

SECURITIES (AMENDMENT) BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Secretary for Financial Services

Clause

Amendment Proposed

- 1 (a) By renumbering the clause as clause 1(1).
- (b) By adding -
- “(2) This Ordinance, other than section 5, shall come into operation on a day to be appointed by the Secretary for Financial Services by notice published in the Gazette.
- (3) Section 5 shall come into operation on the day following the date on which item 43 of Schedule 1 to the Securities (Margin Financing) (Amendment) Ordinance (20 of 2000) comes into operation.”.
- 4 (a) In the proposed section 80A, by deleting the definition of “short selling order” and substituting -
- ““short selling order” (賣空指示) -
- (a) subject to paragraph (b), means an order to sell securities in respect of which a seller or a

person, for whose benefit or on whose behalf the order is made, has a presently exercisable and unconditional right to vest the securities in the purchaser of them by virtue of having -

(i) under a securities borrowing and lending

agreement -

(A) borrowed the securities; or

(B) obtained a confirmation from the

counterparty to the agreement that the

counterparty has the securities

available to lend to him;

(ii) a title to other securities which are

convertible into or exchangeable for the

securities to which

the order relates;

(iii) an option to acquire the securities to which

the order relates;

(iv) rights or warrants to subscribe to and to

receive the securities to which the order

relates; or

(v) entered into with another person an

agreement or an arrangement of a

description as is prescribed under section

146;

(b) in relation to paragraph (a) (ii), (iii), (iv) or (v), does

not include an order where the seller or the first-

mentioned person has, at the time of placing the

order, issued unconditional instructions to obtain the

securities.”.

(b) By deleting the proposed section 80B and substituting -

“80B. Obligation to confirm short selling order

(1) A person, where he is selling as a principal, shall not convey a short selling order at or through the Unified Exchange unless he provides to his agent an assurance (which shall be in the form of a document) that -

(a) he has a presently exercisable and unconditional right to vest the securities to which the order relates in the purchaser of them; and

(b) where paragraph (a)(i) or (v) of the definition of “short selling order” is applicable, the counterparty to the agreement or arrangement concerned referred to in that paragraph has the securities to which the order relates available to lend or deliver to him.

(1A) The person referred to in subsection (1) shall provide to his agent such information (which shall be in the form of a document), if any, and within such time, as are prescribed under section 146.

(2) An exchange participant, where he is selling as a principal, shall not convey a short selling order referred to in paragraph (a)(i) or (v) of the definition of “short selling order” at or through the Unified Exchange unless he has received an assurance (which shall be in the form of a document) from the counterparty to the agreement or arrangement concerned referred to in that paragraph that the counterparty has the securities to which the order relates available to lend or deliver to him.

(2A) An exchange participant referred to in subsection (2) shall collect from the counterparty to the agreement or arrangement concerned such information (which shall be in the form of a document), if any, and within such time, as are prescribed under section 146.

(3) A person, where he is selling as an agent, shall not convey or accept an order to sell securities which is a short selling order at or through the Unified Exchange unless he has received from his principal or other person, for whose benefit or on whose behalf the order is made, an assurance (which shall be in the form of a document) that -

(a) his principal or that other person,

as the case may be, has a presently exercisable and unconditional right to vest the securities to which the order relates in the purchaser of them; and

(b) where paragraph (a)(i) or (v) of the definition of “short selling order” is applicable, the counterparty to the agreement or arrangement concerned referred to in that paragraph has the securities to which the order relates available to lend or deliver to him.

(3A) An agent referred to in subsection (3) shall collect from his principal such information (which shall be in the form of a document), if any, and within such time, as are prescribed under section 146.

(3B) For the purposes of subsections (1), (2) and (3), an investment adviser or a trustee who sells securities under any discretionary authority for and on behalf of his clients or beneficiaries shall be regarded as selling as a principal.

(4) The agent or the exchange participant who receives or collects the document containing the assurance and the information shall

-

(a) subject to paragraph (b), retain it for not less than 1 year from the date upon which it is received;

(b) provide it to the Commission upon request made at any time within that year by an employee of the Commission.

(5) An assurance or information referred to in subsection (1), (1A), (2), (2A), (3) or (3A) shall in any proceedings be admissible as prima facie evidence of the matters specified in that subsection to which the assurance or information, as the case may be, relates.

(6) Subject to subsection (7), a person who contravenes subsection (1), (2), or (3) shall be guilty of an offence and shall be liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(7) In proceedings for an offence under subsection (1), (2) or (3), it shall be a defence for the defendant charged with the offence to prove that when the defendant conveyed or, in the case of subsection (3), conveyed or accepted, the order concerned, he -

(a) did not know that the order was a short selling order;

or

(b) had reasonable grounds to believe and did believe that the order was not a short selling order.

(8) A person who, without reasonable excuse, contravenes subsection (1A), (2A), (3A) or (4) shall be guilty of an offence and shall be liable on conviction to a fine at level 5 and to imprisonment for 1 year.”.

(c) In the proposed section 80C -

(i) in subsection (1), by deleting “stockbroker or stockbroker’s” and substituting “exchange participant or exchange participant’s”;

(ii) by deleting subsection (2) and substituting -

“(2) For the purposes of this section, “exchange participant’s representative” (交易所參與者代表) means a registered dealer’s representative of an exchange participant.”.

5 By deleting the clause and substituting -

“5. Commission rules

Section 146(1) is amended -

(a) in paragraph (o), by repealing “stockbroker through whom the sale is being effected, of the fact that

the right to vest the securities in the purchaser is derived from such an arrangement” and substituting “exchange participant through whom the sale is being effected, of the fact that the right to vest the securities in the purchaser is derived from such an arrangement , and requiring such person, having sold such securities pursuant to such an arrangement, who purchases securities at or through the Unified Exchange in satisfaction, in whole or in part, of the obligations of that person under such arrangement to notify the exchange participant through whom such purchase or purchases are being effected of that fact”;

(b) by adding -

“(oa) providing that a lender under a securities borrowing and lending agreement within the meaning of section 80A shall -

(i) keep such records or documents

and in such manner and form as

may be prescribed by the rules;

(ii) give copies of any such records or

documents -

(A) to the Commission at the

Commission's request; and

(B) in such form and manner,

and within such time, as may

be prescribed by the

rules;".