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## CHAPTER 20

### DISCIPLINARY ACTIONS

#### 2001. Circumstances subject to disciplinary actions

Subject to Rule 2013, HKSCC may institute disciplinary proceedings against a Participant in respect of an act of misconduct committed or reasonably believed to have been committed by it. An act of misconduct includes :-

- (i) a breach of the Rules or the Participant Agreement (including, without limitation, in the case of a Clearing Participant, where the Clearing Participant fails to comply with its obligations to HKSCC or to other Clearing Participants (as the case may be) in relation to the due and punctual settlement under the CNS System or under the Isolated Trades System and matters relating thereto);
- (ii) a failure to comply with any conditions or requirements for its continued participation in any System as are from time to time imposed by HKSCC;
- (iii) a failure to comply with any decision, requirement, condition or direction of HKSCC having binding effect;
- (iv) a failure to co-operate with HKSCC in matters relating to any System or an Appointed Depository, whether or not relating to the Participant, which materially affects the interests of HKSCC or other Participants;
- (v) being subject to an adverse finding by any competent authority wherever situated including without limitation, any court of competent jurisdiction, the Commission or any committee or tribunal of the Commission, and/or the Exchange, any self-regulatory organization, recognized professional body, overseas regulatory body or other body exercising regulatory or disciplinary functions;
- (vi) errors, delays or other conduct detrimental to the operations of any System or an Appointed Depository or conduct which in HKSCC's opinion is detrimental to the interests or reputation of HKSCC or other Participants;
- (vii) provision to HKSCC of information (including information for the purpose of becoming a Participant) which is false, misleading or inaccurate in a material particular;
- (viii) being knowingly concerned in, or improper conduct which causes or contributes to, an act of misconduct falling within sub-paragraphs (i) to (vii) of this Section by another person;
- (ix) failure to pay a fine or comply with any other disciplinary action or penalty imposed by HKSCC within the specified time;

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- (x) conduct which leads to any disciplinary action being taken against HKSCC or which leads to HKSCC being in breach of the rules of an Appointed Depository;
  - (xi) failure to provide information requested by an exchange, clearing house, regulatory authority or an organization (whether within or outside Hong Kong) with which HKEX, HKSCC or the Exchange has entered into an information sharing arrangement or agreement (this act of misconduct does not apply to an Investor Participant) or pursuant to Rule 1703(iii) or (vii);
  - (xii) if the Participant is a Common Participant, a default in payment of any sum payable to any other Recognized Clearing House or an event of default committed by the Participant under the rules of such Recognized Clearing House;
  - (xiii) if the Participant is a TSF CCASS Participant, a failure to comply with any TSF Participant Registration Criteria or any other conditions or requirements for its continued registration as a TSF CCASS Participant, or a failure to comply with any provisions of, or any of its obligations under, Chapter 12A of the Rules, Section 12A of the Operational Procedures and other related provisions in the Operational Procedures;
  - (xiv) if the Participant is a China Connect Clearing Participant, a failure to comply with any China Connect Clearing Participant Registration Criteria or any other conditions or requirements for its continued registration as a China Connect Clearing Participant, or a failure to comply with any provisions of, or any of its obligations under, Chapter 41 of the Rules, Section 10A of the Operational Procedures and other related provisions in the Rules and Operational Procedures;
  - (xv) if the Participant is a China Connect Clearing House, a failure to comply with any China Connect Clearing House qualification requirements or any other conditions or requirements for its continued registration as a China Connect Clearing House, or a failure to comply with any provisions of, or any of its obligations under Chapter 42 of the Rules and other related provisions in the Rules and Operational Procedures, including those applicable to a Clearing Agency Participant which is a China Connect Clearing House;
  - (xvi) if the Participant is a Synapse User, a failure to comply with any conditions or requirements as set out in the Synapse Terms and Conditions and the Synapse User Guide; and
  - (xvii) if the Participant is a FINI CP User, a failure to comply with any FINI PFR or any money settlement obligations with respect to its Electronic Application Instructions for New Issue Shares.

## **2002. Participants responsible for officers, employees, etc.**

For the purpose of determining whether a Participant may be liable to be disciplined under Rule 2001, the acts or omissions of its directors, partners, principals, officers, employees, trainees, agents and representatives shall be deemed to be the acts or omissions of the Participant.

### **2003. Disciplinary actions**

Without prejudice to any other right HKSCC may have, on each charge admitted by or proved against a Participant, the Disciplinary Committee may take no action or impose any one or more of the penalties set out below: -

- (i) expel the Participant from participation in any System;
- (ii) suspend the Participant from participation in any System;
- (iii) limit the Participant's activities or access to certain services and facilities provided by HKSCC (whether in respect of Eligible Securities held in CCASS or otherwise) on such terms and for such period as HKSCC shall consider to be appropriate;
- (iv) impose a fine on the Participant;
- (v) publicly censure the Participant (including its directors, partners, principals, officers, employees, trainees, agents and/or representatives);
- (vi) prohibit or otherwise limit the activities of the directors, partners, principals, officers, employees, trainees, agents and/or representatives of the Participant in relation to the operations of any System, services or facilities provided by HKSCC, if the Disciplinary Committee determines that such directors, partners, principals, officers, employees, trainees, agents and/or representatives have engaged in conduct detrimental to the operations of such System, services or facilities provided by HKSCC or to the reputation of HKSCC or other Participants;
- (vii) notify the matter to any competent authority to which a Participant is subject;
- (viii) privately censure the Participant including any of its directors, partners, principals, officers, employees, trainees, agents and/or representatives;
- (ix) suspend the Participant's right to use any or all of the services and/or facilities provided by HKSCC (whether in respect of Eligible Securities held in CCASS or otherwise) and/or any or all of the ancillary services to which the Participant has access; and/or
- (x) take such other disciplinary action as the Disciplinary Committee shall consider appropriate in the circumstances.

### **2004. Expulsion of Participant**

- (i) Where HKSCC considers it appropriate in the circumstances to expel a Participant from participation in CCASS following any disciplinary proceedings against the Participant, such disciplinary action against the Participant shall have to be approved by the Board before such disciplinary action shall have effect.
- (ii) No Participant who has been expelled from participation in CCASS shall be eligible for re-admission as a Participant, unless otherwise agreed by the Board in its absolute discretion.
- (iii) A Participant that has been expelled from participation in CCASS shall not have any claim in respect of its Contributions, if any, to the Guarantee Fund and/or any other fees paid to HKSCC except as provided for in the Rules.

#### **2005. Notices of disciplinary action and right to be heard**

If HKSCC proposes to take any disciplinary proceedings against a Participant in respect of any act of misconduct referred to in Rule 2001, it shall give written notice to the Participant and the secretary of the Disciplinary Committee and such notice shall include the statement of case which shall comprise the charge or charges as the case may be, and a summary of the facts to be relied on alleged to give rise to that situation.

#### **2006. Notice of hearing and right to be heard**

HKSCC shall give not less than 10 Business Days written notice to the Participant of the date, time and place of any disciplinary hearing. The Participant shall have the right to attend such disciplinary hearing and to make representations, and may at the discretion of the Disciplinary Committee to be legally represented at such disciplinary hearing.

HKSCC shall have the power to postpone or adjourn any such disciplinary hearing to a date, time and place to be determined by HKSCC and shall give notice to the Participant in writing or otherwise of any such postponement or adjournment.

#### **2007. Procedures relating to any disciplinary proceedings**

Where HKSCC takes or proposes to take any disciplinary proceedings against any Participant in respect of any act of misconduct referred to in Rule 2001 alleged to have been committed by the Participant, the procedures of any such disciplinary proceedings shall be as set out in Section 20 of the Operational Procedures as amended from time to time.

#### **2008. Summary Disciplinary Action and Summary Suspension**

- (i) Notwithstanding any other provisions of the Rules, HKSCC shall have the right to, and may proceed summarily against any Participant for any breach of the Rules or any act of misconduct as set out in Rule 2001, or if HKSCC is of the opinion that it would be in the interest of HKSCC and/or any System and/or Participants so to do.

- (ii) Notwithstanding Rules 2004, 2005 and Rule 2006, HKSCC may when proceeding summarily against any Participant:-
  - (a) (1) suspend the Participant from participation in any System, or
  - (2) limit the Participant's activities or access to the services and facilities in any System, and/or
  - (b) summarily fine the Participant or impose on the Participant any other penalty, without prior notification to the Participant.
- (iii) HKSCC shall immediately notify the Participant in writing of any summary suspension and/or any limitation that has been imposed, the duration of the suspension and/or the limitation imposed, if any, and/or any summary penalty or fine (and the amount thereof) imposed, on the Participant.

#### **2009. Appeals to the Disciplinary Committee and the Disciplinary Appeals Committee**

- (i) Where HKSCC takes summary disciplinary action against a Participant pursuant to Rule 2008(ii)(a), the Participant may within 10 Business Days of the receipt of the written notification pursuant to Rule 2008(iii), appeal to the Disciplinary Appeals Committee.
- (ii) Where HKSCC takes summary disciplinary action against a Participant pursuant to Rule 2008(ii)(b), the Participant may within 10 Business Days of the receipt of the written notification pursuant to Rule 2008(iii), appeal to the Disciplinary Committee.
- (iii) Within 10 Business Days of being notified in writing of any other decision of the Disciplinary Committee and the penalty, if any, to be imposed pursuant to Rule 2003 the Participant may appeal to the Disciplinary Appeals Committee against the decision of the Disciplinary Committee and/or against the penalty imposed by the Disciplinary Committee on the grounds set out in Rule 2010.

#### **2010. Grounds for appeal**

- (i) The Disciplinary Committee shall as an appellate tribunal, hear and determine appeals against the imposition of summary fines or penalties imposed by HKSCC pursuant to Rule 2008(ii)(b), on the ground that such fine or penalty is unduly excessive or on the ground that there is no justification for its imposition.
- (ii) The Disciplinary Appeals Committee shall hear and determine appeals against the summary suspension of, or the imposition of limitation on, a Participant by HKSCC in accordance with Rule 2008(ii)(a), on the ground that the duration of the suspension and/or limitation is unduly excessive or on the ground that there is no justification for

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the imposition of such summary suspension or limitation, as the case may be.

- (iii) The Disciplinary Appeals Committee shall hear and determine appeals against a decision of the Disciplinary Committee as a tribunal of first instance on the following grounds:
  - (a) that the Disciplinary Committee misdirected or misconducted itself contrary to the Rules, Operational Procedures or the rules of natural justice;
  - (b) that the Disciplinary Committee's decision was one which no reasonable Disciplinary Committee could have reached;
  - (c) that the Disciplinary Committee's decision was based on an error of law or a gross misinterpretation of the Rules.
- (iv) A Participant may appeal against any disciplinary action or penalty imposed at any disciplinary hearing by the Disciplinary Committee on the ground that the disciplinary action taken or the penalty imposed by the Disciplinary Committee is unduly excessive.
- (v) The Procedure for any appeal to the Disciplinary Appeals Committee or the Disciplinary Committee, as the case may be, shall be as set out in Section 20 of the Operational Procedures, as amended from time to time.
- (vi) Any determination by the Disciplinary Committee in respect of any appeal submitted to it by a Participant pursuant to Rule 2009(ii) in relation to the imposition of a summary fine and/or other summary penalty shall be final.
- (vii) The decision of the Disciplinary Appeals Committee on an appeal made to it pursuant to Rule 2009(i) or on an appeal made to it pursuant to Rule 2009(iii) shall be final and conclusive.

### **2011. Order as to costs**

- (i) Where HKSCC takes disciplinary action against a Participant, HKSCC may order any such Participant to pay such costs and expenses as it considers reasonable excluding any costs or expenses which, in HKSCC's view, regardless of the outcome of the disciplinary hearing, have been unnecessarily incurred. Such costs and expenses may include, without limitation, the remuneration and expenses of the members of the Disciplinary Committee adjudicating at the hearing, legal costs, administration costs and expenses, and costs and expenses incurred in the investigation, preparation and presentation of the case.
- (ii) Subject to Rule 2011(iii), any costs awarded against a Participant at any disciplinary hearing shall be payable within 10 Business Days of the delivery of the written notice of the order and the determination of the amount of the costs.

- (iii) Where a Participant to a disciplinary hearing appeals against a decision pursuant to Rule 2009(iii), the Disciplinary Committee in its absolute discretion may suspend any order as to costs from coming into effect. The Disciplinary Appeals Committee may affirm or reassess any order of costs made by the Disciplinary Committee whether or not an appeal is allowed, dismissed or withdrawn, and such order as to costs made by the Disciplinary Appeals Committee, if any, shall come into effect on the service of its decision on the Participant.

## **2012. Commission, Exchange to be notified**

Where HKSCC takes disciplinary action against a Participant, it shall notify the Commission and, in the case of disciplinary action being taken against a Clearing Participant which is an Exchange Participant, also notify the Exchange.

## **2013. Rules 2001 to 2012 applicable to Participants other than Investor Participants**

Rules 2001 to 2012 shall not apply to Investor Participants.