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

Guidance Note on Cooperation with the SFC

16 November 2026

1. Purpose

1.1. This document is published by the Securities and Futures Commission (SFC) to replace the Guidance Note on Cooperation with the SFC dated 1 June 2023 and seeks to clarify our approach to cooperation in our disciplinary[1], civil court and Market Misconduct Tribunal (MMT) proceedings.

1.2. This Guidance Note will not operate in criminal cases as the Department of Justice (DoJ) has unfettered discretion over criminal prosecutions.

1.3. The SFC recognises and values cooperation in our investigations and enforcement proceedings as it assists us in performing our enforcement objectives. Amongst other things, it facilitates the prompt detection and rectification of breaches of the Securities and Futures Ordinance (SFO), the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) and related regulatory requirements, the efficient use of the SFC's manpower and other resources in investigating such breaches, and the timely conclusion of our investigations and enforcement actions.

1.4. As highlighted in this Guidance Note, timely and substantial cooperation with the SFC may result in an early resolution of the matter, leading to significant savings of time, costs and resources for all parties concerned. In appropriate circumstances, cooperation may also be recognised by the SFC in the form of reduced sanctions.

2. Forms of cooperation

2.1. A party may cooperate with the SFC in many ways. These may include, for instance:

- **Voluntarily and promptly reporting any breaches or failings to the SFC**
- **Providing true and complete information regarding breaches or failings**, including, amongst other things:
  - Taking early and proactive steps to preserve and collect important evidence and provide it to the SFC
  - Making full and frank disclosure of information regarding breaches or failings, and in particular, providing information and evidence of which the SFC is otherwise unaware, including sharing the results of any internal investigation
  - Providing useful intelligence to the SFC
  - Where required, providing oral testimony in proceedings
  - Where a material problem occurred outside Hong Kong, promptly informing the SFC about the matter and providing relevant information that may be useful to the SFC in considering whether a crime or misconduct might have been committed in Hong Kong or if the problem might have an impact on the fitness and properness of a Hong Kong entity

[1] References to disciplinary proceedings in this Guidance Note are to proceedings under Part IX of the Securities and Futures Ordinance and Part 5B of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance. They do not cover disciplinary hearings before the Takeovers and Mergers Panel in relation to the Codes on Takeovers and Mergers and Share Buy-Backs.

- To the extent legally permissible, disclosing relevant documents located outside Hong Kong and facilitating the production of documents and witnesses from outside Hong Kong

- **Acceptance of liability**, for instance:

  - Willingness to take responsibility for the breaches or failings, address our regulatory concerns and accept our investigation findings or proposed sanctions

  - Taking a proactive and positive approach to bring the case to an early conclusion, for instance, in respect of a firm, by involving senior management in communications with the SFC and devoting manpower and resources to assist us in our investigation

- **Taking rectification measures**, for example:

  - Taking early and active steps to contain breaches or failings

  - Making full and prompt compensation to the affected investors for their losses

  - In the case of a firm, instituting necessary enhancements to its internal controls and procedures

  - In the case of an approved securities registrar, instituting necessary enhancements to its service facilities as defined in rule 2 of the Securities and Futures (Approved Securities Registrars) Rules (Cap 571 sub. leg. AT) (ASR Rules)

2.2. Examples of other forms of cooperation can be found in paragraphs 5.2, 6.3, 7.2 and 7.4 below.

3. What does not amount to cooperation

3.1. Mere compliance with statutory or regulatory requirements does not, in itself, amount to cooperation. This includes, for instance:

- In the case of an individual or a firm, compliance with an investigator's direction or notice issued under sections 179 or 183 of the SFO or section 12(2) of the AMLO by producing documents or attending an interview

- In the case of a licensed corporation:

  - Compliance with the obligation under section 146(3) of the SFO to notify the SFC that it is unable to comply with, or to ascertain its compliance with, the Securities and Futures (Financial Resources) Rules

  - Compliance with its self-reporting obligations under section 12 of the Securities and Futures (Client Securities) Rules, section 11 of the Securities and Futures (Client Money) Rules and section 11 of the Securities and Futures (Keeping of Records) Rules

- In the case of a licensed corporation or registered institution, compliance with its self-reporting obligations under paragraph 12.5 of the Code of Conduct for Persons Licensed by or Registered with the SFC

- In the case of approved securities registrars, compliance with its self-reporting obligations under rule 23 of the ASR Rules

4. How we measure cooperation

(i) Cooperation assessment factors

4.1. While we seek to maintain consistency in our enforcement actions, fairness and public interest require each case to be considered on its own facts. As such, the principles and assessment factors set out in this Guidance Note are neither exhaustive nor definitive.

4.2. Nonetheless, we will generally take the following factors into account when we assess cooperation:

- **The value of the assistance provided in our investigation and enforcement proceedings**, including, amongst other things:
  - the timeliness of the cooperation
  - the quality, extent and substance of the assistance provided, including, for instance, the truthfulness and completeness of any information provided to the SFC in relation to breaches or failings
  - whether our investigation was initiated based on information provided by the party
  - the time and resources conserved by the SFC as a result of the cooperation
- **The nature and seriousness of breaches or failings** and their impact on the securities and futures or virtual asset market
- **The general conduct of the party after the breaches or failings** and other circumstances of the party

(ii) Effect of uncooperative conduct

4.3. If a person engages in conduct with the intent or effect of impeding our investigations or enforcement proceedings (uncooperative conduct), the SFC may take this into account when considering the appropriate outcome.

4.4. Uncooperative conduct includes, amongst other things:

- failing to promptly and fully report a material breach or failing
- withholding information relating to a breach or failing
- engaging in evasive conduct during our investigation

- arranging affairs with the intention of unnecessarily prolonging the SFC's investigation

5. Legal professional privilege

5.1. For the avoidance of doubt, a bona fide refusal to waive legal professional privilege attached to a document provided to the SFC will not be regarded as uncooperative conduct. The SFC recognises that legal professional privilege is a fundamental right protected by the Basic Law, section 380(4) of the SFO and section 81(1) of the AMLO and fully respects the exercise of this right.

5.2. Nonetheless, if a person voluntarily waives a claim to legal professional privilege over a document, even on a limited basis, this may be recognised as cooperation which may be taken into account when the SFC considers the appropriate outcome.

6. Disciplinary matters

Benefits of cooperating with the SFC

(i) Early resolution of disciplinary proceedings

6.1. Cooperation may result in a decision by the SFC to enter into an agreement to resolve disciplinary proceedings at an early stage pursuant to section 201 of the SFO or section 53ZSV(2) of the AMLO (Agreement).

6.2. The SFC may enter into an Agreement if it considers it appropriate to do so in the interest of the investing public or in the public interest. Cooperation from the regulated person and the extent and nature of such cooperation are factors considered by the SFC in exercising this discretion.

6.3. As a general principle, the SFC is more willing to enter into an Agreement if cooperation is demonstrated by the regulated person in the ways described in paragraphs 2.1 or 5.2 above or in the following manner:

- **Commissioning third-party reviews** (in the case of a firm) by:
  - Jointly with the SFC, appointing a third-party reviewer to conduct a fact-finding review in respect of the breaches or failings, or a prospective internal control review to identify appropriate remedial actions to prevent their recurrence, as well as agreeing to:
    - bear the cost of engaging the third-party reviewer (the SFC will contribute a nominal amount towards the review to ensure it is a contractual party to the review with resulting rights);
    - the terms of reference of the review devised by the SFC;
    - accept the reviewer's findings (the firm will generally not be entitled to review the reviewer's report before it is provided to the SFC or to request that changes be made to the report);

- (in the case of a fact-finding review) the SFC's use of the reviewer's findings of fact as the basis for appropriate disciplinary proceedings; and

- (in the case of a prospective internal control review) take the remedial steps advised by the SFC and the reviewer and all other necessary enhancements to the firm's internal controls.

- **Directors' undertakings**: in the case of a firm, the giving of undertakings by its board of directors collectively and individually to address the SFC's regulatory concerns. These may include, for instance, undertakings to remedy deficiencies identified in a third-party review within a specified period of time and to ensure that such failings would not recur.

6.4. A regulated person may approach the SFC for discussions with a view to resolving some or all of our regulatory concerns at any time from the detection of the failings or breaches up to the issuance of the Decision Notice (DN). Such discussions are normally conducted on a "without prejudice" basis. The SFC is more likely to be prepared to enter into such discussions if the regulated person has demonstrated extensive and valuable cooperation in our investigation.

6.5. It should be noted that each case turns on its own facts. Therefore, our willingness to resolve a disciplinary matter with a regulated person under an Agreement based on a particular set of facts does not mean that we will consider it appropriate to do so if the circumstances are different.

(ii) Recognition for cooperation

6.6. In disciplinary matters, the SFC may recognise cooperation by reducing the disciplinary sanctions imposed.

6.7. To encourage early cooperation and resolution of cases, the SFC has divided its disciplinary process into three stages:

- **Stage 1** – from the detection of the misconduct or regulatory failings up to the issuance of a Notice of Proposed Disciplinary Action (NPDA)

- **Stage 2** – from the issuance of an NPDA up to the deadline for the regulated person to make written representations in response to the NPDA

- **Stage 3** – from the deadline for making representations up to the issuance of a DN

6.8. As a general principle:

- where a regulated person cooperates with the SFC and an Agreement is reached in Stage 1, the SFC may reduce the sanction imposed by up to 30%;

- where a regulated person cooperates with the SFC and an Agreement is reached in Stage 2 (or if the regulated person accepts the SFC's investigation findings or proposed sanctions in Stage 2), the SFC may reduce the sanction imposed by up to 20%; and

- where a regulated person cooperates with the SFC and an Agreement is reached in Stage 3 (or if the regulated person accepts the SFC's investigation findings or proposed sanctions in Stage 3), the SFC may reduce the sanction imposed by up to 10%.

6.9. Further reductions in sanctions may be possible in cases where the regulated person has provided exceptional and substantial cooperation to the SFC.

6.10. The provisions in this Guidance Note are guiding principles. They do not confer any right or create any legitimate expectations on any person under investigation to: (i) resolve a matter under an Agreement; (ii) be informed of the progress of any SFC investigation; or (iii) prior to the issuance of an NPDA, be informed of the SFC's preliminary assessment of any potential disciplinary matter.

Our policy on resolutions made in private or on a "no admission of liability" basis

6.11. Given the current market conditions in Hong Kong and the need for public accountability and credible deterrence, the SFC is of the view that, as a general principle, it would not be in the public interest for disciplinary matters to be resolved in private or on a "no admission of liability" basis. In particular, the threat of overwhelming liability arising from class action suits if admissions are made is not relevant in Hong Kong. For this reason, offers to resolve a matter on such terms are unlikely to be considered by the SFC.

7. Civil court and MMT proceedings

Benefits of cooperating with the SFC

(i) Early resolution of civil court and MMT proceedings

7.1. In respect of proceedings initiated by the SFC in the civil court under section 213 or section 214 of the SFO or in the MMT under Part XIII or Part XIVA of the SFO, cooperating with the SFC will normally result in significant savings of costs, time and resources:

- In general, the earlier cooperation is provided to the SFC, the greater the potential to save time and costs.

- In a number of past section 213, section 214 and MMT cases, subject to the court or MMT's approval, the proceedings have been dealt with on a summary basis without the need for a trial or calling of witnesses.

Section 214 SFO: Carecraft procedure

7.2. In section 214 proceedings, a party may seek to resolve matters with the SFC by agreeing to adopt the Carecraft procedure[2]. A **Carecraft Schedule** which contains the agreed facts in relation to the SFC's allegations against the party and where

[2] This was sanctioned by the English High Court in *Re Carecraft Construction Co Limited* [1994] 1 WLR 172 and has been adopted by the Hong Kong court in a number of cases, including *Securities and Futures Commission v Yick Chong San* [2007] 4 HLRD 46, *Securities and Futures Commission v Fung Chiu and others* [2009] 2 HKC 19 and *Securities and Futures Commission v Cheung Keng Ching and others*, unrep. HCMP 1869/2008 (18 March 2010), in respect of proceedings under section 214 of the SFO.

appropriate the agreed period of disqualification[3] is submitted to the court for its determination of the appropriate outcome on the basis of the Carecraft Schedule alone.

7.3. Under the Carecraft procedure, the specifics of the cooperation provided could in appropriate cases be set out for the court's consideration in the "Agreed Mitigating Factors" section of the Carecraft Schedule.

Section 213 SFO and MMT proceedings: Statements of agreed facts and proposed/consent orders

7.4. In section 213 and MMT proceedings, a party may seek to resolve matters with the SFC by:

- agreeing to sign a "**Statement of Agreed Facts**", which sets out, for the court or MMT's consideration, the core facts which are not in dispute in relation to the SFC's allegations against the party;
- agreeing on **proposed orders** with the SFC, which may involve, amongst other things, disgorgement of the amount gained or loss avoided by the party from the breaches or failings, restoring the victims to their initial positions and appointing an independent administrator to make the necessary arrangements. The proposed orders may also include disqualification orders, cold shoulder orders, cease and desist orders and costs orders; and
- where necessary, filing an **affidavit** or **affirmation** in section 213 proceedings, confirming agreement to the Statement of Agreed Facts.[4]

7.5. In appropriate circumstances, it may be possible for a party to partially resolve the section 213, section 214 or MMT proceedings with the SFC, including, for instance, where there is no dispute on the facts and the party accepts most of the orders sought by the SFC, but disagrees on the duration of the proposed orders. For example, in Carecraft proceedings, there may be no agreement on the appropriate length of the disqualification period. Nonetheless, where the disputed issues are more narrowly confined, there is generally a greater potential for time, costs and resources to be conserved.

(ii) Recognition for cooperation

7.6. The SFC may recognise cooperation in section 213, section 214 and MMT proceedings in various ways.

Reduced sanctions and mitigation submissions

7.7. Resolving cases with the SFC may potentially lead to reduced sanctions imposed by the court or MMT. For instance, if a party has been cooperative in the course of our investigation (for instance, by making full and frank disclosure of relevant information to us and taking prompt rectification measures) and/or agrees to sign a Statement of

[3] See paragraph 7.5.
[4] See paragraph 12 of the Reasons for Decision of 17 July 2017 in *Securities and Futures Commission v Sun Min*, unrep. HCMP 2236/2015.

Agreed Facts to resolve matters, the SFC may be prepared, in appropriate circumstances, to agree on:

- **a reduced proposed sanction** for the court or MMT's approval (eg, a shorter disqualification order if we consider that the potential risk posed by the party to the investing public is reduced given its cooperative conduct); and

- **mitigation submissions** in support of the proposed orders.

7.8. Whilst the court and MMT are not bound to accept the orders put forward by the parties, in determining the appropriate outcome, they may give weight to the fact that the proposed orders have been agreed.

Cooperation letters

7.9. In appropriate circumstances, upon the request of a party which has been cooperative in our investigations, the SFC may also issue a cooperation letter to another regulator or law enforcement agency describing the cooperation provided by that party. Nonetheless, a letter of this nature is not intended to serve as a recommendation to that regulator or agency on the sanctions to be imposed or actions to be taken.

7.10 The examples set out in paragraphs 7.7 to 7.9 above illustrate various ways in which different forms of cooperation may be recognised in section 213, section 214 and MMT proceedings. However, in any given case, the appropriate outcome (or orders to be sought from the court or MMT, as the case may be) would be determined by the SFC after considering all relevant circumstances, including the cooperation assessment factors, principles of fairness and the public interest. As such, the SFC is not bound to recognise a particular form of cooperation in any particular manner, and this Guidance Note does not confer any right upon any party which has provided cooperation to the SFC or create legitimate expectations of any of the outcomes described above.

8. Enhancing the transparency of our cooperation policy

8.1. In order to enhance the transparency of our enforcement process, the SFC seeks to provide an appropriate level of disclosure regarding cooperation.

8.2. Where the SFC takes into account the cooperation provided by a regulated person in determining the appropriate outcome in disciplinary matters, the SFC will generally:

- in the course of resolution discussions, if the SFC considers it appropriate to impose a reduced sanction, inform the regulated person of what the original sanction would have been, and the final sanction imposed after taking the cooperation into account;

- where an Agreement is reached, state in the agreement that cooperation was given and that this was taken into account in determining the appropriate outcome; and

- at the conclusion of a case, state in the press release and DN the fact that the regulated person cooperated and provide a general description of the cooperation.

8.3. In the context of a section 213, section 214 or MMT case, the SFC will generally:

- where the SFC considers it appropriate in view of the party's cooperation to propose a reduced sanction for the court or MMT's approval, inform the party in resolution discussions of the original proposed order; and

- at the conclusion of the case, state in the press release that the party cooperated and provide a general description of the cooperation.