

Basic Guidelines on Investigation of Market Misconduct

I. Basic Concepts

1. Purpose of Investigation of Market Misconduct

Investigation of Market Misconduct comprises questioning, on-site inspection etc., of persons concerned with a case and witnesses in cases of market misconduct subject to administrative monetary penalty system under the Financial Instruments and Exchange Act (hereinafter referred to as “the FIEA”), such as spreading of rumors, fraudulent means, market manipulation and insider trading, and is conducted under the authority granted by Article 177 of the FIEA.

In an environment that calls for highly flexible and strategic market oversight corresponding to changes in conditions surrounding markets, the purpose of Investigation of Market Misconduct is to ensure fairness and transparency in markets and to protect investors by deterring acts of violation through speedy and effective measures whenever possibilities for unfair transactions exist.

2. Attitudes of Officials Engaging in Investigation of Market Misconduct

Officials engaging in Investigation of Market Misconduct (hereinafter referred to as “Investigators”) shall be mindful of the purpose of Investigation of Market Misconduct (hereinafter referred to as “Investigation”) and shall adopt the following attitudes in the discharge of their duties:

(1) Mission of the Securities and Exchange Surveillance Commission

In the conduct of Investigations, Investigators shall at all times be aware that the mission of the Securities and Exchange Surveillance Commission (hereinafter referred to as “the SESC”) is to maintain fairness and transparency in the markets and to protect investors.

(2) Maintenance of Discipline and Dignity, and Preservation of Confidentiality

In order to win the trust and confidence of the public, Investigators shall at all times endeavor to maintain discipline and dignity, and shall not divulge confidential information that they have come to know in the discharge of their duties.

(3) Observance of Proper Procedures

Having gained a full understanding of the provisions of the FIEA and the purpose of the administrative monetary penalty system, Investigators shall be aware that they are in a position to exercise the authority granted under laws and regulations over private enterprises

and individuals, and shall at all times observe proper procedures in the exercise of such authority.

(4) Discovery through Efficient and Effective Investigation

Investigators shall at all times maintain a temperate and calm attitude, and shall carefully and fully listen to the explanations and responses given by counterparties. Investigators shall exercise initiative and creativity in conducting efficient and effective also Investigations, and shall endeavor to discover the facts in the case on hand.

(5) Self-Improvement and Use of Capacities

Investigators shall gain an accurate understanding of laws, regulations and rules pertaining to finance and securities, and shall endeavor to master new financial instruments and transaction methods. Investigators shall also maintain a wide perspective on developments in the financial and securities markets, and shall at all times pursue self-improvement. In addition, all Investigators shall endeavor to make the maximum use of their capacities in the discharge of their duties.

II. Procedures for Conduct of Investigation of Market Misconduct

1. Conduct of Investigation

Investigations are conducted to determine the facts of cases in which transactions in violation of Articles 173, 174, 174-2, 174-3, 175, or 175-2 are suspected (hereinafter referred to as the “Case”).

2. Conduct of On-Site Inspection or Questioning of Subject

When conducting on-site inspection or questioning, Investigators shall give due consideration to subject individuals, judicial persons or others (hereinafter referred to as the “Subject”), and shall make efforts to conduct such inspection and questioning in an efficient and effective manner.

(1) On-Site Inspection

[1] Presentation of Identification Card and Explanation

Investigators shall carry identification cards and gain the cooperation of the Subject when conducting on-site inspection (hereinafter referred to as “Inspection”). At the start of Inspection, Investigators shall present their identification cards to the Subject to convey that they are officials of the SESC, and shall explain the following matters:

(a) Authority for Inspection (Article 177 of the FIEA) and purpose; and

(b) Appropriate management of information pertaining to the facts and contents of the Inspection.

[2] Points of Caution

In conducting Inspections, Investigators shall pay due attention to the following matters:

- (a) Authority for Inspection is based on Article 177 of the FIEA, and Inspection shall be conducted with the consent of the owner or manager of the property of the Subject;
- (b) The Subject (when the Subject is a judicial person or organization, the person responsible for managing the materials in question) shall be present when viewing the documents or other materials of the Subject;
- (c) Due consideration shall be given to the circumstances of the Subject to minimize disruption of its operations. In principle, Inspections shall be conducted during the normal working hours of a judicial person or organization;
- (d) When requesting viewing or submission of documents or other materials, the necessity of such request shall be fully verified in advance to minimize its scope; and
- (e) Due attention shall be paid to personal and confidential information contained in documents and materials requested in Investigation, and special care shall be taken to avoid loss, misplacement and circumstances that enable third parties to access such information.

[3] Borrowing of Documents and Other Materials

Investigators may temporarily borrow documents and other materials with the consent of the owner or manager of the property when deemed necessary for precise and efficient discovery of facts. When doing so, Investigators shall issue a written acknowledgement, and shall appropriately manage the borrowed documents and other materials to prevent loss or damage. Investigators shall endeavor to return such documents and other materials at an early date.

(2) Questioning

[1] Presentation of Identification Card and Explanation

When conducting questioning Investigators shall carry identification cards and gain the cooperation of the Subject. At the start of questioning, Investigators shall present their identification cards to the Subject to convey that they are officials of the SESC, and shall explain the following matters:

- (a) Authority for questioning (Article 177 of the FIEA) and purpose; and

- (b) Appropriate management of information pertaining to the facts and contents of questioning.

[2] Points of Caution

In conducting questioning, Investigators shall pay due attention to the following matters:

- (a) Authority for questioning is based on Article 177 of the FIEA, and questioning shall be conducted with the consent of the Subject;
- (b) The Subject shall be requested to provide full explanation of matters pertaining to the suspected violation of laws and regulations. Investigators shall fully listen to the opinions and claims of the Subject;
- (c) Information obtained in the course of questioning shall be treated as strictly confidential;
- (d) When a record of questioning is prepared, the content of the record shall be read or shown to the deponent to confirm the accuracy of the record. If the deponent requests an amendment to be made, necessary amendments shall be made to the record, after which the deponent will again be asked to confirm the accuracy of the record;
- (e) Questioning shall be conducted in a public office or other places where the confidentiality of the content of questioning can be preserved;
- (f) Due consideration shall be given to the circumstances of the Subject to minimize disruption of its operations. In principle, questioning shall be conducted during the normal working hours of a judicial person or organization; and
- (g) When questioning extends over many hours, the Subject shall be ensured adequate rest time.

3. Submission of Request by Subject

When a request has been made by the Subject with regard to the Investigation and it is deemed that caution is required in the treatment of the request, the Senior Securities Investigator shall report the matter to the Chief Investigator or the Director of Training and Supervising Investigator without delay and receive instructions.

4. Response to Trouble

When the conduct of Investigation is rendered difficult by refusal, obstruction, or avoidance of Investigation or other serious troubles, the Senior Securities Investigator shall explain once again that the Investigation is being conducted in accordance with laws and regulations, produce a detailed record of the sequence of events and pertinent facts, and report the matter to the Chief Investigator or to the Director of Training and Supervising Investigator without delay and receive instructions. Upon receiving such report, the Chief Investigator or the Director of Training and Supervising Investigator shall report the matter to the Director of the Administrative Monetary Penalty Division without delay, and shall consult on how to respond to the situation.

5. Response to Disaster

In case an unforeseen disaster occurs during Investigation, which may pose a threat to the life and limb of the Subject or Investigators, Investigators shall suspend the Investigation and immediately report the matter to the Director of Administrative Monetary Penalty Division or the Chief Investigator and receive instructions. Investigators shall also act to ensure the safety of life and limb of the Subject and themselves, and shall endeavor to prevent the destruction of documents and other materials and the leakage of information.

III. Issuance of Recommendation

When, as a result of Investigation, an act of violation provided in the FIEA is found, a draft recommendation shall be prepared by Investigation, which contains the findings pertaining to the violation of laws and regulations and recommends the Prime Minister and the Commissioner of the Financial Services Agency to issue an administrative monetary penalty payment order, and shall be submitted to the SESC for its deliberation. If adopted following deliberation, the recommendation shall be delivered by the Secretariat of the SESC to the Financial Services Agency.

IV. Publication

When a recommendation has been issued, in principle, a presentation shall be made to the press and a summary of the case pertaining to the recommendation shall be made public. Following the presentation to the press and on the same day, a summary of the case pertaining to the recommendation shall be made public through the SESC website.

V. Management of Information

1. Points of Caution regarding Management of Information

Investigators shall appropriately manage information obtained in the course of Investigations pursuant to laws and regulations including the Act on the Protection of Personal Information Held by Administrative Organs and provisions concerning the management of general administrative documents. Special attention shall be paid to the following matters:

- (a) Confidential information obtained in the course of Investigation shall not be divulged;
- (b) Information pertaining to Investigations shall not be used for any purpose other than the deterrence of unfair transactions and the protection of investors, except that this prohibition shall not apply to use of such information for justifiable purposes as provided under laws and regulations and
- (c) In particular, special care shall be taken in handling confidential information and information pertaining to the privacy of Subjects.

2. Review by Senior Document Managers and Others

Senior Document Managers and Senior Securities Investigators shall monitor whether Investigators are appropriately managing information, reviewing the abovementioned points, and shall take appropriate measures as needed.

Note: “Senior Document Managers and Others” means Senior Document Managers and Document Managers as defined in the Rule for the Management of Administrative Documents of the Financial Services Agency.

VI. Cooperation with Related Divisions

In order to maintain and strengthen market supervisory functions, Investigators shall endeavor to cooperate closely and share information with the related divisions of the SESC.

VII. Effective Date

Basic Guidelines on Investigation of Market Misconduct shall come into force as from August 30, 2013.

(First Revision)

Basic Guidelines on Investigation of Market Misconduct shall apply as from April 1, 2014.