


Content

Title :	Regulations Governing Borrowing or Lending Money in Connection with Securities Business by Securities Firms 
Date :	2009.07.22
Legislative :	<p>1. Full text of 19 articles adopted and issued per 12 June 2006 Order No. Financial-Supervisory-Securities-II-0950002731 of the Financial Supervisory Commission, Executive Yuan</p> <p>2. Article 16 amended and issued per 6 March 2007 Order No. Financial-Supervisory-Securities-II-0960008172 of the Financial Supervisory Commission, Executive Yuan</p> <p>3. Article 8 amended and issued per 22 July 2009 Order No. Financial-Supervisory-Securities-SITC-0980036050 of the Financial Supervisory Commission, Executive Yuan</p>
Content :	<p>Article 1</p> <p>These Regulations are adopted pursuant to Article 60, paragraph 2, of the Securities and Exchange Act ("the Act").</p> <p>Article 2</p> <p>To conduct money lending in connection with securities business, a securities firm shall obtain the approval of the competent authority.</p> <p>"Money lending in connection with securities business" in the preceding paragraph means any financing business the securities firm and customer agree to engage in to meet settlement needs for purchases of exchange-listed or OTC-listed securities by the customer.</p> <p>The scope of financing by securities firms conducting securities business money lending shall be jointly drafted by the Taiwan Stock Exchange Corporation ("TSEC") and the GreTai Securities Market ("GTSM"), and submitted to the competent authority for final approval.</p> <p>Article 3</p> <p>A securities firm that applies to conduct securities business money lending shall possess the qualifications listed below:</p> <ol style="list-style-type: none">1. In the most recent financial report audited and certified by a certified public accountant (CPA), its net worth per share is not lower than par value, and its financial condition is in compliance with the Regulations Governing Securities Firms.2. Its regulatory capital adequacy ratio has not been lower than 200 percent in the half-year prior to the application date.3. It has not been subject to any warning sanction imposed by the competent authority under Article 66, subparagraph 1, of the Act in the past 3 months.4. It has not been subject to any sanction imposed by the competent authority ordering dismissal of a director, supervisor, or managerial officer of the securities firm, or any disposition to dismiss and replace its responsible person or other relevant personnel in the most recent half year.5. It has not been subject to any sanction imposed by the competent authority requiring the suspension of business in the past year.

6. It has not be subject to any sanction imposed by the competent authority voiding any portion of its business permission in the past two years.
7. It has not been subject to any sanction imposed by the TSEC, GTSM, or the Taiwan Futures Exchange Corporation pursuant to the bylaws of those exchanges suspending or restricting its trading in the past year.
8. Other qualifications as required by the competent authority.

Where a securities firm fails to meet a qualification in subparagraphs 3 through 7 of the preceding paragraph, but the violation has been specifically corrected and the correction is recognized by the competent authority, it may be exempted from the requirements of the subparagraph in question.

After a securities firm has been approved by the competent authority to conduct securities business money lending, if its regulatory capital adequacy ratio falls below 200 percent for two consecutive months, it shall suspend such lending, which may resume only after the securities firm is in compliance with regulations for three consecutive months and is approved by the competent authority; if the securities firm has already received approval to conduct such lending but has not begun doing so, it shall suspend proceeding.

Article 4

A securities firm that conducts securities business money lending shall adopt an effective internal control system.

The internal control system of the preceding paragraph shall adopt "know your customer" assessment and credit investigation procedures, and operating procedures, division of powers and duties, financing limit controls, and account management for the conduct of securities business money lending, as well as related risk management mechanisms.

Article 5

A securities firm that applies to conduct securities business money lending shall fill out an application form, attach the documents listed below, and submit them to the TSEC to review and forward to the competent authority for approval:

1. Internal control system.
2. Financial report of the most recent fiscal year audited and attested by a certified public accountant (CPA). Where the application is submitted more than six months after the beginning of the fiscal year, the financial report for the first half of the year audited and certified by a CPA, shall also be submitted.
3. Board of directors meeting minutes.
4. Evidentiary documentation of compliance with Article 3, paragraph 1, subparagraphs 1, 2, and 7.
5. Other documents required by the competent authority.

Article 6

The amount of securities business money lending conducted by a securities firm is limited to the amount payable by each customer after netting the prices of securities bought and sold by that customer on that trading day, excluding the amounts of margin purchases and short sales in margin trading.

Article 7

Where a securities firm conducts securities business money lending and the

customer uses the securities it has purchased as collateral, the customer's financing period shall be from the second business day to the fifth business day after the trade date.

The value of the collateral referred to in the preceding paragraph shall be limited to a certain percentage of the amount of money loaned by the securities firm to the customer. The percentage shall be jointly drafted by the TSEC and GTSM, and submitted to the competent authority for final approval.

Up to the second business day after the trade date, a securities firm may notify a customer of any additional requirement to provide securities as collateral, which shall be limited to exchange- or OTC-listed securities or government strip bonds only.

The securities firm and customer shall agree that prior to the expiration of the financing period, the customer may use its securities trading funds balance to repay money lending.

Article 8

Where a securities firm conducts securities business money lending and its customer uses securities it owns as collateral, that customer's financing period may not exceed sixth months; the ratio between the value of such collateral and the amount of money lending by the securities firm to that customer may not fall below a certain ratio.

Prior to the expiration of the period in the preceding paragraph, a securities firm may, depending on the customer's credit standing, grant a one-time only extension of 6 months.

Collateral referred to in paragraph 1 shall be limited to the following:

1. Common stock of component companies of the Taiwan 50 Index, Taiwan Mid-Cap 100 Index, or Taiwan Technology Index; exchange-traded fund (ETF) beneficial interest certificates and common stock of the component companies of those funds, offshore ETFs.
2. Common stock of MSCI Taiwan Index component companies as announced by Morgan Stanley Capital International (MSCI).
3. Government strip bonds.
4. Other collateral approved by the competent authority.

A securities firm shall mark to market on a daily basis the ratio of collateral value to customer debt in each lending account; when that ratio is below the prescribed percentage, it shall immediately notify the customer to make up the difference by a deadline with collateral of the types prescribed in the preceding paragraph.

The ratio referred to in paragraph 1 and the preceding paragraph shall be jointly drafted by TSEC and GTSM, and submitted to the competent authority for final approval.

Article 9

A securities firm conducting securities business money lending may not accept as collateral the securities listed below:

1. Pledged shares.
2. A company's own shares or other equity securities acquired through a buyback of its own shares, donation, merger, transfer of operations, or other reason.

Article 10

For a securities firm that conducts securities business money lending under

Article 8 herein, the total outstanding financing balance for each type of security or beneficial interest certificate eligible for use as financing collateral may not exceed 5 percent of the listed shares or beneficial interest units of that type of security, and, calculated in aggregate with the outstanding balance of margin financing [for that type of security] in the margin trading market and the outstanding balance of securities settlement financing [for that type of security] by securities finance enterprises may not exceed 25 percent of the listed shares or beneficial interest units of that type of security.

When the aggregate total of margin financing [for that type of security] in securities business money lending, in the margin trading market, and in securities settlement financing by securities finance enterprises as referred to in the preceding paragraph exceeds 20 percent of the listed shares or number of beneficial interest units of that type of security, the remainder under the limit shall be distributed proportionally; the distribution method shall be drafted by the TSEC and submitted to the competent authority for final approval.

Article 11

When the customer of a securities firm fails to repay money upon the expiration of the financing period, or fails to meet a margin call within the prescribed time period under Article 8, paragraph 4, herein, the securities firm shall immediately dispose of its collateral.

Article 12

Collateral that a securities firm obtains in conducting securities business money lending and for which a customer has issued a collateral transfer agreement may not be transferred to any other purposes except for the purposes listed below, and shall be deposited in central custody:

1. As collateral for securities borrowing through the securities lending system of the TSEC.
2. As collateral for securities borrowing or refinancing through a securities finance enterprise.

Article 13

A securities firm that conducts securities business money lending may charge its customers interest and processing fees on the loans; the interest rate shall be calculated on a per annum basis, and be posted at its place of business.

Article 14

A securities firm conducting securities business money lending shall sign and execute a loan contract with the customer.

The loan contract referred to in the preceding paragraph shall clearly state at least the matters listed below:

1. Reason for the financing.
2. Scope of the financing.
3. Financing period.
4. Financing limit.
5. Financing interest rate, processing fee rate, and the total cost expressed as an annual percentage rate.
6. Rules for protecting creditor rights, including eligible collateral, types of maintenance collateral, collateral maintenance ratio, remargining deadline, and the repayment method under Article 7, paragraph 4.

7. Method by which the securities firm will return collateral to a customer that has repaid loaned funds.
8. Disposal of collateral.
9. Effective date and duration of the contract, and procedures for amendment and termination of the contract.
10. Dispute resolution.

Article 15

A securities firm that conducts securities business money lending may not engage in transactions with the related parties listed below:

1. A director, supervisor, or representative of a juristic-person director or juristic-person supervisor, of the securities firm, or any of its employees or a shareholder holding more than 10 percent of its total shares.
2. A spouse of a director, supervisor, or representative of a juristic-person director or juristic-person supervisor, of the securities firm.
3. A minor child of a person of an identity specified in subparagraph 1 herein.

The terms and conditions, such as financing interest rates and processing fees, that a securities firm offers to a related party or affiliated enterprise other than those specified in the preceding paragraph may not more favorable than those offered to other customers.

Article 16

When a securities firm conducts securities business money lending under Article 8 herein, the combined total of money lending financing limits, plus the limits on margin financing in margin purchase and short sale business, that it extends to a same person or same related parties, may not exceed a certain percentage of that securities firm's net worth, or a certain amount.

"Same person" in the preceding paragraph means a same natural person or same juristic person; the scope of "same related parties" means that person, their spouse, blood relatives within the second degree, and any enterprise of which that person or spouse is a responsible person. A same person or same related parties shall include those using the names of others.

The "certain percentage of that securities firm's net worth" of paragraph 1 means that for a natural person, it may not exceed 1 percent of the securities firm's net worth, or NT\$60 million; for a juristic person, it may not exceed 5 percent of its net worth, or NT\$1 billion; for same related parties, the limit on total financing is 10 percent of the securities firm's net worth, of which the limit on financing extended to natural persons may not exceed 2 percent of the securities firm's net worth.

Article 17

When a securities firm conducts securities business money lending and its customer uses purchased securities as collateral, the outstanding balance of financing to the customer may not exceed 150 percent of the securities firm's net worth; the combined total of the outstanding balance of financing extended to the customer for securities margin purchase and short sales business plus securities business money lending may not exceed 400 percent of the securities firm's net worth.

Where a securities firm is concurrently operated by a financial institution, the net worth provisions of the preceding paragraph shall be calculated based on its allocated operating capital; for a branch of a foreign securities firm located within the territory of the Republic of China (ROC), those provisions shall be calculated based on the capital it has specifically allocated for ROC operations.

Article 18

A securities firm that conducts securities business money lending shall do so in accordance with the regulations governing business operations.

The regulations governing business operations of the preceding paragraph shall clearly specify financing application, repayment, and collateralization methods; standards for calculating collateral financing, calculation of the collateral maintenance ratio, types of maintenance collateral, financing calculation standards and deadlines, disposal of collateral, and other matters as required by the competent authority. The regulations shall be jointly drafted by the TSEC and GTSM and submitted to the competent authority for final approval.

Article 19

These Regulations shall be enforced from the date of issuance.

Data Source : Financial Supervisory Commission Laws and Regulations Retrieving System