

《證券及期貨(賣空及證券借貸(雜項))規則》
(第 571 章, 附屬法例 R)

**Securities and Futures (Short Selling and Securities Borrowing and Lending
(Miscellaneous)) Rules**
(Cap. 571 sub. leg. R)

版本日期
Version date
13.12.2018

經核證文本
Verified Copy

(《法例發布條例》(第 614 章) 第 5 條)
(Legislation Publication Ordinance (Cap. 614), section 5)

如某內頁的頁底標明：

- “經核證文本”；及
- 以下列表顯示的該頁的最後更新日期，
該頁所載條文即視作於上述“版本日期”的正確版本。

此文本所載條文，如並非正在實施，會有附註作說明。

A provision is presumed to be correctly stated as at the above version date if it is on a page marked at the bottom with:

- the words “Verified Copy”; and
- the last updated date shown in this table for the page.

Any provision included in this copy that is not in force is marked accordingly.

條文 Provision	頁數 Page number	最後更新日期 Last updated date
整條 Whole	1—18	13.12.2018

尚未實施的條文 / 修訂 ——

尚未實施的條文及修訂的資料，可於「電子版香港法例」(<http://www.elegislation.gov.hk>) 閱覽。

Provisions / Amendments not yet in operation —

Please see Hong Kong e-Legislation (<http://www.elegislation.gov.hk>) for information of provisions and amendments not yet in operation.

制定史

本為 2002 年第 213 號法律公告——2003 年第 45 號法律公告，2007 年第 11 號，2011 年第 8 號，2018 年第 5 號編輯修訂紀錄

Enactment History

Originally L.N. 213 of 2002 — L.N. 45 of 2003, 11 of 2007, 8 of 2011, E.R. 5 of 2018

《證券及期貨(賣空及證券借貸(雜項))規則》

(第 571 章, 附屬法例 R)

目錄

條次		頁次
1.	(已失時效而略去)	1
2.	釋義	1
3.	本條例第 170(3)(e) 條不適用的交易類別	5
4.	本條例第 171 條的某些規定對某些類別人士及情況不具效力	7
5.	證券借貸協議的借出人須備存紀錄	15

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

(Cap. 571 sub. leg. R)

Contents

Section		Page
1.	(Omitted as spent)	2
2.	Interpretation	2
3.	Classes of transactions to which section 170(3)(e) of the Ordinance not to apply	6
4.	Classes of persons and circumstances in which certain requirements of section 171 of the Ordinance not to have effect	8
5.	Record keeping by lenders under securities borrowing and lending agreements	16

《證券及期貨(賣空及證券借貸(雜項))規則》

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

(第 571 章第 397(1) 及 (2) 及 398(7) 條)
(略去制定語式條文——2018 年第 5 號編輯修訂紀錄)

(Cap. 571, sections 397(1) and (2) and 398(7))
(Enacting provision omitted—E.R. 5 of 2018)

[2003 年 4 月 1 日] 2003 年第 12 號法律公告
(格式變更——2018 年第 5 號編輯修訂紀錄)

[1 April 2003] L.N. 12 of 2003
(Format changes—E.R. 5 of 2018)

1. (已失時效而略去——2018 年第 5 號編輯修訂紀錄)

1. (Omitted as spent—E.R. 5 of 2018)

2. 釋義

在本規則中，除文意另有所指外——

《上市規則》 (Listing Rules) 指聯交所訂立的《香港聯合交易所有限公司證券上市規則》；

外匯基金 (Exchange Fund) 指根據《外匯基金條例》(第 66 章) 第 3 條設立的基金；

外匯基金票據 (Exchange Fund Bill) 指政府根據《外匯基金條例》(第 66 章) 為外匯基金的帳戶發出的稱為“外匯基金票據”的文書；

外匯基金債券 (Exchange Fund Note) 指政府根據《外匯基金條例》(第 66 章) 為外匯基金的帳戶發出的稱為“外匯基金債券”的文書；

金融管理專員委任的莊家 (Monetary Authority-appointed Market Maker) 指獲金融管理專員以現行有效的委任書委任為莊家以就外匯基金票據、外匯基金債券或指明文書進行莊家活動的人；

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);

持有確認 (hold) 就某證券借貸協議而言，指借出人向借用人作出的確認，表示某特定數量的特定證券在雙方議定的特定限期內可供借出予借用人；

指明文書 (specified instrument) 指香港鐵路有限公司、機場管理局、香港按揭證券有限公司及九廣鐵路公司根據它們各別的票據發行計劃而發行的票據；(2007 年第 11 號第 36 條)

借用安排 (borrow) 就某證券借貸協議而言，指根據該協議借用證券，不論借出人是否已將被借用證券交付予借用人；

期貨莊家 (Futures Market Maker) 指獲期交所註冊，以按照期交所訂立的規章就獲容許在期交所營辦的認可期貨市場進行交易的期貨合約進行莊家活動或流通量供應活動的人；

概括性保證 (blanket assurance) 就某證券借貸協議而言，指借出人向借用人作出的確認，表示借出人整體上有足夠的屬某個界定組別的證券供應，有關證券在雙方議定的特定限期內可供借出予借用人；

證券莊家 (Securities Market Maker) 指獲聯交所註冊以按照聯交所訂立的規章就在聯交所營辦的認可證券市場上市或獲容許在該證券市場進行交易的證券進行莊家活動或流通量供應活動的人；亦指根據《上市規則》第 15A 章在聯交所營辦的認可證券市場上市的結構性產品的發行人。(2011 年第 8 號第 28 條)

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

3. 本條例第 170(3)(e) 條不適用的交易類別

- (1) 現為施行本條例第 170(3)(e) 條而訂明以下類別的交易——
- (a) 金融管理專員委任的莊家售賣任何以下證券——
- (i) 外匯基金票據；
 - (ii) 外匯基金債券；或
 - (iii) 指明文書；
- (b) 金融管理專員委任的莊家的代理人售賣任何以下證券——
- (i) 外匯基金票據；
 - (ii) 外匯基金債券；或
 - (iii) 指明文書，
- 而該代理人是以該莊家的代理人身分行事，且相信並有合理理由相信其當事人是所售賣的證券的金融管理專員委任的莊家；
- (c) 在經營證券經銷業務的過程中售賣證券。
- (2) 以下的證券售賣須視為是在經營證券經銷業務的過程中售賣證券——
- (a) 證券莊家售賣某上市證券 (**A**)，目的是對沖先前取得的另一上市證券 (**B**) 的持倉風險，而——
- (i) A 是 B 的成分證券，或 B 是 A 的成分證券；或

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.

- (ii) A 與 B 以某證券作為它們的共同成分證券；
- (b) 期貨莊家售賣某上市證券 (C)，目的是對沖先前取得的以下期貨合約的持倉風險——
 - (i) 就 C 或包括 C 在內的證券指數訂立的期貨合約；或
 - (ii) 就與 C 有共同成分證券的另一證券 (D) 訂立的期貨合約；或
- (c) 證券莊家於在售賣某上市證券當日的下一個交易日內取得將該證券轉歸有關購買人名下的權利的情況下，在就該證券進行莊家活動或流通量供應活動的過程中售賣該證券。(2003 年第 45 號法律公告)
- (3) 在本條中，**上市** (listed) 指在聯交所營辦的認可證券市場上市或獲容許在該證券市場進行交易。

4. 本條例第 171 條的某些規定對某些類別人士及情況不具效力

- (1) 作出指明賣空指示的人如以當事人身分售賣證券，並在傳達該指示時向其代理人提供口頭保證，表示有關的證券借貸協議的對手方備有該指示所關乎的證券可供借給他，而該人又——

- (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

- (a) (i) 以紀錄帶形式記錄該口頭保證；
- (ii) 與其代理人訂立安排，根據該項安排，其代理人同意——
- (A) 以紀錄帶形式記錄該口頭保證；或
- (B) 在收到該賣空指示時，在蓋有時間印章的紀錄上，記錄第(4)款描述的關乎該指示的詳情；或
- (iii) 在作出該口頭保證的當日內，以文件形式向該代理人確認作出該口頭保證；及
- (b) 遵守第(5)款的適用規定，則本條例第 171(1) 條就該賣空指示而言不具效力。
- (2) 作出指明賣空指示的交易所參與者如以當事人身分售賣證券，而——
- (a) 在傳達該賣空指示前，該交易所參與者——
- (i) 已收到有關的證券借貸協議的對手方的口頭保證，表示該對手方已備有該指示所關乎的證券可供借給他；及
- (ii) 已——
- (A) 以紀錄帶形式記錄該口頭保證；
- (B) 在蓋有時間印章的紀錄上，記錄第(4)款描述的關乎該指示的詳情；或
- (C) 與該對手方訂立安排，根據該項安排，該對手方同意——
- (I) 以文件形式記錄第(4)款描述的關乎該指示的詳情；及
- (II) 在作出該口頭保證的當日內，向該參與者提供該文件；及
- (b) 遵守第(5)款的適用規定，

- 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

- 則本條例第 171(3) 條就該賣空指示而言不具效力。
- (3) 作出指明賣空指示的人如以代理人身分售賣證券，而——
- (a) 在傳達該賣空指示前，該人——
- (i) 已從其當事人或(如該指示是為其他人的利益作出或代其他人作出)該其他人(視屬何情況而定)收到口頭保證，表示有關的證券借貸協議的對手方備有該指示所關乎的證券可供借給他；及
- (ii) 已——
- (A) 以紀錄帶形式記錄該口頭保證；
- (B) 在蓋有時間印章的紀錄上，記錄第(4)款描述的關乎該指示的詳情；或
- (C) 與其當事人或該其他人(視屬何情況而定)訂立安排，根據該項安排，該當事人或該其他人(視屬何情況而定)同意在作出該口頭保證的當日內，以文件形式向他確認該口頭保證；及
- (b) 遵守第(5)款的適用規定，則本條例第 171(5) 條就該賣空指示而言不具效力。
- (4) 就第(1)(a)(ii)(B)、(2)(a)(ii)(B)及(C)(I)及(3)(a)(ii)(B)款而言，詳情指——
- (a) 根據有關的證券借貸協議被借用或可供借用的證券或組別的證券，以及其數量；及
- (b) 曾否作出概括性保證或持有確認，或曾否訂立借用安排，以及作出該保證或確認或訂立借用安排(視屬何情況而定)的時間。
- (5) 任何人如記錄口頭保證或第(4)款描述的詳情，或根據第(1)、(2)或(3)款收到以文件(包括紀錄帶或蓋有時間印

- (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—

- 章的紀錄)形式就口頭保證作出的確認,該人——(2003 年第 45 號法律公告)
- (a) 須於自記錄、收取或收到該等保證或詳情(視屬何情況而定)當日起計的一年內,保留該文件;及
- (b) 須於證監會在該段期間內任何時間作出要求時,在該會指明的時間及地點,讓該會有途徑取得該文件及向該會交出該文件。
- (6) 就本條而言,**指明賣空指示**指本條例附表 1 第 1 部第 1 條**賣空指示**的定義的 (a)(i) 段所指的賣空指示的指示。

- (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

5. 證券借貸協議的借出人須備存紀錄

- (1) 當證券借貸協議的借出人向借用人作出概括性保證或持有確認時，或訂立借用安排時，借出人須以文件形式備存載有以下詳情的紀錄——
 - (a) 借用人的姓名或名稱；
 - (b) 被借用或可供借用的證券或組別的證券，以及其數量；及
 - (c) 曾否作出概括性保證或持有確認，或曾否訂立借用安排，以及作出該保證或確認或訂立借用安排(視屬何情況而定)的時間。
- (2) 借出人——
 - (a) 在不抵觸(b)段的條文下，須於自作出有關記錄當日起計的一年內，保留第(1)款提述的紀錄；及
 - (b) 須於證監會在該年內任何時間作出要求時，向該會提供任何該等紀錄的文本。

- (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) 如借出人以代理人身分根據某證券借貸協議借出證券，該人須就第(1)及(2)款而言視為借出人。
- (4) 在本條中，**證券** (securities) 指在聯交所營辦的認可證券市場上市的證券。

- (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.