Regulations on the Administration of Securities Companies of the PRC

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Contents

Table of Contents 1

Chapter I — General Provisions 1

Chapter II — Establishment and Change 2

Chapter III — Organizational Structure 3

Chapter IV — Business Rules and Risk Control 3

Section 1 — Business Rules 3

Section 2 — Risk Control 4

Chapter V — Client Asset Protection 5

Chapter VI — Supervision and Administration 5

Chapter VII — Legal Liability 6

Chapter VIII — Supplementary Provisions 6

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Table of Contents

- Chapter I — General Provisions
- Chapter II — Establishment and Change
- Chapter III — Organizational Structure
- Chapter IV — Business Rules and Risk Control
- Chapter V — Client Asset Protection
- Chapter VI — Supervision and Administration
- Chapter VII — Legal Liability
- Chapter VIII — Supplementary Provisions

Chapter I — General Provisions

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Article 1 — These Regulations are formulated for the purposes of strengthening the supervision and administration of securities companies, regulating the conduct of securities companies, protecting the lawful rights and interests of clients, preventing risks in securities companies, and promoting the healthy development of the securities industry.

Article 2 — These Regulations shall apply to the supervision and administration of securities companies established within the territory of the PRC. The term “securities company” as used in these Regulations means a limited liability company or joint stock limited company that has been approved by the securities regulatory authority under the State Council to engage in securities business in accordance with the Company Law of the PRC and the Securities Law of the PRC.

Article 3 — The securities regulatory authority under the State Council shall, in accordance with the law, implement supervision and administration over securities companies. The dispatched offices of the securities regulatory authority under the State Council shall, within the scope of authorization of the securities regulatory authority under the State Council, perform their functions of supervision and administration over securities companies.

Article 4 — Securities companies shall abide by laws, administrative regulations, and the provisions of the securities regulatory authority under the State Council, observe professional ethics, and shall not harm the lawful rights and interests of clients. Securities companies shall operate in compliance with laws and regulations, strengthen internal management, and prevent business risks.

Article 5 — The State shall encourage securities companies to engage in lawful operations, standardized operations, and innovative development. Securities companies shall, in accordance with the principle of prudent operation, establish sound internal control systems and risk management systems. The securities regulatory authority under the State Council shall adopt measures to promote securities companies to innovate and develop, operate in a standardized manner, and become stronger.

Chapter II — Establishment and Change

Article 6 — The establishment of a securities company shall meet the conditions stipulated by the Company Law of the PRC, the Securities Law of the PRC, and these Regulations, and shall be subject to the examination and approval of the securities regulatory authority under the State Council. Without the approval of the securities regulatory authority under the State Council, no organization or individual may engage in securities business. The State Council shall formulate the standards and procedures for the examination and approval of the establishment of securities companies.

Article 7 — The registered capital of a securities company shall be paid-in capital. Where a securities company applies to change its registered capital, the change shall be subject to the approval of the securities regulatory authority under the State Council. The amount of net capital of a securities company shall not be lower than the prescribed risk control indicator standards.

Article 8 — The term “Securities” shall be included in the name of a securities company. No organization or individual that has not been approved to engage in securities business shall use the words “Securities Company” or “Securities” in its name. A securities company shall mark the words “Securities Limited Liability Company” or “Securities Joint Stock Limited Company” on the signboard of its business premises and on its seals and vouchers.

Article 9 — Where a securities company establishes, acquires, or takes a stake in a branch, a subsidiary, or other securities business institution, or changes its business scope, the shareholders holding more than 5% of its shares, its actual controller, or its articles of association, it shall apply to the securities regulatory authority under the State Council for approval. Where a securities company changes its name, domicile, or the responsible person of a branch, it shall report the change to the dispatched office of the securities regulatory authority under the State Council at its place of domicile for the record.

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Article 10 — Where a securities company is dissolved or goes into bankruptcy, it shall be subject to the approval of the securities regulatory authority under the State Council and shall properly handle the relevant affairs such as the settlement of clients' assets. After a securities company is dissolved or goes into bankruptcy, it shall, in accordance with the provisions, cancel its securities business license and undergo cancellation of registration with the company registration authority.

Chapter III — Organizational Structure

Article 11 — A securities company shall establish a sound organizational structure and management mechanisms such as decision-making, execution, and supervision, and clarify the scope of powers and procedures for the exercise of such powers. A securities company shall establish an independent board of directors and a board of supervisors or supervisors. The directors, supervisors, and senior management personnel of a securities company shall meet the qualifications prescribed by the securities regulatory authority under the State Council.

Article 12 — A securities company shall have a compliance officer, who shall be a senior management person of the securities company. The appointment or removal of the compliance officer shall be subject to the approval of the securities regulatory authority under the State Council. The compliance officer shall be responsible for the compliance management of the securities company, review the compliance of the internal management system and business operation of the securities company, and supervise its implementation.

Article 13 — A securities company shall have a risk control officer. The risk control officer shall be responsible for the risk management of the securities company, monitor, assess, and report the risk situation of the securities company, and propose measures to resolve risks. The risk control officer shall be directly responsible to the board of directors.

Article 14 — Where any director, supervisor, or senior management personnel of a securities company has been subject to administrative penalties for illegal acts or has been disqualified or removed from their position in accordance with the law, they shall not hold the corresponding position within the statutory time limit. The senior management personnel of a securities company shall not concurrently serve as the responsible person of any other for-profit organization.

Article 15 — Securities companies and their staff shall not engage in the following conduct that is detrimental to clients: using the assets of clients for purposes other than those entrusted by the clients; accepting the full authorization of clients to decide on securities trading; making a commitment to clients regarding the proceeds of securities trading or compensation for losses; providing financing or guarantees to clients in violation of the provisions; privately accepting the entrustment of clients to trade securities; or other conduct that harms the lawful rights and interests of clients.

Chapter IV — Business Rules and Risk Control

Section 1 — Business Rules

Article 16 — A securities company shall operate within the scope of its approved securities business. A securities company shall, in accordance with the provisions of the securities regulatory authority under the State Council, formulate business rules, establish and improve business operation procedures, and ensure the standardized and orderly conduct of business.

Article 17 — A securities company engaged in securities brokerage business shall verify the identity of clients, sign securities trading entrustment agreements with clients, and open securities accounts and fund accounts for clients in accordance with the provisions. A securities company shall not provide a securities trading account of one client for use by another person.

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Article 18 — A securities company engaged in securities underwriting and sponsorship business shall comply with the provisions of the securities regulatory authority under the State Council on underwriting methods, underwriting periods, underwriting fees, and underwriting procedures. The lead underwriter of a securities company shall perform its sponsorship duties for the securities issued, verify the authenticity, accuracy, and completeness of the offering documents, and urge the issuer to disclose information in a timely manner.

Article 19 — A securities company engaged in securities asset management business shall, in accordance with the provisions of the securities regulatory authority under the State Council, sign asset management contracts with clients, manage clients' assets in accordance with the contracts, and use the clients' assets for the purposes specified in the contracts. A securities company shall not use the clients' entrusted assets for purposes other than those stipulated in the contracts.

Article 20 — A securities company engaged in securities investment consulting business shall provide analysis, forecasts, or recommendations on the securities market and securities-related products and shall be responsible for the truthfulness and objectivity of the content. A securities company and its staff engaged in securities investment consulting business shall not act as agents for clients in securities investment, share the proceeds of securities investment with clients, or compensate clients for losses from securities investment.

Article 21 — A securities company engaged in margin trading shall, in accordance with the provisions of the securities regulatory authority under the State Council, sign margin trading contracts with clients, and shall not provide financing or securities lending to clients who do not comply with the provisions. The margin ratio and the scope of underlying securities for margin trading shall comply with the provisions of the securities regulatory authority under the State Council.

Section 2 — Risk Control

Article 22 — A securities company shall, in accordance with the provisions of the securities regulatory authority under the State Council, calculate its risk control indicators such as net capital and prepare a net capital calculation table, a risk control indicator monitoring table, and a risk capital reserve calculation table. A securities company shall ensure that its risk control indicators continue to meet the prescribed standards.

Article 23 — Where the risk control indicators of a securities company fail to meet the prescribed standards, the securities regulatory authority under the State Council shall order the securities company to make corrections within a specified time limit. If the securities company fails to make corrections within the time limit, the securities regulatory authority under the State Council may take the following measures: restricting its business activities and ordering it to suspend some of its business; restricting the distribution of dividends and restricting the payment of remuneration and the provision of benefits to directors, supervisors, and senior management personnel; restricting the transfer of property or the creation of other rights over property; ordering it to replace directors, supervisors, and senior management personnel, or restricting their rights; and ordering the controlling shareholder to transfer its equity interest or restricting the relevant shareholders from exercising their rights. The securities company shall not pay dividends to shareholders or provide benefits and remuneration in any form to directors, supervisors, and senior management personnel until its risk control indicators have been rectified to meet the prescribed standards.

Article 24 — A securities company shall, in accordance with the provisions, withdraw a general risk reserve. The general risk reserve shall be used to make up for operational losses of the securities company. Securities companies shall withdraw a trading risk reserve from their annual after-tax profits to make up for losses in securities trading. The withdrawal ratio and management measures of the risk reserve shall be prescribed by the securities regulatory authority under the State Council.

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Article 25 — A securities company shall establish a sound information technology management system to ensure the safety and stable operation of information technology systems. A securities company shall establish a disaster backup system for its information technology systems. Where the information technology system of a securities company fails or malfunctions, it shall immediately activate the emergency plan and report to the securities regulatory authority under the State Council in a timely manner.

Chapter V — Client Asset Protection

Article 26 — A securities company shall, in accordance with the provisions, deposit clients' trading and settlement funds in commercial banks and open a separate account for each client for management. A securities company shall not include clients' trading and settlement funds in its own assets, nor shall it misappropriate clients' trading and settlement funds in any form.

Article 27 — Securities deposited by clients with a securities company shall be deposited with a securities registration and clearing institution in accordance with the provisions. A securities company shall not misappropriate clients' securities or pledge clients' securities to a third party. A securities company shall not use clients' securities to engage in securities lending without the entrustment of the clients.

Article 28 — A securities company shall, in accordance with the provisions, report the trading and settlement funds and securities deposited by clients in a truthful, accurate, and complete manner. A securities company shall, upon request by clients, provide them with information such as the statements of their trading and settlement funds and the details of their securities trading.

Article 29 — Where a securities company is ordered to close down, goes bankrupt, or is taken over or placed under custody for other reasons, its clients' trading and settlement funds and clients' securities shall not be included in the bankruptcy property or liquidation property. The clients' trading and settlement funds and securities shall be returned to the clients in accordance with the provisions.

Chapter VI — Supervision and Administration

Article 30 — The securities regulatory authority under the State Council shall, in accordance with the law, supervise and administer securities companies and shall have the authority to take the following measures: requiring a securities company to submit business and financial information on a regular basis; conducting on-site inspections of a securities company; requiring the directors, supervisors, senior management personnel, and other relevant personnel of a securities company to explain the relevant matters; and taking regulatory measures such as supervisory interviews and warning letters against a securities company.

Article 31 — The securities regulatory authority under the State Council shall conduct classified supervision and administration over securities companies based on their risk profile, compliance management status, and other factors. Securities companies shall disclose basic information, compliance management status, risk control indicator status, and other information in accordance with the provisions.

Article 32 — Where a securities company is involved in a major risk event or its risk control indicators fail to meet the prescribed standards, the securities regulatory authority under the State Council may take measures such as restricting business activities, ordering the company to replace directors, supervisors, and senior management personnel, and restricting the payment of dividends. Where the circumstances are serious, the securities regulatory authority under the State Council may take over or close down the securities company in accordance with the law.

Article 33 — Where the securities regulatory authority under the State Council suspects that a securities company has committed illegal acts, it may seal up or freeze the relevant documents, materials, and property. Where the funds, securities, or other assets of a securities company are likely to be transferred or concealed, the securities regulatory authority under the State Council may apply to the judicial authorities for freezing or sealing up such assets.

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Chapter VII — Legal Liability

Article 34 — Where a securities company, in violation of the provisions of these Regulations, engages in securities business without the approval of the securities regulatory authority under the State Council, it shall be banned, the illegal gains shall be confiscated, and a fine of not less than one time but not more than five times the illegal gains shall be imposed. Where there are no illegal gains or the illegal gains are less than 300,000 yuan, a fine of not less than 300,000 yuan but not more than 600,000 yuan shall be imposed. The persons directly in charge and other persons directly responsible shall be fined not less than 30,000 yuan but not more than 300,000 yuan.

Article 35 — Where a securities company misappropriates clients' funds or securities, it shall be ordered to make corrections, and a fine of not less than 30,000 yuan but not more than 300,000 yuan shall be imposed; the persons directly in charge and other persons directly responsible shall be fined not less than 30,000 yuan but not more than 300,000 yuan. Where the circumstances are serious, the securities regulatory authority under the State Council shall revoke its securities business license.

Article 36 — Where a securities company commits any of the following acts, it shall be ordered to make corrections and fined not less than 30,000 yuan but not more than 300,000 yuan; the persons directly in charge and other persons directly responsible shall be fined not less than 30,000 yuan but not more than 100,000 yuan: failing to properly preserve clients' account opening information, entrustment records, and transaction records; failing to submit business and financial information in accordance with the provisions; refusing or obstructing the on-site inspection by the securities regulatory authority under the State Council; or other violations of these Regulations.

Article 37 — Where a securities company fails to withdraw a general risk reserve in accordance with the provisions, it shall be ordered to make corrections and fined not less than 30,000 yuan but not more than 300,000 yuan. The persons directly in charge and other persons directly responsible shall be fined not less than 10,000 yuan but not more than 100,000 yuan.

Article 38 — Where a securities company violates the provisions of these Regulations and the circumstances are serious, the securities regulatory authority under the State Council may take the following measures against the relevant responsible persons: disqualifying them from holding the position of director, supervisor, or senior management personnel of a securities company; determining them to be persons prohibited from entering the securities market; or imposing administrative penalties in accordance with the law. Where any violation of the provisions of these Regulations constitutes a crime, criminal liability shall be pursued in accordance with the law.

Chapter VIII — Supplementary Provisions

Article 39 — The stock exchanges, securities registration and clearing institutions, and securities industry associations shall, in accordance with the provisions of relevant laws, administrative regulations, and their articles of association, exercise self-regulation over securities companies. Where a securities company violates the rules of a self-regulatory organization, the self-regulatory organization may take disciplinary action against it in accordance with the provisions.

Article 40 — These Regulations shall apply to the supervision and administration of subsidiaries of securities companies that are lawfully established and engage in securities business in accordance with the law. The securities regulatory authority under the State Council shall formulate separate provisions for the supervision and administration of subsidiaries of securities companies.

Article 41 — These Regulations shall also apply to the activities of foreign securities business institutions establishing representative offices within the territory of the PRC and the establishment of securities business institutions within the territory of the PRC, unless otherwise provided by the State Council.

Article 42 — These Regulations shall come into force on June 1, 2008. The provisions on securities companies in the Interim Regulations on the Administration of Securities Trading promulgated by the State Council on April 22, 1993 shall be repealed simultaneously.

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