

## CHAPTER 7

### DISCIPLINARY

#### Disciplinary Powers

701. For the purpose of these disciplinary rules, the word "Exchange Participant" includes, where the context admits, a Responsible Officer, director, partner, Authorized Person, officer, employee, agent, representative and persons acting on behalf of an Exchange Participant, Market Maker, Securities Market Maker, Structured Product Hedging Participant and/or Structured Product Liquidity Provider (as the case may be).
- 701A. Where the acts or omissions of a Responsible Officer, director, partner, Authorized Person, Designated Specialist, officer, employee, agent, representative or persons acting on behalf of an Exchange Participant, Market Maker, Securities Market Maker, Structured Product Hedging Participant, Structured Product Liquidity Provider or registered arbitrageur (as defined in the Fifteenth Schedule) would have been subject to these Rules had such acts or omissions been committed by the Exchange Participant, then such acts or omissions shall be deemed to be committed by that Exchange Participant and disciplinary action may be taken against it.
702. The Board may exercise any of the following disciplinary powers:-
- (1) to expel an Exchange Participant by serving on it a notice of expulsion;
  - (2) to call upon an Exchange Participant, by written notice, to resign. Failing the receipt of notice of such resignation from the Exchange Participant within seven clear days of the date of notice the Board may exercise the power of expulsion in Rule 702(1);
  - (3) to suspend an Exchange Participant from Exchange Participantship of the Exchange on such terms and for such period as the Board shall think fit;
  - (4) to impose a fine on an Exchange Participant;
  - (5) to censure an Exchange Participant and to direct whether and if so in what manner such censure shall be published;
  - (6) to suspend or revoke the registration of a Responsible Officer of an Exchange Participant;
  - (6A) to suspend, withdraw or revoke the right of an Exchange Participant's access to the System on such terms and for such period as the Board shall think fit;
  - (6B) to restrict an Exchange Participant's trading activities on or through the Exchange including but not limited to its Exchange Traded Options Business on such terms and for such period as the Board shall think fit;
  - (7) to suspend an Options Exchange Participant from its Options Exchange Participantship on such terms and for such period as the Board shall think fit;

- (8) to suspend, withdraw, or revoke an Options Trading Exchange Participant's access to the Options Trading System and/or Options Clearing System on such terms and for such period as the Board shall think fit;
- (9) to suspend, withdraw or revoke a Market Maker's permit or a Securities Market Maker's permit (as the case may be) on such terms and for such period as the Board shall think fit;
- (10) to suspend a SEOCH Participant from its SEOCH Participants on such terms and for such period as the Board shall think fit;
- (11) to suspend, withdraw or revoke a SEOCH Participant's access to the Options Clearing System on such terms and for such period as the Board shall think fit;
- (12) to prohibit an Exchange Participant from being appointed or acting as a Structured Product Liquidity Provider on such terms and for such period as the Board shall think fit;
- (13) to prohibit an Exchange Participant from being appointed or acting as a Structured Product Hedging Participant on such terms and for such period as the Board shall think fit; and
- (14) to suspend, withdraw or revoke a Securities Market Maker's and/or a Structured Product Liquidity Provider's access to the System through a Market Making Open Gateway and/or Market Making AMS Terminal on such terms and for such period as the Board shall think fit.

702A. The Board may, in exercising its disciplinary powers and functions, determine guidelines or procedures for proceedings and meetings held for disciplinary purposes.

702B. The Board may, in exercising its power to revoke the registration of any of the persons referred to in Rule 702(6) above, order that the revocation of registration shall not take effect unless, during a period specified by the Board (the "suspension period"), the person commits further acts or omissions which call for disciplinary action and the Board so orders that the revocation shall take effect.

702C. In the event that any of the persons referred to in Rule 702(6) above commits further acts or omissions which call for disciplinary action during the suspension period, the Board shall have discretion:-

- (1) to order that the revocation of the person's registration shall take effect immediately; or
- (2) not to revoke the person's registration and make such other order as the Board shall think fit.

702D. The exercise of powers by the Board or the Chief Executive, as the case may be, in connection with Rules 204(8), 226(5), 431(3)(f), 569A(f), 601, 723(1)(c) and 723(2)(h) and (i) shall be dealt with in the disciplinary procedures made pursuant to the Memorandum from time to time.

703. The Board may delegate, in accordance with the Articles or these Rules, any or part

of its disciplinary powers (including its power to award costs) to committees to be known as the Disciplinary Committee and the Disciplinary Appeals Committee.

704. The Chief Executive may exercise the power referred to in Rules 702(3), 702(6), 702(6A), 702(6B), 702(7), 702(8), 702(9), 702(11), 702(12), 702(13) and 702(14) above provided he has first obtained the approval of the Chairman of the Board or in his absence any member of the Board which may be given either orally or in writing. Where the Chief Executive has exercised any of his powers referred to in this Rule, the Exchange Participant may at any time thereafter apply to the Chief Executive for the lifting of his decision by submitting to the Chief Executive such information, including any information as to the financial condition of the Exchange Participant, as the Chief Executive may require in order for him to be satisfied that it is proper in all the circumstances to lift the decision. The Chief Executive may lift his decision conditionally or unconditionally.
705. The disciplinary powers referred to above may be exercised separately or cumulatively and in no circumstances shall the exercise of such powers prejudice in any way any right that may be vested in the Exchange to seek redress against an Exchange Participant.

### **Disciplinary Proceedings**

706. The Board may convene a meeting at any time to consider the exercise of its disciplinary powers against an Exchange Participant. If at such meeting it is satisfied that a prima facie case has been established calling for disciplinary action against the Exchange Participant concerned the Board shall request the Exchange Participant to attend a meeting and explain its conduct in regard to the matter.
707. The Board may exercise any of its disciplinary powers against an Exchange Participant if, at such meeting or any adjournment thereof, it is of the opinion, after considering the explanation, if any, tendered by the Exchange Participant, that the case against the Exchange Participant is substantiated. The Board shall also be entitled to exercise any of its disciplinary powers against the Exchange Participant concerned should it fail to attend the hearing called for by the Board.
708. The Board shall have unfettered discretion to decide upon the disciplinary action to be taken against an Exchange Participant.
709. The Board shall notify the Commission whenever it considers taking disciplinary action against an Exchange Participant and shall notify the Commission forthwith of the result of such consideration and the disciplinary action taken. In the event of an Exchange Participant giving notice to resign pursuant to Rule 702(2) the Board shall forthwith notify the Commission of such fact.
- 709A. The Board shall notify HKSCC whenever it considers taking disciplinary action against an Exchange Participant in relation to any breaches of Rules 401, 406, 408, 414 to 416, 418A to 418C, 422(6) and (7), 425, 429(1), 501 to 508, 510 to 514, 516, 517, 517B to 530, 534(3), 537, 539 to 545, 548, 552 to 562, 563A to 563D, 723 or the CCASS Rules and shall notify HKSCC forthwith of the result of such consideration and the disciplinary action taken, if any. In the event of an Exchange Participant giving notice to resign pursuant to Rule 702(2) the Board shall forthwith notify HKSCC of such fact.

- 709B. The Board shall notify SEOCH whenever it considers taking disciplinary action against an Exchange Participant in relation to any breaches of Rules 401, 406, 408, 414 to 416, 418A to 418C, 422(6) and (7), 425, 429(1), 534(3), 537, 539 to 543, 545, 563C, 563D, 723, the Options Trading Rules or the Clearing Rules and shall notify SEOCH forthwith of the result of such consideration and the disciplinary action taken, if any. In the event of an Exchange Participant giving notice to resign pursuant to Rule 702(2) the Board shall forthwith notify SEOCH of such fact.
710. Any resolution shall specify full details of the disciplinary action to be taken against an Exchange Participant and when recorded in the Minute Book of the Board or the Disciplinary Committee and signed by the chairman of the meeting deciding on the disciplinary action or a following meeting, shall be conclusive evidence thereof.
711. The Board shall have power to suspend if it thinks fit, any Exchange Participant whose conduct is under investigation until it has enquired into such matter and come to a decision thereon. The Exchange Participant whose conduct is under investigation shall not be entitled to complain about the length of time required for such investigation to be completed and the Board shall be under no obligation whatsoever to compensate an Exchange Participant suspended under these Rules even if the investigation subsequently vindicates the conduct of such Exchange Participant. An Exchange Participant which is suspended shall not be entitled to deal in securities or trade on or through the Exchange under any Stock Exchange Trading Right and shall not be exchange participants for the purpose of the Legislative Council Ordinance.
712. (1) The Board may consider and act upon such evidence as the Board may in its absolute discretion determine admissible in relation to any matter as it thinks fit.
- (2) Any decision of the Board shall be final and shall not be liable to be set aside or varied by any other authority or body.
713. [Repealed]
714. The Exchange shall have power to publish in the local newspapers or in circulars or via electronic or computer data transmission to Exchange Participants the name of any Exchange Participant expelled or whose Exchange Participantship or right to access the System has been suspended by the Exchange and also to publish such expulsion or suspension in any other way it may think fit. No action or other proceedings shall under any circumstances be taken by the Exchange Participant referred to in such publication or notification against any person or body authorising printing, publishing or circulating the same.
715. No Exchange Participant which has been expelled from the Exchange shall be eligible for re-admission.
716. (1) An Exchange Participant shall have the right to be represented at any meeting of the Board held for disciplinary purposes by a solicitor or counsel. Alternatively, it may if it so desires solicit the assistance of another Exchange Participant to represent it or to make submissions on its behalf.
- (2) The Board shall have the power to order payment to or by an Exchange

Participant of costs and expenses incurred in obtaining legal representation for attending a meeting held for disciplinary purposes, such costs and expenses to be limited to professional legal fees and expenses of attending (but not preparing for) the meeting. Costs ordered to be paid by an Exchange Participant shall be recoverable by the Exchange as a civil debt.

(3) [Repealed]

717. Where disciplinary measures are taken against an Exchange Participant by the Chief Executive under Rule 704:-

- (1) the Exchange Participant shall be entitled as of right to appeal to the Disciplinary Committee within fourteen days of being notified of the Chief Executive's decision;
- (2) the Chief Executive shall not be obliged to give reasons to the Exchange Participant for his decision but shall be obliged to do so to the Disciplinary Committee in the event of an appeal;
- (3) the Disciplinary Committee shall deal with and decide on the appeal in the same manner as if it were considering the exercise of its disciplinary powers afresh;
- (4) no action shall accrue to an Exchange Participant (whether against the Chief Executive or the Chairman or member of the Board who approved his decision or any other person) and the Exchange Participant shall not institute any legal action in respect of any loss that the Exchange Participant may have suffered (including any loss of profit) by reason of a suspension or any damage to reputation by reason of the fact that an Exchange Participant's appeal is upheld by the Disciplinary Committee or the Disciplinary Appeals Committee in whole or in part.

718. Where an Exchange Participant whose Exchange Participantship or right to access the System is suspended for any reason whatsoever:-

- (1) any monies due to the Exchange, including amounts for the replenishment of the Compensation Fund and any fees prescribed under these Rules shall nevertheless remain due and payable by the Exchange Participant as if its Exchange Participantship or right to access the System had not been suspended;
- (2) its right to be eligible to trade on or through the Exchange under its Stock Exchange Trading Right shall also be suspended and it shall not be permitted to trade either directly or indirectly during such suspension, except as may otherwise be permitted by the Board or the Chief Executive;;
- (3) the suspension shall not operate so as to avoid or affect the validity or enforceability of any agreement, transaction or arrangement in relation to the Exchange Participant's dealing in securities entered into by the Exchange Participant prior to suspension;
- (4) the Exchange Participant shall be under a duty to instruct and appoint

another Exchange Participant to carry out any instructions already received by it on behalf of its clients prior to suspension and shall immediately notify the Exchange in writing of such appointment.

719. Where an Exchange Participant is expelled from the Exchange it shall forthwith lose all rights to trade on the Exchange.
720. If an Exchange Participant is expelled for any reason, the Board may, with effect from the date of expulsion, revoke any Stock Exchange Trading Right of the Exchange Participant. Upon revocation, the name of the Exchange Participant shall be removed from the register of holders of Stock Exchange Trading Rights kept by the Exchange. The Exchange shall not, by virtue of anything done under this Rule, be deemed to have assumed or acquired any obligation attaching to the Stock Exchange Trading Right(s) of the Exchange Participant and the Exchange Participant shall have no claim against the Exchange whatsoever.
721. In the event that an Exchange Participant is expelled and any Stock Exchange Trading Right of the Exchange Participant is revoked as referred to in Rule 720, the Exchange Participant shall remain indebted to the Exchange for all monies owed to the Exchange, including but not limited to all legal and other incidental costs or disbursements incurred by the Exchange in connection with the expulsion and revocation and any sums owing by the Exchange Participant to the Exchange (whether in its capacity as an Exchange Participant, holder of a Stock Exchange Trading Right or in any other capacity), any recognized exchange controller which is the controller of the Exchange or any company of which a recognized exchange controller which is a controller of the Exchange is a controller.
722. An Exchange Participant which is expelled shall not have any claim in respect of its contribution unless and until the monies representing its contribution are refunded to the Exchange by the Commission pursuant to the Ordinance in which event the Exchange Participant's claim against the Exchange shall be subject to the payment of any monies owed to the Exchange and shall in any event be limited to the amount of the refund.

### **Situations Calling for Disciplinary Action**

723. (1) The Board and (subject to Rule 704 hereof) the Chief Executive may exercise their disciplinary powers against an Exchange Participant in such manner as they think fit if the Exchange Participant:-
- (a) is or has been in breach of these Rules or disobeys or challenges any lawful exercise of any power pursuant or incidental thereto; or has shielded or assisted or omitted to report or has dealt with any Exchange Participant with the knowledge that such Exchange Participant has acted contrary to these Rules;
  - (ab) is or has been in breach of rules, regulations, code of conduct or procedures as may from time to time be prescribed by a recognized exchange controller which is the controller of the Exchange;
  - (b) [Repealed]

- (c) is or has been in breach of the Ordinance;
  - (d) [Repealed]
  - (e) is or has been in breach of the CCASS Rules;
  - (f) [Repealed]
  - (g) [Repealed]
  - (h) [Repealed]
  - (i) in relation to Exchange Traded Options, is or has been in breach of the Options Trading Rules or the Operational Trading Procedures;
  - (j) in relation to Exchange Traded Options, is or has been in breach of the Clearing Rules or the Operational Clearing Procedures;
  - (k) in relation to a Securities Market Maker, is or has been in breach of the Securities Market Maker Regulations; or
  - (l) in relation to a Structured Product Liquidity Provider, is or has been in breach of the Structured Product Liquidity Provider Regulations.
- (2) Without prejudice to the generality of the foregoing, the Board and the Chief Executive may exercise their disciplinary powers against an Exchange Participant in the following instances, in such manner as they think fit, if the Exchange Participant:-
- (a) after becoming aware of any inability on its part to comply with the Financial Resources Rules and/or the financial resources requirements made under Rule 408, fails to notify the Commission and the Board forthwith of such inability or fails to cease dealing in securities, otherwise than for the purpose of giving effect to any agreement or arrangement entered into before the time when it becomes so aware;
  - (b) [Repealed]
  - (c) appears to have been admitted under any misrepresentation or by the suppression of any information which may be required of it or its references and which in the opinion of the Board is material;
  - (d) has been charged with or convicted of a criminal offence necessarily involving a finding of fraud or dishonesty or has been sentenced to a period of imprisonment without the option of a fine;
  - (e) has failed or is unable to carry out any legal obligation relating to securities;
  - (f) [Repealed]

- (g) has dealt with any person, body, firm, corporation or company who or which may have been posted in the Exchange or otherwise notified to the Exchange Participants as one who or which has made default in carrying out his or its engagements relating to securities;
- (h) is under investigation by the Commission under the Ordinance including where an auditor is appointed by the Commission to investigate the affairs of the Exchange Participant;
- (i) is or has been guilty of any misconduct as defined in section 193 of the Ordinance;
- (j) fails to report a transaction or knowingly makes or reports a false or fictitious transaction;
- (k) makes a material mis-statement to the Board, any Committee, the Chief Executive, the Exchange, any designated HKEx staff, a recognized exchange controller which is the controller of the Exchange, or their respective employees or officers, where appropriate;
- (l) knowingly disseminates false, misleading or inaccurate reports concerning market information or conditions that affect or tend to affect the price of any issue of securities;
- (m) trades or deals after becoming insolvent;
- (n) refuses to appear before the Board, any Committee, the Chief Executive, the Exchange, any designated HKEx staff or a recognized exchange controller which is the controller of the Exchange when being called upon;
- (o) refuses to answer fully all questions or refuses to produce all books and records at any disciplinary hearing or investigation when required to do so or testifies falsely;
- (p) refuses to grant access to its registered business address and any other locations, at which it carries out its business of dealing in securities or make available all information, books, records and documents as may be required by any designated HKEx staff, appointed officers or employees of the Exchange or a recognized exchange controller which is a controller of the Exchange or any other authorized person in the course of any inspection provided for by these Rules;
- (q) makes use of or reveals any confidential information obtained by reason of participating in any investigative proceedings or hearing, or revealed to it confidentially by the Board, any Committee, the Chief Executive, any designated HKEx staff, employees or officers of the Exchange or of a recognized exchange controller which is a controller of the Exchange;

- (r) induces or attempts to induce another person to buy or sell securities:-
  - (i) by dishonestly concealing any material fact;
  - (ii) by making or publishing or causing to be made or published whether recklessly, dishonestly or otherwise, any statement, promise or forecast that is misleading, false or deceptive;
  - (iii) by recording or storing in or by means of any mechanical, electronic or other device, information that it knows to be false or misleading in any material respect;
- (s) accepts an order from a client for the sale or purchase of securities without causing such order to be executed on an exchange or in accordance with the rules, bye-laws, regulations, customs and practice of such exchange;
- (t) has defaulted in payment of its subscription or any fine imposed on it;
- (u) has failed to pay any monies other than the subscription due to the Exchange after the expiry of notice in writing calling upon it to pay;
- (v) has shielded or assisted, or omitted to report, or dealt with, any Exchange Participant which it knows has acted contrary to these Rules;
- (w) fails to fulfill, observe or comply with any confirmation, representation or statement given by it or makes a material misstatement;
- (x) has failed to display the Exchange Participant Certificate, duplicate Exchange Participant Certificate, replacement Exchange Participant Certificate and/or certified copy of the Exchange Participant Certificate in accordance with these Rules;
- (y) [Repealed]
- (z) [Repealed]
- (aa) [Repealed]
- (bb) [Repealed]
- (cc) fails to provide information requested by an exchange, regulatory authority or an organization with which HKEx or the Exchange has entered into an information sharing arrangement or agreement;
- (dd) fails to give notice of termination of Clearing Agreement under Rule 358(4).

724. Without prejudice to the scope of the power of suspension or other disciplinary

powers vested in the Board and the Chief Executive, the Board and (subject to Rule 704) the Chief Executive may exercise the powers referred to in Rules 702(3), 702(6), 702(6A), 702(6B), 702(7), 702(8), 702(9), 702(11), 702(12), 702(13) and 702(14) in the following circumstances or if the Board or the Chief Executive, as the case may be, has reason to believe that any of the following circumstances has occurred:-

- (1) where an Exchange Participant has conducted itself in such a manner as to call for disciplinary action and an investigation is being conducted into the affairs of the Exchange Participant for this purpose;;
- (2) where an Exchange Participant is unable to pay its debts as they fall due or has entered into any arrangement with its creditors for the payment of debts or is otherwise insolvent;
- (2A) [Repealed]
- (3) where an Exchange Participant is in breach of any of the conditions (if any) in the grant of its Exchange Participantship or Stock Exchange Trading Right;
- (4) where an Exchange Participant has:-
  - (a) created any incumbrance over its Stock Exchange Trading Right;
  - (b) failed to contribute towards the Compensation Fund;
  - (c) transferred or attempted to transfer its Options Exchange Participantship; or
  - (d) created or attempted to create any incumbrance over its Options Exchange Participantship.
- (5) where an Exchange Participant has failed to pay any monies including any fees that are due and owing to the Exchange or SEOCH or any fine imposed on that Exchange Participant;
- (6) where an Exchange Participant which is also a CCASS Clearing Participant has failed to meet any of its obligations to HKSCC;
- (7) [Repealed]
- (8) where an Exchange Participant has failed to meet any of its obligations to SEOCH;
- (9) where an Exchange Participant which is also an HKCC Participant has failed to meet any of its obligations to HKCC;
- (10) where an Exchange Participant is or may be in such financial or operational difficulty that the Exchange Participant may not be permitted to continue to do business as an Exchange Participant with safety to clients, other Exchange Participants, the Exchange, HKSCC or SEOCH;
- (11) where such action is necessary to protect the interests of the Exchange, a recognized exchange controller which is the controller of the Exchange, HKSCC or SEOCH;

- (12) where such action is necessary to ensure the orderly trading of securities and Option Contracts on the Exchange and/or the operation of HKSCC or SEOCH;
- (13) where a petition is presented or a proceeding is commenced or an order is made or an effective resolution is passed or any other step is taken by any person for the winding-up, administration, re-organisation, reconstruction, amalgamation, dissolution or bankruptcy of the Exchange Participant or for the appointment of a provisional liquidator, liquidator, receiver, administrator, trustee or similar officer over all or any part of the Exchange Participant's business or assets; or
- (14) where a prohibition or requirement is imposed on the Exchange Participant by the Commission pursuant to section 204, 205 or 206 of the Ordinance.

725. If an Exchange Participant: -

- (1) ceases to be or is suspended as a CCASS Clearing Participant; or
- (2) does not have a valid, binding and effective CCASS Clearing Agreement with a CCASS GCP

such Exchange Participant will not be allowed to trade on the Exchange.