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## CHAPTER 35

### LATE DELIVERY OF SECURITIES - CNS SYSTEM

#### **3501. Default fee, stock borrowing and Buy-in for Eligible Securities other than China Connect Securities**

Subject to the Rules and except for Eligible Securities which are China Connect Securities, if a Clearing Participant or Clearing Agency Participant fails or considers prior to T+3 that it may be unable to deliver Eligible Securities on time under the CNS System by the final Batch-settlement-run of such Eligible Securities on the due date (i.e. T+2), then without prejudice to such other rights as it may have under the Rules, HKSCC reserves the right at any time:

- (i) to impose a default fee on any such Participant that is in default, such fees to be of such amounts and to be payable at such times as shall be specified by HKSCC; and/or
- (ii) to effect on behalf of any such Participant a borrowing of such Eligible Securities (up to the quantity required), upon such terms and conditions and at such fees as HKSCC may consider appropriate, and any such Participant shall forthwith upon demand by HKSCC from time to time pay to HKSCC such sums in respect of fees and expenses incurred by HKSCC and/or provide Collateral in such form as required by HKSCC (such Collateral to be used in such manner as HKSCC shall see fit and shall constitute security in respect of its obligations and liabilities to HKSCC) and shall indemnify HKSCC against all costs, fees, expenses, liabilities, losses and damages as a result of HKSCC effecting such borrowing and matters relating thereto; and/or
- (iii) to execute on behalf of any such Participant on T+3 (or, if it is not practicable to do so on T+3, at any time thereafter) a Buy-in on or off the Exchange to purchase such Eligible Securities (up to the quantity required); and/or
- (iv) to permit such Participant to make an irrevocable request to HKSCC to execute on behalf of such Participant a Buy-in to purchase an amount of Eligible Securities up to the quantity requested by such Participant. Such Buy-in shall be effected in accordance with the Operational Procedures.

For the purpose of paragraphs (iii) and (iv) of this Rule 3501, HKSCC may on behalf of that Participant instruct its authorized brokers to assist in executing such Buy-in on or off the Exchange. HKSCC reserves the right to disclose the name and other details of such Participant to its authorized brokers effecting the Buy-in together with such details of the relevant Market Contracts in respect of which a Buy-in is to be effected as HKSCC deems fit.

HKSCC may grant an exemption from or suspend a Buy-in on behalf of a Clearing Participant or Clearing Agency Participant, as the case may be, on T+3 in accordance with the Operational Procedures.

The Clearing Participant or Clearing Agency Participant, as the case may be, to whom an

exemption from a Buy-in is granted shall be obliged to settle overdue short positions of which exemption is granted by day-end of T+3. In the event that any such Participant fails to do so for whatever reason, HKSCC may consider executing on behalf of such Participant a Buy-in on T+4 (or, if it is not practicable to do so on T+4, at any time thereafter) in its absolute discretion as it may think fit.

The rights given to HKSCC under this Rule 3501 are without prejudice to any other rights which HKSCC may have under the Rules as a result of such failure to deliver, including, but not limited to its rights under Rules 3701 to 3704.

For the avoidance of doubt, any borrowing of Eligible Securities effected by HKSCC pursuant to paragraph (ii) of this Rule shall not affect the obligation of any such Participant to deliver Eligible Securities under the CNS System (in respect of which a borrowing was effected) and HKSCC shall be free to make use of the Eligible Securities so borrowed in such manner as it considers appropriate to satisfy its obligations to deliver Eligible Securities to Clearing Participants or Clearing Agency Participants, as the case may be, under the CNS System.

In respect of any sums paid and/or Charged Property provided as Collateral by a Clearing Participant or Clearing Agency Participant, as the case may be, which has failed to deliver Eligible Securities under the CNS System, the only obligation of HKSCC in respect of any such sum so paid by such Participant and/or Charged Property provided by the Participant shall be to pay such Participant an amount equal to the balance remaining after satisfaction of all obligations and liabilities (actual or contingent) of such Participant to HKSCC and/or to return to such Participant the balance of the Charged Property remaining after satisfaction of all obligations and liabilities (actual or contingent) of such Participant to HKSCC.

HKSCC may execute a Buy-in trade on behalf of the Clearing Participant or the Clearing Agency Participant, as the case may be, in default to fulfil its delivery obligation and that Buy-in trade will normally be settled under the CNS System in CCASS in accordance with Rules 3301 to 3307.

Without prejudice to any other rights HKSCC may have, HKSCC may require that a Buy-in pursuant to this Rule be settled under the Isolated Trades System and may also require that such a Buy-in be settled on the day of its execution or within such other period as HKSCC in its absolute discretion considers appropriate. In the event that a Buy-in is required by HKSCC to be settled under the Isolated Trades System, if the counterparty Clearing Participant to a Buy-in fails to deliver Eligible Securities on the due date, HKSCC may direct that Clearing Participant to (or may itself on behalf of that Clearing Participant) execute or arrange a further Buy-in on the Exchange to purchase the Eligible Securities required to settle the original Buy-in and so on and so forth.

In the event that HKSCC executes a Buy-in on behalf of a Clearing Participant or Clearing Agency Participant, as the case may be, pursuant to this Rule, it shall do so at what it determines to be the best prevailing market price and terms available (but taking into account the fact that HKSCC may need to act promptly and provided that HKSCC shall have no liability if it acts in good faith).

Further, each such Participant on whose behalf HKSCC executes a Buy-in shall indemnify HKSCC against all costs, fees, expenses, liabilities, losses and damages of any nature whatsoever suffered or incurred by it directly or indirectly arising out of the execution of such

a Buy-in by HKSCC.

For the avoidance of doubt, HKSCC may, but shall not be obliged to, take any one or more of the measures referred to in this Rule.

### **3501A.Default fee and Buy-in for China Connect Securities**

Subject to the Rules, if a China Connect Clearing Participant fails to deliver China Connect Securities on time by the final Batch-settlement-run of such China Connect Securities on the due date (i.e. T day), then without prejudice to such other rights as HKSCC may have under the Rules, HKSCC reserves the right at any time:

- (i) to impose a default fee on any such Participant that is in default, such fees to be of such amounts and to be payable at such times as shall be specified by HKSCC; and/or
- (ii) to execute on behalf of any such Participant on T+1 (or, if it is not practicable to do so on T+1, at any time thereafter) a Buy-in via the relevant Trading Link to purchase such China Connect Securities (up to the quantity required, rounded up to the nearest Board Lot if the quantity required is not in full Board Lots).

For the purpose of paragraph (ii) of this Rule 3501A, HKSCC may on behalf of that Participant instruct its authorized brokers to assist in executing such Buy-in via the relevant Trading Link. HKSCC reserves the right to disclose the name and other details of such Participant to its authorized brokers assisting in effecting the Buy-in together with such details of the relevant Market Contract in respect of which a Buy-in is to be effected as HKSCC deems fit.

HKSCC may grant an exemption from or suspend a Buy-in on behalf of a China Connect Clearing Participant on T+1 in accordance with the Operational Procedures.

The China Connect Clearing Participant to whom an exemption from a Buy-in is granted shall be obliged to settle the overdue short positions for which exemption is granted by day-end of T+1. In the event that such Participant fails to do so for whatever reason, HKSCC may consider executing on behalf of such Participant a Buy-in on T+2 (or, if it is not practicable to do so on T+2, at any time thereafter) in its absolute discretion as it may think fit up to the outstanding quantity, rounded up to the nearest Board Lot if the quantity is not in full Board Lots.

The rights given to HKSCC under this Rule 3501A are without prejudice to any other rights which HKSCC may have under the Rules as a result of such failure to deliver, including, but not limited to its rights under Rules 3701 to 3704.

In respect of any sums paid and/or Charged Property provided as Collateral by a China Connect Clearing Participant which has failed to deliver China Connect Securities under the CNS System, the only obligation of HKSCC in respect of any such sum so paid by such Participant and/or Charged Property provided by the Participant shall be to pay such Participant an amount equal to the balance remaining after satisfaction of all obligations and liabilities (actual or contingent) of such Participant to HKSCC and/or to return to such Participant the balance of the Charged Property remaining after satisfaction of all obligations and liabilities (actual or contingent) of such Participant to HKSCC.

HKSCC may execute a Buy-in trade on behalf of the China Connect Clearing Participant in default to fulfil its delivery obligation and that Buy-in trade will normally be settled under the

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CNS System in CCASS in accordance with Rules 3301 to 3307 and 4106.

In the event that HKSCC executes a Buy-in on behalf of a China Connect Clearing Participant pursuant to this Rule, it shall do so at what it determines to be the best prevailing market price and terms available (but taking into account the fact that HKSCC may need to act promptly and provided that HKSCC shall have no liability if it acts in good faith).

Further, each such Participant on whose behalf HKSCC executes a Buy-in shall indemnify HKSCC against all costs, fees, expenses, liabilities, losses and damages of any nature whatsoever suffered or incurred by it directly or indirectly arising out of the execution of such a Buy-in by HKSCC, including the Buy-in of any China Connect Securities in excess of the outstanding quantity due to the rounding up of such quantity to the nearest Board Lot.

For the avoidance of doubt, HKSCC may, but shall not be obliged to, take any one or more of the measures referred to in this Rule.

### **3502. Procedures for adjustments in respect of dividends etc.**

HKSCC may from time to time establish such facilities and procedures as it considers appropriate in relation to adjustments or claims in respect of dividends, interest payments, debt redemptions, rights, entitlements, securities and other property accruing to Eligible Securities as a result of late deliveries of Eligible Securities by Clearing Participants or Clearing Agency Participants, as the case may be, under the CNS System. Any such facilities and procedures shall be binding on such Participants and any such Participants failing to deliver Eligible Securities on time shall be liable to HKSCC accordingly. Save as otherwise provided, a Clearing Participant or Clearing Agency Participant, as the case may be, due to receive Eligible Securities from HKSCC under the CNS System shall have no claims against HKSCC in respect of such dividends, interest payments, debt redemptions, rights, entitlements, securities and other property as aforesaid.

Without prejudice to any other right HKSCC may have, if as a result of late deliveries of Eligible Securities by a Clearing Participant or Clearing Agency Participant, as the case may be, under the CNS System such Participant is liable to deliver securities or other property accruing to Eligible Securities to HKSCC, HKSCC may require such a Participant to pay to it forthwith a cash sum of such amount as HKSCC considers appropriate as collateral, until such time as the Participant shall have delivered such securities or other property to HKSCC. HKSCC may require any such Participant to purchase such securities or property and further, may itself at any time purchase such securities or property and the costs and expenses of such purchase shall be borne by the Participant. In respect of any cash collateral provided to HKSCC by any such Participant, the only obligation of HKSCC in respect of any such sum so paid by the Participant shall be to pay such Participant an amount equal to the balance remaining after satisfaction of all obligations and liabilities (actual or contingent) of the Participant to HKSCC.

HKSCC shall notify the Participant concerned in respect of such a purchase and will effect any such purchase at what it determines to be the best prevailing market price and terms available (but taking into account that HKSCC may need to act promptly and provided that HKSCC shall have no liability if it acts in good faith).

Each such Participant undertakes to indemnify HKSCC against all costs, fees, expenses,

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liabilities, losses and damages of any nature whatsoever suffered or incurred by HKSCC directly or indirectly as a result of or in connection with the purchase of such securities or property.

### **3503. Compulsory stock borrowing by HKSCC in case of late delivery**

HKSCC reserves the right at any time to effect a Compulsory Stock Borrowing Transaction in order to:

- (i) meet the aggregate of HKSCC's delivery obligations to Clearing Participants or Clearing Agency Participants, as the case may be, which have not been satisfied as a result of a failure by any Clearing Participant or Clearing Agency Participant, as the case may be, to deliver Eligible Securities to HKSCC by the final Batch-settlement-run on the due date (i.e., T+2); or
- (ii) replace, in whole or in part, HKSCC's stock borrowing under any other Compulsory Stock Borrowing Transaction.

The rights and obligations of the Lender and HKSCC in respect of a Compulsory Stock Borrowing Transaction shall be governed by the Compulsory Stock Borrowing and Lending Regulations. HKSCC shall not be obliged to exercise its rights under this Rule 3503.

Each Participant that becomes a party to a Compulsory Stock Borrowing Transaction shall be bound by and shall comply with:

- (i) all of the provisions of the Rules relating to Compulsory Stock Borrowing Transactions; and
- (ii) the Compulsory Stock Borrowing and Lending Regulations.

In the event of any conflict between the Rules and the Compulsory Stock Borrowing and Lending Regulations, unless HKSCC otherwise determines, the Compulsory Stock Borrowing and Lending Regulations shall prevail.

The Compulsory Stock Borrowing and Lending Regulations shall constitute the "stock borrowing and lending agreement" for the purposes of section 19 of the Stamp Duty Ordinance (Cap. 117) in relation to a Compulsory Stock Borrowing Transaction.

In the event that HKSCC enters into a Compulsory Stock Borrowing Transaction, HKSCC intends to discharge the stock lending fee it incurs thereunder from the default fees collected from the short Participants under Rule 3501.

For the avoidance of doubt, any borrowing of Eligible Securities effected by HKSCC pursuant to this Rule 3503 shall not affect the obligation of the Clearing Participant or Clearing Agency Participant, as the case may be, to deliver Eligible Securities under the CNS System.

