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# Securities and Futures (Amendment) Bill 2013

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# A BILL

## To

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

Enacted by the Legislative Council.

### **Part 1**

#### **Preliminary**

##### **1. Short title and commencement**

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

## Part 2

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

**2. Securities and Futures Ordinance amended**

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

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

(1) Section 21(1)(a)(i)—

**Repeal**

“; or”

**Substitute a semicolon.**

(2) Section 21(1)(a)(ii)—

**Repeal**

“and”

**Substitute**

“or”.

(3) After section 21(1)(a)(ii)—

**Add**

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

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

(1) Section 27(1)(a)—

**Repeal**

“or futures contracts”

**Substitute**

“, futures contracts or OTC derivative products”.

(2) Section 27(1)(b)—

**Repeal**

“or futures contracts”

**Substitute**

“, futures contracts or OTC derivative products”.

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

Section 38(1)(a)—

**Repeal**

“or futures contracts”

**Substitute**

“, futures contracts or OTC derivative products”.

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

(1) Section 42(1)(a)—

**Repeal**

“or futures contracts”

**Substitute**

“, futures contracts or OTC derivative products”.

(2) Section 42(1)(b)—

**Repeal**

“or futures contracts”

**Substitute**

“, futures contracts or OTC derivative products”.

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

- (1) After section 63(1)(a)—

**Add**

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

- (2) Section 63(1)(b)—

**Repeal**

“or futures contracts”

**Substitute**

“, futures contracts or OTC derivative products”.

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

- (1) Section 71(1)(a)(ii)—

**Repeal**

“; or”

**Substitute a semicolon.**

- (2) After section 71(1)(a)(ii)—

**Add**

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

- (3) Section 71(1)(a)(iii)—

**Repeal**

“or futures contracts”

**Substitute**

“, futures contracts or OTC derivative products”.

**9. Part IIIA added**

After Part III—

**Add**

**“Part IIIA**

**OTC Derivative Transactions**

**Division 1—Interpretation**

**101A. Interpretation of Part IIIA**

In this Part—

***clearing obligation*** (結算責任)—

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

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

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

- (a) a name under section 101S(1); or

(b) an entry under section 101S(2);

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

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

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

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

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

(a) for that specific class; and

(b) by rules made under section 101W(a)(i);

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

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

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

**prescribed manner** (訂明方式)—

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

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

**prescribed person** (訂明人士)—

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

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

**reporting obligation** (匯報責任)—

- (a) in relation to a prescribed person that is an authorized financial institution incorporated in Hong Kong, means—
  - (i) an obligation imposed by section 101B(1); or



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

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

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

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

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

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

(a) in relation to the reporting obligation, means a transaction specified in the reporting rules for the purposes of that obligation;

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

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

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

(a) to whom section 101O(1) applies; and

(b) whose position in respect of a specific class has reached the notification level;

**trading obligation** (交易責任)—

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

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

- (ii) an obligation imposed by section 101D(3); and
  - (b) in relation to any other prescribed person, means an obligation imposed by section 101D(1);
- trading rules** (《交易規則》) means rules made under section 101M;
- underlying subject matter** (標的項目)—
- (a) in relation to a transaction in an OTC derivative product that falls within subsection (1)(a)(i) of section 1A of Part 1 of Schedule 1, means any type or combination of types of securities, commodity, index, property, interest rate, currency exchange rate or futures contract;
  - (b) in relation to a transaction in an OTC derivative product that falls within subsection (1)(a)(ii) of section 1A of Part 1 of Schedule 1, means any basket of more than one type, or any combination of types, of securities, commodity, index, property, interest rate, currency exchange rate or futures contract; and
  - (c) in relation to a transaction in an OTC derivative product that falls within subsection (1)(a)(iii) of section 1A of Part 1 of Schedule 1, means any specified event or events (excluding an event or events relating only to the issuer or guarantor of the instrument or to both the issuer and the guarantor).

## **Division 2—Reporting, Clearing and Trading Obligations**

### **101B. Reporting obligation**

- (1) A prescribed person must report an OTC derivative transaction to which subsection (2) applies—

- 
- (a) to the Monetary Authority; and
  - (b) in accordance with the reporting rules.
- (2) This subsection applies to an OTC derivative transaction that—
- (a) is specified in the reporting rules—
    - (i) in relation to the prescribed person; and
    - (ii) as a transaction that is required to be reported to the Monetary Authority;
  - (b) falls within the circumstances and the criteria specified in those rules—
    - (i) in relation to the prescribed person; and
    - (ii) for the application of the requirement to report referred to in paragraph (a)(ii); and
  - (c) does not fall within the circumstances specified in those rules—
    - (i) in relation to the prescribed person; and
    - (ii) as circumstances in which the requirement to report is taken to have been complied with.
- (3) In addition, a prescribed person that is an authorized financial institution incorporated in Hong Kong must ensure that a subsidiary of that institution specified under subsection (5) complies in relation to an OTC derivative transaction with the requirement set out in subsection (4).
- (4) The requirement is that the subsidiary reports to the Monetary Authority, in accordance with the reporting rules, an OTC derivative transaction—
- (a) to which the subsidiary is a counterparty; and
  - (b) that is specified in those rules as a transaction to which subsection (3) applies.

- (5) The Monetary Authority may, by a written notice given to an authorized financial institution incorporated in Hong Kong, specify for the purposes of subsection (3)—
- (a) a particular subsidiary;
  - (b) more than one subsidiary; or
  - (c) subsidiaries generally.
- (6) The Monetary Authority may specify under subsection (5) a subsidiary incorporated outside Hong Kong or a subsidiary incorporated in Hong Kong.

**101C. Clearing obligation**

- (1) A prescribed person must clear an OTC derivative transaction to which subsection (2) applies—
- (a) with a designated CCP; and
  - (b) in accordance with the clearing rules.
- (2) This subsection applies to an OTC derivative transaction that—
- (a) is specified in the clearing rules—
    - (i) in relation to the prescribed person; and
    - (ii) as a transaction that is required to be cleared with a designated CCP;
  - (b) falls within the circumstances and the criteria specified in those rules—
    - (i) in relation to the prescribed person; and
    - (ii) for the application of the requirement to clear referred to in paragraph (a)(ii); and
  - (c) does not fall within the circumstances specified in those rules—
    - (i) in relation to the prescribed person; and

- (ii) as circumstances in which the requirement to clear is taken to have been complied with.
- (3) In addition, a prescribed person that is an authorized financial institution incorporated in Hong Kong must ensure that a subsidiary of that institution specified under subsection (5) complies in relation to an OTC derivative transaction with the requirement set out in subsection (4).
- (4) The requirement is that the subsidiary clears with a designated CCP, in accordance with the clearing rules, an OTC derivative transaction—
  - (a) to which the subsidiary is a counterparty; and
  - (b) that is specified in those rules as a transaction to which subsection (3) applies.
- (5) The Monetary Authority may, by a written notice given to an authorized financial institution incorporated in Hong Kong, specify for the purposes of subsection (3)—
  - (a) a particular subsidiary;
  - (b) more than one subsidiary; or
  - (c) subsidiaries generally.
- (6) The Monetary Authority may specify under subsection (5) a subsidiary incorporated outside Hong Kong or a subsidiary incorporated in Hong Kong.

**101D. Trading obligation**

- (1) A prescribed person must execute an OTC derivative transaction to which subsection (2) applies—
  - (a) only on a designated trading platform; and
  - (b) in accordance with the trading rules.
- (2) This subsection applies to an OTC derivative transaction that—

- 
- (a) is specified in the trading rules—
    - (i) in relation to the prescribed person; and
    - (ii) as a transaction that is required to be executed only on a designated trading platform;
  - (b) falls within the circumstances and the criteria specified in those rules—
    - (i) in relation to the prescribed person; and
    - (ii) for the application of the requirement to execute as described in paragraph (a)(ii); and
  - (c) does not fall within the circumstances specified in those rules—
    - (i) in relation to the prescribed person; and
    - (ii) as circumstances in which the requirement to execute as described in subsection (1) is taken to have been complied with.
- (3) In addition, a prescribed person that is an authorized financial institution incorporated in Hong Kong must ensure that a subsidiary of that institution specified under subsection (5) complies in relation to an OTC derivative transaction with the requirement set out in subsection (4).
- (4) The requirement is that the subsidiary executes only on a designated trading platform and in accordance with the trading rules an OTC derivative transaction—
- (a) to which the subsidiary is a counterparty; and
  - (b) that is specified in those rules as a transaction to which subsection (3) applies.
- (5) The Monetary Authority may, by a written notice given to an authorized financial institution incorporated in Hong Kong, specify for the purposes of subsection (3)—

- (a) a particular subsidiary;
  - (b) more than one subsidiary; or
  - (c) subsidiaries generally.
- (6) The Monetary Authority may specify under subsection (5) a subsidiary incorporated outside Hong Kong or a subsidiary incorporated in Hong Kong.

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

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

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

- (1) If a prescribed person that is an authorized financial institution or an approved money broker contravenes the reporting obligation, clearing obligation or trading obligation, the Monetary Authority may apply to the Court of First Instance in respect of the contravention.
- (2) The application must be made by originating summons that is in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

- (3) The Court of First Instance may inquire into the case and, if satisfied that there is no reasonable excuse for the contravention, impose a financial penalty not exceeding \$5,000,000 on the prescribed person.

### **101G. Exemptions from obligations**

- (1) On application by a prescribed person and on payment of the prescribed fee, the Commission may, with the consent of the Monetary Authority—
  - (a) exempt the person from one or more of the following—
    - (i) the reporting obligation;
    - (ii) the clearing obligation;
    - (iii) the trading obligation; and
  - (b) on granting the exemption, impose conditions.
- (2) The Commission may, with the consent of the Monetary Authority—
  - (a) suspend or withdraw an exemption on—
    - (i) the ground that a condition has not been complied with; or
    - (ii) any other ground that the Commission considers appropriate; or
  - (b) amend any condition.
- (3) The Commission must publish on the Internet particulars that it considers appropriate of an exemption granted, suspended or withdrawn under this section.



**101H. Guidelines on exemptions**

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

**Division 3—Designation of Central Counterparties and Trading Platforms****101I. Designation of central counterparties**

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

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

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

### **101J. Designation of trading platforms**

- (1) On application by a person in the prescribed manner and on payment of the prescribed fee, the Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary—
  - (a) designate the person, in accordance with the designation rules and by a written notice served on the person, as a trading platform for the purposes of this Part; or
  - (b) refuse, in accordance with the designation rules, to designate the person.
- (2) A person may be designated only if—
  - (a) at the time of designation, the person—
    - (i) is a recognized exchange company; or
    - (ii) is a person authorized under section 95(2) to provide automated trading services; and
  - (b) the requirements prescribed by the designation rules have been met.
- (3) A designation may be for—
  - (a) OTC derivative transactions generally; or
  - (b) a class or description of OTC derivative transactions specified in the designation.
- (4) A person outside Hong Kong or in Hong Kong may be designated under this section.

- 
- (5) The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, in accordance with the designation rules and by a written notice served on a person, do the following with regard to a designation—
- (a) impose conditions;
  - (b) amend or revoke a condition;
  - (c) impose additional conditions;
  - (d) revoke the designation.
- (6) Before exercising a power under subsection (1)(b) or (5)(d), the Commission must give the person concerned a reasonable opportunity of being heard.
- (7) If the Commission amends or revokes a condition or imposes an additional condition under subsection (5)(b) or (c), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.
- (8) If the Commission revokes a designation under subsection (5)(d), the revocation takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.
- (9) If, under this section, a person is designated or a designation is revoked, the Commission must publish notice of that fact in the Gazette.
- (10) A notice published under subsection (9) is not subsidiary legislation.

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

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

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

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

- 
- (a) in relation to OTC derivative transactions entered into before the date on which the reporting obligation started to apply—
    - (i) to the class or description of persons to which the person belongs; or
    - (ii) in relation to the class or description of OTC derivative transactions to which the transaction belongs; and
  - (b) if the OTC derivative transaction referred to in paragraph (a)—
    - (i) belongs to a class or description of transactions that is specified by rules made under this section for the purposes of the reporting obligation; and
    - (ii) if at the time the reporting obligation started to apply to the person or the transaction, the transaction is still outstanding within the meaning given by rules made under this subsection.
- (7) Rules made under this section may specify—
- (a) the form and manner in which a specified OTC derivative transaction is to be reported to the Monetary Authority;
  - (b) without limiting paragraph (a), that any requirement as to the form and manner of reporting is complied with if the specified OTC derivative transaction is reported by means of an electronic system operated by the Monetary Authority for submitting and receiving reports on OTC derivative transactions for the purposes of section 101B;
  - (c) any documents, information or particulars that must be submitted for complying with the reporting obligation;

- (d) the period within which the reporting obligation must be complied with; and
  - (e) any other matter relating to the procedure for complying with the reporting obligation.
- (8) Rules made under this section may specify—
- (a) that a prescribed person may report a specified OTC derivative transaction to the Monetary Authority directly or through a third party;
  - (b) that a subsidiary specified under section 101B(5) that is a counterparty to a specified OTC derivative transaction may report the transaction to the Monetary Authority directly or through a third party; and
  - (c) where a specified OTC derivative transaction is reported through a third party, the circumstances in which a prescribed person is liable for a failure to comply with the reporting obligation.

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

- (1) The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, make rules—
- (a) generally for the purposes of the clearing obligation; and
  - (b) without limiting paragraph (a), to prescribe the particular matters set out in this section.
- (2) Rules made under this section—
- (a) may specify for the purposes of paragraph (b)(iv) of the definition of *prescribed person* in section 101A, a class or description of persons; and



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

- 
- (a) the circumstances relating to a specified OTC derivative transaction in which the clearing obligation—
    - (i) applies;
    - (ii) does not apply; or
    - (iii) is taken to have been complied with;
  - (b) the criteria (including thresholds) for the application of the clearing obligation; and
  - (c) different circumstances and criteria for different prescribed persons or different OTC derivative transactions.
- (6) Rules made under this section may specify—
- (a) the manner in which a specified OTC derivative transaction is to be cleared with a designated CCP;
  - (b) the period within which the clearing obligation must be complied with;
  - (c) the circumstances in which a specified OTC derivative transaction that is cleared otherwise than with a designated CCP is treated, for the purposes of the clearing obligation, as having been cleared with a designated CCP;
  - (d) that a prescribed person may clear a specified OTC derivative transaction with a designated CCP directly or through a third party;
  - (e) that a subsidiary specified under section 101C(5) that is a counterparty to a specified OTC derivative transaction may clear the transaction with a designated CCP directly or through a third party; and

- (f) where a specified OTC derivative transaction is cleared with a designated CCP through a third party, the circumstances in which a prescribed person is liable for a failure to comply with the clearing obligation.

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

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

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

- (b) the circumstances in which a specified OTC derivative transaction that is executed otherwise than on a designated trading platform is treated, for the purposes of the trading obligation, as having been executed on a designated trading platform;
- (c) that a prescribed person may execute a specified OTC derivative transaction on a designated trading platform directly or through a third party;
- (d) that a subsidiary specified under section 101D(5) that is a counterparty to a specified OTC derivative transaction may execute the transaction on a designated trading platform directly or through a third party; and
- (e) where a specified OTC derivative transaction is executed on a designated trading platform through a third party, the circumstances in which a prescribed person is liable for a failure to comply with the trading obligation.

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

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

- (a) the application procedure for designation—
  - (i) as a central counterparty, including the documents and information to be provided by the applicant; or
  - (ii) as a trading platform, including the documents and information to be provided by the applicant;
- (b) other requirements to be complied with by an applicant for designation;

- (c) any matter that may be taken into account when considering an application;
- (d) the grounds on which designation may be refused or revoked;
- (e) the procedure for exercising a power under section 101I(1) or (5) or 101J(1) or (5); or
- (f) any other matter relating to the process of or procedure for a designation or revocation under section 101I or 101J.

### **Division 5—Systemically Important Participants**

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

- (1) This section applies to a person who—
  - (a) is not—
    - (i) an authorized financial institution;
    - (ii) an approved money broker; or
    - (iii) a licensed corporation; and
  - (b) engages in OTC derivative transactions.
- (2) A person to whom this section applies must notify the Commission in accordance with subsection (3) if the person's position in a specific class reaches the notification level.
- (3) A notification must be given—
  - (a) in writing and within the period prescribed by the notification rules; and
  - (b) in accordance with subsection (4).
- (4) A notification must contain—
  - (a) sufficient information—

- (i) to identify the systemically important participant;
    - (ii) to identify the specific class to which the notification relates; and
    - (iii) to show that the notification level has been reached; and
  - (b) any information prescribed by the notification rules (including additional information so prescribed, relating to the matters referred to in paragraph (a)).
- (5) A person who without reasonable excuse fails to comply with subsection (2) commits an offence.
- (6) A person who commits an offence under subsection (5) is liable—
- (a) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years; or
  - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years.

**101P. Commission to maintain register**

- (1) The Commission must maintain a register, in a form that it considers appropriate, to record information under section 101Q.
- (2) The SIP register may be maintained—
  - (a) in a documentary form; or
  - (b) by recording information otherwise than in a documentary form, so long as the information is capable of being reproduced in a legible form.
- (3) At all reasonable times, the SIP register must be made available to the public for the purpose of enabling a person who is a member of the public to ascertain—

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- (a) whether the person is dealing with a registered SIP; and
  - (b) the particulars of registration of a registered SIP the person is dealing with.
- (4) At all reasonable times, a member of the public may—
- (a) inspect the SIP register, or if it is maintained otherwise than in a documentary form, a reproduction of the information or the relevant part of it in a legible form; and
  - (b) on payment of the prescribed fee, obtain a copy of—
    - (i) an entry in the SIP register; or
    - (ii) an extract of the SIP register.
- (5) A document purporting to be—
- (a) a copy of an entry in or extract of the SIP register; and
  - (b) certified by an authorized officer of the Commission as a true copy of the entry or extract,
- is admissible as evidence of its contents in any legal proceedings.
- (6) Without derogating from the other provisions of this section, the Commission must, in addition, make the SIP register available to the public in the form of an online record.

**101Q. Registration in SIP register**

- (1) The Commission may enter in the SIP register in respect of a person who has complied with the notification requirement—
- (a) the name of the person; and



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- (b) the specific class in respect of which the notification level has been reached.
- (2) The Commission may enter in the SIP register in respect of a person who has purportedly given a notification, but not in accordance with section 101O(3)—
- (a) the name of the person; and
- (b) the specific class in respect of which the notification level has been reached.
- (3) If the conditions in subsection (6) are satisfied in relation to a person, the Commission may enter in the SIP register—
- (a) the name of the person; and
- (b) the specific class referred to in subsection (6)(b).
- (4) Before making an entry in the SIP register under subsection (3)(a) or (b) in respect of a person, the Commission must—
- (a) inform the Monetary Authority; and
- (b) give the person concerned a reasonable opportunity of being heard in respect of the proposed entry.
- (5) The Commission must inform the person concerned by a written notice as soon as practicable after making an entry in the SIP register under subsection (1)(a) or (b), (2)(a) or (b) or (3)(a) or (b).
- (6) The conditions referred to in subsection (3) are that—
- (a) section 101O(1) applies to the person; and
- (b) either—

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- (i) the Commission has reasonable cause to believe that the person's position in a specific class has reached the notification level but the person has not given a notification in respect of the specific class; or
  - (ii) the Monetary Authority informs the Commission that the Monetary Authority has reasonable cause to believe that the person's position in a specific class has reached the notification level but the person has not given a notification in respect of the specific class.
- (7) A decision to make an entry in the SIP register under subsection (1), (2) or (3) takes effect at the time of the service of the notice under subsection (5) on the person or at the time specified in the notice, whichever is the later.

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

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

- (4) For the purposes of this section, a person is taken to be registered for a specific class if the SIP register shows that the person's position in that specific class has reached the notification level.

### **101S. Deregistration**

- (1) The Commission must remove from the SIP register the name of a person, if the Commission is satisfied that the relevant conditions, circumstances and criteria prescribed by the notification rules for removing a person's name from the SIP register have been met.
- (2) The Commission must remove from the SIP register a specific class entered in respect of a person's name, if the Commission is satisfied that the relevant conditions, circumstances and criteria prescribed by the notification rules for removing the specific class from the SIP register have been met.
- (3) A deregistration may be effected—
  - (a) by the Commission on its own initiative; or
  - (b) on application by a registered SIP.
- (4) The Commission must give the person concerned a reasonable opportunity of being heard before refusing an application for deregistration.
- (5) The Commission must consult the Monetary Authority before effecting a deregistration.
- (6) The Commission must inform the person concerned of a deregistration or a refusal to deregister by a written notice as soon as practicable after a deregistration or a refusal to deregister.
- (7) This section does not prevent the Commission from amending the SIP register to give effect to a decision of the Securities and Futures Appeals Tribunal under Part XI on a review by that Tribunal of a decision of the Commission under section 101Q(3).

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

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

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

- (1) The Commission may, with the consent, or at the request, of the Monetary Authority, take the action specified in subsection (2), if the Commission has reasonable cause to believe that the registered SIP's activities or transactions in OTC derivative products pose, or may pose, a systemic risk—
  - (a) in the securities and futures industry; or
  - (b) to the financial stability of Hong Kong.
- (2) The action the Commission may take is to require, by a written notice, the registered SIP to do one or more of the following acts specified in the notice—
  - (a) to refrain from increasing, or to reduce, the registered SIP's positions in one or more specific classes;
  - (b) to collect collateral or to increase the amount of collateral collected;
  - (c) to post collateral or to increase the amount of collateral posted;
  - (d) to restrict the use of collateral as specified in the notice;
  - (e) to take any other action prescribed by the notification rules.
- (3) A requirement in a notice served under this section takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

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

- (1) If a registered SIP fails to comply with a requirement made under section 101T(1) or 101U, the Commission may apply to the Court of First Instance for an inquiry into the failure.

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- (2) If a registered SIP fails to comply with a requirement made under section 101T(2), the Monetary Authority may apply to the Court of First Instance for an inquiry into the failure.
  - (3) The Court of First Instance may inquire into the case and if satisfied that—
    - (a) there is no reasonable excuse for the registered SIP not to comply with the requirement, order the registered SIP to comply with the requirement within the period specified by the Court; and
    - (b) the failure was without reasonable excuse, punish the registered SIP in the same manner as if the registered SIP had been guilty of contempt of court.
  - (4) If there is a reasonable likelihood that a registered SIP will fail to comply with a requirement referred to in subsection (1), the Commission may apply to the Court of First Instance for an order that the registered SIP take such action or refrain from taking such action as the Court directs.
  - (5) If there is a reasonable likelihood that a registered SIP will fail to comply with a requirement referred to in subsection (2), the Monetary Authority may apply to the Court of First Instance for an order that the registered SIP take such action or refrain from taking such action as the Court directs.
  - (6) An application under subsection (1), (2), (4) or (5) must be made by originating summons that is in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

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

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

- (a) in relation to a specific class—
  - (i) the threshold for the application of the notification requirement;
  - (ii) the period within which the notification requirement must be complied with; and
  - (iii) the conditions, circumstances and criteria for deregistration;
- (b) additional information to be given by a person under section 101O(4)(b);
- (c) matters on which information may be required to be given under section 101T(1)(c) and (2)(c);
- (d) action a registered SIP may be required to take under section 101U(2)(e); and
- (e) generally for better carrying out the purposes of this Division.”.

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

- (1) Section 109(1)(a)(i)—

**Repeal**

“Type 6 or Type 9”

**Substitute**

“Type 6, Type 9 or Type 11”.

- (2) Section 109(3)(c)—

**Repeal**

“; or”

**Substitute a semicolon.**

(3) Section 109(3)(d)—

**Repeal the full stop**

**Substitute**

“; or”.

(4) After section 109(3)(d)—

**Add**

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

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

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

Section 116(9)—

**Repeal**

“Part IX”

**Substitute**

“Divisions 2 and 3 of Part IX”.

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

(1) Section 119(1)—



**Repeal**

“and Type 8”

**Substitute**

“, Type 8, Type 11 and Type 12”.

(2) Section 119(7)—

**Repeal**

“Part IX”

**Substitute**

“Divisions 2 and 3 of Part IX”.

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

Section 120(10)—

**Repeal**

“Part IX”

**Substitute**

“Divisions 2 and 3 of Part IX”.

**14. Section 145A added**

After section 145—

**Add**

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

(1) The Commission may, by a written notice served on a licensed corporation that engages in OTC derivative transactions, vary any financial resources rule applicable to the corporation, if satisfied, on reasonable grounds, that it is prudent to make the variation, taking into account risks associated with the corporation.

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- (2) If the Commission proposes to serve a notice under subsection (1) on a licensed corporation, it must serve a draft of the notice (*draft notice*) on the corporation.
- (3) A draft notice must—
- (a) specify—
    - (i) the financial resources rule proposed to be varied;
    - (ii) the manner in which that rule is proposed to be varied; and
    - (iii) the grounds for the proposed variation; and
  - (b) include a statement that the corporation may, within 14 days, or a longer period the Commission allows in a particular case, from the date of service of the draft notice, make written representations to the Commission on any or all of the matters specified in the draft notice.
- (4) If representations are made in accordance with subsection (3)(b) on a draft notice served on a licensed corporation, the Commission may, after considering the representations—
- (a) serve a notice on the corporation under subsection (1) in substantially the same terms as the draft notice;
  - (b) serve a notice on the corporation under subsection (1) in terms modified to take account of any one or more of those representations that satisfy the Commission that the modification ought to be made; or

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- (c) elect not to serve a notice on the corporation under subsection (1) because one or more of those representations satisfy the Commission that it should neither take the action mentioned in paragraph (a) nor take the action mentioned in paragraph (b).
- (5) If no representations are made in accordance with subsection (3)(b) on a draft notice served on a licensed corporation, the Commission may serve a notice on the corporation under subsection (1) in substantially the same terms as the draft notice.
- (6) If a financial resources rule applicable to a licensed corporation that engages in OTC derivative transactions is varied under this section, this Part (including rules made under section 145) applies, in relation to that corporation, with all necessary modifications to take account of the financial resources rule so varied.
- (7) To avoid doubt—
- (a) the Commission may serve a draft notice on a licensed corporation in substitution for an earlier draft notice served on the corporation; and
- (b) the reference to substantially the same terms as the draft notice in subsections (4)(a) and (5) is not to be construed to include the statement required to be included in a draft notice under subsection (3)(b).
- (8) The variation of a financial resources rule under subsection (1) takes effect at the time of the service of the written notice of the variation on the licensed corporation under that subsection or at the time specified in the notice, whichever is the later.”

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

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

**Add**

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

- (2) Section 178—

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

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

- (a) in section 183, a person in relation to whom an investigator is directed or appointed to investigate any matter under section 182(1); and
- (b) in section 184B, a person in relation to whom an MA investigator is directed or appointed to investigate any matter under section 184A(1).”.
- (3) Section 178—

**Add in alphabetical order**

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

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

- (1) Section 181(1)(b)—

**Repeal**

“contract, or an”

**Substitute**

“contract, OTC derivative product, or an”.

- (2) Section 181(1)(b)—

**Repeal**

“contract or collective”

**Substitute**

“contract, OTC derivative product or collective”.

- (3) Section 181(1)(c)—

**Repeal**

“contract, or an”

**Substitute**

“contract, OTC derivative product, or an”.

- (4) Section 181(1)(c)—

**Repeal**

“contract or collective”

**Substitute**

“contract, OTC derivative product or collective”.

- (5) Section 181(1)(d)—

**Repeal**

“contract, or an”

**Substitute**

“contract, OTC derivative product, or an”.

- (6) Section 181(1)(d)—

**Repeal**

“contract or collective”

**Substitute**

“contract, OTC derivative product or collective”.

(7) Section 181(2)(a)—

**Repeal**

“contract, or the”

**Substitute**

“contract, OTC derivative product, or the”.

(8) Section 181(2)(a)—

**Repeal**

“contract or collective”

**Substitute**

“contract, OTC derivative product or collective”.

(9) Section 181(2)(b)—

**Repeal**

“contract, or the”

**Substitute**

“contract, OTC derivative product, or the”.

(10) Section 181(2)(b)—

**Repeal**

“contract or collective”

**Substitute**

“contract, OTC derivative product or collective”.

(11) Section 181(2)(c)—

**Repeal**

“contract, or the”

**Substitute**

“contract, OTC derivative product, or the”.

(12) Section 181(2)(c)—

**Repeal**

“contract or collective”

**Substitute**

“contract, OTC derivative product or collective”.

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

Part VIII, Division 3, heading—

**Repeal**

“Powers of investigations”

**Substitute**

“Commission’s Powers of Investigation”.

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

(1) Section 182, heading—

**Repeal**

“Investigations”

**Substitute**

“Investigations by Commission”.

(2) Section 182(1)(b)(iv)—

**Repeal**

“; or”

**Substitute a semicolon.**

(3) After section 182(1)(b)(v)—

**Add**

“(vi) dealing in OTC derivative products or advising on OTC derivative products; or

(vii) providing clearing agency services for OTC derivative transactions;”.

(4) Section 182(1)(d)—

**Repeal**

“(v)”

**Substitute**

“(vii)”.

- (5) After section 182(1)(d)—

**Add**

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

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

- (6) Section 182(1)(g)—

**Repeal**

“(d),”

**Substitute**

“(d), (da), (db),”.

**19. Section 184 amended (offences in relation to investigations)**

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

**Repeal**

“as”.

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

**Repeal**

“as”.



**20. Part VIII, Division 3A added**

Part VIII, after Division 3—

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

- (1) If the Monetary Authority has reasonable cause to believe that an authorized financial institution or an approved money broker may have contravened the reporting obligation, clearing obligation or trading obligation, the Monetary Authority may—
  - (a) direct in writing one or more persons appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to investigate the matter; or
  - (b) with the consent of the Financial Secretary, appoint in writing one or more other persons to investigate the matter.
- (2) The Monetary Authority must give an MA investigator a copy of—
  - (a) the direction, if the MA investigator is directed under subsection (1)(a); and
  - (b) the appointment, if the MA investigator is appointed under subsection (1)(b).
- (3) The MA investigator must, before first imposing a requirement on a person under section 184B(1), (2) or (3), produce a copy of the direction or appointment for inspection by the person.

**184B. Conduct of investigations**

- (1) A person under investigation or a person whom the MA investigator has reasonable cause to believe to be in possession of any record or document that contains, or that is likely to contain, information relevant to an investigation under section 184A, or whom the MA investigator has reasonable cause to believe to be otherwise in possession of such information, must—
- (a) produce to the MA investigator, within the time and at a place the MA investigator reasonably requires in writing, a record or document specified by the MA investigator—
    - (i) that is, or may be, relevant to the investigation; and
    - (ii) that is in the person's possession;
  - (b) if required by the MA investigator, give the MA investigator an explanation or further particulars in respect of a record or document produced under paragraph (a);
  - (c) attend before the MA investigator at a time and place the MA investigator reasonably requires in writing, and answer any question relating to a matter under investigation raised by the MA investigator; and
  - (d) give the MA investigator all assistance in connection with the investigation that the person is reasonably able to give, including responding to any written question raised by the MA investigator.

- (2) An MA investigator may require, in writing, a person who makes or gives an explanation, particulars, answer or statement under this section to verify, by statutory declaration, within a reasonable period specified in the requirement, the explanation, particulars, answer or statement.
- (3) If a person does not make or give an explanation, particulars, answer or statement in accordance with a requirement under this section for the reason that the explanation, particulars, answer or statement was not within the person's knowledge or in the person's possession, an MA investigator may require, in writing, the person to verify by statutory declaration—
  - (a) that the person was unable to comply or fully comply (as the case may be) with the requirement for that reason; and
  - (b) within a reasonable period specified in the requirement.
- (4) A statutory declaration under this section may be made before the MA investigator.

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

- (1) An MA investigator—
  - (a) may make interim reports on the investigation conducted under this Division to the Monetary Authority;
  - (b) must make interim reports on the investigation to the Monetary Authority if directed by the Monetary Authority; and
  - (c) must, after the completion of the investigation, make a final report on the investigation to the Monetary Authority.

- (2) The Monetary Authority may, with the consent of the Secretary for Justice, publish any report made under subsection (1).

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

- (1) A person commits an offence if the person, without reasonable excuse—
  - (a) fails to produce a record or document required to be produced under section 184B(1)(a);
  - (b) fails to give an explanation or further particulars required under section 184B(1)(b);
  - (c) fails to attend before the MA investigator as required under section 184B(1)(c);
  - (d) fails to answer a question raised by the MA investigator under section 184B(1)(c);
  - (e) fails to comply with section 184B(1)(d); or
  - (f) fails to comply with a requirement under section 184B(2) or (3).
- (2) A person who commits an offence under subsection (1) is liable—
  - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
  - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (3) A person commits an offence if—
  - (a) the person—
    - (i) in purportedly complying with a requirement imposed by the MA investigator under section 184B(1)(a), produces a record or document that is false or misleading in a material particular;

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

- 
- (c) in purportedly complying with a requirement imposed by the MA investigator under section 184B(1)(b), gives an explanation or further particulars that are false or misleading in a material particular;
  - (d) in purportedly answering a question raised by the MA investigator under section 184B(1)(c), says anything that is false or misleading in a material particular; or
  - (e) in purportedly responding to a written question raised by the MA investigator under section 184B(1)(d), states anything that is false or misleading in a material particular.
- (6) An officer or employee of a corporation commits an offence if the officer or employee, with intent to defraud, causes or allows the corporation to—
- (a) fail to do anything described in subsection (1)(a), (b), (c), (d), (e) or (f);
  - (b) in purportedly complying with a requirement imposed by the MA investigator under section 184B(1)(a), produce a record or document that is false or misleading in a material particular;
  - (c) in purportedly complying with a requirement imposed by the MA investigator under section 184B(1)(b), give an explanation or further particulars that are false or misleading in a material particular;
  - (d) in purportedly answering a question raised by the MA investigator under section 184B(1)(c), say anything that is false or misleading in a material particular; or

- (e) in purportedly responding to a written question raised by the MA investigator under section 184B(1)(d), state anything that is false or misleading in a material particular.
- (7) A person is not excused from complying with a requirement imposed under section 184B(1), (2) or (3) only on the ground that to do so might tend to incriminate the person.
- (8) A person who commits an offence under subsection (5) or (6) is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

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

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

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

- (1) Section 185, heading—

**Repeal****“or 183”****Substitute****“, 183 or 184B”.**

- (2) After section 185(1)—

**Add**

“(1A) If a person fails to do anything on being required to do so by an MA investigator under section 184B(1), (2) or (3), the Monetary Authority may, by originating summons, make an application to the Court of First Instance in respect of the failure.

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

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

- (3) Section 185(2), after “(1)”—

**Add****“or (1A)”.**

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

**Add****“or (1B)(b)”.**

- (5) Section 185(3)(a)(i)—

**Repeal**



“or 184”

**Substitute**

“, 184 or 184D”.

- (6) Section 185(3)(b)—

**Repeal**

“or 184”

**Substitute**

“, 184 or 184D”.

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

**Add**

“or (1B)(b)”.

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

- (1) Section 186, heading—

**Repeal**

“Assistance”

**Substitute**

“Commission’s assistance”.

- (2) Section 186(1)(b)—

**Repeal**

“contract, collective”

**Substitute**

“contract, OTC derivative product, collective”.

- (3) Section 186(2)—

**Repeal**

“contract, collective”

**Substitute**

“contract, OTC derivative product, collective”.

**23. Section 186A added**

After section 186—

**Add**

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

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

- 
- (3) If the Monetary Authority receives from a companies inspector outside Hong Kong a request for assistance described in subsection (4), the Monetary Authority may give the requested assistance by exercising the powers under sections 184A and 184B if, in the opinion of the Monetary Authority—
- (a) the companies inspector satisfies the requirements referred to in subsection (6); and
  - (b) the condition in subsection (7) is satisfied.
- (4) A request for assistance referred to in subsection (3) is a request for assistance to investigate whether a person specified by the companies inspector outside Hong Kong has contravened or is contravening legal or regulatory requirements that relate to transactions regarding OTC derivative products or other similar transactions.
- (5) The requirements referred to in subsection (1)(a) are that the overseas entity—
- (a) performs functions similar to the functions of the Monetary Authority or regulates, supervises or investigates banking, insurance or other financial services; and
  - (b) is subject to adequate secrecy provisions.
- (6) The requirements referred to in subsection (3)(a) are that the companies inspector outside Hong Kong—
- (a) performs functions similar to the functions of the Registrar of Companies or regulates, supervises or investigates the affairs of corporations; and
  - (b) is subject to adequate secrecy provisions.
- (7) The condition referred to in subsections (1)(b) and (3)(b) is that—
- (a) it is desirable or expedient that the assistance should be given in the interests of the investing public or in the public interest; or

- 
- (b) the assistance will enable or assist the recipient of the assistance to perform the recipient's functions and it is not contrary to the interests of the investing public or to the public interest that the assistance should be given.
- (8) In deciding whether the condition set out in subsection (7) is satisfied in a particular case, the Monetary Authority must take into account—
- (a) if the recipient of the assistance is an overseas entity, whether the overseas entity will—
- (i) pay to the Monetary Authority any of the costs and expenses incurred in giving the assistance; and
- (ii) be able and willing to give reciprocal assistance within its jurisdiction in response to a comparable request for assistance from Hong Kong; or
- (b) if the recipient of the assistance is a companies inspector outside Hong Kong, whether—
- (i) the companies inspector will pay to the Monetary Authority any of the costs and expenses incurred in giving the assistance; and
- (ii) under the laws of the country or territory in which the companies inspector is appointed, reciprocal assistance will be given in response to a comparable request for assistance from Hong Kong.
- (9) If the Monetary Authority is satisfied of the matters referred to in subsection (5)(a) and (b) or (6)(a) and (b), the Monetary Authority must, as soon as reasonably practicable after being so satisfied, publish in the Gazette, the name of the overseas entity or the companies inspector outside Hong Kong.

- (10) Subsection (11) applies if a person is required to give an explanation or further particulars as required by, or to give an answer to a question raised by, an MA investigator exercising under subsection (1) or (3), a power under section 184B, and the explanation, further particulars or the answer might tend to incriminate the person and the person so claims before giving it.
- (11) Without limiting section 187, the MA investigator must not provide to an overseas entity or a companies inspector outside Hong Kong for use in criminal proceedings against the person in the jurisdiction of the overseas entity or the companies inspector—
- (a) evidence of the requirement;
  - (b) evidence of the question and answer; or
  - (c) evidence of the explanation or further particulars.
- (12) The Monetary Authority must pay into the Exchange Fund any amount received from an overseas entity or a companies inspector outside Hong Kong in respect of costs and expenses incurred by the Monetary Authority in giving assistance under this section.
- (13) A matter published under subsection (9) is not subsidiary legislation.
- (14) In this section—
- companies inspector* (公司審查員), in relation to a place outside Hong Kong, has the meaning given by section 186(9);
  - overseas entity* (海外實體) means an authority or regulatory organization outside Hong Kong.”.

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

- (1) Section 187(1)(a)—

**Repeal**

“; or”

**Substitute a semicolon.**

- (2) Section 187(1)(b)—

**Repeal the comma**

**Substitute**

“; or”.

- (3) After section 187(1)(b)—

**Add**

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

- (4) Section 187(2)(a)—

**Repeal**

“; or”

**Substitute a semicolon.**

- (5) Section 187(2)(b)—

**Repeal the comma**

**Substitute**

“; or”.

- (6) After section 187(2)(b)—

**Add**

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

(7) Section 187(2)—

**Repeal**

“or 184”

**Substitute**

“, 184 or 184D”.

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

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

**Add**

“or MA investigator”.

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

**Add**

“or MA investigator”.

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

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

**Add**

“or MA investigator”.

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

**Add**

“or the Monetary Authority”.

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

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

**Repeal the full stop**

**Substitute a semicolon.**

(2) Section 193(1)—

**Add in alphabetical order****“disciplinary power** (紀律懲處權) means—

- (a) in section 197A, a power that may be exercised by the Commission under section 197A(1); and
- (b) in Divisions 4 and 5, a power that may be exercised by the Monetary Authority under section 203A(1);”.

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

Part IX, Division 2, heading—

**Repeal****“Discipline, etc.”****Substitute****“Disciplinary Action by Commission”.****29. Section 197A added**

Part IX, Division 2, after section 197—

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

- (1) If a registered SIP fails to comply with a requirement made under section 101U, the Commission may exercise, either or both of the following powers as the Commission considers appropriate in the circumstances of the case—
  - (a) publicly or privately reprimand the registered SIP;
  - (b) order the registered SIP to pay a pecuniary penalty not exceeding the amount that is the greater of the following—



- 
- (i) \$10,000,000;
    - (ii) 3 times the amount of the profit gained, or loss avoided, by the registered SIP as a result of the failure to comply with the requirement.
  - (2) The exercise of the disciplinary power—
    - (a) under subsection (1)(a) is subject to section 198; and
    - (b) under subsection (1)(b) is subject to sections 198 and 199.
  - (3) If the Commission exercises a disciplinary power, it may disclose to the public details of the decision including the reasons for it and any material facts relating to the case.
  - (4) A person who is ordered to pay a pecuniary penalty must pay it to the Commission within—
    - (a) 30 days after the order has taken effect as a specified decision under section 232; or
    - (b) a longer period specified in the notice referred to in section 198(3), after the order has taken effect as a specified decision under section 232.
  - (5) The Court of First Instance may, on an application made by the Commission, register the order in the Court of First Instance.
  - (6) An application must be made in the manner prescribed by rules made under section 397 for the purposes of subsection (5).
  - (7) On registration, the order is to be regarded for all purposes as an order of the Court of First Instance made within its civil jurisdiction for the payment of money.

- (8) The Commission must pay a pecuniary penalty paid to or recovered by it under an order made under this section into the general revenue.
- (9) A disciplinary power may be exercised against a person whether or not the person is a registered SIP at the time of the exercise of the power, and the references to registered SIP in this section (except the reference in subsection (1) in relation to the failure to comply with a requirement) must be construed accordingly.”.

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

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

**Add**

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

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

(1) Section 198, heading—

**Repeal**

**“Part IX”**

**Substitute**

**“Division 2”.**

(2) Section 198(1)—

**Repeal**

**“or 197(1)(a) or (b) or (2)”**

**Substitute**

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

(3) Section 198(2)—

**Repeal**

**“or 197(1) or (2)”**

**Substitute**

“, 197(1) or (2) or 197A(1)”.

- (4) Section 198(3)—

**Repeal**

“or 197(1) or (2)”

**Substitute**

“, 197(1) or (2) or 197A(1)”.

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

- (1) Section 199, heading—

**Repeal**

“or 196(2)”

**Substitute**

“, 196(2) or 197A(1)(b)”.

- (2) Section 199(1), English text—

**Repeal**

“shall”

**Substitute**

“must”.

- (3) Section 199(1)—

**Repeal**

“or 196(2)”

**Substitute**

“, 196(2) or 197A(1)(b)”.

- (4) Section 199(2), English text—

**Repeal**

“shall” (wherever appearing)

**Substitute**

“must”.

(5) After section 199(2)—

**Add**

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

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

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

Section 200, heading—

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

(1) Section 201, heading—

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

(2) Section 201(1)—

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

(3) Section 201(2)—

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

(4) Section 201(3)—

**Repeal****“or 197(1)(a) or (b) or (2)”**

**Substitute**

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

(5) Section 201(5)—

**Repeal**

“211”

**Substitute**

“101E, 101V, 211”.

**35. Section 202 amended (requirement to transfer records upon revocation or suspension of licence or registration)**

Section 202(1)—

**Repeal**

“this Part”

**Substitute**

“Division 2 or 3”.

**36. Section 203 amended (permission to carry on business operations upon revocation or suspension of licence or registration)**

Section 203(1)—

**Repeal**

“this Part”

**Substitute**

“Division 2 or 3”.

**37. Part IX, Divisions 4 and 5 added**

Part IX, after Division 3—

**Add****“Division 4—Disciplinary Action by Monetary Authority****203A. Disciplinary action by Monetary Authority**

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

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



*contravention* (違責) means a contravention of an obligation;

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

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

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

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

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

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

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

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

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

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

- (1) If a person is ordered to pay a pecuniary penalty in the exercise of a disciplinary power, the person must pay it to the Monetary Authority within—

- (a) 30 days after the order has taken effect as a specified decision under section 232; or
  - (b) a longer period specified in the notice referred to in section 203B(2), after the order has taken effect as a specified decision under section 232.
- (2) The Court of First Instance may, on an application made by the Monetary Authority, register the order in the Court of First Instance.
- (3) An application under subsection (2) must be made by producing to the Registrar of the High Court a notice in writing requesting that the order be registered, together with the order and a copy of the order.
- (4) On registration, the order is to be regarded for all purposes as an order of the Court of First Instance made within its civil jurisdiction for the payment of money.
- (5) The Monetary Authority must pay a pecuniary penalty paid to or recovered by the Monetary Authority under an order made under this section into the general revenue.

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

- (1) If a person fails to comply with a prohibition in force in respect of the person as a result of the exercise of a power under section 203A(1)(b), the Monetary Authority may, by originating summons, make an application to the Court of First Instance in respect of the failure.
- (2) The Court of First Instance may inquire into the case and if satisfied that—

- (a) there is no reasonable excuse for the person not to comply with the prohibition, order the person to comply with the prohibition within the period specified by the Court; and
  - (b) the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if the person and, if applicable, the other person, had been guilty of contempt of court.
- (3) If there is a reasonable likelihood that a person will fail to comply with a prohibition in force in respect of the person as a result of the exercise of a power under section 203A(1)(b), the Monetary Authority may, by originating summons, apply to the Court of First Instance for an order that—
- (a) the person take such action or refrain from taking such action as the Court directs; and
  - (b) any other person whom the Court is satisfied is able to procure the person to comply with the prohibition, take such action or refrain from taking such action as the Court directs.
- (4) An originating summons under this section must be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).”.

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

Part XVI, Division 1, heading, after “**Secrecy**”—

**Add**

**“(general)”.**

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

(1) Section 378(1)—

**Repeal**

“Except”

**Substitute**

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

- (2) Section 378(2)(b)—

**Repeal**

“laws of Hong Kong”

**Substitute**

“relevant provisions or otherwise”.

- (3) Section 378(11)—

**Repeal**

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

**Substitute**

“at the time of disclosure—

- (a) in the case of a contravention of subsection (7), the person knew or ought reasonably to have known that the information was previously disclosed to the person or to any other person (as the case may be) pursuant to subsection (1) or in any of the circumstances described in subsection (2), (3) or (4) (other than subsections (2)(a), (3)(a), (g)(i) and (k) and (4)(b)), unless the person proves that the person had reasonable grounds to believe that subsection (7)(i), (ii), (iii), (iv) or (v) applied to the disclosure of the information by the person; or
- (b) in the case of a contravention of subsection (8), the person knew or ought reasonably to have known that the information was previously disclosed to the person or an auditor (as the case

may be) in the circumstances described in subsection (4)(b), unless the person proves that the person had reasonable grounds to believe that subsection (8)(i), (ii), (iii), (iv), (v) or (vi) applied to the disclosure of the information by the person, the person commits”.

(4) After section 378(13)—

**Add**

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

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

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

Part XVI, after Division 1—

**Add**

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

**381A. Preservation of secrecy**

- (1) This section applies to—
  - (a) the Monetary Authority and a person who was the Monetary Authority; and
  - (b) a person who is or was—



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

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

- (f) to a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66), if the disclosure will enable or assist the person to assist the Monetary Authority in performing a function referred to in that section; or
  - (g) to the Hong Kong Deposit Protection Board established by section 3 of the Deposit Protection Scheme Ordinance (Cap. 581) for the purpose of enabling or assisting the Board to perform its functions under that Ordinance.
- (5) A person who contravenes subsection (2) commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (6) In this section—
- information** (資料) means a matter referred to in subsection (2)(a) or a record or document referred to in subsection (2)(c).

### **381B. Disclosure by Monetary Authority**

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

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

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

**information** (資料) means a matter referred to in section 381A(2)(a) or a record or document referred to in section 381A(2)(c).

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

- (1) Despite section 381A(2), if in the opinion of the Monetary Authority, the condition in subsection (3) is satisfied, the Monetary Authority may disclose information—

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- (a) to the Chief Executive;
  - (b) to the Financial Secretary;
  - (c) to the Secretary for Justice;
  - (d) to the Commissioner of Police;
  - (e) to the Commissioner of the Independent Commission Against Corruption;
  - (f) to the Insurance Authority;
  - (g) to the Registrar of Companies;
  - (h) to the Official Receiver;
  - (i) to the Mandatory Provident Fund Schemes Authority;
  - (j) to the Privacy Commissioner for Personal Data;
  - (k) to the Ombudsman;
  - (l) to a public officer authorized under subsection (8);
  - (m) to the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (Cap. 588);
  - (n) to an inspector appointed by the Financial Secretary to investigate the affairs of a corporation;
  - (o) to a recognized exchange company;
  - (p) to a recognized clearing house;
  - (q) to a recognized exchange controller;
  - (r) to a recognized investor compensation company;
  - (s) to a person authorized under section 95(2) to provide authorized automated trading services;
- or

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

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- (a) performs functions similar to the functions of the Monetary Authority or regulates, supervises or investigates banking, insurance or other financial services; and
- (b) is subject to adequate secrecy provisions.
- (5) The requirements referred to in subsection (2)(b) are that the companies inspector outside Hong Kong—
- (a) performs functions similar to the functions of the Registrar of Companies or regulates, supervises or investigates the affairs of corporations; and
- (b) is subject to adequate secrecy provisions.
- (6) If the Monetary Authority is satisfied of the matters referred to in subsection (4)(a) and (b) or (5)(a) and (b), the Monetary Authority must, as soon as reasonably practicable after being so satisfied, publish in the Gazette, the name of the authority, regulatory organization or companies inspector.
- (7) The Monetary Authority may, in disclosing information under this section, impose any condition that the Monetary Authority considers appropriate.
- (8) The Financial Secretary may authorize a public officer as a person to whom information may be disclosed under subsection (1)(l).
- (9) A matter published under subsection (6) is not subsidiary legislation.
- (10) In this section—
- companies inspector* (公司審查員), in relation to a place outside Hong Kong, has the meaning given by section 378(15);
- information* (資料) has the meaning given by section 381B(7).



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

- (1) If information is disclosed pursuant to section 381A(2) or in any of the circumstances described in section 381A(4), 381B(1) or (2) or 381C(1), unless subsection (2) applies—
  - (a) the person to whom the information is disclosed; and
  - (b) any other person obtaining or receiving the information from the person to whom the information is disclosed, either directly or indirectly,must not disclose the information or any part of it to any other person.
- (2) Information disclosed as described in subsection (1) may be disclosed to any other person if—
  - (a) the Monetary Authority consents to the disclosure;
  - (b) the information has already been made available to the public;
  - (c) the disclosure is of a part that has already been made available to the public;
  - (d) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with a matter arising under a specified provision;
  - (e) the disclosure is in connection with any judicial or other proceedings to which the person or other person referred to in subsection (1)(a) or (b) is a party; or

- (f) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law.
- (3) The Monetary Authority may, in giving any consent under subsection (2)(a), impose any condition that the Monetary Authority considers appropriate.
- (4) A person referred to in subsection (1)(a) to whom information is disclosed commits an offence if the person—
  - (a) discloses information in contravention of that subsection; and
  - (b) at the time of the disclosure knew or ought reasonably to have known that the information was previously disclosed to the person pursuant to section 381A(2) or in any of the circumstances described in section 381A(4), 381B(1) or (2) or 381C(1),

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

- (5) A person referred to in subsection (1)(b) who obtains or receives information commits an offence if the person—
  - (a) discloses information in contravention of that subsection; and
  - (b) at the time of the disclosure knew or ought reasonably to have known that the information was previously disclosed to the person referred to in subsection (1)(a) under section 381A(2) or in any of the circumstances described in section 381A(4), 381B(1) or (2) or 381C(1),

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

- (6) A person who commits an offence under subsection (4) or (5) is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (7) To avoid doubt—
  - (a) this section does not apply to information disclosed to the Commission under this Division; and
  - (b) section 378 applies to information disclosed to the Commission under this Division.
- (8) In this section—  
*information* (資料) has the meaning given by section 381B(7).

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

- (1) Despite section 381A(2), if requested by the Commission, the Monetary Authority must give to the Commission any information received or obtained by the Monetary Authority that relates to—
  - (a) an OTC derivative transaction that is reported (whether directly or indirectly) under section 101B(1) by a prescribed person that is not an authorized financial institution or an approved money broker;
  - (b) an OTC derivative transaction that—
    - (i) is reported (whether directly or indirectly) under section 101B(1) or (3) by an authorized financial institution or an approved money broker; and

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- (ii) is a transaction to which a prescribed person other than an authorized financial institution or an approved money broker is a counterparty; or
  - (c) an OTC derivative transaction that is reported (whether directly or indirectly) under section 101B(1) or (3) by an authorized financial institution or an approved money broker and is a transaction—
    - (i) in an OTC derivative product of which the underlying subject matter includes securities, futures contracts, indices of securities or futures contracts or any combination of those; or
    - (ii) in an OTC derivative product that falls within subsection (1)(a)(iii) of section 1A of Part 1 of Schedule 1 and the underlying subject matter is a credit event.
- (2) In this section—
- credit event** (信用事件), in relation to a transaction in an OTC derivative product that—
- (a) falls within subsection (1)(a)(iii) of section 1A of Part 1 of Schedule 1; and
  - (b) transfers credit risk in relation to a reference obligation from one party to the other party,
- means an event, which, if it occurs, obliges one party to make payment to the other party;
- credit risk** (信用風險) means the risk of loss from default by a party in a contract of indebtedness;

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

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

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

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

#### **41. Section 385A added**

After section 385—

##### **Add**

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

- (1) The Monetary Authority may, after consultation with the Financial Secretary, make an application to intervene in and be heard in any judicial or other proceedings, other than criminal proceedings, if—
- (a) the proceedings concern a matter provided for in a specified provision or the Monetary Authority has an interest in the proceedings because of the Monetary Authority’s functions under a specified provision; and
  - (b) the Monetary Authority is satisfied that it is in the public interest for the Monetary Authority to intervene in and be heard in the proceedings.
- (2) The following applies in respect of an application made for the purposes of subsection (1)—
- (a) the application must be made to the court hearing the proceedings or which otherwise has jurisdiction to hear the proceedings;
  - (b) the application must—
    - (i) be made in writing; and
    - (ii) be supported by an affidavit showing that the conditions set out in subsection (1)(a) and (b) are satisfied; and

- (c) a copy of the application must be served on each party to the proceedings as soon as reasonably practicable after the application is made.
- (3) The court to which the application is made—
- (a) may by order—
- (i) allow the application subject to any terms that it considers just; or
- (ii) refuse the application; and
- (b) may not make an order under paragraph (a) without first giving the Monetary Authority, and each party to the proceedings, a reasonable opportunity of being heard.
- (4) If the application is allowed, the Monetary Authority, subject to the terms referred to in subsection (3)(a)(i)—
- (a) may intervene in and be heard in the proceedings;
- (b) is to be regarded for all purposes as a party to the proceedings; and
- (c) has all the rights, duties and liabilities of a party to the proceedings.
- (5) This section does not affect Order 15, rule 6 of the Rules of the High Court (Cap. 4 sub. leg. A).
- (6) In this section—
- court* (法院) includes a magistrate and a tribunal other than the Market Misconduct Tribunal and the Securities and Futures Appeals Tribunal.”.

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

After section 388(3)—

**Add**

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

#### **43. Section 388A added**

After section 388—

##### **Add**

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

- (1) This section applies to an offence committed—
  - (a) under section 184D;
  - (b) under section 191(6) in relation to the execution of a warrant issued on information on oath laid by an MA investigator; or
  - (c) under section 381D.
- (2) The Monetary Authority may prosecute an offence to which this section applies or an offence of conspiracy to commit such an offence, in the name of the Monetary Authority.
- (3) Any offence prosecuted under subsection (2) must be tried before a magistrate as an offence that is triable summarily.
- (4) For prosecuting an offence referred to in subsection (1) or (2) only, a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66), even if he or she is not qualified to practise as a barrister or to act as a solicitor under the Legal Practitioners Ordinance (Cap. 159)—
  - (a) may appear and plead before a magistrate in any case of which that person has charge; and



(b) has, in relation to the prosecution, all the other rights of a person qualified to practise as a barrister or to act as a solicitor under that Ordinance.

(5) This section does not derogate from the powers of the Secretary for Justice in respect of the prosecution of criminal offences.”.

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

Section 389(2), after “388(1)”—

**Add**

“or 388A(3)”.

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

(1) Section 392(1)(a)(v)—

**Repeal**

“; or”

**Substitute a semicolon.**

(2) After section 392(1)(a)(vi)—

**Add**

“(vii) OTC derivative products; or”.

(3) Section 392(1)(b)(v)—

**Repeal**

“or”.

(4) Section 392(1)(b)(vi)—

**Repeal the full stop**

**Substitute**

“; or”.

(5) After section 392(1)(b)(vi)—

**Add**

“(vii) OTC derivative products.”.

(6) Section 392(2)(e)—

**Repeal**

“; or”

**Substitute a semicolon.**

(7) Section 392(2)(f)—

**Repeal the full stop**

**Substitute**

“; or”.

(8) After section 392(2)(f)—

**Add**

“(g) OTC derivative products.”.

**46. Section 392A added**

After section 392—

**Add**

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

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

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

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

Section 398(4)—

**Repeal**

“provision of this Ordinance”

**Substitute**

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

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

(1) Section 399(5)—

**Repeal**

“section in”

**Substitute**

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

(2) Section 399(5)—

**Repeal**

“guideline under this section”

**Substitute**

“guideline under this section or that other provision”.

(3) Section 399(5)(a)—

**Repeal**

“provisions of this section”

**Substitute**

“provisions of this section or the provision concerned”.

(4) Section 399(6), after “section”—

**Add**

“or any other provision of this Ordinance”.

(5) Section 399(7), after “section”—

**Add**

“or any other provision of this Ordinance”.

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

At the end of section 407—

**Add**

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

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

(1) Section 408—

**Repeal**

“or Schedule 10”

**Substitute**

“or Schedule 10 or 11”.

(2) Section 408—

**Repeal**

“of Schedule 10”

**Substitute**

“of Schedules 10 and 11”.

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

(1) Section 409, heading—

**Repeal**

“Schedule 10”

**Substitute**

“Schedules 10 and 11”.

(2) Section 409—

**Repeal**

“Schedule 10”

**Substitute**

“Schedules 10 and 11”.

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

(1) Schedule 1—

**Repeal**

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

**Substitute**

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

(2) Schedule 1, Part 1, section 1—

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

**Substitute**

“*market contract* (市場合約) means—

- (a) a contract that is subject to the rules of a recognized clearing house, entered into by the clearing house with a clearing participant pursuant to a novation—
  - (i) that is in accordance with those rules; and

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

**Add in alphabetical order**

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

***approved money broker*** (核准貨幣經紀) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155);

***clearing obligation*** (結算責任) has the meaning given by section 101A of this Ordinance;

***dealing in OTC derivative products*** (場外衍生工具產品交易) has the meaning given by Part 2 of Schedule 5;

***MA investigator*** (金管局調查員) has the meaning given by section 178 of this Ordinance;

***OTC derivative product*** (場外衍生工具產品) has the meaning given by section 1B;

***OTC derivative transaction*** (場外衍生工具交易) means a transaction in an OTC derivative product;

**prescribed person** (訂明人士) has the meaning given by section 101A of this Ordinance;

**providing clearing agency services for OTC derivative transactions** (為場外衍生工具交易提供結算代理人服務) has the meaning given by Part 2 of Schedule 5;

**registered SIP** (已登記系統重要參與者) has the meaning given by section 101A of this Ordinance;

**reporting obligation** (匯報責任) has the meaning given by section 101A of this Ordinance;

**SIP register** (系統重要參與者登記冊) has the meaning given by section 101A of this Ordinance;

**specified provision** (指明條文) means each of the following—

- (a) Part IIIA of this Ordinance and subsidiary legislation made under it;
- (b) Division 3A of Part VIII of this Ordinance;
- (c) sections 185, 187, 190 and 191 of this Ordinance to the extent to which they relate to an investigation of any matter under section 184A of this Ordinance;
- (d) sections 186A, 385A and 388A of this Ordinance;
- (e) Divisions 4 and 5 of Part IX of this Ordinance;
- (f) Division 1A of Part XVI of this Ordinance;

**trading obligation** (交易責任) has the meaning given by section 101A of this Ordinance;”.

- (4) Schedule 1, Part 1, after section 1A—

**Add**

**“1B. Meaning of OTC derivative product**

- (1) In this Ordinance, subject to subsections (2) and (3)—

**OTC derivative product** (場外衍生工具產品) means a structured product.

- 
- (2) An *OTC derivative product* does not include—
- (a) securities that are traded on a recognized stock market;
  - (b) a futures contract that is traded on a recognized futures market;
  - (c) a securities or futures contract that is—
    - (i) traded on a stock market or futures market prescribed under section 392A of this Ordinance; and
    - (ii) cleared through a clearing house prescribed under that section;
  - (d) a structured product that is offered to the public, the issue of any advertisement, invitation or document relating to which is authorized under section 105(1) of this Ordinance;
  - (e) a structured product in the form of debt security the payment under which is derived from cash flows generated by an underlying pool of assets;
  - (f) an instrument that—
    - (i) is in the form of shares, stocks, debentures, loan stocks, funds, bonds, notes, deposits or certificates of deposits or in the form of any other type of instrument prescribed under section 392A of this Ordinance; and
    - (ii) has an embedded feature that makes it a structured product;
  - (g) a spot contract;
  - (h) a structured product that is offered—
    - (i) within an offer period that is not more than 2 weeks; and



- 
- (ii) to multiple persons on identical terms, other than the consideration to be paid for the product; or
    - (i) a structured product, or a structured product of a class or description, prescribed under section 392(1)(b)(vii) of this Ordinance as a product that is not to be regarded as an OTC derivative product in accordance with the notice.
  - (3) An OTC derivative product also includes a product prescribed by notice under section 392(1)(a)(vii) of this Ordinance as a product that is to be regarded as an OTC derivative product in accordance with the notice.
  - (4) In this section—

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

    - (a) if the contract is—
      - (i) entered into in Hong Kong, 2 business days after the date of entering into the contract; or
      - (ii) settled outside Hong Kong, 2 days on which each settlement facility necessary to settle the transaction is open for business, after the date of entering into the contract;
    - (b) the period generally accepted in the market for that type or combination of types of securities, commodity, index, property, interest rate or currency exchange rate as the standard delivery period.”.
  - (5) Schedule 1, Part 1, before section 2—

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

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

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

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

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

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

**Add**

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

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

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

**Add**

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

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

**Add**

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

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

**Add**

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

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

**Add**

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

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

- (a) paragraph (a)—

**Repeal**

“; or”

**Substitute a semicolon;**

- (b) paragraph (b)—

**Repeal the semicolon**

**Substitute**

“; or”;

- (c) after paragraph (b)—

**Add**

“(c) OTC derivative products management;”.

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

**Add**

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

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

**Repeal**

“; or”

**Substitute a semicolon.**

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

**Add**

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

(i) in order that they may negotiate or conclude OTC derivative transactions in a way that forms or results in a binding transaction in accordance with established methods; or

(ii) with the reasonable expectation that they will negotiate or conclude OTC derivative transactions in such a way;”.

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

**Repeal**

“guaranteed,”

**Substitute**

“guaranteed; or”.

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

**Add**

“(d) transactions—

- (i) referred to in paragraph (ab); or
- (ii) resulting from the activities referred to in paragraph (ba),

may be novated, cleared, settled or guaranteed.”.

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

**Add**

“or any excluded services”.

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

**Add**

“(iiia) is licensed for Type 11 regulated activity and the act also constitutes dealing in OTC derivative products;

(iiib) is licensed for Type 12 regulated activity and the act is carried out wholly incidentally to the carrying on of that regulated activity;”.

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

**Add**

“(iiia) is licensed for Type 11 regulated activity and the act also constitutes dealing in OTC derivative products;

(iiib) is licensed for Type 12 regulated activity and the act is carried out wholly incidentally to the carrying on of that regulated activity;”.

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

**Repeal**

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

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

**Add**

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

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

**Repeal**

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

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

**Add**

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

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

**Add**

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

- (21) Schedule 5, Part 2—

**Add in alphabetical order**

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

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

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

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

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

*excluded services* (豁除服務) means—

- (a) services for trading in OTC derivative products that do not fall within paragraph (a), (b) or (c) of the definition of *automated trading services* and which are provided—
  - (i) by an authorized financial institution or an approved money broker;
  - (ii) by means of electronic facilities; and
  - (iii) wholly incidentally in carrying out an act that would constitute dealing in OTC derivative products but for the exclusion under section 2(f) of Part 2A;
- (b) services for clearing OTC derivative products that—
  - (i) also constitute Type 12 regulated activity; and
  - (ii) are provided by a person licensed for that regulated activity; and
- (c) services for clearing OTC derivative products that—
  - (i) would constitute Type 12 regulated activity but for the exclusion under section 4(b) of Part 2A; and
  - (ii) are provided by an authorized financial institution or an approved money broker;

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

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



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

- (a) such a service provided by an authorized financial institution or an approved money broker wholly incidentally in carrying out an act that would constitute dealing in OTC derivative products but for the exclusion under section 2(f) of Part 2A;
- (b) such a service provided by a person who—
  - (i) is licensed for Type 11 regulated activity; and
  - (ii) provides such service wholly incidentally in carrying on that regulated activity;
- (c) the provision of a service that would constitute securities or futures contracts management but for the exclusions under paragraphs (a), (b), (c), (d), (e), (f), (g) and (h) of the definition of ***securities or futures contracts management***;

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

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

(22) Schedule 5, after Part 2—

**Add**

**“Part 2A**

1. In Part 2, *advising on OTC derivative products* does not include the following—
  - (a) an act that falls within—
    - (i) Type 4 regulated activity, carried out by a person licensed to carry on that regulated activity; or
    - (ii) Type 5 regulated activity, carried out by a person licensed to carry on that regulated activity;
  - (b) an act that is excluded from the definition of *advising on futures contracts* in Part 2 under paragraph (ii) of that definition;
  - (c) an act that is excluded from the definition of *advising on securities* in Part 2 under paragraph (ii) of that definition;
  - (d) an OTC derivative advising act carried out in the ordinary course of business by—
    - (i) an authorized financial institution; or
    - (ii) an approved money broker;
  - (e) an OTC derivative advising act carried out by a person licensed for Type 9 regulated activity who—
    - (i) provides a service of OTC derivative products management that the person is permitted to provide under that licence; and
    - (ii) carries out the act solely for the purpose of providing that service;
  - (f) an OTC derivative advising act carried out by a person who—

- 
- (i) falls within a class prescribed by rules made under section 397 of this Ordinance for the purposes of this paragraph; or
    - (ii) carries on a type or description of business so prescribed;
  - (g) an OTC derivative advising act carried out by a corporation, if the giving of the advice or issuing of the analyses or reports constituting the act is solely to—
    - (i) any of its wholly owned subsidiaries; or
    - (ii) a holding company that holds all its issued shares or to other wholly owned subsidiaries of that holding company;
  - (h) an OTC derivative advising act carried out by—
    - (i) a solicitor, if carrying out that act is wholly incidental to his or her practice as a solicitor in a Hong Kong firm or foreign firm (both as defined by section 2(1) of the Legal Practitioners Ordinance (Cap. 159));
    - (ii) counsel, if carrying out that act is wholly incidental to his or her practice as counsel;
    - (iii) a certified public accountant, if carrying out that act is wholly incidental to his or her practice as a certified public accountant in a practice unit (as defined by section 2(1) of the Professional Accountants Ordinance (Cap. 50)); or
    - (iv) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29), if carrying out that act is wholly incidental to the discharge of its duties as such a trust company;

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

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

- 
- (ii) carries on a type or description of business so prescribed;
  - (l) an OTC derivative dealing act carried out only on a market referred to in section 3(a), (b) or (c) of the Commodity Exchanges (Prohibition) Ordinance (Cap. 82);
  - (m) an OTC derivative dealing act carried out by a person who—
    - (i) is a member of a commodity exchange referred to in section 3(d) of the Commodity Exchanges (Prohibition) Ordinance (Cap. 82); and
    - (ii) carries out the act only on an exchange referred to in subparagraph (i);
  - (n) an OTC derivative dealing act that is carried out by a person (*first person*) through another person (*OTC derivative products dealer*) who is—
    - (i) licensed for Type 11 regulated activity;
    - (ii) an authorized financial institution;
    - (iii) an approved money broker;
    - (iv) an officer or employee of an authorized financial institution, acting in the person's capacity as such; or
    - (v) an officer or employee of an approved money broker, acting in the person's capacity as such, except that the first person is to be regarded as dealing in OTC derivative products if that person, in return for a commission, rebate or other remuneration carries out an act set out in section 3.
3. The acts referred to in section 2(n) are that the first person (within the meaning of that section)—

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

- (d) an act of an agent, who does not handle client money or client assets, of such an acceptable participant.

5. In section 4—

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

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

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

- (a) which the Commission is satisfied has legal or regulatory requirements comparable to those of Hong Kong for regulating the provision of clearing and settlement services (other than acts referred to in section 4) in respect of OTC derivative transactions or other similar transactions on behalf of another person and through a central counterparty (either directly as a member of the central counterparty or indirectly



- through another person that is such a member); and
- (b) with the regulators of which the Commission has adequate cooperative arrangements or agreements.”.

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

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

**Add**

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

- |     |   |   |
|-----|---|---|
| 4I. | Section 101J(5)(b) or (c) of this Ordinance | Amendment or revocation of any condition, or imposition of any additional condition.                                    |
| 4J. | Section 101J(5)(d) of this Ordinance        | Revocation of a designation.  |
| 4K. | Section 101Q(3) of this Ordinance           | Making an entry in the SIP register.  |
| 4L. | Section 101S(1) or (2) of this Ordinance    | Refusal to remove from the SIP register the name of a person or a specific class entered in respect of a person's name. |
| 4M. | Section 101U(1) and (2) of this Ordinance   | Taking action to require a registered SIP to do an act.”.   |
- (2) Schedule 8, Part 2, Division 1, after item 40—  
**Add**  
“40A. Section 145A(1) of this Ordinance      Variation of any financial resources rule.”.
- (3) Schedule 8, Part 2, Division 1, after item 59—  
**Add**  
“59A. Section 197A(1)(a) or (b) of this Ordinance      Exercise of power to publicly or privately reprimand a registered SIP, or to order to pay a pecuniary penalty.”.
- (4) Schedule 8, Part 2, Division 2, after item 6—  
**Add**  
“7. Section 203A(1)(a), (b) or (c) of this Ordinance      Exercise of power to publicly or privately reprimand a person, to impose a prohibition on a person, or to order to pay a pecuniary penalty.”.
- (5) Schedule 8, Part 3, Division 5, after item 2—

**Add**

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

**Add**

“8A. A specified decision set out in item 40A of Division 1 of Part 2. Section 145A(8) of this Ordinance.”.

**55. Schedule 11 added**

After Schedule 10—

**Add**

**“Schedule 11** [ss. 407, 408 & 409]

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

**Part 1**

**Interpretation**

**1. Interpretation**

(1) In this Schedule—

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

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

***commencement date*** (生效日期), in relation to a specified regulated activity, the new Type 9 activity, the expanded Type 9 RA, the new Type 7 activity and the expanded Type 7 RA, means the date appointed under

section 1(2) of the amending Ordinance for the coming into operation of section 53 of the amending Ordinance;

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

**corporate applicant** (法團申請人)—

- (a) in relation to an application that relates to a specified regulated activity, means a person who makes an application referred to in section 3(1) or (2) of this Schedule;
- (b) in relation to an application that relates to the expanded Type 9 RA, means a person who makes an application referred to in section 13(2) or (3) of this Schedule; and
- (c) in relation to an application that relates to the expanded Type 7 RA, means a person who makes an application referred to in section 33(2) or (3) of this Schedule;

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

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

Schedule to be approved for the regulated activity to which the application relates;

- (d) in relation to an application made under section 119 or 127 by an authorized financial institution, means the date on and from which that institution is deemed under this Schedule to be registered for the regulated activity to which the application relates; and
- (e) in relation to an application made for the purposes of section 71C of the Banking Ordinance (Cap. 155), means the date on and from which the applicant for consent under that section is deemed under this Schedule to have consent in relation to the regulated activity to which the application relates;

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

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

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

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

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

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

**LR applicant** (持牌代表申請人)—

- (a) in relation to an application that relates to a specified regulated activity, means an individual who makes an application referred to in section 4(1) or (2) of this Schedule;
- (b) in relation to an application that relates to the expanded Type 9 RA, means an individual who makes an application referred to in section 14(2) or (3) of this Schedule; and
- (c) in relation to an application that relates to the expanded Type 7 RA, means an individual who makes an application referred to in section 34(2) or (3) of this Schedule;

**LR application** (持牌代表申請)—

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

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

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

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

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

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

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

***qualification period*** (資格計算期)—

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



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

***qualifying activity*** (合資格活動)—

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

***RO applicant*** (負責人員申請人)—

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

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

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

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

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

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

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

## **Part 2**

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

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

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

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

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

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

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

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

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

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- (i) have applied under section 126 to be approved as responsible officers of the corporate applicant in relation to the specified regulated activity concerned; and
    - (ii) satisfy the conditions in section 5(2)(a), (b) and (d) of this Schedule;
  - (d) that every executive director of the corporate applicant who is an individual—
    - (i) has applied under section 126 to be approved as a responsible officer of the corporate applicant in relation to the specified regulated activity concerned; and
    - (ii) satisfies the conditions in section 5(2)(a), (b) and (d) of this Schedule;
  - (e) either that—
    - (i) the corporate applicant has lodged an application under section 130(1) and the premises concerned satisfy the requirements of section 130(2)(a) and (b); or
    - (ii) the premises proposed to be used for keeping records or documents for the purposes of section 130(1) are the subject of an existing approval under that section;
  - (f) that the corporate applicant is in compliance, or has arrangements in place to ensure compliance, with any requirements of the Securities and Futures (Financial Resources) Rules (Cap. 571 sub. leg. N) applicable to a licensed corporation that carries on the specified regulated activity concerned; and

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

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

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



- (b) to be accredited to that principal.
- (3) The conditions are that—
- (a) the application is made within the application period;
  - (b) the application relates to a corporate applicant who has made an application referred to in section 3(1) or (2) of this Schedule for the same specified regulated activity to which the LR applicant's application relates;
  - (c) the conditions in section 3(3) of this Schedule are satisfied in relation to the principal's application for the same specified regulated activity to which the LR applicant's application relates;
  - (d) the LR applicant is carrying on for or on behalf of the principal the relevant qualifying activity at the time the application is made; and
  - (e) the LR applicant has not been issued a no-deeming notice before the deeming date.
- (4) The deeming under subsections (1) and (2)—
- (a) takes effect on the date immediately after the end of the transitional period for the specified regulated activity concerned; and
  - (b) ends in accordance with section 8 of this Schedule.
- (5) For the purposes of subsections (1) and (2), the reference in section 120(1) to a corporation licensed under section 116 is to be read as a reference to the principal.
- (6) For the purposes of subsections (1) and (2), the reference in section 122(1)(a) to a corporation licensed under section 116 is to be read as a reference to the principal.

**5. Deemed approval of responsible officers**

- (1) An individual who has made an LR application, and who also applies in accordance with section 126(1) to be approved as a responsible officer, is deemed to be approved in relation to the specified regulated activity concerned if the conditions in subsection (2) are satisfied.
- (2) The conditions are that—
  - (a) the application under section 126 in relation to the specified regulated activity concerned is made within the application period;
  - (b) the conditions in section 4(3)(a), (b), (d) and (e) of this Schedule are satisfied in relation to the LR application for the specified regulated activity concerned;
  - (c) the conditions in section 3(3) of this Schedule are satisfied in relation to the principal's application for the specified regulated activity concerned;
  - (d) subsection (3) is complied with; and
  - (e) the RO applicant has not been issued a no-deeming notice before the deeming date.
- (3) The RO applicant must submit, together with the application, a confirmation form confirming—
  - (a) if the application relates to Type 11 regulated activity, that the RO applicant has been carrying on in Hong Kong a qualifying activity for the qualification period; and
  - (b) if the application relates to Type 12 regulated activity, that the RO applicant has been carrying on in Hong Kong or elsewhere a qualifying activity for the qualification period.

- (4) The deeming under subsection (1)—
  - (a) takes effect on the date immediately after the end of the transitional period for the specified regulated activity concerned; and
  - (b) ends in accordance with section 10 of this Schedule.
- (5) For the purposes of subsection (1), the reference in section 126(1) to—
  - (a) a licensed representative is to be read as a reference to an LR applicant; and
  - (b) the licensed corporation is to be read as a reference to the principal.

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

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

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

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

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

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

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

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

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

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

- (1) This section applies to an individual who is deemed to be licensed—
- (a) under section 4(1) of this Schedule; and

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

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

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

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

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

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

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



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

## **Part 3**

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

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

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

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

**Division 2—Corporations and Individuals****13. Deemed licensing of corporations**

- (1) This section applies to a person that—
  - (a) is not an authorized financial institution; and
  - (b) is not a corporation that is licensed to carry on the existing Type 9 RA.
- (2) A person who applies in accordance with section 116(1) to be licensed to carry on the expanded Type 9 RA is deemed to be licensed under that section to carry on the expanded Type 9 RA if the conditions in subsection (4) are satisfied.
- (3) A person who applies in accordance with section 127(1) for variation of the regulated activity specified in the person's licence by adding the expanded Type 9 RA is deemed to be licensed under section 116(1) to carry on the expanded Type 9 RA if the conditions in subsection (4) are satisfied.
- (4) The conditions are that—
  - (a) the corporate applicant is a person referred to in section 116(2)(a);
  - (b) the application is made within the application period;
  - (c) an application for the purposes of section 130(1) is lodged, unless—
    - (i) the corporate applicant is a licensed corporation; and
    - (ii) the premises proposed to be used for keeping records or documents for the purposes of section 130(1) are the subject of an existing approval under that section;

- (d) not less than 2 individuals, at least one of whom is an executive director of the corporate applicant, have applied under section 126 to be approved as responsible officers of the corporate applicant in relation to the expanded Type 9 RA, and at least 2 of them, including at least 1 executive director of the corporate applicant, have not been issued a no-deeming notice before the corporate applicant is deemed;
  - (e) every executive director of the corporate applicant has applied under section 126 to be approved as a responsible officer of the corporate applicant in relation to the expanded Type 9 RA and none of them has been issued a no-deeming notice before the corporate applicant is deemed;
  - (f) subsection (5) is complied with; and
  - (g) the corporate applicant has not been issued a no-deeming notice before the deeming date.
- (5) The corporate applicant must submit, together with the application, a confirmation form confirming—
- (a) that the corporate applicant has been carrying on in Hong Kong a qualifying activity for the qualification period;
  - (b) that not less than 2 individuals, at least one of whom is an executive director of the corporate applicant—
    - (i) have applied under section 126 to be approved as responsible officers of the corporate applicant in relation to the expanded Type 9 RA; and
    - (ii) satisfy the conditions in section 15(2)(a), (b) and (d) of this Schedule;
  - (c) that every executive director of the corporate applicant who is an individual—

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- (i) has applied under section 126 to be approved as a responsible officer of the corporate applicant in relation to the expanded Type 9 RA; and
  - (ii) satisfies the conditions in section 15(2)(a), (b) and (d) of this Schedule;
  - (d) either that—
    - (i) the corporate applicant has lodged an application under section 130(1) and the premises concerned satisfy the requirements of section 130(2)(a) and (b); or
    - (ii) the premises proposed to be used for keeping records or documents for the purposes of section 130(1) are the subject of an existing approval under that section;
  - (e) that the corporate applicant is in compliance, or has arrangements in place to ensure compliance, with any requirements of the Securities and Futures (Financial Resources) Rules (Cap. 571 sub. leg. N) applicable to a licensed corporation that carries on the expanded Type 9 RA; and
  - (f) that the corporate applicant is in compliance, or has arrangements in place to ensure compliance, with any provisions of this Ordinance, the guidelines and codes of conduct applicable to a licensed corporation that carries on the new Type 9 activity.
- (6) The deeming under subsections (2) and (3)—
- (a) takes effect on the date immediately after the end of the transitional period for the new Type 9 activity; and
  - (b) ends in accordance with section 16 of this Schedule.

**14. Deemed licensing of representatives**

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

- (c) the conditions in section 13(4) of this Schedule are satisfied in relation to the principal's application for the expanded Type 9 RA;
  - (d) the LR applicant is carrying on for or on behalf of the principal the relevant qualifying activity at the time the application is made; and
  - (e) the LR applicant has not been issued a no-deeming notice before the deeming date.
- (5) The deeming under subsections (2) and (3)—
- (a) takes effect on the date immediately after the end of the transitional period for the new Type 9 activity; and
  - (b) ends in accordance with section 18 of this Schedule.
- (6) For the purposes of subsections (2) and (3), the reference in section 120(1) to a corporation licensed under section 116 is to be read as a reference to the principal.
- (7) For the purposes of subsections (2) and (3), the reference in section 122(1)(a) to a corporation licensed under section 116 is to be read as a reference to the principal.

### **15. Deemed approval of responsible officers**

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

- (b) the conditions in section 14(4)(a), (b), (d) and (e) of this Schedule are satisfied in relation to the LR application for the expanded Type 9 RA;
  - (c) the conditions in section 13(4) of this Schedule are satisfied in relation to the principal's application for the expanded Type 9 RA;
  - (d) subsection (3) is complied with; and
  - (e) the RO applicant has not been issued a no-deeming notice before the deeming date.
- (3) The RO applicant must submit, together with the application, a confirmation form confirming that the RO applicant has been carrying on in Hong Kong a qualifying activity for the qualification period.
- (4) The deeming under subsection (1)—
- (a) takes effect on the date immediately after the end of the transitional period for the new Type 9 activity; and
  - (b) ends in accordance with section 20 of this Schedule.
- (5) For the purposes of subsection (1), the reference in section 126(1) to—
- (a) a licensed representative is to be read as a reference to an LR applicant; and
  - (b) the licensed corporation is to be read as a reference to the principal.

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

- (1) A person deemed to be licensed under section 13(2) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—

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

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

- (1) This section applies if a person is deemed to be licensed under section 13(2) or (3) of this Schedule in respect of the expanded Type 9 RA.
- (2) During the period the person is deemed to be licensed—
  - (a) the premises in respect of which an application is lodged under section 130(1) are deemed to be approved;
  - (b) the person is deemed to have complied with section 130(3) in relation to the premises; and



- (c) the requirement in section 131(1) does not apply in respect of the person, but only if the person is not licensed for any other regulated activity.
- (3) If the person is deemed to be licensed under section 13(2) of this Schedule, during the period the person is so deemed, and if the person is granted a licence under section 116 for the expanded Type 9 RA, even after that, the deeming date is to be regarded—
  - (a) for the purposes of section 138(2), as the date of the grant of the licence, unless another date is approved by the Commission under that section; and
  - (b) for the purposes of section 138(4), as the date on which the person is licensed, unless another date is approved by the Commission under that section.
- (4) During the period the person is deemed to be licensed under section 13(2) or (3) of this Schedule, the person is also deemed to be subject to the condition that the person must not carry on securities or futures contracts management.

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

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

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

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

#### **19. Consequences of deemed status—representatives**

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

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

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

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

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

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

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

**Division 3—Authorized Financial Institutions and  
Individuals****22. Deemed registration of authorized financial institutions**

- (1) This section applies to an authorized financial institution that is not registered to carry on the existing Type 9 RA.

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

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

### **23. Deeming of executive officers**

- (1) This section applies to an individual who is not an executive officer of an authorized financial institution in relation to the existing Type 9 RA.

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- (2) An individual who applies for consent under section 71C(1) of the Banking Ordinance (Cap. 155) in relation to the expanded Type 9 RA is deemed to have consent to be an executive officer of the authorized financial institution concerned, in relation to that regulated activity, if the conditions in subsection (3) are satisfied.
  - (3) The conditions are that—
    - (a) the application for consent under section 71C(1) of the Banking Ordinance (Cap. 155) in relation to the expanded Type 9 RA is made within the application period;
    - (b) the authorized financial institution in relation to which the application is made—
      - (i) has made an application under section 119 or 127 in relation to the expanded Type 9 RA; and
      - (ii) satisfies the conditions in section 22(4) of this Schedule;
    - (c) subsection (4) is complied with; and
    - (d) the applicant has not been issued a no-deeming notice before the deeming date.
  - (4) The applicant must submit, together with the application, a confirmation form confirming that the applicant has been carrying on in Hong Kong a qualifying activity for the qualification period.
  - (5) The deeming under subsection (2)—
    - (a) takes effect on the date immediately after the end of the transitional period for the new Type 9 activity; and
    - (b) ends in accordance with section 26 of this Schedule.



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

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

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

- (1) This section applies to an authorized financial institution that is deemed to be registered under section 22(2) or (3) of this Schedule in respect of the expanded Type 9 RA.

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

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

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

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

- (e) a refusal to grant the authorized financial institution a certificate of registration for the expanded Type 9 RA takes effect as a specified decision under section 232;
- (f) a refusal to vary a regulated activity specified in the certificate of registration of the authorized financial institution by adding the expanded Type 9 RA takes effect as a specified decision under section 232.

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

- (1) The Commission may, after consultation with the Monetary Authority, issue a notice to an applicant referred to in section 22(2) or (3) of this Schedule informing that the applicant is not to be deemed to be registered under that section, if the Commission is not satisfied that—
  - (a) the application is made in accordance with section 119(1) or 127(1);
  - (b) the condition in section 22(4)(a) of this Schedule has been met;
  - (c) the applicant has confirmed the matters required to be confirmed under section 22(5) of this Schedule; or
  - (d) of the applicants for consent under section 71C(1) of the Banking Ordinance (Cap. 155) for the purposes of section 22(4)(b) of this Schedule, not less than 2 individuals have not been issued no-deeming notices before the authorized financial institution is deemed.

- (2) The Monetary Authority may issue a notice to an applicant referred to in section 23(2) of this Schedule informing that the applicant is not to be deemed to have consent under that section, if the Monetary Authority is not satisfied that—
  - (a) the conditions in section 23(3)(a) and (b) of this Schedule have been met; or
  - (b) the applicant has confirmed the matters required to be confirmed under section 23(4) of this Schedule.

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

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

- (1) This section applies to a corporation that, immediately before the commencement date, is a corporation licensed to carry on the existing Type 9 RA.
- (2) Unless the corporation complies with subsections (3) and (4), the corporation's licence for the existing Type 9 RA is deemed, on and from the date immediately after the end of the transitional period for the expanded Type 9 RA, to be subject to the condition that it must not carry on the new Type 9 activity.
- (3) The corporation must, within the application period for the expanded Type 9 RA, notify the Commission in writing that it is carrying on the new Type 9 activity and provide—
  - (a) a full description of the nature of the business carried on or to be carried on and the types of services provided or to be provided by the corporation;

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

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

- (1) This section applies to an individual who is approved as a responsible officer of a corporation licensed to carry on the existing Type 9 RA in relation to that regulated activity.
- (2) Unless the individual complies with subsections (3) and (4), the licensed representative licence of the individual is deemed, on and from the date immediately after the end of the transitional period for the expanded Type 9 RA, to be subject to the condition that the individual must not carry on the new Type 9 activity.

- (3) The individual must, within the application period for the expanded Type 9 RA, notify the Commission in writing that the individual is carrying on the new Type 9 activity.
- (4) The individual must submit, together with the notification, a confirmation form confirming that the individual has been carrying on in Hong Kong or elsewhere a qualifying activity for the qualification period.

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

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

- (1) This section applies to an authorized financial institution that, immediately before the commencement date, is an authorized financial institution registered to carry on the existing Type 9 RA.
- (2) Unless the authorized financial institution complies with subsections (3) and (4), the registration of the authorized financial institution for the existing Type 9 RA is deemed, on and from the date immediately after the end of the transitional period for the expanded Type 9 RA, to be subject to the condition that it must not carry on the new Type 9 activity.
- (3) The authorized financial institution must, within the application period for the expanded Type 9 RA, notify the Commission and the Monetary Authority in writing that it is carrying on the new Type 9 activity and provide—
  - (a) a full description of the nature of the business carried on or to be carried on and the types of services provided or to be provided by the authorized financial institution;

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- (b) information relating to the human and technical resources, operational procedures and organizational structure of the authorized financial institution showing that it is capable of carrying on its regulated activities, and its proposed regulated activities, competently; and
  - (c) a full description of any business history of the authorized financial institution and a business plan of the authorized financial institution covering internal controls, organizational structure, contingency plans and related matters.
- (4) The authorized financial institution must submit, together with the notification, a confirmation form confirming—
- (a) that at least one of its executive officers has been carrying on in Hong Kong or elsewhere a qualifying activity for the qualification period;
  - (b) that the authorized financial institution is in compliance with the requirement in paragraph 6 of the Seventh Schedule to the Banking Ordinance (Cap. 155);
  - (c) if the authorized financial institution is incorporated in Hong Kong, that it is also in compliance with the minimum capital requirements applicable to it under Part XVIA of the Banking Ordinance (Cap. 155); and
  - (d) that the authorized financial institution is in compliance with any provisions of this Ordinance, the guidelines and codes of conduct applicable to a registered institution that carries on the new Type 9 activity.

**31. Executive officers—deemed condition**

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

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

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



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

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

### **33. Deemed licensing of corporations**

- (1) This section applies if—
  - (a) a person is not licensed to carry on the existing Type 7 RA; and
  - (b) the person indicates in the application referred to in subsection (2) or (3) that the person does not intend to carry on the existing Type 7 RA except to the extent that it also constitutes carrying on the new Type 7 activity.
- (2) Subject to subsection (4), a person who applies in accordance with section 116(1) to be licensed to carry on the expanded Type 7 RA is deemed to be licensed under that section to carry on the expanded Type 7 RA if the conditions in subsection (5) are satisfied.
- (3) Subject to subsection (4), a person who applies in accordance with section 127(1) for variation of the regulated activity specified in the person's licence by adding the expanded Type 7 RA is deemed to be licensed under section 116(1) to carry on the expanded Type 7 RA if the conditions in subsection (5) are satisfied.
- (4) During the period the person is deemed to be licensed to carry on the expanded Type 7 RA, the person is also deemed to be subject to the condition that the person must not carry on the existing Type 7 RA except to the extent that it also constitutes carrying on the new Type 7 activity.

- (5) The conditions are that—
- (a) the corporate applicant is a person referred to in section 116(2)(a);
  - (b) the application is made within the application period;
  - (c) an application for the purposes of section 130(1) is lodged, unless—
    - (i) the corporate applicant is a licensed corporation; and
    - (ii) the premises proposed to be used for keeping records or documents for the purposes of section 130(1) are the subject of an existing approval under that section;
  - (d) not less than 2 individuals, at least one of whom is an executive director of the corporate applicant, have applied under section 126 to be approved as responsible officers of the corporate applicant in relation to the expanded Type 7 RA, and at least 2 of them, including at least 1 executive director of the corporate applicant, have not been issued a no-deeming notice before the corporate applicant is deemed;
  - (e) every executive director of the corporate applicant has applied under section 126 to be approved as a responsible officer of the corporate applicant in relation to the expanded Type 7 RA and none of them has been issued a no-deeming notice before the corporate applicant is deemed;
  - (f) the corporate applicant indicates in the application that, if it is deemed to be licensed to carry on the expanded Type 7 RA, the corporate applicant does not intend to carry on the existing Type 7 RA during the period that it is so deemed except

- to the extent that it also constitutes carrying on the new Type 7 activity;
- (g) subsection (6) is complied with; and
  - (h) the corporate applicant has not been issued a no-deeming notice before the deeming date.
- (6) The corporate applicant must submit, together with the application, a confirmation form confirming—
- (a) that the corporate applicant has been carrying on in Hong Kong a qualifying activity for the qualification period;
  - (b) that the corporate applicant does not intend to carry on the existing Type 7 RA except to the extent that it also constitutes carrying on the new Type 7 activity during the period that it is deemed for the expanded Type 7 RA;
  - (c) that not less than 2 individuals, at least one of whom is an executive director of the corporate applicant—
    - (i) have applied under section 126 to be approved as responsible officers of the corporate applicant in relation to the expanded Type 7 RA; and
    - (ii) satisfy the conditions in section 35(2)(a), (b) and (d) of this Schedule;
  - (d) that every executive director of the corporate applicant who is an individual—
    - (i) has applied under section 126 to be approved as a responsible officer of the corporate applicant in relation to the expanded Type 7 RA; and
    - (ii) satisfies the conditions in section 35(2)(a), (b) and (d) of this Schedule;

- (e) either that—
    - (i) the corporate applicant has lodged an application under section 130(1) and the premises concerned satisfy the requirements of section 130(2)(a) and (b); or
    - (ii) the premises proposed to be used for keeping records or documents for the purposes of section 130(1) are the subject of an existing approval under that section;
  - (f) that the corporate applicant is in compliance, or has arrangements in place to ensure compliance, with any requirements of the Securities and Futures (Financial Resources) Rules (Cap. 571 sub. leg. N) applicable to a licensed corporation that carries on the expanded Type 7 RA; and
  - (g) that the corporate applicant is in compliance, or has arrangements in place to ensure compliance, with any provisions of this Ordinance, the guidelines and codes of conduct applicable to a licensed corporation that carries on the new Type 7 activity.
- (7) The deeming under subsections (2) and (3)—
- (a) takes effect on the date immediately after the end of the transitional period for the new Type 7 activity; and
  - (b) ends in accordance with section 36 of this Schedule.

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

- (1) This section applies to an individual who is not licensed to carry on the existing Type 7 RA.
- (2) An individual who applies in accordance with section 120(1) to be licensed to carry on the expanded Type 7 RA for a corporation, but not as a responsible officer,

and who applies in accordance with section 122(1) to be accredited to the principal, is deemed, if the conditions in subsection (4) are satisfied—

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

- (5) The deeming under subsections (2) and (3)—
  - (a) takes effect on the date immediately after the end of the transitional period for the new Type 7 activity; and
  - (b) ends in accordance with section 38 of this Schedule.
- (6) For the purposes of subsections (2) and (3), the reference in section 120(1) to a corporation licensed under section 116 is to be read as a reference to the principal.
- (7) For the purposes of subsections (2) and (3), the reference in section 122(1)(a) to a corporation licensed under section 116 is to be read as a reference to the principal.

### **35. Deemed approval of responsible officers**

- (1) An individual who has made an LR application, and who also applies in accordance with section 126(1) to be approved as a responsible officer, is deemed to be approved in relation to the expanded Type 7 RA if the conditions in subsection (2) are satisfied.
- (2) The conditions are that—
  - (a) the application under section 126 in relation to the expanded Type 7 RA is made within the application period;
  - (b) the conditions in section 34(4)(a), (b), (d) and (e) of this Schedule are satisfied in relation to the LR application for the expanded Type 7 RA;
  - (c) the conditions in section 33(5) of this Schedule are satisfied in relation to the principal's application for the expanded Type 7 RA;
  - (d) subsection (3) is complied with; and

- (e) the RO applicant has not been issued a no-deeming notice before the deeming date.
- (3) The RO applicant must submit, together with the application, a confirmation form confirming that the RO applicant has been carrying on in Hong Kong a qualifying activity for the qualification period.
- (4) The deeming under subsection (1)—
  - (a) takes effect on the date immediately after the end of the transitional period for the new Type 7 activity; and
  - (b) ends in accordance with section 40 of this Schedule.
- (5) For the purposes of subsection (1), the reference in section 126(1) to—
  - (a) a licensed representative is to be read as a reference to an LR applicant; and
  - (b) the licensed corporation is to be read as a reference to the principal.

### **36. When deemed status ends—corporations**

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

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

### **37. Consequences of deemed status—corporations**

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



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

### **38. When deemed status ends—representatives**

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

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

### **39. Consequences of deemed status—representatives**

- (1) This section applies to an individual who is deemed to be licensed under section 34(2) of this Schedule in respect of the expanded Type 7 RA.
- (2) During the period the individual is deemed to be licensed, and if the individual is granted a licence under section 120 for the expanded Type 7 RA, even after that, the deeming date is to be regarded—

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

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

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

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

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

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

- (1) The Commission may issue a notice to a corporate applicant informing that the applicant is not to be deemed to be licensed under section 33(2) or (3) of this Schedule if the Commission is not satisfied that—
  - (a) the application is made in accordance with section 116(1) or 127(1); or
  - (b) the conditions in section 33(5)(a), (b), (c), (d), (e), (f) and (g) of this Schedule have been met.
- (2) The Commission may issue a notice to an LR applicant informing that the applicant is not to be deemed to be licensed under section 34(2) or (3) of this Schedule if the Commission is not satisfied that—
  - (a) the application is made in accordance with section 120(1) or 127(1); or
  - (b) the conditions in section 34(4)(a), (b), (c) and (d) of this Schedule have been met.

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

## **Part 5**

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

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

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

- (1) This Division applies despite sections 2, 12 and 32 of this Schedule.
- (2) This Division applies to—
  - (a) a person (other than an individual) who—
    - (i) applies under section 116(1) or 127(1) during the application period to carry on a new regulated activity; and
    - (ii) has been issued a no-deeming notice in respect of the application;
  - (b) an individual who—
    - (i) applies under section 120(1) or 127(1) to carry on a new regulated activity; and
    - (ii) carries on the new regulated activity for a person referred to in paragraph (a);

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

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

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

- (1) A person (other than an individual) or an authorized financial institution to whom this Division applies who does an act referred to in section 114(1) in relation to a new regulated activity, does not contravene that section even if the person or the authorized financial institution is not a person referred to in section 114(2)(a), (b) or (c), if the conditions in subsection (3) are satisfied.

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- (2) An individual to whom this Division applies who does an act referred to in section 114(3) in relation to a new regulated activity, does not contravene that section even if the individual is not a person referred to in section 114(4)(a), (b) or (c), if the conditions in subsection (4) are satisfied.
- (3) The conditions referred to in subsection (1) are that the act is done—
- (a) during the specified period; and
  - (b) solely for the purpose of closing down the business that is connected with the new regulated activity concerned.
- (4) The conditions referred to in subsection (2) are that the act is done—
- (a) during the specified period; and
  - (b) solely for the purpose of closing down the business—
    - (i) of the person or the authorized financial institution for whom the individual carries on the new regulated activity concerned; and
    - (ii) that is connected with that new regulated activity concerned.
- (5) In this section—
- specified period*** (指明期間), in relation to a new regulated activity—
- (a) for a person referred to in section 42(2)(a) of this Schedule, means the longer of the following periods—
    - (i) the period beginning on the date the no-deeming notice is issued to the person in respect of the new regulated activity and ending with the end of the transitional period;



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- (ii) the period of 3 months beginning on the date that the no-deeming notice is issued;
  - (b) for an individual referred to in section 42(2)(b) of this Schedule, means the specified period applicable to the person for whom the individual carries on the new regulated activity;
  - (c) for an authorized financial institution referred to in section 42(2)(c) of this Schedule, means the longer of the following periods—
    - (i) the period beginning on the date the no-deeming notice is issued to the authorized financial institution in respect of the new regulated activity and ending with the end of the transitional period;
    - (ii) the period of 3 months beginning on the date that the no-deeming notice is issued;
  - (d) for an individual referred to in section 42(2)(d) of this Schedule, means the specified period applicable to the authorized financial institution for whom the individual carries on the new regulated activity;
  - (e) for a person referred to in section 42(2)(e) of this Schedule who—
    - (i) becomes an unsuccessful appellant, means the period of 3 months beginning on the date the decision on review relating to the new regulated activity takes effect as a specified decision under section 232; and
    - (ii) is a non-appellant, means the period of 3 months beginning on the date the decision to refuse to grant the licence to carry on the new regulated activity takes effect as a specified decision under section 232;

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

#### **44. Extension of specified period**

- (1) A person (whether an individual or otherwise) referred to in section 42(2)(a), (b), (e) or (f) or 47(3) of this Schedule may apply to the Commission in writing, within the specified period that is applicable to the person in the particular case, for an extension of that specified period.
- (2) An authorized financial institution referred to in section 42(2)(c) or (g) of this Schedule may apply to the Commission in writing, within the specified period that is applicable to the authorized financial institution in the particular case, for an extension of that specified period.

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- (3) An individual referred to in section 42(2)(d) or (h) of this Schedule may apply to the Monetary Authority in writing, within the specified period that is applicable to the individual in the particular case, for an extension of that specified period.
  - (4) On receiving an application—
    - (a) made under subsection (1), the Commission may extend the specified period for a period that it considers appropriate, having regard to the circumstances of the person's business and activities;
    - (b) made under subsection (2), the Commission may, in consultation with the Monetary Authority, extend the specified period for a period that it, in consultation with the Monetary Authority, considers appropriate, having regard to the circumstances of the business and activities of the authorized financial institution; and
    - (c) made under subsection (3), the Monetary Authority may extend the specified period for a period that the Monetary Authority considers appropriate, having regard to the circumstances of the business and activities of the authorized financial institution.
  - (5) If the specified period is extended under this section in relation to a particular person, an authorized financial institution or an individual, a reference in section 43 of this Schedule to the specified period, in its application to that person, authorized financial institution or individual, must be taken to include the period so extended.

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

- (1) The Commission may, by a written notice served on a person (whether an individual or otherwise) referred to in section 42(2)(a), (b), (e) or (f) or 47(3) of this Schedule, require the person to comply with one or more of the requirements in subsection (4).
- (2) The Commission may, after consultation with the Monetary Authority, by a written notice served on an authorized financial institution referred to in section 42(2)(c) or (g) of this Schedule, require the authorized financial institution to comply with one or more of the requirements in subsection (4).
- (3) The Monetary Authority may, by a written notice served on an individual referred to in section 42(2)(d) or (h) of this Schedule, require the individual to comply with one or more of the requirements in subsection (4).
- (4) The requirements the issuing authority may impose are—
  - (a) to require the subject person or subject individual to carry on the new regulated activity concerned in a specified manner;
  - (b) to require the subject person or subject individual not to carry on the new regulated activity concerned in a specified manner;
  - (c) to require the subject person to deal with or refrain from dealing with, any assets whether in Hong Kong or elsewhere and whether or not they are the subject person's assets, in a specified manner;
  - (d) to require the subject person to maintain assets in Hong Kong or a specified place outside Hong Kong so that—

- (i) the assets are of a value or class or description that appear to be desirable to the issuing authority for the purpose of ensuring that the subject person will be able to meet the subject person's liabilities in respect of the business in the new regulated activity concerned carried on by that person; and
- (ii) the assets are maintained in a manner that will enable the subject person at any time to freely transfer or otherwise dispose of the assets.

(5) In this section—

**issuing authority** (主管當局), in relation to a notice issued under—

- (a) subsection (1) or (2), means the Commission; and
- (b) subsection (3), means the Monetary Authority;

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

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

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

**subject person** (標的人士) means—

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

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

- (1) A person (whether an authorized financial institution, individual or other person) who fails to comply with a requirement specified in a notice served under section 45(1), (2) or (3) of this Schedule commits an offence.
- (2) A person (other than an individual) who commits an offence under subsection (1) is liable—
  - (a) on conviction on indictment to a fine of \$10,000,000; or
  - (b) on summary conviction to a fine of \$500,000.
- (3) An individual who commits an offence under subsection (1) is liable—
  - (a) on conviction on indictment to a fine of \$10,000,000 and to imprisonment for 7 years; or
  - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 6 months.

**Division 2—Individuals Assisting Licensed Corporations to Carry on New Regulated Activity****47. Section 114 not contravened by individuals assisting licensed corporations**

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

- 
- (b) the person has become an unsuccessful appellant (within the meaning of section 42(3) of this Schedule); or
  - (c) the person is a non-appellant (within the meaning of section 42(4) of this Schedule).
- (3) An individual who does an act in relation to that regulated activity to assist a person referred to in subsection (2) does not contravene section 114(3) even if the individual is not a person referred to in section 114(4) if the conditions in subsection (4) are satisfied.
- (4) The conditions are that—
- (a) no individual to whom section 42(2)(b) or (f) of this Schedule applies is able to assist the person referred to in subsection (2) to close down the business connected with the new regulated activity;
  - (b) the act is done solely for the purpose of closing down the business connected with the new regulated activity;
  - (c) the act is done during the specified period applicable to the person under paragraph (a) or (e) of the definition of *specified period* in section 43(5) of this Schedule, depending on whether the person—
    - (i) has been issued a no-deeming notice;
    - (ii) has become an unsuccessful appellant (within the meaning of section 42(3) of this Schedule); or
    - (iii) is a non-appellant (within the meaning of section 42(4) of this Schedule); and
  - (d) the Commission has received prior written notice from the person referred to in subsection (2) that the individual concerned would be assisting that person.

- (5) For the purposes of subsection (4), the Commission is to be regarded as having received the notice if the person who gave the notice receives a written acknowledgement of receipt from the Commission.

## **Part 6**

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

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

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

#### **49. Deemed conditions**

- (1) For the purposes of this Ordinance—



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- (a) a condition that a licence is deemed to be subject to under section 28(2) of this Schedule is to be regarded as a condition imposed under section 116;
  - (b) a condition that a licence is deemed to be subject to under section 29(2) of this Schedule is to be regarded as a condition imposed under section 120;
  - (c) a condition that a registration is deemed to be subject to under section 30(2) of this Schedule is to be regarded as a condition imposed under section 119; and
  - (d) a condition that a licence is deemed to be subject to under section 33(4) of this Schedule is to be regarded as a condition imposed under section 116.
- (2) A condition that a consent is deemed to be subject to under section 31(2) of this Schedule (*consent condition*) is to be regarded as a condition imposed under section 71C(9) of the Banking Ordinance (Cap. 155) except that paragraphs (a), (b) and (c) of that section 71C(9) do not apply to or in relation to the consent condition.”.
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## Part 3

### Amendments Relating to Protections under Part III of Securities and Futures Ordinance

#### 56. Securities and Futures Ordinance amended

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

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

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

**Add**

“or made under section 40(2A)”.

(2) After section 18(6) —

**Add**

“(7) In this section —

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

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

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

After section 40(2)—

**Add**

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

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

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

Section 47(1)(a)—

**Repeal**

“the net sum (if any)”

**Substitute**

“any net sum”.

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

Schedule 3, Part 5, after section 1—

**Add**

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

3. For the purposes of section 2—

(a) a clearing participant will be regarded as recording market contracts in separate capacities if it enters into—

(i) transactions that are required or permitted by the RCH rules to be recorded in any of

- 
- the clearing participant's house accounts with the recognized clearing house;
- (ii) transactions that are required or permitted by the RCH rules to be recorded in any of the clearing participant's client accounts with the recognized clearing house;
- (b) any net sum payable to the clearing participant in respect of transactions recorded in client accounts, as calculated under section 1(c), must not be set off against any net sum payable by the clearing participant in respect of transactions recorded in any house account, as calculated under that section, regardless of any provision to the contrary in the RCH rules;
  - (c) any net sum payable to the clearing participant in respect of transactions recorded in house accounts, as calculated under section 1(c), may be set off against any net sum payable by the clearing participant in respect of transactions recorded in any client account, as calculated under that section, if the RCH rules so provide or permit.
4. To avoid doubt—
- (a) a transfer of a defaulting participant's positions under an unsettled market contract and collateral in a client account to one or more other clearing participants of the recognized clearing house in accordance with the RCH rules constitutes settlement of that contract for the purposes of section 1(a); and
  - (b) without limiting section 1(b), the reference in that section to the rights and liabilities of the clearing participant under or in respect of the contract concerned includes the rights and liabilities that arise as a result of action taken under the RCH

rules authorizing the transfer of the clearing participant's positions under the contract and collateral in a client account to one or more other clearing participants of the recognized clearing house.

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

6. In this Part—

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

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

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

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

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## Part 4

### Amendments to Securities and Futures Ordinance Relating to Electronic Filing

**61. Securities and Futures Ordinance amended**

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

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

Section 308(1)—

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

**Substitute**

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

**63. Section 374 substituted**

Section 374—

**Repeal the section**

**Substitute**

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

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

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

- (e) a notification required by section 347;
  - (f) a notification required by section 350(2).
- (2) Despite section 400, a specified document that is required to be given or delivered to a person specified in column 1 of the following table is to be regarded as duly given or delivered only if it is sent to the person specified opposite that person in column 2 of the table—
- (a) by means of an electronic transmission system approved under subsection (4); and
  - (b) in accordance with the directions and instructions for the use of that system published under subsection (5).

**Table**

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

- (3) As soon as practicable after receiving a specified document under subsection (2), the relevant exchange company must send a copy of it to the Commission and (except for a notification under section 330(1) or a report under section 333(1)) to the listed corporation concerned—
- (a) by means of an electronic transmission system approved under subsection (4); and



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

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

At the end of Schedule 10—

**Add**

**“Part 6**

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

1. Subject to section 2, section 374 of this Ordinance as substituted by section 63 of the Securities and Futures (Amendment) Ordinance 2013 ( of 2013) applies to a specified document if the duty to give or deliver the document arose on or after the commencement date of

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section 63 of the Securities and Futures (Amendment) Ordinance 2013 ( of 2013).

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

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

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## Part 5

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

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

**65. Securities and Futures Ordinance amended**

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

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

(1) Section 303(2)(c)—

**Repeal**

“him.”

**Substitute**

“the person;”.

(2) After section 303(2)(c)—

**Add**

“(d) an order that the person pay to the Government an amount not exceeding the amount of any profit gained or loss avoided by the person as a result of the commission of the offence in question.”.

(3) After section 303(7)—

**Add**

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

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

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

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

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

Schedule 2, after item 12—

**Add**

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

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

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## **Part 6**

### **Consequential Amendment**

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

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

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## Explanatory Memorandum

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

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

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

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

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

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



- (b) new sections 101P and 101Q (the SFC's duty to maintain a register, which may be inspected by members of the public, to record the names of persons who have notified the SFC and, additionally, those who have not notified the SFC if the SFC or the MA has reasonable cause to believe that their positions have reached the notification level);
  - (c) new section 101R (non-application of the notification requirement in respect of a class or description of OTC derivative transaction while a person is registered for that class or description);
  - (d) new section 101S (deregistration if the SFC is satisfied that the relevant conditions, circumstances and criteria prescribed for deregistration have been met);
  - (e) new sections 101T and 101U (powers of the SFC and the MA to require information from a registered SIP and the SFC's power to require a registered SIP to take action specified by it regarding OTC derivative products);
  - (f) new section 101V (application by the SFC to CFI for the enforcement of requirements imposed on SIPs); and
  - (g) new section 101W (rule making power of the SFC to prescribe details of the matters dealt with in the Division).
15. Clause 10 amends section 109 of the SFO to extend the offence of issuing advertisements relating to the carrying on of regulated activities to cover Type 11 RA.
16. Clause 12 amends section 119 of the SFO (which deals with the registration of authorized financial institutions for regulated activities) to exclude from its ambit Type 11 RA and Type 12 RA.

17. Clause 14 adds a new section 145A to the SFO to empower the SFC to vary financial resources rules for licensed corporations that engage in OTC derivative transactions, to enhance the SFC's supervision of such corporations.
18. Clauses 15 to 20 amend Part VIII of the SFO to include powers relating to the regulation of OTC derivative transactions among the SFC's existing supervisory powers and investigatory powers. The amendments also add a new Division 3A to confer powers on the MA to exercise similar powers over authorized financial institutions and approved money brokers for contravening the obligations. The main amendments are—
  - (a) clause 15, which includes in section 178 of the SFO a definition of *MA investigator* to mean investigators directed or appointed by the MA and expands the definition of *person under investigation* to include a person investigated by an MA investigator;
  - (b) clause 16, which amends section 181 of the SFO to extend the powers of a person authorized by the SFC to include power to require the giving of information about activities in OTC derivative products;
  - (c) clause 18, which amends section 182 of the SFO to give the SFC power to investigate wrongdoing connected with dealing in OTC derivative products or advising on OTC derivative products, providing clearing agency services for OTC derivative transactions and the contravention of obligations and non-compliance by registered SIPs of regulatory requirements under the new regime;
  - (d) clause 20, which adds a new Division 3A, with provisions to—
    - (i) give the MA power to direct or appoint MA investigators (new section 184A);
    - (ii) set out the powers of an MA investigator (new section 184B);

- (iii) provide for the making of investigation reports (new section 184C);
  - (iv) create offences for non-compliance with requirements made during the course of an investigation and for giving false or misleading information (new section 184D); and
  - (v) provide for the recovery of costs of an investigation (new section 184E);
- (e) clause 21, which amends section 185 of the SFO (which deals with application to the CFI for non-compliance with requirements made during an investigation) to apply it to investigations carried out by an MA investigator;
- (f) clause 22, which amends section 186 of the SFO (which deals with the SFC's power to assist regulators outside Hong Kong) to include assistance relating to transactions regarding OTC derivative products;
- (g) clause 23, which adds a new section 186A to the SFO to enable the MA to assist regulators outside Hong Kong who perform regulatory functions, in their investigations into matters concerning OTC derivative transactions;
- (h) clauses 24, 25 and 26, which amend sections 187, 190 and 191 of the SFO so that provisions relating to the use of incriminating evidence in proceedings, inspection of records and documents and application for and search under Magistrate's warrants extend to investigations carried out by an MA investigator.
19. Clauses 27 to 37 contain amendments relating to disciplinary powers of the SFC and the MA. They extend the existing powers of the SFC to enable it to take disciplinary action in relation to OTC derivative products and OTC derivative transactions. The amendments also add new Divisions 4 and 5 to Part IX of the SFO to enable the MA to take disciplinary

action against authorized financial institutions and approved money brokers that contravene the obligations. The following are the key amendments—

- (a) clause 29, which adds a new section 197A to the SFO to empower the SFC to take disciplinary action for non-compliance with requirements imposed on a registered SIP under new section 101U;
- (b) clauses 31 and 32, which amend sections 198 and 199 of the SFO to include new section 197A in the provisions relating to procedural requirements to be observed by the SFC in taking disciplinary action and to require the SFC to issue guidelines for taking disciplinary action to impose pecuniary penalties under new section 197A;
- (c) clause 34, which amends section 201 of the SFO to bring new section 197A within the SFC's power to take additional action and to state that the disciplinary powers do not affect the CFI's power to exercise its powers under the new provisions that empower the SFC to apply to the CFI for non-compliance with requirements under the SFO;
- (d) clause 37, which adds new Divisions 4 and 5 to Part IX of the SFO to—
  - (i) enable the MA to take disciplinary action against an authorized financial institution or an approved money broker (new section 203A);
  - (ii) set out procedural requirements for taking disciplinary action (new section 203B);
  - (iii) require the MA to publish guidelines for taking disciplinary action (new section 203C);
  - (iv) enable the MA to take action additional to disciplinary action with the consent of the person being disciplined (new section 203D);

- (v) set out how to recover pecuniary penalties imposed by the MA (new section 203E);
  - (vi) empower the MA to apply to the CFI to enforce compliance with a disciplinary order imposed on an authorized financial institution or an approved money broker prohibiting it from continuing to carry on or carrying on the business of OTC derivative transactions (new section 203F).
20. Clause 39 amends section 378 of the SFO to remove from its ambit the MA and persons assisting the MA, in the performance of the new functions relating to the regulatory regime for OTC derivative transactions.
21. Clause 40 adds a new Division 1A to Part XVI of the SFO to impose a confidentiality requirement on the MA and other persons involved in performing the MA's functions under the new regulatory regime and to create exceptions to the requirement in specified situations. Following are the main new sections—
- (a) new section 381A, which provides that the MA and every other person involved in performing the MA's new functions must preserve secrecy with regard to information that comes into their possession when performing those functions and sets out the circumstances in which they can disclose such information;
  - (b) new section 381B, which sets out situations in which only the MA can disclose information;
  - (c) new section 381C, which sets out circumstances in which the MA can disclose information, but subject to a condition;
  - (d) new section 381D, which imposes restrictions on persons to whom information is disclosed regarding the onward disclosure of the information and creates offences for breaching the restrictions;

- (e) new section 381E, which provides for situations in which the MA must disclose information to the SFC;
  - (f) new section 381F, which allows the MA to disclose information to overseas persons performing similar functions to the MA, but subject to certain conditions.
22. Clause 41 adds a new section 385A to the SFO to allow the MA to intervene in proceedings that are not criminal and concern matters relating to the MA's functions under the new regulatory regime.
23. Clause 42 amends section 388 of the SFO to exclude from the SFC's powers to bring prosecutions, matters relating to the MA's new functions.
24. Clause 43 adds a new section 388A to the SFO to empower the MA to prosecute certain offences relating to the MA's new functions and clause 44 amends section 389 of the SFO consequentially.
25. Clause 45 amends section 392 of the SFO to empower the FS to prescribe by a notice published in the Gazette that any interests, rights or property are to be regarded or not to be regarded as OTC derivative products.
26. Clause 46 adds a new section 392A to the SFO to empower the FS to prescribe by notice published in the Gazette certain matters for the purposes of the definition of *OTC derivative product*.
27. Clause 47 amends section 398 of the SFO to exclude from its application rules made by the SFC with the consent of the MA.
28. Clause 48 amends section 399 of the SFO to extend its application to all guidelines made by the SFC, including those made in relation to disciplinary action against registered SIPs.

29. Clauses 49 to 51 contain amendments consequential to the addition of a new Schedule 11 to the SFO setting out transitional arrangements relating to the Type 11 RA and Type 12 RA and the new components of Type 7 RA and Type 9 RA.
30. Clause 52 amends Schedule 1 (which contains definitions of general application) to the SFO to include a definition of *OTC derivative product* and other new definitions pertaining to the regulation of OTC derivative transactions. The replacement of the definition of *market contract* re-enacts the existing definition as paragraph (a) and adds a new paragraph (b) to cater for OTC derivative transactions.
31. Clause 53 amends Schedule 5 to the SFO to include definitions of Type 11 RA and Type 12 RA and the new components of Type 7 RA and Type 9 RA.
32. Clause 54 amends Schedule 8 to the SFO to include decisions under the new regime that are subject to review by the Securities and Futures Appeals Tribunal.

### **Transitional arrangements**

33. Clause 55 adds a new Schedule 11 to the SFO to provide transitional arrangements for activities that fall within Type 11 RA and Type 12 RA and the new components of Type 7 RA and Type 9 RA. In substance, the arrangements are as follows—
  - (a) a person who carries on Type 11 RA or Type 12 RA or the new components of Type 7 RA or Type 9 RA during the transitional period does not commit an offence even if the person is not licensed, registered or approved for that regulated activity;
  - (b) the transitional period in relation to each regulated activity is 6 months from the commencement of the application of the SFO to the regulated activity;

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



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

**Amendments relating to Part III protections**

34. Clause 57 amends section 18 of the SFO. Subclause (1) expands the definition of *default rules* to cover rules of a recognized clearing house (*RCH*) made under new section 40(2A) added by clause 58. Subclause (2) clarifies the ambit of the definition of *market collateral*.
35. Clause 58 amends section 40 of the SFO to add a new subsection (2A) to enable an RCH to make rules for taking proceedings or other action, to cover the RCH's own default or a reduction or cessation of the services provided by the RCH, and in relation to contracts entered into between a clearing participant and a clearing client and positions or collateral of a clearing client held by a clearing participant.
36. Clause 60 amends Part 5 of Schedule 3 (which sets out what the default rules must contain) to the SFO to add—
  - (a) a new section 2 to provide that if the RCH rules envisage that a clearing participant may record market contracts in separate capacities, the requirements as to the contents in section 1 of Schedule 3 to the SFO must be complied with for each capacity; and
  - (b) a new section 3 to—
    - (i) clarify when a clearing participant will be regarded as recording market contracts in separate capacities;
    - (ii) state that a net sum payable to the clearing participant for transactions recorded in client accounts must not be set off against a net sum payable by the clearing participant for transactions recorded in a house account even if the RCH rules provide otherwise; and

- (iii) state that a net sum payable to the clearing participant for transactions recorded in house account may be set off against a net sum payable by the clearing participant for transactions recorded in a client account if the RCH rules so permit; and
- (c) a new section 4 to—
- (i) clarify that a transfer of a defaulting participant's positions under an unsettled market contract and collateral in a client account to one or more other clearing participants of the recognized clearing house constitutes settlement of that contract; and
  - (ii) clarify consequentially the reference in section 1(b) of Part 5 of Schedule 3 to the SFO to the rights and liabilities of the clearing participant under or in respect of an unsettled or open market contract.

### **Amendments relating to electronic filing**

37. Clause 63 replaces section 374 of the SFO, which deals with the method of giving certain notifications and delivering reports under Part XV of the SFO (disclosure of interests in listed corporations). The effect of the new section is to require these documents to be filed electronically with the relevant exchange company (which is The Stock Exchange of Hong Kong Limited), except for those required to be given to the MA, which must be filed electronically with the MA.
38. Clause 64 enacts transitional provisions for notifications and reports under Part XV of the SFO. In particular, if the duty to give or deliver the document arose before the commencement date of clause 63, the document may be filed electronically under the new section 374 or given or delivered by a method specified in the old section 374.

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

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

**Consequential repeal**

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