

**[79.05] Notices served on company**

Notices recognizing a company as an investor compensation company and notices amending or revoking conditions of recognition must be served on the company: ss 79(1)-(2). Where the SFC refuses to recognize a company as an investor compensation company, the SFC must inform the company by notice in writing served on the company: s 79(6). On service of notices, see s 400.

**80 Transfer and resumption of functions of Commission**

- (1) The Commission may request the Chief Executive in Council to transfer, by order ('transfer order') published in the Gazette, to a recognized investor compensation company ('designated investor compensation company'), a function to which this section applies, if the Commission is satisfied that the designated investor compensation company is willing and able to perform the function.
- (2) This section applies to a function of the Commission under Part XII (other than sections 240(4) and (9) and 244(2)) or rules made under that Part.
- (3) For the purposes of subsection (2), the function of the Commission under Part XII to maintain the compensation fund includes a function to maintain all or any part of the compensation fund, and the other provisions of this Ordinance shall apply accordingly.
- (4) A function to which this section applies may be transferred by a transfer order either in whole or in part, and the transfer may be subject to-
  - (a) a reservation that the Commission is to perform the function concurrently with the designated investor compensation company; and
  - (b) such other conditions as the Commission considers appropriate.
- (5) A transfer order may contain such incidental, supplemental and consequential provisions as may be necessary or expedient for the purpose of giving full effect to the order.
- (6) The Commission may at the request or with the consent of a designated investor compensation company resume a function transferred by a transfer order, but the resumption takes effect only by order of the Chief Executive in Council.
- (7) The Chief Executive in Council may order that the Commission resume a function transferred to a designated investor compensation company by a transfer order if the Commission so requests and if it appears to the Chief Executive in Council to be in the public interest to do so.

**[80.01] Enactment History**

This section came into effect 1 April 2003.

**[80.02] General Note**

Upon recognition as a recognised investor compensation company under s 79(1), the company is given its responsibilities pursuant to a transfer order made under s 80(1). The order is to be made, upon request by the SFC, by the Chief Executive in Council, namely the Chief Executive acting after consultation with the Executive Council: Interpretation and General Clauses Ordinance (Cap 1) s 3.

The intention of the legislative scheme is to have the compensation fund administered and managed by the independent investor compensation company: see the SFC's *Consultation Paper on New Investor Compensation Arrangements for Hong Kong*, September 1998, para 57. This is implemented by transferring the SFC's responsibilities under Pt XII to the investor compensation company pursuant to s 80.

The functions that may be conferred on the company are the functions of the SFC under Pt XII, which contains provisions for the creation and maintenance of the investor compensation fund: s 80(2). Functions of the SFC pursuant to rules made under that Part (ie s 244) can also be conferred on the company: s 80(2). The following rules have been made under Pt XII: Securities and Futures (Investor Compensation - Claims) Rules; Securities and Futures (Investor Compensation - Levy) Rules; and the Securities and Futures (Investor Compensation - Compensation Limits) Rules.

Section 236 confers on the SFC the responsibility for establishing and maintaining the investor compensation fund. Section 80(3) provides that the function of the SFC to maintain the compensation fund includes a function to maintain all or any part of the compensation fund, and s 80(4) provides that a function may be transferred either in whole or in part. The transfer may be subject to the condition that the SFC is to perform the function concurrently with the investor compensation company. The effect of these provisions is that flexibility is provided under s 80 for determining which of the SFC functions are to be transferred under s 80(1). Hence, the transfer order could confer on the recognized investor compensation company a function to maintain only part of the compensation fund rather than the entire fund.

**[80.03] Transfer order**

The Securities and Futures (Transfer of Functions - Investor Compensation Company) Order was gazetted as L.N. 225 of 2002, with effect from 1 April 2003. Most of the functions dealing with claims processing have been transferred to the investor compensation company (ie the Investor Compensation Company Ltd) under that Order. The functions transferred are set out in Sch 1 of the Order as follows:

## Securities and Futures Ordinance

Item	Provision	Description
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- (i) to an authorized financial institution or an approved money broker;
- (ii) to a person acting in their capacity as an officer or employee of such an authorized financial institution or approved money broker; or
- (iii) to an intermediary licensed for Type 11 regulated activity or a representative of such an intermediary who carries on that regulated activity for the intermediary.
- (4) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues, or has in his possession for the purposes of issue, any advertisement or document if-
- (a) the advertisement or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was receiving and issuing materials provided by others;
- (b) the contents of the advertisement or document (as the case may be) were not, wholly or partly, devised-
- (i) where the business was carried on by him, by himself or any officer, employee or agent of his; or
- (ii) where the business was not carried on by him, by himself; and
- (c) for the purposes of the issue-
- (i) where the business was carried on by him, he or any officer, employee or agent of his; or
- (ii) where the business was not carried on by him, he did not select, add to, modify or otherwise exercise control over the contents of the advertisement or document (as the case may be).
- (5) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues by way of live broadcast, or has in his possession for the purposes of issue by way of live broadcast, any advertisement or document if-
- (a) the advertisement or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);
- (b) the contents of the advertisement or document (as the case may be) were not, wholly or partly, devised-
- (i) where he was the broadcaster, by himself or any officer, employee or agent of his; or
- (ii) where he was not the broadcaster, by himself;
- (c) for the purposes of the issue-
- (i) where he was the broadcaster, he or any officer, employee or agent of his; or

- (ii) where he was not the broadcaster, he, did not select, add to, modify or otherwise exercise control over the contents of the advertisement or document (as the case may be); and
- (d) in relation to the broadcast-
- (i) where he was the broadcaster, he; or
- (ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster, acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap 106) or the Broadcasting Ordinance (Cap 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster.
- (6) It is a defence to a charge for an offence under subsection (1) for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence with which he is charged.

(Securities and Futures (Amendment) Bill 2013)

#### [109.01] Enactment History

This section came into effect 1 April 2003. This section is proposed to be amended by the Securities and Futures (Amendment) Bill 2013, which seeks to establish a framework for regulation of over-the-counter derivative products and transactions, in particular, to provide for the regulation of the market infrastructure in this regard.

#### [109.02] General Note

Section 109(1) provides that it is an offence for a person to issue, or possess for the purpose of issue an advertisement, or any document containing such an advertisement in which a person holds himself out as being prepared to carry on Type 4, Type 5, Type 6 or Type 9 regulated activities and the person is not licensed or registered for such regulated activity under this Ordinance. The offence is subject to certain exceptions in subsections (3) to (6). For the types of regulated activities and their meanings see Sch 5.

The Securities and Futures (Amendment) Bill 2013 will add a new Type 11 regulated activity to Schedule 5 for dealing in or advising on OTC derivative products. This section is proposed to be amended for the purposes of the new regulatory regime on OTC derivative products to extend the offence of issuing advertisements relating to the carrying on of regulated activities to cover the proposed new Type 11 activity.

- (a) in relation to a licensed corporation, means a responsible officer of the licensed corporation;
- (b) in relation to a registered institution, means a person who is an executive officer of the registered institution under the Banking Ordinance (Cap 155); or
- (c) in relation to an associated entity of an intermediary, means any director of the associated entity who is responsible for directly supervising the receiving or holding by the associated entity of client assets of the intermediary.

#### [196.08] Definitions

For 'registered' and 'monetary authority', see Sch 1 Pt 1 below.

#### [196.09] SFC Disciplinary Fining Guidelines

The SFC published the SFC Disciplinary Fining Guidelines pursuant to 199(1) on 28 February 2003 to indicate the manner in which the SFC will perform its function of imposing fines on regulated persons under s 194(2) of the SFO (196(2)). For further in respect of the Fining Guidelines, please refer to [194.09] above.

#### [196.10] Cooperation with the SFC

In March 2006, the SFC issued a Guidance Note to clarify its long-standing practice of giving credit to regulated persons for their cooperation with the SFC by imposing lighter disciplinary sanctions than would be imposed in the absence of cooperation. For further in respect of the Guidance Note, see [194.06] above.

#### [196.11] Publish

Under the Securities and Futures (Amendment) Ordinance 2012, a new subsection (6A) was added to this section to clarify that the SFC may publish details of disciplinary action taken against regulated persons under this section.

### 197 Other circumstances for disciplinary action in respect of registered institutions, etc.

- (1) Subject to section 198, the Commission may revoke a registered institution's registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered, or suspend a registered institution's registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered for such period as the Commission may specify—
- (a) if—

- (i) a receiver or manager of the property or business of the registered institution is appointed;
- (ii) the registered institution fails to satisfy a levy of execution;
- (iii) the registered institution enters into a compromise or scheme of arrangement with its creditors;
- (iv) the registered institution goes into liquidation or is ordered to be wound up;
- (v) the registered institution is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the registered institution to remain registered;
- (b) if the registered institution does not carry on the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the revocation or suspension (as the case may be) relates; or
- (c) if the registered institution requests the Commission to so revoke or suspend the registration.
- (2) Subject to section 198, but without limiting the generality of subsection (1), the Commission may revoke a registered institution's registration in relation to Type 7 regulated activity or any part thereof if—
- (a) the Commission has required under section 119(8)(b) that the registered institution should apply for an authorization under section 95(2) for that regulated activity; and
- (b) (i) the registered institution has failed to make an application for the authorization under section 95(2) in accordance with the requirement, or has otherwise informed the Commission that it proposes not to make an application for the authorization under section 95(2); or
- (ii) the registered institution has made an application for the authorization under section 95(2), but the application is not granted.
- (3) The registration of a registered institution shall be deemed to be revoked if—
- (a) the registered institution ceases to be an authorized financial institution; or
- (b) the registered institution is wound up, struck off the [Companies Register] register of companies or is otherwise dissolved.
- (4) Subject to subsection (5), the registration of a registered institution shall be deemed to be suspended if the registered institution fails to make full payment of any annual fee payable by it under section 138, or any additional sum payable by it under

(b) in relation to futures contracts, means a futures market outside Hong Kong;

'relevant recognized market' (有關認可市場)-

- (a) in relation to securities, means a recognized stock market;
- (b) in relation to futures contracts, means a recognized futures market.

(2) In this subsection and sections 286 to 289 and Division 2, unless the context otherwise requires-

'derivatives' (衍生工具), in relation to listed securities, means-

- (a) rights, options or interests (whether described as units or otherwise) in, or in respect of, the listed securities;
- (b) contracts, the purpose or pretended purpose of which is to secure or increase a profit or avoid or reduce a loss, wholly or partly by reference to the price or value, or a change in the price or value, of-
  - (i) the listed securities; or
  - (ii) any rights, options or interests referred to in paragraph (a);
- (c) rights, options or interests (whether described as units or otherwise) in, or in respect of-
  - (i) any rights, options or interests referred to in paragraph (a); or
  - (ii) any contracts referred to in paragraph (b);
- (d) instruments or other documents creating, acknowledging or evidencing any rights, options or interests or any contracts referred to in paragraph (a), (b) or (c), including certificates of interest or participation in, temporary or interim certificates for, receipts (including depository receipts) in respect of, or warrants to subscribe for or purchase-
  - (i) the listed securities; or
  - (ii) the rights, options or interests or the contracts,

whether or not the derivatives are listed and regardless of whether issued or made them;

'inside information' (內幕消息), in relation to a corporation, means specific information that-

- (a) is about-
  - (i) the corporation;
  - (ii) a shareholder or officer of the corporation; or
  - (iii) the listed securities of the corporation or the derivatives; and
- (b) is not generally known to the persons who are decision-makers or would be likely to deal in the listed securities of the corporation but would if generally known to them likely to

materially affect the price of the listed securities; (Added 9 of 2012 s 9)

'listed' (上市) means listed on a recognized stock market, and for the purposes of this definition, securities shall continue to be regarded as listed during a period of suspension of dealings in those securities on the recognized stock market;

'listed corporation' (上市法團) means a corporation which has issued securities that are, at the time of the relevant contravention in relation to the corporation, listed;

'listed securities' (上市證券) means-

- (a) securities which, at the time of the relevant contravention in relation to a corporation, have been issued by the corporation and are listed;
- (b) securities which, at the time of the relevant contravention in relation to a corporation, have been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently listed;
- (c) securities which, at the time of the relevant contravention in relation to a corporation, have not been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently so issued and listed;

'relevant contravention' (違例事件) means a contravention of any of the provisions of Division 2;

'securities' (證券) means-

- (a) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, or which it is reasonably foreseeable will be issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority;
- (b) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
- (c) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
- (d) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;
- (e) interests, rights or property, whether in the form of an instrument or otherwise, prescribed by notice under section 102 as being regarded as securities in accordance with the terms of the notice.

(Amended 9 of 2012 s 9)

- expenses reasonably incurred by the Commission, whether in relation or incidental to-
- (i) the proceedings;
  - (ii) any investigation of the person's conduct or affairs carried out before the proceedings were instituted; or
  - (iii) any investigation of the person's conduct or affairs carried out for the purposes of the proceedings;
- (g) an order that any body which may take disciplinary action against the person as one of its members be recommended to take disciplinary action against the person;
- (h) if the person is a listed corporation, any order that the Tribunal considers necessary to ensure that a breach of a disclosure requirement does not again take place in respect of the corporation including, but not limited to, an order that the corporation appoint an independent professional adviser approved by the Commission to review the corporation's procedure for compliance with this Part or to advise the corporation on matters relating to compliance with this Part;
- (i) if the person is an officer of a listed corporation, any order that the Tribunal considers necessary to ensure that the officer does not again perpetrate any conduct that constitutes a breach of a disclosure requirement including, but not limited to, an order that the officer undergo a training program approved by the Commission on compliance with the Part directors' duties and corporate governance.
- (2) When making an order in respect of a person under subsection (1), the Tribunal may take into account any conduct by the person which-
- (a) previously resulted in the person being convicted of an offence in Hong Kong;
  - (b) previously resulted in the person being identified by the Tribunal-
    - (i) under section 252(3)(b) as having engaged in any market misconduct; or
    - (ii) under section 307J(1)(b) as being in breach of a disclosure requirement; or
  - (c) at any time before the commencement of Part XII resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the Securities (Insider Dealing) Ordinance.
- (3) The Tribunal must not impose a regulatory fine on a person under subsection (1)(d) unless, in all the circumstances of the case, the fine is proportionate and reasonable in relation to the breach of the disclosure requirement. For that purpose, the Tribunal may

take into account, in addition to any conduct referred to in subsection (2), any of the following matters-

- (a) the seriousness of the conduct that resulted in the person being in breach of the disclosure requirement;
  - (b) whether or not that conduct was intentional, reckless or negligent;
  - (c) whether that conduct may have damaged the integrity of the securities and futures market;
  - (d) whether that conduct may have damaged the interest of the investing public;
  - (e) whether that conduct resulted in any benefit to the person or any other person, including any profit gained or loss avoided;
  - (f) the person's financial resources.
- (4) An order made under subsection (1)(a) may specify a corporation by name or by reference to a relationship with any other corporation.

Subject to any rules made by the Chief Justice under section 307X, Order 62 of the Rules of the High Court (Cap 4 Sub Leg A) applies to the taxation of any sum ordered under subsection (1)(e) or (f) for costs reasonably incurred in relation or incidental to the proceedings.

(5) In this section-

'chief executive' (最高行政人員) has the meaning given by section 308(1).

#### [307N.01] Enactment History

This section is new. It was added to this Ordinance by the Securities and Futures (Amendment) Ordinance 2012 (9 of 2012). This section may be compared with ss 257 and 258 above.

#### [307N.02] General Note

Section 307N empowers the MMT to make orders in respect of a person it has identified as being in breach of a disclosure requirement. These orders are broadly similar to those the MMT may make under ss 257 or 258 in market misconduct proceedings, except that there would be no order for disgorgement of profits (see s 257(1)(d)), and that the Tribunal may order a listed corporation or a person who is in breach of a disclosure requirement as a director or chief executive of a listed corporation to pay a regulatory fine not exceeding \$8,000,000. Additionally, the MMT may order a listed corporation to appoint an independent professional adviser, and order an officer of the listed corporation to undergo training.

#### [307N.03] Tribunal's approach in imposing orders

Ordinance and the repealed Leveraged Foreign Exchange Trading Ordinance (as the case may be) shall continue to apply to the exercise of the power and to any appeals and other matters relating thereto (including any further exercise of power) as if this Ordinance had not been enacted.

68. Where, but for this section, the exercise of any power under section 67 would have been subject to appeal to the Securities and Futures Appeals Panel established by section 18 of the repealed Securities and Futures Commission Ordinance, or application for review to the Securities and Futures Appeals Tribunal, but not such appeal to the Securities and Futures Appeals Panel, may be made in respect of the exercise of the power and disposed of in all respects as if the exercise of the power were a specified decision as defined in section 215 of and section 1 of Schedule 8 to this Ordinance, and the other provisions of this Ordinance shall, with necessary modifications, apply accordingly.
69. Section 214 of this Ordinance applies even if the conduct of business or affairs in question has occurred, or appears to the Commission as occurring, before the commencement of Part XI of this Ordinance.

#### Part XI of this Ordinance (Securities and Futures Appeals Tribunal)

70. Where a person has made an appeal to the Securities and Futures Appeals Panel before the commencement of Part XI of this Ordinance under-
- Part III of the repealed Securities and Futures Commission Ordinance; or
  - Part IX of the repealed Leveraged Foreign Exchange Trading Ordinance,

and the appeal has not been finally determined before such commencement, the appeal may be continued and disposed of in all respects (and, without limiting the generality of the foregoing, any power to appoint any person as a member (whether as the chairman, deputy chairman or other member) of the Securities and Futures Appeals Panel or as a member of a tribunal appointed under any of the provisions referred to in paragraphs (a) and (b) may be exercised for the purposes of the appeal as if this Ordinance had not been enacted.

71. Where-

- before the commencement of Part XI of this Ordinance an appeal has not been made to the Securities and Futures Appeals Panel under-
  - Part III of the repealed Securities and Futures Commission Ordinance; or

- Part IX of the repealed Leveraged Foreign Exchange Trading Ordinance; and
- the time within which the appeal may be made under such Part is running and has not expired upon such commencement,

the appeal may be made to the Securities and Futures Appeals Panel and disposed of in all respects (and, without limiting the generality of the foregoing, any power to appoint any person as a member (whether as the chairman, deputy chairman or other member) of the Securities and Futures Appeals Panel or as a member of a tribunal appointed under any of the provisions referred to in paragraph (a)(i) and (ii) may be exercised for the purposes of the appeal) as if this Ordinance had not been enacted.

72. Where, by virtue of section 70 or 71, any appeal is or is to be made or continued, and disposed of, under-
- Part III of the repealed Securities and Futures Commission Ordinance; or
  - Part IX of the repealed Leveraged Foreign Exchange Trading Ordinance,

then, without limiting the generality of sections 70 and 71 (including the exercise of the power to appoint any person as a member (whether as the chairman, deputy chairman or other member) of the Securities and Futures Appeals Panel established by section 18 of the repealed Securities and Futures Commission Ordinance or as a member of a tribunal appointed under any of the provisions referred to in paragraphs (a) and (b))-

- any person who immediately before the commencement of Part XI of this Ordinance holds any office as a member (whether as the chairman, deputy chairman or other member) of the Securities and Futures Appeals Panel or as a member of the tribunal to determine the appeal shall, for the purposes of the appeal, continue to hold the same office on the same terms and conditions as if this Ordinance had not been enacted; and
- the Securities and Futures Appeals Panel and the tribunal shall, for the purposes of the appeal, continue in existence as if this Ordinance had not been enacted.

#### Part XII of this Ordinance (Investor compensation)

73. In sections 74 to 76-

'Futures Exchange Compensation Fund' (期交所賠償基金) and 'Unified Exchange Compensation Fund' (聯交所賠償基金) have the meanings respectively assigned to them in section 235 of this Ordinance;

'repealed Commodities Trading Rules' (已廢除的《商品交易規則》) means the Commodities Trading (Dealers, Commodity Trading

## 25 Amounts receivable from licensed corporations licensed for Type 8 regulated activity

- (1) Subject to subsection (2), a licensed corporation licensed for Type 1 regulated activity shall include in its liquid assets the aggregate of any amount receivable from each licensed corporation licensed for Type 8 regulated activity and any net amount receivable from such second-mentioned licensed corporation referred to in section 24(2) that has not been included in its liquid assets under that section, in the amount which, in relation to each such second-mentioned licensed corporation, is the lower of-
- such aggregate amount less any specific provision for bad or doubtful debts made in respect of each such aggregate amount; and
  - the sum of-
    - the amount of cash deposited with it as security by such second-mentioned licensed corporation;
    - the market value of collateral deposited with it by such second-mentioned licensed corporation, less the haircut amount in relation to such collateral; and
    - the maximum amount that it can draw under a bank guarantee provided to it by such second-mentioned licensed corporation and issued by an approved financial institution or an approved bank incorporated outside Hong Kong.
- (2) The aggregate of amounts that a licensed corporation includes in its liquid assets under subsection (1) shall not exceed the aggregate of amounts receivable from other licensed corporations referred to in that subsection less the aggregate of amounts of specific and general provisions for bad or doubtful debts made in respect of such aggregate of amounts receivable.

## 26 Cash provided as security for short selling

- A licensed corporation shall include in its liquid assets an amount receivable in the amount of any cash (including interest accrued on it) provided by it as security to the counterparty in respect of a short selling by it of securities where it has not yet delivered the securities to the counterparty for settlement, where the counterparty is-
- a securities dealer;
  - a specified exchange;
  - a clearing house of a specified exchange; or
  - a clearing participant of a clearing house referred to in paragraph (c).

## 27 Proprietary positions of licensed corporations

- (1) A licensed corporation shall include in its liquid assets any of the following assets that it beneficially owns-
- subject to subsections (2), (3), (4), (6) and (7), listed shares;
  - qualifying debt securities;
  - special debt securities;
  - specified securities;
  - specified investments,
- at market value, less the haircut amounts in relation to the securities or specified investments concerned.
- (2) Subject to subsection (5), where a licensed corporation beneficially owns any listed shares and writes a call stock options contract on such shares, to the extent that the number of shares underlying the options contract is equal to the number of such shares, subsection (1)(a) does not apply in respect of such shares and section 40(3) and (4) does not apply in respect of the options contract and it shall include in its liquid assets such shares in the amount which is the lower of-
- the market value of such shares, less the haircut amount in relation to such shares; and
  - the number of such shares multiplied by the strike price of such options contract.
- (3) Subject to subsection (5), where a licensed corporation beneficially owns any listed shares and holds a short position in a stock futures contract in respect of such shares, to the extent that the number of shares underlying the futures contract is equal to the number of such shares, subsection (1)(a) does not apply in respect of such shares and section 40(4) does not apply in respect of the futures contract and it shall include in its liquid assets such shares at market value.
- (4) Subject to subsection (5), where a licensed corporation beneficially owns any listed shares and holds a put stock options contract, which is not subject to any margin requirement, in respect of such shares, to the extent that the number of shares underlying the options contract is equal to the number of such shares, it may elect not to apply subsection (1)(a) in respect of such shares and section 31(1)(b) in respect of the options contract whereupon it shall include in its liquid assets such shares in the amount which is the higher of-
- the market value of such shares, less the haircut amount in relation to such shares; and
  - the number of such shares multiplied by the strike price of such options contract.
- (5) Subsections (2), (3) and (4) do not apply in respect of a stock futures contract or a stock options contract which has been