

Disciplinary Procedures

INTRODUCTION

The Disciplinary Procedures forms part of the Rules of the Exchange and is binding on all Exchange Participants and Special Participants, and all holders of Stock Exchange Trading Rights (irrespective of whether they are Exchange Participants or not). The terms "Participant", "Exchange Participant" and "Special Participant" have been used in the Disciplinary Procedures for simplicity purposes but the disciplinary proceedings and disciplinary powers that may be exercised against Participants or Exchange Participants set out in Chapter 7 of the Rules of the Exchange and the Disciplinary Procedures shall mutatis mutandis apply to disciplinary proceedings and disciplinary powers that may be instituted or exercised against holders of Stock Exchange Trading Right.

This "Disciplinary Procedures" is applicable to all disciplinary cases where proceedings are instituted with the Disciplinary Committee after the Scheme Effective Date.

Rules referred to in the "Disciplinary Procedures" mean the Rules of the Exchange and the terms used herein where applicable bear the same meaning as in the Rules of the Exchange.

In this "Disciplinary Procedures", unless the context otherwise requires, the following terms shall bear the following meanings:

"Disciplinary Section" means the division, department, section or unit of the Exchange or HKEx delegated from time to time with the responsibilities and functions set out in Clause 1 of Part I of the Disciplinary Procedures.

"Enforcement Section" means the division, department, section or unit of the Exchange or HKEx delegated from time to time with the responsibilities and functions set out in Clause 2 of Part I of the Disciplinary Procedures.

The "Disciplinary Procedures" provides for:-

1. the functions of the Disciplinary Section in disciplinary matters;

2. the allocation of responsibility to the Enforcement Section for investigation of alleged offences and, if thought fit, prosecution of disciplinary proceedings before the Disciplinary Committee;
3. the functions of the Disciplinary Committee, the Disciplinary Appeals Committee, the Chief Executive and SEOCH in disciplinary matters;
4. the categorisation of offences into offences to be dealt with under the Standard Penalty Procedures and offences to be dealt with by hearings, and the adoption of the Standard Penalty Procedures and the Schedule of Penalties in relation to offences to be dealt with under the Standard Penalty Procedures;
5. procedures for legal representation and costs; and
6. comprehensive and straightforward procedures to be followed in the case of disciplinary actions.

The "Disciplinary Procedures" is divided into two parts. Part I deals with the responsibilities, powers and functions of the Exchange's Committees, divisions, departments, sections and units as well as those of SEOCH concerning disciplinary matters while Part II contains the actual procedures which will be followed whenever there is situation calling for disciplinary action.

PART I

RESPONSIBILITIES, POWERS AND FUNCTIONS OF COMMITTEES, DIVISIONS, DEPARTMENTS, SECTIONS, UNITS AND SEOCH CONCERNING DISCIPLINARY MATTERS

1. Disciplinary Section

The responsibilities and functions of the Disciplinary Section include the following:-

- 1.1 to act as a co-ordinator between the Disciplinary Appeals Committee, the Disciplinary Committee, SEOCH and other divisions and departments of the Exchange;
- 1.2 to ensure that the "Disciplinary Procedures" is properly understood and followed by the Exchange and the Participants;

- 1.3 to keep all records of and relating to disciplinary matters;
- 1.4 to notify the Commission whenever the Exchange considers taking disciplinary action against a Participant and to notify the Commission of the result of such consideration and the disciplinary action taken, if any; in the event of a Participant being called upon to resign pursuant to Rule 702(2), to notify the Commission of such fact [Rule 709];
- 1.5.1 to notify the Hong Kong Securities Clearing Company Limited ("HKSCC") whenever the Exchange considers taking disciplinary action against an Exchange Participant in relation to any breaches of Rules 401 to 429, 501 to 548, 552 to 563D, 723 or the CCASS Rules and to notify HKSCC of the result of such consideration and the disciplinary action taken, if any; in the event of an Exchange Participant being called upon to resign pursuant to Rule 702(2), to notify HKSCC of such fact [Rule 709A(1)];
- 1.5.2 to notify HKSCC whenever the Exchange considers taking disciplinary action against a Special Participant in relation to any breaches of Rules 501, 501G to 501I, 502A to 502B, 502D, 503 to 505A, 506A, 507A, 508, 511, 512, 514, 516, 516A, 517(1), 517(4), 517(6), 517B to 519, 522, 528, 544(1), 544(3), 544(4), 545, 563C to 563D, 723 or the CCASS Rules and to notify HKSCC of the result of such consideration and the disciplinary action taken, if any; in the event of a Special Participant being called upon to resign pursuant to Rule 702(2), to notify HKSCC of such fact [Rule 709A(2)];
- 1.5.3 to notify SEOCH whenever the Exchange considers taking disciplinary action against an Exchange Participant in relation to any breaches of Rules 401 to 429, 534(3), 537 to 543, 545, 563C to 563D, 723, the Options Trading Rules or the Clearing Rules and to notify SEOCH of the result of such consideration and the disciplinary action taken, if any; in the event of an Exchange Participant being called upon to resign pursuant to Rule 702(2), to notify SEOCH of such fact [Rule 709B];
- 1.6 to review the "Disciplinary Procedures" from time to time and make recommendations to the Disciplinary Committee to ensure that the procedures remain efficient and appropriate in the light of experience;

- 1.7 to assist in the arrangement of meetings of the Disciplinary Committee and of disciplinary hearings before the Disciplinary Committee, and to be responsible for supplying the members of the Disciplinary Committee with the necessary papers for use at disciplinary hearings;
- 1.8 to arrange for the service of notices referred to in the "Disciplinary Procedures" upon both the Participant charged with an offence and the Enforcement Section;
- 1.9 to arrange for the service of the decisions of the Disciplinary Committee;
- 1.10 to collect fines from the Participants charged as ordered by the Disciplinary Committee;
- 1.11 to arrange for the publication, if so required by the Disciplinary Committee or the Disciplinary Appeals Committee, of the decision in any particular case;
- 1.12 to arrange for the collection from and payment of costs to the Participant charged as ordered by the Disciplinary Committee or the Disciplinary Appeals Committee (as the case may be);
- 1.13 upon request by the Participant charged, to produce or arrange to produce a copy of the notes taken and evidence adduced at the hearing by the Disciplinary Committee; and
- 1.14 to carry out the duties specified in the Standard Penalty Procedures.

2. Enforcement Section

The responsibilities and functions of the Enforcement Section include the following:-

- 2.1 to investigate alleged offences to be dealt with under the Standard Penalty Procedures, to be followed, if thought fit, by the issue of a Warning Letter to the Participant concerned;

- 2.2 to investigate alleged offences to be dealt with by hearings by the Participant concerned and to notify the Commission of the commencement of any such investigation and the result of such investigation if no disciplinary proceedings are commenced;
- 2.3 following an investigation of an alleged offence to be dealt with by hearings, if it is satisfied that a prima facie case has been established, to institute disciplinary proceedings before the Disciplinary Committee by providing a statement of case including details of the charges to the Secretary to the Disciplinary Committee for service on the Participant charged or if thought fit, to issue a warning letter to the Participant concerned;
- 2.4 to carry out the duties specified in the Standard Penalty Procedures, including notifying the Participant concerned of its right to have the matter referred to the Disciplinary Committee and to do so if required by the Participant concerned;
- 2.5 to provide a statement of case including details of the charges to the Secretary to the Disciplinary Committee for service on the Participant charged in matters where an alleged offence to be dealt with under the Standard Penalty Procedures is being referred to the Disciplinary Committee;
- 2.6 to present the case before the Disciplinary Committee and, if applicable, the Disciplinary Appeals Committee, and produce witnesses and evidence in support of the charges made;
- 2.7 to refer the decision on penalty of the Disciplinary Committee to the Disciplinary Appeals Committee in accordance with Clause 4.14.2 of Part II; and
- 2.8 in cases where the Enforcement Section is not satisfied with the verdict of not guilty reached by the Disciplinary Committee, to refer that decision to the Disciplinary Appeals Committee for an opinion and/or guidelines on points of principles for future reference in accordance with Clause 4.14.3 of Part II, if in the view of the Enforcement Section:-
 - 2.8.1 the Disciplinary Committee has misdirected itself; or
 - 2.8.2 the Disciplinary Committee's decision is:-

- (i) one which no reasonable committee could have reached;
- (ii) unsupported by the evidence presented at the hearing;
- (iii) based on an error of law; or
- (iv) based on a misinterpretation or misapplication of the Rules of the Exchange or of established market practice.

For the avoidance of doubt, the Enforcement Section shall have no right to seek to reverse the not guilty verdict made by the Disciplinary Committee and the hearing by the Disciplinary Appeals Committee of the matter referred under this clause shall not affect the hearing in relation to which the referral is made or any not guilty verdict.

3. Other Divisions, Departments, Sections and Units

The responsibilities and functions of divisions, departments, sections and units other than the Disciplinary Section and the Enforcement Section include the following:-

- 3.1 to conduct an investigation into alleged offences to be dealt with under the Standard Penalty Procedures and to issue a Warning Letter, if thought fit; and
- 3.2 to conduct a preliminary investigation into alleged offences to be dealt with by hearings prior to a full investigation by the Enforcement Section.

In these roles, the divisions, departments, sections and units may require production of books and records by the Participants concerned.

4. Disciplinary Committee

The responsibilities and functions of the Disciplinary Committee include the following:-

- 4.1 to hear appeals from disciplinary measures taken by the Chief Executive against a Participant under Rule 704;

- 4.2 to hear charges brought against any Participant;
- 4.3 to refer the matter to SEOCH if the charges may lead to the expulsion of the Exchange Participant charged from SEOCH;
- 4.4 to fix a date for the disciplinary hearing and instruct the Secretary to the Disciplinary Committee to serve the notice of the disciplinary hearing upon the Participant charged and the Enforcement Section;
- 4.5 to summon the Participant charged and the Enforcement Section to attend before it to give evidence in relation to the charges made against the Participant;
- 4.6 to consider and determine, after conclusion of the hearing, whether or not each charge has been proved;
- 4.7 to hear and consider pleas in mitigation;
- 4.8 to impose any of the penalties listed in Rule 702;
- 4.9 to order payment to or by a Participant charged of costs and expenses incurred in obtaining external legal representation for the purposes of the disciplinary hearing, such costs and expenses to be limited to professional legal fees and expenses at the disciplinary hearing;
- 4.10 to notify the Participant charged of the decision in writing including any award of costs and its right to refer the decision of the Disciplinary Committee to the Disciplinary Appeals Committee;
- 4.11 in the event that the Participant charged requires the matter to be referred to the Disciplinary Appeals Committee in accordance with Clause 4.14.1 of Part II, the Disciplinary Committee to produce a written statement of findings of fact, the reasons for its verdict and the reasons for any penalty imposed to the Participant charged, the Enforcement Section and the Secretary to the Disciplinary Appeals Committee;

- 4.12 in the event that the Enforcement Section requires the matter to be referred to the Disciplinary Appeals Committee in accordance with Clause 4.14.2 of Part II, the Disciplinary Committee to produce to the Participant charged, the Enforcement Section and the Secretary to the Disciplinary Appeals Committee a decision in writing setting out its reasons for the penalty;
- 4.13 in the event that the Enforcement Section requires the decision to be referred to the Disciplinary Appeals Committee in accordance with Clause 4.14.3 of Part II, the Disciplinary Committee to produce a written statement of findings of fact, the reasons for its verdict and the reasons for any penalty imposed to the Enforcement Section and the Secretary to the Disciplinary Appeals Committee;
- 4.14 to review the disciplinary rules and procedures from time to time and make recommendations to the Board if appropriate;
- 4.15 to extend, vary or waive any period of time referred to in the Disciplinary Procedures or as previously ordered by the Disciplinary Committee;
- 4.16 to require the Participant charged or the Enforcement Section to supply such further information and documents in its possession or under its control relating to the case as the Disciplinary Committee sees fit;
- 4.17 to delegate to a member of the Disciplinary Committee the power to give instructions to the Participant charged and the Enforcement Section through the Secretary to the Disciplinary Committee on procedural matters relating to the disciplinary proceedings; and
- 4.18 to reconsider the verdict and the penalty of disciplinary cases remitted by the Disciplinary Appeals Committee under Clause 5.8 of Part II.

5. Disciplinary Appeals Committee

The responsibilities and functions of the Disciplinary Appeals Committee include the following:-

- 5.1 to hear matters referred by the Participant charged following verdict reached by the Disciplinary Committee in accordance with Clause 4.14.1 of Part II;

- 5.2 to summon the Participant charged to attend before the Disciplinary Appeals Committee to give evidence in relation to the charges, if fresh evidence is to be adduced and to summon the Participant charged to attend before it to make submissions in respect of the matter referred by the Enforcement Section under Clause 4.14.2 of Part II;
- 5.3 to summon the Enforcement Section to attend before the Disciplinary Appeals Committee to make submissions in respect of the matter referred by the Participant charged under Clause 4.14.1 of Part II;
- 5.4 to consider and determine, after conclusion of the hearing, whether to uphold or quash the verdict of the Disciplinary Committee;
- 5.5 to consider whether to impose the same, or substitute a lesser or greater penalty for that imposed by the Disciplinary Committee on the Participant charged if it upholds the verdict of the Disciplinary Committee;
- 5.6 to provide a written decision;
- 5.7 to consider and determine, in the case of a referral from the Enforcement Section on penalty, whether to uphold the penalty imposed by the Disciplinary Committee or to impose a lesser or greater penalty in substitution;
- 5.8 to consider the points of principles referred by the Enforcement Section in accordance with Clause 4.14.3 of Part II and give its opinion and/or guidelines to the Disciplinary Committee and the Enforcement Section;
- 5.9 to extend, vary or waive any period of time referred to in the Disciplinary Procedures or as previously ordered by the Disciplinary Appeals Committee;
- 5.10 to require the Participant charged or the Enforcement Section to supply such further information and documents in its possession or under its control relating to the case as the Disciplinary Appeals Committee sees fit;
- 5.11 to order payment to or by a Participant charged of costs and expenses incurred in obtaining external legal representation for the purposes of the hearing, such costs and expenses to be limited to professional legal fees and expenses at the hearing of the referral;

- 5.12 to vary an order for costs and expenses only when hearing a referral made to it under Clauses 4.14.1 and 4.14.2 of Part II;
- 5.13 to delegate to a member of the Disciplinary Appeals Committee the power to give instructions to the Participant charged and the Enforcement Section through the Secretary to the Disciplinary Appeals Committee on procedural matters relating to the disciplinary proceedings; and
- 5.14 to remit disciplinary cases to the Disciplinary Committee for reconsideration under Clause 5.8 of Part II.

6. The Chief Executive

- 6.1 the Chief Executive has certain disciplinary powers under Rules 226 and 704 and they should only be used in the event of emergency or extreme need for swift action in any particular case. The Chief Executive should keep the Disciplinary Committee informed, at the earliest opportunity, of any exercise of those disciplinary powers; and
- 6.2 the Chief Executive or his delegates shall have the power to summon any Participant to attend before him or his delegates.

7. SEOCH

The responsibilities and functions of SEOCH include the following:-

- 7.1 to investigate alleged breaches of the Clearing Rules;
- 7.2 to refer, at its discretion, reports and findings regarding any alleged offences to be dealt with by hearings to the Enforcement Section for investigation and/or further disciplinary action; and
- 7.3 to hear any case of which the Disciplinary Committee or the Disciplinary Appeals Committee is of the opinion that the penalty to be imposed is expulsion of the Exchange Participant charged from SEOCH participation, in accordance with the procedures as determined by SEOCH from time to

time.

PART II

DISCIPLINARY PROCEDURES

1. Offences to be Dealt with under the Standard Penalty Procedures and Offences to be Dealt with by Hearings

1.1 The following are classified as "offences to be dealt with under the Standard Penalty Procedures":-

1.1.1 misconduct in the Trading Hall such as smoking, gaming, gambling and any other acts considered by the Board to be detrimental to the interests of the Exchange contrary to Rule 549;

1.1.2 failure to display Exchange Participant Certificate or certified copy thereof, duplicate Exchange Participant Certificate or replacement Exchange Participant Certificate as required by Rules 351A(1), 352B(4) and 352B(5);

1.1.3 [Repealed]

1.1.4 failure to return to the Exchange the Exchange Participant Certificate upon cessation of business as required under Rule 351A(2);

1.1.5 failure to report to the Exchange on loss of an Exchange Participant Certificate as required under Rule 352B(4);

1.1.6 failure of an Exchange Participant to give advance notice of commencement, suspension (except as a result of the event referred to in Rule 345 or by order of the Exchange), cessation or recommencement of business as required under Rule 353;

- 1.1.7 failure of an Exchange Participant to be a licensed corporation or deemed to be a licensed corporation licensed to carry on Type 1 regulated activity under the Securities and Futures Ordinance as required under Rule 302(2); and
 - 1.1.8 failure of a Special Participant to be an ATS provider authorised by the Commission under section 95(2) of the Ordinance as required under Rule 1507(2).
- 1.2 All other situations calling for disciplinary action are classified as "offences to be dealt with by hearings".
 - 1.3 Any person, whether an Exchange official or a member of the Board, the Disciplinary Committee or the Disciplinary Appeals Committee, who is an interested party by virtue of his connection with the Participant being charged or his involvement in the matters being dealt with shall declare his interest to the Exchange and abstain from taking any part in the procedures set out below (unless required to give information or evidence to those Committees).

2. Standard Penalty Procedures

- 2.1 The Enforcement Section or the Disciplinary Section, as the case may be, shall conduct an investigation into any alleged offence to be dealt with under the Standard Penalty Procedures.
- 2.2.1 Upon being satisfied that an offence to be dealt with under the Standard Penalty Procedures referred to in Clause 1.1.1 of Part II has been committed, the Enforcement Section or the Disciplinary Section, as the case may be, shall issue a Warning Letter to the Exchange Participant, warning that if the action required to be taken in the Warning Letter was not complied with within the period stipulated in the Warning Letter, the penalty as prescribed for that particular offence in the Schedule of Penalties would be imposed. In the Warning Letter, it shall be clearly stated that the Exchange Participant, if it so wishes, may request the matter be dealt with by a hearing before the Disciplinary Committee within the time limit stipulated in the Warning Letter.

- 2.2.2 Upon being satisfied that an offence to be dealt with under the Standard Penalty Procedures referred to in any of the Clauses 1.1.2 to 1.1.4 and 1.1.6 of Part II has been committed, the Disciplinary Section or the Enforcement Section, as the case may be, shall issue a letter to the Exchange Participant, advising that the penalty as prescribed for that particular offence or offences in the Schedule of Penalties has been imposed and shall be paid within the period stipulated in the letter. In the letter, it shall be clearly stated that the Exchange Participant, if it so wishes, may request the matter be dealt with by a hearing before the Disciplinary Committee within the time limit stipulated in the letter.
- 2.2.3 Upon being satisfied that an offence to be dealt with under the Standard Penalty Procedures referred to in Clause 1.1.5 of Part II has been committed, the Disciplinary Section or the Enforcement Section, as the case may be, shall issue a Warning Letter, warning that in case of any repeated offence, the penalty as prescribed for that particular offence in the Schedule of Penalties would be imposed. In the Warning Letter, it shall be clearly stated that the Exchange Participant, if it so wishes, may request the matter be dealt with by a hearing before the Disciplinary Committee within the time limit stipulated in the Warning Letter.
- 2.2.4 Upon being satisfied that an offence to be dealt with under the Standard Penalty Procedures referred to in Clauses 1.1.7 and 1.1.8 of Part II has been committed, the Disciplinary Section or the Enforcement Section, as the case may be, shall issue a letter to the Participant, advising that the penalty as prescribed for that particular offence in the Schedule of Penalties would be imposed at the date stipulated in the letter. In the letter, it shall be clearly stated that the Participant, if it so wishes, may request the matter be dealt with by a hearing before the Disciplinary Committee within the time limit stipulated in the letter.
- 2.3.1 If in response to a Warning Letter issued by the Enforcement Section or the Disciplinary Section under Clause 2.2.1 of Part II, the Participant requests that the matter be referred to the Disciplinary Committee, the Enforcement Section shall handle the case in accordance with the Procedures for Offences To Be Dealt With By Hearings thereafter leading to a hearing before the Disciplinary Committee.

- 2.3.2 If in response to a Warning Letter or letter respectively issued by the Enforcement Section or the Disciplinary Section under Clause 2.2.1 or Clause 2.2.2 of Part II, the Participant requests that the matter be referred to the Disciplinary Committee, the Enforcement Section shall handle the case in accordance with the Procedures for Offences To Be Dealt With By Hearings thereafter leading to a hearing before the Disciplinary Committee.
- 2.3.3 If in response to a letter or Warning Letter, as the case may be, issued by the Enforcement Section or the Disciplinary Section under Clause 2.2.2, or Clause 2.2.3 or Clause 2.2.4 of Part II, the Participant requests that the matter be referred to the Disciplinary Committee, the Enforcement Section shall handle the case in accordance with the Procedures for Offences To Be Dealt With By Hearings thereafter leading to a hearing before the Disciplinary Committee.
- 2.4 The Disciplinary Committee may after hearing the matter referred to it in accordance with Clauses 2.3.1 to 2.3.3 of Part II, in addition to any penalty which it may impose, order the Participant charged to pay the standard penalty prescribed in the Schedule of Penalties.
- 2.5 A Participant may at any time after having requested the matter to be referred to the Disciplinary Committee admit the offence to be dealt with under the Standard Penalty Procedures and pay the penalty prescribed in the Schedule of Penalties for the offence or offences with which it had been charged.

3. Procedures for Offences to be Dealt with by Hearings

- 3.1 The relevant division, department, section, unit or SEOCH (as the case may be) shall conduct preliminary investigation on suspected breaches and report the findings of such investigation to the Enforcement Section.
- 3.2 The Enforcement Section may, if necessary, conduct further investigation on all referred cases and may initiate investigation on suspected breaches. If it is satisfied that a prima facie case has been established, it may institute disciplinary proceedings by providing a statement of case including details of the charges to the Secretary to the Disciplinary Committee or if thought fit, issue a warning letter to the Participant concerned. If the Enforcement Section is not so satisfied, the case shall not be pursued further.

- 3.3 The Secretary to the Disciplinary Committee shall serve the statement of case upon the Participant charged.

4. Disciplinary Proceedings before the Disciplinary Committee

- 4.1 In any case referred to the Disciplinary Committee, in addition to those members of the Disciplinary Committee who have declared an interest under Clause 1.3 of Part II and excused himself from taking any part in the case (unless required to give information or evidence to any Committee), no member of the Disciplinary Appeals Committee shall be permitted to attend any hearing of the Disciplinary Committee whilst it is considering any matter relating to that case.
- 4.2 If the Participant charged wishes to contest the disciplinary proceedings, it shall, within 14 days from being served with a statement of case, submit a statement of defence to the Secretary to the Disciplinary Committee.
- 4.3 If the Participant charged wishes to admit the charges, it shall inform the Disciplinary Committee in writing of that fact within 14 days from being served with a statement of case, and if it so wishes, may at the same time and in the same notification make a plea in mitigation to the Disciplinary Committee. If the Participant charged wishes to make such a plea, it may make it in writing or orally at its option, however, if the plea is made in writing, the Disciplinary Committee may require the Participant charged to attend before it in person to explain its plea. Thereafter the Disciplinary Committee shall decide upon a penalty without the need for a further hearing. The fact that the Participant charged has admitted the charges will of itself be regarded as a mitigating circumstance.
- 4.4 Within 21 days of service of the statement of case by the Secretary to the Disciplinary Committee, the Participant charged and the Enforcement Section shall provide the following, where applicable, to the Secretary to the Disciplinary Committee:-
- 4.4.1 a list of the witnesses to be called at the hearing; and
- 4.4.2 copies of the documents to be produced at the hearing.

- 4.5 The Secretary to the Disciplinary Committee shall as soon as practicable after receipt of the list and the documents referred to in Clause 4.4 of Part II forward the same to the Disciplinary Committee, the Participant charged and the Enforcement Section (as the case may be).
- 4.6 After receipt of the list and/or the documents, if any, referred to in Clause 4.4 of Part II, the Disciplinary Committee shall fix a date for the hearing and its Secretary shall notify the Participant charged and the Enforcement Section of the date for hearing.
- 4.7 A notice under Clause 4.6 of Part II shall set out the time, date and place of the hearing and shall be served no later than 14 days before the day fixed for the hearing.
- 4.8 The hearing shall be held in private.
- 4.9 If the Participant charged fails to attend the hearing before the Disciplinary Committee, the Disciplinary Committee may proceed in its absence and dispose of the matter in whatever manner as it sees fit.
- 4.10 At the hearing, the Participant charged and the Enforcement Section shall have the right to call and question witnesses including those called by the other party and to address the Disciplinary Committee; and the Disciplinary Committee may question the witnesses, the Participant charged and the representatives of the Enforcement Section.
- 4.11 After the hearing, the Disciplinary Committee shall consider whether each charge has been proved, and shall notify the Participant charged and the Enforcement Section in writing of its verdict on each charge, its penalty and any award as to costs.

- 4.12 If the Participant charged is found to have committed the offence charged, it may make a plea in mitigation. The plea in mitigation must be made in writing within 5 days from the date of the notification of the verdict of the Disciplinary Committee, save that if the verdict is given immediately upon conclusion of the hearing the plea in mitigation may (at the Participant's choice) be made immediately thereafter and orally. If a written plea in mitigation is made by the Participant charged, the Disciplinary Committee may require the Participant charged to attend before it to explain the plea.
- 4.13 After considering any plea in mitigation, the Disciplinary Committee shall make its decision in writing, containing the verdict and penalty on each charge.
- 4.14.1 If the Participant charged is not satisfied with the decision of the Disciplinary Committee, it may within 14 days of service of the decision require the matter to be referred to the Disciplinary Appeals Committee. In so doing, the Participant charged shall specify that it is dissatisfied with the verdict or the penalty or both.
- 4.14.2 If the Enforcement Section is not satisfied with the decision of the Disciplinary Committee on penalty, it may within 14 days of service of the decision require the matter to be referred to the Disciplinary Appeals Committee.
- 4.14.3 If the Enforcement Section is not satisfied with the decision of the Disciplinary Committee on verdict, it may within 14 days of service of the decision require the matter to be referred to the Disciplinary Appeals Committee for opinion and/or guidelines on points of principles.
- 4.15 If the Participant charged requires the matter to be referred to the Disciplinary Appeals Committee in accordance with Clause 4.14.1 of Part II, the Disciplinary Committee shall produce a reasoned decision in writing, setting out its findings of fact, the reasons for its verdict and any penalty imposed and its Secretary shall issue the same to the Participant charged, the Enforcement Section and the Secretary to the Disciplinary Appeals Committee.

- 4.16.1 In requiring the matter to be referred to the Disciplinary Appeals Committee in accordance with Clause 4.14.1 of Part II, the Participant charged may apply in writing to the Secretary to the Disciplinary Committee for a full transcript of the hearing by the Disciplinary Committee at which all parties are present. A copy of the full transcript, if obtained by the Participant charged, shall be served by it on the Enforcement Section. The costs of producing the full transcript shall be borne by the Participant charged.
- 4.16.2 In requiring the matter to be referred to the Disciplinary Appeals Committee in accordance with Clause 4.14.2 of Part II, the Enforcement Section may request the Secretary to the Disciplinary Committee for a full transcript of the hearing by the Disciplinary Committee at which all parties are present. The Enforcement Section shall cause a copy of the full transcript, if obtained, to be served on the Participant charged.
- 4.17.1 If the Enforcement Section requires a decision of the Disciplinary Committee on penalty to be referred to the Disciplinary Appeals Committee in accordance with Clause 4.14.2 of Part II, the Disciplinary Committee shall produce a decision in writing, setting out its reasons for the penalty and its Secretary shall issue the same to the Participant charged, the Enforcement Section and the Secretary to the Disciplinary Appeals Committee.
- 4.17.2 If the Enforcement Section requires a decision of the Disciplinary Committee on verdict to be referred to the Disciplinary Appeals Committee in accordance with Clause 4.14.3 of Part II, the Disciplinary Committee shall produce a reasoned decision in writing, setting out its findings of fact, the reasons for its verdict and of its penalty imposed and its Secretary shall issue the same to the Enforcement Section and the Secretary to the Disciplinary Appeals Committee.
- 4.18.1 If the Disciplinary Committee after being satisfied that a prima facie case has been established against the Exchange Participant charged in respect of breach of the Clearing Rules, is of the opinion that the penalty to be imposed is expulsion of the Exchange Participant charged from SEOCH, the Disciplinary Committee shall refer the matter to SEOCH for hearing through the company secretary of SEOCH.

4.18.2 If the matter is being referred to the SEOCH in accordance with Clause 4.18.1 of Part II, the Secretary to the Disciplinary Committee shall within 14 days after the decision has been made by the Disciplinary Committee serve on the Exchange Participant charged, the Enforcement Section and the Secretary to the SEOCH:-

- a written notice of the referral; and
- copies of all documents related to the matter.

5. Disciplinary Proceedings before the Disciplinary Appeals Committee

5.1 In any case referred to the Disciplinary Appeals Committee under Clauses 4.14.1, 4.14.2 and 4.14.3 of Part II, in addition to those members of the Disciplinary Appeals Committee who have declared an interest under Clause 1.3 of Part II and excused himself from taking any part in the case (unless required to give information or evidence to any Committee), no member of the Disciplinary Committee shall be permitted to attend any hearing in the Disciplinary Appeals Committee whilst it is considering any matter relating to that case.

5.2.1 If the matter is referred to the Disciplinary Appeals Committee in accordance with Clause 4.14.1 of Part II, the Participant charged shall, within 14 days of receipt of the reasoned decision in writing referred to in Clause 4.15 of Part II, lodge a statement of grounds of referral, and particulars of any fresh evidence it wishes to adduce, with the Secretary to the Disciplinary Appeals Committee.

5.2.2 If the decision of the Disciplinary Committee on penalty is referred to the Disciplinary Appeals Committee in accordance with Clause 4.14.2 of Part II by the Enforcement Section, it shall, within 14 days of receipt of the decision in writing referred to in Clause 4.17.1 of Part II, lodge a statement of grounds of referral with the Secretary to the Disciplinary Appeals Committee.

- 5.2.3 If the decision of the Disciplinary Committee is being referred to the Disciplinary Appeals Committee in accordance with Clause 4.14.3 of Part II by the Enforcement Section, it shall, within 14 days of receipt of the reasoned decision in writing referred to in Clause 4.17.2 of Part II, lodge a statement of grounds of referral with the Secretary to the Disciplinary Appeals Committee, together with points on which opinion and/or guidelines it wishes the Disciplinary Appeals Committee to give.
- 5.3 The Secretary to the Disciplinary Appeals Committee shall as soon as practicable after receipt of the documents referred to in Clauses 5.2.1, 5.2.2 or 5.2.3 of Part II forward the same to the Disciplinary Appeals Committee and either the Participant charged or the Enforcement Section as the case may be.
- 5.4 The Disciplinary Appeals Committee shall fix a date for the hearing and its Secretary shall notify the Participant charged and the Enforcement Section of the date for hearing.
- 5.5 A notice under Clause 5.4 of Part II shall set out the time, date and place of the hearing and shall be served no later than 14 days before the hearing.
- 5.6 The hearing shall be held in private.
- 5.7 If the Participant charged or the Enforcement Section fails to attend the hearing before the Disciplinary Appeals Committee, the Disciplinary Appeals Committee may proceed in its absence and dispose of the matter in whatever manner as it sees fit.
- 5.8 If fresh evidence is produced at the hearing by the Participant charged, and the Disciplinary Appeals Committee considers that such fresh evidence should be allowed, the Disciplinary Appeals Committee may hear the case itself. Should the Disciplinary Appeals Committee determine that it is not appropriate to do so, it shall remit the matter to the Disciplinary Committee for reconsideration of the verdict and the penalty.

- 5.9.1 If the Participant charged does not seek to introduce fresh evidence, the Disciplinary Appeals Committee shall consider the matter on the basis of the reasoned decision given by the Disciplinary Committee, the record of evidence given before the Disciplinary Committee, the statement of the grounds of referral and the oral submissions made by the Participant charged and the Enforcement Section at the hearing. Having done so, the Disciplinary Appeals Committee may either dismiss the charges or, if it upholds the verdict of the Disciplinary Committee, either impose the same, or substitute a lesser or a greater penalty for that imposed by the Disciplinary Committee.
- 5.9.2 In dealing with the referral of decisions on both verdict and penalty required by the Enforcement Section, the Disciplinary Appeals Committee shall consider the matter on the basis of the reasoned decision given by the Disciplinary Committee, the record of evidence given before the Disciplinary Committee, the statement of the grounds of referral and the oral submissions made by the Participant charged and the Enforcement Section before the Disciplinary Committee and the Disciplinary Appeals Committee. Having done so, the Disciplinary Appeals Committee may either uphold the penalty imposed by the Disciplinary Committee, or substitute a lesser or a greater penalty, or give its opinion and/or guidelines on points of principles for future reference to the Enforcement Section and the Disciplinary Committee, as the case may be.
- 5.10 The Secretary to the Disciplinary Appeals Committee shall notify the Participant charged and the Enforcement Section in writing of the decision of the Disciplinary Appeals Committee.
- 5.11 The decision of the Disciplinary Appeals Committee on a referral shall be final and conclusive and the Disciplinary Appeals Committee shall not be required to give reasons for its decision.

6. Legal Representation and Costs

- 6.1.1 The Participant charged shall have the right to be represented by a solicitor or counsel at the hearing before the Disciplinary Committee or the Disciplinary Appeals Committee (as the case may be) [Rule 716(1)].

- 6.1.2 The Enforcement Section may seek external legal representation in cases where external legal representation is obtained by the Participant charged.
- 6.2 If the Participant charged wishes to be represented by a solicitor or counsel at the hearing before the Disciplinary Committee or the Disciplinary Appeals Committee (as the case may be), it shall notify the Disciplinary Committee or the Disciplinary Appeals Committee (as the case may be) of the name of the solicitor or counsel representing it within 14 days from being served with a statement of case.
- 6.3 The Disciplinary Committee and the Disciplinary Appeals Committee (as the case may be), may order a payment:-
- to a Participant charged in relation to costs and expenses incurred by it in obtaining external legal representation for the purposes of the disciplinary hearing or the hearing of the referral; or
 - by a Participant charged in relation to costs and expenses incurred by the Enforcement Section, the Disciplinary Committee and the Disciplinary Appeals Committee (as the case may be) in obtaining external legal representation for the purposes of the disciplinary hearing or the hearing of the referral.

The above costs and expenses to be limited to professional legal fees and expenses of attending (but not preparing for) the disciplinary hearing or the hearing of the referral (as the case may be) [Rule 716(2)].

- 6.4 If the Disciplinary Committee or the Disciplinary Appeals Committee (as the case may be) in the exercise of its discretion sees fit to make an order for costs and expenses including hearing of fresh evidence produced by the Participant charged and the Enforcement Section, it shall order the payment of costs and expenses to follow the event except where it appears to the Disciplinary Committee or the Disciplinary Appeals Committee (as the case may be) that in the circumstances of the case any other order should be made as to the whole or any of the costs and expenses.
- 6.5 The amount of costs and expenses to be paid:-

- to a Participant charged in relation to costs and expenses incurred by it in obtaining external legal representation for the purposes of the disciplinary hearing or the hearing of the referral; or
- by a Participant charged in relation to costs and expenses incurred by the Enforcement Section, the Disciplinary Committee and the Disciplinary Appeals Committee (as the case may be) in obtaining external legal representation for the purposes of the disciplinary hearing or the hearing of the referral,

shall be determined by the Disciplinary Committee or the Disciplinary Appeals Committee (as the case may be), and any sum so ordered to be paid by a Participant charged shall be recoverable by the Exchange as a civil debt [Rule 716(2)].

- 6.6 Any order for costs and expenses made under Clause 6.3 of Part II shall be final and conclusive and not subject to appeal. Provided that the Disciplinary Appeals Committee in hearing a referral in accordance with Clauses 4.14.1 or 4.14.2 of Part II may reverse or vary an order of costs.

7. Publicity

After conclusion of disciplinary proceedings, the Disciplinary Committee or the Disciplinary Appeals Committee (as the case may be) may direct that the name of any Participant charged, their charges and penalties imposed be published in any manner or medium which the relevant Committee shall determine.

SCHEDULE OF PENALTIES

1. Misconduct in the Trading Hall [Rule 549]:-
 - 1.1 for the first offence within a period of 12 months:-
 - issue of a Warning Letter by the Disciplinary Section.
 - 1.2 for the second offence within a period of 12 months:-

- issue of a second Warning Letter by the Enforcement Section and the posting of a notice in the Trading Hall naming the Exchange Participant for misconduct under Rule 549.
- 1.3 for the third offence within a period of 12 months:-
- issue of a third Warning Letter by the Enforcement Section, the posting of a second notice in the Trading Hall naming the Exchange Participant for misconduct under Rule 549 and imposition of a fine of \$500.
- 1.4 any subsequent offence to be treated as an offence to be dealt with by hearings in accordance with the Procedures For Offences To Be Dealt With By Hearings.
2. Failure to display Exchange Participant Certificate or certified copy thereof, duplicate Exchange Participant Certificate or replacement Exchange Participant Certificate contrary to Rule 351A(1), 352B(4) or 352B(5):-
- an imposition of a fine of \$5,000 each time.
3. [Repealed]
4. Failure to return to the Exchange the Exchange Participant Certificate upon cessation of business, contrary to Rule 351A(2):-
- an imposition of a fine of \$5,000.
5. Failure to report to the Exchange of loss of an Exchange Participant Certificate contrary to Rule 352B(4):-
- for the first offence, issue of a Warning Letter by the Disciplinary Section;
 - any subsequent offence, an imposition of a fine of \$5,000.
6. Failure of an Exchange Participant to give advance notice of commencement, suspension (except as a result of the event referred to in Rule 345(1) or 345(2) or by order of the Exchange), cessation or recommencement of business, contrary to Rule 353:-

- for the first offence, an imposition of a fine of \$5,000;
 - any subsequent offence to be treated as an offence to be dealt with by hearings in accordance with the Procedures For Offences To Be Dealt With By Hearings.
7. Failure of an Exchange Participant to be a licensed corporation or deemed to be a licensed corporation licensed to carry on Type 1 regulated activity under the Securities and Futures Ordinance, contrary to Rule 302(2):-
- Suspension of Exchange Participantship.
8. Failure of a Special Participant to be an ATS provider authorised by the Commission under section 95(2) of the Securities and Futures Ordinance, contrary to Rule 1507(2).
- Suspension of Special Participantship.