《2000 年證券 (保證金融資) (修訂) 條例》

目錄

SECURITIES (MARGIN FINANCING) (AMENDMENT) ORDINANCE 2000

CONTENTS

香港特別行政區

2000 年第 20 號條例

印章位置

行政長官
董建華
2000 年 3 月 23 日

本條例旨在修訂《證券條例》以規管證券保證金融資的進行，並就有關事宜訂定條文。

[ ]

由立法會制定。

1. 簡稱及生效日期

(1) 本條例可引稱為《2000 年證券 (保證金融資) (修訂) 條例》。
(2) 本條例自財經事務局局長以憲報公告指定的日期起實施。

2. 釋義

《證券條例》(第 333 章) 第 2(1) 條現予修訂，加入——
""公司集團" (group of companies) 具有《公司條例》(第 32 章) 第 2(1) 條給予該詞的涵義；
"金融管理專員" (Monetary Authority) 指根據《外匯基金條例》(第 66 章) 第 5A 條獲委任為金融管理專員的人；
"紀錄" (record) 指不論以任何方式編纂、記錄或貯存的任何資料紀錄，並包括——
(*a*) 任何簿冊、紀錄冊或載有資料的其他文件；及
(*b*) 任何能夠從中產生資料的紀錄碟、紀錄帶或其他物品；
"保險業監督" (Insurance Authority) 指根據《保險公司條例》(第 41 章) 第 4 條獲委任為保險業監督的公職人員；

HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 20 OF 2000

L.S.

TUNG Chee-hwa
Chief Executive
23 March 2000

An Ordinance to amend the Securities Ordinance to regulate securities margin financing and to provide for related matters.

[ ]

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Securities (Margin Financing) (Amendment) Ordinance 2000.
(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services by notice published in the Gazette.

2. Interpretation

Section 2(1) of the Securities Ordinance (Cap. 333) is amended by adding—
""accounting records" (會計紀錄) includes any records relating to trust accounts required to be kept under this Ordinance;
"business day" (營業日) means a day (excluding Saturday) on which banks in Hong Kong are open for business;
"financial accommodation" (財務通融) means a loan or other arrangement under which a person is or is to be provided with credit, whether directly or through a third party, and in particular includes an overdraft, a discounted negotiable instrument, a guarantee, a forbearance from enforcing a debt that in substance is a loan, and also includes an agreement to secure the payment or repayment of any such accommodation;
"group of companies" (公司集團) has the meaning assigned to it by section 2(1) of the Companies Ordinance (Cap. 32);
"Insurance Authority" (保險業監督) means the public officer appointed as the Insurance Authority under section 4 of the Insurance Companies Ordinance (Cap. 41);

"保證金比率" (margin ratio) 就每樣證券抵押品而言，指該抵押品價值的某個百分率，而該百分率是用以計算證券交易商或證券保證金融資人在某客戶以該樣證券抵押品作為抵押的情況下，一般容許該客戶向他借取款項 (或取得其他形式的財務通融) 的最高款額；

"保證金價值" (margin value) 就每樣證券抵押品而言，指證券交易商或證券保證金融資人在某客戶以該樣證券抵押品作為抵押的情況下，一般容許該客戶向他借取款項 (或取得其他形式的財務通融) 的最高款額；

"高級人員" (officer) 就任何法團而言，指董事、秘書或其他涉及該法團的管理的人；

"財務通融" (financial accommodation) 指直接或透過第三者令某人獲提供或將會獲提供信貸的任何貸款或其他安排，尤其包括透支、已貼現可流轉票據、擔保及延期強制執行償還實質上是一項貸款的債項，亦包括保證該等通融的付款或還款的協議；

"記錄" (record) 包括編纂和貯存；

"註冊融資人" (registered financier) 指任何已註冊為證券保證金融資人的人；

"註冊融資人代表" (registered financier's representative) 指任何已註冊為證券保證金融資人代表的人；

"會計紀錄" (accounting records) 包括關於本條例規定須備存的信託帳戶的任何紀錄；

"營業日" (business day) 指香港銀行開放營業的日子 (不包括星期六)；

"證券抵押品" (securities collateral) 就任何交易商或證券保證金融資人而言，指下列證券——

(*a*) 為獲得該交易商或融資人提供財務通融而存放於該交易商或融資人作為抵押的證券；或

(*b*) 為便利獲得該交易商或融資人根據某項安排提供財務通融而存放於任何其他人的證券，而該交易商或融資人是在該項安排下對該等抵押予他的證券享有權益的；或

(*c*) (僅就第 81A 條而言) 為獲得提供財務通融以外的其他目的而存放於該交易商作為抵押的證券；

"margin ratio" (保證金比率), in relation to each description of securities collateral, means the percentage of the value of such collateral up to which a client is generally permitted to borrow (or otherwise secure other forms of financial accommodation) from a securities dealer or securities margin financier against that particular description of securities collateral;

"margin value" (保證金價值), in relation to each description of securities collateral, means the maximum amount of money which a client is generally permitted to borrow (or otherwise secure other forms of financial accommodation) from a securities dealer or securities margin financier against that particular description of securities collateral;

"Monetary Authority" (金融管理專員) means the person appointed as the Monetary Authority under section 5A of the Exchange Fund Ordinance (Cap. 66);

"officer" (高級人員), in relation to a corporation, means a director, secretary or other person concerned in the management of the corporation;

"record" (紀錄), when used as a noun, means any record of information, however compiled, recorded or stored, and includes—

(*a*) any book, register or other document containing information; and

(*b*) any disc, tape or other article from which information is capable of being produced;

"record" (記錄), when used as a verb, includes compile and store;

"registered financier" (註冊融資人) means a person registered as a securities margin financier;

"registered financier's representative" (註冊融資人代表) means a person registered as a securities margin financier's representative;

"securities collateral" (證券抵押品), in relation to a dealer or a securities margin financier, means securities deposited—

(*a*) with the dealer or financier as security for the provision by the dealer or financier of financial accommodation; or

(*b*) with any other person to facilitate the provision of financial accommodation by the dealer or financier under an arrangement that confers on the dealer or financier a collateral interest in the securities; or

(*c*) for the purpose of section 81A only, with the dealer as security for a purpose other than the provision of financial accommodation;

"securities margin financier" (證券保證金融資人) means a person who carries on a business of securities margin financing, whether the person carries on any other business or not;

"證券保證金融資" (securities margin financing) 指提供財務通融，以便利取得在某證券交易所上市的證券及 (如適用的話) 持續持有該等證券，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；

"證券保證金融資人" (securities margin financier) 指任何經營證券保證金融資業務的人，不論該人有否經營其他業務；

"證券保證金融資人代表" (securities margin financier's representative) 就任何證券保證金融資人而言，指——

(*a*) 受僱於該融資人、代該融資人行事或藉與該融資人訂立的安排而行事的人，而該人為報酬而為該融資人履行任何與該融資人所經營的證券保證金融資業務有關的職務 (通常由會計、文員或出納員執行的工作除外)；或

(*b*) 該融資人的董事，而該董事積極參與或直接負責監督該融資人的證券保證金融資業務。"。

3. 加入第 XA 部

現加入——

"第 XA 部

證券保證金融資

第 1 分部——導言

121B. 第 XA 部的適用範圍

(1) 本部只適用於在香港經營的證券保證金融資業務，並只在該業務與在證券交易所上市的證券有關的範圍內方適用，而不論該交易所是位於香港或其他地方。

(2) 除第 (3) 款另有規定外，本部不適用於附表 4 所列的任何一種活動，而進行該等活動的人如無經營其他證券保證金融資業務，則無須註冊為證券保證金融資人。

(3) 凡經營本部適用的證券保證金融資業務的人亦有進行附表 4 所列的任何一種活動，則本部亦適用於該人所進行的該等活動。

(4) 監察委員會可藉憲報公告增補、刪除或修改附表 4 內任何條文。

"securities margin financier's representative" (證券保證金融資人代表), in relation to a securities margin financier, means—

(*a*) a person in the employment of, or acting for or by arrangement with, a securities margin financier who for remuneration performs for the financier any function relating to the business of securities margin financing carried on by the financier, other than work normally performed by an accountant, clerk or cashier; or

(*b*) a director of the financier who actively participates in, or is directly responsible for supervising, the financier's business of securities margin financing;

"securities margin financing" (證券保證金融資) means providing financial accommodation in order to facilitate the acquisition of securities listed on a stock exchange and, where applicable, the continued holding of those securities, whether or not those or other securities are pledged as security for the accommodation;".

3. Part added

The following is added—

"PART XA

SECURITIES MARGIN FINANCING

Division 1—Preliminary

121B. Application of Part XA

(1) This Part applies only to a business of securities margin financing carried on in Hong Kong in so far as the business relates to securities listed on a stock exchange (whether located in Hong Kong or elsewhere).

(2) Subject to subsection (3), this Part does not apply to any of the activities listed in Schedule 4, and a person who carries on such activities and no other securities margin financing, need not be registered as a securities margin financier.

(3) Where a person carries on a business of securities margin financing to which this Part applies and, in addition, carries on any of the activities listed in Schedule 4, then this Part applies to such other activities.

(4) The Commission may, by notice in the Gazette, add to, delete from or modify any of the provisions in Schedule 4.

第 2 分部——證券保證金融資人的註冊

121C. 禁止註冊融資人以外的人進行證券保證金融資

(1) 在不抵觸第 121B(2) 條的規定下，除註冊融資人外，任何人不得在香港——

(*a*) 經營證券保證金融資業務；或

(*b*) 顯示自己是經營上述業務的人。

(2) 任何人違反第 (1) 款，即屬犯罪——

(*a*) 一經循公訴程序定罪，可處罰款 $1,000,000 及監禁 5 年，如屬持續的罪行，則可就該罪行持續期間的每一日另處罰款 $2,000 ；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，則可就該罪行持續期間的每一日另處罰款 $500 。

(3) 凡任何人提供財務通融，並有合理理由相信該項通融將不會用以便利取得在某證券交易所上市的證券或持續持有該等證券，則該人並不違反本條。

121D. 非註冊人士不得以註冊融資人代表身分行事

(1) 除註冊融資人代表外，任何人不得在香港——

(*a*) 以註冊融資人代表身分行事；或

(*b*) 顯示自己是一名註冊融資人代表。

(2) 任何人違反第 (1) 款，即屬犯罪，一經定罪，可處第 4 級罰款，如屬持續的罪行，則可就該罪行持續期間的每一日另處罰款 $500 。

121E. 何人有資格根據本部註冊

(1) 只有符合以下説明的人方有資格註冊為證券保證金融資人——

(*a*) 該人是一間公司；及

Division 2—Registration of securities margin financiers

121C. Securities margin financing prohibited except by registered financier

(1) Subject to section 121B(2), a person must not, in Hong Kong—

(*a*) carry on a business of securities margin financing; or

(*b*) hold out that the person carries on such a business,

unless the person is registered as a securities margin financier.

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

(*a*) on conviction on indictment, to a fine of $1,000,000 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine of $2,000 for each day during which the offence continues; or

(*b*) on summary conviction, to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of $500 for each day during which the offence continues.

(3) Where a person provides financial accommodation and reasonably believes that it is not to be used to facilitate the acquisition of securities listed on a stock exchange or the continued holding of such securities, the person providing the financial accommodation does not contravene this section.

121D. Unregistered person not to act as representative of registered financier

(1) A person must not, in Hong Kong—

(*a*) act as a representative of a registered financier; or

(*b*) hold out that the person is such a representative,

unless the person is registered as a securities margin financier's representative.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 4 and, in the case of a continuing offence, to a further fine of $500 for each day during which the offence continues.

121E. Who is eligible to be registered under this Part

(1) A person is eligible to be registered as a securities margin financier only if—

(*a*) the person is a company; and

(*b*) 除證券保證金融資業務及任何必然附帶於該業務的經營的業務外，該人並無經營任何業務。

(2) 只有年滿 18 歲的自然人方有資格註冊為證券保證金融資人代表。

121F. 註冊申請

(1) 任何合資格的人均可向監察委員會申請註冊為證券保證金融資人或證券保證金融資人代表。

(2) 註冊申請必須——

(*a*) 載有監察委員會規則所訂明的資料；及

(*b*) 連同如此訂明的文件及費用。

(3) 申請人在提出申請時，必須向監察委員會提供該委員會所合理要求的下列資料——

(*a*) 申請如獲批准則申請人將顯示為他所能提供的服務的有關資料；及

(*b*) 申請人擬經營的及申請所關乎的業務的有關資料，或關於申請人有意或擬就該業務而僱用的任何人的資料，或關於申請人有意在進行該業務的過程中聯繫的任何人的資料；及

(*c*) 使監察委員會得以考慮關於以下人士或公司的任何事宜的資料——

(i) 申請人就或將會就擬經營的申請所關乎的業務而僱用的任何人，或就或將會就該業務與申請人有聯繫的任何人；及

(ii) 將會就該業務以代表身分行事的任何人；及

(iii) 申請人的任何大股東、董事或高級人員，與申請人屬於同一公司集團的任何其他公司，或任何該等其他公司的任何董事或高級人員。

(4) 申請人或其他人在根據本條提出的申請中，或就根據本條提出的申請，以口頭或書面方式作出他明知屬虛假達關鍵程度的申述或具誤導性達關鍵程度的申述，即屬犯罪——

(*b*) the person carries on no business other than securities margin financing, except business that is necessarily incidental to carrying on such business.

(2) Only a natural person who has reached 18 years of age is eligible to be registered as a securities margin financier's representative.

121F. Application for registration

(1) Any eligible person may apply to the Commission to be registered as a securities margin financier or a securities margin financier's representative.

(2) An application for registration must—

(*a*) contain such information as is prescribed by Commission rules; and

(*b*) be accompanied by such documents and by such fee as are so prescribed.

(3) An applicant must furnish to the Commission, at the time of the application, such information as may reasonably be required by the Commission—

(*a*) regarding the services which, if the application is allowed, the applicant will hold himself out as being able to provide; and

(*b*) regarding the business which the applicant proposes to carry on and to which the application relates, or relating to any person whom the applicant intends or proposes to employ in such business or any person with whom the applicant intends to be associated in the course of carrying on such business; and

(*c*) to enable the Commission to take into account any matter relating to—

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

(ii) any person who will be acting as a representative in relation to such business; and

(iii) any substantial shareholder, director or officer of the applicant, any other company in the same group of companies as the applicant or to any director or officer of any such other company.

(4) An applicant or other person who, in or in relation to an application under this section, makes any representation, whether orally or in writing, that the person knows to be materially false or misleading commits an offence and is liable—

(a) 一經循公訴程序定罪，可處罰款 $1,000,000 及監禁 5 年；或
(b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

(5) 就第 (4) 款而言，“申述” (representation) 指——
(a) 對現在或過去的事實的申述；或
(b) 關於未來某事件的申述；或
(c) 關於現有的某意向、意見、信念、知悉之事或其他思想狀況的申述。

(6) 就第 (4) 款所訂罪行而進行的法律程序，可在發現該罪行後 6 個月內任何時間提出。

121G. 批准或拒絕要求將某人註冊為證券保證金融資人的申請

(1) 本條適用於註冊為證券保證金融資人的申請。

(2) 如有以下情況，監察委員會可拒絕有關申請——
(a) 申請並不符合第 121F 條的規定；或
(b) 申請人沒有向監察委員會提供由本條例或根據本條例訂明的資料，而該等資料是關於申請人或任何由申請人僱用的人或與申請人有聯繫的人的，以及是關於任何相當可能影響申請人處理業務的方法的情況的；或
(c) 申請人的任何董事根據《精神健康條例》(第 136 章) 被羈留在精神病院，或其任何董事患有或看來患有該條例所指的精神紊亂；或
(d) 申請人的任何董事是未獲解除破產的破產人，或其任何董事已與本身的債權人訂立《破產條例》(第 6 章) 所指的自願安排；或
(e) 申請人沒有財政資源規則中指明為為使證券保證金融資業務得以經營所必需的財政資源。

(3) 除非申請人有至少一名董事獲或將會獲監察委員會根據第 121I 條予以核准，否則監察委員會必須拒絕有關申請。

(4) 如申請人不能令監察委員會信納申請人是註冊為證券保證金融資人的適當人選，則監察委員會亦必須拒絕有關申請。

(a) on conviction on indictment, to a fine of $1,000,000 and to imprisonment for 5 years; or
(b) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.

(5) For the purposes of subsection (4), “representation” (申述) means a representation—
(a) of a matter of fact, either present or past; or
(b) about a future event; or
(c) about an existing intention, opinion, belief, knowledge or other state of mind.

(6) Proceedings for an offence under subsection (4) may be brought at any time within 6 months after the discovery of the offence.

121G. Grant or refusal of application for registration as securities margin financier

(1) This section applies to an application for registration as a securities margin financier.

(2) The Commission may refuse the application if—
(a) the application does not comply with section 121F; or
(b) the applicant has not provided the Commission with such information relating to it or any person employed by or associated with it, and to any circumstances likely to affect its method of conducting business as may be prescribed by or under this Ordinance; or
(c) any director of the applicant is detained under the Mental Health Ordinance (Cap. 136) in a mental hospital or is a person suffering or appearing to suffer from mental disorder within the meaning of that Ordinance; or
(d) any director of the applicant is an undischarged bankrupt or has entered into a voluntary arrangement with the director's creditors within the meaning of the Bankruptcy Ordinance (Cap. 6); or
(e) the applicant does not have the financial resources specified in the financial resources rules as being necessary to enable a business of securities margin financing to be carried on.

(3) The Commission must refuse the application unless at least one director of the applicant is or will be approved by the Commission under section 121I.

(4) The Commission must also refuse the application if the applicant does not satisfy the Commission that it is a fit and proper person to be registered as a securities margin financier.

(5) 監察委員會在考慮申請人是否註冊為證券保證金融資人的適當人選時，除考慮它認為有關的任何其他事項外，亦必須考慮以下事項——

(*a*) 申請人及其高級人員現時及過去的財政狀況；

(*b*) 申請人的高級人員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等人員將會履行的職務的性質；

(*c*) 申請人的高級人員能否有效率、誠實及公正地履行該等職務；

(*d*) 申請人的信譽、在財政方面的穩健性及可靠性，以及申請人的高級人員的信譽、品格及他們在財政方面的穩健性及可靠性；

(*e*) 以下人士就申請人提出的要求批准的申請而作的批予該項批准或拒絕批予該項批准的決定——

(i) 金融管理專員或保險業監督；或

(ii) 任何其他主管當局(不論在香港或其他地方)，而該主管當局所執行的職能是監察委員會認為與本條或第121H或121I條授予監察委員會的職能相類似的。

(6) 為本條的目的，監察委員會可考慮它所管有的任何有關資料，不論這些資料是由申請人或其他人提供。

(7) 為本條的目的，監察委員會可考慮它有的關於以下人士的任何資料——

(*a*) 申請人就申請所關乎的業務而僱用或將會僱用的任何人，或就該業務與或將會與申請人有聯繫的任何人；及

(*b*) 將會就該業務以代表身分行事的任何人；及

(*c*) 申請人的任何大股東，或屬於同一公司集團的任何其他公司的任何大股東，或該等其他公司的任何高級人員。

(8) 監察委員會不得在未事先給予申請人獲聆聽的機會的情況下拒絕有關申請。

(9) 在拒絕任何根據本條提出的申請後，監察委員會必須在切實可行的範圍內盡快將該項拒絕以書面通知申請人，並必須在該通知內説明拒絕該項申請的理由。

(5) In considering whether the applicant is a fit and proper person to be registered as a securities margin financier, the Commission must, in addition to any other matter that the Commission considers relevant, have regard to the following matters—

(*a*) the current and past financial status of the applicant and its officers;

(*b*) the educational or other qualifications or experience of the applicant's officers having regard to the nature of the functions that they will perform if the application is granted;

(*c*) the ability of the applicant's officers to perform those functions efficiently, honestly and fairly;

(*d*) the reputation, financial integrity and reliability of the applicant and the reputation, character, financial integrity and reliability of the applicant's officers;

(*e*) any decision granting or refusing an application for authorization made in respect of the applicant—

(i) by the Monetary Authority or the Insurance Authority; or

(ii) by any other authority (whether in Hong Kong or elsewhere) that in the opinion of the Commission performs a function similar to that imposed on the Commission by this section or section 121H or 121I.

(6) For the purposes of this section, the Commission may take into account any relevant information in its possession whether provided by the applicant or by some other person.

(7) For the purposes of this section, the Commission may take into account any information that it has relating to—

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

(*b*) any person who will be acting as a representative in relation to that business; and

(*c*) any substantial shareholder of the applicant or of any other company belonging to the same group of companies, or any officer of any such other company.

(8) The Commission must not refuse the application without first giving the applicant an opportunity of being heard.

(9) As soon as practicable after refusing an application made under this section, the Commission must give written notice of the refusal to the applicant and must include in the notice the reasons why the application was refused.

(10) 在第 (5) 款中，凡提述批准，即包括提述註冊及發出牌照。

121H. 批准或拒絕要求將某人註冊為證券保證金融資人代表的申請

(1) 本條在任何自然人提出申請註冊為證券保證金融資人代表的情況下具有效力。

(2) 如有以下情況，監察委員會可拒絕有關申請——

(*a*) 申請並不符合第 121F 條的規定；或

(*b*) 申請人沒有向監察委員會提供由本條例或根據本條例訂明的資料；或

(*c*) 申請人根據《精神健康條例》(第 136 章) 被羈留在精神病院，或申請人患有或看來患有該條例所指的精神紊亂；或

(*d*) 申請人是未獲解除破產的破產人，或已與其債權人訂立《破產條例》(第 6 章) 所指的自願安排。

(3) 如申請人不能令監察委員會信納申請人是註冊為證券保證金融資人代表的適當人選，則監察委員會必須拒絕有關申請。

(4) 監察委員會在考慮申請人是否註冊為證券保證金融資人代表的適當人選時，除考慮它認為有關的任何其他事項外，亦必須考慮以下事項——

(*a*) 申請人現時及過去的財政狀況；

(*b*) 申請人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申請人將會履行的職務的性質；

(*c*) 申請人能否有效率、誠實及公正地履行該等職務；

(*d*) 申請人的信譽、品格及在財政方面的穩健性及可靠性；

(*e*) 以下人士就申請人提出的要求批准的申請而作的批予該項批准或拒絕批予該項批准的決定——

(i) 金融管理專員或保險業監督；或

(10) In subsection (5), a reference to authorization includes a reference to registration and licensing.

121H. Grant or refusal of application for registration as securities margin financier's representative

(1) This section has effect where a natural person makes an application for registration as a securities margin financier's representative.

(2) The Commission may refuse the application if—

(*a*) the application does not comply with section 121F; or

(*b*) the applicant has not provided the Commission with such information as may be prescribed by or under this Ordinance; or

(*c*) the applicant is detained under the Mental Health Ordinance (Cap. 136) in a mental hospital or is a person suffering or appearing to suffer from mental disorder within the meaning of that Ordinance; or

(*d*) the applicant is an undischarged bankrupt or has entered into a voluntary arrangement with the applicant's creditors within the meaning of the Bankruptcy Ordinance (Cap. 6).

(3) The Commission must refuse the application if the applicant does not satisfy the Commission that the applicant is a fit and proper person to be registered as a securities margin financier's representative.

(4) In considering whether the applicant is a fit and proper person to be registered as a securities margin financier's representative, the Commission must, in addition to any other matter that the Commission considers relevant, have regard to the following matters—

(*a*) the applicant's current and past financial status;

(*b*) the applicant's educational or other qualifications or experience having regard to the nature of the functions that the applicant will perform if the application is granted;

(*c*) the applicant's ability to perform those functions efficiently, honestly and fairly;

(*d*) the applicant's reputation, character, financial integrity and reliability;

(*e*) any decision granting or refusing an application for authorization made in respect of the applicant—

(i) by the Monetary Authority or the Insurance Authority; or

(ii) 任何其他主管當局 (不論在香港或其他地方)，而該主管當局所執行的職能是監察委員會認為與本條或第 121G 或 121I 條授予監察委員會的職能相類似的；

(*f*) 有關與申請人有聯繫或將會與申請人有聯繫的任何人的任何事宜，而該聯繫是與申請一旦獲准時則將由申請人代為行事的證券保證金融資人的業務有關的；

(*g*) 申請人所經營或擬經營的任何業務。

(5) 為本條的目的，監察委員會可考慮它所管有的任何有關資料，不論這些資料是由申請人或其他人提供。

(6) 監察委員會不得在未事先給予申請人獲聆聽的機會的情況下拒絕有關申請。

(7) 在拒絕任何根據本條提出的申請後，監察委員會必須在切實可行的範圍內盡快將該項拒絕以書面通知申請人，並必須在該通知內説明拒絕該項申請的理由。

(8) 在第 (4) 款中，凡提述批准，即包括提述註冊及發出牌照。

121I. 註冊融資人除非有核准董事否則不得經營業務

(1) 除非註冊融資人有至少一名董事獲監察委員會根據本條予以核准，否則該融資人不得經營證券保證金融資業務。

(2) 註冊融資人在違反第 (1) 款的情況下經營業務，即屬犯罪——

(*a*) 一經循公訴程序定罪，可處罰款 $200,000，如屬持續的罪行，則可就該罪行持續期間的每一日另處罰款 $2,000；或

(*b*) 一經循簡易程序定罪，可處第 5 級罰款，如屬持續的罪行，則可就該罪行持續期間的每一日另處罰款 $500。

(3) 註冊融資人的董事或已申請註冊為證券保證金融資人的公司的董事，可以書面向監察委員會申請根據本條予以核准。

(4) 如有以下情況，監察委員會可拒絕有關申請——

(*a*) 申請人沒有註冊為證券保證金融資人代表，亦並未申請如此註冊；或

(ii) by any other authority (whether in Hong Kong or elsewhere) that in the opinion of the Commission performs a function similar to that imposed on the Commission by this section or section 121G or 121I;

(*f*) any matter relating to a person who is or is to be associated with the applicant in relation to the business of the securities margin financier for whom the applicant will act if the application is granted;

(*g*) any business carried on or proposed to be carried on by the applicant.

(5) For the purposes of this section, the Commission may take into account any relevant information in its possession whether provided by the applicant or by some other person.

(6) The Commission must not refuse the application without first giving the applicant an opportunity of being heard.

(7) As soon as practicable after refusing an application made under this section, the Commission must give written notice of the refusal to the applicant and must include in the notice the reasons why the application was refused.

(8) In subsection (4), a reference to authorization includes a reference to registration and licensing.

121I. Registered financier not to carry on business unless it has an approved director

(1) A registered financier must not carry on a business of securities margin financing unless at least one director of the financier is approved by the Commission under this section.

(2) A registered financier that carries on business in contravention of subsection (1) commits an offence and is liable—

(*a*) on conviction on indictment, to a fine of $200,000 and, in the case of a continuing offence, to a further fine of $2,000 for each day during which the offence continues; or

(*b*) on summary conviction, to a fine at level 5 and, in the case of a continuing offence, to a further fine of $500 for each day during which the offence continues.

(3) A director of a registered financier, or of a company that has applied to be registered as a securities margin financier, may apply in writing to the Commission to be approved under this section.

(4) The Commission may refuse the application if the applicant—

(*a*) is not, or has not applied to be, registered as a securities margin financier's representative; or

(*b*) 申請人不能令監察委員會信納——
(i) 申請人積極參與或將會積極參與有關註冊融資人所經營的證券保證金融資業務，或申請人積極參與或將會積極參與已申請註冊為證券保證金融資人的有關公司所擬經營的證券保證金融資業務；或
(ii) 申請人直接負責或將會直接負責監督該業務；或
(iii) 申請人是監督該業務的適當人選。

(5) 監察委員會在考慮申請人是否根據本條予以核准的適當人選時，除考慮它認為有關的其他事項外，亦必須考慮第 121H(4) 條指明的事項。

(6) 為第 (4) 款的目的，監察委員會可考慮它所管有的任何資料，不論這些資料是否由申請人提供。

(7) 監察委員會不得在未事先給予申請人獲聆聽的機會的情況下拒絕有關申請。

(8) 在拒絕任何根據本條提出的申請後，監察委員會必須在切實可行的範圍內盡快將該項拒絕以書面通知申請人，並必須在該通知內説明拒絕該項申請的理由。

121J. 監察委員會在批准註冊申請時可施加條件及限制

(1) 證券保證金融資人的註冊或證券保證金融資人代表的註冊須受以下條件及限制規限——
(*a*) 監察委員會規則所訂明的條件及限制 (如有的話)；及
(*b*) 監察委員會在批准註冊申請時或於註冊持續有效的任何時間所施加的條件及限制 (如有的話)。

(2) 監察委員會可隨時撤銷或更改根據第 (1)(*b*) 款施加的條件或限制。

(3) 監察委員會不得在未事先給予註冊融資人或註冊融資人代表獲聆聽的機會的情況下，根據第 (1)(*b*) 款施加條件或限制，或更改任何該等條件或限制，而在註冊融資人或註冊融資人代表的要求下，監察委員會必須就其決定提供理由。

(*b*) does not satisfy the Commission that the applicant—
(i) actively participates or will actively participate in the business of securities margin financing that the registered financier or the company that has applied to be so registered carries on or proposes to carry on; or
(ii) is or will be directly responsible for the supervision of that business; or
(iii) is a fit and proper person to supervise that business.

(5) In considering whether the applicant is a fit and proper person to be approved under this section, the Commission must, in addition to any other matter that the Commission considers relevant, have regard to the matters specified in section 121H(4).

(6) For the purposes of subsection (4), the Commission may have regard to any information in its possession whether provided by the applicant or not.

(7) The Commission must not refuse the application without first giving the applicant an opportunity of being heard.

(8) As soon as practicable after refusing an application made under this section, the Commission must give written notice of the refusal to the applicant and must include in the notice the reasons why the application was refused.

121J. Commission may impose conditions and restrictions in granting application for registration

(1) Registration as a securities margin financier or as a securities margin financier's representative is subject to—
(*a*) such conditions and restrictions (if any) as are prescribed by Commission rules; and
(*b*) such conditions and restrictions (if any) as the Commission imposes when granting the application for registration or at any time while registration remains in force.

(2) The Commission may, at any time, revoke or vary conditions or restrictions imposed under subsection (1)(*b*).

(3) The Commission must not impose conditions or restrictions under subsection (1)(*b*), or vary any such conditions or restrictions, without first giving the registered financier or registered financier's representative an opportunity of being heard, and the Commission must provide reasons for its decision when requested to do so.

121K. 適用於註冊融資人的特別條件

(1) 根據第 121J 條可施加於任何註冊融資人的條件及限制，包括 (但不限於) 以下條件：規定該融資人向監察委員會交存一項監察委員會所批准的保證，所保證的款額不超逾監察委員會規則為此訂明的款額，並且該融資人須將該項如此交存的保證保持有效。

(2) 如某項註冊按照第 (1) 款而受某項條件規限，而有關註冊融資人按照該條件向監察委員會交存一項保證，監察委員會可按監察委員會規則所訂明的情況、目的及方式運用該項保證。

121L. 適用於註冊融資人代表的特別條件

作為註冊融資人代表的一項條件是，該代表不得代當時名列其註冊證明書上的融資人以外的任何註冊融資人行事。

121M. 監察委員會須發出註冊證明書

(1) 監察委員會在批准任何要求註冊為證券保證金融資人的申請時，必須向有關申請人發出一份註冊證明書，批准該申請人經營證券保證金融資業務。

(2) 監察委員會在批准任何要求註冊為證券保證金融資人代表的申請時，必須向有關申請人發出一份註冊證明書，批准該申請人以證券保證金融資人代表身分行事。凡有關申請人獲准代某註冊融資人行事，該證明書必須指明該註冊融資人的名稱。

121N. 須向監察委員會提供的資料、陳述或報表

(1) 註冊融資人必須提交監察委員會不時指示的與該融資人經營的證券保證金融資業務有關的書面資料、陳述或報表。

(2) 如監察委員會要求註冊融資人在提交根據第 (1) 款發出的指示中指明的陳述或報表前，將該陳述或報表交由該融資人的核數師審計，則該融資人必須遵從該項要求。

(3) 監察委員會可延展遵從根據第 (1) 款發出的指示的期限。

121K. Special conditions applicable to registered financiers

(1) Conditions and restrictions that may be imposed on a registered financier under section 121J include (but are not limited to) a condition requiring the financier to lodge and maintain with the Commission a security approved by the Commission for such amount not exceeding the amount prescribed by Commission rules for such purpose.

(2) If a security is lodged with the Commission in accordance with a condition to which registration is subject in accordance with subsection (1), the Commission may apply the security in such circumstances, for such purposes and in such manner as is prescribed by Commission rules.

121L. Special condition applicable to registered financiers' representatives

It is a condition of registration as a registered financier's representative that the representative must not act for a registered financier other than the financier whose name currently appears in the representative's certificate of registration.

121M. Commission to issue certificate of registration

(1) On granting an application for registration as a securities margin financier, the Commission must issue the applicant with a certificate of registration authorizing the applicant to carry on a business of securities margin financing.

(2) On granting an application for registration as a securities margin financier's representative, the Commission must issue the applicant with a certificate of registration authorizing the applicant to act as a securities margin financier's representative. The certificate must specify the name of the registered financier for whom the applicant is authorized to act.

121N. Information and statements to be given to Commission

(1) A registered financier must lodge such written information or statements in relation to the securities margin financing business carried on by the financier as the Commission from time to time directs.

(2) If the Commission requires a registered financier to have a statement specified in a direction given under subsection (1) audited by an auditor of the financier before it is lodged, the financier must comply with the requirement.

(3) The Commission may extend the period for compliance with a direction given under subsection (1).

121O. 監察委員會須備存證券保證金融資人註冊紀錄冊及證券保證金融資人代表註冊紀錄冊

(1) 為施行本部，監察委員會必須備存一份證券保證金融資人註冊紀錄冊及一份證券保證金融資人代表註冊紀錄冊。

(2) 監察委員會必須在證券保證金融資人註冊紀錄冊內，就每名註冊融資人記入以下詳情——

(*a*) 該融資人的名稱；
(*b*) 該融資人的每名獲根據第 121I 條核准的董事的姓名；
(*c*) 該融資人的主要業務地點的地址；
(*d*) 註冊申請獲批准的日期；
(*e*) 監察委員會規則所訂明的任何其他事項。

(3) 監察委員會必須在證券保證金融資人代表註冊紀錄冊內，就每名註冊融資人代表記入以下詳情——

(*a*) 該代表的姓名；
(*b*) 該代表獲准代為行事的註冊融資人的主要業務地點的地址；
(*c*) 註冊申請獲批准的日期；
(*d*) 監察委員會規則所訂明的任何其他事項。

(4) 如任何人不再在本部下註冊，監察委員會必須取消有關註冊以及在有關註冊紀錄冊中記錄該項取消。

(5) 每當監察委員會辦事處開放辦公時，任何人均可按照監察委員會規則查閱註冊紀錄冊，並將註冊紀錄冊內關於某個別人士的記項複製副本。

(6) 任何註冊紀錄冊內記項的副本，如看來是經監察委員會授權的人員核證的，則在相反證明成立之前，在任何法律程序中均可接納為其內所列內容的證據。

121O. Commission to keep Registers of Securities Margin Financiers and Securities Margin Financiers' Representatives

(1) The Commission must keep a Register of Securities Margin Financiers and a Register of Securities Margin Financiers' Representatives for the purposes of this Part.

(2) The Commission must enter in the Register of Securities Margin Financiers the following particulars in relation to each registered financier—

(*a*) the financier's name;
(*b*) the name of each of the directors of the financier approved under section 121I;
(*c*) the address of the financier's principal place of business;
(*d*) the date on which the application for registration was granted;
(*e*) any other matters prescribed by Commission rules.

(3) The Commission must enter in the Register of Securities Margin Financiers' Representatives the following particulars in relation to each registered financier's representative—

(*a*) the representative's name;
(*b*) the address of the principal place of business of the registered financier for whom the representative is authorized to act;
(*c*) the date on which the application for registration was granted;
(*d*) any other matters prescribed by Commission rules.

(4) If a person has ceased to be registered under this Part, the Commission must cancel the registration and record the cancellation in the relevant Register.

(5) Whenever the office of the Commission is open for business, any person may, in accordance with Commission rules, inspect the Registers and make a copy of an entry in the Registers relating to a particular person.

(6) A copy of an entry in a Register that purports to be certified by an officer authorized by the Commission is admissible in any legal proceedings as evidence of its contents until the contrary is proved.

121P. 註冊融資人及註冊融資人代表的姓名或名稱須刊登在憲報上

(1) 在每一公曆年內，監察委員會必須在憲報刊登所有註冊融資人及註冊融資人代表的姓名或名稱及地址至少一次。

(2) 如藉增加或刪除任何人的姓名或名稱而修訂根據第 121O 條備存的任何註冊紀錄冊，監察委員會必須在該項修訂作出後 1 個月內於憲報刊登該項修訂的詳情。

121Q. 註冊融資人及註冊融資人代表須就詳情的改變作出通知

(1) 監察委員會規則所訂明的關乎任何註冊融資人的詳情如有所改變，則在該項改變發生後 7 個營業日內，該融資人必須將該項改變以書面通知監察委員會。

(2) 在任何註冊融資人不再經營證券保證金融資業務後 1 個營業日內，該融資人必須將此事以書面通知監察委員會。

(3) 在任何人獲委任為或不再擔任任何註冊融資人的董事後 7 個營業日內，該融資人必須將此事以及該人的姓名及地址以書面通知監察委員會。

(4) 監察委員會規則所訂明的關乎任何註冊融資人代表的詳情如有所改變，則在該項改變發生後 7 個營業日內，該代表必須將該項改變以書面通知監察委員會。

(5) 在任何註冊融資人代表不再代某註冊融資人行事後 1 個營業日內，該融資人及該代表均須將此事以書面通知監察委員會。

(6) 本條所規定的通知必須符合監察委員會提供的表格或批准的格式。

(7) 任何註冊融資人或註冊融資人代表無合理辯解而違反本條的任何規定，即屬犯罪，一經定罪，可處第 2 級罰款。

121R. 撤銷及暫時吊銷註冊融資人的註冊

(1) 如任何註冊融資人的名稱自公司登記冊中剔除，或如任何註冊融資人以其他方式解散，則該融資人的註冊即告撤銷。

121P. Names of registered financiers and registered financiers' representatives to be published in Gazette

(1) The Commission must, not less than once in each calendar year, publish in the Gazette the names and addresses of all persons who are registered as securities margin financiers and securities margin financiers' representatives.

(2) If either of the Registers kept under section 121O is amended by adding or removing a person's name, the Commission must publish in the Gazette particulars of the amendment within 1 month after making it.

121Q. Registered financier and registered financier's representative to notify change in particulars

(1) Within 7 business days after a change occurs in a particular prescribed by Commission rules that relates to a registered financier, the financier must give written notice of the change to the Commission.

(2) Within 1 business day after a registered financier ceases to carry on the business of securities margin financing, the financier must give written notice of that fact to the Commission.

(3) Within 7 business days after a person is appointed or ceases to be appointed as a director of a registered financier, the financier must give written notice to the Commission of the appointment or cessation of appointment and the person's name and address.

(4) Within 7 business days after a change occurs in a particular prescribed by Commission rules that relates to a registered financier's representative, the representative must give written notice of the change to the Commission.

(5) Within 1 business day after a registered financier's representative ceases to act for a registered financier, the financier and representative must each give written notice of that fact to the Commission.

(6) A notice required to be given under this section must be in a form provided or approved by the Commission.

(7) A registered financier or registered financier's representative who, without reasonable excuse, fails to comply with a requirement of this section commits an offence and is liable on conviction to a fine at level 2.

121R. Revocation and suspension of registration of registered financier

(1) The registration of a registered financier is revoked if the financier is struck off the register of companies or is otherwise dissolved.

(2) 如有以下情況，監察委員會可撤銷註冊融資人的註冊——

(*a*) 該融資人正在清盤當中或被飭令清盤；或

(*b*) 已就該融資人的財產委任接管人或接管人及經理人；或

(*c*) 該融資人並非正在經營證券保證金融資業務；或

(*d*) 就該融資人而作出的實施執行未獲履行；或

(*e*) 該融資人與其債權人作出債務妥協或債務償還安排；或

(*f*) 該融資人或該融資人的任何高級人員在香港或其他地方因犯任何罪行而被定罪，而該罪行的定罪必然涉及該高級人員曾作出欺詐或不誠實作為的裁斷；或

(*g*) 該融資人或該融資人的任何高級人員被裁定犯本條例所訂罪行；或

(*h*) 該融資人違反第 121I(1) 條。

(3) 監察委員會不得在未事先給予註冊融資人獲聆聽的機會的情況下根據第 (2) 款撤銷該融資人的註冊。

(4) 監察委員會亦可應註冊融資人的要求而撤銷該融資人的註冊。

(5) 監察委員會可將註冊融資人的註冊暫時吊銷一段期間或直至某事件發生為止以代替根據第 (2) 款撤銷該項註冊，該期間及該事件由監察委員會決定。

(6) 監察委員會如認為適當，可隨時更改或撤銷對註冊融資人的註冊作出的暫時吊銷。

121S. 監察委員會處理註冊融資人的失當行為的權力

(1) 監察委員會可隨時就以下事項作出查訊——

(*a*) 任何註冊融資人——

(i) 不論在根據本部註冊之前或之後，是否沒有向監察委員會提供由本條例或根據本條例規定的關於該融資人的資料，以及關於相當可能影響該融資人經營業務的方法的任何情況的資料；或

(2) The Commission may revoke the registration of a registered financier if—

(*a*) the financier is in liquidation or is ordered to be wound up; or

(*b*) a receiver, or a receiver and manager, of the financier's property is appointed; or

(*c*) the financier is not carrying on a business of securities margin financing; or

(*d*) a levy of execution relating to the financier has not been satisfied; or

(*e*) the financier enters into a compromise or an arrangement with its creditors; or

(*f*) the financier or any of the financier's officers is convicted, whether in Hong Kong or elsewhere, of an offence the conviction for which necessarily involved a finding that the officer acted fraudulently or dishonestly; or

(*g*) the financier or any of the financier's officers is convicted of an offence against this Ordinance; or

(*h*) the financier contravenes section 121I(1).

(3) The Commission must not revoke the registration of a registered financier under subsection (2) without first giving the financier an opportunity of being heard.

(4) The Commission may also revoke a registered financier's registration at the financier's request.

(5) The Commission may, instead of revoking the registration of a registered financier under subsection (2), suspend that registration for such period, or until the happening of such event, as it determines.

(6) The Commission may at any time vary or revoke a suspension of registration of a registered financier if it believes it to be appropriate to do so.

121S. Powers of Commission in relation to misconduct of registered financier

(1) The Commission may at any time inquire into any of the following matters—

(*a*) whether a registered financier—

(i) has failed to provide the Commission, whether before or after becoming registered under this Part, with such information relating to the financier, and to any circumstances likely to affect the financier's method of carrying business, as may be required by or under this Ordinance; or

(ii) 是否向監察委員會提供了任何屬虛假達關鍵程度或具誤導性達關鍵程度的上述資料；或
(iii) 是否犯了或曾犯了任何與該融資人的業務的經營有關的失當行為；或
(iv) 是否因任何其他理由而不再是註冊為證券保證金融資人的適當人選；或

(*b*) 該融資人的任何高級人員是否——
(i) 犯了或曾犯了任何失當行為；或
(ii) 參與該融資人的業務的管理的適當人選；或

(*c*) 就某個別註冊融資人而言，是否有第 121R(2) 條提述的任何情況發生。

(2) 監察委員會在考慮任何註冊融資人是否繼續註冊為註冊融資人的適當人選時，除考慮它認為有關的任何其他事項外，亦必須考慮以下事項——

(*a*) 該融資人及其高級人員現時及過去的財政狀況；
(*b*) 該融資人的高級人員的學歷或其他資歷或經驗，而在這方面的考慮須顧及該等人員須履行的職務的性質；
(*c*) 該融資人的高級人員能否繼續有效率、誠實及公正地履行該等職務；
(*d*) 該融資人的信譽、在財政方面的穩健性及可靠性，以及該融資人的高級人員的信譽、品格及他們在財政方面的穩健性及可靠性。

(3) 在根據本條查訊與任何註冊融資人或該融資人的高級人員有關的事項後，監察委員會如認為適當，可——

(*a*) 撤銷該融資人的註冊；或
(*b*) 將該融資人的註冊暫時吊銷一段期間或直至某事件發生為止，該期間及該事件由監察委員會決定；或
(*c*) 譴責該融資人或高級人員。

(4) 監察委員會不得在未事先給予有關的融資人或高級人員獲聆聽的機會的情況下根據第 (3) 款採取任何行動。

(5) 就本條而言，“失當行為” (misconduct) 指——

(ii) has provided the Commission with any such information but the information is materially false or misleading; or
(iii) is or has been guilty of any misconduct in relation to the carrying on of the financier's business; or
(iv) for any other reason, is no longer a fit and proper person to be registered as a securities margin financier; or

(*b*) whether any of the financier's officers—
(i) is or has been guilty of any misconduct; or
(ii) is a fit and proper person to be concerned in the management of the financier's business; or

(*c*) whether any of the circumstances referred to in section 121R(2) has occurred in respect of a particular registered financier.

(2) In considering whether a registered financier is a fit and proper person to continue to be registered, the Commission must, in addition to any other matter that the Commission considers relevant, have regard to the following matters—

(*a*) the current and past financial status of the financier and its officers;
(*b*) the educational or other qualifications or experience of the financier's officers having regard to the nature of the functions that they are required to perform;
(*c*) the ability of the financier's officers to continue to perform those functions efficiently, honestly and fairly;
(*d*) the financier's reputation, financial integrity and reliability and the reputation, character, financial integrity and reliability of the financier's officers.

(3) After inquiring under this section into a matter relating to a registered financier or an officer of the financier, the Commission may if it thinks fit—

(*a*) revoke the financier's registration; or
(*b*) suspend the financier's registration for such time, or until the happening of such event, as it may determine; or
(*c*) reprimand the financier or officer.

(4) The Commission must not take any action under subsection (3) without first giving the financier or officer concerned an opportunity of being heard.

(5) For the purposes of this section, "misconduct" (失當行為) means—

(*a*) 違反本條例或《證券及期貨事務監察委員會條例》(第 24 章) 中與經營證券保證金融資業務有關的任何條文；或
(*b*) 違反監察委員會根據本條例或《證券及期貨事務監察委員會條例》(第 24 章) 作出的與經營證券保證金融資業務有關的任何規定；或
(*c*) 違反註冊融資人的任何註冊條件或限制，或違反獲准代該融資人行事的註冊融資人代表的任何註冊條件或限制；或
(*d*) 註冊融資人或獲准代該融資人行事的註冊融資人代表的任何作為或不作為，而該作為或不作為是有損或相當可能會有損投資大眾的利益的。

121T. 撤銷及暫時吊銷註冊融資人代表的註冊

(1) 任何註冊融資人代表如去世，其註冊即告撤銷。
(2) 如有以下情況，監察委員會可撤銷任何註冊融資人代表的註冊——
(*a*) 該代表根據《精神健康條例》(第 136 章) 被羈留在精神病院，或該代表患有或看來患有該條例所指的精神紊亂；或
(*b*) 該代表是一項破產令的標的或已與其債權人訂立《破產條例》(第 6 章) 所指的自願安排；或
(*c*) 該代表在香港或其他地方因犯任何罪行而被定罪，而該罪行的定罪必然涉及其曾作出欺詐或不誠實作為的裁斷；或
(*d*) 該代表被裁定犯本條例所訂罪行；或
(*e*) 該代表不再代其註冊所關乎的註冊融資人行事；或
(*f*) 該代表的註冊所關乎的註冊融資人的註冊被撤銷或暫時吊銷。

(*a*) a contravention of a provision of this Ordinance or of the Securities and Futures Commission Ordinance (Cap. 24) that relates to carrying on a business of securities margin financing; or
(*b*) a failure to comply with a requirement made by the Commission under this Ordinance or the Securities and Futures Commission Ordinance (Cap. 24) that relates to carrying on a business of securities margin financing; or
(*c*) a contravention of a condition or restriction of the registration of a registered financier or of the registration of a registered financier's representative who is authorized to act for the financier; or
(*d*) an act or omission by a registered financier, or by a registered financier's representative who is authorized to act for the financier, that is or is likely to be prejudicial to the interests of members of the investing public.

121T. Revocation and suspension of registration of registered financier's representative

(1) The registration of a registered financier's representative is revoked by the representative's death.
(2) The Commission may revoke the registration of a registered financier's representative if—
(*a*) the representative is detained under the Mental Health Ordinance (Cap. 136) in a mental hospital or is a person suffering or appearing to suffer from mental disorder within the meaning of that Ordinance; or
(*b*) the representative is the subject of a bankruptcy order or enters into a voluntary arrangement with the representative's creditors within the meaning of the Bankruptcy Ordinance (Cap. 6); or
(*c*) the representative is convicted, whether in Hong Kong or elsewhere, of an offence the conviction for which necessarily involved a finding that the person acted fraudulently or dishonestly; or
(*d*) the representative is convicted of an offence against this Ordinance; or
(*e*) the representative ceases to act for the registered financier in relation to whom the representative is registered; or
(*f*) the registration of the registered financier in relation to whom the representative is registered is revoked or suspended.

(3) 監察委員會不得在未事先給予註冊融資人代表獲聆聽的機會的情況下根據第 (2) 款撤銷該代表的註冊。

(4) 監察委員會亦可應註冊融資人代表或由該代表代為行事的註冊融資人的要求而撤銷該代表的註冊。

(5) 監察委員會可將註冊融資人代表的註冊暫時吊銷一段期間或直至某事件發生為止以代替根據第 (2) 款撤銷該項註冊，該期間及該事件由監察委員會決定。

(6) 監察委員會如認為適當，可隨時更改或撤銷對註冊融資人代表的註冊作出的暫時吊銷。

121U. 監察委員會處理註冊融資人代表的失當行為的權力

(1) 監察委員會可隨時就以下事項作出查訊——

(*a*) 不論在根據本部註冊之前或之後，某註冊融資人代表是否沒有向監察委員會提供由本條例或根據本條例規定的關乎該代表的資料；或

(*b*) 某註冊融資人代表是否向監察委員會提供了任何屬虛假達關鍵程度或具誤導性達關鍵程度的上述資料；或

(*c*) 該代表是否犯了或曾犯了關乎由該代表代為行事或曾由該代表代為行事的註冊融資人的業務的失當行為；或

(*d*) 該代表是否因任何其他理由而不再是註冊為證券保證金融資人代表的適當人選。

(2) 監察委員會在考慮任何註冊融資人代表是否繼續註冊為證券保證金融資人代表的適當人選時，除考慮它認為有關的任何其他事項外，亦必須考慮以下事項——

(*a*) 該代表現時及過去的財政狀況；

(*b*) 該代表的學歷或其他資歷或經驗，而在這方面的考慮必須顧及該代表須履行的職務的性質；

(*c*) 該代表能否有效率、誠實及公正地履行該等職務；

(*d*) 該代表的信譽、品格及在財政方面的穩健性及可靠性。

(3) The Commission must not revoke the registration of a registered financier's representative under subsection (2) without first giving the representative an opportunity of being heard.

(4) The Commission may also revoke the registration of a registered financier's representative at the request of the representative or the registered financier for whom the representative acts.

(5) The Commission may, instead of revoking the registration of a registered financier's representative under subsection (2), suspend that registration for such period, or until the happening of such event, as it determines.

(6) The Commission may at any time vary or revoke a suspension of registration of a registered financier's representative if it believes it to be appropriate to do so.

121U. Powers of Commission in relation to misconduct of registered financier's representative

(1) The Commission may at any time inquire into whether a registered financier's representative—

(*a*) has failed to provide the Commission, whether before or after becoming registered under this Part, with such information relating to the representative as may be required by or under this Ordinance; or

(*b*) has provided the Commission with any such information but the information is materially false or misleading; or

(*c*) is or has been guilty of any misconduct in relation to the business of the registered financier for whom the representative acts or formerly acted; or

(*d*) for any other reason, is no longer a fit and proper person to be registered as a securities margin financier's representative.

(2) In considering whether a registered financier's representative is a fit and proper person to continue to be registered, the Commission must, in addition to any other matter that the Commission considers relevant, have regard to the following matters—

(*a*) the representative's current and past financial status;

(*b*) the representative's educational or other qualifications or experience, having regard to the nature of the functions that the representative is required to perform;

(*c*) the representative's ability to perform those functions efficiently, honestly and fairly;

(*d*) the representative's reputation, character, financial integrity and reliability.

(3) 在查訊與任何註冊融資人代表有關的事項後，監察委員會如認為適當，可——

(*a*) 撤銷該代表的註冊；或

(*b*) 將該代表的註冊暫時吊銷一段期間或直至某事件發生為止，該期間及該事件由監察委員會決定；或

(*c*) 譴責該代表。

(4) 監察委員會不得在未事先給予有關代表獲聆聽的機會的情況下根據第 (3) 款採取任何行動。

(5) 就本條而言，"失當行為" (misconduct) 指——

(*a*) 違反本條例或《證券及期貨事務監察委員會條例》(第 24 章) 中與經營證券保證金融資業務有關的任何條文；或

(*b*) 違反監察委員會根據本條例或《證券及期貨事務監察委員會條例》(第 24 章) 作出的與經營證券保證金融資業務有關的任何規定；或

(*c*) 違反註冊融資人代表的任何註冊條件或限制；或

(*d*) 註冊融資人代表的任何作為或不作為，而該作為或不作為是有損或相當可能會有損投資大眾的利益的。

121V. 監察委員會處理註冊融資人的核准董事的權力

(1) 監察委員會可隨時作出查訊，以確定任何根據第 121I 條獲核准的註冊融資人董事是否不再是負責監督該融資人的證券保證金融資業務的適當人選。

(2) 監察委員會在考慮任何董事是否繼續負責監督該融資人的證券保證金融資業務的適當人選時，除考慮它認為有關的任何其他事項外，亦必須考慮以下事項——

(*a*) 該董事是否有能力負責監督該融資人的證券保證金融資業務；

(*b*) 該董事的信譽、品格及在財務方面的穩健性及可靠性。

(3) 在查訊與任何根據第 121I 條獲核准的董事有關的事項後，監察委員會如認為適當，可撤銷該項核准。

(3) After inquiring into a matter relating to a registered financier's representative, the Commission may if it thinks fit—

(*a*) revoke the representative's registration; or

(*b*) suspend the representative's registration for such time, or until the happening of such event, as it may determine; or

(*c*) reprimand the representative.

(4) The Commission must not take any action under subsection (3) without first giving the representative concerned an opportunity of being heard.

(5) For the purposes of this section, "misconduct" (失當行為) means—

(*a*) a contravention of a provision of this Ordinance or of the Securities and Futures Commission Ordinance (Cap. 24) that relates to carrying on a business of securities margin financing; or

(*b*) a failure to comply with a requirement made by the Commission under this Ordinance or the Securities and Futures Commission Ordinance (Cap. 24) that relates to carrying on a business of securities margin financing; or

(*c*) a contravention of a condition or restriction of the registration of a registered financier's representative; or

(*d*) an act or omission by a registered financier's representative that is or is likely to be prejudicial to the interests of members of the investing public.

121V. Powers of Commission in relation to approved director of registered financier

(1) The Commission may at any time inquire into whether a director of a registered financier approved under section 121I is no longer a fit and proper person to be responsible for supervising the financier's business of securities margin financing.

(2) In considering whether a director is a fit and proper person to continue to be responsible for supervising the financier's business of securities margin financing, the Commission must, in addition to any other matter that the Commission considers relevant, have regard to the following matters—

(*a*) the director's ability to be responsible for supervising the financier's business of securities margin financing;

(*b*) the director's reputation, character, financial integrity and reliability.

(3) After inquiring into a matter relating to a director approved under section 121I, the Commission may, if it thinks fit, revoke the approval.

(4) 監察委員會不得在未事先給予有關董事獲聆聽的機會的情況下根據本條撤銷對該董事的核准。

121W. 監察委員會須就其決定給予書面通知

(1) 監察委員會在決定根據第121R或121S條撤銷或暫時吊銷任何註冊融資人的註冊後，或在決定根據第121S條對任何註冊融資人或該融資人的任何高級人員採取任何其他行動後，必須——

(*a*) 將該項決定以書面通知該融資人或高級人員；及

(*b*) 在該項決定內包括一項該項決定所依據的理由的陳述。

(2) 監察委員會在決定根據第121T或121U條撤銷或暫時吊銷任何註冊融資人代表的註冊後，或在決定根據第121U條對任何註冊融資人代表採取任何其他行動後，必須——

(*a*) 將該項決定以書面通知該代表；及

(*b*) 在該項決定內包括一項該項決定所依據的理由的陳述。

(3) 監察委員會在決定根據第121V條取消對任何註冊融資人董事的核准後，必須——

(*a*) 將該項決定以書面通知該董事；及

(*b*) 在該項決定內包括一項該項決定所依據的理由的陳述。

121X. 監察委員會向註冊融資人或註冊融資人代表發出指示的增補權力

(1) 除在第121R、121S、121T及121U條下的權力外，監察委員會有權向任何註冊融資人或註冊融資人代表發出指示，在該融資人或代表的業務運作方面以指示所指明的方式加以局限；而在不限制本條的規定的原則下，監察委員會可為以下目的發出上述指示——

(*a*) (就與撤銷註冊有關連的情況而言)停止業務運作；或

(*b*) 在註冊暫時吊銷的一段期間內，為保障客戶的利益而只進行必要的業務運作。

(4) The Commission must not revoke the approval of a director under this section without first giving the director an opportunity of being heard.

121W. Commission to give written notice of decisions

(1) On deciding to revoke or suspend the registration of a registered financier under section 121R or 121S, or to take any other action against a registered financier or an officer of the financier under section 121S, the Commission—

(*a*) must give written notice of the decision to the financier or officer; and

(*b*) must include in the decision a statement of the reasons on which it is based.

(2) On deciding to revoke or suspend the registration of a registered financier's representative under section 121T or 121U, or to take any other action against a registered financier's representative under section 121U, the Commission—

(*a*) must give written notice of the decision to the representative; and

(*b*) must include in the decision a statement of the reasons on which it is based.

(3) On deciding to cancel the approval of a director of a registered financier under section 121V, the Commission—

(*a*) must give written notice of the decision to the director; and

(*b*) must include in the decision a statement of the reasons on which it is based.

121X. Additional powers of Commission for direction of registered financier or registered financier's representative

(1) In addition to the powers under sections 121R, 121S, 121T and 121U, the Commission may issue a direction to a registered financier or registered financier's representative to limit its or his business operations in a manner specified in the direction, including, without limiting this section, for the purpose of—

(*a*) closing down the operations in connection with a revocation of registration; or

(*b*) carrying on only essential operations for the protection of client's interests during a period of suspension of registration.

(2) 凡根據本條向任何人發出的指示是與撤銷或暫時吊銷註冊有關連的，而該人按照該指示進行業務運作，則該人須當作並無違反第 121C 或 121D 條 (視屬何情況而定)。

(3) 任何證券保證金融資人違反根據本條向他發出的指示而進行業務運作，即屬犯罪——

(*a*) 一經循公訴程序定罪，可處罰款 $1,000,000 及監禁 5 年；或

(*b*) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

(4) 任何證券保證金融資人代表無合理辯解而以違反根據本條向他發出的指示的方式行事，即屬犯罪，一經定罪，可處第 4 級罰款。

121Y. 撤銷或暫時吊銷註冊的效力

(1) 除第 4 分部另有規定外，根據本部撤銷或暫時吊銷任何人的註冊均不具有以下效力——

(*a*) 廢止或影響由該人所訂立的關於證券保證金融資的任何協議、交易或安排，不論該協議、交易或安排是在撤銷或暫時吊銷註冊之前或之後訂立的；或

(*b*) 影響在該協議、交易或安排之下產生的任何權利、義務或法律責任。

(2) 任何根據以下條文被撤銷註冊的人，在自撤銷時起計的 12 個月內，並無資格申請根據本部註冊為證券保證金融資人或證券保證金融資人代表——

(*a*) 第 121R 條 (該條的第 (2)(*c*) 或 (*h*) 或 (4) 款除外)；或

(*b*) 第 121S 條；或

(*c*) 第 121T 條 (該條的第 (2)(*e*) 或 (*f*) 或 (4) 款除外)；或

(*d*) 第 121U 條。

(2) Where a direction is issued under this section to a person in connection with revocation of registration or suspension of registration and that person carries on business operations in accordance with such a direction, he is deemed not to contravene section 121C or 121D, as the case may be.

(3) A securities margin financier who carries on business operations contrary to a direction issued to it under this section commits an offence and is liable—

(*a*) on conviction on indictment, to a fine of $1,000,000 and to imprisonment for 5 years; or

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

(4) A financier's representative who without reasonable excuse acts in a manner contrary to a direction issued to him under this section commits an offence and is liable on conviction to a fine at level 4.

121Y. Effect of revoking or suspending registration

(1) Except as provided by Division 4, the revocation or suspension of the registration of a person under this Part does not operate so as—

(*a*) to avoid or affect an agreement, transaction or arrangement relating to securities margin financing entered into by the person, whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension; or

(*b*) to affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

(2) A person whose registration is revoked under—

(*a*) section 121R (other than under subsection (2)(*c*) or (*h*) or (4) of that section); or

(*b*) section 121S; or

(*c*) section 121T (other than subsection (2)(*e*) or (*f*) or (4) of that section); or

(*d*) section 121U,

is not eligible to apply to be registered under this Part, whether as a securities margin financier or a securities margin financier's representative, before the end of 12 months from the revocation.

第 3 分部——證券保證金融資業務的處理

121Z. 註冊融資人須向客戶提供帳戶結單

(1) 本條適用於任何註冊融資人與其客戶之間訂立的以下種類的交易——

(a) 由該客戶存放或由他人代該客戶存放證券抵押品或款項；

(b) 由該客戶提取或由他人代該客戶提取證券抵押品或款項；

(c) 由該融資人處置該客戶的任何證券抵押品；

(d) 調整向該客戶提供的財務通融的款額，或提供該項通融所根據的條款，不論是以擴大、減少、記入貸項或記入借項的形式作出 (但因該融資人收取利息而須作出的調整則除外)；

(e) 將收入記入該客戶帳目的貸方或從該客戶帳目扣除收費。

(2) 任何註冊融資人在訂立本條適用的交易後，必須於下一個營業日之內擬備和提供予每名該融資人的客戶一份符合第 (3) 款規定的帳戶結單。

(3) 第 (2) 款所提述的帳戶結單必須包括以下資料——

(a) 該融資人用以經營業務的名稱，以及在香港經營該業務的主要地點的地址；

(b) 按第 (2) 款規定可獲該融資人提供帳戶結單的有關客戶的姓名或名稱、地址及帳戶號碼；

(c) 就任何有涉及該客戶的交易進行的每一天而言，該客戶帳戶在該日開始時和終結時的尚待結算餘額，以及在該日內該帳戶結餘的變動的細節；

(d) 向該客戶提供的所有財務通融的細節，包括有關通融的性質、限額及屆滿日期，以及其利率和計算利息的基準；

(e) 在該日開始時為該客戶帳戶持有的每樣證券抵押品的數量；

Division 3—Conduct of securities margin financing businesses

121Z. Registered financier to provide client with statement of account

(1) This section applies to the following kinds of transactions entered into between a registered financier and a client of the financier—

(*a*) a deposit of securities collateral or money by or on behalf of the client;

(*b*) a withdrawal of securities collateral or money by or on behalf of the client;

(*c*) a disposal by the financier of any of the client's securities collateral;

(*d*) an adjustment of the amount of financial accommodation being provided, or the terms on which it is provided, to the client, whether by extension, reduction, credit or debit (except as a result of interest charged by the financier);

(*e*) a crediting of income to, or a deduction of charges from, the client's account.

(2) A registered financier must prepare and provide to each client of the financier, no later than the end of the next business day after entering into any transaction to which this section applies, a statement of account that complies with subsection (3).

(3) The statement referred to in subsection (2) must include the following information—

(*a*) the name under which the financier carries on business and the address of the principal place in Hong Kong at which the business is carried on;

(*b*) the name, address and account number of the client to whom the financier is required to give the statement of account;

(*c*) the outstanding balance of the account of the client at the beginning and at the end of each day on which a transaction involving the client takes place and details of changes in the balance of that account during that day;

(*d*) details of all financial accommodation provided to the client, including the nature, limit and expiry date of the accommodation together with the interest rate and basis of the interest calculation thereon;

(*e*) the quantity of each description of securities collateral held for the account of the client at the beginning of that day;

(*f*) 在該日終結時為該帳戶持有的每樣證券抵押品的數量、市場價格、市場價值、保證金比率及保證金價值；

(*g*) 在該日存入該帳戶及在該日從該帳戶提取的每樣證券抵押品的數量；

(*h*) 該融資人在該日主動對為該帳戶持有的證券抵押品作出的一切處置，以及該等處置所產生的收益是如何處理的；

(*i*) 在該日記入該帳戶的貸項的收入的細目分類，及在該日記入該帳戶的借項的利息及其他收費的細目分類。

(4) 任何註冊融資人必須在每個公曆月終結後的 7 個營業日內——

(*a*) 為其每名客戶擬備一份符合第 (5) 款的帳戶結單；及

(*b*) 將該帳戶結單提供予該客戶，

但如該帳戶在有關期間內並無任何交易，亦沒有任何尚待結算餘額及該融資人沒有為該帳戶持有任何證券抵押品，則屬例外。

(5) 第 (4) 款所提述的帳戶結單必須包括以下資料——

(*a*) 該融資人用以經營業務的名稱，以及在香港經營該業務的主要地點的地址；

(*b*) 按第 (4) 款規定可獲該融資人提供帳戶結單的有關客戶的姓名或名稱、地址及帳戶號碼；

(*c*) 該客戶帳戶在該月開始時和終結時的尚待結算餘額，以及在該月內該帳戶結餘的變動的細節；

(*d*) 在該月內向該客戶提供的所有財務通融的細節，包括有關通融的性質、限額及屆滿日期；

(*e*) 在該月開始時為該客戶帳戶持有的每樣證券抵押品的數量；

(*f*) 在該月終結時為該帳戶持有的每樣證券抵押品的數量、市場價格、市場價值、保證金比率及保證金價值；

(*g*) 在該月內存入該帳戶及在該月內從該帳戶提取的每樣證券抵押品的數量；

(*f*) the quantity, market price, market value, margin ratio and margin value of each description of securities collateral held for that account at the end of that day;

(*g*) the quantity of each description of securities collateral deposited to or withdrawn from that account during that day;

(*h*) all disposals initiated by the financier of securities collateral held for that account during that day and what happened to the proceeds of those disposals;

(*i*) a breakdown of the income credited, and the interest and other charges debited, to that account on that day.

(4) A registered financier must, within 7 business days after the end of each calendar month—

(*a*) prepare for each client of the financier a statement of account that complies with subsection (5); and

(*b*) provide the statement to the client,

unless there is no transaction in the account over the relevant period and the account does not have any outstanding balance and holding of securities collateral during the relevant period.

(5) The statement referred to in subsection (4) must include the following information—

(*a*) the name under which the financier carries on business and the address of the principal place in Hong Kong at which the business is carried on;

(*b*) the name, address and account number of the client to whom the financier is required to give the statement of account;

(*c*) the outstanding balance of the account of the client at the beginning and at the end of that month and details of changes in the balance of that account during that month;

(*d*) details of all financial accommodation provided to the client during that month, including the nature, limit and expiry date of the accommodation;

(*e*) the quantity of each description of securities collateral held for the account of the client at the beginning of that month;

(*f*) the quantity, market price, market value, margin ratio and margin value of each description of securities collateral held for that account at the end of that month;

(*g*) the quantity of each description of securities collateral deposited to or withdrawn from that account during that month;

(*h*) 該融資人在該月內主動對為該帳戶持有的證券抵押品作出的一切處置，以及該等處置所產生的收益是如何處理的；

(*i*) 在該月內記入該帳戶的貸項的收入的細目分類，及在該月內記入該帳戶的借項的利息及其他收費的細目分類。

(6) 任何註冊融資人無合理辯解而違反本條，即屬犯罪，一經定罪，可處第 4 級罰款。

121AA. 註冊融資人在客戶帳戶方面的職責

(1) 在任何註冊融資人的客戶要求該融資人向他提供一份他於該融資人所設帳戶的指明帳戶結單的文本後，該融資人必須在切實可行的範圍內盡快遵從該項要求。

(2) 如監察委員會應任何註冊融資人的客戶提出的申請而有所指示，則該融資人必須按該等指示而於其通常營業時間內，備有該融資人有的該客戶的帳戶結單的文本，以供該客戶查閱。

(3) 在以下情況下註冊融資人無須提供或為供查閱而備有下列帳戶結單的文本——

(*a*) (如屬第 121Z(2) 條所提述的帳戶結單) 該帳戶結單是在自提出要求日期起計的前 3 個月前擬備的；或

(*b*) (如屬第 121Z(4) 條所提述的帳戶結單) 該帳戶結單是在自提出要求日期起計的前 6 年前擬備的。

(4) 註冊融資人可就根據第 (1) 款提供的文本收費，該收費不得超逾監察委員會規則就此而訂明的款額。

(5) 任何註冊融資人無合理辯解而違反第 (1) 或 (2) 款，即屬犯罪，一經定罪，可處第 4 級罰款。

121AB. 註冊融資人在處置證券抵押品方面的限制

(1) 除第 (4) 款另有規定外，在證券抵押品由註冊融資人的客戶或由他人代該客戶存放於該融資人，或存放於另一人以便利獲得該融資人提供財務通融後，該融資人必須在切實可行的範圍內盡快確保有關的證券——

(*a*) 以該客戶的名義登記；或

(*h*) all disposals initiated by the financier of securities collateral held for that account during that month and what happened to the proceeds of those disposals;

(*i*) a breakdown of the income credited, and the interest and other charges debited, to that account during that month.

(6) A registered financier who without reasonable excuse fails to comply with this section commits an offence and is liable on conviction to a fine at level 4.

121AA. Duties of registered financier with respect to clients' accounts

(1) As soon as practicable after a client of a registered financier requests the financier to provide the client with a copy of a specified statement of the client's account with the financier, the financier must comply with the request.

(2) If the Commission, on the application by a client of a registered financier, so directs, the financier must make available for inspection by the client during the financier's ordinary hours of business the financier's copies of the client's statements of account.

(3) A registered financier is not required to provide or keep available for inspection a copy of a statement of account if—

(*a*) in the case of a statement of account referred to in section 121Z(2), the statement that was prepared more than 3 months before the request; or

(*b*) in the case of a statement of account referred to in section 121Z(4), the statement that was prepared more than 6 years before the request.

(4) A registered financier may impose a charge not exceeding an amount prescribed by Commission rules for a copy of a document provided under subsection (1).

(5) A registered financier who, without reasonable excuse, fails to comply with subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 4.

121AB. Restrictions on disposition of securities collateral by registered financiers

(1) Subject to subsection (4), as soon as practicable after securities collateral is deposited with a registered financier, or with another person to facilitate the provision of financial accommodation by the financier, by or on behalf of a client of the financier, the financier must ensure that the relevant securities are—

(*a*) registered in the name of the client; or

(*b*) 以該融資人或該融資人所控制的代名人的名義登記；或
(*c*) 存放於認可機構、註冊交易商或監察委員會為施行本條而核准的某些其他機構的指定帳戶內作穩妥保管。

(2) 監察委員會只有在信納有關的機構能提供令人滿意的上述穩妥保管服務的情況下，方可為施行第(1)(*c*)款藉給予該機構的書面通知而核准該機構。

(3) 如證券抵押品由註冊融資人的客戶或由他人代該客戶存放於該融資人，或存放於另一人以便利獲得該融資人提供財務通融，則該融資人必須採取合理步驟，以確保有關的證券除按第(1)及(4)款的規定處理外，不得以其他方式存放、移轉、借出、質押或再質押或以其他方式處理。

(4) 如證券抵押品由註冊融資人的客戶或由他人代該客戶存放於該融資人，或存放於另一人以便利獲得該融資人提供財務通融，則該融資人可——

(*a*) 將有關的證券作為對該融資人提供財務通融的抵押品而存放於任何認可機構或任何註冊交易商；或
(*b*) 處置該等證券，以履行該客戶維持所協定的保證金水平的義務；或
(*c*) 處置該等證券，以履行該客戶付還或解除由該融資人所提供的財務通融的法律責任，

但該融資人只可在獲得該客戶的書面授權下或在監察委員會規則准許的情況下方可採取上述行動。

(5) 第(4)款所提述的授權(但不包括由客戶作出的，使融資人有權在該客戶作出有關的證券保證金融資協議所指的失責行為，而又未能在被要求時糾正該失責行為的情況下，根據第(4)(*b*)或(*c*)款處置有關的證券的授權)——

(*a*) 只在該項授權指明其有效期間的情況下方具有效力；及
(*b*) 在如此指明的期間或12個月內(兩者以較短者為準)一直有效；及
(*c*) 可以書面方式延續一次或多於一次，每次不得超逾12個月。

(*b*) registered in the name of the financier or a nominee controlled by the financier; or
(*c*) deposited in safe custody in a designated account with an authorized institution, a registered dealer or some other institution approved by the Commission for the purposes of this section.

(2) The Commission may, by written notice given to the institution concerned, approve an institution for the purposes of subsection (1)(*c*) only if it is satisfied that the institution provides satisfactory facilities for such safe custody.

(3) If securities collateral is deposited with a registered financier, or with another person to facilitate the provision of financial accommodation by the financier, by or on behalf of a client of the financier, the financier must take reasonable steps to ensure that the relevant securities are not deposited, transferred, lent, pledged, or repledged or otherwise dealt with except as provided by subsections (1) and (4).

(4) If securities collateral is deposited with a registered financier, or with another person to facilitate the provision of financial accommodation by the financier, by or on behalf of a client of the financier, the financier may—

(*a*) deposit the relevant securities with an authorized institution or a registered dealer as collateral for financial accommodation provided to the financier; or
(*b*) dispose of those securities in settlement of the client's obligation to maintain an agreed level of margin; or
(*c*) dispose of those securities in settlement of any liability of the client to repay or discharge the financial accommodation provided by the financier,

but only with the written authority of the client or as permitted by Commission rules.

(5) An authority referred to in subsection (4), other than one given by the client authorizing disposition of securities under subsection (4)(*b*) or (*c*) where the client is in default under the relevant securities margin financing agreement and fails to rectify such default when requested to do so—

(*a*) is effective only if it specifies the period for which it is current; and
(*b*) remains in force for the period so specified or 12 months, whichever is the shorter; and
(*c*) may be renewed in writing for one or more further periods not exceeding 12 months at any one time.

(6) 任何註冊融資人無合理辯解而違反第 (1) 款，即屬犯罪，一經定罪，可處第 3 級罰款。

(7) 任何註冊融資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 $200,000 及監禁 2 年；或

(*b*) 一經循簡易程序定罪，可處第 6 級罰款。

(8) 本條並不影響任何人就存放於註冊融資人或存放於另一人以便利獲得該融資人提供財務通融的證券抵押品而具有的合法申索權或留置權。

(9) 為免生疑問，凡註冊融資人已按照第 (4) 款將有關的證券存放於任何認可機構或任何註冊交易商，則第 (3) 款不得解釋為規定該融資人須確保該機構或交易商並無將該等證券再存放、移轉、借出、質押或再質押或以其他方式處理。

121AC. 註冊融資人須就不能遵守財政資源規則通知監察委員會

(1) 任何註冊融資人如察覺它不能遵守財政資源規則的規定，或察覺理應使它察覺它不能遵守財政資源規則的規定的資料，該融資人必須即時——

(*a*) 將此事通知監察委員會；及

(*b*) 停止提供進一步的財務通融，但為履行在該融資人察覺此事之前已訂立的任何協議或安排而提供進一步的財務通融則屬例外。

(2) 任何註冊融資人的董事如察覺或如有盡合理努力本會察覺該融資人不能遵守財政資源規則的規定一事，則該融資人須視為察覺此事。

(3) 監察委員會如有合理理由相信任何註冊融資人不能遵守財政資源規則的規定，可暫時吊銷該融資人的註冊，聽候監察委員會就第 121R 條所述事項或就根據第 121AW 條委任的核數師所提交的報告作出審議。

(4) 凡監察委員會有合理理由相信任何註冊融資人不能遵守財政資源規則的規定，監察委員會可為確定該融資人是否正遵守上述規定而——

(6) A registered financier who, without reasonable excuse, fails to comply with subsection (1) commits an offence and is liable on conviction to a fine at level 3.

(7) A registered financier who, without reasonable excuse, contravenes subsection (3) commits an offence and is liable—

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

(*b*) on summary conviction, to a fine at level 6.

(8) Nothing in this section affects a lawful claim or lien that a person has in respect of securities collateral deposited with a registered financier or another person to facilitate the provision of financial accommodation by the financier.

(9) For the avoidance of doubt, subsection (3) shall not be construed as requiring the registered financier to ensure that the relevant securities are not redeposited, transferred, lent, pledged, or repledged or otherwise dealt with by an authorized institution or a registered dealer with whom the financier has deposited the relevant securities in accordance with subsection (4).

121AC. Registered financier to notify Commission if unable to comply with financial resources rules

(1) If a registered financier becomes aware, or becomes aware of information that ought to make the financier aware, that the financier cannot comply with the financial resources rules, the financier must immediately—

(*a*) notify the Commission of the fact; and

(*b*) cease to provide further financial accommodation, otherwise than for the purpose of giving effect to any agreement or arrangement entered into before the time when the financier became so aware.

(2) A registered financier is taken to be aware that the financier is unable to comply with the financial resources rules if any director of the financier is aware or would, with the exercise of reasonable diligence, have been aware of that matter.

(3) If the Commission reasonably believes that a registered financier cannot comply with the financial resources rules, the Commission may suspend the financier's registration pending consideration by the Commission of the matter under section 121R or the report of an auditor appointed under section 121AW.

(4) Where the Commission reasonably believes that a registered financier cannot comply with the financial resources rules, it may, for the purpose of ascertaining whether or not such compliance is taking place—

(a) 要求該融資人及該融資人的任何高級人員、僱員或代理人交出由該融資人持有的與該融資人的業務有關的所有會計紀錄及其他紀錄，以供查閱；及

(b) 要求該融資人的核數師交出該核數師持有的與上述業務有關的所有會計紀錄及其他紀錄。

(5) 第 (4) 款賦予監察委員會的權力，可由監察委員會為此目的而以書面授權的人行使，但該人在行使上述權力前須出示該書面授權。

(6) 任何註冊融資人違反第 (1) 款，即屬犯罪，一經定罪，可處第 6 級罰款，如屬持續的罪行，則可就該罪行持續期間的每一日另處罰款 $1,000 。

(7) 任何人無合理辯解而不遵從根據第 (4) 款對該人作出的要求，即屬犯罪，一經定罪，可處第 5 級罰款及監禁 2 年。

第 4 分部——與非註冊融資人訂立的合約

121AD. 本分部的適用範圍及釋義

(1) 凡某協議的訂立或履行構成屬證券保證金融資業務的活動或該種活動的一部分，該協議即屬本分部所指的協議。

(2) 本分部適用於由非註冊證券保證金融資人和其客戶在本分部生效後所訂立的，與該等融資人經營的證券保證金融資業務相關的協議。

(3) 在本分部中，凡提述非註冊證券保證金融資人，即提述符合以下說明的證券保證金融資人——

(a) 該人並非根據第 2 分部註冊；或

(b) 該人在該分部下的註冊被暫時吊銷或撤銷，

但有關提述並不包括對因第 121X(2)、 121BF(1) 或 121BG 條的實施而不屬違反第 121C 條的人的提述。

(a) require the financier and any of its officers, employees or agents to produce for inspection all accounting and other records held by the financier that relate to the financier's business; and

(b) require an auditor of the financier to produce all accounting and other records held by the auditor relating to that business.

(5) The power conferred on the Commission by subsection (4) may be exercised by a person authorized in writing by the Commission for the purpose, subject to the person producing the written authorization before exercising the power.

(6) A registered financier that contravenes subsection (1) 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 $1,000 for each day during which the offence continues.

(7) A person who, without reasonable excuse, fails to comply with any requirement made to the person under subsection (4) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

Division 4—Agreements with unregistered financiers

121AD. Application and interpretation of this Division

(1) In this Division, "agreement" (協議) means an agreement the making or performance of which constitutes, or is part of, the business activity of securities margin financing.

(2) This Division applies to agreements entered into after the commencement of this Division by unregistered securities margin financiers with their clients in connection with the business of securities margin financing carried on by those financiers.

(3) A reference in this Division to an unregistered securities margin financier is a reference to a securities margin financier—

(a) who is not registered under Division 2; or

(b) whose registration under that Division is suspended or revoked,

but does not include a reference to a person who does not contravene section 121C because of the operation of section 121X(2), 121BF(1) or 121BG.

121AE. 非註冊人士訂立的協議

(1) 除第 (2) 款及第 121AF(2) 條另有規定外，凡任何非註冊證券保證金融資人 ("提供者") 在違反第 121C 條的情況下經營證券保證金融資業務，他不得對在經營該業務過程中訂立的協議的另一方 ("買方") 強制執行該協議。

(2) 凡任何證券保證金融資人的註冊被暫時吊銷，而某協議是在註冊暫時吊銷前訂立的，則第 (1) 款不會使該融資人不能對買方強制執行該協議中關乎以下事項的部分——

(*a*) 支付費用及收費，包括支付未清繳貸款的利息；

(*b*) 計算保證金價值；

(*c*) 計算保證金比率；

(*d*) 提供證券抵押品；

(*e*) 發出追繳保證金通知；或

(*f*) 處置證券抵押品。

(3) 買方有權——

(*a*) 追討他在有關協議下支付的任何款項或他在該協議下移轉或因其他情況而不再管有的任何其他財產；及

(*b*) 就他因提供者並非註冊而蒙受的任何損失追討補償，但買方須在該等損失產生時並不知道提供者是並非註冊的。

(4) 為施行第 (3)(*b*) 款，買方只可就符合以下說明的損失追討補償——

(*a*) 該損失是因提供者並非註冊而直接引致的；及

(*b*) 該損失是協議雙方在訂立有關協議時理應預料到的。

(5) 為施行第 (3) 款，買方有權——

(*a*) 追討的款額或其他財產；及

(*b*) 追討的補償款額，

為——

(i) 協議雙方議定的款額或財產，或以上兩者的組合；或

(ii) 法院應協議的任何一方的申請而釐定的、其認為屬公平公正的款額或財產，或以上兩者的組合，而法院可就此另外施加任何條款。

121AE. Agreements made by unregistered persons

(1) Subject to subsection (2) and section 121AF(2), an agreement made by an unregistered securities margin financier ("the provider") in the course of carrying on a business of securities margin financing in contravention of section 121C is unenforceable against the other party ("the purchaser").

(2) Where a securities margin financier has had its registration suspended, nothing in subsection (1) shall make unenforceable against the purchaser those parts of an agreement that was entered into before such suspension relating to—

(*a*) the payment of fees and charges including interest on loans outstanding;

(*b*) the calculation of margin value;

(*c*) the calculation of margin ratio;

(*d*) the provision of securities collateral;

(*e*) the making of margin calls; or

(*f*) the disposal of securities collateral.

(3) The purchaser is entitled to recover—

(*a*) any money paid or other property transferred or otherwise parted with by him under the agreement; and

(*b*) compensation for any loss sustained by him as a result of the provider being unregistered, provided that the purchaser did not, at the time such loss arose, know that the provider was unregistered.

(4) For the purposes of subsection (3)(*b*), compensation shall only be recoverable for loss that is—

(*a*) a direct result of the provider being unregistered; and

(*b*) within the reasonable contemplation of the parties at the time the agreement was entered into.

(5) For the purposes of subsection (3)—

(*a*) the amount of money or other property; and

(*b*) the amount of compensation,

that the purchaser is entitled to recover is—

(i) such amount or property, or combination thereof, as the parties agree to; or

(ii) on the application of either party, such amount or property, or combination thereof, as the Court considers just and equitable and on such additional terms as the Court may impose.

(6) 如買方沒有履行協議，則提供者可向法院申請，要求買方付還在協議下取得的任何款項或交還在協議下取得的任何財產，而法院可按其認為屬公平公正的條款，作出其認為屬公平公正的命令。

121AF. 因第121AE條而不可強制執行的協議

(1) 本條適用於因第121AE條而不可強制執行的協議。

(2) 法院如應協議的任何一方的申請，信納可強制執行一項協議的條件獲得符合，則可允許——

(a) 強制執行該協議；或

(b) 保留全部或部分在該協議下支付的款項或移轉的財產，

或以上兩者的組合，但該協議須受法院認為屬公平公正的修改所規限。

(3) 可強制執行一項協議的條件為——

(a) 強制執行該協議，或保留全部或部分在該協議下支付的款項或移轉的財產，或以上兩者的組合，視何者適用而定，是公平公正的；

(b) 申請人——

(i) 是提供者，而他有合理理由相信並真誠相信他訂立該協議並不違反第121C條；或

(ii) 是買方，而他在支付有關的款項時，或移轉或因其他情況而不再管有其他財產時，並不知道提供者是並非註冊的。

(4) 如在任何協議下移轉的財產已轉移予第三者，則在第121AE條或本條中凡提述財產之處，須理解為提述有關財產在該協議下移轉時的價值。

第5分部——註冊融資人的會計紀錄

121AG. 註冊融資人須備存會計紀錄

(1) 任何註冊融資人——

(6) If the purchaser does not perform the agreement, the provider may apply to the Court for the repayment of any money and the return of any property received by the purchaser under the agreement, and the Court may make such order on such terms as it considers just and equitable.

121AF. Agreements made unenforceable by section 121AE

(1) This section applies to an agreement which is unenforceable because of section 121AE.

(2) If, on the application of either party, the Court is satisfied that the enforcement conditions are met, it may, subject to such modification as it considers just and equitable, allow—

(a) the agreement to be enforced; or

(b) all or part of the money paid and property transferred under the agreement to be retained,

or a combination thereof.

(3) The enforcement conditions are—

(a) that it is just and equitable for the agreement to be enforced or for all or part of the money paid or property transferred under the agreement to be retained, or a combination thereof; and

(b) where the applicant is—

(i) the provider, that he honestly and reasonably believed that he was not contravening section 121C by making the agreement; or

(ii) the purchaser, that he did not, at the time the money was paid or other property was transferred or otherwise parted with, know that the provider was unregistered.

(4) If property transferred under the agreement has passed to a third party, a reference in section 121AE or this section to that property is to be read as a reference to its value at the time of its transfer under the agreement.

Division 5—Accounting records of registered financiers

121AG. Registered financier to keep accounting records

(1) A registered financier—

(*a*) 必須備存記錄和說明該融資人所訂立的交易及其財務狀況的會計紀錄；及
(*b*) 必須確保該等紀錄按本條的規定備存。

(2) 該融資人的會計紀錄必須以符合以下說明的方式備存——
(*a*) 可使該融資人經營的證券保證金融資業務的真實而中肯的損益表及資產負債表得以不時擬備；及
(*b*) 可使該等損益表及資產負債表得以方便而妥當地審計；及
(*c*) 可使該融資人有否遵從財政資源規則一事得以輕易地確定。

(3) 該等紀錄必須以書面形式以中文或英文備存，或是以可使該等紀錄能隨時被取用和能隨時轉換為中文或英文的書面形式的方式備存。

(4) 備存的紀錄所具有的細節，必須足以顯示以下詳情——
(*a*) 所有由該融資人收取或支付的款項，包括存入信託帳戶或從信託帳戶支出的款項；及
(*b*) 所有由該融資人向客戶提供的財務通融及所有從客戶收取的付款；及
(*c*) 該融資人對為客戶的帳戶而持有的證券抵押品作出的一切處置，並須就每項證券抵押品的處置顯示——
(i) 客戶的姓名或名稱；及
(ii) 完成該項處置的交易商的姓名或名稱；及
(iii) 完成該項處置所收取的收費；及
(iv) 該項處置所產生的收益是如何處理的；及
(*d*) 該融資人從其他來源收取的所有收入；及
(*e*) 由該融資人支付的所有支出 (包括利息)；及
(*f*) 該融資人的所有資產及負債 (包括或有負債)；及
(*g*) 所有不屬該融資人的財產而該融資人須作出交代的證券，以及所有根據某項給予該融資人對某等抵押予他的證券享有權益的安排而存放於某人的該等證券；並須顯示該等證券或其所有權文件由何人以及為何人持有，亦須將為作穩妥保管而由第三方持有的證券或證券所有權文件與為融資人獲提供財務通融而作抵押的證券或證券所有權文件加以區分。

(*a*) must keep such accounting records as will record and explain the transactions entered into by, and the financial position of, the financier; and
(*b*) must ensure that those records are kept as required by this section.

(2) The financier's accounting records must be kept in such a way—
(*a*) as will enable true and fair profit and loss accounts and balance sheets of the securities margin financing business carried on by the financier to be prepared from time to time; and
(*b*) as will enable those accounts and balance sheets to be conveniently and properly audited; and
(*c*) as will enable it to be readily established whether or not the financier had complied with the financial resources rules.

(3) The records must be kept in writing in the Chinese or English language or in such a manner as will enable them to be readily accessible and readily converted into writing in the Chinese or English language.

(4) The records must be kept in sufficient detail to show particulars of—
(*a*) all money received or paid by the financier, including money paid to or disbursed from a trust account; and
(*b*) all financial accommodation provided by the financier to clients and all payments received from clients; and
(*c*) all disposals of securities collateral by the financier held for the account of clients, showing in the case of each disposal of securities collateral—
(i) the name of the client; and
(ii) the name of the dealer who effected the disposal; and
(iii) the charge made for effecting the disposal; and
(iv) what happened to the proceeds of the disposal; and
(*d*) all income received by the financier from other sources; and
(*e*) all outgoings (including interest) paid by the financier; and
(*f*) all the financier's assets and liabilities (including contingent liabilities); and
(*g*) all securities that are not the financier's property and for which the financier is accountable, and all securities that are deposited with a person under an arrangement that confers on the financier a collateral interest in the securities, showing by whom, and for whom, the securities or the documents of title to the securities are held, distinguishing those that are held by a third party for safe custody from those that are deposited as security for financial accommodation provided to the financier.

(5) 該等紀錄必須包括融資人從客戶收取或代客戶收取證券或證券所有權文件的認收文本。每項認收必須指明客戶的姓名或名稱並提供所涉及的證券的詳情。

(6) 在不局限第 (4) 款的規定下，備存的紀錄所具有的細節，必須足以分別顯示該融資人與其客戶或為其客戶的帳戶而訂立的所有交易的詳情。

(7) 註冊融資人必須——

(*a*) 將第 121Z(2) 條所提述的每份帳戶結單的文本保留一段至少 2 年的期間；及

(*b*) 將第 (1) 款所提述的紀錄及第 121Z(4) 條所提述的每份帳戶結單的文本保留一段至少 6 年的期間。

(8) 註冊融資人的會計紀錄及其他紀錄內的記項，須視為由該融資人作出或經他授權作出的。

(9) 根據本條須由註冊融資人備存的紀錄，可藉在裝訂好的簿冊內作出記項或以電子裝置或任何其他方便的方式記錄有關事項而備存。

(10) 如任何註冊融資人以裝訂好的簿冊以外的其他方式備存本條所規定的紀錄，則該融資人必須採取合理的預防措施，以防止捏改紀錄和方便發現任何該等捏改。

(11) 任何人如——

(*a*) 將該人明知屬虛假達關鍵程度或具誤導性達關鍵程度的資料包括在本條規定須備存的紀錄內；或

(*b*) 銷毀、刪除或捏改包括在該紀錄內的資料；或

(*c*) 沒有在該紀錄內記錄資料，而其意圖是捏改根據該資料作出的記項或擬根據該資料作出的記項，

即屬犯罪，一經定罪，可處第 5 級罰款及監禁 2 年。

121AH. 註冊融資人須將其財政年度通知監察委員會

(1) 註冊融資人必須在獲註冊後的 1 個月內，將其財政年度終結的日期以書面通知監察委員會。

(5) The records must include copies of acknowledgements of the receipt of securities or of documents of title to securities received by the financier from or on behalf of clients. Each acknowledgement must specify the name of the client and give particulars of the securities concerned.

(6) Without limiting subsection (4), the records must be kept in sufficient detail to show separately particulars of all transactions entered into by the financier with or for the account of its clients.

(7) A registered financier must retain—

(*a*) for a period of not less than 2 years, a copy of each statement of account referred to in section 121Z(2); and

(*b*) for a period of not less than 6 years, the records referred to in subsection (1) and a copy of each statement of account referred to in section 121Z(4).

(8) An entry in the accounting and other records of a registered financier is taken to have been made by, or with the authority of, the financier.

(9) A record required to be kept by a registered financier under this section may be kept either by making entries in a bound book or by recording the relevant matters in an electronic device or in any other convenient manner.

(10) A registered financier who keeps records required by this section otherwise than in a bound book must take reasonable precautions to guard against falsification of the records and to facilitate discovery of any such falsification.

(11) A person who—

(*a*) includes in a record required to be kept by this section information that the person knows to be materially false or misleading; or

(*b*) destroys, removes or falsifies information that is included in such a record; or

(*c*) fails to record information in such a record with intent to falsify an entry made or to be made from that information,

commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

121AH. Registered financier to notify Commission of its financial year

(1) A registered financier must, not later than 1 month after becoming registered, give to the Commission written notice of the date on which its financial year ends.

(2) 監察委員會可應註冊融資人的書面申請，容許融資人更改其財政年度終結的日期。上述申請可按監察委員會認為適當的條件予以批准。

(3) 註冊融資人必須確保其財政年度不超逾 12 個月，但獲監察委員會批准者除外。

(4) 本條並不影響《公司條例》(第 32 章) 第 122 條在註冊融資人方面的施行。

121AI. 註冊融資人須擬備周年財務報表

(1) 在任何註冊融資人獲註冊後，該融資人必須就其於上述註冊後終結的每個財政年度——

(*a*) 擬備顯示該財政年度最後一天的狀況的由真實而中肯的損益表及資產負債表組成的財務報表，該等財務報表須按監察委員會規則所訂明的會計原則 (如有的話) 擬備，並須載有監察委員會規則所訂明的資料；及

(*b*) 於該財政年度終結後 4 個月內，將該等財務報表連同其核數師的載有如此訂明的資料的報告提交監察委員會。

(2) 如任何註冊融資人或其核數師在須向監察委員會提交財務報表的最後期限前或 (如該期限以往曾根據本款准予一次或多於一次的延展) 在如此延展的期限屆滿前提出申請，監察委員會可批准將該期限延展。

(3) 第 (2) 款所指的批准可在監察委員會決定施加的條件 (如有的話) 的規限下給予。

(4) 任何註冊融資人如——

(*a*) 沒有在最後期限前向監察委員會提交財務報表；或

(*b*) 違反根據第 (3) 款施加的條件，

即屬犯罪，一經定罪，可處第 3 級罰款。

第 6 分部——註冊融資人的信託帳戶

121AJ. 註冊融資人須開設信託帳戶

註冊融資人必須在持牌銀行開立和維持一個或多於一個指定為信託帳戶的帳戶。

(2) The Commission may, on the written application of a registered financier, allow the financier to vary the date on which its financial year ends. The application may be approved on such conditions as the Commission considers appropriate.

(3) A registered financier must ensure that, except with the Commission's approval, its financial year does not exceed 12 months.

(4) This section does not affect the operation of section 122 of the Companies Ordinance (Cap. 32) in relation to a registered financier.

121AI. Registered financier to prepare annual financial statements

(1) A registered financier must, in respect of each financial year of the financier ending after it became registered—

(*a*) prepare financial statements, consisting of a true and fair profit and loss account and a balance sheet made up to the last day of the financial year, on the basis of such accounting principles (if any) and containing such information as is prescribed by Commission rules; and

(*b*) lodge the statements with the Commission not later than 4 months after the end of that financial year, together with the report of the financier's auditor containing the information so prescribed.

(2) The Commission may, on an application made by a registered financier or the financier's auditor before the deadline for lodging financial statements with the Commission or, if that period has been extended by an approval or approvals previously given under this subsection, before the end of the period as so extended, approve an extension of the period.

(3) An approval under subsection (2) may be given subject to such conditions (if any) as the Commission decides to impose.

(4) A registered financier who—

(*a*) fails to lodge financial statements with the Commission before the deadline; or

(*b*) fails to comply with conditions imposed under subsection (3),

commits an offence and is liable on conviction to a fine at level 3.

Division 6—Registered financiers' trust accounts

121AJ. Registered financier required to keep trust accounts

A registered financier must establish and maintain in a licensed bank one or more accounts, to be designated as trust accounts.

121AK. 須存入信託帳戶的款項

(1) 註冊融資人必須將以下款額存入信託帳戶——

(*a*) 所有從某客戶或為某客戶收取的款額，但下述款額除外——

(i) 用以減少該客戶欠該融資人的款額的款額；或

(ii) 在收取後4個營業日內支付予該客戶或按照該客戶的指示而支付的款額；及

(*b*) (除與客戶有任何相反的協議外) 由於將 (*a*) 段所述的任何款額存於信託帳戶內而衍生的利息款額。

(2) 該融資人必須確保所有根據第 (1) 款須存入信託帳戶的款額一直保留在該帳戶內，直至——

(*a*) 該等款額用以支付予客戶或按照客戶的指示支付為止；或

(*b*) 該等款額須用以支付客戶欠該融資人的款項為止。

(3) 該融資人亦必須確保除第 (1) 款所提述種類的款額外，不得有任何款額存入信託帳戶。

121AL. 信託帳戶內款項的應累算利息屬於客戶

凡註冊融資人須向某客戶交代，則除該融資人與該客戶有任何相反的協議外，所有就該融資人維持的信託帳戶內持有的款項而應累算作為利息的款額，屬於該客戶所有。

121AM. 須將款項存入信託帳戶的期限

凡任何款項按本分部規定須存入信託帳戶，註冊融資人必須確保在收取該款項後4個營業日內將其存入信託帳戶。

121AN. 信託帳戶內的款項不得用於應付融資人本身的債項

(1) 除本分部另有規定外，在註冊融資人的信託帳戶內持有的款項——

(*a*) 不得用於償付該融資人的任何債項或法律責任；及

121AK. What is to be paid into trust account

(1) A registered financier must pay into a trust account—

(*a*) all amounts received from or on account of a client other than amounts—

(i) used to reduce the amount owed by the client to the financier; or

(ii) paid to the client, or paid in accordance with the client's directions, within 4 business days after receipt; and

(*b*) subject to any agreement with a client to the contrary, all amounts derived as interest from the retention in a trust account of any amount mentioned in paragraph (*a*).

(2) The financier must ensure that all amounts required to be paid into a trust account under subsection (1) are retained there—

(*a*) until paid to the client or in accordance with the client's directions; or

(*b*) until required to pay money that the client owes to the financier.

(3) The financier also must ensure that no amount other than an amount of a kind referred to in subsection (1) is paid into a trust account.

121AL. Interest accruing to money in trust account to belong to client

All amounts that accrue as interest from the holding of money in a trust account kept by a registered financier belong to the client to whom the financier is accountable, subject to any agreement between the financier and the client to the contrary.

121AM. When money to be paid into trust account

A registered financier must ensure that money required by this Division to be paid into a trust account is paid into the account within 4 business days after it is received by the financier.

121AN. Money in trust account not available to meet financier's own debts

(1) Subject to this Division, money held in a trust account of a registered financier—

(*a*) is not available for the payment of any of the financier's debts or liabilities; and

(b) 不得在任何人就追討該等債項或強制執行該等法律責任而進行起訴時，根據法庭命令或法律程序文件予以扣押或在執行法庭命令或法律程序文件時予以取用。

(2) 任何並非按照本分部而以信託帳戶內的款項作出的付款均屬無效，而獲支付該款項的人並無取得有關款項的所有權。

121AO. 對信託帳戶內持有的款項的申索權及留置權不受影響

本分部並不影響任何人對以下款項所具有的合法申索權或留置權——

(a) 在信託帳戶內持有的款項；或

(b) 註冊融資人所收取但尚未存入由該融資人維持的信託帳戶的款項。

121AP. 註冊融資人須就信託帳戶備存會計紀錄

註冊融資人必須就其根據本分部維持的每個信託帳戶備存會計紀錄，而該等紀錄須記錄——

(a) 所有存入該帳戶的款額、由該融資人代為持有該等款額的客戶的姓名或名稱，以及該等款額存入帳戶的日期；及

(b) 所有從信託帳戶作出的提款、由該融資人代為提款的客戶的姓名或名稱，以及提款的日期；及

(c) 監察委員會規則所訂明的其他資料 (如有的話)。

121AQ. 違反本分部的罪行

(1) 任何人無合理辯解而違反本分部的任何條文，即屬犯罪，一經循簡易程序定罪，可處第 5 級罰款。

(2) 任何人如在有詐騙意圖的情況下違反本分部的任何條文，即屬犯罪，一經循公訴程序定罪，可處罰款 $200,000 及監禁 5 年。

(*b*) is not liable to be attached, or taken in execution, under the order or process of a court at the instance of a person who sues to recover such a debt or to enforce such a liability.

(2) A payment of money made from a trust account otherwise than in accordance with this Division is void and a person to whom such a payment is made does not get title to the money concerned.

121AO. Claim and lien over money held in trust account not affected

Nothing in this Division affects a lawful claim or lien that a person has in respect of—

(*a*) money held in a trust account; or

(*b*) money received by a registered financier that has not yet been paid into a trust account kept by the financier.

121AP. Registered financier to keep accounting records relating to trust account

A registered financier must, in relation to each trust account kept by the financier under this Division, keep accounting records that record—

(*a*) all amounts paid into the account, the names of the clients on whose behalf the amounts are held, and the dates on which the amounts were paid into the account; and

(*b*) all withdrawals from the trust account, the names of the clients on whose behalf the withdrawals were made, and the dates of the withdrawals; and

(*c*) such other information (if any) as may be prescribed by Commission rules.

121AQ. Offences against this Division

(1) A person who, without reasonable excuse, contravenes any provision of this Division commits an offence and is liable on summary conviction to a fine at level 5.

(2) A person who, with intent to defraud, contravenes a provision of this Division commits an offence and is liable on conviction on indictment to a fine of $200,000 and to imprisonment for 5 years.

第 7 分部——會計紀錄及其他紀錄的審計

121AR. 註冊融資人須委任核數師

(1) 註冊融資人必須委任一名核數師以審計該融資人的會計紀錄及其他紀錄，該核數師可同時是為施行《公司條例》(第 32 章) 而委任的核數師。

(2) 如任何註冊融資人的核數師退休、辭任或因任何其他理由而不再擔任其核數師，則在上述情況發生後，該融資人必須在切實可行的範圍內盡快委任另一名核數師，以審計該融資人的會計紀錄及其他紀錄。

(3) 以下人士並無資格根據本條獲委任為某註冊融資人的核數師——

(*a*) 該融資人本身的僱員；或

(*b*) 該融資人本身的高級人員；或

(*c*) (*a*) 或 (*b*) 段所提述的人的僱員；或

(*d*) 屬於監察委員會規則所訂明的任何其他類別的人。

121AS. 如核數師停任或已就核數師的免任或不獲再度委任而發出動議通知，註冊融資人須通知監察委員會

(1) 如——

(*a*) 註冊融資人就任何將於該融資人的股東大會上動議的下述議案而給予其成員通知——

(i) 將該融資人的核數師免任；或

(ii) 在該核數師的任期屆滿時以他人替代或不再度委任該核數師；或

(*b*) 註冊融資人的核數師是在並非由於上述議案的其他情況下被免任，或該核數師辭去其職位或以其他方式停任該職位，

則該融資人必須在有關事件發生後於接着的該個營業日之內，將已有上述通知發出或上述核數師已不再是融資人的核數師一事以書面通知監察委員會。

(2) 任何註冊融資人違反第 (1) 款的規定，即屬犯罪，一經定罪，可處第 4 級罰款。

121AT. 註冊融資人的核數師須就其辭任或被免任一事通知監察委員會

如註冊融資人的核數師——

Division 7—Auditing of accounting and other records

121AR. Registered financier to appoint auditor

(1) A registered financier must appoint an auditor to audit the financier's accounting and other records, but such auditor may be the same auditor as the one appointed for the purposes of the Companies Ordinance (Cap. 32).

(2) As soon as practicable after an auditor retires, resigns or for any other reason ceases to be the auditor of a registered financier, the financier must appoint another auditor to audit the financier's accounting and other records.

(3) A person who—

(*a*) is an employee of the financier; or

(*b*) is an officer of the financier; or

(*c*) is an employee of a person referred to in paragraph (*a*) or (*b*); or

(*d*) belongs to any other class of persons prescribed by Commission rules,

is ineligible for appointment under this section.

121AS. Registered financier to give notice to the Commission if auditor ceases to hold office or notice of motion to remove or not reappoint auditor is given

(1) If—

(*a*) a registered financier gives notice to its members of a motion, to be moved at a general meeting of the financier—

(i) to remove an auditor of the financier from office; or

(ii) to replace or not reappoint such an auditor at the end of the auditor's term of office; or

(*b*) an auditor of a registered financier is removed from office otherwise than in consequence of such a motion, or resigns from or otherwise ceases to hold office as auditor,

the financier must, within 1 business day after the relevant event, inform the Commission in writing that the notice has been given or that the auditor has ceased to be an auditor of the financier.

(2) A registered financier who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine at level 4.

121AT. Auditor of registered financier to notify Commission of resignation or removal from office

An auditor of a registered financier who—

(*a*) 辭任或被免任；或

(*b*) 在他的任期屆滿時不獲再度委任，

則該核數師須在上述辭任、免任或不獲再度委任一事發生後於接着的該個營業日之內，將該事以書面通知監察委員會。

121AU. 核數師須向監察委員會報告某些事項

(1) 如任何核數師在履行作為某註冊融資人的核數師的職責的過程中察覺有任何須予報告的事項，則該核數師於察覺該事項後須在切實可行的範圍內盡快就該事項向監察委員會提交書面報告，並將該報告的文本送交該融資人。

(2) 在本條中，"須予報告的事項" (reportable matter) 指——

(*a*) 核數師認為屬——

(i) 在具關鍵性的程度上對該融資人的財務狀況有不利影響的事項；或

(ii) 構成該融資人違反第 121AB 或 121AG 條、第 6 分部或財政資源規則的規定的事項；或

(*b*) 在他就該融資人的周年財務報表而作出的報告中所包括或擬包括的任何保留事項或不利陳述。

121AV. 對核數師的保障

(1) 任何註冊融資人的核數師如就某事項真誠地向監察委員會提供資料、意見或文件，而——

(*a*) 該核數師是以其核數師身分察覺該事項的；及

(*b*) 該事項是與監察委員會在本條例下或在《證券及期貨事務監察委員會條例》(第 24 章) 下的任何職能有關的，

則該核數師不會僅因真誠地向監察委員會提供該等資料、意見或文件而違反該核數師在法律上所負有的責任。

(2) 不論有關資料、意見或文件是否應監察委員會的要求而向監察委員會提供的，第 (1) 款仍就該等資料、意見或文件而具有效力。

(3) 第 (1) 款亦適用於——

(*a*) 已不再獲委任或聘用為核數師的人；及

(*b*) 曾獲某註冊融資人委任的核數師，而該融資人的註冊已被撤銷或暫時吊銷。

(*a*) resigns or is removed from office; or

(*b*) is not reappointed at the end of the auditor's term of office,

is required to give to the Commission written notice of the resignation, removal or non-reappointment within 1 business day after the resignation, removal or non-reappointment occurs.

121AU. Auditor to report to Commission on certain matters

(1) If an auditor, in the course of performing duties as auditor of a registered financier, becomes aware of a reportable matter, the auditor is required, as soon as practicable after becoming aware of the matter, to lodge with the Commission a written report on the matter and send a copy of the report to the financier.

(2) In this section, "reportable matter" (須予報告的事項) means—

(*a*) a matter that, in the opinion of the auditor—

(i) adversely affects the financier's financial position to a material extent; or

(ii) constitutes a contravention by the financier of section 121AB or 121AG, Division 6 or the financial resources rules; or

(*b*) any qualification or adverse statement that the auditor has included or intends to include in the auditor's report on the financier's annual financial statements.

121AV. Protection for auditor

(1) An auditor of a registered financier does not contravene a duty owed by the auditor in law only because the auditor has given to the Commission in good faith information, an opinion or a document concerning a matter if—

(*a*) the auditor became aware of the matter in the auditor's capacity as such; and

(*b*) the matter is relevant to a function of the Commission under this Ordinance or the Securities and Futures Commission Ordinance (Cap. 24).

(2) Subsection (1) has effect with respect to information, an opinion or a document given to the Commission whether or not it is given in response to a request of the Commission.

(3) Subsection (1) also applies—

(*a*) to a person whose appointment or engagement as an auditor has ceased; and

(*b*) to an auditor who was appointed by a registered financier whose registration has been revoked or suspended.

第 8 分部——由監察委員會委任的核數師進行的審計

121AW. 監察委員會可委任核數師

(1) 如有以下情況，監察委員會可委任一名核數師對任何註冊融資人的會計紀錄及其他紀錄，以及對該融資人所持有的證券進行審查和審計並作出報告——

(*a*) 該融資人違反第 121AI 條；或

(*b*) 監察委員會已接獲一份第 121AU 條所指的關乎該融資人的報告；或

(*c*) 監察委員會有合理理由相信該融資人違反財政資源規則。

(2) 如監察委員會認為根據本分部委任的任何核數師的全部或部分開支應由有關的註冊融資人承擔，監察委員會可藉書面命令，指示該融資人在指明的限期內並以指明的方式繳付指明的款額，而該款額為該等開支的全部或部分。

(3) 如任何註冊融資人沒有在准許的限期內遵從根據本條作出的命令，監察委員會可藉在任何具有司法管轄權的法院提起法律程序，將該命令所指明的款額作為債項予以追討。

121AX. 監察委員會可應註冊融資人的客戶的申請而委任核數師

(1) 如任何註冊融資人的客戶指稱該融資人沒有就該融資人為該客戶收取的款項或證券向該客戶作出交代，監察委員會在接獲該客戶的申請後，可委任一名核數師對該融資人的會計紀錄及其他紀錄以及對該融資人持有的證券進行審查和審計並作出報告。上述委任必須以書面作出。

(2) 上述申請必須以書面作出，並必須指明——

(*a*) 有關融資人收取其被指稱沒有作出交代的款項或證券的情況；及

(*b*) 該等款項或證券的詳情，以及申請人與該融資人之間與此有關的交易的詳情；及

(*c*) 監察委員會規則所訂明的其他資料 (如有的話)。

(3) 申請人必須以法定聲明證明在該申請中作出的所有陳述屬實。

(4) 在該申請中作出的陳述如是真誠且無惡意地作出的，則享有受約制特權。

Division 8—Audits by auditors appointed by Commission

121AW. Commission may appoint auditor

(1) The Commission may appoint an auditor to examine, audit and report on the accounting and other records of, and securities held by, a registered financier if—

(*a*) the financier has failed to comply with section 121AI; or

(*b*) the Commission has received a report under section 121AU in relation to the financier; or

(*c*) the Commission reasonably believes that the financier has failed to comply with the financial resources rules.

(2) If the Commission is of the opinion that the whole or any part of the expenses of an auditor appointed under this Division should be borne by the registered financier concerned, it may, by order in writing, direct the financier to pay a specified amount, being the whole or part of those expenses, within the period and in the manner specified.

(3) If a registered financier fails within the permitted period to comply with an order made under this section, the Commission may, by proceedings brought in any court of competent jurisdiction, recover as a debt the amount specified in the order.

121AX. Commission may appoint auditor on application of client of registered financier

(1) On receiving an application from a client of a registered financier who alleges that the financier has failed to account to the client for money or securities received for the client by the financier, the Commission may appoint an auditor to examine, audit and report on the accounting and other records of, and securities held by, the financier. The appointment must be in writing.

(2) The application must be in writing and must specify—

(*a*) the circumstances under which the financier received the money or securities in respect of which the financier is alleged to have failed to account; and

(*b*) particulars of that money or those securities, and of related transactions between the applicant and the financier; and

(*c*) such other information (if any) as may be prescribed by Commission rules.

(3) The applicant must verify by statutory declaration all statements made in the application.

(4) A statement made in the application has qualified privilege if made in good faith and without malice.

(5) 只有在以下情況下，監察委員會方可根據第 (1) 款委任核數師——

(*a*) 監察委員會已給予有關註冊融資人就該項沒有作出交代的指稱作出解釋的機會；及

(*b*) 監察委員會信納申請人有好的理由提出該項申請；及

(*c*) 監察委員會信納對該融資人的會計紀錄及其他紀錄以及對該融資人持有的證券進行審查和審計並作出報告，是符合該融資人或申請人或一般公眾人士的利益的。

121AY. 核數師須向監察委員會作出報告

就某項審查和審計而根據本分部獲委任的核數師於該項審查和審計完成後，須在切實可行的範圍內盡快向監察委員會提供一份該項審查和審計的書面報告。

121AZ. 由監察委員會委任的核數師的特別權力

(1) 根據本分部獲委任對註冊融資人備存的會計紀錄及其他紀錄，以及對該融資人持有的證券進行審查和審計的核數師，可為進行該項審查和審計而——

(*a*) 向經宣誓的該融資人、該融資人的任何高級人員、僱員或代理人，以及根據本部就該融資人的業務而委任的任何其他核數師進行訊問；及

(*b*) 僱用該核數師認為為進行該項審查和審計而必需僱用的人。

(2) 該核數師可以書面授權其任何僱員就該項審查和審計作出該核數師在本分部下獲准許作出或須作出的任何事，但向經宣誓的任何人進行訊問的權力或行使本款所授予的權力則除外。

121BA. 核數師及其僱員可在某些情況下披露資料

儘管有《證券及期貨事務監察委員會條例》(第 24 章) 第 59(1) 條的規定，根據本分部委任的核數師及其任何僱員可——

(*a*) 為施行或遵從本條例任何條文；及

(5) The Commission may appoint an auditor under subsection (1) only if—

(*a*) it has given the registered financier an opportunity to give an explanation for the alleged failure; and

(*b*) it is satisfied that the applicant has good reason for making the application; and

(*c*) it is satisfied that it is in the interests of the financier or the applicant or the public generally that the accounting and other records of, and securities held by, the financier should be examined, audited, and reported on.

121AY. Auditor to report to Commission

An auditor appointed under this Division is required to provide the Commission, as soon as practicable after completing the examination and audit in respect of which the auditor was appointed, with a written report of the examination and audit.

121AZ. Special powers of auditor appointed by Commission

(1) An auditor appointed under this Division to examine and audit the accounting and other records kept, and securities held, by a registered financier may, for the purpose of carrying out the examination and audit—

(*a*) examine on oath the financier, any of the financier's officers, employees or agents, and any other auditor appointed under this Part in relation to the financier's business; and

(*b*) employ such persons as the auditor considers necessary for the conduct of the examination and audit.

(2) The auditor may authorize in writing any of the auditor's employees to do, in relation to the examination and audit, anything that the auditor is permitted or required to be done under this Division, except to examine a person on oath or to exercise the power conferred by this subsection.

121BA. Auditor and auditor's employees may disclose information in certain circumstances

Notwithstanding section 59(1) of the Securities and Futures Commission Ordinance (Cap. 24), an auditor appointed under this Division and any employee of such auditor may disclose information that comes to his knowledge in the course of performing his duties as such auditor or as an employee of such auditor (as the case may be)—

(*a*) for the purpose of carrying into effect, or complying with, any of the provisions of this Ordinance; and

(*b*) 為任何法律程序的目的；及
(*c*) 向監察委員會；及
(*d*) (如屬該核數師的僱員) 向該核數師，

披露他在履行其核數師或核數師僱員 (視屬何情況而定) 的職責的過程中所獲悉的資料。

121BB. 須應要求而交出會計紀錄及其他紀錄

(1) 在根據本分部委任的核數師或根據第 121AZ(2) 條獲授權的人的要求下，任何註冊融資人或其任何高級人員、僱員及代理人必須交出與該融資人的業務有關的所有會計紀錄及其他紀錄，以及該融資人所持有的與該融資人的業務有關的任何證券，以供查閱。

(2) 在根據本分部委任的核數師或根據第 121AZ(2) 條獲授權的人的要求下，任何註冊融資人委任的核數師必須交出他所持有的與該融資人的業務有關的所有會計紀錄及其他紀錄，以供查閱。

(3) 任何註冊融資人或其任何高級人員、僱員或代理人，或該融資人委任的任何核數師，必須回答由根據本分部委任的核數師或根據第 121AZ(2) 條獲授權的人向其提出的關乎一項審查和審計的所有問題。

(4) 第 (1) 或 (2) 款所提述的任何人無合理辯解而不遵從根據第 (1) 或 (2) 款向他提出的要求，或第 (3) 款所提述的任何人無合理辯解而拒絕回答或沒有回答根據該款向他提出的任何問題，即屬犯罪，一經定罪，可處第 5 級罰款及監禁 2 年。

(5) 根據第 121AZ(2) 條獲授權的人在出示該人的書面授權之後，方可行使第 (1) 或 (2) 款所賦予的權力或行使為施行第 (3) 款而提出問題的權力。

第 9 分部——與審計有關的補充條文

121BC. 銷毀、隱藏或更改紀錄或將紀錄或其他財產調離香港的罪行

任何人如意圖阻止、阻延或妨礙根據第 7 或 8 分部進行的審查和審計而——
(*a*) 銷毀、隱藏或更改與註冊融資人的業務有關的會計紀錄或其他紀錄；或

(*b*) for the purposes of any legal proceedings; and
(*c*) to the Commission; and
(*d*) in the case of an employee of an auditor, to the auditor.

121BB. Accounting and other records to be produced on request

(1) On being requested to do so by an auditor appointed under this Division or a person authorized under section 121AZ(2), a registered financier, or any of its officers, employees and agents, must produce for inspection all accounting and other records, and any securities held by the financier, that relate to the financier's business.

(2) On being requested to do so by an auditor appointed under this Division or a person authorized under section 121AZ(2), an auditor appointed by a registered financier must produce for inspection all accounting and other records held by the auditor relating to the financier's business.

(3) A registered financier or any of its officers, employees or agents or any auditor appointed by a financier must answer all questions relevant to an examination and audit which are put to him by an auditor appointed under this Division or a person authorized under section 121AZ(2).

(4) Any person mentioned in subsection (1) or (2) who, without reasonable excuse, fails to comply with any request made to him under the relevant subsection, or any person mentioned in subsection (3) who, without reasonable excuse, refuses or fails to answer any question put to him under that subsection, is guilty of an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

(5) A person authorized under section 121AZ(2) may exercise a power conferred by subsections (1) or (2) or the power to put a question for the purposes of subsection (3) only after producing the person's written authorization.

Division 9—Supplementary provisions relating to auditing

121BC. Offence to destroy, conceal or alter records or send records or other property outside Hong Kong

Any person who, with intent to prevent, delay or obstruct the conduct of an examination and audit under Division 7 or 8—
(*a*) destroys, conceals or alters an accounting or other record relating to the business of a registered financier; or

(*b*) 將任何該等紀錄或屬於註冊融資人或由註冊融資人控制的任何財產調離香港，或企圖將該等紀錄或財產調離香港，或與其他人串謀將該等紀錄或財產調離香港，

即屬犯罪，一經定罪，可處第 6 級罰款及監禁 2 年。

121BD. 妨礙核數師

任何人如意圖阻止、阻延或妨礙根據第 7 或 8 分部進行的審查和審計而離開或企圖離開香港，即屬犯罪，一經定罪，可處第 6 級罰款及監禁 2 年。

第 10 分部——雜項條文

121BE. 監察委員會可寬免或修改本部所施加的規定

(1) 身為註冊融資人或申請註冊為證券保證金融資人的任何人士，可以書面向監察委員會提出申請，要求在某訂明條文的某規定適用於該人時寬免或修改該規定。

(2) 監察委員會在考慮任何根據第 (1) 款提出的申請後，可無條件或在某些條件規限下，在該項申請中指明的規定適用於有關申請人時寬免或修改該規定，亦可拒絕該項申請。

(3) 除非有以下情況，否則監察委員會不得寬免或修改某訂明條文的某規定——

(*a*) 經考慮申請人遵守有關規定會為投資大眾帶來的利益，監察委員會覺得該項遵守會對申請人造成不合理的負擔；及

(*b*) 監察委員會覺得在該個案中行使此權力不會違反投資大眾的利益。

(4) 監察委員會在批准根據本條提出的申請後，必須將其決定以書面通知申請人。

(5) 凡監察委員會——

(*a*) 拒絕批准根據本條提出的申請的全部或部分；或

(*b*) 在批准該項申請時施加條件，

監察委員會必須將其決定及作出該項決定的理由以書面通知申請人。

(*b*) sends or attempts to send, or conspires with any other person to send, out of Hong Kong any such record, or any property belonging to or under the control of a registered financier,

commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 2 years.

121BD. Obstruction of audit

Any person who, with intent to prevent, delay or obstruct the conduct of an examination and audit under Division 7 or 8, leaves or attempts to leave Hong Kong commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 2 years.

Division 10—Miscellaneous provisions

121BE. Commission may waive or modify requirements imposed by this Part

(1) A person who is a registered financier or an applicant for registration as a securities margin financier may apply in writing to the Commission to waive or modify a requirement of a prescribed provision in its application to the person.

(2) On considering an application made under subsection (1), the Commission may waive or modify the requirement specified in the application in its application to the applicant, either unconditionally or subject to conditions or may refuse the application.

(3) The Commission must not waive or modify a requirement of a prescribed provision unless it appears to the Commission that—

(*a*) compliance with the requirement in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on the investing public; and

(*b*) the exercise of this power in the particular case is not contrary to the interest of the investing public.

(4) On granting an application made under this section, the Commission must give written notification of its decision to the applicant.

(5) Where the Commission—

(*a*) refuses the application made under this section in whole or in part; or

(*b*) imposes conditions on granting the application,

it must notify the applicant in writing of its decision and the reasons for making such decision.

(6) 根據本條批准的寬免或修改——

(a) 在有關通知所指明的期間內持續有效；或

(b) 在沒有上述的指明期間的情況下，則在監察委員會予以撤銷之前持續有效。

(7) 本條並不限制《證券及期貨事務監察委員會條例》(第24章)第55A條賦予監察委員會的權力。

(8) 為施行本條，訂明條文即——

(a) 第121C、121D、121I、121Z、121AA、121AB、121AC、121AG、121AH、121AI、121AJ、121AK、121AM、121AP、121AR及121AS條；及

(b) 監察委員會規則適用於註冊融資人或申請註冊為證券保證金融資人的申請人的任何條文。

121BF. 若干非註冊人士在聽候註冊時獲准經營業務或行事

(1) 如任何人在緊接本部實施前正經營證券保證金融資業務，而該人在本部實施後30天內向監察委員會申請註冊為證券保證金融資人，則——

(a) 在聽候監察委員會對該項申請作出決定的期間；或

(b) (如監察委員會其後拒絕該項申請)在——

(i) 緊接監察委員會將該項拒絕通知申請人後的14天內；或

(ii) 監察委員會以書面通知申請人的較長期間內，

該人並不違反第121C條。

(2) 如任何人在緊接本部實施前正代任何經營證券保證金融資業務的人行事，而該人在本部實施後30天內向監察委員會申請註冊為證券保證金融資人代表，則——

(a) 在聽候監察委員會對該項申請作出決定的期間；或

(b) (如監察委員會其後拒絕該項申請)在——

(6) A waiver or modification granted under this section remains in force—

(a) for such period as is specified in the notification; or

(b) if no such period is specified, until revoked by the Commission.

(7) This section does not limit the powers conferred on the Commission by section 55A of the Securities and Futures Commission Ordinance (Cap. 24).

(8) For the purpose of this section, the prescribed provisions are—

(a) sections 121C, 121D, 121I, 121Z, 121AA, 121AB, 121AC, 121AG, 121AH, 121AI, 121AJ, 121AK, 121AM, 121AP, 121AR and 121AS; and

(b) any provision of the Commission rules that is applicable to registered financiers or applicants for registration as securities margin financiers.

121BF. Certain unregistered persons to be permitted to carry on business or to act pending registration

(1) If a person who is, immediately before the commencement of this Part, carrying on a business of securities margin financing applies to the Commission to be registered as a securities margin financier within 30 days after that commencement, the person does not contravene section 121C—

(a) pending the determination of the application by the Commission; or

(b) if the Commission subsequently refuses the application, until—

(i) the expiry of 14 days immediately after the Commission has notified the refusal to the applicant; or

(ii) the expiry of such further period as the Commission notifies to the applicant in writing.

(2) If a person who is, immediately before the commencement of this Part, acting for a person carrying on a business of securities margin financing applies to the Commission to be registered as a securities margin financier's representative within 30 days after that commencement, the person does not contravene section 121D—

(a) pending the determination of the application by the Commission; or

(b) if the Commission subsequently refuses the application, until—

(i) 緊接監察委員會將該項拒絕通知申請人後的 14 天內；或
(ii) 監察委員會以書面通知申請人的較長期間內，

該人並不違反第 121D 條。

(3) 監察委員會可藉向第 (1) 款所提述的申請人送達命令，規定該申請人作出以下所有或任何事項——

(*a*) 以指明的方式經營證券保證金融資業務；或
(*b*) 不得以指明的方式經營上述業務；或
(*c*) 以指明的方式處理申請人所控制的資產 (不論位於香港或其他地方)；或
(*d*) 不得以指明的方式處理任何上述資產；或
(*e*) 在香港備存資產或指明種類的資產，而有關資產須是監察委員會認為會確保申請人能應付與申請人所經營的證券保證金融資業務有關的法律責任的。

(4) 任何人無合理辯解而不遵從根據第 (3) 款向該人送達的命令，即屬犯罪——

(*a*) 一經循公訴程序定罪，可處罰款 $1,000,000 及監禁 5 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。

121BG. 若干非註冊人士獲准經營有限度業務

凡任何人——

(*a*) 在緊接本部實施前正經營證券保證金融資業務；並且
(*b*) 繼續就根據本部實施前批出的財務通融而作出的放款收取已累算或正累算的利息，

而該人並無經營亦無顯示自己是經營任何其他證券保證金融資業務的，則就第 121C 條而言，該人須當作並無經營證券保證金融資業務。”。

4. 加入附表 4

現加入——

(i) the expiry of 14 days immediately after the Commission has notified the refusal to the applicant; or
(ii) the expiry of such further period as the Commission notifies to the applicant in writing.

(3) The Commission may, by order served on an applicant referred to in subsection (1), require the applicant to do all or any of the following—

(*a*) to carry on the business of securities margin financing in a specified manner; or
(*b*) not to carry on such a business in a manner so specified; or
(*c*) to deal in a specified manner with assets (whether located in Hong Kong or elsewhere) that are under the applicant's control; or
(*d*) not to deal with any such assets in a specified manner; or
(*e*) to keep in Hong Kong such assets, or such assets of a specified kind, as will, in the opinion of the Commission, ensure that the applicant will be able to meet the applicant's liabilities in relation to the business of securities margin financing carried on by the applicant.

(4) A person who, without reasonable excuse, fails to comply with an order served on the person under subsection (3) commits an offence and is liable—

(*a*) on conviction on indictment, to a fine of $1,000,000 and to imprisonment for 5 years; or
(*b*) on summary conviction, to a fine at level 6 and to imprisonment for 6 months.

121BG. Certain unregistered persons to be permitted to carry on limited business

A person who—

(*a*) immediately before the commencement of this Part, carried on a business of securities margin financing; and
(*b*) continues to collect interest accrued or accruing on sums already advanced under financial accommodation granted before the commencement of this Part,

is deemed not to be carrying on a business of securities margin financing for the purpose of section 121C, but only if the person does not carry on, or hold itself out as carrying on, any other securities margin financing.".

4. Schedule 4 added

The following is added—

"附表 4 [第 121B 條]

獲豁免而無需遵守第 XA 部
的各種活動

1. 由註冊交易商或獲豁免交易商提供財務通融，以便利該交易商為其客戶取得或持有證券。

2. 由互惠基金法團提供財務通融，對投資於該法團的任何互惠基金的投資提供融資。

3. 由認可機構提供財務通融，以便利該機構的客戶取得或持有證券。

4. 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的或組成某項該等證券借用或證券交還的一部分的證券保證金融資，或屬與該等借用或交還相類似的任何證券交易的或組成該等交易的一部分的證券保證金融資。

5. 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。

6. 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作出的。

7. 由某公司向其董事或僱員提供財務通融，以便利他們取得或持有該公司本身的證券。

8. 向註冊融資人、註冊交易商、獲豁免交易商或認可機構提供財務通融，以便利取得或持有證券。

9. 由公司集團的某成員向該集團的另一成員提供財務通融，以便利該另一成員取得或持有證券。

10. 由一名個人向某公司提供財務通融，以便利該公司取得或持有證券，而該人持有該公司 10% 或多於 10% 的已發行股本。"。

5. 對《證券條例》的相應修訂

《證券條例》(第 333 章) 按附表 1 所示進一步予以修訂。

6. 對《證券及期貨事務監察委員會條例》的相應修訂

《證券及期貨事務監察委員會條例》(第 24 章) 按附表 2 所示予以修訂。

7. 對其他條例的相應修訂

附表 3 第 2 欄指明的條例，按該附表第 3 欄所示予以修訂。

8. 保留及過渡性條文

列於附表 4 內的保留及過渡性條文具有效力。

"SCHEDULE 4 [s. 121B]

KINDS OF ACTIVITIES EXEMPTED
FROM PART XA

1. The provision of financial accommodation by a registered or exempt dealer in order to facilitate acquisitions or holdings of securities by the dealer for the dealer's clients.

2. The provision of financial accommodation by a mutual fund corporation in order to finance investment in any of the corporation's mutual funds.

3. The provision of financial accommodation by an authorized institution for the purpose of facilitating acquisitions or holdings of securities by the institution's clients.

4. Securities margin financing that is or forms part of a stock borrowing, or a stock return, as defined by section 19(16) of the Stamp Duty Ordinance (Cap. 117), or any transaction in securities similar to such a borrowing or return.

5. The provision of financial accommodation that forms part of an arrangement to underwrite or sub-underwrite securities.

6. The provision of financial accommodation to facilitate an acquisition of securities in accordance with the terms of a prospectus, regardless of whether the offer of securities is made in Hong Kong or elsewhere.

7. The provision of financial accommodation by a company to its directors or employees to facilitate acquisitions or holdings of its own securities.

8. The provision of financial accommodation to a registered financier, a registered or an exempt dealer or an authorized institution to facilitate acquisitions or holdings of securities.

9. The provision of financial accommodation 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.

10. The provision of financial accommodation 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.".

5. Consequential amendment of Securities Ordinance

The Securities Ordinance (Cap. 333) is further amended as indicated in Schedule 1.

6. Consequential amendment of Securities and Futures Commission Ordinance

The Securities and Futures Commission Ordinance (Cap. 24) is amended as indicated in Schedule 2.

7. Consequential amendment of other Ordinances

The Ordinances specified in column 2 of Schedule 3 are amended as indicated in column 3 of that Schedule.

8. Savings and transitional provisions

The savings and transitional provisions set out in Schedule 4 have effect.

附表 1 [第 5 條]

《證券條例》的相應修訂

項	受影響的條文	修訂
1.	第 2(1)條	(*a*) 在 "註冊證明書" 的定義中，在 "VI" 之後加入 "或 XA"。 (*b*) 在 "法團" 的定義中，在 (*e*) 段中，廢除 "規例" 而代以 "監察委員會規則"。 (*c*) 在 "交易商" 的定義中，加入—— "(*d*) 所涉及的證券交易僅屬以下性質的註冊融資人—— (i) 與任何人訂立協議 (或作出提出與該人訂立協議的要約、或誘使或企圖誘使該人訂立協議或提出訂立協議的要約的作為)，而目的是使該人或為了使該人取得證券，但上述協議或作為須純粹是為了以註冊融資人身分向該人提供財務通融而訂立或作出的；或 (ii) 為以下目的而處置代客戶持有的證券抵押品—— (A) 履行客戶維持所協定的保證金水平的義務；或 (B) 履行客戶付還或解除由融資人所提供的財務通融的法律責任；"。 (*d*) 在 "財政年度" 的定義中，加入—— "(*aa*) 就任何註冊融資人而言，指該融資人根據第 121AH 條所通知的期間或監察委員會根據該條批准的期間；或"。 (*e*) 在 "註冊" 的定義中，廢除 "或投資代表" 而代以 "、投資代表、證券保證金融資人或證券保證金融資人代表"。 (*f*) 在 "代表" 的定義中，廢除 "或投資代表" 而代以 "、投資代表或證券保證金融資人代表"。 (*g*) 在 "證券" 的定義中，在第 (ii) 段中，廢除 "藉規例" 而代以 "由監察委員會規則"。 (*h*) 廢除 "信託帳戶" 的定義而代以—— " "信託帳戶" (trust account)—— (*a*) 就交易商而言，指第 84 條規定須維持的信託帳戶；及

SCHEDULE 1 [s. 5]

CONSEQUENTIAL AMENDMENT OF SECURITIES ORDINANCE

Item	Provision affected	Amendment
1.	Section 2 (1)	(*a*) In the definition of "certificate of registration", add "or XA" after "Part VI". (*b*) In paragraph (*e*) of the definition of "corporation", repeal "by regulations" and substitute ", by Commission rules,". (*c*) In the definition of "dealer", add— "(*d*) a registered financier, if the only dealings in securities are— (i) entering into agreements with a person (or the act of offering to enter into an agreement, or inducing or attempting to induce a person to enter into or offer to enter into an agreement) for or with a view to that person acquiring securities, provided these agreements or acts are made solely for the purpose of providing financial accommodation as a registered financier to that person; or (ii) disposals of securities collateral held for a client— (A) in settlement of the client's obligation to maintain an agreed level of margin; or (B) in settlement of the client's liabilities to repay or discharge financial accommodation provided by the financier;". (*d*) In the definition of "financial year", add— "(*aa*) in the case of a registered financier, the period notified by the financier under section 121AH or approved by the Commission under that section; or". (*e*) In the definition of "registered", repeal "or investment representative" and substitute ", investment representative, securities margin financier or securities margin financier's representative". (*f*) In the definition of "representative", repeal " or an investment representative" and substitute ", an investment representative or a securities margin financier's representative". (*g*) In paragraph (ii) of the definition of "securities", repeal "regulations" and substitute "Commission rules". (*h*) Repeal the definition of "trust account" and substitute— " "trust account" (信託帳戶)— (*a*) in relation to a dealer, means a trust account required to be kept under section 84; and

項	受影響的條文	修訂
		(*b*) 就註冊融資人而言，指 121AJ 條規定須維持的信託帳戶；”。 (*i*) 加入—— ““財政資源規則” (financial resources rules) 指根據《證券及期貨事務監察委員會條例》(第 24 章) 第 28 條訂立的規則； “認可機構” (authorized institution) 指《銀行業條例》(第 155 章) 第 2 條所指的認可機構； “監察委員會規則” (Commission rules) 指根據第 146 條訂立的規則；”。
2.	第 5(7)(*d*) 條	(*a*) 廢除首次出現的 “規例” 而代以 “監察委員會規則”。 (*b*) 廢除第二次出現的 “規例” 而代以 “該規則”。
3.	第 27(1) 及 (3) 條	廢除 “銀行”。
4.	第 52 條	(*a*) 在第 (1) 及 (1A) 款中，廢除 “規例中” 而代以 “監察委員會規則所”。 (*b*) 在第 (2)(*c*) 款中，廢除 “董事或”。 (*c*) 在第 (3) 及 (4) 款中，廢除 “為本款的目的而根據本條例訂立的規例” 而代以 “監察委員會規則”。 (*d*) 在第 (6)(*d*) 款中，廢除 “規例” 而代以 “監察委員會規則”。 (*e*) 在第 (7) 款中，廢除 “使能償付第 (2) 款所指的法律責任或規例訂明的” 而代以 “以確保能償付第 (2) 款所指的法律責任及監察委員會規則所訂明種類的任何”。
5.	第 55 條	(*a*) 在第 (2)(*b*)(viii) 款中，廢除在“的註冊”之前的所有字句而代以 “該法團任何根據本部而須註冊的高級人員並無如此註冊，或該高級人員”。 (*b*) 在第 (2A) 款中，廢除 “第 65B 條” 而代以 “財政資源規則”。 (*c*) 廢除第 (5) 款而代以—— “(5) 在本條中，“註冊人” (registered person) 不包括根據第 XA 部註冊的註冊融資人或註冊融資人代表。”。
6.	第 56 條	(*a*) 在第 (2)(*c*) 款中，廢除 “董事、秘書或涉及該法團的管理的人” 而代以 “高級人員”。

Item	Provision affected	Amendment
		(*b*) in relation to a registered financier, means a trust account required to be kept under section 121AJ;”. (*i*) Add— ““authorized institution” (認可機構) means an authorized institution within the meaning of section 2 of the Banking Ordinance (Cap. 155); “Commission rules” (監察委員會規則) means rules made under section 146; “financial resources rules” (財政資源規則) means rules made under section 28 of the Securities and Futures Commission Ordinance (Cap. 24);”.
2.	Section 5(7)(*d*)	Repeal “regulations” and substitute “Commission rules”.
3.	Section 27(1) and (3)	Repeal “bank trading days” and substitute “business days”.
4.	Section 52	(*a*) In subsections (1) and (1A), repeal “in regulations” and substitute “by Commission rules”. (*b*) In subsection (2)(*c*), repeal “director or”. (*c*) In subsections (3) and (4), repeal “regulations made under this Ordinance” and substitute “Commission rules”. (*d*) In subsection (6)(*d*), repeal “regulations” and substitute “Commission rules”. (*e*) In subsection (7), repeal “to enable liabilities under subsection (2), or such other liabilities as may be prescribed by regulations, to be satisfied” and substitute “to ensure that liabilities under subsection (2), and any other liabilities of a kind prescribed by Commission rules, are satisfied”.
5.	Section 55	(*a*) In subsection (2)(*b*)(viii)— (i) repeal “a director, secretary, or other person concerned in the management” and substitute “an officer”; (ii) repeal “a director, secretary, or other person” and substitute “an officer”. (*b*) In subsection (2A), repeal “section 65B” and substitute “the financial resources rules”. (*c*) Repeal subsection (5) and substitute— “(5) In this section, “registered person” (註冊人) does not include a securities margin financier or securities margin financier's representative registered under Part XA.”.
6.	Section 56	(*a*) In subsection (2)(*c*), repeal “any director, secretary or person concerned in its management” and substitute “any officer of the corporation”.

項	受影響的條文	修訂
		(*b*) 廢除第(3)款而代以—— "(3) 監察委員會不得在未事先給予註冊人獲聆聽的機會的情況下，根據第(2)款向其施加任何罰則；如註冊人屬法團，則監察委員會不得在未事先給予其有關高級人員獲聆聽的機會的情況下，根據第(2)(*c*)款向該人員施加任何罰則。"。 (*c*) 廢除第(4)款而代以—— "(4) 在本條中，"註冊人" (registered person) 不包括根據第XA部註冊的註冊融資人或註冊融資人代表。"。
7.	第57條	(*a*) 在第(3)款中，在"(*b*)(iii)款"之後加入"或第(3)款"。 (*b*) 加入—— "(5) 除《證券及期貨事務監察委員會條例》(第24章)第21條另有規定外，監察委員會根據第55或56條作出的決定，在根據第(4)款發出有關決定的通知當日或在有關決定或通知內指明的較後日期生效。"。
8.	第60(4)(*c*)條	廢除"規例"而代以"監察委員會規則"。
9.	第63條	(*a*) 在第(1)(*b*)款中，廢除"規例中"而代以"監察委員會規則"。 (*b*) 加入—— "(6) 在本條中，"註冊人" (registered person) 不包括根據第XA部註冊的註冊融資人或註冊融資人代表。"。
10.	第64條	(*a*) 在第(2)款中，廢除"並於規例所訂明的任何費用繳付後，"。 (*b*) 加入—— "(4) 在本條中，"訂明" (prescribed) 指由監察委員會規則訂明。"。
11.	第65A(1)(*c*)、(3)(*c*)及(4)條	廢除所有"第65B條"而代以"財政資源規則"。
12.	第65C(1)及(2)條	廢除"第65B條"而代以"財政資源規則"。
13.	第65D(1)條	廢除"第65B條"而代以"財政資源規則"。
14.	第66(1)(*b*)條	廢除"在規例中"而代以"由監察委員會規則所"。
15.	第67(3)條	廢除"規例"而代以"監察委員會規則"。

Item	Provision affected	Amendment
		(*b*) In subsection (3), repeal "and, in the case of a registered person that is a corporation, any director, secretary or person concerned in its management," and substitute "and, if that person is a corporation, any officer of the corporation referred to in that subsection,". (*c*) Repeal subsection (4) and substitute— "(4) In this section, "registered person" (註冊人) does not include a securities margin financier or securities margin financier's representative registered under Part XA.".
7.	Section 57	(*a*) In subsection (3), add "or (3)" after "(*b*)(iii)". (*b*) Add— "(5) Except as provided by section 21 of the Securities and Futures Commission Ordinance (Cap. 24) (procedure for appeals), a decision of the Commission under section 55 or 56 takes effect on the date on which the decision is notified under subsection (4) or such later date as is specified in the decision or notice.".
8.	Section 60(4)(*c*)	Repeal "in regulations" and substitute "by Commission rules".
9.	Section 63	(*a*) In subsection (1)(*b*), repeal "regulations" and substitute "Commission rules". (*b*) Add— "(6) In this section, "registered person" (註冊人) does not include a securities margin financier or securities margin financier's representative registered under Part XA.".
10.	Section 64	(*a*) In subsection (2), repeal "and on payment of any fee prescribed by regulations". (*b*) Add— "(4) In this section, "prescribed" (訂明) means prescribed by Commission rules.".
11.	Section 65A(1)(*c*), (3)(*c*) and (4)	Repeal "section 65B" and substitute "the financial resources rules".
12.	Section 65C(1) and (2)	Repeal "section 65B" and substitute "the financial resources rules".
13.	Section 65D(1)	Repeal "section 65B" and substitute "the financial resources rules".
14.	Section 66(1)(*b*)	Repeal "in regulations" and substitute "by Commission rules".
15.	Section 67(3)	Repeal "regulations" and substitute "Commission rules".

項	受影響的條文	修訂
16.	第68條	(*a*) 在第(4)款中，廢除"規例訂明的表格"而代以"監察委員會提供的表格或批准的格式"。 (*b*) 在第(5)款中，廢除"規例所訂明的表格"而代以"監察委員會提供的表格或批准的格式"。
17.	第72(5)(*c*)(iii)條	廢除"在規則中"而代以"由監察委員會規則所"。
18.	第73(3)(*c*)(iii)條	廢除"在規例中"而代以"由監察委員會規則所"。
19.	第74(2)(*b*)條	廢除"在規例中"而代以"由監察委員會規則所"。
20.	第75(3)條	廢除"完成購買、出售或交換證券的合約而沒有遵從第(1)款"而代以"無合理辯解而在違反第(1)款的情況下完成購買、出售或交換證券的合約"。
21.	新條文	加入——

"75A. 交易商須向客戶提供帳戶結單

(1) 本條適用於任何交易商與其客戶之間訂立的以下種類的交易——

(*a*) 由該客戶存放或由他人代該客戶存放證券抵押品或款項；

(*b*) 由該客戶提取或由他人代該客戶提取證券抵押品或款項；

(*c*) 由該交易商處置該客戶的任何證券抵押品；

(*d*) 調整向該客戶提供的財務通融的款額，或提供該項通融所根據的條款，不論是以擴大、減少、記入貸項或記入借項的形式作出(但因該交易商收取利息而須作出的調整則除外)；

(*e*) 將收入記入該客戶帳戶的貸方或從該客戶帳戶扣除收費。

(2) 任何向客戶提供財務通融以便利取得和(如適用的話)持續持有證券的交易商，在訂立本條適用的交易後必須於下一個營業日之內，擬備和提供予該客戶一份符合第(3)款的規定的帳戶結單。

(3) 第(2)款所提述的帳戶結單必須包括以下資料——

(*a*) 該交易商用以經營業務的姓名或名稱，以及在香港經營該業務的主要地點的地址；

Item	Provision affected	Amendment
16.	Section 68(4) and (5)	Repeal "in the form prescribed by regulations" and substitute "on a form provided or approved by the Commission".
17.	Section 72(5)(*c*)(iii)	Repeal "in regulations" and substitute "by Commission rules".
18.	Section 73(3)(*c*)(iii)	Repeal "in regulations" and substitute "by Commission rules".
19.	Section 74(2)(*b*)	Repeal "in regulations" and substitute "by Commission rules".
20.	Section 75(3)	Add "without reasonable excuse" after "who".
21.	New	Add—

"75A. Dealer to provide client with statement of account

(1) This section applies to the following kinds of transactions entered into between a dealer and a client of the dealer—

(*a*) a deposit of securities collateral or money by or on behalf of the client;

(*b*) a withdrawal of securities collateral or money by or on behalf of the client;

(*c*) a disposal by the dealer of any of the client's securities collateral;

(*d*) an adjustment of the amount of financial accommodation, or the terms on which it is provided, to the client, whether by extension, reduction, credit or debit (except as a result of interest charged by the dealer);

(*e*) a crediting of income to, or a deduction of charges from, the client's account.

(2) A dealer who provides financial accommodation to a client to facilitate the acquisition and, where applicable, the continued holding of securities must prepare and provide to the client, no later than the end of the next business day after the entering into of any transaction to which this section applies, a statement of account that complies with subsection (3).

(3) The statement referred to in subsection (2) must include the following information—

(*a*) the name under which the dealer carries on business and the address of the principal place in Hong Kong at which the business is carried on;

項	受影響的條文	修訂

(*b*) 按第 (2) 款規定可獲該交易商提供帳戶結單的有關客戶的姓名或名稱、地址及帳戶號碼；

(*c*) 就任何有涉及該客戶的交易進行的每一天而言，該客戶帳戶在該日開始時和終結時的尚待結算餘額，以及在該日內該帳戶結餘的所有變動的細節；

(*d*) 在該日向該客戶提供的所有財務通融的細節，包括有關通融的性質、限額及屆滿日期，以及其利率和計算利息的基準；

(*e*) 在該日開始時為該客戶帳戶持有的每樣證券抵押品的數量；

(*f*) 在該日終結時為該帳戶持有的每樣證券抵押品的數量、市場價格、市場價值、保證金比率及保證金價值；

(*g*) 在該日存入該帳戶及在該日從該帳戶提取的每樣證券抵押品的數量；

(*h*) 該交易商在該日主動對為該帳戶持有的證券抵押品作出的一切處置，以及該等處置所產生的收益是如何處理的；

(*i*) 在該日記入該帳戶的貸項的收入的細目分類，及在該日記入該帳戶的借項的利息及其他收費的細目分類。

(4) 除第 (5) 款另有規定外，任何交易商必須在每個公曆月終結後的 7 個營業日內，擬備和提供予曾獲該交易商在該月內提供財務通融以便利取得證券和 (如適用的話) 持續持有該等證券的每名客戶一份符合第 (6) 款的帳戶結單。

(5) 如某帳戶在有關期間內並無任何交易，亦沒有任何尚待結算餘額及交易商沒有為該帳戶持有任何證券抵押品，則交易商無須根據第 (4) 款提供帳戶結單。

(6) 第 (4) 款所提述帳戶結單必須包括以下資料——

Item	Provision affected	Amendment

(*b*) the name, address and account number of the client to whom the dealer is required to give the statement of account;

(*c*) the outstanding balance of the account of the client at the beginning and at the end of each day on which a transaction involving the client takes place and details of all changes in the balance of that account during that day;

(*d*) details of all financial accommodation provided to the client during that day, including the nature, limit and expiry date of the accommodation together with the interest rate and basis of the interest calculation thereon;

(*e*) the quantity of each description of securities collateral held for the account of the client at the beginning of that day;

(*f*) the quantity, market price, market value, margin ratio and margin value of each description of securities collateral held for that account at the end of that day;

(*g*) the quantity of each description of securities collateral deposited to or withdrawn from that account during that day;

(*h*) all disposals initiated by the dealer of securities collateral held for that account during that day and what happened to the proceeds of those disposals;

(*i*) a breakdown of the income credited, and the interest and other charges debited, to that account on that day.

(4) Subject to subsection (5), a dealer must, within 7 business days after the end of each calendar month, prepare and provide to each client to whom the dealer has, during the month, provided financial accommodation to facilitate the acquisition of securities and, where applicable, the continued holding of those securities a statement of account that complies with subsection (6).

(5) Where there is no transaction in the account over the relevant period and the account does not have any outstanding balance and holding of securities collateral during the relevant period, a dealer need not provide a statement of account under subsection (4).

(6) The statement referred to in subsection (4) must include the following information—

項	受影響的條文	修訂
		(*a*) 該交易商用以經營業務的姓名或名稱，以及在香港經營該業務的主要地點的地址； (*b*) 按第 (4) 款規定可獲該交易商提供帳戶結單的有關客戶的姓名或名稱、地址及帳戶號碼； (*c*) 該客戶帳戶在該月開始時和終結時的尚待結算餘額，以及在該月內該帳戶結餘的所有變動的細節； (*d*) 在該月內向該客戶提供的所有財務通融的細節，包括有關通融的性質、限額及屆滿日期； (*e*) 在該月開始時為該客戶帳戶持有的每樣證券抵押品的數量； (*f*) 在該月終結時為該帳戶持有的每樣證券抵押品的數量、市場價格、市場價值、保證金比率及保證金價值； (*g*) 在該月內存入該帳戶及在該月內從該帳戶提取的每樣證券抵押品的數量； (*h*) 該交易商在該月內主動對為該帳戶持有的證券抵押品作出的一切處置，以及該等處置所產生的收益是如何處理的； (*i*) 在該月內記入該帳戶的貸項的收入的細目分類，及在該月內記入該帳戶的借項的利息及其他收費的細目分類。 (7) 任何交易商無合理辯解而違反本條的規定，即屬犯罪，一經定罪，可處第 4 級罰款。”。
22.	第 76(1) 條	廢除“規例”而代以“監察委員會規則”。
23.	第 77 條	廢除而代以—— **“77. 交易商在客戶帳戶方面的職責** (1) 在本條中，對交易商的提述，即包括對獲豁免交易商的提述，但如該項對交易商的提述是關於根據第 75A 條擬備帳戶結單的，則屬例外。

Item	Provision affected	Amendment
		(*a*) the name under which the dealer carries on business and the address of the principal place in Hong Kong at which the business is carried on; (*b*) the name, address and account number of the client to whom the dealer is required to give the statement of account; (*c*) the outstanding balance of the account of the client at the beginning and at the end of that month and details of all changes in the balance of that account during that month; (*d*) details of all financial accommodation provided to the client during that month, including the nature, limit and expiry date of the accommodation; (*e*) the quantity of each description of securities collateral held for the account of the client at the beginning of that month; (*f*) the quantity, market price, market value, margin ratio and margin value of each description of securities collateral held for that account at the end of that month; (*g*) the quantity of each description of securities collateral deposited to or withdrawn from that account during that month; (*h*) all disposals initiated by the dealer of securities collateral held for that account during that month and what happened to the proceeds of those disposals; (*i*) a breakdown of the income credited, and the interest and other charges debited, to that account during that month. (7) A dealer who, without reasonable excuse, fails to comply with a requirement of this section commits an offence and is liable on conviction to a fine at level 4.”.
22.	Section 76(1)	Repeal “in regulations” and substitute “by Commission rules”.
23.	Section 77	Repeal and substitute— **“77. Duties of dealer with respect to clients’ accounts** (1) In this section, a reference to a dealer includes a reference to an exempt dealer (except in relation to a statement of account prepared under section 75A).

項	受影響的條文	修訂
		(2) 在任何交易商的客戶要求該交易商向他提供以下文件的文本後，該交易商必須在切實可行的範圍內盡快遵從該項要求—— (*a*) 與該客戶有關的任何指明成交單據；或 (*b*) 該交易商就該客戶而備存的任何指明帳目；或 (*c*) 該交易商根據第 75A 條就該客戶而備存的任何指明帳戶結單。 (3) 如監察委員會應任何交易商的客戶提出的申請而有所指示，則該交易商必須按該等指示而於其通常營業時間內備有以下文件，以供該客戶查閱—— (*a*) 與該客戶有關的任何指明成交單據；或 (*b*) 該交易商就該客戶而備存的任何指明帳目；或 (*c*) 該交易商根據第 75A 條就該客戶而備存的任何指明帳戶結單。 (4) 本條並不規定交易商提供或為供查閱而備有—— (*a*) 自提出有關要求當日起計的前 3 個月前進行的交易的—— (i) 任何成交單據的文本；或 (ii) 第 75A(2) 條所提述的帳戶結單的文本；或 (*b*) 自提出有關要求當日起計的前 6 年前進行的交易的—— (i) 任何帳目的文本；或 (ii) 第 75A(4) 條所提述的帳戶結單的文本。 (5) 交易商可就根據第 (2) 款提供的文本收費，該收費不得超逾監察委員會規則就此而訂明的款額。 (6) 任何交易商無合理辯解而違反第 (2) 或 (3) 款，即屬犯罪，一經定罪，可處第 4 級罰款。”。
24.	第 79 條	(*a*) 在第 (6) 款中—— (i) 廢除首次出現的“規例”而代以“監察委員會規則”； (ii) 廢除第二次及第三次出現的“規例”而代以“該規則”。

Item	Provision affected	Amendment
		(2) As soon as practicable after a client of a dealer requests the dealer to provide the client with a copy of— (*a*) any specified contract note relating to the client; or (*b*) any specified account kept by the dealer in respect of the client; or (*c*) any specified statement of account kept by the dealer in respect of the client under section 75A, the dealer must comply with the request. (3) If the Commission, on an application made by a client of a dealer, so directs, the dealer must make available for inspection by the client during the dealer's ordinary hours of business— (*a*) any specified contract note relating to the client; or (*b*) any specified account kept by the dealer in respect of the client; or (*c*) any specified statement of account prepared for the client under section 75A. (4) This section does not require a dealer— (*a*) to provide, or make available for inspection, a copy of— (i) a contract note; or (ii) a statement of account referred to in section 75A(2), that relates to a dealing transacted more than 3 months before the date of the relevant request; or (*b*) to provide, or make available for inspection, a copy of— (i) an account; or (ii) a statement of account referred to in section 75A(4), that relates to a dealing transacted more than 6 years before the date of the relevant request. (5) A dealer may impose a charge not exceeding an amount prescribed by Commission rules for a copy of a document provided under subsection (2). (6) A dealer who, without reasonable excuse, fails to comply with subsection (2) or (3) commits an offence and is liable on conviction to a fine at level 4.".
24.	Section 79	(*a*) In subsection (6), repeal "regulations" and substitute "Commission rules".

項	受影響的條文	修訂
		(*b*) 在第 (9) 款中，廢除“在不損害根據第 146 條訂立規例的權力下，可根據該條就以下事項訂立規例”而代以“監察委員會可根據第 146 條就以下事項訂立規則”。
25.	第 80(4)(*d*) 條	廢除“規例”而代以“監察委員會規則所”。
26.	第 81 條	廢除而代以——

“81. 交易商在處置證券方面的限制

(1) 在本條中，對交易商的提述，即包括對獲豁免交易商的提述。

(2) 除第 (6) 款另有規定外，凡交易商或該交易商所控制的任何代名人須就證券向某人作出交代，而該等證券不屬該交易商的財產並是在香港持有作穩妥保管的，則該交易商必須確保該等證券——

(*a*) 以該人的名義或以該代名人的名義登記；或

(*b*) 被存放於認可機構或監察委員會為施行本條而核准的某些其他機構的指定帳戶內作穩妥保管。

(3) 監察委員會只有在信納有關的機構能提供令人滿意的上述穩妥保管服務的情況下，方可為施行第 (2)(*b*) 款藉給予該機構的書面通知而核准該機構。

(4) 第 (2) 款所適用的交易商必須採取合理步驟，以確保該款所提述的證券除按該款規定或監察委員會規則准許的方式處理外，不得以其他方式存放、移轉、借出、質押、再質押或以其他方式處理。

(5) 第 (4) 款並不影響第 (2) 款所適用的交易商為以下目的而處置第 (2) 款所提述的證券的權利——

(*a*) 履行該等證券的實益擁有人就證券交易而對該交易商負有的法律責任，而該法律責任是指在該交易商已將指定作為保證履行該法律責任的抵押品的所有其他資產處置後仍未履行的法律責任；或

Item	Provision affected	Amendment
		(*b*) In subsection (9), repeal "Without prejudice to the power to make regulations under section 146, regulations may be made under that section—" and substitute "Rules may be made under section 146—".
25.	Section 80(4)(*d*)	Repeal "regulations" and substitute "Commission rules".
26.	Section 81	Repeal and substitute—

"81. Restrictions on disposition of securities by dealer

(1) In this section, a reference to a dealer includes a reference to an exempt dealer.

(2) Subject to subsection (6), where securities which are not the property of the dealer and for which the dealer, or any nominee controlled by the dealer, is accountable are held for safe custody in Hong Kong, the dealer must ensure that the securities are either—

(*a*) registered in the name of the person to whom the dealer is accountable or in the name of the nominee; or

(*b*) deposited in safe custody in a designated account with an authorized institution or some other institution approved by the Commission for the purposes of this section.

(3) The Commission may, by written notice given to the institution concerned, approve an institution for the purposes of subsection (2)(*b*) only if it is satisfied that the institution provides satisfactory facilities for such safe custody.

(4) A dealer to whom subsection (2) applies must take reasonable steps to ensure that the securities referred to in that subsection are not deposited, transferred, lent, pledged, repledged or otherwise dealt with except as provided by that subsection or as permitted by Commission rules.

(5) Subsection (4) does not affect the right of a dealer to whom subsection (2) applies to dispose of the securities referred to in subsection (2) for the purpose of settling any liability owed by the person (who is the beneficial owner of such securities) to the dealer for—

(*a*) dealing in securities which remains after the dealer has disposed of all other assets designated as collateral for securing the settlement of that liability; or

項 受影響的條文 修訂

(*b*) 履行該等證券的實益擁有人就該交易商向其提供的財務通融而對該交易商負有的法律責任，而該法律責任是指在該交易商已將指定作為保證履行該法律責任的抵押品的所有其他資產處置後仍未履行的法律責任，

但該交易商只可在獲得該人的書面授權下或在監察委員會規則准許的情況下處置該等證券。

(6) 第(2)款所適用的交易商可在符合以下說明的情況下，將該款所提述的證券借予或存放於任何人——

(*a*) 該項借出或存放是符合聯合交易所的規則和規例的；或

(*b*) 該項借出或存放是符合香港中央結算有限公司的規則和規例的；或

(*c*) 該人屬監察委員會規則為施行本條而指明的某類別的人，

但該交易商只可在獲得有關客戶的書面授權下或在監察委員會規則准許的情況下進行該項借出或存放。

(7) 第(6)款所提述的授權只在該項授權指明其有效期間的情況下方具有效力，而該項授權——

(*a*) 在如此指明的期間或12個月內(兩者以較短者為準)一直有效；及

(*b*) 可以書面方式延續一次或多於一次，每次不得超逾12個月。

(8) 任何交易商無合理辯解而違反第(2)款，即屬犯罪，一經定罪，可處第3級罰款。

(9) 任何交易商無合理辯解而違反第(4)款，即屬犯罪——

(*a*) 一經循公訴程序定罪，可處罰款$200,000及監禁2年；或

(*b*) 一經循簡易程序定罪，可處第6級罰款。

(10) 本條不適用於由交易商的客戶或由他人代該客戶存放於——

(*a*) 該交易商的證券抵押品；或

(*b*) 另一人以便利獲得該交易商提供財務通融者的證券抵押品。

(11) 為免生疑問，凡交易商已按照第(6)款將有關的證券借予或存放於任何人，則第(4)款不得解釋為規定該交易商須確保該人並無將有關的證券再存放、移轉、再借出、質押或再質押或以其他方式處理。

Item Provision affected Amendment

(*b*) financial accommodation provided by the dealer to the person which remains after the dealer has disposed of all other assets designated as collateral for securing the settlement of that liability,

but only with the written authority of the person or as permitted by Commission rules.

(6) A dealer to whom subsection (2) applies may lend or deposit the securities referred to in that subsection to a person—

(*a*) in accordance with the rules and regulations of the Unified Exchange; or

(*b*) in accordance with the rules and regulations of the Hong Kong Securities Clearing Company Limited; or

(*c*) of a class specified in Commission rules for the purposes of this section,

but only with the written authority of the client or as permitted by Commission rules.

(7) An authority referred to in subsection (6) is effective only if it specifies the period for which it is current and it—

(*a*) remains in force for the period so specified or 12 months, whichever is the shorter; and

(*b*) may be renewed in writing for one or more further periods not exceeding 12 months at any one time.

(8) A dealer who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 3.

(9) A dealer who, without reasonable excuse, contravenes subsection (4) commits an offence and is liable—

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

(*b*) on summary conviction, to a fine at level 6.

(10) This section does not apply to securities collateral deposited—

(*a*) with a dealer; or

(*b*) with another person to facilitate the provision of financial accommodation by the dealer,

by or on behalf of a client of the dealer.

(11) For the avoidance of doubt, subsection (4) shall not be construed as requiring the dealer to ensure that the relevant securities are not redeposited, transferred, relent, pledged, or repledged or otherwise dealt with by a person to whom the dealer has lent or deposited the relevant securities in accordance with subsection (6).

項	受影響的條文	修訂

81A. 交易商在處置證券抵押品方面的限制

(1) 在本條中，對交易商的提述，即包括對獲豁免交易商的提述。

(2) 除第 (6) 款另有規定外，在證券抵押品由交易商的客戶或由他人代該客戶存放於該交易商，或存放於另一人以便利獲得該交易商提供財務通融後，該交易商必須在切實可行的範圍內盡快確保有關的證券——

(*a*) 以該客戶的名義登記；或

(*b*) 以該交易商或該交易商所控制的代名人的名義登記；或

(*c*) 存放於認可機構或監察委員會為施行本條而核准的某些其他機構的指定帳戶內作穩妥保管。

(3) 監察委員會只有在信納有關的機構能提供令人滿意的上述穩妥保管服務的情況下，方可為施行第 (2)(*c*) 款藉給予該機構的書面通知而核准該機構。

(4) 如證券抵押品由交易商的客戶或由他人代該客戶存放於該交易商，或存放於另一人以便利獲得該交易商提供財務通融，則該交易商必須採取合理步驟，以確保有關的證券除按第 (2) 及 (6) 款的規定處理外，不得以其他方式存放、移轉、借出、質押、再質押或以其他方式處理。

(5) 第 (4) 款並不影響任何交易商為以下目的而處置客戶的證券抵押品的權利——

(*a*) 履行該客戶維持所協定的保證金水平的義務；或

(*b*) 履行該客戶付還或解除由該交易商所提供的財務通融的法律責任；或

(*c*) 履行該客戶就某證券交易進行交收的法律責任，而他已就該法律責任提供證券抵押品；或

(*d*) 履行該客戶就證券交易而對該交易商負有的法律責任，而該法律責任是指在該交易商已將指定作為保證履行該法律責任的抵押品的所有其他資產處置後仍未履行的法律責任，

但該交易商只可在獲得該客戶的書面授權下或在監察委員會規則准許的情況下處置該等證券抵押品。

Item	Provision affected	Amendment

81A. Restrictions on disposition of securities collateral by dealer

(1) In this section, a reference to a dealer includes a reference to an exempt dealer.

(2) Subject to subsection (6), as soon as practicable after securities collateral is deposited with a dealer, or with another person to facilitate the provision of financial accommodation by the dealer, by or on behalf of a client of the dealer, the dealer must ensure that the relevant securities are—

(*a*) registered in the name of the client; or

(*b*) registered in the name of the dealer or a nominee controlled by the dealer; or

(*c*) deposited in safe custody in a designated account with an authorized institution or some other institution approved by the Commission for the purposes of this section.

(3) The Commission may, by written notice given to the institution concerned, approve an institution for the purposes of subsection (2)(*c*) only if it is satisfied that the institution provides satisfactory facilities for such safe custody.

(4) If securities collateral is deposited with a dealer, or with another person to facilitate the provision of financial accommodation by the dealer, by or on behalf of a client of the dealer, the dealer must take reasonable steps to ensure that the relevant securities are not deposited, transferred, lent, pledged, repledged or otherwise dealt with except as provided by subsections (2) and (6).

(5) Subsection (4) does not affect the right of a dealer to dispose of the securities collateral of a client in settlement of—

(*a*) the client's obligation to maintain an agreed level of margin; or

(*b*) any liability of the client to repay or discharge the financial accommodation provided by the dealer; or

(*c*) any liability of the client to settle a transaction in securities against which liability securities collateral has been provided by that client; or

(*d*) any liability owed by the client to the dealer for dealing in securities which remains after the dealer has disposed of all other assets designated as collateral for securing the settlement of that liability,

but only with the written authority of the person or as permitted by Commission rules.

項	受影響的條文	修訂

(6) 如證券抵押品由交易商的客戶或由他人代該客戶存放於該交易商，或存放於另一人以便利獲得該交易商提供財務通融，則該交易商可——

(*a*) 將有關的證券作為對該交易商提供財務通融的抵押品而存放於任何認可機構；或

(*b*) 將該等證券——

(i) 按照聯合交易所的規則及規例借予或存放於某人；或

(ii) 按照香港中央結算有限公司的規則及規例借予或存放於某人；或

(iii) 借予或存放於監察委員會規則為施行本條而指明的某類別的人；或

(*c*) 將該等證券存放於香港中央結算有限公司，作為解除該交易商在結算上的義務和清償該交易商在結算上的負債的抵押品；或

(*d*) 將該等證券存放於香港聯合交易所期權結算所有限公司，作為就該交易商的期權合約交易或與期權合約有關的交易的抵押品，

但該交易商只可在獲得該客戶的書面授權或在監察委員會規則准許的情況下方可採取上述行動。

(7) 第 (6) 款所提述的授權——

(*a*) 只在該項授權指明其有效期間的情況下方具有效力；及

(*b*) 在如此指明的期間或 12 個月內 (兩者以較短者為準) 一直有效；及

(*c*) 可以書面方式延續一次或多於一次，每次不得超逾 12 個月。

(8) 任何交易商無合理辯解而違反第 (2) 款，即屬犯罪，一經定罪，可處第 3 級罰款。

(9) 任何交易商無合理辯解而違反第 (4) 款，即屬犯罪——

(*a*) 一經循公訴程序定罪，可處罰款 $200,000 及監禁 2 年；或

(*b*) 一經循簡易程序定罪，可處第 6 級罰款。

Item	Provision affected	Amendment

(6) If securities collateral is deposited with a dealer, or with another person to facilitate the provision of financial accommodation by the dealer, by or on behalf of a client of the dealer, the dealer may—

(*a*) deposit the relevant securities with an authorized institution as collateral for financial accommodation provided to the dealer; or

(*b*) lend or deposit the securities to—

(i) a person in accordance with the rules and regulations of the Unified Exchange; or

(ii) a person in accordance with the rules and regulations of the Hong Kong Securities Clearing Company Limited; or

(iii) a person of a class specified in Commission rules for the purposes of this section; or

(*c*) deposit the securities with the Hong Kong Securities Clearing Company Limited as collateral for the discharge and satisfaction of the dealer's clearing obligations and liabilities; or

(*d*) deposit the securities with the SEHK Options Clearing House Limited as collateral in respect of the dealer's transactions in or relating to options contracts,

but only with the written authority of the client or as permitted by Commission rules.

(7) An authority referred to in subsection (6)—

(*a*) is effective only if it specifies the period for which it is current; and

(*b*) remains in force for the period so specified or 12 months, whichever is the shorter; and

(*c*) may be renewed in writing for one or more further periods not exceeding 12 months at any one time.

(8) A dealer who, without reasonable excuse, fails to comply with subsection (2) commits an offence and is liable on conviction to a fine at level 3.

(9) A dealer who, without reasonable excuse, contravenes subsection (4) commits an offence and is liable—

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

(*b*) on summary conviction, to a fine at level 6.

項	受影響的條文	修訂
		(10) 為免生疑問，凡交易商已按照第 (6) 款將有關的證券借予或存放於香港中央結算有限公司、香港聯合交易所期權結算所有限公司、任何認可機構或任何其他人，則第 (4) 款不得解釋為規定該交易商須確保上述人士並無將有關的證券再存放、移轉、再借出、質押或再質押或以其他方式處理。 **81B. 對證券的申索權及留置權不受影響** 第 81 或 81A 條並不影響任何人對以下證券或證券抵押品所具有的合法申索權或留置權—— (*a*) 任何存放於交易商或交易商所控制的代名人作穩妥保管的證券；或 (*b*) 存放於交易商或存放於另一人以便利獲得該交易商提供財務通融的證券抵押品。”。
27.	第 82(2) 條	廢除兩度出現的“簿冊、帳目、”而代以“會計紀錄及其他”。
28.	第 83 條	(*a*) 在第 (3)(*a*)(vi) 款中—— (i) 廢除“或任何有關連法團”； (ii) 廢除末處的“及”。 (*b*) 在第 (3)(*a*) 款中，加入—— “(viii) 所有由該交易商進行的證券保證金融資；及”。 (*c*) 廢除第 (4A) 款而代以—— “(4A) 在不限制第 (1) 及 (3) 款的原則下，但在符合監察委員會規則的規定下，該交易商須備存可使財政資源規則是否已獲遵從一事得以輕易地確定的紀錄。”。 (*d*) 在第 (5)(*a*) 款中，在“紀錄”之後加入“及第 121Z(4) 條所提述的每份帳戶結單的文本”。 (*e*) 在第 (5)(*b*)(ii) 款中，廢除句號而代以“；及”。 (*f*) 在第 (5)(*b*) 款中，加入—— “(iii) 第 75A(2) 條所提述的每份帳戶結單的文本。”。
29.	第 84 條	(*a*) 在第 (1)(*a*) 及 (*b*) 款中，廢除“銀行”。 (*b*) 在第 (1)(*b*) 款中，廢除末處的“及”。 (*c*) 在第 (1) 款中，加入——

Item	Provision affected	Amendment
		(10) For the avoidance of doubt, subsection (4) shall not be construed as requiring the dealer to ensure that the relevant securities are not redeposited, transferred, relent, pledged, or repledged or otherwise dealt with by an authorized institution, the Hong Kong Securities Clearing Company Limited, the SEHK Options Clearing House Limited, or any other person, with whom the dealer has lent or deposited the relevant securities in accordance with subsection (6). **81B. Claims and liens over securities not affected** Nothing in section 81 or 81A affects any lawful claim or lien that a person has in respect of— (*a*) any securities deposited for safe custody with a dealer or a nominee controlled by a dealer; or (*b*) securities collateral deposited with a dealer or another person to facilitate the provision of financial accommodation by the dealer.".
27.	Section 82(2)	Repeal "books, accounts," where it twice appears and substitute "accounting and other".
28.	Section 83	(*a*) In subsection (3)(*a*)(vi)— (i) repeal "or any related corporation"; (ii) repeal "and" at the end. (*b*) In subsection (3)(*a*), add— "(viii) all securities margin financing conducted by the dealer; and". (*c*) Repeal subsection (4A) and substitute— "(4A) Without limiting subsections (1) and (3) but subject to Commission rules, the dealer shall keep records that are sufficient to enable it be readily established whether or not the financial resources rules have been complied with.". (*d*) In subsection (5)(*a*), add "and a copy of each statement of account referred to in section 121Z(4)" after "subsection (1)". (*e*) In subsection (5)(*b*)(ii), repeal the full stop and substitute "; and". (*f*) In subsection (5)(*b*), add— "(iii) a copy of each statement of account referred to in section 75A(2).".
29.	Section 84	(*a*) In subsection (1)(*a*) and (*b*), repeal "bank trading days" and substitute "business days". (*b*) In subsection (1)(*b*), repeal "and" at the end. (*c*) In subsection (1), add—

項	受影響的條文	修訂
		“(*ba*) 從獲該交易商提供財務通融以便利取得和 (如適用的話) 持續持有證券的客戶收取或為該客戶收取的所有款額，但下述款額除外—— (i) 用以減少該客戶欠該交易商的款額的款額；或 (ii) 在收款後 4 個營業日內支付予該客戶或按照該客戶的指示而支付的款額；及”。 (*d*) 在第 (1)(*c*) 款中，廢除 “或 (*b*)” 而代以 “、(*b*) 或 (*ba*)”。 (*e*) 在第 (3) 款中，廢除 “銀行”。 (*f*) 在第 (6)(*c*) 款中，廢除 “可藉規例” 而代以 “監察委員會規則所”。
30.	第 87(2)(*d*) 條	廢除 “規例中” 而代以 “由監察委員會規則”。
31.	第 88(1) 條	廢除 “規例” 而代以 “監察委員會規則”。
32.	第 89(1)(*b*) 條	(*a*) 廢除 “65B 、”。 (*b*) 在 “84 條” 之後加入 “或財政資源規則”。
33.	第 90(1) 條	(*a*) 在 (*c*) 段中，廢除 “第 65B 條” 而代以 “財政資源規則”。 (*b*) 廢除 “簿冊、帳目及” 而代以 “會計紀錄及其他”。
34.	第 91 條	(*a*) 在第 (1) 及 (4)(*b*) 款中，廢除 “簿冊、帳目及” 而代以 “會計紀錄及其他”。 (*b*) 在第 (2)(*c*) 款中，廢除 “可藉規例” 而代以 “監察委員會規則所”。
35.	第 93 條	(*a*) 廢除 “簿冊、帳目及” 而代以 “會計紀錄及其他”。 (*b*) 在 (*a*) 段中，廢除 “簿冊、帳目、” 而代以 “會計紀錄及其他”。
36.	第 94 條	廢除而代以——

“94. 核數師及其僱員可在某些情況下披露資料

儘管有《證券及期貨事務監察委員會條例》(第 24 章) 第 59(1) 條的規定，根據第 90 或 91 條委任的核數師及其任何僱員可——

Item	Provision affected	Amendment
		“(*ba*) all amounts that are received from or on account of a client to whom the dealer provides financial accommodation to facilitate the acquisition and, where applicable, the continued holding of securities, except those amounts that are— (i) used to reduce the amount owed by the client to the dealer; or (ii) paid to the client, or paid in accordance with the client's directions, within 4 business days after receipt; and”. (*d*) In subsection (1)(*c*), repeal “or (*b*)” and substitute “, (*b*) or (ba)”. (*e*) In subsection (3), repeal “bank trading days” and substitute “business days”. (*f*) In subsection (6)(*c*), repeal “regulations” and substitute “Commission rules”.
30.	Section 87(2)(*d*)	Repeal “in regulations” and substitute “by Commission rules”.
31.	Section 88(1)	Repeal “regulations” and substitute “Commission rules”.
32.	Section 89(1)(*b*)	(*a*) Repeal “65B,”. (*b*) Add “or the financial resources rules” after “or 84”.
33.	Section 90(1)	(*a*) In paragraph (*c*), repeal “section 65B” and substitute “the financial resources rules”. (*b*) Repeal “books, accounts, and” and substitute “accounting and other”.
34.	Section 91	(*a*) In subsections (1) and (4)(*b*), repeal “books, accounts, and” and substitute “accounting and other”. (*b*) In subsection (2)(*c*), repeal “regulations” and substitute “Commission rules”.
35.	Section 93	(*a*) Repeal “books, accounts, and” and substitute “accounting and other”. (*b*) In paragraph (*a*), repeal “books, account,” and substitute “accounting and other”.
36.	Section 94	Repeal and substitute—

“94. Auditor and auditor's employees may disclose information in certain circumstances

Notwithstanding section 59(1) of the Securities and Futures Commission Ordinance (Cap. 24), an auditor appointed under section 90 or 91 and any employee of such auditor may disclose information that comes to his knowledge in the course of performing his duties as such auditor or as an employee of such auditor (as the case may be)—

項	受影響的條文	修訂
		(*a*) 為施行或遵從本條例任何條文；及 (*b*) 為任何法律程序的目的；及 (*c*) 向監察委員會；及 (*d*) (如屬該核數師的僱員) 向該核數師， 披露他在履行其核數師或核數師僱員 (視屬何情況而定) 的職責的過程中所獲悉的資料。”。
37.	第 95 條	在第 (1) 款中，廢除兩度出現的“簿冊、帳目及”而代以“會計紀錄及其他”。
38.	第 96 條	在第 (1) 及 (2) 款中，廢除兩度出現的“簿冊、帳目、紀錄或文件”而代以“會計紀錄或其他紀錄”。
39.	第 97(*c*) 條	廢除“帳目、簿冊及”而代以“會計紀錄及其他”。
40.	第 127 條	(*a*) 在第 (1)(*b*) 款中，廢除“事項，”而代以“事項；或”。 (*b*) 在第 (1) 款中，加入—— “(*c*) 任何涉及證券保證金融資的事項，”。 (*c*) 在第 (3) 款中—— (i) 廢除“藉着以規例訂明的表格按訂明的方式給予訂明人士的通知，規定該人”而代以“規定任何訂明人士”； (ii) 在末處加入—— “根據本款作出規定的通知必須符合監察委員會提供的表格或批准的格式，並以監察委員會規則所訂明的方式作出。”。 (*d*) 在第 (10) 款中，廢除“規例”而代以“監察委員會規則”。
41.	第 137 條	廢除“所訂立的任何”而代以“而訂立的監察委員會”。
42.	第 144(1) 條	(*a*) 在“證券交易”之後加入“或證券保證金融資”。 (*b*) 加入—— “(*aa*) 限制任何並非註冊融資人的人從事證券保證金融資；”。 (*c*) 加入—— “(*ba*) 就註冊融資人而言，委任任何人管理該融資人的財產的命令；”。 (*d*) 在 (*c*) 段中，在“證券”之後加入“或證券保證金融資”。

Item	Provision affected	Amendment
		(*a*) for the purpose of carrying into effect, or complying with, any of the provisions of this Ordinance; and (*b*) for the purposes of any legal proceedings; and (*c*) to the Commission; and (*d*) in the case of an employee of an auditor, to the auditor.”.
37.	Section 95	In subsection (1), repeal “books, accounts, and” where it twice appears and substitute “accounting and other”.
38.	Section 96	(*a*) In subsection (1)(*a*), repeal “book, account, record or document” and substitute “accounting or other record”. (*b*) In subsections (1)(*b*) and (2), repeal “book, account, record, or document” wherever it appears and substitute “accounting or other record”.
39.	Section 97(*c*)	Repeal “accounts, books, and” and substitute “accounting and other”.
40.	Section 127	(*a*) In subsection (1)(*b*), repeal “advice,” and substitute “advice; or”. (*b*) In subsection (1), add— “(*c*) any matter concerning securities margin financing,”. (*c*) In subsection (3)— (i) repeal “by notice in the form prescribed by regulations given in the manner as prescribed”; (ii) add at the end— “A requirement under this subsection must be in a form provided or approved by the Commission and be given in the manner prescribed by Commission rules.”. (*d*) In subsection (10), repeal “regulations” and substitute “Commission rules”.
41.	Section 137	Repeal “regulations” and substitute “Commission rules”.
42.	Section 144(1)	(*a*) Add “or to securities margin financing” after “dealing in securities”. (*b*) Add— “(*aa*) an order restraining a person who is not registered as a securities margin financier from engaging in securities margin financing;”. (*c*) Add— “(*ba*) in relation to a registered financier, an order appointing a person to administer the property of the financier;”. (*d*) In paragraph (*c*), add “or securities margin financing” after “relating to securities”.

項	受影響的條文	修訂
43.	第146條	廢除而代以——

"146. 監察委員會規則

(1) 監察委員會可為以下全部或任何目的訂立規則——

(a) 訂明註冊交易商、註冊交易合夥及註冊交易商代表可就何種類別的人作證券交易，以及註冊交易商、註冊交易合夥及註冊交易商代表可以何種方式及在何種情況下作證券交易；

(b) 訂明註冊投資顧問、註冊投資顧問合夥及註冊投資代表可以投資顧問或投資代表的身分就何種類別的人經營業務，以及註冊投資顧問、註冊投資顧問合夥及註冊投資代表可以何種方式和在何種情況下經營業務；

(c) 訂明註冊融資人可就何種類別的人經營證券保證金融資業務，以及註冊融資人可以何種方式和在何種情況下經營證券保證金融資業務；

(d) 訂明註冊融資人代表可就何種類別的人代註冊融資人行事，以及註冊融資人代表可以何種方式和在何種情況下代註冊融資人行事；

(e) 規定註冊交易商、註冊交易合夥、註冊投資顧問、註冊投資顧問合夥、註冊融資人及註冊融資人代表在其營業地點展示其註冊證明書；

(f) 就註冊交易商、註冊投資顧問、註冊交易合夥、註冊投資顧問合夥、註冊融資人、註冊交易商代表、註冊投資代表及註冊融資人代表進行業務方面訂明規定；

Item	Provision affected	Amendment
43.	Section 146	Repeal and substitute—

"**146. Commission rules**

(1) The Commission may make rules for all or any of the following purposes—

(*a*) prescribing the class of persons in relation to whom, and the manner and circumstances in which, registered dealers, registered dealing partnerships and registered dealers' representatives may deal in securities;

(*b*) prescribing the class of persons in relation to whom, and the manner and circumstances in which, registered investment advisers, registered investment advisers' partnerships and registered investment representatives may carry on business as investment advisers or as investment representatives;

(*c*) prescribing the class of persons in relation to whom, and the manner and circumstances in which, registered financiers may carry on the business of securities margin financing;

(*d*) prescribing the class of persons in relation to whom, and the manner and circumstances in which, registered financiers' representatives may act for registered financiers;

(*e*) requiring registered dealers, registered dealing partnerships, registered investment advisers, registered investment advisers' partnerships, registered financiers and registered financiers' representatives to exhibit their certificates of registration at their places of business;

(*f*) prescribing requirements with respect to the conduct of business by registered dealers, registered investment advisers, registered dealing partnerships, registered investment advisers' partnerships, registered financiers, registered dealers' representatives, registered investment representatives and registered financiers' representatives;

項	受影響的條文	修訂
		(*g*) 規定交易商、投資顧問、交易合夥、投資顧問合夥、證券保證金融資人、交易商代表、投資代表及證券保證金融資人代表根據本條例註冊的附帶事項；
		(*h*) 賦權監察委員會更正根據本條例備存的任何註冊紀錄冊及登記冊內的任何錯誤；
		(*i*) 賦權監察委員會於註冊證明書的正本或任何複本遺失或銷毀時，在監察委員會規則所訂明的費用 (如有的話) 獲繳付後，發出註冊證明書的複本；
		(*j*) 為施行本條例而訂明任何表格或格式，或賦權監察委員會為施行本條例而指明、提供或批准任何表格或格式；
		(*k*) 訂明提出根據第 VI 或 XA 部註冊的申請的方式；
		(*l*) 訂明須就信託帳戶而記錄的詳情；
		(*m*) 訂明就須由交易商或註冊融資人擬備的損益表及資產負債表而須記錄的詳情；
		(*n*) 訂明根據第 XI 部進行調查的程序，以及就該等調查進行期間證據 (不論書面或口頭) 的接收及證人的傳召和訊問作出規定；
		(*o*) 規定屬某指明類別的人在聯合交易所或透過聯合交易所出售證券時，如他將證券轉歸於買方名下的權利 (或如他以代理人身分行事，則他的當事人如此行事的權利) 是得自某指明種類的安排的，則他須將證券轉歸於買方名下的權利是得自該項安排此一事實，通知辦理該項售賣的股票經紀；

Item	Provision affected	Amendment
		(*g*) providing for matters incidental to the registration of dealers, investment advisers, dealing partnerships, investment advisers' partnerships, securities margin financiers, dealers' representatives, investment representatives and securities margin financiers' representatives under this Ordinance;
		(*h*) enabling the Commission to correct any errors in any register kept under this Ordinance;
		(*i*) enabling the Commission, on payment of the fee (if any) prescribed by Commission rules, to issue a duplicate certificate of registration if the original certificate or any duplicate certificate is lost or destroyed;
		(*j*) prescribing forms for the purposes of this Ordinance or enabling the Commission to specify, or to provide or approve, forms for those purposes;
		(*k*) prescribing the manner in which applications are to be made for registration under Part VI or XA;
		(*l*) prescribing the particulars to be recorded in relation to trust accounts;
		(*m*) prescribing the particulars to be recorded in relation to the profit and loss account and balance sheet required to be prepared by a dealer or registered financier;
		(*n*) prescribing the procedure for holding investigations under Part XI, and providing for the reception of evidence, whether written or oral, and for the summoning and examination of witnesses, during the course of such an investigation;
		(*o*) requiring a person of a specified description, when selling securities at or through the Unified Exchange and when the person's right to vest the securities in the purchaser (or, if acting as agent, the principal's right to do so) is derived from an arrangement of a specified kind, to notify the stockbroker through whom the sale is being effected, of the fact that the right to vest the securities in the purchaser is derived from such an arrangement;

項 受影響的條文 修訂

(*p*) 就透過聯合交易所的設施進行買賣的期權合約，訂明對任何人可直接或間接持有或控制的該等合約的數目的限制或須就該數目遵從的條件；

(*q*) 訂明或訂定任何本條例規定或准許由監察委員會規則訂明的事項。

(2) 除本條例另有規定外，根據本條訂立的任何規則可作出以下所有或任何規定——

(*a*) 規定該規則一般地適用或須按指明的例外情況或因素而對其適用範圍加以限制；

(*b*) 規定該規則須按屬指明類別的不同因素而有區別地適用；

(*c*) 規定該規則可授權將任何事宜或事情交由任何指明的人決定、應用或規管。

(3) 在不抵觸訂明的條款及條件下，根據本條訂立的任何規則可規定第 VI 至 IX 部及第 XA 部的條文或其中的某些指明條文——

(*a*) 就任何指明的人或屬以下指明類別人士的任何人而言並不具有效力——

(i) 只因作出任何屬於另一業務的附帶事情而是或可能是交易商、投資顧問或證券保證金融資人的人；或

(ii) 並不為任何其他人或代任何其他人進行證券交易的人；或

(iii) 只因訂立任何指明交易或任何指明類別的交易而是交易商、投資顧問或證券保證金融資人的人；或

(*b*) 就 (*a*) 段所提述的任何人的代表或 (*a*) 段所提述的任何類別人士的成員而言並不具有效力；或

(*c*) 在該規則所訂明的範圍內對任何該等人士或成員，或任何該等人士或成員的代表具有效力；或

(*d*) 就指明人士或指明類別人士所訂立的指明交易或指明類別的交易而言並不具有效力。”。

Item Provision affected Amendment

(*p*) prescribing limits on, or conditions to be complied with in respect of, the number of options contracts which may be held or controlled, directly or indirectly, by any person where those contracts are traded through the facilities of the Unified Exchange;

(*q*) prescribing or providing for any matter that is required or permitted by this Ordinance to be prescribed by Commission rules.

(2) Except as otherwise provided in this Ordinance, a rule made under this section may do all or any of the following—

(*a*) apply generally or be limited in its application by reference to specified exceptions or factors;

(*b*) apply differently according to different factors of a specified kind;

(*c*) authorize any matter or thing to be determined, applied or regulated by any specified person.

(3) A rule made under this section may provide that, subject to such terms and conditions as may be prescribed, the provisions of Parts VI to IX and XA, or such of them as are specified—

(*a*) do not have effect in relation to any specified person or to any person who is a member of a specified class of persons—

(i) who is or may be a dealer, investment adviser or securities margin financier only because the person does anything that is incidental to another business; or

(ii) who does not deal in securities for or on behalf of any other person; or

(iii) who is a dealer, investment adviser or securities margin financier only because the person has entered into a specified transaction or class of transactions; or

(*b*) do not have effect in relation to a representative of any such person, or a member of any such class of persons, as is referred to in paragraph (*a*); or

(*c*) has effect in relation to any such person or member, or a representative of any such person or member, to such extent as is prescribed in the rule; or

(*d*) do not have effect in relation to a specified transaction or class of transactions entered into by a specified person or class of persons.”.

項	受影響的條文	修訂
44.	第 146A 條	廢除而代以—— **"146A. 規例** 行政長官會同行政會議可訂立規例，規定違反監察委員會規則某指明條文即屬犯罪，並可就該罪行訂明不超逾第 1 級罰款及不超逾 3 個月監禁的罰則。"。
45.	第 147(1) 條	廢除而代以—— "(1) 如任何法團犯違反本條例的罪行，而—— (*a*) 該罪行經證明是在該法團的高級人員或任何看來是以該高級人員身分行事的人的同意或縱容下犯的；或 (*b*) 該罪行經證明是可歸因於該法團的高級人員或任何看來是以該高級人員身分行事的人的疏忽， 則該人員或該人亦屬犯了上述罪行，可按與起訴和懲罰該法團相同的方式，予以起訴和懲罰。"。

附表 2 [第 6 條]

《證券及期貨事務監察委員會條例》
的相應修訂

項	受影響的條文	修訂
1.	第 2(1) 條	在"註冊人"的定義中，廢除"投資代表或商品交易顧問代表"而代以"證券保證金融資人、投資代表、商品交易顧問代表或證券保證金融資人代表"。
2.	第 4 條	(*a*) 在第 (1)(*a*) 及 (*b*) 款中，廢除所有"及財產投資安排"而代以"、財產投資安排及證券保證金融資"。 (*b*) 在第 (1)(*e*) 款中，廢除"參與財產投資安排"而代以"訂立財產投資安排或證券保證金融資交易"。 (*c*) 在第 (*l*)(*g*) 款中，廢除"或財產投資安排的參與"而代以"、財產投資安排或證券保證金融資交易的訂立"。 (*d*) 在第 (1)(*g*) 及 (*i*) 款中，廢除"及財產投資安排"而代以"、財產投資安排及證券保證金融資"。

Item	Provision affected	Amendment
44.	Section 146A	Repeal and substitute— **"146A. Regulations** The Chief Executive in Council may make regulations providing that a contravention of any specified provision of Commission rules is an offence and may prescribe penalties for the offence not exceeding a fine at level 1 and imprisonment for 3 months.".
45.	Section 147(1)	Repeal and substitute— "(1) If an offence against this Ordinance committed by a corporation is proved— (*a*) to have been committed with the consent or connivance of; or (*b*) to be attributable to neglect by, an officer of the corporation, or any person who purported to act as such an officer, the officer or person also commits the offence and is liable to be proceeded against and punished in the same way as the corporation." .

SCHEDULE 2 [s. 6]

CONSEQUENTIAL AMENDMENT OF SECURITIES AND FUTURES COMMISSION ORDINANCE

Item	Provision affected	Amendment
1.	Section 2(1)	In the definition of "registered person", repeal "investment representative or a commodity trading advisers' representative" and substitute "securities margin financier, investment representative, commodity trading adviser's representative or securities margin financier's representative".
2.	Section 4	(*a*) In subsection (1)(*a*) and (*b*), repeal "futures contracts and property investment arrangements" wherever it appears and substitute "futures contracts, property investment arrangements and securities margin financing". (*b*) In subsection (1)(*e*), add "or securities margin financing transactions" after "property investment arrangements". (*c*) In subsection (1)(*g*), add "or securities margin financing transactions" after "entering into property investment arrangements". (*d*) In subsection (1)(*g*) and (*i*), repeal "and property investment arrangements" and substitute ", property investment arrangements and securities margin financing".

項	受影響的條文	修訂
3.	第 19 條	(*a*) 在第 (1)(*e*) 款中，在 "第 55" 之後加入 "(2) 或 (2A)"。 (*b*) 加入—— "(1A) 凡—— (*a*) 任何人根據《證券條例》(第 333 章) 第 XA 部申請註冊而被拒絕；或 (*b*) 任何人根據該部申請註冊而在有條件 (並非該部或監察委員會規則訂明的條件) 或限制的規限下獲准，但該人不滿意該條件或限制；或 (*c*) 註冊融資人或註冊融資人代表的註冊條件或限制根據該部更改，而該融資人或該代表不滿意該項更改；或 (*d*) 證券保證金融資人或證券保證金融資人代表的註冊被監察委員會根據《證券條例》(第 333 章) 第 121R(2)、121S、121T(2) 或 121U 條撤銷或暫時吊銷， 則在符合第 21 條的規定下，該申請人、融資人或代表可向上訴委員會提出上訴，反對上述拒絕、條件或限制的施加或更改、撤銷或暫時吊銷。 (1B) 凡監察委員會—— (*a*) 根據《證券條例》(第 333 章) 第 121I 條拒絕核准任何註冊證券保證金融資人的董事；或 (*b*) 根據該條例第 121V 條取消對該董事的核准， 則在符合第 21 條的規定下，該董事可向上訴委員會提出上訴，反對上述拒絕或取消。"。 (*c*) 在第 (2)(*e*) 款中，在 "第 35" 之後加入 "(2)"。 (*d*) 在第 (4) 款中，在 "(1)(*d*)" 之後加入 "、(1A)(*c*)"。
4.	第 21(4) 條	在 "19(1)(*b*)、(*d*)" 之後加入 "或 (1A)(*b*)、(*c*)"。
5.	第 27 條	(*a*) 在第 (10)(*a*) 款中—— (i) 廢除句號而代以 "；或"； (ii) 加入—— "(iii) 證券保證金融資人。"。 (*b*) 在第 (10)(*b*) 款中，加入——

Item	Provision affected	Amendment
3.	Section 19	(*a*) In subsection (1)(*e*), add "(2) or (2A)" after "section 55". (*b*) Add— "(1A) Where— (*a*) an application of a person for registration under Part XA of the Securities Ordinance (Cap. 333) is refused; or (*b*) an application for registration under that Part is granted subject to a condition (not being a condition prescribed by that Part or by Commission rules) or a restriction with which the applicant is dissatisfied; or (*c*) a condition or restriction of registration of a securities margin financier or a securities margin financier's representative is varied under that Part and the financier or representative is dissatisfied with the variation of the condition or restriction; or (*d*) the registration of a securities margin financier or a securities margin financier's representative is revoked or suspended under section 121R(2), 121S, 121T(2) or 121U of the Securities Ordinance (Cap. 333), the applicant, financier or representative may, subject to section 21, appeal to the Panel against the refusal, the imposition or variation of the condition or restriction, revocation or suspension. (1B) Where the Commission— (*a*) refuses to approve a director of a registered securities margin financier under section 121I of the Securities Ordinance (Cap. 333); or (*b*) cancels the approval of such a director under section 121V of that Ordinance, the director may, subject to section 21, appeal to the Panel against the refusal or cancellation.". (*c*) In subsection (2)(*e*), add "(2)" after "section 35". (*d*) In subsection (4), add ", (1A)(*c*)" after "(1)(*d*)".
4.	Section 21(4)	Add ", (1A)(*b*) or (*c*)" after "19(1)(*b*) or (*d*)".
5.	Section 27	(*a*) In subsection (10)(*a*)— (i) repeal "trading adviser." and substitute "trading adviser; or"; (ii) add— "(iii) a securities margin financier.". (*b*) In subsection (10)(*b*), add—

項	受影響的條文	修訂
		““證券保證金融資人” (securities margin financier) 具有《證券條例》(第 333 章) 第 2(1) 條給予該詞的涵義。”。
6.	第 28 條	(*a*) 在第 (2)(*d*) 款中，廢除句號而代以分號。 (*b*) 在第 (2) 款中，加入—— “(*e*) 賦權監察委員會為規則所指明的目的而授予或批給批准，並賦權監察委員會修訂或撤銷該等批准，以及規定監察委員會須以如此指明的方式公布該等批准及該等批准的任何修訂或撤銷。”。 (*c*) 廢除第 (4) 款。
7.	第 29(3) 條	廢除 (*b*) 段而代以—— “(*b*) 監察委員會認為在該個案中行使此權力不會違反投資大眾的利益。”。
8.	新條文	在第 IV 部中的第 29 條之後加入——

“29AA. 監察委員會可豁免某些人士使其免受財政資源規則的規限

(1) 監察委員會可藉憲報公告豁免指明的人或指明類別的人，使其免受財政資源規則或該等規則的任何指明條文規限。

(2) 本條所指的豁免可無條件批給或在某些條件規限下批給。

(3) 除第 (5) 款另有規定外，根據本條批給的豁免——

(*a*) 在該豁免所指明的期間 (如有的話) 終結之前持續有效；或

(*b*) 在沒有上述的指明期間的情況下，則在監察委員會予以撤銷之前持續有效。

(4) 除非監察委員會信納以下情況，否則不得根據本條批給豁免——

(*a*) 經考慮有關的人或有關類別的人遵守財政資源規則或該等規則的指明條文會為投資大眾帶來的利益，監察委員會信納該項遵守會對該人或該類別的人造成不合理的負擔；及

(*b*) 監察委員會信納在該個案中行使此權力不會違反投資大眾的利益。

(5) 監察委員會可藉憲報公告修訂或撤銷根據本條批給的豁免。即使有關的豁免所指明的期間尚未屆滿，該豁免仍可被撤銷。”。

Item	Provision affected	Amendment
		““securities margin financier” (證券保證金融資人) has the meaning assigned to it by section 2(1) of the Securities Ordinance (Cap. 333).”.
6.	Section 28	(*a*) In subsection (2)(*d*), repeal “rules.” and substitute “rules;”. (*b*) In subsection (2), add— “(*e*) empower the Commission to grant approvals for such purposes as are specified in the rules and to amend or revoke those approvals, and require the Commission to publish those approvals and any amendment or revocation of them in a manner so specified.”. (*c*) Repeal subsection (4).
7.	Section 29(3)	Repeal paragraph (*b*) and substitute— “(*b*) the exercise of this power in the particular case is not contrary to the interest of the investing public.”.
8.	New	Add after section 29 in Part IV—

“29AA. Commission may exempt persons from operation of financial resources rules

(1) The Commission may, by notice published in the Gazette, exempt a specified person, or persons of a specified class, from the operation of the financial resources rules or of any specified provision of the rules.

(2) An exemption under this section may be granted unconditionally or subject to conditions.

(3) Subject to subsection (5), an exemption granted under this section remains in force—

(*a*) if a period is specified in the exemption, until the end of the period; or

(*b*) if no such period is specified, until revoked by the Commission.

(4) The Commission may not grant an exemption under this section unless it is satisfied that—

(*a*) compliance with the financial resources rules or the specified provision of those rules would be unduly burdensome for the person or class of persons having regard to the benefit which compliance would confer on the investing public; and

(*b*) the exercise of this power in the particular case is not contrary to the interest of the investing public.

(5) The Commission may, by notice published in the Gazette, amend or revoke an exemption granted under this section. Such an exemption may be revoked even though a period specified in the exemption has not yet expired.”.

項	受影響的條文	修訂
9.	第 31(2) 條	廢除“或商品交易顧問”而代以“、商品交易顧問、證券保證金融資人”。
10.	第 33 條	(*a*) 廢除第 (1)(*b*) 款而代以—— “(*b*) 監察委員會有理由相信有人—— (i) 在進行證券交易或期貨合約買賣時；或 (ii) 在管理證券投資或期貨合約投資時；或 (iii) 在作出財產投資安排時；或 (iv) 在就證券或期貨合約的取得、處置、購買或售賣提供意見時，或在就以其他方式投資於證券或期貨合約提供意見時，或在就任何財產投資安排提供意見時；或 (v) 就任何涉及證券保證金融資的交易， 可能曾虧空公款或在其他方面違反信託，或有詐騙或不當行為；或”。 (*b*) 廢除第 (1)(*d*) 款而代以—— “(*d*) 監察委員會有理由相信任何人現在或曾經以不符合投資大眾的利益或公眾利益的方式，從事以下事務—— (i) 證券交易或期貨合約買賣；或 (ii) 管理證券投資或期貨合約投資；或 (iii) 作出財產投資安排；或 (iv) 提供屬 (*b*)(iv) 段所提述種類的意見；或 (v) 訂立涉及證券保證金融資的交易；或”。
11.	第 38 條	(*a*) 在第 (2) 款中，廢除“或 56”而代以“、56、121R 或 121S”。 (*b*) 在第 (4) 款中—— (i) 廢除“或投資顧問合夥商行合夥人”而代以“、投資顧問合夥商行合夥人或證券保證金融資人”； (ii) 廢除“及“投資顧問合夥商行”(investment advisers' partnership)”而代以“、“投資顧問合夥商行” (investment advisers' partnership) 及“證券保證金融資人”(securities margin financier)”。
12.	第 55 條	廢除第 (1) 款而代以—— “(1) 如監察委員會提出申請而原訟法庭應該項申請而信納某人已違反或正違反，或有相當可能性有人會違反某訂明規定，則原訟法庭可——

Item	Provision affected	Amendment
9.	Section 31(2)	Repeal “or commodity trading adviser” and substitute “, commodity trading adviser, securities margin financier”.
10.	Section 33	(*a*) In subsection (1)(*b*)— (i) in subparagraphs (i) and (ii), add “or” at the end; (ii) add— “(v) in relation to any transaction involving securities margin financing; or”. (*b*) Repeal subsection (1)(*d*) and substitute— “(*d*) the Commission has reason to believe that the manner in which a person is engaging or has engaged in— (i) dealing in securities or trading in futures contracts; or (ii) managing investment in securities or futures contracts; or (iii) making property investment arrangements; or (iv) giving advice of the kind referred to in paragraph (*b*)(iv); or (v) entering into transactions involving securities margin financing, is not in the interest of the investing public or the public interest; or”.
11.	Section 38	(*a*) In subsection (2), repeal “55 or 56” and substitute “55, 56, 121R or 121S”. (*b*) In subsection (4)— (i) repeal “adviser or a partner in an investment advisers' partnership” and substitute “adviser, a partner in an investment advisers' partnership or securities margin financier”; (ii) repeal “and “investment advisers' partnership” (投資顧問合夥商行)” and substitute “, “investment advisers' partnership” (投資顧問合夥商行) and “securities margin financier” (證券保證金融資人)”.
12.	Section 55	Repeal subsection (1) and substitute— “(1) If, on the application of the Commission, the Court of First Instance is satisfied that a person has contravened or is contravening, or that there is a reasonable likelihood that a person will contravene a prescribed provision, the Court may—

項	受影響的條文	修訂
		(*a*) 發出強制令以制止該人重複、繼續或作出該項違反；及 (*b*) 在其認為適宜的情況下發出要求該人採取任何指明行動的命令。 (1A) 就第 (1) 款而言，以下條文均為訂明規定—— (*a*) 根據第 28 條訂立的規則； (*b*) 根據第 29 條發出的指示； (*c*) 根據第 V 部發出的通知； (*d*)《證券條例》(第 333 章) 第 XA 部所施加或根據該部施加的規定。”。
13.	第 55A 條	(*a*) 在第 (1)(*b*) 款中，廢除 “81(1)” 而代以 “81(2) 及 (4)、81A(2) 及 (4)”。 (*b*) 廢除第 (2)(*a*) 及 (*b*) 款而代以—— “(*a*) 經考慮該人遵守有關規定會為投資大眾帶來的利益，該項遵守會否對該人造成不合理的負擔；及 (*b*) 在該個案中行使此權力是否不會違反投資大眾的利益。”。

附表 3 [第 7 條]

其他條例的相應修訂

項	受影響的條文	修訂
1.	銀行業條例 (第 155 章)	在第 3(1) 條中，加入—— “(*ja*)《證券條例》(第 333 章) 所指的註冊融資人接受任何存款，而存款是該條例第 121AK 條適用的；”。
2.	《放債人條例》(第 163 章)	在附表 1 第 1 部中，加入—— “10. 根據《證券條例》(第 333 章) 註冊的證券保證金融資人。 11. 根據《證券條例》(第 333 章) 註冊，並在經營證券交易業務的過程中，從事該條例所界定的證券保證金融資的交易商。”。
3.	《商品交易條例》(第 250 章)	(*a*) 在第 35 條中，加入—— “(6) 除《證券及期貨事務監察委員會條例》(第 24 章) 第 21 條另有規定外，監察委員

Item	Provision affected	Amendment
		(*a*) grant an injunction restraining the person from repeating or continuing, or from committing, the contravention; and (*b*) if in the opinion of the Court it is desirable to do so, make an order requiring the person to take any specified action. (1A) The following provisions are prescribed for the purposes of subsection (1)— (*a*) a rule made under section 28; (*b*) a direction given under section 29; (*c*) a notice given under Part V; (*d*) a requirement imposed by or under Part XA of the Securities Ordinance (Cap. 333).”.
13.	Section 55A	(*a*) In subsection (1)(*b*), repeal “81(1)” and substitute “81(2) and (4), 81A(2) and (4)”. (*b*) Repeal subsection (2)(*a*) and (*b*) and substitute— “(*a*) to whether compliance with the requirement in question would be unduly burdensome for the person having regard to the benefit which compliance would confer on the investing public; and (*b*) to whether the exercise of this power in the particular case is not contrary to the interest of the investing public.”.

SCHEDULE 3 [s. 7]

CONSEQUENTIAL AMENDMENT OF OTHER ORDINANCES

Item	Provision affected	Amendment
1.	Banking Ordinance (Cap. 155)	In section 3(1), add— “(*ja*) a person who is a registered financier within the meaning of the Securities Ordinance (Cap. 333), where section 121AK of that Ordinance applies to such a deposit;”.
2.	Money Lenders Ordinance (Cap. 163)	In Part 1 of Schedule 1, add— “10. A securities margin financier registered under the Securities Ordinance (Cap. 333). 11. A dealer registered under the Securities Ordinance (Cap. 333) who, in the course of carrying on a business of dealing in securities, engages in securities margin financing as defined in that Ordinance.”.
3.	Commodities Trading Ordinance (Cap. 250)	(*a*) In section 35, add— “(6) Except as provided by section 21 of the Securities and Futures Commission Ordinance (Cap. 24)(procedure for appeals), a

項	受影響的條文	修訂
		會根據本條作出的決定，在根據第 (5) 款發出有關決定的通知當日或在有關決定或通知內指明的較後日期生效。”。 (*b*) 在第 36 條中，加入—— “(7) 除《證券及期貨事務監察委員會條例》(第 24 章) 第 21 條另有規定外，監察委員會根據本條作出的決定，在根據第 (4) 款發出有關決定的通知當日或在有關決定或通知內指明的較後日期生效。”。 (*c*) 在第 37(3) 條中，在“除外”之前加入“或第 (3) 款”。 (*d*) 將第 57 條重編為第 57(1) 條； (*e*) 在第 57 條中，加入—— “(2) 任何人無合法權限而違反第 (1) 款，即屬犯罪，一經定罪，可處第 6 級罰款及監禁 6 個月。”。
4.	《證券交易所合併條例》(第 361 章)	(*a*) 廢除第 15(1) 條而代以—— “(1) 交易所公司有責任—— (*a*) 確保其會員在財政資源規則適用於該等會員的範圍內遵守該等規則；及 (*b*) 於該等規則在某項條件或其他修改規限下適用於任何會員的情況下，確保該會員按照該條件或修改而遵從該等規則。”。 (*b*) 在第 15(2) 條中，廢除“第 65B 條及”。 (*c*) 廢除第 34(1)(*b*) 條而代以—— “(*b*) 確保其會員遵守財政資源規則，使交易所公司更佳地履行第 15 條對其施加的責任；及”。 (*d*) 在第 34 條中，加入—— “(1A) 為施行第 (1)(*b*) 款而訂立的規則可就以下全部或任何事項作出規定—— (*a*) 會員須呈交的報表、該等報表的格式，須在報表內申報的資料的種類，以及該等資料必須以何種方式核實； (*b*) 資產估值須採用的方式以及由會員支付估值費用；

Item	Provision affected	Amendment
		decision of the Commission under this section takes effect on the date on which the decision is notified under subsection (5) or such later date as is specified in the decision or notice.". (*b*) In section 36, add— "(7) Except as provided by section 21 of the Securities and Futures Commission Ordinance (Cap. 24)(procedure for appeals), a decision of the Commission under this section takes effect on the date on which the decision is notified under subsection (4) or such later date as is specified in the decision or notice.". (*c*) In section 37(3), add "subsection (3) or" after "other than". (*d*) Renumber section 57 as section 57(1). (*e*) In section 57, add— "(2) A person who, without lawful authority, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.".
4.	Stock Exchanges Unification Ordinance (Cap. 361)	(*a*) Repeal section 15(1) and substitute— "(1) It is the duty of the Exchange Company to ensure— (*a*) that its members comply with the financial resources rules in so far as those rules apply to them; and (*b*) where those rules apply to a member subject to a condition or other modification, that the member complies with those rules in accordance with the condition or modification.". (*b*) In section 15(2), repeal "section 65B and". (*c*) Repeal section 34(1)(*b*) and substitute— "(*b*) to ensure that its members comply with the financial resources rules for the better fulfilment by the Exchange Company of the duty imposed on it by section 15; and". (*d*) In section 34, add— "(1A) Rules made for the purpose of subsection (1)(*b*) may provide for all or any of the following— (*a*) the returns to be made by members, the form of, and the kinds of information to be included in those returns and the manner in which the information must be verified; (*b*) the manner in which assets are to be valued and the payment by members of the costs of valuation;

項	受影響的條文	修訂
		(*c*) 會員須備存就財政資源規則而言是可計算在內的資產的紀錄的方式，以及必須在甚麼地方保存該等紀錄；
		(*d*) 由交易所公司授權的人員查閱紀錄。”。

附表 4 [第 8 條]

保留及過渡性條文

1. 訂明表格

如任何表格或格式是按照《證券條例》(第 333 章) 的某項條文由在緊接附表 1 第 43 項生效前根據該條例屬有效的規則所訂明的，而該項條文經本條例修訂，以使為施行該項條文所規定或所准許的表格或格式得以由證券及期貨事務監察委員會指明、提供或批准，則該訂明表格或格式須視為經由該委員會指明、提供或批准，直至該委員會為施行該項條文而指明、提供或批准新的表格或格式為止。

2. 對交易商處置證券的限制

(1) 《證券條例》(第 333 章) 第 81 條 (由附表 1 第 26 項取代) 適用於在緊接該項生效前由交易商或交易商所控制的代名人為該交易商的客戶持有作穩妥保管的證券。

(2) 如在緊接附表 1 第 26 項生效前，須向某人作出交代的交易商已在獲得該人的書面授權下——

(*a*) 將該交易商須向該人有所交代的任何證券存放，以作為向該交易商作出貸款或墊款的保證；或

(*b*) 為任何其他目的而借出或放棄管有該等證券，

該項授權在該項生效後的 3 個月內或在該項授權指明的較短期間內仍然有效，而該交易商在上述期間內按照該項授權行事，不屬違反《證券條例》(第 333 章) 第 81A 條 (由附表 1 第 26 項所增補者)。

3. 規則的保留條文

在緊接附表 1 第 43 項生效前根據《證券條例》(第 333 章) 第 146 或 146A 條有效的規則，繼續作為根據在該項生效後屬有效的該條例第 146 條訂立的監察委員會規則而有效。

4. 某些規例的保留條文

在緊接附表 1 第 44 項生效前根據《證券條例》(第 333 章) 第 146(2) 條有效的規例，繼續作為根據在該項生效後屬有效的該條例第 146A 條訂立的規例而有效。

Item	Provision affected	Amendment
		(*c*) the manner in which members are required to keep records of assets that may be taken into account for the purposes of the financial resources rules and the places at which the records must be maintained;
		(*d*) the inspection of records by officers of the Exchange Company authorized by it.”.

SCHEDULE 4 [s. 8]

SAVINGS AND TRANSITIONAL PROVISIONS

1. Prescribed forms

If a form is, in accordance with a provision of the Securities Ordinance (Cap. 333), prescribed by rules in force under that Ordinance immediately before the commencement of item 43 of Schedule 1 and the provision is amended by this Ordinance to enable forms required or permitted for the purposes of the provision to be specified, or to be provided or approved, by the Securities and Futures Commission, the prescribed form is taken to have been specified, or provided or approved, by the Commission until it specifies, or provides or approves, a new form for the purposes of that provision.

2. Restrictions on disposition of securities by dealer

(1) Section 81 of the Securities Ordinance (Cap. 333) (as substituted by item 26 of Schedule 1) applies to securities held for safe custody by a dealer, or a nominee controlled by the dealer, for the account of a client of the dealer immediately before the commencement of that item.

(2) If, immediately before the commencement of item 26 of Schedule 1, a dealer, with the written authority of the person to whom the dealer is accountable, has—

(*a*) deposited any securities, for which the dealer is accountable, as security for loans or advances made to the dealer; or

(*b*) lent or parted with the possession of such securities for any other purpose,

such written authority shall remain in force for 3 months after the commencement of that item, or such shorter period as may be specified in such authority, and a dealer does not contravene section 81A of the Securities Ordinance (Cap. 333) (as added by item 26 of Schedule 1) during such period when acting in accordance with such authority.

3. Saving for rules

A rule in force under section 146 or 146A of the Securities Ordinance (Cap. 333) immediately before the commencement of item 43 of Schedule 1 continues in force as a Commission rule made under section 146 of that Ordinance, as in force after that commencement.

4. Saving for certain regulations

A regulation in force under section 146(2) of the Securities Ordinance (Cap. 333) immediately before the commencement of item 44 of Schedule 1 continues in force as a regulation made under section 146A of that Ordinance, as in force after that commencement.