

## Content

Title : Regulations Governing the Conduct of Discretionary Investment Business by Securities Investment Trust Enterprises and Securities Investment Consulting Enterprises [Ch](#)

Date : 2016.01.04

Legislative : 1. Full text of 44 articles adopted and issued per 30 October 2004 Order No. Financial-Supervisory-Securities-IV-0930005187 of the Financial Supervisory Commission, Executive Yuan; for enforcement from the date of issuance  
2. Articles 2, 6, 8, 10, 12 to 14, 16, 17, 22, 23, 28, 29, 32 to 34, 41, and 43 amended and issued, Articles 17-1 and 42-1 added, and Article 15 deleted per 20 January 2006 Order No. Financial-Supervisory-Securities-IV-0950000371 of the Financial Supervisory Commission, Executive Yuan  
3. Articles 14, 16, 41, and 43 amended and issued, Articles 8-1 and 22-1 added per 5 February 2007 Order No. Financial-Supervisory-Securities-IV-0960004182 of the Financial Supervisory Commission, Executive Yuan  
4. Articles 2, 4 to 6, 8, 10, 13, 14, 21 to 23, 33, 34, 38, 41, and 43 amended and issued and Chapter 4-1 and Articles 7-1, 14-1, and 41-1 to 41-3 added per May 12 2008 Order No. Financial-Supervisory-Securities-IV-0970018976 of the Financial Supervisory Commission, Executive Yuan  
5. Articles 1, 4 to 7, 16, 22, 32, 41, and 41-1 amended and issued, Articles 2-1, 7-1, 7-2, 19-1, 31-1, 31-2, and 31-3 added, and Article 7-1 accordingly renumbered as Article 7-3 20 per August 2009 Order No. Financial-Supervisory-Securities-SITC-0980042046 of the Financial Supervisory Commission, Executive Yuan  
6. Articles 2, 8, 21, 28, 31-1, and 44 amended and issued per 1 August 2012 Order Financial-Supervisory-Securities-SITC-1010032368 of the Financial Supervisory Commission; for enforcement from the date of issuance except for Article 21, which shall be enforced from the fiscal year 2013.  
7. Articles 2, 10, 16, 17-1, 23, and 31-3 amended and issued, and article 43 deleted, per 29 May 2014 Order No. Financial-Supervisory-Securities-SITC-10300133221 of the Financial Supervisory Commission  
8. Articles 4 to 6 amended and issued per 28 August 2014 Order Financial-Supervisory-Securities-Firms-1030030988 of the Financial Supervisory Commission  
9. Articles 5, 6, and 7-3 amended and issued per 4 January 2016 Order No. Financial-Supervisory-Securities-SITC-1040052431 of the Financial Supervisory Commission

Content : Chapter I General Principles

### Article 1

These Regulations are adopted pursuant to Article 50 paragraph 2, Article 52 paragraph 3, Article 54 paragraph 2, Article 55 paragraph 3, Article 56 paragraph 1, Article 58, Article 60 paragraph 2, Article 61 paragraphs 2 and 3, Article 62 paragraph 6, Article 64, and Article 65 paragraph 2 of the Securities Investment Trust and Consulting Act ("SITC Act").

### Article 2

"Discretionary investment services" in these Regulations means services in which a securities investment trust enterprise (SITE) or a securities investment consulting enterprise (SICE) performs value analyses and makes investment judgments with regard to securities, securities-related products, or other items approved for investment or trading by the Financial Supervisory Commission (FSC), and based on such judgments,

undertakes investments or trades on behalf of a customer using discretionary investment assets that the customer delivers by a mandate or transfers under a trust.

A securities broker, futures broker, managed futures enterprise, or futures trust enterprise concurrently operating a SICE that provides discretionary investment services shall be governed by Chapter 2, Chapter 4, and Chapter 4-1 herein, and additionally by the provisions of these Regulations regarding provision of discretionary investment services by a SICE.

A trust enterprise that concurrently provides mandate-type discretionary investment services shall be governed by Chapter 2, Chapter 4, and Chapter 4-1 herein, and additionally by the provisions of these Regulations regarding operation of mandate-type discretionary investment services by a SICE.

If, as described in the latter part of Article 18, paragraph 1 of the Trust Enterprise Act, a trust enterprise undertakes discretionary use of trust assets and invests those assets in the securities named in Article 6 of the Securities and Exchange Act, while also meeting certain other conditions, it shall apply to the FSC to concurrently conduct discretionary investment business in accordance with the Standards Governing the Establishment of Securities Investment Consulting Enterprises. Except where the Trust Act or the Trust Enterprise Act provides otherwise, rules governing the use of such assets by the trust enterprise shall be consistent with the provisions of Chapter 4 herein.

The "other conditions" of the preceding paragraph are that the trust assets individually managed or collectively managed through the trust enterprise are invested in the securities referred to under Article 6 of the Securities and Exchange Act in an amount not less than NT\$10 million.

If, for assets under the special ledger account of an insurance enterprise operating investment-linked insurance business, the policyholder's contract mandates the insurance enterprise with full discretionary authority in the use of such assets and the assets are used for securities as defined under Article 6 of the Securities and Exchange Act, the insurance enterprise shall apply to the FSC in accordance with the Standards Governing the Establishment of Securities Investment Consulting Enterprises for permission to concurrently operate discretionary investment business. The scope of its utilization of the aforesaid assets shall be as set out in Chapter 4-1.

In these Regulations, "custodian of the discretionary investment assets" means a bank that maintains custody of investment assets and undertakes other custodial business relating to discretionary investment pursuant to the SITC Act and relevant discretionary investment services contracts, and meets the conditions prescribed by the FSC.

#### Article 2-1

When a SITE, a SICE, or a securities broker provides trust-type discretionary investment services, it shall accept no less than NT\$10 million in original trust assets from the principal, and shall apply for concurrent operation of money trusts and securities trusts in accordance with these Regulations and the Regulations Governing the Concurrent Operation of Trust Business by Securities Investment Trust Enterprises, Securities Investment Consulting Enterprises, and Securities Firms.

Enterprises which provide trust-type discretionary investment services pursuant to the preceding paragraph shall do so in accordance with the SITC Act, these Regulations, and related laws and regulations, and shall additionally abide by the Trust Act, the Trust Enterprise Act, regulations governing the concurrent operation of trust business, and other related provisions.

## Chapter II Business Permission

### Article 3

A SITE or SICE intending to provide discretionary investment services shall apply to the FSC for approval.

No person that has not received the approval referred to in the preceding paragraph may provide discretionary investment services.

### Article 4

A SITE applying to provide discretionary investment services shall possess the following qualifications:

1. Having already established a securities investment trust fund.
2. A net worth per share not lower than par value in the CPA-audited and certified financial report for the preceding period.
3. Having received no sanction pursuant to Article 103, subparagraph 1 of the SITC Act, Article 100, paragraph 1, subparagraph 1 of the Futures Trading Act, or Article 66, subparagraph 1 of the Securities and Exchange Act within the preceding half-year.
4. Having received no sanction equal to or greater than those under Article 103, subparagraphs 2 through 5 of the SITC Act, Article 100, paragraph 1, subparagraphs 2 through 4 of the Futures Trading Act, or Article 66, subparagraphs 2 through 4 of the Securities and Exchange Act within the preceding two years.
5. Having made substantive corrections after being sanctioned pursuant to the preceding two subparagraphs and receiving an order to take corrective action.
6. Other qualifications as may be prescribed by the FSC.

### Article 5

A SICE applying to provide discretionary investment services shall possess the following qualifications:

1. Paid-in capital of no less than NT\$50 million. For a SICE making this application that concurrently conducts futures advisory business or a SICE simultaneously applying to conduct discretionary investment business and to concurrently conduct futures advisory business, actual paid-in capital shall be no less than NT\$70 million.
2. The CPA-audited and certified financial report for the preceding period, showing a net worth per share not lower than par value.
3. Having not been subject within the past three months to a warning, penalty for default, suspension of some or all of the rights and interests normally enjoyed by a member, or voidance or suspension of membership qualifications by the Securities Investment Trust and Consulting Association of the R.O.C. (SITCA) or the Chinese National Futures Association, pursuant to their self-regulatory rules, resulting from its operation of securities investment analysis or futures research and analysis.
4. Having received no sanction pursuant to Article 103, subparagraph 1 of

the SITC Act, Article 100, paragraph 1, subparagraph 1 of the Futures Trading Act, or Article 66, subparagraph 1 of the Securities and Exchange Act within the preceding the preceding half-year.

5. Having received no sanction equal to or greater than those under Article 103, subparagraphs 2 through 5 of the SITC Act, Article 100, paragraph 1, subparagraphs 2 through 4 of the Futures Trading Act, or Article 66, subparagraphs 2 through 4 of the Securities and Exchange Act within the preceding two years.

6. Having effected substantive correction after previously receiving a disposition or sanction under the preceding 3 subparagraphs and being ordered to make correction.

7. Other qualifications as may be prescribed by the FSC.

A SICE that applies to provide trust-type discretionary investment services shall meet the qualifications of subparagraphs 2 through 7 of the preceding paragraph, and its paid-in capital shall not be lower than the sum of the amount prescribed in subparagraph 1 of the preceding paragraph plus NT\$50 million; for a managed futures enterprise that concurrently operates or is at the same time applying to concurrently provide trust-type discretionary investment services, paid-in capital not lower than the sum of the minimum paid-in capital amount prescribed in Article 15 of the Standards for the Establishment of Managed Futures Enterprises plus NT\$50 million.

## Article 6

A SITE or a SICE that applies to provide discretionary investment services shall fill out an application form, attaching the following documents, for submission to the SITCA, which shall review and forward them to the FSC for permission:

1. Articles of incorporation.

2. Company bylaws.

3. The CPA-audited and certified financial report for the most recent fiscal year. If the date of application is more than six months past the start of the new fiscal year, the CPA-audited and certified financial report for the first half of the fiscal year shall also be attached.

4. The meeting minutes of the relevant board of directors meetings.

5. A business plan, specifying, with respect to the discretionary investment business, the operational principles, internal organization and segregation of duties, and personnel recruitment and training.

6. A declaration that the particulars set out in the application and its attachments involve no misrepresentations or nondisclosures.

7. A SITE or a SICE that applies to provide trust-type discretionary investment services shall at the same time attach the documents prescribed in the Regulations Governing the Concurrent Operation of Trust Business by Securities Investment Trust Enterprises, Securities Investment Consulting Enterprises, and Securities Firms.

The company bylaws referred to in subparagraph 2 of the preceding paragraph shall include an internal control system that sets out, with respect to discretionary investment services, operating principles, operating procedures, segregation of duties and responsibilities, resolution of business disputes, personnel training and education, and administrative matters.

A SITE or a SICE may simultaneously apply for a branch unit to provide

support in the promotion of its discretionary investment business.

#### Article 7

Within three months after the date of FSC approval for the offering of discretionary investment services, the SITE or SICE shall fill out an application for issuance of a new business license with the following documents attached for submission to SITCA, which shall review and forward them to the FSC for permission:

1. Documentary proof of company registration.
2. The SITE or SICE business license.
3. The name of the organization conforming to the provisions of Article 8, and a register of personnel meeting qualification requirements, issued by the SITCA after reviewing their qualifications, together with the relevant documentary proof of qualifications.
4. The audit report from a CPA special audit on the internal control system for the discretionary investment services.
5. A prospectus prepared in accordance with the provisions of Article 21 herein.
6. Documentary proof that the operating bond required under Article 10 has been furnished.
7. A declaration that the particulars set out in the application and its attachments contain no misrepresentations or nondisclosures.

The CPA performing the audit required by subparagraph 4 of the preceding paragraph shall be one qualified to audit and attest the financial reports of public companies.

The FSC may revoke the permission of a SITE or a SICE that fails to apply for issuance of a new business license within the period prescribed by paragraph 1, provided that with legitimate reason, an application may be forwarded to the FSC through SITCA prior to the end of the prescribed period for a one-time extension of three months only.

A SITE or a SICE that offers trust-type discretionary investment services shall apply for issuance of a new business license pursuant to the provisions of paragraph 1, and in addition, prior to commencing business, shall complete registration of new lines of business pursuant to the Regulations Governing the Concurrent Operation of Trust Business by Securities Investment Trust Enterprises, Securities Investment Consulting Enterprises, and Securities Firms and report to the FSC with documentation showing approval for membership in the Trust Association of the R.O.C. and the lodging of the required compensation reserve.

#### Article 7-1

A SITE or a SICE that offers discretionary investment services and applies for promotion and business solicitation for its discretionary investment services by a branch unit shall fill out an application, with the following documents attached, and apply to the FSC for permission:

1. Board of directors meeting minutes containing a resolution for the branch unit to engage in promotion and business solicitation for discretionary investment services.
2. The internal control system for the promotion and solicitation of discretionary investment services by the branch unit.
3. A declaration that the particulars set out in the application and its attachments involve no misrepresentations or nondisclosures.

The internal control system of subparagraph 2 of the preceding paragraph shall include rules governing the concurrent appointment and the conduct of associated persons at the branch unit who engage in promotion and solicitation for the discretionary investment services.

#### Article 7-2

A SITE or a SICE that offers discretionary investment services and makes an application pursuant to the preceding paragraph shall fill out an application form, with the following documents attached, and within six months after the date of receiving FSC permission, apply to the FSC for issuance of a new business license for its branch unit:

1. A register, issued by the SITCA, of associated persons at the branch unit engaging in promotion and solicitation for discretionary investment services whose qualifications have passed review, and documentation of their qualifications.
2. A declaration stating that none of the circumstances under Article 68 of the SITC Act apply to any officer, department supervisor, or associated person of the branch unit.
3. A declaration that the particulars set out in the application and its attachments involve no misrepresentations or nondisclosures.

Permission for a branch unit to engage in promotion and solicitation of discretionary investment services will be revoked for any SITE or SICE that does not apply to the FSC for issuance of a new business license for the branch unit for such business within the stated deadline of the preceding paragraph, provided that when a legitimate reason exists, an application may be made to the FSC for a one-time extension of no more than three months.

#### Article 7-3

Given any of the following circumstances in an application by a SITE or a SICE for operation of discretionary investment business, the FSC may withhold permission:

1. The business plan or the internal control system is insufficiently specific or cannot be effectively implemented.
2. The department supervisors or associated persons operating the discretionary investment business do not meet the provisions of the Regulations Governing Responsible Persons and Associated Persons of Securities Investment Consulting Enterprises regarding qualification or exclusively holding the given position.
3. The content of the application or matters set out therein are discovered to contain misrepresentations.
4. Other circumstances under which it is deemed necessary to withhold approval in order to protect the public interest.

The FSC may withhold permission given any of the following circumstances in an application by a SITE or a SICE for operation of trust-type discretionary investment business:

1. The circumstances in any of the subparagraphs of the preceding paragraph.
2. The person with authority to determine the disposition of trust assets does not meet the requirement under the Trust Enterprise Act of not concurrently holding any other position.
3. The responsible person of the SITE or SICE and the associated persons

that operate and manage trusts do not possess the qualifications or the specialized knowledge or experience in relation to trusts required by the Regulations Governing the Concurrent Operation of Trust Business by Securities Investment Trust Enterprises, Securities Investment Consulting Enterprises, and Securities Firms.

### Chapter III Management of Finances, Operations, and Personnel

#### Article 8

A SITE or a SICE that provides discretionary investment services shall establish a specialized department for that purpose, which shall be staffed with a sufficient number of competent supervisors and associated persons.

In addition to the specialized department referred to in the preceding paragraph, a SITE or a SICE shall at a minimum also establish investment research, financial accounting, and internal audit departments.

Unless the requirements of paragraph 4 or 5 are met, the supervisors and associated persons of the specialized department of paragraph 1 may not engage in any business other than that of the specialized department, nor may the duties of the supervisor and associated persons be undertaken on a concurrent basis by any person not registered as a department supervisor or associated person of the specialized department.

When a SITE or a SICE conducts discretionary investment business, the associated persons engaged in investment or trading decision-making for that business may serve concurrently as personnel engaged in investment or trading decision-making with respect to private placement of securities investment trust funds, offering of futures trust funds to persons meeting certain eligibility requirements, or discretionary futures trading.

When a SITE or a SICE conducting discretionary investment business meets the following requirements, the associated persons engaged in investment or trading decision-making for that business may serve concurrently as personnel engaged in investment or trading decision-making with respect to the offering of securities investment trust funds or as personnel engaged in securities investment analysis in connection with the conduct of securities investment consulting business, and vice versa:

1. The customers of the discretionary investment business or securities investment consulting business are qualified institutional investors as specified in Article 4, paragraph 2 of the Financial Consumer Protection Act.

2. The scope of investments or trading for the discretionary investment account, and the scope of analysis, opinions, or recommendations for securities investment by the concurrently operated securities investment consulting business shall be limited to the major investment targets and region of the fund that it manages, and the investment strategy shall uniformly be active management strategy or passive management strategy.

3. The internal control system of the enterprise has already adopted operational principles for effective prevention of conflict of interests in order to ensure fair treatment of all clients.

An associated person of the specialized department of paragraph 1 that carries out research and analysis and makes investment or trading decisions may not concurrently serve as an associated person that executes transactions, and an associated person that makes investment or trading decisions [in discretionary trading] may not concurrently serve as an

associated person that makes investment or trading decisions in collective trust fund business, the offering of securities investment trust funds, the business of offering futures investment trust funds to unspecified persons, proprietary securities trading business, proprietary futures business, or trading or investment carried out with the enterprise's own funds.

The department supervisor and associated persons of the specialized department referred to in paragraph 1 and the internal audit department referred to in paragraph 2, with the exception of a supervisor of an internal audit department of a SITE or a SICE concurrently operated by an enterprise in another line of business, shall possess the qualifications set out in the Regulations Governing Responsible Persons and Associated Persons of Securities Investment Consulting Enterprises.

A SITE or a SICE concurrently operated by an enterprise in another line of business shall establish the specialized department referred to in paragraph 1, provided that this requirement shall not apply if the SITE or SICE has already established an independent, specialized department to handle discretionary futures trading business.

#### Article 8-1

If a SITE or a SICE offers discretionary investment services but fails to enter into any discretionary investment services agreements with customers within two years after receiving FSC approval for such business and reissuance of its business license, its approval for the operation of discretionary investment services business will be revoked.

Prior to the issuance of these amended Regulations, when a SITE or SICE that offers discretionary investment services has received FSC approval for such business and a reissued business license but fails to enter into any discretionary investment services agreements with customers within two years after the issuance date of these amended Regulations, its approval for the operation of discretionary investment services business will be revoked.

#### Article 9

Discretionary investment assets that a SITE or a SICE receives from a customer shall be segregated from the proprietary assets of the SITE, the SICE, or the custodian of the discretionary investment assets. No creditor in respect of a liability against the proprietary assets of the SITE, the SICE, or the custodian may make any claim or exercise any other right against the discretionary investment assets of the customer.

#### Article 10

A SITE or a SICE shall, in accordance with the provisions below, lodge an operating bond with a financial institution that is a qualified custodian, and that meets the conditions prescribed by the FSC:

1. Where the paid-in capital of the SITE or SICE is less than NT\$100 million, the bond shall be NT\$10 million.
2. Where the paid-in capital of the SITE or SICE is NT\$100 million or more but less than NT\$200 million, the bond shall be NT\$15 million.
3. Where the paid-in capital of the SITE or SICE is NT\$200 million or more but less than NT\$300 million, the bond shall be NT\$20 million.
4. Where the paid-in capital of the SITE or SICE is NT\$300 million or more, the bond shall be NT\$25 million.

The operating bond referred to in the preceding paragraph may be lodged in

the form of cash, bank deposits, government bonds, or financial bonds. Such assets may not be pledged or provided in any manner as collateral, and the bond may not be lodged in separate parts with different financial institutions. The FSC shall be notified by letter for its approval prior to any withdrawal of the bond or change in the institution at which the bond is deposited.

When there is an increase in the paid-in capital of a SICE, the SICE shall increase the amount of the operating bond lodged with the financial institution, following the prescriptions of paragraph 1.

Directions regarding provision of the operating bond of paragraph 1 shall be adopted by the SITCA and reported to the FSC by letter for approval; the same shall apply to any amendment thereto.

When a SITE or a SICE is concurrently operated by a non-industry enterprise, with the exception of a futures trust enterprise, its operating capital, rather than paid-in capital, shall be used in calculating the amounts under paragraphs 1 and 3.

#### Article 11

Where a SITE or SICE provides mandate-type discretionary investment services, the customer shall place the discretionary investment assets in the custody of the custodian or transfer them to the custodian by trust.

The SITE or the SICE may not for any reason keep the customer's discretionary investment assets in its own custody.

The custodian of the discretionary investment assets referred to in the preceding paragraph shall be personally designated by the customer.

The SITE or the SICE has the obligation to inform the customer when any of the following types of controlling relationship exist between itself and the custodian of the discretionary investment assets designated by the customer:

1. The custodian of the discretionary investment assets has investment holdings of 10 percent or more of the total outstanding shares of the SITE or the SICE.
2. The custodian of the discretionary investment assets serves as a director or supervisor of the SITE or the SICE, or a director or supervisor of the custodian of the discretionary investment assets serves as a director, supervisor, or managerial officer of the SITE or the SICE.
3. The SITE or the SICE has investment holdings of 10 percent or more of the total outstanding shares of the custodian of the discretionary investment assets.
4. The SITE, the SICE, or a representative thereof serves as a director or supervisor of the custodian of the discretionary investment assets.
5. Any other substantive controlling relationship exists between the custodian of the discretionary investment assets and the SITE or the SICE. The provisions of subparagraph 2 of the preceding paragraph apply mutatis mutandis to the representative or designated representative of a director or supervisor that is a juristic person.

If a discretionary investment services customer is a trust enterprise or another enterprise approved by the FSC, the customer may keep the discretionary investment assets in its own custody without regard for the provisions of paragraph 1.

#### Article 12

The amount of discretionary investment assets that a SITE or a SICE accepts from any single customer in providing discretionary investment services may not be less than NT\$5 million. This restriction shall not apply, however, when the discretionary investment assets are assets in a special ledger account for investment-linked insurance or Labor Pension Act annuity insurance.

#### Article 13

The total amount accepted for investment purposes by a SICE providing discretionary investment services may not exceed 20 times its net worth, provided that this restriction shall not apply to a SICE with paid-in capital of NT\$300 million or more.

When a SICE concurrently provides both mandate-type and trust-type discretionary investment services, the total amount accepted for investment purposes as referred to in the preceding paragraph shall be calculated on the basis of the combined amounts of the two types.

"Net worth" under paragraph 1 is the net worth stated in the financial report for the most recent period, audited and certified by a CPA, passed by the board of directors, and recognized by the supervisors.

When a SICE is concurrently operated by an enterprise in another line of business, with the exception of a futures trust enterprise, its allocated operating capital, rather than its net worth or paid-in capital, shall be used for the calculations under paragraph 1.

#### Article 14

Except where the FSC provides otherwise, a SITE or a SICE providing discretionary investment services shall observe the following provisions:

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1. The SITE or SICE may not invest in securities other than those named in Article 6 of the Securities and Exchange Act.
2. The SITE or SICE may trade only securities-related products.
3. The SITE or SICE may not provide loans.
4. The SITE or SICE may not engage in trading of securities or securities-related products between any of the funds, collective trust funds, other discretionary investment or futures trading accounts, or proprietary securities trading or proprietary futures trading accounts under its own management. This restriction shall not apply, however, to cross trades that unintentionally result from orders placed and transacted through a centralized exchange market or a securities firm's place of business.
5. The SITE or SICE may not invest in any stocks, corporate bonds, or financial bonds issued by the SITE or SICE itself.
6. The SITE or SICE may not engage in any of the following activities, except by express written consent or contractual agreement with the customer:
  - A. Investing in call (put) warrants issued by the SITE or SICE itself.
  - B. Investing in any stocks, corporate bonds, or financial bonds issued by a company having an interest relationship with the SITE or SICE.
  - C. Investing in securities underwritten by a securities underwriter having an interest relationship with the SITE or SICE.
  - D. Engaging in margin trading.
  - E. Lending or borrowing securities.
7. The SITE or SICE may not invest in securities underwritten by the SITE

or SICE itself except when it has clearly informed the customer of related conflicts of interest and control measures and obtained written consent from the customer for each subsequent investment, in which the amount of investment permitted shall be explicitly stated.

8. Investments in foreign securities may not violate the scope or the types of investment prescribed by the FSC.

9. The SITE or SICE may not engage in conduct prohibited by any other law or regulation or any regulation of the FSC.

The meaning of "any of the funds" in subparagraph 4 of the preceding paragraph includes publicly or privately offered securities investment trust funds and futures trust funds.

The term "securities underwritten" in subparagraphs 6 and 7 of paragraph 1 includes securities obtained but not yet disposed of by a securities underwriter as a result of firm-commitment underwriting.

Except where otherwise provided by law or regulation, when a SITE or a SICE providing discretionary investment services invests in exchange-listed or OTC-listed securities, it shall place an order with a securities broker to perform the transaction on a centralized securities market or at a securities firm's place of business.

#### Article 14-1

The term "company or securities underwriter having an interest relationship with the SITE or SICE" in paragraph 1, subparagraph 6 of the preceding article refers to one of the following circumstances:

1. Having the relationship with the enterprise defined in Chapter 6-1 of the Company Act.

2. A director or supervisor of the enterprise or a shareholder with total combined shareholdings of five percent or more of the enterprise.

3. Any person of the preceding subparagraph or a managerial officer of the enterprise is the same person as, or has a spousal relationship with, a director, supervisor, or a managerial officer of the company or a shareholder who holds ten percent or more of the company's shares.

The term "total combined shareholdings" in subparagraph 2 of the preceding paragraph means the total shareholdings of an enterprise in the SITE or SICE, plus the shareholdings of that enterprise's directors, supervisors, and managerial officers in the SITE or SICE, plus any shares of the SITE or SICE held by a third enterprise that is directly or indirectly controlled by the first enterprise.

The provisions of paragraph 1 apply mutatis mutandis to the representative or designated representative of a juristic person director or supervisor performing duties on its behalf.

#### Article 15

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#### Article 16

The range of securities-related products which a SITE or SICE may trade using discretionary investment assets shall be limited to the following:

1. Trading orders that futures commission merchants are allowed to handle per FSC announcements made in accordance with Article 5 of the Futures Trading Act, and trading in securities-related futures contracts, option contracts, and futures option contracts.

2. FSC-approved off-exchange trading in financial products derived from

currencies, securities, interest rates, or securities indices. A SITE or SICE trading securities-related products using discretionary investment assets may, with the approval of the FSC, be exempted from the restriction under subparagraph 1 of the preceding paragraph when necessitated by the basic investment or trading policies of the discretionary trading account.

The ratios, methods of calculating risk exposure, and related regulations regarding the use of discretionary investment assets by a SITE or a SICE in trading securities-related products pursuant to the preceding two paragraphs shall be separately adopted by the FSC.

When a SITE or a SICE has received FSC approval for concurrent operation of a managed futures enterprise, it may apply for approval by the FSC of exemption from the limiting ratios of the preceding paragraph with respect to its utilization of discretionary investment assets in trading securities-related products. Its risk exposure may not then exceed 100 percent of the net asset value of the discretionary investment account.

Article 17

A SITE or a SICE shall diversify investments made using discretionary investment assets. Except where the FSC provides otherwise, the ratios at which a SITE or SICE distributes discretionary investment assets among different investment instruments shall be governed by the following provisions:

1. The aggregate amount invested on behalf of any single discretionary investment account in the stocks, corporate bonds, financial bonds, and call warrants of any single company may not exceed 20 percent of the net asset value of that account; the aggregate amount invested in corporate bonds or financial bonds issued by any single company may not exceed 10 percent of the total net asset value of the discretionary investment account.
2. The aggregate investment on behalf of all discretionary investment accounts in the shares of stock of any single company may not exceed 10 percent of the total number of shares issued by that company.
3. Neither the aggregate amount invested on behalf of any single discretionary investment account in the beneficial securities, REIT beneficial securities, or REAT beneficial securities offered or privately placed by any single trustee institution nor the aggregate amount invested in the asset-backed securities offered or privately placed by any single special-purpose company may exceed 20 percent of the total net asset value of the discretionary investment account.

When a SITE or a SICE uses discretionary investment assets for investment in depositary receipts, it shall calculate the shares it holds in the issuer of those depositary receipts together with the depositary receipts to produce an aggregate number or monetary amount that shall be used in calculating the ceiling on investment. The number of depositary receipts shall be calculated at the number of shares they represent.

When a SITE or a SICE uses discretionary investment assets for investment in call warrants, the number of underlying stocks represented by those warrants shall be calculated together with its holdings of other stocks issued by the issuer of the underlying stocks to produce an aggregate total that shall be used in calculating the ceiling on investment.

The provisions of paragraph 1, subparagraphs 1 and 3 shall not apply when the SITE or SICE has made other stipulations with the customer in the discretionary investment services contract, except with regard to the subjects of investment named in Article 14, paragraph 1, subparagraph 6, item 1, and Article 14, subparagraph 7.

#### Article 17-1

When a SITE or a SICE using discretionary investment assets for overseas investment receives approval from the customer to authorize either a foreign investment consulting services company or a member of its own group that provides central market trading services to place a trading order on the customer's behalf with a foreign securities firm, futures commission merchant, or any other trading counterparty, the SITE or SICE shall adopt risk monitoring and management measures for such transactions as a part of its internal control system, including the standards by which the company providing foreign investment consulting services is selected, and shall submit the measures to the board of directors for approval.

The term "member of its own group" in the preceding paragraph shall mean a holding company to which the SITE or SICE belongs and whose shareholdings in the SITE or SICE are in excess of 50 percent, or a subsidiary in which the SITE or SICE has shareholdings in excess of 50 percent, or a subsidiary under the same holding company in which the holding company's shareholdings exceed 50 percent.

#### Article 18

A SITE or a SICE conducting discretionary investments in foreign securities shall obtain the approval of the Central Bank, and shall make outward and inward remittances in accordance with the Regulations Governing the Declaration of Foreign Exchange Receipts and Disbursements or Transactions and other applicable regulations of the Central Bank.

#### Article 19

In addition to abiding by applicable laws and regulations, a SITE or SICE and its directors, supervisors, managerial officers, associated persons, and employees may not commit any of the following acts in providing discretionary investment services:

1. Using information gained in the course of professional duties to engage in securities trading for their own account or for any party other than the customer.
2. Undertaking a trade damaging to the rights and interests of the customer when using the customer's discretionary investment assets to trade securities.
3. Signing any agreement with the customer to share proceeds or losses resulting from investment in securities, provided that this restriction does not apply where the FSC has otherwise made provision for performance compensation.
4. Investing the discretionary investment assets of a customer in a cross trade involving the enterprise's own funds or the discretionary investment assets of another customer, provided that this restriction does not apply to unintentional cross trades that occur on a centralized securities exchange market or at a securities firm's place of business.
5. Using a customer's account to trade securities on the enterprise's own account or the account of another party.

6. Outsourcing the whole or a part of the discretionary investment services contract to another party to perform, or assigning such a contract to another party, provided that this restriction does not apply if the FSC provides otherwise.

7. Investing a customer's investment assets and, without legitimate reason, changing an executed order on the customer's discretionary investment account into an order on the enterprise's own account, the account of another party, or another discretionary investment account, or changing an order on another account into an order on the customer's discretionary investment account.

8. Making an investment decision not based on an investment analysis report, or based on an investment analysis report lacking a reasonable analytical basis or source data, provided that this restriction does not apply when a reasonable basis for the decision can be furnished.

9. Any other act prejudicial to the operation of the enterprise or the rights and interests of the customer.

#### Article 19-1

Except where the FSC provides otherwise, the supervisor of a department dedicated to discretionary investment business and the discretionary investment manager at a SITE or a SICE and that person's spouse, minor children, and other persons in whose name that person makes transactions may not engage in trading of a given company's shares and equity-type derivative products from the time that the SITE or SICE decides to utilize discretionary investment assets to engage in trading of the given company's shares or equity-type derivative financial products until such time as the given company's shares or equity-type derivative financial products are no longer held as part of the discretionary assets.

#### Article 20

A SITE or a SICE providing discretionary investment services that collects performance compensation shall abide by the following provisions:

1. The performance compensation shall be appropriate and reasonable.

2. The performance compensation shall be jointly stipulated by the SITE or SICE and the customer, with terms defining the investment instrument, conditions for collection, fee type, and method of calculation; those terms shall be a part of the discretionary investment services contract.

3. No performance compensation may be assessed or collected when the net asset value of the discretionary investment assets is lower than the amount of the assets originally provided.

4. Contractual provisions regarding performance compensation may not require their assessment and collection on a profit sharing basis, and a definite ceiling shall be imposed; performance compensation as a specified ratio or amount may only be allocated when real operational performance exceeds a prior stipulated performance metric.

5. The two parties may stipulate reduced compensation when real operational performance fails to meet a prior stipulated performance metric, but compensation may not be reduced to zero, nor may it be stipulated that the SITE or SICE bear a specified proportion of any loss.

#### Article 21

A SITE or a SICE entering into a discretionary investment services contract with a customer shall give the customer a seven-day period to review the

contract in its entirety before signing. It shall also seek a thorough understanding of the customer's financial strength, investment experience, objectives, and requirements, and produce a customer information form to be retained for reference along with other related documents. It shall also assign a specific individual to explain in detail to the customer matters related to discretionary investment, and give the customer a discretionary investment prospectus, which shall be made an appendix to the discretionary investment services contract.

The prospectus referred to in the preceding paragraph shall set out the following matters:

1. The nature of the discretionary investment, its scope, management principles, fee collection methods, contractual prohibitions, the legal relationship between the customer, discretionary investment enterprise and custodian of the discretionary investment assets, and method of operation.
2. The method of analysis, sources of data, and investment strategies for utilization of discretionary investment assets.
3. The educational and professional backgrounds of the department supervisor and associated persons of the department operating discretionary investment services, and the status of any dispositions received by those persons in the preceding two years pursuant to Article 104 of the SITC Act, Article 101 of the Futures Trading Act, or Article 56 of the Securities and Exchange Act.
4. The comprehensive income statement and balance sheet for the two preceding fiscal years.
5. A description of any litigated or non-litigated matters resulting from conduct of the business.
6. The status of any dispositions received by the enterprise or its responsible person pursuant to Articles 103 or 104 of the SITC Act, Articles 100 or 101 of the Futures Trading Act, Article 56 or 66 of the Securities and Exchange Act, or Article 44 of the Trust Enterprise Act.
7. Cautionary language regarding the risks of investment or trading, the special characteristics of the instruments to be traded or invested in, and any possible associated risks or legal restrictions.

Any change in the prospectus referred to in the paragraph 1 with a material influence on customer rights and interests shall be reported to the FSC for recordation.

#### Article 22

A SITE or a SICE that provides discretionary investment services shall enter into a discretionary investment services contract with the customer, clearly stipulating all discretionary investment rights and obligations between the SITE or SICE and the customer that derive from the mandate or trust relationship. A copy of the contract shall be sent to the custodian of the discretionary investment assets.

The discretionary investment services contract of the preceding paragraph shall be separately executed with each customer by the SITE or SICE, and except where law, regulation, or the FSC provides otherwise, no collective mandate or collective trust may be accepted thereunder. The discretionary investment services contract shall set out the following matters, and where establishes is a trust relationship, it shall additionally set out the particulars of each subparagraph of Article 19, paragraph 1 of the Trust

Enterprise Act:

1. The names and addresses of the parties to the contract.
2. The reasons and time limits for any rescission of the contract subsequent to signing.
3. The discretionary investment assets initially placed for investment.
4. Stipulations regarding basic investment and trading policies, scope of investment and trading, and any changes thereto. Types and names of securities or products shall be clearly listed as part of the scope of investment and trading.
5. The granting of authorization for investment or trading decisions and any restrictions thereon.
6. The granting of authorization to direct utilization of assets and any restrictions thereon.
7. Designation of the investment manager and any change in that designation.
8. Designation of the custodian of the discretionary investment assets and any change in that designation, and directions regarding the method of custody and the method of collection and delivery.
9. Designation of the securities broker or futures broker, and any change in that designation.
10. Confidentiality obligations, and the obligation to exercise the due care of a good administrator.
11. The legal obligations associated with a change in equity holdings when the customer is a director, supervisor, or managerial officer or a public company, or shareholder in such a company holding more than 10 percent of the company's shares.
12. Reporting obligations.
13. The method of calculating compensation and fees for the commissioned services, and the manner and time of payment.
14. The effective date and duration of the contract.
15. Provisions for amendment or termination of the contract.
16. The obligation to give notice of any material change, and the means of notice.
17. Provisions regarding settlement obligations after termination of the contractual relationship.
18. Provisions for handling breach of contract.
19. Provisions for handling matters following bankruptcy, dissolution, cessation of business, suspension of business or voidance or revocation of the business permission.
20. A method for resolution of disputes, and the court of jurisdiction.
21. Other matters as may be prescribed by the FSC.

The discretionary investment assets initially placed for investment, as referred to in subparagraph 3 of the preceding paragraph, shall be deposited in their entirety with the custodian of the discretionary investment assets at the time the discretionary investment services contract is signed; the same applies to any increase in those assets. This restriction shall not apply, however, when the discretionary assets are assets in a special ledger account for investment-linked insurance or Labor Pension Act annuity insurance and a separate stipulation in respect of those assets has been included in the discretionary investment services

contract.

The basic investment and trading policies and the scope of investment and trading referred to in paragraph 2, subparagraph 4 shall be carefully negotiated on the basis of the customer's financial strength, investment or trading experience, and investment objectives, as well as the applicable restrictions of law or regulations.

The "designation of the securities broker or futures broker" referred to in paragraph 2, subparagraph 9 shall be made at the customer's own discretion. When the customer only designates a single securities broker or futures broker, the customer shall be clearly informed of the associated risks. When, in accordance with the preceding paragraph, the customer at its own discretion designates the enterprise in another line of business as the securities broker or futures broker, the customer shall first be clearly informed of the associated risks, conflicts of interest, and related control measures, and separate written consent shall be obtained from the customer in addition to the discretionary investment services contract. Where the customer makes no designation of a securities broker or futures broker, the SITE or SICE shall designate the broker, giving due attention to appropriate diversification and avoiding overconcentration. When the SITE or SICE is concurrently operated by an enterprise in another line of business, that enterprise may not be designated as the securities broker, and when that enterprise and the designated securities broker or futures broker are mutually invested or have a relationship of control and subordination, that fact shall be disclosed in the discretionary investment services contract. When the circumstances under Article 27 of the Trust Enterprise Act are present, they shall be stipulated in the trust agreement or advance notice shall be given and prior written consent obtained from the beneficial owner.

The compensation referred to in paragraph 2, subparagraph 13 may include collection of the performance compensation provided for in Article 20. SITCA shall draft contract templates for discretionary investment business and adopt regulations governing mediation procedures in regard to the method of dispute resolution referred to in paragraph 2, subparagraph 20, which it shall submit to the FSC by letter for approval; the same shall apply to any amendment thereto.

The discretionary investment services contract of paragraph 1 and related materials shall be retained on file for a period of not less than five years after the contract ceases to have effect.

Designation or change in designation of the custodian of the discretionary investment assets as referred to in paragraph 2, subparagraph 8 shall not apply when the customer keeps the discretionary investment assets in its own custody as provided for in Article 11, paragraph 5.

#### Article 22-1

In any discretionary investment case reaching or exceeding a specified monetary amount or suspected to involve money laundering, a SITE or SICE shall maintain transaction documents sufficient to fully reconstruct transactions and records verifying the customer's identity and transaction orders, and shall comply with the requirements of the Money Laundering Control Act.

#### Article 23

The types and scope of use of idle discretionary investment assets by a SITE or a SICE providing discretionary investment services shall be as follows:

1. Cash.
2. Deposits with a financial institution.
3. Short term bills purchased from bills houses.
4. Repo transactions in short-term bills and bonds.
5. Money market collective trust fund beneficial securities issued by a domestic trust enterprise.
6. Other uses prescribed by the FSC.

The "idle discretionary investment assets" of the preceding paragraph refers to liquid assets other than those discretionary investment assets that are invested in the securities named in Article 6 of the Securities and Exchange Act or used for trading securities-related products.

The financial institution of paragraph 1, subparagraph 2 and the trading counterparties of the repo transactions in short-term bills and bonds of subparagraph 4 shall meet the conditions prescribed by the FSC; the short-term bills of paragraph 1, subparagraph 3 shall have a credit rating at or above a prescribed level issued by an FSC-recognized credit rating agency.

#### Article 24

When the scope of trading or investment allowed a SITE or a SICE in the conduct of discretionary investment business is increased due to a change of law or regulation, the SITE or SICE shall adopt relevant additional measures for accounting and for risk monitoring and management as part of its internal control system and submit the additional measures to the board of directors for approval.

When the scope of trading or investment allowed by a SITE or a SICE in the conduct of discretionary investment business is increased due to a change of law or regulation subsequent to the signing of a discretionary investment services contract, such new trading or investment may be undertaken only after amendment of the discretionary investment services contract.

#### Article 25

Discretionary investment services contracts and the brokerage contracts of securities and futures brokers shall clearly stipulate that the SITE or SICE will be liable for performance of any obligation arising from use of the discretionary investment assets for investment in securities or for trading of securities-related products that exceeds the scope provided by law, regulation, or the discretionary investment services contract.

#### Article 26

When a SITE or a SICE conducts discretionary investment business, the customer shall separately enter into a mandate agreement or a trust agreement with the custodian of the discretionary investment assets to govern the handling of matters relating to investments in securities or trading in securities-related products. Such matters include account opening, custody of funds and certificates, deposit of margins and premiums, trade settlement, account servicing, and exercise of equity rights.

The provisions of the preceding paragraph do not apply to customers who keep discretionary investment assets in their own custody as provided for

in Article 11, paragraph 5.

The custodian of the discretionary investment assets shall enter into mandate or trust agreements of the type specified in paragraph 1 separately with each individual customer, and except where law, regulation, or the FSC provide otherwise, may not accept any collective mandate or collective trust.

Prior to implementing the matters referred to in paragraph 1, the custodian of the discretionary investment assets shall first review the scope and the restrictions set out in the mandate contract.

The content and scope of the mandate agreement or trust agreement referred to in paragraph 1 and the related contract templates shall be drafted by SITCA and submitted by letter to the FSC for approval.

#### Article 27

A SITE or a SICE that conducts discretionary investment business shall do so in accordance with operating rules.

The operating rules of the preceding paragraph regarding contract signing, account opening, trading, settlement, clearing, investment and trading matters (e.g. analysis reports, decisions, execution records, review reports), and other matters shall be drafted by the SITCA and approved by the FSC; the same shall apply to any amendment thereto.

#### Article 28

A SITE or a SICE that utilizes discretionary investment assets for investment or trading shall produce a written transaction decision based on its analysis report and produce a record of the transaction at the time the decision is executed. The SITE or SICE shall further produce a monthly review report regarding these procedures, and its analysis report and transaction decision shall be based on reasonable analytical bases and source data.

In the preceding paragraph, the analysis report shall state the analytical bases, source data, and recommendation made; the written trading decision shall state the type, volume, and price of the investment instrument as well as the timing of the trade, as anticipated by the SITE or SICE; the record of implementation shall state the type, volume, and price of the investment instrument as well as the timing of the trade, as actually executed, and shall state the reasons for any discrepancies with the written decision.

The analysis report, written trading decision, record of implementation, and review report referred to in the first paragraph shall be produced in written form in chronological sequence, and kept on file for a period of not less than five years.

When a SITE or a SICE utilizes discretionary investment assets for investment or trading, and the customer is a qualified institutional investor as specified in Article 4, paragraph 2 of the Financial Consumer Protection Act, the procedures for the utilization of discretionary investment assets for investment or trading may be separately stipulated in the discretionary investment services contract that it enters into with the customer, and are not subject to the restrictions of the preceding three paragraphs. The relevant investment information or trading information shall be produced in chronological sequence and kept on file for a period of not less than five years.

When a SITE or a SICE conducts discretionary investment business, it shall establish an account for each individual customer in which it records daily the status of trading of customer assets and the customer's balance by volume and value.

A customer may request to examine the data referred to in the preceding paragraph and the appointed SITE or SICE may not refuse such a request. A SITE or SICE using discretionary investment assets to trade securities or securities-related products shall apply any transaction fees returned or other benefits paid by securities brokers, futures commission merchants, or other trading counterparties to offsetting the customer's transaction costs.

#### Article 29

A SITE or a SICE that conducts discretionary investment business shall compile for each customer a regular monthly record of trading on the customer's assets and a report on the current status of those assets, to be delivered to the customer.

At any time impairment of the net asset value of a customer's discretionary investment assets equals 20 percent or more of the value of the original discretionary investment assets, the SITE or SICE shall produce the report referred to in the preceding paragraph and deliver it to the customer within two business days from the date of the event. The same shall apply in each subsequent case of impairment equaling 20 percent or more of the net asset value stated in a previous report.

When a customer's discretionary investment assets are the assets of a special ledger account for investment-linked insurance or Labor Pension Act annuity insurance, then at any time impairment of its discretionary investment account assets equals 5 percent or more of their per-unit value on the previous business day, the SITE or SICE shall produce the report referred to in the paragraph 1 and deliver it to the customer within two business days from the date of the event, without regard for the provisions of the preceding paragraph.

The percentage given in the preceding paragraph may be adjusted with the customer's consent or by stipulation in the discretionary investment services contract, but may not exceed 10 percent.

#### Article 30

If a SITE or SICE is unable to continue providing discretionary investment services because of dissolution of the enterprise or because of voidance or revocation of its business permission, its discretionary investment services contracts shall be terminated.

When a SITE or SICE is the subject of suspension or cessation of business or obvious mismanagement, the FSC may order it to transfer its discretionary investment services contracts to another FSC-designated SITE or SICE for management.

Under the circumstances in the preceding paragraph, the SITE or SICE shall solicit the opinion of the customer; the discretionary investment services contract of any customer who does not consent or who expresses no opinion shall be deemed terminated.

#### Article 31

A SITE or a SICE that conducts discretionary investment business shall submit a summary of operating statistics to the FSC on a regular basis in

accordance with FSC regulations.

The format of the summary of operating statistics referred to in the preceding paragraph shall be prescribed by the SITCA.

#### Article 31-1

A SITE or a SICE that provides trust-type discretionary investment services shall establish a department dedicated to trust business and staff it with a sufficient number of competent managers and associated persons. The dedicated trust business department may be combined with the dedicated department of Article 8, paragraph 1, but after combination, persons in the dedicated department responsible for deciding the disposition of trust assets may not concurrently operate any other business outside the scope of the dedicated department.

The supervisor and associated persons of the dedicated department of the preceding paragraph may not handle business beyond the scope of the dedicated department, nor may their functions be performed by any person not registered as supervisor or associated person of the dedicated department.

The associated persons of the dedicated department of paragraph 1 who carry out research and analysis and make investment or trading decisions may not concurrently serve as, or have their positions concurrently filled by, associated persons who execute trades.

The responsible person of a SITE or SICE that offers trust-type discretionary investment services and the associated persons that operate and manage trusts shall possess the qualifications or the specialized knowledge or experience prescribed by the Regulations Governing the Concurrent Operation of Trust Business by Securities Investment Trust Enterprises, Securities Investment Consulting Enterprises, and Securities Firms, and shall also possess the qualifications prescribed by the Regulations Governing Responsible Persons and Associated Persons of Securities Investment Consulting Enterprises.

#### Article 31-2

A SITE or a SICE that offers trust-type discretionary investment services shall lodge a compensation reserve in accordance with Article 34 of the Trust Enterprise Act and related provisions.

#### Article 31-3

A SITE or a SICE that offers trust-type discretionary investment services shall place the trust assets delivered by the customer in custody with a custodian of discretionary investment assets.

Under any of the following circumstances, an institution may not serve as a custodian of discretionary investment assets:

1. The institution is a fund custodian, has received an FSC disposition pursuant to Article 115 of the SITC Act, and the period of the disposition has not yet concluded.
2. The institution does not meet the conditions prescribed by the FSC.
3. Where any of the circumstances under Article 11, paragraph 3, subparagraphs 1 through 5 or paragraph 4 are present, except where approved by the FSC.

The SITE or SICE shall enter into a custody agreement with the custodian of the discretionary investment assets for implementing matters such as account opening for securities investment or trading of securities-related

products, custody of funds and securities, payment of margins and premiums, settlement of transactions, account servicing, and exercise of equity rights.

Individual custody agreements of the type set out in the preceding paragraph shall be signed between the SITE or SICE and the custodian of the discretionary investment assets with respect to each individual customer, and except where law and regulation or the FSC provide otherwise, customers' discretionary assets may not be delivered to the custodian under a joint mandate.

Prior to implementing the matters under paragraph 3, the custodian of the discretionary investment assets shall first review the stipulated scope of the discretionary investment services contract and the restrictions it sets out.

The content and a template for the custody agreement of paragraph 3 shall be drafted by the SITCA and submitted to the FSC for approval.

#### Article 32

The provisions of Article 8-1, Article 9, Article 13 through Article 14-1, Article 16 through Article 21, Article 22, paragraph 1 through paragraph 10, Article 22-1 through Article 25, Article 27 through Article 31, Article 36, and Article 40 shall apply to a SITE or a SICE that provides trust-type discretionary investment services.

Chapter IV Concurrent Operation of Discretionary Investment Services by a Trust Enterprise

#### Article 33

A trust enterprise that concurrently provides discretionary investment services shall allocate a sufficient number of competent supervisory personnel and associated persons for conduct of the business.

No associated person of the preceding paragraph that carries out research and analysis and makes investment or trading decisions may concurrently serve as an associated person that executes transactions; in addition, no associated person that makes investment or trading decisions [in discretionary trading] may concurrently serve as an associated person that makes investment or trading decisions in collective trust fund business, the offering of securities investment trust funds, the business of offering of futures trust funds to unspecified persons, or trading or investment carried out with the enterprise's own funds.

A trust enterprise that concurrently conducts discretionary investment business may keep the trust assets in its own custody; if it keeps the trust assets in its own custody it shall designate a person to be exclusively responsible for handling custodial matters.

#### Article 34

The total amount accepted for investment purposes by a trust enterprise conducting discretionary investment business may not exceed 20 times its allocated operating capital, provided that this restriction does not apply to a trust enterprise with allocated operating capital of NT\$300 million or more.

The total amount accepted for investment purposes under the preceding paragraph shall be calculated as an aggregate inclusive of those amounts the enterprise also concurrently accepts for mandate-type and trust-type discretionary investment business.

When the combined allocated operating capital of a trust enterprise for its conduct of discretionary investment services of both mandate types and discretionary types equals NT\$300 million or more and it has lodged an NT\$25 million operating bond in accordance with Article 10, the total amount it accepts for investment purposes under the mandate type shall not be subject to a ceiling of 20 times the operating capital allocated for mandate-type services.

#### Article 35

A trust enterprise concurrently conducting discretionary investment services that has already set aside a compensation reserve shall be exempt from the requirement to provide an operating bond.

#### Article 36

When a trust enterprise concurrently conducts discretionary investment business, its directors, supervisors, managerial officers, associated persons, and employees shall abide by applicable laws and regulations, and may not commit any of the following acts:

1. Using information they gain regarding trust assets in the course of professional duties to carry out securities trades for the enterprise's own account or for any party other than the customer or the beneficial owner associated with the trust assets.
2. Undertaking a trade damaging to the rights and interests of the customer or beneficial owner when using the trust assets in securities transactions.
3. Signing any agreement with the customer or beneficial owner to share proceeds or losses resulting from investment in securities, provided that this restriction does not apply where the FSC has otherwise made provision for performance compensation.
4. Using trust assets to perform cross trading with one's own assets or other assets of which the enterprise is trustee, provided that this restriction does not apply to a trade made on a centralized securities exchange market or at a securities firm's place of business when the resulting cross trade was not deliberately produced.
5. Investing a customer's trust assets and, without legitimate reason, changing an executed order on the customer's trust account into an order on the enterprise's own account, the account of another party, or another trust account, or changing an order on another account into an order on the customer's trust account.
6. Using the trust account to trade securities on the enterprise's own account or the account of another party.
7. Making an investment decision not based on an investment analysis report, or based on an investment analysis report lacking a reasonable analytical basis or source data, provided that this restriction does not apply when a reasonable basis for the decision can be furnished.
8. Any other act prejudicial to the operation of the enterprise or the rights and interests of the customer.

#### Article 37

When a trust enterprise concurrently provides discretionary investment services, the trustee shall itself handle trust affairs, provided that with the consent of the customer and the beneficial owner, it may cause a third party to undertake trust affairs on its behalf.

The third party referred to in the preceding paragraph who may act as agent

for the trustee in handling discretionary investment affairs may only do so on behalf of trust enterprises that have FSC approval for concurrent operation of discretionary investment business, and on behalf of SITEs or SICEs that may conduct discretionary investment business.

#### Article 38

A trust agreement between a trust enterprise and a customer shall set out the items listed in the subparagraphs of Article 19, paragraph 1 of the Trust Enterprise Act, and when the concurrent operation of discretionary investment business is involved, the agreement shall also set out the following matters:

1. Designation of the securities broker or futures broker, and any change in that designation.
2. The obligation to give notice of any material change and the means of notice.
3. Provisions for handling of breach of contract.
4. A method for resolution of disputes, and the court of jurisdiction.
5. Other matters as prescribed by the FSC.

The provisions of subparagraph 1 of the preceding paragraph do not apply when the trust enterprise undertakes management and employment of a collective trust fund.

Information relating to the trust agreement or a collective trust fund management and employment account shall be retained on file for a period of not less than five years from the expiration date of the trust.

The compensation stipulated in the trust agreement may include performance compensation collected in accordance with FSC regulations.

Except where the trust deed provides otherwise, designation of a securities broker or futures broker as referred to in paragraph 1, subparagraph 1 shall be done by the trust enterprise, which in so doing shall give appropriate attention to diversification and avoiding overconcentration.

When the trust enterprise and the given securities firm or futures broker are mutually invested or there exists a relationship of control and subordination between them, such fact shall also be divulged in the trust agreement, except in relation to investment in securities through the management and employment of a collective trust fund. Where any circumstance exists as set out in Article 27 of the Trust Enterprise Act, the matter shall be handled according to the stipulations of the trust deed, or prior notice shall be given to and written consent obtained from the beneficial owner.

The SITCA shall adopt regulations to govern mediation procedures with regard to the method of dispute resolution referred to in paragraph 1 subparagraph 4, and shall submit those regulations, and any subsequent amendments thereto, to the FSC for approval.

#### Article 39

A trust enterprise that conducts discretionary investment business shall do so in accordance with operating rules.

The operating rules of the preceding paragraph regarding contract signing, account opening, trading, settlement, clearing, investment and trading matters (e.g. analysis reports, decisions, execution records, review reports), and other matters shall be drafted by SITCA and approved by the FSC; the same applies to any amendment thereto.

## Article 40

Discretionary investment trust agreements and the brokerage contracts of securities and futures brokers shall clearly stipulate that a trust enterprise concurrently conducting discretionary investment business will be liable for performance of any obligation arising from use of the discretionary investment assets for investment in securities or trading of securities-related products that exceeds the scope of restrictions provided by law, by regulation, or the trust agreement.

When there is a violation of law or breach of contract by a trust enterprise concurrently conducting discretionary investment business, or when there is injury to a customer or beneficial owner arising out of other causes attributable to the trust enterprise, the enterprise shall be liable for damages in accordance with Article 35 of the Trust Enterprise Act.

## Article 41

The provisions of Article 14, Article 14-1, Articles 16 through 18, Article 19-1 through Article 21, Article 22 paragraph 2 (the forepart) and paragraphs 3 and 4, Article 22-1, Article 23, Article 24, Article 26 paragraph 3, and Articles 28 through 31 apply mutatis mutandis to a trust enterprise concurrently conducting discretionary investment business, provided that the provisions of Article 22 paragraph 3, Article 23, and Article 29 paragraph 2 do not apply where otherwise stipulated between the trust enterprise and the customer.

### Chapter IV-I Concurrent Operation of Discretionary Investment Business by Insurance Enterprises

#### Article 41-1

An insurance enterprise that concurrently operates discretionary investment business, making decisions with discretionary authority about the utilization of subject assets under a special ledger account for investment-linked insurance business, shall establish a specialized department exclusively for the purpose, which shall be staffed with a sufficient number of competent supervisors and associated persons.

Except where the FSC provides otherwise, the supervisors and associated persons of the specialized department of the preceding paragraph may not engage in business other than that of the specialized department, nor may their duties be performed by persons other than the registered supervisors and associated persons of the department.

No associated person of paragraph 1 that carries out research and analysis and makes investment or trading decisions may concurrently serve as an associated person that executes transactions; in addition, no associated person that makes investment or trading decisions may concurrently serve as a person who makes investment or trading decisions with regard to the assets under an ordinary account of the insurance enterprise.

Any insurance enterprise producer who solicits business in which the enterprise has discretionary authority to decide the utilization of subject assets in investment-linked insurance, in addition to meeting the qualifications for associated persons set out in the Regulations Governing Responsible Persons and Associated Persons of Securities Investment Consulting Enterprises, shall also abide by the provisions of the SITC Act and the Regulations Governing Responsible Persons and Associated Persons of Securities Investment Consulting Enterprises.

#### Article 41-2

An insurance enterprise that concurrently operates discretionary investment business, making decisions with discretionary authority about the utilization of subject assets under a special ledger account for investment-linked insurance business, shall do so in accordance with operating rules.

Operating rules regarding contract signing, account opening, trading, settlement, clearing, investment and trading matters (e.g. analysis reports, decisions, execution records, review reports), and other matters shall be drafted by the SITCA and approved by the FSC; the same shall apply to any amendment thereto.

#### Article 41-3

The provisions of Article 10, Article 11, paragraphs 1, 3, and 4, Article 13, paragraphs 1 and 4, Article 14, Article 14-1, Articles 16 through 20, Article 21, paragraph 1, Article 22, paragraphs 1, 2, 4, 8, and 10, Articles 22-1 through 25, Article 26, paragraphs 1 and 4, and Articles 28 through 31 apply *mutatis mutandis* to an insurance enterprise that concurrently operates discretionary investment business in which it makes decisions with discretionary authority about the utilization of subject assets under a special ledger account for investment-linked insurance business.

### Chapter V Supplementary Provisions

#### Article 42

The format of documents required by these Regulations will be announced by the FSC.

#### Article 42-1

If application documents submitted pursuant to these Regulations or any matters to be recorded therein are incomplete and the FSC requires that they be supplemented within a prescribed period of time, then upon failure to supplement the information within the time limit, or where the FSC deems it necessary in order to protect the public interest, the FSC may reject the application.

#### Article 43

(Deleted)

#### Article 44

These regulations shall be enforced from the date of issuance, except for Article 21 amended and issued on 1 August 2012, which shall be enforced from the fiscal year of 2013.