



Disciplinary Proceedings at a Glance (for regulated persons under Part 5B of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance)
紀律處分程序概覽 (適用於《打擊洗錢及恐怖分子資金籌集條例》第 5B 部下的受規管人士)

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Securities and Futures Commission
54/F, One Island East
18 Westlands Road
Quarry Bay
Hong Kong
Tel : (852) 2231 1222
Fax : (852) 2521 7836
E-mail : enquiry@sfc.hk
SFC website : www.sfc.hk

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證券及期貨事務監察委員會
香港鰂魚涌華蘭路 18 號
港島東中心 54 樓
電話 : (852) 2231 1222
傳真 : (852) 2521 7836
電郵 : enquiry@sfc.hk
證監會網址 : www.sfc.hk

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SFC Disciplinary Proceedings at a Glance

This guide is intended to provide a brief overview of the Securities and Futures Commission's (SFC) disciplinary process under the licensing regime for virtual asset trading platforms.

Under subdivision 1 in division 9 of Part 5B of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO), the SFC is given the power to discipline its licensees, comprising firms, their responsible officers and those involved in their management (together referred to as regulated persons). If the SFC finds that a regulated person's conduct suggests it is, or was at any time, guilty of misconduct or not fit and proper, the SFC may impose sanctions from the range set out in the AMLO. This guide explains how we go about this process.

This guide does not concern other actions the SFC may take, such as civil proceedings before the High Court or criminal proceedings before the Magistrates' Court.

Why does the SFC discipline?

One of the SFC's functions is to protect the interests of investors and maintain market integrity. One of the ways we do this is by enforcing the law through imposing disciplinary sanctions on regulated persons when needed. This is to ensure resolute and appropriate action is taken against those who harm investors or damage market integrity, regardless of their position and status. Potential sanctions by the SFC serve to deter non-compliance with regulatory requirements.

It is of paramount importance that all regulated persons are treated fairly in the disciplinary process. When making disciplinary decisions, the SFC will have regard to its previous decisions and take into account the specific circumstances of each case. The SFC will also adjust its penalties from time to time by considering factors relevant to the discharge of its statutory duties and changing market circumstances, particularly market participants' behaviour. The SFC always aims to impose sanctions which are proportionate to the seriousness of the improper conduct.

Who is subject to SFC disciplinary action?

- As noted above the SFC has the power to take disciplinary action against regulated persons only. These include licensed providers, licensed representatives, responsible officers of licensed providers, and those involved in the management of licensed providers (including directors and Managers-In-Charge of Core Functions (MICs) of licensed providers).¹

¹ Based on the SFC's FAQ (Measures for augmenting senior management accountability in platform operators) dated 31 May 2023, an MIC refers to an individual appointed by a platform operator to be principally responsible, either alone or with others, for managing any of the following functions of the platform operator: (i) Overall Management Oversight; (ii) Key Business Line; (iii) Operational Control and Review; (iv) Risk Management; (v) Finance and Accounting; (vi) Information Technology; (vii) Compliance; and (viii) Anti-Money Laundering and Counter-Terrorist Financing.

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 and/or the reputation of Hong Kong as an international financial centre
 - costs imposed on or losses caused to clients, market users or the investing public
 - nature of the conduct (eg, whether it is intentional, reckless or negligent; whether prior advice was sought from advisors or supervisors)
 - duration and frequency of the conduct
 - whether the conduct is widespread in the industry
 - whether the conduct was engaged in by the firm or the individual alone or as a group and the role in that group
 - whether fiduciary duty is breached
 - revelation of serious or systemic failures of a firm's management system or internal control
 - whether the SFC has issued any guidance concerning the conduct

- The amount of profits accrued or loss avoided

- Other circumstances of the firm or individual
 - manner of reporting the conduct by the firm or individual
 - degree of cooperation with the SFC and other authorities
 - remedial steps taken since the identification of relevant conduct
 - previous disciplinary record
 - an individual's experience and position

- Other relevant factors
 - the SFC's action in previous similar cases (Note: usually, similar cases would be treated consistently. However, the SFC may impose a heavier sanction than in the past if the misconduct has become prevalent or widespread in the market.)
 - punishment or regulatory action by other authorities

The criteria listed above are not exhaustive.

Potential disciplinary measures available to the SFC

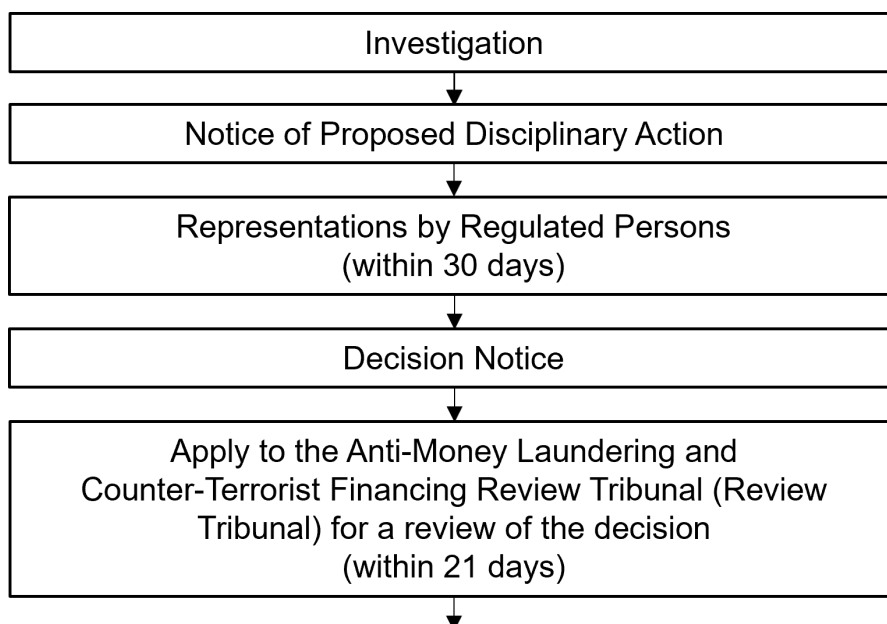
The SFC is empowered to impose one or more of the following sanctions:

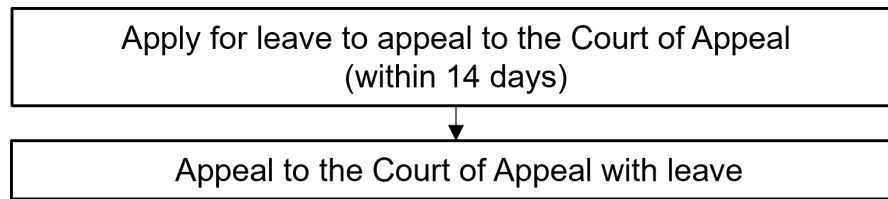
- revocation of licence
- suspension of licence
- revocation of approval to be a responsible officer
- suspension of approval to be a responsible officer
- prohibition of application for licence
- prohibition of application to become a responsible officer
- fine (up to a maximum of \$10 million or three times of the profit gained or loss avoided, whichever is higher)
- private or public reprimand
- remedial action order

All of the SFC's sanctions, except for private reprimand, will be publicly announced by means of a press release. All press releases on SFC enforcement actions, including disciplinary actions, are available in the "[Enforcement news](#)" section of the SFC website (www.sfc.hk).

To better understand our considerations when imposing a fine, please refer to the SFC Disciplinary Fining Guidelines (for regulated persons under Part 5B of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance) published in June 2023. They can be found on the SFC website (in the "Rules & standards" – "Codes & Guidelines" – "Guidelines" section).

Disciplinary process





Investigation

The SFC investigates acts that suggest misconduct or call into question the fitness and properness of a regulated person. We may initiate an investigation based on information from various sources, including the public, other regulators or law enforcement agencies in Hong Kong, such as the Hong Kong Police Force, foreign regulators and internal referrals. Internal referrals may arise from our monitoring and inspections of licensed providers or from investigations into other matters, such as criminal offences. Following the investigation, we will consider whether evidence is sufficient to commence disciplinary proceedings.

Our disciplinary investigations should not be confused with those of other bodies, such as the Hong Kong Police Force and the Independent Commission Against Corruption, which also investigate suspected criminal behaviour.

Notice of proposed disciplinary action (NPDA)

The SFC sends an NPDA to a regulated person if it decides to start disciplinary proceedings.

The NPDA sets out the SFC's preliminary views on the misconduct or conduct that calls into question the fitness and properness of the regulated person. The NPDA also states the sanctions proposed by the SFC which it considers appropriate to impose based on the facts available 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. We expect representations on the facts and proposed sanctions to be made at the same time.

Opportunity to be heard

Before exercising any power to discipline, the SFC always gives the regulated person a reasonable opportunity to be heard. We allow the regulated person to make representations to explain the matter and comment on the appropriateness of the proposed sanctions. Under normal circumstances, the regulated person is given 30 days to make representations. However, we 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 a decision notice to the regulated person.

Legal representation

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

Request for evidence when making representations to the SFC

When issuing an NPDA to a 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 the SFC for a copy of documents on the list.

Meeting the SFC

Disciplinary proceedings are normally determined on the basis of written submissions. However, a regulated person may request a meeting with the SFC to make oral submissions, and must apply to the SFC in writing to explain why a meeting is necessary. This meeting will be held if we consider fairness in the circumstances requires it.

During disciplinary proceedings, if fairness in the circumstances demands, we may invite a regulated person to attend a meeting to clarify certain issues even without an application from that person. We may notify a regulated person of our 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 together with all the evidence it already has. We will then send a decision notice in writing to the regulated person detailing our decision. The decision notice will set out:

- the reasons for the decision;
- the time at which the decision will take effect;
- the action that the person is required to take under the decision;
- 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 and its payment deadline.

The decision notice will also include information on the regulated person's right to apply to the Review Tribunal for a review of the decision.



Resolving disciplinary proceedings by agreement

A regulated person may make a resolution proposal to the SFC. We have the power to resolve disciplinary proceedings by agreement when we consider it appropriate to do so in the interest of the investing public or in the public interest. Whether we will resolve a case by agreement depends on the facts and circumstances of individual cases. We will consider every resolution proposal very carefully, and agree to negotiate a resolution only if we consider it appropriate and in the interest of the investing public or in the public interest to do so. Unless the regulated person and the SFC agree otherwise, all discussions about resolution proposals will be treated as "without prejudice", meaning that neither the SFC nor the regulated person may refer to those discussions in the disciplinary proceedings or subsequent legal proceedings.

Cooperation with the SFC

In deciding on the final sanctions, the SFC will consider whether the regulated person cooperates with the SFC. In appropriate circumstances, the sanctions may be reduced depending, amongst other things, on the timeliness, nature and degree of the cooperation. For more information on our approach to cooperation in disciplinary matters, please refer to the Guidance Note on Cooperation with the SFC published in June 2023, which can be found on the SFC website (in the "Rules & standards" – "Codes & Guidelines" – "Guidelines" section).

Application to the Review Tribunal for a review of the decision

The decision of the SFC is subject to review by the Review Tribunal, which is an independent body chaired by a person who is eligible for appointment as a judge of the High Court and is not a public officer or is a public officer by virtue only of being the chairperson of a board or tribunal. A regulated person, if aggrieved by the decision of the SFC, may apply for a review of the decision by submitting a notice in writing to the Review Tribunal within 21 days after a decision notice is served or given. This period may be extended by applying to the Review Tribunal and demonstrating a good cause.

The notice to the Review Tribunal must set out clearly the grounds for the application and should be delivered to the Secretariat of the Review Tribunal at:

Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal
5th Floor, High Block
Queensway Government Offices
66 Queensway
Hong Kong

(Tel: 2867 4967)

Website: https://www.fstb.gov.hk/fsb/en/link/aml_tribunal.html



Effective date of a decision

If the regulated person does not apply for a review of the SFC's decision within 21 days, the decision will take effect when the period expires.

If, within the 21-day period, the regulated person informs the SFC in writing that the person will not apply for a review of the decision, the decision will take effect when the SFC receives the notification.

If, within the 21-day period, the regulated person applies for a review of the decision, the decision will not take effect until the Review Tribunal makes a determination. However, the SFC's decision will take immediate effect if the regulated person withdraws the application.

Appeal to the Court of Appeal

If the regulated person is dissatisfied with the Review Tribunal's determination of the review, an application for leave to appeal against the determination can be made to the Court of Appeal within 14 days from the date on which the Review Tribunal makes a determination. Leave to appeal may be granted if the appeal has a reasonable prospect of success, or it is in the interests of justice that it should be heard.

The regulated person may appeal to the Court of Appeal on a question of law, a question of fact or a question of mixed law and fact.

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)
54/F, One Island East
18 Westlands Road
Quarry Bay
Hong Kong

Please quote the SFC's case reference shown in the SFC correspondence relating to the matter (eg, 508/EN/123).

Summary only, not legal advice

This is a summary for reference only. It is not legal advice. Regulated persons should seek their own legal advice when necessary.

證監會的紀律處分程序概覽

本指引旨在概述有關在虛擬資產交易平台發牌制度下證券及期貨事務監察委員會（證監會）的紀律處分過程。

根據《打擊洗錢及恐怖分子資金籌集條例》（《打擊洗錢條例》）第 5B 部第 9 分部第 1 次分部，證監會獲賦權對其持牌人，包括商號、它們的負責人員及參與該等商號的管理的人士（統稱為受規管人士）採取紀律處分。假如證監會認為受規管人士的行為顯示其犯有或曾在任何時間犯有失當行為或並非繼續獲得發牌的適當人選，則證監會可能會對該名受規管人士施加载列於《打擊洗錢條例》範圍內的制裁。本指引說明我們如何進行紀律處分的過程。

本指引並非關乎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或在裁判法院席前進行的刑事法律程序。

證監會為何要採取紀律處分？

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，是於有需要時對受規管人士施加紀律處分制裁以執行有關法律。這便能確保可以對損害投資者或破壞市場廉潔穩健的人士（不論該等人士的職位及身分），採取堅決而適當的行動。證監會可施加的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得到公平的待遇是相當重要的。證監會在作出紀律處分的決定時，會考慮以往的決定，並會顧及每宗個案的具體情況。證監會亦會考慮與履行其法定責任及市場環境轉變有關的因素（尤其是市場參與者的行為），不時就其罰則作出調整。證監會一直以能夠按照有關不當行為的嚴重性作出相稱的制裁為目標。

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，他們包括持牌提供者、持牌代表、持牌提供者的負責人員及參與持牌提供者管理的人士（包括持牌提供者的董事及核心職能主管）。¹

2 根據證監會於 2023 年 5 月 31 日發出的常見問題（關於加強平台營運者高級管理層問責性的措施），核心職能主管指獲平台營運者委任為（單獨或連同其他人）主要負責管理該平台營運者以下任何職能的人士：(i) 整體管理監督；(ii) 主要業務；(iii) 營運監控與檢討；(iv) 風險管理；(v) 財務與會計；(vi) 資訊科技；(vii) 合規；及(viii) 打擊洗錢及恐怖分子資金籌集。

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及／或香港作為國際金融中心的聲譽的影響
 - 對客戶、市場使用者或投資大眾帶來的成本或造成的損失
 - 該行為的性質（例如是否蓄意、罔顧後果的或因疏忽而導致的；有否事先尋求顧問或上司的意見）
 - 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或個人本身，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
 - 顯示出商號在管理制度或內部監控方面犯有嚴重或系統性的缺失
 - 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

- 商號或個人的其他情況
 - 商號或個人舉報有關行為的方式
 - 與證監會及其他監管當局的合作程度
 - 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
 - 個別人士的經驗及職位

- 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或監管行動

上文載列的準則並非詳盡無遺。

證監會可採取的紀律措施

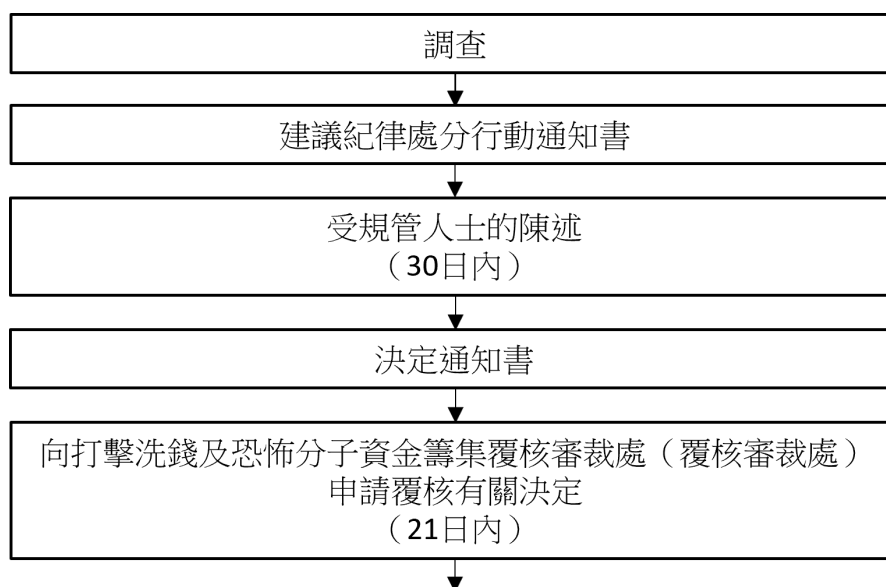
證監會獲授權施加以下一項或多項制裁：

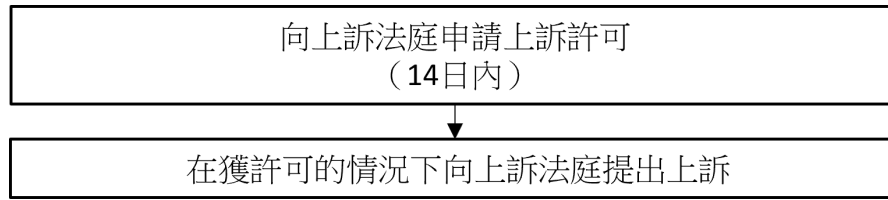
- 撤銷牌照
- 暫時吊銷牌照
- 撤銷核准成為負責人員
- 暫停核准成為負責人員
- 禁止申請牌照
- 禁止申請成為負責人員
- 罰款（最高罰款為 1,000 萬元或所賺取的利潤金額或所避免的損失金額的三倍，以較高者為準）
- 私下或公開譴責
- 補救行動令

除私下譴責外，證監會的各项制裁均會以新聞稿方式對外公布。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）〈[執法消息](#)〉一欄取覽。

如欲更清楚了解我們在施加罰款時所考慮的因素，請參閱本會在 2023 年 6 月刊發的《〈證監會紀律處分罰款指引（適用於〈打擊洗錢及恐怖分子資金籌集條例〉第 5B 部下的受規管人士）〉》。該指引可於證監會網站〈規則及標準〉－〈守則及指引〉－〈指引〉一欄取覽。

紀律處分的過程





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。我們可根據來自各方面的資料展開調查，有關的資料來源包括公眾人士、香港的其他監管機構或執法機構，例如香港警務處、海外監管機構及內部轉介。內部轉介可能是源自我們對持牌提供者進行的監察及視察或就其他事宜（例如刑事罪行）進行的調查。我們在進行調查後，會考慮是否有充分的證據支持展開紀律處分程序。

請不要混淆本會為採取紀律處分而進行的調查與其他機構（例如調查涉嫌刑事行為的香港警務處或香港廉政公署）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該名受規管人士的失當行為或導致該名受規管人士的適當人選資格受到質疑的行為的初步意見。行動通知書亦會列明證監會根據當時可得到的事實認為適宜施加的建議制裁。

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。我們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

證監會在行使任何權力作出紀律處分之前，必會給予受規管人士合理的陳詞機會。我們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（例如須就複雜的證據進行研究），我們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決定通知書。

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為向證監會作出陳述。

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以書面陳述為基礎。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，但須向證監會提出書面申請，說明其認為需要進行會見的原因。如我們認為在有關情況下為公平起見需要進行會見，便會安排會見。

在進行紀律處分程序期間，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，我們亦會邀請受規管人士出席會見，以澄清若干事宜。我們可以在行動通知書中或在收到受規管人士的書面陳述後，將我們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。我們隨後會以書面方式向受規管人士發出決定通知書，詳述我們的決定。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；
- 該人士須根據該項決定採取的行動；
- 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繳付罰款的限期。

決定通知書亦包括關乎該名受規管人士向覆核審裁處申請覆核有關決定之權利的資料。

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。在我們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，我們有權透過協議解決紀律處分程序。我們是否透過協議解決某宗個案，將視乎個別個案的事實及情況而定。我們將會非常審慎地考慮每項解決建議，並只會在我們認為適當及就維護投資大眾利益或公眾利益而言是適當的情況下同意進行解決磋商。除非受規管人士與證監會另有協議，否則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，即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程序中，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（除其他因素外）受規管人士與證監會合作的適時性、性質及程度而有所減輕。如欲了解更多有關我們對在紀律事宜中的合作行為所採取的方針，請參閱本會在 2023 年 6 月刊發的《有關與證監會合作的指引》。該指引可於證監會網站〈規則及標準〉－〈守則及指引〉－〈指引〉一欄取覽。

向覆核審裁處申請覆核決定

證監會的決定是可受到覆核審裁處覆核的。覆核審裁處是獨立機關，由具資格獲委任為高等法院法官，以及不屬公職人員或僅憑藉委員會或審裁處的主席的身分而屬公職人員的人擔任主席。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，向覆核審裁處提交書面通知，以申請覆核有關決定。受規管人士在提出充分的理由的情況下，可以向覆核審裁處申請將該限期延展。

向覆核審裁處發出的通知書必須明確列明申請理由，並送交覆核審裁處秘書處，地址為：

打擊洗錢及恐怖分子資金籌集覆核審裁處
香港金鐘道 66 號
金鐘道政府合署高座 5 樓
（電話：2867 4967）

網站：https://www.fstb.gov.hk/fsb/tc/link/aml_tribunal.html

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申請覆核，該決定將於有關限期屆滿之時生效。

假如受規管人士在 21 日的限期內以書面方式通知證監會其不會申請覆核該決定，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 日的限期內申請覆核有關決定，則該決定將不會生效，直至覆核審裁處作出裁定為止。然而，假如受規管人士撤回申請，證監會的決定將會即時生效。



向上訴法庭提出上訴

假如受規管人士對覆核審裁處就覆核作出的裁定感到不滿，可在覆核審裁處作出裁定當日起計的 14 日內針對該裁定向上訴法庭申請上訴許可。若有關上訴有合理機會得直，或該上訴因有利於秉行公正的理由而應予審理，便可獲批予上訴許可。

受規管人士可向上訴法庭就法律問題或事實問題或法律兼事實問題提出上訴。

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）
香港鰂魚涌華蘭路 18 號
港島東中心 54 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，並非法律意見。如有需要，受規管人士應自行徵詢法律意見。