

Content

Title : Regulations Governing Over-the-Counter Trading Enterprises [Ch](#)

Date : 2006.06.27

Legislative : 1. Full text of 30 articles adopted and issued 27 June 2006 per Order No. Financial-Supervisory-Securities-III-0950002994 of the Financial Supervisory Commission, Executive Yuan; for implementation from the date of issuance

Content : Chapter I General Principles

Article 1

These Regulations are adopted pursuant to Article 18, paragraph 2 of the Securities Exchange Act ("the Act").

Article 2

The term over-the-counter trading ("OTC trading") as used in these Regulations means trading at securities firms' places of business, or transaction on a platform established by an OTC trading enterprise, of securities and other financial products.

The term over-the-counter trading enterprise ("OTC trading enterprise") in these Regulations means an enterprise that establishes a venue and equipment for purposes of trading or transaction referred to in the preceding paragraph of securities and other financial products, and that regulates matters relating to the OTC trading of those products.

Article 3

The operation of an OTC trading enterprise shall require the approval of the Competent Authority.

Article 4

The business operated by OTC trading enterprises is as listed below:

1. OTC trading of securities.
2. OTC trading of other financial products.
3. Other related business items as approved by the Competent Authority.

Chapter II Permission for Establishment

Article 5

An OTC trading enterprise shall be organized as a company limited by shares; its paid-in capital may not be less than NT\$1 billion, which shall be fully subscribed by the promoters at the time of promotion.

Article 6

An OTC trading enterprise shall apply to the Competent Authority by submitting an application and the following documents:

1. Articles of incorporation.
2. Business plan.
3. A register of the promoters, specifying their personal or organizational names, addresses, and capital contributions.
4. Promoters meeting minutes.
5. Other documents as required by the Competent Authority.

The business plan of subparagraph 2 of the preceding paragraph shall include the items listed below:

1. Matters regarding the regulation of OTC trading of securities and other financial products.
2. Matters regarding the enterprise's internal organization and internal accounting controls.
3. Matters regarding the computer planning for OTC trading.
4. Other matters regarding business operations.

Article 7

After completing company registration procedures in accordance with law, an OTC trading enterprise shall apply to the Competent Authority for the issuance of a business license, attaching the documents listed below:

1. Document evidencing company registration.
2. Articles of incorporation.
3. Shareholders register and shareholders meeting minutes.
4. Register of directors, supervisors, and managerial officers, and a written statement declaring that they do not fall into any of the categories specified in Article 53 of the Act.
5. Board of directors meeting minutes.
6. Register of associated persons, evidentiary documentation of their qualifications, and a written declaration stating that they do not fall into any of the categories specified in Article 54 of the Act.
7. Other documentation as required by the Competent Authority.

If an OTC trading enterprise fails to apply for the issuance of a business license within six months after completing business registration, the Competent Authority may revoke its approval, provided that before that six-month period has lapsed and with legitimate reason, the OTC trading enterprise may apply to the Competent Authority to extend its approval; such extension may be granted only once for a period not to exceed six months.

Chapter III Management and Supervision

Section 1 Finance and Operations

Article 8

After obtaining permission from the Competent Authority and registering in accordance with law, an OTC trading enterprise shall post an operations bond with the national treasury.

The amount of the operations bond of the preceding paragraph shall be 5 percent of the company's paid-in capital amount.

Article 9

An OTC trading enterprise shall set aside in one lump sum NT\$50 million as a compensation reserve fund, and within 15 days after the end of every quarter, shall deposit 20 percent of its business service fee revenues into that compensation reserve fund, provided that this requirement shall no longer apply once the amount set aside in the compensation reserve fund reaches the amount of the total authorized capital.

The compensation reserve fund of the preceding paragraph shall be deposited in a designated account, and may only be used for the purposes listed below:

1. Bank deposit or postal savings.
2. Purchase of government or financial bonds.
3. Other purposes approved by the Competent Authority.

Article 10

An OTC trading enterprise shall prepare and submit to the competent authority for approval an annual business plan and a budget, three months and two months before the beginning of the fiscal year, respectively, and shall do the same for any amendments thereto. Within 15 days after the end of each quarter, it shall prepare a report on the implementation status of the annual business plan for that quarter, and file it with the Competent Authority for recordation.

An OTC trading enterprise shall implement the annual business plan and budget approved by the Competent Authority, and draft performance evaluation and assessment rules for its departments and personnel, and submit them, and any amendment thereto, to the Competent Authority for approval.

Article 11

Within four months after the end of every business year, and within two months after the end of the business half-year, an OTC trading enterprise shall file with the Competent Authority a CPA-audited and certified financial report passed by the board of directors and recognized by the supervisors.

Any inconsistency between the annual financial report in the preceding paragraph and the annual financial report recognized by the regular shareholders meeting shall be reported to the Competent Authority within two days from the date of occurrence of the fact.

The preparation of the financial report of paragraph 1 shall be subject mutatis mutandis to the provisions of the Regulations Governing Preparation of Financial Reports by Company-Type Stock Exchanges.

Article 12

An OTC trading enterprise's proprietary funds may not be loaned to any other party or transferred for any other purpose. Aside from utilization for operational purposes, such funds shall be restricted to the following uses:

1. Bank deposits or postal savings.
2. Purchase of treasury bills and negotiable certificates of deposit.
3. Purchase of government bonds or financial bonds.
4. Other uses approved by the Competent Authority.

Article 13

An OTC trading enterprise shall set aside special reserve from its after-tax earnings each year.

The special reserve of the preceding paragraph shall be set aside annually at a rate not higher than 80 percent of after-tax earnings, with the actual rate to be set by the Competent Authority with consideration to the OTC trading enterprise's earnings status.

The special reserve of paragraph 1 may not be used except to cover company losses, or for uses filed with and approved by the Competent Authority.

Article 14

An OTC trading enterprise shall draft procedures for the acquisition and disposal of fixed assets, and file them, and any amendment thereto, with the Competent Authority for approval.

Article 15

The OTC trading enterprise shall draft the fee schedules for its business operations and file them, and any amendments thereto, with the Competent

Authority for approval.

Article 16

An OTC trading enterprise shall apply to the Competent Authority for approval before taking any of the following actions:

1. Amending its articles of incorporation.
2. Suspending or resuming operations.
3. Undergoing dissolution.
4. Transferring all or the principal part of its assets to another or others or receiving transfer of all or the principal part of assets of another or others.
5. Making an equity investment in another company.
6. Any other matter that the Competent Authority requires to first be reported for its approval.

Article 17

If any of the circumstances listed below occurs at an OTC trading enterprise, it shall file a report with the Competent Authority:

1. Temporary suspension of securities trading on the OTC market due to an event of force majeure; also, resumption of trading in such cases.
2. Malfunction or interruption of the trading system or trading information transmission system.
3. Tardiness or inability by a securities firm to carry out performance or settlement.
4. Signing or termination of an OTC trading contract with a securities firm.
5. Utilization of the clearing and settlement fund deposited by a securities firm with the OTC trading enterprise.
6. The signing of a cooperation agreement or memorandum of understanding with a foreign exchange, self-regulatory organization, or other institution.
7. Adoption of a resolution at a shareholders or board of directors meeting.
8. Preparation and submission of an audit report and notification of the supervisors pursuant to Article 15, paragraph 2 of the Regulations Governing the Establishment of Internal Control Systems by Service Enterprises in Securities and Futures Markets.
9. Any other matter that the Competent Authority requires to be reported.

The circumstances in subparagraphs 1 to 3 of the preceding paragraph shall be reported to the Competent Authority on the day following the occurrence of the fact; the circumstances in subparagraphs 4 to 7 shall be reported to the Competent Authority within five days following the occurrence of the fact or any change in the status thereof.

Article 18

An OTC trading enterprise shall draft a business plan and submit it, and any amendment thereto, to the Competent Authority for approval.

The business plan of the preceding paragraph shall regulate the issues listed below:

1. The application for and termination of OTC securities trading.
2. Proprietary trading, trading for customer accounts, and how the two are to be distinguished.
3. Method for the establishment of a brokerage contract.

4. Business operation hours and trading units.
5. Method for the public display of trading prices.
6. Standards regarding tick size and price limits, and the setting of initial OTC trading prices.
7. Settlement and payment schedules and methods.
8. Arbitration and disposition of trading disputes and regulatory violations.
9. Other matters regarding OTC trading.

When an OTC-traded financial product's special characteristics render it unsuitable for trading under the methods of the preceding paragraph, the OTC trading enterprise may adopt separate trading rules and submit them, and any amendments thereto, to the Financial Supervisory Commission (FSC) for approval.

Article 19

An OTC trading enterprise shall establish a surveillance system for the OTC securities trading market, and draft rules therefor and submit them, and any amendment thereto, to the FSC for ratification.

Whenever necessary for the market surveillance of the preceding paragraph, an OTC trading enterprise may make inquiries of a securities firm trading over the counter or of a securities-issuing company, and may requisition and inspect relevant data, or notify such firm or company to submit written statements, and they may not refuse to do so.

Article 20

An OTC trading enterprise may investigate a securities firm's finances, business, and internal audit activities, and provide guidance. If any violation of laws or regulations or any impropriety is discovered, it shall take proper action immediately and notify the Competent Authority.

When an OTC trading enterprise carries out an investigation under the preceding paragraph and discovers any mismanagement, losses that undermine creditworthiness, or the occurrence of an emergency at a securities firm engaged in OTC trading, or there is any material deficiency in its internal audit activities, the OTC trading enterprise shall immediately conduct a targeted examination and provide guidance.

When a securities firm engaged in OTC trading is unable to perform its delivery obligations, the OTC trading enterprise shall immediately conduct a targeted examination, and supervise a replacement securities firm to take over its payment and settlement affairs.

The OTC trading enterprise shall draft procedures and rules for the matters specified in the preceding two paragraphs and submit them, and any amendments thereto, to the Competent Authority for approval.

Article 21

An OTC trading enterprise may not do any of the following acts without the approval of the Competent Authority:

1. Participate in a merger.
2. Transfer all, or a principal portion, of its business.
3. Provide guarantees, endorse negotiable instruments, or provide assets for use as collateral by others.
4. Any other act specified by the Competent Authority.

Article 22

To protect the public interest, the Competent Authority may from time to

time order an OTC trading enterprise to provide a financial or business report or other reference material, and may directly investigate its financial or business situation.

Section 2 Organization and Personnel

Article 23

An OTC trading enterprise shall draft an organizational charter covering matters such as its internal organization, staffing, and position titles, and submit it, and any amendments thereto, to the Competent Authority for approval.

Article 24

An OTC trading enterprise shall draft human resource management rules regarding personnel hiring, salary levels, compensation, attendance, incentives and penalties, training, advanced study, performance, retirement, severance, and disability and bereavement benefits, and submit them, and any amendments thereto, to the Competent Authority for approval.

Article 25

When there is any change in the directors, supervisors, or managerial officers of an OTC trading enterprise, it shall report such change to the Competent Authority within five days after the occurrence of the fact or change therein; any changes in its associated persons shall be compiled and submitted in a monthly summary report to the Competent Authority for recordation.

Article 26

No director, supervisor, or managerial officer of an OTC trading enterprise may fall into any category specified in a subparagraph of Article 53 of the Act; none of its associated persons may fall into any category specified in a subparagraph of Article 54 of the Act.

Article 27

No managerial officer or associated person of an OTC trading enterprise may in any fashion hold any concurrent position or honorary position at an OTC-listed company, emerging stock company, or securities firm.

Article 28

When a managerial officer or associated person of an OTC trading enterprise is remiss in or fails to faithfully carry out business matters entrusted to them, the enterprise shall dismiss such person from their position, terminate their employment, or make another appropriate disposition.

Article 29

No director, supervisor, managerial officer, or employee of an OTC trading enterprise may do any of the following acts:

1. Directly or indirectly engage in securities trading or financial product transactions using knowledge gained in the performance of duties.
2. Divulge any secret learned in the performance of duties.
3. Solicit, agree to accept, or accept any improper benefit for an action performed in the course of duties or in breach of duties.
4. Fail to recuse oneself when performance of duties involves any interest of one's own.
5. Commit any misrepresentation, fraud, nondisclosure, omission, or other misleading conduct in the conduct of OTC trading of securities or other financial products.
6. Violate any law or regulation or the Competent Authority's requirements

by commission or omission.

The provisions of paragraph 1 apply mutatis mutandis to the exercise of duties by the representative or designated representative of a director or supervisor that is a juristic person.

Chapter IV Supplementary Provisions

Article 30

These Regulations shall enter into force from the date of issuance.

Data Source : Financial Supervisory Commission Laws and Regulations Retrieving System