

C210-E

Amend the Securities Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Securities (Amendment) Ordinance 1999.

2. Calls by registered dealers

Section 73(4) of the Securities Ordinance (Cap. 333) is amended by repealing "售賣人" and substituting "賣方".

3. Short selling restricted

Section 80(2) is amended by repealing "of \$10,000 and to imprisonment for 6 months" and substituting "at level 6 and to imprisonment for 2 years".

4. Sections added

The following are added---

"80A. Interpretation for purposes of sections 80A to 80C

In this section and sections 80B and 80C---

"assurance" (保證) means an assurance under section 80B(1), (2) or (3);

"securities borrowing and lending agreement" (證券借貸協議)---

(a) means an agreement whereby a person borrows or lends securities pursuant to an arrangement where the borrower undertakes to return securities of the same description to the lender or pay the equivalent value of the securities;

(b) includes a stock borrowing within the meaning of section 19(16) of the Stamp Duty Ordinance (Cap. 117);

"short selling order" (賣空指示) 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---

(a) entered into a securities borrowing and lending agreement with another person;

(b) entered into an agreement with another person under which the seller or the first-mentioned person is required to return the securities or pay the equivalent value of the securities to which the order relates;

(c) a title to other securities which are convertible into or exchangeable for the securities to which the order relates;

(d) an option to acquire the securities to which the order relates;

(e) rights or warrants to subscribe to and to receive the securities to which the order relates; or

(f) entered into with another person an agreement or an arrangement of a description

as is prescribed under section 146.

80B. Obligation to confirm short sales

(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---

(a) an assurance (which shall be in the form of a document) that---

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

(ii) where paragraph (a), (b) or (f) of the definition of "short selling order" is applicable, all the relevant parties to the agreement or arrangement concerned referred to in that paragraph will provide the securities to which the order relates; and

(b) such information (which shall be in the form of a document), if any, as is prescribed under section 146.

(2) A stockbroker, where he is selling as a principal, shall not convey a short selling order referred to in paragraph (a), (b) or (f) of the definition of "short selling order" at or through the Unified Exchange unless he---

(a) has received an assurance (which shall be in the form of a document) from all the relevant parties to the agreement or arrangement concerned referred to in that paragraph that they will provide the securities to which the order relates; and

(b) possesses such information (which shall be in the form of a document), if any, as is prescribed under section 146.

(3) A person, where he is selling as an agent, shall not accept or convey 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---

(a) an assurance (which shall be in the form of a document) that---

(i) 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

(ii) where paragraph (a), (b) or (f) of the definition of "short selling order" is applicable, all the relevant parties to the agreement or arrangement concerned referred to in that paragraph will provide the securities to which the order relates; and

(b) such information (which shall be in the form of a document), if any, as is prescribed under section 146.

(4) The stockbroker or other person who receives or possesses 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 shall in any proceedings be admissible as prima facie evidence of the matters specified in subsection (1), (2) or (3) to which the assurance relates.

(6) A person who contravenes subsection (1), (2), (3) 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.

#### 80C. Obligation to disclose short sales

(1) A stockbroker or stockbroker's representative who knows or is informed that an order to sell securities is a short selling order shall---

(a) when passing the order to any other person with a view that the other person shall input the order into the trading system of the Unified Exchange, inform such other person that the order is a short selling order;

(b) when inputting the order into the trading system of the Unified Exchange, indicate such matters as may be required under the applicable rules of the Unified Exchange to show that the order is a short selling order.

(2) For the purposes of this section, "stockbroker's representative" (股票經紀代表) means a registered dealer's representative of a stockbroker.

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

#### 5. Regulations

Section 146(1) is amended---

(a) in paragraph (ra), by repealing "seller is derived from such an arrangement" and substituting "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 stockbroker through whom such purchase or purchases are being effected of that fact";

(b) by adding---

"(raa) providing that a lender under a securities borrowing and lending agreement within the meaning of section 80A shall keep such records or documents and in such manner and form as may be prescribed by the rules;"

#### Explanatory Memorandum

The main purpose of this Bill is to amend the Securities Ordinance (Cap. 333) to provide a measure of protection to investors in securities by regulating the activities of those persons who carry on short selling activities (see the definition

of "short selling order" in new section 80A at clause 4).

2. Clause 4 adds 3 new sections---

(a) new section 80A defines the terms "assurance", "securities borrowing and lending agreement" and "short selling order" used in the new sections;

(b) new section 80B provides that---

(i) a person, where he is selling as a principal, shall not convey a short selling order unless he provides to his agent---

(A) an assurance that---

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

(II) where paragraph (a), (b) or (f) of the definition of "short selling order" is applicable, all the relevant parties to the agreement or arrangement concerned referred to in that paragraph will provide the securities to which the order relates; and

(B) such information as is prescribed under section 146;

(ii) a stockbroker, where he is selling as a principal, shall not convey a short selling order referred to in paragraph (a), (b) or (f) of the definition of "short selling order" unless he---

(A) has received an assurance from all the relevant parties to the agreement or arrangement concerned referred to in that paragraph; and

(B) possesses such information as is prescribed under section 146; and

(iii) a person, where he is selling as an agent, shall not accept or convey a short selling order unless he has received from his principal or other person, for whose benefit or on whose behalf the order is made---

(A) an assurance that---

(I) his principal or that other person, as the case may be, has a presently exercisable and unconditional right to vest the securities in the purchaser of them; and

(II) where paragraph (a), (b) or (f) of the definition of "short selling order" is applicable, all the relevant parties to the agreement or arrangement concerned referred to in that paragraph will provide the securities to which the order relates; and

(B) such information as is prescribed under section 146;

(c) new section 80C provides that a stockbroker or stockbroker's representative shall---

(i) when passing the order to any other person with a view that the other person shall input the order into the trading system of the Unified Exchange, inform such other person that the order is a short selling order;

(ii) when inputting the order into the trading system of the Unified Exchange, indicate such matters as may be required under the applicable rules of the Unified Exchange to show that the order is a short selling order.

3. Clause 5 revises the regulation making power under section 146(1)(ra) to provide the Securities and Futures Commission with the additional power to request information from investors to enhance the transparency of the stock market.