



Amendments to the Financial Investment Services and Capital Markets Act Regarding Additional Issuance of Securities by Closed-End REF and Calculation of the Number of Investors in Private REF

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1. Additional Issuance of Securities by Closed-End REFs

A. Restrictions on Additional Issuance of Securities by Closed-End REFs and Exceptions

- Pursuant to the Financial Investment Services and Capital Markets Act (the “FISCMA”), real estate collective investment vehicle must be closed-end – investors may not claim redemption of the collective investment securities issued by the vehicle (the “Closed-End REF”).
- Given that under the FISCMA, a closed-End REF has a fixed term, and, in principle, its investors may not exit until the end of such term, there is a need for preventing certain events which may dilute its investors’ equity interests. Therefore, additional issuance of securities by the Closed-End REF is restricted unless exemptions set forth in the Enforcement Decree of the FISCMA and Regulations on Financial Investment Business apply. For instance, additional issuance is permitted where the existing investors are granted preemptive rights to subscribe to additional collective investment securities to be newly issued by the Closed-End REF in proportion to their holding ratios of collective investment securities.
- For reference, while the foregoing restriction on additional issuance does not apply to private real estate collective investment vehicles (the “Private REF”) which are reserved for professional investors (not general investors), in practice, private real estate collective investment vehicles are established and managed subject to such restriction and additional issuance is permitted under exceptional circumstances.

B. Issues regarding the Interpretation of the Enforcement Decree of the FISCMA

- Regarding the interpretation of the language “existing investors are granted preemptive rights to subscribe to additional collective investment securities to be newly issued by the Closed-End REF in proportion to their holding

ratios of collective investment securities,” there were disagreements over whether the new collective investment securities may be issued to a third party other than existing investors in the event one of the existing investors has lost its preemptive right.

C. Amendment to the Regulations on Financial Investment Business and its Implications

- In order to resolve the disagreements over the interpretation of the aforesaid language, the Financial Services Commission amended the Regulations on Financial Investment Business on August 30, 2022 by adding a new Paragraph 1 to Article 7-21 of the Regulations on Financial Investment Business, which is set forth below:
- The amendment clarified that a third party other than the existing investors can participate in the additional issuance of collective investment securities by the Closed-End REF to the extent that there are new collective investment securities which were not purchased by the existing investors entitled to exercise the preemptive rights.

2. Calculation of the Number of Investors in Private REF

A. Rules for aggregating the number of investors in Private REF

- The total number of investors in a Private REF under the FISCMA must be 100 or less (among them, general investors must be 49 or less), and in determining the total number of investors in the Private REF, if another collective investment vehicle acquires 10% or more of the total collective investment securities of that Private REF, the number of investors in the other collective investment vehicle is added to the number of investors in the Private REF.
- However, if the ‘other collective investment vehicle’ above is one of the following, the number of its investors is not added to the number of investors in the Private REF:
 - (i) private collective investment vehicle of collective investment vehicles pursuant to Article 80(1)5-2 of the Enforcement Decree of the FISCMA, (ii) real estate and special asset collective investment vehicle of collective investment vehicles pursuant to Article 80(1)5-3 of the Enforcement Decree of the FISCMA, and (iii) retail REIT of collective investment vehicles the sum of whose investments in any of the collective investment vehicles set forth in Article 80(1)5-3 of the Enforcement Decree of the FISCMA, including ‘general private collective investment vehicle investing more than 50% of its total assets in real estate or special assets (collectively, the “**Excluded REF**”).

B. Amendment of the Enforcement Decree of the FISCMA with respect to investment targets of retail real estate collective investment vehicle of collective investment vehicles and retail REIT of collective investment vehicles

- Prior to the amendment of Item C of Article 80(1)5-3 of the Enforcement Decree of the FISCMA on August 30, 2022, it was not clear, in interpreting the clause ‘general private collective investment vehicle investing more than 50% of its total assets in real estate or special assets,’ whether ‘real estate’ included not only physical real properties but also securities related to real estate.
- With the amendment of the Enforcement Decree of the FISCMA on August 30, 2022, the term ‘real estate’ above was changed to “real estate under Article 229(2) of the FISCMA”, making it clear that general private collective

investment vehicle that invests more than 50% of its total assets in real estate, including securities related to real estate, are also included in the Excluded REF. For your information, real estate under Article 229(2) of the FISCMA includes physical real properties as well as securities related to real estate.

- As a result, the investment targets of retail real estate collective investment vehicle fund of collective investment vehicles and retail REIT of collective investment vehicles, to which the above rule concerning the exclusion of the number of investors applies, have been expanded to include general private collective investment vehicle investing more than 50% of its total assets in real estate, including real estate-related securities.

[\[Korean version\]](#) 환매금지형 펀드의 추가 설정 및 사모펀드의 투자자수 산정 등에 관한 자본시장법 관련 법령 개정 해설

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