

## STRENGTHENED PENALTIES ON UNFAIR TRADING ACTIVITIES IN CAPITAL MARKETS TAKE EFFECT FROM JANUARY 19

- Revisions to the FSCMA focused on bolstering penalties for price manipulation and other unfair trading activities in capital markets take effect on January 19.
  - Authorities will enforce sanctions with zero tolerance to ensure an establishment of a fair and credible market environment.
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The Financial Services Commission announced that the revised Financial Investment Services and Capital Markets Act (FSCMA) and its subordinate statutes will go into effect on January 19. The revision deals with (a) introducing a penalty surcharge system on unfair trading activities, (b) legislating a method for calculating the amount of unfairly gained profits, and (c) providing a leniency to those reporting violations committed by oneself or others. The revised rules were prepared through close consultation and discussion with the Ministry of Justice, the Supreme Prosecutors' Office, the Financial Supervisory Service and the Korea Exchange. The authorities expect that the changed rules will help to more effectively detect and prevent unfair trading activities and more strictly apply sanctions on illegitimate activities.

First, the revision introduces a penalty surcharge system on unfair trading activities and enables authorities to impose a penalty surcharge of up to twice the amount of unfairly gained profits (maximum KRW4 billion when there is no illicit profit made or it is impossible to calculate an amount). Previously, only criminal penalties were available as a method of sanctioning unfair trading activities, which usually took long time to reach a decision by the court with the strict application of burden of proof. With the introduction of penalty surcharge, a speedier and more effective sanctioning will now be possible on unfair trading activities. In terms of the procedure for imposing a penalty surcharge, in principle, the FSC is able to impose a penalty surcharge after receiving an outcome of investigation from the prosecution service. However, when the matter has been consulted with the prosecution service or if it has been more than a year since the case was first reported to the prosecution service, the FSC is allowed to impose a penalty surcharge even before receiving an investigation outcome from the prosecution service.

Second, the revision establishes a clear legal ground for calculating the amount of unfairly gained profits, which will be a total income minus total cost. More specifically, the amount of unfairly gained profits will be defined as profits realized, profits unrealized and losses avoided. Calculation methods have been prepared for each type of violation, such as the use of undisclosed material information, manipulation of market price and unfair trading, and the gains made by transactions deemed to be a part of motivation for violation can also be counted towards unfairly gained profits. Moreover, the revision sets out a method for calculating the amount of unfairly gained profits for when an external factor (for instance, presence of a third party) is involved.

Third, the revision establishes a leniency rule for those reporting unfair trading activities of their own or others. This will help to facilitate whistleblowing on unfair trading activities committed by a group of individuals in an organized manner. More specifically, the leniency rule can provide a reduction of penalty surcharge between 50 to 100 percent based on the level of cooperation.

The FSC will work to ensure a seamless enforcement of the revised rules and continuously make efforts to root out unfair trading activities in capital markets. Authorities are regularly sharing issues concerning market monitoring and unfair trading cases under investigation through a working level consultation body.

As unfair trading activities in capital markets can disturb market order and inflict damage to investors, the FSC and other related organizations will strictly enforce sanctions based on the principle of zero tolerance to foster a more fair and credible environment in capital markets.

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