

An Introduction to Taiwan's Investor Protection Related Regulations

Chairman Mr. Allan Cameron, my dear colleagues,

It's a great pleasure for me to attend this Round Table on Capital Market Reform in Asia, organized by the OECD. First of all, I would like to express my gratitude to our host for successfully arranging this significant event. And now I will briefly introduce the investor protection regulations of my country for you.

In order to rebuild investor confidence in the stock market, it is necessary to enhance investor protection by ensuring investors' rights and benefits. Based on this concept, Taiwan has treated investor protection as a guiding objective in the last few years. To broadly define investor protection, it includes the surveillance by government of the Taiwan Stock Exchange, corporate governance and self-regulation by enterprises; assurance of the market's function and schemes by which investors can claim their rights and benefits. The first three have been widely discussed in the market management field, so I'd like to focus on a narrower definition of investor protection and explain Taiwan's recent development of regulations regarding the schemes for investors to claim their rights and benefits.

Since most investors in Taiwan's stock market are individual investors, the Securities Investors and Futures Traders Protection Law or "Investors Protection Law" was enacted in order to discourage investors from waiving their right to seek legal aids just because of limitations of time, finance or expertise. This Investor Protection Law was implemented on January 1, 2003 and its main regulatory points are as follows:

1. To establish a protection center and build up a protection fund to conduct protection related affairs.
2. In cases of breach of contract or default by securities or futures firms, the

protection center may compensate investors or traders from the protection fund.

3. The protection center will handle complaints or mediation resulting from securities or futures trading, and the result of mediation shall have the same effect as an irrevocable judgment.
4. To bring in a class action or class arbitration system.

Besides, three related rules enacted pursuant to the Investor Protection Law are the “Rules Governing Securities Investors and Futures Traders Protection Institutions”, the “Regulations Governing Payment Operations of Securities Investors and Futures Traders Protection Funds”, and the “Regulations Governing Organization and Mediation Procedures of the Mediation Committee of Securities Investors and Futures Traders Protection Institutions”. Following is a description of the purpose of Investor Protection Law and these three related sets of rules.

- A. To establish the Protection Center and to build up the protection fund to conduct protection related affairs.

According to the Investor Protection Law, firms or institutions related to the securities or futures market have to contribute funds for the purpose of establishing the Protection Center. These funding institutions include the Taiwan Stock Exchange Corporation, the Gretai Securities Market, Taiwan Futures Exchange, the Taiwan Securities Central Depository, the Chinese Securities Association, the Securities Investment Trust & Consulting Association of the ROC, the Futures Association, and other securities finance corporations. The total fund now collected is around NT\$1.031 billion, and the Institute of Securities Investors and Futures Traders Protection Center (or the “Protection Center”) has been established.

The protection fund of the Protection Center comes not only from the funding mentioned, but also from monthly appropriations from certain institutions. The Taiwan Stock Exchange Corporation, the Gretai Securities Market, and the Taiwan Futures Exchange have to appropriate 5% of their transaction charges; securities firms have to appropriate 0.000285% of their dealing amount, and futures firms have to

appropriate NT\$1.88 per dealing contract. Once the protection fund reaches NT\$5 billion, the Securities and Futures Commission of the Ministry of Finance may allow securities or futures firms, which have appropriated for more than 10 years to temporarily halt the appropriation. There are two matters to consider when deciding the percentage or the amount of the appropriation. Firstly, the percentage of the appropriated amount of business income of each securities and futures firm should be similar; secondly, the possibility for the protection fund to reach NT\$5 billion in the tenth year.

Because the Protection Center needs to conduct mediation, class actions or litigation, and because securities and futures firms fund the protection fund, the supervision by the Securities and Futures Commission of the Protection Center shall be prudential and severe to ensure both its integrity and the public interest. Therefore, in these related rules, the finance, business, organization and members of the Protection Center are strictly regulated.

B. In cases where securities or futures firms breach contracts, the Protection Center may compensate investors or traders with the protection fund.

The Protection Center may compensate securities investors and futures traders with the protection fund if securities or futures firms breach their contracts or default as a result of financial difficulties. Moreover, the Protection Center may, within the amount of the compensation, exercise in its own name the investors' rights toward that securities or futures firm.

The maximum compensation amount to each investor or trader of each securities or futures firm is NT\$1 million. The maximum compensation amount to total investors or traders of each securities or futures firm shall be decided by the Protection Center and shall be not less than NT\$100 million. However, the Protection Center may adjust this by considering the market situation and the amount of the appropriation, though any such adjustments need to be approved by the Securities and Futures Commission.

C To handle complaints or mediation resulting from securities or futures trading

Any civil disputes resulting from the offering, issuing, purchasing of securities or trading of futures and other related matters between securities investors or futures traders and securities and futures firms or other interested parties may be handled by the Protection Center. In order to ensure the result of the disputes, and to reduce the number of litigation cases, the regulations require the Protection Center to set up a mediation committee. Successful mediation shall have the same effect as an irrevocable judgment. If one or more persons having a joint interest disagree with the result of the mediation, that result shall be deemed void to that person, but valid to the rest. However, if more than half of them disagree with the result of the mediation, the mediation shall be deemed to have failed.

D. To bring in a class action or class arbitration system

In order to achieve efficiency in litigation and arbitration, and in order to promote the function of the Protection Center, according to the Investor Protection Law, the Protection Center is granted, when more than twenty securities investors or futures traders request, the right to litigate or arbitrate, and the Protection Center may carry out class actions or class arbitration in its own name. On the other hand, considering the Protection Center's financial burden and the public interest, and in order to prevent malefactors from transferring property, the regulations allow the Protection Center to petition provisional seizure or provisional disposition without furnishing security. For cases with more than NT\$100 million or value, payment of trial fee can be exempted. Moreover, if the Protection Center asserts that without execution of the case investors or traders might be impossible to compensate or might suffer uncountable damage, the court may declare provisional execution without furnishing security.

We expect the Investor Protection Law and the Protection Center to bring the following benefits to our securities and futures market.

1. Benefit to securities and futures firms: The scheme of compensating investors or

traders with a protection fund in case of breach of contract or default and the schemes of mediation, class action or class arbitration are helpful in increasing the confidence of investors and traders, and furthermore, to promote market development.

2. Benefit to investors: The schemes of mediation, class action and class arbitration provide investors with more opportunities to be compensated in case of illegality. Otherwise, the possibility to petition provisional seizure, provisional disposition or provisional execution without furnishing security may prevent malefactors from transferring property, and may accelerate the compensation procedure.
3. Effects on companies and insiders: With the regime of class action, the directors, supervisors and managers of public companies who make sham deals, cover up the company's true state and mislead investors can be sued and corporate governance by the issuers can be strengthened.
4. Effects on accountants: After the implementation of the Investor Protection Law, investors can protect their rights more efficiently, and Certified Public Accountants might be sued by class action if there is any fraudulence in certification. As a result, Certified Public Accountants not only need to keep on developing their expertise, but also need to safeguard their independence so as to ensure the quality of certification and gain the trust of investors.

Since its implementation this January post, the regime of investor protection that I have described has received from markets positive responses and investors. In the future, our main task will be to strengthen the implementation of protection, including the surveillance of government and of the Taiwan Stock Exchange, corporate governance and self-regulation by enterprises, and the assurance of market function, in order to prevent and reduce the occurrence of illegality and, furthermore, to increase and rebuild investor confidence in the markets.