

PART VII

BUSINESS CONDUCT, ETC. OF INTERMEDIARIES

167. Requirements to disclose short sales

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¹(2) Subject to subsection (3), a person who, without ~~lawful~~reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

¹(3) A person shall not ~~For the purposes of subsection (2), "lawful excuse" (合法辯解) includes~~ be regarded as committing an offence under subsection (2) if he contravenes subsection (1) by reason only of his inadvertence, carelessness or negligence.

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¹ In considering Paper No. CSA06/01 dated 17 November 2001 at the Bills Committee meeting on 4 December 2001, a Member expressed the view that "inadvertence, carelessness or negligence" should not be classified as "lawful excuse" in the statute. We accordingly propose to refine further clause 167(2) and (3) to address the comment while preserving the original scope of the "carve-out".

PART IX

DISCIPLINE, ETC.

Division 2 - Discipline, etc.

188. Other circumstances for disciplinary actions in respect of
licensed persons, etc.

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~~¹(8) For the avoidance of doubt, nothing in this section
limits the generality of section 187(1)(a) or (b) or (2)(a) or (b).~~

¹ In the light of an earlier comment from the Legal Service Division of the Legislative Council, we proposed in Paper CSA08/01 dated 23 November 2001 to add new clauses 188(8) and 190(8) to put it beyond doubt that the specific grounds of “fitness and properness” and “misconduct” in clauses 188 and 190 would not restrict the interpretation of “fitness and properness” and “misconduct” as grounds of disciplinary actions under clauses 187 and 189A. At the Bills Committee meeting on 10 December 2001, Members expressed the view that the two provisions were unnecessary as there should be no room for doubt. On reflection we agree with Members and hence propose to withdraw the amendments.

190. Other circumstances for disciplinary action in
respect of registered institutions, etc.

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~~¹(8) For the avoidance of doubt, nothing in this section
limits the generality of section 189A(1)(a) or (b) or (2)(a) or
(b).~~

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PART XVI

MISCELLANEOUS

368. Immunity

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(5) Nothing in subsection (4) affects any requirement under this Ordinance to disclose the name and address of a client of a legal practitioner (whether or not the legal practitioner is qualified in Hong Kong to practise as a¹ counsel or to act as a solicitor).

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¹ Technical amendment.

**388. General requirements for documents
lodged with Commission**

(1) Except as otherwise provided in sections 315 and 338², the Commission may, by notice published in the Gazette, specify any form in respect of any application, statement, notice, return or other document (however described) required to be lodged, filed or submitted with or to the Commission for the purposes of any provision of this Ordinance, either generally or in any particular case, and, without limiting the generality of the foregoing, may in the form -

- (aa) include directions and instructions relating to the compilation of the application, statement, notice, return or other document (as the case may be);
- (a) include directions and instructions relating to the inclusion of statutory declarations made in respect of the particulars in it; and
- (b) specify documents by which it is to be accompanied.

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² **Members did not propose any change to our proposal to disapply this clause to clause 315 in Part XV, which already provides for specific requirements for forms applicable to substantial shareholders of listed corporations to be prescribed under that Part. On further review, we have now added the reference to clause 338 in Part XV, which provides for specific requirements for forms applicable to directors and chief executives of listed corporations.**

Supplementary Note to Annex 3
to Paper No. CSA01/01
dated 9 November 2001

SCHEDULE 2

[ss. 3, 7 & 10 &
Schs. 1 & 9]

SECURITIES AND FUTURES COMMISSION

PART 1

CONSTITUTION AND PROCEEDINGS
OF COMMISSION, ETC.

¹Chairman and members of Commission

1. The Commission shall consist of a chairman and such number ~~(not being less than 7)~~ of ~~other members~~ executive directors and non-executive directors as is determined by the Chief Executive, all of whom shall be appointed by the Chief Executive as follows-

(a) the number of members of the Commission shall not be less than 8; and

(b) the majority of the members of the Commission shall be appointed to be non-executive directors of the Commission, and the remainder shall be appointed to be executive directors of the Commission; and.

¹ Members considered Paper No. CSA01/01 dated 9 November 2001 at the Bills Committee meeting on 4 December 2001 and made no comment on this clause. We accept the technical drafting comment of the Legal Service Division of the Legislative Council made outside the meeting and propose to further refine the drafting accordingly.

~~2.(b)~~ The chairman of the Commission shall, by virtue of holding that office, be regarded as an executive director of the Commission appointed under paragraph (a).

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**Deputy chairman and vacancies in office of
chairman or deputy chairman**

8. A designation under section 7 ceases to have effect when -
- (a) it is revoked by the Financial Secretary;
 - (b) where the designation is under section 7(a), an appointment is made under section 4; or
 - (c) where the designation is under section 7(b), the deputy chairman appointed under section 4 is ~~no longer unable~~ able to act as chairman ~~due to illness, absence from Hong Kong or any other cause~~², whichever is the earlier.

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² We accept the drafting comment of the Legal Service Division of the Legislative Council and accordingly propose this further minor amendment.

PART 2

NON-DELEGABLE FUNCTIONS OF COMMISSION

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(77) to borrow, or to charge any investments by way of security, under section 230(2)(a)³ of this Ordinance;

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³ Further technical amendment consequential to the amendment to clause 230 considered by Members at the Bills Committee meeting on 17 September 2001.

Supplementary Note to
Annex 2 to Paper No. CSA04/01
dated 17 November 2001

SCHEDULE 6 [ss. 114, 117, 136 & 139
& Schs. 1 & 9]

REGULATED ACTIVITIES

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PART 2

In this Schedule -

"advising on corporate finance" (就機構融資提供意見) means giving
advice -

* * * * *

(c) to a listed corporation or public company or a
subsidiary of the corporation or company, or to its
officers or shareholders, concerning corporate
restructuring ~~involving~~ in respect of¹ securities

¹ Members considered Annex 2 to Paper CSA04/01 on 4 December 2001. We propose this further technical amendment to reflect more clearly the policy intention that only the specific part of the corporate restructuring activities concerning securities falls within the definition of "advising on corporate finance", instead of the whole corporate restructuring exercise where securities are involved. This seeks to restrict the scope of activities that fall under the licensing regime to what is necessary.

(including the issue, cancellation or variation of
any rights attaching to any securities),
but does not include such advice given by -

* * * * *

(vi) ²~~a~~-counsel who gives such advice wholly incidental
to his practice as such;

* * * * *

² **Minor technical drafting amendment.**

"advising on futures contracts" (就期貨合約提供意見) means -

* * * * *

otherwise than by -

—(vi)—²a—counsel who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a counsel;

* * * * *

"advising on securities" (就證券提供意見) means -

* * * * *

otherwise than by -

(vi) ²a—counsel who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a counsel;

* * * * *

"asset management" (資產管理), in relation to a person, means providing a service of managing a portfolio of securities or

futures contracts for another person by the person, otherwise
than by -

* * * * *

(f) ²a—counsel who provides such service wholly
incidental to his practice as such;

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Securities and Futures Commission
31 December 2001

Supplementary Note to
the Annex to Paper No. CSA10A/01
dated 1 December 2001

SCHEDULE 7[ss. 209, 210, 211, 212, 213,
215, 224, 226 & 227]

SECURITIES AND FUTURES APPEALS TRIBUNAL

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PART 2

SPECIFIED DECISIONS

Division 1

Specified decisions made by the Commission

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Item	Provision	Description of decision
55.	Section 197(1)(a) ¹ or (b) of this Ordinance	Prohibition or requirement imposed on a licensed corporation concerning relevant property.

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¹ Members considered Paper CSA10A/01 at the Bills Committee meeting on 10 December 2001. We propose this further technical amendment consequential to amendment to clause 197.

Supplementary Note to Annex 3 to
Paper No. CSA12/01
dated 3 December 2001

SCHEDULE 8 [ss. 243, 244, 245,
248 & 260]

MARKET MISCONDUCT TRIBUNAL

1. In this Schedule, unless the context otherwise requires -
"chairman" (主席) means the chairman of the Tribunal;
"judge" (法官) has the meaning assigned to it by section 237(1) of
this Ordinance;
"member" (成員) means a member of the Tribunal;
"ordinary member" (普通成員) means a member other than the chairman;
"Presenting Officer" (提控官) has the meaning assigned to it by
section 237(1) of this Ordinance;
"proceedings" (研訊程序) means proceedings instituted under section
244 of this Ordinance;

~~"replacement member" (代替成員) means a replacement member of the Tribunal appointed under section 9;~~

"Tribunal" (審裁處) has the meaning assigned to it by section 237(1) of this Ordinance.

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¹ In response to comments made by a Bills Committee Member at the meeting on 14 December 2001, we have refined the drafting in clause 9 of this Schedule concerning the appointment to replace an ordinary member of the Market Misconduct Tribunal. As a result, the proposed definition of "replacement members" (originally proposed to replace the term "temporary members" in the Blue Bill) is no longer necessary and has been deleted. Consequential amendments are made to clauses 9, 9A and 13 to preserve the intention that a member appointed to replace an ordinary member in the course of any proceedings will serve the Tribunal until the conclusion of the proceedings. Clauses 10 to 12 are also deleted as a result of the amendments.

9. Subject to sections ~~9A to 12~~, the Chief Executive may appoint a person, ~~who is not a public officer, to act as a replacement member of the Tribunal in the place of any~~ replace an¹ ordinary member if the ordinary member has died, or has resigned from office under section 6 or has been removed from office under section 7, and the person may, subject to the other provisions of this Ordinance, from time to time be reappointed.

¹9A. The Chief Executive shall not appoint a person to replace an ordinary ~~act as a replacement member of the Tribunal under section 9~~ unless the chairman of the Tribunal -

- (a) has recommended that a person should be so appointed having regard to the interests of justice; and
- (b) has given a reasonable opportunity of being heard to -
 - (i) any person whose identity is specified pursuant to section 14(b) in the statement for the proceedings as described in section 14; and
 - (ii) the Presenting Officer appointed for the proceedings.

~~¹10. A temporary member who is appointed to act in the place of the chairman shall be a judge, and a temporary member who is appointed to act in the place of an ordinary member shall not be~~

~~a person who would be disqualified under section 243(3) of this Ordinance from appointment as such ordinary member.~~

~~11. A temporary member appointed to act in the place of a member may at any time resign his office by notice in writing to the Chief Executive.~~

~~12. A temporary member appointed to act in the place of a member may be removed from office by the Chief Executive for_ incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct proved to the satisfaction of the Chief Executive.~~

~~13. A person appointed to replace an ordinary member who acts in the place of an ordinary member in accordance with an appointment under section 9 shall be deemed for all purposes to be the ordinary member.~~

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17. The Tribunal may at any time during the course of any proceedings order the Presenting Officer appointed for the proceedings to amend the statement for the proceedings as described in section 14 in such manner as it considers appropriate, ~~subject to the requirement~~ except² that -

- (a) there shall be no amendment to the identity of the person originally specified pursuant to section 14(b) in the statement; and
- (b) after the amendment the financial product which is the subject of any market misconduct specified in the statement shall remain the same as the financial product which is the subject of the market misconduct originally specified in the statement.

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Financial Services Bureau
Securities and Futures Commission
31 December 2001

² Technical amendment for greater clarity in response to a comment made by a Member at the Bills Committee meeting on 14 December 2001.