



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 or proceedings before the Market Misconduct Tribunal.

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 6 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:

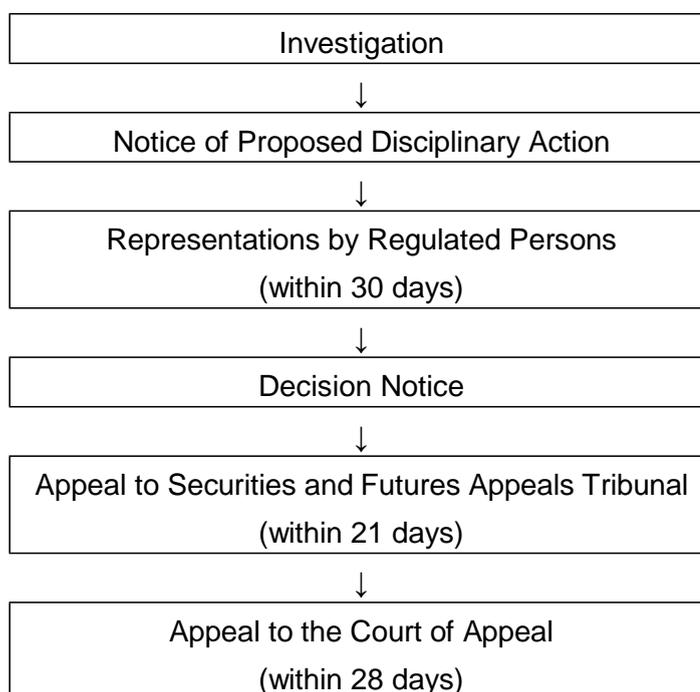
- revocation or partial revocation of licence or registration
- suspension or partial suspension of licence or registration
- revocation of approval to be a responsible officer
- suspension of approval to be a responsible officer
- prohibition of application for licence or registration
- prohibition of application to become a responsible officer, executive officer or relevant individual
- fine (up to the maximum of \$10 million or 3 times of the profit gained/loss avoided, whichever is the higher)
- reprimand (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 properness 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 preliminary views of the SFC on the misconduct and/or conduct that calls into question the fitness and properness 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 that are relevant to the facts and matters set out in the NPDA. 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.

Resolving disciplinary proceedings by agreement

A regulated person may make a resolution proposal to the SFC. The SFC has power to resolve 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 resolve a case by agreement depends on the facts and circumstances of individual cases. Normally, the SFC will consider resolution proposals after it has received representations from the regulated person. The SFC will consider every resolution proposal very carefully, and will agree to enter into resolution 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 resolution proposals 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.

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)
(Fax: 2507 2900)
Website : www.sfat.gov.hk

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 28 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)
35/F, Cheung Kong Center
2 Queen's 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.



證監會紀律處分程序概覽

本小冊子旨在提供有關證監會的紀律處分程序的簡單概要。根據《證券及期貨條例》第 IX 部，證監會獲賦權對其所發牌或註冊的人士，包括商號及代表該等商號履行須獲發牌照或註冊才能執行的職能的人士（包括參與其管理的人士）（統稱為受規管人士）進行紀律處分¹。假如證監會認為受規管人士的行為顯示其犯有失當行為或並非繼續獲得發牌或註冊的適當人選，則證監會可能會對該名受規管人士施加其從載列於《證券及期貨條例》的一系列制裁中所挑選的制裁。本小冊子說明我們如何進行有關的程序。

本小冊子並非關於證監會可能採取的其他行動，例如在高等法院席前進行的民事法律程序、在裁判法院席前進行的刑事法律程序或在市場失當行為審裁處席前進行的研訊程序。

證監會為何要採取紀律處分行動？

根據《證券及期貨條例》，證監會的其中一項職能是保障投資者的權益及維持市場的廉潔穩健。證監會在履行上述職能時所採用的其中一個方法是對受規管人士施加紀律處分制裁以執行有關法律。透過紀律處分，證監會便能確保可以對損害投資者利益或市場的廉潔穩健的人士（不論該等人士的職位及身分），採取堅定而適當的行動。證監會施加制裁是要對不符合監管規定的行為產生阻嚇作用。

每位受規管人士在紀律處分的過程中都必須得到公平的待遇，這點對我們來說至關重要。證監會在作出紀律處分行動的決定時，會考慮其以往的決定，同時亦會顧及到每宗個案的具體情況。然而，證券及期貨事務上訴審裁處²已裁定，若情況有變以致證監會不適合參照以往的決定，則以往的決定可不予理會。證監會將根據其認為與履行其法律責任及改變中的市場環境有關的多項考慮因素（尤其是市場參與者的行為），不時就其罰則作出調整。無論何時，證監會的目標是要能夠按照有關失當行為的嚴重性作出相稱的制裁。

證監會可對甚麼人士採取紀律處分行動？

- 如上文所述，證監會僅有權對受規管人士採取紀律處分行動，即：持牌或註冊法團；持牌法團的代表及負責人員；註冊法團的主管人員及有關人士；以及沒有領有牌照或以其他方式獲得監管機構的批准，但有份參與持牌或註冊法團的管理的人士。

¹ 證監會亦會憑藉《證券及期貨條例》附表 10 的若干過渡性條文，根據舊有的法律對在《證券及期貨條例》於 2003 年 4 月 1 日實施前出現的違規行為進行紀律處分。這情況在未來數年很可能仍會持續。

² 有關審裁處的角色討論，見第 6 頁。



決定是否採取紀律處分行動及釐定制裁的輕重程度的準則

證監會將考慮到個別個案的全部情況，包括：

- 有關行為的性質及嚴重性
 - 該行為對市場的廉潔穩健的影響
 - 對客戶 / 市場使用者 / 投資大眾帶來的成本 / 造成的損失
 - 該行為的性質（例如是否蓄意 / 罔顧後果的 / 因疏忽而導致的；有否事先尋求顧問 / 上司的意見）
 - 該行為持續的期間及頻密程度
 - 該行為在業內是否相當普遍
 - 從事該行為的是有關商號 / 個人本身，還是以集團的方式行事，以及有關商號或個人在以集體方式行事時所擔當的角色
 - 有否違反受信責任
 - （就商號而言）顯示出有嚴重 / 系統性的管理制度問題或內部監控缺失
 - 證監會有否就有關的行為發出任何指引

- 累積的利潤或所避免的損失的數額

- 商號 / 個人的其他情況
 - 商號 / 個人舉報有關行為的方式
 - 與證監會及其他有關當局的合作程度
 - 自識別出有關行為後所採取的補救措施
 - 過往的紀律處分紀錄
 - （就個別人士而言）經驗及職位

- 其他相關的考慮因素
 - 證監會在過往類似個案中的行動（註：通常會以貫徹一致的方針對待類似的個案。然而，若涉及的失當行為在市場內已變得普遍或有蔓延的情況，證監會可能會施加較以往更為嚴厲的制裁。）
 - 其他有關當局所施加的罰則 / 監管行動

上文載列的準則並非詳盡無遺。



證監會可採取的紀律措施

證監會獲授權施加以下一項或多項制裁：

- 撤銷或局部撤銷牌照或註冊
- 暫時吊銷或局部暫時吊銷牌照或註冊
- 撤銷核准成為負責人員
- 暫停核准成為負責人員
- 禁止申請牌照或註冊
- 禁止申請成為負責人員、主管人員或有關人士
- 罰款（最高罰款為 1,000 萬元或所賺取的利潤金額 / 所避免的損失金額的三倍，以較高者為準）
- 譴責（私下或公開）

除私下譴責外，證監會的各项制裁均會以新聞稿方式公布。與證監會的執法行動（包括紀律處分行動）有關的所有新聞稿均可於證監會網站 (www.sfc.hk) 的〈與執法有關的新聞〉部分內閱覽。

如欲更清楚了解證監會在施加罰款時所考慮的因素，請參閱本會在 2003 年 3 月刊發的《證監會紀律處分罰款指引》。該指引可於證監會網站的〈監管手冊〉 - 〈守則、指引及通函〉部分內閱覽。



紀律處分程序



調查

證監會就顯示受規管人士曾犯有失當行為或其適當人選資格受到質疑的行為展開調查。證監會可根據來自任何方面的資料展開調查，有關的資料來源包括公眾人士、香港的其它監管機構或執法機構（例如香港金融管理局及警方）、海外監管機構、香港交易及結算所有限公司，及內部轉介。內部轉介可能是源自證監會就股票及衍生產品市場的日常交易進行的監察、對中介人進行的視察或就其它事宜（例如民事市場失當行為或刑事罪行）所進行的調查。證監會在進行調查後，會考慮是否有充分的證據支持展開紀律處分程序。

請不要混淆證監會為採取紀律處分而進行的調查与其它機構（例如調查涉嫌刑事行為的香港警務處或廉政公署）或其它具有紀律處分權力的機構（例如香港交易及結算所有限公司）所進行的調查。

建議紀律處分行動通知書（行動通知書）

如證監會決定展開紀律處分程序，便會向受規管人士發出行動通知書。行動通知書內載列證監會對導致該名受規管人士的適當人選資格受到質疑的失當行為及 / 或行為的初步意見，亦會列明證監會根據其當時所理解的事實認為適宜施加的制裁。



受規管人士的陳述

證監會在行動通知書內邀請受規管人士就有關事宜作出解釋，及說明為何本會所建議的制裁並不恰當。有關陳述應該以書面方式向負責簽署該行動通知書的人士作出，而不應向證監會的其他董事或高級人員作出，原因是他們並不會參與作出有關決定。

證監會要求受規管人士同時提交有關事實及建議制裁的陳述。

陳詞的機會

證監會在行使作出紀律處分行動的任何權力之前，必須事先給予受規管人士合理的陳詞機會，允許受規管人士作出陳述以解釋有關事宜，以及就建議制裁是否適當發表意見。在一般情況下，受規管人士會獲得 30 日的時間作出陳述。然而，如所提供的理由是合理的話（例如須就複雜的證據進行研究），證監會亦會考慮進一步延期的請求。

假如受規管人士在行動通知書所列明的限期前仍未作出回應，證監會將根據其當時擁有的證據就有關制裁作最後決定，而證監會相當可能會施加該行動通知書內所建議的制裁。證監會隨後會向受規管人士發出另一封函件，就有關決定及施加制裁的理由通知該名受規管人士。

法律代表

受規管人士可以徵詢法律意見，當中可能包括指示其律師代表向證監會作出陳述。

在向證監會作出陳述時要求提供證據

當證監會向受規管人士發出行動通知書列明建議制裁時，亦會同時向受規管人士提供與行動通知書載列的事實和事宜有關的一系列文件的清單。受規管人士可要求證監會提供該清單所列的文件的副本。

與證監會進行會見

有關紀律處分程序的決定通常是以書面陳述作為基礎的。然而，受規管人士可要求與證監會進行會見，以便作出口頭陳述。如受規管人士希望與證監會進行會見，便須以書面向證監會申請，說明其認為需要進行會見的原因。如證監會認為在有關情況下為公平起見需要進行會見，便會安排與該受規管人士會見。

在進行紀律處分程序的過程中，如在有關情況下為了公平起見，即使受規管人士沒有作出會見申請，證監會亦會邀請該受規管人士出席會見，以澄清若干事宜。證監會可以在行動通知書中或在收到規管人士的書面陳述後，將其在該情況下擬進行會見的決定通知該受規管人士。



決定通知書

證監會在審閱受規管人士在其陳述書內所提交的所有資料時，會連同其已持有的所有證據一併加以研究。證監會隨後會以書面方式向受規管人士發出決定通知書，詳述證監會的決定。決定通知書將載列：

- 作出該項決定的理由；
- 該項決定生效的時間；
- 將予施加的任何撤銷、暫時吊銷牌照或禁止申請的措施的持續期間及條款；
- 在該項決定下的任何譴責的條款；及
- 可能判處的罰款數額以及須繳付有關罰款的最後限期。

決定通知書內亦包括關乎該名受規管人士就有關決定向證券及期貨事務上訴審裁處提出上訴之權利的資料。

透過協議解決紀律處分程序

受規管人士可向證監會提出解決建議。證監會有權在其認為就維護投資大眾的利益或公眾利益而言是適當的情況下，透過協議解決紀律處分程序。證監會是否透過協議解決某一個案，將視乎個別個案的事實及情況而定。一般而言，證監會在收到受規管人士的陳述書後才會考慮解決的建議。證監會將會非常審慎地考慮每項解決建議，並會在其認為適當及符合投資大眾利益或公眾利益的情況下同意進行解決磋商。所有就解決建議進行的商討都是在“無損權利”的基礎上進行，除非受規管人士與證監會另有協議。“無損權利”的意思是指證監會及該名受規管人士都不能在紀律處分程序或在以後的法律訴訟中，提述有關商討的內容。

與證監會合作

證監會在決定最終的制裁時，會考慮到受規管人士有否與證監會合作。在適當的情況下，有關的制裁或會視乎受規管人士的合作程度而有所減輕。

向證券及期貨事務上訴審裁處提出上訴

受規管人士是可就證監會的決定向證券及期貨事務上訴審裁處提出上訴。該審裁處是獨立於證監會的上訴機關，並由高等法院的法官擔任主席。受規管人士如因證監會的決定而感到受屈，可在獲送達或發出決定通知書後的 21 日內，向證券及期貨事務上訴審裁處提交書面通知書就有關的決定提出上訴。受規管人士可以向證券及期貨事務上訴審裁處提出充分的理由，申請將提出上訴的時限延展。



向證券及期貨事務上訴審裁處發出的通知書必須明確列明提出上訴的理由。

向證券及期貨事務上訴審裁處發出的通知書應送交證券及期貨事務上訴審裁處秘書，地址為：

證券及期貨事務上訴審裁處
香港灣仔告士打道 7 號
人民入境事務大樓 38 樓
(電話：2827 1470)
(傳真：2507 2900)
網址：www.sfat.gov.hk

決定的生效日期

假如受規管人士並無在 21 日內就證監會的決定提出上訴，該決定將於有關限期屆滿之時生效。

假如受規管人士在 21 日的上訴限期內通知證監會（不論是以書面或口頭方式）其不會就該決定提出上訴，則該決定將於證監會收到該通知之時生效。

假如受規管人士在 21 日的上訴限期內提出上訴，則該決定將不會生效，直至證券及期貨事務上訴審裁處作出最後決定為止。然而，假如受規管人士撤回其上訴，則證監會的決定將會即時生效。

向上訴法庭提出上訴

假如受規管人士對證券及期貨事務上訴審裁處的決定感到不滿，可向上訴法庭提出上訴。受規管人士必須在證券及期貨事務上訴審裁處作出最後決定當日起計的 28 天內提出上訴。受規管人士只可就法律論點提出上訴，而不得就證券及期貨事務上訴審裁處所作出的決定是否適宜或證券及期貨事務上訴審裁處有否誤解有關事實一事提出上訴。

繳付罰款

假如受規管人士被命令繳付罰款，則有關罰款須於決定通知書內指定的限期前以支票方式繳付（抬頭人為“證券及期貨事務監察委員會”）。上述支票應送交至以下地址：

證券及期貨事務監察委員會
(致：財務科總監)
香港中環皇后大道中 2 號
長江集團中心 35 樓

請列明證監會的檔案編號。該檔案編號列於證監會就有關事宜發出的來往書信（例如 508/EN/123）。



此乃摘要，並不構成法律意見

本概覽純屬摘要，只供參考之用，及並非法律意見。受規管人士應自行徵詢法律意見。