

December 2022

Additional Update on Korean Short Sale Rules

On December 1, 2022, the Financial Services Commission (the "FSC") announced a new measure to publicly disclose on the FSC's website the names of each party subject to regulatory investigation that received an administrative penalty for short sale rule breach or market disruption activity.

The new measure will begin to apply to those parties upon which the Securities and Futures Commission (the "SFC") imposes administrative penalties following SFC deliberation during its meeting scheduled for December 14, 2022. The names of penalized parties are expected to be disclosed in February 2023 on the FSC's website.

The introduction of this new measure is part of the financial regulators' efforts to more forcefully prevent unfair trade practices in the capital markets. The new measure would apply to those parties receiving an administrative penalty for breach of (i) public disclosure obligations (Article 429 of the Financial Investment Services and Capital Markets Act of Korea (the "FSCMA")), (ii) market disruption prohibition (Article 429-2 of the FSCMA) or (iii) short sale regulations (Article 429-3 of the FSCMA). Consistent with the current practice, the information on the parties whose cases are referred to the criminal authorities by the financial regulators will not be made public. The new measure will apply equally to foreign financial companies receiving administrative penalties for short sale rule breaches, and will result in publication of their names and penalty amounts imposed.

The Korean financial regulatory agencies have thus far not as a matter of policy publicly disclosed the names and other information relating to parties under investigation due to concerns over potential misuse of specific transactional information that may be inferred from the identity of entities or individuals. The implementation of the new measure to disclose names of certain penalized parties will invariably increase reputational risk associated with engaging in short sale rule breaches and related practices.

Recent strengthened enforcement measures by the regulatory agencies against illegal short sale activities, including implementation of the new measure, underscore the importance of implementing and enhancing robust systems and controls to effectively monitor and prevent short sale rule breaches.

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