

Concept of Disposition Against Members

Established on July 15, 2021

1. Basic Concept

The main purpose of dispositions to be taken by the Association against Full Members is to prevent any Full Member from violating any laws and ordinances, orders and dispositions based thereon, and the Articles of Incorporation and various rules of the Association (hereinafter referred to as “Laws and Ordinances, etc.”), and to prevent any recurrence thereof, thereby securing fairness in the business of investment trusts conducted by any Full Member and financial instruments business, etc. related to the investment corporation, and thoroughly protecting investors, thereby contributing to the maintenance and improvement of confidence in the asset management business and the financial instruments exchange market.

Therefore, in order to further enhance the effectiveness of dispositions of Full Members, the Association has decided to clarify and categorize seriousness and malicious nature of violation of Laws and Ordinances, etc., the status of internal control systems, and treatment in cases where violation of Laws and Ordinances, etc. is repeated or continuing or where antisocial forces are involved, and other cases, after sorting out factors to be considered in the dispositions. In addition, it has decided to review the maximum amount of negligence fine imposed on Full Members for violation of Laws and Ordinances, etc.

On the other hand, it is important for Full Members to prevent the occurrence of any violation of Laws and Ordinances, etc. by endeavoring to secure accurate understanding and recognition of Laws and Ordinances, etc. on a day-to-day basis with a high degree of compliance awareness, establishing an appropriate internal control system in accordance with their own business conditions and adequately and properly conducting internal control in order to prevent any violation of Laws and Ordinances, etc. Even if any violation of Laws and Ordinances, etc. occurs, it is desirable to establish an environment in which self-purification can be achieved by detecting it early through internal self-inspection, etc. and making a prompt response, and other means.

Based on this concept, elements to be considered in the examination of dispositions of Full Members are summarized as follows. It is expected that this arrangement will increase the transparency and predictability of dispositions of Full Members and will also contribute to the improvement of compliance awareness among Full Members with Laws and Ordinances, etc.

It should be noted that the following items are examples of elements to be taken into consideration in the examination of dispositions, and other items that are deemed necessary in accordance with the content of the case can also be taken into consideration. Furthermore, it should also be noted that even if an individual officer or employee of a Full Member has committed a violation of Laws and Ordinances, etc., when any deficiency is found in the internal control system of the Full Member, an action is taken against the officer or employee in consideration of the status and degree of such deficiency.

2. Factors to be Considered When a Disposition is Taken upon Occurrence of Violation of Laws and Ordinances, etc.

(1) Seriousness of the act

(i) Period and size of violation of Laws and Ordinances, etc.

The period and frequency (number of cases) of violation of Laws and Ordinances, etc., the number of persons engaged in such violation, the effect of such violation on the trust property or the managed assets (amount of damages), etc. shall be taken into consideration.

When it is determined that any violation of Laws and Ordinances, etc. has been committed for a long period of time or on a large scale, strict measures shall be taken accordingly.

(ii) Breach of Duty of Loyalty and Duty of Care, etc.

In the event that an investment management company is not considered to be engaged in the investment management business with due care of a bona fide and good manager for the benefit of beneficiaries of an investment trust, etc. or the investment corporation, or for any acts that fail to protect investors (beneficiaries) or harm the fairness of transactions, or that cause a loss of confidence in the asset management business, strict measures shall be taken accordingly.

(iii) Status of Administrative Punishment for Violation of Laws and Ordinances, etc.

In the event that any administrative punishment is imposed for any violation of Laws and Ordinances, etc., measures shall be implemented, taking into account details of the punishment.

(2) Malicious nature of the act

(i) Presence or absence, and degree of willful intention or negligence

In any violation of Laws and Ordinances, etc., it shall be considered whether such violation of Laws and Ordinances, etc. was committed intentionally or caused by carelessness or negligence such as a mistake in paperwork.

When the degree of willful intention or negligence is deemed serious, strict measures shall be taken accordingly.

(ii) Organizational nature, presence or absence, and degree of involvement of the management team and managerial personnel

The number and position of persons involved in violation of Laws and Ordinances, etc. (from the viewpoint of organizational nature) shall be taken into consideration when dealing with such violation.

Even if the number of persons involved in violation of Laws and Ordinances, etc. is small, when the involvement of managerial personnel is recognized, such as the management team, etc. permitting or overlooking such violation, it is determined that such violation is organizational, and measures shall be taken accordingly.

In the event that any violation of Laws and Ordinances, etc. is highly organizational and strong involvement of the senior management is recognized, strict measures shall be taken accordingly.

(iii) Repeatability, and presence or absence of similar indication in the past

When any similar violation of Laws and Ordinances, etc. is repeatedly committed or when any similar violation has been pointed out in a past administrative inspection or inspection by a self-regulatory organization, etc., measures shall be taken in consideration of the parties involved in such violation, responses to the previous notice, and the status of corrective measures taken.

If there is any substantial imperfection in the subsequent response, such as failure to take appropriate improvement measures, or if the previous indication has been overlooked, strict measures shall be taken accordingly.

(iv) Presence or absence of concealment of facts and the extent thereof

When any act of concealment of facts is recognized and the circumstances thereof are deemed extremely malicious, such as the act of organizationally implemented concealment of facts, strict measures shall be taken accordingly.

(3) Impact of the act

(i) Extent of loss of confidence in the asset management business

Measures shall be taken in consideration of the extent to which the trust of investors (beneficiaries) in the asset management business has been lost, such as fairness of operations of the Financial Instruments Business related to investment trusts and investment corporations (including fair treatment of customers and proper management of conflicts of interest).

In the event that the impact on investors (beneficiaries) and financial instruments exchange markets is deemed material and credit of the asset management business is deemed substantially impaired, strict measures shall be taken accordingly.

(ii) Effect on investors (beneficiaries), presence or absence of complaints

Measures shall be taken in consideration of the content and extent of losses imposed on investors (beneficiaries) and the status of complaints from investors (beneficiaries) regarding violation of Laws and Ordinances, etc.

In the event that the impact on the investor (beneficiary) is deemed serious, such as a serious concern arising about the protection of investment trust property and the investment corporation's managed assets, etc., strict measures shall be taken accordingly.

(4) Awareness and attitude about compliance with Laws and Ordinances, etc.

(i) Awareness and attitude about compliance with Laws and Ordinances, etc.

Measures shall be taken in consideration of recognition of Laws and Ordinances, etc., compliance awareness, and attitude with regard to violation of Laws and Ordinances, etc.

In the event of any lack of awareness of compliance with Laws and Ordinances, etc., strict

measures shall be taken accordingly.

- (ii) Presence or absence of opinion hearings from attorneys, etc.

Measures shall be implemented, also taking into consideration whether opinions of attorneys, certified public accountants, and other experts have been sought and considered, as necessary.

(5) Status of internal control system

- (i) Status of internal control system

In order to prevent any violation of Laws and Ordinances, etc., measures shall be taken in consideration of whether internal control has been implemented sufficiently and accurately, after appropriate internal control systems (including an information control environment, etc.) are established according to the operation of the Full Member.

- (ii) Clarification of responsibility

With regard to the occurrence of any violation of Laws and Ordinances, etc., measures shall be taken in consideration of how the management team and managerial personnel recognize their responsibility for such violation and how the responsibility is clarified.

- (iii) Whether or not in-house training, etc. is implemented

In order to prevent any violation of Laws and Ordinances, measures shall be taken in consideration of whether the management team, managerial personnel, etc. give appropriate instructions and whether effective internal training, etc. is provided.

(6) Status of response to violation of Laws and Ordinances, etc.

- (i) Background to discovery of violation of Laws and Ordinances, etc.

Measures shall be taken in consideration of whether the violation of Laws and Ordinances, etc. was discovered through an administrative inspection or an inspection by a self-regulatory organization, or through a self-inspection, etc.

In principle, while strict measures shall be taken when the violation was discovered through an administrative inspection or an inspection by a self-regulatory organization, mitigation measures may be considered when the violation was discovered through a self-inspection, etc.

- (ii) Status of corrective measures after discovery

Measures taken after any violation of Laws and Ordinances, etc. was discovered and the status of improvement to prevent the recurrence shall be taken into account.

When it is recognized that immediate and appropriate corrective measures have been taken, it may be considered as a mitigating factor. In addition, if corrective measures are considered insufficient, including the lapse of time, after the discovery of violation of Laws and Ordinances etc., the measures may be taken as an aggravating factor.

(iii) Cooperation in Investigations, etc.

When any uncooperative attitude is recognized, such as interference with investigations of the Association through interruption, suppression of information, provision of false materials and other means, against investigations, requests for reports, and submission of materials based on the Articles of Incorporation, strict measures shall be taken accordingly in consideration of such circumstances.

(7) Whether or not antisocial forces are involved

When any antisocial force is involved in any violation of Laws and Ordinances, etc., strict measures shall be taken accordingly.

(8) Treatment of the amount equivalent to unjust enrichment

(i) Collection of the amount equivalent to unjust enrichment

When unjust enrichment occurs as a result of violation of Laws and Ordinances, etc. to a Full Member or any person concerned thereof with respect to a matter to be subject to measures prescribed in Article 17 of the Articles of Incorporation, the amount to be collected may be determined in consideration of an amount equivalent to the unjust enrichment in calculating the amount of negligence fine.

When a Full Member voluntarily takes measures to return the amount equivalent to unjust enrichment, the amount to be collected may be determined according to the content of this return measure.

(ii) Treatment of affiliated companies, etc. that can be considered to be substantially the same as a Full Member

When an affiliated company, etc. that can be considered to be substantially the same as a Full Member has obtained an amount equivalent to unjust enrichment in relation to violation of Laws and Ordinances, etc., this amount equivalent to unjust enrichment may be, in principle, deemed to be that of the Full Member and the amount to be collected may be determined.

(iii) Treatment in the event that a surcharge is imposed on the other party

When a surcharge has been imposed, the amount to be collected may be determined in calculating the amount of negligence fine in consideration of the amount of the surcharge.

3. Concept of Expulsion and Applicable Reasons and Factors to be Considered

The purpose of expulsion, etc. by the Association is to prevent the recurrence of any violation of Laws and Ordinances, etc. by a Full Member who has caused the event subject to the expulsion, etc. by forcing it to withdraw from the Association and giving a warning regarding the withdrawal, thereby leading to the prevention of any violation of Laws and Ordinances, etc. by other Full Members.

In light of this point, in the case where the trust in the asset management business is significantly

damaged by any material violation of Laws and Ordinances, etc., the case where obligations as a Full Member cannot be performed due to bankruptcy, etc., or the case where the qualification as a Full Member is questionable due to the involvement of antisocial forces, etc., the Association shall consider expulsion, etc. The items to be taken into account in the consideration shall be as follows.

For any item other than the following items, expulsion, etc. may be considered if it is deemed necessary according to the content of the matter. With regard to the timing of expulsion, it shall also be examined whether or not any particular problem will arise from the viewpoint of investor protection even if the Full Member to be expelled is not subject to voluntary regulation of the Association.

(1) Unauthorized membership

For unauthorized membership, because the initial membership itself is considered invalid, expulsion shall be imposed.

(2) Insolvency

If the subject Full Member does not voluntarily withdraw from the Association, expulsion thereof shall be considered.

(3) When any disposition taken by any government agency or any disposition taken by the Association is violated

If wrongfulness is found in the subject Full Member's refusing to abide by the disposition taken by the Associate, expulsion thereof shall be considered.

(4) Arrears in membership fees etc.

If a Full Member is delinquent in paying membership fee for no justifiable reason, its membership shall be suspended or restricted. When the situation, such as continuous failure to pay membership fee, is not improved even during the period of suspension or restriction of membership, expulsion, etc. shall be considered.

(5) False report, etc.

If a false report is made, or basic obligations as a Full Member, such as submission of materials, are not fulfilled, the non-fulfillment of obligations shall be disclosed. If the situation is considered significantly malicious or the non-fulfillment of obligations continues for one year or more, expulsion, etc. shall be considered.

(6) When antisocial forces are involved in corporate management, etc.

If any antisocial force is found to exist among major shareholders, directors, etc. or if any antisocial force is found to be involved in corporate management, etc., expulsion, etc. shall be considered.

(7) When the total period of restriction or suspension of membership exceeds one year.

If any Full Member has been subjected to restriction or suspension of membership in the past five (5)

years, and the total period of the restriction or suspension exceeds one year, expulsion, etc. shall be considered.

(8) Others

In addition to what is stated above, the following situations are also taken into account in considering expulsion.

- Case where it is recognized that there has been an organized act; for example, there has been leading or active involvement of the senior management (director) in violation of Laws and Ordinances, etc.
- Case where there is any substantial deficiency in follow-up measures; for example, any appropriate improvement measures have not been taken for no justifiable reason and the situation is equivalent to abandonment of the matter.
- Case where it is recognized that the circumstances are extremely malicious; for example, there has been concealment of facts, which was done organizationally.

(End)