

L.N. 213 of 2002

Securities and Futures (Short Selling and
Securities Borrowing and Lending
(Miscellaneous)) Rules

(Made by the Securities and Futures Commission under sections
397(1) and 398(7) of the Securities and Futures Ordinance
(Cap. 571), and under section 397(2) of that Ordinance
after consultation with the Financial Secretary)

1. Commencement

These Rules shall come into operation on the day appointed for the commencement of the Securities and Futures Ordinance (Cap. 571).

2. Interpretation

In these Rules, unless the context otherwise requires---

"blanket assurance" (概括性保證), in relation to a securities borrowing and lending agreement, means a confirmation from a lender to a borrower that the lender has a sufficient overall supply of a defined group of securities such that for a specific period of time as agreed on by the parties, the securities concerned are available to lend to the borrower;

"borrow" (借用安排), in relation to a securities borrowing and lending agreement, means a borrowing of securities under the agreement, irrespective of whether the borrowed securities have been delivered by the lender to the borrower;

"Exchange Fund" (外匯基金) means the fund established under section 3 of the Exchange Fund Ordinance (Cap. 66);

"Exchange Fund Bill" (外匯基金票據) means any instrument described as such which is issued by the Government for the account of the Exchange Fund under the Exchange Fund Ordinance (Cap. 66);

"Exchange Fund Note" (外匯基金債券) means any instrument described as such which is issued by the Government for the account of the Exchange Fund under the Exchange Fund Ordinance (Cap. 66);

"Futures Market Maker" (期貨莊家) means a person who is registered with the Futures Exchange Company for the purpose of performing, in accordance with rules made by the Futures Exchange Company, market making or liquidity providing activities in respect of futures contracts admitted to trading on the recognized futures market it operates;

"hold" (持有確認), in relation to a securities borrowing and lending agreement, means a confirmation from a lender to a borrower that for a specific period of time as agreed on by the parties, specific securities in a specific quantity are available to lend to the borrower;

"Listing Rules" (《上市規則》) means the Rules Governing the Listing of Securities

on The Stock Exchange of Hong Kong Limited made by the Stock Exchange Company;
"Monetary Authority-appointed Market Maker" (金融管理專員委任的莊家) means a person appointed as a market maker by the Monetary Authority under a letter of appointment currently in force for the purpose of conducting market making activities in respect of Exchange Fund Bills, Exchange Fund Notes or specified instruments;

"Securities Market Maker" (證券莊家) means a person who is registered with the Stock Exchange Company for the purpose of performing, in accordance with rules made by the Stock Exchange Company, market making or liquidity providing activities in respect of securities listed or admitted to trading on the recognized stock market it operates or an issuer of any structured product listed on the recognized stock market operated by the Stock Exchange Company under Chapter 15A of the Listing Rules;

"specified instrument" (指明文書) means any note issued by the MTR Corporation Limited, the Airport Authority, the Hong Kong Mortgage Corporation Limited and the Kowloon-Canton Railway Corporation under their respective note issuance programmes.

3. Classes of transactions to which section 170(3)(e) of the Ordinance not to apply

(1) The following classes of transactions are prescribed for the purposes of section 170(3)(e) of the Ordinance---

(a) a sale by a Monetary Authority-appointed Market Maker of any of the following securities---

- (i) Exchange Fund Bills;
- (ii) Exchange Fund Notes; or
- (iii) specified instruments;

(b) a sale by an agent of a Monetary Authority-appointed Market Maker of any of the following securities---

- (i) Exchange Fund Bills;
- (ii) Exchange Fund Notes; or
- (iii) specified instruments,

where the agent is acting in such capacity and believes and has reasonable grounds to believe that his principal is a Monetary Authority-appointed Market Maker of the security sold;

(c) a sale of securities effected in the course of conducting jobbing business.

(2) The following sales of securities shall be regarded as a sale of securities in the course of conducting jobbing business---

(a) the sale of a listed security ("A") by a Securities Market Maker for the purpose of hedging the risks of a position previously acquired in another listed security ("B") and---

- (i) A is a component of B or vice versa; or

(ii) where both A and B have a security as a common component;
(b) the sale of a listed security ("C") by a Futures Market Maker for the purpose of hedging the risks of a position previously acquired in---

(i) a futures contract in respect of C or an index of securities which includes C; or

(ii) a futures contract in respect of another security ("D") where D has a common component with C; or

(c) the sale of a listed security by a Securities Market Maker in performing market making or liquidity providing activities in respect of such security, where the Securities Market Maker acquires the right to vest such security in the purchaser before the end of the trading day following the day of the sale.

(3) In this section, "listed" (上市) means listed or admitted to trading on a recognized stock market operated by the Stock Exchange Company.

4. Classes of persons and circumstances in which certain requirements of section 171 of the Ordinance not to have effect

(1) Section 171(1) of the Ordinance does not have effect in relation to a specified short selling order, which is made by a person, where he is selling as a principal, and who at the time of conveying the short selling order, provides his agent with an oral assurance that the counterparty to the securities borrowing and lending agreement in question has the securities to which the order relates available to lend to him provided such person---

(a) (i) records such oral assurance in the form of a tape recording;

(ii) enters into an arrangement with his agent whereby the agent has agreed to---

(A) record such oral assurance in the form of a tape recording; or

(B) at the time of his receiving the short selling order, record the particulars as described in subsection (4) to which the order relates on a time-stamped record; or

(iii) confirms the giving of the oral assurance in the form of a document to the agent by the end of the day on which it was given; and

(b) complies with the applicable requirements of subsection (5).

(2) Section 171(3) of the Ordinance does not have effect in relation to a specified short selling order, which is made by an exchange participant, where he is selling as a principal provided that such exchange participant---

(a) prior to conveying the short selling order---

(i) has received from the counterparty to the securities borrowing and lending agreement in question an oral assurance that the counterparty has the securities to

which the order relates available to lend to him; and

(ii) has---

(A) recorded the oral assurance in the form of a tape recording;

(B) recorded the particulars as described in subsection (4) to which the order relates on a time-stamped record; or

(C) entered into an arrangement with the counterparty whereby the counterparty has agreed to---

(I) record the particulars as described in subsection (4) to which the order relates in the form of a document; and

(II) provide such document to the exchange participant by the end of the day on which the assurance was given; and

(b) complies with the applicable requirements of subsection (5).

(3) Section 171(5) of the Ordinance does not have effect in relation to a specified short selling order made by a person, where he is selling as an agent provided such person---

(a) prior to conveying the short selling order---

(i) has received from his principal, or the other person for whose benefit or on whose behalf such order is made (as the case may be) an oral assurance that the counterparty to the securities borrowing and lending agreement in question has the securities to which the order relates available to lend to him; and

(ii) has---

(A) recorded the oral assurance in the form of a tape recording;

(B) recorded the particulars as described in subsection (4) to which the order relates on a time-stamped record; or

(C) entered into an arrangement with his principal, or that other person (as the case may be), whereby his principal, or such other person (as the case may be) has agreed to provide a confirmation of the oral assurance in the form of a document to him by the end of the day on which the assurance was given; and

(b) complies with the applicable requirements of subsection (5).

(4) For the purposes of subsections (1)(a)(ii)(B), (2)(a)(ii)(B) and (C)(I) and (3)(a)(ii)(B), particulars are---

(a) the securities or group of securities borrowed under the securities borrowing and lending agreement, available for borrowing and the quantity; and

(b) whether a blanket assurance or a hold has been given or a borrow has been entered into, and the time it was given or entered into (as the case may be).

(5) Any person who records an oral assurance or particulars as described in subsection (4) or who receives a confirmation of an oral assurance in the form of a document (including a tape recording or time-stamped record) under subsection (1),

(2) or (3) shall---

(a) retain such document for not less than one year from the date of recording, collecting or receiving such assurance or particulars (as the case may be); and
(b) upon request made by the Commission at any time within that period give the Commission access to and produce the document within the time and at the place specified by the Commission.

(6) For the purposes of this section, a "specified short selling order" is an order which is a short selling order within the meaning of paragraph (a)(i) of the definition of "short selling order" in section 1 of Part 1 of Schedule 1 to the Ordinance.

5. Record keeping by lenders under securities borrowing and lending agreements

(1) When a lender under a securities borrowing and lending agreement gives a blanket assurance or a hold to a borrower, or enters into a borrow, the lender shall keep records in the form of a document, containing the following particulars---

(a) the name of the borrower;

(b) the securities or group of securities borrowed, or available for borrowing and the quantity thereof; and

(c) whether a blanket assurance or a hold has been given or a borrow has been entered into, and the time it was given or entered into (as the case may be).

(2) The lender shall---

(a) subject to paragraph (b), retain the records referred to in subsection (1) for not less than one year from the date the relevant record was made; and

(b) upon request made at any time within that year by the Commission, provide copies of any such record to the Commission.

(3) Where a lender under a securities borrowing and lending agreement is lending as an agent, such person shall be regarded as the lender for the purposes of subsections (1) and (2).

(4) In this section, "securities" (證券) means securities which are listed on a recognized stock market operated by the Stock Exchange Company.

Andrew Len Tao SHENG

Chairman,

Securities and Futures Commission

9 December 2002

Explanatory Note

These Rules are made by the Securities and Futures Commission under sections 397 and 398 of the Securities and Futures Ordinance (Cap. 571) ("the Ordinance"). They prescribe for the purposes of section 170(3)(e) of the Ordinance the classes of

transactions that are exempt from section 170(1) of the Ordinance. They specify the circumstances in which certain requirements of section 171 of the Ordinance do not have effect. They also specify the record keeping requirements for lenders under securities borrowing and lending agreements.