

GOVERNMENT TO TIGHTEN PENALTIES ON ILLEGAL STOCK SHORT SALE

The FSC announced the passage of a revision bill to the Financial Investment Services and Capital Markets Act at a plenary session of the National Assembly on December 9. The revision bill focuses on regulating illegal short sale activities including naked short sale to improve the accountability of domestic stock markets. The revision bill contains the following provisions.

KEY PROVISIONS

(A) IMPOSE PENALTY SURCHARGE AND CRIMINAL PENALTY ON ILLEGAL SHORT SALE

Currently, illegal short sale activities are punishable with minor fines. To strengthen punishment, penalty surcharges will be imposed up to the amount of short orders as well as criminal penalties of a minimum one year of imprisonment or a fine of more than three times and up to five times the avoided loss amount. The introduction of strict monetary sanctions and criminal penalties will help prevent intentional attempts at illegal short sale while preventing investor errors and mistakes.

(B) REQUIRE SHORT SELLERS TO KEEP RECORDS OF LOAN AGREEMENTS FOR FIVE YEARS

Short sellers need to keep their securities lending agreements for five years and promptly submit them to the financial authorities when requested. This will help improve transparency and help financial authorities to more readily identify illegal short sale activities.

(C) RESTRICT SHORT SELLERS' PARTICIPATION IN EQUITY FINANCING

Short sellers will be prohibited from participating in equity financing of companies whose stocks they have shorted once the companies' plans for equity financing have been disclosed. A penalty surcharge of up to KRW500 million will be imposed on violation of this provision.

(D) STRENGTHEN REGULATION ON SHORT SALE BAN

The temporary provision in the current enforcement decree that allows the authorities to prohibit stock short sale if it is deemed necessary to ensure the safety of stock markets and guarantee fair prices will be made permanent through this revision to the Act.

FURTHER PLANS

Once the revision to the Financial Investment Services and Capital Markets Act is approved at a cabinet meeting, it will go into effect three months after promulgation. In the meantime, the FSC will work on the amendments to lower regulations to ensure a seamless implementation. In close coordination with the Korea Exchange, the FSC will also work on the development of a real-time illegal short sale detection mechanism, require mandatory inspection for illegal short sale every month and increase the number of personnel responsible for monitoring.

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