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## **Section 20**

### **Disciplinary Action**

#### **20.1 INFORMATION**

##### **20.1.1 Information**

A Participant shall, as and when required, provide HKSCC in writing with information about its business and transactions in CCASS Eligible Securities for the purposes of:

- (a) satisfying HKSCC that the Rules are being complied with; and
- (b) protecting the integrity of CCASS and the operations of HKSCC.

#### **20.2 MONITORING AND INVESTIGATIONS**

##### **20.2.1 Access to Participant's offices**

Any authorized representative or agent of HKSCC shall be permitted by a Participant or a Participant shall procure that any authorized representative or agent of HKSCC be permitted by the Participant's Settlement Agent, to enter the office premises of the Participant or its Settlement Agent (as the case may be) at all reasonable times for the purposes of investigation and to ensure compliance with the Rules.

##### **20.2.2 Investigation and information**

HKSCC may, for the purposes of obtaining information during any investigation of any matter which it considers relevant to its functions:

- (a) require the production by a Participant of documents and other material in the Participant's or its Settlement Agent's possession, custody, power or control and, if any such documents or material cannot be produced, require the Participant to state to the best of its knowledge and belief where and in whose possession, custody, power or control such documents and materials are;
- (b) interview any director, partner, principal, officer, employee, trainee, agent or representative of a Participant and require him to answer questions and provide explanations or otherwise require answers and explanations from the Participant, and record such answers and explanations electronically or otherwise;
- (c) require the attendance, upon reasonable notice, of a director, partner, principal, officer, employee, trainee, agent or representative of a Participant at a specified date, time and place, to answer questions, provide explanations and/or give evidence.

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## **20.3 RESPONSIBILITY OF PARTICIPANTS**

### **20.3.1 Compliance**

A Participant shall comply or, as the case may be, shall procure compliance by all its directors, partners, principals, officers, employees, trainees, agents or representatives, as the case may be, with the Rules and any requirements of HKSCC made pursuant to the Rules.

### **20.3.2 Conduct of officers, employees and agents of Participants**

A Participant shall be responsible to HKSCC for the acts, omissions and conduct of its directors, partners, principals, officers, employees, trainees, agents and representatives acting in the course of their office, employment, training or agency. Such conduct shall be treated for the purposes of the Rules as the conduct of the Participant.

## **20.4 ACTS OF MISCONDUCT**

### **20.4.1 Grounds for disciplinary action**

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:

- (a) a breach of the Rules or the Participant Agreement;
- (b) a failure to comply with any conditions or requirements for its continued participation in CCASS as are from time to time imposed by HKSCC;
- (c) a failure to comply with any decision, requirement, condition or direction of HKSCC having binding effect;
- (d) a failure to co-operate with HKSCC in matters relating to CCASS or an Appointed Depository, whether or not relating to the Participant, which materially affects the interests of HKSCC or other Participants;
- (e) 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;
- (f) errors, delays or other conduct detrimental to the operations of CCASS or an Appointed Depository or conduct which in HKSCC's opinion is detrimental to the interest or reputation of HKSCC or other Participant;
- (g) provision to HKSCC of information (including information for the purpose of becoming a Participant) which is false, misleading or inaccurate in a material particular;
- (h) being knowingly concerned in, or improper conduct which causes or contributes to an act of misconduct falling within sub-paragraphs (a) to (g) of this Section by another

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person;

- (i) failure to pay a fine or comply with any other disciplinary action or penalty imposed by HKSCC within the specified time;
- (j) 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 Depositary;
- (k) failure to provide information requested by an exchange, clearing house, regulatory authority or an organization 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);
- (l) 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;
- (m) 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 12 of the Operational Procedures and other related provisions in the Operational Procedures;
- (n) 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; and
- (o) 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.

## **20.5 THE DISCIPLINARY FUNCTION OF HKSCC**

### **20.5.1 Summary suspension**

If in its opinion it would be in the interests of CCASS or Participants to do so, HKSCC may summarily suspend a Participant from participation in CCASS or limit its activities or access to the services and facilities in CCASS without notifying such Participant beforehand.

In such a case, HKSCC will immediately notify a Participant in writing of the summary

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suspension of its participation in CCASS or of the limitation to CCASS services or facilities, or of the suspension of any other HKSCC services or facilities (as the case may be) that has been imposed on it by HKSCC. In appropriate cases (e.g. where a DCP or a GCP is summarily suspended from participation in CCASS), HKSCC may also notify other Participants. Where a DCP or a GCP is summarily suspended by HKSCC, HKSCC may also request the Exchange to suspend (i) the DCP or the GCP if it is an Exchange Participant and (ii) each NCP of that GCP which does not have in place immediately upon suspension of the GCP a binding, valid and effective Clearing Agreement with another GCP for the clearing of the NCP's Exchange Trades or Clearing Agency Transactions from further trading on the Exchange, regardless of whether the DCP, GCP or NCP has in place a binding, valid and effective Clearing Agreement with another GCP for the clearing and settlement of its China Connect Securities Trades. Further, where a GCP is summarily suspended by HKSCC, HKSCC may also request the Exchange to suspend each NCCCP of that GCP from the trading of China Connect Securities.

Within 5 Business Days of the summary suspension or limitation imposed on a Participant by HKSCC, unless such summary suspension or limitation shall have been lifted, HKSCC shall inform such Participant in writing, stating the situation referred to in Rule 2001 alleged to give rise to HKSCC taking the disciplinary action against the Participant together with a concise statement of the facts alleged to give rise to that situation.

A Participant subject to summary suspension or limitation by HKSCC may within 10 Business Days thereof appeal to the Disciplinary Appeals Committee.

A Participant summarily suspended from participation in CCASS shall, notwithstanding the suspension, remain a Participant but shall not be permitted access to any of the services or facilities in CCASS normally permitted by HKSCC to the Participant. Notwithstanding the foregoing, HKSCC may, at its absolute discretion, permit the suspended Participant access to such of its CCASS services or facilities as may be determined by HKSCC.

#### **20.5.2 Summary fines and penalties**

HKSCC may notify all Participants that from a specified date, any breach of a specified Rule will result in the imposition of a summary fine or other summary penalty on the Participant concerned. From the specified date, where a breach of any specified Rule by any Participant is established by HKSCC, HKSCC will notify the Participant in writing of the imposition of the summary fine and/or summary penalty and the amount of the fine, if any, being levied. Notwithstanding any appeal by the Participant against the amount of the summary fine levied, the fine shall be paid within 10 Business Days of the receipt by the Participant of the written notification.

A Participant may appeal against the amount of any summary fine levied and/or other summary penalty imposed pursuant to this Section 20.5.2 on the ground that the fine and/or the penalty imposed was excessive.

An appeal against the imposition of a summary fine and/or summary penalty shall be to the Disciplinary Committee comprised of a group of at least three members of the Disciplinary

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Committee.

Notice of appeal must be received by the Disciplinary Committee within 10 Business Days of the written notification of the imposition of the summary fine and/or summary penalty. The notice must state the grounds to be relied upon in support of the appeal.

Any determination by the Disciplinary Committee in respect of any appeal submitted to it by a Participant in relation to the imposition of a summary fine and/or other summary penalty shall be final.

### **20.5.3 The Rule Enforcement Team**

The Rule Enforcement Team may investigate and consider grounds for bringing disciplinary proceedings, and may refer cases to the Risk Management Committee and/or the Disciplinary Committee of HKSCC under Section 20.7.1. The Rule Enforcement Team, through any one of its officers shall have conduct of disciplinary cases against the Participants. Such officer of the Rule Enforcement Team may act or appear, at the discretion of the Disciplinary Committee through a solicitor or barrister, or through any other officer of HKSCC.

### **20.5.4 The Risk Management Committee**

The Risk Management Committee may receive reports from the Rule Enforcement Team under Section 20.7.1, and decide whether there should be a referral of the case to the Disciplinary Committee. The Risk Management Committee may give such other advice to the Rule Enforcement Team as it deems appropriate or as may be requested.

### **20.5.5 The Disciplinary Committee**

The Disciplinary Committee shall:

- (a) as a tribunal of first instance, hear and determine charges against a Participant in respect of an alleged act of misconduct referred to it;
- (b) as an appellate tribunal, hear and determine appeals against the imposition of summary fines or penalties imposed by HKSCC pursuant to Section 20.5.2.

### **20.5.6 The Disciplinary Appeals Committee**

The Disciplinary Appeals Committee shall:

- (a) hear and determine appeals from the Disciplinary Committee as a tribunal of first instance in accordance with Section 20.5.5(a).
- (b) hear and determine appeals against the summary suspension of, or the imposition of limitations on a Participant by HKSCC in accordance with Section 20.5.1.

## **20.6 MEMBERSHIP OF COMMITTEE**

### **20.6.1 Membership of the Disciplinary Committee and the Disciplinary Appeals Committee**

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The Board of HKSCC shall from time to time appoint the members of the Disciplinary Committee and may empower the Disciplinary Committee to co-opt such persons to the Committee to adjudicate at any disciplinary hearing or any appeal hearing, as the case may be, as the Disciplinary Committee deems appropriate in the circumstances.

The Board shall from time to time appoint independent non-executive directors of HKEX and/or co-opted persons to the Disciplinary Appeals Committee.

No person shall at any one time or at different times for the same case be a member of the Disciplinary Committee and the Disciplinary Appeals Committee and, if the case was subject to a referral by the Risk Management Committee to the Disciplinary Committee pursuant to Section 20.5.4, Risk Management Committee.

#### **20.6.2 Legal advisers to the Committee and to the Parties**

A legal adviser, who shall be either a practising barrister or solicitor or an in-house counsel of HKSCC, may be appointed by and may sit with the Disciplinary Committee (including at a pre-hearing review) and with the Disciplinary Appeals Committee to give any legal advice he thinks proper or as the Committee or Appeals Committee, as the case may be, may require.

Any legal advice given by the legal adviser in the absence of the parties shall be repeated in the presence of or delivered in writing to the parties.

On an appeal to the Disciplinary Appeals Committee, a different legal adviser shall be appointed by the Disciplinary Appeals Committee from the legal adviser appointed by the Disciplinary Committee.

Any party to a disciplinary hearing or appeals hearing before the Disciplinary Committee and/or the Disciplinary Appeals Committee, as the case may be, may have present at any such hearing a legal adviser (a solicitor or barrister) to assist the party in the presentation of its case. Except as provided in Section 20.6.3, any such legal adviser shall not represent the party at the hearing.

#### **20.6.3 Legal Representation**

The parties appearing before the Disciplinary Committee or the Disciplinary Appeals Committee may, at the discretion of the Disciplinary Committee or the Disciplinary Appeals Committee, as the case may be, be legally represented.

In determining whether or not to exercise its discretion to permit any party to be legally represented, the Disciplinary Committee or the Disciplinary Appeals Committee, as the case may be, shall have recourse to the following factors, inter alia:

- (a) the seriousness of the charge(s);
- (b) whether any points of law are likely to arise;

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- (c) the capacity of the Participant to present its own case;
  - (d) whether there are likely to be any procedural difficulties;
  - (e) the need for reasonable speed in reaching a decision; and
  - (f) the need for fairness.

#### **20.6.4 Quorum and co-option**

The quorum for a Disciplinary Committee hearing shall be three, except that:

- (a) a pre-hearing review may take place before one member of the Disciplinary Committee;
- (b) with the consent of the Participant, any disciplinary hearing or any appeals hearing may take place or be continued before not less than two members of the Disciplinary Committee;
- (c) the Disciplinary Committee may include a co-opted person who shall count as a member for the purposes of the quorum.

The quorum for a Disciplinary Appeals Committee hearing shall be three, except that:

- (a) with the consent of the Participant, an appeal may take place or be continued before not less than two members of the Disciplinary Appeals Committee; and
- (b) the Disciplinary Appeals Committee may include a co-opted person who shall count as a member for the purposes of the quorum.

#### **20.6.5 Secretary**

The Disciplinary Committee and the Disciplinary Appeals Committee shall each have a secretary to carry out any administrative functions who shall not take part in its deliberations.

#### **20.6.6 Hearings in private**

The Disciplinary Committee hearings and Disciplinary Appeals Committee hearings shall be conducted in private.

#### **20.6.7 Majority decisions**

If at any time the members of the Disciplinary Committee or the Disciplinary Appeals Committee are not unanimous as to any finding, penalty or other matter, the decision shall be that of the majority. If they are equally divided, the decision shall be that which most favours the Participant. The Disciplinary Committee and the Disciplinary Appeals Committee shall have no obligation to disclose that its decision was by a majority.

### **20.7 REFERRAL TO THE DISCIPLINARY COMMITTEE**

**20.7.1 Referrals by the Rule Enforcement Team**

Where it appears to the Rule Enforcement Team that there are grounds for believing that a Participant has or may have committed an act of misconduct and that it is appropriate to refer the matter to the Disciplinary Committee, the Rule Enforcement Team may do so directly, or may report those grounds to the Risk Management Committee which shall then determine whether or not a referral to the Disciplinary Committee should be made.

**20.7.2 Statement of Case**

Referral to the Disciplinary Committee shall be made, and disciplinary proceedings begun, by the Rule Enforcement Team serving on the secretary to the Disciplinary Committee and on the Participant the statement of case, which shall comprise the charge or charges and a summary of the principal facts to be relied on.

**20.8 PRE-HEARING PREPARATION AND PRE-HEARING REVIEW****20.8.1 Initial exchange of evidence, pleas and proposed directions**

After service of a statement of case, except in cases where all charges to be proceeded with are to be admitted by the Participant:

- (a) the Rule Enforcement Team shall serve on the Participant copies of the documents on which it intends to rely and a list of the witnesses, if any, proposed to be called and a summary of the witnesses' proposed evidence;
- (b) the Participant shall serve to the Rule Enforcement Team written notice stating its intended pleas to the charges, what evidence of the witnesses, if any, served by the Rule Enforcement Team is agreed and can be read at the hearing, which documents are agreed and what admissions of facts the Participant can make;
- (c) the Rule Enforcement Team and the Participant shall then serve on each other and on the secretary of the Disciplinary Committee notice of the directions to be sought at the pre-hearing review or their assessment that there is no need for a pre-hearing review.

**20.8.2 Convening of pre-hearing review**

A pre-hearing review will be convened as soon as practicable in all cases save those in which all charges are to be admitted and those where both the Rule Enforcement Team and the Participant have agreed in writing that there is no need for a pre-hearing review.

**20.8.3 Attendance at pre-hearing review**

The Participant shall be represented at the pre-hearing review by a director, officer or partner or by its principal, and may at the discretion of the Disciplinary Committee be represented, if it wishes, by a legal representative.

**20.8.4 Power of Disciplinary Committee at pre-hearing review**

At the pre-hearing review the Disciplinary Committee may give all such directions and take such other steps as it considers appropriate, for the clarification of the facts and issues and generally for their just, efficient and expeditious presentation at the hearing.



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**20.8.5 Particular directions**

Without restriction on the general power to give directions under Section 20.8.4, the Disciplinary Committee may:

- (a) fix a time and place or make arrangements for the hearing;
- (b) with the consent of the Rule Enforcement Team and the Participant, direct the hearing or any part of the hearing to proceed by written representations;
- (c) record any admissions made by either party and any request to any party to make admissions;
- (d) direct any party to prepare and serve any schedule or notice to admit facts or documents, and the other party to respond thereto;
- (e) direct any party to disclose and serve copies of any documents;
- (f) direct the Participant to serve a written statement of defence setting out in general terms the nature of its defence to any charge and the principal matters with which it takes issue on the statement of case;
- (g) direct the Participant to provide the Rule Enforcement Team with the names of all witnesses to be called at the hearing and their statements or an outline of the matters on which it is intended that they should give evidence;
- (h) make time limits for the service by either party of any further evidence;
- (i) extend or abridge time;
- (j) adjourn the pre-hearing review, with such order as it thinks fit;
- (k) vary or waive compliance with any of Sections 20.8.1 or 20.8.4 or any previous directions of the Disciplinary Committee;
- (l) direct the amendment of any charge; and
- (m) make any order for the payment of costs of or in connection with pre-hearing preparation or the pre-hearing review.

**20.8.6 Record of pre-hearing review**

A record shall be made of the directions given at the pre-hearing review, which shall be available to the parties and may be referred to at the hearing.

**20.8.7 Failure to comply with pre-hearing rules and directions**

Failure by Participant to comply with Sections 20.8.1 or 20.8.4 or any directions given at the pre-hearing review shall not render the Participant liable to disciplinary proceedings,

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but may be commented on by the Rule Enforcement Team before the Disciplinary Committee for such inferences to be drawn as are proper in all the circumstances, and may render the Participant liable for costs, whether or not any charge is found proved.

**20.8.8 Overriding discretion of the Disciplinary Committee**

The Disciplinary Committee shall not be prevented by Section 20.8.1 or any directions at the pre-hearing review from receiving evidence or proceeding in any manner other than in accordance with Section 20.8.4 or any directions given at the pre-hearing review.

**20.8.9 Departure by Participant from statement of defence or admissions**

A statement of defence by the Participant pursuant to Section 20.8.5(f) may be put before the Disciplinary Committee. The Participant shall not be prevented by such statement of defence, or by any admissions made to the Rule Enforcement Team or pursuant to the pre-hearing review, from putting forward any contrary or further case or from withdrawing such admissions; though in any such case the Rule Enforcement Team may invite the Disciplinary Committee to draw, and the Disciplinary Committee may draw, any inferences proper in all the circumstances.

**20.8.10 Consent order**

At any time after a referral until the opening of the hearing before the Disciplinary Committee, the Rule Enforcement Team and the Participant may without prejudice negotiate a proposed consent order and jointly submit it in writing to the Disciplinary Committee for approval.

Such proposed consent order shall comprise:

- (a) proposed admission by the Participant to a charge or charges;
- (b) a proposed order for a penalty or penalties which the Disciplinary Committee would have power to make;
- (c) any proposed order for costs; and
- (d) the terms of a proposed written summary in the form which the Disciplinary Committee might deliver under Section 20.9.17.

If the Disciplinary Committee approves the proposed consent order, or any variation agreed by the parties, it shall immediately make the order.

The consequences of a consent order made by the Disciplinary Committee shall be the same as an order made at the conclusion of a hearing of the Disciplinary Committee, except that there can be no appeal and the consent order and penalties on any charges shall have immediate effect including any requirement for HKSCC then to give publicity in accordance with the Rules.

**20.9 THE DISCIPLINARY COMMITTEE HEARING**

**20.9.1 Notice**

The Participant shall be given not less than 10 Business Days (but in any event no more than twenty Business Days) written notice of the time and place of the disciplinary hearing by the secretary to the Disciplinary Committee, unless otherwise directed of at the pre-hearing review and agreed by the parties.

**20.9.2 Admissions of charges in writing**

The Participant may in writing admit any charges to be proceeded with, and deliver any mitigation to the secretary of the Disciplinary Committee not less than 5 Business Days before the hearing.

**20.9.3 Attendance**

Save in accordance with Section 20.6.3 or any previous direction by the Disciplinary Committee, the Participants shall be represented at the hearing by a director, officer, partner or by its principal.

**20.9.4 Failure to attend**

If the Participant fails to attend, the Disciplinary Committee may proceed in its absence.

**20.9.5 Normal order of proceedings**

Unless otherwise directed by the Disciplinary Committee, the order of proceedings at the hearing shall be as follows:

- (a) the charges shall be read by the secretary of the Committee and the Participant asked whether it admits each charge;
- (b) the Rule Enforcement Team shall open the case;
- (c) if any charge is not admitted:
  - (i) the Rule Enforcement Team shall present evidence and/or call witnesses whom the Participant may then cross-examine, the Rule Enforcement Team re-examine, and witness(es) may be asked questions by the Disciplinary Committee;
  - (ii) the Participant may present its evidence and call any witnesses who may be cross-examined, re-examined and questioned by the Disciplinary Committee;
  - (iii) the Rule Enforcement Team may address the Committee, provided that the Participant has presented or called evidence;
  - (iv) the Participant may address the Disciplinary Committee;
  - (v) the Disciplinary Committee shall deliberate and announce whether it finds each charge proved;
- (d) when any charge has been admitted or found proved, the Rule Enforcement Team shall give information as to any previous findings of misconduct which may include

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the findings of regulatory bodies within or outside Hong Kong;

- (e) the Participant may produce or call evidence and/or make representations in mitigation; and
- (f) the Disciplinary Committee will deliberate upon and announce any penalty and order for costs.

**20.9.6 Charges against more than one Participant**

The Disciplinary Committee may hear charges against more than one Participant at the same time if it thinks it just and convenient, and may give directions accordingly.

**20.9.7 Record of the hearing**

A record shall be made of the hearing, electronically or otherwise. Subject to Section 20.10.7, the Participant shall be entitled to a transcription or copy of the record on payment of such cost as determined by the Disciplinary Committee to be reasonable, if any.

**20.9.8 Burden of proof**

Except where otherwise provided in this Section, the burden of proof shall be on HKSCC.

**20.9.9 Standard of proof**

The Disciplinary Committee shall not make any finding of misconduct unless it is satisfied on the evidence adduced at the disciplinary hearing that the alleged act of misconduct has been established to have been committed.

**20.9.10 Evidence and directions**

Proceedings at the Disciplinary Committee hearing shall be governed by this Section and by the rules of natural justice, subject to which the Disciplinary Committee may:

- (a) admit any evidence whether oral or written, whether direct or hearsay, without any requirement that it be on oath, and whether or not the same would be admissible in a court of law;
- (b) make any directions as may be given at a pre-trial hearing, and vary any directions which have been made; and
- (c) make all such directions with regard to the conduct of and procedure at the hearing as the Disciplinary Committee considers appropriate for securing a proper opportunity for the Participant to answer the case against it and otherwise as may be just.

The Disciplinary Committee may receive in evidence, and make findings against the Participant in reliance upon, any interviews and admissions by persons for whose conduct the Participant had responsibility under Section 20.3.2.

**20.9.11 Convictions and findings by other authorities**

The findings of fact of the following bodies shall be prima facie evidence of the facts so

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found:

- (a) any court of competent jurisdiction outside Hong Kong;
- (b) any committee or tribunal of any of the following bodies exercising regulatory or disciplinary functions:
  - (i) the Commission;
  - (ii) the recognized exchange controller which is the controller of HKSCC;
  - (iii) the Exchange;
  - (iv) an Appointed Depository;
  - (v) any self-regulatory organization or recognized professional body;
  - (vi) any overseas regulatory authority; and
- (c) any other body exercising a regulatory or disciplinary jurisdiction over persons engaged in financial services business whether within Hong Kong or elsewhere.

The findings of fact of any court in Hong Kong which have not been set aside on appeal or otherwise, shall be conclusive evidence of the facts so found.

A criminal conviction by any court in Hong Kong which has not been set aside on appeal or otherwise shall be conclusive evidence of the commission of the offence in question. Whether the offence committed amounts to misconduct shall be a matter for the Disciplinary Committee.

The findings of fact referred to in the immediately preceding two paragraphs may be proved by production of the appropriate certified copy of the judgment or findings, and any conviction referred to may be proved by production of a certificate of conviction.

#### **20.9.12 Disciplinary Actions and Penalties**

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:

- (a) expel the Participant from participation in CCASS;
- (b) suspend the Participant from participation in CCASS;
- (c) limit the Participant's activities or access to certain services and facilities provided by HKSCC (whether in respect of Eligible Securities in CCASS or otherwise) on such terms and for such period as shall be considered appropriate;
- (d) impose a fine on the Participant;
- (e) publicly censure the Participant (including its directors, partners, principals, officers, employees, trainees, agents and/or representatives);

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- (f) 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 CCASS and/or 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 CCASS, services or facilities provided by HKSCC or to the reputation of HKSCC or other Participants;
  - (g) notify the matter to any competent authority to which a Participant is subject;
  - (h) privately censure the Participant including any of its directors, partners, principals, officers, employees, trainees, agents and/or representatives;
  - (i) 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 in CCASS or otherwise) and/or any or all of the ancillary services to which the Participant has access; and/or
  - (j) take such other disciplinary action as the Disciplinary Committee shall consider appropriate in the circumstances.

Where the Disciplinary Committee imposes a penalty of expulsion from participation in CCASS against a Participant following any disciplinary hearing, and if an appeal is made such penalty is upheld on appeal by the Disciplinary Appeals Committee, such penalty shall not take effect until the penalty of expulsion against the Participant is approved by the Board.

#### **20.9.13 Consideration of other misconduct**

The Disciplinary Committee may take into account any other act of misconduct recorded in writing and admitted by the Participant which the Participant requests to be taken into consideration.

#### **20.9.14 Deliberation in private**

The Disciplinary Committee may deliberate in the absence of the parties at any time.

#### **20.9.15 Adjournment**

The Disciplinary Committee may adjourn a hearing at any time, and may do so on terms as to costs or otherwise as it thinks fit.

#### **20.9.16 Reservation of judgment**

If the Disciplinary Committee has reserved its judgment, it shall reconvene for the purpose of completing any proceeding and imposing any penalty. The Disciplinary Committee may give any decision in writing by delivering it to the Rule Enforcement Team and the Participant.

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**20.9.17 Written summary of decision**

At the conclusion of the disciplinary proceedings against the Participant, the Disciplinary Committee shall deliver to the Participant and the Rule Enforcement Team a written summary:

- (a) of the charges admitted;
- (b) of its findings as to whether any charges not admitted are proved;
- (c) of its findings or views on any facts or matters to which it wishes to draw attention;  
and
- (d) of any penalties and order for costs imposed.

**20.9.18 Costs**

The Disciplinary Committee may order a party to the disciplinary hearing to pay such costs and expenses as it considers reasonable excluding any costs or expenses which, in the Disciplinary Committee's view, regardless of the outcome of the case, have been unnecessarily incurred. Such costs and expenses may include the remuneration and expenses of the members of the Disciplinary Committee, legal costs, administration costs and costs incurred in the investigation, preparation and presentation of the case.

In addition, costs may be awarded against HKSCC if, in the opinion of the Disciplinary Committee, the Rule Enforcement Team has behaved unreasonably in the commencement or conduct of the proceedings.

The Disciplinary Committee may determine the amount of costs to be awarded against a party to the disciplinary hearing.

Costs shall be payable within 10 Business Days of the delivery of the written notice of the order and the amount of the costs.

**20.9.19 Effective date**

Except as provided in Section 20.9.12 with respect to the imposition of a penalty of expulsion, where notice of appeal in relation to any charge is served in accordance with these disciplinary procedures, the penalty on that charge and any order as to costs shall come into effect notwithstanding any pending appeal save that the Disciplinary Committee may in its absolute discretion suspend the penalty and any order as to costs from coming into effect until the determination of the appeal.

**20.10 APPEAL TO THE DISCIPLINARY APPEALS COMMITTEE****20.10.1 Application of procedural rules of Disciplinary Committee to Disciplinary Appeals Committee**

The following rules shall apply to the proceedings of the Disciplinary Appeals Committee as they apply to the Disciplinary Committee hearing:

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| Section 20.9.4  | (failure to attend)                         |
| Section 20.9.6  | (charges against more than one Participant) |
| Section 20.9.7  | (record of the hearing)                     |
| Section 20.9.14 | (deliberation in private)                   |
| Section 20.9.15 | (adjournment)                               |
| Section 20.9.16 | (reservation of judgment)                   |
| Section 20.9.17 | (written summary of decision), and          |
| Section 20.9.18 | (costs)                                     |

### **20.10.2 Time for appeal**

- (a) Within 10 Business Days of service on it of the Disciplinary Committee's written summary, the Participant may appeal to the Disciplinary Appeals Committee by serving a notice of appeal on the Rule Enforcement Team and the secretary to the Disciplinary Committee;
- (b) the Disciplinary Committee or the Disciplinary Appeals Committee may extend time for appeal.

### **20.10.3 Notice of appeal**

A notice of appeal shall set out each charge appealed against, the ground or grounds of appeal in relation to each charge and a brief statement of the matters relied upon in relation to each ground.

### **20.10.4 Right of appeal against a finding that a charge is proved**

A charge which is proved may be appealed on the following grounds:

- (a) that the Disciplinary Committee misdirected or misconducted itself contrary to this Section or the rules of natural justice;
- (b) that the Disciplinary Committee's decision was one which no reasonable Disciplinary Committee could have reached; and
- (c) that the Disciplinary Committee's decision was based on an error of law or a misinterpretation of the Rules.

### **20.10.5 Right of appeal on disciplinary action or penalty**

A Participant may appeal against any disciplinary action or penalty imposed on any charge on the ground that the penalty imposed or the disciplinary action taken by the Disciplinary Committee was excessive.

### **20.10.6 Powers of the Disciplinary Appeals Committee**

The Disciplinary Appeals Committee may allow an appeal against a finding that a charge is proved only on one or more of the grounds set out in Section 20.10.4. On dismissing an appeal against the finding that a charge is proved (whether or not there is an appeal against penalty), and on an appeal against penalty on a charge, the Disciplinary Appeals



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Committee may approve, increase or decrease the penalty imposed by the Disciplinary Committee and/or may make any other order which the Disciplinary Committee could have made.

Where the Disciplinary Appeals Committee imposes the penalty, or affirms the penalty imposed by the Disciplinary Committee, of expulsion of the Participant from participating in CCASS, such penalty imposed or affirmed, as the case may be, shall not come into effect until approved by the Board.

**20.10.7 Transcript of proceedings before the Disciplinary Committee**

The secretary to the Disciplinary Appeals Committee will obtain and serve on the parties a transcript or record of the hearing before the Disciplinary Committee or of such part of the hearing as the parties agree is necessary.

**20.10.8 Proceeding only by written submissions**

If both parties consent in writing to the secretary to the Disciplinary Appeals Committee, the appeal may be by written submissions only.

**20.10.9 Notice of the appeal hearing in other cases**

The secretary to the Disciplinary Appeals Committee shall give to the Participant and the Rule Enforcement Team not less than 10 Business Days' notice in writing of the date, time and place of the appeal hearing.

**20.10.10 Withdrawal of appeal**

Subject to Section 20.10.14, the Participant may, by writing to the secretary to the Disciplinary Appeals Committee, withdraw its appeal on any charge at any time before the opening of the hearing. On withdrawal, the penalty on that charge which has been suspended during the appeal will come immediately into effect.

**20.10.11 Directions on appeal**

The Disciplinary Appeals Committee may give all such directions as it considers appropriate for the just hearing of the appeal.

**20.10.12 Normal order of proceeding before the Disciplinary Appeals Committee**

The normal order of proceeding will be as follows:

- (a) the Participant shall open the appeal and, subject to Section 20.10.13, produce or call any further evidence;
- (b) the Rule Enforcement Team may make submissions in answer;
- (c) the Participant may reply.

**20.10.13 Evidence before the Disciplinary Appeals Committee**

The Disciplinary Appeals Committee shall consider the evidence before the Disciplinary Committee. It may only hear or receive further evidence in relation to any appeal, only if

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such further evidence was not reasonably obtainable at the time of the hearing before the Disciplinary Committee.

#### **20.10.14 Effective date**

Subject to Section 20.10.6, on any charge in respect of which there has been an appeal which has not been withdrawn in accordance with Section 20.10.10, on the dismissal of the appeal any penalty imposed by the Disciplinary Committee which has been suspended pending the appeal, shall come into effect on service of the written summary by the Disciplinary Appeals Committee. The Disciplinary Appeals Committee, on the dismissal of an appeal, may, if it considers appropriate vary any penalty imposed by the Disciplinary Committee. The Disciplinary Appeals Committee may reassess or affirm any order of costs made by the Disciplinary Committee whether or not an appeal is allowed or dismissed or, notwithstanding that the appeal may have been withdrawn in accordance with Section 20.10.10. Any order as to costs made by the Disciplinary Appeals Committee shall come into effect on service of the written summary by the Disciplinary Appeals Committee.

### **20.11 PUBLICITY AND PUBLIC CENSURE**

#### **20.11.1 Publicity**

- (a) At the conclusion of the disciplinary proceedings whether by a consent order, on expiry of the time for appeal without service of any appeal, on withdrawal of appeal on each charge, or on delivery of the Disciplinary Appeal Committee's written summary in relation to all charges of misconduct admitted or proven, HKSCC may make public by such means as it thinks fit the name of the Participant and the written summary referred to in Sections 20.8.10, 20.9.17 or 20.10.14 as the case may be.
- (b) There shall be no publication of any charge on which the order under Section 20.9.12 is no action, and HKSCC may edit a summary to be made public accordingly.

#### **20.11.2 Public Censure**

In the case where HKSCC decides to publicly censure a Participant, it may do so by:

- (i) issuing a written circular to Participants, the Exchange, a recognized exchange controller which is the controller of HKSCC, the Commission or other regulatory or statutory bodies concerned;
- (ii) transmitting an electronic message through CCASS Terminals and Participant Gateways to Participants;
- (iii) publication in HKSCC in-house journals, newsletters etc; or
- (iv) publication in newspapers, etc.