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**No. S 513**

**SUPREME COURT OF JUDICATURE ACT  
(CHAPTER 322)**

**RULES OF COURT  
(AMENDMENT NO. 4)  
RULES 2011**

In exercise of the powers conferred on us by section 80 of the Supreme Court of Judicature Act and all other powers enabling us under any written law, we, the Rules Committee, hereby make the following Rules:

**Citation and commencement**

**1.** These Rules may be cited as the Rules of Court (Amendment No. 4) Rules 2011 and shall come into operation on 30th September 2011.

**Amendment of Order 62**

**2.** Order 62 of the Rules of Court (R 5) (referred to in these Rules as the principal Rules) is amended —

(a) by inserting, immediately after paragraph (3) of Rule 5, the following paragraph:

“(4) For the purposes of paragraph (3), the steps which the Court may direct to be taken for substituted service of a document to be effected include the use of such electronic means (including electronic mail or Internet transmission) as the Court may specify.”; and

(b) by inserting, immediately after paragraph (3) of Rule 6, the following paragraph:

“(4) For the purposes of paragraph (1)(e), the manner in which the Court may direct service of any document to be effected includes the use of such electronic means (including electronic mail or Internet transmission) as the Court may specify.”.

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**Amendment of Order 93****3. Order 93 of the principal Rules is amended —**

(a) by deleting the definitions of “claimant” and “contravening person” in Rule 1(1) and substituting the following definitions:

“ “claimant” —

- (a) in relation to a proceeding under section 234, 235 or 236, has the same meaning as in section 234(1);
- (b) in relation to a proceeding under section 236D, has the same meaning as in section 236D(1);
- (c) in relation to a proceeding under section 236G, has the same meaning as in section 236G(1);
- (d) in relation to a proceeding under section 236I, has the same meaning as in section 236I(1); and
- (e) in relation to a proceeding under section 236K, has the same meaning as in section 236K(3);

“contravening person” —

- (a) in relation to a proceeding under section 234, 235 or 236, has the same meaning as in section 234(1);
- (b) in relation to a proceeding under section 236D, has the same meaning as in section 236B(1) or 236C(1), as the case may be;
- (c) in relation to a proceeding under section 236G, has the same meaning as in section 236E(1) or 236F(1), as the case may be;
- (d) in relation to a proceeding under section 236I, has the same meaning as in section 236H(1);
- (e) in relation to a proceeding under section 236J, has the same meaning as in section 236B(1), 236C(1), 236E(1), 236F(1) or 236H(1), as the case may be; and
- (f) in relation to a proceeding under section 236K, has the same meaning as in section 236B(1), 236C(1), 236E(1), 236F(1) or 236H(1), as the case may be;

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“defendant corporation” has the same meaning as in section 236A;

“defendant individual” means an individual liable to an order for a civil penalty under section 236H in respect of a contravention of any provision of Part XII of the Act committed by a corporation, partnership, limited liability partnership or unincorporated association;

“defendant partnership” has the same meaning as in section 236A.”;

- (b) by deleting the words “and 236” in Rule 1(2) and substituting the words “, 236, 236D, 236G, 236I, 236J and 236K”;
- (c) by inserting, immediately after the words “section 234” in Rule 2(1), the words “, 236D, 236G or 236I”;
- (d) by deleting paragraph (2) of Rule 2 and substituting the following paragraph:

“(2) Every application for leave of the Court under section 235(1) or 236J(1) or (3) to commence an action under section 234, 236D, 236G or 236I, as the case may be, shall be made by originating summons, naming as the defendant therein the contravening person, the defendant corporation, the defendant partnership or the defendant individual, as the case may be.”;
- (e) by deleting the words “contravening person,” in Rule 2(5) and substituting the words “contravening person, the defendant corporation, the defendant partnership or the defendant individual, as the case may be,”;
- (f) by inserting, immediately after the words “section 234” in Rule 2(7), the words “, 236D, 236G or 236I”;
- (g) by inserting, immediately after the words “section 235(2)” in Rule 2(7), the words “or 236J(1) or (3), as the case may be,”;
- (h) by inserting, immediately after the words “section 234,” in the heading of Rule 2, the words “236D, 236G or 236I,”;
- (i) by deleting paragraph (1) of Rule 3 and substituting the following paragraph:

“(1) A claimant seeking compensation from a contravening person referred to in section 234(1),

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defendant corporation, defendant partnership or defendant individual —

- (a) convicted for a contravention of any provision of Part XII of the Act; or
- (b) against whom an order for a civil penalty is made under section 232, 236B, 236C, 236E, 236F or 236H (other than by way of a default judgment or a consent order),

as the case may be, may apply to the Court for directions on claims for compensation in respect of that contravention, and the Court may, subject to section 236(2) or to section 236K(2) read with section 236(2), as the case may be, fix a return date for hearing the application.”;

- (j) by inserting, immediately after the words “section 236(4) or (5)” in Rule 3(2), the words “or with section 236K(2) read with section 236(4) or (5), as the case may be”;
- (k) by inserting, immediately after the words “contravening person” in Rule 3(6), the words “, the defendant corporation, the defendant partnership or the defendant individual, as the case may be”;
- (l) by inserting, immediately after the words “section 236” in the heading of Rule 3, the words “or 236K”;
- (m) by deleting paragraph (1) of Rule 4 and substituting the following paragraph:

“(1) At least 7 clear days before the return date of the application under Rule 3(1), each claimant desiring to claim compensation against the contravening person referred to in section 234(1), the defendant corporation, the defendant partnership or the defendant individual, as the case may be, under section 236 or 236K in respect of the same contravention for which the contravening person, the defendant corporation, the defendant partnership or the defendant individual, had been convicted or had a civil penalty order under section 232, 236B, 236C, 236E, 236F or 236H, as the case may be, made against him, must state his claim by filing an affidavit in accordance with paragraph (2).”;

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- (n) by inserting, immediately after the words “contravening person” in Rule 4(4), the words “, the defendant corporation, the defendant partnership or the defendant individual, as the case may be,”;
  - (o) by inserting, immediately after the words “section 236” in the heading of Rule 4, the words “or 236K”; and
  - (p) by inserting, immediately after the words “contravening person” wherever they appear in Rule 5(2) and (3), the words “, defendant corporation, defendant partnership or defendant individual, as the case may be”.

#### **Amendment of Order 94**

4. Order 94 of the principal Rules is amended —

- (a) by deleting the definition of “civil penalty action” in Rule 1(1) and substituting the following definitions:

“ “civil penalty action” means any proceeding commenced by the Authority under section 137ZD, 232, 236B(3), 236C, 236E(3), 236F or 236H;

“contravening person” —

- (a) in relation to a proceeding under section 236B(3), has the same meaning as in section 236B(1);
  - (b) in relation to a proceeding under section 236C, has the same meaning as in section 236C(1);
  - (c) in relation to a proceeding under section 236E(3), has the same meaning as in section 236E(1);
  - (d) in relation to a proceeding under section 236F, has the same meaning as in section 236F(1); or
  - (e) in relation to a proceeding under section 236H, has the same meaning as in section 236H(1).”;
- (b) by deleting paragraph (2) of Rule 1 and substituting the following paragraph:
 

“(2) These Rules apply to a proceeding commenced under section 137ZD, 232, 236B(3), 236C, 236E(3), 236F or 236H subject to the following Rules of this Order.”;

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- (c) by inserting, immediately after the words “by the defendant” in Rule 2(3)(a), the words “or under which the defendant is liable for the payment of a civil penalty, as the case may be”;
  - (d) by deleting the words “section 232(1)” in Rule 2(5) and substituting the words “section 137ZD(1), 232(1), 236B(3), 236C(2), 236E(3), 236F(2) or 236H(1), as the case may be”;
  - (e) by inserting, immediately after the words “the defendant” in Rule 8(5)(a), (d), (e), (f) and (h), the words “or contravening person”;
  - (f) by inserting, immediately after the words “the defendant’s” in Rule 8(5)(g) and (i), the words “or contravening person’s”;
  - (g) by deleting the words “section 232(4)” in Rule 12 and substituting the words “section 137ZD(3) or 232(4), or under section 232(4) read with section 236B(6), 236C(5), 236E(6), 236F(5) or 236H(4),”;
  - (h) by deleting the words “section 232(4)” in the heading of Rule 12 and substituting the words “section 137ZD(3) or 232(4)”;
  - (i) by renumbering Rule 13 as paragraph (1) of that Rule, and by inserting immediately thereafter the following paragraphs:

“(2) Subject to the Rules in this Order, the Court may in or for the purposes of any proceedings herein, make such order as to costs as it thinks just.

(3) Where —

(a) a legal officer of the Authority, who has been admitted as an advocate and solicitor under the Legal Profession Act (Cap. 161); or

(b) a State Counsel,

appears as an advocate on behalf of the Authority and costs are awarded to the Authority, such costs shall include such items, including fees for drawing, for getting up the case and for attendances, as would be included within the meaning of the word “costs” in any written law as though an advocate and solicitor who has in force a practising certificate, and who practises in a Singapore law practice, had appeared.

(4) Such costs shall be in accordance with any scale of fees prescribed from time to time to be chargeable by advocates and solicitors and may be taxed in accordance with Order 59.

(5) Costs awarded to the Authority in accordance with this Rule, when recovered, shall be paid to the Authority.”.

### **Amendment of Order 100**

5. Order 100 of the principal Rules is amended —

- (a) by deleting “84FA(5A)” in Rule 2(2)(a)(ii) and (b)(ii) and substituting in each case “84FA(4)”;
- (b) by deleting the words “and the land” in Rule 2(4)(a)(i);
- (c) by deleting the words “or proprietor” in Rule 4(2)(a)(ix); and
- (d) by deleting the words “subsidiary proprietor or” in Rule 4(2)(b)(ix).

### **New Order 103**

6. The principal Rules are amended by inserting, immediately after Order 102, the following Order:

“ORDER 103

SECURITIES AND FUTURES ACT

ORDER FOR DISGORGEMENT  
AGAINST THIRD PARTY

### **Interpretation and application (O. 103, r. 1)**

1.—(1) In this Order —

“Act” means the Securities and Futures Act (Cap. 289) and any reference to a section shall be construed as a reference to a section in the Act;

“Authority” means the Monetary Authority of Singapore established under section 3 of the Monetary Authority of Singapore Act (Cap. 186);

“claimant” has the same meaning as in section 236L(12);

“order for disgorgement” means an order applied for under section 236L(1);

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“third party” has the same meaning as in section 236L(1).

(2) These Rules apply to proceedings under section 236L, subject to the following Rules of this Order.

**Commencement of action under section 236L (O. 103, r. 2)**

2.—(1) An application for an order for disgorgement under section 236L may be made by originating summons, naming as the defendant therein the third party.

(2) Order 28 shall, unless modified expressly herein, apply to the originating summons.

(3) The application under paragraph (1) shall be supported by an affidavit setting out —

(a) the grounds on which the application is made, including:

- (i) particulars of the contravention of the relevant provision of Part XII of the Act;
- (ii) circumstances leading to the trades carried out for the third party in question;
- (iii) circumstances leading to the third party receiving the whole or any part of the benefit of the contravention; and
- (iv) particulars of the benefit received by the third party; and

(b) where the application is made by a claimant —

- (i) particulars of the securities transaction, futures contract, or contract or arrangement in connection with leveraged foreign exchange trading, in respect of which the claimant suffered a loss;
- (ii) circumstances leading to the entering into of the transaction in question;
- (iii) circumstances leading to the loss suffered; and
- (iv) particulars of the loss suffered.

(4) Unless the Court otherwise orders, the application under paragraph (1) and supporting affidavit under paragraph (3) must be served personally on —

- (a) the third party; and
- (b) any other person appearing to be interested as the Court may direct,



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at least 28 clear days or such longer time as the Court may direct, before the hearing of the application.

(5) If the applicant for the order for disgorgement or his solicitor does not comply with paragraph (4), the application shall be deemed dismissed, unless the Court otherwise directs.

(6) After hearing an application under paragraph (1), the Court may direct the applicant to serve on the third party a notice under section 236L(2) in Form 228, specifying the time and place for him to show cause why an order for disgorgement should not be made against him.

(7) The third party may show cause by affidavit or otherwise to the satisfaction of the Court.

**Application for directions on claims under section 236L (O. 103, r. 3)**

3.—(1) If an order for disgorgement has been made final in accordance with section 236L(11), the applicant for the order or any claimant may apply to the Court for directions on claims for compensation to be paid out of the sum under the order, and the Court may, subject to section 236L(6), fix a return date for hearing the application.

(2) Every application under paragraph (1) shall be made by summons.

(3) Unless the Court otherwise orders, the application under paragraph (1) must be served personally on —

(a) the third party; and

(b) any other person appearing to be interested as the Court may direct,

at least 28 clear days or such longer time as the Court may direct, before the return date.

(4) Every application under paragraph (1) shall be advertised in Form 229 at least 21 clear days or such longer time as the Court may direct before the return date, at least once in one English and one Chinese local daily newspaper or in such other newspaper as the Court may direct.

(5) The advertisement shall state the day on which the application was filed and the name and address of the applicant for directions and of his solicitor.

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(6) If the applicant for directions or his solicitor does not comply with paragraph (3), (4) or (5), the appointment of the time and place at which the application is to be heard shall be cancelled by the Court and the application shall be deemed dismissed, unless the Court otherwise directs.

**Proof of claim under section 236L (O. 103, r. 4)**

4.—(1) At least 7 clear days before the return date of the application under Rule 3(1), each claimant desiring to file a claim for compensation under section 236L(6), must state his claim by filing an affidavit in accordance with paragraph (2).

(2) The affidavit shall be supported by the relevant exhibits, and must explain the grounds on which the claimant's claim is made, including:

- (a) particulars of the securities transaction, futures contract, or contract or arrangement in connection with leveraged foreign exchange trading transaction, in respect of which the claimant suffered a loss;
- (b) circumstances leading to the entering into of the transaction in question;
- (c) circumstances leading to the loss suffered; and
- (d) particulars of the loss suffered.

(3) Without limiting the generality of paragraph (2), the exhibits may include —

- (a) trade notes or slips;
- (b) statements of accounts for the relevant period; and
- (c) copies of instructions given to a broker or remisier.

(4) Every claimant shall serve on the third party a copy of the affidavit within 3 days of the filing of the same.

**Powers of Court (O. 103, r. 5)**

5.—(1) Without affecting the generality of Order 28, Rules 4, 5, 8, 9, 10 and 11, the Court may, after hearing —

- (a) an application under Rule 2(1);
- (b) the third party under Rule 2(7); or

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(c) an application under Rule 3(1), provided all the persons on whom the application has been served and all claimants who have filed their affidavits of claim appear, give such directions or make such orders as to the further conduct of the proceedings as it thinks best adapted to secure the just, expeditious and economical disposal of the proceedings, including directions or orders —

- (i) for the filing of such further affidavits as the Court considers necessary;
- (ii) on the manner in which proceedings shall be instituted against the third party;
- (iii) that an issue be stated and tried;
- (iv) that the matter be adjourned;
- (v) that further advertisements be made in addition to that required under Rule 3(4) in the manner required by the Court;
- (vi) for the substitution of the claimant making the application under Rule 2(1) or 3(1), as the case may be, with another claimant; or
- (vii) that the application under Rule 2(1) or 3(1), as the case may be, be dismissed.

(2) Where the third party (or, where applicable, any other interested party referred to in Rule 3(3)(b)) —

- (a) having been duly served with a notice to show cause under Rule 2(6), does not appear at the hearing for the notice; or
- (b) having been duly served with the application under Rule 3(1) does not appear on the hearing of the application,

or, having appeared, fails or refuses to comply with an order made in the proceedings, the Court may make such order as it deems appropriate.

(3) Where a claimant, having filed an affidavit of claim under Rule 4, does not appear on the hearing of the application under that Rule or, having appeared, fails or refuses to comply with an order made in the proceedings, the Court may make an order declaring the claimant, and all persons claiming under him, forever barred from bringing any claim against the third party.

**Other powers (O. 103, r. 6)**

6. Subject to Rules 1 to 5, the Court may in or for the purposes of any proceedings herein, make such order as to costs or any other matter as it thinks just.

**Trial of issue stated (O. 103, r. 7)**

7.—(1) Order 35 shall apply, with necessary modifications, to the trial of an issue stated under Rule 5(1)(iii) as it applies to the trial of an action.

(2) The Court by whom an issue stated is tried may give such judgment or make such order as finally to dispose of all questions arising in the proceedings to try the issues stated.

**Application by the Authority (O. 103, r. 8)**

8.—(1) Order 94, Rules 6, 7, 8, 10, 11 and 13 shall, with the necessary modifications, apply in relation to an application by the Authority under this Order as they apply in relation to a civil penalty action.

(2) For the purpose of paragraph (1), a reference in Order 94, Rule 8 to the defendant is a reference to the person referred to in section 236L(1)(a), (b) or (c) (as the case may be) or the third party.”.

**Amendment of Appendix A**

7. Appendix A of the principal Rules is amended —  
(a) by deleting Form 226 and substituting the following Form:

“226.

O. 93, r. 3      ADVERTISEMENT OF APPLICATION

(Title as in action)

Notice is hereby given that an application to the Court for directions on claims for compensation in respect of the following matter was made by                      of                      on                      :

(Give date and brief particulars of the subject contravention of the Securities and Futures Act (Cap. 289) and name of the contravening person, the defendant corporation, the defendant partnership or the defendant individual, as the case may be)

Notice is further given that the Court will sit at  
 on 20 at am/pm to hear the application; and any person  
 desiring to claim compensation against the contravening person,  
 the defendant corporation, the defendant partnership or the defendant  
 individual, as the case may be, for the same contravention must, at least  
 7 clear days before the date of hearing, state his claim in accordance  
 with the Rules of Court and must, within 3 days of filing his claim,  
 serve it on the contravening person, the defendant corporation, the  
 defendant partnership or the defendant individual, as the case may be.  
 A person who, after filing his claim, fails to appear at the hearing in  
 person or by his counsel may be barred from bringing any claim against  
 the contravening person, the defendant corporation, the defendant  
 partnership or the defendant individual.

The Applicant's solicitor is of ."; and  
 (b) by inserting, immediately after Form 227, the following Forms:

“228.

O. 103, r. 2(6) **SHOW CAUSE NOTICE FOR  
 ORDER FOR DISGORGEMENT  
 AGAINST THIRD PARTY**  
 (Title as in action)

**SHOW CAUSE NOTICE**

(Issued pursuant to the order of (name of Judge) dated the  
 day of 20 .)

To of

Take notice that an application for an order for disgorgement has  
 been brought against you. In it the applicant claims against you (state  
 the nature of the applicant's claim) as appears from the originating  
 summons a copy whereof is served herewith (together with a copy of  
 the originating summons).

Notice is further given that the Court will sit at  
 on 20 at am/pm to give you an opportunity to show cause why  
 the order should not be made.

If you do not appear at the hearing for the showing of cause,  
 the Court may make such order as it deems appropriate.

Dated this day of 20 .

229.

O. 103, r. 3(4) ADVERTISEMENT OF APPLICATION  
FOR DIRECTIONS ON CLAIMS  
FOR COMPENSATION UNDER ORDER  
FOR DISGORGEMENT

(Title as in action)

Notice is hereby given that an order for disgorgement under section 236L of the Securities and Futures Act (Cap. 289) has been made against (name of third party) in respect of the following matter:

(Give date and brief particulars of the subject contravention of the Securities and Futures Act (Cap. 289), name of the contravening person and circumstances leading to the third party receiving the whole or any part of the benefit of the relevant contravention)

Notice is further given that an application to the Court for directions on claims for compensation to be paid out of the sum under the order for disgorgement was made by \_\_\_\_\_ of \_\_\_\_\_ on \_\_\_\_\_.

Notice is further given that the Court will sit at \_\_\_\_\_ on 20 \_\_\_\_\_ at \_\_\_\_\_ am/pm to hear the application; and any person desiring to claim compensation against (the third party) in respect of the same contravention must, at least 7 clear days before the date of hearing, state his claim in accordance with the Rules of Court and must, within 3 days of filing his claim, serve it on (the third party). A person who, after filing his claim, fails to appear at the hearing in person or by his counsel may be barred from bringing any claim against (the third party).

The Applicant's solicitor is \_\_\_\_\_ of \_\_\_\_\_."

[G.N. Nos. S 637/2006; S 228/2007; S 648/2007; S 508/2008; S 49/2009;  
S 605/2009; S 32/2010; S 378/2010; S 504/2010; S 708/2010;  
S 75/2011; S 218/2011; S 224/2011]

Made this 2nd day of September 2011.

CHAN SEK KEONG  
*Chief Justice.*

SUNDARESH MENON SC  
*Attorney-General.*

V K RAJAH  
*Judge of Appeal.*

LAI SIU CHIU

*Judge.*

BELINDA ANG SAW EAN

*Judge.*

TAY YONG KWANG

*Judge.*

ANDREW ANG

*Judge.*

TAN SIONG THYE

*Chief District Judge.*

LESLIE CHEW KWEE HOE SC

*District Judge.*

LEE ENG BENG SC

*Advocate and Solicitor.*

GEORGE LIM TEONG JIN SC

*Advocate and Solicitor.*

[RSCS R7/7 Vol. 13; AG/LLRD/SL/322/2010/1 Vol. 2]

(To be presented to Parliament under section 80(6) of the Supreme Court of Judicature Act).