

**CCASS OPERATIONAL PROCEDURES**

**Definitions**

- (a) For the convenience of readers, the definitions contained in the Rules are repeated below.

**"Disciplinary Appeals Committee"**

means the committee designated by the Board consisting of one or more independent non-executive directors of HKEx and/or other persons co-opted by the Board;

**Section 20**

**Disciplinary Action**

**20.5 THE DISCIPLINARY FUNCTION OF HKSCC**

**20.5.1 Summary suspension**

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

**20.5.3 The Clearing Division**

The Clearing Division 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 Clearing Division, through any one of its officers shall have conduct of disciplinary cases against the Participants. Such officer of the Clearing Division 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 Clearing Division 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 Clearing Division as it deems appropriate or as may be requested.

**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**

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:

**20.6.4 Quorum and co-option**

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 Clearing Division**

Where it appears to the Clearing Division 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 Clearing Division 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 Clearing Division 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 Clearing Division 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 Clearing Division written notice stating its intended pleas to the charges, what evidence of the witnesses, if any, served by the Clearing Division is agreed and can be read at the hearing, which documents are agreed and what admissions of facts the Participant can make;
- (c) the Clearing Division 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 Clearing Division and the Participant have agreed in writing that there is no need for a pre-hearing review.

**20.8.5 Particular directions**

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

- (b) with the consent of the Clearing Division and the Participant, direct the hearing or any part of the hearing to proceed by written representations;
- (g) direct the Participant to provide the Clearing Division 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;

**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, but may be commented on by the Clearing Division 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.

**20.8.9 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 Clearing Division 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 Clearing Division 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 Clearing Division and the Participant may without prejudice negotiate a proposed consent order and jointly submit it in writing to the Disciplinary Committee for approval.

**20.9 THE DISCIPLINARY COMMITTEE HEARING**

**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:

- (b) the Clearing Division shall open the case;
- (c) if any charge is not admitted:
  - (i) the Clearing Division shall present evidence and/or call witnesses whom the Participant may then cross-examine, the Clearing Division re-examine, and witness(es) may be asked questions by the Disciplinary Committee;
  - (iii) the Clearing Division may address the Committee, provided that the Participant has presented or called evidence;
- (d) when any charge has been admitted or found proved, the Clearing Division shall give information as to any previous findings of misconduct which may include the findings of regulatory bodies within or outside Hong Kong;

**20.9.12 Disciplinary Actions and Penalties**

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.

**20.9.16 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 Clearing Division and the Participant.

**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 Head of the Clearing Division 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 Clearing Division 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.

**20.10 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:

- 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 Clearing Division and the secretary to the Disciplinary Committee;
- (b) the Disciplinary Committee or the Disciplinary Appeals Committee may extend time for appeal.

**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 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.

**20.10.8 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 Clearing Division 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 Clearing Division 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 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.