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Taiwan

Regulation

FUNDS AND FUND MANAGEMENT 2010

2.1 Type of funds

Investment fund

Collective investment undertakings are organized in Taiwan either as closed-ended investment trusts or as open-ended investment trusts.

Future trust fund

Collective future trust fund undertakings are organized in Taiwan either by non-particular person or the person to match certain qualifications condition of the collective futures trust fund.

Foreign institutional investor (FINI)

Foreign institutional investor (FINI) is a fund invested by overseas Chinese and foreign nationals and registered with the Taiwan Stock Exchange and the Central Bank to invest in local securities being traded in the Taiwan Stock Exchange. There is no investment ceiling for each foreign institution.

2.2 Laws

Investment fund

- Securities Exchange Law 18, 18-1 including the rules for administration of Securities Investment Trust Enterprises and regulations governing the management of Securities Investment Trust Funds
- Bank Law, Chapter 6 (Investment Trust Companies) and related Regulations 100 to 115-1.

Future trust fund

- Securities Exchange Law 18, 18-1 including the rules for administration of Securities Investment Trust Enterprises and regulations governing the management of Securities Investment Trust Funds
- Bank Law, Chapter 6 (Investment Trust Companies) and related Regulations 100 to 115-1.

Foreign institutional investor (FINI)

Regulations governing securities investment by overseas Chinese and foreign nationals and procedures for remittance prescribed pursuant to the provisions of the Statute for Investment by Overseas Chinese, Article 8, Paragraph 4 and the Statute for Investment by Foreign Nationals, Article 8, Paragraph 4

2.3 Managers, trustees, and custodians

Investment fund

Fund manager

A fund manager (fund management company) must be incorporated in Taiwan with limited liability. Its paid up share capital must be not less than NT\$300 million. Further, at least 20% of the promoters of the fund management company must have been established for at least 3 years. The promoters must be a fund management institution, bank, insurance company, financial holding company that meets the following qualifications.

A fund management institution shall:

- have managerial or operational experience in the business of international securities investments, trust funds; and
- itself, or its 50 percent controlled subsidiaries, must have assets under management, including mutual funds, unit trusts and investment trusts raised through public offerings in excess of TWD 65 billion.

A bank shall:

- have experience in the business of international finance, securities, or trust; and
- rank in the top 1,000 banks (measured by total assets or net worth) in the free world during the previous year.

An insurance company shall:

- have experience in insurance fund management; and
- hold securities assets in excess of TWD 8 billion.

A securities investment trust enterprise shall:

- has been established for at least three full years and has not been sanctioned by the competent authority of its home country for a reason related to fund management during the preceding three years;
- has not been sanctioned under Article 66, subparagraphs 2 to 4 of the Securities and Exchange Act, or, in the case of a foreign securities firm, has not been sanctioned by the competent authority of its home country, during the preceding three years: and
- has paid-in capital of TWD 8 billion or more and net worth per share of not less than par value, as shown in the latest CPA-audited and certified financial report.

A financial holding company shall:

- A subsidiary of the financial holding company in which it controls 50 percent or more of the shares meets qualification requirements as set out in one of the preceding 5 subparagraphs.

The fund management company must have at least five professionals each with at least 3 years of experience in the area of securities investment analysis, securities investment decision-making or the trading of securities in a professional investment institution.

With the exception of promoters, one person or related group of persons may not hold more than 25 percent of the issued share capital of the fund management company. Any promoter or shareholder holding more than a 5 percent share is precluded from serving concurrently as the promoter of another fund management company.

There are legal limits to the fees, which can be charged by managers or trustees. Also, the fee level must be approved by the Securities and Future Bureau (SFB) when submitting an application to establish a fund.

Future trust fund

In the case of a fund management institution:

- has been established for at least three full years and has not been sanctioned by the competent authority of its home country for a reason related to fund management during the preceding three years;

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- has experience in the management or conduct of international securities investment trust fund business; and
- among the assets managed by the institution together with those managed by other institutions controlled by or subordinate to that institution, the mutual funds, unit trusts and investment trusts are publicly offered for pooled investment in securities with an aggregate fund size of no less than TWD 65 billion.

In the case of a bank:

- has been established for at least a full three years and has not been sanctioned by the competent authority of its home country for a reason related to fund management during the preceding three years.;
- has experience in international finance, securities, or trust business; and
- has been ranked in the preceding year among the world's top 1,000 banks in either assets or net worth bases.

In the case of an insurance company:

- has been established for at least three full years and has not been sanctioned by the competent authority of its home country for a reason related to fund management during the preceding three years;
- has experience in the management of insurance funds;
- with paid-in capital of no less than TWD 100 billion; and
- the net worth per share value is not less than par value, as shown in the latest CPA-audited and certified financial report.

In the case of a securities firm:

- has been established for at least a full three years and has not been sanctioned by the competent authority of its home country for a reason related to fund management during the preceding three years:
- has not been sanctioned under Article 66, subparagraphs 2 to 4 of the Securities and Exchange Act, or, in the case of a foreign securities firm, has not been sanctioned by the competent authority of its home country, during the preceding three years: and
- has paid-in capital of NT\$8 billion or more and net worth per share of not less than par value, as shown in the latest CPA-audited and certified financial report.

In the case of a futures commission merchant:

- has been established and operating for at least three full years as a securities firm engaged in the integrated conduct of securities underwriting, dealing, and brokerage business;
- has not been sanctioned under Article 100, subparagraphs 2 through 4 of the Futures Trading act in the preceding three years and are a foreign futures commission merchant and has not been sanctioned by the competent authority of its home country; and
- has paid-in capital of TWD 8 billion or more and net worth per share of not less than par value, as shown in the latest CPA-audited and certified financial report.

In the case of a futures commission merchant:

- is a financial holding company established by and under the Financial Holding Company Act;
- one of the subsidiaries in which the company controls 50 percent or more of shares to meet one of the qualification requirements set out in the preceding two subparagraphs;
- has net worth of NT\$8 billion or more, or paid-in capital of TWD 6 billion or more;
- financial holding company: A subsidiary of the financial holding company in which it controls 50 percent or more of the shares meets qualification requirements as set out in one of the preceding 5 subparagraphs.

Custodians

Only banks may act as custodians or trustees of a fund organized in Taiwan.

Banks, which have one of the following relationships with the fund management company, are prohibited from acting as custodians unless otherwise approved by the SFB:

- where the bank investment in the fund management company exceeds 10 percent of the issued share capital of the enterprise;
- where the bank acts as Director or Supervisor of the fund management company;
- where more than 10 percent of the issued share capital of the bank is held by the fund management company; and
- where the fund management company or its representatives act as Director or Supervisor of the bank.

2.4 Investment restrictions

Investment fund

The investment fund is restricted in the following activities:

- The SITE may not invest in non-listed or non-OTC-listed stocks or privately-placed securities.
- The SITE may not make loans or provide security.
- The SITE may not engage in securities margin transactions.
- The SITE may not engage in trading of securities or securities-related products between the various other funds, collective trust funds, discretionary accounts, or accounts for trading of securities with self-owned funds under the common management of the SITE, provided that this shall not apply in the case of cross-trades unintentionally occurring on a centralized securities exchange market or on over-the-counter markets.
- The SITE may not invest in its own securities or in securities issued by any company that is an interested company relative to the SITE.
- The SITE may not use a fund to purchase the certificates of beneficial interest of that same fund, provided that this restriction shall not apply in the case of beneficiaries' requests for redemption of certificates of beneficial interest, or when certificates of beneficial interest are redeemed because of the discontinuance of all or some part of the fund.
- The SITE may not invest in structured interest rate products, provided that this restriction shall not apply when such products are a fund's principal investment vehicle and are so designated by the fund's name.
- The total amount invested by any fund in the stocks, corporate bonds, or financial bonds of any single listed or OTC-listed company may not exceed 10 percent of the net asset value of the fund.
- The total amount invested by any fund in the shares of any single listed or OTC-listed company may not exceed ten percent of the total issued and outstanding shares of that company; the total amount invested by all funds under the common management of a SITE in the shares of any one listed or OTC-listed company may also not exceed 10 percent of the total issued and outstanding shares of that company.
- The total amount invested by any fund in an underwriting of shares of any single listed or OTC-listed company may not exceed one percent of the total shares underwritten; the total amount invested by all funds under the

common management of a SITE in any single underwriting may not exceed three percent of the total of underwritten shares being.

- The total amount invested by a fund in the certificates of beneficial interest of other funds may not exceed 10 percent of the first fund's total asset value, provided that this restriction shall not apply in the case of a fund of funds or exchange-traded funds under Article 37, paragraph 4.
- The total number of beneficial units of any single fund, with the exception of exchange-trade funds under Article 37, paragraph 4, that may be invested in by all funds under the common management of a SITE may not exceed 10 percent of the issued beneficial units of the fund being invested in.
- The total amount invested by a fund in the unsecured corporate bonds of any single company may not exceed ten percent of the unsecured corporate bonds issued by that company.
- The securities held by a fund may not be loaned to another person, provided that this restriction shall not apply given compliance with Article 14.
- Proxy forms for shareholders' meetings of an issuing company whose shares are purchased by a fund may not be sold or transferred.
- No fund may authorize stock trades by any one securities firm that exceed 30 percent of the total monetary value of the fund's stock trades in the given month. This provision shall not apply, however, to funds that have been established for less than one full fiscal year.
- The total amount any fund may invest in a bills finance company's guaranteed bills may not exceed 10 percent of the fund's total asset value, and may also not exceed TWD 500 million.
- The total amount invested by a fund in the international financial institution bonds issued by any single international financial institution with FSC approval to issue such bonds within Taiwan may not exceed ten percent of the fund's net asset value, and may not exceed 10 percent of the international financial institution bonds issued within Taiwan by the given international financial institution.
- The SITE may not engage in any improper trading activity and thereby affect the net asset value of a fund under its management.
- The SITE may not engage in any other act prohibited by the FSC.

Future trust fund

The offering from a future trust enterprise to a non particular person of futures trading and futures related investments shall be insured reasonable dispersion risk and limited to the following:

- A futures commission merchant established by and under the preceding law, under Article 5.
- Approved by the competent authority and are not allowed to trade outside the futures exchange of derivatives of currencies, securities, interest rates, indices, or any other interests conducted pursuant to the regulations or practices set forth by domestic or foreign futures exchanges or other futures markets.
- Holding the future trust fund beneficiary certificate or approved by foreign fund management institution or a managed future trust fund issued by other future trust enterprise.
- Securities other than the preceding funds.
- Futures related spot products besides derivatives of securities.
- A futures trust enterprise may only utilize a futures trust fund for investments in the items of subparagraph 5 of the preceding paragraph after submitting an investment and risk management plan to the competent authority and receiving its approval.

Fund management company

The use of a fund management company's capital shall be limited to the following:

- Bank deposits
- Purchase of government bonds, corporate bonds, or financial bonds
- Purchase of treasury bills, negotiable fixed-term deposit certificates, or commercial papers
- Purchase of SITE beneficiary certificates meeting SFB requirements and in a specified ratio
- Other utilization as approved by the SFB

Foreign institutional investor (FINI)

Investment of FINIs is limited to the following:

- Investing in stocks, bond conversion entitlement certificates, and Taiwan depositary receipts issued or privately placed by listed, over-the-counter (OTC), or emerging-stock companies.
- Investing in security investment trust fund beneficiary certificates.
- Investing in government bonds, financial bonds, ordinary corporate bonds, convertible corporate bonds, and corporate bonds with warrants.
- Investing in beneficial securities placed publicly or privately by trustee institutions, or asset-backed securities placed publicly or privately by special-purpose companies.
- Issuing call warrants and put warrants.
- Investing in other securities as approved by the competent authority for the securities industry.

2.5 Borrowing

Following the promulgation of the new ruling, dated December 21, 2004, by SFB on Stock Borrowing and Lending, foreign banks, insurance companies, securities firms, fund management companies, governmental investment institutions, pension funds, mutual funds, unit trust funds, investment trust funds, trust companies and academic, or charity organizations (specified foreign investors) are allowed to borrow stocks with their assets in Taiwan as collateral.

Stock borrowing and lending activities by specified foreign investors are governed by article 82-2 of the Operating Rules of the Taiwan Stock Exchange Corporation and Rules for Stock Borrowing and Lending.

2.6 Accounts and prospectus

Investment fund

To raise money initially for the investment fund, the fund management company shall prepare a prospectus for public offering.

The investment fund should establish a fund accounting system in accordance with SFB regulations. The fiscal year of the investment fund shall begin on 1 January and end on 31 December of each calendar year. Also, the investment fund shall prepare an annual report within two months after the close of each fiscal year and a monthly report within 10 days after the end of each calendar month, for submission to the SFB.

The annual report referred to in the preceding paragraph shall be audited and certified by a registered accountant approved by the SFB. The annual report and monthly report referred to in the preceding paragraph shall be sent to the SFB through the Securities Investment Trust Association for inspection

Future trust fund

To raise money initially for the future trust fund, the fund management company shall prepare a prospectus for public offering.

The future trust fund should establish a fund accounting system in accordance with SFB regulations. The fiscal year of the future trust fund shall begin on 1 January and end on 31 December of each calendar year. Also, the future trust fund shall prepare an annual report within two months after the close of each fiscal year and a monthly report within 10 days after the end of each calendar month, for submission to the SFB.

The annual report referred to in the preceding paragraph shall be audited and certified by a registered accountant approved by the SFB. The annual report and monthly report referred to in the preceding paragraph shall be sent to the SFB through the Securities Investment Trust Association for inspection.

Fund management company

The fund management company should announce to the public and file with the SFB, within four months following the close of each fiscal year, annual financial reports which have been duly audited and certified by a certified public accountant, approved by the company board of directors, and recognized by its supervisors.

Foreign institutional investor (FINI)

For FINIs, the annual audit requirement is removing effective from 30 June 2003.

2.7 Supervision

The supervisory authority for the three above-mentioned parties is the SFB, Division 4, No. 85, Sec 1, Shin-Sheng South Road, Taipei, Taiwan, and Republic of China.

2.8 Fund ownership

With the exception of the initial fund raising (See 1.10 Stock Exchange), there are no specific laws restricting the percentage of funds which any one person or group of persons may hold in a fund.

Fund structure

Investment fund

Funds may invest in other funds provided that such investments do not exceed certain limits as prescribed by the SFB. The following are the principal restrictions on the fund management company investing in other funds:

- Should not invest in various trust funds under the same fund management company
- Should not invest in investment funds in which its market price is in excess of 90 percent of its net asset value of the previous day
- The aggregate amount of any individual investment fund investing in another investment fund should not exceed 10 percent of its net asset value
- The aggregate amount of total investment funds investing in any individual investment fund should not exceed 10 percent of the issued units of the individual trust fund.

Future trust fund

The offering from a future trust enterprise to a non particular person of futures trading should be approved by the competent authority and the following:

- Holding futures contract, futures option contract, and option contract of the aggregate amount of the initial margins required for futures contracts, initial margins required for put option contracts, and premiums required for call option contracts. The open positions of all delivery months plus the investment by the account in money market instruments shall not be more than 70 percent of the net asset value balance of the future trust fund
- The initial margin required for open positions in the nearest and next-nearest contract months, respectively, of any single futures contract may not exceed 10 percent of the net asset value of the given futures trust fund; the initial margin required for open positions in any other contract month of the same single futures contract may not exceed 5 percent of the net asset value of the given futures fund.
- Holding the aggregate amount of the initial margins required for single option sequence together with the same total amount of premium payables delivered and received option sequence transactions shall not be more than 10 percent of the net asset value balance of the future trust fund

- Hold the aggregate amount of the initial margins required for single underlying product or financial instruments futures contract, option contracts together with the same total amount of the single underlying product or financial instruments futures contract shall not be more than 20 percent of the net asset value balance of the future trust fund

The option sequence mentioned in item three points to the futures option or options contract for trading on the same object, due dates and strike price.

2.10 Stock exchange

Investment Fund

Only closed-ended funds may be listed on the Stock Exchange while open-ended funds may not be listed.

Within one month after the receipt of the business license, the newly incorporated fund management company should file with the SFB its application for raising the initial securities investment fund. The fund management company should start to conduct the public offering within twelve months after the approval from the SFB and the required funds should be fully subscribed within forty-five days from the start of the public offering.

The type, minimum amounts and diversification criteria for the initial fund raising are prescribed by the SFB and are based on the needs of the securities markets and the money supply situation. In general, an initial fund must rise not less than TWD 3 billion for open ended funds and TWD 2 billion for closed-ended funds. Additionally, there must be at least 1,000 unit holders whose investment in the fund is individually less than TWD 1 million and in excess of TWD 400 million in the aggregate.

Future Trust Fund

Within one month after the receipt of the business license, the newly incorporated future fund enterprise should file with the SFB its application for offering the future trust fund.

The offering from a future trust enterprise to a non particular person of futures trading in accordance with the preceding law, the future trust enterprise is also required the following:

- Offering in its own country
- Established amount of not less than TWD 500 million
- Beneficiaries may not commence application for redemption until 45 days after the date on which the fund was established

The offering of the futures trust fund shall commence within six months from the date on which the [business license] approval letter is received the fund shall be established within 45 days thereafter.

After applying (or registering) to publicly offer a futures trust fund and obtaining application approval (or effective registration), in addition to the SITE shall also commence the public offering within three months after the date on which it receives written notification of approval or effective registration, and establish the fund within 30 days thereafter, provided that where, for legitimate reason, the public offering cannot commence within three months, the SITE may, prior to the deadline, apply for an extension of not more than three months, to be granted only once.

2.11 Bank secrecy

The Banking Bureau of the Financial Supervisory Commission has issued guidelines to banks and financial institutions with respect to money laundering.

2.12 Fund set-up

It takes approximately three months from the time an application is submitted to the SFB to the time the fund is offered to the public.

The cost of setting up a fund in Taiwan is approximately TWD 17 million or USD 500,000. It consists primarily of marketing expenses, legal fees, investment bankers' fees etc.

It includes expenses for the period from set-up of the security investment trust company to the set-up of the first fund. Details of these costs are below.

Set-up of security investment trust company

- Approximately TWD 2 million for professional fees (such as, lawyer and CPA fees etc.);
- TWD 3 million to TWD 8 million for salary expenses, rental, and depreciation expenses.

Set-up of first fund

- Approximately TWD 6 million for promotion expenses
- TWD 0 to TWD 3.1 million for professional and other direct expenses

2.13 Foreign funds

Prior to the marketing of a mutual fund organized under the laws of a territory outside Taiwan, it must be approved by the SFB. Subsequent to approval, such a fund must be distributed through qualified financial institutions, which are most commonly banks.

Also, individuals or legal entities can invest in foreign funds through the use of designated investment funds, normally provided by banks, which invest in foreign marketable securities.

2.14 Bearer shares

The issue of units in bearer form is prohibited in Taiwan. All units are registered with a fund management company and transferred only through the endorsement of the transferor.

2.15 Use of the internet

The use of the internet as a marketing tool for the stock brokerage activities is increasing in popularity. On 8 March 1999 on-line transactions of mutual funds were approved by SFB.

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