

Securities Investment Company Act (Republic of Korea)

By Ministry of Legislation

INTRODUCTION

Details of Enactment and Amendment

- **Enactment:** This Act was enacted on September 16, 1998, as Act No. 5557, in order to prescribe matters relevant to requirements for establishment and registration, method of asset management, and issuance and repurchase of stocks of the securities investment companies (mutual funds).
- **Amendment:** This Act has arrived at its present form after going through the amendments over three occasions since its enactment. The latest amendment was on April 27, 2002.

Main Contents

- A securities investment company is a company which the securities invest experts gather funds from general investors, and invest them for the investors. While it takes the form of stock company under the Commercial Act, its principal service shall be investment and management of securities, and cannot be engaged in the business of providing other services.
- A securities investment company shall invest in, and manage, the securities after gathering funds from the investors, only if it has registered as a securities investment company with the Financial Supervision Commission after its incorporation.
- The composition of the organs of a securities investment company shall be identical in principle with that of a general stock company, however, it is different from the latter in the following two points; that the composition of its board of directors is dualized by having executive directors and supervisory directors (conducting supervisory duties over management directors and other persons related with funds), and that qualifications of its auditor, unlike the case of general stock companies, shall be a certified public accountant who belongs to an accounting corporation.
- A securities investment company shall invest its asset holdings only in the securities, etc. and any investment in the real properties such as real estates shall be prohibited.
- Since a securities investment company is a nominal company running only the business of investing in the securities, its businesses of asset management, asset custody, etc. shall be entrusted to, and dealt with by, asset management company and asset custodian company, etc. respectively.

● Since the stockholders' right to request redemption is acknowledged only for open-end securities investment companies, liquidity of funds in cases of closed-end securities investment companies can be secured through trading them after listing at the Korea Stock Exchange or registering with the KOSDAQ.

● Following the amendment of the Enforcement Decree of the Securities Investment Company Act, the establishment capital of a securities investment company, which was at four hundred million won, is lowered to one hundred million won from September, 2002 for the purpose of accelerating the establishment of securities investment company, but the amount of minimum net asset to be kept by a securities investment company, which was at two hundred million won, is raised to one billion won for the purpose of promoting the sound management of securities investment company.

● The previous Act prescribed that a securities investment company belonging to a large-scale enterprise group could exercise the voting rights to the stocks of its affiliate held by it to the extent as not affecting the results of exercise of voting rights by the other stockholders though it predicted that the exercise of voting rights would invite any loss to itself; whereas, for the purpose of protecting the interest of investors, the amended Act prescribes that a securities investment company which belongs to an enterprise group restricted within the narrow mutual contribution limits can, only in the case of merger, transfer of business, appointment or dismissal of officers, or amendment of the articles of incorporation, exercise the voting rights to the stocks of its affiliate positively within the scope of 30 percent of the total number of the issued stocks of its affiliate, including the number of stocks held by the specially related persons of the affiliate, in case where it predicts that the exercise of voting rights will invite any loss to itself.

● Where a securities investment company holds a corporation's stocks equivalent to or more than the rate or amount as prescribed by the Presidential Decree (the present prescribed rate or amount is 5/100 or one billion won in accordance with the Enforcement Decree of the Securities Investment Company Act) in the total amount of its assets, it shall keep a record of and announce in public the matters concerning whether to exercise its voting rights to such stocks, for the purpose of enhancing the transparency of its management and protecting the interest of the investors.

Sep 16, 1998 Act No. 5557

Amended by Jan. 21, 2000 Act No. 6174

Mar. 28, 2001 Act No. 6425

Apr. 27, 2002 Act No. 6694

CHAPTER I GENERAL PROVISIONS

■ Article 1 (Purpose)

The purpose of this Act shall be to contribute to the development of the national economy by providing diversified securities investment means for investors and stimulating investment in the capital market through stipulating the matters necessary for the establishment of securities investment companies, the methods of asset management, and the issuance and redemption of stocks.

■ Article 2 (Definition)

The terms used in this Act shall be defined as follows:

1. The term "securities investment company" means a company established under this Act for the purpose of distributing the profits gained from investing its assets in securities, etc. to its stockholders;

1-2. The term "exchange traded securities investment company" means a securities investment company that satisfies all the requirements of the following items:

(a) To aim at an operation linked up with the fluctuation of one or some of the indexes, indicating the composite price level of a number of issues according to the class of securities, etc., which meet the conditions prescribed by the Presidential Decree;

(b) To be open-ended pursuant to the provisions of Article 45 (1); and

(c) Stocks issued at the time of establishment of a securities investment company to be listed on the securities market pursuant to Article 2 (12) of the Securities and Exchange Act (hereinafter referred to as the "securities market"), or to be registered with the Association brokerage market pursuant to Article 2 (14) of the same Act (hereinafter referred to as the "Association brokerage market") within the time frame prescribed by the Presidential Decree;

1-3. The term "indirect securities investment company" means a securities investment company that has the main objective of investment in the securities of the following items with a portion, above the pro- portion prescribed by the Presidential Decree, of total asset amount of the securities investment company:

(a) Stocks issued by securities investment companies pursuant to this Act;

(b) Stocks of foreign securities investment companies pursuant to the provisions of Article 80 (1);

(c) Beneficiary certificates issued in accordance with the Securities Investment Trust Business Act or the Trust Business Act; and

(d) Foreign beneficiary certificates pursuant to the provisions of Article 42-4 (1) of the Securities Investment Trust Business Act;

2. The term "asset management company" means a company registered with the Financial Supervisory Commission pursuant to Article 33 (1), and that conducts the business of asset management that is entrusted by a securities investment company;
3. The term "custodian" means a company that falls under Article 39(3) ; and that conducts the business of safekeeping of assets and other business related thereto that is entrusted by a securities investment company.
4. The term "distributor" means a company registered with the Financial Supervisory Commission pursuant to Article 41 (2) that conducts the business of public offering and secondary distribution of the stocks issued by a securities investment company that is entrusted therefrom;
5. The term "general administration trustee company" means a company that carries on the business of each subparagraph of Article 42 (1) that is entrusted by a securities investment company and is registered with the Financial Supervisory Commission in accordance with the provisions of Article 42-2 (1);
6. The term "securities" means the securities and stock index provided in Article 2 (1) and (2) and Article 2-2 (1) of the Securities and Exchange Act;
7. The term "securities, etc." means those that fall under one of the following items:
 - (a) Securities;
 - (b) Bills or debt certificates issued, sold, or intermediated by financial institutions prescribed by Presidential Decree; or,
 - (c) Foreign currency securities determined by Ordinance of the Ministry of Finance and Economy from among those prescribed in the Foreign Exchange Transactions Act.
8. The term "net asset value" means the amount obtained from deducting liabilities from assets.

■ Article 3 (Legal Status)

- (1) A securities investment company shall be a stock corporation.
- (2) A securities investment company shall be subject to the application of the Commercial Act except for cases otherwise specifically prescribed in this Act.

■ Article 4 (Restrictions, etc. on Concurrently Engaging in Other Business)

- (1) No securities investment company shall engage in any business other than investing its assets in securities, etc. pursuant to Article 28.
- (2) A securities investment company shall not establish any other business offices other than a head office and shall not employ employees or standing officers therein.

■ **Article 5 (Prohibition of Use of Similar Name)**

No entity other than the securities investment companies established under this Act shall use the name "securities investment company" or any other similar titles.

CHAPTER II ESTABLISHMENT

AND REGISTRATION

SECTION 1 Establishment

■ **Article 6 (Promoter)**

(1) There shall be at least one or more promoters of a securities investment company.

(2) Any person who falls under one of the following subparagraphs shall not be a promoter:

1. A minor, an incapacitated person, or a quasi-incapacitated person;
2. A bankrupt person who has not been reinstated;
3. A person for whom five years have not elapsed since the completion (including the case where the execution is deemed to be completed) or exemption of the execution of punishment after being sentenced to an imprisonment or heavier penalty, or a fine or heavier punishment under this Act and other financial statutes or subordinate statutes prescribed by Presidential Decree (including the foreign statutes similar thereto; hereinafter the same shall apply);
4. A person sentenced to a suspension of execution of an imprisonment or heavier penalty and whose probation period has not expired;
5. A person who was an officer or an employee of a corporation or a company whose business license, authorization or registration, etc. was cancelled in accordance with this Act and other financial statutes or subordinate statutes prescribed by Presidential Decree (limited to any person who was directly or correspondingly responsible for the cause of the cancellation of such license, etc. prescribed by Presidential Decree) and for whom five years have yet to elapse from the date of the cancellation of such business license, authorization or registration against such corporation or such company; or,
6. A person for whom five years have not elapsed since the date of dismissal or removal from that person's office due to a violation of this Act or other financial statutes or subordinate statutes prescribed by Presidential Decree.

■ **Article 7 (Articles of Incorporation)**

(1) Promoters shall prepare the articles of incorporation including the matters in the following subparagraphs and record their names and seal or sign thereon:

1. Purpose;
2. Company name;
3. Matters relating to the redemption of stocks such as whether stocks are redeemed or not at the request of stockholders;
4. Total number of stocks to be issued;
5. Total number of stocks and the issuance price thereof at the time of establishment (in the case of par value stock, price of one stock);
6. The minimum net asset value to be maintained by the securities investment company concerned;
7. Basic policy of asset management;
8. Matters relating to the evaluation of assets;
9. Matters relating to the distribution of profits, etc.;
10. Location of company;
11. Method of public notice;
12. Remuneration base of directors and auditors;
13. Outline of asset management entrustment agreement that is to be made with an asset management company (including the fees to be paid to an asset management company); and,
14. Outline of the business entrustment agreement to be made with a custodian and distributor.

(2) The total number of stocks to be issued at the time of establishment pursuant to the provisions of paragraph (1) 5 may be determined by fixing an upper limit and a lower limit;

(3) The minimum net asset amount pursuant to the provision of paragraph (1) 6 shall be above the amount prescribed by Presidential Decree, within the limit not exceeding one billion won.

■ Article 8 (Paid-in Capital at the Time of Establishment)

In case a securities investment company issues non-par value stocks at the time of establishment, the paid-in capital at the time of establishment shall be the total amount of the issuance price of stocks.

■ Article 9 (Subscription, etc. for Underwriting of Stocks)

(1) A promoter shall prepare the application form for stocks that contain the matters in each of the following subparagraphs and provide it to the persons intending to subscribe for underwriting of the stocks to be issued at the time of establishment:

1. Matters in Article 7 (1) 1 through 12;
2. Where a fixed period of duration or reasons for dissolution are provided in the articles of incorporation, such contents thereof;
3. The Method of distribution of the stocks to be issued at the time of establishment and the payment date for the subscription money of stock;
4. Financial institutions that are receive the payment of subscription money of stocks and the place of the payment thereof;
5. Names and addresses of the candidates for directors and auditors;
6. Name and address of the asset management company and summary of the asset management entrustment agreement;
7. Names and addresses of the custodian, distributor, and general administration trustee company, and summary of the business entrustment agreement;
8. State that the securities investment company may cancel its establishment in case the number of stocks underwritten is less than that to be issued at the time of establishment; and,
9. State that any person who has subscribed to underwrite the stocks may cancel the subscription when the securities investment company is not established within a specified period of time or the Financial Supervisory Commission rejects the registration thereof pursuant to Article 13 (3).

(2) Any promoter who intends to solicit subscriptions to underwrite stocks to be issued at the time of establishment shall draft an investment prospectus and file it in advance with the Financial Supervisory Commission.

(3) Any promoter that solicits subscriptions to underwrite stocks to be issued at the time of establishment shall supply prospective underwriters with an investment prospectus filed with the Financial Supervisory Commission in accordance with paragraph (2), providing an explanation of major points.

(4) Any promoter, if necessary, may use a simple investment prospectus consisting of a summary of the major points of the investment prospectus filed with the Financial Supervisory Commission in accordance with the provisions of paragraph (2) to solicit subscriptions to underwrite stocks, notwithstanding the provisions of paragraph (3).

(5) Necessary matters such as matters to be entered in the investment prospectus and the simple investment prospectus referred to in paragraphs (2) and (4), and the method of offering such prospectuses shall be prescribed by Presidential Decree.

■ Article 10 (Fictitious Appointment of Directors and Auditors)

The candidates for directors and auditors who are stated in the application form for stocks shall be deemed elected as directors and auditors respectively when the stock allocation is completed.

■ Article 11 (Investigation Report, etc. by Directors)

(1) The directors referred to in Article 10 shall promptly investigate whether any violation of this Act, related statutes or subordinate statutes or the articles of incorporation have been committed with respect to the incorporation of a securities investment company and report the results to the board of directors.

(2) When directors find any violation of Acts and subordinate statutes or the articles of incorporation as provided under paragraph (1), they shall convene an inaugural general meeting of shareholders to report such findings in case of the incorporation of a corporation by subscription, and they shall report such findings to such promoters in case of the incorporation of a corporation by promoters.

SECTION 2 Registration

■ Article 12 (Investment Registration)

(1) When a securities investment company intends to engage in the business provided in Article 28 (1) under this Act, it shall register the matters falling under each of the following subparagraphs with the Financial Supervisory Commission:

1. Matters mentioned in Article 7 (1) 1 through 9;
2. Names and resident registration numbers of directors and auditors;
3. Name of the asset management company and summary of the asset management entrustment agreement;
4. Names of the custodian, distributor, and general administration trustee company; and,
5. Where a fixed period of duration or reasons for dissolution are provided in the articles of incorporation, the contents thereof.

(2) When a securities investment company intends to make a registration pursuant to paragraph (1), it shall submit a registration statement to the Financial Supervisory Commission by attaching the documents mentioned in each of the following subparagraphs:

1. A copy of the articles of incorporation;
2. A certificate of the corporate register;
3. Documents proving the payment of the subscription money of stocks; and,
4. Copies of the business entrustment agreements made with the asset management company, custodian, distributor, and general administration trustee company.

(3) Any securities investment company shall be prohibited from publicly offering new securities and outstanding securities (limited to stocks) in accordance with the provisions of Article 2 (3) and (4) of the Securities and Exchange Act without registering its business in accordance with the provisions of paragraph (1): Provided that the same shall not apply to the case in which stocks are offered at the time establishment.

■ Article 13 (Requirements, etc. for Investment Registration)

(1) Any securities investment company that intends to make a registration pursuant to Article 12 shall satisfy the requirements falling under each of the following subparagraphs:

1. It shall be lawfully established under this Act;
2. The capital at the time of the registration application shall be above the amount prescribed by Presidential Decree;
3. Directors and auditors shall not fall under the disqualification conditions as provided in Article 19 and Article 26 (2), respectively;
4. An asset management company, custodian, distributor or general administration trustee company that has concluded a business entrustment agreement shall be in conformity with the provisions of Articles 33, 39 (3), 41 (2) or 42-2 and shall not be in a period where its business has been suspended;
5. The contents of the registration statement shall not be contrary to this Act or the orders thereunder; and,
6. There shall not be any false statements or omissions of material fact in the registration statement.

(2) When a securities investment company that has made an application for registration meets the requirements for registration pursuant to paragraph (1), the Financial Supervisory Commission shall enter it in its registration book and notify the fact, without delay, to the stated securities investment company.

(3) The Financial Supervisory Commission may, in case a securities investment company that has made an application for registration fails to meet the requirements for registration pursuant to

paragraph (1), reject the registration, and may, in case there are incomplete matters in the registration statement, request that such application be completed within a specified period of time. In this case, the Financial Supervisory Commission shall, without delay, notify such securities investment company by a letter specifying the reason.

(4) The Financial Supervisory Commission shall maintain a registration book of securities investment companies for public inspection.

■ Article 14 (Registration of Change)

(1) In case there is any change in the registered matters pursuant to Article 12 (1), a securities investment company must make a registration of the changed matters within two weeks thereafter with the Financial Supervisory Commission: Provided that this shall not apply to changes in minor matters as determined by the Financial Supervisory Commission.

(2) Article 13 (2) and (3) shall apply *mutatis mutandis* to the cases of making a registration of change in accordance with paragraph (1).

CHAPTER III ORGANS

SECTION 1 Stockholders' Meeting

■ Article 15 (Convening of Stockholders' Meeting)

(1) A stockholders' meeting of a securities investment company shall be convened by the board of directors.

(2) A securities investment company may, in the case of convening a stockholders' meeting, substitute the notice of convening a meeting provided in Article 363 (1) of the Commercial Act to the stockholders who own 1/100 or less of the stocks issued by the said securities investment company with at least two public announcements in at least two daily newspapers (including at least one nationwide daily newspaper) respectively of the fact that such meeting is convened pursuant to the provisions of the articles of incorporation, and the time, place, and matters on the agenda of such meeting at least two weeks prior to the scheduled date thereof.

■ Article 16 (Exercise of Voting Rights in Writing)

(1) Any stockholder who does not attend a stockholders' meeting may exercise their voting rights in writing.

(2) Any securities investment company shall, when it notifies the convening of a stockholders' meeting or when there is a request from stockholders, deliver thereto the form needed to exercise their voting rights in writing.

(3) Any stockholder who intends to exercise his voting right in writing shall submit to the securities investment company the form mentioned in paragraph (2) in which the voting right is exercised one day prior to the scheduled date of a stockholders' meeting.

(4) The number of the voting rights exercised in writing shall be added to the number of voting rights exercised by the attendants at a stockholders' meeting.

(5) Necessary matters in relation to the exercise of voting rights in writing other than those mentioned in paragraphs (1) through (4) shall be prescribed by Presidential Decree.

SECTION 2 Directors and Board of Directors

■ Article 17 (Classification of Directors)

(1) Directors shall be classified into executive directors and supervisory directors.

(2) The number of supervisory directors shall be more than the number of executive directors.

■ Article 18 (Appointment of Directors)

(1) Directors (excluding the directors who are deemed to have been appointed at the time of establishment pursuant to Article 10) shall be appointed at a stockholders' meeting.

(2) Article 409 (2) of the Commercial Act shall apply *mutatis mutandis* to the case where supervisory directors are appointed at a stockholders' meeting.

■ Article 19 (Disqualification of Directors)

(1) Any person falling under one of the following subparagraphs of Article 6 (2) shall not be an executive director.

(2) Any person falling under one of the following subparagraphs shall not be a supervisory director:

1. Any person falling under one of the following subparagraphs of Article 6 (2);

2. Promoters of the securities investment company concerned (limited to the supervisory directors fictitiously appointed pursuant to Article 10);

3. In case a person and a person having a special relationship as prescribed by Presidential Decree with such person (hereinafter referred to as "persons having a special relationship") possess stocks in excess of 10/100 of the total stocks issued by the securities investment company concerned, the said person and the said persons having a special relationship (hereinafter referred to as "principal stockholders");

4. Any persons having a special relationship of an asset management company or distributor;

5. Any person whose remuneration is regularly paid by an asset management company;

5-2. Any director of a securities investment company who holds office as a director of another corporation and also is a full-time officer or employee of such corporation; and,

6. Any person prescribed by Presidential Decree who might impair the neutrality of a supervisory director.

■ Article 20 (Duty of Executive Directors)

(1) Executive directors shall administer the business affairs of a securities investment company and represent such securities investment company. In this case, it may be determined in the articles of incorporation that a chief executive director can be appointed among the executive directors, or a plurality of executive directors can jointly represent such securities investment company.

(2) Executive directors shall, when they intend to perform the business affair falling under one of the following subparagraphs, obtain the approval by resolution of the board of directors:

1. Conclusion of a business entrustment agreement or an amended agreement with an asset management company, custodian, distributor or general administration trustee company;

2. Payment of remuneration for asset management, fee for asset custody, and other expenses incidental to the management or custody of assets; or,

2-2. Matters on distribution of money and dividend of stocks; or

3. Other matters prescribed in the articles of incorporation that are recognized as important for the business affairs of a securities investment company.

(3) Executive directors shall report the progress of business accomplished to the board of directors at least once every three months.

■ Article 21 (Duty of Supervisory Director)

(1) Supervisory directors shall supervise the management of business affairs by executive directors.

(2) Supervisory directors shall, when they deem necessary for executing their duties, request the auditor to submit an audit report.

(3) Supervisory directors may, when necessary for understanding the business and property status of their securities investment company, request the executive directors and the asset management company, custodian, distributor, or general administration trustee company that is entrusted with the business of such securities investment company to submit a report concerning the business and property status related to such securities investment company.

(4) Any person who is requested pursuant to the provisions of paragraph (3) shall comply with such request unless there is a special reason.

■ **Article 22 (Convening of Board of Directors' Meeting)**

(1) A board of directors' meeting of a securities investment company shall be convened by the executive directors or supervisory directors.

(2) Any executive director or supervisory director shall, when they intend to convene a board of directors' meeting, notify the convening of a meeting to each executive director and supervisory director three days prior to the scheduled date thereof: Provided that the notification period may be shortened in accordance with the articles of incorporation.

■ **Article 23 (Duty of Board of Directors)**

(1) The board of directors may make resolutions only on the matters provided in this Act and the articles of incorporation.

(2) The board of directors shall, when all of the executive directors become vacant, immediately convene a stockholders' meeting to appoint executive directors.

(3) An asset management company that has been entrusted with the asset management from a securities investment company pursuant to Article 32 shall report the details of the asset management, etc. to the board of directors of such securities investment company every three months.

(4) The board of directors shall evaluate the details of the asset management, etc. reported according to the provisions of paragraph (3), and shall report the evaluation results to its stockholders' meeting at least once each year.

■ **Article 24 (Method of Resolution of Board of Directors)**

(1) The resolutions of the board of directors shall be adopted by a majority quorum of its members and the concurrence of a majority of those present. In this case, the participating supervisory directors shall be not less than 1/2 of the directors in attendance.

(2) Article 368 (4) and Article 371 (2) of the Commercial Act shall apply *mutatis mutandis* to the case of paragraph (1).

SECTION 3 Auditor

■ **Article 25 (Appointment)**

An auditor (excluding the auditor who is deemed to have been appointed at the time of establishment pursuant to Article 10) shall be appointed at a stockholders' meeting.

■ Article 26 (Qualification)

(1) The auditor shall be a certified public accountant who belongs to an accounting corporation under the Certified Public Accountant Act.

(2) Any person who falls under one of the following subparagraphs shall not be an auditor:

1. Any person who falls under one of the subparagraphs of Article 6 (2);
2. Any person who belongs to an accounting corporation whose audit functions are restricted pursuant to Article 21 of the Certified Public Accountant Act in relation to the securities investment company concerned or whose duties are restricted pursuant to Article 33 of the same Act;
3. Any person whose duties have been suspended;
4. Any person who belongs to an accounting corporation whose business operations have been suspended; or,
5. Any person and their spouses who regularly receives remuneration for business other than that related to certified public accounting matters from any of those falling under one of the following items:
 - (a) Principal stockholders of the securities investment company concerned;
 - (b) Directors of the securities investment company concerned; or,
 - (c) An asset management company, custodian, distributor, or general administration trustee company that has been entrusted with the business of such securities investment company.

■ Article 27 (Duty of Auditor)

(1) An auditor may, when necessary for performing its duty, request an asset management company, custodian, distributor or general administration trustee company that the securities investment company concerned has entrusted with its business to report the accounting related to the business affairs of such securities investment company.

(2) Any person who receives a request pursuant to paragraph (1) shall comply with such request, unless there is a special reason.

(3) An auditor shall, when the auditor determines that the executive director has violated any statutes or subordinate statutes or the articles of incorporation with respect to the performance of their duties or that they might cause significant losses to the securities investment company concerned, promptly report it to the supervisory directors.

SECTION 1 Method of Business Operation

■ Article 28 (Scope of Asset Management)

(1) Any securities investment company shall invest and manage its assets by a method falling under one of the following subparagraphs:

1. Purchase and sale of securities, etc.;

1-2. Loan of securities, etc. within the limit as prescribed by the Ordinance of the Ministry of Finance and Economy;

1-3. Transaction to swap different interest rates that have been agreed upon at agreed time with the other party of the transaction (hereinafter referred to as the "interest rate swap transaction"). In this case, the total amount of bonds and debt certificates of a securities investment company, which is the basis of calculation of the agreed interest rates at the time of interest rate swap transaction, shall not exceed the total amount of bonds and debt certificates held by the securities investment company concerned;

2. Deposits with financial institutions prescribed by Presidential Decree or extending short-term loans with a maturity of not more than thirty days; and,

3. Futures trading or overseas futures trading under the Futures Trading Act.

(2) No securities investment company shall manage its assets by any means falling under one of the following subparagraphs: Provided that this shall not apply to cases prescribed by Presidential Decree where it is necessary for the protection of investors or where there is no concern that the sound asset management of securities investment companies may be harmed:

1. Investment in the same issue of securities, etc. (excluding the securities pursuant to the provisions of each item of subparagraph 1-3 of Article 2) of the same issue exceeding the ratio prescribed by Presidential Decree that is within 10/100 of the total asset amount; in this case, the securities, etc. excluding stocks among the securities, etc. issued by the same company, shall be deemed the same issue;

1-2. An act of investment where the risk amount of each mode of transaction and the total risk amount ensuing a securities option transaction of the same issue exceed 10/100 of total asset amount, in case where a transaction of rights (hereinafter referred to as the "securities option transaction") is being made, which can conclude a deal of stock certificates between the contracting parties by declaration of intent of one of the contracting parties in accordance with the standards and methods put forward by the Korea Stock Exchange (hereinafter referred to as the "Stock Exchange") pursuant to the provisions of Article 71 of the Securities and Exchange Act. In this case, the method of calculating the risk amount of each mode of transaction and the total risk amount shall be determined by the Financial Supervisory Commission;

2. Investment exceeding 10/100 of the total number of stocks issued by the same company;
3. Acquisition of the securities, etc. issued by the principal stockholders of the securities investment company concerned in excess of the ratio prescribed by Presidential Decree;
4. An act of acquiring stocks or beneficiary certificates (excluding the beneficiary certificates issued in accordance with Article 3 of the Securities Investment Trust Business Act) pursuant to the provisions of each item of subparagraph 1-3 of Article 2 in excess of the rate prescribed by the Presidential Decree (limited to a securities investment company other than an indirect securities investment company); or
5. Other practices prescribed by Presidential Decree that may be detrimental to the interests of stockholders.

(3) Where any securities investment company under unavoidable circumstances invests in excess of the investment limit under the provisions of each subparagraph of paragraph (2) due to causes, including price fluctuation of securities, etc. in its possession, as prescribed by Presidential Decree, such investment shall be deemed to be made in conformity with the investment limit. In this case, such securities investment company shall make such investment conform with the investment limit within six months.

(4) Necessary matters concerning the method and limit, etc. of futures trading or overseas futures trading under the provisions of paragraph (1) 3 shall be prescribed by Presidential Decree.

■ Article 29 (Restriction on Borrowings, etc.)

No securities investment company shall borrow funds, guarantee debt, or furnish collateral: *Provided*, that it may borrow funds in the cases prescribed by Presidential Decree from those that do not raise any concerns as to the possibility of posing a threat to the interests of stockholders, and that the matters concerning the limit and method of borrowings shall be prescribed by Presidential Decree.

■ Article 30 (Restriction on Transactions)

No securities investment company shall make transactions falling under any subparagraph of Article 28 (1) with a person falling under one of the following subparagraphs: *Provided* that this shall not apply to the transactions determined by the Financial Supervisory Commission that do not raise any concerns as to the possibility of posing a threat to the interests of stockholder:

1. Directors of the securities investment company concerned; or,
2. The asset management company that has been entrusted with the business of the securities investment company concerned.

■ Article 31 (Restriction on Exercise of Voting Rights to Holding Stocks)

(1) Where matters to be resolved at a stockholders' meeting of the corporation in which a securities investment company holds stocks fall under one of the following subparagraphs, the securities investment company or the asset management company (hereafter in this Article referred to as the "securities investment company, etc.") entrusted by the company to exercise the voting rights thereof shall exercise its voting rights so as not to influence resolutions to be concluded by the number of stocks remaining after subtracting the number of stocks held by the securities investment company concerned from the number of stocks participating in such stockholders' meeting: *Provided*, That this shall not apply to such cases, as merger, transfer and takeover of business, appointment and dismissal of officers, amendment to the articles of incorporation or other matters equal to them, of the corporation that issued the stocks held by the securities investment company, in case where it is evident that losses will occur to the securities investment company concerned:

1. Where the securities investment company, etc. concerned or those persons having common interests prescribed by the Presidential Decree with such securities investment company, etc. seek to incorporate the corporation that issued the stocks held by the securities investment company into its affiliated company as provided in subparagraph 3 of Article 2 of the Monopoly Regulation and Fair Trade Act (hereinafter referred to as an "affiliated company");
2. Where the corporation that issued the stocks held by the securities investment company has an affiliated company relationship with such securities investment company, etc.; or
3. Other cases prescribed by the Presidential Decree that might damage the sound asset management of the securities investment company, etc. concerned.

(2) No securities investment company, etc. shall exercise the voting rights of stocks, etc. it holds as prescribed by the Presidential Decree such as those acquired in violation of Article 28 (2) 1 through 4.

(3) No securities investment company, etc. shall commit any act to evade the application of paragraphs (1) and (2) such as through cross-exercising of voting rights under a contract, etc. with a third party.

(4) The provisions of proviso of paragraph (1) shall not apply to a securities investment company belonging to an enterprise group subject to limitations on mutual contribution under the provisions of Article 9 (1) of the Monopoly Regulation and Fair Trade Act (hereinafter referred to as an "enterprise group subject to limitations on mutual contribution"): *Provided*, That in case where the securities investment company, etc. belonging to an enterprise group, holds stocks, as assets of the securities investment company, etc. issued by a corporation affiliated with itself (limited to the listed or Association registered corporations pursuant to the Securities and Exchange Act), and when it is predicted that the exercise of voting rights, pursuant to the provisions of main sentence of paragraph (1), on the matters falling under one of the following subparagraphs will unmistakably invite loss to the securities investment company concerned, it may exercise its voting rights pursuant to the provisions of proviso of paragraph (1), and in this case the number of stocks which enables the exercise of voting rights shall not exceed 30/ 100 of the total stocks

issued by the corporation concerned, adding up the number of stocks with which the specially related persons pursuant to the provisions of Article 7 (1) 5 (a) of the Monopoly Regulation and Fair Trade Act are entitled to exercise:

1. Merger of the corporation with other corporations, transfer of whole or main part of business of the corporation to other corporations;
2. Appointment and dismissal of officers of the corporation; or
3. Amendment to the articles of incorporation of the corporation.

(5) A securities investment company, etc. shall record and maintain documents, in accordance with the prescriptions of the Presidential Decree, as to whether it has exercised the voting rights and how it has exercised them (if declined to exercise its voting rights, the reason therefor) over the corporation (hereinafter referred to as the "corporation being the object of public announcement as to whether the voting rights have been exercised thereupon") that issued the stocks composing, in excess of the rate or amount prescribed by the Presidential Decree, the total asset amount of the securities investment company concerned.

(6) A securities investment company, etc. shall announce in public the matters concerning whether it has exercised its voting rights according to the classification of the following subparagraphs. In this case, the procedures for public announcement and other necessary matters shall be prescribed by the Presidential Decree:

1. In case where it has exercised its voting rights over the matters relating to the change of operating rights such as merger, transfer and takeover of business, appointment and dismissal of officers, amendment to the articles of incorporation, etc., the definite contents of how the voting rights have been exercised;
2. In case where the voting rights have been exercised over the corporation being the object of public announcement as to whether the voting rights have been exercised thereupon, the definite contents of how the voting rights have been exercised; and
3. In case where the voting rights have not been exercised over the corporation being the object of public announcement as to whether the voting rights have been exercised thereupon, the definite reason why the voting rights have not been exercised.

(7) A securities investment company, etc. shall, when it announces in public under paragraph (6) the matters, etc. concerning whether it has exercised its voting rights, announce all together the data, prescribed by the Presidential Decree, necessary for the investors to identify the appropriateness, etc. of such exercise of voting rights.

SECTION 2 Entrustment of Asset Management Business, Etc.

■ Article 32 (Entrustment of Asset Management Business)

(1) Any securities investment company shall entrust an asset management company with the business related to its asset management.

(2) Any agreement concluded on the entrustment pursuant to paragraph (1) (excluding the case where an agreement is made with a person who becomes an asset management company at the time of establishment pursuant to Article 9 (1) 6), must obtain the approval from stockholders at a stockholders' meeting.

■ Article 33 (Registration, etc. of Asset Management Company)

(1) A person who intends to conduct the business on asset management upon entrustment from a securities investment company shall register thereof with the Financial Supervisory Commission.

(2) A person who intends to register pursuant to paragraph (1) shall meet the following requirements:

1. It shall be a stock corporation under the Commercial Act;
2. Its paid-in capital shall be not less than the amount prescribed by Presidential Decree, which shall be 500 million won or greater;
3. Among the officers and employees who work full-time, the number of specialized fund managers under the standards prescribed by Presidential Decree shall be not less than that prescribed by Presidential Decree;
4. Among its officers, none of them shall fall under any subparagraph of Article 6 (2); and,
5. It shall meet the requirements prescribed by Presidential Decree such as financial soundness, etc. to ensure the sound asset management of the securities investment company.

(3) Any asset management company shall, in accordance with the provisions of Presidential Decree, register the matters on the specialized fund managers mentioned in paragraph (2) 3 with the Korea Investment Trust Companies Association pursuant to Article 49 (1) of the Securities Investment Trust Business Act (hereinafter referred to as the "Korea Investment Trust Companies Association").

(4) Deleted.

(5) Any foreign asset management company (referring to a company that engages in the business of asset management of a company corresponding to a securities investment company in foreign countries under foreign statutes; hereinafter the same shall apply) shall, when it intends to establish branches and other offices so as to engage in the business of asset management in Korea, register thereof with the Financial Supervisory Commission in such manner as prescribed by Presidential Decree.

(6) The branch and other offices registered in accordance with paragraph (5) shall be deemed asset management companies under this Act.

(7) Any company that is not an asset management company shall not use in its company name any term that represents an asset management company.

■ Article 34 (Restrictions, etc. on Asset Management Company's Concurrently Engaging in Other Businesses)

(1) An asset management company shall not concurrently engage in any other businesses, except for cases approved under this Act or other statutes or subordinate statutes or by the Financial Supervisory Commission.

(2) An asset management company shall not invest in securities with its proprietary property except as prescribed by Presidential Decree.

(3) A standing officer of an asset management company shall, except for when that person obtains approval from the Financial Supervisory Commission, neither be a full-time officer or employee of another company nor engage in any other business.

(4) No officer and employee of an asset management company shall conduct security trading or its entrustment thereof in their own account, regardless of the title thereof, except as prescribed by Presidential Decree.

■ Article 35 (Code of Conduct of Asset Management Company)

(1) An asset management company shall faithfully carry out its business affairs as a good custodian in accordance with Acts and subordinate statutes and the asset management entrustment agreement.

(2) An asset management company shall not make persons who are not registered fund managers pursuant to Article 33 (3) conduct the business prescribed by Presidential Decree.

(3) An asset management company shall not conduct practices falling under one of the following subparagraphs with respect to the asset management business that is entrusted by a securities investment company:

1. Practices to guarantee or promise the realization of a certain amount of profits to the securities investment company that entrusts the asset management business;

2. Practices by the asset management company to compensate all or part of the losses incurred as a result of the management of assets entrusted or to promise the compensation of such losses to the securities investment company that entrusted the asset management business;

3. Practices in the following items that are conducted with assets whose management is entrusted by a securities investment company: or,

- (a) Practice of seeking profits for the person themselves or a third party by utilizing the assets whose management is entrusted by a securities investment company;
- (b) Practices of trading securities on a short-term basis by utilizing the assets whose management is entrusted by a securities investment company to seek profits for a securities company that has a relationship as prescribed by Presidential Decree with the asset management company (hereinafter referred to as a "related securities company");
- (c) Practice of acquiring the securities, etc. that remain un-subscribed after the related securities company underwrites them by utilizing the assets whose management is entrusted by a securities investment company;
- (d) Practice of trading the securities concerned by utilizing the assets whose management is entrusted by a securities investment company for the purpose of artificially forming a market price for the securities that the related securities company underwrites and subscribes;
- (e) Practice of trading the securities, etc. issued by persons having a special relationship a securities investment company by utilizing the assets whose management is entrusted by such securities investment company for the purpose of seeking profits for such persons having a special relationship of such securities investment company;
- (f) Practice of trading the securities, etc. issued by persons having a special relationship an asset management company by utilizing the assets whose management is entrusted by a securities investment company for the purpose of seeking profits for such persons having a special relationship of such asset management company; and,
- (g) Practice of buying the securities, etc. issued by persons an asset management company in excess of the ratio prescribed by Presidential Decree for the purpose of seeking profits for such persons having a special relationship of such asset management company.

4. In addition to those mentioned in the subparagraphs 1 through 3, the practices prescribed by Presidential Decree that might harm the transitional order of securities, etc. and the interests of stockholders of the securities investment company.

■ **Article 35-2 (Prohibition on Use of Undisclosed Asset Operation Information)**

- (1) Any officers of a securities investment company and the officers and employees of an asset management company that engage in the business of managing assets of a securities investment company shall be prohibited from performing any act of trading securities, etc. by using undisclosed information pertaining to the asset management of such securities investment company or allows other persons to use such information.
- (2) The scope of the undisclosed information with respect to the asset operation of the securities investment company under the provisions of paragraph (1) and other necessary matters shall be prescribed by Presidential Decree.

■ Article 35-3 (Internal Control Standards)

(1) An asset management company shall observe statutes or subordinate statutes, operate its assets in a sound manner and establish basic procedures and standards to be followed by its officers and employees when they perform their duties (hereinafter referred to as "internal control standards").

(2) An asset management company shall monitor whether its internal control standards are observed and appoint not less than one person (hereinafter referred to as the "law-abiding monitor)compliance officer" assigned to investigate any violation of the internal control standards and report the results to the auditor or the audit committee.

(3) In case where an asset management company (excluding domestic branches or other business offices of a foreign asset management company; hereafter in this Article, the same shall apply) intends to appoint or dismiss a compliance officer, it shall go through a resolution of the board of directors.

(4) A compliance officer shall meet the requirements falling under each of the following subparagraphs:

1. He shall have the career falling under any of the following items:

(a) A person who has the career of having served for not less than 10 years in the Bank of Korea or the institutions subject to inspection under Article 38 of the Act on the Establishment, etc. of Financial Supervisory Organizations (including foreign financial institutions equivalent to them);

(b) A person who has obtained a master's degree or higher in a finance-related field and has the career of having served for not less than 5 years at posts of a researcher or full-time lecturer or higher in a research institute or a college or university;

(c) A person who is qualified as an attorney-at-law or a certified public accountant and has the career of having served for not less than 5 years at services related to such qualifications; and

(d) A person who has the career of having served for not less than 5 years in the Ministry of Finance and Economy, the Financial Supervisory Commission, the Securities and Futures Commission, or the Financial Supervisory Service, and for whom 5 years have yet elapsed after he resigned or retired from the relevant agencies;

2. He shall not fall under any subparagraph of Article 6 (2); and

3. He shall not have any facts to have been subjected to the measures falling under the demand of caution or warning from the Financial Supervisory Commission or the Governor of the Financial Supervisory Service during recent 5 years on account of violating the Acts and subordinate statutes related to financing.

(5) Matters necessary for the internal control standards and the compliance officers shall be prescribed by the Presidential Decree.

■ **Article 36 (Liabilities of Asset Management Company)**

(1) Any asset management company shall, when it causes losses to the securities investment company that entrusted the asset management due to neglecting its duties, be liable to pay for the damages to such securities investment company.

(2) Where an asset management company assumes the liabilities in damages to a securities investment company or a third party and where there is a cause attributable to the involved directors, custodian, distributor, or general administration trustee company, they shall be jointly liable to pay for such damages.

■ **Article 37 (Termination, etc. of Asset Management Entrustment Agreement)**

(1) A securities investment company shall, when it intends to terminate an asset management entrustment agreement made with a asset management company, obtain the approval from a general meeting of stockholders: Provided that a securities investment company may, when it deems that it would suffer any serious loss failing immediate termination of such agreement because it is obvious that the asset management company fails to fulfill the business obligation, terminate the agreement, by a resolution of the board of directors, and enter into an asset management entrustment agreement with another asset management company. In this case, the securities investment company shall, without delay, make report to a general meeting of stockholders.

(2) An executive director of a securities investment company may, when he deems that the asset management company entrusted with an asset management thereby may not continue to perform all or part of its business due to the business suspension, dissolution, and others reasons corresponding thereto, terminate the asset management entrustment agreement and enter into an asset management entrustment agreement with another asset management company. In this case, they shall obtain the approval to terminate and conclude an agreement from a stockholders' meeting without delay and, if such approval is not obtained, such termination and conclusion of an agreement shall cease to be valid in the future.

■ **Article 38 (Detailed Criteria on the Registration and Business of the Asset Management Company)**

Necessary matters in relation to the registration and business of an asset management company other than those provided in Article 33 through Article 37 shall be prescribed by Presidential Decree.

■ **Article 39 (Entrustment, etc. of Asset Custody Affairs)**

(1) A securities investment company shall entrust a custodian with the custody of its assets and the business related thereto.

(2) An agreement on entrustment pursuant to paragraph (1) (excluding the agreement to be made with the company that is deemed a custodian at the time of establishment pursuant to Article 9 (1) 7) shall be approved at a stockholders' meeting.

(3) Custodians shall be trust companies or financial institutions that engage in the trust business under the Trust Business Act.

■ Article 40 (Services of Custodian)

(1) A custodian shall faithfully perform its services as a good custodian for a securities investment company in accordance with statutes or subordinate statutes and the asset custody entrustment agreement.

(2) No custodian shall conduct trading falling under one of the subparagraphs of Article 28 (1) by using the assets entrusted by a securities investment company for its proprietary property.

(3) Any custodian shall administer the assets entrusted by a securities investment company separately from its proprietary assets or the assets whose custody is entrusted by a third party.

(4) Any custodian shall deposit securities, among the assets whose custody is entrusted pursuant to paragraph (1), with the Korea Securities Depository under Article 173 of the Securities and Exchange Act in such manner as prescribed by Presidential Decree.

(5) No custodian shall be a distributor of the stocks that a securities investment company entrusts, except where it obtains approval from the Financial Supervisory Commission.

(6) Article 36 shall apply *mutatis mutandis* to the liabilities of a custodian. In this case, an "asset management company" shall be deemed a "custodian," and a "custodian" shall be deemed an "asset management company."

■ Article 41 (Entrustment of Stock Selling Business)

(1) A securities investment company shall entrust a distributor with the business relating to a public offering or secondary distribution of the stocks issued thereby.

(2) A person who intends to conduct business relating to a public offering or secondary distribution of stocks upon entrustment from a securities investment company shall fall under one of the following subparagraphs and shall register with the Financial Supervisory Commission:

1. Securities companies provided in Article 2 (9) of the Securities and Exchange Act;

2. Management companies that engage in the business provided in Article 10 (1) 2 of the Securities Investment Trust Business Act;

3. Asset management companies (limited to the cases of making a public offering or secondary distribution of the stocks issued by a securities investment company that has entrusted its asset management with such asset management company); or,

4. Financial institutions established under the Banking Act and other financial institutions prescribed by Presidential Decree.

(3) A distributor that is entrusted with a public offering and secondary distribution of stocks by a securities investment company pursuant to paragraph (1) shall be deemed to have obtained a securities business license according to Article 28 (1) of the Securities and Exchange Act only for the business of making a public offering and secondary distribution of such stocks.

(4) Article 36 shall apply *mutatis mutandis* to the liabilities of a distributor. In this case, an "asset management company" shall be deemed a "distributor," and a "distributor" shall be deemed an "asset management company."

(5) Necessary matters in relation to the business of a distributor, in addition to those mentioned in paragraphs (1) through (4), shall be prescribed by Presidential Decree.

■ Article 41-2 (Content of Advertisement for Solicitation for Acquisition)

Matters to be included in any advertisement used by any securities investment company and any distributor to solicit the acquisition of stocks shall be prescribed by Presidential Decree: Provided that matters relating to important indications and advertisements under the provisions of Article 4 (1) of the Act on Fair Indication and Advertisement shall be provided according to this Act hereto.

■ Article 42 (General Administration Trustee Company)

(1) Any securities investment company shall entrust the business affairs in each of the following subparagraphs to a general administration trustee company (excluding a general administration trustee company which is an affiliated company of the relevant securities investment company or asset management company):

1. Business affairs on transferring the ownership of issued stocks;
2. Business affairs on the issuance of stocks;
3. Business affairs on the operation of the securities investment company concerned;
4. Business affairs on calculation; or,
5. Other business affairs prescribed by Presidential Decree.

(2) Article 36 shall apply *mutatis mutandis* to the liabilities of a general administration trustee company. In this case, an "asset management company" shall be deemed a "general administration

trustee company," and a "general administration trustee company" shall be deemed an "asset management company."

■ **Article 42-2 (Registration, etc. of General Administration Trustee Company)**

(1) Any person who intends to carry on the business of a general administration trustee company upon entrustment from a securities investment company shall register thereof with the Financial Supervisory Commission.

(2) Any person who intends to register pursuant to the provisions of paragraph (1) shall meet the requirements falling under each of the following subparagraphs:

1. It shall be a stock corporation under the Commercial Act or a corporation engaged in the business of changing the registry entry under the Securities and Exchange Act, or a financial institution as stipulated by the Presidential Decree;
2. Its paid-in capital or contributed amount shall be not less than 500 million won and not less than an amount prescribed by the Presidential Decree;
3. It shall have professional personnel in conformity with the standards prescribed by Presidential Decree among its full-time officers and employees;
4. It shall have physical facilities including computer facilities prescribed by Presidential Decree;
5. Among its officers, there shall not be a person falling under any subparagraph of Article 6 (2); and
6. It shall not be an asset management company.

(3) A general administration trustee company shall, when the act of operating assets by an asset management company is in contravention of statutes or subordinate statutes or the content of an investment prospectus, demand the withdrawal, alteration or correction of such act.

SECTION 3 Issuance and Redemption of Stocks

■ **Article 43 (Issuance of Stocks)**

(1) All securities investment companies shall issue their stocks in a non-bearer form.

(2) All securities investment companies may issue non-par-value stocks.

■ **Article 44 (Restriction on Acquisition of Treasury Stock and Creation of Pledge)**

(1) All securities investment companies shall neither acquire nor use as the object matter of a pledge the stocks that it issues itself: Provided that this shall not apply to cases falling under each of the following subparagraphs:

1. In case of the exercise of right such as the execution of a security right;
2. In case of the redemption of stocks pursuant to Article 50; and,
3. In case of the purchase of stocks pursuant to the provisions of Article 58 (1).

(2) Any securities investment company shall dispose, without delay, any stock acquired pursuant to paragraph (1) 1 in such manner as prescribed by Presidential Decree.

■ Article 45 (Non-issuance of Stock Certificates)

(1) Any securities investment company having a system that the securities investment company concerned purchases the stock of stockholders at the request of stockholders (hereinafter referred to as an "open-end securities investment company") may not decide to issue stock certificates until stockholders so request in such manner as determined in the articles of incorporation, notwithstanding Article 355 (1) of the Commercial Act. In this case, it shall state such intention on the stock subscription form pursuant to Article 9 or Article 48.

(2) In case an open-end securities investment company does not issue stock certificates in accordance with the provision of paragraph (1), the stockholders that already hold stock certificates may deliver such stock certificates to such securities investment company and may declare that they do not want to hold them.

(3) In case an open-end securities investment company that has not issued stock certificates pursuant to paragraph (1) issues stocks at the request of stockholders and in case it receives a declaration mentioned in paragraph (2) and that such stocks were returned, the stockholders' list shall respectively state these facts without delay.

(4) Any open-end securities investment company shall, when it fails to comply with the purchase of stocks due to an amendment to its articles of incorporation, promptly issue the stock certificates that were not issued.

■ Article 46 (Procedures for Issuance of New Stocks)

(1) Where a securities investment company issues stocks after its establishment, the board of directors thereof shall resolve the matters in each of the following subparagraphs: Provided that this shall not apply to the case where the articles of incorporation provides otherwise:

1. Number of stocks to be issued;
2. Issue price; and,
3. Payment date of subscription money.

(2) Where an open-end securities investment company issues stocks after its establishment, the board of directors may decide the matters in each of the following subparagraphs:

1. Period of issuance;
2. Upper limit of the number of stocks to be issued during the period of issuance concerned; and,
3. Method of determining the daily issuance price during the period of issuance concerned and the payment period for subscription money.

(3) Any securities investment company that issues stock according to the resolution of the board of directors pursuant to paragraph (2) shall make a public disclosure of the daily issuance price fixed in accordance with the method mentioned in paragraph (2) 3 in such manner as prescribed by Presidential Decree.

(4) In case a securities investment company issues stocks according to a resolution of the board of directors pursuant to paragraphs (1) and (2), the provisions in Chapter III of the Securities and Exchange Act shall not apply thereto.

■ Article 47 (Terms of Issuance)

(1) Any securities investment company shall, when it issues stocks after its establishment, uniformly establish the issuance price and the terms of issuance occurring on the same issuing date.

(2) In the case of paragraph (1) the issuance price of a stock shall be calculated on the basis of the net asset value of the securities investment company concerned in such manner as prescribed by Presidential Decree.

■ Article 48 (Stock Subscription Form)

(1) Any securities investment company shall, when it issues stocks after its establishment, prepare a stock subscription form in which the matters in the following subparagraphs are included, and furnish them to the persons who intend to purchase such stocks:

1. Matters provided under Article 7 (1) 1 through 12;
2. Matters provided under Article 9 (1) 2, 4, 6 and 7; and,
3. Matters provided in each subparagraph of Article 46 (1) or Article 46 (2).

(2) The provisions of Article 9 (2) through (5) shall apply *mutatis mutandis* to the solicitation of subscriptions of stocks issued after the incorporation of a securities investment company. In this case, "promoters" described in Article 9 (2) shall be deemed "securities investment companies," and "promoters" described in Article 9 (3) and (4) shall be deemed "securities investment companies and distributors," respectively.

■ Article 49 (Listing, etc. of Outstanding Stocks)

Any securities investment company other than an open-end securities investment company shall let the stock certificates concerned be traded by means of listing them on the securities market or registering them with the Association brokerage market within thirty days from the day the stock certificates, which have been subscribed or sold for the first time, are delivered.

■ **Article 50 (Request for Redemption)**

(1) Stockholders of an open-end securities investment company may request the distributor of the stocks concerned to redeem such stocks.

(2) Where a distributor fails to comply with a redemption as provided in paragraph (1) due to some unavoidable reason, the stockholder concerned may request the asset management company, general administration trustee company, and other persons provided in the articles of incorporation to redeem the stocks concerned.

(3) Any person who has been requested to redeem stock pursuant to paragraphs (1) or (2) shall promptly request the securities investment company concerned to repurchase such stock.

(4) Any securities investment company shall, where it is requested to purchase stock pursuant to paragraph (3), pay the purchase price of the stock with cash held thereby or the cash obtained from the sale of its assets.

(5) The purchase price of stock, where a securities investment company purchases stock pursuant to paragraph (4), shall be calculated on the basis of the net asset value in such manner as prescribed by Presidential Decree.

(6) Any securities investment company shall, where it purchases stock pursuant to paragraph (4), enter the details of purchase in the stockholders' list and retire such stocks.

(7) Any securities investment company shall, where it is unable to pay the purchase price mentioned in paragraph (4) due to a delay in the sale of stocks it holds, etc. until the date provided in its articles of incorporation that is within fifteen days from the date that the redemption is requested in accordance with the provisions of paragraphs (1) or (2), promptly notify such fact to the stockholder who requests such redemption.

(8) Any securities investment company may not, in the case where it falls under one of the following subparagraphs, comply with the request of redemption pursuant to paragraph (3):

1. In case a securities investment company decides, in order to ascertain who is entitled to exercise the right of a stockholder or a pledgee, to regard the stockholders or pledgees recorded on the stockholders' list as the stockholders or the pledgees who are entitled to exercise the right thereof on a specified date as prescribed in Article 354 (1) of the Commercial Act, and the request for redemption is made during the period from such specified date to the date on which the right of a stockholder or a pledgee is exercised. In this case, in applying Article 354 (3) of the Commercial Act, "three months" shall be deemed "two months";

2. Case of dissolution;
3. Where net asset value is less than the minimum net asset value as determined in the articles of incorporation;
4. Where the purchase of stocks is restricted by statutes or subordinate statutes or an order thereunder; or,
5. A case falling under a condition as provided in the articles of incorporation.

(9) Any stockholder shall, where it requests a redemption pursuant to paragraphs (1) and (2) and when stocks are issued, submit an application form for redemption to the distributor, together with its stock certificates. In this case, the stockholder shall state the number of the stocks requested in the redemption and the date of request, and the stockholder's name and seal or sign thereon.

CHAPTER V ACCOUNTING

AND MERGERS, ETC.

SECTION 1 Accounting

■ Article 51 (Preparation, etc. of Financial Statements)

(1) The executive directors shall prepare the documents and supplementary schedules (hereinafter referred to as "financial statements") in each of the following subparagraphs every accounting period and obtain the approval of the board of directors:

1. Balance sheet;
2. Income statement;
3. Asset management report; and
4. Deleted.

(2) The executive directors shall file the financial statements with the auditor four weeks prior to the date of a stockholders' meeting.

(3) Information required in the financial statements shall be determined by the Financial Supervisory Commission.

■ Article 52 (Audit Report)

(1) The auditor shall prepare an audit report within 2 weeks from the date on which the auditor receives the financial statements pursuant to Article 51 (2) and file such report with the executive directors.

(2) Information required in the audit report mentioned in paragraph (1) shall be prescribed by Presidential Decree.

■ Article 53 (Approval, etc. of Financial Statements)

(1) The executive directors shall submit the financial statements to a stockholders meeting for approval. In this case, the audit report mentioned in Article 52 (1) shall be filed together therewith.

(2) The executive directors shall, when the approval of the financial statements pursuant to paragraph (1) is obtained from a stockholders' meeting, promptly file the statements in each of the following subparagraphs with the Financial Supervisory Commission and publicly announce the balance sheet and audit report:

1. Financial statements; and,
2. Audit report mentioned in Article 52 (1).

■ Article 54 (Valuation of Assets)

(1) Any securities investment company shall value the securities listed on the securities market and other assets at the market price in such manner as prescribed by the Presidential Decree on a daily basis (where it is not an open-end securities investment company, at each period prescribed by the Presidential Decree).

(2) Any securities investment company shall publicly announce or post the net asset value that is valued pursuant to paragraph (1) in such manner as prescribed by Presidential Decree.

■ Article 55 (Distribution of Assets)

(1) Any securities investment company may distribute cash to its stockholders within the amount remaining after deducting the minimum net asset amount mentioned in Article 7 (1) 6 from the net asset value.

(2) Any securities investment company may distribute the whole amount of profits by the newly-issued stocks.

(3) Matters necessary for the distribution of cash or the dividend of stocks under paragraphs (1) and (2) shall be prescribed by the Presidential Decree.

■ Article 56 (Maintenance and Public Disclosure of Financial Statements, etc.)

(1) Any executive director shall maintain the documents in the following subparagraphs at its head office, and deliver copies of such documents to the asset management company and distributor for the maintenance thereof at their business offices:

1. Financial statements;
2. Audit report mentioned in Article 52 (1);
3. Articles of incorporation;
4. Minutes of stockholders' meetings;
5. Stockholders' list; and,
6. Minutes of board of directors' meetings.

(2) The documents mentioned in paragraph (1) 1 and 2 shall be maintained for five years.

(3) Any stockholder or creditor of a securities investment company may inspect the documents maintained pursuant to paragraph (1) at any time during the business hours and request delivery of a copy or an abstract copy.

SECTION 2 Merger, Etc.

■ Article 57 (Merger)

No securities investment company shall merge with funds that are not securities investment companies.

■ Article 58 (Shareholders' Appraisal Rights)

(1) Where a securities investment company restricts the purchase of its stocks by amending the articles of incorporation or the board of directors of such securities investment company decides to extend the duration of such restrictions and its shareholders file a written notice of their intention to oppose such resolution with such securities investment company prior to a shareholders' general meeting, such shareholders may ask for the purchase of stocks they own, giving the type and number of such stocks in writing within 20 days from the date on which the shareholders' general meeting resolves to that extent.

(2) Necessary matters concerning the purchase price of stocks, etc. in case the securities investment company purchases such stocks pursuant to the provisions of paragraph (1) shall be prescribed by Presidential Decree.

(3) In case where a securities investment company purchases its stocks under paragraph (1), it shall enter its details on the stockholders' list and retire the relevant stocks.

CHAPTER VI SUPERVISION

■ Article 59 (Preparation and Maintenance of Books and Documents)

Any securities investment company, asset management company, custodian, distributor, and general administration trustee company shall prepare and maintain the books and documents related to their business affairs in such manner as determined by the Financial Supervisory Commission.

■ Article 60 (Filing, etc. of Monthly and Annual Reports)

(1) Any securities investment company and asset management company shall file a quarterly business report and annual business report prescribed by Presidential Decree with the Financial Supervisory Commission and the Korea Investment Trust Companies Association.

(2) Any securities investment company and asset management company shall maintain the business report and annual report mentioned in paragraph (1), and deliver copies of such report to the distributor for the maintenance thereof at their business offices.

(3) The Korea Investment Trust Companies Association shall publicly disclose the comparative performance results, including the change in the net asset value of a securities investment company, in such manner as prescribed by Presidential Decree.

(4) Any securities investment company shall, under the conditions as prescribed by the Presidential Decree, prepare the written report on asset management and furnish it to the stockholders.

■ Article 61 (Supervision, Examination, Etc.)

(1) The Financial Supervisory Commission may, when it deems necessary for the public interest or the protection of stockholders, order securities investment companies, asset management companies, custodians, distributors, or general administration trustee companies to submit the data related to their business affairs, etc. or report thereon under the provisions of this Act.

(2) The FSS Governor of the Financial Supervisory Service (hereinafter referred to as the "FSS Governor") under the Act on the Establishment, etc. of Financial Supervisory Organization, may have its employees examine the businesses and property of securities investment companies, asset management companies, custodians, distributors, or general administration trustee companies.

(3) The FSS Governor may, when deemed necessary for the examination pursuant to paragraph (2), request submission of data, and the attendance and testimony of involved persons.

(4) Any person who conducts an examination pursuant to paragraph (2) shall carry a document indicating his authority and show it to the related persons.

(5) The FSS Governor shall, when conducting an examination pursuant to paragraph (2), report the results thereof to the Financial Supervisory Commission, and the Financial Supervisory Commission may, when there is any violation of this Act or orders and dispositions thereunder as a result of such examination, take action in the following manner against the securities investment company, asset management company, custodian, or general administration trustee company:

1. Revocation of registration;
2. Suspension of all or part of the business;
3. Demand the dismissal of officers; and,
4. Actions prescribed by Presidential Decree that are necessary for the correction of the violation.

■ **Article 62 (Report, etc. of Insufficient Net Asset Value)**

(1) Any securities investment company shall, when its net asset is less than the minimum net asset provided in Article 7 (3), report this fact to the Financial Supervisory Commission within three days from the date on which such insufficiency occurs.

(2) The Financial Supervisory Commission shall, in case the net asset value of a securities investment company continues to remain less than the minimum net asset provided in Article 7 (3) for three months, notify such securities investment company that it will revoke its registration pursuant to Article 12.

■ **Article 63 (Revocation of Investment Registration)**

The Financial Supervisory Commission may, in case a securities investment company falls under one of the following subparagraphs, revoke its registration as provided in Article 12: Provided that in the cases falling under the subparagraph 1 or 2, the registration mentioned in Article 12 shall be revoked:

1. Case of dissolution;
2. Where the net asset value of a securities investment company continues to remain less than the minimum net asset provided in Article 7 (3) for more than three consecutive months;
3. Where the registration mentioned in Article 12 has been made by improper means;
4. Where the registration requirements as provided in Article 13 (1) 1 and 3, or 4 are not fulfilled;
or,
5. Where it violates this Act, or any orders or dispositions under this Act.

■ **Article 63-2 (Cancellation of Registration, etc. of Asset Management Company)**

The Financial Supervisory Commission may, where any asset management company falls under any of the following subparagraphs, cancel the registration of such asset management company pursuant to the provisions of Article 33 or suspend the business of such asset management company for a fixed period not exceeding one year:

1. Case of dissolution;
2. Where the registration under the provisions of Article 33 (1) has been made by fraudulent or other improper means;
3. Where the registration requirements as provided in Article 33 (2) 1 through 4 are not fulfilled;
4. Where the requirements for financial soundness under the provisions of Article 33 (2) 5 are not satisfied for three consecutive years;
5. Where the business has not been commenced after 6 months have been elapsed from the date of registration; or,
6. Where the internal control standards under the provisions of Article 35-3 (1) have not been established.

■ Article 63-3 (Registration Cancellation of General Administration Trustee Company)

The Financial Supervisory Commission may, where any general administration trustee company falls under any of the following subparagraphs, cancel the registration pursuant to the provisions of Article 42-2:

1. Case of dissolution;
2. Where the registration under the provisions of Article 42-2 (1) has been made by fraudulent or other improper means; or,
3. Where the registration requirements as provided in Article 42-2(2) 1 through 6 are not fulfilled.

CHAPTER VII DISSOLUTION AND LIQUIDATION

SECTION 1 Dissolution

■ Article 64 (Causes for Dissolution)

Any securities investment company shall be dissolved when any of the causes falling under one of the following subparagraph occurs:

1. Expiration of the period of duration provided in the articles of incorporation and occurrence of other causes for dissolution;

2. Resolution of a stockholders' meeting;
3. Merger;
4. Bankruptcy;
5. Order or judgment of a court;
6. Rejection of registration pursuant to Article 13 (3); or,
7. Revocation of the registration pursuant to Article 61 (5) or Article 63.

■ **Article 65 (Report on Dissolution)**

In case a securities investment company is dissolved, the bankruptcy administrator or the liquidator thereof shall report fact to the Financial Supervisory Commission within thirty days from the date of dissolution.

Section 2 Liquidation

■ **Article 66 (Liquidator or Liquidation Supervisor)**

(1) In case a securities investment company is dissolved (excluding the case of dissolution as provided under the subparagraphs 3 and 4 of Article 64), a liquidators' committee composed of liquidators and liquidation supervisors shall be established.

(2) In case a securities investment company is dissolved due to the causes mentioned in the subparagraph 1 or 2 of Article 64, the executive directors and supervisory directors thereof shall be the liquidators and liquidation supervisors, respectively: Provided that where it is otherwise provided in the articles of incorporation or a stockholders' meeting, it shall so be applied.

(3) In case a securities investment company is dissolved due to the causes mentioned in the subparagraph 5 of Article 64, the Financial Supervisory Commission may appoint liquidators and liquidation supervisors at the request of interested persons. This provision shall also apply to cases falling under one of the following subparagraphs:

1. Cases of no liquidator or liquidation supervisor as provided under paragraph (1); and
2. Cases of liquidation as provided in Article 193 (1) of the Commercial Act.

(4) In case a securities investment company is dissolved due to the reasons as provided under the subparagraph 6 or 7 of Article 64, the Financial Supervisory Commission shall appoint liquidators and liquidation supervisors under its own authority.

(5) The remuneration for liquidators or liquidation supervisors may be paid from the securities investment company concerned in such manner as determined in the articles of incorporation or a

stockholders' meeting where they are appointed in accordance with paragraph (2) or in such manner as determined by the Financial Supervisory Commission in the case where they are appointed in accordance with paragraph (3) and (4).

■ Article 67 (Declaration of Liquidators, Etc.)

The liquidators shall report matters falling under one of the following subparagraphs to the Financial Supervisory Commission within two weeks after assuming office:

1. Causes of dissolution and the date thereof; and,
2. Names, resident registration numbers, and addresses of liquidators and liquidation supervisors.

■ Article 68 (Dismissal of Liquidators, Etc.)

The Financial Supervisory Commission may, when a liquidator or a liquidation supervisor is materially unfit to perform business or seriously violates statutes or subordinate statutes, dismiss that person under its own authority or at the request of interested persons concerned. In this case, the Financial Supervisory Commission may appoint a new liquidator or liquidation supervisor on its own authority.

■ Article 69 (Investigation of Property Status)

(1) The liquidators shall investigate the property status of the company concerned immediately after taking office, and prepare a property list and balance sheet thereof as prescribed in the Ordinance of the Ministry of Finance and Economy in order to submit such documents to the auditor.

(2) The auditor shall submit an audit report to the liquidators within 2 weeks after receiving a property list and balance sheet in accordance with the provisions paragraph (1).

(3) Information required in the audit report as provided under paragraph (2) shall be prescribed by Presidential Decree.

■ Article 70 (Approval, etc. of Property List, Etc.)

(1) The liquidator shall submit the property list and balance sheet prepared pursuant to Article 69 (1) to the liquidators' committee for its approval. In this case, the audit report mentioned in Article 69 (2) shall also be submitted.

(2) The liquidators shall promptly submit a certified copy of the property list and balance sheet that has been approved pursuant to paragraph (1) to the Financial Supervisory Commission.

(3) The liquidators shall maintain the property list and balance sheet that have been approved by the liquidators committee pursuant to paragraph (1) at the securities investment company until

the completion of liquidation, and deliver them to the asset management company and the distributor concerned so that they can be maintained at their business offices.

■ **Article 71 (Report on Violated Matters, etc. by Liquidator)**

The auditor shall, when that auditor learns a liquidator has violated statutes or subordinate statutes or the articles of incorporation in relation to the performance of business, or when that auditor fears that the liquidator might cause a substantial loss to a securities investment company, report such fact to the liquidation supervisors.

■ **Article 72 (Preemptory Notice to Creditors)**

(1) Any liquidator shall, within one month from the date of assumption of their duties, serve a preemptory notice at least twice in the designated method of publication to the creditors of a securities investment company that they have to file a report regarding their credits within a certain period or else they will be excluded from the liquidation. In this case, the reporting period shall be not less than one month.

(2) With respect to any securities investment company for which fund borrowings, debt-repayment guarantees or offering of pledges are restricted under Article 29, the process of serving the preemptory notice to creditors may be omitted under the conditions as prescribed by Presidential Decree notwithstanding the provisions of paragraph (1): *Provided*, that the same shall not apply to the case of any liability for implementing any contract with respect to futures trading under the Futures Trading Act and any situations as prescribed by Presidential Decree.

■ **Article 73 (Conclusion of Liquidation)**

(1) The liquidators shall, when the liquidation affairs are concluded, prepare a settlement report without delay, and obtain approval from a stockholders' meeting. In this case, an auditor's report concerning the settlement report shall also be submitted.

(2) The liquidators shall, when the approval pursuant to paragraph (1) is obtained, publicly disclose the settlement report and auditor's report, and submit a certified copy thereof to the Financial Supervisory Commission.

■ **Article 74 (Supervisory Order of Liquidation)**

The Financial Supervisory Commission may, when it deems necessary for the liquidation of a securities investment company, order the securities investment company, asset management company, custodian, or general administration trustee company concerned to take necessary measures in relation to the deposit of property and other liquidation affairs.

CHAPTER VIII REGISTRATION

■ **Article 75 (Registration of Establishment)**

(1) The registration of establishment of a securities investment company shall be made within two weeks from the date of conclusion of a board of directors' meeting or a stockholders' meeting pursuant to Article 11.

(2) Information required in the registration of establishment pursuant to paragraph (1) are as follows:

1. Matters provided in Article 7 (1) 1 through 4, 6, 10, and 11;
2. Where the period of duration or causes of dissolution of a securities investment company is determined in the articles of incorporation, the contents thereof;
3. Name and address of the transfer agent;
4. Names and resident registration numbers of the directors concerned;
5. Name, resident registration number, and address of the director representing the securities investment company; and,
6. In case the articles of incorporation provides that the a securities investment company is represented by a chief executive director among the executive directors or jointly represented by several executive directors, the contents thereof.

(3) In the case of making a registration of establishment pursuant to paragraph (1), the documents prescribed by Presidential Decree shall be attached thereto.

■ **Article 76 (Exception to Registration of Liquidators, etc.)**

(1) Any securities investment company shall, when it is dissolved, register the matters in each of the following subparagraphs within two weeks from the date of dissolution where its executive directors become liquidators or within two weeks from the date of appointment where liquidators are appointed:

1. Names and resident registration numbers of liquidators (in the case of a chief liquidator, including the chief liquidator's address); and,
2. In case it is determined that the securities investment company is either represented by a chief liquidator among the liquidators or jointly represented by several liquidators, the determination thereof.

(2) Any securities investment company shall, when it is dissolved, register the names and resident registration numbers of the liquidation supervisors within two weeks from the date of dissolution where the supervisory directors become liquidation supervisors, or within two weeks from the date of appointment where liquidation supervisors are appointed.

(3) When registering the liquidators, etc. pursuant to paragraphs (1) and (2), the documents prescribed by Presidential Decree shall be attached thereto.

■ **Article 77 (Entrustment of Registration by Financial Supervisory Commission)**

(1) The Financial Supervisory Commission shall, in cases falling under one of the following subparagraphs, entrust the registration office that has jurisdiction on the location of a securities investment company with the relevant registration:

1. Where a securities investment company is dissolved due to the reasons mentioned in the subparagraph 6 or 7 of Article 64; and,
2. Where the Financial Supervisory Commission dismisses a liquidator or liquidation supervisor under its own authority.

(2) The Financial Supervisory Commission shall, when it makes an entrustment of the registration pursuant to paragraph (1), attach the documents showing the ground of registration thereto.

CHAPTER IX SUPPLEMENTARY PROVISIONS

■ **Article 78 (Exception to Securities Investment Companies Undergoing Corporate Restructuring)**

(1) Article 28 (2) shall not apply to a securities investment company satisfying the requirements in the following subparagraphs (hereinafter referred to as a "securities investment company undergoing corporate restructuring"):

1. It shall invest a portion, above the proportion prescribed by the Presidential Decree, of its assets in the securities issued by corporations that do not belong to the enterprise groups prescribed by the Presidential Decree among the enterprise groups pursuant to the Monopoly Regulation and Fair Trade Act;
2. The duration period of business after its establishment shall be at least one year and longer than that period prescribed by Presidential Decree; and,
3. It shall not be an open-end securities investment company.

(2) Notwithstanding Article 33 (5), a foreign asset management company satisfying the requirements in each subparagraphs of Article 33 (2) may, without establishing its branches and other offices, receive an entrustment of asset management from the securities investment company undergoing corporate restructuring.

(3) The necessary matters in relation to managing the assets of the securities investment company undergoing corporate restructuring by a foreign management company pursuant to paragraph (2) shall be prescribed by Presidential Decree.

■ **Article 78-2 (Exceptions to Indirect Securities Investment Company)**

(1) An indirect securities investment company shall not engage in the asset operation falling under any of the following subparagraphs: *Provided*, That in case where there is no apprehension of any detriment to the protection of investors or the sound operation of assets and prescribed by the Presidential Decree, this shall not apply:

1. An act to invest in a securities investment company (including the investment trust which the trust company operates, in case where the asset management company is concurrently engaged in the business of a trust company pursuant to the Securities Investment Trust Business Act) operated by the same asset management company in excess of 50/100 of total asset amount of such indirect securities investment company;
2. An act to invest in excess of 20/100 of total asset amount of the indirect securities investment company in the same beneficiary certificates (including foreign beneficiary certificates) issued by a trust company (including foreign trust company) under the Securities Investment Trust Business Act and a trust company under the Trust Business Act, or in the stocks issued by the same securities investment company (including foreign securities investment company pursuant to the provisions of Article 80 (1)); or
3. Other acts apprehended to be detrimental to the protection of investors and the stability of the indirect securities investment company, and prescribed by the Presidential Decree.

(2) Matters necessary for the operation of an indirect securities investment company such as remuneration for asset management shall be prescribed by the Presidential Decree.

[This Article Newly Inserted by Act No. 6694, Apr. 27, 2002]

■ **Article 79 (Exception to Securities Investment Companies with a Small Number of Investors)**

(1) Article 13 (1) 4 (limited to asset management companies), Articles 28 (2) 1, 2 and 4, 32 (1) and 49 shall not apply to securities investment companies that only issue stocks by means other than through a public offering or secondary distribution in accordance with Article 2 (3) and (4) of the Securities and Exchange Act and the numbers of whose stockholders are less than those determined by the Presidential Decree.

(2) Article 31 (1), (4), and (5) shall not apply where, among securities investment companies with a small number of investors under paragraph (1), a securities investment company aiming to absorb other companies into its affiliated companies (hereinafter referred to as a "securities investment company for acquisition of businesses") exercises directly the voting rights to its stock holdings.

(3) Where a securities investment company for acquisition of businesses belonging to a large conglomerate group absorbs another company into its affiliated companies, it shall sell the other company's stocks within five years from the date of such absorption.

(4) The necessary matters in relation to the asset management of the securities investment companies for acquisition of businesses, the restrictions of contributions to such securities investment companies, etc. shall be prescribed by the Presidential Decree.

■ **Article 79-2 (Issuance of New Stocks of Exchange Traded Securities Investment Company)**

(1) An exchange traded securities investment company may, when called upon by an authorized participant pursuant to the provisions of Article 79-3 (hereinafter referred to as an "authorized participant") to issue stocks of the exchange traded securities company, issue stocks in accordance with the stipulation of the articles of incorporation.

(2) When an authorized participant intends to request the issuance of stocks of an exchange traded securities investment company under the provisions of paragraph (1), it shall convert the cash or securities, etc. (hereinafter referred to as "subscription money, etc.") paid directly by investors, or by investors through distributors into an asset equivalent to a certain unit (hereinafter referred to as an "creation unit") prescribed by the Presidential Decree.

(3) Method of paying the subscription money, etc. and other necessary matters concerning the issuance of stocks by an exchange traded securities investment company shall be prescribed by the Presidential Decree.

[This Article Newly Inserted by Act No. 6694, Apr. 27, 2002]

■ **Article 79-3 (Authorized Participant)**

(1) An exchange traded securities investment company shall designate an authorized participant among the distributors operating the securities business under Article 2 (8) 1 and 2 of the Securities and Exchange Act in order to let it take up the business, etc. of converting subscription money, etc. into an creation unit.

(2) An authorized participant shall operate businesses of the following subparagraphs:

1. Business of requesting the securities investment company concerned to issue stocks of an exchange traded securities investment company;
2. Business of requesting the securities investment company concerned for redemption of the stocks of an exchange traded securities investment company;
3. Business of sale and purchase, and the entrusted business of sale and purchase of securities, etc., in order to convert the subscription money, etc. into an asset equivalent to the creation unit;
and
4. Businesses corresponding to the businesses of subparagraphs 1 through 3, and prescribed by the Presidential Decree.

(3) In case where an authorized participant buys and sells, and buys and sells by entrustment, securities, etc. in order to convert subscription money, etc. into an asset equivalent to the creation unit, it shall be regarded as having registered the discretionary investment business in respect of such businesses pursuant to the provisions of Article 70-2 (2) of the Securities and Exchange Act.

(4) An authorized participant shall, through the businesses in subparagraphs of paragraph (2), exert to conform the market price of stocks of an exchange traded securities investment company traded in the securities market or the Association brokerage market to the net asset value per stock of the stocks concerned, and let the stocks concerned traded in the market smoothly.

[This Article Newly Inserted by Act No. 6694, Apr. 27, 2002]

■ Article 79-4 (Redemption of Stocks of Exchange Traded Securities Investment Company)

(1) Stockholders of an exchange traded securities investment company may request the distributor (excluding the authorized participant; hereafter in this Article, the same shall apply) or the authorized participant of the stocks concerned (limited to the case where the company that sold the stocks of the securities investment company concerned was an authorized participant) to redeem the stocks by creation unit: Provided, That in case where the distributor is not able to respond to redemption due to dissolution, revocation of license, suspension of business, and other causes (hereafter in this Article referred to as "dissolution, etc.") prescribed by the Presidential Decree, redemption may be requested against the authorized participant.

(2) The distributor requested for the redemption of stocks of an exchange traded securities investment company pursuant to the provisions of the main sentence of paragraph (1) shall demand the redemption of the stocks concerned against the authorized participant: Provided, That in case where the authorized participant is not able to carry out the business relating to the redemption of the stocks concerned due to dissolution, etc., the distributor may demand the purchase of stocks against the exchange traded securities investment company at first hand.

(3) In case where the authorized participant, against whom the stockholders of an exchange traded securities investment company intend to request the redemption of stocks of the exchange traded securities investment company pursuant to the provisions of paragraph (1), is not able to carry out the business relating to the redemption of the stocks concerned due to dissolution, etc., they may request the purchase of stocks against the exchange traded securities investment company at first hand.

(4) The authorized participant requested or demanded for the redemption of stocks of an exchange traded securities investment company pursuant to the provisions of main sentences of paragraphs (1) and (2) shall, without delay, demand the exchange traded securities investment company to respond to the purchase.

(5) The exchange traded securities investment company obliged to respond to the request for purchase pursuant to the provisions of paragraphs (2) through (4) shall respond to the request for

purchase with securities, etc. (excluding the cases where prescribed by the Presidential Decree). In this case, the redemption shall be based on the asset held by the exchange traded securities investment company concerned after the conclusion of assets operation on the day the request for purchase is made.

(6) When the exchange traded securities investment company purchases stocks pursuant to the provisions of paragraph (5), it shall put the contents thereof in the stockholders' list and retire such stocks.

(7) In case where the exchange traded securities investment company fails to respond to the redemption pursuant to the prescriptions of paragraph (5) within the time frame stipulated in the articles of incorporation, which is within the extent of fifteen days, from the day it is requested for purchase pursuant to the provisions of paragraphs (1) through (5) due to a natural disaster and other causes equivalent thereto, it shall inform the stockholders who requested redemption of the fact without delay.

(8) The exchange traded securities investment company shall not be required to respond to the redemption of stocks in cases falling under any of the following subparagraphs:

1. In case where it falls under any subparagraph of Article 50 (8); or
2. In case where the stocks issued by the exchange traded securities investment company have been delisted or the registration thereof with the Association brokerage market has been revoked.

[This Article Newly Inserted by Act No. 6694, Apr. 27, 2002]

■ Article 79-5 (Delisting or Revocation, etc. of Registration of Stocks Issued by Exchange Traded Securities Investment Company)

(1) The Stock Exchange or the Korea Securities Dealers Association (hereinafter referred to as the "Securities Dealers Association") pursuant to the provisions of Article 162 of the Securities and Exchange Act shall, when a cause falling under any of the following subparagraphs in respect of the stocks issued by an exchange traded securities investment company occurs, delist or revoke the registration of such stocks:

1. In case where the difference (hereinafter referred to as "rate of tracking error") between the fluctuation rate of net asset value per stock of the exchange traded securities investment company and the fluctuation rate of indexes targeted by the exchange traded securities investment company exceeds the rate prescribed by the Presidential Decree and maintains for a period of time prescribed by the Presidential Decree;
2. In case where the exchange traded securities investment company fails to sum up or make use of the targeted indexes; or

3. Other cases where the protection of stockholders of the exchange traded securities investment company and the sound management of asset are apprehended to be hurt, and prescribed by the Presidential Decree.

(2) An exchange traded securities investment company shall be dissolved for causes falling under any of the following subparagraphs:

1. Causes falling under any subparagraph of Article 64; or

2. In case where the stocks issued by the exchange traded securities investment company are delisted or the registration thereof with the Association brokerage market is revoked.

[This Article Newly Inserted by Act No. 6694, Apr. 27, 2002]

■ Article 79-6 (Intermediate Allocation of Exchange Traded Securities Investment Company)

(1) In case where the articles of incorporation so dictate, an exchange traded securities investment company may designate one or more specific days in a business year and allocate securities or money, as prescribed by the Presidential Decree, among the stockholders of the day (hereafter in this Article referred to as the "intermediate allocation") on the resolution of the board of directors.

(2) The intermediate allocation pursuant to the provisions of paragraph (1) shall be made within one month from the date of resolution of the board of directors.

(3) Necessary matters regarding the method of intermediate allocation, etc. shall be prescribed by the Presidential Decree.

[This Article Newly Inserted by Act No. 6694, Apr. 27, 2002]

■ Article 79-7 (Public Announcement, etc. of Assets Held by Exchange Traded Securities Investment Company)

(1) An exchange traded securities investment company shall announce in public everyday the composition of assets, etc. of the securities investment company concerned as of one day prior to the day of public announcement through the securities market or the Association brokerage market.

(2) The Stock Exchange or the Securities Dealers Association shall, as prescribed by the Presidential Decree, announce in public the net asset value of property of the exchange traded securities companies and the rate of tracking error.

(3) Necessary matters relating to the contents, procedures, etc. of public announcement pursuant to the provisions of paragraph (1) shall be prescribed by the Presidential Decree.

[This Article Newly Inserted by Act No. 6694, Apr. 27, 2002]

■ **Article 79-8 (Asset Management of Exchange Traded Securities Investment Company)**

(1) In applying the provisions of Article 28 (2) 1 to an exchange traded securities investment company, "10/100" shall be regarded as "30/100."

(2) The provisions of Article 28 (2) 2 and 3 shall not be applied in respect of an exchange traded securities investment company.

[This Article Newly Inserted by Act No. 6694, Apr. 27, 2002]

■ **Article 79-9 (Exceptions to Exchange Traded Securities Investment Company)**

(1) In applying this Act to exchange traded securities investment companies, "distributor" in Articles 7 (1) 14, 9 (1) 7, 12 (1) 4 and (2) 4, 13 (1) 4, and 20 (2) 1 shall be regarded as "distributor and authorized participant" respectively, and "Article 50" in Article 44 (1) 2 as "Articles 50 and 79-4".

(2) The provisions of Article 31 (1) and proviso of paragraph (4) of the same Article, and the provisions of Articles 35 (3) 3 (g), 50, 60 (4) and 64 shall not apply to the exchange traded securities investment companies.

(3) The provisions of Articles 422 and 462-3 of the Commercial Act shall not apply to exchange traded securities investment companies.

(4) The provisions of Article 54-3 (1) 1 and 4 of the Securities and Exchange Act, Article 188 of the same Act and Article 200-2 of the same Act shall not apply to exchange traded securities investment companies.

[This Article Newly Inserted by Act No. 6694, Apr. 27, 2002]

■ **Article 80 (Domestic Sale of Stocks Issued by Foreign Securities Investment Companies)**

(1) Any foreign securities investment company (referring to the person satisfying the criteria prescribed by Presidential Decree, from among those established under foreign statutes for the purpose of mainly investing their assets in securities; hereinafter the same shall apply) shall, when it intends to sell the stocks issued in foreign countries in accordance with foreign statutes in Korea, make a declaration to the Financial Supervisory Commission in such manner as prescribed by Presidential Decree.

(2) The provisions of Articles 9 (2) through (5), 54 (2) and 56 shall apply *mutatis mutandis* to domestic sales of stocks issued by any foreign securities investment companies pursuant to paragraph (1). In this case, "promoters" in Article 9 (2) shall be deemed "foreign securities investment companies," "promoters" in Article 9 (3) and (4) shall be deemed "foreign securities investment companies and distributors" respectively, and "securities investment companies" in Articles 54 (2) and 56 (3) shall be deemed "foreign securities investment companies."

(3) The necessary matters concerning the domestic sales method of the stocks issue by the foreign securities investment companies mentioned in paragraph (1) shall be prescribed by Presidential Decree.

■ **Article 81 (Participation in Korea Investment Trust Companies Association)**

Any securities investment company, asset management company, custodian, and general administration trustee company may become a member of the Korea Investment Trust Companies Association.

■ **Article 82 (Contribution)**

(1) The securities investment companies, asset management companies, custodians, and general administration trustee companies that are examined by the FSS Governor shall pay a contribution to cover the examination expenses to the Financial Supervisory Service.

(2) The ratio, ceiling, and other necessary matters regarding the payment of contribution mentioned in paragraph (1) shall be prescribed by Presidential Decree.

■ **Article 83 (Hearings)**

The Financial Supervisory Commission shall, when it intends to execute a disposition falling under one of the following subparagraphs, hold a hearing:

1. Revocation of registration pursuant to Article 61 (5);
2. Revocation of registration pursuant to Article 63;
3. Revocation of registration of any asset management company under the provisions of Article 63-2; or,
4. Revocation of registration of any general administration trustee company under the provisions of Article 63-3.

■ **Article 84 (Relation with Other Statutes or Subordinate Statutes)**

(1) In applying of the Commercial Act to securities investment companies, the "court" in Articles 259 (4), 467 (1), 536, 539, 541 of the Commercial Act shall be deemed the "Financial Supervisory Commission", and the "public prosecutor" in Article 176 of the Commercial Act shall be deemed the "Financial Supervisory Commission."

(2) The provisions of Articles 19, 288, 289 (2), 298 through 300, 308 (1), 310 through 313, 329(1) and (4), 330, proviso of 335 (1), 335-2 through 335-7, 341 through 351, 370, 389 (1), 415-2, 417 through 419, 420-2 through 420-4, 438, 439, and 458 of the Commercial Act shall not apply to securities investment companies.

(3) The provisions of Articles 191-13 and 191-14 of the Securities and Exchange Act shall apply *mutatis mutandis* to the stockholders of securities investment companies. In this case in Article 191-13 (1) of the Securities and Exchange Act, "the stock equivalent to 1/10,000 or more of the total number of issued and outstanding stocks of a stock-listed corporation" shall be deemed "the stock of the securities investment companies"

(4) The provisions of Chapter II and Chapter IX (excluding Section 2, Article 191-13, and Article 191-14) of the Securities and Exchange Act shall not apply to securities investment companies.

■ Article 85 (Delegation of Authority)

The Financial Supervisory Commission and the Korea Investment Trust Companies Association may delegate part of its authority under this Act to the FSS Governor in such manner as prescribed by Presidential Decree.

CHAPTER X PENAL PROVISIONS

■ Article 86 (Penal Provisions)

Any person who falls under one of the following subparagraphs shall be punished by imprisonment of up to five years or by a fine up of to thirty million won:

1. A person who engages in the business provided in Article 28 (1) without making a registration pursuant to Article 12 (1);
- 1-2. A person who makes a public offering or secondary distribution of the stocks issued without filing a registration pursuant to the provisions of Article 12 (1) in contravention of paragraph (3) of the same Article;
2. A person registers pursuant to Article 12 by fraudulent or other improper means;
3. A person who manages assets in violation of Article 28 (2) and (3), 78-2 (1) or 79-8 (1);
4. A person who borrows funds, guarantees liabilities, or provides collateral in violation of Article 29;
5. A person who exercises voting rights in violation of Article 31 (1) through (3);
6. A person who engages in the business of an asset management company without registering pursuant to Article 33 (1) or (5);
7. A person registers pursuant to Article 33 (1) or (5) by fraudulent or other improper means;
8. A person who acts in violation of Article 35 (3); or,

9. A person who engages in trading through the use of undisclosed information pertaining to asset management or allows other persons to use such information in violation of Article 35-2.

■ Article 87 (Penal Provisions)

Any person who falls under one of the following subparagraphs shall be punished by an imprisonment of up to five years or by a fine of up to twenty million won:

1. A person who makes transactions in violation of Article 30;
2. A person who makes transactions in violation of Article 40 (2);
- 2-2. A person who engages in the business of a general administration trustee company without registering their business in accordance with the provisions of Article 42-2 (1);
- 2-3. A person who registers their business under the provisions of Article 42-2 (1) by improper means;
- 2-4. A person who fails to make a demand with respect to withdrawal, alteration or correction in contravention of the provisions of Article 42-2 (3);
3. A person who fails to implement the necessary measures on the deposit of property and other liquidation affairs in violation of Article 74; and
4. A person who sells stocks of any foreign securities investment company without filing a registration in violation of Article 80 (1).

■ Article 88 (Penal Provisions)

Any person who falls under one of the following subparagraphs shall be punished by imprisonment of up to one year or by a fine of up to five million won:

1. A person who uses the title of a securities investment company or asset management company in violation of Article 5 or Article 33 (7);
2. A person who fails to provide the investment prospectus described in Article 9 (3) through (5) (including the case in which the application is made *mutatis mutandis* in the provisions of Article 48 (2) and Article 80 (2)) or falsely prepares and provides investment prospectuses or simple investment prospectuses :
- 2-2. A person who fails to record and maintain, or fraudulently records and maintains, documents as to whether he exercised the voting rights, in violation of Article 31 (5);
3. A person who fails to announce in public, or fraudulently announce in public regarding the exercise of voting rights in violation of Article 31 (6);

4. A person who conducts securities trading or securities entrustment in violation of Article 34 (4);
5. A person who fails to separately administer the assets of a securities investment company in violation of Article 40 (3);
6. A person who fails to deposit securities with the Korea Securities Depository in violation of Article 40 (4);
- 6-2. A person who fails to include matters that have to be included in sale solicitation advertisements in violation of Article 41-2;
7. A person who complies with the redemption in violation of Article 50 (4);
- 7-2. A person who fails to publish or put on public notice the net asset value of any securities investment company under the provisions of Article 54 or falsely publishes or puts on public notice such net asset value;
8. A person who fails to prepare and maintain the books and documents on the business in violation of Article 59;
9. A person who fails to maintain the business report and annual report, or falsely prepares such reports and maintains them in violation of Article 60 (2);
- 9-2. A person who fails to provide the written report on asset management under Article 60 (4) or falsely prepares such written report and provides it; or
10. A person who fails to make a declaration pursuant to Article 80 (1) or makes a false declaration.

■ Article 89 (Provisions of Dual Punishment)

When a representative of a corporation, or an agent or employee of a corporation or an individual violates Article 86 through Article 88 with respect to the business affairs of such corporation or individual, a fine falling under each pertinent Article shall also be imposed to such corporation or individual, in addition to a punishment against the offenders.

■ Article 90 (Negligence Fine)

(1) Any person who falls under one of the following items shall be punished by a negligence fine not exceeding 10 million won:

1. A person who fails to register a change in violation of Article 14;
2. A person who fails to submit the financial statements, etc. in violation of Article 53 (2);

3. A person who fails to maintain the financial statements, etc. in violation of Article 56 (1);
4. A person who fails to submit a business report and annual report, or falsely prepares and submits such reports in violation of Article 60 (1);
5. A person who fails to implement an order to submit data or to report in violation of Article 61 (1);
6. A person who refuses, impedes, or evades the examination pursuant to Article 61 (2);
7. A person who fails to comply with a request for submission of data, attendance or statement in violation of Article 61 (3); or,
8. A person who fails to report in violation of Article 62 (1).

(2) The negligence fine mentioned in paragraph (1) shall be imposed and collected by the Financial Supervisory Commission in such manner as prescribed by Presidential Decree.

(3) Any person who objects to the disposition of a negligence fine pursuant to paragraph (2) may file an objection with the Financial Supervisory Commission within thirty days from the date on which that person is informed thereof.

(4) In case a negligence fine is imposed upon a person pursuant to paragraph (2) and that person files an objection pursuant to paragraph (3), the Financial Supervisory Commission shall promptly notify the competent court of the fact. In this case, the competent court shall review the matter at trial in accordance with a negligence fine under the Non-Contentious Case Litigation Procedure Act.

(5) When no objection is made and no negligence fine is paid within the period mentioned in paragraph (3), such negligence fine shall be collected in accordance with the examples of the disposition of national taxes in arrears.

ADDENDA

(1) (Enforcement Date) This Act shall be effective from the date of its promulgation.

(2) (Special Cases concerning Registration of Open-End Securities Investment Company) Any open-end securities investment company (including the case where a securities investment company is converted into an openend securities investment company after its establishment) may make a registration pursuant to Article 12 and a registration of changed matters pursuant to Article 14 on and after the date to be determined by the Presidential Decree within the period of five years from the enforcement date of this Act and, in the case where the date is not determined by the Presidential Decree within such period, it may make a registration pursuant to Article 12 and a registration of changed matters pursuant to Article 14 from the following day of the date on which five years will have elapsed since the enforcement date of the Act.

(3) (Enactment of Presidential Decree Allowing Borrowings by Open-End securities investment company) The Enforcement Decree which allows an open-end securities investment company to borrow funds pursuant to the proviso of Article 29 shall be enacted within five years from the enforcement date of this Act, and if not enacted within such period, the part of Article 29 prohibiting the borrowing of funds shall lose effect on the following day of the date on which five years will have elapsed since the enforcement date of this Act.

ADDENDA

■ Article 1 (Enforcement Date)

This Act shall enter into force on April 1, 2000: *Provided*, That the amended provisions of Articles 79 and 84 shall enter into force on the date of its promulgation.

■ Article 2 (Transitional Measures concerning Disqualifications)

Where any officer of a securities investment company or an asset management company, at the time when this Act enters into force, falls under the disqualifications under the amended provisions of Article 6 (2) 5 or 19 (2) 5-2 due to a cause that occurred prior to the enforcement of this Act, the case shall be dealt with according to the previous provisions notwithstanding the amended provisions.

■ Article 3 (Transitional Measures concerning Internal Control Standards of Asset Management Company)

Any asset management company, at the time when this Act enters into force enforce, shall establish its internal control standards within six months after the enforcement of this Act in accordance with the amended provisions of Article 35-3 (1).

■ Article 4 (Transitional Measures concerning General Administration Trustee Company)

Any general administration trustee company at the time when this Act enters into force, where it intends to continuously engage in the business of each subparagraph of Article 42 (1) upon entrustment from any securities investment company, shall register its business with the Financial Supervisory Commission after satisfying the requirements described in the amended provisions of Article 42-2 (in case of an asset management company that concurrently engages in the business described in each subparagraph of Article 42 (1), the requirements of Article 42-2 (2) 6 shall be excluded) within two months from the date of enforcement of this Act.

■ Article 5 (Transitional Measures concerning Concurrent Operation of Business of General Administration Trustee Company by Asset Management Company)

(1) Any asset management company that concurrently engages in a business under any subparagraph of Article 42 (1) at the time that this Act enters into force, where it obtains authorization from the Financial Supervisory Commission after satisfying requirements

prescribed by the Financial Supervisory Commission with respect to the concurrent operation of other business within 2 months after the enforcement of this Act, may concurrently engage in such business during a period set by the Financial Supervisory Commission notwithstanding the amended provisions of Article 42-2 (2) 6. In this case, such asset management company shall prohibit any person in charge of the business of a general administration trustee company from concurrently taking charge of the business of managing assets of a securities investment company.

(2) In applying the amended provisions of Article 42-2 (3) to any asset management company that has been authorized to concurrently operate another business under any subparagraph of Article 42 (1) in accordance with the provisions of the former part of paragraph (1), "general administration trustee companies" shall be deemed "persons in charge of the business of such general administration trustee companies" and "asset management companies" shall be deemed "persons in charge of the business of such asset management companies".

■ Article 6 (Transitional Measures concerning Listing, etc. of Issued Stocks)

In applying the amended provisions of Article 49 to any securities investment company that is not an open-end securities investment company at the time that this Act is enforced, the date of enforcement of this Act shall be deemed the date of issue of the stock certificates.

ADDENDA

(1) (Enforcement Date) This Act shall enter into force on the date of its promulgation.

(2) (Applicable Cases concerning Qualification Requirements of Compliance Officers) The amended provisions of Article 35-3 (4) shall apply to the compliance officers who are appointed on or after the enforcement of this Act.

(3) (Transitional Measures on Investment Limit, etc. to Same Items) The securities investment company which has come to exceed the limit of investment in and acquisition of securities, etc. due to the amended provisions of Article 28 (2) 1 and 3 shall make itself meet the limit of investment and acquisition under the amended provisions of Article 28 (2) 1 and 3 within 6 months after the enforcement of this Act.

ADDENDA

(1) (Enforcement Date) This Act shall enter into force three months after the date of its promulgation: *Provided*, That the amended provisions of Article 28 (2) 1-2 shall enter into force on the date of its promulgation.

(2) (Transitional Measures regarding Investment Limit on Stocks of Securities Investment Company) A securities investment company, which has become in excess of the investment limits on securities, etc. due to the amendment to Article 28 (2) 4, shall make itself fit for the investment

limits pursuant to the amended provisions of Article 28 (2) 4 within six months from the enforcement of this Act.

Source: <http://www.moleg.go.kr/> Access time: 05/08/2003