

## Updating Your Study Manual

### Instructions for Inserting Version 1.8

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The followings serve as the instructions for updating **Topic 3: The Securities and Futures Ordinance** of Study Manual 1 for the Licensing Examination for Securities and Futures Intermediaries. Please be reminded that only the updated sections are provided for downloading. You may replace the relevant sections with this updated version for the study manual you possess.

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#### **Instructions:**

1. Download and print out the following pages.
  2. **Remove** pages 3-9 to 3-10      and      **Insert** new pages 3-9 to 3-10.
  3. **Remove** pages 3-21 to 3-22      and      **Insert** new pages 3-21 to 3-22.
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in the information it must advise the SFC of changes within 7 business days after the change.

- 7.10 An associated entity of an intermediary other than an AFI, which receives or holds client assets of the intermediary cannot conduct any other business unless authorised in writing by the SFC.
- 7.11 If an associated entity contravenes any matters in paragraphs 7.9 and 7.10, it is guilty of an offence.

### **Safeguarding of clients' money**

- 7.12 The SFC is empowered to make rules for the holding of and dealing with clients' money by *licensed corporations* (not AFIs) and their associated entities. A breach of the rules will be an offence. The SFC has made the Securities and Futures (Client Money) Rules under s.149 (Please refer to section 4 of topic 4 for details).

### **Keeping of records**

- 7.13 The SFC is empowered to make rules for:
- the keeping of records by intermediaries (including registered institutions); and
  - the keeping of records by their associated entities of the intermediaries' clients' assets received or held by them.

The SFC has made the Securities and Futures (Keeping of Records) Rules under s.151 (Please refer to section 5 of topic 4 for details.)

- 7.14 If, with the intention of committing fraud, a person:
- makes false or misleading entries;
  - destroys any records; or
  - does not maintain records;

he is guilty of an offence.

### **Contract notes, receipts, statements of accounts and notifications**

- 7.15 The SFC is empowered to make rules requiring:

- *intermediaries* (including registered AFIs) to prepare and issue to clients, contract notes, receipts, statements of account, and notifications; and
- their associated entities to prepare and issue receipts, statements of account and notifications.

The SFC has made the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules under s.152 (Please refer to section 6 of topic 4 for details).

### **Provisions relating to audit matters**

- 7.16 Please note that the audit provisions apply to *licensed corporations* (not to registered AFIs) and also to *associated entities of intermediaries*. Unlike the other sections of this part, most of the requirements relating to audits are contained in the SFO and not delegated to subsidiary legislation made by the SFC. The exceptions are that the Securities and Futures (Accounts and Audit) Rules have been made by the SFC under s.397 specifying the contents of audited financial statements to be prepared under s.156 and the form of the audit report on the statements (Please refer to section 7 of topic 4 for details).
- 7.17 The audited accounts of licensed corporations (not registered AFIs) must be submitted to the SFC not later than 4 months after the end of the financial year or, in the case of cessation accounts, the date of cessation of the business. Failure to submit accounts as required is an offence (s.156).

#### ***Appointment of auditors***

- 7.18 Part VI provides that licensed corporations and associated entities of intermediaries will appoint auditors within one month of being licensed or becoming an associated entity and notify the SFC of such appointments within 7 **business** days of the appointment. Failure to appoint auditors, in the manner above or where there is a vacancy, is an offence (s.153).

#### ***Removal or resignation of auditors***

- 7.19 A licensed corporation or an associated entity of an intermediary must notify the SFC in writing within one business day if it gives notice of a resolution to remove or to replace an auditor, or the auditor ceases to be its auditor (s.154).

#### ***Special reports by auditors (s.157) and immunity provisions (s.158)***

- 7.20 An auditor shall make a written report as soon as practicable:

- requiring it to maintain property in Hong Kong or elsewhere of a value or description specified by the SFC to ensure that it may be able to meet its liabilities in such a way as to allow the licensed corporation to freely transfer or dispose of the property.
- 11.3 The SFC may withdraw, vary or make substitutions to notices, giving reasons (s.209). The notices remain valid even if the licence is suspended or revoked (s.210). If the licensed person refuses or fails to comply with a notice, the SFC may apply to the Court of First Instance to order it to comply (s.211).

### **Winding up and bankruptcy orders and injunctions**

- 11.4 The SFC may also petition or apply to the Court of First Instance respectively for:
- winding up orders for *corporations* (other than AFI) under the Companies Ordinance on just and equitable grounds and bankruptcy orders for licensed representatives under the Bankruptcy Ordinance respectively, if it considers it desirable in the public interest (s.212); and
  - injunctions to prevent contravention by any person of the relevant provisions or any orders made or notices issued or any terms and conditions of any licence or registration (s.213).

### **Remedies against listed corporations**

- 11.5 The SFC may, after consultation with the Financial Secretary and, in the case of an AFI, the HKMA, apply to the Court of First Instance for various orders where the business or affairs of a listed corporation are being conducted in a manner which is oppressive or fraudulent or unfairly prejudicial to its members (s.214).

Revision question:

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Question 5: What is an associated entity for the purposes of the SFO? Why was this concept introduced?

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## **12 Part XI – The Securities and Futures Appeals Tribunal**

- 12.1 The SFO has established a full-time Securities and Futures Appeals Tribunal ('SFAT') chaired by a judge as Chairman to hear appeals against decisions made by the SFC and the HKMA (the latter in the case of SFC registered institutions). The decisions which can be reviewed by the SFAT are set out in Part 2 of Schedule 8 to the SFO.

## **13 Part XII – Investor Compensation**

- 13.1 This part provides for a single investor compensation fund to cover losses incurred by clients of intermediaries in general including non-exchange participants. The compensation limits will be set by reference to individuals instead of brokers.

### **Formation of the Investor Compensation Fund**

- 13.2 The Investor Compensation Company Limited ('ICC') has been set up under the SFO to administer and manage the Investor Compensation Fund ('ICF'). [It processes claims made against the ICF.](#)

## **14 Part XIII – The Market Misconduct Tribunal and Part XIV – Offences Relating to Dealings in Securities and Futures Contracts**

- 14.1 Parts XIII and XIV will be taken up in Topic 9.

## **15 Part XV – Disclosure of Interests**

- 15.1 The disclosure provisions reflect the modern trend towards greater disclosure and transparency in securities markets, including the disclosure of interests in shares if they exceed specified levels ([an interest in share capital – whether or not issued – which exceeds 5% of the issued equity share capital](#)), the interests of directors and chief executives (without limiting levels),