

Legal Updates

KIM & CHANG

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2010 FINANCIAL INVESTMENT BUSINESS LICENSE GUIDELINES

On May 31, 2010, the Financial Services Commission (the "FSC") issued guidelines (the "Guidelines") on its policies regarding financial investment business licenses under the Financial Investment Services and Capital Markets Act. The following businesses will be newly permitted pursuant to the Guidelines:

1. New establishment of boutique securities companies dedicated to special business area

- Business plan relating to the specialized business area it intends to engage in to be subject to strict scrutiny by independent, outside evaluation committee
- Subject to condition that new business areas may not be added for a predetermined period of time (e.g., 5 ~ 10 years)

2. Limited licenses for securities companies and banks to engage in OTC derivatives with lower market risk

- Securities companies: dealing business relating to equity linked OTC derivatives and OTC derivative business relating to issuance of derivative linked securities
- Banks: businesses that banks have been conducting, or have a need to be permitted to conduct in the future, such as dealing/brokerage business for commodity derivatives, gold banking, KTB swaps, etc.

3. Dealing (including underwriting) business relating to government bonds by banks

- Under the previous policy, this type of license was limited to entities intending to either (a) qualify as a primary dealer of treasury bonds or (b) participate in auctions for monetary stabilization bonds. However, the Guidelines have abolished this requirement.

4. Brokerage business relating to debt securities by foreign exchange brokerage companies and currency/interest rate linked OTC derivative brokerage business by money brokerage companies

5. Collective investment business licenses for investment advisory or discretionary investment management companies

- Limited to single-type collective investment business, such as securities funds, based on evaluation of business capabilities for a predetermined period of time (e.g., investment advisory or discretionary investment management company with at least 5 years experience that has had good performance for the past three years and has not experienced a change in its largest shareholder in the past one year)

6. Fund distribution licenses for banks/securities companies

7. Trust business for securities companies/insurance companies

- Under the previous policy, this trust business license was limited to entrustments for pension plan management but the Guidelines have abolished such requirements.

The details relating to the actual implementation of the Guidelines (including without limitation (a) the specific requirements for establishment of boutique securities companies dedicated to special business areas, (b) whether brokerage business relating to equity linked OTC derivatives will be permitted to securities companies, (c) what kind of activities will be permitted if securities companies are allowed to engage in OTC derivative business relating to issuance of derivative linked securities, etc.) are not specifically addressed in the Guidelines. The FSC announced that it will hold explanatory sessions regarding the details of the Guidelines for industry members. We expect many of these issues to be clarified in the upcoming explanatory sessions.

The FSC will accept license applications in accordance with the Guidelines from July.

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