

## FSC ANNOUNCES REVISIONS TO ENFORCEMENT DECREE AS A FOLLOW-UP TO IMPROVE RULES ON SHORT SELLING

The FSC announced revisions to the Enforcement Decree of the Financial Investment Services and Capital Markets Act (FSCMA) on January 13 as a follow-up measure to the government's effort to strengthen penalties on illegal stock short sale activities. The amendments will be put up for public comments until February 2, 2021.<sup>1</sup>

### **KEY REVISIONS**

#### **(A) RESTRICTION ON SHORT SELLERS' PARTICIPATION IN CAPITAL INCREASE**

The revised FSCMA restricts short sellers from participating in a company's capital increase via issuing new shares once the company has made such a plan public, except in certain cases. As such, the Enforcement Decree will be revised to determine a specific time period wherein the short seller's participation in capital increase is restricted as well as specific cases for exception as specified below. If an investor has shorted a company's stocks during the restriction period, the investor cannot participate in the company's capital increase, except for the cases where the short selling is deemed to have no unjust effects on the issuing price as stated below.

**(RESTRICTION PERIOD)** From one day after the disclosure of the company's capital increase plan until the determination of the issuing price

**(EXCEPTIONAL CASES)** (i) Purchase of new shares exceeding the amount of short positions between the time of the last short sale and the determination of the issuing price, (ii) participation in capital increase by trading units within a firm that operates separate trading units pursuant to the standards specified by the FSC that have no records of short selling the company's stocks and (iii) short selling for market making or liquidity provision purposes

#### **(B) MAINTENANCE OF SHORT SALE TRANSACTIONS DATA**

The revised FSCMA requires short sellers to keep their securities lending agreements for five years to be presented promptly to the relevant authorities upon request. As such, the Enforcement Decree will be revised to prescribe specific criteria to be maintained, including information on stock items, number of shares,

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<sup>1</sup> Please click [here](#) to see more details about key revisions to the FSCMA passed at the National Assembly on December 9, 2020.

transaction dates, counterparties, lending periods, fee rates, etc. It also requires the maintenance of transactions data stored in an electronic transaction processing platform or other format that is not susceptible for alteration.

#### **(C) PENALTY SURCHARGE STANDARDS**

The revised FSCMA newly created the imposition of penalty surcharges on illegal short sale activities. Specific amounts for monetary sanctions will be determined through comprehensive consideration of the total amount of short orders, profits gained from the illegal short sale activity, etc. and the application of the relevant supervisory regulations.

#### **(D) PENALTY ON VIOLATION OF DATA MAINTENANCE DUTY**

The revised FSCMA created penalty surcharges of up to KRW100 million for violations of the transactions data maintenance duty. The revised Enforcement Decree sets specific penalties within the legally permitted levels of KRW60 million for corporate entities and KRW30 million for non-corporate entities.

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For press inquiry, please contact Foreign Media Relations Team at [fsc\\_media@korea.kr](mailto:fsc_media@korea.kr).