

NEW OPERATING RULES ON VIRTUAL ASSET MARKET INSPECTION TO ENSURE STRICT INVESTIGATION & PUNISHMENT ON UNFAIR TRADES

- New operating rules on the inspection of virtual asset market proposed for public comment for forty days from March 28 to May 7.
 - Detailed investigation process established throughout all stages—(a) detecting a suspicious transaction, (b) examining the case by the FSC-FSS, (c) conducting an investigation, and (d) imposing a criminal punishment or penalty surcharge.
 - New committees to be set up for policy coordination and deliberation advisory, along with a fast-track investigation procedure.
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The Financial Services Commission issued a preliminary notice for the enactment of new operating rules on the inspection of virtual asset market being proposed for public comment from March 28 to May 7. The new operating rules will specifically deal with details of the procedures and methods regarding the examination and investigation of unfair trading activities in the virtual asset market.

Pursuant to the Act on the Protection of Virtual Asset Users (“the Act” hereinafter), which is scheduled to go into effect from July 19 this year, unfair trading activities involving virtual assets, such as the use of material nonpublic information, price manipulation, and other fraudulent activities, are prohibited and subject to criminal punishment or penalty surcharge.¹ Once the Act becomes effective, unfair trading activities (or suspicious transactions) involving virtual assets will be first (a) monitored by virtual asset service providers (VASPs), then the case will be (b) examined by the FSC and the FSS (Financial Supervisory Service) to bring a formal charge with the prosecutors’ office, which will then (c) investigate the case for (d) imposing a criminal punishment or penalty surcharge.

In this regard, the new operating rules being proposed prescribe specific procedures and methods for each stage of the investigation process.

First, upon finding a suspicious transaction activity, VASPs should take appropriate measures to protect users, by issuing a warning, fact-checking about the rumor and disclosing findings, restricting orders, suspending transactions, and so on. When it is suspected to have detected an unfair trading activity, VASPs should report the case to the FSC and the FSS. When there is enough corroborating evidence demonstrating that an unfair trading activity took place, or if a request has been received from an investigative authority about an ongoing investigation, VASPs should immediately report the case to the prosecutors’ office.

Second, the FSC and the FSS are authorized to examine and investigate unfair

¹ (Criminal punishment) Imprisonment of at least one year or a fine of at least three times but no more than five times the amount of unfairly gained profits (the severity of jail time depends on the amount of unfairly gained profits).

(Penalty surcharge) Up to twice the amount of unfairly gained profits.

trading activities by demanding an affidavit, appearance for statement, submission of documents, and so on, and make sure that they use a particular request form specified by the rules in the process. The FSC should then follow specific procedures to arrive at a deliberation before reporting the case and filing a formal charge with the prosecutors' office. However, if there are concerns about the possibility of a suspect fleeing or obstruction of evidence, the FSC may resort to a fast-track approach and immediately file a charge with the prosecutors' office without going through a deliberation process.

Third, the FSC may impose a penalty surcharge once the result of investigation and penalty decision has been received from the prosecutors' office. However, if it has been coordinated with the prosecutors' office, or if it has been more than one year after filing a formal charge with the prosecutors' office, the FSC may impose a penalty surcharge even before receiving the result of investigation and penalty decision from the prosecutors' office.

The operating rules being proposed also establish a consultative committee consisting of officials from the FSC, the FSS and the prosecutors' office to more flexibly deal with investigation related policies, joint investigation operations and division of functions, as well as an advisory committee to assist deliberation of the FSC.

The FSC expects that the proposed rules will help the authorities to more effectively and systematically regulate unfair trading activities in the virtual asset market.

The proposed rules will be put up for public comment for forty days from March 28 to May 7, and will take effect in tandem with the Act on July 19, 2024.

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