

NEWSLETTER

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Capital Markets Group

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Recent Capital Markets Regulatory Trend

In addition to the stagnation of Korea's capital markets, as concerns about losses and damages arising from financial transactions are increasing, financial authorities are continuing to increase the level of supervision on capital markets. Recently, 'Unfair Trading Investigation/Inspection Council', comprised of the Financial Services Commission (the FSC), the Financial Supervisory Service (the FSS), the Korea Exchange (the KRX) and Seoul Southern District Prosecutors' Office, has conducted an oversight review of the current state of inspections conducted by the KRX and investigations conducted by the FSC and FSS in relation to unfair trading, thereby increasing tension in the market.

In the upcoming year of 2023, financial authorities expressed their intention to actively respond to a variety of challenges in the financial environment with a particular focus on **unfair trading in capital markets**. A brief summary of the noteworthy items are as follows:

1. Assistance in Utilizing KRX-Insider Trading Alarm Service (K-ITAS)

- Although the KRX or KOSDAQ listed companies have internal regulations about reporting of trading carried out by officers and employee, financial authorities are paying attention to the fact that there is a limit to the effectiveness of such internal measures, as it is difficult for each company to keep track of such transaction in case its officers and employees fail to report their purchase/sale of treasury shares, etc.
- As a response to such challenge, financial authorities plan to improve utilization of the KRX-Insider Trading Alarm Service (K-ITAS), which was launched in July 2018. K-ITAS is a service that notifies a listed company via text messages when its officers and employees purchases or sells treasury shares, and K-ITAS was implemented in order to assist in ensuring compliance with applicable regulations, including monitoring of transactions including sale and purchase of treasury shares by officers and employees of listed companies, return of short-swing profits, reporting of shares held by officers, etc.
- In order to encourage utilization of K-ITAS, the Korea Listed Companies Association and the KOSDAQ Listed Companies Association plan to enforce amendments to the 'Standard Regulation on Managing Publicly Disclosed Information' and the 'Standard Regulation on Managing Internal Information' in the near future, under which notifications sent to a company regarding

its officers employees purchasing or selling treasury shares, etc. shall be deemed to fulfill the reporting obligation of such transaction. Additionally, the FSC stated that it will take necessary measures to encourage listed companies to promptly implement such amended standard regulations in their internal regulations.

2. Disclosure of Persons Violating Regulations Regarding Unfair trading

- The FSC currently plans to expand the scope of disclosure of persons subject to disciplinary measures, etc. as it determined that ensuring effectiveness of disciplinary measures regarding unfair trading in capital markets, including illegal short-selling, etc. became increasingly necessary.
- Persons subject to administrative monetary penalties, etc. pursuant to the final disposition of financial authorities shall be disclosed to the public in the future, and financial authorities expect such disclosure would decrease factors leading to illegal acts in capital markets. Although the majority of such persons subject to disciplinary measures are legal entities, individuals may also be subject to such disciplinary measures if such individual engages in certain types of unfair trading, including but not limited to market manipulation.
- However, persons subject to criminal liability shall continue not to be disclosed, and persons subject to both criminal liability and administrative monetary penalties shall also not be disclosed. Although matters notified to or filed by the investigation agency may be subject to disclosure in the future after negotiating with relevant agencies, the prospect of the mandatory disclosure of persons subject to criminal liability seems remote.
- The abovementioned regulation has been introduced in the 22nd meeting of Securities and Futures Commission on December 14, 2022 and has been implemented immediately.

3. Strengthening of Internal Control of Financial Companies

- As concerns about internal control measures within the financial industry continue to grow due to the occurrence of large-scale financial accidents including mis-selling, etc., the FSC formed a “Task Force for Improving Internal Control System” (**Internal Control TF**) in order to arrange an effective internal control system to better prevent financial accidents.
- According to the notable items published by the Internal Control TF up to the date of this Newsletter, (1) so-called ‘major financial accidents’ that pose major adverse effect on the soundness of consumers and financial companies and that have major social implications shall be managed by representative directors, (2) for other financial accidents (excluding those to be managed by representative directors), officers of each relevant department shall be directly responsible for such accidents, and such officers shall not delegate their responsibility to those who are not officers of the company, and (3) obligations of management bodies of the board of directors to inspect and supervise internal control systems shall be stipulated in the internal regulations of the company.
- New regulations regarding internal controls will be incorporated into amended laws and regulations once the details are confirmed.

In addition to the foregoing, in order to strengthen provisions on enforcement against unfair trading, financial authorities stated that it will actively cooperate to implement FSC and FSS's joint inspection system, and it will also promote improvements in relevant systems in order to align roles and processes requisite for such systems. Since financial authorities are adamant on supervising and monitoring capital markets, and since strengthening of regulations on unfair trading is likely to continue for the time being, a scrupulous review and renovation of internal control regulations and the overall system would be necessary.

Further, amendments to major laws and regulations related to capital markets which we have discussed in previous newsletters are as follows:

- (1) Amendment to the 'Financial Investment Services and Capital Markets Act (the FISCMA)' focusing on **restrictions of appointment as officers of listed companies, etc. to be imposed on persons engaging in unfair trading regarding capital markets transaction** is currently under negotiation with relevant agencies.
- (2) Amendment to the 'Regulations on the Issuance and Disclosure of Securities' focusing on **placing a limit on call option and refixing on (redeemable) convertible shares of listed companies** is also currently under negotiation with relevant agencies.
- (3) The Ministry of Government Legislation has approved the amendment to the Enforcement Decree of the FISCMA focusing on **the grant of appraisal rights to shareholders opposing to the vertical spin-off of a listed company**, and the amendment is likely to take effect in the near future.

Lee & Ko's Capital Markets Group will continue to monitor changes in the applicable laws and regulations, and will promptly provide more useful information. If you require any assistance in this regard, please contact Lee & Ko's Capital Markets Group.

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