

Content

Title :	Directions for Public Companies Conducting Private Placements of Securities <b>Ch</b>
Date :	2013.01.08
Legislative :	<ol style="list-style-type: none"><li>1. Full text of seven points adopted and issued per 11 October 2005 Order No. Financial-Supervisory-Securities-I-0940004469 of the Financial Supervisory Commission, Executive Yuan; for enforcement from the date of issuance</li><li>2. Full text of seven points amended and issued per 8 May 2009 Order No. Financial-Supervisory-Securities-I-0980017689 of the Financial Supervisory Commission, Executive Yuan</li><li>3. Full text of eight points amended and issued per 1 September 2010 Order No. Financial-Supervisory-Securities-Corporate-0990046878 of the Financial Supervisory Commission, Executive Yuan; for immediate effect</li><li>4. Points 2, 3, and 8 and Attachment to Point 6 amended and issued per 8 January 2013 Order No. Financial-Supervisory-Securities-Corporate-1010055995 of the Financial Supervisory Commission; for immediate effect</li></ol>
Content :	<p>1 A public company conducting a private placement of securities under Article 43-6 of the Securities and Exchange Act (the "Act") shall do so in accordance with these Directions.</p> <p>2 Terms used in these Directions are defined as follows:</p> <ol style="list-style-type: none"><li>1. Price determination date: The date when the board of directors resolves on the price, conversion price, or subscription price of privately placed straight corporate bonds or securities with equity characteristics; the price of securities with equity characteristics may be determined by the board of directors only after, and on the basis of, a determination of the pricing by a resolution of a shareholders meeting.</li><li>2. Reference price:<ol style="list-style-type: none"><li>A. For TWSE-listed or GTSM-listed stock, it shall be the higher of the following two calculations:<ol style="list-style-type: none"><li>a. The simple average closing price of the common shares of the TWSE listed or GTSM listed company for either the 1, 3, or 5 business days before the price determination date, after adjustment for any distribution of stock dividends, cash dividends or capital reduction.</li><li>b. The simple average closing price of the common shares of the TWSE listed or GTSM listed company for the 30 business days before the price determination date, after adjustment for any distribution of stock dividends, cash dividends, or capital reduction.</li></ol></li><li>B. For emerging stock, it shall be the higher of the following two calculations:<ol style="list-style-type: none"><li>a. The sum of all transaction amounts of the common shares of such emerging stock in the Emerging Stock Computerized Price Negotiation and Click System in each business day for 30 business days prior to the price determination date, divided by the sum of the number of shares traded in each business day, after adjustment for any distribution of stock dividends, cash dividends or capital reduction.</li><li>b. The net worth per share shown on the financial report audited and</li></ol></li></ol></li></ol>

certified or reviewed by a certified public accountant (CPA) for the period closest to the price determination date.

C. For stock that has never been listed on the TWSE or GTSM or traded over-the-counter at securities firms, the reference price is the net worth per share shown on the financial report audited and certified or reviewed by a CPA for the period closest to the price determination date.

D. Exchangeable corporate bond:

a. If the exchangeable underlying stocks are TWSE listed (or GTSM listed), the reference price is the higher of either the simple average closing price of the common shares for any of either the 1, 3, or 5 business days before the price determination date, after adjustment for any distribution of stock dividends, cash dividends or capital reduction, or the simple average closing price of the common shares for the 30 business days before the price determination date, after adjustment for any distribution of stock dividends, cash dividends or capital reduction.

b. If the exchangeable underlying stocks are emerging stocks, the reference price is the higher of the following: [i] the sum of all transaction amounts of the common shares of the exchangeable stock in the Emerging Stock Computerized Price Negotiation and Click System in each business day for 30 business days prior to the price determination date, divided by the sum of the number of shares traded in each business day, after adjustment for any distribution of stock dividends, cash dividends or capital reduction, or [ii] the net worth per share shown on the financial report audited and certified or reviewed by a CPA for the period closest to the price determination date.

c. If the exchangeable underlying stocks have never been TWSE listed (or GTSM listed) or traded over-the-counter at securities firms, [the company] shall, by the resolution date of the board of directors, request experts to provide opinions on the price per share for the common shares of the exchangeable underlying stocks.

3. Theoretical price: A securities price calculated based on an appropriate pricing model that is selected in consideration of the various rights under the terms of issuance. The pricing model shall as a whole encompass, and include the concurrent consideration of, the various rights included in the terms of issuance. Any right not included for consideration within the model shall be excluded from the terms of issuance.

4. Strategic investor: Any individual or juristic person that, for the purpose of increasing the profit of the investee company, provides assistance to the investee company in terms of enhanced skills, improved quality, reduced cost, increased efficiency, enlarged market, or other benefits, achieved through vertical or horizontal integration in the industry or joint effort in product or market development or otherwise, and using the individual's or juristic person's own experience, skills, knowledge, brand, or channels.

5. Related party: As determined in accordance with the Regulations Governing the Preparation of Financial Reports by Securities Issuers.

6. Insider: A director, supervisor, managerial officer, or a shareholder holding more than 10 percent of the total number of shares of the company, and any spouse, minor child, or nominee holder thereof.

7. Independent expert: A CPA, lawyer, or securities underwriter, who may

not be a related party of the public company or of any placee.

3 A public company with a net profit and no accumulated deficit for the most recent fiscal year shall use the public offering method to issue securities, except in any of the following circumstances in which a private placement may be conducted:

1. The company is a public company formed by one single government or juristic-person shareholder.
2. The capital raised through private placement is to be used entirely in the introduction of a strategic investor(s).
3. The company is an TWSE listed, GTSM listed, or emerging-stock company to which a circumstance is likely to occur under Article 7 or 8 of the Regulations Governing the Offering and Issuance of Securities by Securities Issuers, where for justifiable reason the company, in urgent need of capital, is unable to achieve the reasonable improvement of the situation necessary for a public offering to be conducted, and has been granted approval by the Taiwan Stock Exchange Corporation ("TWSE") or GreTai Securities Market ("GTSM"). Nevertheless, in no event may a placee under the private placement be an insider or related party of the company.

A company conducting a private placement shall collect the price of the shares or subscription in full within 15 days starting from the day on which the board of directors resolves on the price determination date. However, if the private placement additionally requires an approval from the FSC or another competent authority, the company shall collect the price of the shares or subscription in full within 15 days from the date it receives the approval of the FSC or the other competent authority.

4 For a private placement of securities by a public company under Article 43-6 of the Act, with the exception of straight corporate bonds (which may be resolved on by the board of directors under paragraph 3 of the same article), the below-listed particulars shall be stated in the notice to convene the shareholders' meeting in accordance with paragraph 6 of that article, and shall be thoroughly explained at the shareholders' meeting:

1. The basis and reasonableness of the private placement pricing:
  - A. For a private placement of common shares, specify the percentage by which the private placement price of common shares may not be lower than the reference price, and the basis for the method by which the price was set, and its reasonableness; if the placee intends to make a non-cash capital contribution, the meeting notice shall also specify the capital contribution method, amount offset by the non-cash contribution and its reasonableness, and an independent expert's opinions on the reasonableness of the offset amount, to serve as a reference for the shareholders to decide whether to agree.
  - B. For a private placement of securities with equity characteristics such as preferred shares, convertible corporate bonds or corporate bonds with warrants, specify the terms of the private placement, the percentage by which the issuance price may not be lower than the theoretical price, and provide an overall explanation of the reasonableness of the terms set for the private placement. For a private placement of preferred shares, if the placee intends to make a non-cash capital contribution, the meeting notice shall also specify the capital contribution method, amount offset by the non-cash contribution and its reasonableness, and an independent expert's

opinions on the reasonableness of the offset amount, to serve as a reference for the shareholders to decide whether to agree.

C. If the price per share of the privately placed common shares or preferred shares, the conversion price of convertible corporate bonds, or the subscription price of preferred shares with warrants, corporate bonds with warrants, or employee stock warrants might possibly be lower than the par value of the shares, specify the cause, reasonableness, method of price setting, and any effect on the shareholders' equity (such as an increase in accumulated loss, or the possibility of future capital reduction as a result of an increase in accumulated loss).

D. Where the company is a TWSE listed or GTSM listed company or an emerging stock company, if the price per share of the privately placed common shares is lower than 80 percent of the reference price, or if the issuance price of the preferred shares, convertible corporate bonds, preferred shares with warrants, corporate bonds with warrants, or employee stock warrants is lower than 80 percent of the theoretical price, state the independent expert's opinion on the basis and reasonableness of the pricing on the meeting notice, to serve as a reference for the shareholders to decide whether to agree.

E. The shareholders' meeting may not grant discretionary authorization to the board of directors or the chairman of the board to set the percentage for the private placement pricing.

2. The method for selecting the specific persons:

A. If the placees are insiders or related parties of the company, the list of placees, method and objectives of selecting the placees, and the relationship between the placees and the company shall be fully discussed at a meeting of the board of directors and stated in the notice to convene the shareholders' meeting, failing which no such person may subscribe afterwards. The price per share fixed for privately placed common shares may not be lower than 80 percent of the reference price, and the issuance price fixed for privately placed preferred shares, convertible corporate bonds, preferred shares with warrants, corporate bonds with warrants, or employee stock warrants may not be lower than 80 percent of the theoretical price.

B. If any placee is a strategic investor, the method and objectives of selecting the placee, the necessity for that selection, and the anticipated benefits shall be fully discussed at a meeting of the board of directors and stated in the notice to convene the shareholders' meeting.

C. Where the placees have already been determined before the shareholders' meeting notice is mailed, the method and objectives of selecting the placees, and the relationship between the placees and the company, shall be specified. If any placee is a juristic person, the name of the juristic person and the name and the percentage of shareholdings shall be given of every shareholder of the juristic person whose equity interest ranks among the top 10, and also of the relationship to the company of every shareholder of the juristic person whose equity interest ranks among the top 10.

D. Where the placees are determined after the shareholders' meeting notice is mailed, the above information on the placees shall be input into the Market Observation Post System ("MOPS") within 2 days starting from the

date the places are determined.

3. In the reasons for the necessity for conducting the private placement, specify the reasons for not using a public offering, the limit on the private placement, the use of the funds raised by the private placement, and the anticipated benefits. If there are to be multiple closings, also specify the anticipated number of closings, the use of the funds for each closing of the private placement, and the anticipated benefits for each closing.

If an independent director expresses an objection or reservation, it shall be specified in the notice to convene the shareholders' meeting.

If there is a significant change in managerial control within the 1 year period immediately preceding the day on which the board of directors resolves on the private placement, or if there will be a significant change in managerial control after the introduction of strategic investor through private placement, the company shall engage a securities underwriter to provide an assessment opinion on the necessity and reasonableness for conducting the private placement, and shall state the opinion in the notice to convene the shareholders' meeting to serve as a reference for the shareholders to decide whether to agree.

The required information under the preceding three paragraphs shall appear in the notice to convene the shareholders' meeting in a conspicuous typeface, accompanied by an indication of the websites where relevant information may be found, including the website of the MOPS and the company's website.

5 A public company shall report to the subsequent shareholders' meeting or meetings and specify the dates of the approvals by the shareholders' meeting and the board of directors for the conducting of a private placement of straight corporate bonds (including exchangeable corporate bonds) or securities with equity characteristics and the quantity approved, the basis and reasonableness of the private placement price, the method for selecting the specific persons, the reasons for the necessity of conducting the private placement, the places of the private placement, qualification requirements, subscription quantities, relationship to the company, involvement in company operations, actual subscription (or issuance) price, the discrepancy between the actual subscription (or issuance) price and the reference (or theoretical) price, any effect of the private placement on shareholder equity, and the status of utilization of the funds, plan implementation progress, and the realization of plan benefits from the time the price of the shares or subscription has been paid up in full until the fund utilization plan has been completely carried out.

6 Information disclosure:

1. TWSE listed, GTSM listed, and emerging stock companies shall input information on the private placement of securities into the MOPS in accordance with the rules of the TWSE and the GTSM:

A. Within 2 days starting from the date of the resolution of the board of directors meeting:

- a. the matters required to be specified in the shareholders' meeting notice as provided in Article 43-6, paragraph 6, of the Act
- b. If the price per share of privately placed common shares is lower than 80 percent of the reference price, or the issuance price of preferred

shares, convertible corporate bonds, preferred shares with warrants, corporate bonds with warrants, or employee stock warrants is lower than 80 percent of the theoretical price, also disclose the independent expert's opinion on the basis and reasonableness of the private placement pricing.

c. If the placee makes any non-cash capital contribution, also disclose the independent expert's opinions on the reasonableness of the amount offset by the non-cash capital contribution.

d. If the placees are insiders or related parties of the company, also disclose the list of placees, method and objectives of selecting the placees, and the relationship between the placees and the company. If any placee is a juristic person, the name of the juristic person and the name and the percentage of shareholdings shall be given of every shareholder of the juristic person whose equity interest ranks among the top 10, and also of the relationship to the company of every shareholder of the juristic person whose equity interest ranks among the top 10.

e. If any placee is a strategic investor, also disclose the method and objectives of selecting the placee, the necessity of that selection, and the anticipated benefits.

f. If an independent director expresses an objection or reservation, also disclose that independent director's opinion.

g. If there is a significant change in managerial control within the 1 year period immediately preceding the day on which the board of directors resolves on the private placement, or there will be a significant change in managerial control after the introduction of a strategic investor through private placement, also disclose the assessment opinion issued by the securities underwriter on the necessity and reasonableness for conducting the private placement.

B. Within 2 days starting from the actual date of determination of the private placement price:

a. the monetary amount of the private placement, the use of the funds raised in the private placement, the schedule for use of the funds and anticipated benefits, the ratio of the current private placement amount and the anticipated cumulative amount of all private placements to the total paid-in capital, the method for selecting the placees, the basis for setting of the private placement price resolved by the shareholders' meeting, the private placement reference price and the actual private placement price, conversion price, or subscription price.

b. For exchangeable corporate bonds, if the exchange price is lower than 80 percent of the reference price for the common shares of the exchangeable underlying stock, also request an expert to provide an opinion on the basis and reasonableness of the pricing, and disclose on the MOPS the reasonableness of the difference and the expert opinion.

c. If, as it turns out, the actual price per share of privately placed common shares or preferred shares, or the conversion price of convertible corporate bonds, or the subscription price of preferred shares with warrants, corporate bonds with warrants, or employee stock warrants is lower than the par value of the shares, disclose the cause, reasonableness, method of price setting, and any effect on the shareholders' equity (such as an increase in accumulated loss, or the possibility of future capital reduction as a result of an increase in accumulated loss).

C. Within 10 days from the end of each quarter: the status of use of the funds raised by the private placement of securities; from the time the price of the shares or subscription has been paid up in full until the fund utilization plan has been completely carried out, a quarterly statement shall be published detailing the status of utilization of the funds raised in the private placement.

2. Within 15 days starting from the time the price of the shares or subscription has been paid up in full, the public company shall input into the MOPS the information on the private placement of securities as required under Article 43-6, paragraph 5 of the Act (see Attachment):

A. The type of securities privately placed, the date of the shareholders' meeting resolution, the monetary amount of the private placement, the unit price of the private placement, the basis on which the price was set, the total number of shares placed in the current private placement, the date the price of the shares or subscription has been paid up in full, the delivery date, the expiration date, the reason for conducting the private placement, the targets of the private placement, proportional shareholdings of the placees, relationship between the placees and the company, estimated number of director or supervisor seats to be obtained by the placees. For any placee that is a juristic person, the name of the juristic-person shareholder shall be given, together with the name and shareholding of every shareholder of the juristic person whose equity interest ranks among the top 10, and also the relationship to the company of every shareholder of the juristic person whose equity interest ranks among the top 10.

B. In a case of private placement of employee stock warrants, also simultaneously disclose: the subscription volume of each individual subscription rights holder, the volume that may be subscribed to by each individual subscription rights holder per accounting year, the method for performance, and the duration of the rights.

C. In a case of private placement of overseas securities, also simultaneously disclose: the type of securities, denominated currency of the issue, and place of listing.

3. The public company shall disclose the relevant matters regarding the conducting of the private placement in accordance with the Regulations Governing Information to be Published in Public Offering and Issuance Prospectuses.

7 For securities privately placed by an TWSE listed or GTSM listed company, and for any securities thereof that are distributed, converted, or subscribed subsequent to the private placement, the company shall, for 3 full years following the delivery date of the private placement securities, obtain a letter issued by the TWSE or GTSM acknowledging that the securities meet the standards for TWSE listing or GTSM listing before it may file with the FSC for retroactive handling of public issuance procedures.

8 For violations of these Directions, in addition to imposing administrative fines on the responsible person of the violating company under Article 178, paragraph 1 and Article 179 of the Act, the FSC may revoke registration cases pursuant to the Regulations Governing the Offering and Issuance of Securities by Securities Issuers, the Regulations Governing the Offering and Issuance of Foreign Securities by Securities

Issuers, and the Regulations Governing the Offering and Issuance of Securities by Foreign Issuers. In cases of serious violations, the FSC may also take any necessary measures pursuant to Articles 20 and 171 of the Act.

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Data Source : Financial Supervisory Commission Laws and Regulations Retrieving System