

立法會 *Legislative Council*

立法會LS19/05-06號文件

2006年1月5日財經事務委員會會議文件

規管透過大眾媒體廣播的證券相關節目

財經事務委員會副主席要求法律事務部就規管透過大眾媒體廣播的證券相關節目的現行法例及規範性條文提供便覽，以協助議員在2006年1月5日的事務委員會會議上考慮與衍生權證市場檢討有關的事宜。

2. 透過大眾媒體廣播的證券相關節目，是指由主持及受邀嘉賓就證券或外匯市場的走勢或特定證券或貨幣提供分析或評論，以及在直播期間答覆撥通電話的一般聽眾或觀眾就個別證券的提問的電台或電視節目(下稱“證券相關節目”)。

3. 在香港特區，證券及期貨事務監察委員會(下稱“證監會”)是所有從事與《證券及期貨條例》(第571章)附表5所界定的證券及期貨合約交易有關的活動的人士的監管機關。¹ 這些活動稱為受規管活動。任何人除非獲發牌或根據《證券及期貨條例》的有關條文獲得准許或豁免，否則不得從事受規管活動。² 很多證券相關節目的主持及嘉賓都是《證券及期貨條例》所訂的持牌人，有些則並非持牌人。他們參與這類節目的行為，可屬於第4類受規管活動，即就證券提供意見。然而，《證券及期貨條例》附表5中“就證券提供意見”的定義第(ix)段已明確訂明，該詞的意思並不包括透過普遍地提供予公眾閱覽的報章、雜誌或其他刊物提供的意見或發出的分析或報告，或透過供公眾接收(不論是否需付收看費)的電視廣播或無線電廣播提供的意見或發出的分析或報告。這意味參與證券相關節目的上述行為並不受《證券及期貨條例》所規管。不過，還有其他因素須予考慮。

4. 任何人須令證監會信納他是就《證券及期貨條例》所訂的某類受規管活動獲發牌的適當人選。³ 這是一項持續的責任。證監會如認為某持牌人並非擔任或留任同一類持牌人的適當人選，可行使紀律處分權力，包括撤銷該人的牌照。⁴ 證監會在考慮某人是否適當人選時，除考慮其他因素外，亦可考慮該人的信譽、品格、可靠程度及在

¹ 《證券及期貨條例》附表5。(除非另有明文述明，否則所有在本文件引述的《證券及期貨條例》條文均節錄於附錄I。)

² 請閱《證券及期貨條例》第114、116、120及121條。

³ 《證券及期貨條例》第120(3)條。

⁴ 《證券及期貨條例》第194條。

財政方面的穩健性，以及其認為有關的任何事項。⁵ 如某持牌人在證券相關節目中犯了失當行為，證監會可裁斷他不再是就《證券及期貨條例》所訂的受規管活動獲發牌的適當人選。

5. 再者，持牌人須遵守證監會訂立的規則及操守守則。⁶ 《證券及期貨事務監察委員會持牌人或註冊人操守準則》(下稱“《準則》”)第16.9段⁷訂明分析員在大眾媒體中就某上市法團的證券提供分析或評論時應作出的披露。《準則》第16段嚴格來說只適用於分析員，但參與證券相關節目的持牌人都有依照《準則》第16段作出所需披露。

6. 除上述只適用於證監會持牌人或註冊人的條文外，《證券及期貨條例》亦載有一般適用於所有人的條文。就現時目的而言，第107、108、298及301條⁸也許是至為相關的。第107條對為誘使另一人訂立或要約訂立旨在取得、處置、認購或包銷證券的協議或受規管投資協議，或取得或要約取得集體投資計劃的權益，或參與或要約參與集體投資計劃而作出任何欺詐的失實陳述或罔顧實情的失實陳述等行為施加刑事法律責任。第108條對該等欺詐或罔顧實情的失實陳述施加民事法律責任。第298條規定，任何人披露、傳遞或散發虛假或具誤導性的資料，而該等資料相當可能會誘使他人 在香港認購證券或進行期貨合約交易，或誘使他人 在香港售賣或購買證券，或在香港維持、提高、降低或穩定證券的價格或期貨合約交易的價格，即屬犯罪。第301條就關乎香港的槓桿式外匯交易合約的類似行為訂立新的罪行。任何人如違反第298或301條，便可能負有法律責任，須以損害賠償的方式賠償另一人因該項違反而蒙受的金錢損失。⁹ 其他人如針對該人提出訴訟，該人即使未因該項違反而被檢控或被定罪，仍可能負有上述法律責任。至於個別事件中，證券相關節目中的行為是否有足夠的接近關係，或有關資料是否具欺詐或誤導成分，因而招致法定刑罰或法律責任，則是一個事實的問題。此外還須一提，侵權法亦就疏忽的錯誤陳述或欺騙提供民事補救方法。

7. 就衍生權證的推銷而言，證監會現正研究此課題。該會最近就香港的衍生權證市場檢討發表的報告¹⁰已特別處理此問題。¹¹ 在《報告》第VI章，證監會承認，衍生權證發行人所採用的多種日趨普遍的推銷及宣傳手法正是引起關注的原因，證監會並建議頒布有關推銷衍生權證的新指引。證監會表示有意把該等指引納入《上市規則》，並會就此事宜與廣播事務管理局商討，以確保所有推銷活動均納入涵蓋範圍。

⁵ 《證券及期貨條例》第129(1)(d)條及第194(3)條。

⁶ 《證券及期貨條例》第168及169條。

⁷ 第16段整段均屬相關資料，內容載於附錄II。

⁸ 請閱附錄I。

⁹ 《證券及期貨條例》第305條。

¹⁰ 《完善市場 精明投資 —— 香港的衍生權證市場報告》，2005年11月。(下稱“《報告》”)

¹¹ 請閱載於附錄III的《報告》第202至209段。

8. 證券相關節目作為電台或電視廣播的一部分，須根據《廣播條例》(第562章)受廣播事務管理局(下稱“廣管局”)監管。必須注意的是，廣管局只監管節目提供者，即獲發牌提供電台或電視節目的法團，而不監管主持或參與該類節目的個人。持牌人除遵守其他規定外，亦須遵守適用於該持牌人的業務守則的所有條文。¹² 廣管局已依據《廣播條例》第3(1)條，分別就電視及電台廣播發出及刊登業務守則。有關守則為《電台業務守則——節目標準》、《電台業務守則——廣告標準》、《電視通用業務守則——節目標準》及《電視通用業務守則——廣告標準》。¹³ 各套守則的相關條文節錄於附錄IV，以便議員參閱。該等業務守則為廣播牌照持有人提供原則性的指引，而並非直接規管證券相關節目的作業方式。

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¹² 《廣播條例》第23(2)(d)條。

¹³ 全部載於廣管局網站：<http://www.hkba.hk/cn/download/>。

附錄 I

《證券及期貨條例》 及 《廣播條例》有關條文的 節錄

107. 欺詐地或罔顧實情地誘使他人 投資金錢的罪行

(1) 任何人為誘使另一人作出以下作為而作出任何欺詐的失實陳述或罔顧實情的失實陳述，即屬犯罪——

(a) 訂立或要約訂立——

- (i) 旨在取得、處置、認購或包銷證券的協議；或
- (ii) 受規管投資協議；或

(b) 取得或要約取得集體投資計劃的權益，或參與或要約參與集體投資計劃。

(2) 任何人犯第(1)款所訂罪行——

(a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 7 年；或

(b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

(3) 就本條而言——

(a) “欺詐的失實陳述”(fraudulent misrepresentation)指——

- (i) 任何陳述，而在該陳述作出時，作出該陳述的人知道該陳述是虛假、具誤導性或具欺騙性的；
- (ii) 任何承諾，而在該承諾作出時，作出該承諾的人是無意履行該承諾的，或知道該承諾是不能夠履行的；
- (iii) 任何預測，而在該預測作出時，作出該預測的人知道根據他當時所知的事實，該預測是沒有充分理由支持的；或
- (iv) 任何陳述或預測，而在該陳述或預測作出時，作出該陳述或預測的人蓄意遺漏某項事關重要的事實，以致——
 - (A) (就陳述而言)該陳述成為虛假、具誤導性或具欺騙性的陳述；或
 - (B) (就預測而言)該預測成為具誤導性或具欺騙性的預測；

(b) “罔顧實情的失實陳述”(reckless misrepresentation)指——

- (i) 任何陳述，而在該陳述作出時，該陳述是虛假、具誤導性或具欺騙性的，並且是罔顧實情地作出的；
- (ii) 任何承諾，而在該承諾作出時，該承諾是不能夠履行的，並且是罔顧實情地作出的；
- (iii) 任何預測，而在該預測作出時，該預測是罔顧實情地作出的，並且根據作出該預測的人當時所知的事實，該預測是沒有充分理由支持的；或

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

(1) A person commits an offence if he makes any fraudulent misrepresentation or reckless misrepresentation for the purpose of inducing another person—

(a) to enter into or offer to enter into—

- (i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or
- (ii) a regulated investment agreement; or

(b) to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme.

(2) A person who commits an offence under subsection (1) is liable—

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or

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

(3) For the purposes of this section—

(a) “fraudulent misrepresentation”(欺詐的失實陳述) means—

- (i) any statement which, at the time when it is made, is to the knowledge of its maker false, misleading or deceptive;
- (ii) any promise which, at the time when it is made, its maker has no intention of fulfilling, or is to the knowledge of its maker not capable of being fulfilled;
- (iii) any forecast which, at the time when it is made, is to the knowledge of its maker not justified on the facts then known to him; or

(iv) any statement or forecast from which, at the time when it is made, its maker intentionally omits a material fact, with the result that—

(A) in the case of the statement, the statement is rendered false, misleading or deceptive; or

(B) in the case of the forecast, the forecast is rendered misleading or deceptive;

(b) “reckless misrepresentation”(罔顧實情的失實陳述) means—

- (i) any statement which, at the time when it is made, is false, misleading or deceptive and is made recklessly;
- (ii) any promise which, at the time when it is made, is not capable of being fulfilled and is made recklessly;
- (iii) any forecast which, at the time when it is made, is not justified on the facts then known to its maker and is made recklessly; or

- (iv) 任何陳述或預測，而在該陳述或預測作出時，作出該陳述或預測的人罔顧實情地遺漏某項事關重要的事實，以致——
- (A) (就陳述而言) 該陳述成為虛假、具誤導性或具欺騙性的陳述；或
- (B) (就預測而言) 該預測成為具誤導性或具欺騙性的預測。

108. 在某些情況下誘使他人投資 金錢的民事法律責任

(1) 凡任何人作出任何欺詐的失實陳述、罔顧實情的失實陳述或疏忽的失實陳述，而另一人受該失實陳述所誘使而——

(a) 訂立或要約訂立——

- (i) 旨在取得、處置、認購或包銷證券的協議；或
- (ii) 受規管投資協議；或

(b) 取得或要約取得集體投資計劃的權益，或參與或要約參與集體投資計劃，

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

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

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

(4) 本條並不授予在《公司條例》(第 32 章) 第 40 條適用 (不論是否參照該條例第 342E 條而適用) 的個案中提出訴訟的權利。

- (iv) any statement or forecast from which, at the time when it is made, its maker recklessly omits a material fact, with the result that—
- (A) in the case of the statement, the statement is rendered false, misleading or deceptive; or
- (B) in the case of the forecast, the forecast is rendered misleading or deceptive.

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

(1) Where a person makes any fraudulent misrepresentation, reckless misrepresentation or negligent misrepresentation by which another person is induced—

(a) to enter into or offer to enter into—

- (i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or
- (ii) a regulated investment agreement; or

(b) to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme,

the first-mentioned person shall, whether or not he also incurs any other liability (whether under this Part or otherwise), be liable to pay compensation by way of damages to the other person for any pecuniary loss that the other person has sustained as a result of the reliance by the other person on the misrepresentation.

(2) For the purposes of this section, where a company or other body corporate has made any fraudulent misrepresentation, reckless misrepresentation or negligent misrepresentation by which another person is induced to do any act referred to in subsection (1)(a) or (b), any person who was a director of the company or body corporate at the time when the misrepresentation was made shall, unless it is proved that he did not authorize the making of the misrepresentation, be presumed also to have made the misrepresentation.

(3) For the avoidance of doubt, where a court has jurisdiction to determine an action brought under subsection (1), it may, where it is, apart from this section, within its jurisdiction to entertain an application for an injunction, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

(4) This section does not confer a right of action in any case to which section 40 of the Companies Ordinance (Cap. 32) (whether with or without reference to section 342E of that Ordinance) applies.

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

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

(7) 就本條而言——

(a) “欺詐的失實陳述”(fraudulent misrepresentation) 指——

- (i) 任何陳述，而在該陳述作出時，作出該陳述的人知道該陳述是虛假、具誤導性或具欺騙性的；
- (ii) 任何承諾，而在該承諾作出時，作出該承諾的人是無意履行該承諾的，或知道該承諾是不能夠履行的；
- (iii) 任何預測，而在該預測作出時，作出該預測的人知道根據他當時所知的事實，該預測是沒有充分理由支持的；或
- (iv) 任何陳述或預測，而在該陳述或預測作出時，作出該陳述或預測的人蓄意遺漏某項事關重要的事實，以致——

(A) (就陳述而言) 該陳述成為虛假、具誤導性或具欺騙性的陳述；或

(B) (就預測而言) 該預測成為具誤導性或具欺騙性的預測；

(b) “罔顧實情的失實陳述”(reckless misrepresentation) 指——

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

(A) (就陳述而言) 該陳述成為虛假、具誤導性或具欺騙性的陳述；或

(B) (就預測而言) 該預測成為具誤導性或具欺騙性的預測；

(c) “疏忽的失實陳述”(negligent misrepresentation) 指——

- (i) 任何陳述，而在該陳述作出時，該陳述是虛假、具誤導性或具欺騙性的，並且是在沒有採取合理程度的謹慎以確保其準確性的情況下作出的；

(5) A person may bring an action under subsection (1) even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of a contravention of this Part.

(6) Nothing in this section affects, limits or diminishes any rights conferred on a person, or any liabilities a person may incur, under the common law or any other enactment.

(7) For the purposes of this section—

(a) “fraudulent misrepresentation” (欺詐的失實陳述) means—

- (i) any statement which, at the time when it is made, is to the knowledge of its maker false, misleading or deceptive;
- (ii) any promise which, at the time when it is made, its maker has no intention of fulfilling, or is to the knowledge of its maker not capable of being fulfilled;
- (iii) any forecast which, at the time when it is made, is to the knowledge of its maker not justified on the facts then known to him; or
- (iv) any statement or forecast from which, at the time when it is made, its maker intentionally omits a material fact, with the result that—

(A) in the case of the statement, the statement is rendered false, misleading or deceptive; or

(B) in the case of the forecast, the forecast is rendered misleading or deceptive;

(b) “reckless misrepresentation” (罔顧實情的失實陳述) means—

- (i) any statement which, at the time when it is made, is false, misleading or deceptive and is made recklessly;
- (ii) any promise which, at the time when it is made, is not capable of being fulfilled and is made recklessly;
- (iii) any forecast which, at the time when it is made, is not justified on the facts then known to its maker and is made recklessly; or
- (iv) any statement or forecast from which, at the time when it is made, its maker recklessly omits a material fact, with the result that—

(A) in the case of the statement, the statement is rendered false, misleading or deceptive; or

(B) in the case of the forecast, the forecast is rendered misleading or deceptive;

(c) “negligent misrepresentation” (疏忽的失實陳述) means—

- (i) any statement which, at the time when it is made, is false, misleading or deceptive and is made without reasonable care having been taken to ensure its accuracy;

- (ii) 任何承諾，而在該承諾作出時，該承諾是不能夠履行的，並且是在沒有採取合理程度的謹慎以確保該承諾能夠履行的情況下作出的；
- (iii) 任何預測，而在該預測作出時，該預測是在沒有採取合理程度的謹慎以確保其準確性的情況下作出的，並且根據作出該預測的人當時所知的事實，該預測是沒有充分理由支持的；或
- (iv) 任何陳述或預測，而在該陳述或預測作出時，作出該陳述或預測的人疏忽地遺漏某項事關重要的事實，以致——
 - (A) (就陳述而言) 該陳述成為虛假、具誤導性或具欺騙性的陳述；或
 - (B) (就預測而言) 該預測成為具誤導性或具欺騙性的預測。

109. 發出關於進行受規管活動等的廣告的罪行

- (1) 除第 (3) 至 (6) 款另有規定外，任何人作出以下作為，即屬犯罪——
 - (a) 發出或為發出而管有任何廣告，而該人知道——
 - (i) 另一人在該廣告中顯示自己準備進行第 4、5、6 或 9 類受規管活動；及
 - (ii) 該另一人沒有根據本條例的規定就該等活動獲發牌或獲註冊；或
 - (b) 發出或為發出而管有該人知道載有上述廣告的文件。
- (2) 任何人犯第 (1) 款所訂罪行，一經定罪，可處第 5 級罰款及監禁 6 個月。
- (3) 任何人不得僅因他向以下的人發出任何廣告或文件，或為向以下的人發出而管有任何廣告或文件，而視為犯第 (1) 款所訂罪行——
 - (a) (就某人在廣告中顯示自己準備進行第 4 類受規管活動的情況而言) 就第 4 類受規管活動獲發牌或獲註冊的中介人，或為該中介人進行該類活動的該中介人的代表；
 - (b) (就某人在廣告中顯示自己準備進行第 5 類受規管活動的情況而言) 就第 5 類受規管活動獲發牌或獲註冊的中介人，或為該中介人進行該類活動的該中介人的代表；

- (ii) any promise which, at the time when it is made, is not capable of being fulfilled and is made without reasonable care having been taken to ensure that it can be fulfilled;
- (iii) any forecast which, at the time when it is made, is not justified on the facts then known to its maker and is made without reasonable care having been taken to ensure the accuracy of those facts; or
- (iv) any statement or forecast from which, at the time when it is made, its maker negligently omits a material fact, with the result that—
 - (A) in the case of the statement, the statement is rendered false, misleading or deceptive; or
 - (B) in the case of the forecast, the forecast is rendered misleading or deceptive.

109. Offence to issue advertisements relating to carrying on of regulated activities, etc.

- (1) Subject to subsections (3) to (6), a person commits an offence if he issues, or has in his possession for the purposes of issue—
 - (a) an advertisement in which to his knowledge—
 - (i) a person holds himself out as being prepared to carry on Type 4, Type 5, Type 6 or Type 9 regulated activity; and
 - (ii) the person is not licensed or registered for such regulated activity as required under this Ordinance; or
 - (b) any document which to his knowledge contains such advertisement.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 5 and to imprisonment for 6 months.
- (3) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues any advertisement or document, or has any advertisement or document in his possession for the purposes of issue—
 - (a) in the case of an advertisement in which a person holds himself out as being prepared to carry on Type 4 regulated activity, to an intermediary licensed or registered for Type 4 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary;
 - (b) in the case of an advertisement in which a person holds himself out as being prepared to carry on Type 5 regulated activity, to an intermediary licensed or registered for Type 5 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary;

- (2) 在本部中，凡提述進行某類受規管活動的牌照——
- (a) 就持牌法團而言，須解釋為授權經營該類活動的業務的牌照；及
 - (b) 就持牌代表而言，須解釋為授權為他所隸屬的持牌法團（或代該法團或藉與該法團訂立的安排）而就該類活動執行任何受規管職能的牌照。
- (3) 凡根據第 119 條就某類受規管活動獲註冊，須解釋為獲註冊經營該類活動的業務。

114. 對經營受規管活動的業務的限制等

- (1) 除第 (2)、(5) 及 (6) 款另有規定外，任何人不得——
 - (a) 經營某類受規管活動的業務；或
 - (b) 顯示自己經營某類受規管活動的業務。
- (2) 第 (1) 款不適用於——
 - (a) 就有關類別的受規管活動而根據第 116 或 117 條獲發牌的法團；
 - (b) 就有關類別的受規管活動而根據第 119 條獲註冊的認可財務機構；或
 - (c) 根據第 95(2) 條獲認可進行有關類別的受規管活動的人。
- (3) 在不損害第 (1) 款的原則下但在第 (4) 款的規限下，任何人不得——
 - (a) 就任何以業務形式進行的受規管活動執行任何受規管職能；或
 - (b) 顯示自己執行該項職能。
- (4) 第 (3) 款——
 - (a) 在持牌代表為其主事人進行該代表獲發牌進行的受規管活動的情況下，不適用於該代表；
 - (b) 不適用於符合以下說明的個人——
 - (i) 為註冊機構進行該機構獲註冊進行的受規管活動；及
 - (ii) 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為受該機構就該類活動聘用的；或
 - (c) 不適用於根據第 95(2) 條獲認可進行某類受規管活動的人士的僱員，而該僱員是就該類活動執行任何受規管職能的。

- (2) In this Part, a reference to a licence to carry on a regulated activity—
- (a) in relation to a licensed corporation, as a licence to carry on a business in the regulated activity; and
 - (b) in relation to a licensed representative, as a licence to perform for or on behalf of or by arrangement with a licensed corporation to which he is accredited any regulated function in relation to the regulated activity.
- (3) Registration for a regulated activity under section 119 shall be construed as registration for carrying on a business in the regulated activity.

114. Restriction on carrying on business in regulated activities, etc.

- (1) Subject to subsections (2), (5) and (6), no person shall—
 - (a) carry on a business in a regulated activity; or
 - (b) hold himself out as carrying on a business in a regulated activity.
- (2) Subsection (1) shall not apply to—
 - (a) a corporation licensed under section 116 or 117 for the regulated activity;
 - (b) an authorized financial institution registered under section 119 for the regulated activity; or
 - (c) a person authorized under section 95(2) for the regulated activity.
- (3) Without prejudice to subsection (1) but subject to subsection (4), no person shall—
 - (a) perform any regulated function in relation to a regulated activity carried on as a business; or
 - (b) hold himself out as performing such function.
- (4) Subsection (3) shall not apply to—
 - (a) a licensed representative who carries on for his principal a regulated activity for which the representative is licensed;
 - (b) an individual—
 - (i) who carries on for a registered institution a regulated activity for which the registered institution is registered; and
 - (ii) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the registered institution in respect of the regulated activity; or
 - (c) an employee of a person authorized under section 95(2) for the regulated activity who performs any regulated function in relation to the regulated activity for which the person is so authorized.

(5) 任何人不得僅因進行附表 5 第 3 部指明的一項或多於一項活動，而視為就第 8 類受規管活動違反第 (1) 款。

(6) 任何人如提供財務通融並合理地相信該項通融並非用以利便——

(a) 取得在證券市場 (不論是認可證券市場或香港以外地方的任何其他證券市場) 上市的證券；或

(b) 繼續持有該等證券，

則該人不得僅因該項提供而視為就第 8 類受規管活動違反第 (1) 款。

(7) 就第 (6) 款而言，在就違反第 (1) 款而進行的法律程序中，如證明有關的人在向某借用人提供財務通融之前，已從該借用人取得確認書，確認該項通融並非用以利便第 (6)(a) 及 (b) 款提述的取得或繼續持有，則除非相反證明成立，否則須推定該人已合理地相信該項通融不會如此使用。

(8) 任何人無合理辯解而違反第 (1) 款，即屬犯罪——

(a) 一經循公訴程序定罪，可處罰款 \$5,000,000 及監禁 7 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$100,000；或

(b) 一經循簡易程序定罪，可處罰款 \$500,000 及監禁 2 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$10,000。

(9) 任何人無合理辯解而違反第 (3) 款，即屬犯罪——

(a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$20,000；或

(b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$2,000。

(5) A person shall not be regarded as contravening subsection (1) in relation to Type 8 regulated activity by reason only of carrying on one or more of the activities specified in Part 3 of Schedule 5.

(6) A person shall not be regarded as contravening subsection (1) in relation to Type 8 regulated activity by reason only of providing financial accommodation if he reasonably believes that the financial accommodation is not to be used to facilitate—

(a) the acquisition of securities listed on a stock market (whether a recognized stock market or any other stock market outside Hong Kong); or

(b) the continued holding of such securities.

(7) For the purposes of subsection (6), where it is proved in any proceedings for a contravention of subsection (1) that the person had obtained, before providing the financial accommodation to a borrower, a written confirmation from the borrower that the financial accommodation was not to be used to facilitate such acquisition or continued holding as referred to in subsection (6)(a) and (b), that person shall be presumed, unless the contrary is proved, to have reasonably believed that the financial accommodation was not to be so used.

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

(a) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues; or

(b) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

(9) A person who, without reasonable excuse, contravenes subsection (3) commits an offence and is liable—

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$20,000 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which the offence continues.

116. 法團須獲發牌以進行受規管活動

(1) 證監會可應申請人以訂明方式提出的申請並在訂明費用獲繳付後，向申請人批給牌照，使申請人可進行該會在牌照上指明的一類或多於一類受規管活動。

(2) 除非以下規定獲符合，否則證監會須拒絕根據第 (1) 款批給進行某類受規管活動的牌照——

- (a) 申請人是——
 - (i) 一間公司；
 - (ii) 已遵守《公司條例》(第 32 章) 第 XI 部關於文件登記的條文的海外公司；或
 - (iii) 符合以下說明而非公司或海外公司的法團——
 - (A) 主要在香港以外地方經營某項活動的業務，而該項活動如在香港進行，便會構成該類受規管活動；
 - (B) 若非有第 115(1)(i) 及 (ii) 條的條文，則第 114(1) 條不會適用於該法團；及
 - (C) 如該法團在香港設立營業地點，則《公司條例》(第 32 章) 第 XI 部會適用於該法團；
 - (b) 已就第 125(1)(a) 及 (b) 條所提述的人根據第 126 條提出申請，要求核准他們就該類活動成為申請人的負責人員；及
 - (c) 已根據第 130(1) 條提出申請，要求批准將某處所用作申請人存放本條例規定的紀錄或文件的地方。
- (3) 除非申請人令證監會信納以下事宜，否則該會須拒絕根據第 (1) 款批給進行某類受規管活動的牌照——
- (a) 申請人是就該類活動獲發牌的適當人選；
 - (b) 申請人如獲發牌，將有能力遵守財政資源規則；及
 - (c) 申請人——
 - (i) 已按照在第 (4) 款下訂立的規則向證監會交存保證，並將保證保持有效；或

116. Corporations to be licensed for carrying on regulated activities

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on one or more than one regulated activity as the Commission may specify in the licence.

(2) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless—

- (a) the applicant is—
 - (i) a company;
 - (ii) an overseas company which has complied with the provisions of Part XI of the Companies Ordinance (Cap. 32) for the registration of documents; or
 - (iii) a corporation (other than a company or an overseas company)—
 - (A) which carries on a business principally outside Hong Kong in an activity which, if carried on in Hong Kong, would constitute the regulated activity;
 - (B) to which section 114(1) would not apply but for the provisions of section 115(1)(i) and (ii); and
 - (C) to which Part XI of the Companies Ordinance (Cap. 32) would apply if it established a place of business in Hong Kong;
 - (b) applications have been lodged under section 126 in respect of such persons as referred to in section 125(1)(a) and (b) for approval of them as the responsible officers of the applicant in relation to the regulated activity; and
 - (c) an application has been lodged under section 130(1) for approval of premises to be used by the applicant for keeping records or documents required under this Ordinance.
- (3) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless the applicant satisfies the Commission that—
- (a) it is a fit and proper person to be licensed for the regulated activity;
 - (b) it will be able, if licensed, to comply with the financial resources rules; and
 - (c) it—
 - (i) has lodged and maintains with the Commission such security in accordance with rules made under subsection (4); or

- (ii) 已按照根據第 (5) 款訂立的規則投購保險。
- (4) 證監會可為施行第 (3)(c)(i) 款而訂立規則，就以下各項作出規定——
- (a) 持牌法團須向證監會交存並將之保持有效的任何保證；
 - (b) 交存該等保證的方式；
 - (c) 須按甚麼條款將該等保證保持有效；
 - (d) 證監會按該等規則訂明的情況、目的及方式運用該等保證的權力；
 - (e) 關乎該等保證的任何其他事宜。
- (5) 證監會可為施行第 (3)(c)(ii) 款而訂立規則，就以下各項作出規定——
- (a) 持牌法團須就指明風險投購並將之保持有效的指明款額的保險保障內容；
 - (b) 須按甚麼條款投購該等保險並將之保持有效；
 - (c) 關乎該等保險的任何其他事宜。
- (6) 根據第 (1) 款批給的牌照須受證監會施加的合理條件規限，而證監會可隨時藉送達書面通知予有關持牌法團，修訂或撤銷任何該等條件或施加新的條件，但該項修訂、撤銷或施加須是在有關情況下屬合理的。
- (7) 凡證監會根據第 (6) 款藉送達書面通知修訂或撤銷任何條件或施加任何新的條件，該項修訂、撤銷或施加在該通知送達時或在該通知指明的時間（兩者以較遲者為準）生效。
- (8) 持牌法團在進行它根據第 (1) 款獲發牌進行的受規管活動時，須使用牌照上指明的名稱，而不得使用其他名稱。
- (9) 在不損害證監會在第 IX 部下的權力的原則下，凡某法團獲發牌進行第 7 類受規管活動，在該法團根據第 95(2) 條獲認可提供自動化交易服務時，該牌照須當作就該類活動而被撤銷。

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

——該項註冊有待根據第 197(2) 條撤銷前，該類活動須以該通知指明的方式營辦。

(9) 證監會不得在沒有事先諮詢金融管理專員的情況下，根據第 (5) 或 (8)(b) 款行使其權力。

120. 代表須獲發牌

(1) 證監會可應任何個人以訂明方式提出的申請並在訂明費用獲繳付後，向申請人批給牌照，使他可為他所隸屬的、並根據第 116 條獲發牌的法團進行證監會在牌照上指明的一類或多於一類受規管活動。

(2) 證監會可應申請人以訂明方式提出的申請並在訂明費用獲繳付後，行使其絕對酌情決定權向申請人批給臨時牌照，使他可為上述法團進行該申請所關乎的受規管活動。

(3) 除非申請人令證監會信納他是就有關的受規管活動獲發牌的適當人選，否則該會須拒絕根據第 (1) 或 (2) 款向他批給進行該類活動的牌照。

(4) 除非申請人令證監會信納根據第 (2) 款向他批給牌照不會損害投資大眾的利益，否則證監會須拒絕批給該牌照。

(5) 根據第 (1) 或 (2) 款批給的牌照須受第 (6) 款指明的條件以及證監會施加的任何其他合理條件規限。

(6) 根據第 (1) 或 (2) 款批給的牌照須受以下條件規限：有關持牌代表——

(a) 須時刻令證監會知悉其聯絡辦法資料的詳情，包括（在適用範圍內）其住址、電話號碼、傳真號碼及電子郵件地址；及

(b) 須在該等詳情有所改變後 14 日內將該項改變告知證監會。

(7) 證監會可隨時藉送達書面通知予有關持牌代表，修訂或撤銷根據第 (5) 款施加的任何條件或施加新的條件，但該項修訂、撤銷或施加須是在有關情況下屬合理的。

(8) 凡證監會根據第 (7) 款藉送達書面通知修訂或撤銷任何條件或施加任何新的條件，該項修訂、撤銷或施加在該通知送達時或在該通知指明的時間（兩者以較遲者為準）生效。

regulated activity, and the regulated activity shall be operated in such manner as may be specified in the notice pending the revocation of the registration under section 197(2).

(9) The Commission shall not exercise its power under subsection (5) or ~~(8)(b)~~ unless the Commission has first consulted the Monetary Authority.

120. Representatives to be licensed

(1) The Commission may, upon application by an individual in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on one or more than one regulated activity as the Commission may specify in the licence for a corporation licensed under section 116 to which he is accredited.

(2) The Commission in its absolute discretion may, upon request by the applicant in the prescribed manner and payment of the prescribed fee, grant to the applicant a provisional licence to carry on, for such corporation, the regulated activity in respect of which the application is made.

(3) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) or (2) unless the applicant satisfies the Commission that he is a fit and proper person to be so licensed for the regulated activity.

(4) The Commission shall refuse to grant a licence under subsection (2) unless the applicant satisfies the Commission that the grant of the licence will not prejudice the interest of the investing public.

(5) A licence granted under subsection (1) or (2) shall be subject to the condition specified in subsection (6) and to any other reasonable conditions as the Commission may impose.

(6) It shall be a condition of a licence granted under subsection (1) or (2) that the licensed representative concerned shall—

(a) at all times keep the Commission informed of particulars of his contact details including, in so far as applicable, his residential address, telephone and facsimile numbers and electronic mail address; and

(b) inform the Commission of any change in the particulars within 14 days after the change takes place.

(7) The Commission may at any time, by notice in writing served on the licensed representative concerned, amend or revoke any condition imposed under subsection (5) or impose new conditions as may be reasonable in the circumstances.

(8) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (7), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(9) 當有以下情況(以先發生者為準), 臨時牌照須當作被撤銷——

- (a) 證監會拒絕根據第(1)款提出的有關申請; 或
- (b) 證監會應該申請批給牌照。

(10) 在不損害證監會在第 IX 部下的權力的原則下, 該會可在考慮投資大眾的利益後, 行使其絕對酌情決定權, 藉送達書面通知予有關持牌代表, 撤銷根據第(2)款批給的臨時牌照。

(11) 凡臨時牌照根據第(9)款當作被撤銷或根據第(10)款被撤銷, 以往是持牌代表的人須在該項撤銷生效後 7 個營業日內, 將該牌照交還證監會。

(12) 任何人無合理辯解而違反第(11)款, 即屬犯罪, 一經定罪, 可處第 6 級罰款, 如屬持續的罪行, 則可就罪行持續期間的每一日, 另處罰款 \$2,000。

(13) 持牌代表在進行他根據第(1)或(2)款獲發牌進行的受規管活動時, 須使用牌照上指明的姓名, 而不得使用其他姓名。

121. 向代表批給短期牌照

(1) 證監會可應任何個人以訂明方式提出的申請並在訂明費用獲繳付後, 向申請人批給牌照, 使他可——

- (a) 為他所隸屬的、並根據第 116 條獲發牌的法團; 或
- (b) 為他所隸屬的、並根據第 117 條獲發牌的法團,

進行證監會在牌照上指明的一類或多於一類受規管活動(第 3、7、8 及 9 類受規管活動除外), 為期不超過 3 個月。

(2) 除非申請人令證監會信納以下事宜, 否則該會須拒絕根據第(1)款批給進行某類受規管活動的牌照——

- (a) 他根據在香港以外地方的主管當局或規管機構的授權(不論實際如何稱述)在該地方進行某項活動, 而該項活動如在香港進行, 便會構成該類受規管活動的, 而——
 - (i) 證監會認為該當局或機構所執行的職能, 是與本部授予該會的職能相似的;

(9) A provisional licence shall be deemed to be revoked——

- (a) upon the Commission's refusal of the relevant application made under subsection (1); or
- (b) upon the grant of the licence sought under the application,

whichever first occurs.

(10) Without prejudice to the Commission's powers under Part IX, the Commission may, after having regard to the interest of the investing public and in its absolute discretion, by notice in writing served on the licensed representative concerned, revoke a provisional licence granted under subsection (2).

(11) On the revocation of a provisional licence under subsection (9) or (10), the person who was formerly the licensed representative under such licence shall return the licence to the Commission within 7 business days after the revocation.

(12) A person who, without reasonable excuse, contravenes subsection (11) commits an offence and is liable on conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which the offence continues.

(13) A licensed representative shall not, when carrying on the regulated activity for which he is licensed under subsection (1) or (2), use a name other than the name specified in the licence.

121. Temporary licences for representatives

(1) The Commission may, upon application by an individual in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on, for a period not exceeding 3 months, one or more than one regulated activity (other than Type 3, Type 7, Type 8 and Type 9 regulated activities) as the Commission may specify in the licence——

- (a) for a corporation licensed under section 116 to which he is accredited; or
- (b) for a corporation licensed under section 117 to which he is accredited.

(2) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless the applicant satisfies the Commission——

- (a) that he carries on in a place outside Hong Kong an activity which, if carried on in Hong Kong, would constitute carrying on the regulated activity, under an authorization (however described) by an authority or regulatory organization in that place which——
 - (i) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part;

- (ii) 該當局或機構確認並令證監會信納申請人已獲如此授權；及
 - (iii) 證監會信納該當局或機構獲該地方的法律賦權調查申請人在香港的行為，並在適用的情況下為該等行為採取紀律行動；
 - (b) 就申領第 (1)(a) 款所指的牌照的申請而言——
 - (i) 他為某法團或代某法團進行 (a) 段提述的活動，而該法團主要於香港以外地方，在符合以下說明的該地方的主管當局或規管機構的授權（不論實際如何稱述）下經營該項活動的業務——
 - (A) 證監會認為該當局或機構所執行的職能，是與本部授予該會的職能相似的；及
 - (B) 該當局或機構確認並令證監會信納該法團已獲如此授權；及
 - (ii) 他尋求隸屬的持牌法團是第 (i) 節提述的法團所屬的公司集團的成員；
 - (c) 就申領第 (1)(b) 款所指的牌照的申請而言，他尋求獲發該牌照，純粹是為了經營他的主事人經營的第 117(2)(a) 條提述的活動的業務；
 - (d) 批給該牌照，不會導致在任何一段 24 個月的期間內，他根據第 (1) 款獲批給的各牌照的各別牌照期合計超過 6 個月；及
 - (e) 他是就該類受規管活動獲如此發牌的適當人選。
- (3) 根據第 (1) 款批給的牌照須受第 (4) 款指明的條件以及證監會施加的任何其他合理條件規限。
- (4) 根據第 (1) 款批給的牌照須受以下條件規限：有關持牌代表——
- (a) 須時刻令證監會知悉其聯絡辦法資料的詳情，包括（在適用範圍內）其住址、電話號碼、傳真號碼及電子郵件地址；
 - (b) 須在該等詳情有所改變後 14 日內將該項改變告知證監會；及

- (ii) confirms to the satisfaction of the Commission that the applicant has been so authorized; and
 - (iii) the Commission is satisfied is empowered under the law of that place to investigate, and, where applicable, to take disciplinary action for, the conduct of the applicant in Hong Kong;
 - (b) where the application is for a licence under subsection (1)(a), that—
 - (i) he carries on the activity referred to in paragraph (a) for or on behalf of a corporation which carries on the activity as a business principally in a place outside Hong Kong under an authorization (however described) by an authority or regulatory organization in that place which—
 - (A) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part; and
 - (B) confirms to the satisfaction of the Commission that the corporation has been so authorized; and
 - (ii) the licensed corporation to which he seeks to be accredited is a member of the same group of companies as the corporation referred to in subparagraph (i);
 - (c) where the application is for a licence under subsection (1)(b), that he seeks to be so licensed solely for the conduct of his principal's business in the activity referred to in section 117(2)(a);
 - (d) that the granting of the licence would not result in his being granted licences under subsection (1) for respective licence periods that in total exceed 6 months in any period of 24 months; and
 - (e) that he is a fit and proper person to be so licensed for the regulated activity.
- (3) A licence granted under subsection (1) shall be subject to the condition specified in subsection (4) and to any other reasonable conditions as the Commission may impose.
- (4) It shall be a condition of a licence granted under subsection (1) that the licensed representative concerned—
- (a) shall at all times keep the Commission informed of particulars of his contact details including, in so far as applicable, his residential address, telephone and facsimile numbers and electronic mail address;
 - (b) shall inform the Commission of any change in the particulars within 14 days after the change takes place; and

(c) 在進行他獲如此發牌進行的受規管活動時，不得持有任何客戶資產。

(5) 證監會可隨時藉送達書面通知予有關持牌代表，修訂或撤銷根據第(3)款施加的任何條件或施加新的條件，但該項修訂、撤銷或施加須是在有關情況下屬合理的。

(6) 凡證監會根據第(5)款藉送達書面通知修訂或撤銷任何條件或施加任何新的條件，該項修訂、撤銷或施加在該通知送達時或在該通知指明的時間(兩者以較遲者為準)生效。

(7) 持牌代表在進行他根據第(1)款獲發牌進行的受規管活動時，須使用牌照上指明的姓名，而不得使用其他姓名。

122. 隸屬關係的批准及轉移

(1) 證監會可應以訂明方式提出的申請並在訂明費用獲繳付後，批准——

(a) 根據第 120(1) 或 (2) 或 121(1)(a) 條獲發牌的持牌代表隸屬根據第 116 條獲發牌的法團；或

(b) 根據第 121(1)(b) 條獲發牌的持牌代表隸屬根據第 117 條獲發牌的法團，並須於給予上述批准後，在牌照上指明該法團為該代表的主事人。

(2) 證監會可應根據第 120(1) 或 (2) 或 121(1) 條獲發牌的持牌代表以訂明方式提出的申請並在訂明費用獲繳付後，批准將該代表的隸屬關係轉移至另一個根據第 116 或 117 條(視屬何情況而定)獲發牌的法團，而在批准該項轉移後，證監會須向該代表再度發出牌照，並在牌照上指明該法團為其主事人。

(3) 除非申請人令證監會信納他將有能力履行他作為有關持牌法團的持牌代表的職責，並達到所需的水準，否則該會須拒絕——

(a) 根據第(1)款批准隸屬關係；或

(b) 根據第(2)款批准轉移隸屬關係。

(4) 在不局限第(3)款的一般性的原則下，凡根據第 121(1)(a) 條獲發牌的持牌代表提出申請，要求——

(a) 根據第(1)(a)款批准隸屬關係；或

(b) 根據第(2)款批准轉移隸屬關係。

(c) shall not hold any client assets in carrying on the regulated activity for which he is so licensed.

(5) The Commission may at any time, by notice in writing served on the licensed representative concerned, amend or revoke any condition imposed under subsection (3) or impose new conditions as may be reasonable in the circumstances.

(6) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (5), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(7) A licensed representative shall not, when carrying on the regulated activity for which he is licensed under subsection (1), use a name other than the name specified in the licence.

122. Approval and transfer of accreditation

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve the accreditation of a licensed representative—

(a) who is licensed under section 120(1) or (2) or 121(1)(a), to a corporation licensed under section 116; or

(b) who is licensed under section 121(1)(b), to a corporation licensed under section 117,

and shall specify in the licence, upon such approval, the corporation as his principal.

(2) The Commission may, upon application in the prescribed manner and payment of the prescribed fee by a licensed representative licensed under section 120(1) or (2) or 121(1), approve the transfer of his accreditation to another corporation licensed under section 116 or 117 (as the case may be), and upon approving the transfer, the Commission shall re-issue the licence to the licensed representative with the name of the corporation specified in the licence as his principal.

(3) The Commission shall refuse to—

(a) approve an accreditation under subsection (1); or

(b) approve a transfer of accreditation under subsection (2),

unless the applicant satisfies the Commission that he will be competent to carry out his duties to the requisite standard as a licensed representative for or on behalf of the licensed corporation concerned.

(4) Without limiting the generality of subsection (3), where a licensed representative who is licensed under section 121(1)(a) applies—

(a) under subsection (1)(a) for approval of an accreditation; or

(b) under subsection (2) for approval of a transfer of accreditation,

- ~~—(b)—提供該等資料的格式、方式及時限；~~
~~—(c)—任何其他與此有關的事宜。~~

129. “適當人選”的斷定

(1) 證監會或金融管理專員(視屬何情況而定)在考慮某人是否就本部任何條文而言的適當人選時，除考慮其認為有關的任何事項外，在不抵觸第 134 條的情況下，亦須就該人考慮以下事項——

- (a) 有關人士的財政狀況及償付能力；
- (b) 有關人士的學歷或其他資歷或經驗，而在這方面的考慮必須顧及如申請一旦獲准則該人將會執行的職能的性質；
- (c) 有關人士是否有能力稱職地、誠實地而公正地進行有關的受規管活動；及
- (d) 有關人士的信譽、品格、可靠程度及在財政方面的穩健性，

而上述有關人士——

- (i) (凡該人是個人)是該人本人；
- (ii) (凡該人是並非認可財務機構的法團)是該法團及該法團的任何高級人員；或
- (iii) (凡該人是認可財務機構)是該機構及該機構的任何董事、最高行政人員、經理(《銀行業條例》(第 155 章)第 2(1)條所界定者)及主管人員。

(2) 在不局限第(1)款的一般性的原則下，證監會或金融管理專員(視屬何情況而定)在考慮某人是否就本條例任何條文而言的適當人選時，可——

- (a) 考慮以下人士就該人作出的任何決定——
 - (i) (如屬證監會的情況)金融管理專員或(如屬金融管理專員的情況)證監會；
 - (ii) 保險業監督；
 - (iii) 積金局；或
 - (iv) 任何其他主管當局或規管機構(不論該當局或機構是在香港或其他地方)，而證監會認為該當局或機構所執行的職能，是與該會的職能相似的；
- (b) 考慮其所管有的關乎以下人士的任何資料，不論這些資料是否由該人提供——

- ~~—(b)—the form, manner and time period in which such information is to be provided;~~
~~—(c)—any other matter relating thereto.~~

129. Determination of “fit and proper”

(1) In considering whether a person is a fit and proper person for the purposes of any provision of this Part, the Commission or the Monetary Authority (as the case may be) shall, in addition to any other matter that the Commission or the Monetary Authority (as the case may be) may consider relevant, but subject to section 134, have regard to—

- (a) the financial status or solvency;
- (b) the educational or other qualifications or experience having regard to the nature of the functions which, if the application is allowed, the person will perform;
- (c) the ability to carry on the regulated activity competently, honestly and fairly; and
- (d) the reputation, character, reliability and financial integrity,

of—

- (i) where the person is an individual, the person himself;
- (ii) where the person is a corporation (other than an authorized financial institution), the corporation and any officer of the corporation; or
- (iii) where the person is an authorized financial institution, the institution and any director, chief executive, manager (as defined in section 2(1) of the Banking Ordinance (Cap. 155)) and executive officer of the institution.

(2) Without limiting the generality of subsection (1), the Commission or the Monetary Authority (as the case may be) may, in considering whether a person is a fit and proper person for the purposes of any provision of this Ordinance—

- (a) take into account a decision made in respect of the person by—
 - (i) (in the case of the Commission) the Monetary Authority or (in the case of the Monetary Authority) the Commission;
 - (ii) the Insurance Authority;
 - (iii) the Mandatory Provident Fund Schemes Authority; or
 - (iv) any other authority or regulatory organization, whether in Hong Kong or elsewhere, which, in the Commission's opinion, performs a function similar to the functions of the Commission;
- (b) take into account any information in the possession of the Commission or the Monetary Authority (as the case may be), whether provided by the person or not, relating to—

- (i) (凡該項考慮是與根據第 116 或 117 條批給的牌照或申請該牌照有關的) 該人就或將會就該牌照或申請 (視屬何情況而定) 所關乎的受規管活動而僱用的任何其他人士，或就或將會就該類活動與該人有聯繫的任何其他人；
- (ii) (凡該項考慮是與根據第 116 或 117 條批給進行某類受規管活動的牌照、就某類受規管活動根據第 119 條所作的註冊，或申請該牌照或註冊有關的) 將會就該類活動為該人或代該人行事的任何其他人士；或
- (iii) (凡該人是某公司集團中的一個法團)——
 - (A) 該集團中的任何其他法團；或
 - (B) 該法團或 (A) 分節提及的法團的任何大股東或高級人員；
- (c) (凡該項考慮是與根據第 116 或 117 條批給的牌照、根據第 119 條所作的註冊，或申請該牌照或註冊有關的) 考慮該人是否已設立有效的內部監控程序及風險管理制度，以確保該人遵守任何有關條文中所有適用於該人的規管性規定，而就此尤其須考慮按照第 128 條提供的資料；及
- (d) 考慮該人正經營或擬經營的任何其他業務的狀況。

~~130. 存放紀錄或文件的處所的適合性~~

- (1) 證監會可應以訂明方式提出的申請並在訂明費用獲繳付後，批准持牌法團將某處所用作存放本條例規定的紀錄或文件的地方。
- (2) 除非申請人令證監會信納以下事宜，否則該會須拒絕根據第 (1) 款就某處所給予批准——
 - (a) 該處所適合用作該款提述的用途；及
 - (b) (如該處所的某部分被用作居住用途) 該處所部分用作居住用途一事不會影響在本部或第 VI 或 VIII 部下任何權力的行使。

- (i) where such consideration relates to a licence under section 116 or 117 or an application for the licence, any other person who is or is to be employed by, or associated with, the person for the purposes of the regulated activity for which the licence is granted or the application is made (as the case may be);
- (ii) where such consideration relates to a licence under section 116 or 117 to carry on a regulated activity or any registration for a regulated activity under section 119 or an application for the licence or registration, any other person who will be acting for or on behalf of the person in relation to the regulated activity; or
- (iii) where the person is a corporation in a group of companies——
 - (A) any other corporation in the same group of companies; or
 - (B) any substantial shareholder or officer of the corporation or any corporation referred to in subparagraph (A);
- (c) take into account, where such consideration relates to a licence under section 116 or 117 or any registration under section 119 or an application for the licence or registration, whether the person has established effective internal control procedures and risk management systems to ensure his compliance with all applicable regulatory requirements under any of the relevant provisions, having regard in particular to the information provided in accordance with section 128; and
- (d) have regard to the state of affairs of any other business which the person carries on or proposes to carry on.

~~130. Suitability of premises for keeping records or documents~~

- (1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve premises to be used by a licensed corporation for keeping records or documents required under this Ordinance.
- (2) The Commission shall refuse to approve premises under subsection (1) unless the applicant satisfies the Commission that——
 - (a) the premises are suitable for being used for the purpose referred to in that subsection; and
 - (b) where the premises are used partly for residential purposes, such residential use of the premises will not affect the exercise of any powers under this Part or Part VI or VIII.

- (i) 就某類受規管活動獲發牌為持牌代表；及
- (ii) 以隸屬該法團的身分為該法團進行該類活動的；或
- (b) 就註冊機構而言，指符合以下說明的個人——
- (i) 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為受該機構就某類受規管活動聘用的；及
- (ii) 為該機構進行該類活動的；
- “客戶合約”(client contract) 指中介人與他人之間的任何合約或安排，而該中介人須根據該合約或安排的條款提供構成受規管活動的服務。

第 2 分部——業務操守

168. 中介人及其代表的業務操守

(1) 證監會可訂立規則，規定中介人及其代表在進行該中介人獲發牌或獲註冊進行的受規管活動時，須遵守規則所指明的關乎該中介人或該代表(視屬何情況而定)在進行該等活動方面的行為操守的常規和標準。

(2) 在不局限第(1)款的一般性及不損害第 398(7) 及 (8) 條的原則下，證監會可在第(1)款提述的規則中——

- (a) 禁止中介人或他人代中介人使用具誤導性或欺騙性的廣告；並在中介人或他人代中介人使用廣告方面施加條件；
- (b) 規定客戶合約須包括指明的條款及條件，而除非證監會就任何個別條款或條件另有指示，否則該等條款及條件須視為有關合約的要素，而不論有關合約的條文是否顯露不同的意圖；
- (c) 規定中介人在與客戶訂立客戶合約時，及在其後不時在該客戶的要求下，須向該客戶提供指明的、關乎該中介人的業務及代該中介人行事而該客戶可聯絡的人的身分及地位的資料；

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

Division 2—Business conduct

168. Business conduct of intermediaries and their representatives

(1) The Commission may make rules requiring intermediaries and their representatives to comply with such practices and standards, relating to the conduct of the intermediaries or the representatives (as the case may be) in carrying on the regulated activities for which the intermediaries are licensed or registered, as are specified in the rules.

(2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—

- (a) prohibit the use of misleading or deceptive advertisements by or on behalf of intermediaries, and impose conditions for the use of advertisements by or on behalf of intermediaries;
- (b) require specified terms and conditions to be included in client contracts and provide that the terms and conditions are, unless the Commission in relation to any particular term or condition otherwise directs, to be deemed to be of the essence of the client contracts in which they are included, whether or not a different intention appears from the provisions of such client contracts;
- (c) require an intermediary to provide to its client, upon entering into a client contract with the client, and thereafter from time to time upon request by the client, specified information concerning the business of the intermediary, and the identity and status of any person acting on behalf of the intermediary and with whom the client may have contact;

- (d) 規定中介人及其任何代表須採取指明的步驟，以確知指明的、關乎該中介人的每一位客戶的身分、財務狀況，以及與該中介人提供的服務有關的投資經驗和目標的事宜；
- (e) 規定中介人及其任何代表在向該中介人的任何客戶提供有關金融產品的資料或意見之前須採取指明的步驟；
- (f) 規定中介人及其任何代表在向該中介人的任何客戶作出任何關於金融產品的建議時，須以指明的方式向該客戶披露該中介人或該代表(視屬何情況而定)在該產品中的任何利害關係；
- (g) 規定中介人及其任何代表須採取指明的步驟，以確保他向該中介人的客戶披露他所推薦的金融產品所涉及的財務風險；
- (h) 規定中介人及其任何代表須採取指明的步驟，以確保他向該中介人的客戶披露他就所推薦的金融產品而從第三者或將從第三者收取的佣金或利益；
- (i) 規定在指明情況下，中介人及其任何代表不得代該中介人的客戶進行交易；
- (j) 禁止中介人或其任何代表在指明情況以外的情況下，或在不符合指明條件的情況下，使用關乎該中介人任何客戶的事務的資料；
- (k) 規定中介人及其任何代表在其本身的利益與該中介人的客戶的利益出現衝突的情況下須採取指明的步驟；
- (l) 禁止中介人在指明情況以外的情況下，或在不符合指明條件的情況下，向另一中介人收取財物或獲取服務，以作為將業務轉介予該另一中介人的代價；

- (d) require an intermediary, and any representative of an intermediary, to take specified steps to ascertain, in relation to each of the clients of the intermediary, specified matters relating to his identity and his financial situation, investment experience and investment objectives relevant to the services to be provided by the intermediary;
- (e) require an intermediary, and any representative of an intermediary, to take specified steps before providing information or advice concerning financial products to any client of the intermediary;
- (f) require an intermediary, and any representative of an intermediary, when making any recommendation concerning any financial product to any client of the intermediary, to disclose to the client in the specified manner any interest the intermediary or the representative (as the case may be) may have in the financial product;
- (g) require an intermediary, and any representative of an intermediary, to take specified steps to ensure that disclosure is made to any client of the intermediary of financial risks in relation to any financial product the intermediary or the representative (as the case may be) recommends to the client;
- (h) require an intermediary, and any representative of an intermediary, to take specified steps to ensure that disclosure is made to any client of the intermediary of any commission or advantage the intermediary or the representative (as the case may be) receives or is to receive from any third party in connection with any financial product the intermediary or the representative (as the case may be) recommends to the client;
- (i) require an intermediary, and any representative of an intermediary, not to effect a transaction on behalf of any client of the intermediary in specified circumstances;
- (j) prohibit the use by an intermediary, or any representative of an intermediary, of information relating to the affairs of a client of the intermediary, except in specified circumstances and under specified conditions;
- (k) require an intermediary, and any representative of an intermediary, to take specified steps in cases of conflict arising between any of their interests and those of a client of the intermediary;
- (l) prohibit the receipt by an intermediary of any property or services from another intermediary in consideration of directing business to that other intermediary, except in specified circumstances and under specified conditions;

- (m) 禁止任何中介人的代表在指明情況以外的情況下，或在不符合指明條件的情況下，為自己進行證券或期貨合約交易；
- (n) 規定中介人及其任何代表須採取指明的步驟，以推行及實施遏阻及識辨洗錢活動的程序；
- (o) 就與常規和標準有關的其他事宜作出規定，而該等常規和標準是關乎在進行中介人獲發牌或獲註冊進行的受規管活動方面的操守的。

(3) 不論本條有任何規定，證監會不得行使本條賦予的訂立規則的權力，以就第(2)(b)款提述的規定指明任何條款及條件，除非該會信納指明該等條款及條件是為了更佳地達致該會的任何規管目標或更佳地執行其任何職能。

(4) 根據本條訂立的規則可規定，任何中介人或其代表無合理辯解而違反該等規則中適用於他的任何指明條文，即屬犯罪——

- (a) 一經循公訴程序定罪，可處不超過罰款 \$200,000 及監禁 2 年的指明罰則；
- (b) 一經循簡易程序定罪，可處不超過第 6 級罰款及監禁 6 個月的指明罰則。

169. 中介人及其代表的業務操守守則

(1) 在不損害證監會根據第 168 條訂立規則的權力的原則下，該會可在憲報刊登及以該會認為適當的任何其他方式發表操守守則，就在通常情況下期望中介人及其代表在進行該中介人獲發牌或獲註冊進行的受規管活動方面須遵守的常規和標準，作出指引。

(2) 在不局限第(1)款的一般性的原則下，第(1)款提述的任何操守守則在作出該款提述的指引時，可提述——

- (a) 遵守並非由證監會發出或施加的任何其他守則或規定的義務；
- (b) 履行持續義務(包括以下的義務)的義務——
 - (i) (就中介人而言)向中介人的代表提供持續訓練的義務；或

- (m) prohibit the dealing by any representative of an intermediary for his own account in securities or futures contracts, except in specified circumstances and under specified conditions;
- (n) require an intermediary, and any representative of an intermediary, to take specified steps to introduce and implement procedures to discourage and identify any money laundering activities;
- (o) provide for any other matter relating to the practices and standards relating to conduct in carrying on the regulated activities for which intermediaries are licensed or registered.

(3) Notwithstanding anything in this section, the Commission shall not exercise any of its powers under this section to make rules to specify any terms and conditions for the purposes of any requirement referred to in subsection (2)(b) unless it is satisfied that the specification of the terms and conditions is for the better furtherance of any of its regulatory objectives or the better performance of any of its functions.

(4) Rules made under this section may provide that an intermediary, or a representative of an intermediary, that, without reasonable excuse, contravenes any specified provision of the rules that applies to it or him commits an offence and is liable to a specified penalty not exceeding—

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

169. Codes for business conduct of intermediaries and their representatives

(1) Without prejudice to the power of the Commission to make rules under section 168, the Commission may publish, in the Gazette and in any other manner it considers appropriate, codes of conduct for the purpose of giving guidance relating to the practices and standards with which intermediaries and their representatives are ordinarily expected to comply in carrying on the regulated activities for which the intermediaries are licensed or registered.

(2) Without limiting the generality of subsection (1), any code of conduct referred to in that subsection may, in giving guidance referred to in that subsection, refer to obligations to observe—

- (a) any other codes or requirements issued or imposed otherwise than by the Commission;
- (b) continuing obligations, including any such obligations—
 - (i) in the case of an intermediary, to provide for the continuous training of its representatives; or

- (ii) (就中介人的代表而言) 接受持續訓練的義務；
- (c) 遵守關乎第 168(2) 條所述任何事宜的常規和標準的義務。
- (3) 證監會可不時以符合該會根據本條刊登及發表操守守則的權力的方式，修訂該守則的全部或任何部分，而——
 - (a) 本條其他條文在作出必要的變通後，適用於該等修訂，猶如它們適用於該守則一樣；及
 - (b) 除非文意另有所指，否則在本條例或其他條例中對該守則 (不論實際如何稱述) 的提述，須解釋為對經如此修訂的該守則的提述。
- (4) 任何中介人或其代表如沒有遵守根據本條刊登及發表並適用於他的任何操守守則所列條文，並不會僅因此而令他在任何司法或其他法律程序中被起訴，但在為施行本條例任何條文而考慮以下事項時，可顧及上述事實——
 - (a) (就中介人而言) 該中介人是否獲發牌或獲註冊或繼續持牌或獲註冊的適當人選；
 - (b) (就屬持牌法團的中介人的代表而言) 該代表是否獲發牌或繼續持牌的適當人選；或
 - (c) (就屬註冊機構的中介人的代表而言) 該代表是否名列於或繼續名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為受該機構就某類受規管活動聘用的適當人選，
 而在根據本條例於任何法庭進行的法律程序中，該守則須獲接納為證據；如法庭覺得該守則的任何條文與法律程序中產生的任何問題有關，則在裁定該問題時須考慮該條文。
- (5) 根據本條刊登及發表的任何操守守則可——
 - (a) 在一般或特別情況下適用，而在不局限前文的一般性的原則下，該守則亦可——
 - (i) 在指明的範圍內適用於或不適用於任何指明人士或屬某指明類別的人；
 - (ii) 在某些指明情況下適用或不適用；
 - (b) 就不同情況訂定不同條文，亦可就不同個案或不同類別的個案訂定不同條文。

- (ii) in the case of a representative of an intermediary, to undergo continuous training;
- (c) practices and standards concerning any of the matters described in section 168(2).
- (3) The Commission may from time to time amend the whole or any part of any code of conduct published under this section in a manner consistent with the power to publish the code of conduct under this section, and—
 - (a) the other provisions of this section apply, with necessary modifications, to such amendments to the code as they apply to the code; and
 - (b) any reference in this or any other Ordinance to the code (however expressed) shall, unless the context otherwise requires, be construed as a reference to the code as so amended.
- (4) A failure on the part of an intermediary, or a representative of an intermediary, to comply with the provisions set out in any code of conduct published under this section that apply to it or him shall not by itself render it or him liable to any judicial or other proceedings, but may be taken into account in considering, for the purposes of any provision of this Ordinance—
 - (a) in the case of an intermediary, whether it is a fit and proper person to be or to remain licensed or registered;
 - (b) in the case of a representative of an intermediary that is a licensed corporation, whether he is a fit and proper person to be or to remain licensed as a representative; or
 - (c) in the case of a representative of an intermediary that is a registered institution, whether he is a fit and proper person to be or to remain a person whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by a registered institution in respect of a regulated activity,
 and in any proceedings under this Ordinance before any court the code shall be admissible in evidence, and if any provision set out in the code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.
- (5) Any code of conduct published under this section—
 - (a) may be of general or special application and, without limiting the generality of the foregoing, may be made so as to apply, or so as not to apply—
 - (i) to a specified extent in relation to any specified person or to members of a specified class of persons;
 - (ii) in specified circumstances;
 - (b) may make different provisions for different circumstances and provide for different cases or classes of cases.

(6) 根據本條刊登及發表的操守守則不是附屬法例。

第 3 分部——對賣空的限制等

170. 限制賣空

(1) 在第 (2) 及 (3) 款的規限下，除非任何人在認可證券市場或透過認可證券市場售賣證券時——

- (a) 具有或 (如他以代理人身分售賣) 他的當事人具有；或
- (b) 他相信並有合理理由相信他具有或 (如他以代理人身分售賣) 他的當事人具有，

一項即時可行使而不附有條件的權利，以將該等證券轉歸於其購買人名下，否則不得如此售賣該等證券。

(2) 就第 (1) 款而言——

- (a) 任何人如——
 - (i) 其本意是售賣證券；
 - (ii) 提出售賣證券的要約；
 - (iii) 顯示自己有權售賣證券；或
 - (iv) 指示任何為中介人進行第 1 類受規管活動的中介人代表售賣證券，則他須被視為售賣該等證券；
- (b) 任何人如在某特定時間具有一項即時可行使而不附有條件的權利，以將證券轉歸於他名下或按照他的指示而轉歸他人名下，則他須被視為在該時間具有一項即時可行使而不附有條件的權利，以將該等證券轉歸於其購買人名下；
- (c) 任何人將證券轉歸其購買人名下的權利，不得僅因該等證券被押記或質押予其他人以作為還款的保證，而被視為是附有條件的。

(3) 第 (1) 款不適用於——

- (a) 秉誠行事的人，而他相信並有合理理由相信在他作出第 (1) 款所指的售賣證券的作為時，他對該等證券或在該等證券中是具有權利、所有權或權益的；
- (b) 以中介人代表身分為該中介人進行第 1 類受規管活動的人，以該身分秉誠代其他人行事，而他相信並有合理理由相信在他代該其他人作出第 (1) 款所指的售賣證券的作為時，該其他人對該等證券或在該等證券中是具有權利、所有權或權益的。

(6) Any code of conduct published under this section is not subsidiary legislation.

Division 3—Restriction on short selling, etc.

170. Short selling restricted

(1) Subject to subsections (2) and (3), a person shall not sell securities at or through a recognized stock market unless at the time he sells them—

- (a) he has or, where he is selling as an agent, his principal has; or
- (b) he believes and has reasonable grounds to believe that he has or, where he is selling as an agent, that his principal has,

a presently exercisable and unconditional right to vest the securities in the purchaser of them.

(2) For the purposes of subsection (1)—

- (a) a person shall be regarded as selling securities if he—
 - (i) purports to sell the securities;
 - (ii) offers to sell the securities;
 - (iii) holds himself out as being entitled to sell the securities; or
 - (iv) instructs any representative of an intermediary that carries on Type 1 regulated activity for the intermediary, to sell the securities;
- (b) a person who, at a particular time, has a presently exercisable and unconditional right to have securities vested in him or in accordance with his directions shall be regarded as having at that time a presently exercisable and unconditional right to vest the securities in a purchaser of them;
- (c) a right of a person to vest securities in a purchaser of them shall not be regarded as not unconditional by reason only of the fact that the securities are charged or pledged in favour of some other person to secure the repayment of money.

(3) Subsection (1) does not apply to—

- (a) a person who acts in good faith, believing and having reasonable grounds to believe that he has a right, title, or interest to or in the securities which he sells within the meaning of subsection (1);
- (b) a person who, as a representative of an intermediary that carries on Type 1 regulated activity for the intermediary, acts in good faith on behalf of some other person, believing and having reasonable grounds to believe that such other person has a right, title, or interest to or in the securities which he sells within the meaning of subsection (1) on behalf of such other person;

第 2 分部——紀律等

Division 2—Discipline, etc.

194. 就持牌人等採取紀律行動

(1) 在符合第 198 條的規定下，如——

- (a) 某受規管人士犯失當行為或曾在任何時間犯失當行為；或
- (b) 按證監會的意見，某受規管人士並非擔任或留任同一類受規管人士的適當人選，

則證監會可行使該會認為就有關個案的情況而言屬適當的下述權力——

(i) 如該受規管人士是持牌人——

- (A) 就該受規管人士獲發牌進行的所有或任何受規管活動或其中任何部分，撤銷該牌照；或
- (B) 就該受規管人士獲發牌進行的所有或任何受規管活動或其中任何部分，將該牌照暫時吊銷一段證監會指明的期間或直至該會指明的事件發生為止；

(ii) 如該受規管人士是某持牌法團的負責人員——

- (A) 撤銷根據第 126(1) 條就該受規管人士成為該負責人員而給予該受規管人士的核准；或
- (B) 將上述核准暫時撤銷一段證監會指明的期間或直至該會指明的事件發生為止；

(iii) 公開地或非公開地譴責該受規管人士；

(iv) 禁止該受規管人士在證監會指明的期間內或在該會指明的事件發生之前就該類受規管活動或該等受規管活動作出以下所有或其中任何事情——

- (A) 申請牌照或註冊；
- (B) 申請根據第 126(1) 條獲核准成為持牌法團的負責人員；
- (C) 申請根據《銀行業條例》(第 155 章) 第 71C 條獲給予同意以或繼續以註冊機構的主管人員的身分行事；
- (D) 透過註冊機構，尋求名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示該受規管人士就某類受規管活動受聘於該機構。

194. Disciplinary action in respect of licensed persons, etc.

(1) Subject to section 198, where—

- (a) a regulated person is, or was at any time, guilty of misconduct; or
- (b) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,

the Commission may exercise such of the following powers as it considers appropriate in the circumstances of the case—

(i) where the regulated person is a licensed person—

- (A) revoke his licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed; or
- (B) suspend his licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed for such period or until the occurrence of such event as the Commission may specify;

(ii) where the regulated person is a responsible officer of a licensed corporation—

- (A) revoke the approval granted under section 126(1) in respect of him as such a responsible officer; or
- (B) suspend such approval for such period or until the occurrence of such event as the Commission may specify;

(iii) publicly or privately reprimand the regulated person;

(iv) prohibit the regulated person from doing all or any of the following in relation to such regulated activity or regulated activities, and for such period or until the occurrence of such event, as the Commission may specify—

- (A) applying to be licensed or registered;
- (B) applying to be approved under section 126(1) as a responsible officer of a licensed corporation;
- (C) applying to be given consent to act or continue to act as an executive officer of a registered institution under section 71C of the Banking Ordinance (Cap. 155);
- (D) seeking through a registered institution to have his name entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by the registered institution in respect of a regulated activity.

(2) 在符合第 198 及 199 條的規定下，如——

- (a) 某受規管人士犯失當行為或曾在任何時間犯失當行為；或
- (b) 按證監會的意見，某受規管人士並非擔任或留任同一類受規管人士的適當人選，

則證監會不論是否同時行使第 (1) 款所賦權力，均可命令該受規管人士繳付最高數額如下的罰款 (以金額較大者為準)——

- (i) \$10,000,000；或
- (ii) 因該失當行為或因該受規管人士其他導致證監會得出該意見的行為 (視屬何情況而定) 而令該受規管人士獲取的利潤金額或避免的損失金額的 3 倍。

(3) 證監會在斷定某受規管人士是否第 (1)(b) 或 (2)(b) 款所指的適當人選時，除可考慮其他事宜 (包括第 129 條指明的事宜) 外，亦可考慮該會認為在有關個案的情況下適宜考慮的該受規管人士現時或過往的行為。

(4) 根據第 (2) 款被命令繳付罰款的受規管人士，須在該命令根據第 232 條作為指明決定而生效後 30 日 (或證監會根據第 198(3) 條藉通知而指明的較長限期) 內，向該會繳付該罰款。

(5) 原訟法庭可應證監會按為施行本款而藉根據第 397 條訂立的規則訂明的方式而提出的申請，在原訟法庭登記根據第 (2) 款作出的命令，而該命令一經登記，即就所有目的而言視為原訟法庭在其民事司法管轄權範圍內就繳付款項而作出的命令。

(6) 依據一項根據第 (2) 款作出的命令而付予證監會或由該會追討所得的罰款，須由該會撥入政府一般收入。

(7) 在本條中——

“有關時間” (relevant time) 就某人而言——

- (a) 就第 (1)(a) 或 (2)(a) 款而言，指該人犯失當行為或曾犯失當行為的時間；或
- (b) 就第 (1)(b) 或 (2)(b) 款而言，指某事件發生的時間，而該事件 (不論是否連同任何其他事件) 令證監會得出該人並非該款所指的適當人選的意見；

“受規管人士” (regulated person) 指屬或曾在有關時間屬以下任何類別人士的人——

- (a) 持牌人；

(2) Subject to sections 198 and 199, where—

- (a) a regulated person is, or was at any time, guilty of misconduct; or
- (b) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,

the Commission may, separately or in addition to any power exercisable under subsection (1), order the regulated person to pay a pecuniary penalty not exceeding the amount which is the greater of—

- (i) \$10,000,000; or
- (ii) 3 times the amount of the profit gained or loss avoided by the regulated person as a result of his misconduct, or of his other conduct which leads the Commission to form the opinion (as the case may be).

(3) The Commission, in determining whether a regulated person is a fit and proper person within the meaning of subsection (1)(b) or (2)(b), may, among other matters (including those specified in section 129), take into account such present or past conduct of the regulated person as it considers appropriate in the circumstances of the case.

(4) A regulated person ordered to pay a pecuniary penalty under subsection (2) shall pay the penalty to the Commission within 30 days, or such further period as the Commission may specify by notice under section 198(3), after the order has taken effect as a specified decision under section 232.

(5) The Court of First Instance may, on an application of the Commission made in the manner prescribed by rules made under section 397 for the purposes of this subsection, register an order made under subsection (2) in the Court of First Instance and the order shall, on registration, be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.

(6) Any pecuniary penalty paid to or recovered by the Commission pursuant to an order made under subsection (2) shall be paid by the Commission into the general revenue.

(7) In this section—

“regulated person” (受規管人士) means a person who is or at the relevant time was any of the following types of person—

- (a) a licensed person;
- (b) a responsible officer of a licensed corporation; or
- (c) a person involved in the management of the business of a licensed corporation;

“relevant time” (有關時間), in relation to a person, means—

- (a) where subsection (1)(a) or (2)(a) applies, the time when the person is, or was, guilty of misconduct; or

- (b) 持牌法團的負責人員；或
- (c) 參與持牌法團的業務的管理的人。

195. 在其他情況下就持牌人等採取紀律行動

(1) 在符合第 198 條的規定下，證監會可在以下情況下，就持牌人獲發牌進行的所有或任何受規管活動或其中任何部分，撤銷該牌照或將該牌照暫時吊銷一段該會指明的期間或直至該會指明的事件發生為止——

- (a) 持牌人屬個人，而——
 - (i) 該持牌人根據《破產條例》(第 6 章) 與債權人訂立自願安排，或有破產令根據該條例針對該持牌人而作出；
 - (ii) 該持牌人沒有清償某項實施執行所涉及的款項；
 - (iii) 該持牌人根據《精神健康條例》(第 136 章) 被法庭裁斷為精神上無行為能力或被羈留在精神病院，而證監會認為該項裁斷或羈留損害該持牌人作為繼續持牌的人選的適當性；或
 - (iv) 該持牌人在香港或其他地方被裁定犯某罪行(任何有關條文所訂罪行除外)，而證監會認為該項定罪損害該持牌人作為繼續持牌的人選的適當性；
- (b) 持牌人是法團，而——
 - (i) 有人獲委任為該持牌人的財產或業務的接管人或經理人；
 - (ii) 該持牌人沒有清償某項實施執行所涉及的款項；
 - (iii) 該持牌人與債權人作出債務妥協或債務償還安排；
 - (iv) 該持牌人正在清盤或被下令清盤；
 - (v) 該持牌人在香港或其他地方被裁定犯某罪行(任何有關條文所訂罪行除外)，而證監會認為該項定罪損害該持牌人作為繼續持牌的人選的適當性；

- (b) where subsection (1)(b) or (2)(b) applies, the time of occurrence of any matter which, whether with any other matter or not, leads the Commission to form the opinion that the person is not a fit and proper person within the meaning of such subsection.

195. Other circumstances for disciplinary actions in respect of licensed persons, etc.

(1) Subject to section 198, the Commission may revoke a licensed person's licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed, or suspend a licensed person's licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed for such period or until the occurrence of such event as the Commission may specify, if—

- (a) where the licensed person is an individual—
 - (i) the licensed person enters into a voluntary arrangement with creditors, or has a bankruptcy order made against him, under the Bankruptcy Ordinance (Cap. 6);
 - (ii) the licensed person fails to satisfy a levy of execution;
 - (iii) the licensed person has been found by a court to be mentally incapacitated, or is detained in a mental hospital, under the Mental Health Ordinance (Cap. 136), which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed; or
 - (iv) the licensed person is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed;
- (b) where the licensed person is a corporation—
 - (i) a receiver or manager of the property or business of the licensed person is appointed;
 - (ii) the licensed person fails to satisfy a levy of execution;
 - (iii) the licensed person enters into a compromise or scheme of arrangement with its creditors;
 - (iv) the licensed person goes into liquidation or is ordered to be wound up;
 - (v) the licensed person is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed;

當可能會因就該法團或其有連繫法團的證券或就該等期貨合約(視屬何情況而定)所進行的受禁交易，而得以維持、提高、降低或穩定，而某人或其有聯繫者——

- (a) 已直接或間接訂立或履行該受禁交易；或
- (b) 已由於披露、傳遞或散發上述資料而直接或間接收取利益，或預期會由於披露、傳遞或散發上述資料而直接或間接收取利益，

則該人不得披露、傳遞或散發該資料，或授權披露、傳遞或散發該資料，或牽涉入披露、傳遞或散發該資料。

(2) 除第(3)款另有規定外，任何人違反第(1)款，即屬犯罪。

(3) 凡任何人基於該人或其有聯繫者直接或間接收取第(1)(b)款提述的利益，或預期會直接或間接收取第(1)(b)款提述的利益，而就違反第(1)款被控犯第(2)款所訂罪行，如該人證明——

- (a) 該人或其有聯繫者(視屬何情況而定)收取或預期會收取的利益，並非從直接或間接訂立或履行有關的受禁交易的另一人或從該另一人的有聯繫者收取的；或
- (b) 該人或其有聯繫者(視屬何情況而定)收取或預期會收取的利益，是從直接或間接訂立或履行有關的受禁交易的另一人或從該另一人的有聯繫者收取的，但直至該資料被披露、傳遞或散發之時(包括該資料被披露、傳遞或散發的一刻)，該人或其有聯繫者(視屬何情況而定)是以真誠行事的。

即可以此作為免責辯護。

(4) 在本條中——

- (a) 提述受禁交易之處，指構成市場失當行為的行為或交易，亦指構成違反第2至4分部任何條文的行為或交易；而
- (b) 提述任何人訂立或履行受禁交易之處，須據此解釋。

298. 披露虛假或具誤導性的資料 以誘使進行交易的罪行

(1) 如任何資料相當可能會——

- (a) 誘使他人香港認購證券或進行期貨合約交易；

—means of authorized automated trading services will be maintained, increased, reduced or stabilized, or is likely to be maintained, increased, reduced or stabilized, because of a prohibited transaction relating to securities of either the corporation or a related corporation of the corporation or to the futures contracts (as the case may be), if he, or an associate of his—

- (a) has entered into or carried out, directly or indirectly, the prohibited transaction; or
- (b) has received, or expects to receive, directly or indirectly, a benefit as a result of the disclosure, circulation or dissemination of the information.

(2) Subject to subsection (3), a person who contravenes subsection (1) commits an offence.

(3) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) on the basis that he, or an associate of his, received, or expected to receive, directly or indirectly, a benefit referred to in subsection (1)(b), it is a defence to the charge for the person to prove that—

- (a) the benefit which he or the associate of his (as the case may be) received, or expected to receive, was not from a person who has entered into or carried out, directly or indirectly, the prohibited transaction in question, or an associate of such person; or
- (b) the benefit which he or the associate of his (as the case may be) received, or expected to receive, was from a person who has entered into or carried out, directly or indirectly, the prohibited transaction in question, or an associate of such person, but up to (and including) the time of the disclosure, circulation or dissemination of the information he has acted in good faith.

(4) In this section—

- (a) a reference to a prohibited transaction means any conduct or transaction which constitutes market misconduct or a contravention of any of the provisions of Divisions 2 to 4; and
- (b) a reference to any person having entered into or carried out the prohibited transaction shall be construed accordingly.

298. Offence of disclosure of false or misleading information inducing transactions

(1) A person shall not, in Hong Kong or elsewhere, disclose, circulate or disseminate, or authorize or be concerned in the disclosure, circulation or dissemination of, information that is likely—

- (a) to induce another person to subscribe for securities, or deal in futures contracts, in Hong Kong;

- (b) 誘使他人 在香港售賣或購買證券；或
- (c) 在香港維持、提高、降低或穩定證券的價格或期貨合約交易的價格，則在以下情況下，任何人不得在香港或其他地方披露、傳遞或散發該資料，或授權披露、傳遞或散發該資料，或牽涉入披露、傳遞或散發該資料——
- (i) 該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性；及
 - (ii) 該人知道該資料屬第 (i) 段所述的資料，或罔顧該資料是否屬第 (i) 段所述的資料。
- (2) 除第 (3) 至 (5) 款另有規定外，任何人違反第 (1) 款，即屬犯罪。
- (3) 凡任何人只因任何資料的發出或複製而違反第 (1) 款，並因此被控犯第 (2) 款所訂罪行，如他證明以下各項，即可以此作為免責辯護——
- (a) 該資料的發出或複製是在某業務 (不論是否由他經營) 的日常運作過程中發生的，而該業務的主要目的，是發出或複製其他人提供的材料；
 - (b) 該資料的內容 (不論是全部或其中任何部分內容)——
 - (i) (如該業務是由他經營) 並非由他本人或由他的任何高級人員、僱員或代理人設定；或
 - (ii) (如該業務不是由他經營) 並非由他本人設定；
 - (c) 為了該項發出或複製——
 - (i) (如該業務是由他經營) 他本人或他的任何高級人員、僱員或代理人；或
 - (ii) (如該業務不是由他經營) 他本人，並無揀選、增補、修改或以其他方式控制該資料的內容；及
 - (d) 在該資料發出或複製時，他不知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性。
- (4) 凡任何人只因任何資料的再傳送而違反第 (1) 款，並因此被控犯第 (2) 款所訂罪行，如他證明以下各項，即可以此作為免責辯護——
- (a) 該資料的再傳送是在某業務 (不論是否由他經營) 的日常運作過程中發生的，而該業務的正常運作，涉及將資訊再傳送往資訊系統內的其他人，或將資訊從一個資訊系統再傳送往另一個資訊系統 (不論位於何處)，不

- (b) to induce the sale or purchase in Hong Kong of securities by another person; or
- (c) to maintain, increase, reduce or stabilize the price of securities, or the price for dealings in futures contracts, in Hong Kong,
- if—
- (i) the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and
 - (ii) the person knows that, or is reckless as to whether, the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.
- (2) Subject to subsections (3) to (5), a person who contravenes subsection (1) commits an offence.
- (3) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the issue or reproduction of information, it is a defence to the charge for the person to prove that—
- (a) the issue or reproduction of the information took place in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was issuing or reproducing materials provided by others;
 - (b) the contents of the information were not, wholly or partly, devised—
 - (i) where the business was carried on by him, by himself or any officer, employee or agent of his; or
 - (ii) where the business was not carried on by him, by himself;
 - (c) for the purposes of the issue or reproduction—
 - (i) where the business was carried on by him, he or any officer, employee or agent of his; or
 - (ii) where the business was not carried on by him, he, did not select, add to, modify or otherwise exercise control over the contents of the information; and
 - (d) at the time of the issue or reproduction, he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact.
- (4) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the re-transmission of information, it is a defence to the charge for the person to prove that—
- (a) the re-transmission of the information took place in the ordinary course of a business (whether or not carried on by him), the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system

論是直接地再傳送或是藉利便該等其他人與第三者之間建立連結而再傳送；

- (b) 該資料的內容(不論是全部或其中任何部分內容)——
 - (i) (如該業務是由他經營)並非由他本人或由他的任何高級人員、僱員或代理人設定；或
 - (ii) (如該業務不是由他經營)並非由他本人設定；
- (c) 為了該項再傳送——
 - (i) (如該業務是由他經營)他本人或他的任何高級人員、僱員或代理人；或
 - (ii) (如該業務不是由他經營)他本人，並無揀選、增補、修改或以其他方式控制該資料的內容；
- (d) 就該資料所作的再傳送，是附有一項大意如下的訊息的，或是在獲再傳送該資料的人確認明白以下事項之後完成的——
 - (i) (如該業務是由他經營)他本人或他的任何高級人員、僱員或代理人並無設定該資料的內容，而且既不就該資料負責，亦不認可其準確性；或
 - (ii) (如該業務不是由他經營)經營該業務的人或該人的任何高級人員、僱員或代理人並無設定該資料的內容，而且既不就該資料負責，亦不認可其準確性；及
- (e) 在該資料再傳送時——
 - (i) 他不知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性；或
 - (ii) 他知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性，但——
 - (A) (如該業務是由他經營)在有關個案的情況下，按理不能期望他阻止該項再傳送；或
 - (B) (如該業務不是由他經營)在有關個案的情況下，他已採取所有合理步驟，使某個能夠採取步驟致使阻止該項再傳送的人，知悉該資料如此屬虛假或具誤導性之事(即使該項再傳送事實上發生)。

- (wherever situated), whether directly or by facilitating the establishment of links between such other persons and third parties;
- (b) the contents of the information were not, wholly or partly, devised—
 - (i) where the business was carried on by him, by himself or any officer, employee or agent of his; or
 - (ii) where the business was not carried on by him, by himself;
- (c) for the purposes of the re-transmission—
 - (i) where the business was carried on by him, he or any officer, employee or agent of his; or
 - (ii) where the business was not carried on by him, he, did not select, add to, modify or otherwise exercise control over the contents of the information;
- (d) the re-transmission of the information was accompanied by a message to the effect, or was effected following acknowledgment by the persons to whom it was re-transmitted of their understanding, that—
 - (i) where the business was carried on by him, he or any officer, employee or agent of his; or
 - (ii) where the business was not carried on by him, the person who carried on the business or any officer, employee or agent of that person, did not devise the contents of the information, and neither took responsibility for it nor endorsed its accuracy; and
- (e) at the time of the re-transmission—
 - (i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or
 - (ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—
 - (A) where the business was carried on by him, in the circumstances of the case he could not reasonably be expected to prevent the re-transmission; or
 - (B) where the business was not carried on by him, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the re-transmission to be prevented (even if the re-transmission in fact took place).

(5) 凡任何人只因任何資料的直播而違反第(1)款，並因此被控犯第(2)款所訂罪行，如他證明以下各項，即可以此作為免責辯護——

- (a) 該資料的廣播是在某廣播業者(不論他是否該廣播業者)的業務的日常運作過程中發生的；
- (b) 該資料的內容(不論是全部或其中任何部分內容)——
 - (i) (如他是該廣播業者)並非由他本人或由他的任何高級人員、僱員或代理人設定；或
 - (ii) (如他不是該廣播業者)並非由他本人設定；
- (c) 為了該項廣播——
 - (i) (如他是該廣播業者)他本人或他的任何高級人員、僱員或代理人；或
 - (ii) (如他不是該廣播業者)他本人，並無揀選、增補、修改或以其他方式控制該資料的內容；
- (d) 就該項廣播而言——
 - (i) (如他是該廣播業者)他；或
 - (ii) (如他不是該廣播業者)他相信並有合理理由相信該廣播業者，按照使他或該廣播業者(視屬何情況而定)有權以廣播業者身分廣播的牌照(如有的話)的條款及條件，及按照任何根據或依據《電訊條例》(第106章)或《廣播條例》(第562章)發出並以廣播業者身分適用於他或該廣播業者(視屬何情況而定)的業務守則或指引(不論實際如何稱述)而行事；及
- (e) 在該資料廣播時——
 - (i) 他不知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性；或
 - (ii) 他知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性，但——
 - (A) (如他是該廣播業者)在有關個案的情況下，按理不能期望他阻止該項廣播；或

(5) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the live broadcast of information, it is a defence to the charge for the person to prove that—

- (a) the broadcast of the information took place in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);
- (b) the contents of the information were not, wholly or partly, devised—
 - (i) where he was the broadcaster, by himself or any officer, employee or agent of his; or
 - (ii) where he was not the broadcaster, by himself;
- (c) for the purposes of the broadcast—
 - (i) where he was the broadcaster, he or any officer, employee or agent of his; or
 - (ii) where he was not the broadcaster, he, did not select, add to, modify or otherwise exercise control over the contents of the information;
- (d) in relation to the broadcast—
 - (i) where he was the broadcaster, he; or
 - (ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster, acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster; and
- (e) at the time of the broadcast—
 - (i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or
 - (ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—
 - (A) where he was the broadcaster, in the circumstances of the case he could not reasonably be expected to prevent the broadcast; or

(B) (如他不是該廣播業者) 在有關個案的情況下，他已採取所有合理步驟，使某個能夠採取步驟致使阻止該項廣播的人，知悉該資料如此屬虛假或具誤導性之事(即使該項廣播事實上發生)。

(6) 在本條中，“發出”(issue) 就任何材料(包括任何資料)而言，包括——

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

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

~~299. 操縱證券市場的罪行~~

(1) 任何人不得——

- (a) 意圖誘使另一人購買或認購或不售賣某法團或其有連繫法團的證券，而在香港或其他地方直接或間接訂立或履行 2 宗或多於 2 宗買賣該法團的證券的交易，而該等交易本身或連同其他交易提高或相當可能會提高任何證券的價格(不論後述的證券是在有關認可市場或是透過使用認可自動化交易服務交易的)；
- (b) 意圖誘使另一人售賣或不購買某法團或其有連繫法團的證券，而在香港或其他地方直接或間接訂立或履行 2 宗或多於 2 宗買賣該法團的證券的交易，而該等交易本身或連同其他交易降低或相當可能會降低任何證券的價格(不論後述的證券是在有關認可市場或是透過使用認可自動化交易服務交易的)；或

(B) where he was not the broadcaster, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the broadcast to be prevented (even if the broadcast in fact took place).

(6) In this section, “issue” (發出), in relation to any material (including any information), includes publishing, circulating, distributing or otherwise disseminating the material or the contents thereof, whether—

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

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

~~299. Offence of stock market manipulation~~

(1) A person shall not, in Hong Kong or elsewhere—

- (a) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction increase, or are likely to increase, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to purchase or subscribe for, or to refrain from selling, securities of the corporation or of a related corporation of the corporation;
- (b) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction reduce, or are likely to reduce, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to sell, or to refrain from purchasing, securities of the corporation or of a related corporation of the corporation; or

第 4 分部——其他罪行

300. 涉及在證券、期貨合約或槓桿式外匯交易方面使用欺詐或欺騙手段等的罪行

- (1) 任何人不得在涉及證券、期貨合約或槓桿式外匯交易的交易中——
- (a) 意圖欺詐或欺騙而直接或間接使用任何手段、計劃或計謀；或
 - (b) 直接或間接從事任何具欺詐或欺騙性質或會產生欺詐或欺騙效果的作為、做法或業務。
- (2) 任何人違反第(1)款，即屬犯罪。
- (3) 在本條中，提述交易之處，包括提述要約及邀請（不論實際如何稱述）。

301. 披露虛假或具誤導性的資料以誘使訂立槓桿式外匯交易合約的罪行

- (1) 在以下情況下，任何人不得在香港或其他地方披露、傳遞或散發任何相當可能誘使另一人在香港訂立槓桿式外匯交易合約的資料，或在香港或其他地方授權披露、傳遞或散發該資料，或在香港或其他地方牽涉入披露、傳遞或散發該資料——
- (a) 該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性；及
 - (b) 該人知道該資料屬(a)段所述的資料，或罔顧該資料是否屬(a)段所述的資料。
- (2) 除第(3)至(5)款另有規定外，任何人違反第(1)款，即屬犯罪。
- (3) 凡任何人只因任何資料的發出或複製而違反第(1)款，並因此被控犯第(2)款所訂罪行，如他證明以下各項，即可以此作為免責辯護——
- (a) 該資料的發出或複製是在某業務（不論是否由他經營）的日常運作過程中發生的，而該業務的主要目的，是發出或複製其他人提供的材料；
 - (b) 該資料的內容（不論是全部或其中任何部分內容）——

Division 4—Other offences

300. Offence involving fraudulent or deceptive devices, etc. in transactions in securities, futures contracts or leveraged foreign exchange trading

- (1) A person shall not, directly or indirectly, in a transaction involving securities, futures contracts or leveraged foreign exchange trading—
- (a) employ any device, scheme or artifice with intent to defraud or deceive; or
 - (b) engage in any act, practice or course of business which is fraudulent or deceptive, or would operate as a fraud or deception.
- (2) A person who contravenes subsection (1) commits an offence.
- (3) In this section, a reference to a transaction includes an offer and an invitation (however expressed).

301. Offence of disclosure of false or misleading information inducing others to enter into leveraged foreign exchange contracts

- (1) A person shall not, in Hong Kong or elsewhere, disclose, circulate or disseminate, or authorize or be concerned in the disclosure, circulation or dissemination of, information that is likely to induce another person to enter into a leveraged foreign exchange contract in Hong Kong, if—
- (a) the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and
 - (b) the person knows that, or is reckless as to whether, the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.
- (2) Subject to subsections (3) to (5), a person who contravenes subsection (1) commits an offence.
- (3) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the issue or reproduction of information, it is a defence to the charge for the person to prove that—
- (a) the issue or reproduction of the information took place in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was issuing or reproducing materials provided by others;
 - (b) the contents of the information were not, wholly or partly, devised—

- (i) (如該業務是由他經營)並非由他本人或由他的任何高級人員、僱員或代理人設定;或
- (ii) (如該業務不是由他經營)並非由他本人設定;
- (c) 為了該項發出或複製——
 - (i) (如該業務是由他經營)他本人或他的任何高級人員、僱員或代理人;或
 - (ii) (如該業務不是由他經營)他本人，並無揀選、增補、修改或以其他方式控制該資料的內容;及
- (d) 在該資料發出或複製時，他不知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性。
- (4) 凡任何人只因任何資料的再傳送而違反第(1)款，並因此被控犯第(2)款所訂罪行，如他證明以下各項，即可以此作為免責辯護——
 - (a) 該資料的再傳送是在某業務(不論是否由他經營)的日常運作過程中發生的，而該業務的正常運作，涉及將資訊再傳送往資訊系統內的其他人，或將資訊從一個資訊系統再傳送往另一個資訊系統(不論位於何處)，不論是直接地再傳送或是藉利便該等其他人與第三者之間建立連結而再傳送;
 - (b) 該資料的內容(不論是全部或其中任何部分內容)——
 - (i) (如該業務是由他經營)並非由他本人或由他的任何高級人員、僱員或代理人設定;或
 - (ii) (如該業務不是由他經營)並非由他本人設定;
 - (c) 為了該項再傳送——
 - (i) (如該業務是由他經營)他本人或他的任何高級人員、僱員或代理人;或
 - (ii) (如該業務不是由他經營)他本人，並無揀選、增補、修改或以其他方式控制該資料的內容;
 - (d) 就該資料所作的再傳送，是附有一項大意如下的訊息的，或是在獲再傳送該資料的人確認明白以下事項之後完成的——
 - (i) (如該業務是由他經營)他本人或他的任何高級人員、僱員或代理人並無設定該資料的內容，而且既不就該資料負責，亦不認可其準確性;或

- (i) where the business was carried on by him, by himself or any officer, employee or agent of his; or
- (ii) where the business was not carried on by him, by himself;
- (c) for the purposes of the issue or reproduction—
 - (i) where the business was carried on by him, he or any officer, employee or agent of his; or
 - (ii) where the business was not carried on by him, he, did not select, add to, modify or otherwise exercise control over the contents of the information; and
- (d) at the time of the issue or reproduction, he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact.
- (4) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the re-transmission of information, it is a defence to the charge for the person to prove that—
 - (a) the re-transmission of the information took place in the ordinary course of a business (whether or not carried on by him), the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system (wherever situated), whether directly or by facilitating the establishment of links between such other persons and third parties;
 - (b) the contents of the information were not, wholly or partly, devised—
 - (i) where the business was carried on by him, by himself or any officer, employee or agent of his; or
 - (ii) where the business was not carried on by him, by himself;
 - (c) for the purposes of the re-transmission—
 - (i) where the business was carried on by him, he or any officer, employee or agent of his; or
 - (ii) where the business was not carried on by him, he, did not select, add to, modify or otherwise exercise control over the contents of the information;
 - (d) the re-transmission of the information was accompanied by a message to the effect, or was effected following acknowledgment by the persons to whom it was re-transmitted of their understanding, that—
 - (i) where the business was carried on by him, he or any officer, employee or agent of his; or

- (ii) (如該業務不是由他經營) 經營該業務的人或該人的任何高級人員、僱員或代理人並無設定該資料的內容，而且既不就該資料負責，亦不認可其準確性；及
- (e) 在該資料再傳送時——
- (i) 他不知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性；或
- (ii) 他知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性，但——
- (A) (如該業務是由他經營) 在有關個案的情況下，按理不能期望他阻止該項再傳送；或
- (B) (如該業務不是由他經營) 在有關個案的情況下，他已採取所有合理步驟，使某個能夠採取步驟致使阻止該項再傳送的人，知悉該資料如此屬虛假或具誤導性之事 (即使該項再傳送事實上發生)。
- (5) 凡任何人只因任何資料的直播而違反第 (1) 款，並因此被控犯第 (2) 款所訂罪行，如他證明以下各項，即可以此作為免責辯護——
- (a) 該資料的廣播是在某廣播業者 (不論他是否該廣播業者) 的業務的日常運作過程中發生的；
- (b) 該資料的內容 (不論是全部或其中任何部分內容)——
- (i) (如他是該廣播業者) 並非由他本人或由他的任何高級人員、僱員或代理人設定；或
- (ii) (如他不是該廣播業者) 並非由他本人設定；
- (c) 為了該項廣播——
- (i) (如他是該廣播業者) 他本人或他的任何高級人員、僱員或代理人；或
- (ii) (如他不是該廣播業者) 他本人，並無揀選、增補、修改或以其他方式控制該資料的內容；
- (d) 就該項廣播而言——
- (i) (如他是該廣播業者) 他；或

- (ii) where the business was not carried on by him, the person who carried on the business or any officer, employee or agent of that person, did not devise the contents of the information, and neither took responsibility for it nor endorsed its accuracy; and
- (e) at the time of the re-transmission—
- (i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or
- (ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—
- (A) where the business was carried on by him, in the circumstances of the case he could not reasonably be expected to prevent the re-transmission; or
- (B) where the business was not carried on by him, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the re-transmission to be prevented (even if the re-transmission in fact took place).
- (5) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the live broadcast of information, it is a defence to the charge for the person to prove that—
- (a) the broadcast of the information took place in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);
- (b) the contents of the information were not, wholly or partly, devised—
- (i) where he was the broadcaster, by himself or any officer, employee or agent of his; or
- (ii) where he was not the broadcaster, by himself;
- (c) for the purposes of the broadcast—
- (i) where he was the broadcaster, he or any officer, employee or agent of his; or
- (ii) where he was not the broadcaster, he, did not select, add to, modify or otherwise exercise control over the contents of the information;
- (d) in relation to the broadcast—
- (i) where he was the broadcaster, he; or

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

(e) 在該資料廣播時——

(i) 他不知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性；或

(ii) 他知道該資料在某事關重要的事實方面屬虛假或具誤導性，或因遺漏某事關重要的事實而屬虛假或具誤導性，但——

(A) (如他是該廣播業者) 在有關個案的情況下，按理不能期望他阻止該項廣播；或

(B) (如他不是該廣播業者) 在有關個案的情況下，他已採取所有合理步驟，使某個能夠採取步驟致使阻止該項廣播的人，知悉該資料如此屬虛假或具誤導性之事(即使該項廣播事實上發生)。

(6) 在本條中，“發出”(issue) 就任何材料(包括任何資料) 而言，包括——

(a) 藉親自造訪；

(b) 在報章、雜誌、期刊或其他刊物；

(c) 藉海報、告示、啓事或通知的展示；

(d) 以通告、冊子、小冊子或傳單的方式；

(e) 藉照片展覽或放映電影片；

(f) 藉聲音或電視廣播；

(g) 藉資訊系統或其他電子器材；或

(h) 以其他方式(不論是以機械、電子、磁力、光學、人手或其他媒介，或藉光、影像或聲音或其他媒介的產生或傳送)，

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

(ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster, acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster; and

(e) at the time of the broadcast—

(i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or

(ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—

(A) where he was the broadcaster, in the circumstances of the case he could not reasonably be expected to prevent the broadcast; or

(B) where he was not the broadcaster, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the broadcast to be prevented (even if the broadcast in fact took place).

(6) In this section, “issue” (發出), in relation to any material (including any information), includes publishing, circulating, distributing or otherwise disseminating the material or the contents thereof, whether—

(a) by any visit in person;

(b) in a newspaper, magazine, journal or other publication;

(c) by the display of posters or notices;

(d) by means of circulars, brochures, pamphlets or handbills;

(e) by an exhibition of photographs or cinematograph films;

(f) by way of sound or television broadcasting;

(g) by any information system or other electronic device; or

(h) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,

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

304. 關乎違反第 2 至 4 分部之事的交易

既非無效亦非可使無效

任何交易不得僅因任何違反第 2 至 4 分部任何條文之事曾就該交易或因該交易而發生，而屬無效或可使無效。

305. 就違反本部須負的民事法律責任

(1) 除第 (2) 及 (3) 款另有規定外，任何人如違反第 2 至 4 分部任何條文，則他負有法律責任以損害賠償的方式賠償另一人因該項違反而蒙受的金錢損失，不論他是否亦根據第 303 條或其他規定招致任何其他法律責任，亦不論該損失是否由於該另一人曾以受該項違反影響的價格訂立交易所引致的。

(2) 除非就有關個案的情況而言，某人應根據第 (1) 款作出賠償是公平、公正和合理的，否則該人無須根據該款作出賠償。

(3) 本部所指的可用於針對違反第 2 至 4 分部任何條文而提出的控罪的免責辯護，在就同一項違反而根據第 (1) 款提起的訴訟中，亦可用作免責辯護。

(4) 任何人即使未因違反第 2 至 4 分部任何條文而被檢控或被定罪，其他人仍可根據第 (1) 款就該項違反而針對該人提出訴訟。

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

(6) 在不損害《證據條例》(第 8 章) 第 62 條的原則下，在根據第 (1) 款提出的訴訟中——

- (a) 市場失當行為審裁處依據第 252(3)(a) 條裁定曾發生市場失當行為此一事實；
- (b) 市場失當行為審裁處在依據第 252(3)(b) 條所作的裁定中識辨某人(不論該人是否在根據本條第 (1) 款提出的訴訟的一方)曾從事市場失當行為此一事實，

304. Transactions relating to contravention of Divisions 2 to 4 not void or voidable

A transaction is not void or voidable by reason only that a contravention of any of the provisions of Divisions 2 to 4 has taken place in relation to or as a result of it.

305. Civil liability for contravention of this Part

(1) Subject to subsections (2) and (3), a person who contravenes any of the provisions of Divisions 2 to 4 shall, whether or not he also incurs any other liability (whether under section 303 or otherwise), be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of the contravention, whether or not the loss arises from the other person having entered into a transaction or dealing at a price affected by the contravention.

(2) No person shall be liable to pay compensation under subsection (1) unless it is fair, just and reasonable in the circumstances of the case that he should be so liable.

(3) A defence under this Part to a charge for an offence in respect of a contravention of any of the provisions of Divisions 2 to 4 shall also be a defence in an action brought under subsection (1) in respect of the same contravention.

(4) A person may bring an action under subsection (1) in respect of a contravention of any of the provisions of Divisions 2 to 4 even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of the contravention.

(5) For the avoidance of doubt, where a court has jurisdiction to determine an action brought under subsection (1), it may, where it is, apart from this section, within its jurisdiction to entertain an application for an injunction, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

(6) Without prejudice to section 62 of the Evidence Ordinance (Cap. 8), in an action brought under subsection (1) —

- (a) the fact that there is a determination by the Market Misconduct Tribunal pursuant to section 252(3)(a) that market misconduct has taken place;
- (b) the fact that there is a determination by the Market Misconduct Tribunal pursuant to section 252(3)(b) identifying a person (whether or not a party to the action) as having engaged in market misconduct,

只要該裁定仍然存在，即可在與該訴訟的任何爭議點有關的情況下獲接納為證明以下事宜的證據——

- (i) (就 (a) 段提述的裁定而言) 曾發生該市場失當行為；或
- (ii) (就 (b) 段提述的裁定而言) 該人曾從事該市場失當行為。

(7) 在根據第 (1) 款提出的訴訟中，如有第 (6)(a) 或 (b) 款提述的裁定存在一事根據第 (6) 款可獲接納為證據——

(a) 則——

- (i) 就第 (6)(a) 款提述的裁定而言，除非相反證明成立，否則該裁定針對的市場失當行為須當作曾發生；或
- (ii) 就第 (6)(b) 款提述的裁定而言，除非相反證明成立，否則該裁定針對的人須當作曾從事市場失當行為；及

(b) 在不損害為作為該裁定的證據或為確定該裁定所依據的事實而收取任何其他可獲接納的證據的原則下，根據第 262(2)(b)(i) 條發表並載有該裁定的市場失當行為審裁處報告的內容，或根據第 (8) 款提供並載有該裁定的市場失當行為審裁處報告的文本的內容，亦可為該目的而獲接納為證據。

(8) 在根據第 (1) 款提出的訴訟中，如——

(a) 有第 (6)(a) 或 (b) 款提述的裁定存在一事根據第 (6) 款可獲接納為證據；及

(b) 載有市場失當行為審裁處裁定的報告沒有根據第 262(2)(b)(i) 條發表，則具有司法管轄權就該訴訟作出裁定的法院如認為適當的話，可要求向該法院提供該報告的文本，以供該法院為第 (7)(b) 款的目的使用；如該法院作出該要求——

- (i) 市場失當行為審裁處須安排向該法院提供該報告的文本，以供該法院為第 (7)(b) 款的目的使用；及
- (ii) 該報告的內容可為第 (7)(b) 款指明的目的獲接納。

(9) 在本條中，提述交易之處，包括提述要約及邀請 (不論實際如何稱述)。

shall, in so far the determination is still subsisting, be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in the action—

- (i) in the case of a determination referred to in paragraph (a), that the market misconduct has taken place; or
- (ii) in the case of a determination referred to in paragraph (b), that the person has engaged in market misconduct.

(7) In an action brought under subsection (1), where the fact that there is a determination referred to in subsection (6)(a) or (b) is admissible in evidence under subsection (6)—

(a) then—

- (i) in the case of a determination referred to in subsection (6)(a), the market misconduct that is the subject of the determination shall, unless the contrary is proved, be taken to have taken place; or
- (ii) in the case of a determination referred to in subsection (6)(b), the person that is the subject of the determination shall, unless the contrary is proved, be taken to have engaged in market misconduct; and

(b) without prejudice to the reception of any other admissible evidence as evidence of the determination or for the purpose of identifying the facts on which the determination was based, the contents of a report of the Market Misconduct Tribunal containing the determination and published under section 262(2)(b)(i), or the contents of a copy of a report of the Market Misconduct Tribunal containing the determination and made available under subsection (8), shall also be admissible in evidence for such purpose.

(8) Where in an action brought under subsection (1)—

- (a) the fact that there is a determination referred to in subsection (6)(a) or (b) is admissible in evidence under subsection (6); and
- (b) a report of the Market Misconduct Tribunal containing the determination has not been published under section 262(2)(b)(i),

the court having jurisdiction to determine the action may, where it considers appropriate, require that a copy of the report be made available to the court to enable it to be used for the purposes of subsection (7)(b), whereupon—

- (i) the Market Misconduct Tribunal shall cause a copy of the report to be made available to the court to enable it to be used for the purposes of subsection (7)(b); and
- (ii) the contents of the report shall be admissible for the purpose specified in subsection (7)(b).

(9) In this section, a reference to a transaction includes an offer and an invitation (however expressed).

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

306. 不構成罪行的行為

(1) 不論本部有任何規定，因某行為而被控犯本部(第 300 或 302 條除外)所訂罪行的人，如證明該行為按照在第(2)款下訂立的規則不得視為構成罪行，即可以此作為免責辯護。

(2) 為施行第(1)款，證監會如認為訂立規則訂明在何種情況下，根據本部(第 300 或 302 條除外)本會構成某罪行的行為不得視為構成該罪行，是符合公眾利益的，則可在諮詢財政司司長後訂立該等規則。

(3) 不論本部有任何規定，如——

(a) 某人因某行為而被控犯第 295、296 或 299 條所訂罪行；及

(b) 該項控罪是基於該行為是就在有關境外市場交易的證券或期貨合約而作出的，而非就在有關認可市場或透過使用認可自動化交易服務交易的證券或期貨合約而作出的，

除非控方證明假使該行為在該有關境外市場所在的地方作出，即構成刑事罪行，否則不得裁定該人犯該罪行。

307. 根據第 XIII 部就市場失當行為提起法律程序

後不得提起進一步法律程序

不論本部有任何規定，在以下情況下，不得就某行為而對某人提起刑事法律程序——

(a) 過往已根據第 252 條就同一行為對該人提起法律程序；及

(b) (i) 該法律程序仍待決；或

(ii) 由於過往已提起該法律程序，因此不得根據第 252 條就同一行為再次合法地對該人提起法律程序。

(10) Nothing in this section affects, limits or diminishes any rights conferred on a person, or any liabilities a person may incur, under the common law or any other enactment.

306. Conduct not to constitute offences

(1) Notwithstanding anything in this Part, where a person is charged with an offence under this Part (other than section 300 or 302) by reason of any conduct, it is a defence to the charge for the person to prove that the conduct is, according to the rules made under subsection (2), not to be regarded as constituting an offence.

(2) For the purposes of subsection (1), the Commission, after consultation with the Financial Secretary, may, where it considers it is in the public interest to do so, make rules to prescribe the circumstances in which any conduct that would otherwise constitute an offence under this Part (other than section 300 or 302) shall not be regarded as constituting such an offence.

(3) Notwithstanding anything in this Part, where—

(a) a person is charged with an offence under section 295, 296 or 299 by reason of any conduct; and

(b) the person is charged on the basis that the conduct was carried out not in respect of securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services, but in respect of securities or futures contracts traded on a relevant overseas market,

the person shall not be convicted of the offence unless the prosecution proves that in any place in which such relevant overseas market is situated the conduct would have constituted a criminal offence had it been carried out there.

307. No further proceedings after Part XIII market misconduct proceedings

Notwithstanding anything in this Part, no criminal proceedings may be instituted against any person under this Part in respect of any conduct if—

(a) proceedings have previously been instituted against the person under section 252 in respect of the same conduct; and

(b) (i) those proceedings remain pending; or

(ii) by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted against that person under section 252 in respect of the same conduct.

附表 5

[第 114、118、139 及
142 條及附表 1]

受規管活動

第 1 部

以下各項為受規管活動——

- 第 1 類：證券交易；
- 第 2 類：期貨合約交易；
- 第 3 類：槓桿式外匯交易；
- 第 4 類：就證券提供意見；
- 第 5 類：就期貨合約提供意見；
- 第 6 類：就機構融資提供意見；
- 第 7 類：提供自動化交易服務；
- 第 8 類：提供證券保證金融資；
- 第 9 類：提供資產管理。

第 2 部

在本附表中——

“外匯交易”(foreign exchange trading)指訂立或要約訂立任何合約或安排，或誘使或企圖誘使他人訂立或要約訂立任何合約或安排，而某人藉該合約或安排承諾——

- (a) 與另一人兌換貨幣；
- (b) 將某數額的外幣交付另一人；或
- (c) 將某數額的外幣存入另一人的帳戶內，

但不包括為“槓桿式外匯交易”的定義中第(i)至(xv)段所描述的合約或安排或為建議的該等合約或安排作出的作為，亦不包括在與該等段落所描述的合約或安排或與建議的該等合約或安排有關連的情況下作出的作為；

“自動化交易服務”(automated trading services)指透過並非由認可交易所或認可結算所提供的電子設施而提供的服務，而藉該項服務——

- (a) 買賣任何證券或期貨合約的要約經常以某種方式被提出或接受，而按照已確立的方法(包括證券市場或期貨市場一般採用的方法)，以該種方式提出或接受該等要約構成具約束力的交易或導致具約束力的交易產生；
- (b) 人與人之間經常互相介紹或認識，從而洽商或完成任何證券或期貨合約的買賣，或在有他們將會以某種方式洽商或完成任何證券或期貨合約的買賣的合理期望的情況下經常互相介紹或認識，而按照已確立的方法(包括證券市場或期貨市場一般採用的方法)，以該種方式洽商或完成該等買賣構成具約束力的交易或導致具約束力的交易產生；或
- (c) 符合以下說明的交易得以更替、結算、交收或獲得擔保——
 - (i) (a)段提述的；
 - (ii) 由(b)段提述的活動而產生的；或
 - (iii) 在證券市場或期貨市場或在該等市場的規則的規限下完成的，

但不包括由政府或代政府營辦的法團所提供的該等服務；

SCHEDULE 5

[ss. 114, 118, 139 &
142 & Sch. 1]

REGULATED ACTIVITIES

PART 1

The following are regulated activities—

- Type 1: dealing in securities;
- Type 2: dealing in futures contracts;
- Type 3: leveraged foreign exchange trading;
- Type 4: advising on securities;
- Type 5: advising on futures contracts;
- Type 6: advising on corporate finance;
- Type 7: providing automated trading services;
- Type 8: securities margin financing;
- Type 9: asset management.

PART 2

In this Schedule—

“advising on corporate finance”(就機構融資提供意見) means giving advice—

- (a) concerning compliance with or in respect of rules made under section 23 or 36 of this Ordinance governing the listing of securities and the code published under section 399(2)(a) or (b) of this Ordinance;
- (b) concerning—
 - (i) any offer to dispose of securities to the public;
 - (ii) any offer to acquire securities from the public; or
 - (iii) acceptance of any offer referred to in subparagraph (i) or (ii), but only in so far as the advice is given generally to holders of securities or a class of securities; or
- (c) to a listed corporation or public company or a subsidiary of the corporation or company, or to its officers or shareholders, concerning corporate restructuring in respect of securities (including the issue, cancellation or variation of any rights attaching to any securities),

but does not include such advice given by—

- (i) a corporation solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;
- (ii) a person who is licensed for Type 1 regulated activity who gives such advice wholly incidental to the carrying on of that regulated activity;
- (iii) an authorized financial institution which is registered for Type 1 regulated activity which gives such advice wholly incidental to the carrying on of that regulated activity;
- (iv) an individual—
 - (A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 regulated activity by an authorized financial institution registered for that regulated activity; and
 - (B) who gives such advice wholly incidental to the carrying on of that regulated activity;
- (v) a solicitor who gives such advice wholly incidental to his practice as such in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);
- (vi) counsel who gives such advice wholly incidental to his practice as such;

“期貨合約交易”(dealing in futures contracts)就任何人而言,指該人——

- (a) 為訂立、取得或處置期貨合約而與另一人訂立或要約與另一人訂立協議;
- (b) 誘使或企圖誘使另一人訂立或要約訂立期貨合約;或
- (c) 誘使或企圖誘使另一人取得或處置期貨合約,

但不包括該人在以下情況進行的期貨合約交易——

- (i) 該人以認可結算所身分執行其職能;
- (ii) 該人透過另一人(“該交易商”)作出(a)、(b)或(c)段提述的作為,而該交易商是——
 - (A) 就第2類受規管活動獲發牌或獲註冊的;或
 - (B) 名列於金融管理專員根據《銀行業條例》(第155章)第20條備存的紀錄冊並顯示為就第2類受規管活動受聘於就該類活動獲註冊的認可財務機構的,但如該人是為賺取佣金、回佣或其他報酬而進行以下事項,則須視為進行期貨合約交易——
 - (I) 從第三者接收為訂立期貨合約而提出的要約或邀請,並以他本人或該第三者的名義將該要約或邀請轉達予該交易商;
 - (II) 使該交易商或其代表與第三者互相介紹,以使該第三者可與該交易商訂立期貨合約或提出與該交易商訂立期貨合約的要約或邀請;
 - (III) 透過該交易商為第三者達成期貨合約的取得或處置;
 - (IV) 為該交易商向第三者提出取得或處置期貨合約的要約;或
 - (V) 為該交易商接受第三者提出的取得或處置期貨合約的要約;
- (iii) 該人只在《商品交易所(禁止經營)條例》(第82章)第3(a)、(b)或(c)條提述的市場作出(a)、(b)或(c)段提述的作為;
- (iv) 該人屬《商品交易所(禁止經營)條例》(第82章)第3(d)條提述的商品交易所的成員,並且只在該交易所作出(a)、(b)或(c)段提述的作為;
- (v) 該人訂立市場合約;
- (vi) 該人就第9類受規管活動獲發牌或獲註冊,並純粹為進行該類活動而作出(a)、(b)或(c)段提述的作為;或
- (vii) 該人以主事人身分並透過與另一人交易而就並非在認可期貨市場交易的期貨合約作出(a)、(b)或(c)段提述的作為,而該另一人是專業投資者(不論以主事人或代理人身分行事);

“就期貨合約提供意見”(advising on futures contracts)指——

- (a) 就以下各項提供意見——
 - (i) 應否訂立期貨合約;
 - (ii) 應訂立哪些期貨合約;
 - (iii) 應於何時訂立期貨合約;或
 - (iv) 應按哪些條款或條件訂立期貨合約;或
- (b) 發出分析或報告,而目的是為利便該等分析或報告的受眾就以下各項作出決定——
 - (i) 是否訂立期貨合約;
 - (ii) 須訂立哪些期貨合約;
 - (iii) 於何時訂立期貨合約;或
 - (iv) 按哪些條款或條件訂立期貨合約,

但不包括在以下情況提供的意見或發出的分析或報告——

- (i) 任何法團純粹向其任何全資附屬公司、持有其所有已發行股份的控股公司,或該控股公司的其他全資附屬公司提供上述意見或發出上述分析或報告;

- (vii) a certified public accountant who gives such advice wholly incidental to his practice as such in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50); (*Amended 23 of 2004 s. 56*)
- (viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which gives such advice wholly incidental to the discharge of its duty as such; or
- (ix) a person through—
 - (A) a newspaper, magazine, book or other publication which is made generally available to the public; or
 - (B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise;

“advising on futures contracts”(就期貨合約提供意見) means——

- (a) giving advice on—
 - (i) whether;
 - (ii) which;
 - (iii) the time at which; or
 - (iv) the terms or conditions on which, futures contracts should be entered into; or
- (b) issuing analyses or reports, for the purposes of facilitating the recipients of the analyses or reports to make decisions on—
 - (i) whether;
 - (ii) which;
 - (iii) the time at which; or
 - (iv) the terms or conditions on which, futures contracts are to be entered into,

otherwise than by——

- (i) a corporation which gives such advice or issues such analyses or reports solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;
- (ii) a person who is licensed for Type 2 regulated activity who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
- (iii) an authorized financial institution which is registered for Type 2 regulated activity which gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
- (iv) an individual——
 - (A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 2 regulated activity by an authorized financial institution registered for that regulated activity; and
 - (B) who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
- (v) a solicitor who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a solicitor in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);
- (vi) counsel who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as counsel;
- (vii) a certified public accountant who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a certified public accountant in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50); (*Amended 23 of 2004 s. 56*)
- (viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which gives such advice or issues such analyses or reports wholly incidental to the discharge of its duty as such; or
- (ix) a person who gives such advice or issues such analyses or reports through——
 - (A) a newspaper, magazine, book or other publication which is made generally available to the public; or
 - (B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise;

- (ii) 就第 2 類受規管活動獲發牌的人完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告；
- (iii) 就第 2 類受規管活動獲註冊的認可財務機構完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告；
- (iv) 任何符合以下說明的個人——
 - (A) 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為就第 2 類受規管活動受聘於就該類活動獲註冊的認可財務機構的；及
 - (B) 完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告的；
- (v) 律師完全因為在《法律執業者條例》(第 159 章) 所指的香港律師行或外地律師行以律師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；
- (vi) 大律師完全因為以大律師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；
- (vii) 會計師完全因為在《專業會計師條例》(第 50 章) 所指的執業單位以會計師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；
(由 2004 年第 23 號第 56 條修訂)
- (viii) 根據《受託人條例》(第 29 章) 第 VII 部註冊的信託公司完全因為履行它作為註冊信託公司的職責而附帶提供上述意見或發出上述分析或報告；或
- (ix) 任何人透過——
 - (A) 普遍地提供予公眾閱覽的報章、雜誌、書籍或其他刊物提供上述意見或發出上述分析或報告；或
 - (B) 供公眾接收 (不論是需付收看費) 的電視廣播或無線電廣播提供上述意見或發出上述分析或報告；

“就機構融資提供意見”(advising on corporate finance) 指——

- (a) 對根據本條例第 23 或 36 條訂立的關於管限證券上市的規章或規則及根據本條例第 399(2)(a) 或 (b) 條刊登或發表的守則的遵守問題或就該等規章、規則或守則提供意見；
- (b) 提供關於以下各項的意見——
 - (i) 處置證券而將之轉予公眾的要約；
 - (ii) 從公眾取得證券的要約；或
 - (iii) 接受第 (i) 或 (ii) 節提述的任何要約，但以意見是普遍地提供予證券或某類別證券的持有人為限；或
- (c) 向上市法團、公眾公司或該法團或公司的附屬公司，或向該法團、公司或附屬公司的高級人員或股東提供關於機構重組而在證券方面 (包括發行、撤銷或更改附於任何證券的權利) 的意見，

但不包括在以下情況提供的意見——

- (i) 任何法團純粹向其任何全資附屬公司、持有其所有已發行股份的控股公司，或該控股公司的其他全資附屬公司提供上述意見；
- (ii) 就第 1 類受規管活動獲發牌的人完全因為進行該類活動而附帶提供上述意見；
- (iii) 就第 1 類受規管活動獲註冊的認可財務機構完全因為進行該類活動而附帶提供上述意見；
- (iv) 任何符合以下說明的個人——
 - (A) 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為就第 1 類受規管活動受聘於就該類活動獲註冊的認可財務機構的；及
 - (B) 完全因為進行該類活動而附帶提供上述意見的；

“advising on securities” (就證券提供意見) means—

- (a) giving advice on—
 - (i) whether;
 - (ii) which;
 - (iii) the time at which; or
 - (iv) the terms or conditions on which, securities should be acquired or disposed of; or
- (b) issuing analyses or reports, for the purposes of facilitating the recipients of the analyses or reports to make decisions on—
 - (i) whether;
 - (ii) which;
 - (iii) the time at which; or
 - (iv) the terms or conditions on which, securities are to be acquired or disposed of,

otherwise than by—

- (i) a corporation which gives such advice or issues such analyses or reports solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;
- (ii) a person who is licensed for Type 1 regulated activity who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
- (iii) an authorized financial institution which is registered for Type 1 regulated activity which gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
- (iv) an individual—
 - (A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 regulated activity, by an authorized financial institution registered for that regulated activity; and
 - (B) who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
- (v) a solicitor who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a solicitor in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);
- (vi) counsel who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as counsel;
- (vii) a certified public accountant who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a certified public accountant in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50); (Amended 23 of 2004 s. 56)
- (viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which gives such advice or issues such analyses or reports wholly incidental to the discharge of its duty as such; or
- (ix) a person who gives such advice or issues such analyses or reports through—
 - (A) a newspaper, magazine, book or other publication which is made generally available to the public; or
 - (B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise,

but does not include the giving of such advice that falls within the meaning of “advising on corporate finance”;

“asset management” (資產管理), in relation to a person, means providing a service of managing a portfolio of securities or futures contracts for another person by the person, otherwise than by—

- (a) a corporation which provides such service solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;
- (b) a person who is licensed for Type 1 or Type 2 regulated activity who provides such service wholly incidental to the carrying on of that regulated activity;

- (v) 律師完全因為在《法律執業者條例》(第 159 章)所指的香港律師行或外地律師行以律師身分執業而附帶提供上述意見；
- (vi) 大律師完全因為以大律師身分執業而附帶提供上述意見；
- (vii) 會計師完全因為在《專業會計師條例》(第 50 章)所指的執業單位以會計師身分執業而附帶提供上述意見；(由 2004 年第 23 號第 56 條修訂)
- (viii) 根據《受託人條例》(第 29 章)第 VIII 部註冊的信託公司完全因為履行它作為註冊信託公司的職責而附帶提供上述意見；或
- (ix) 任何人透過——
 - (A) 普遍地提供予公眾閱覽的報章、雜誌、書籍或其他刊物提供上述意見；或
 - (B) 供公眾接收(不論是否需付收看費)的電視廣播或無線電廣播提供上述意見；

“就證券提供意見”(advising on securities)指——

- (a) 就以下各項提供意見——
 - (i) 應否取得或處置證券；
 - (ii) 應取得或處置哪些證券；
 - (iii) 應於何時取得或處置證券；或
 - (iv) 應按哪些條款或條件取得或處置證券；或
- (b) 發出分析或報告，而目的是為便利該等分析或報告的受眾就以下各項作出決定——
 - (i) 是否取得或處置證券；
 - (ii) 須取得或處置哪些證券；
 - (iii) 於何時取得或處置證券；或
 - (iv) 按哪些條款或條件取得或處置證券；

但不包括在以下情況提供的意見或發出的分析或報告——

- (i) 任何法團純粹向其任何全資附屬公司、持有其所有已發行股份的控股公司，或該控股公司的其他全資附屬公司提供上述意見或發出上述分析或報告；
- (ii) 就第 1 類受規管活動獲發牌的人完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告；
- (iii) 就第 1 類受規管活動獲註冊的認可財務機構完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告；
- (iv) 任何符合以下說明的個人——
 - (A) 名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示為就第 1 類受規管活動受聘於就該類活動獲註冊的認可財務機構的；及
 - (B) 完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告的；
- (v) 律師完全因為在《法律執業者條例》(第 159 章)所指的香港律師行或外地律師行以律師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；
- (vi) 大律師完全因為以大律師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；
- (vii) 會計師完全因為在《專業會計師條例》(第 50 章)所指的執業單位以會計師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；(由 2004 年第 23 號第 56 條修訂)
- (viii) 根據《受託人條例》(第 29 章)第 VIII 部註冊的信託公司完全因為履行它作為註冊信託公司的職責而附帶提供上述意見或發出上述分析或報告；或

- (c) an authorized financial institution which is registered for Type 1 or Type 2 regulated activity which provides such service wholly incidental to the carrying on of that regulated activity;
 - (d) an individual—
 - (i) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 or Type 2 (as the case may be) regulated activity by an authorized financial institution registered for that regulated activity; and
 - (ii) who provides such service wholly incidental to the carrying on of that regulated activity;
 - (e) a solicitor who provides such service wholly incidental to his practice as such in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);
 - (f) counsel who provides such service wholly incidental to his practice as such;
 - (g) a certified public accountant who provides such service wholly incidental to his practice as such in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50); or (Amended 23 of 2004 s. 56)
 - (h) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which provides such service wholly incidental to the discharge of its duty as such;
- “automated trading services” (自動化交易服務) means services provided by means of electronic facilities, not being facilities provided by a recognized exchange company or a recognized clearing house, whereby—
- (a) offers to sell or purchase securities or futures contracts are regularly made or accepted in a way that forms or results in a binding transaction in accordance with established methods, including any method commonly used by a stock market or futures market;
 - (b) persons are regularly introduced, or identified to other persons in order that they may negotiate or conclude, or with the reasonable expectation that they will negotiate or conclude sales or purchases of securities or futures contracts in a way that forms or results in a binding transaction in accordance with established methods, including any method commonly used by a stock market or futures market; or
 - (c) transactions—
 - (i) referred to in paragraph (a);
 - (ii) resulting from the activities referred to in paragraph (b); or
 - (iii) effected on, or subject to the rules of, a stock market or futures market, may be novated, cleared, settled or guaranteed,
 but does not include such services provided by a corporation operated by or on behalf of the Government;
- “dealing in futures contracts” (期貨合約交易), in relation to a person, means
- (a) making or offering to make an agreement with another person to enter into, or to acquire or dispose of, a futures contract;
 - (b) inducing or attempting to induce another person to enter into, or to offer to enter into, a futures contract; or
 - (c) inducing or attempting to induce another person to acquire or dispose of a futures contract,
- by the person, except where the person—
- (i) is carrying out his functions as a recognized clearing house;
 - (ii) performs the act referred to in paragraph (a), (b) or (c) through another person (“the futures dealer”)—
 - (A) who is licensed or registered for Type 2 regulated activity; or
 - (B) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 2 regulated activity by an authorized financial institution registered for that regulated activity,
 but the person shall be regarded as dealing in futures contracts if, in return for a commission, rebate or other remuneration, the person—

(ix) 任何人透過——

(A) 普遍地提供予公眾閱覽的報章、雜誌、書籍或其他刊物提供上述意見或發出上述分析或報告；或

(B) 供公眾接收(不論是否需付收看費)的電視廣播或無線電廣播提供上述意見或發出上述分析或報告。

但如所提供的上述意見符合“就機構融資提供意見”的涵義，則“就證券提供意見”不包括提供該等意見；

“資產管理”(asset management)就任何人而言，指該人為另一人提供管理證券或期貨合約投資組合的服務，但不包括在以下情況提供的服務——

(a) 任何法團純粹向其任何全資附屬公司、持有其所有已發行股份的控股公司，或該控股公司的其他全資附屬公司提供上述服務；

(b) 就第 1 或 2 類受規管活動獲發牌的人完全因為進行該類活動而附帶提供上述服務；

(c) 就第 1 或 2 類受規管活動獲註冊的認可財務機構完全因為進行該類活動而附帶提供上述服務；

(d) 任何符合以下說明的個人——

(i) 名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示為就第 1 或 2 類(視屬何情況而定)受規管活動受聘於就該類活動獲註冊的認可財務機構的；及

(ii) 完全因為進行該類活動而附帶提供上述服務的；

(e) 律師完全因為在《法律執業者條例》(第 159 章)所指的香港律師行或外地律師行以律師身分執業而附帶提供上述服務；

(f) 大律師完全因為以大律師身分執業而附帶提供上述服務；

(g) 會計師完全因為在《專業會計師條例》(第 50 章)所指的執業單位以會計師身分執業而附帶提供上述服務；或 (由 2004 年第 23 號第 56 條修訂)

(h) 根據《受託人條例》(第 29 章)第 VIII 部註冊的信託公司完全因為履行它作為註冊信託公司的職責而附帶提供上述服務；

“槓桿式外匯交易”(leveraged foreign exchange trading)指以下任何作為——

(a) 訂立或要約訂立槓桿式外匯交易合約，或誘使或企圖誘使他人訂立或要約訂立槓桿式外匯交易合約；

(b) 提供任何財務通融，以便利進行外匯交易或(a)段提述的作為；或

(c) 與另一人訂立或要約與另一人訂立一項為訂立合約而作出的安排，或誘使或企圖誘使某人與另一人訂立一項為訂立合約而作出的安排(不論該項安排是否在酌情決定的基礎上訂立)，以便利進行(a)或(b)段提述的作為，

但不包括為符合下述說明的合約或安排或為建議的該等合約或安排作出的作為，亦不包括在與符合下述說明的合約或安排或與建議的該等合約或安排有關連的情況下作出的作為——

(i) 完全關於以公平價值或市場價值提供財產(貨幣除外)、服務或職位的；

(ii) 凡該等合約或安排是由一個法團訂立的，而——

(A) 該法團的主要業務並不包括任何形式的貨幣交易；

(B) 該法團訂立該等合約或安排的目的，是對沖它就其業務所承受的貨幣兌換風險；及

(C) 該等合約或安排是與另一個法團訂立的；

(I) receives from a third person an offer or invitation to enter into a futures contract, and communicates it, either in his name or in the name of the third person, to the futures dealer;

(II) effects an introduction between the futures dealer or his representative and a third person, so that the third person may enter into, or offer or invite to enter into, a futures contract with the futures dealer;

(III) effects an acquisition or disposal of a futures contract for a third person through the futures dealer;

(IV) makes an offer for the futures dealer to a third person to acquire or dispose of a futures contract; or

(V) accepts for the futures dealer an offer by a third person to acquire or dispose of a futures contract;

(iii) performs the act referred to in paragraph (a), (b) or (c) only on a market referred to in section 3(a), (b) or (c) of the Commodity Exchanges (Prohibition) Ordinance (Cap. 82);

(iv) is a member of a commodity exchange referred to in section 3(d) of the Commodity Exchanges (Prohibition) Ordinance (Cap. 82) who only performs the act referred to in paragraph (a), (b) or (c) on such an exchange;

(v) enters into a market contract;

(vi) is licensed or registered for Type 9 regulated activity and performs the act referred to in paragraph (a), (b) or (c) solely for the purposes of carrying on that regulated activity; or

(vii) as principal performs the act referred to in paragraph (a), (b) or (c) in relation to a futures contract traded otherwise than on a recognized futures market by way of dealing with a person who is a professional investor (whether acting as principal or agent);

“dealing in securities”(證券交易), in relation to a person, means making or offering to make an agreement with another person, or inducing or attempting to induce another person to enter into or to offer to enter into an agreement—

(a) for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or

(b) the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities, by the person, except where the person—

(i) is a recognized exchange company operating a stock market;

(ii) is a recognized clearing house;

(iii) is a corporation providing automated trading services under authorization granted under section 95(2) of this Ordinance;

(iv) performs the act through another person (“the securities dealer”)

(A) who is licensed or registered for Type I regulated activity; or

(B) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type I regulated activity by an authorized financial institution registered for that regulated activity,

but the person shall be regarded as dealing in securities if, in return for a commission, rebate or other remuneration, the person—

(I) receives from a third person an offer or invitation to enter into an agreement referred to in paragraph (a) or (b), and communicates it, either in his name or in the name of the third person, to the securities dealer;

(II) effects an introduction between the securities dealer or his representative and a third person, so that the third person may enter into, or offer or invite to enter into, an agreement referred to in paragraph (a) or (b) with the securities dealer;

(III) effects an agreement referred to in paragraph (a) or (b) on behalf of a third person through the securities dealer;

(IV) makes an offer to the securities dealer on behalf of a third person to acquire or dispose of securities; or

(V) accepts for the securities dealer an offer by a third person to enter into an agreement referred to in paragraph (a) or (b);

- (iii) 屬《貨幣兌換商條例》(第 34 章)所指的兌換交易；
 - (iv) 由《銀行業條例》(第 155 章)第 2(1)條所指的核准貨幣經紀安排，而有關合約或安排的各方均是法團或根據《有限責任合夥條例》(第 37 章)註冊的有限責任合夥；
 - (v) 屬保險人純粹為了其保險業務而進行的交易，而該保險人是根據《保險公司條例》(第 41 章)第 8 條獲授權經營保險業務或根據該條例第 61(1)或 (2)條被當作獲如此授權的；
 - (vi) 屬由任何就第 2 類受規管活動獲發牌或獲註冊的人或透過該人在指明期貨交易所執行的合約，或屬完全附帶於一份或多於一份該類合約或一系列該類合約的合約；
 - (vii) 由以下團體或機構所安排的——
 - (A) 金融管理專員認為屬以下性質的團體——
 - (I) 中央銀行；或
 - (II) 執行中央銀行職能的機構；或
 - (B) 獲金融管理專員批准以代 (A) 節所述的團體行事的機構；
 - (viii) 屬由任何就第 1 類受規管活動獲發牌或獲註冊的人或透過該人在指明證券交易所執行的交易，或屬完全附帶於一宗或多於一宗該類交易或一系列該類交易的交易；
 - (ix) 屬由任何就第 7 類受規管活動獲發牌或獲註冊的人或透過該人執行的交易，或屬完全附帶於一宗或多於一宗該類交易或一系列該類交易的交易；
 - (x) 屬就證監會根據本條例第 104 條認可的集體投資計劃的一項或多於一項權益而作出的交易；
 - (xi) 屬完全附帶於一宗或多於一宗就指明債務證券作出的交易或一系列該類交易的交易；
 - (xii) 由認可財務機構作出的；
 - (xiii) 由任何屬某類別人士的人或從事某類業務的人作出的，而該類別人士或該類業務是由證監會為施行本段而藉根據本條例第 397 條訂立的規則訂明的；
 - (xiv) 由任何人透過交易商作出的，但如該人是為賺取佣金、回佣或其他報酬而進行以下事項，則須視為進行槓桿式外匯交易——
 - (A) 該人從另一人接收為進行以下各項而提出的要約或邀請——
 - (I) 訂立槓桿式外匯交易合約；或
 - (II) 使用任何財務通融以便利進行外匯交易或訂立槓桿式外匯交易合約，並以他本人或該另一人的名義將該要約或邀請傳達予該交易商；
 - (B) 該人使另一人與該交易商或其代表互相介紹，以使該另一人可——
 - (I) 與該交易商訂立槓桿式外匯交易合約；或
 - (II) 使用由該交易商提供的任何財務通融以便利進行外匯交易或訂立槓桿式外匯交易合約；或
 - (C) 該人透過該交易商而為另一人達成槓桿式外匯交易合約的訂立，
- 在本段中，“交易商”(trader)指認可財務機構或就第 3 類受規管活動獲發牌的法團；或
- (xv) 由——
 - (A) 證監會根據本條例第 104 條認可的集體投資計劃作出的；或
 - (B) 任何人為營辦證監會根據本條例第 104 條認可的集體投資計劃而在業務過程中作出的；
- “槓桿式外匯交易合約”(leveraged foreign exchange contract)指任何合約或安排，其效果是該合約或安排的一方同意或承諾——
- (a) 在他本人與協議的另一方或在他本人與另一人之間，按照某貨幣相對於另一貨幣的增值或減值(視屬何情況而定)作出調整；

- (v) as principal—
 - (A) performs the act by way of dealing with a person who is a professional investor (whether acting as principal or agent); or
 - (B) acquires, disposes of, subscribes for or underwrites securities;
 - (vi) enters into a market contract;
 - (vii) issues a prospectus which complies with, or is exempt from compliance with, Part II of the Companies Ordinance (Cap. 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance;
 - (viii) issues a document relating to the securities of a corporation incorporated in Hong Kong which is not a company, being a document which—
 - (A) would, if the corporation were a company, be a prospectus to which section 38 of the Companies Ordinance (Cap. 32) applies, or would apply if not excluded by section 38(5)(b) or 38A of that Ordinance; and
 - (B) contains all the matters which, under Part XII of that Ordinance, would be required to contain if the corporation were a corporation incorporated outside Hong Kong and the document were a prospectus issued by the corporation;
 - (ix) issues a form of application for the shares or debentures of a corporation, together with—
 - (A) a prospectus which complies with, or is exempt from compliance with, Part II of the Companies Ordinance (Cap. 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance; or
 - (B) in the case of a corporation incorporated in Hong Kong which is not a company, a document which contains the matters specified in paragraph (viii)(B);
 - (x) issues a prospectus the registration of which has been authorized by the Commission under section 342C of the Companies Ordinance (Cap. 32) in relation to a collective investment scheme that is a corporation—
 - (A) which is or holds itself out as being engaged primarily in the business of investing, reinvesting or trading in any property (including securities and futures contracts); and
 - (B) the shares in which are exclusively, or primarily, redeemable shares, or issues together with the prospectus a form of application for the shares in the corporation;
 - (xi) issues any advertisement, invitation or document the issue of which has been authorized by the Commission under section 105 of this Ordinance;
 - (xii) is a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) acting as an agent for a collective investment scheme which, by performing the act, is carrying out its functions of distributing application forms, redemption notices, conversion notices and contract notes, receiving money and issuing receipts on behalf of its principal;
 - (xiii) is licensed or registered for Type 4 or Type 6 regulated activity and, solely for the purposes of carrying on that regulated activity, he issues a document under section 175(1)(a)(i) or (ii) of this Ordinance, the content of which complies with the requirements of section 175(1)(b) and (c) of this Ordinance; or
 - (xiv) is licensed or registered for Type 9 regulated activity and performs the act solely for the purposes of carrying on that regulated activity;
- “foreign exchange trading” (外匯交易) means entering into or offering to enter into, or inducing or attempting to induce a person to enter into or to offer to enter into, a contract or arrangement whereby any person undertakes to—
- (a) exchange currency with another person;
 - (b) deliver an amount of foreign currency to another person; or
 - (c) credit the account of another person with an amount of foreign currency,
- but does not include any act performed for or in connection with any contract or arrangement or a proposed contract or arrangement as described in paragraphs (i) to (xv) of the definition of “leveraged foreign exchange trading”;
- “leveraged foreign exchange contract” (槓桿式外匯交易合約) means a contract or arrangement the effect of which is that one party agrees or undertakes to—

- (b) 向協議的另一方或向另一人支付某數額的款項或交付某數量的商品，而該數額或該數量是按照或將會按照某貨幣相對於另一貨幣在幣值上的變動而釐定的；或
- (c) 在議定的將來某個時間，將一筆按議定代價計算的議定數額的貨幣，交付協議的另一方或交付另一人；

“證券交易”(dealing in securities)就任何人而言，指該人與另一人訂立或要約與另一人訂立協議，或誘使或企圖誘使另一人訂立或要約訂立協議，而——

- (a) 目的是或旨在取得、處置、認購或包銷證券；或
- (b) 該等協議的目的或作稱目的是使任何一方從證券的收益或參照證券價值的波動獲得利潤，

但不包括該人在以下情況進行的證券交易——

- (i) 該人是營辦證券市場的認可交易所；
- (ii) 該人是一間認可結算所；
- (iii) 該人是根據本條例第 95(2) 條獲認可提供自動化交易服務的法團；
- (iv) 該人透過另一人(“該交易商”)作出有關作為，而該交易商是——
- (A) 就第 I 類受規管活動獲發牌或獲註冊的；或
- (B) 名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示為就第 I 類受規管活動受聘於就該類活動獲註冊的認可財務機構的，
- 但如該人是為賺取佣金、回佣或其他報酬而進行以下事項，則須視為進行證券交易——
- (I) 從第三者接收為訂立 (a) 或 (b) 段提述的協議而提出的要約或邀請，並以他本人或該第三者的名義將該要約或邀請傳達予該交易商；
- (II) 使該交易商或其代表與第三者互相介紹，以使該第三者可與該交易商訂立 (a) 或 (b) 段提述的協議，或提出與該交易商訂立 (a) 或 (b) 段提述的協議的要約或邀請；
- (III) 透過該交易商代第三者達成 (a) 或 (b) 段提述的協議；
- (IV) 代第三者向該交易商提出取得或處置證券的要約；或
- (V) 為該交易商接受第三者提出的訂立 (a) 或 (b) 段提述的協議的要約；
- (v) 該人以主事人身分進行以下事項——
- (A) 透過與另一人交易而作出有關作為，而該另一人是專業投資者(不論以主事人或代理人身分行事)；或
- (B) 取得、處置、認購或包銷證券；
- (vi) 該人訂立市場合約；
- (vii) 該人發出符合或獲豁免而無需符合《公司條例》(第 32 章)第 II 部的招股章程，如該人是在香港以外地方成立的法團，則指發出符合或獲豁免而無需符合該條例第 XII 部的招股章程；
- (viii) 該人發出關於在香港成立但並非公司的法團的證券的文件，而——
- (A) 假若該法團是一間公司，則該文件便會是《公司條例》(第 32 章)第 38 條適用或(若該文件沒有被該條例第 38(5)(b)或 38A 條豁免)會適用的招股章程；及
- (B) 假若該法團是在香港以外地方成立的法團，而該文件是該法團發出的招股章程的話，則該文件已載有該條例第 XII 部規定該文件須載有的所有事項；
- (ix) 該人發出申請某法團的股份或債權證的表格，而該表格連同——
- (A) 符合或獲豁免而無需符合《公司條例》(第 32 章)第 II 部的招股章程，或(如該法團是在香港以外地方成立的法團)符合或獲豁免而無需符合該條例第 XII 部的招股章程；或
- (B) (如該法團是在香港成立的不是公司的法團)載有第 (viii)(B) 段指明的事項的文件；

- (a) make an adjustment between himself and the other party or another person according to whether a currency is worth more or less (as the case may be) in relation to another currency;
- (b) pay an amount of money or to deliver a quantity of any commodity determined or to be determined by reference to the change in value of a currency in relation to another currency to the other party or another person; or
- (c) deliver to the other party or another person at an agreed future time an agreed amount of currency at an agreed consideration;

“leveraged foreign exchange trading”(槓桿式外匯交易) means—

- (a) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into or to offer to enter into, a leveraged foreign exchange contract;
- (b) the act of providing any financial accommodation to facilitate foreign exchange trading or to facilitate an act referred to in paragraph (a); or
- (c) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into, an arrangement with another person, on a discretionary basis or otherwise, to enter into a contract to facilitate an act referred to in paragraph (a) or (b),

but does not include any act performed for or in connection with any contract or arrangement or a proposed contract or arrangement—

- (i) wholly referable to the provision of property, other than currency, or services or employment at fair or market value;
- (ii) where the contract or arrangement is entered into by a corporation—
- (A) the principal business of which does not include dealing in currency in any form;
- (B) for the purpose of hedging its exposure to currency exchange risks in connection with its business; and
- (C) with another corporation;
- (iii) that is an exchange transaction within the meaning of the Money Changers Ordinance (Cap. 34);
- (iv) arranged by an approved money broker within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) and every party to which is a corporation or a limited partnership registered under the Limited Partnerships Ordinance (Cap. 37);
- (v) that is a transaction executed solely for the purpose of its insurance business by an insurer authorized under section 8 of the Insurance Companies Ordinance (Cap. 41) to carry on insurance business or deemed to be so authorized under section 61(1) or (2) of that Ordinance;
- (vi) that is a contract executed on a specified futures exchange by or through a person who is licensed or registered for Type 2 regulated activity or is wholly incidental to one or more than one such contract or a series of such contracts;
- (vii) arranged by—
- (A) a body which, in the opinion of the Monetary Authority, is—
- (I) a central bank; or
- (II) an institution which performs the functions of a central bank; or
- (B) an organization which, with the approval of the Monetary Authority, is acting on behalf of a body referred to in subparagraph (A);
- (viii) that is a transaction executed on a specified stock exchange by or through a person who is licensed or registered for Type 1 regulated activity or is wholly incidental to one or more than one such transaction or a series of such transactions;
- (ix) that is a transaction executed by or through a person who is licensed or registered for Type 7 regulated activity or is wholly incidental to one or more than one such transaction or a series of such transactions;
- (x) that is a transaction in an interest or interests in a collective investment scheme authorized by the Commission under section 104 of this Ordinance;
- (xi) that is wholly incidental to one or more than one transaction in specified debt securities or a series of such transactions;
- (xii) by an authorized financial institution;
- (xiii) by any person belonging to a class of persons, or carrying on a type of business, as prescribed by rules made under section 397 of this Ordinance for the purposes of this paragraph;

- (x) 該人就某屬法團的集體投資計劃發出已獲證監會根據《公司條例》(第 32 章) 第 342C 條批准註冊的招股章程，或連同該章程發出該法團的股份的申請表格，而——
- (A) 該法團主要是從事或顯示本身主要是從事投資、再投資或買賣任何財產(包括證券及期貨合約)的業務的；及
- (B) 該法團的股份純粹是或主要是可贖回股份；
- (xi) 該人發出已獲根據本條例第 105 條認可發出的廣告、邀請或文件；
- (xii) 該人是以某集體投資計劃的代理人身分行事的，根據《受託人條例》(第 29 章) 第 VIII 部註冊的信託公司，該公司藉作出有關作為而代其主事人執行派發申請表格、贖回通知、轉換通知及成交單據，以及收受金錢及發出收據等職能；
- (xiii) 該人就第 4 或 6 類受規管活動獲發牌或獲註冊，並純粹為進行該類活動而根據本條例第 175(1)(a)(i) 或 (ii) 條發出一份文件，而該文件的內容是符合本條例第 175(1)(b) 及 (c) 條的規定的；或
- (xiv) 該人就第 9 類受規管活動獲發牌或獲註冊，並純粹為進行該類活動而作出有關作為；
- “證券保證金融資”(securities margin financing) 指提供財務通融，以便利——
- (a) 取得在任何證券市場(不論是認可證券市場或香港以外地方的任何其他證券市場) 上市的證券；及
- (b) (如適用的話) 繼續持有該等證券，
- 而不論該等證券或其他證券是否被質押作為該項通融的抵押，但不包括以下各項——
- (i) 提供組成某項包銷或分包銷證券安排的一部分的財務通融；
- (ii) 提供財務通融以便利按照某招股章程的條款取得證券，不論認購有關證券的要約是在香港或其他地方提出的；
- (iii) 由任何就第 1 類受規管活動獲發牌或獲註冊的人提供的，以便利該人為其客戶取得或持有證券的財務通融；
- (iv) 由屬法團的集體投資計劃提供的，對投資於它所發行的集體投資計劃的任何權益的投資提供財務通融，而——
- (A) 該法團主要是從事或顯示本身主要是從事投資、再投資或買賣任何財產(包括證券及期貨合約)的業務的；及
- (B) 該法團的股份純粹是或主要是可贖回股份；
- (v) 由某認可財務機構提供的，以便利該機構的客戶取得或持有證券的財務通融；
- (vi) 由持有某公司不少於 10% 已發行股本的個人向該公司提供的，以便利取得或持有證券的財務通融；或
- (vii) 由某中介人藉使某人與該中介人的有連繫法團互相介紹以使該法團可提供財務通融予該人的方式提供的財務通融。

第 3 部

以下是本條例第 114(5) 條提述的指明活動——

- (a) 取得在證券市場上市的證券，而此舉屬《印花稅條例》(第 117 章) 第 19(16) 條所界定的證券借用或證券交還或組成某項該等證券借用或證券交還的一部分，或屬與該等借用或交還相似的任何證券交易；或

- (xiv) by a person through a trader, but the person shall be regarded as carrying on leveraged foreign exchange trading if, in return for a commission, rebate or other remuneration, the person—
- (A) receives from another person an offer or invitation to—
- (I) enter into a leveraged foreign exchange contract; or
- (II) use any financial accommodation to facilitate foreign exchange trading or facilitate entering into a leveraged foreign exchange contract, and communicates it, either in his name or in the name of the other person, to the trader;
- (B) effects an introduction between the trader or its representative and another person, so that the other person may—
- (I) enter into a leveraged foreign exchange contract with the trader; or
- (II) use any financial accommodation provided by the trader to facilitate foreign exchange trading or facilitate entering into a leveraged foreign exchange contract; or
- (C) effects the entering into a leveraged foreign exchange contract by another person through the trader, where in this paragraph, “trader” (交易商) means a corporation licensed for Type 3 regulated activity or an authorized financial institution; or
- (xv) by—
- (A) a collective investment scheme; or
- (B) a person in the course of business for the purpose of operating a collective investment scheme, authorized by the Commission under section 104 of this Ordinance;
- “securities margin financing” (證券保證金融資) means providing a financial accommodation in order to facilitate—
- (a) the acquisition of securities listed on any stock market, whether a recognized stock market or any other stock market outside Hong Kong; and
- (b) (where applicable) the continued holding of those securities, whether or not those or other securities are pledged as security for the accommodation, but does not include the provision of financial accommodation—
- (i) that forms part of an arrangement to underwrite or sub-underwrite securities;
- (ii) to facilitate an acquisition of securities in accordance with the term of a prospectus, regardless of whether the offer of securities is made in Hong Kong or elsewhere;
- (iii) by a person who is licensed or registered for Type 1 regulated activity in order to facilitate acquisitions or holdings of securities by the person for his client;
- (iv) by a collective investment scheme that is a corporation—
- (A) which is or holds itself out as being engaged primarily in the business of investing, reinvesting or trading in any property (including securities and futures contracts); and
- (B) the shares in which are exclusively, or primarily, redeemable shares, in order to finance investment in any interest in the collective investment scheme of which it is the issuer;
- (v) by an authorized financial institution for the purpose of facilitating acquisitions or holdings of securities by the institution's clients;
- (vi) by an individual to a company in which he holds 10% or more of its issued share capital to facilitate acquisitions or holdings of securities; or
- (vii) by an intermediary by way of effecting an introduction between a person and a related corporation of the intermediary in order that the corporation may provide the person with financial accommodation.

PART 3

The following are the specified activities referred to in section 114(5) of this Ordinance—

- (a) the acquisition of securities listed on a stock market which is or forms part of a stock borrowing or stock return as defined in section 19(16) of the Stamp Duty Ordinance (Cap. 117), or any transaction in securities similar to such a borrowing or return; or

- (b) (i) 向任何就第 1 或 8 類受規管活動獲發牌的法團或向任何認可財務機構提供的、以便利取得或持有證券的財務通融；
- (ii) 由某公司向其董事或僱員提供的、以便利取得或持有該公司本身的證券的財務通融；或
- (iii) 由某公司集團的某成員向該集團的另一成員提供的、以便利該另一成員取得或持有證券的財務通融。

- (b) the provision of financial accommodation—
- (i) to a corporation licensed for Type 1 or Type 8 regulated activity or an authorized financial institution to facilitate acquisitions or holdings of securities;
- (ii) by a company to its directors or employees to facilitate acquisitions or holdings of its own securities; or
- (iii) by a member of a group of companies to another member of the group to facilitate acquisitions or holdings of securities by that other member.

附表 6 [第 113、139 及 143 條]

指明稱銜

項	條文	指明稱銜
1.	本條例第 139(1) 條	“股票經紀”、“債券交易商”、“債券經紀”、“證券交易商”、“證券經紀”、“bond broker”、“bond dealer”、“securities dealer”、“stock dealer”及“stockbroker”
2.	本條例第 139(2) 條	“期貨交易商”、“期貨經紀”、“futures broker”及“futures dealer”
3.	本條例第 139(3) 條	“槓桿式外匯交易商”及“leveraged foreign exchange trader”
4.	本條例第 139(4) 條	“股票顧問”、“證券顧問”、“securities adviser”、“securities consultant”及“stock adviser”
5.	本條例第 139(5) 條	“期貨顧問”、“futures adviser”及“futures consultant”
6.	本條例第 139(6) 條	“機構融資顧問”、“corporate finance adviser”及“corporate finance consultant”
7.	本條例第 139(7) 條	“自動化交易服務提供者”及“automated trading service provider”
8.	本條例第 139(8) 條	“證券保證金融資人”、“margin lender”及“securities margin financier”

附表 7 [第 175 及 177 條]

本條例第 175 條所指由進行第 1、4 或 6 類受規管活動的
中介人或代表提出的要約

第 1 部

為取得證券而提出的要約所須符合的規定

1. 如擬取得的證券當時是在任何證券市場（不論是認可證券市場或香港以外地方的任何其他證券市場）上市或報價的，則該要約

SCHEDULE 6 [ss. 113, 139 & 143]

SPECIFIED TITLES

Item	Provision	Specified titles
1.	Section 139(1) of this Ordinance	“bond broker”, “bond dealer”, “securities dealer”, “stock dealer”, “stockbroker”, “股票經紀”, “債券交易商”, “債券經紀”, “證券交易商” and “證券經紀”
2.	Section 139(2) of this Ordinance	“futures broker”, “futures dealer”, “期貨交易商” and “期貨經紀”
3.	Section 139(3) of this Ordinance	“leveraged foreign exchange trader” and “槓桿式外匯交易商”
4.	Section 139(4) of this Ordinance	“securities adviser”, “securities consultant”, “stock adviser”, “股票顧問” and “證券顧問”
5.	Section 139(5) of this Ordinance	“futures adviser”, “futures consultant” and “期貨顧問”
6.	Section 139(6) of this Ordinance	“corporate finance adviser”, “corporate finance consultant” and “機構融資顧問”
7.	Section 139(7) of this Ordinance	“automated trading service provider” and “自動化交易服務提供者”
8.	Section 139(8) of this Ordinance	“margin lender”, “securities margin financier” and “證券保證金融資人”

SCHEDULE 7

[ss. 175 & 177]

OFFERS BY INTERMEDIARIES OR REPRESENTATIVES FOR
TYPE 1, TYPE 4 OR TYPE 6 REGULATED ACTIVITY
UNDER SECTION 175 OF THIS ORDINANCE

PART 1

REQUIREMENTS TO BE SATISFIED IN RELATION TO
OFFERS TO ACQUIRE SECURITIES

1. If the securities proposed to be acquired are currently listed or quoted on any stock market, whether a recognized stock market or any other stock market outside Hong Kong, the offer shall

(12) 如廣管局信納某項其他須領牌電視節目服務只擬供或可供某單一屋苑接收，廣管局可藉送達有關的持牌人或尋求成為持牌人的人的書面通知，寬免在“其他須領牌電視節目服務”的定義中 (b)(i) 段指明的規定。

(13) 在本條例中——

(a) 對“telecommunications”的提述包括對“telecommunication”的提述；

(b) 對“Telecommunications”的提述包括對“Telecommunication”的提述。

第 II 部

業務守則及指引

3. 廣管局對業務守則的批准

(1) 在符合第 (8) 款的規定下，廣管局可就本條例施加於持牌人的規定或就牌照條件向持牌人提供實務指引——

(a) 批准和發出該局認為就上述目的而言屬適合的業務守則 (不論是否由該局擬備)；及

(b) 批准該局認為就上述目的而言屬適合並由其他人或擬由其他人發出的業務守則。

(2) 凡廣管局根據第 (1) 款批准任何業務守則，該局須藉憲報公告——

(a) 指出有關的守則，並指明該項批准的生效日期；及

(b) 指明該守則是為施行本條例甚麼規定或甚麼牌照條件而批准的。

(3) 廣管局可——

(a) 不時修訂該局根據本條擬備的業務守則的全部或其中任何部分；及

(b) 批准對或擬對當其時已根據本條批准的業務守則的全部或任何部分作出的修訂，

(12) The Broadcasting Authority may, by notice in writing served on the licensee, or the person seeking to be a licensee, concerned, waive the requirement specified in paragraph (b)(i) of the definition of “other licensable television programme service” if the Broadcasting Authority is satisfied that the other licensable television programme service concerned is only intended or available for reception by a single housing estate.

(13) In this Ordinance—

(a) a reference to “telecommunications” includes “telecommunication”;

(b) a reference to “Telecommunications” includes “Telecommunication”.

PART II

CODES OF PRACTICE AND GUIDELINES

3. Approval of codes of practice by Broadcasting Authority

(1) Subject to subsection (8), for the purpose of providing practical guidance for licensees in respect of any requirements under this Ordinance imposed on licensees or in respect of licence conditions, the Broadcasting Authority may—

(a) approve and issue such codes of practice (whether prepared by it or not) as in its opinion are suitable for that purpose; and

(b) approve such codes of practice issued or proposed to be issued otherwise than by it as in its opinion are suitable for that purpose.

(2) Where a code of practice is approved under subsection (1), the Broadcasting Authority shall, by notice in the Gazette—

(a) identify the code concerned and specify the date on which its approval is to take effect; and

(b) specify for which of the requirements under this Ordinance or licence conditions the code is so approved.

(3) The Broadcasting Authority may—

(a) from time to time revise the whole or any part of any code of practice prepared by it under this section; and

(b) approve any revision or proposed revision of the whole or any part of any code of practice for the time being approved under this section,

而第(2)款的條文在經必要的變通後，適用於根據本款作出的批准，一如該等條文適用於根據第(1)款作出的批准。

(4) 廣管局可隨時撤回任何根據本條而對某業務守則作出的批准。

(5) 凡廣管局根據第(4)款撤回對某業務守則的批准，該局須藉憲報公告指出該守則，並指明該局對該守則的批准終止有效的日期。

(6) 本條例中提述“業務守則”，即提述該守則經根據本條批准而對其全部或部分作出的任何修訂而在當其時具有效力的版本。

(7) 根據第(1)(b)款賦予廣管局批准業務守則的權力，包括批准該守則的某部分的權力，而在本條例中，“業務守則”據此可理解為包括該守則的某部分。

(8) 廣管局在根據第(1)款批准業務守則或根據第(3)款批准對該守則的修訂或擬作出的該等修訂前——

(a) (如該守則或該經如此修訂的守則(視屬何情況而定)將會全部或部分適用於某些持牌人)須諮詢該局認為合適的並代表該等持牌人的團體；及

(b) (在該守則或該經如此修訂的守則(視屬何情況而定)涉及廣播服務的技術標準的範圍內)須在該局認為合適的情況下諮詢電訊局長。

(9) 為免生疑問，現宣布：廣管局可為不同類別的持牌人，根據第(1)款批准不同的業務守則，亦可為該款所述的相同或不同的規定或就牌照條件，如此批准不同的業務守則。

4. 指引

(1) 廣管局可不時安排擬備不抵觸本條例並關乎——

(a) 廣管局擬執行本條例賦予該局的職能的方式的指引；

(b) 廣管局認為合適的與本條例有關的其他事宜的指引；

並安排以憲報公告刊登該等指引，以使持牌人或尋求成為持牌人的公司有所依循。

and the provisions of subsection (2) shall, with the necessary modifications, apply in relation to the approval of any revision under this subsection as they apply in relation to the approval of a code of practice under subsection (1).

(4) The Broadcasting Authority may at any time withdraw its approval from any code of practice approved under this section.

(5) Where under subsection (4) the Broadcasting Authority withdraws its approval from a code of practice approved under this section, it shall, by notice in the Gazette, identify the code concerned and specify the date on which its approval of it is to cease to have effect.

(6) References in this Ordinance to a “Code of Practice” are references to that code as it has effect for the time being by virtue of any revision of the whole or any part of it approved under this section.

(7) The power of the Broadcasting Authority under subsection (1)(b) to approve a code of practice issued or proposed to be issued otherwise than by it shall include power to approve a part of such a code and, accordingly, in this Ordinance “Code of Practice” may be read as including a part of such a code.

(8) The Broadcasting Authority shall, before approving a code of practice under subsection (1) or any revision or proposed revision of the code under subsection (3), consult with—

(a) such bodies representative of licensees to which the code or the code as so revised, as the case may be, will apply (whether in whole or in part); and

(b) in so far as the code or the code as so revised, as the case may be, relates to the technical standards of a broadcasting service, the Telecommunications Authority,

as it thinks fit.

(9) For the avoidance of doubt, it is hereby declared that different codes of practice may be approved under subsection (1) for different classes of licensees, and may be so approved for the same or different requirements mentioned in that subsection or licence conditions.

4. Guidelines

(1) The Broadcasting Authority may from time to time cause to be prepared and published by notice in the Gazette, for the guidance of licensees or companies seeking to be licensees, guidelines not inconsistent with this Ordinance—

(a) indicating the manner in which the Broadcasting Authority proposes to perform functions conferred by this Ordinance upon the Broadcasting Authority;

(b) on such other matters relevant to this Ordinance as the Broadcasting Authority thinks fit.

~~(d) 持牌人或該人在香港以外地方的刑事紀錄，而該等紀錄所關乎的行為，假若是在香港作出的即會構成或組成 (c) 段所述的持牌人或該人的香港刑事紀錄部分內容者。~~

22. 防止干預持牌人在節目內容方面的獨立性

(1) 持牌人不得協議在其領牌服務內包括或不包括任何材料，但持牌人正在訂約以求獲得供應給其領牌服務的材料則不在此限。

(2) ~~任何協議中如有任何規定持牌人在其領牌服務內包括或不包括任何材料的條文，不得針對該持牌人強制執行該條文，但如該材料屬根據該協議將會供應的材料，則不在此限。~~

23. 關於電視節目服務的一般規定

(1) 持牌人在任何時間均須負責確保其領牌服務不包括潛送訊息。

(2) 除第 (3) 款另有規定外，持牌人須——

- (a) 遵守其牌照條件；
- (b) 遵守本條例所訂並適用於該持牌人的規定；
- (c) 遵從根據本條例發出或作出並適用於該持牌人的任何指示、命令、決定或裁定；
- (d) 遵守適用於該持牌人的業務守則的所有條文；及
- (e) 在不影響任何與本條有關的業務守則的實施、根據第 42(1)(e) 條訂立的規例或廣管局根據《廣播事務管理局條例》(第 391 章) 第 9 條而有的職能的原則下，確保其領牌服務在電視節目內容及廣播技術方面均維持達到適當標準。

(3) 第 (2) 款不適用於政府所提供的材料。

(4) 為免生疑問，現宣布：如持牌人的領牌服務包括或會包括根據《電影檢查條例》(第 392 章) 獲豁免或核准上映或公布的材料，持牌人亦不因此而獲免履行根據本條例他須履行的任何責任。

~~(d) the criminal record in places outside Hong Kong of the licensee or person in respect of conduct which, if done in Hong Kong, would constitute or form part of the criminal record in Hong Kong of the licensee or person as mentioned in paragraph (c).~~

22. Prevention of interference with programming independence of licensees

(1) A licensee shall not, except in respect of material the supply of which it is contracting for its licensed service, agree to include or to refrain from including in its licensed service any material.

(2) Any provision in an agreement which requires a licensee to include or to refrain from including in its licensed service any material, other than material to be supplied under the agreement, shall not be enforceable against the licensee.

23. General requirements as to television programme services

(1) A licensee shall be responsible at all times for ensuring that its licensed service does not include a subliminal message.

(2) Subject to subsection (3), a licensee shall—

- (a) comply with its licence conditions;
- (b) comply with any requirements under this Ordinance which are applicable to it;
- (c) comply with any directions, orders, or determinations, under this Ordinance which are applicable to it;
- (d) comply with all provisions in a Code of Practice which are applicable to it; and
- (e) without prejudice to the operation of any Code of Practice which relates to this section, to any regulations under section 42(1)(e) or to the Broadcasting Authority's functions under section 9 of the Broadcasting Authority Ordinance (Cap. 391), secure proper standards for its licensed service with regard to television programme content and technical performance.

(3) Subsection (2) shall not apply in the case of material supplied by the Government.

(4) For the avoidance of doubt, it is hereby declared that the fact that any material included or to be included in a licensee's licensed service is material exempted or approved for the purposes of exhibition or publication under the Film Censorship Ordinance (Cap. 392) does not by itself relieve the licensee of any obligation under this Ordinance.

- (5) 在本條中——
 “潛送訊息”(subliminal message) 指播送時間短暫而不足以使人對所播送材料留下有意識的印象；
 “標準”(standards) 就電視節目內容而言，包括規定可於一天內的哪個時間提供某類別電視節目內容的限制。

第 VI 部

牌照的執行

24. 廣管局及電訊局長的指示

- (1) 廣管局可向持牌人發出書面指示(關於技術標準的指示除外)，規定持牌人須採取有關通知指明的該局認為必須的行動，以使持牌人遵守某訂明條例的任何條文、任何牌照條件或適用於持牌人的業務守則的任何條文。
- (2) 電訊局長可向持牌人發出書面指示，規定持牌人須採取關乎技術標準而在有關通知內指明的該局認為必須的行動，以使持牌人遵守某訂明條例的任何條文、任何牌照條件或適用於持牌人的業務守則的任何條文。
- (3) 廣管局須安排在憲報刊登根據第(1)款發出的指示，或以其認為合適的其他方式刊登。

25. 對持牌人業務的調查

- (1) 廣管局如信納為妥善履行其根據某訂明條例而具有的職能以確保持牌人遵守某牌照條件，或遵守該條例所訂並適用於該持牌人的規定，或遵守根據該條例發出或作出的並適用於該持牌人的指示、命令、決定或裁定，或遵守適用於該持牌人的業務守則條文，以致有此需要，可以書面授權任何人在該局於授權書內指明的時間，作出以下全部或任何一項行動——

- (5) In this section—
 “standards” (標準), in relation to television programme content, includes restrictions on the time of day when content of a particular class may be provided;
 “subliminal message” (潛送訊息) means the transmission of material the duration of which is so brief that it does not enable a person to obtain a conscious picture of the material.

PART VI

ENFORCEMENT OF LICENCES

24. Directions of Broadcasting Authority and Telecommunications Authority

- (1) The Broadcasting Authority may issue directions in writing to a licensee (except directions relating to technical standards) requiring it to take such action specified in the notice as the Broadcasting Authority considers necessary in order for the licensee to comply with any requirement under a prescribed Ordinance, any licence condition or any provision in a Code of Practice applicable to it.
- (2) The Telecommunications Authority may issue directions in writing to a licensee requiring it to take such action specified in the notice with regard to technical standards as the Telecommunications Authority considers necessary in order for the licensee to comply with any requirement under a prescribed Ordinance, any licence condition or any provision in a Code of Practice applicable to it.
- (3) The Broadcasting Authority shall cause directions under subsection (1) to be published in the Gazette or in such other manner as it thinks fit.

25. Investigation of licensee's business

- (1) Where the Broadcasting Authority is satisfied that it is necessary for the proper performance of its functions under a prescribed Ordinance in order to ensure a licensee's compliance with a licence condition, a requirement under the Ordinance which is applicable to it, a direction, order, or determination, under the Ordinance which is applicable to it, or a provision in a Code of Practice which is applicable to it, it may authorize in writing any person to do all or any of the following at such times as are specified by it in the authorization——

附錄 II

證券及期貨事務監察委員會持牌人或註冊人操 守準則 - 第 **16** 段

分析員

16.1 適用範圍

- (a) 本段適用於下列人士：
 - (i) 分析員；
 - (ii) 僱用任何分析員的商號；及
 - (iii) 發表任何投資研究的商號。
- (b) 本段涵蓋就於香港買賣的證券作出的投資研究及對該等證券構成影響的投資研究。

16.2 釋義

- (a) 就本段而言，“分析員”指商號內擬備及／或發表投資研究或投資研究的實質內容的個人。該詞並不涵蓋以下個人：
 - (i) 在完全附帶於本身的交易或經紀職能的情況下提供投資意見或評論的個人；
 - (ii) 所進行的研究純粹供該商號內部使用且不會分發予客戶的個人；或
 - (iii) 提供個人(一對一)投資意見的個人。

就第 16.2(a)(ii)段而言，商號的內部使用包括集團內所有公司(而並非單純第 16.2(d)段所指明的商號)的使用。
- (b) 就本段而言，“有聯繫者”指：
 - (i) 分析員的配偶、親生或領養的未成年子女，或未成年繼子女；
 - (ii) 某信託的受託人，而分析員、其配偶、其親生或領養的未成年子女或其未成年繼子女是該信託的受益人或酌情對象；或
 - (iii) 慣於或有義務按照分析員的指示或指令行事的另一人。
- (c) 就本段而言，“財務權益”指任何通常為人所知的財務權益，例如就某家上市法團的證券的投資，或上市法團與商號或分析員之間的財務通融安排。

“財務權益”一詞並不包括根據正常交易關係而作出的商業貸款，或在任何集體投資計劃的投資(儘管事實上該計劃擁有涉及某上市法團的證券的投資)。

- (d) 就本段而言，“商號”指任何中介人及其公司集團。若某公司在香港進行涉及證券的以下業務，才會被視為一家公司集團的公司：
 - (i) 投資銀行；
 - (ii) 自營交易或莊家活動；或
 - (iii) 代理經紀。
- (e) 就第 16.5(c)段而言，“受僱於商號或與該商號有聯繫的個人”指：
 - (i) 受僱於該商號而分析員慣於或有義務按照其發出的指示或指令行事的個人；
 - (ii) 受僱於該商號及對有關投資研究的題材或內容或分發時間具有影響力的個人；或
 - (iii) 負責釐定有關分析員的報酬的個人。
- (f) 就本段而言，“投資研究”包括載有以下任何一項資料的文件：
 - (i) 證券的投資分析結果；
 - (ii) 對可能影響證券日後表現的因素的投資分析，但不包括就宏觀經濟或策略性事宜所作的任何分析；或
 - (iii) 根據任何前述的結果或投資分析而提出的意見或建議，
並須據此解釋任何投資／研究報告。
- (g) 就本段而言，“上市法團”指本身的證券在香港聯合交易所有限公司上市的法團。
- (h) 就本段而言，“證券”指由上市法團發行的、在香港聯合交易所有限公司上市或交易的股份及該等股份的任何同時於香港聯合交易所有限公司上市或交易的權證或期權。

16.3 原則

證監會相信，以下原則對於本段適用的所有分析員及商號所進行的業務至關重要¹。

(a) 分析員的交易及財務權益

應設立機制，使分析員的交易活動或財務權益不會妨礙其投資研究及建議。

(b) 商號的財務權益及商務關係

應設立機制，使僱用該分析員的商號的交易活動、財務權益或商務關係不會妨礙該等分析員的投資研究及建議。

(c) 分析員的匯報途徑及補償

應設立分析員的匯報途徑及補償安排架構，藉以消除或大幅限制任何實際及潛在的利益衝突。

(d) 商號的監察制度

僱用分析員的商號應確立書面的內部程序或監控措施，以識別及消除、避免、管理或披露任何實際及潛在的分析員利益衝突。

(e) 外來影響

應消除或管理證券發行人、機構投資者及其他外間人士對分析員施加的任何不當影響。

(f) 披露的清晰度、具體程度及顯眼程度

就實際及潛在的利益衝突的披露應是完整、適時、清晰、準確、具體及顯眼的披露。

(g) 誠信及道德操守

分析員應秉持嚴格的誠信標準。

¹ 這些原則大致上重申國際證券事務監察委員會組織(“國際證監會組織”)於 2003 年 9 月 25 日發表的《處理賣方證券分析員利益衝突的原則聲明》(“《原則聲明》”)中的原則。除了這些原則外，本會亦鼓勵分析員及商號採納《原則聲明》所列載的措施，作為最佳作業方式。《原則聲明》載於國際證監會組織的網站，網址為 www.iosco.org。

16.4 分析員的交易及財務權益

(a) 商號應為分析員訂立交易政策

僱用任何分析員的商號應設立及維持書面政策及監控程序，管限任何該等分析員的交易及買賣，從而消除、避免、管理或披露因該等交易或買賣而產生的任何實際及潛在的利益衝突。

(b) 分析員進行交易的限制

分析員或其有聯繫者不應：

- (i) 以有違其已發表的建議的方式；或
- (ii) 在就某上市法團的投資研究發出前 30 日內及就某上市法團的投資研究發出後的 3 個營業日內；

交易或買賣涉及其評論的上市法團的任何證券，但在於有關商號的政策內概述的特殊情況以及已獲得有關的法律或監察部門預先核准的情況下進行的交易或買賣除外。

就第 16.4(b)(ii)段而言，如分析員或其有聯繫者曾在之前的 30 日內，交易或買賣涉及某上市法團的證券，則該分析員不應就該上市法團發出任何投資研究，但在發生會影響該等證券的價格且已為公眾所知悉的重大事件的情況下發出投資研究則除外。

(c) 相關關係的披露

如分析員或其有聯繫者擔任該分析員所評論的上市法團的高級人員，該分析員便應在研究報告中披露該項事實。

(d) 相關財務權益的披露

如分析員或其有聯繫者擁有與該分析員所評論的上市法團有關的任何財務權益，該分析員便應在研究報告中披露該項事實。

16.5 商號的財務權益及商務關係

(a) 商號應作出相關財務權益的披露

如商號擁有任何上市法團的財務權益，而某研究報告所評論的是涉及該上市法團的證券，且該等權益的合計總額相等於或高於該上市法團的市場資本值的1%，商號便應在研究報告中披露該項事實。

(b) 商號應作出相關莊家活動的披露

商號如為涉及有關上市法團的證券進行莊家活動，商號便應在研究報告中披露該項事實。

(c) 商號應作出相關關係的披露

如受僱於商號或與該商號有聯繫的個人擔任有關上市法團的高級人員，該商號便應在研究報告中披露該項事實。

(d) 商號作出相關商務關係的披露

商號如與有關上市法團有投資銀行業務的關係，便應在研究報告中披露該項事實。在過去 12 個月內就投資銀行服務所收取的任何補償或委託都構成投資銀行業務關係。

(e) 商號於發出投資研究前進行不當交易

如商號的投資研究涵蓋涉及某上市法團的證券，商號便不應在該等投資研究發表前不當地進行該等證券的交易或買賣。

(f) 商號不應向上市法團提供若干保證

商號不應為求展開或影響與上市法團的商務關係而提供任何承諾或保證，表示其將會在投資研究內發表對該上市法團有利的評論，或更改其研究的涵蓋範圍或評級。

(g) 安靜期

在公開發售中擔任經理人、保薦人或包銷商的商號，不應在以下期間內的任何時間，發出涵蓋某上市法團的任何投資研究：

- (i) 如該宗發售屬首次公開招股，則有關期間為緊接該等證券定價後的 40 天；或
- (ii) 如屬第二次公開發售，則有關期間為緊接該等證券定價後的 10 天，

除非該商號在其正常業務的過程中，一直以來都有按照合理的規律定期就該上市法團發出投資研究，或在當發生會影響有關證券的價格且已為公眾所知悉的重大事件的情況下發出投資研究則除外。

證券的定價日期指訂定有關發售的具體價格的日期。

16.6 分析員的匯報途徑、補償及在其他部門的參與

(a) 分析員的匯報途徑與補償

凡設有投資銀行部的商號都不應：

- (i) 安排其分析員向該部門匯報；或
- (ii) 將其分析員的補償與任何特定的投資銀行交易直接掛鉤。

(b) 投資銀行部預先核准投資研究

凡設有投資銀行部的商號都不應允許該部門預先核准分析員的報告或建議，但由投資銀行部於研究報告發表前，在監察部或法律部的監察下審核該報告內的事實是否準確則屬例外。

(c) 分析員不應招攬投資銀行業務

分析員不應參與旨在招攬投資銀行業務的商業活動，例如商務推銷及交易巡迴推介。

16.7 商號的監察制度

商號應設立、維持及落實執行一套書面政策及監控程序，以消除、避免或管理實際及潛在的分析員利益衝突。商號應在顧及本身的特殊架構與業務模式，及其客戶的經驗與投資狀況的情況下，適當地制定相關的政策及程序。

16.8 外來影響

如上市法團或其他第三者曾就有關投資研究提供或同意提供任何補償或其他利益，則分析員或其所屬商號便應在研究報告中披露該事實。

16.9 透過大眾媒體作出評論或建議

分析員透過大眾媒體作出評論或建議時，第 16 段內所有根據下文第 16.9(a) 及(b)段(如適用)作出修改的條文將適用。

(a) 分析員以個人身分在大眾媒體中出現

如分析員在大眾媒體中以個人身分就涉及某上市法團的證券提供分析或評論(包括親身出現)，便應於提供該等分析或評論時披露以下資料：

- (i) 其姓名；
- (ii) 其持牌狀況；及
- (iii) 如其及／或其有聯繫者於上市法團擁有財務權益，則披露擁有該等權益的事實。

(b) 分析員以個人身分回應觀眾／聽眾及記者的提問

當分析員被觀眾／聽眾要求或在其他情況下被記者要求就特定證券作出分析或評論時，分析員可以作出有關分析或評論(儘管事實上該分析員及／或其有聯繫者在該分析員提供有關分析或評論前的30天內曾經買賣有關證券)，但其必須作出第16.9(a)(i)至(iii)段所述明的披露。

(c) 商號透過大眾媒體傳達投資研究

為免生疑問，商號透過大眾媒體傳達其投資研究時(例如在贊助節目中發布其研究報告的全部或部分內容)，第16段內所有有關條文將適用。

16.10 信息披露的清晰度、具體程度與顯眼程度

(a) 披露的素質

凡任何事宜須根據本段的規定而作出披露者，該等披露應該符合以下說明：

- (i) 清晰；
- (ii) 準確；
- (iii) 具體；
- (iv) 具備足夠的顯眼程度；及
- (v) 以適時和公平的方式發布。

(b) 披露方法

根據本段的規定作出的任何披露，應以切合投資研究或分析員的意見或評論的發放媒體的方法作出。須作出的披露限於有關事宜的事實，而所涉及的數額或性質等詳情則毋須披露。

(c) 披露責任

凡分析員及／或商號已作出有關披露，倘若有關的大眾媒體發表或以其他方式轉載其投資研究或建議的全部或部分內容而沒有附帶該等有關披露，分析員及／或商號均毋須就此負責。

16.11 誠信及道德操守

- (a) 分析員的分析及建議應該是建基於合理的基礎上。
- (b) 分析員在提出建議時，應對所使用的詞語賦予定義，並貫徹使用該等定義。



SECURITIES AND
FUTURES COMMISSION
證券及期貨事務監察委員會

附錄 III

完善市場 精明投資— 香港的衍生權證市場報告

Hong Kong
November 2005

香港
2005 年 11 月

- (c) 回佣是否反映個別投資者承擔的佣金費用淨額；~~—— 我們對經紀行進行的視察發現經紀行與投資者攤分回佣的情況；或~~
- (d) 產生回佣的交易是否投資者為獲取佣金回扣而互相進行買賣的結果。

201. 我們建議全面禁止佣金回扣及其他獎勵計劃，並歡迎市場對此項建議及其他可行方法提出意見。

6：頒布新的推銷指引

許多權證發行人均採取高滲透率的推銷策略

202. 我們的檢討顯示，許多衍生權證發行人均採取高滲透率的推銷策略，藉此推廣他們的衍生權證。較常見的活動包括——

- (1) 透過傳媒(包括報章及互聯網)發表定期市場評論或意見；
- (2) 邀請分析員或市場評論員在所贊助的電台或電視節目中發表意見；及
- (3) 透過其他大眾傳媒宣傳衍生權證，例如在公共交通工具及其他公眾場所進行播放。

203. 因此，衍生權證市場在過去數年經歷大幅增長，而衍生權證目前已被視為可供香港投資大眾投資的主流金融產品之一。然而，這卻忽略了衍生權證的複雜性及投資於該等權證所附帶的更高風險。

證監會發表的指引

204. 在 2001 年 12 月，證監會就衍生權證的推銷資料向衍生權證發行人發表指引³⁶。該指引列明推銷文件內應提供哪些資料，包括諸如合約細則、通訊、市場動態及公開廣告等資料。然而，部分市場參與者表示不清楚該指引是否只適用於以書面形式提供的推銷資料，還是同時適用於透過其他傳媒(例如電台、電視、互聯網等)進行的推銷活動。

205. 另外，證監會亦在其《操守準則》³⁶內加入有關獲證監會發牌或註冊的分析員的潛在及實際利益衝突的指引。該指引適用於所有在聯交所上市或買賣的證券，因此也包括衍生權證。因此，透過傳媒對衍生權證發表評論或提供意見的持牌或註冊分析員必須遵守該指引。在香港，由於許多散戶投資者都會視在大眾傳媒上發表的評論或意見為投資信息的重要來源，所以該指引非常重要。

推銷及宣傳活動的問題

206. 儘管已有現行的指引³⁶，但我們觀察到衍生權證發行人所採用的多種日趨普遍的推銷及宣傳手法，而這正是引起我們關注的原因。尤其是——

³⁶ 指《證券及期貨事務監察委員會持牌人或註冊人操守準則》。該指引載於《操守準則》第 16 段。

- (1) 報章上有關衍生權證的廣告往往只刊載正面的分析；
 - (2) 有時候不清楚有關資料到底是廣告還是評論；及
 - (3) 發行人選擇性地引述投資者的意見，即只引述聲稱曾從買賣發行人的衍生權證中賺取利潤的投資者的意見。
207. 上述做法導致投資者獲得對衍生權證的扭曲看法，因而令到這種本來已經複雜的產品更難得到人們恰當的理解。

我們的建議

208. 有見及此，我們建議頒布有關推銷衍生權證的新指引，因而使有關指引明確包含經由傳媒(例如電台、電視、互聯網等)進行的宣傳。我們亦建議有關指引採取以原則為本而非規範性的方針來規管整個範疇內的推銷及宣傳活動。
209. 我們的初步意見認為上述經修訂的指引很可能需要納入《上市規則》，從而將確保遵守有關規則的責任交由發行人來承擔。我們亦會就此事宜與廣播事務管理局商討，因為我們認為單憑我們本身的規則並不足以涵蓋所有推銷活動。

7. 淺白語言

210. 我們認為，市場參與者，尤其是發行人，在加強投資者對衍生權證的認識方面能夠擔當同樣重要的角色，方法是確保其產品的資料可供隨時閱覽及易於理解。尤其是，該等資料應盡可能以明確及非技術性的語言撰寫，而假如篇幅過於冗長，則應附載同樣可供隨時閱覽及易於理解的簡明概要。

現有文件所造成的困難

211. 交易所網站內可供閱覽的衍生權證上市文件包括—
- (1) 基礎上市文件 — 這文件載列多隻衍生權證的條款及條件，以及有關發行人及發行人的任何擔保人的詳情，篇幅一般超過 200 頁；
 - (2) 補充上市文件 — 這文件載列與個別發行有關的資料(例如發行概要、其條款及條件、流通量提供者的詳情、相關風險因素以及就基礎上市文件所提供的資料的任何更改詳情)，篇幅一般約 20 頁。
212. 兩份文件均以正式的法律語言擬備，令散戶投資者難以理解。相反，自 2005 年初起，若干以一般投資者為對象的非上市結構性票據及非上市債券的發行人已開始採用技術性較低的語言來擬備文件。這些以“淺白語言”撰寫的文件與衍生權證的文件相似，即會有一份文件載列適用於某一計劃中的全部發行的條款，及有另一份文件載列只適用於個別發行的條款。

附錄 IV

廣播事務管理局發出的
電台業務守則—節目標準、
電台業務守則—廣告標準、
電視通用業務守則—節目標準及
電視通用業務守則—廣告標準
有關條文的節錄

電台業務守則 — 節目標準

廣播事務管理局

2005年2月4日

的節目，但是持牌人亦應意識到某些節目可能會有大量兒童或青少年收聽。該等情況通常出現於一些經常或特意以兒童及青少年為對象的節目，而其內容又特別吸引兒童或青少年。因此，持牌人不得在通常以兒童或青少年聽眾為對象的節目時段內，安排播放以成年聽眾為對象的節目。

18. 兒童節目應有助兒童明瞭正確的社會觀念、道德觀念及精神修養，促進兒童人格、品德及智力健全發展。

19. 播放一些有理由相信能夠吸引兒童或青少年的節目時，應嚴格遵守節目標準中對於言詞、暴力及性方面所作出的規定。持牌人必須考慮到聽眾以青少年居多。

警告

20. 倘若任何節目內容有可能引致部分聽眾反感或不安，應在節目開始前加上有效警告。

持平

一般原則

21. 持牌人必須確保新聞節目及有關香港公共政策或備受香港公眾關注而又具爭議的真實題材節目，能夠恰當地持平（個人意見節目除外，有關該等節目的規定，另見下文第 36 段）。真實題材節目是指根據真實資料製作的非虛構節目，例如新聞、時事節目、個人意見節目、聽眾來電節目、紀錄片及採用調查手法報道的節目。

22. 所謂恰當地持平，是指節目在報道不同的言論時，必須以公正不偏的態度處理。討論備受公眾關注的問題時，節目應盡量反映所有主要而又關乎宏旨的觀點，以便求取平衡。節目不應隱瞞事實而有所偏倚，或輕重倒置而誤導聽眾。持牌人必須盡一切合理努力，確保節目內的真實資料準確無誤。

23. 恰當地持平，其中所謂「恰當」是指因應不同的題材和節目類別，作恰當或適當的處理。恰當地持平，並非指每一方的意見要佔用相等的節目時間或每一方的意見長短相等，亦非要求節目對每個富爭議性的問題保持絕對中立。作決定時，持牌人應以專業判斷為考慮標準。

24. 節目主持人應盡量鼓勵各方表達意見。在直播節目中，主持人應提防參與討論者發表沒有事實根據的言論。有需要時，節目主持人應盡量據其所知，糾正資料的謬誤。

在一段時間內做到持平

25. 在單一個節目內反映主要的對立意見是理想的做法，但不一定可行。有時由一系列多集組成的節目可視作一個完整的節目。有些情況，在個別節目內只報道較片面的意見亦可能是合適的做法。持牌人需要按個別情況運用編輯判斷力。要在一段時間內做到持平，並不一定要在單一個節目內令各方都有機會表達意見。

新聞

26. 新聞節目應就所報道的題材向聽眾提供理智而詳盡的闡述，令他們可以得出自己的意見。報道新聞時，應遵守下列規定：

- (a) 新聞報道必須準確和恰當地持平。
- (b) 令人聯想到新聞的音響效果、用語及其他技巧，只應在新聞報道中使用。
- (c) 恐怖突兀、駭人聽聞或令人驚恐的細節，如與所報道事實無重要關係，應予略去。報道新聞應避免引起虛驚。
- (d) 評論與剖析，應與新聞報道清楚區分。
- (e) 報道如與事實不符，應盡快在發覺後更正，或在該節目完結時或在下一節目開始時加以糾正。
- (f) 凡報道本地或國際新聞的真正新聞節目，不得接受贊助。就本段而言，「新聞節目」不應包括新聞專輯、雜誌式新聞節目、新聞評論、時事節目，或商業／財經／體育節目。不得把廣告材料當作新聞播送，也不得把該等材料加入新聞報告或新聞片內。

節目主持人可能存在的利益衝突

27. 在本守則公布後三個月內，持牌人須自行制訂和設立一個機制，讓新聞節目主持人及有關香港公共政策或備受香港公眾關注而又具爭議的真實題材節目主持人，向持牌人披露是否有任何可能會導致其節目出現公正或持平問題的商業協議、安排或理解（不論是否以書面形式作出）存在。持牌人須運用其編輯判斷力，決定：

- (a) 有關的節目主持人應否避免參與討論可能有利益衝突的事宜；或
- (b) 在節目材料播出時，應否向聽眾披露有相關的商業協議存在。

持牌人必須受理所有公眾人士就其節目可能存在的利益衝突所提出的任何投訴。持牌人須把調查結果通知投訴人及廣管局，並把結果免費供公眾查閱，例如在其網站內發布該等資料。第 27 段不適用於並非由持牌人製作的外購節目。

公平

一般原則

28. 持牌人有責任避免在真實題材節目中對個別人士或團體不公平，尤其不可使用謬誤資料或歪曲事實。持牌人亦不應錯誤引導聽眾，以致對節目提及的人士或團體不公平。

報道法庭案件

29. 報道摘錄自法庭審訊程序或是其他公共紀錄的內容，必須公正而且真確，尤其是報道已經展開審訊程序的刑事案件，處理手法不得有可能妨礙法庭進行公平審訊，而且應避免：

- (a) 對涉案事件預下判斷，尤其是對於被告是否有罪加以推斷；
- (b) 議論案件的是非曲直或實情，以致可能妨礙有關司法程序；

(c) 評論被告的性情或品格；以及

(d) 播出可能有礙司法公正的評論或報道。

事件重演

30. 在真實題材節目內播出的「事件重演」，應該標明是真實事件重演，使聽眾不會誤把虛構的事物當作事實。

訪問

31. 若原定接受訪問的人士未能或不願意應邀參與真實題材節目，則應在節目中以客觀的態度如實交待有關情況，並應小心謹慎，確保不會歪曲他們的意見。

32. 預錄訪問經剪輯和縮短後，受訪者的意見不得遭到歪曲或曲解。

33. 持牌人不應把受訪者過往在錄音訪問中發表的意見，當作是受訪者於廣播時所持的意見，以免歪曲其意見。有需要時應告訴聽眾進行訪問的日期。

回應的權利

34. 節目如會影響個別人士、公司或其他機構的聲譽，持牌人應特別小心處理；應採取一切合理措施，確保本身已盡量公正和準確地報道所有重要事實。

35. 當真實題材節目揭示有不公或不稱職的事件，或帶有損害個別人士或機構的批評，受批評的一方應有適當機會及時作出回應。

個人意見節目

36. 「個人意見節目」是指由主持人或有時候由個別參與節目人士發表本身意見的節目。下列規定適用於所有有關香港公共政策或備受香港公眾關注而又具爭議的個人意見節目：

(a) 個人意見節目開始時，須清楚說明節目的性質。例如以下列字句作出宣布：「本節目只反映節目主持人及／或

個別參與節目人士的個人意見。」

(b) 必須尊重事實，任何個人意見不應以虛假證據為依據。

(c) 節目應提供適當機會，以便其他人可以回應。

(d) 持牌人應注意，任何以系列形式播出的個人意見節目，皆有需要盡量讓多方面意見得以表達。

私隱

一般原則

37. 所有節目均應尊重個人私隱。節目材料的收集，或節目本身處理有關人士的手法，皆可引起有關節目侵犯私隱的投訴。持牌人須確保，節目是按照《個人資料（私隱）條例》（第 486 章）的規定取得材料。持牌人必須以合法及在有關個案的所有情況下屬公平的方法收集材料，作廣播用途。

極度痛苦和悲傷的情景

38. 持牌人對極度沮喪或面對壓力的人士進行訪問或錄音時，應小心處理任何有可能令當事人添加憂慮或悲傷的情況。不應向極度悲傷的人士施壓，逼他們接受訪問。一般來說，要得到死者家屬同意方可報道喪禮。

訪問兒童

39. 不應透過發問向兒童套取他們對家事的意見，亦不應要求他們就一些在他們判斷能力範圍以外的事情發表意見。

報道兒童受性侵犯的罪行

40. 在報道兒童受性侵犯的罪行時，應避免透露該兒童的身分。

過分突出商品

41. 任何節目都不得過分突出屬於商業性質的產品、服務、商標、牌子、標識，或與上述商業利益有關連的人士，以致造成等同廣告的

效果。凡提及上述物品或人士，必須基於節目的編輯需要，又或只是以附帶形式出現。

消費者指南

42. 節目中如提供或包含有產品或服務的評介或消費指南資料，應以最公平的方式處理，並採取最嚴格的編輯標準。這類材料的真正目標，必須是為公眾提供真正的消費者指南，而表達方式必須公平和客觀。此外，持牌人必須確保節目遵守下列規定：

- (a) 持牌人或節目製作人不應因節目提及個別產品或服務而獲得報酬；
- (b) 這類材料必須以為消費者提供產品或服務的真確及客觀資料為宗旨；
- (c) 披露產品牌子或服務商號，必須切題及配合節目的目的；同時，持牌人必須以客觀態度挑選產品或服務，對所有製造商或供應商應一視同仁；
- (d) 這類材料應盡量以研究調查結果為依據；
- (e) 傳達的信息必須準確，而且不得隱瞞重要事實，以致誤導聽眾；
- (f) 應盡可能廣泛提供不同公司、產品或服務的資料，以免對某牌子或公司偏袒或不公。節目若屬於系列形式，則不同產品及服務的資料毋須集中在某一集內播出，而可在同一節目的不同集數中分別播出；
- (g) 只要態度公正客觀，節目主持人可在節目中評價某些產品或服務，但應避免因為個人偏好而過分褒揚某些產品或服務，或提供一些不必要的詳細資料，以免令人覺得有關產品或服務比其他產品或服務優勝；以及
- (h) 這類材料不得包括廣告業務守則規定不可播放廣告的產品或服務。

電台業務守則 — 廣告標準

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- (o) 廣告絕不可鼓勵、挑戰或刺激不喝酒人士或 18 歲以下青少年喝酒。

18. 一般來說，凡飲品所含的乙醇分量以容積計算低於 1.2%，且以低酒精或無酒精的含酒精飲品形式推出，該等飲品的廣告絕不可在兒童節目或接近兒童節目時間播出。特別是乙醇分量以容積計算超出 0.5%，但少於 1.2% 的飲品，不論是否以低酒精或無酒精的含酒精飲品形式推出，該等飲品的廣告一律不可在兒童節目或接近兒童節目時間播出。該類廣告必須符合上文第 17 段第 (a)、(b)、(c)、(d)、(f)、(g)、(h)、(i)、(j)、(l)、(m) 及 (o) 的規定。

教育課程

19. 持牌人須遵守《教育條例》（第 279 章）第 86A 條、《非本地高等及專業教育（規管）條例》（第 493 章）第 34 條，以及《非本地高等及專業教育（規管）規則》（第 493 章附屬法例）第 3 條的規定。

私人用品

20. 推銷私人用品（例如女性衛生產品、避孕套、適用於生殖器一帶的除臭劑、失禁產品等）的廣告，在表達方式上要小心審慎。

財經廣告

21. 持牌人須遵守《附錄 I》所載有關財經廣告的附加標準。

物業廣告

22. 不得在電台播出本港任何住宅、店舖、辦公室或其他使用單位的租售廣告：

- (a) 就已建成樓宇而言，除非廣告商能證明建議中的租售事宜，並無違反在影響該建成樓宇所座落土地的批地條件中的有關租售條款；

- (b) 就未建成樓宇而言——

附錄 I

財經廣告的附加標準

法律責任

1. 持牌人有責任確保廣告符合所有有關法例條文和監管規定，其中包括下文所列者但並不局限於此：

- (a) 《公司條例》（第 32 章）；
- (b) 《銀行業條例》（第 155 章）；
- (c) 《保險公司條例》（第 41 章）；
- (d) 《證券及期貨條例》（第 571 章）；
- (e) 《強制性公積金計劃條例》（第 485 章）；
- (f) 《證券及期貨事務監察委員會（證監會）守則》，包括但
不限於：
 - (i) 《單位信託及互惠基金守則》；
 - (ii) 《與投資有關的人壽保險計劃守則》；
 - (iii) 《集資退休基金守則》；
 - (iv) 《與移民有關的投資計劃守則》；
 - (v) 《證監會強積金產品守則》；
 - (vi) 《證券及期貨事務監察委員會持牌人或註冊人操守
準則》；
 - (vii) 《基金經理操守準則》；
 - (viii) 《企業融資顧問操守準則》；及

(ix) 證監會就其監管的其他類型投資產品（例如紙黃金）而不時發出的規則和指引；以及

(g) 《香港聯合交易所有限公司證券上市規則》和《香港聯合交易所有限公司創業板證券上市規則》。

（上述資料只供參考，本守則使用者有責任查明有哪些適用及新近訂定的法例條文和監管規定。）

存款及儲蓄服務

2. 存款及儲蓄服務的廣告，須遵守下列規定：

(a) 《銀行業條例》（第 155 章）授權經營的任何持牌銀行、有限制牌照銀行及接受存款公司所提供的存款及儲蓄服務：

(i) 廣告不應使用任何字句或措辭聲言存款將會絕對或完全安全，或作類似的表示；

(ii) 廣告不應聲稱或暗示存戶提取存款或應得利息是有所保證或有所保障，除非廣告同時說明保證的性質及程度及擔保人的名稱，或保障的性質及程度（視情況而定）；

(iii) 廣告不應提到機構的名義或法定資本額；以及

(iv) 廣告不應提及機構的資產總額或總存款額，除非該廣告同時亦分別或一併提到實收資本額及儲備金額；或

(b) 邀人存款於香港以外地方的廣告，須遵守《銀行業條例》（第 155 章）附表五載列的規定。

借貸及信貸

3. 《銀行業條例》（第 155 章）授權經營的持牌銀行、有限制牌照銀行及接受存款公司，可為其按揭及其他借貸與信貸服務作廣告宣傳，但須小心處理廣告內容，以免公眾對貸款服務條件有所誤解。

有關股票市場或投資展望的評論或指導意見

4. 除非符合本附錄第 5 及 6 段的規定或適用的法例另作批准（不論是明示或暗示），否則廣告不應包含任何有關股票市場（包括在股票市場上市的證券）、投資展望或任何投資建議的評論或指導意見，也不應提及某種證券、期貨合約或投資產品。

投資產品

5. 須取得證監會批准的投資產品（包括但不限於單位信託、互惠基金、與投資有關的保險計劃、集資退休基金、強制性公積金，以及與移民有關的投資計劃），其廣告須獲證監會依據《證券及期貨條例》（第 571 章）第 105 條予以批准。

受規管活動

6. 關於進行任何受規管活動的廣告（按《證券及期貨條例》（第 571 章）所界定），須遵照《證券及期貨條例》（第 571 章）的相關條文（包括但不限於發出廣告者須獲證監會發牌的規定）。

財經刊物

7. 除非符合本附錄第 5 及 6 段的規定或適用的法例另作批准（不論是明示或暗示），有關投資或其他財經事宜刊物（包括期刊、書籍、電傳文件服務和其他形式的電子發行品）的廣告，都不得推薦某種證券或投資產品。有關該等刊物的訂閱服務廣告，內容也必須概括，不得推薦某種證券或投資產品。

保險單收益估計

8. 廣告不得引述保險單收益的數據例子，包括但不限於分紅人壽保單中未來紅利和股息的估計數字。

電視通用業務守則 — 節目標準

廣播事務管理局

2005年9月9日

第9章 持平公正

適用於所有服務的一般原則

1. 新聞節目應就所報道的題材向觀眾提供理智而詳盡的闡述，令他們可以得出自己的意見。持牌人應確保新聞的報道準確而且恰當地持平。所謂持平，並不表示編輯人員需要摒棄查究精神，亦非要求以相同篇幅報道新聞事件的每一方面，而是要公平客觀地報道每段新聞。

適用於不同類別服務的準則

本地免費及本地收費電視節目服務

持平

一般原則

2. 本地免費及本地收費電視節目服務方面，持牌人必須確保新聞節目及有關香港公共政策或備受香港公眾關注而又具爭議的真實題材節目，能夠恰當地持平（個人意見節目除外，有關該等節目的規定，另見下文第17段）。真實題材節目是指根據真實資料製作的非虛構節目，例如新聞、時事節目、個人意見節目、紀錄片及採用調查手法報道的節目。

3. 所謂恰當地持平，是指節目在報道不同的言論時，必須以公正不偏的態度處理。討論備受公眾關注的問題時，節目應盡量反映所有主要而又關乎宏旨的觀點，以便求取平衡。節目不應隱瞞事實而有所偏倚，或輕重倒置而誤導觀眾。持牌人必須盡一切合理努力，確保節目內的真實資料準確無誤。

4. 恰當地持平，其中所謂「恰當」是指因應不同的題材和節目類別，作恰當或適當的處理。恰當地持平，並非指每一方的意見要佔用相等的節目時間或每一方的意見長短相等，亦非要求節目對每個富爭議的問題保持絕對中立。作決定時，持牌人應以專業判斷為考慮標準。

5. 節目主持人應盡量鼓勵各方表達意見。在直播節目中，主持人應提防參與討論者發表沒有事實根據的言論。有需要時，節目主持人應盡量據其所知，糾正資料的謬誤。

在一段時間內做到持平

6. 在單一個節目內反映主要的對立意見是理想的做法，但不一定可行。有時由一系列多集組成的節目可視作一個完整的節目。有些情況，在個別節目內只報道較片面的意見亦可能是合適的做法。持牌人需要按個別情況運用編輯判斷力。要在一段時間內做到持平，並不一定要在單一個節目內令各方都有機會表達意見。

新聞

7. 報道新聞時，應遵守下列規定：

- (a) 恐怖突兀、駭人聽聞或令人驚恐的細節，如與所報道事實無重要關係，應予略去。報道新聞應避免引起虛驚。
- (b) 新聞報告所用的圖片，應該小心選擇，以確保公正，不應誤導觀眾，或駭人聽聞。
- (c) 評論與剖析，應與新聞報道清楚區分。
- (d) 電視攝影隊的出現若激發某些人借意生事，新聞編輯和節目製作人應盡一切努力，刪去該刻意「製造」的事件，又或把實況原原本本報道。
- (e) 報道如與事實不符，應盡快在發覺後更正，或在該節目完結時或在下一節目開始時加以糾正。在某些情況下，可用字幕作出更正聲明。
- (f) 凡報道本地或國際新聞的真正新聞節目，不得接受贊助。不得把廣告材料當作新聞播送，也不得把該等材料加入新聞報告或新聞片內。

節目主持人可能存在的利益衝突

8. 在本守則公布後三個月內，持牌人須自行制訂和設立一個機

制，讓新聞節目主持人及有關香港公共政策或備受香港公眾關注而又具爭議的真實題材節目主持人，向持牌人披露是否有任何可能會導致其節目出現公正或持平問題的商業協議、安排或理解（不論是否以書面形式作出）存在。持牌人須運用其編輯判斷力，決定：

(a) 有關的節目主持人應否避免參與討論可能有利益衝突的事宜；或

(b) 在節目材料播出時，應否向觀眾披露有相關的商業協議存在。

持牌人必須受理所有公眾人士就其節目可能存在的利益衝突所提出的任何投訴。持牌人須把調查結果通知投訴人及廣管局，並把結果免費供公眾查閱，例如在其網站內發布該等資料。第8段不適用於並非由持牌人製作的外購節目或頻道。

公平

一般原則

9. 持牌人有責任避免在真實題材節目中對個別人士或團體不公平，尤其不可使用謬誤資料或歪曲事實。持牌人亦不應錯誤引導觀眾，以致對節目提及的人士或團體不公平。

報道法庭案件

10. 報道摘錄自法庭審訊程序或是其他公共紀錄的內容，必須公正而且真確，尤其是報道已經展開審訊程序的刑事案件，處理手法不得有可能妨礙法庭進行公平審訊，而且應避免：

(a) 對涉案事件預下判斷，尤其是對於被告是否有罪加以推斷；

(b) 議論案件的是非曲直或實情，以致可能妨礙有關司法程序；

(c) 評論被告的性情或品格；以及

(d) 播出可能有礙司法公正的評論或報道。

事件重演

11. 在真實題材節目內播出的「事件重演」，應該標明是真實事件重演，使觀眾不會誤把虛構的事物當作事實。

訪問

12. 若原定接受訪問的人士未能或不願意應邀參與真實題材節目，則應在節目中以客觀的態度如實交待有關情況，並應小心謹慎，確保不會歪曲他們的意見。

13. 預錄訪問經剪輯和縮短後，受訪者的意見不得遭到歪曲或曲解。

14. 持牌人不應把受訪者過往在錄影或錄音訪問中發表的意見，當作是受訪者於廣播時所持的意見，以免歪曲其意見。有需要時應告訴觀眾進行訪問的日期。

回應的權利

15. 節目如會影響個別人士、公司或其他機構的聲譽，持牌人應特別小心處理；應採取一切合理措施，確保本身已盡量公正和準確地報道所有重要事實。

16. 當真實題材節目揭示有不公或不稱職的事件，或帶有損害個別人士或機構的批評，受批評的一方應有適當機會及時作出回應。

個人意見節目

17. 「個人意見節目」是指由主持人或有時候由個別參與節目人士發表本身意見的節目。下列規定適用於所有有關香港公共政策或備受香港公眾關注而又具爭議的個人意見節目：

(a) 個人意見節目開始時，須清楚說明節目的性質。例如以下列字句作出宣布：「本節目只反映節目主持人及／或個別參與節目人士的個人意見。」

(b) 必須尊重事實，任何個人意見不應以虛假證據為依據。

(c) 節目應提供適當機會，以便其他人可以回應。

(d) 持牌人應注意，任何以系列形式播出的個人意見節目，皆有需要盡量讓多方面意見得以表達。

非本地電視節目服務

18. 除第1段所列的一般原則外，這類電視節目服務並無其他特別條文需要遵守。

其他須領牌電視節目服務

為香港一般公眾人士提供的服務

19. 持牌人必須遵守上文第2至17段的規定。

為酒店住客及其他特別羣體提供的服務

20. 除第1段所列的一般原則外，這類電視節目服務並無其他特別規定需要遵守。

電視通用業務守則 — 廣告標準

廣播事務管理局

2005年9月9日

第 3 章 一般廣告標準

適用於所有服務的一般原則

1. 電視廣告必須合法、健康、誠實及真確。
2. 所有廣告材料的內容、表達方式及播映時間，均須遵守《電視通用業務守則 — 節目標準》的規定。

適用於不同類別服務的準則

本地免費、本地收費以及其他須領牌電視節目服務

司法管轄

3. 所有廣告材料均須遵守本港法例的規定。

廣告識別

4. 廣告材料應清楚表明是廣告。廣告與節目必須有明顯區別。
5. 應小心評估任何以節目形式（例如紀錄片、錄影訪問、烹飪示範）拍攝的廣告，以確保該廣告不會與節目材料混淆。假如廣告所採用的形式，未能令人即時察覺其為廣告，有關廣告必須在開始及結束時，以清晰可讀的文字指明本身屬於廣告（例如使用附加字幕）。對於包含或部分包含家居購物材料的服務，若廣管局認為該服務或部分服務的性質，已向觀眾清楚說明，則這項規定並不適用。
6. 就本地收費電視節目服務及其他須領牌電視節目服務而言，若播出的廣告屬於主要供香港以外地區收看的衛星節目的一部分，而持牌人並未因播放廣告而獲得任何收益，兼且持牌人須干擾廣播服務才可遵守本章第 4 段及第 5 段的標準，則持牌人可免遵守有關標準。

品味

7. 廣告的表達手法應莊重及有品味，避免展示令人不安的材料，例如過分持續重覆的內容，以及暗示情況緊急的字眼和字句。同時，

應盡全力使廣告與加插廣告的節目在內容和格調上保持一致。

貶抑

8. 廣告內容不得包含有貶抑競爭對手、競銷產品或服務、其他行業、專業或機構的效果的聲稱。

真確表達

9. 廣告不得以任何公然或隱含的方式作出與事實不符的描述、聲稱或說明；或對有關產品或服務，或其是否適用於所建議的用途，作出誤導的描述、聲稱或說明。持牌人如既不知道亦無理由懷疑該等聲稱為虛假或含誤導成分，並經合理查核後仍無法確定該等聲稱為虛假或誤導者，則可免承擔本節所訂的有關責任。（有關廣告聲稱的標準，詳見第 4 章「有事實根據的聲稱和最暢銷聲稱」。）

模仿

10. 持牌人如知道某廣告仿效或不合理地採用近似競爭對手的名稱或廣告口號，即不能接受該廣告。

使用驚嚇的描繪方式

11. 廣告不得使用不適當的描繪方式引起觀眾恐懼。

接連重播廣告

12. 已刪除。

接受廣告材料的標準

13. 持牌人如有充分理由懷疑廣告客戶的誠信或廣告內容的真實性，或懷疑客戶未有遵守所有適用法例規定的精神及目的，則必須拒絕接受客戶的廣告。

14. 持牌人如有充分理由相信，使用某些廣告材料或播出某些產品或服務的廣告，會令大多數社會人士或關注該等事宜的人士不滿，則必須拒絕使用該等資料或播放該等廣告。（請參閱第 5 章「不可在電視播放廣告的產品及服務」。）

不可加插廣告的節目

15. 不可在下述節目加插廣告：

(a) 宗教儀式或其他崇拜節目；或

(b) 廣管局根據《廣播條例》規定本地免費電視節目服務於教育電視時段內播出由政府提供的學校節目。

非本地電視節目服務

16. 持牌人應遵守接收國家及地區有關當局所訂定的法例、節目標準及廣告標準。

第 4 章 有事實根據的聲稱和最暢銷聲稱

本地免費、本地收費以及其他須領牌電視節目服務

須實證的聲稱

1. 所有有事實根據的聲稱和最暢銷聲稱，均須有憑據。除非有充分事實證明，否則廣告字句不能稱某一產品為「最好」、「最成功」、「最安全」或「最快」，或採用類似字眼來聲稱質素最高。
2. 若有聲稱表示有事實根據，並且有研究或試驗結果支持，而有關研究／試驗是由廣告商自行評估或委托他人進行，則廣告應清楚說明該評估或研究的原始資料和進行日期。
3. 最暢銷聲稱更須受以下規定限制：
 - (a) 該等聲稱應有以下資料支持：
 - (i) 經獨立核算的銷售數字；或
 - (ii) 概率抽樣調查紀錄，結果須經有關行業的組織承認或批署，或符合廣告商有關行業的行內標準，或已採用科學方法進行，確保統計結果具代表性和真確可靠；及
 - (b) 除非在廣告內充分而明確地（以聲音及／或畫面）說明居領導地位牌子的產品類別、銷售國家及所涉時期，例如：「一九九二年，X 牌是香港銷量第一的 _____（產品類別）」，否則不得採用最暢銷聲稱。
4. 使用「最受歡迎」、「最多人選擇」、「最多人喜愛」等等字眼時，若用意明顯是指第一銷量位置，應遵守最暢銷聲稱的規限標準。

廣告中的誤導成分

5. 任何廣告都不得以誤導手法聲稱或暗示所宣傳的產品或服務，或其中任何成分，具有某些無法證明的特性或成分。

6. 引用與所宣傳產品或服務有關的研究調查或試驗結果時，應小心謹慎，避免誤導觀眾。不得使用不相關的數據及科學名詞／術語誤導觀眾，使他們以為有關聲稱有科學根據。真確性有限的統計或試驗，不得說成放諸四海皆準。

7. 廣告所傳達的信息必須準確，不得以隱瞞或不清楚交待重要事實的手法，誤導觀眾。

8. 以畫面或言語在廣告中提及價格、價格比較、減價或其他與價格有關的事宜時，資料必須準確，亦不得以過分強調或以歪曲事實的手法，誤導觀眾。

附加字幕

9. 廣告材料若以字幕方式顯示（不論獨自出現或附加在其他影像之上），文字必須清晰可讀，出現時間必須足夠讓一般觀眾在標準家庭電視機上閱讀全部信息。

10. 應該特別注意字體、字距、行距、背景或其他表達手法和方式，包括但不限於文字和背景的配合會否令文字顯得模糊不清，甚或難以辨認。

非本地電視節目服務

11. 持牌人應遵守接收國家及地區有關當局所訂定的法例、節目標準及廣告標準。

私人用品

一般原則

22. 推銷私人用品（例如女性衛生產品、避孕套、適用於生殖器一帶的除臭劑、失禁產品等）的廣告，在表達方式上要小心審慎。描繪該類產品的手法必須品味良好，避免太過圖像化。女性衛生產品及避孕套的廣告應以含蓄而不嘩眾取寵的方式表達。

女性衛生產品

23. 廣告中表達產品的手法，不應引起觀眾反感及／或尷尬。凡胯部的近鏡，均不能接受。

避孕套

24. 避孕套廣告只許作真實報道，不得聲稱該避孕套產品可完全防止傳染愛滋病。

25. 除獲廣管局特別批准外，避孕套廣告不得在下午 4 時至晚上 8 時 30 分之間於本地免費電視節目服務內播映。

教育課程

26. 持牌人須遵守《教育條例》（第 279 章）第 86A 條、《非本地高等及專業教育（規管）條例》（第 493 章）第 34 條，以及《非本地高等及專業教育（規管）規則》（第 493 章附屬法例）第 3 條的規定。

財經廣告

法律責任

27. 持牌人有責任確保廣告符合所有有關法例條文和監管規定，其中包括下文所列者但並不局限於此：

(a) 《公司條例》（第 32 章）；

(b) 《銀行業條例》（第 155 章）；

- (c) 《保險公司條例》（第 41 章）；
- (d) 《證券及期貨條例》（第 571 章）；
- (e) 《強制性公積金計劃條例》（第 485 章）；
- (f) 《證券及期貨事務監察委員會（證監會）守則》，包括但不限於：
 - (i) 《單位信託及互惠基金守則》；
 - (ii) 《與投資有關的人壽保險計劃守則》；
 - (iii) 《集資退休基金守則》；
 - (iv) 《與移民有關的投資計劃守則》；
 - (v) 《證監會強積金產品守則》；
 - (vi) 《證券及期貨事務監察委員會持牌人或註冊人操守準則》；
 - (vii) 《基金經理操守準則》；
 - (viii) 《企業融資顧問操守準則》；及
 - (ix) 證監會就其監管的其他類型投資產品（例如紙黃金）而不時發出的規則和指引；以及
- (g) 《香港聯合交易所有限公司證券上市規則》和《香港聯合交易所有限公司創業板證券上市規則》。

（上述資料只供參考，本守則使用者有責任查明有哪些適用及新近訂定的法例條文和監管規定。）

28. 已刪除。