



SECURITIES AND FUTURES COMMISSION
證券及期貨事務監察委員會

Disciplinary Proceedings at a Glance

紀律處分程序概覽

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SFC Disciplinary Proceedings at a Glance

This pamphlet is intended to provide a brief overview of our disciplinary process. Under Part IX of the Securities and Futures Ordinance (“SFO”) the SFC is given power to discipline those that it licenses or registers, comprising firms and those who perform functions for them which require a licence or registration including those involved in their management¹ (together referred to as “regulated persons”). If the SFC finds that a regulated person’s conduct suggests it is guilty of misconduct or not fit and proper, the SFC may impose sanctions selected from a range set out in the SFO. This pamphlet explains how we go about this process.

This pamphlet is not about other actions that the SFC may take such as civil proceedings before the High Court, criminal proceedings before the Magistrates’ Court (eg for breach of the disclosure of interests provisions in Part XV of the SFO) or proceedings before the Market Misconduct Tribunal. The SFC will describe these in the future on its website in our Regulatory Handbook.

Why does the SFC discipline?

Under the SFO, one of the SFC’s functions is to protect the interests of investors and to maintain market integrity. One of the ways we do this is by enforcing the law through imposing disciplinary sanctions on regulated persons. Through discipline, the SFC ensures firm and appropriate action is taken against those who harm investors or damage market integrity, regardless of their position and status. The threat of sanctions being imposed by the SFC serves to deter non-compliance with regulatory requirements.

It is of paramount importance to us that all regulated persons are treated fairly in the disciplinary process. When making disciplinary decisions, the SFC will have regard to its previous decisions while taking into account the specific circumstances of each case. However, the Securities and Futures Appeals Tribunal² has ruled that the SFC may disregard previous decisions where changed circumstances warrant it. The SFC will adjust its penalties from time to time in light of various considerations it deems relevant to the discharge of its statutory duties and to changing market circumstances, particularly market participants’ behaviour. The SFC aims at all times to impose sanctions which are proportionate to the gravity of the improper conduct.

Who is subject to SFC disciplinary action?

As noted above the SFC has power to take disciplinary action against regulated persons only. This means: licensed or registered corporations; representatives and responsible officers of licensed corporations; executive officers and relevant individuals of registered corporations; and those who are not licensed or otherwise given a regulatory approval but are involved in the management of a licensed or registered corporation.

¹ The SFC also disciplines under the old law in relation to conduct which occurred before the commencement of the SFO on 1 April 2003 by virtue of certain transitional provisions in Schedule 10 of the SFO. This is likely to continue for some years to come.

² See page 7 for a discussion of the role of the Tribunal.



Criteria for determining whether to take disciplinary action and the level of sanctions

The SFC will consider all the circumstances of a case, including:

- The nature and seriousness of the conduct
 - impact of the conduct on market integrity
 - costs imposed on/losses caused to clients/market users/investing public
 - nature of the conduct (eg whether it is intentional/reckless/negligent; whether prior advice was sought from advisors/supervisors)
 - duration and frequency of the conduct
 - whether the conduct is widespread in the industry
 - whether the conduct was engaged in by the firm/individual alone or as a group and the role in that group
 - whether there is a breach of fiduciary duty
 - (for firms) revelation of serious/systematic management system or internal control failures
 - whether the SFC has issued any guidance concerning the conduct
- The amount of profits accrued or loss avoided
- Other circumstances of the firm/individual
 - manner of reporting the conduct by the firm/individual
 - degree of co-operation with the SFC and other authorities
 - remedial steps taken since the identification of relevant conduct
 - previous disciplinary record
 - (for individuals) experience and position
- Other relevant factors
 - SFC's action in previous similar cases (note: usually similar cases would be treated consistently. However, if the misconduct has become prevalent or widespread in the market, the SFC may impose a heavier sanction than in the past)
 - punishment/regulatory action by other authorities

The criteria listed above are **not exhaustive**.



Disciplinary measures available to the SFC

The SFC is empowered to impose one or more of the following sanctions:

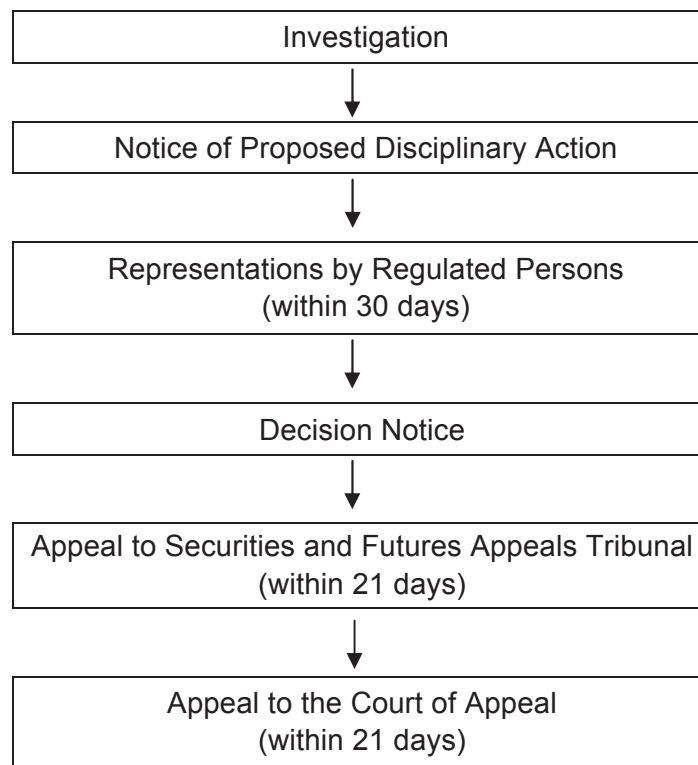
- **revocation** or **partial revocation** of licence or registration
- **suspension** or **partial suspension** of licence or registration
- **revocation** of approval to be a responsible officer
- **suspension** of approval to be a responsible officer
- **prohibition** of application for licence or registration
- **prohibition** of application to become a responsible officer, executive officer or relevant individual
- **fin**es (up to the maximum of \$10 million or 3 times of the profit gained/loss avoided, whichever is the higher)
- **reprimands** (private or public)

All the SFC's sanctions, other than a private reprimand, will be published by means of a press release. All press releases on SFC enforcement actions, including disciplinary actions, are available on the SFC website (www.hksfc.org.hk) under "Enforcement News".

To better understand the considerations of the SFC when imposing a fine, please refer to the SFC Disciplinary Fining Guidelines published in March 2003, which can be found on the SFC website under "Regulatory Handbook"- "Codes, Guidelines and Circulars".



Disciplinary process



Investigation

The SFC investigates acts that suggest misconduct or that call into question the fitness and propriety of a regulated person. The SFC may initiate an investigation on the basis of information from any source, including the public, other regulators or law enforcement agencies in Hong Kong, such as the Hong Kong Monetary Authority and the Police, foreign regulators, Hong Kong Exchanges and Clearing Limited, and internal referrals. Internal referrals may arise from the SFC's monitoring of day-to-day trading in the stock and derivatives markets, from the SFC's inspections of intermediaries or from investigations into other matters, such as civil market misconduct or criminal offences. Following the investigation, the SFC will consider whether or not there is sufficient evidence to commence disciplinary proceedings.

The SFC's disciplinary investigations should not be confused with those of other bodies, such as the Hong Kong Police or the ICAC, who investigate suspected criminal behaviour, or other bodies with the power to discipline, such as Hong Kong Exchanges and Clearing Limited.

Notice of proposed disciplinary action (NPDA)

An NPDA is sent to the regulated person if the SFC decides to start disciplinary proceedings. The NPDA sets out the findings of the SFC investigation into apparent misconduct and/or acts that call into question the fitness and propriety of the regulated person. It also states the sanctions the SFC considers appropriate to impose on the basis of the facts as it understands them at the time.



Representations by regulated persons

In the NPDA, the SFC invites the regulated person to explain the matter and why the proposed sanctions are not appropriate. Representations should be made in writing to the person who signed the NPDA. Representations should not be made to other SFC directors or officers, as they will not be involved in making the decision.

The SFC expects representations on the facts and proposed sanctions to be made at the same time.

An opportunity to be heard

Before exercising any power to discipline, the SFC must first give the regulated person a reasonable opportunity to be heard by allowing the regulated person to make representations explaining the matter and commenting on the appropriateness of the proposed sanctions. Under normal circumstances, the regulated person is given 30 days to make representations. However, the SFC will consider reasonable requests for further extensions (eg to consider complex evidence).

If a response is not provided before the deadline stated in the NPDA, the SFC will make a final decision on the sanctions based on the evidence before it and it is likely that the SFC will impose the sanctions proposed in the NPDA. The SFC will then send another letter informing the regulated person of the decision and the reason for imposing the sanctions.

Legal representation

A regulated person may wish to get legal advice, which may include instructing their lawyer to make representations to the SFC on their behalf.

Request for evidence when making representations to the SFC

When the SFC issues an NPDA to the regulated person setting out the proposed sanctions, the SFC will also provide the regulated person with a list of documents on which the SFC has relied in reaching its preliminary finding of improper conduct. The regulated person may ask for a copy of documents on the list from the SFC.

Meeting the SFC

Disciplinary proceedings are normally determined on the basis of written submissions. However, a regulated person may ask for a meeting with the SFC to make oral submissions. If a regulated person wants to have a meeting with the SFC, he must apply to the SFC in writing explaining why he thinks it is necessary. The SFC will hold a meeting with the regulated person if it considers fairness in the circumstances requires a meeting.

In the course of disciplinary proceedings, if fairness in the circumstances demands, the SFC may invite the regulated person to attend a meeting to clarify certain issues even without an application from that person. The SFC may notify a regulated person of its decision to hold a meeting in these circumstances in the NPDA or after receiving written submissions.



Decision notice

The SFC will review all information submitted by the regulated person in their representations together with all the evidence it already possesses. The SFC will then send a decision notice in writing to the regulated person detailing the SFC's decision. The decision notice will set out:

- the reasons for the decision;
- the time at which the decision is to take effect;
- the duration and terms of any revocation, suspension or prohibition to be imposed;
- the terms of any reprimand under the decision; and
- the amount of any fine that may be imposed as well as the date by which it must be paid.

The decision notice will also include information on the regulated person's right to appeal to the Securities and Futures Appeals Tribunal against the decision.

Settlement of disciplinary proceedings

A regulated person may make a settlement proposal to the SFC. The SFC has power to settle disciplinary proceedings by agreement when the SFC considers it appropriate to do so in the interest of the investing public or in the public interest. Whether the SFC will settle a case depends on the facts and circumstances of individual cases. Normally, the SFC will consider settlement proposals after it has received representations from the regulated person. The SFC will consider every settlement proposal very carefully, and will agree to enter into settlement negotiations if the SFC considers it appropriate and in the interest of the investing public or in the public interest to do so. All discussions about settlement will be treated as "without prejudice", unless the regulated person and the SFC agree otherwise. "Without prejudice" means that neither the SFC nor the regulated person may refer to those discussions in the disciplinary proceedings or subsequent legal proceedings unless there is a subsequent dispute as to whether or not a settlement was concluded.

Co-operation with the SFC

In deciding on the final sanctions, the SFC will consider whether the regulated person co-operates with the SFC. In appropriate circumstances, the sanctions may be reduced depending on the degree of co-operation.

Appeal to the Securities and Futures Appeals Tribunal

The decision of the SFC is subject to appeal to the Securities and Futures Appeals Tribunal which is an appellate body independent of the SFC and chaired by a High Court judge. A regulated person, if aggrieved by the decision of the SFC, may appeal the decision by submitting a notice in writing to the Securities and Futures Appeals Tribunal within 21 days after a decision notice is served or given. The time for appealing may be extended by applying to the Securities and Futures Appeals Tribunal and demonstrating good cause.



The notice to the Securities and Futures Appeals Tribunal must set out clearly the grounds for the appeal.

The notice to the Securities and Futures Appeals Tribunal should be delivered to the Secretary to the Securities and Futures Appeals Tribunal at:

The Securities and Futures Appeals Tribunal
38th Floor, Immigration Tower
7 Gloucester Road, Wan Chai
Hong Kong
(Tel: 2827 1470)

Effective date of a decision

If the regulated person does not appeal the SFC's decision within 21 days, the decision will take effect at the time when the period expires.

If, within the 21 days appeal period, the regulated person informs the SFC, whether in writing or orally, that they will not appeal the decision, the decision will take effect at the time the SFC receives the notification.

If, within the 21 days appeal period, the regulated person appeals, the decision will not take effect until the Securities and Futures Appeals Tribunal makes a final decision. However, if the regulated person withdraws his appeal, the SFC's decision will take immediate effect.

Appeal to the Court of Appeal

If the regulated person is dissatisfied with the Securities and Futures Appeals Tribunal's decision, an appeal can be made to the Court of Appeal. The regulated person must appeal within 21 days from the date on which the Securities and Futures Appeals Tribunal makes a final decision. The regulated person may appeal only on a point of law and not on whether the Securities and Futures Appeals Tribunal's decision was the right one to make or if the Securities and Futures Appeals Tribunal misinterpreted the facts.

Paying a fine

If the regulated person is ordered to pay a fine, the fine must be paid to the SFC by the deadline specified in the decision notice, by cheque made payable to the "Securities and Futures Commission" and sent to:

The Securities and Futures Commission
(Attn: Director of Finance and Administration)
8th Floor, Chater House
8 Connaught Road Central
Hong Kong

Please quote the SFC's case reference which is quoted on the SFC correspondence relating to matter (eg 508/EN/123).

Summary only, not legal advice

This is a summary for reference only. It is not legal advice. A regulated person should seek their own legal advice.

8th Floor, Chater House, 8 Connaught Road Central, Hong Kong

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