

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.