Charltons - Hong Kong Law Newsletter - 22 September 2005

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# Amendments To The Definitions Of "Regulated Activities" In Schedule 5 To The Securities And Futures Ordinance To Take Effect On 9 December 2005

## 1. Introduction

The Securities and Futures Commission (the "SFC") has published its Consultation Conclusions on the amendments to Schedule 5 to the Securities and Futures Ordinance (the "SFO") proposed in its February Consultation Paper. Part 2 of Schedule 5 to the SFO sets out the definitions of 9 "regulated activities". Persons engaging in regulated activities are required to be licensed by or registered with the SFC unless exempted. The amendments fine-tune the definitions of certain regulated activities to take into account industry developments and comments from market participants on the licensing regime.

The amendments are set out in Appendix 1 of the Consultation Conclusions which are available on the [SFC's website](http://www.sfc.hk). Subject to the legislative process, the amendments will take effect on 9 December 2005. The purpose of this note is to provide a summary of the amendments.

## 2. Licensing Of Managers Of Real Estate Investment Trusts ("REITS")

Under the current law, the definition of "asset management" (Regulated Activity Type 9) generally relates to the management of a portfolio of securities or futures contracts for others. It is thought that the fund managers of REITs which are offered to the public are not currently required to be licensed because the investment portfolios under management are not within the SFO definitions of "securities" or "futures" contracts.

The definition of "asset management" will be amended to include management of SFC authorised REITs. Accordingly, fund managers of SFC authorised REITs will need to be licensed by the SFC for Regulated Activity Type 9. Managers of unauthorised REITs do not however require a licence.

## 3. Money Brokers Exemption

Under the current law, certain trading activities of an approved money broker undertaken on behalf of its clients may be within the definition of "dealing in securities" (Regulated Activity Type 1) so triggering the SFO's licensing requirements. The definition of "dealing in securities" will be amended to provide an exclusion for the related dealing activities carried on by an approved money broker (within the meaning of Section 2(1) of the Banking Ordinance) where each of the other parties to the transaction is an authorised financial institution for whom the broker acts.

## 4. Incidental Advice Of Fund Managers

Under the existing licensing regime, fund managers are required to be licensed for Regulated Activity Type 9 (asset management) in order to provide portfolio management services to clients concerning securities or futures contracts. Where a fund manager also advises clients on securities or futures contracts, for example by way of issuing research reports or providing advice on the timing or terms of acquisitions or disposals, he is additionally required to be licensed for Regulated Activity Type 4 (advising on securities) or Type 5 (advising on futures contracts). The SFC considers the additional licensing requirement to be unnecessary in certain circumstances.

The definitions of "advising on securities" and "advising on futures contracts" will therefore be amended to provide an exclusion for advice given by a licensed asset manager solely for the purposes of his provision of a service of managing a portfolio of securities or futures contracts, as the case may be, under a collective investment scheme.

## 5. Redress Disposal Of Securities To Non-Professionals

The SFC's February Consultation Paper contained a proposal that the definition of "dealing in securities" be amended to remove the current exclusion for persons disposing of securities as principal. This would require persons disposing of securities to anyone other than a "professional" (within the limited definition in Schedule 1 SFO) to be licensed to deal in securities.

Following the response to the consultation, the SFC has decided not to implement this amendment for the time being. It will instead be considered in a separate consultation.

*This note is intended as a summary only of the amendments to be made to Schedule 5 to the SFO. Specific advice should be sought in relation to any particular situation.*

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**Charltons - Hong Kong Law Newsletter - Issue 27 - 22 September 2005**