

Updating Your Study Manual

Instructions for Inserting Version 1.7

The followings serve as the instructions for updating **Topic 8: Other SFC Regulated Activities** 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** the original front page and **Insert** the updated front page.
 3. **Remove** pages 8-21 to 8-22 and **Insert** new pages 8-21 to 8-22.
-

[Blank Page]

STUDY MANUAL FOR

PAPER 1

FUNDAMENTALS OF

SECURITIES AND FUTURES REGULATION

of

The Licensing Examination
for Securities and Futures Intermediaries

First published May 2003

Current Version 1.7 (November 2005)

Published by:

Hong Kong Securities Institute
© Hong Kong Securities Institute 2003, 2004
© Hong Kong Securities Institute 2005

24/F, Wing On Centre, 111 Connaught Road Central, Hong Kong
Telephone: (852) 3120-6100
Examinations Hotline: (852) 3120-6220
Membership Hotline: (852) 3120-6170
Training Hotline: (852) 3120-6200
Fax: (852) 2899-2611
Email: info@hksi.org
Website: www.hksi.org

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the copyright owner.

ISBN: 988-97139-1-8

Disclaimer

This is an educational manual only and does not provide legal advice or expert advice in whatsoever form. Every effort has been made to ensure its accuracy, however, no responsibility for loss occasioned to any person acting or refraining from action as a result of any materials in this publication will be accepted by the publisher and/or individual contributors.

- 4.11 There are a number of exclusions from the definition of CIS, for example:
- if the participants and the operator of the arrangements belong to the same group of companies;
 - franchise arrangements; and
 - where a solicitor holds money from clients during the course of his work.
- 4.12 The intention is to make the definition flexible so as to ensure where necessary that any new products are properly regulated.
- 4.13 It is important to note that, as we have seen, the arrangements defined as securities and CIS in the SFO, may be extended by the FS using his powers to make the necessary notices under ss.392 and 393, SFO respectively.

Authorisation of CIS

- 4.14 S.104, SFO states that:
- ‘On an application to the Commission, the Commission may, where it considers appropriate, authorize any collective investment scheme, subject to the condition specified in subsection (2) and to any other condition it considers appropriate’.
- 4.15 Subsection (2) of s.104 specifies as a condition that there should be an individual approved by the SFC to receive notices and decisions served by the SFC relating to the scheme and requires contact details relating to that person to be provided to the SFC. The SFC has powers to approve the contact person and to withdraw the approval.

Advertisements

- 4.16 Essentially s.103, SFO states that it is an offence for a person to issue, or to have for the purposes of issue, an advertisement, invitation or document which to his knowledge invites the public:
- (a) to enter into or offer to enter into –
 - (i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or
 - (ii) a regulated investment agreement; or

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

unless the issue is authorized by the SFC under s.105(1), SFO.

4.17 The following are exempt from the application of s.103:

- prospectuses complying with the Companies Ordinance;
- advertisements, invitations and documents **in respect of securities (other than unauthorised funds)** issued by licensed corporations (Type 1, Type 4 or Type 6);
- **advertisements, invitations and documents in respect of futures contracts issued by licensed corporations (Type 2 or Type 5);**
- sellers or publishers of newspapers and other publications containing such advertisements; and
- conduits or live broadcasters issuing such prohibited material in the ordinary course of their business (please refer to s.103 for full details and text).

4.18 S.105(1) provides for the SFC to authorise the issue of advertisements and so on, subject to a similar requirement as mentioned in paragraph 4.15, that is, there should be an individual approved by the SFC to receive SFC notices and decisions relating to the advertisement.

Misrepresentations

4.19 Provisions relating to the definition of misrepresentation and the consequences of making one, are stated in ss.107 and 108, SFO.

4.20 S.107(1), SFO states that:

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

- (a) to enter into or offer to enter into –
 - (i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or
 - (ii) a regulated investment agreement; or
- (b) to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme.’

Please refer to s.107 for full definitions of fraudulent and reckless misrepresentation.