

## Content

Title : Regulations Governing the Issuance of Exchange Traded Notes by Securities Firms **Ch**

Date : 2018.06.28

Legislative : 1. Full text of 23 articles adopted and issued per 28 June 2018 Order No. Financial-Supervisory-Securities-Firms-1070320986 of the Financial Supervisory Commission; for implementation from the date of issuance Format of documents required for the issuance and reopening of Exchange Traded Notes adopted per 31 July 2018 Order No. Financial-Supervisory-Securities-Firms-1070324955

Content : Chapter 1 General Principles

### Article 1

These Regulations are adopted pursuant to the provisions of Article 22, paragraph 4 and Article 30, paragraph 2 of the Securities and Exchange Act (the "Act").

### Article 2

Except where otherwise provided by laws or regulations, the issuance of Exchange Traded Notes (ETNs) shall be governed by these Regulations.

The term "Exchange Traded Note (ETN)" used in these Regulations means a security, issued by a securities firm, that at maturity pays investors returns linked to the performance of the underlying index it tracks and that is traded on a securities exchange market, with investors' subscriptions and redemptions settled in cash.

The underlying index referred to in the preceding paragraph shall meet the following requirements, and may not involve a new Taiwan dollar (NTD) exchange rate index:

1. The index shall have been produced by a party with professional ability and experience in producing indexes.
2. The index shall be representative of its defined market.
3. The index's components shall be a broad sampling and liquid, provided that with the competent authority's approval broad sampling need not be required.
4. Index data shall be sufficiently disclosed and easily accessible.
5. There is no violation of laws or regulations in connection with the index, nor any matter that would make the index unsuitable as an underlying index.

### Article 3

The name of an ETN shall clearly indicate the index or index performance that is being tracked.

Where an ETN tracks a multiple of the performance or inverse performance of an index, the name of the ETN shall clearly indicate the multiple of the "daily" performance or inverse performance of the underlying index that is being tracked.

### Article 4

A securities firm filing for registration to issue or to reopen (that is, to issue an additional amount of) ETNs shall meet the qualifying requirements listed below:

1. It must be an integrated securities firm that concurrently engages in securities brokerage, underwriting, and dealership business.
2. Its CPA audited and attested financial report for the most recent period shows net worth not less than NTD10 billion and not less than paid-in capital, and its financial condition meets the requirements of Articles 13, 14, 16, 18-1, and 19 of the Regulations Governing Securities Firms.

3. It must have reported a regulatory capital adequacy ratio of not lower than 250 percent for each of the preceding 6 months.
4. It has not been subject to any disciplinary warning from the competent authority during the preceding 3 months.
5. It has not been subject to any sanction imposed by the competent authority during the preceding 6 months ordering dismissal or replacement of any of its directors, supervisors, or managerial officers.
6. It has not been subject to any sanction imposed by the competent authority during the preceding year requiring a suspension of business.
7. It has not been subject to any sanction imposed by the competent authority during the preceding 2 years voiding its permission for any part of its business.
8. It has not been subject to any sanction during the preceding year whereby the Taiwan Stock Exchange Corporation (TWSE), the Taipei Exchange (TPEx), or the Taiwan Futures Exchange Corporation (TAIFEX), acting pursuant to its rules, has suspended or restricted the securities firm's trading privileges.

Any securities firm in non-conformance with any of the conditions of subparagraphs 4 to 8 of the preceding paragraph but that has made concrete improvement and has satisfied the competent authority thereof may be exempted from the restrictions of those subparagraphs.

#### Article 5

A securities firm issuing ETNs shall allocate on a monthly basis a performance bond that accounts for a certain percentage of the total outstanding balance of the ETNs.

The total amount of ETNs issued by the securities firm may not exceed 50 percent of its net worth as shown on its most recent CPA audited and attested financial report. However, the same does not apply to a reopening of ETNs for which the securities firm has allocated a supplementary amount of performance bond.

The securities firm shall allocate a supplementary amount of performance bond if during the term of the ETNs its net worth fails to meet the requirement of paragraph 1, subparagraph 2 of the preceding article or its regulatory capital adequacy ratio fails to meet the requirement of paragraph 1, subparagraph 3 of the preceding article.

The performance bonds referred to in the preceding 3 paragraphs shall be deposited with the TPEx. The rules governing the allocation ratio, deposit, custody, payment, and refund of such performance bonds, and any amendments thereto, shall be drafted by the TPEx in conjunction with the TWSE and submitted to the competent authority for ratification.

#### Chapter 2 Filing-for-Registration Procedures

#### Article 6

To issue or reopen ETNs, a securities firm shall submit the following documents to the TWSE or TPEx for review, to be then forwarded, together with the TWSE's or TPEx's review opinion and letter of approval for TWSE/TPEx listing, to the competent authority for filing for registration:

1. A registration statement.
2. An issuance plan.
3. Minutes of the relevant board of directors meeting.
4. A prospectus and a simplified prospectus.
5. Documentary proof that the underlying index meets the requirements of Article 2, paragraph 3.
6. Documentary proof that the securities firm meets the qualifying requirements for the issuance of ETNs as set out in Article 4, paragraph 1, subparagraphs 2, 3, and 8.
7. Documentary proof that the securities firm meets the requirements of paragraph 2 of the preceding article.
8. A statement of information on the current status of the ETNs (applicable only in the case of a reopening of ETNs).
9. Other documents to be submitted in accordance with the requirements of the competent authority.

#### Article 7

When a securities firm files for any of the following issuance registrations pursuant to the preceding article, its registration shall become effective when a prescribed number of business days have elapsed counting inclusively from the date upon which the competent authority receives the filing documents:

1. In the case of filing for registration to issue ETNs, the registration shall become effective when 12 business days have elapsed counting inclusively from the date upon which the competent authority receives the filing documents.
2. In the case of filing for registration to reopen ETNs, the registration shall become effective when 7 business days have elapsed counting inclusively from the date upon which the competent authority receives the filing documents.

If a securities firm files for registration to issue or reopen ETNs and during the period between its submission of the filing to the competent authority and the time of effective registration, an event occurs that has a material effect on shareholders' rights or interests (shareholders' equity) or securities prices as contemplated in Article 36, paragraph 3, subparagraph 2 of the Act, or its financial or business status undergoes a material change or there is a change in the content of its registration documents that has a material effect on the issuance plan, in addition to duly making an announcement and filing a report with the competent authority and the TWSE or TPEx within 2 days counting inclusively from the date of occurrence of the fact, the securities firm shall also obtain a professional opinion from an appropriate expert, as dictated by the nature of the event, and request the CPA to provide an opinion regarding the effect of the event on the current issuance plan, and file all the opinions with the TWSE or TPEx. The TWSE or TPEx shall then provide an opinion on the matter and submit a written report to the competent authority.

Where a securities firm fails to file registration documents in full, or the documents do not furnish all the required particulars, or a circumstance under the preceding paragraph occurs, but it makes full supplementations or corrections of its own accord prior to being notified by the competent authority of the suspension of effective registration, its registration shall become effective when the effective registration period of paragraph 1 has elapsed counting inclusively from the date upon which the competent authority receives the supplementary or corrective documentation.

**Article 8**

Under any of the following circumstances, the competent authority may reject a securities firm's filing for registration to issue or reopen ETNs:

1. The submitted registration documents are not submitted in full or do not furnish all the required particulars, and supplementation or correction cannot be completed by the deadline set by the competent authority.
2. The securities firm does not comply with the requirements of Article 4.
3. The securities firm does not comply with the requirements of Article 5, paragraph 2.
4. There is a lack of appropriate risk management measures, or the design or implementation of its internal control system is materially deficient.
5. The securities firm materially fails to prepare financial reports in accordance with applicable laws or regulations or generally accepted accounting principles.
6. The securities firm files for registration to issue ETNs within 3 months counting inclusively from the date upon which it receives notification from the competent authority that a previous filing was rejected, voided, or revoked by the competent authority or that it withdrew a previous filing at its own discretion.
7. The securities firm has already filed with the competent authority for registration to issue ETNs but the registration has not yet become effective. However, the same does not apply in the case of filing for registration to reopen ETNs.
8. The securities firm has been incapable of meeting obligations in connection with a previous issue of ETNs.
9. During the preceding year the securities firm failed to comply with TWSE or TPEx rules applicable to ETNs and was unable to make improvement within

a specified time period.

10. The competent authority discovers that the securities firm has committed any material violation of laws or regulations, or there is factual evidence of material irregularities with the securities firm's finances or business.

11. The competent authority otherwise considers it necessary to reject registration in order to protect the public interest.

#### Article 9

Under any of the following circumstances, the competent authority may suspend the effectiveness of a securities firm's filing for registration to issue or reopen ETNs:

1. The filed registration documents are not submitted in full or do not furnish all the required particulars.

2. Any of the circumstances under Article 7, paragraph 2 has arisen.

3. The competent authority otherwise considers it necessary to suspend the effectiveness of registration in order to protect the public interest.

#### Article 10

Beginning on the date upon which a securities firm receives written notice of suspension of effective registration, it may submit supplemental materials in response to the suspension reason(s), and apply for lifting the suspension. If the competent authority does not again notify it to submit supplemental materials or reject its filing, the registration shall become effective when the effective registration period set out in Article 7, paragraph 1 has elapsed counting inclusively from the date upon which the competent authority receives the supplementary or corrective documentation.

After an effective registration is suspended by the competent authority under the preceding article, if within 12 business days, counting inclusively from the date upon which it receives the written notice of suspension, the securities firm does not apply for lifting of the suspension in accordance with the preceding paragraph or it applies for lifting of the suspension but the suspension reasons still exist, the competent authority may reject its filing.

#### Article 11

After a securities firm has obtained effective registration to issue or reopen ETNs, the competent authority may void or revoke the effective registration if it discovers any of the following circumstances:

1. The issuance does not commence by the deadline set forth in Article 12 hereof, counting inclusively from the date upon which the securities firm receives the written notice of effective registration.

2. Material violation of the provisions of Articles 16 and 17 hereof.

3. Violation of the provisions of Article 20 of the Act.

4. Violation of the provisions of Article 7, paragraph 2 hereof.

5. The securities firm fails to announce or report to the competent authority, as required by Article 36, paragraph 3, subparagraph 2 of the Act, any event arising after the securities firm's effective registration for issuance of ETNs that has a material effect on investors' rights or interests, within 2 days counting inclusively from the date of occurrence of the fact.

6. Any other necessity in order to protect the public interest, or other violation of these Regulations or of the restrictions or prohibitions of the competent authority in force at the time of effective registration.

When a securities firm's effective registration is voided or revoked by the competent authority, it shall handle the relevant matters in accordance with the ETN prospectus and applicable TWSE or TPEx rules.

#### Article 12

After obtaining effective registration to issue or reopen ETNs, a securities firm shall commence the issuance or reopening of the ETNs within 3 months counting inclusively from the date upon which it receives the written notice of effective registration, provided that if the securities firm is unable to commence the issuance or reopened issuance within 3 months for a legitimate reason, then prior to the deadline it may apply to

the competent authority for a one-time extension not to exceed 3 months.

#### Article 13

After a securities firm has obtained effective registration to issue ETNs, except as otherwise provided by the competent authority, it may undertake the procedures to reopen the original issue if, for the 5 business days preceding the registration date, the average ratio of the number of units already issued to the number of units to be issued under the original effective registration is 80 percent or higher.

### Chapter 3 Supervision and Regulation

#### Article 14

After a securities firm has obtained effective registration to issue ETNs, it shall apply to, and enter into a listing contract with, the TWSE or TPEX for listing of the ETNs on the TWSE or TPEX. The TWSE or TPEX shall file the TWSE or TPEX listing contract with the competent authority for recordation.

Matters related to the listing, trading, or delisting of ETNs on or from the TWSE or TPEX shall be handled in accordance with the applicable TWSE or TPEX rules.

#### Article 15

A securities firm issuing or reopening ETNs may contract with a securities underwriter to underwrite the ETNs, or it may sell the ETNs by itself. The securities firm shall prepare a prospectus and a simplified prospectus and deliver copies of the prospectuses to the securities underwriter and investors and announce their content. However, the securities firm is not required to deliver such prospectuses to investors who purchase the ETNs on the securities exchange market.

Matters required to be stated in the prospectus referred to in the preceding paragraph are as follows:

1. The following statements shall be printed conspicuously on the cover page:
  - A. "The Financial Supervisory Commission has allowed the effective registration of the ETNs, but that does not indicate that the ETNs are risk-free."
  - B. "The sum the investors receive when redeeming the ETNs at or prior to maturity may be less than their invested principal (or even zero in the worst case scenario) due to various factors such as market fluctuations or the issuer's default or occurrence of credit risk. Therefore, before trading, the investors should carefully read the prospectus and be certain that they are fully aware of the risks and features of the ETNs."
  - C. In the event there is any misrepresentation or nondisclosure in this prospectus, the issuer, its responsible persons, and any other persons whose signature or seal appear on the prospectus shall be held legally liable.
  - D. Web addresses for inquiries regarding this prospectus, including the web address of the information reporting website designated by the competent authority, and the web address where the securities firm discloses information related to the prospectus.
  - E. Date of printing.
2. Overview of the ETNs.
  - A. Name of the securities firm.
  - B. Short description of the ETNs: name, number of units to be issued, total amount to be issued, issue price, issue date, maturity date, issuance period, name of underlying index, market on which the ETNs trade, indicative value, whether income/gains are distributed, investor fees, repayment at maturity, early redemption by the securities firm, purchase and redemption by investors, and other relevant matters.
  - C. Description of the underlying index: essential content of the index license agreement, methods for index construction and calculation, past performance, and the method for making announcements of material events in connection with the underlying index, where those events materially affect investors' rights or interests.
  - D. Methods of calculating and manner of disclosing the intraday indicative

value and the closing indicative value and reasons for their deviation from the trading price.

E. Method for distribution of income/gains.

F. Fees to be borne by investors.

G. Use of the funds and hedging strategies.

H. Risks for investors.

I. Trading on the securities exchange market and how investors can purchase and redeem the ETNs.

J. How repayment is made at maturity.

K. Conditions and procedures for the securities firm's reopening of the original issue, early redemption, halting or resumption of purchases, and suspension of purchases.

L. Matters to be handled and procedures to be followed if the effective registration of the ETNs is voided or revoked by the competent authority or the ETNs are delisted from the TWSE or TPEX.

3. Overview of the securities firm.

4. List of securities underwriters and liquidity providers and their duties.

5. Disclosure of relevant ETN information.

6. Any other particulars required by the competent authority.

The simplified prospectus referred to in paragraph 1 shall contain in summary form the key information provided in the prospectus pursuant to the preceding paragraph.

The model templates for the prospectus and the simplified prospectus referred to in the preceding 2 paragraphs, and any amendments thereto, shall be drafted by the TWSE in conjunction with the TPEX and submitted to the competent authority for ratification.

A securities firm shall prepare an ETN prospectus and simplified prospectus in accordance with the provisions of the preceding 3 paragraphs.

### Article 16

Any change to an ETN prospectus or simplified prospectus involving any matter specified in paragraphs 2 and 3 of the preceding article, where the change materially affects investors' rights or interests, shall be submitted to the competent authority for approval. Following approval, the securities firm shall announce the content of the change within 2 days counting inclusively from the date upon which it receives the approval letter.

### Article 17

A securities firm shall on each business day announce the unit indicative value of each ETN of the previous business day.

If the effective registration of a securities firm's ETNs is voided or revoked by the competent authority, the securities firm shall announce the fact within 2 days counting inclusively from the date of occurrence.

A securities firm shall report to the competent authority and announce the following events within 2 days counting inclusively from the date of occurrence:

1. Any occurrence of a material event in connection with the underlying index, where the event materially affects investors' rights or interests.

2. Any material investor litigation or dispute arising in connection with the issuance of the ETNs.

3. Any material change to the finances or business of the securities firm.

4. The securities firm's early redemption, halting or resumption of purchases, or suspension of purchases.

5. Any other event that materially affects investors' rights or interests.

### Article 18

The term of an ETN shall be as specified in the ETN prospectus.

When an ETN is delisted from the TWSE or TPEX at maturity, the securities firm shall report to the competent authority for recordation within 2 days counting inclusively from the maturity date.

When a cause exists for delisting of ETNs from the TWSE or TPEX prior to the maturity date, as specified in the ETN prospectus or applicable TWSE or TPEX rules, the securities firm, TWSE, or TPEX shall immediately report the fact to the competent authority for recordation.

For ETNs that require permission from the Central Bank of the Republic of China (Taiwan) (CBC), upon occurrence of an event specified in paragraphs 2 and 3 hereof, when reporting to the competent authority for recordation, the securities firm, TWSE, or TPEx shall also copy the CBC.

#### Article 19

Before a securities firm issues or reopens an ETN that tracks the performance of a foreign index, it shall obtain permission from the CBC with respect to any inward or outward remittance of funds involved, and proceed in accordance with the requirements of the CBC.

#### Article 20

The name of an ETN may not cause others to mistakenly believe that the security of the principal can be guaranteed or that profit can be guaranteed.

The effective registration of a securities firm's ETN may not be cited in publicity as verification of its registration particulars or as a guarantee of the value of the ETN.

#### Article 21

A securities firm issuing ETNs shall produce all account books and statements required by the competent authority. Except where the competent authority otherwise provides, the period for which those books and statements shall be preserved and the method of doing so shall be in accordance with the Business Entity Accounting Act and other applicable provisions.

### Chapter 4 Supplementary Provisions

#### Article 22

The format of documents required pursuant to these Regulations with respect to the issuance or reopening of ETNs shall be prescribed by the competent authority.

The method for making announcements that a securities firm is required to make pursuant to these Regulations shall be prescribed by the competent authority.

#### Article 23

These Regulations shall be in force from the date of issuance.

---

Data Source : Financial Supervisory Commission Laws and Regulations Retrieving System