Securities and Futures (Amendment) Ordinance 2014

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第 6 部
相應修訂

70. 廢除《2012 年證券及期貨（期貨合約）公告》.................................A912

Part 6
Consequential Amendment

70. Securities and Futures (Futures Contracts) Notice 2012 repealed .................................................................A913
An Ordinance 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 2014.

(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
2014年第6號條例
A494
第5條

第27(1)條——
廢除(b)段
代以
“(b) 關乎以下事宜的其他資料：該交易所的業務、任何證券的交易、任何期貨合約的交易或任何場外衍生工具產品的交易。”。

第38(1)(a)條——
廢除
“或期貨合約”
代以
“或期貨合約或場外衍生工具產品”。

第42(1)條——
廢除(b)段
代以
“(b) 關乎以下事宜的其他資料：該結算所的業務、任何證券的交易、任何期貨合約的交易或任何場外衍生工具產品的交易。”。

5. 修訂第38條 (認可結算所的責任)
第38(1)(a)條——
廢除
“或期貨合約的交易”
代以
“或期貨合約或場外衍生工具產品的交易”。

6. 修訂第42條 (認可結算所交出紀錄等)
(1) 第42(1)(a)條——
廢除
“或期貨合約”
代以
“或期貨合約或場外衍生工具產品”。

(2) 第42(1)條——
廢除(b)段
代以
“(b) 關乎以下事宜的其他資料：該結算所的業務、任何證券的交易、任何期貨合約的交易或任何場外衍生工具產品的交易。”。

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“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”
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 101N;

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

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

(b) a name under section 101V(1).
(b) an entry under section 101V(2);

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

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

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

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

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

(a) for that specific class; and

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

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

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

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

**prescribed manner** (訂明方式)—

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

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

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

(d) in relation to the record keeping obligation, means—
   (i) an authorized financial institution;
   (ii) an approved money broker;
   (iii) a licensed corporation; or
(iv) a person of a class or description specified in the record keeping rules as being subject to the record keeping obligation;

record keeping obligation (備存紀錄責任)—

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

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

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

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

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

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

reporting obligation (匯報責任)—

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

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

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

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

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

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

specific class (特定類別) means a particular class or description of OTC derivative transactions;
結算責任 (clearing obligation) ——
(a) 就屬在香港成立為法團的認可財務機構的訂明人士而言，指——
   (i) 第 101C(1) 條所指施加的責任；或
   (ii) 第 101C(3) 條所指施加的責任；及
(b) 就任何其他訂明人士而言，指第 101C(1) 條所指施加的責任；
《匯報規則》(reporting rules) 指根據第 101L 條訂立的規則；

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

撤銷登記 (derelegation) 就某特定類別而言，指——
(a) 根據第 101V(1) 條除名；或
(b) 根據第 101V(2) 條將某記項移除；

標的項目 (underlying subject matter) ——

specified OTC derivative transaction (指明場外衍生工具交易)—
(a) in relation to the reporting obligation, means a transaction specified in the reporting rules for the purposes of that obligation;
(b) in relation to the clearing obligation, means a transaction specified in the clearing rules for the purposes of that obligation;
(c) in relation to the trading obligation, means a transaction specified in the trading rules for the purposes of that obligation; and
(d) in relation to the record keeping obligation, means a transaction specified in the record keeping rules for the purposes of that obligation; systemically important participant (系統重要參與者) means a person—
(a) to whom section 101R(1) applies; and
(b) whose position in respect of a specific class has reached the notification level;

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

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

underlying subject matter (標的項目)—
Division 2—Reporting, Clearing, Trading and Record Keeping 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.

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

101C. Clearing obligation

(1) A prescribed person must clear an OTC derivative transaction to which subsection (2) applies—
(a) with a designated CCP; and
(b) in accordance with the clearing rules.

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

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

101E. Record keeping obligation

(1) A prescribed person must keep, in accordance with the record keeping rules, records relating to an OTC derivative transaction to which subsection (2) applies.

(2) This subsection applies to an OTC derivative transaction that—
(a) is specified in the record keeping rules—
   (i) in relation to the prescribed person; and
   (ii) as a transaction the records of which are required to be kept;
(b) falls within the circumstances and the criteria specified in those rules—
   (i) in relation to the prescribed person; and
(ii) for the application of the requirement to keep record referred to in paragraph (a)(ii); and

(c) does not fall within the circumstances specified in those rules—

(i) in relation to the prescribed person; and

(ii) as circumstances in which the requirement to keep record is taken to have been complied with.

(3) In addition, a prescribed person that is an authorized financial institution incorporated in Hong Kong must ensure that a subsidiary of that institution specified under subsection (5) complies in relation to an OTC derivative transaction with the requirement set out in subsection (4).

(4) The requirement is that the subsidiary keeps, in accordance with the record keeping rules, records relating to an OTC derivative transaction—

(a) to which the subsidiary is a counterparty; and

(b) that is specified in those rules as a transaction to which subsection (3) applies.

(5) The Monetary Authority may, by a written notice given to an authorized financial institution incorporated in Hong Kong, specify for the purposes of subsection (3)—

(a) a particular subsidiary;

(b) more than one subsidiary; or

(c) subsidiaries generally.

(6) The Monetary Authority may specify under subsection (5) a subsidiary incorporated outside Hong Kong or a subsidiary incorporated in Hong Kong.
(7) A person specified in subsection (9)(a) must, when requested by the Commission—
(a) give the Commission access to the records kept under this section; and
(b) produce the records to the Commission within the time and at the place specified by the Commission.

(8) A person specified in subsection (9)(b) must, when requested by the Monetary Authority—
(a) give the Monetary Authority access to the records kept under this section; and
(b) produce the records to the Monetary Authority within the time and at the place specified by the Monetary Authority.

(9) The person specified—
(a) for the purposes of subsection (7) is—
(i) a prescribed person that is a licensed corporation; or
(ii) a prescribed person that is a person of a class or description specified in the record keeping rules as being subject to the record keeping obligation; and
(b) for the purposes of subsection (8) is—
(i) a prescribed person that is an authorized financial institution; or
(ii) a prescribed person that is an approved money broker.

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

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

(1) If a prescribed person that is not an authorized financial institution or an approved money broker contravenes the reporting obligation, clearing obligation, trading obligation or record keeping obligation, the Commission may apply to the Court of First Instance in respect of the contravention.

(2) The application must be made by originating summons that is in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

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

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

(1) If a prescribed person that is an authorized financial institution or an approved money broker contravenes the reporting obligation, clearing obligation, trading obligation or record keeping obligation, the Monetary Authority may apply to the Court of First Instance in respect of the contravention.

(2) The application must be made by originating summons that is in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

(3) The Court of First Instance may inquire into the case and, if satisfied that there is no reasonable excuse for the contravention, impose a financial penalty not exceeding $5,000,000 on the prescribed person.
101H. Exemptions from obligations

(1) On application by a prescribed person and on payment of the prescribed fee, the Commission may, with the consent of the Monetary Authority—

(a) exempt the person from one or more of the following—

(i) the reporting obligation;
(ii) the clearing obligation;
(iii) the trading obligation;
(iv) the record keeping obligation; and

(b) on granting the exemption, impose conditions.

(2) The Commission may, with the consent of the Monetary Authority—

(a) suspend or withdraw an exemption on—

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

(b) amend any condition.

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

101I. Guidelines on exemptions

(1) The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, publish guidelines for granting exemptions from the reporting obligation, clearing obligation, trading obligation or record keeping obligation.
(2) The Commission—
(a) may exercise its powers under section 101H only after guidelines have been published; and
(b) must have regard to the published guidelines when exercising its powers under section 101H.

(3) Guidelines published under subsection (1) are not subsidiary legislation.

Division 3—Designation of Central Counterparties and Trading Platforms

101J. Designation of central counterparties

(1) On application by a person in the prescribed manner and on payment of the prescribed fee, the Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary—
(a) designate the person, in accordance with the designation rules and by a written notice served on the person, as a central counterparty for the purposes of this Part; or
(b) refuse, in accordance with the designation rules, to designate the person.

(2) A person may be designated only if—
(a) at the time of designation, the person—
(i) is a recognized clearing house; or
(ii) is a person authorized under section 95(2) to provide automated trading services; and
(b) the requirements prescribed by the designation rules have been met.

(3) A designation may be for—
(a) OTC derivative transactions generally; or
(b) 就該項指定指明的某類別或某種類場外衍生工具交易而作出。

(4) 在香港境外或境內的人，均可根據本條獲指定。

(5) 證監會可在金融管理專員同意下，在諮詢財政司司長後，按照《指定規則》並藉向任何人送達書面通知，就任何指定——

(a) 施加任何條件；
(b) 修訂或撤銷任何條件；
(c) 施加額外條件；
(d) 撤銷該指定。

(6) 證監會在行使第(1)(b)或(5)(d)款所指的權力之前，須給予有關的人合理的陳詞機會。

(7) 如證監會根據第(5)(b)或(c)款修訂或撤銷任何條件，或施加任何額外條件，則該項修訂、撤銷或施加的生效時間，是有關通知送達之時，或該通知指明的時間，兩者以較遲者為準。

(8) 如證監會根據第(5)(d)款撤銷任何指定，則該項撤銷的生效時間，是有關通知送達之時，或該通知指明的時間，兩者以較遲者為準。

(9) 如任何人根據本條獲指定，或任何指定根據本條遭撤銷，證監會須在憲報刊登公告，以公布此事。

(10) 根據第(9)款刊登的公告，不是附屬法例。

(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.
101K. 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**

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

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

(a) generally for the purposes of the reporting
obligation; and

(b) without limiting paragraph (a), to prescribe the
particular matters set out in this section.
(2) Rules made under this section—
(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
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(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 or on behalf of the Monetary Authority for submitting and receiving reports on OTC derivative transactions for the purposes of section 101B;

(c) any documents, information or particulars that must be submitted for complying with the reporting obligation;

(d) the period within which the reporting obligation must be complied with; and

(e) any other matter relating to the procedure for complying with the reporting obligation.

(8) Rules made under this section may specify—

(a) that a prescribed person may report a specified OTC derivative transaction to the Monetary Authority directly or through a third party; and

(b) that a subsidiary specified under section 101B(5) that is a counterparty to a specified OTC derivative transaction may report the transaction to the Monetary Authority directly or through a third party.
101M. Rule making power—fees

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

(2) Rules made under this section may provide—

(a) that the amount of any fees may be fixed by reference to a scale set out in the rules;
(b) for the payment of different fees by or in relation to persons or cases of different classes or descriptions;
(c) for the time and manner of payment of the fees;
(d) that the payment of any fees may, either generally or in a particular case, be reduced, waived or refunded;
(e) that the Monetary Authority may recover any outstanding amount of the fees as a civil debt due to the Monetary Authority; and
(f) for any other matters relating or incidental to a matter mentioned in paragraph (a), (b), (c), (d) or (e).

(3) This section is in addition to and not in derogation of sections 29 and 29A of the Interpretation and General Clauses Ordinance (Cap. 1).

101N. Rule making power—clearing obligation

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

(a) generally for the purposes of the clearing obligation; and
(b) without limiting paragraph (a), to prescribe the particular matters set out in this section.

(2) Rules made under this section—

(a) may specify for the purposes of paragraph (b)(iv) of the definition of prescribed person in section 101A, a class or description of persons; and

(b) must provide in relation to a person of such a class or description that the person is subject to the clearing 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—
(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; and
(e) that a subsidiary specified under section 101C(5) that is a counterparty to a specified OTC derivative transaction may clear the transaction with a designated CCP directly or through a third party.

101O. Rule making power—trading obligation

(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;
101P. Rule making power—record keeping obligation

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

(a) generally for the purposes of the record keeping obligation; and

(b) without limiting paragraph (a), to prescribe the particular matters set out in this section.

(2) Rules made under this section—

(a) may specify for the purposes of paragraph (d)(iv) of the definition of prescribed person in section 101A, a class or description of persons; and

(b) must provide in relation to a person of such a class or description that the person is subject to the record keeping obligation only if the person is a counterparty to a specified OTC derivative transaction.

(3) Rules made under this section may specify—
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(a) generally, or with reference to a class or description of transactions, the OTC derivative transactions that are subject to the record keeping obligation;

(b) the records to be kept;

(c) different records to be kept under different circumstances or by different classes or descriptions of prescribed persons;

(d) the manner in which, the location at which and the minimum duration for which the records must be kept;

(e) the circumstances relating to a specified OTC derivative transaction in which the record keeping obligation—

(i) applies;

(ii) does not apply; or

(iii) is taken to have been complied with; and

(f) any other matter relating to the records to be kept.

101Q. Rule making power—designations
The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, make rules to prescribe—

(a) the application procedure for designation—

(i) as a central counterparty, including the documents and information to be provided by the applicant; or

(ii) as a trading platform, including the documents and information to be provided by the applicant;

(b) the records to be kept;

(c) different records to be kept under different circumstances or by different classes or descriptions of prescribed persons;

(d) the manner in which, the location at which and the minimum duration for which the records must be kept;

(e) the circumstances relating to a specified OTC derivative transaction in which the record keeping obligation—

(i) applies;

(ii) does not apply; or

(iii) is taken to have been complied with; and

(f) any other matter relating to the records to be kept.
第 5 分部 — 系統重要參與者

101R. 須具報場外衍生工具交易的持倉量的人

(1) 凡任何人——

(a) 並非——

(i) 認可財務機構；
(ii) 核准貨幣經紀；
(iii) 持牌法團；
(iv) 認可交易所；
(v) 認可結算所；或
(vi) 根據第 95(2) 條獲認可提供自動化交易服務的人；並

(b) 從事場外衍生工具交易，

本條即適用於該人。

(2) 如本條適用的人的特定類別的持倉量，達到具報水平，

該人須按照第 (4) 款，向證監會具報。

(b) 其他須具備的申請人須遵從的其他規定；
(c) 在考慮申請時可顧及的任何事宜；
(d) 可據以拒絕或撤銷指定的理由；
(e) 根據第 101J(1) 或 (5) 或 101K(1) 或 (5) 條行使權力的程序；或
(f) 關乎根據第 101J 或 101K 條作出指定或撤銷的過程或程序的任何其他事項。

Division 5—Systemically Important Participants

101R. 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;
(iii) a licensed corporation;
(iv) a recognized exchange company;
(v) a recognized clearing house; or
(vi) a person authorized under section 95(2) to provide automated trading services; and

(b) engages in OTC derivative transactions.

(2) A person to whom this section applies must notify the Commission in accordance with subsection (4) if the person's position in a specific class reaches the notification level.
(3) For the purposes of subsection (2), a reference to a person’s position includes the position of another person to the extent to which the performance of the obligations arising from that other person’s position is guaranteed by the person.

(4) A notification must be given—
(a) in writing and within the period prescribed by the notification rules; and
(b) in accordance with subsection (5).

(5) A notification must contain—
(a) sufficient information—
(i) to identify the systemically important participant;
(ii) to identify the specific class to which the notification relates; and
(iii) to show that the notification level has been reached; and
(b) any information prescribed by the notification rules (including additional information so prescribed, relating to the matters referred to in paragraph (a)).

(6) A person who without reasonable excuse fails to comply with subsection (2) commits an offence.

(7) A person who commits an offence under subsection (6) is liable—
(a) on conviction on indictment to a fine of $5,000,000 and to imprisonment for 7 years and, if the offence is a continuing offence, to a further fine of $100,000 for every day during which the offence continues, until the cut-off date for the further fine; or
(b) on summary conviction to a fine of $500,000 and to imprisonment for 2 years and, if the offence is a continuing offence, to a further fine of $10,000 for every day during which the offence continues, until the cut-off date for the further fine.

(8) For the purposes of subsection (7), the cut-off date for a further fine for which the person is liable is the date on which the person, in writing, notifies the Commission in accordance with subsection (5) of the person's position in that specific class.

101S. Commission to maintain register

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

(2) The SIP register may be maintained—

(a) in a documentary form; or

(b) by recording information otherwise than in a documentary form, so long as the information is capable of being reproduced in a legible form.

(3) At all reasonable times, the SIP register must be made available to the public for the purpose of enabling a person who is a member of the public to ascertain—

(a) whether the person is dealing with a registered SIP; and

(b) the particulars of registration of a registered SIP the person is dealing with.

(4) At all reasonable times, a member of the public may—

(a) inspect the SIP register, or if it is maintained otherwise than in a documentary form, a reproduction of the information or the relevant part of it in a legible form; and
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(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.

101T. Registration in SIP register

(1) The Commission may enter in the SIP register in respect of a person who has complied with the notification requirement—
(a) the name of the person; and
(b) the specific class in respect of which the notification level has been reached.

(2) The Commission may enter in the SIP register in respect of a person who has purportedly given a notification, but not in accordance with section 101R(4)—
(a) the name of the person; and
(b) the specific class in respect of which the notification level has been reached.
(3) If the conditions in subsection (6) are satisfied in relation to a person, the Commission may enter in the SIP register—
   (a) the name of the person; and
   (b) the specific class referred to in subsection (6)(b).

(4) Before making an entry in the SIP register under subsection (3)(a) or (b) in respect of a person, the Commission must—
   (a) inform the Monetary Authority; and
   (b) give the person concerned a reasonable opportunity of being heard in respect of the proposed entry.

(5) The Commission must inform the person concerned by a written notice as soon as practicable after making an entry in the SIP register under subsection (1)(a) or (b), (2)(a) or (b) or (3)(a) or (b).

(6) The conditions referred to in subsection (3) are that—
   (a) section 101R(1) applies to the person; and
   (b) either—
      (i) the Commission has reasonable cause to believe that the person's position in a specific class has reached the notification level but the person has not given a notification in respect of the specific class; or
      (ii) the Monetary Authority informs the Commission that the Monetary Authority has reasonable cause to believe that the person's position in a specific class has reached the notification level but the person has not given a notification in respect of the specific class.
(7) For the purposes of subsection (6)(b), a reference to a person's position includes the position of another person to the extent to which the performance of the obligations arising from that other person's position is guaranteed by the person.

(8) A decision to make an entry in the SIP register under subsection (1), (2) or (3) takes effect at the time of the service of the notice under subsection (5) on the person or at the time specified in the notice, whichever is the later.

101U. Notification not required after registration for specific class

(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 101T(2) or (3) to comply with the notification requirement in respect of that specific class.

(3) Also, subsection (1) does not affect the application of section 101R(2) to a person whose position in a specific class reaches the notification level after the first or any subsequent deregistration for that specific class.

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

(5) For the purposes of subsections (3) and (4), a reference to the position of a person or a person's position includes the position of another person to the extent to which the performance of the obligations arising from that other person's position is guaranteed by the person.
101V. Deregistration

(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 101T(3).
101W. 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.
101X. 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 exposure arising from its 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;

(e) to restrict the type of collateral collected or posted;

(f) to take any other action prescribed by the notification rules.

(3) For the purposes of subsection (2)(a), a reference to the registered SIP's exposure arising from its positions is a reference to the risk to which the registered SIP is exposed in respect of—

(a) the positions of the registered SIP; and

(b) the positions of another person to the extent to which the performance of the obligations arising
from those positions is guaranteed by the registered SIP.

(4) A requirement in a notice served under this section takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

101Y. Application to Court of First Instance

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

(2) If a registered SIP fails to comply with a requirement made under section 101W(2), the Monetary Authority may apply to the Court of First Instance for an inquiry into the failure.

(3) The Court of First Instance may inquire into the case and if satisfied that—
   (a) there is no reasonable excuse for the registered SIP not to comply with the requirement, order the registered SIP to comply with the requirement within the period specified by the Court; and
   (b) the failure was without reasonable excuse, punish the registered SIP in the same manner as if the registered SIP had been guilty of contempt of court.

(4) If there is a reasonable likelihood that a registered SIP will fail to comply with a requirement referred to in subsection (1), the Commission may apply to the Court of First Instance for an order that the registered SIP take such action or refrain from taking such action as the Court directs.
(5) If there is a reasonable likelihood that a registered SIP will fail to comply with a requirement referred to in subsection (2), the Monetary Authority may apply to the Court of First Instance for an order that the registered SIP take such action or refrain from taking such action as the Court directs.

(6) An application under subsection (1), (2), (4) or (5) must be made by originating summons that is in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

101Z. Rule making power—notifications etc.

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;

(iii) the conditions, circumstances and criteria for deregistration; and

(iv) the conditions, circumstances and criteria for regarding a person’s position as reaching the notification level;

(b) additional information to be given by a person under section 101R(5)(b);

(c) matters on which information may be required to be given under section 101W(1)(c) and (2)(c);

(d) action a registered SIP may be required to take under section 101X(2)(f); and

(e) generally for better carrying out the purposes of this Division.”.
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”.

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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 acts involving OTC derivative transactions, vary any financial resources rule applicable to the corporation, if satisfied, on reasonable grounds, that it is prudent to make the variation, taking into account risks associated with the corporation.

(2) If the Commission proposes to serve a notice under subsection (1) on a licensed corporation, it must serve a draft of the notice (draft notice) on the corporation.

(3) A draft notice must—

(a) specify—

(i) the financial resources rule proposed to be varied;

(ii) the manner in which that rule is proposed to be varied; and

(iii) the grounds for the proposed variation; and

(b) include a statement that the corporation may, within 14 days, or a longer period the Commission allows in a particular case, from the date of service of the draft notice, make written representations to the Commission on any or all of the matters specified in the draft notice.

(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—
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(a) 證監會可根據第 (1) 款，向該法團送達內容與該通知草擬本大致相同的通知；
(b) 如該等申述中任何一項或多於一項（有闢申述），令證監會信納應修改通知的內容，則證監會可在顧及有關申述下作出該項修改，並根據第 (1) 款，向該法團送達內容經修改的通知；或
(c) 如有關申述令證監會信納不應採取 (a) 段所述的行動，亦不應採取 (b) 段所述的行動，則證監會可因此選擇不根據第 (1) 款向該法團送達通知。

(5) 如有通知草擬本送達某持牌法團，但該法團沒有按照第 (3)(b) 款，就該通知草擬本作出申述，則證監會可根據第 (1) 款，向該法團送達內容與該通知草擬本大致相同的通知。

(6) 如適用於某從事場外衍生工具交易的持牌法團的任何財政資源規則，根據本條被更改，則本部 (包括根據第 145 條訂立的規則) 就該法團而適用，但須顧及經更改的財政資源規則，作出必要的變通。

(7) 為免生疑問——
(a) 證監會可向某持牌法團送達通知草擬本，以取代較早前送達該法團的另一份通知草擬本；及
(b) 在第 (4)(a) 及 (5) 款中，凡提及“內容與該通知草擬本大致相同”，不得解釋為包括第 (3)(b) 款規定須包含在通知草擬本內的陳述。

(a) serve a notice on the corporation under subsection (1) in substantially the same terms as the draft notice;
(b) serve a notice on the corporation under subsection (1) in terms modified to take account of any one or more of those representations that satisfy the Commission that the modification ought to be made; or
(c) elect not to serve a notice on the corporation under subsection (1) because one or more of those representations satisfy the Commission that it should neither take the action mentioned in paragraph (a) nor take the action mentioned in paragraph (b).

(5) If no representations are made in accordance with subsection (3)(b) on a draft notice served on a licensed corporation, the Commission may serve a notice on the corporation under subsection (1) in substantially the same terms as the draft notice.

(6) If a financial resources rule applicable to a licensed corporation that engages in OTC derivative transactions is varied under this section, this Part (including rules made under section 145) applies, in relation to that corporation, with all necessary modifications to take account of the financial resources rule so varied.

(7) To avoid doubt—
(a) the Commission may serve a draft notice on a licensed corporation in substitution for an earlier draft notice served on the corporation; and
(b) the reference to substantially the same terms as the draft notice in subsections (4)(a) and (5) is not to be construed to include the statement required to be included in a draft notice under subsection (3)(b).
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”
代以
“符合以下說明的人：持有任何證券、期貨合約、槓桿式外匯交易合約、場外衍生工具產品”。

(2) 第 181(1)(b) 條——
廢除
在“，或”之後的所有字句
代以
“任何證券、期貨合約、槓桿式外匯交易合約、場外衍生工具產品或集體投資計劃的權益；”。

(3) 第 181(1)(c) 條——
廢除
在“相信”之後而在“，或任何”之前的字句
代以
“是符合以下說明的人：已直接或透過代名人、受託人或代理人的持股，且不論是以實益擁有人、代名人、受託人或代理人的身份或其他身份，取得或處置任何證券、期貨合約、槓桿式外匯交易合約、場外衍生工具產品”。

(4) 第 181(1)(c) 條——
廢除
“或集體投資計劃的權益的人”
代以
“、場外衍生工具產品或集體投資計劃的權益”。

(5) 第 181(1)(d) 條——
廢除
“合約，或”
代以
“合約、場外衍生工具產品，或”。

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”。

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(6) 第 181(1)(d) 條——
廢除
“合約或集體”
代以
“合約、場外衍生工具產品或集體”。

(7) 第 181(2)(a) 條——
廢除
“合約，或”
代以
“合約、場外衍生工具產品，或”。

(8) 第 181(2)(a) 條——
廢除
“合約或集體”
代以
“合約、場外衍生工具產品或集體”。

(9) 第 181(2)(b) 條——
廢除
“合約，或”
代以
“合約、場外衍生工具產品，或”。

(10) 第 181(2)(b) 條——
廢除
“合約或集體”
代以
“合約、場外衍生工具產品或集體”。

(11) 第 181(2)(c) 條——
廢除

(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
17. 修訂第 VIII 部第 3 分部標題 (調查權力)
第 VIII 部，第 3 分部，標題——
廢除
“調查權力”
代以
“證監會的調查權力”。

18. 修訂第 182 條 (調查)
(1) 第 182 條，標題——
廢除
“調查”
代以
“證監會所作的調查”。
(2) 第 182(1)(b)(iv) 條——
廢除
“；或”
代以分號。
(3) 在第 182(1)(b)(v) 條之後——
加入

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12. 第 181(2)(c) 條——
廢除
“合約或集體”
代以
“合約、場外衍生工具產品或集體”。

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
“；或”
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 client clearing 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, trading obligation or record keeping obligation;
(db) the Commission has reasonable cause to believe that a registered SIP may have failed to comply with a requirement made under section 101X;”.

(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”.
Part 2
Section 20

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, trading obligation or record keeping obligation, the Monetary Authority may—

(a) direct in writing one or more persons appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to investigate the matter; or

(b) with the consent of the Financial Secretary, appoint in writing one or more other persons to investigate the matter.

(2) The Monetary Authority must give an MA investigator a copy of—

(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.
2014第6號條例
A600
第2部
第20條

(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.
184D. 與調查有關的罪行

(1) 任何人無合理辯解而沒有——
   (a) 交出根據第 184B(1)(a) 條被要求交出的紀錄或文件；
   (b) 提供根據第 184B(1)(b) 條被要求提供的解釋或進一步詳情；
   (c) 遵從金管局調查員根據第 184B(1)(c) 條作出的面見要求；
   (d) 回答金管局調查員根據第 184B(1)(c) 條提出的問題；
   (e) 遵守第 184B(1)(d) 條；或
   (f) 遵從根據第 184B(2) 或 (3) 條作出的要求，
       即屬犯罪。

(2) 犯第 (1) 款所訂罪行的人——
   (a) 一經循公訴程序定罪，可處罰款 $200,000 及監禁
       1 年；或
   (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。

(3) 任何人——
   (a) 在——
      (i) 看來是遵從金管局調查員根據第 184B(1)(a) 條
          作出的要求時，交出在要項上屬虛假或具誤導
          性的紀錄或文件；

(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) 在看來是遵從金管局調查員根據第 184B(1)(b) 條作出的要求時，提供在要項上屬虛假或具誤導性的解釋或進一步詳情；

(d) 在看來是回答金管局調查員根據第 184B(1)(c) 條提出的問題時，說出在要項上屬虛假或具誤導性的話語；或

(e) 在看來是回答金管局調查員根據第 184B(1)(d) 條提出的書面問題時，作出在要項上屬虛假或具誤導性的陳述，

即屬犯罪。

(6) 任何法團的高級人員或僱員意圖詐騙而致使或容許該法團——

(a) 沒有作出第 (1)(a), (b), (c), (d), (e) 或 (f) 款描述的作為；

(b) 在看來是遵從金管局調查員根據第 184B(1)(a) 條作出的要求時，交出在要項上屬虛假或具誤導性的紀錄或文件；

(c) 在看來是遵從金管局調查員根據第 184B(1)(b) 條作出的要求時，提供在要項上屬虛假或具誤導性的解釋或進一步詳情；

(d) 在看來是回答金管局調查員根據第 184B(1)(c) 條提出的問題時，說出在要項上屬虛假或具誤導性的话語；或

(e) 在看來是回答金管局調查員根據第 184B(1)(d) 條提出的書面問題時，作出在要項上屬虛假或具誤導性

(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”
(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
Part 2
Section 22

Securities and Futures (Amendment) Ordinance 2014

Ord. No. 6 of 2014

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) 金融管理專員在斷定第 (7) 款列明的條件，是否已在任何個別個案中獲符合時——
(a) (如尋求協助者是海外實體) 須考慮該海外實體是否會——
   (i) 向金融管理專員支付因提供協助而招致的任何費用及開支；及
   (ii) 有能力及願意因應香港方面提出的類似請求，而在其管轄範圍內提供交互協助；或
(b) (如尋求協助者是香港以外地方的公司審查員) 須考慮——
   (i) 該公司審查員是否會向金融管理專員支付因提供協助而招致的任何費用及開支；及
   (ii) 根據在該公司審查員獲委任所在的國家或地區的法律，交互協助會否因應香港方面提出的類似請求而提供。

(9) 金融管理專員在信納第 (5)(a) 及 (b) 或 (6)(a) 及 (b) 款所述的事宜後（如信納的話），須在合理地切實可行範圍內，盡快在憲報公布有關海外實體或香港以外地方的公司審查員的姓名或名稱。

(10) 凡管理局調查員於根據第 (1) 或 (3) 款行使第 184B 條所賦予的權力時，作出某要求，而某人須按該要求提供解釋或進一步詳情，或須回答管理局調查員於如此行使該等權力時提出的問題，而該解釋、進一步詳情或答案可

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

(1) Section 187(1)(a)—

Repeal
“; or”
Substitute a semicolon.
（2）第187(1)(b)條——
廢除
“要求任何人提供解釋或進一步詳情或回答問題，”
代以
“，要求任何人提供解釋或進一步詳情，或回答問題；或”。

（3）在第187(1)(b)條之後——
加入
“(c) 金管局調查員根據第184B條，要求任何人提供解釋或
進一步詳情，或回答問題，”。

（4）第187(2)(a)條——
廢除
“要求任何人提供或作出解釋、陳述或說明；或”
代以
“，要求任何人提供或作出解釋、陳述或說明；”。

（5）第187(2)(b)條——
廢除
“要求任何人提供解釋或進一步詳情或回答問題，”
代以
“，要求任何人提供解釋或進一步詳情，或回答問題；或”。

（6）在第187(2)(b)條之後——
加入
“(c) 金管局調查員根據第184B條，要求任何人提供解釋或
進一步詳情，或回答問題，”。

（7）第187(2)條——
廢除
“或184”
代以

(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
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—
修訂第 IX 部第 2 分部標題 ( 紀律等 )
第 IX 部第 2 分部標題——
廢除
“紀律等”
代以
“由證監會採取的紀律行動”。

加入第 197A 條
第 IX 部第 2 分部，在第 197 條之後——
加入

“197A. 就已登記系統重要參與者沒有遵從要求而採取的紀律行動

(1) 如已登記系統重要參與者沒有遵從根據第 101X 條作出的要求，則證監會可行使該會認為就有關個案的情況而言屬適當的以下兩項或其中一項權力——

(a) 公開地或非公開地譴責該已登記系統重要參與者；
(b) 命令該已登記系統重要參與者繳付最高數額如下的罰款（以金額較大者為準）——

(i) $10,000,000；
(ii) 因沒有遵從該項要求而令該已登記系統重要參與者獲取的利潤金額或避免的損失金額的 3 倍。

Part IX, Division 2 heading amended (discipline, etc.)
Part IX, Division 2 heading——
Repeal
“Discipline, etc.”
Substitute
“Disciplinary Action by Commission”.

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 101X, 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
30. 修訂第 IX 部第 3 分部標題 ( 雜項條文 )
第 IX 部，第 3 分部，標題，在 “雜項” 之前——
加入
“關乎第 2 分部的”。

31. 修訂第 198 條 ( 有關根據第 IX 部行使權力的程序規定 )
(1) 第 198 條，標題——
廢除
“第 IX 部”
代以
“第 2 分部”。
(2) 第 198(1) 條——
廢除
“或 197(1)(a) 或 (b) 或 (2)”
代以
“、197(1)(a) 或 (b) 或 (2) 或 197A(1)”。
(3) 第 198(2) 條——
廢除
“或 197(1) 或 (2)”
代以
“、197(1) 或 (2) 或 197A(1)”。
(4) 第 198(3) 條——
廢除
“或 197(1) 或 (2)”

 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)”
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 “101F, 101Y, 211”.

34. 修訂第 201 條（關於根據第 IX 部行使權力的一般條文）

(1) 第 201 條，標題——
廢除
“第 IX 部”
代以
“第 2 或 3 分部”。

(2) 第 201(1) 條——
廢除
“或 197(1) 或 (2)”
代以
“、197(1) 或 (2) 或 197A(1)”。

(3) 第 201(2) 條——
廢除
“本部”
代以
“第 2 或 3 分部”。

(4) 第 201(3) 條——
廢除
“或 197(1)(a) 或 (b) 或 (2)”
代以
“、197(1)(a) 或 (b) 或 (2) 或 197A(1)”。

(5) 第 201(5) 條——
廢除
“211”
代以
“101F、101Y、211”。
35. 修訂第 202 條（在牌照或註冊被撤銷或暫時吊銷或暫時撤銷後，
須轉移紀錄）

第 202(1) 條——

廢除
在“根據”之後而在“轉移”之前的全部字句

代以
“第 2 或 3 分部被撤銷、暫時吊銷或暫時撤銷，證監會可藉
書面通知，要求獲批給該牌照或該項註冊（視屬何情況而定）
的人，將證監會在該通知中合理地指明的、關乎客戶資產或
該人的客戶的事務而由該人在任何時間為該客戶持有的紀錄，
以證監會在該通知中合理地指明的方式，”。

36. 修訂第 203 條（在牌照或註冊被撤銷或暫時吊銷或暫時撤銷後，
准許進行業務運作）

第 203(1) 條——

廢除
“本部”

代以
“第 2 或 3 分部”。

37. 加入第 IX 部第 4 及 5 分部

第 IX 部，在第 3 分部之後——

加入

“第 4 分部——由金融管理專員採取的紀律行動”

203A. 由金融管理專員採取的紀律行動

(1) 如認可財務機構或核准貨幣經紀違反任何責任，則金融
管理專員可就屬紀律行動的對象的人，行使金融管理專

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, trading obligation or record keeping 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.
Guidelines for performance of functions under section 203A(1)(c)

(1) The Monetary Authority must publish guidelines indicating the manner in which the Monetary Authority proposes to exercise the disciplinary power to order a pecuniary penalty.

(2) The guidelines must be published—
   (a) in the Gazette; and
   (b) in any other manner that the Monetary Authority considers appropriate.

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

(4) The Monetary Authority—
(a) may exercise the disciplinary power to order a pecuniary penalty only after guidelines have been published; and
(b) must have regard to the published guidelines when exercising a disciplinary power to order a pecuniary penalty.

(5) The Monetary Authority may amend any guideline published under this section in a manner consistent with the power to publish guidelines and the other provisions of this section apply to any such amendment as they apply to the guideline.

(6) A failure on the part of a person to comply with a guideline does not by itself render that person liable to any judicial or other proceedings, but in any proceedings under this Ordinance before a court—
(a) the guideline is admissible in evidence; and
(b) if any guideline appears to the court to be relevant to a question arising in any proceedings, it must be taken into account in determining that question.

(7) Guidelines published under this section are not subsidiary legislation.

(8) A reference to a guideline is a reference to that guideline as amended from time to time under this section.
203D. 關於根據第 4 分部行使權力的一般條文

(1) 金融管理專員如考慮對某人行使紀律懲處權，並認為就維護投資大眾的利益或公眾利益而言，作出以下作為是適當的，則可在該人同意下，作出以下作為——
(a) 行使任何紀律懲處權（不論該權力是否就是金融管理專員考慮行使的紀律懲處權）；及
(b) 採取金融管理專員認為就有關個案的情況而言屬適當的任何其他行動（進一步行動）。

(2) 如金融管理專員根據第(1)款，行使紀律懲處權或採取進一步行動，則——
(a) 金融管理專員須遵守第203B(2)及(3)條，猶如第203B(2)及(3)條在適當的變通後，適用於採取進一步行動一樣；及
(b) 在紀律懲處的建議對象的同意下，金融管理專員無須遵守第203B(1)條。

(3) 本分部或第4分部，並不影響原訟法庭根據或依據第101G、101Y或203F條，作出任何命令或行使任何其他權力。

203E. 追討和繳付罰款

(1) 如有人因金融管理專員行使紀律懲處權，而被命令繳付罰款，則該人須——

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 101G, 101Y 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
Securities and Futures (Amendment) Ordinance 2014

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

(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

(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).”. 
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 to 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”.

“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 to 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”.

“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 to 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”.

“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 to 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”.

“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 to 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”.

“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 to 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”.
381A. 保密

(1) 本條適用於——

(a) 專員及曾經是專員的人；及

(b) 現時或曾經——

(i) 是專員的顧問或代理人的人；

(ii) 根據《外匯基金條例》(第66章) 第5A(3)條獲委任的人；

(iii) 專員根據指明條文委任的人；或

(4) 在第378(13)條之後——

加入

“(13A) 本條不就下述事宜而適用於第381A(1)條提述的人——

(a) 該人——

(i) 由第381A(2)(a)(i)條提述的原因而獲悉的事宜；或

(ii) 如第381A(2)(a)(ii)或(ii)條提述般獲悉的事宜；或

(b) 該人由第381A(2)(c)(i)，(ii)或(iii)條提述的原因而得以管有的紀錄或文件。”。

40. 加入第XVI部第1A分部

第XVI部，在第1分部之後——

加入

“第1A分部——關於金融管理專員根據指明條文行使職能的保密事宜等

381A. 保密

(1) 本條適用於——

(a) 專員及曾經是專員的人；及

(b) 現時或曾經——

(i) 是專員的顧問或代理人的人；

(ii) 根據《外匯基金條例》(第66章)第5A(3)條獲委任的人；

(iii) 專員根據指明條文委任的人；或

(4) After section 378(13)—

Add

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

(a) a matter that comes to the person’s knowledge—

(i) because of a reason referred to in section 381A(2)(a)(i); or

(ii) as described in section 381A(2)(a)(ii) or (iii); or

(b) a record or document that is in the person’s possession because of a reason referred to in section 381A(2)(c)(i), (ii) or (iii).”.

40. Part XVI, Division 1A added

Part XVI, after Division 1—

Add

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

381A. Preservation of secrecy

(1) This section applies to—

(a) the Monetary Authority and a person who was the Monetary Authority; and

(b) a person who is or was—

(i) a consultant, agent or adviser of the Monetary Authority;

(ii) a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66);

(iii) a person appointed by the Monetary Authority under a specified provision; or
(iv) a person assisting the Monetary Authority in the performance of a function under a specified provision or in carrying into effect a specified provision.

(2) Except in the performance of a function under a specified provision, or for the purpose of carrying into effect or doing anything required or authorized under a specified provision, a person to whom this section applies—

(a) must preserve and aid in preserving secrecy with regard to any matter that comes to the person's knowledge—

(i) because of the person’s appointment under a specified provision;

(ii) in the performance of a function under a specified provision or in carrying into effect a specified provision; or

(iii) in the course of assisting another person in the performance of a function under a specified provision or in carrying into effect a specified provision;

(b) must not communicate any matter referred to in paragraph (a) to another person; and

(c) must not suffer or permit another person to have access to any record or document that is in the person's possession because of—

(i) the person's appointment under a specified provision;

(ii) the performance of a function under a specified provision or the carrying into effect of a specified provision; or
(iii) the assistance to the other person in the performance of a function under a specified provision or in carrying into effect a specified provision.

(3) Subsection (2) does not apply to disclosure of information that has already been made available to the public.

(4) Subsection (2) does not apply to disclosure of information—

(a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings in Hong Kong;

(b) with a view to the commencement of, or otherwise for the purposes of, an investigation carried out in Hong Kong under a specified provision or otherwise;

(c) for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with a matter arising under a specified provision;

(d) in connection with any judicial or other proceedings to which the person is a party;

(e) in accordance with an order of a court, or in accordance with a law or a requirement made under a law;

(f) to a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66), if the disclosure will enable or assist the person to assist the Monetary Authority in performing a function referred to in that section; or

(g) to the Hong Kong Deposit Protection Board established by section 3 of the Deposit Protection Scheme Ordinance (Cap. 581) for the purpose of enabling or assisting the Board to perform its functions under that Ordinance.
(5) A person who contravenes subsection (2) commits an offence and is liable—
(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or
(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(6) In this section—
information (資料) means a matter referred to in subsection (2)(a) or a record or document referred to in subsection (2)(c).

381B. Disclosure by Monetary Authority

(1) Despite section 381A(2), the Monetary Authority may disclose information—
(a) in the performance of a function under, or for the purpose of carrying into effect or doing anything required or authorized under, any Ordinance (other than this Ordinance);
(b) to a person who is a liquidator appointed under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);
(c) to the Securities and Futures Appeals Tribunal;
(d) to the Market Misconduct Tribunal;
(e) to the Banking Review Tribunal established under section 101A of the Banking Ordinance (Cap. 155);
(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.
381C. Disclosure if Monetary Authority considers condition satisfied

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

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

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

(a) an authority or regulatory organization outside Hong Kong which, in the opinion of the Monetary Authority, satisfies the requirements referred to in subsection (4); or
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(b) a companies inspector outside Hong Kong who, in the opinion of the Monetary Authority, satisfies the requirements referred to in subsection (5).

(3) The condition referred to in subsections (1) and (2) is that—

(a) it is desirable or expedient that the information should be disclosed in the interests of the investing public or in the public interest; or

(b) the disclosure of the information will enable or assist the recipient of the information to perform the recipient’s functions and it is not contrary to the interests of the investing public or to the public interest.

(4) The requirements referred to in subsection (2)(a) are that the authority or regulatory organization outside Hong Kong—

(a) performs functions similar to the functions of the Monetary Authority or regulates, supervises or investigates banking, insurance or other financial services; and

(b) is subject to adequate secrecy provisions.

(5) The requirements referred to in subsection (2)(b) are that the companies inspector outside Hong Kong—

(a) performs functions similar to the functions of the Registrar of Companies or regulates, supervises or investigates the affairs of corporations; and

(b) is subject to adequate secrecy provisions.

(6) If the Monetary Authority is satisfied of the matters referred to in subsection (4)(a) and (b) or (5)(a) and (b), the Monetary Authority must, as soon as reasonably practicable after being so satisfied, publish in the Gazette, the name of the authority, regulatory organization or companies inspector.
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;
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(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* has the meaning given by section 381B(7).
381E. 向證監會提供若干資料

(1) 儘管有第381A(2)條的規定，金融管理專員在證監會的要求下，須向證監會提供金融管理專員接獲或取得的、關乎以下事宜的資料——

(a) 訂明人士（認可財務機構或核准貨幣經紀除外）根據第101B(1)條直接或間接匯報的場外衍生工具交易；

(b) 符合以下說明的場外衍生工具交易——

(i) 該項交易是由認可財務機構或核准貨幣經紀根據第101B(1)或(3)條直接或間接匯報的；及

(ii) 該項交易的對手方，是並非認可財務機構或核准貨幣經紀的訂明人士；或

(c) 認可財務機構或核准貨幣經紀根據第101B(1)或(3)條直接或間接匯報的場外衍生工具交易，而該交易是符合以下說明的場外衍生工具產品的交易——

(i) 該產品的標的項目，包括證券、期貨合約、證券或期貨合約的指數，或該等項目的任何組合；或

(ii) 該產品是附表1第1部第1A條第(1)(a)(iii)款所指者，而有關標的項目，是任何信用事件。

(2) 在本條中——

381E. Certain information to be given to Commission

(1) Despite section 381A(2), if requested by the Commission, the Monetary Authority must give to the Commission any information received or obtained by the Monetary Authority that relates to—

(a) an OTC derivative transaction that is reported (whether directly or indirectly) under section 101B(1) by a prescribed person that is not an authorized financial institution or an approved money broker;

(b) an OTC derivative transaction that—

(i) is reported (whether directly or indirectly) under section 101B(1) or (3) by an authorized financial institution or an approved money broker; and

(ii) is a transaction to which a prescribed person other than an authorized financial institution or an approved money broker is a counterparty; or

(c) an OTC derivative transaction that is reported (whether directly or indirectly) under section 101B(1) or (3) by an authorized financial institution or an approved money broker and is a transaction—

(i) in an OTC derivative product of which the underlying subject matter includes securities, futures contracts, indices of securities or futures contracts or any combination of those; or

(ii) in an OTC derivative product that falls within subsection (1)(a)(iii) of section 1A of Part 1 of Schedule 1 and the underlying subject matter is a credit event.

(2) In this section—
credit event (信用事件), in relation to a transaction in an OTC derivative product that—
(a) falls within subsection (1)(a)(iii) of section 1A of Part 1 of Schedule 1; and
(b) transfers credit risk in relation to a reference obligation from one party to the other party,
means an event, which, if it occurs, obliges one party to make payment to the other party;
credit risk (信用風險) means the risk of loss from default by a party in a contract of indebtedness;
reference obligation (参照義務) , 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
41. 加入第 385A 條
在第 385 條之後——
加入

“385A. 金融管理專員介入法律程序的權力
(1) 如——
(a) 有其他法律程序 (刑事法律程序除外)涉及任何指明條文有所規定的事宜，或專員由於任何指明條文授予的職能，而在該程序中有利害關係，及
(b) 專員信納專員介入該程序，並在該程序中陳詞，是符合公眾利益的，
則專員可在諮詢財政司司長後，提出申請，要求介入該程序並在該程序中陳詞。

(c) 按照金融管理專員可接受的國際標準運作。

(3) 金融管理專員在向海外人士披露資料時，可同意該海外人士在符合金融管理專員施加的條件下，向任何其他人披露該等資料。

(4) 金融管理專員如就某海外人士，信納第 (2) 款提及的事宜，則須在合理地切實可行範圍內，盡快在憲報公布該海外人士的姓名或名稱。

(5) 根據第 (4) 款作出的公布，不是附屬法例。”。

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) 《高等法院規則》(第4章，附屬法例A) 第15號命令第6條規則，不受本條影響。

(6) 在本條中——

法院 (court) 包括裁判官及審裁處（市場失當行為審裁處及

上訴審裁處除外）。

專員指金融管理專員。”。

42. 修訂第388條（證監會就某些罪行提出檢控）
在第388(3) 條之後——

加入

“(4) 本條不適用於第388A(1) 條提及的罪行，亦不適用於串

謀犯該罪的罪行。”。

43. 加入第388A條
在第388 條之後——

加入

“388A. 金融管理專員就罪行提出檢控

(1) 本條適用於——

(a) 第184D 條所訂罪行；

(b) 關於執行根據金管局調查員經宣誓而作的告發而發

出的手令的，第191(6) 條所訂的罪行；或

(c) 第381D 條所訂罪行。

(2) 金融管理專員可用本身的名義，就任何本條適用的罪行

或串謀犯該罪行的罪行，提出檢控。

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.
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(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) 第 399(5)(a) 條——
廢除
“其他條文在作出”
代以
“或有關條文的其他條文在經”。

(4) 第 399(6) 條，在“守根據本條”之後——
加入
“(或根據本條例的任何其他條文)”。

(5) 第 399(7) 條，在“本條”之後——
加入
“(或根據本條例的任何其他條文)”。

49. 修訂第 407 條 (保留、過渡性、相應及有關條文等)
在第 407 條的末處——
加入

50. 修訂第 408 條 (第 XVII 部的條文等並不減損《釋義及通則條例》第 23 條的效力)
(1) 第 408 條——
廢除
“或附表 10”
代以
“或附表 10 或 11”。

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(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 2014 (6 of 2014) 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”.
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(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, 101A, 102, 164, 171, 174, 175, 202, 381E, 392A”.
Substitute
“[ss. 2, 19, 66, 102, 164, 171, 174, 175, 202”.

(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 and entered into by the clearing house with a clearing participant, whether or not pursuant to a novation, for the purpose of the clearing and settlement of a transaction in securities or futures contracts that is—

(i) effected on a recognized stock market or a recognized futures market; or

(ii) subject to the rules of a recognized exchange company;

(b) a contract that is subject to the rules of a recognized clearing house and entered into by the clearing house with a clearing participant, whether or not pursuant to a novation, for the purpose of the clearing and settlement of an OTC derivative transaction; or

(c) a contract that is—

(i) subject to the rules of a designated CCP (as defined by section 101A of this Ordinance) that is a provider of authorized automated trading services and specified by the Commission by notice published in the Gazette under section 1C; and

(ii) entered into by the designated CCP with any one of its members, whether or not pursuant to a novation, for the purpose of the clearing and settlement of an OTC derivative transaction;”.

(3) Schedule 1, Part 1, section 1—

Add in alphabetical order
advising on OTC derivative products 有指明條文的規定；
approved money broker (核准貨幣經紀) 有指明條文的規定；
clearing obligation (結算責任) 有指明條文的規定；
dealing in OTC derivative products (場外衍生工具產品) 有指明條文的規定；
MA investigator (金管局調查員) 有指明條文的規定；
OTC derivative product (場外衍生工具產品) 有指明條文的規定；
OTC derivative transaction (場外衍生工具交易) 有指明條文的規定；
prescribed person (指定人士) 有指明條文的規定；
providing client clearing services for OTC derivative transactions (場外衍生工具交易提供客戶結算服務) 有指明條文的規定；
record keeping obligation (備存記錄責任) 有指明條文的規定；
registered SIP (已登記系統重要參與者) 有指明條文的規定；
reporting obligation (匯報責任) 有指明條文的規定；
SIP register (系統重要參與者登記冊) 有指明條文的規定；
specified provision (指明條文) 有指明條文的規定；
"1B.  場外衍生工具產品的涵義

(1) 在本條例中，在不抵觸第 (2) 及 (3) 款的規定下——

場外衍生工具產品 (OTC derivative product) 指任何結構性產品。

(2) 場外衍生工具產品不包括——

(a) 在認可證券市場交易的證券；
(b) 在認可期貨市場交易的期貨合約；
(c) 符合以下說明的證券或期貨合約——

(i) 在根據本條例第 392A 條訂明的證券市場或期貨市場交易；及
(ii) 透過根據該條訂明的結算所結算；

(4) 附表 1、第 1 部，在第 1A 條之後——

加入

“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;
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(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)(a)(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 (c)(i) 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 client clearing 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 *advising on securities*—
   Repeal
   “such advice that”
   Substitute
   “such advice or issuing of such analyses or reports that”.

(8) 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;”.

(9) 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;”.

(10) Schedule 5, Part 2, definition of *automated trading services*, paragraph (b)—
Repeal
“; or”

Substitute a semicolon.

(11) 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;”.

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

Repeal
“guaranteed,”

Substitute
“guaranteed; or”.

(13) 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,”.
(14) Schedule 5, Part 2, definition of automated trading services, after “Government”—
Add
“or any excluded services”.

(15) Schedule 5, Part 2, definition of dealing in futures contracts, after paragraph (iii)—
Add
“(iiiia) 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, after paragraph (iii)—
Add
“(iiiia) 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;”.

(17) 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)”.

(18) 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;”.

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(19) 附表 5，第 2 部，槓桿式外匯交易的定義，第 (iv) 段——
廢除
“《銀行業條例》(第 155 章) 第 2(1) 條所指的”。
(20) 附表 5，第 2 部，槓桿式外匯交易的定義，在第 (v) 段之後——
加入
“(va) 該作為由就第 11 類受規管活動獲發牌的人作出，而該作為亦構成場外衍生工具產品交易;”。
(21) 附表 5，第 2 部，槓桿式外匯交易的定義，在第 (xi) 段之後——
加入
“(xia) 符合以下說明的場外衍生工具交易作為：由就第 12 類受規管活動獲發牌的人作出，而該作為的作出，是完全附帶於該類受規管活動的進行的；
(xib) 屬構成訂立市場合約的作為;”。
(22) 附表 5，第 2 部——
按筆劃數目順序加入
“為場外衍生工具交易提供客戶結算服務 (providing client clearing services for OTC derivative transactions) 就任何人而言，在不抵觸第 2A 部的規定下，指不論是否作為中央對手方成員而向另一人就透過中央對手方(不論是位於香港或在其他地方)結算及交收場外衍生工具交易而提供服務；

(19) 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)”.
(20) 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;”.
(21) 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;
(xib) that is an act that constitutes entering into a market contract;”.
(22) 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 or issuing of such analyses or reports 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; or

(b) inducing or attempting to induce another person to enter into or to offer to enter into an OTC derivative transaction;

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—
就場外衍生工具產品提供意見 (advising on OTC derivative products) 在不抵觸第 2A 部的規定下，指——

(a) 就應否訂立場外衍生工具交易、應訂立哪些交易、應於何時或應按哪些條款及條件訂立交易提供意見；或

(b) 發出分析或報告，而目的是為利便該等分析或報告的使用者就應否訂立場外衍生工具交易、應訂立哪些交易、應於何時或應按哪些條款或條件訂立交易作出決定，

但如提供上述意見或發出上述分析或報告，符合就機構融資提供意見或提供信貸評級服務的涵義，則就場外衍生工具產品提供意見不包括提供該意見或發出該等分析或報告；

就場外衍生工具提供意見作為 (OTC derivative advising act)
指就場外衍生工具產品提供意見的定義的 (a) 或 (b) 段提及的作為；

豁除服務 (excluded services) 指——

(a) 不屬自動化交易服務的定義的 (a)、(b) 或 (c) 段所指的場外衍生工具產品的交易而提供，並符合以下說明的服務——

(i) 由認可財務機構或核准貨幣經紀提供的；

(ii) 藉電子設施提供的；及

(iii) 完全附載於下述作為的作出而提供的；該項作為若非因第 2A 部第 2(f) 條所指的豁除的話，即會構成場外衍生工具產品交易；

(b) 就結算場外衍生工具產品提供的，符合以下說明的服務——

(i) 該項服務亦構成第 12 類受規管活動；及

(ii) 該項服務是由就該類受規管活動獲發牌的人提供的；及

(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
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the exclusions under paragraphs (a), (b), (c), (d),
(e), (f), (g) and (h) of the definition of securities
or futures contracts management;

providing client clearing services for OTC derivative
transactions (為場外衍生工具交易提供客戶結算服務), in
relation to a person and subject to Part 2A, means
providing services to another person for the clearing
and settlement of OTC derivative transactions through
a central counterparty (whether located in Hong Kong
or elsewhere), whether or not as a member of the
central counterparty;”.

(23) 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—
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(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));
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;

(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;
(b) an act that is excluded from the definition of dealing in securities in Part 2 under paragraph (iv) or (xiii) of that definition;

(c) an act that is excluded from the definition of dealing in futures contracts in Part 2 under paragraph (ii) of that definition;

(d) an act that is excluded from the definition of leveraged foreign exchange trading in Part 2 under paragraph (i), (iii), (vii) or (xiv) of that definition;

(e) an act carried out by a person for the purpose of performing the person's functions as—
   (i) a recognized clearing house;
   (ii) a recognized exchange company; or
   (iii) a provider of automated trading services authorized under section 95(2) of this Ordinance;

(f) an act carried out in the ordinary course of business by—
   (i) an authorized financial institution; or
   (ii) an approved money broker;

(g) an act referred to in paragraph (a) of the definition of dealing in OTC derivative products in Part 2 that is carried out by a person as a price taker;

(h) an OTC derivative dealing act carried out by a person licensed for Type 9 regulated activity who—
   (i) provides a service of managing a portfolio of OTC derivative products for another person that the person is permitted to provide under that licence; and
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(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) 屬認可財務機構；
(iii) 屬核准貨幣經紀；
(iv) 屬認可財務機構的高級人員或僱員，並以該身份作出該作為；或
(v) 屬核准貨幣經紀的高級人員或僱員，並以該身份作出該作為，
但如前者作出第 3 條所列的作為，是為了賺取佣金、回佣或其他報酬的話，則須視為進行場外衍生工具\n產品交易。

3. 第 2(n) 條所述的作為，是該條所指的前者——
(a) 從第三者接受訂立場外衍生工具交易的要約或邀請，
並用前者本人或該第三者的名義，將該要約或邀請，
傳達予第 2(n) 條所指的場外衍生工具產品交易商；
(b) 介紹場外衍生工具產品交易商或其代表與第三者
建立關係，以使該第三者可與該交易商訂立一項場
外衍生工具交易，或提出與場外衍生工具產品交
易商訂立場外衍生工具交易的要約或邀請；
(c) 使第三者透過場外衍生工具產品交易商訂立場
外衍生工具交易；
(d) 為場外衍生工具產品交易商向第三者提出訂立場
外衍生工具交易的要約；或

(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
4. In Part 2, 

providing client clearing services for OTC derivative transactions does not include the following—

(a) an act carried out by a central counterparty, whether located in Hong Kong or elsewhere, for the purpose of performing the person’s functions as a central counterparty;

(b) an act carried out by an authorized financial institution or an approved money broker in the ordinary course of business;

(c) an act of an acceptable participant of a central counterparty located in Hong Kong; or

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

5. In section 4—

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

(a) who does not have a place of business in Hong Kong;

(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

(e) accepts for the OTC derivative products dealer an offer by a third person to enter into an OTC derivative transaction.
供結算及交收服務（第4條第1款），而該人提供上述服務，是受相若的海外司法管轄區的法律規定或規管性規定所規限的；

相若的海外司法管轄區 (comparable overseas jurisdiction) 指符合以下說明的司法管轄區——

(a) 證監會信納該司法管轄區在規管服務方面，具有與香港相若的法律規定或規管性規定。該項服務是（作為中央對手方成員而直接地或透過屬中央對手方成員的另一人而間接地）代另一人並透過中央對手方，就場外衍生工具交易或其他相類交易的結算及交收（第4條第1款）；及

(b) 證監會與該司法管轄區的規管當局有足夠的互助合作安排或協議。”。

54. 修訂附表8 (證券及期貨事務上訴審裁處)

(1) 附表8，第2部，第1分部，在第4項之後——

加入

“4A. 本條例第101H(1)(a)或(b)條
101H(1)(a)或(b)條　

4B. 本條例第101H(2)(a)或(b)條
101H(2)(a)或(b)條

Securities and Futures (Amendment) Ordinance 2014

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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 101H(1)(a) or (b) of this Ordinance
101H(1)(a) or (b) of this Ordinance　Refusal to grant an exemption, or imposition of any condition.

4B. Section 101H(2)(a) or (b) of this Ordinance
101H(2)(a) or (b) of this Ordinance　Suspension or withdrawal of an exemption, or amendment of any condition.
<table>
<thead>
<tr>
<th>4C.</th>
<th>本條例第 101J(1)(b) 條</th>
<th>拒絕指定某人為中央對手方。</th>
</tr>
</thead>
<tbody>
<tr>
<td>4D.</td>
<td>本條例第 101J(5)(a) 條</td>
<td>施加條件。</td>
</tr>
<tr>
<td>4E.</td>
<td>本條例第 101J(5)(b) 或 (c) 條</td>
<td>修訂或撤銷條件，或施加額外條件。</td>
</tr>
<tr>
<td>4F.</td>
<td>本條例第 101J(5)(d) 條</td>
<td>撤銷指定。</td>
</tr>
<tr>
<td>4G.</td>
<td>本條例第 101K(1)(b) 條</td>
<td>拒絕指定某人為交易平台。</td>
</tr>
<tr>
<td>4H.</td>
<td>本條例第 101K(5)(a) 條</td>
<td>施加條件。</td>
</tr>
<tr>
<td>4I.</td>
<td>本條例第 101K(5)(b) 或 (c) 條</td>
<td>修訂或撤銷條件，或施加額外條件。</td>
</tr>
<tr>
<td>4J.</td>
<td>本條例第 101K(5)(d) 條</td>
<td>撤銷指定。</td>
</tr>
<tr>
<td>4K.</td>
<td>本條例第 101T(3) 條</td>
<td>在系統重要參與者登記冊上作出記項。</td>
</tr>
<tr>
<td>4L.</td>
<td>本條例第 101V(1) 或 (2) 條</td>
<td>拒絕將某人從系統重要參與者登記冊除名，或拒絕從該登記冊移除某人的姓名或名稱而記入該登記冊的特定類別。</td>
</tr>
<tr>
<td>4M.</td>
<td>本條例第 101X(1) 及 (2) 條</td>
<td>採取行動，要求已登記系統重要參與者作出任何作為。”。</td>
</tr>
</tbody>
</table>

| 4C.  | Section 101J(1)(b) of this Ordinance | Refusal to designate a person as a central counterparty. |
| 4D.  | Section 101J(5)(a) of this Ordinance | Imposition of any condition. |
| 4E.  | Section 101J(5)(b) or (c) of this Ordinance | Amendment or revocation of any condition, or imposition of any additional condition. |
| 4F.  | Section 101J(5)(d) of this Ordinance | Revocation of a designation. |
| 4G.  | Section 101K(1)(b) of this Ordinance | Refusal to designate a person as a trading platform. |
| 4H.  | Section 101K(5)(a) of this Ordinance | Imposition of any condition. |
| 4I.  | Section 101K(5)(b) or (c) of this Ordinance | Amendment or revocation of any condition, or imposition of any additional condition. |
| 4J.  | Section 101K(5)(d) of this Ordinance | Revocation of a designation. |
| 4K.  | Section 101T(3) of this Ordinance | Making an entry in the SIP register. |
| 4L.  | Section 101V(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 101X(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 Section 101J(7) of this Ordinance.
2B. A specified decision set out in Section 101J(8) of this Ordinance.”.
2C. A specified decision set out in item 4I of Division 1 of Part 2.

Section 101K(7) of this Ordinance.

2D. A specified decision set out in item 4J of Division 1 of Part 2.

Section 101K(8) of this Ordinance.

2E. A specified decision set out in item 4K of Division 1 of Part 2.

Section 101T(8) of this Ordinance.

2F. A specified decision set out in item 4M of Division 1 of Part 2.

Section 101X(4) 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

Add
“Schedule 11  [ss. 407, 408 & 409]

Transitional Provisions for Securities and Futures (Amendment) Ordinance 2014

Part 1

Interpretation

1. Interpretation

(1) In this Schedule—

amending Ordinance (《修訂條例》) means the Securities
and Futures (Amendment) Ordinance 2014 (6 of
2014);

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)—
申請期 (application period) 就本附表所述的某受規管活動 (現有第 7 類受規管活動及現有第 9 類受規管活動除外)而言，指自該受規管活動的生效日期起計的 3 個月期間；

合資格活動 (qualifying activity)——
(a) 就第 11 類受規管活動而言，指在生效日期及該日期後，即構成該類受規管活動的活動；
(b) 就第 12 類受規管活動而言，指在生效日期及該日期後，即構成該類受規管活動的活動，但構成該類活動的服務，不須已向他人提供；
(c) 就經擴展第 7 類受規管活動而言，指在生效日期及該日期後，即構成新的第 7 類活動的活動；及
(d) 就經擴展第 9 類受規管活動而言，指在生效日期及該日期後，即構成新的第 9 類活動的活動；

法團申請人 (corporate applicant)——
(a) 就關乎某類指明受規管活動的申請而言，指提出本附表第 3(1) 或 (2) 條提述的申請的人；
(b) 就關乎經擴展第 9 類受規管活動的申請而言，指提出本附表第 13(2) 或 (3) 條提述的申請的人；及
(c) 就關乎經擴展第 7 類受規管活動的申請而言，指提出本附表第 33(2) 或 (3) 條提述的申請的人；

(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
持牌代表申請 (LR application)——
(a) 就本附表第 5(1) 條所述的第 126(1) 條所述的，尋求就某類指明受規管活動獲核准成為負責人的申請而而言，指本附表第 4(1) 或 (2) 條所述的就同類指明受規管活動而提出的申請；
(b) 就本附表第 15(1) 條所述的，尋求就經擴展第 9 類受規管活動獲核准成為負責人的申請而而言，指本附表第 14(2) 或 (3) 條所述的申請；及
(c) 就本附表第 35(1) 條所述的，尋求就經擴展第 7 類受規管活動獲核准成為負責人的申請而而言，指本附表第 34(2) 或 (3) 條所述的申請；

持牌代表申請人 (LR applicant)——
(a) 就關乎某類指明受規管活動的申請而而言，指指出本附表第 4(1) 或 (2) 條所述的申請的個人；
(b) 就關乎經擴展第 9 類受規管活動的申請而而言，指出本附表第 14(2) 或 (3) 條所述的申請的個人；及
(c) 就關乎經擴展第 7 類受規管活動的申請而而言，指出本附表第 34(2) 或 (3) 條所述的申請的個人；

指明受規管活動 (specified regulated activity) 指第 11 類受規管活動或第 12 類受規管活動；

(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 (现有第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 (现有第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;
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Securities and Futures (Amendment) Ordinance 2014

Ord. No. 6 of 2014

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;
(e) 任何在條例的該條提出申請的人在某個日期及該日期後，即根據本附表就該申請所關乎的該類受規管活動而當作為取得同意，當作同意日期指該日期。

經擴展第 7 類受規管活動 (expanded Type 7 RA) 指在就新的第 7 類活動的生效日期及該日期後的第 7 類受規管活動；

經擴展第 9 類受規管活動 (expanded Type 9 RA) 指在就新的第 9 類活動的生效日期及該日期後的第 9 類受規管活動；

資格計算期 (qualification period)——

(a) 就第 11 類受規管活動、第 12 類受規管活動或經擴展第 7 類受規管活動而言，指在緊接有關受規管活動的生效日期之前的最少 2 年；及

(b) 就經擴展第 9 類受規管活動而言——

(i) 為施行本附表第 13(2) 或 (3)、15(1)、22(2) 或 (3) 或 23(2) 條所述的申請而言，指在緊接有關生效日期之前的最少 2 年；及

(ii) 為施行本附表第 28、29、30 或 31 條所述的具報而言，指在緊接有關生效日期之前的 6 年內的最少 2 年；

過渡期 (transitional period) 就本附表所述的某類受規管活動 (現有第 7 類受規管活動及現有第 9 類受規管活動除外) 而言，指自該類受規管活動的生效日期起計的 6 個月期間；

確認表格 (confirmation form) 就規定某人須確認某事宜的條文而言，指為該目的而根據第 402(1) 條指明的表格。

(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 (負責任人員申請人)——

(a) in relation to an application that relates to a specified regulated activity, means an individual who makes an application referred to in section 5(1) of this Schedule for approval as a responsible officer;

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

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

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

transitional period (過渡期), in relation to a regulated activity mentioned in this Schedule (except the existing Type 7 RA or the existing Type 9 RA), means the period of 6 months beginning on the commencement date for that regulated activity.
(2) In this Schedule, a reference to a section is to be construed as a reference to a section of this Ordinance as amended by the amending Ordinance except where it is expressly stated that the reference is to a reference to a section of this Schedule.

(3) In this Schedule, a reference to a regulated activity is to be construed as including the new Type 7 activity, the expanded Type 7 RA, the new Type 9 activity and the expanded Type 9 RA.

(4) In this Schedule—

(a) a reference to carrying on, in connection with a regulated activity (including in connection with a deemed condition under Parts 3 and 4 of this Schedule), is to be construed—

(i) in relation to a corporate applicant (including a corporate applicant to whom Division 1 of Part 5 of this Schedule applies), a person deemed under this Schedule to be licensed under section 116, a licensed corporation or an authorized financial institution, as carrying on a business in the regulated activity;

(ii) in relation to an LR applicant (including an LR applicant to whom Division 1 of Part 5 of this Schedule applies), as performing for or on behalf of or by arrangement with the principal any function in relation to the regulated activity other than work ordinarily performed by an accountant, clerk or cashier;

(iii) in relation to an executive officer of an authorized financial institution, as being responsible for directly supervising the conduct of the business that constitutes the regulated activity, conducted by the authorized financial institution; and
(iv) in relation to a licensed representative, a responsible officer, an individual deemed under this Schedule to be licensed, an individual referred to in section 42(2)(d) or (h) of this Schedule, a subject individual (as defined by section 45(5) of this Schedule) or an individual assisting a person under Division 2 of Part 5 of this Schedule, as performing for or on behalf of or by arrangement with a person (other than an individual) or an authorized financial institution, any function in relation to the regulated activity other than work ordinarily performed by an accountant, clerk or cashier;

(b) a reference to carrying on a qualifying activity is to be construed—

(i) in relation to a corporate applicant, any other corporation in the same group of companies as a corporate applicant, a licensed corporation or an authorized financial institution, as carrying on a business in the qualifying activity;

(ii) in relation to an RO applicant or a responsible officer, as performing for or on behalf of or by arrangement with another person (other than an individual) any function in relation to the qualifying activity other than work ordinarily performed by an accountant, clerk or cashier; and

(iii) in relation to an applicant for consent under section 71C of the Banking Ordinance (Cap. 155) in relation to an authorized financial institution or an executive officer of an authorized financial institution, as being responsible for directly supervising the conduct of the business that constitutes the
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 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 concerned 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 concerned if the conditions in subsection (3) are satisfied.

(3) The conditions are that—

(a) the corporate applicant is a person referred to in section 116(2)(a);

(b) the application is made within the application period;

(c) an application for the purposes of section 130(1) is lodged, unless—

(i) the corporate applicant is a licensed corporation; and

(ii) the premises proposed to be used for keeping records or documents for the purposes of section 130(1) are the subject of an existing approval under that section;

(d) not less than 2 individuals, at least one of whom is an executive director of the corporate applicant, have applied under section 126 to be approved as responsible officers of the corporate applicant in relation to the specified regulated activity concerned, and at least 2 of them, including at least 1 executive director of the corporate applicant, have not been issued a no-deeming notice before the corporate applicant is deemed;

(e) every executive director of the corporate applicant has applied under section 126 to be approved as a responsible officer of the corporate applicant in relation to the specified regulated activity concerned and none of them has been issued a no-deeming notice before the corporate applicant is deemed;
(f) subsection (4) is complied with; and

(g) the corporate applicant has not been issued a no-deeming notice before the deeming date.

(4) The corporate applicant must submit, together with the application, a confirmation form confirming—

(a) if the application relates to Type 11 regulated activity, that the corporate applicant has been carrying on in Hong Kong a qualifying activity for the qualification period;

(b) if the application relates to Type 12 regulated activity, that the corporate applicant or any other corporation in the same group of companies as that applicant has been carrying on in Hong Kong or elsewhere a qualifying activity for the qualification period;

(c) that not less than 2 individuals, at least one of whom is an executive director of the corporate applicant—

(i) have applied under section 126 to be approved as responsible officers of the corporate applicant in relation to the specified regulated activity concerned; and

(ii) satisfy the conditions in section 5(2)(a), (b) and (d) of this Schedule;

(d) that every executive director of the corporate applicant who is an individual—

(i) has applied under section 126 to be approved as a responsible officer of the corporate applicant in relation to the specified regulated activity concerned; and

(ii) satisfies the conditions in section 5(2)(a), (b) and (d) of this Schedule;

(e) either that—
(i) the corporate applicant has lodged an application under section 130(1) and the premises concerned satisfy the requirements of section 130(2)(a) and (b); or

(ii) the premises proposed to be used for keeping records or documents for the purposes of section 130(1) are the subject of an existing approval under that section;

(f) that the corporate applicant is in compliance, or has arrangements in place to ensure compliance, with any requirements of the Securities and Futures (Financial Resources) Rules (Cap. 571 sub. leg. N) applicable to a licensed corporation that carries on the specified regulated activity concerned; and

(g) that the corporate applicant is in compliance, or has arrangements in place to ensure compliance, with any provisions of this Ordinance, the guidelines and codes of conduct applicable to a licensed corporation that carries on the specified regulated activity concerned.

(5) The deeming under subsections (1) and (2)—

(a) takes effect on the date immediately after the end of the transitional period for the specified regulated activity concerned; and

(b) ends in accordance with section 6 of this Schedule.

4. Deemed licensing of representatives

(1) An individual who applies in accordance with section 120(1) to be licensed to carry on a specified regulated activity for a corporation, but not as a responsible officer, and who applies in accordance with section 122(1) to be accredited to the principal, is deemed, if the conditions in subsection (3) are satisfied—

(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.
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(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)—
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(a) 在關乎有關指明受規管活動的過渡期終止日期的翌日生效；及

(b) 按本附表第 8 條終止。

(5) 就第 (1) 及 (2) 款而言，在第 120(1) 條中指述根據第 116 條獲發牌的法團，須理解為指述有關主事人。

(6) 就第 (1) 及 (2) 款而言，在第 122(1)(a) 條中指述根據第 116 條獲發牌的法團，須理解為指述有關主事人。

5. 當作核准成為負責人員

(1) 凡任何個人已提出持牌代表申請，而該名個人亦按照第 126(1) 條提出申請，尋求獲核准成為負責人員，如第 (2) 款的條件獲符合，該名個人即當作為就有關指明受規管活動而獲核准。

(2) 有關條件為——

(a) 就有關指明受規管活動提出的第 126 條所指的申請，是在申請期內提出的；

(b) 本附表第 4(3)(a)、(b)、(d) 及 (e) 條的條件，就關乎有關指明受規管活動的持牌代表申請而獲符合；

(c) 本附表第 3(3) 條的條件，就關乎有關指明受規管活動的主事人的申請而獲符合；

(d) 第 (3) 款獲遵守；及

(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) 第 131(1) 條的規定不就該人而適用，但只限於在該人並無就任何其他受規管活動而獲發牌的情況下不適用。

(3) 如該人根據本附表第 3(1) 條作為獲發牌，則在該人當作為獲發牌的期間內，以及（如該人根據第 116 條，就該類指明受規管活動而獲批給牌照）即使在該牌照獲批給後，當作持牌日期——

(a) 就第 138(2) 條而言，須視為批給該牌照的日期（但如證監會根據該條批准另一日期則除外）；及

(b) 就第 138(4) 條而言，須視為該人獲發牌的日期（但如證監會根據該條批准另一日期則除外）。

8. 當作持牌身分的終止—代表

(1) 任何個人根據本附表第 4(1) 條就某類指明受規管活動當作為獲發牌一事，在下列事件中最早發生者發生當日，即告終止——

(a) 該名個人根據第 120 條就該類指明受規管活動而提出之申請被撤回，或有關主事人根據第 116 或 127 條就有關指明受規管活動而提出之申請被撤回；

(b) 該名個人就該類指明受規管活動而獲批給牌照；

(c) 尋求——

(i) 就該類指明受規管活動批給該名個人牌照遭拒絶，而該項拒絕根據第 232 條作為指明決定而生效；

(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;
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.
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11. 證監會發出不予當作通知

(1) 如證監會不信任——

(a) 由某法團申請人提出的申請，是按照第 116(1) 或 127(1) 條提出的；或

(b) 本附表第 3(3)(a)、(b)、(c)、(d)、(e) 及 (f) 條的條件已獲符合，

則證監會可向該法團申請人發出通知，告知該申請人不得根據本附表第 3(1) 或 (2) 條當作為獲發牌。

(2) 如證監會不信任——

(a) 由某持牌代表申請人提出的申請，是按照第 120(1) 或 127(1) 條提出的；或

(b) 本附表第 4(3)(a)、(b)、(c) 及 (d) 條的條件已獲符合，

則證監會可向該持牌代表申請人發出通知，告知該申請人不得根據本附表第 4(1) 或 (2) 條當作為獲發牌。

(3) 如證監會不信任——

(a) 由某負責人員申請人提出的申請，是按照第 126(1) 條提出的；或

(b) 本附表第 5(2)(a)、(b)、(c) 及 (d) 條的條件已獲符合，

則證監會可向該負責人員申請人發出通知，告知該申請人不得根據本附表第 5(1) 條當作為獲核准。

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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) 第 (5) 款獲遵守；及

(g) 在當作持牌日期前，沒有不予當作通知向該法團申請人發出。

(5) 上述法團申請人須連同有關申請，呈交一份確認表格，以確認——

(a) 該法團申請人在香港進行某類合資格活動，為期已達資格計算期；

(b) 不少於 2 名個人（其中最少一名屬該法團申請人的執行董事）——

(i) 已根據第 126 條提出申請，尋求就經擴展第 9 類受規管活動獲核准成為該法團申請人的負責人員；及

(ii) 符合本附表第 15(2)(a)、(b) 及 (d) 條的條件；

(c) 該法團申請人每名屬個人的執行董事——

(i) 已根據第 126 條提出申請，尋求就經擴展第 9 類受規管活動獲核准成為該法團申請人的負責人員；及

(ii) 符合本附表第 15(2)(a)、(b) 及 (d) 條的條件；

(d) 以下兩者其中之一——

(i) 該法團申請人已提出第 130(1) 條所指的申請，而有關處所符合第 130(2)(a) 及 (b) 條的規定；

(f) subsection (5) is complied with; and

(g) the corporate applicant has not been issued a no-deeming notice before the deeming date.

(5) The corporate applicant must submit, together with the application, a confirmation form confirming—

(a) that the corporate applicant has been carrying on in Hong Kong a qualifying activity for the qualification period;

(b) that not less than 2 individuals, at least one of whom is an executive director of the corporate applicant—

(i) have applied under section 126 to be approved as responsible officers of the corporate applicant in relation to the expanded Type 9 RA; and

(ii) satisfy the conditions in section 15(2)(a), (b) and (d) of this Schedule;

(c) that every executive director of the corporate applicant who is an individual—

(i) has applied under section 126 to be approved as a responsible officer of the corporate applicant in relation to the expanded Type 9 RA; and

(ii) satisfies the conditions in section 15(2)(a), (b) and (d) of this Schedule;

(d) either that—

(i) the corporate applicant has lodged an application under section 130(1) and the premises concerned satisfy the requirements of section 130(2)(a) and (b); or
ii) the premises proposed to be used for keeping records or documents for the purposes of section 130(1) are the subject of an existing approval under that section;

(e) that the corporate applicant is in compliance, or has arrangements in place to ensure compliance, with any requirements of the Securities and Futures (Financial Resources) Rules (Cap. 571 sub. leg. N) applicable to a licensed corporation that carries on the expanded Type 9 RA; and

(f) that the corporate applicant is in compliance, or has arrangements in place to ensure compliance, with any provisions of this Ordinance, the guidelines and codes of conduct applicable to a licensed corporation that carries on the new Type 9 activity.

6) The deeming under subsections (2) and (3)—

(a) takes effect on the date immediately after the end of the transitional period for the new Type 9 activity; and

(b) ends in accordance with section 16 of this Schedule.

14. Deemed licensing of representatives

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

(2) An individual who applies in accordance with section 120(1) to be licensed to carry on the expanded Type 9 RA for a corporation, but not as a responsible officer, and who applies in accordance with section 122(1) to be accredited to the principal, is deemed, if the conditions in subsection (4) are satisfied—
(a) to be licensed as a licensed representative under section 120(1) to carry on for the principal the expanded Type 9 RA; and
(b) to be accredited to that principal.

(3) An individual who applies in accordance with section 127(1) for variation of the regulated activity specified in the individual's licence by adding the expanded Type 9 RA, and who applies in accordance with section 122(1) to be accredited to the principal, is deemed, if the conditions in subsection (4) are satisfied—
(a) to be licensed as a licensed representative under section 120(1) to carry on for the principal the expanded Type 9 RA; and
(b) to be accredited to that principal.

(4) The conditions are that—
(a) the application is made within the application period;
(b) the application relates to a corporate applicant who has made an application referred to in section 13(2) or (3) of this Schedule for the expanded Type 9 RA;
(c) the conditions in section 13(4) of this Schedule are satisfied in relation to the principal's application for the expanded Type 9 RA;
(d) the LR applicant is carrying on for or on behalf of the principal the relevant qualifying activity at the time the application is made; and
(e) the LR applicant has not been issued a no-deeming notice before the deeming date.

(5) The deeming under subsections (2) and (3)—
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(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.
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.

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.

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.

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)—
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
18. When deemed status ends—representatives

(1) An individual deemed to be licensed under section 14(2) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—

(a) the individual’s application under section 120, or the principal’s application under section 116 or 127, for the expanded Type 9 RA is withdrawn;

(b) the individual is granted a licence for the expanded Type 9 RA;

(c) a refusal to—

(i) grant the individual a licence for the expanded Type 9 RA takes effect as a specified decision under section 232;

(ii) grant the principal a licence for the expanded Type 9 RA takes effect as a specified decision under section 232; or

(iii) vary the regulated activity specified in the principal’s licence by adding the expanded Type 9 RA takes effect as a specified decision under section 232;

(d) 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—

(2) 任何個人根據本附表第 14(3) 條當作為獲發牌一事，在下列事件中最早發生者發生當日，即告終止——

(a) 該名個人根據第 127 條就經擴展第 9 類受規管活動而提出的申請被撤回，或有關主事人根據第 116 或 127 條就經擴展第 9 類受規管活動而提出的申請被撤回；

(b) 該名個人的牌照所指明的受規管活動，以加入經擴展第 9 類受規管活動的方式更改；

(c) 尋求——

(i) 以加入經擴展第 9 類受規管活動的方式更改該名個人的牌照所指明的受規管活動遭拒絕，而該項拒絕根據第 232 條作為指明決定而生效；

(ii) 就經擴展第 9 類受規管活動批給有關主事人牌照遭拒絕，而該項拒絕根據第 232 條作為指明決定而生效；或

(iii) 以加入經擴展第 9 類受規管活動的方式更改有關主事人的牌照所指明的受規管活動遭拒絕，而該項拒絕根據第 232 條作為指明決定而生效；

(d) 該名個人就經擴展第 9 類受規管活動而當作為獲發牌，而在當作持牌日期後，該名個人不再為有關主事人（或代該主事人）就該類受規管活動而行事。

19. 獲得當作持牌身分的後果——代表

(1) 凡任何個人根據本附表第 14(2) 條就經擴展第 9 類受規管活動當作為獲發牌，本條即適用於該名個人。

(2) 在上述個人當作為獲發牌的期間內，以及（如該名個人根據第 120 條，就經擴展第 9 類受規管活動而獲批給牌照）即使在該牌照獲批給後，當作持牌日期——
(a) for the purposes of section 138(2), as the date of the grant of the licence, unless another date is approved by the Commission under that section; and
(b) for the purposes of section 138(4), as the date on which the individual is licensed, unless another date is approved by the Commission under that section.

20. When deemed status ends—responsible officers

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

(a) the individual’s LR application under section 120 or 127 for the expanded Type 9 RA is withdrawn;
(b) a refusal to grant the licence applied for by that LR applicant for the expanded Type 9 RA takes effect as a specified decision under section 232;
(c) a refusal to vary the regulated activity specified in the individual’s licence by adding the expanded Type 9 RA takes effect as a specified decision under section 232;
(d) the individual’s application under section 126 to be approved as a responsible officer in relation to the expanded Type 9 RA is withdrawn;
(e) the individual is approved under section 126 as a responsible officer in relation to the expanded Type 9 RA;
(f) a refusal to approve the individual as a responsible officer in relation to the expanded Type 9 RA takes effect as a specified decision under section 232;
21. Issue of no-deeming notices by Commission

(1) The Commission may issue a notice to a corporate applicant informing that the applicant is not to be deemed to be licensed under section 13(2) or (3) of this Schedule if the Commission is not satisfied that—

(a) the application is made in accordance with section 116(1) or 127(1); or

(b) the conditions in section 13(4)(a), (b), (c), (d), (e) and (f) of this Schedule have been met.

(2) The Commission may issue a notice to an LR applicant informing that the applicant is not to be deemed to be licensed under section 14(2) or (3) of this Schedule if the Commission is not satisfied that—

(a) the application is made in accordance with section 120(1) or 127(1); or

(b) the conditions in section 14(4)(a), (b), (c) and (d) of this Schedule have been met.
(3) The Commission may issue a notice to an RO applicant informing that the applicant is not to be deemed to be approved under section 15(1) of this Schedule if the Commission is not satisfied that—

(a) the application is made in accordance with section 126(1); or

(b) the conditions in section 15(2)(a), (b), (c) and (d) of this Schedule have been met.

Division 3—Authorized Financial Institutions and Individuals

22. Deemed registration of authorized financial institutions

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

(2) An authorized financial institution that applies in accordance with section 119(1) to carry on the expanded Type 9 RA is deemed to be registered under that section to carry on the expanded Type 9 RA if the conditions in subsection (4) are satisfied.

(3) An authorized financial institution that applies in accordance with section 127(1) for variation of the regulated activity specified in its certificate of registration by adding the expanded Type 9 RA is deemed to be registered under section 119(1) to carry on the expanded Type 9 RA if the conditions in subsection (4) are satisfied.

(4) The conditions are that—

(a) the application is made within the application period;
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(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

(b) 少於 2 名個人 (該等個人擬就經擴展第 9 類受規管活動，進行《銀行業條例》(第 155 章) 第 71D 條所指的主管人員的職能) ——

(i) 已提出申請，尋求該條例第 71C(1)(a) 條所指的同意；及
(ii) 沒有不予當作通知向其發出；

(c) 第 (5) 款獲遵守；及
(d) 在當作註冊日期前，沒有不予當作通知向有關申請人發出。

(5) 上述申請人須連同有關申請，呈交一份確認表格，以確認——

(a) 該申請人在香港進行某類合資格活動，為期已達資格計算期；
(b) 不少於 2 名個人——

(i) 已提出申請，尋求就經擴展第 9 類受規管活動取得《銀行業條例》(第 155 章) 第 71C(1)(a) 條所指的同意；及
(ii) 符合本附表第 23(3)(a) 及 (c) 條的條件；
(c) 該申請人已遵守 (或已設有安排以確保遵守) 適用於進行新的第 9 類活動的註冊機構的本條例、有關指引及操守守則的條文；
(d) 該申請人已遵守《銀行業條例》(第 155 章) 附表 7 第 6 條的規定；及
(e) if the applicant is a locally incorporated authorized financial institution, the applicant has also complied with any requirements imposed under Part XVIA of the Banking Ordinance (Cap. 155).

(6) The deeming under subsections (2) and (3)—

(a) takes effect on the date immediately after the end of the transitional period for the new Type 9 activity; and

(b) ends in accordance with section 24 of this Schedule.

23. Deeming of executive officers

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

(2) An individual who applies for consent under section 71C(1) of the Banking Ordinance (Cap. 155) in relation to the expanded Type 9 RA is deemed to have consent to be an executive officer of the authorized financial institution concerned, in relation to that regulated activity, if the conditions in subsection (3) are satisfied.

(3) The conditions are that—

(a) the application for consent under section 71C(1) of the Banking Ordinance (Cap. 155) in relation to the expanded Type 9 RA is made within the application period;

(b) the authorized financial institution in relation to which the application is made—

(i) has made an application under section 119 or 127 in relation to the expanded Type 9 RA; and
(ii) 满足第 22(4) 条的条件；
(c) 第 (4) 款获遵守；及
(d) 在當作同意日期前，沒有不予當作通知向有關申請人發出。

(4) 上述申請人須連同有關申請，呈交一份確認表格，以確認該申請人在香港進行某類合資格活動，為期已達資格計算期。

(5) 第 (2) 款所指的當作為取得同意一事——
(a) 在關乎新的第 9 類活動的過渡期終止日期的翌日生效；及
(b) 按照本附表第 26 條終止。

24. 當作為取得同意一事——認可財務機構

(1) 任何認可財務機構根據本附表第 22(2) 條當作為獲註冊一事，在下列事件中最早發生者發生當日，即告終止——
(a) 根據第 119 條就經擴展第 9 類受規管活動提出的申請被撤回；
(b) 有註冊證明書根據第 119(1) 條就經擴展第 9 類受規管活動而發給；
(c) 尋求就經擴展第 9 類受規管活動發給註冊證明書遭拒絕，而該項拒絕根據第 232 條作為指明決定而生效。

(2) 任何認可財務機構根據本附表第 22(3) 條當作為獲註冊一事，在下列事件中最早發生者發生當日，即告終止——

(ii) 满足 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)—
25. 獲得當作註冊身分的後果——認可財務機構

(1) 凡任何認可財務機構根據本附表第 22(2) 或 (3) 條，就經擴展第 9 類受規管活動當作為獲註冊，本條即適用於該認可財務機構。

(2) 如上述認可財務機構根據本附表第 22(2) 條當作為獲註冊，第 (3) 款即適用。

(3) 在上述認可財務機構當作為獲註冊的期間內，以及 (如該機構根據第 119(1) 條，就經擴展第 9 類受規管活動而獲發給註冊證明書 ) 即使在該註冊證明書獲發給後，當作註冊日期就第 138(2) 條而言，須視為發給該註冊證明書的日期 (但如證監會根據第 138(2) 條批准另一日期則除外)。

(4) 在上述認可財務機構根據本附表第 22(2) 或 (3) 條當作為獲註冊的期間內，該機構亦當作為受它不得進行證券或期貨合約管理的條件所規限。

(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
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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. 負責人員—當作條件

(1) 凡任何個人獲核准，就現有第 9 類受規管活動，成為獲發牌以進行該類受規管活動的法團的負責人員，本條即適用於該名個人。

(2) 除非上述個人遵守第 (3) 及 (4) 款，否則該名個人的持牌代表牌照，自關乎經擴展第 9 類受規管活動的過渡期終止日期的翌日起，即當作為受該名個人不得進行新的第 9 類活動的條件所規限。

(3) 上述個人須於關乎經擴展第 9 類受規管活動的申請期內，將其正在進行新的第 9 類活動一事，以書面通知證監會。

(4) 上述個人須連同有關通知書，呈交一份確認表格，以確認該名個人在香港或其他地方進行某類合資格活動，為期已達資格計算期。

第 5 分部——認可財務機構就現有第 9 類受規管活動獲註冊

30. 認可財務機構—當作條件

(1) 凡任何認可財務機構在緊接生效日期之前，屬獲註冊以進行現有第 9 類受規管活動的認可財務機構，本條即適用於該機構。

(2) 除非上述認可財務機構遵守第 (3) 及 (4) 款，否則該機構就現有第 9 類受規管活動的註冊，自關乎經擴展第 9 類

29. Responsible officers—deemed condition

(1) This section applies to an individual who is approved as a responsible officer of a corporation licensed to carry on the existing Type 9 RA in relation to that regulated activity.

(2) Unless the individual complies with subsections (3) and (4), the licensed representative licence of the individual is deemed, on and from the date immediately after the end of the transitional period for the expanded Type 9 RA, to be subject to the condition that the individual must not carry on the new Type 9 activity.

(3) The individual must, within the application period for the expanded Type 9 RA, notify the Commission in writing that the individual is carrying on the new Type 9 activity.

(4) The individual must submit, together with the notification, a confirmation form confirming that the individual has been carrying on in Hong Kong or elsewhere a qualifying activity for the qualification period.

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

30. Authorized financial institutions—deemed condition

(1) This section applies to an authorized financial institution that, immediately before the commencement date, is an authorized financial institution registered to carry on the existing Type 9 RA.

(2) Unless the authorized financial institution complies with subsections (3) and (4), the registration of the authorized financial institution for the existing Type 9 RA is deemed, on and from the date immediately after
the end of the transitional period for the expanded Type 9 RA, to be subject to the condition that it must not carry on the new Type 9 activity.

(3) The authorized financial institution must, within the application period for the expanded Type 9 RA, notify the Commission and the Monetary Authority in writing that it is carrying on the new Type 9 activity and provide—

(a) a full description of the nature of the business carried on or to be carried on and the types of services provided or to be provided by the authorized financial institution;

(b) information relating to the human and technical resources, operational procedures and organizational structure of the authorized financial institution showing that it is capable of carrying on its regulated activities, and its proposed regulated activities, competently; and

(c) a full description of any business history of the authorized financial institution and a business plan of the authorized financial institution covering internal controls, organizational structure, contingency plans and related matters.

(4) The authorized financial institution must submit, together with the notification, a confirmation form confirming—

(a) that at least one of its executive officers has been carrying on in Hong Kong or elsewhere a qualifying activity for the qualification period;

(b) that the authorized financial institution is in compliance with the requirement in paragraph 6 of the Seventh Schedule to the Banking Ordinance (Cap. 155);
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.

(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.

(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;
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;

(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 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 the 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;
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)—
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
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

38. 當作持牌身分的終止——代表

(1) 任何個人根據本附表第 34(2) 條當作為獲發牌一事，在下列事件中最早發生者發生當日，即告終止——

(a) 該名個人根據第 120 條就經擴展第 7 類受規管活動而提出的申請被撤回，或有關主事人根據第 116 或 127 條就經擴展第 7 類受規管活動而提出的申請被撤回；

(b) 該名個人就經擴展第 7 類受規管活動而獲批給牌照；

(c) 尋求——

(i) 就經擴展第 7 類受規管活動批給該名個人牌照遭拒絕，而該項拒絕根據第 232 條作為指明決定而生效；

(ii) 就經擴展第 7 類受規管活動批給有關主事人牌照遭拒絕，而該項拒絕根據第 232 條作為指明決定而生效；或

(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.
(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;
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—
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(i) is deemed under this Schedule to be registered under section 119 or 127 for a new regulated activity; and

(ii) becomes an unsuccessful appellant or is a non-appellant; and

(h) an individual who carries on the new regulated activity for an authorized financial institution referred to in paragraph (g).

(3) For the purposes of this Division, a person (other than an individual) or an authorized financial institution becomes an unsuccessful appellant, if—

(a) the person or the authorized financial institution applies for a review of a decision to refuse to—

(i) grant a licence under section 116 to carry on a new regulated activity;

(ii) grant a certificate of registration under section 119 to carry on a new regulated activity; or

(iii) vary the regulated activity specified in the licence or certificate of registration 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 a certificate of registration under section 119 to carry on a new regulated activity; or
(c) 拒絕根據第 127 條以加入任何新受規管活動的方式更改有關牌照或註冊證明書所指明的受規管活動的決定，
該人或該機構即屬非上訴人。

43. 在指明期間內，不屬違反第 114 條

(1) 凡本分部適用的人 (不屬個人者) 或認可財務機構，就某類新受規管活動而言，作出第 114(1) 條提述的作為，
則如第 (3) 款的條件獲符合，該人或該機構即使並非第 114(2)(a)、(b) 或 (c) 條提述的人，亦不屬違反第 114(1) 條。

(2) 凡本分部適用的個人就某類新受規管活動而言，作出第 114(3) 條提述的作為，則如第 (4) 款的條件獲符合，該
名個人即使並非第 114(4)(a)、(b) 或 (c) 條提述的人，亦不屬違反第 114(3) 條。

(3) 第 (1) 款提述的條件為——
(a) 有關作為是在指明期間內作出的；及
(b) 作出該作為，純粹是為了結束與該新受規管活動有關的業務。

(4) 第 (2) 款提述的條件為——
(a) 有關作為是在指明期間內作出的；及
(b) 作出該作為，純粹是為了結束符合以下說明的業務——

(c) vary the regulated activity specified in the licence or certificate of registration by adding a new
regulated activity under section 127.

43. Section 114 not contravened during specified period

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

(2) An individual to whom this Division applies who does an act referred to in section 114(3) in relation to a new
regulated activity, does not contravene that section even if the individual is not a person referred to in
section 114(4)(a), (b) or (c), if the conditions in subsection (4) are satisfied.

(3) The conditions referred to in subsection (1) are that the act is done—
(a) during the specified period; and
(b) solely for the purpose of closing down the business that is connected with the new regulated activity concerned.

(4) The conditions referred to in subsection (2) are that the act is done—
(a) during the specified period; and
(b) solely for the purpose of closing down the business—
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(i) of the person or the authorized financial institution for whom the individual carries on the new regulated activity concerned; and

(ii) that is connected with that new regulated activity concerned.

(5) In this section—

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

(a) for a person referred to in section 42(2)(a) of this Schedule, means the longer of the following periods—

(i) the period beginning on the date the no-deeming notice is issued to the person in respect of the new regulated activity and ending with the end of the transitional period;

(ii) the period of 3 months beginning on the date that the no-deeming notice is issued;

(b) for an individual referred to in section 42(2)(b) of this Schedule, means the specified period applicable to the person for whom the individual carries on the new regulated activity;

(c) for an authorized financial institution referred to in section 42(2)(c) of this Schedule, means the longer of the following periods—

(i) the period beginning on the date the no-deeming notice is issued to the authorized financial institution in respect of the new regulated activity and ending with the end of the transitional period;

(ii) the period of 3 months beginning on the date that the no-deeming notice is issued;
(d) for an individual referred to in section 42(2)(d) of this Schedule, means the specified period applicable to the authorized financial institution for whom the individual carries on the new regulated activity;

(e) for a person referred to in section 42(2)(e) of this Schedule who—

(i) becomes an unsuccessful appellant, means the period of 3 months beginning on the date the decision on review relating to the new regulated activity takes effect as a specified decision under section 232; and

(ii) is a non-appellant, means the period of 3 months beginning on the date the decision to refuse to grant the licence to carry on the new regulated activity takes effect as a specified decision under section 232;

(f) for an individual referred to in section 42(2)(f) of this Schedule, means the specified period applicable to the person for whom the individual carries on the new regulated activity;

(g) for an authorized financial institution referred to in section 42(2)(g) of this Schedule that—

(i) becomes an unsuccessful appellant, means the period of 3 months beginning on the date the decision on review relating to the new regulated activity takes effect as a specified decision under section 232; and

(ii) is a non-appellant, means the period of 3 months beginning on the date the decision to refuse to grant a certificate of registration to carry on the new regulated activity takes effect as a specified decision under section 232; and
44. Extension of specified period

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

(2) An authorized financial institution referred to in section 42(2)(c) or (g) of this Schedule may apply to the Commission in writing, within the specified period that is applicable to the authorized financial institution in the particular case, for an extension of that specified period.

(3) An individual referred to in section 42(2)(d) or (h) of this Schedule may apply to the Monetary Authority in writing, within the specified period that is applicable to the individual in the particular case, for an extension of that specified period.

(4) On receiving an application—

(a) made under subsection (1), the Commission may extend the specified period for a period that it considers appropriate, having regard to the circumstances of the person’s business and activities;

(b) made under subsection (2), the Commission may, in consultation with the Monetary Authority, extend the specified period for a period that it, in consultation with the Monetary Authority, considers appropriate, having regard to the circumstances of the authorized financial institution in the particular case.
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;
指定 (specified) 指在主管當局送達的通知內指定；

標的個人 (subject individual) ——
(a) 在有通知根據第 (1) 款向任何人 (不屬個人者) 送達的情況下，指該人；或
(b) 在有通知根據第 (2) 款向任何認可財務機構送達的情況下，指該機構；

標的人士 (subject person) ——
(a) 在有通知根據第 (1) 款向任何人送達通知的情況下，指該個人；
(b) 在有通知根據第 (3) 款向任何個人送達通知的情況下，指該名個人。

46. 違反本附表第 45 條所指規定屬罪行
(1) 任何人 (不論是認可財務機構、個人或其他人) 沒有遵守根據本附表第 45(1)、(2) 或 (3) 條送達的通知內指明的任何規定，即屬犯罪。

(2) 任何人 (不屬個人者) 如犯第 (1) 款所訂罪行——
(a) 一經循公訴程序定罪，可處罰款 $10,000,000；或
(b) 一經循簡易程序定罪，可處罰款 $500,000。

(3) 任何個人如犯第 (1) 款所訂罪行——
(a) 一經循公訴程序定罪，可處罰款 $10,000,000 及監禁 7 年；或
(b) 一經循簡易程序定罪，可處罰款 $500,000 及監禁 6 個月。

specified (指明) 指定在主管當局送達的通知內指定；

subject individual (標的個人) 指，如發出通知的當局是——
(a) 委員會，一個被通知的個人(第 (1) 條)；
(b) 貨幣管理局，一個被通知的個人(第 (3) 條)；

subject person (標的人士) 指——
(a) 一個個人(第 (1) 條)；或
(b) 一個認可財務機構(第 (2) 條)。

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;
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(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
49. Deemed conditions

(1) For the purposes of this Ordinance—

(a) a condition that a licence is deemed to be subject to under section 28(2) of this Schedule is to be regarded as a condition imposed under section 116;

(b) a condition that a licence is deemed to be subject to under section 29(2) of this Schedule is to be regarded as a condition imposed under section 120;

(c) a condition that a registration is deemed to be subject to under section 30(2) of this Schedule is to be regarded as a condition imposed under section 119; and

(d) a condition that a licence is deemed to be subject to under section 33(4) of this Schedule is to be regarded as a condition imposed under section 116.

(2) A condition that a consent is deemed to be subject to under section 31(2) of this Schedule (consent condition) is to be regarded as a condition imposed under section 116.

(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.
(第155章)第71C(9)條施加的條件，但該第71C(9)條的(a)、(b)及(c)段不適用於該同意條件，亦不就該同意條件而適用。”。

71C(9) of the Banking Ordinance (Cap. 155) except that paragraphs (a), (b) and (c) of that section 71C(9) do not apply to or in relation to the consent condition.”.
Part 3
Amendments Relating to Protections under Part III of Securities and Futures Ordinance

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

57. Section 18 amended (interpretation of Part III)
(1) Section 18(1), definition of default rules, after “40(2)”—
Add
“or made under section 40(2A)”.

(2) Section 18(1), definition of defaulter—
Repeal
“a clearing participant who”
Substitute
“a recognized clearing house, or a clearing participant, that”.

(3) 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 clearing house) and whether the property is held or deposited by way of charge, transfer or other arrangement; and
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(b) **guarantee fund contribution** (保證基金供款) means any contribution by a recognized clearing house or its clearing participants to a fund that—

(i) is maintained by the clearing house to cover losses, including losses arising in connection with—

(A) it being unable or likely to become unable to meet its obligations in respect of any unsettled or open market contract; or

(B) a clearing participant being unable, or appearing to be, or likely to become, unable to meet obligations in respect of unsettled or open market contracts to which that participant is a party; and

(ii) may be applied for that purpose under the default rules of the clearing house.”.

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

(1) 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 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 clearing house to cease to provide or operate any clearing and settlement facilities provided or operated by it;
(b) taking proceedings or other action in relation to any contracts entered into between a clearing participant and its clients if—
   (i) the clearing participant appears to be unable, or likely to become unable, to meet its obligations in respect of all unsettled or open market contracts to which it is a party; and
   (ii) those contracts relate to such unsettled or open market contracts recorded in a client account.

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

(2) After section 40(6)—

   Add "(7) In this section—

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

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

   (a) which is held with a recognized clearing house in the name of the clearing participant; and
Section 45 amended (proceedings of recognized clearing house take precedence over law of insolvency)

After section 45(1)(d)—

Add

“(da) the provision of market collateral;”.

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”.

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

Schedule 3, Part 5, after section 1—

Add

“2. If—

(a) the RCH rules envisage that a clearing participant may record market contracts in separate capacities, as referred to in section 3; and
(b) the recognized clearing house operates in such a manner that paragraphs (a), (b), (c), (d), (e) and (f) of section 1 may be complied with separately in respect of each of the capacities, 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 a separate capacity in respect of its house accounts and each of its client accounts if—

(i) for house accounts—transactions that are required or permitted by the RCH rules to be recorded in any of the clearing participant’s house accounts with the recognized clearing house have been so recorded; and

(ii) for each client account—transactions that are required or permitted by the RCH rules to be recorded in any of the clearing participant’s client accounts with the clearing house have been so recorded;

(b) any net sum payable to the clearing participant in respect of transactions recorded in a client account, as calculated under section 1(c), must not be set-off against any net sum payable by the clearing participant in respect of transactions recorded in any house account, as calculated under that section, regardless of any provision to the contrary in the RCH rules;

(c) any net sum payable to the clearing participant in respect of transactions recorded in house accounts, as calculated under section 1(c), may be set-off against any net sum payable by the clearing participant in respect of transactions recorded in
須就記錄在任何客戶帳戶內的交易支付的淨款額（根據該條計算所得者）互相抵銷；

(d) 如《認可結算所規章》有此訂定的話，客戶帳戶內的交易而付予結算所參與者的淨款額（根據第1(c)條計算所得者），不得與結算所參與者須就記錄在任何其他客戶帳戶內的交易支付的淨款額（根據該條計算所得者）互相抹銷。

4. 為免生疑問——

(a) 將違責參與者在某客戶帳戶內的未交收市場合約的持倉量及抵押品，按照《認可結算所規章》轉移予該認可結算所的一名或多於一名其他結算所參與者的作為，就第1(a)條而言，即構成該合約的交收；及

(b) 在不局限第1(b)條的原則下，在該條中，凡提及結算所參與者根據有關合約或有有關合約而有的權利及法律責任，即包括根據《認可結算所規章》採行動所引起的權利及法律責任（該行動授權或准許該結算所參與者根據有關合約將在某客戶帳戶內的持倉量及抵押品，轉移予該認可結算所的一名或多於一名其他結算所參與者）。

5. 儘管有本條例第55條的規定，第1、2、3及4條仍然適用。

6. 在本部中，凡提及互相抵銷或抵銷，即包括淨額計算安排。

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

6. In this Part, a reference to a set-off or offset includes a netting arrangement.
7. For the purposes of this Part, a sum of money payable by, or payable to, a person includes a value to be taken into account under a netting arrangement to which the person is a party.

8. In this Part—

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

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

(a) which is held with a recognized clearing house in the name of the clearing participant; and

(b) in which the following are recorded—

(i) the clearing participant’s own positions or collateral;

(ii) the positions or collateral of other persons that are regarded by the RCH rules to be the clearing participant’s own positions or collateral;

netting (淨額計算) means the determination of a net balance by taking account of the values (whether positive or negative) attributed to an accelerated or terminated payment, or to a delivery obligation or entitlement;

RCH rules (《認可結算所規章》), in relation to a recognized clearing house, means the rules of the clearing house referred to in section 1.”.
Part 4

Amendments to Securities and Futures Ordinance Relating to Electronic Filing

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

63. 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;”.

64. 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;
Part 4  
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(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>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>The relevant exchange company</td>
<td>The relevant exchange company</td>
</tr>
<tr>
<td>A listed corporation</td>
<td>The relevant exchange company</td>
</tr>
<tr>
<td>The Commission</td>
<td>The relevant exchange company</td>
</tr>
<tr>
<td>The Monetary Authority</td>
<td>The Monetary Authority</td>
</tr>
</tbody>
</table>

(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.”.

65. 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 2014

1. Subject to section 2, section 374 of this Ordinance as substituted by section 64 of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) applies to a specified document if the duty to give or deliver the document arose on or after the commencement date of
2. If the duty to give or deliver a specified document arose before the commencement date of section 64 of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014), the document is to be regarded as duly given or delivered if it is—

(a) delivered, left or sent on or after that date in accordance with section 374 of this Ordinance as in force immediately before that date; or

(b) sent in accordance with section 374 of this Ordinance as substituted by section 64 of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014).

3. In this Part—

*specified document* (指明文件) means a document referred to in section 374(1) of this Ordinance as substituted by section 64 of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014)."
Part 5—Division 1

Division 1—Amendments to Securities and Futures Ordinance

66. Securities and Futures Ordinance amended

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

67. 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.”.
第 2 分部——對《有組織及嚴重罪行條例》的修訂

68. 修訂《有組織及嚴重罪行條例》
《有組織及嚴重罪行條例》(第 455 章) 現予修訂，修訂方式列於本分部。

69. 修訂附表 2 (其他的指明的罪行)
附表 2，在第 12 項之後——

加入
“13. 《證券及期貨條例》
(第 571 章)
第 291 條 內幕交易
第 295 條 虛假交易
第 296 條 操控價格
第 297 條 披露關於受禁交易的資料
第 298 條 披露虛假或具誤導性的資料以誘使進行交易
第 299 條 操縱證券市場”。

证券及期货 (修订) 条例

Part 5—Division 2
Section 68

Division 2—Amendment to Organized and Serious Crimes Ordinance

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

69. 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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Section 70

Securities and Futures (Futures Contracts) Notice 2012 repealed

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