

Content

Title : Guidelines for Depositing Funds for Securities Offered and Issued by Issuers into Specialized Accounts **Ch**

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Legislative : Promulgated by Securities and Exchange Commission, Ministry of Finance on January 31, 1996 per Ruling Ref. No. (85)-Taiwan-Finance-Securities (I)-00290.

A full amendment, including renaming of the regulations, was promulgated by the Securities and Exchange Commission on 6 August, 2002 per Ruling Ref. No. (91)-Taiwan-Finance-Securities (I)-0910004191.

Content : Article 1

Where an issuer, acting in accordance with the provisions of Subparagraph 2 of Paragraph 1 of Article 9 of the Criteria Governing the Offering and Issuance of Securities by Securities Issuers, establishes a specialized account for the deposit of proceeds from the offer and issue of securities, such issuer shall observe the provisions of these Guidelines in order to ensure the rights and interests of investors.

Article 2

Securities and parties covered by these Guidelines:

After an issuer reports (or applies for) the offer and issue of negotiable securities and the report takes effect (or the application is approved), it shall establish a specialized account pursuant to the provisions of these Guidelines except under the following circumstances:

- (1) issuance of new shares due to merger;
- (2) issuance of new shares due to acquisition of shares of another company;
- (3) issuance of new shares due to an acquisition or split carried out in accordance with the law;
- (4) issuance of ordinary corporate bonds; or
- (5) issuance of employee stock options.

Article 3

In establishing a specialized account for the proceeds from the offering and issuance of securities, an issuer shall enter into a "Consignment Contract for Collecting Proceeds" and "Consignment Contract for Depositing Proceeds" after it has obtained the approval of this Commission or the registration becomes effective and before the collection of the proceeds commences. However, if the contracts are entered into with the head office of one and the same financial institution, the said contracts may be combined into one.

Article 4

The bank to collect and deposit the proceeds shall be selected by the issuer or the preparatory office of a company to be established through an offering; provided that the collection and deposit of the proceeds shall not be handled by the same business unit of the bank.

Article 5

The Consignment Contract for Collection of Proceeds shall stipulate the following (see Attachment 1 for a standard contract):

- (1) After the bank consigned to collect the proceeds has received the proceeds, the issuer or the preparatory office of the company to be established through an offering shall not use such proceeds.
- (2) Within five (5) business days after the deadline for payment, such proceeds shall be deposited into the bank of specialized deposit account by the bank consigned to collect proceeds.
- (3) If the securities are not fully subscribed, after they are fully subscribed by specified persons, the proceeds paid shall still be deposited into the bank consigned to collect the proceeds. The bank consigned to collect proceeds shall deposit such proceeds into the bank of specialized deposit account on the business day following the date of full payment.

Article 6

The Consignment Contract for Depositing Proceeds in a Specialized Account shall stipulate the following (see Attachment 2 for a standard contract):

- (1) The bank where the specialized account is established for the deposit of proceeds shall not pay the proceeds to the issuer or the preparatory office of the company to be established through an offering until such proceeds are fully collected. In the meantime, the bank shall provide a proof of deposit to this Commission for recordation; for a company whose shares are already publicly listed or are being traded at the place of business of a securities firm, the bank where the specialized account is established for the deposit of proceeds shall also provide a copy of the proof of deposit to either the Taiwan Stock Exchange Corporation or the Republic of China Over-the-Counter-Securities Exchange.
- (2) Before the proceeds are fully collected, the issuer or the preparatory office of the company to be established through an offering shall not pledge the deposit in the specialized account for a loan; provided that it may enter into a custodian contract with the bank of specialized deposit account. After such contract is approved by this Commission for recordation, the company may purchase government bonds or certificates of deposit from the bank of specialized deposit account and consign it for safekeeping. However, such government bonds or certificates of deposit shall not be pledged for a loan. The contract shall not be terminated/cancelled unless an approval for recordation is granted by this Commission.
- (3) When an approval is granted by this Commission or the registration becomes effective, if each use of the proceeds requires to be reported to this Commission for recordation, the issuer or the preparatory office of the company to be established through an offering shall apply to this Commission in writing before the use. The bank of specialized deposit account shall not allow the amount to be used until it has received a copy of the approval letter for recordation from this Commission.
- (4) If the effective registration or approval is revoked by this Commission because the proceeds cannot be fully collected within the prescribed period of time, the bank of specialized deposit account shall be responsible to return the collected proceeds to the original payors. Any cost so incurred shall be paid by the issuer or the promoter of the company to be established through an offering.

Article 7

When a securities firm underwrites securities in accordance with Article 29

of the Regulations Governing Securities Firms, these Guidelines shall apply. The proceeds collected in the specialized account shall be deposited into the bank of specialized deposit account within five (5) business days after the deadline for underwriting/payment and used pursuant to the above procedures.

Article 8

When foreign issuers offer and issue negotiable securities, those required under the provisions of Paragraph 1 of Article 13 of the Criteria Governing the Offering and Issuance of Securities by Foreign Securities Issuers to establish a specialized account shall do so pursuant to the provisions of Articles 3 to 7 of these Guidelines.

Data Source : Financial Supervisory Commission Laws and Regulations Retrieving System