

Updating Your Study Manual

Instructions for Inserting Version 1.3, 2003

The followings serve as the instructions for updating **Topic 5: Business Conduct and Client Relations** 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.

Instructions:

1. Download and print out the following pages.
 2. **Remove** pages 5-13 to 5-14 and **Insert** new pages 5-13 to 5-14.
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General Principle 8 – Safeguarding of client assets (See Section 11 of the Code)

- 2.33 The eighth general principle states in paragraph 11.1(a) that an intermediary or a third party acting on its behalf should in handling clients transactions or assets account for them promptly and properly and ensure that clients positions or assets are safeguarded adequately. This principle is additional to the legislation in the SFO, and in the Client Securities Rules and Client Money Rules which were studied in topic 4. The scope of care expected in the Code appears to be wider than in the legislation as it would appear to be extended to all client assets handled by the intermediary.

However paragraph 11.1(b) of the Code does inject a limitation by suggesting that there are risks in receiving and/or holding client assets overseas and that the client should be warned of the possible risks in such situations as they may not be protected by the SFO, Client Securities Rules or Client Money Rules. The SFC may need to explain the full implications.

General Principle 9 – Responsibilities of senior management (See Section 14 of the Code)

- 2.34 The senior management of an intermediary should be primarily responsible for ensuring that the standards of conduct described in the Code of Conduct are maintained and the proper procedures are adhered to by the intermediary.
- 2.35 The requirement is that senior management should properly manage the risks associated with the business including performing periodic evaluations of its risk management processes. To be able to do this it should:

understand

- the nature of the business;
- the intermediary's internal control systems and procedures;
- its risk management policies;
- the extent of their authority and responsibilities; and

have access to all:

- relevant information on a timely basis; and
- necessary advice.

Professional investors ('PIs') **(See Section 15 of the Code)**

2.36 It has been recognized that there are some classes of investors who have investment experience, skills and knowledge or the financial resources to command the advice of such experience and knowledge. Such persons will not need the protection that the ordinary retail investor might need. The special classes of investors are defined as 'professional investors' ('PIs') in the SFO and the definition is extended by the SFC in the Securities and Futures (Professional Investor) Rules ('the Professional Investor Rules').

2.37 PIs are defined in Schedule 1, SFO to include:

- entities such as exchange companies specified in Part III of the SFO (refer section 4 of topic 3);
- intermediaries, and similar investment service providers regulated overseas; also their wholly owned subsidiaries, holding companies ([100% holding](#)) and wholly owned subsidiaries of the holding companies;
- AFIs and similar overseas institutions; also their wholly owned subsidiaries, holding companies and the wholly owned subsidiaries of the holding companies;
- insurers regulated under the Insurance Companies Ordinance ('ICO') and their overseas counterparts;
- CISs authorized in Hong Kong and their operators; and their counterparts overseas;
- MPF and ORSO schemes, and their approved trustees, service providers, investment managers, their administrators and overseas counterparts;
- Governments, central banks and multilateral agencies; and

The above form one category of PIs (to be referred to as 'Category 1')

- any other persons prescribed as professional investors under rules made by the SFC under s.397, SFO (see paragraph 2.39 below for such persons – to be referred to as 'category 2 PIs').

2.38 All PIs are excluded from:

- the unsolicited calls provisions of s.174, SFO (see paragraphs 8.14 to 8.16, topic 3) i.e. they may be cold-called;
- the requirements for offers by intermediaries or representatives specified in s.175, SFO (the details need not be studied).

2.39 The Professional Investor Rules extend the Category 1 PIs to: