

Underwriting Business

- Prevention of the securities underwriting business under the terms and conditions which are deemed to be extremely inappropriate (Rules 71(b))
- Appropriate examination of the issuer's financial condition and business performance in relation to the securities underwriting business (Rules 71(c))
- Mandatory delivering of the prospectus in selling securities to a customer in respect of a public offering (Rules 48(h))

Basic Principle

- Securities companies shall establish internal rules for underwriting business to ensure the followings:
 - (1) the appropriate management of its operations such as “Due-Diligence” and setting of terms and conditions including pricing and
 - (2) the protection of investors.
- Such internal rules shall include the operational flow for underwriting business and be understood correctly by relevant officers.

Check point 1: Decision making for underwriting

- A securities company shall set up a conference body to make a final decision to underwrite. Such body shall comprise a number of responsible officers, including a compliance officer.
- Making decision to underwrite shall be based on “comprehensive judgment” in light of all issues mattered in the due-diligence; all material issues should be list up and answers to all issues should be clarified in the process of decision making.

Check point 2: Due-Diligence

- A securities company shall
 - adequately allocate staff to execute due-diligence to execute due-diligence.
 - establish an organizational structure in which officers for due-diligence can form independent opinions, being independent from the sales division.
 - ensure a sufficient period for due-diligence.
 - strive to obtain accurate information on the issuer until the payment date for the underwriting.
 - conduct rigorous due-diligence on items specified in the internal rules that shall include the followings. As for initial public offering, more cautious due-diligence is necessary.

<Check Points in due-diligence for Initial Public Offering>

- 1) Eligibility of public offering
 - Visions of management
 - Legality and Sociality of business including AML issue
 - Managements' awareness on compliance and risk management
 - Soundness in the purposes of utilizing the capital market
- 2) Corporate governance and the internal control system
 - Appropriateness in designing organizational structure
 - Status of business execution by executive officers and the board of directors
 - Necessity of RPTs and appropriateness of their terms and conditions (If any)

- Independence from a parent company
 - Investment in affiliated companies and the situation of managing such companies
 - Compliance status and system & operation for compliance
 - Protection of intellectual property rights and infringement on other companies' rights
- 3) Financial conditions and business performance
- Soundness in financial conditions and cash-flow management
 - Analysis on fluctuations in financial conditions and business performance
 - The historical data on past performances in announced business plans
- 4) Business outlook
- Assumption for business plans and progress in business plans
 - Potential Growth and its stability
 - Dividend Policy and the past record of distributing dividends
- 5) Use of Proceeds
- Validity of the use of proceeds (consistency with business plan)
 - The status of use of funds raised in the past
- 6) Corporate Disclosure
- Capability of complying the statutory disclosure
 - Adequacy and appropriateness of disclosure
 - Appropriate disclosure of developments since the end of the latest business year

<Check Points for public offering by listed companies>

- 1) Eligibility of public offering - Legality and Sociality of business including AML issue
 - 2) Financial conditions and business performance - Soundness in financial conditions and cash-flow management
- Analysis on fluctuations in financial conditions and business performance
- The historical data on past performances in announced business plans
 - 3) Business outlook - Assumption for profit plans and progress in the profit plans
- Dividend Policy and the past record of distributing dividends
 - 4) Use of Proceeds - Validity of the use of proceeds (consistency with business plan)
- Appropriate disclosure of the use of proceeds
- The status of utilization of funds raised in the past
 - 5) Corporate Disclosure - Adequacy and appropriateness of disclosure
- Appropriate disclosure of developments since the end of the latest financial year
 - 6) Stock Price - Trends of stock prices
- Trends of trading volume
- Adequacy of the issuance volume in view of the liquidity
- A securities company is expected to obtain the following materials;
 - 1) Document explaining Use of Proceeds
 - 2) Projected balance sheet and projected statement on cash flows
 - 3) Company overview (its competitiveness in its industry, industry developments, an overview of business, etc.)

- 4) The status of business plans
- 5) The status of accounting (a list of customers, a list of suppliers, the monthly amount of orders received and sales, and a list of affiliated companies, etc.)
- 6) The latest financial conditions and business performance (a list of contingent liabilities, latest business performance, important subsequent events, the latest amount of orders received, order backlogs and sales, etc.)
- 7) Matters concerning business risks, etc.

CHECK POINT 3: TERMS AND CONDITIONS

- A securities company shall
 - make it a rule to consider the market conditions in determining the terms and conditions by conducting a survey on investment demand.
 - consider the necessity of accumulating investment demand so as to maintain the sufficient demand in the secondary market.
 - consider the risk in underwriting that can be more excessive than assumed due to a larger-than-expected amount unsubscribed as a result of setting the excessively favorable price for the issuer.
 - keep records on above mentioned considerations and surveys.

CHECK POINT 4: DISTRIBUTION OF PROSPECTUS

- No securities company shall sell securities to a customer in operating the securities underwriting without delivering a copy of the prospectus published under sub-section (b) of section 35 of the law together with a copy of materials expressed in clause (ii) of sub-section (a) of rule 108 if not included in the prospectus either in a printed form or in electromagnetic form to such customer upon or prior to the sale of securities. (48 (h) of the Securities Exchange Rules)
- A securities company shall deliver a copy of prospectus in a printed form; provided,

however, it may deliver a prospectus in electromagnetic form when the followings are ensured;

- 1) Securities companies have obtained customer's prior consent to receiving a copy of prospectus in electromagnetic
- 2) Securities companies notice customer of the delivery
- 3) Securities companies enable customers to access and see a copy of prospectus throughout the course of offering process without any charge and
- 4) Securities companies provide a copy of prospectus in a printed form upon request from investors without charge.

(End)