invitation made by means of a telephone call or personal visit;

"issue" () includes distribute and circulate;

"leivable futures transaction" () means a contract to buy or a contract to sell which is -

(a) traded on the futures market operated by a recognized exchange company, by a member of that market in the course of trading futures contracts; and

(b) registered with a futures clearing house;

"licence" () means a licence issued under Part VI of this Ordinance;

"licensed" () means licensed under this Ordinance;

"licensed bank" () means a bank licensed under the Banking Ordinance (Cap. 155) to carry on banking business in Hong Kong;

"limited company" () means a company formed and registered under the Companies Ordinance (Cap. 32) that is not an unlimited company within the meaning of section 4(2)(c) of that Ordinance;

"listed" () means listed on the Stock Exchange, and -

(a) a company or corporation is regarded as listed if any of its securities are listed;

(b) securities are regarded as listed when the Stock Exchange Company has, on the application of the company which issued them, or on the application of a holder of them, agreed to allow, subject to the requirements of this Ordinance, dealings in those securities to take place on its stock market; and

(c) securities continue to be regarded as listed during a period of suspension of dealings on the stock market;

"listing" () for a security, means the procedure whereby a security is listed on the Stock Exchange;

"market charge" () is defined in Part V of this Ordinance;

"market collateral" () is defined in Part V of this Ordinance;

"market contract" () means a contract subject to the rules of a recognized clearing house entered into by the clearing house with a participant pursuant to a novation which is both in accordance with those rules and for the purposes of the clearing and settlement of transactions in securities or futures contracts effected on, or subject to the rules of, a recognized exchange company;

"member" () for a stock market or futures market, means a person who is a shareholder of the exchange company that operates the market, and any other person who is admitted to the regular use of the trading facilities of the market under the rules of the company;

"memorandum" () means the memorandum of association of a corporation, as originally framed or as altered in pursuance of any enactment;

"Monetary Authority" () means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66);

"multilateral agency" () is defined in Part XIII of this Ordinance;

"mutual fund corporation" () means a corporation -

(a) which is or holds itself out as being engaged primarily in the business of investing, reinvesting or trading in securities or any other property; and

(b) the shares in which are exclusively, or primarily, redeemable shares;

"number" (), in relation to shares, includes amount, where the context admits of the reference to shares being construed to include stock;

"officer" () for a corporation includes a director, manager or secretary, and for an unincorporated body includes every member of its governing body;

"overseas bank" () means a bank incorporated outside Hong Kong and not holding a valid banking licence under the Banking Ordinance (Cap. 155);

"Panel" () means the Securities and Futures Appeals Panel established under section 3.1 of this Ordinance;

"participant" () is defined in Part V of this Ordinance;

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

"principal" (), in relation to the accreditation of a licensed representative, means a licensed dealer or licensed adviser to whom the representative is accredited, and in a case

where a partner is licensed, means the partnership of which the partner is a member and to which the representative is accredited;

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

"qualifying credit rating" () 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 specified credit

rating;

"recognized clearing house" () means a clearing house declared under section 5.2(1) of this Ordinance to be a recognized clearing house;

"recognized counterparty" () means -

(a) an authorized institution within the meaning of section 2(1) of the Banking Ordinance (Cap. 155);

(b) in relation to a particular transaction conducted by a licensed leveraged foreign exchange trader ("the initial transaction"), another licensed leveraged foreign exchange trader not being a related corporation of the licensed leveraged foreign exchange trader which conducted the initial transaction; or

- (c) an institution designated in writing by the Commission as a recognized counterparty;

"recognized exchange company" () means a company declared under section 4.2(1) of this Ordinance to be a recognized exchange company;

"recognized futures exchange" () means a futures exchange specified in Part 3;

"recognized stock exchange" () means a stock exchange specified in Part 4;

"record" () includes -

(a) a book, voucher, receipt or data material, or information which is recorded in a non-legible form but is capable of being reproduced in a legible form;

(b) a 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 a film (including a microfilm), tape or other device in which visual images are embodied so as to be capable of being reproduced;

(c) books of a banker and a document or record used in the ordinary course of business of a bank;

(d) accounts or deeds; and

(e) cheques, orders for the payment of money, bills of exchange, promissory notes and securities in the possession or under the control of a banker;

"related corporation" () has the meaning set out in section 1.2 in Part 2;

"relevant information" () is defined in Part XI of this Ordinance;

"relevant office-holder" () is defined in Part V of this Ordinance;

"the relevant Ordinances" () means -

(a) this Ordinance;

(b) the Securities (Disclosure of Interests) Ordinance (Cap. 396); and

(c) Parts II and XII of the Companies Ordinance (Cap. 32), so far as the Parts relate, directly or

indirectly, to the Commission performing functions relating to -

(i) prospectuses;

(ii) the purchase by a company of its own shares; and

(iii) a company providing financial assistance for the acquisition of its shares;

"relevant share capital" () means a corporation's issued share capital of a class carrying rights to vote in all circumstances at general meetings of the corporation;

"representative" () includes a securities dealer's representative, a securities adviser's representative, a futures dealer's representative, a futures adviser's representative and a leveraged foreign exchange trader's representative;

"responsible officer" (), in relation to a corporation, means an individual who is nominated under Part VI of this Ordinance to be responsible for directly supervising the conduct of the business for which the corporation is licensed or seeks a licence;

"rules" () for a recognized exchange company or clearing house includes -

(a) its constitution;

(b) the rules, regulations and directions, by whatever name called, relating to its membership, management,

operations and procedures, the conduct of its members, the persons who may participate in any of the services it provides and the setting and levying of fees and charges;

(c) the rules, regulations and directions, by whatever name called, relating to such of the following as may be relevant to that exchange company or clearing house -

- (i) the listing of securities;
- (ii) the trading of securities or futures contracts;
- (iii) the provision of clearing and settlement services, and the suspension or withdrawal of such services;

(iv) the provision of other services,

and for a futures market, "rules" () means the rules by whatever name called, that govern the market concerned or persons who trade in it;

"securities" () means, except in Part XI of this Ordinance where it is separately defined and subject to section 4.4(3)(b) of this Ordinance, shares, stocks, debentures, loan stocks, funds, bonds, or notes of, or issued by, a body, whether incorporated or unincorporated, or of a government or local government authority; and includes -

(a) rights, options, or interests (whether described as units or otherwise) in or for the shares, stocks, debentures, loan stocks, funds, bonds, or notes;

(b) certificates of interest or participation in, or temporary or interim certificates for, receipts for,

or warrants to subscribe to or purchase, the shares, stocks, debentures, loan stocks, funds, bonds, or notes;

- (c) options on stock indices, other than options which are futures contracts;
- (d) instruments commonly known as securities,

but does not include -

(i) shares or debentures of a company which is a private company within the meaning of section 29 of the Companies Ordinance (Cap. 32);

(ii) an interest arising under a general partnership agreement or proposed general partnership agreement unless the agreement or proposed agreement -

(A) 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); or

(B) is within a class of agreements prescribed for the purposes of this paragraph;

(iii) a 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;

(iv) a bill of exchange within the meaning of section 3 of the Bills of Exchange Ordinance (Cap. 19) and a

promissory note within the meaning of section 89 of that Ordinance;

- (v) a debenture that specifically provides that it is not negotiable or transferable;

"securities adviser" () means a person who carries on business giving advice on securities, or who holds himself out as conducting such business, within the meaning of section 6.5(3) and (4) of this Ordinance;

"securities adviser's representative" ()

means a person in the employment of, or acting for or by arrangement with, a securities adviser, not being an exempt securities adviser, who advises in securities on behalf of that securities adviser, whether he is paid a salary, wages, commission or otherwise;

"securities clearing house" () means a person -

- (a) whose activities or objects include the provision of services for the clearing and settlement of transactions in securities effected on, or subject to the rules of a stock market; or

- (b) who guarantees the settlement of any such transactions;

"securities dealer" () means a person who carries on business dealing in securities, or who holds himself out as carrying on such business, within the meaning of section 6.2 of this Ordinance;

"securities dealer's representative" () means a person in the employment of, or acting for or by arrangement with, a securities dealer, not being an exempt dealer, who deals in securities on behalf of that securities

dealer, whether he is paid a salary, wages, commission or otherwise;

"settlement" () is defined in Part V of this Ordinance;

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

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

"specified debt securities" () means debenture stock, loan stock, 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 of Hong Kong;
- (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;

"Stock Exchange" () means the stock market operated by the Stock Exchange Company;

"Stock Exchange Company" () means the recognized exchange company referred to in section 4.3 of this Ordinance;

"stock market" () means a market, exchange, place or facility which provides for bringing together on a regular basis purchasers and sellers of securities, or for the negotiation or conclusion of sales and purchases of securities; but does not include -

- (a) the office or facilities of a member of the Stock Exchange;
- (b) the office or facilities of a recognized clearing house; or
- (c) facilities that are provided by a person authorized to provide them under section 4.12 of this

Ordinance;

"subsidiary" () is construed in accordance with section 1.1 of Part 2;

"takeover offer for 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" () includes name or description;

"tribunal" () means a tribunal appointed under section 3.3 of this Ordinance;

"trust account" () means a trust account established under section 8.9 of this Ordinance;

"underwriter" () means a person who for remuneration undertakes to subscribe for or purchase on specified terms such specified securities as are offered to the public by a person

issuing or selling the securities, but are not subscribed for or purchased by the public;

"unit trust" () means any arrangement made for the purpose, or having the effect, of providing facilities for the participation by persons -

(a) as beneficiaries under a trust; or

(b) in profits or income arising from the acquisition, holding, management or disposal of securities or any other property, under arrangements specified for the purpose of this definition by the Commission, either generally or in any particular case.

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Sch. 1

PART 2
INTERPRETATION

1.1 **"Subsidiary" defined**

- (1) A corporation is a subsidiary of another corporation ("the parent corporation" ()) if -
- (a) the parent corporation -
 - (i) controls the composition of its board of directors;
 - (ii) controls more than half of the voting power of it; or
 - (iii) holds more than half of its issued share capital (excluding any part 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 parent corporation's subsidiary.
- (2) The composition of a corporation's board of directors is taken to be controlled by another corporation if the other corporation, without the consent of another person, can appoint or remove all or a majority of the directors. The corporation is taken to have power to appoint or remove a director if -
- (a) a person cannot be appointed as a director without the other corporation exercising the power in his favour; or
 - (b) a person's appointment as a director follows necessarily from his being a director or other officer of the other corporation.

- (3) In determining whether one corporation is a subsidiary of another corporation -
- (a) shares held by or power exercisable by the other corporation in a fiduciary capacity are treated as not held or exercisable by it;
 - (b) subject to paragraphs (c) and (d), shares held or power exercisable -
 - (i) by a person as 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 that other corporation, not being a subsidiary which is concerned only in a fiduciary capacity,are treated as exercisable by that corporation;
 - (c) shares held or power exercisable by a person under a debenture of the corporation or of a trust deed for securing the issue of the debenture are disregarded; and
 - (d) shares held or power exercisable by, or by a nominee for, the other corporation or its subsidiary (not being held or exercisable under a debenture) are treated 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 business.

1.2 **"Related corporation" defined**

For the purposes of the expression "related corporation" in this Ordinance -

- (a) 2 or more corporations are regarded as related corporations 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 of one or more corporations; or
 - (iii) holds more than half of the issued share capital of one or more corporations

(excluding any part which carries no right to participate beyond a specified amount on a distribution of either profits or capital),

the corporations which he controls as mentioned in subparagraphs (i) and (ii) or of which he holds more than half the issued share capital and each of their subsidiaries, are regarded as related corporations of each other;

- (c) the composition of a corporation's board of directors is taken as controlled by an individual if by some power exercisable by him, without the consent or concurrence of any other person, he can appoint or

remove all or a majority of the directors, and for the purposes of this provision, that individual is taken to have power to appoint or remove a director if -

(i) a person cannot be appointed without the exercise in his favour by that individual of the power; or

(ii) a person's appointment as a director follows necessarily from his being a director or other officer of that other corporation.

PART 3

RECOGNIZED FUTURES EXCHANGES

Australian Options Market

Chicago Board of Options Exchange

Chicago Board of Trade

Chicago Mercantile Exchange

Commodity Exchange, Inc. (New York)

DTB Deutsche Terminbörse

European Options Exchange (Amsterdam)

Hong Kong Futures Exchange Limited

London International Financial Futures Exchange

London Metal Exchange

Marche a Terme International de France

Marche des Options Negociables de Paris

New York Cotton Exchange, Inc.

New York Futures Exchange

New York Mercantile Exchange

New Zealand Futures and Options Exchange

Osaka Securities Exchange

Pacific Stock Exchange

Philadelphia Stock Exchange

Singapore International Monetary Exchange

Stockholm Options Market

Swiss Options and Financial Futures Exchange AG

Sydney Futures Exchange, Ltd.

Tokyo Grain Exchange

Tokyo International Financial Futures Exchange

Tokyo Stock Exchange

Toronto Futures Exchange

PART 4 RECOGNIZED STOCK EXCHANGES

American Stock Exchange

Amsterdam Stock Exchange

Australian Stock Exchange

Brussels Stock Exchange

Copenhagen Stock Exchange

Frankfurt Stock Exchange

Helsinki Stock Exchange

Japanese Association of Securities Dealers Automated Quotations

Korea Stock Exchange

Kuala Lumpur Stock Exchange

London Stock Exchange

Luxembourg Stock Exchange

Madrid Stock Exchange

Makati Stock Exchange

Manila Stock Exchange

Milan Stock Exchange

Montreal Stock Exchange

Nagoya Stock Exchange

National Association of Securities Dealers Automated Quotations

New York Stock Exchange

New Zealand Stock Exchange

Osaka Securities Exchange

Oslo Stock Exchange

Paris Bourse

Stock Exchange of Hong Kong Limited

Stock Exchange of Singapore

Stock Exchange of Thailand

Stockholm Stock Exchange

Tokyo Stock Exchange

Toronto Stock Exchange

Vienna Stock Exchange

Zurich Stock Exchange

PART 5 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.

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Sch. 2

SCHEDULE 2

[ss. 2.1, 2.3 & 2.7]

CONSTITUTIONAL PROVISIONS RELATING TO THE COMMISSION

PART 1

MEMBERS, DIRECTORS AND MEETINGS OF THE COMMISSION
AND OF THE ADVISORY COMMITTEE, ETC.

Membership of Commission

1. The Commission consists of a chairman and an uneven number as the Governor may determine but not being less than 7, of other directors all appointed by the Governor; and when the number of the other directors ceases to be an uneven number the Governor shall make the necessary appointment to comply with this section.
2. Half of the directors of the Commission, including the chairman, shall be appointed to be executive directors and the remainder shall be appointed to be non-executive directors.

Vacancies in the office of chairman or deputy chairman

3. The Governor may appoint an executive director to be deputy chairman of the Commission.
4. 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 or other incapacity or is absent from Hong Kong the deputy chairman or an executive director designated under section 5 or 6 shall act as chairman in his place.

5. The chairman of the Commission may designate an executive director to act as chairman of the Commission during any period during which both he and the deputy chairman are unable to act as chairman due to illness or other incapacity or absence from Hong Kong, and may at any time revoke any such designation.

6. If no appointment has been made under section 3 or if the office of deputy chairman of the Commission is vacant, the Financial Secretary may designate an executive director to act as chairman of the Commission during any period during which the chairman of the Commission is unable to act as chairman due to illness or other incapacity or is absent from Hong Kong.

7. A designation under section 6 shall cease when it is revoked by the Financial Secretary or an appointment is made under section 3, whichever first occurs.

Directors

8. The terms and conditions of office of a director of the Commission shall be such as the Governor may determine.

9. A director of the Commission may at any time resign his office by letter sent to the Governor.

10. A director of the Commission shall be paid by the Commission such remuneration, allowances or expenses as the Governor may determine.

11. The Governor may by notice in writing remove from office any director of the Commission whose removal appears to him to be desirable for the effective performance by the Commission of its functions.

12. The Commission may act notwithstanding a vacancy among its directors.

Meetings of Commission

13. 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 or the deputy chairman or any 2 other directors.

14. At a meeting of the Commission -

(a) the chairman of the Commission shall be chairman of the meeting; or

(b) if the chairman of the Commission is not present, the deputy chairman shall be chairman of the meeting; or

(c) if neither the chairman of the Commission nor the deputy chairman is present, the directors present shall choose one of their number to be chairman of the meeting.

15. The quorum for a meeting of the Commission is 4 directors of whom 2 are executive directors and 2 are non-executive directors.

16. Each director of the Commission present at a meeting has a vote.

17. Every question for decision at a meeting of the Commission shall be determined by a majority of votes of the directors present and, in the event that voting is equally divided, subject to section 18 the chairman of the meeting shall have a casting vote.

18. The chairman of a meeting shall not exercise a casting vote until after he has consulted the Financial Secretary on the question.

19. A resolution in writing signed by all the directors of the Commission who are present in Hong Kong 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.

Administration, procedure and business

20. The Commission has a seal which shall be authenticated by the signature of the chairman or deputy chairman of the Commission, or by the signature of some other director of the Commission authorized by it to act in that behalf.

21. 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 and the proper exercise of powers.

Advisory Committee

22. The Advisory Committee shall consist of -

- (a) the chairman of the Commission;
- (b) not more than 2 executive directors of the Commission who shall be appointed by the

Commission;

(c) not less than 8 or more than 12 other members who shall be appointed by the Governor after consultation with the Commission.

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

- (a) the chairman of the Commission; or
- (b) any other 3 members of the Advisory Committee.

24. At a meeting of the Advisory Committee -

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

25. Where a member of the Advisory Committee appointed by the Commission ceases to be an executive director of the Commission, he ceases to be a member of the Advisory Committee.

26. The Governor may by notice in writing remove a person from membership of the Advisory Committee.

PART 2

NON-DELEGABLE FUNCTIONS OF THE COMMISSION

1. A power of the Commission to make subsidiary legislation.

2. The following powers of the Commission -
 - (a) to borrow money under section 2.6(d) of this Ordinance;
 - (b) to publish guidelines under section 2.6(e) of this Ordinance;
 - (c) to submit estimates to the Governor under section 2.9(2) of this Ordinance;
 - (d) to prepare an annual report and annual accounts under section 2.11 of this Ordinance;
 - (e) to appoint auditors under section 2.12(1) of this Ordinance;
 - (f) under section 3.2(3)(c) of this Ordinance, to specify a date for a decision of the Commission to come into operation before an appeal;
 - (g) to declare a company to be a recognized exchange company under section 4.2 of this Ordinance;
 - (h) under section 4.4 of this Ordinance, to approve futures contracts for trading on a futures market, or to approve things for trading on a stock market or futures market;
 - (i) to refuse to approve amendments to rules of a recognized exchange company, and to declare classes of rules that do not require approval under section 4.8 of this Ordinance;
 - (j) to request the Governor in Council to transfer functions of the Commission or to order that the Commission resume the exercise of such functions

under section 4.10 of this Ordinance;

(k) to approve the appointment of a chief executive of a recognized exchange company under section 4.11 of this Ordinance;

(l) to declare that a company shall cease to be a recognized exchange company under section 4.12 of this Ordinance;

(m) to direct that a recognized exchange company cease to provide or operate facilities under section 4.13 of this Ordinance;

(n) to direct a recognized exchange company to close its market under section 4.14 of this Ordinance;

(o) the power to refuse to approve rules of a recognized clearing house, and to declare classes of rules that do not require approval under section 5.4 of this Ordinance;

(p) to publish a report under section 7.6(4) of this Ordinance;

(q) to certify to the High Court a failure to comply with a requirement under section 7.9 of this Ordinance;

(r) to issue notices under sections 7.15, 7.16, 7.17 and 7.18 of this Ordinance;

(s) to substitute or vary a notice under section 7.20 of this Ordinance;

(t) to present a petition under section 7.22 of this Ordinance;

(u) to issue a notice under section 14.3 or 14.4 of this Ordinance;

(v) to appoint members to the Advisory Committee, under section 22(b) of Part 1.

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Sch. 3

SCHEDULE 3

[ss. 3.2 & 3.3]

APPEALS TO THE SECURITIES AND FUTURES APPEALS PANEL

PART 1

APPEALS TO THE PANEL

Item Decision or act that
 may give rise to an appeal

1. The refusal of an application for a licence, or for the status of an exempt securities dealer or exempt securities adviser, or the grant of such an application subject to conditions.

Who may appeal

The applicant.

Matter that may be appealed against

The refusal of a licence, or the conditions attached to a licence.

2. The attachment or amendment of licence conditions or of conditions of exemption as an exempt securities dealer or exempt securities adviser, or the refusal to remove or amend conditions.

The licensed person.

The conditions imposed.

3. Revocation of a licence, other than on death or dissolution, or at the request, of the licensed person.

The person whose licence is revoked.

The revocation.

4. Suspension of licence.

The person whose licence is suspended.

The suspension.

5. Revocation or suspension of status as exempt securities dealer or as exempt securities adviser.

The person whose exempt status is revoked or suspended.

The revocation or suspension.

6. Determination that an employee of an exempt dealer or adviser is not fit and proper person.

The exempt person. The employee.

The determination.

7. Refusal to approve a person as a responsible officer of a licensed corporation.

The corporation.

The person nominated by the corporation as a responsible officer.

The refusal to approve.

8. Revocation of approval of a person as a responsible officer of a licensed corporation.

The corporation.

The person nominated by the corporation as a responsible officer.

The revocation of approval.

9. Refusal of accreditation of a dealer's or adviser's representative under section 6.9 of this Ordinance.

The representative, and the dealer or adviser.

The refusal.

10. Issue of a notice under section 7.15, 7.16, 7.17, 7.18 or 7.20 of this Ordinance.

Any person on whom the notice is served.

The notice.

11. An award of compensation by a recognized exchange company for the purposes of Part X of this Ordinance, or the refusal to make such an award.

Any person who is refused an award, or is dissatisfied with the size of an award.

The refusal of an award or its amount.

PART 2

TRIBUNAL PROCEEDINGS

1. The parties shall be entitled to be heard -
 - (a) through counsel or a solicitor;
 - (b) where the appellant is a company, through any of its directors or employees;
 - (c) where the appellant is a partnership, through any of its partners;
 - (d) where the appellant is an individual, through the appellant in person; or
 - (e) with the leave of the tribunal hearing the appeal, through any other person.

2. A tribunal may -
 - (a) receive such evidence as it considers relevant, whether it would be admissible in a court or not;
 - (b) require evidence to be given on oath or affirmation and orally or in writing.

3. The member presiding at the hearing of the appeal may administer an oath or affirmation to any person.

4. A tribunal may require any record or other document specified by it and relating to the subject-matter of the appeal to be produced by the appellant or the Commission.

5. A tribunal may by notice in writing signed by the member presiding and served on the person to whom it is addressed, require that person to attend and give evidence before it at the hearing of

the appeal, and to produce such record or other document in that person's custody or under his control relating to the subject-matter of the appeal as may be specified in the notice.

6. Without affecting the generality of section 14.5(2) of this Ordinance, a tribunal and its members, and witnesses, counsel and any solicitor, and any other person who is a party to or who otherwise has an interest in the proceedings, shall have the same privileges and immunities in respect of the hearing of an appeal under this Part as they would have in proceedings before the High Court.

7. A tribunal may confirm, vary or reverse the decision or other determination under appeal.

8. Every decision of a tribunal shall contain a statement of the reasons for the decision.

9. (1) A tribunal may award to any party to the appeal costs against any other party, including costs against a party whose appeal has been withdrawn or whose application for a case to be stated is refused and costs so awarded shall be recoverable as a civil debt.

(2) A tribunal may order any appellant whose appeal is unsuccessful, or is withdrawn, to pay such costs and expenses incurred by, or on behalf of, the tribunal as it considers reasonable in the circumstances, and any sum so ordered to be paid shall be recoverable by the Commission as a civil debt.

10. The chairman of the Panel shall regulate the procedure for the hearing of appeals by tribunals, subject to the provisions of this Schedule and rules made under section 3.3(3) of this Ordinance.

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Sch. 4

SCHEDULE 4

[ss. 5.1, 5.3 & 5.19]

CLEARING HOUSES

PART 1

PROPERTY WHICH MAY BE SUBJECT TO A MARKET CHARGE
OR PROVIDED AS MARKET COLLATERAL

1. Money, letters of credit, bankers' drafts, certified cheques, and any similar instruments.
2. Securities, including securities which are not securities within the meaning of Part 1 of Schedule 1.
3. Futures contracts, options and any similar financial contracts.

PART 2
REQUIREMENTS FOR DEFAULT RULES
OF RECOGNIZED CLEARING HOUSES

The rules of a recognized clearing house, which provide for the taking of proceedings or other action if a participant appears to be unable, or likely to become unable, to meet his obligations for 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 participant a sum of money in relation to each contract if that is required after taking into account all the rights and liabilities of the participant under or in respect of the contract concerned;
- (c) enable all sums of money payable by or to the 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 participant;
- (d) if any net sum referred to in paragraph (c) is payable by the participant, provide for that net sum to be set-off against all property of the participant which is either subject to a market charge or which has been provided as market collateral (or set-off against the proceeds of the realization of such property) so as to produce a further net sum, if any, payable by or to the participant;

(e) if any net sum referred to in paragraph (c) is payable to the participant, provide that all property of the 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 participant, or of any further net sum referred to in paragraph (d) payable by or to the participant, as the case may be, or, if there is no such sum, the certification by the clearing house of that fact.

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Sch. 5

SCHEDULE 5 [s. 11.11]
INSIDER DEALING TRIBUNAL

1. In this Schedule, unless the context otherwise requires -
"chairman" () means the chairman of the Tribunal;
"inquiry" () means an inquiry under section 11.12 of this Ordinance;
"member" () means a member of the Tribunal;
"Tribunal" () means the Insider Dealing Tribunal referred to in section 11.11 of this Ordinance.

Appointment of members

2. Subject to section 4, the chairman shall be appointed for a term for 3 years but may from time to time, so long as he remains qualified under section 11.11(3) of this Ordinance, be reappointed.
3. The other 2 members shall be appointed to act in relation to any specified inquiry or inquiries and any such member may be so appointed more than once.
4. A member may at any time resign his office by notice in writing to the Governor.
5. A member other than the chairman may be removed from office by the Governor for incapacity, bankruptcy, neglect of duty or misconduct proved to the satisfaction of the Governor.

6. If an inquiry has been commenced by the Tribunal but not completed before the expiry of the chairman's term of office or before the resignation from or vacation of office by a member takes effect, the Governor may authorize the chairman or member to continue as chairman or a member of the Tribunal for the purpose of completing that inquiry.

Temporary members

7. The Governor may appoint a temporary member of the Tribunal to act in place of any member who is precluded by illness, absence from Hong Kong or any other cause from exercising his functions or who considers it improper or undesirable that he should exercise his functions in relation to any specified matter.

8. A temporary member who is appointed to act in place of the chairman shall be a judge and a temporary member who is appointed to act for an ordinary member shall not be a person who would be disqualified under section 11.11(3) of this Ordinance from appointment as a member.

9. A temporary member who acts in place of the chairman or other member shall be deemed for all purposes to be the chairman or other member of the Tribunal as the case may be.

Sittings and representation

10. The chairman shall convene such sittings of the Tribunal as he thinks necessary for the efficient performance of its functions.

11. The chairman shall preside at all sittings of the Tribunal and no sitting shall be held unless the other 2 members are also present.

12. 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.

13. Every sitting of the Tribunal shall be held in public unless the Tribunal considers that in the interests of justice a sitting or any part thereof should not be held in public in which case it may hold the sitting or part thereof in private.

14. The hearing of an application to the Tribunal to hold a sitting or part thereof in private shall be held in private.

15. A person whose conduct is the subject of an inquiry or who is implicated, or concerned in the subject-matter of an inquiry shall be entitled to be present in person at any sitting of the Tribunal relating to that inquiry and to be represented by a barrister or solicitor.

16. For the purposes of section 15 the Tribunal shall determine whether the conduct of any person is the subject of the inquiry or whether a person is in any way implicated or concerned in the subject-matter of the inquiry.

17. The Tribunal may appoint a legal officer nominated by the Attorney General, a barrister or a solicitor to act as counsel for the Tribunal.

18. In section 15, "sitting" () does not include any meeting of the Tribunal which is held for the purpose of deliberating on any question before the Tribunal.

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Sch. 6

SCHEDULE 6

[ss. 13.1, 13.5 & 13.11]

PROMOTION OF INVESTMENTS

PART 1

SUM SPECIFIED FOR THE PURPOSES OF SECTION 13.5(2)(f) AND (g) OF THIS ORDINANCE

\$1 million or its equivalent in any other currency.

PART 2

INSTRUMENTS

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.

PART 3

MULTILATERAL AGENCIES

1. The African Development Bank.
2. The Asian Development Bank.

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

PART 4
LIST OF EXEMPTED BODIES WHICH MAY BE AMENDED
UNDER SECTION 13.11(2) OF THIS ORDINANCE

1. Hong Kong Export Credit Insurance Corporation.
2. The Hong Kong Industrial Estates Corporation.
3. Hong Kong Productivity Council.
4. Hong Kong Tourist Association.
5. Hong Kong Trade Development Council.
6. The Vocational Training Council.

PART 5
LIST OF EXEMPTED BODIES WHICH MAY NOT BE AMENDED
UNDER SECTION 13.11(2) OF THIS ORDINANCE

1. The Government.
2. Urban Council.
3. Regional Council.
4. Any District Board.

5. Hong Kong Housing Authority.
6. Kowloon-Canton Railway Corporation.
7. Mass Transit Railway Corporation.
8. Land Development Corporation.
9. Any other corporation which has any of its shares listed on the Stock Exchange and any wholly owned subsidiary of such a corporation, whether incorporated in Hong Kong or elsewhere.

PART 6
SUM SPECIFIED FOR THE PURPOSES OF DEFINITION OF "RELEVANT CONDITION" IN SECTION 13.5(9) OF
THIS ORDINANCE

\$100 million or its equivalent in any other currency.

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Sch. 7

SCHEDULE 7

[ss. 13.9 & 13.11]

PART 1
REQUIREMENTS TO BE SATISFIED IN RELATION TO
OFFERS TO ACQUIRE SECURITIES

1. If the securities to be acquired are currently listed or quoted on the Stock Exchange or a stock market outside Hong Kong the offer shall, subject to section 2 -
 - (a) state this fact and specify on which stock markets the securities are currently listed or quoted;
 - (b) specify the last recorded price paid in respect of the securities on each stock market on the latest practicable date during the period of 3 months immediately preceding the date of the offer;
 - (c) specify the last price paid 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 prices paid in respect of the securities during the period of 6 months immediately preceding the date of the offer;
 - (e) where the offer has been the subject of a public announcement, whether in a newspaper or in any other form of news medium or otherwise, specify the last price paid in respect of the securities on the last trading day during the period of 3 months immediately preceding the public announcement, or, if the securities were not dealt in during that period, this should be stated.

2. If the securities proposed to be acquired are not listed or quoted on any stock market, the offer shall contain -
 - (a) any information that the offeror may have as to the number and nominal value 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, or, where the offeror has no such information, a statement to that effect; and
 - (b) particulars of any restriction in the constitution of the corporation which issued the securities on the right to transfer the securities which has the effect of requiring the offerees, before transferring securities held by them in the corporation, to offer those securities for purchase to members of the corporation 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. Where the securities proposed to be acquired are those of a corporation incorporated outside Hong Kong and any holders of those securities reside in Hong Kong, and those securities are listed or quoted on a stock market of the country or territory in which the corporation is incorporated, the offer shall state this fact and specify the stock market on which they are listed or quoted.

4. The offer shall contain, in a prominent position in printing not smaller than 8 point Times, a notice in the following form -

"IMPORTANT

If you are in doubt as to any aspect of this offer,
you should consult a licensed securities dealer,
a bank manager, solicitor, professional accountant,
or other professional adviser."

PART 2
REQUIREMENTS TO BE SATISFIED IN RELATION TO
OFFERS TO DISPOSE OF SECURITIES

1. If the securities offered will be uniform in all respects with the securities currently listed or quoted on the Stock Exchange or a stock market outside Hong Kong, the offer shall -
 - (a) state that fact and specify the stock market on which those securities, or the securities with which they will be uniform, are currently listed or quoted;
 - (b) specify the last recorded price paid in respect of the securities on the stock market on the latest practicable date during the period of 3 months immediately preceding the date of the offer;
 - (c) specify the last price paid 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 prices paid in respect of the securities during the period of 6 months immediately preceding the date of the offer;
 - (e) where the offer has been the subject of a public announcement, whether, in a newspaper or in any other

form of news medium or otherwise, specify the last price paid on the last trading day during the period of 3 months immediately preceding the public announcement, or, if the securities were not dealt in during that period, this should be stated.

2. Where the securities offered are those of a corporation incorporated outside Hong Kong and -

(a) are listed or quoted on a stock market in the country or territory where the corporation was incorporated; or

(b) are yet to be issued but will be in all respects uniform with the securities already so listed or quoted,

the offer shall specify that fact and the name of the stock market on which those securities, or the securities with which they will be uniform, are so listed or quoted.

3. The offer shall, in the case of securities of a corporation which are not listed or quoted on the Stock Exchange or other stock market or which are not uniform in all respects with securities so listed or quoted -

(a) give particulars of any restriction in the corporation's constitution which has the effect of requiring a holder of the corporation's securities to offer them for purchase to members of the corporation or any other person before transferring them in pursuance of the offer;

(b) except where the offer is accompanied by a document which conforms with Part II or Part XII of the Companies Ordinance (Cap. 32) in relation to the corporation whose securities are the subject of the offer, contain the particulars specified in section 4 or be accompanied by a statement in writing containing those particulars.

4. (1) The particulars referred to in section 3(b) are as follows -

- (a) (i) the year in which, and the country or territory in which, the issuing corporation was incorporated;
 - (ii) the address of its registered or principal office in Hong Kong; and
 - (iii) where the issuing corporation is incorporated outside Hong Kong, the address of its registered or principal office in the country or territory in which it was incorporated or is resident;
- (b) (i) the authorized capital of the issuing corporation;
 - (ii) the amount of the authorized capital of the corporation 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 that capital is divided;
 - (iv) the rights of each class of shareholder in respect of capital, dividends and voting; and
 - (v) the number and total nominal value respectively of shares issued for cash and shares issued as fully or partly paid up for a consideration other than cash;
- (c)
- (i) the number and total nominal value of shares issued since the close of the last financial year of the issuing corporation;
 - (ii) the classes (if any) into which the shares are divided and the rights of each class of shareholder in respect of capital, dividends and voting;
 - (iii) the number and total nominal value respectively of shares issued as fully or partly paid up for cash or as fully or partly paid up for a consideration other than cash, or both;
 - (iv) the number of redeemable preference shares (if any) redeemed and the amounts repaid in respect of the shares so redeemed; and
 - (v) particulars of any reduction of capital lawfully authorized in respect of the corporation;
- (d) particulars of any reorganization of the capital of the issuing corporation during each of its 2 financial years preceding the date of the offer;

- (e) (i) the amount of the net profit or loss of the issuing 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 of dividends paid by the issuing corporation and the amount distributed by way of dividends on each class of shares during each of the 5 financial years immediately preceding 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 issuing 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 issuing corporation;
- (h) the number, description, and nominal value of the securities of the issuing corporation held by or on behalf of each of its directors or, if a director does not hold any such securities and no securities are held on his behalf, a statement to that effect; and

(i) whether or not the securities offered are, or, in the case of securities to be issued, will be, fully paid up, and, if not, to what extent they are or will be paid up, and, if the issuing corporation has fixed a date and amount for payment of outstanding calls, the date and amount of each such call.

(2) If any of the particulars required by subsection (1) are not available by reason of the issuing corporation not having carried on business for a sufficient length of time, or for any other reason, the offer shall state that fact; and if the issuing corporation is one incorporated in Hong Kong in respect of which those particulars are not available in the returns of the corporation filed with the Registrar of Companies, the offer shall also state that fact.

5. If the securities offered are not yet to be issued, the offer shall -

- (a) state -
- (i) whether or not the issue requires the authority of a resolution of the issuing corporation;
 - (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 issuing corporation since the date of the

balance sheet and profit and loss account of the corporation for the financial year preceding the date of the offer and, if so, particulars of the change;

(b) be accompanied by copies of the balance sheet and profit and loss account of the corporation (if any) made up to the end of the last financial year of the corporation preceding the date of the offer;

(c) be accompanied by copies of the memorandum and articles of association or other document constituting or defining the constitution of the issuing corporation unless the offer specifies -

(i) a place in Hong Kong at which copies of those documents 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 issuing corporation that are not currently listed on the Stock Exchange or other stock market, give any information that the offeror may have as to the number and nominal value of those securities which have been sold during the period of 6 months preceding the date of the offer, and the prices yielded from the sales or, if the offeror has no such information, state that fact;

(e) in the case of securities which will not be uniform in all respects with securities previously issued by the issuing corporation, 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 (if any) 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 the Stock Exchange or other stock market and, if such an application has been made, the name of the stock market applied to.

6. The offer shall contain in a prominent position, in printing not smaller than 8 point Times, a notice in the following form -

"IMPORTANT

If you are in doubt as to any aspect of this offer,

you should consult a licensed securities dealer,

a bank manager, solicitor, professional accountant, or other professional adviser."

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Sch. 8

SCHEDULE 8

[s. 15.2]

TRANSITIONAL ARRANGEMENTS

Part III of this Ordinance (Securities and Futures Appeals Panel)

1. Where a person has appealed to the Securities and Futures Appeals Panel prior to the commencement of this Ordinance under -

- (a) Part III of the Securities and Futures Commission Ordinance (Cap. 24); or
- (b) Part IX of the Leveraged Foreign Exchange Trading Ordinance (Cap. 451),

and the appeal has not been determined by then, the appeal may continue, and shall be disposed of, as if this Ordinance had not been enacted, subject to the provisions of this Schedule relating to Part VI of this Ordinance.

2. Where at the commencement of this Ordinance the time has not expired in any particular case for making an appeal under -

- (a) Part III of the Securities and Futures Commission Ordinance (Cap. 24); or
- (b) Part IX of the Leveraged Foreign Exchange Trading Ordinance (Cap. 451),

an appeal may be made, and shall be disposed of, as if this Ordinance has not been enacted, subject to the provisions of this Schedule relating to Part VI of this Ordinance.

3. A person who immediately prior to the commencement of this Ordinance is a member of the Securities and Futures Appeals Panel established under Part III of the Securities and Futures Commission Ordinance (Cap. 24), or is a member of a tribunal constituted under that Part, shall be regarded as a person appointed to be a member of the Securities and Futures Appeals Panel, or of a tribunal appointed from it, under Part III of this Ordinance.

Part IV of this Ordinance (Exchanges)

4. With effect from the commencement of this Ordinance, but without prejudice to its provisions relating to the regulation of the Stock Exchange Company and of other recognized exchange companies -

(a) The Stock Exchange of Hong Kong Limited shall be regarded as the Stock Exchange Company;

(b) the Hong Kong Futures Exchange Limited shall be regarded as a recognized exchange company

authorized to operate a futures market in Hong Kong;

(c) the rules of The Stock Exchange of Hong Kong Limited and of the Hong Kong Futures

Exchange Limited which are in effect immediately prior to the commencement of this Ordinance shall be regarded as having been approved by the Commission under this Ordinance.

Part V of this Ordinance (Clearing houses)

5. With effect from the commencement of this Ordinance, but without prejudice to its provisions relating to the regulation of recognized clearing houses -

- (a) Hong Kong Securities Clearing Corporation Limited shall be regarded as a recognized clearing house for the clearing of securities;
- (b) HKFE Clearing Corporation Limited shall be regarded as a recognized clearing house for the clearing of futures contracts;
- (c) SEHK Options Clearing House Limited shall be regarded as a recognized clearing house for the clearing of exchange traded options; and
- (d) the rules of the clearing houses referred to in paragraphs (a), (b) and (c) which are in effect immediately prior to the commencement of this Ordinance shall be regarded as having been approved by the Commission under this Ordinance.

Part VI of this Ordinance (Licensing of dealers, advisers and representatives)

- 6. A person who immediately prior to the commencement of this Ordinance is registered under the Securities Ordinance (Cap. 333) as a dealer shall thereupon be regarded as licensed under this Ordinance as a securities dealer.
- 7. Where a corporation falls under section 6 to be regarded as licensed under this Ordinance as a securities dealer, any director of that corporation who immediately prior to the commencement of this Ordinance is registered under the Securities Ordinance (Cap. 333) as a dealer shall thereupon be regarded as the corporation's licensed representative, and as its responsible officer, under this Ordinance.

8. (1) A person who immediately prior to the commencement of this Ordinance is registered under the Securities Ordinance (Cap. 333) as an investment adviser shall thereupon be regarded as licensed under this Ordinance as a securities adviser, subject to subsection (2).

(2) A person who falls under subsection (1) to be regarded as licensed as a securities adviser under this Ordinance may hold property of clients, but only -

(a) if at the commencement of this Ordinance an application has been made to the Commission for that person to be licensed under this Ordinance as a securities dealer; and

(b) for so long as that application is not refused.

9. Where a corporation falls under section 8 to be regarded as licensed under this Ordinance as a securities adviser, any director of that corporation who immediately prior to the commencement of this Ordinance is registered under the Securities Ordinance (Cap. 333) as an investment adviser shall thereupon be regarded as the corporation's licensed representative, and as its responsible officer, under this Ordinance.

10. A partnership that immediately before the commencement of this Ordinance is registered under the Securities Ordinance (Cap. 333) as a dealing partnership or as an investment adviser's partnership shall thereupon cease to be registered or licensed, but each partner in the partnership who immediately before the commencement is registered as a dealer or investment adviser shall be regarded as licensed under this Ordinance as a securities dealer or, as the case may be, as a securities adviser.

11. A person who immediately prior to the commencement of this Ordinance is registered under the Securities Ordinance (Cap. 333) as a dealer's representative or as an investment adviser's representative shall thereupon be regarded as licensed under this Ordinance as a securities dealer's representative or, as the case may be, a securities adviser's representative.

12. A person who immediately prior to the commencement of this Ordinance is registered under the Commodities Trading Ordinance (Cap. 250) as a dealer shall thereupon be regarded as licensed under this Ordinance as a futures dealer.

13. Where a corporation falls under section 12 to be regarded as licensed under this Ordinance as a futures dealer, any director of that corporation who immediately prior to the commencement of this Ordinance is registered under the Commodities Trading Ordinance (Cap. 250) as a dealer shall thereupon be regarded as the corporation's licensed representative, and as its responsible officer, under this Ordinance.

14. (1) A person who immediately prior to the commencement of this Ordinance is registered under the Commodities Trading Ordinance (Cap. 250) as a commodities trading adviser shall thereupon be regarded as licensed under this Ordinance as a futures adviser, subject to subsection (2).

(2) A person who falls under subsection (1) to be regarded as licensed as a futures adviser under this Ordinance may hold property of clients, but only -

(a) if at the commencement of this Ordinance an application has been made to the Commission for that

person to be licensed under this Ordinance as a futures dealer; and

(b) for so long as that application is not refused.

15. Where a corporation falls under section 14 to be regarded as licensed under this Ordinance as a futures adviser, any director of that corporation who immediately prior to the commencement of this Ordinance is registered under the Commodities Trading Ordinance (Cap. 250) as a commodities trading adviser shall thereupon be regarded as the corporation's licensed representative and as its responsible officer, under this Ordinance.

16. A person who immediately prior to the commencement of this Ordinance is registered under the Commodities Trading Ordinance (Cap. 250) as a dealer's representative or as a commodities trading adviser's representative shall thereupon be regarded as licensed under this Ordinance as a futures dealer's representative or, as the case may be, a futures adviser's representative.

17. A person who immediately prior to the commencement of this Ordinance is an exempt dealer under the Securities Ordinance (Cap. 333) shall thereupon be regarded as an exempt securities dealer under this Ordinance.

18. A person who immediately prior to the commencement of this Ordinance is an exempt adviser under the Securities Ordinance (Cap. 333) shall thereupon be regarded as an exempt securities adviser under this Ordinance.

19. Where an application is made, prior to the commencement of this Ordinance, for registration or for a licence in any capacity specified in column 2 of the Table, and the application has not been granted or refused by the Commission by then, the application may thereupon 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 pendingat commencement
1. for registration as a dealer under the Securities Ordinance (Cap. 333)
2. for registration as an investment adviser under the Securities Ordinance (Cap. 333)
3. for registration as a dealer's representative under the Securities Ordinance (Cap. 333)
4. for registration as an investment adviser's representative under the Securities Ordinance (Cap. 333)
5. for registration as a dealer under the Commodities Trading Ordinance (Cap. 250)
6. for registration as a commodity trading adviser under the Commodities Trading Ordinance (Cap. 250)
7. for registration as a dealer's representative under the Commodities Trading Ordinance (Cap. 250)
8. for registration as a commodity trading adviser's representative under the

Commodities Trading Ordinance (Cap.
250)

To be treated as application

for a licence as a securities dealer

for a licence as a securities adviser

for a licence as a securities dealer's
representative

for a licence as a securities adviser's
representative

for a licence as a futures dealer

for a licence as a futures adviser

for a licence as a futures dealer's
representative

for a licence as a futures adviser's
representative

9.
for a licence as a leveraged foreign
exchange trader under the Leveraged
Foreign Exchange Trading Ordinance
(Cap. 451)

10.
for a licence as a representative under the
Leveraged Foreign Exchange Trading
Ordinance (Cap. 451)

for a licence as a leveraged foreign
exchange trader

for a licence as a leveraged foreign
exchange trader's representative

20. A person who immediately prior to the commencement of this Ordinance is a responsible director of a corporation under the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) shall thereupon be regarded as a responsible officer of the corporation under this Ordinance.

21. An institution that immediately prior to the commencement of this Ordinance is a recognized counterparty under the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) by virtue of having been designated in writing as such by the Commission shall thereupon be regarded as a recognized counterparty under this Ordinance.

22. Where an issuer has, for the purposes of the definition of "specified debt securities" in the Leveraged Foreign Exchange Trading Ordinance (Cap. 451), been approved by the Commission and the approval subsists immediately prior to the commencement of this Ordinance, the issuer shall be regarded as having been approved for the purposes of the definition of that term in this Ordinance.

23. Where approval has been given by the Commission under the Securities and Futures Commission Ordinance (Cap. 24) for premises to be used for keeping records or other documents, and such approval subsists immediately prior to the commencement of this Ordinance,

the approval shall be regarded as subsisting for the purposes of this Ordinance.

24. Where in any case the Commission has waived any requirement under section 55 of the Securities and Futures Commission Ordinance (Cap. 24) or section 69 of the Leveraged Foreign Exchange Trading Ordinance (Cap. 451), and the waiver subsists immediately prior to the commencement of this Ordinance, the waiver shall be regarded as subsisting for the purposes of this Ordinance.

25. Any condition that has been attached by the Commission to -

- (a) a person's registration under the Securities Ordinance (Cap. 333);
- (b) a person's registration under the Commodities Trading Ordinance (Cap. 250); or
- (c) a licence issued under the Leveraged Foreign Exchange Trading Ordinance (Cap. 451),

and that is in effect immediately prior to the commencement of this Ordinance, shall be treated as being attached to any licence which is regarded as subsisting by virtue of these transitional provisions.

26. Where the Commission has commenced action prior to the commencement of this Ordinance under -

- (a) section 55 or 56 of the Securities Ordinance (Cap. 333);
- (b) section 35 or 36 of the Commodities Trading Ordinance (Cap. 250); or
- (c) section 11 or 12 of the Leveraged Foreign Exchange Trading Ordinance (Cap. 451),

it may thereafter continue that action under section 6.14 or 6.15 of this Ordinance.

Part X of this Ordinance (Investor compensation)

27. (1) For the purposes of sections 28 and 29 -

(a) "appointed day" () means the day on which Part X of this Ordinance comes into effect;

(b) any term or expression not defined in this Ordinance shall have the same meaning as it had,

immediately prior to the appointed day, in either the Securities Ordinance (Cap. 333) or the Commodities Trading Ordinance (Cap. 250) depending on which of the provisions of those 2 Ordinances continues to apply to the circumstances in question by virtue of this Part;

(c) a reference to any provision in the Securities Ordinance (Cap. 333) or the Commodities Trading Ordinance (Cap. 250) shall be a reference to that provision in force immediately prior to the appointed day.

(2) The provisions of Part X of the Securities Ordinance (Cap. 333) and Part VIII of the Commodities Trading Ordinance (Cap. 250) in force immediately prior to the appointed day, other than section 112 of the Securities Ordinance (Cap. 333) and section 89 of the Commodities Trading Ordinance (Cap. 250) shall, subject to this Schedule, continue to apply for the purposes of this Schedule, and without prejudice to the generality of the foregoing -

(a) the Unified Exchange Compensation Fund established and maintained under section 99 of the Securities

Ordinance (Cap. 333) and the Futures Exchange Compensation Fund established and maintained under section 77 of the Commodities Trading Ordinance (Cap. 250) (hereinafter referred to as "the compensation funds") shall continue in existence and shall be maintained by the Commission at a level which is sufficient in its opinion to meet any claims or likely claims made or continued under this Schedule, until such time as any balance remaining therein is paid to the respective Exchange Company under this Schedule; and

(b) the Securities Compensation Fund Committee established under section 100 of the Securities Ordinance (Cap. 333) shall continue in existence for the purposes of that section and the Futures Compensation Fund Committee established under section 78 of the Commodities Trading Ordinance (Cap. 250) shall continue in existence for the purposes of that section in each case with such members as were appointed thereto immediately prior to the appointed day or as are appointed from time to time thereafter under those sections.

(3) The provisions of -

- (a) sections 52 and 52A of the Securities Ordinance (Cap. 333);
- (b) rules 2, 4, 5 and 6 and the Schedule to the Securities (Miscellaneous) Rules (Cap. 333 sub. leg.);
- (c) sections 31 and 33 of the Commodities Trading Ordinance (Cap. 250); and

(d) Parts I and III and Schedule 2 of the Commodities Trading (Dealers, Commodity Trading Advisers and Representatives) Rules (Cap. 250 sub. leg.), in force immediately prior to the appointed day shall, subject to this section, continue to apply for the purposes of this Schedule.

28. (1) A claim for compensation made before the appointed day that has not been disposed of may be continued and disposed of under this section.

(2) As soon as 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 from a compensation fund may be made by any person.

(3) Where, in respect of a default occurring prior to the appointed day, a person wishes to claim compensation from a compensation fund, he shall lodge his claim in writing with the Commission -

(a) if a notice under subsection (2) has been published, on or before the date specified in the notice;

or

(b) if no such notice has been published, within 3 months after the claimant became aware of the default giving rise to the claim.

(4) Any claim that is not made within the time limited by subsection (3) shall, unless the Commission otherwise determines, be barred.

(5) After -

- (a) all claims made or continued under this section have been disposed of; and
- (b) all outstanding liabilities against the compensation funds have been satisfied subject to

subsection (6),

the Commission shall pay the balance remaining in each of the compensation funds to the respective Exchange Company, who shall use the whole of such monies for the purpose of fund compensation arrangements prescribed in rules made under Part X of this Ordinance.

(6) The Commission shall hold funds for a claimant for 3 years after the claim is resolved after which time the Commission shall pay the money to the respective Exchange Company under subsection (5)(b) if the claimant cannot be located.

(7) Except as provided in this section, no claim may be made for compensation from the compensation funds.

29. (1) Where, prior to the appointed day, a dealer has -

- (a) become bankrupt or has been ordered to be wound up or dissolved;
- (b) committed a default;
- (c) had his certificate of registration revoked;
- (d) been convicted; or
- (e) ceased to be registered,

in circumstances described in either section 52 of the Securities Ordinance (Cap. 333) or section 33 of the Commodities Trading Ordinance (Cap. 250) and no transfer, payment, forfeiture or release of or from any deposit has been made pursuant to either of those sections then such transfer, payment, forfeiture or release and any subsequent application of such deposit may continue to be made under the applicable provision specified in section 27(3).

(2) As soon as 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 against a deposit referred to above may be made by any person.

(3) Where, in respect of a default occurring prior to the appointed day, a person wishes to make a claim against a deposit, he shall lodge his claim in writing with the Commission -

(a) if a notice under subsection (2) 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 the claimant became aware of the circumstances giving rise to the claim.

(4) Any claim that is not made within the time limited by subsection (3) shall, unless the Commission otherwise determines, be barred.

(5) After all claims made or continued under this section have been disposed of the Commission shall refund each deposit or the balance remaining to the dealer concerned.

(6) If the dealer cannot be located within 3 years of -

(a) a claim having been determined; or

(b) where there are no claims, the period limited by subsection (3),

the Commission shall pay the money into the general revenue.

(7) Except as provided in this section no claim may be made against any deposit paid under section 52 of the Securities Ordinance (Cap. 333) or section 31 of the Commodities Trading Ordinance (Cap. 250).

Part XIII of this Ordinance (Offers of investments)

30. A unit trust or mutual fund corporation that is, immediately prior to the commencement of this Ordinance, an authorized unit trust or mutual fund corporation under section 15 of the Securities Ordinance (Cap. 333), shall thereupon be regarded as authorized under section 13.3 of this Ordinance.

Part XIV of this Ordinance (Miscellaneous)

31. Proceedings that have been instituted prior to the commencement of this Ordinance under section 13 of the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) may be continued under section 14.6 of this Ordinance.

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Clause

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