

Content

Title : Regulations Governing Information to be Published in Private Placement Memoranda by Securities Investment Trust Enterprises When Privately Offering Securities Investment Trust Funds **Ch**

Date : 2012.07.27

Legislative : 1. Full text of 8 articles adopted and issued 30 October 2004 per Order No. Financial-Supervisory-Securities-IV-0930005172 of the Financial Supervisory Commission, Executive Yuan; for implementation from the date of issuance
2. Articles 4, 7 and 8 amended and issued per 27 July 2012 Order No. Financial-Supervisory-Securities-SITC-1010033473 of the Financial Supervisory Commission; for enforcement from the date of issuance, except for Article 7, which shall enter into force from the fiscal year of 2013

Content : Article 1

These Regulations are adopted in accordance with Article 15, paragraph 5 of the Securities Investment Trust and Consulting Act (the "Act").

Article 2

When a securities investment trust enterprise privately offers a securities investment trust fund (a "fund") to specified persons in Taiwan, the enterprise shall prepare a private placement memorandum in accordance with the content requirements of these Regulations. When said enterprise privately offers a fund to specified persons abroad, the enterprise shall do so in accordance with the laws and regulations of the jurisdiction in which the offering is made, and these Regulations shall not apply.

Article 3

The contents of a private placement memorandum must be detailed, accurate and precise. There must not be any misrepresentation, nondisclosure, omission, or any other circumstances sufficient to mislead another party. In cases of misrepresentation or nondisclosure in the contents of a private placement memorandum, the securities investment trust enterprise, its responsible person(s), and any other persons who have attached their signature/seal to the private placement memorandum, shall be legally responsible.

The cover of a private placement memorandum must, in a conspicuous manner, have printed on it an investment risk warning. Where a fund is denominated in foreign currency, the type of currency in which the fund is denominated shall be noted. Where a trust enterprise is concurrently engaged in the securities investment trust business, and itself is the custodian of the assets of the securities investment trust, the memorandum shall also display a statement denoting that said enterprise is itself the custodian institution.

The securities investment trust enterprise and the chairman of its board of directors shall sign or seal the back cover of a private placement memorandum.

Article 4

The private placement memorandum shall include the following information:

- (1) A general description of the fund.
- (2) The main contents of the securities investment trust contract.
- (3) A general description of the securities investment trust enterprise.
- (4) Investment risk disclosure.
- (5) Methods for and limitations on the transfer of beneficial certificates.
- (6) Any other items as required by the Financial Supervisory Commission (FSC).

Article 5

The general description of the fund shall include the following information:

- (1) A brief introduction to the fund: This shall include at least the name of the fund, the type of fund, the total amount being privately offered, the total number of beneficial units, and the face value and duration of each beneficial unit; for a foreign denominated fund, the currency in which the fund is denominated shall be clearly denoted, and all payments for subscriptions or redemptions shall be made in that currency.
- (2) The professional duties of the securities investment trust enterprise and the fund custodian institution.
- (3) Fund investment: This shall include at least the basic policy, the scope, and the decision-making process of fund investments; also, the name of the fund manager, his or her professional (and/or academic) credentials, and his or her powers; and limitations on use of the fund. Where the fund manager concurrently manages another fund or other funds, the name(s) of the other fund(s) and measures adopted to prevent any conflict of interest shall be disclosed.
- (4) Principles and methods for handling the exercise of voting rights when the fund participates in a shareholders meeting of a share-issuing company.
- (5) Items, timing, and methods of payment for distribution of investment gains.
- (6) Subscription for beneficial certificates: This shall include at least the subscription procedure and deadline, the calculation of the subscription price and the method of payment, the method of delivery of the beneficial certificates and the timing of delivery, conditions for the successful or unsuccessful establishment of the fund, and the method of resolution in the event of unsuccessful establishment.
- (7) Redemption of beneficial certificates: This shall include at least the redemption procedure and deadline, the calculation of the redemption price and the method of payment, and the conditions for delayed payment of the redemption price.
- (8) The rights and fee burdens of beneficial owners: This shall at least include the rights that shall be enjoyed by the beneficial owner; the items, method of calculation, and method of payment for any fees that shall be the responsibility of the beneficial owner; the items, method of calculation, and method of payment for any taxes that shall be the responsibility of the beneficial owner; and matters pertaining to meetings of beneficial owners.
- (9) Information to be disclosed to beneficial owners: This shall include at least the content of information that, by law, shall be disclosed to beneficial owners, or that are stipulated in the securities investment trust contract, and the forms or methods by which such information is to be

presented.

Article 6

The main contents of the securities investment trust contract shall address at least the following matters:

- (1) Name of the fund, name of the securities investment trust enterprise, name of the fund custodian institution, and duration of the fund.
- (2) Assets of the fund.
- (3) Fees to be borne by the fund.
- (4) How to calculate the net asset value of the fund and of the net asset value per beneficial unit.
- (5) Any change in securities investment trust enterprises.
- (6) Any change in fund custodian institutions.
- (7) Termination of the securities investment trust contract.
- (8) Liquidation of the fund.
- (9) Items of which beneficiaries shall be notified.
- (10) Amendment of the securities investment trust contract.

Where a trust enterprise is concurrently engaged in the business of securities investment trusts and is itself the custodian of the assets of the securities investment trust fund, it may omit to carry the information regarding the name of the fund custodian institution, however, a clear statement that the enterprise is itself the custodian institution for the fund assets shall be carried in the securities investment trust contract.

Article 7

The general description of the securities investment trust enterprise shall include at least the following items:

- (1) A brief introduction to the enterprise.
- (2) The organization of the enterprise.
- (3) Disclosure of interested companies.
- (4) An overview of enterprise operations.
- (5) Statements of comprehensive income and balance sheets for the most recent 2 fiscal years.
- (6) Circumstances within the 2 most recent years involving punishments imposed by the FSC.
- (7) Litigated or non-litigated incidents materially affecting the rights and interests of beneficiaries.

Article 8

These Regulations shall enter into force from the date of issuance, except for Article 7 amended and issued on 27 July 2012, which shall enter into force from the fiscal year of 2013.