

## SFC Circular - Court reaffirms SFC's power of issuing restriction notices

The Court of First Instance has dismissed a judicial review application against the Securities and Futures Commission (SFC) relating to restriction notices issued in an ongoing investigation into a suspected “ramp-and-dump” scheme.

The judicial review application, brought by Mr Chen Wencan and Ms Su Jiaqi, sought to challenge the restriction notices issued on 9 February 2021 by the SFC under sections 204(1)(a) and 205(1) of the Securities and Futures Ordinance (SFO) to freeze their assets in various trading accounts held with certain licensed corporations.

The applicants contended that sections 204(1)(a) and 205(1) exercised on the basis of section 207(e) of the SFO was, amongst other things, not prescribed by law and a disproportionate interference with their property rights and was therefore unconstitutional. The arguments were previously dismissed by the Court in another similar judicial review application relating to another suspected “ramp-and-dump” scheme.

The SFC's Executive Director of Enforcement, Mr Christopher Wilson, said: “We welcome the Court's decision reaffirming the SFC's statutory powers to issue restriction notices to freeze suspects' assets held with licensed corporations. This enables the SFC to take front-loaded actions to protect investors and the public interest.”

In the Court's judgment, the Hon Mr Justice Coleman said he is not persuaded that there are any significant differences or additional matters raised by the applicants which point to any reason why a different view should be taken in these proceedings than was taken in the previous similar application.

The Court also ordered the applicants to pay the SFC's costs in relation to these proceedings.

中文版本

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## 法庭再次確認證監會發出限制通知的權力

原訟法庭駁回針對證券及期貨事務監察委員會（證監會）在一項仍在進行的調查中發出的限制通知所提出的司法覆核申請。有關調查涉嫌與“唱高散貨”計劃有關。

這宗司法覆核申請由陳文燦先生及蘇嘉琪女士提出，尋求反對證監會在2021年2月9日根據《證券及期貨條例》第204(1)(a)及205(1)條發出的多份限制通知。該等限制通知旨在凍結他們在某些持牌機構開立的多個交易帳戶內的資產。

申請人聲稱，在《證券及期貨條例》第207(e)條的基礎上獲行使的第204(1)(a)及205(1)條（除其他事項外）並非由法律所訂明，並且以不相稱的方式干擾了他們的財產權，因此屬違憲。法庭先前已在另一宗涉嫌“唱高散貨”計劃的同類司法覆核申請中駁回有關爭辯。

證監會法規執行部執行董事魏弘福先生（Mr Christopher Wilson）表示：“本會歡迎法庭的裁決。是次裁決再次確認證監會具有發出限制通知以凍結嫌疑人於持牌機構持有的資產的法定權力。這使證監會能夠採取前置式行動，保障投資者及公眾利益。”

高浩文法官（The Hon Mr Justice Coleman）在法庭判決中表示，其未能信服申請人所指，本案存在任何重大差異或額外事宜，因而有任何理由支持是次法律程序中採納的觀點應有別於先前的同類申請中所採納的觀點。

法庭亦命令申請人就是次法律程序支付證監會的訟費。

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