

Content

Title :	Directions Governing the Acquisition of Treasury Stock by Exchange-listed and OTC-listed Financial Institutions <b>Ch</b>
Date :	2008.09.18
Legislative :	1.Promulgated on November, 03, 2005 2.Amended on July, 16, 2008 3.Amended per order Jin-Guan-Yin-(VI)-No. 09760003970 dated September 18, 2008
Content :	<p>To maintain the financial soundness of financial institutions, it is hereby required that an exchange-listed or OTC-listed financial institution intending to buy back its own shares pursuant to Article 28-2 of the Securities and Exchange Act and the Regulations Governing Share Repurchase by Listed and OTC Companies shall meet the following requirements:</p> <p>1. For financial holding companies:</p> <p>(1) The capital adequacy ratio of its banking subsidiary and bills finance subsidiary respectively is not less than 10% and their tier-1 capital adequacy ratio respectively is not less than 6%, the capital adequacy ratio of its securities subsidiary is not less than 200%, and the capital adequacy ratio of its insurance subsidiary is not less than 250%.</p> <p>(2) The group capital adequacy ratio shall meet the following criteria respectively according to the purpose of share repurchase (using the group capital adequacy ratio for the most recent fiscal half-year examined by a certified public accountant):</p> <p>a. For the purpose of transferring shares to employees and/or equity conversion: The group capital adequacy ratio after deducting the dollar amount for the presently filed share repurchase is not less than 105%.</p> <p>b. For the purpose of share cancellation: The group capital adequacy ratio after deducting the dollar amount for the presently filed share repurchase is not less than 120%.</p> <p>(3) None of its subsidiaries has been ordered by the competent authority to carry out a capital increase but failed as yet to raise the funds.</p> <p>2. For banks:</p> <p>(1) The capital adequacy ratio after deducting the dollar amount for the presently filed share repurchase is not less than 10%, and the tier-one capital adequacy ratio is not less than 6% (using the capital adequacy ratio for the most recent fiscal half-year examined by a certified public accountant).</p> <p>(2) The most recent financial examination or review by the competent authority does not reveal any instance of insufficient provisioning of allowance for bad debts (including reserve for guarantee liabilities), false reporting of non-performing loans, or other similar instances.</p> <p>(3) The non-performing loan (NPL) ratio as most recently filed by the bank itself is below 2.5%, and the coverage ratio of allowance for bad debts is not less than 40%.</p> <p>3. For bills finance companies:</p> <p>(1) The capital adequacy ratio after deducting the dollar amount for the presently filed share repurchase is not less than 10%, and the tier-one capital adequacy ratio is not less than 6% (using the capital adequacy ratio for the most recent fiscal half-year examined by a certified public accountant).</p> <p>(2) The non-performing loan (NPL) ratio as most recently filed by the bill finance company itself is below 2.5% and the most recent financial examination or review by the competent authority does not reveal any instance of insufficient provisioning of allowance for bad debts (including reserve for guarantee liabilities), false reporting of non-performing loans, or other similar instances.</p> <p>4. For insurance companies: The capital adequacy ratio after deducting the</p>

dollar amount for the presently filed share repurchase is not less than 250% (using the capital adequacy ratio for the most recent fiscal year examined by a certified public accountant), and all funds are utilized at a ratio in compliance with Articles 146 to 146-6 of the Insurance Act and other applicable laws and regulations.

5. For securities firms: The capital adequacy ratio after deducting of the dollar amount for the presently filed share repurchase is not less than 200% (using the information from the monthly accounting statement or the capital adequacy ratio calculated based on the financial report for the most recent period certified by a certified public accountant, whichever is lower).

6. Where a financial institution does not meet the criteria for capital adequacy ratio set forth in Points 1 ~ 5 herein, the financial institution is still deemed meeting the criteria, provided its latest self-settled capital adequacy ratio that has been examined by a certified public accountant after deducting the dollar amount for the presently filed share repurchase reaches the level prescribed above, except in the case of a financial holding company that repurchases its own shares for the purposes of share cancellation.

A financial institution that has repurchased its own shares pursuant to the preceding paragraph, but its capital adequacy ratio calculated based on the financial report certified by a certified public accountant after deducting the dollar amount for the presently filed share repurchase does not reach the level prescribed above, the financial institution is barred from undertaking share repurchase pursuant to the preceding paragraph in one year from the date of repurchase.

7. A certified public accountant has audited and certified the financial statements of the aforesaid financial institution for both the most recent fiscal year and the most recent fiscal half-year and has issued an unqualified opinion or modified unqualified opinion for them, and the financial institution is financially sound, and has neither any deficit nor accumulated deficit (provided that this restriction shall not apply where the certified public accountant has issued a qualified opinion on an interim financial report for the reason that a long-term equity investment of the financial holding company and the investment gains/losses therefrom are accounted for based on a financial report of the investee company that has not yet been audited or reviewed by a certified public accountant), and furthermore there is no other factual evidence indicating any likelihood of false profit presentation in the financial statements. In addition, if a bank or bills finance company sells non-performing loans and defers recognition of the losses on an annual amortization basis, it shall deduct the full amount of any such deferred and unrecognized losses when calculating the maximum share repurchase amount permitted under Article 28-2 of the Securities and Exchange Act,

8. When filing to repurchase its own shares in accordance with the Regulations Governing Share Repurchase by Listed and OTC Companies, a financial institution shall through its responsible person additionally issue an undertaking stating that: (1) its financial status complies with the regulatory provisions set out in the aforementioned regulations; and (2) if the repurchase is carried out for the purpose of transferring shares to employees, it will implement accordingly and in good faith. A copy of the undertaking shall, together with a copy of the filing document and the share transfer rules, be submitted to the competent authority for the relevant industry.

9. Where a financial institution repurchases its own shares for the purposes of transferring shares to employees or otherwise for purposes of equity conversion, it shall submit a report on a semi-annual basis to the competent authority for the relevant industry, giving detailed information on the progress of its implementation of the share transfer scheme and the concrete measures adopted, and shall complete the share transfer within three years after the repurchase. If by the end of that period the share transfer is not completed, necessitating cancellation of capital, except in the situation where an employee or investor elects to waive the right to share subscription or equity conversion by reason of market price, the FSC will adopt any of the following measures:

(1) Require the financial institution to, within six (6) months following

share cancellation, carry out cash capital increase to make up the cancelled capital; before that capital is fully made up, the FSC may reject any application filed by the financial institution for a new business or for share repurchase;

(2) If the financial institution intends to repurchase its own shares after its capital has been fully made up as stated above, its capital adequacy ratio as calculated in accordance with the above principles must meet the following criteria before the financial institution may carry out such share repurchase: not less than 126% if it is a financial holding company (with all subsidiaries meeting the following capital adequacy ratio criteria for each industry), not less than 12% if a bank or bills finance company (with the tier-one capital adequacy ratio not less than 7.2%), not less than 300% if an insurance company, and not less than 240% if a securities firm; and

(3) Publish the name of the financial institution and any of the above restrictions that the FSC has imposed thereupon.

10. A financial institution is not subject to the provisions hereof for any repurchase of its own shares that, prior to the promulgation hereof, has already been announced and filed in compliance with Article 28-2 of the Securities and Exchange Act and the Regulations Governing Share Repurchase by Listed and OTC Companies.

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Data Source : Financial Supervisory Commission Laws and Regulations Retrieving System