The Investor Protection Regime of the Financial Investment Services and Capital Markets Act of Korea

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ABSTRACT

The Korean financial market had long been regulated by several dispersed laws. However, with the enactment of the Financial Investment Services and Capital Markets Act (the FISCMA) in 2009, the regulatory principles have been partly integrated. As one of the central elements in the FISCMA is the reinforced investor protection, it is necessary to review the changes and discuss suggestions for improvement. Thus the article primarily focuses on the three tenets of investor protection: duty to explain, principle of suitability, and methods to prevent conflicts of interest.

In reviewing these subjects, the article explains the new changes in the FISCMA, which were mainly brought on by the transformation from institutional to functional regulations of financial businesses. Also, for comparison it notes the similar regulations existing in the U.S laws. The obstacles that still remain in FISCMA concerning investor protection are discussed as well. Regarding conflicts of interest, the FISCMA presents such a wide range of regulatory measures as imposing the duty of good faith, prohibiting the specific conduct of business, and requiring financial business entities to establish the internal control system as well as the Chinese wall.

Even though the changes found in the FISCMA are appropriate concerning the broadening scope of financial businesses, it is recommended that the compensation for damages to investors and the principles of fiduciary duty should be further complemented. The authors hope this article contributes to expanding our knowledge of the new legislation governing the Korean financial market.

KEYWORDS: know-your-customer rule, disclose-or-abstain rule, churning, internal control, dumping, Securities and Exchange Commission(SEC), SEC Rule

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I. Introduction

The structures of financial laws differ greatly across countries. Recently, Korea has undergone a major integration of various financial laws. The Korean financial market had been regulated by 16 different kinds of bodies of law, including the Banking Act, the Securities and Exchange Act, the Insurance Business Act, and the Futures Trading Act. However, the Financial Investment Services and Capital Market Act[1] [hereinafter “the FISCMA”], which has been enacted in 2009 integrates the 14 other kinds of Acts excluding the Banking Act and the Insurance Business Act, providing a background for various financial market activities to be formed into one. Besides the main purpose of the FISCMA in integrating the financial regulations, what is noticeable is the enhanced investor protection regime, which has been improved in order to respond to the increasing number of complex financial products such as those in the derivative market. Also to note is the increased regulation and awareness on conflicts of interest that may arise from the integration of various capital market activities especially those of asset management and securities business. Thus this paper will attempt to review the new developments in the FISCMA, especially regarding those of investor protection in the subjects of duty to explain, principle of suitability, and approaches to prevent conflicts of interest.