

# **Financial Instruments and Exchange Act (Tentative translation)**

(Act No. 25 of April 13, 1948)

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## **Chapter I General Provisions**

(Purpose)

Article 1 The purpose of this Act is to ensure fairness in, inter alia, the issuance of Securities and transactions of Financial Instruments, etc. and to facilitate the smooth distribution of Securities, as well as to achieve fair price formation for Financial Instruments, etc. through the full utilization of the functions of the capital markets, by, inter alia, streamlining systems for the disclosure of corporate affairs, specifying the necessary particulars relevant to persons conducting Financial Instruments Business, and ensuring the appropriate operation of Financial Instruments Exchanges, thereby contributing to the sound development of the national economy and the protection of investors.

(Definitions)

Article 2 (1) The term "Securities" as used in this Act means the following:

- (i) national government bonds;
- (ii) municipal bonds;
- (iii) debentures issued by a corporation pursuant to a special Act (excluding those set forth in the following item and item (xi));
- (iv) specified corporate bonds prescribed in the Act on the Securitization of Assets (Act No. 105 of 1998);
- (v) corporate bond certificates (including those issued by a mutual company; the same applies hereinafter);
- (vi) investment securities issued by a corporation incorporated pursuant to a special Act (excluding those set forth in the following item, item (viii) and item (xi));
- (vii) preferred equity investment certificates prescribed in the Act on Preferred Equity Investment by Cooperative Financial Institutions (Act No. 44 of 1993; hereinafter referred to as the "Act on Preferred Equity Investment");
- (viii) preferred equity securities and securities indicating a right to subscribe for preferred equity which are prescribed in the Act on the Securitization of Assets;
- (ix) share certificates and share option certificates;
- (x) beneficiary certificates of an investment trust or foreign investment trust which are prescribed in the Act on Investment Trusts and Investment Corporations (Act No. 198 of 1951);
- (xi) investment securities, investment equity subscription right certificates, or investment corporation bond certificates or foreign investment securities prescribed in the Act on Investment Trusts and Investment Corporations;
- (xii) beneficiary certificates of loan trusts;
- (xiii) beneficiary certificates of special purpose trusts prescribed in the Act on the Securitization of Assets;
- (xiv) beneficiary certificates of beneficiary certificate-issuing trusts prescribed in the Trust Act (Act No. 108 of 2006);
- (xv) promissory notes specified by Cabinet Office Ordinance which have been issued by a corporation in order to raise the funds necessary for business;
- (xvi) mortgage securities prescribed in the Mortgage Securities Act (Act No. 15 of 1931);
- (xvii) securities or certificates issued by a foreign state or foreign person, and which have the nature of the securities and certificates set forth in items (i) to (ix) inclusive or item (xii) to the preceding item inclusive (excluding those specified in the following item);
- (xviii) securities or certificates which are specified by Cabinet Office Ordinance,

- which are issued by a foreign person, and which indicate a beneficial interest in a trust that holds the loan claims of a person operating in the banking business or a person otherwise providing money loans on a regular basis, or indicate any other similar rights;
- (xix) securities or certificates that indicate the right to a transaction specified in paragraph (21), item (iii) which is conducted on a Financial Instruments Market, in accordance with the standards and means prescribed by the person operating the Financial Instruments Market, right to a transaction that is conducted on a foreign Financial Instruments Market (meaning a foreign Financial Instruments Market provided for in paragraph (8), item (iii), sub-item (b); hereinafter the same applies in this item) and which is similar to the transaction specified in paragraph (21), item (iii) (excluding those pertaining to Financial Instruments (limited to those listed in paragraph (24), item (iii)-2) or Financial Indicators (limited to the prices of said Financial Instruments and the figures calculated based thereon), or the right to a transaction specified in paragraph (22), item (iii) or (iv) which is conducted in neither a Financial Instruments Market nor a foreign Financial Instruments Market (such rights are hereinafter referred to as "Options");
  - (xx) securities or certificates which the person with whom securities or certificates set forth in the preceding items has been deposited issues in a state other than the state in which the deposited securities or certificates were issued, and which indicate a right to the deposited securities or certificates; and
  - (xxi) securities or certificates other than those set forth in the preceding items, which are specified by Cabinet Order as those with regard to which, in consideration of transferability and other factors, it is found to be necessary to ensure the public interest or the protection of investors.
- (2) The rights that must be indicated on Securities set forth in items (i) to (xv) inclusive of the preceding paragraph, on Securities set forth in item (xvii) of that paragraph (excluding those with the nature of Securities set forth in item (xvi) of that paragraph), and on Securities set forth in item (xviii) of that paragraph; and the rights that must be indicated on the Securities set forth in item (xvi) of that paragraph, Securities set forth in item (xvii) of that paragraph (limited to those with the nature of Securities set forth in item (xvi) of that paragraph), and Securities set forth in items (xix) to (xxi) inclusive of that paragraph which are specified by Cabinet Office Ordinance (hereinafter collectively referred to as "Rights That Must Be Indicated on Securities" in this and the following paragraphs) are deemed to be the Securities indicating these rights even if Securities indicating these rights have not been issued; the Electronically Recorded Monetary Claims (meaning the Electronically Recorded Monetary Claims set forth in Article 2, paragraph (1) of the

Electronically Recorded Monetary Claims Act (Act No. 102 of 2007); hereinafter the same applies in this paragraph) specified by Cabinet Order as those which, in consideration of transferability and other circumstances, it is found to be necessary to deem corporate bond certificates or any other Securities specified in the items of the preceding paragraph (referred to as the "Specified Electronically Recorded Monetary Claims" in item (vii) and the following paragraph), are deemed to be such Securities; the rights set forth in the following items are deemed to be the relevant Securities even if they are not rights which must be indicated on securities or certificates; and the provisions of this Act apply:

- (i) a beneficial interest in a trust (excluding a beneficial interest that must be indicated on the beneficiary certificates of an investment trust specified in item (x) of the preceding paragraph and a beneficial interest that must be indicated on Securities set forth in any of items (xii) to (xiv) inclusive of that paragraph);
- (ii) rights that are claimable against a foreign person and which have the nature of the rights specified in the preceding item (excluding rights that must be indicated on the beneficiary certificates of a foreign investment trust specified in item (x) of the preceding paragraph and rights that must be indicated on Securities set forth in item (xvii) or item (xviii) of that paragraph);
- (iii) the membership rights of a general partnership company or limited partnership company (limited to rights specified by Cabinet Order) or membership rights of a limited liability company;
- (iv) the membership rights of a foreign corporation which have the nature of rights specified in the preceding item;
- (v) among the rights based on a partnership contract provided for in Article 667, paragraph (1) of the Civil Code (Act No. 89 of 1896), a silent partnership agreement provided for in Article 535 of the Commercial Code (Act No. 48 of 1899), a limited partnership agreement for investment provided for in Article 3, paragraph (1) of the Limited Partnership Act for Investment (Act No. 90 of 1998), or a limited liability partnership agreement provided for in Article 3, paragraph (1) of the Limited Liability Partnership Act (Act No. 40 of 2005), membership rights in an incorporated association or other rights (excluding rights based on foreign laws and regulations) the holder of which (hereinafter referred to as an "Equity Holder" in this item) can receive dividends of profits arising from business that is conducted using the money (including anything specified by Cabinet Order as being similar to money) invested or contributed by the Equity Holder (such business is hereinafter referred to as "Invested Business" in this item) or a distribution of the assets of the Invested Business, which do not fall under one of the following



- categories (excluding rights that must be indicated on Securities set forth in the items of the preceding paragraph and rights deemed to be Securities pursuant to the provisions of this paragraph (excluding this item)):
- (a) rights of an Equity Holder in cases specified by Cabinet Order as those in which all of the Equity Holders participate in the Invested Business;
  - (b) rights of an Equity Holder, if it is provided that Equity Holders will not receive dividends of profits or a distribution of the assets of the Invested Business in an amount exceeding the amount invested or contributed by them (excluding rights set forth in sub-item (a));
  - (c) rights based on an insurance contract in which a person that engages in the insurance business prescribed in Article 2, paragraph (1) of the Insurance Business Act (Act No. 105 of 1995) is the insurer, a mutual aid contract concluded with a cooperative prescribed in Article 5 of the Agricultural Cooperatives Act (Act No. 132 of 1947) which engages in the services prescribed in Article 10, paragraph (1), item (x) of that Act, a mutual aid contract concluded with a cooperative prescribed in Article 4 of the Consumer Cooperatives Act (Act No. 200 of 1948) which engages in the mutual aid services prescribed in Article 10, paragraph (2) of that Act, a mutual aid contract concluded with a cooperative prescribed in Article 2 of the Fisheries Cooperatives Act (Act No. 242 of 1948) which engages in the services prescribed in Article 11, paragraph (1), item (xi), Article 93, paragraph (1), item (vi)-2 or Article 100-2, paragraph (1), item (i) of that Act, a mutual aid contract concluded with a cooperative prescribed in Article 3 of the Small and Medium-Sized Enterprise Cooperatives Act (Act No. 181 of 1949) which engages in the mutual aid services prescribed in Article 9-2, paragraph (7) of that Act, or a specified joint real estate venture contract prescribed in Article 2, paragraph (3) of the Specified Joint Real Estate Ventures Act (Act No. 77 of 1994) (excluding rights set forth in sub-items (a) and (b)); or
  - (d) rights other than those set forth in sub-items (a) to (c) inclusive, which are specified by Cabinet Order as rights in connection with which there is found to be no compromise to the public interest or to the protection of Equity Holders even if the rights are not deemed to be Securities;
  - (vi) rights based on foreign laws and regulations which are similar to those specified in the preceding item; or
  - (vii) rights other than Specified Electronically Recorded Monetary Claims and the rights set forth in the preceding items, which are specified by Cabinet Order as rights in connection with which it is found that, in consideration of their economic nature being similar to Securities prescribed in the preceding paragraph and rights set forth in the preceding items and in consideration of other circumstances, it is necessary and appropriate to ensure the public

interest or the protection of investors, by deeming these rights to be Securities.

(3) The term "Public Offering of Securities" as used in this Act means, among solicitations of offers to acquire newly issued Securities (including acts specified by Cabinet Office Ordinance as being similar to such solicitation (such acts are referred to as "Acts Similar to Solicitation of Offers to Acquire" in the following paragraph); hereinafter referred to as "Solicitation of Offers to Acquire"), the Solicitation of Offers to Acquire in cases provided for in item (i) or item (ii) below, which is issued with regard to Securities set forth in paragraph (1), Rights That Must Be Indicated on Securities, or Specified Electronically Recorded Monetary Claims that are deemed to be Securities under the preceding paragraph (such Securities or rights are referred to as "Article 2 (1) Securities" in the following paragraph, paragraph (6) of this Article, paragraphs (4) and (5) of the following Article, and Article 23-13, paragraph (4)); and the Solicitation of Offers to Acquire in cases provided for in item (iii) below, which is issued with regard to rights that are deemed to be Securities under the items of the preceding paragraph (such rights are referred to as "Article 2 (2) Securities" in the following paragraph, paragraphs (4) and (5) of the following Article, and Article 23-13, paragraph (4)); the term "Private Placement of Securities" means Solicitation of Offers to Acquire which does not come within the purview of a Public Offering of Securities:

- (i) cases specified by Cabinet Order as those in which the Solicitation of Offers to Acquire is issued (unless the solicitation is issued only to Professional Investors) to a large number of persons (other than Qualified Institutional Investors (meaning persons specified by Cabinet Office Ordinance as having expert knowledge of and experience with investment in Securities; the same applies hereinafter), if Qualified Institutional Investors are included in the persons to which the Solicitation of Offers to Acquire is issued, and the Solicitation of Offers to Acquire constitutes a case specified by Cabinet Order as one in which there is little likelihood of the relevant Securities being transferred from the Qualified Institutional Investor that acquires them to any person other than a Qualified Institutional Investor);
- (ii) cases in which the Solicitation of Offers to Acquire is other than as specified in the preceding item, and in which it does not fall under any of the following sub-items:
  - (a) a Solicitation of Offers to Acquire issued only to Qualified Institutional Investors and constituting a case specified by Cabinet Order as one in which there is little likelihood of the relevant Securities being transferred from the person that acquires them to any person other than a Qualified Institutional Investor; and
  - (b) a Solicitation of Offers to Acquire issued only to Professional Investors

and falling under all of the following requirements (excluding the cases specified in sub-item (a)):

1. the other party to the Solicitation of Offers to Acquire is not the State, the Bank of Japan, or a Qualified Institutional Investor, and the Solicitation of Offers to Acquire is issued by a Financial Instruments Business Operator, etc. (meaning a Financial Instruments Business Operator, etc. as prescribed in Article 34; the same applies in the following paragraph, Article 4, paragraph (1), item (iv) and paragraph (3), Article 27-32-2, and Article 27-34-2) based on entrustment by customers or on its own behalf;
  2. the Solicitation of Offers to Acquire comes under the purview of cases specified by Cabinet Order as those in which there is little likelihood of the relevant Securities being transferred from the person that acquires them to any person other than a Professional Investor, etc. (meaning a Professional Investor or Non-Resident (meaning a non-resident as defined in Article 6, paragraph (1), item (vi) of the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949)), and limited to those specified by Cabinet Order; the same applies hereinafter).
- (c) a Solicitation of Offers to Acquire falling under neither the case specified in the preceding item, nor sub-items (a) and (b) of this item (except if the Solicitation of Offers to Acquire meets the requirements that are specified by Cabinet Order in consideration of the status, etc. of the issuance and solicitation of Securities of the same class as the relevant Securities), and constituting a case specified by Cabinet Order as one in which there is little likelihood of the relevant Securities being held by a large number of persons.
- (iii) cases specified by Cabinet Order as those in which, in response to the Solicitation of Offers to Acquire, a considerably large number of persons will come to hold the Securities connected with the solicitation.
- (4) The term "Secondary Distribution of Securities" as used in this Act means, among offers to sell and solicitation of offers to purchase already-issued Securities (excluding offers and solicitation coming under the purview of Acts Similar to the Solicitation of Offers to Acquire and any other offer or solicitation specified by Cabinet Office Ordinance; hereinafter referred to as an "Offer to Sell, etc."), Offers to Sell, etc. in cases provided for in item (i) or item (ii), which are made with regard to Article 2 (1) Securities; and Offers to Sell, etc. in cases provided for in item (iii), which are made with regard to Article 2 (2) Securities (excluding an Offer to Sell, etc. that involves the purchase and sale of Securities on a Financial Instruments Exchange Market, a transaction equivalent thereto, and any other Securities transactions specified by Cabinet Order):

- (i) cases specified by Cabinet Order as those in which the Offer to Sell, etc. is made (unless the offer is made only to Professional Investors) to a large number of persons (other than Qualified Institutional Investors, if Qualified Institutional Investors are included in the persons to which the Offer to Sell, etc. is made, and if the Offer to Sell, etc. constitutes a case specified by Cabinet Order as one in which there is little likelihood of the relevant Securities being transferred from the Qualified Institutional Investor that acquires them to any person other than a Qualified Institutional Investor);
  - (ii) cases in which the Offer to Sell, etc. is other than as specified in the preceding item, and in which it does not fall under any of the following sub-items:
    - (a) an Offer to Sell, etc. made only to Qualified Institutional Investors and constituting a case specified by Cabinet Order as one in which there is little likelihood of the relevant Securities being transferred from the person that acquires them to any person other than a Qualified Institutional Investor;
    - (b) an Offer to Sell, etc. made only to Professional Investors and falling under all of the following requirements (excluding the cases specified in sub-item (a)):
      - 1. the other party to the Offer to Sell, etc. is not the State, the Bank of Japan, or a Qualified Institutional Investor, and the Offer to Sell, etc. is made by a Financial Instruments Business Operator, etc. based on entrustment by a customer or on its own behalf;
      - 2. the Offer to Sell, etc. comes under the purview of cases specified by Cabinet Order as those in which there is little likelihood of the relevant Securities being transferred from the person that acquires them to any person other than a Professional Investor, etc.
    - (c) an Offer to Sell, etc. falling under neither the case specified in the preceding item, nor sub-items (a) and (b) of this item (except if the Offer to Sell, etc. meets the requirements that are specified by Cabinet Order in consideration of the status, etc. of the issuance and solicitation of Securities of the same class as the relevant Securities), and constituting a case specified by Cabinet Order as one in which there is little likelihood of the relevant Securities being held by a large number of persons.
  - (iii) cases specified by Cabinet Order as those in which, in response to the Offer to Sell, etc., a considerably large number of persons will come to hold the Securities connected with the offer.
- (5) The term "Issuer" as used in this Act means the person that issues, or seeks to issue, Securities (or the person specified by Cabinet Office Ordinance with regard to the Securities specified by Cabinet Office Ordinance); and rights other than those which must be indicated on securities or certificates, but

which are deemed to be Securities pursuant to paragraph (2), are deemed to have been issued as Securities by the person specified by Cabinet Office Ordinance for each kind of right, at the time specified by Cabinet Office Ordinance.

(6) The term "Underwriter" as used in this Act (excluding Chapter V) means a person that, at the time of a Public Offering, Secondary Distribution, or Private Placement of Securities, or the time of an exclusive Offer to Sell, etc. to Professional Investors (meaning an Offer to Sell, etc. Article 2 (1) Securities which falls under paragraph (4), item (ii), sub-item (b) (excluding an Offer to Sell, etc. involving the purchase and sale of Securities on a Financial Instruments Exchange Market, a transaction equivalent thereto, and any other transaction of Securities specified by Cabinet Order; the same applies hereinafter) involving Securities, does either of the things set forth in the following items:

- (i) acquires all or part of the relevant Securities with the aim of having other persons acquire them; or
- (ii) concludes a contract stipulating that if no other person acquires all or part of the relevant Securities, the Underwriter will acquire those that remain.
- (iii) in cases where the Securities are share option certificates (including the Securities specified by Cabinet Office Ordinance as being equivalent thereto; hereinafter the same shall apply in this item), the person who acquired said share option certificates concludes a contract to acquire, when he/she does not exercise share options (including the rights specified by Cabinet Office Ordinance as being equivalent thereto; hereinafter the same shall apply in this item) for all or part of said share option certificates, the share option certificates pertaining to said unexercised share options in order for said person or a third party to exercise said share options.

(7) The term "Securities Registration Statement" as used in this Act means the statement referred to in Article 5, paragraph (1) (including as applied mutatis mutandis pursuant to Article 5, paragraph (5); the same applies hereinafter), documents accompanying it pursuant to Article 5, paragraph (13), and any amended statement as under Article 7, paragraph (1), Article 9, paragraph (1) or Article 10, paragraph (1).

(8) The term "Financial Instruments Business" as used in this Act means performance of any of the following acts (excluding those that are specified by Cabinet Order as acts which, in consideration of their content and other factors, are found not to compromise the protection of investors, and the acts set forth in item (xii), (xiv), and (xv) of this paragraph and in the items of Article 28, paragraph (8), when performed by a bank, a Cooperative Financial Institution defined in Article 2, paragraph (1) of the Act on Preferred Equity Investment (hereinafter referred to as a "Cooperative Financial Institution") or other

financial institution specified by Cabinet Order) on a regular basis:

- (i) the purchase and sale of Securities (excluding those falling under the category of Derivatives Transactions; the same applies hereinafter), Market Transactions of Derivatives(excluding Market Transactions of Derivatives pertaining to Financial Instruments (limited to those listed in paragraph (24), item (iii)-2) or Financial Indicators (limited to the prices of said Financial Instruments and the figures calculated based thereon) (hereinafter referred to as "Commodity-Related Market Transactions of Derivatives")) or Foreign Market Derivatives Transaction (excluding the purchase and sale of Securities falling under item (x));
- (ii) intermediation, brokerage (excluding Brokerage for Clearing of Securities, etc.), or agency for the purchase and sale of Securities, Market Transactions of Derivatives, or Foreign Market Derivatives Transactions (excluding intermediation, brokerage, or agency for the purchase and sale of Securities which falls under item (x));
- (iii) intermediation, brokerage, or agency for entrustment of the following transactions:
  - (a) the purchase and sale of Securities or Market Transactions of Derivatives on a Financial Instruments Exchange Market;
  - (b) the purchase and sale of Securities or Foreign Market Derivatives Transactions on a foreign Financial Instruments Market (meaning a market in a foreign state which is similar to a Financial Instruments Exchange Market; the same applies hereinafter).
- (iv) Over-the-Counter Transactions of Derivatives of Derivatives or intermediation, brokerage (excluding Brokerage for Clearing of Securities, etc.), or agency for it (hereinafter referred to as "Over-the-Counter Transactions of Derivatives, etc.");
- (v) Brokerage for Clearing of Securities, etc.;
- (vi) the underwriting of Securities (meaning doing any of the things set forth in an item of paragraph (6) at the time of a Public Offering, Secondary Distribution, Private Placement of Securities, or exclusive Offer to Sell, etc. to Professional Investors);
- (vii) the Public Offering or Private Placement of Securities (limited to those set forth in the following items):
  - (a) beneficiary certificates of investment trusts specified in paragraph (1), item (x) which are connected to the beneficial interest in an Investment Trust Managed Under Instructions from the Settlor provided for in Article 2, paragraph (1) of the Act on Investment Trusts and Investment Corporations;
  - (b) beneficiary certificates of foreign investment trusts specified in paragraph (1), item (x);

- (c) Securities specified in paragraph (1), item (xvi);
- (d) Securities specified in paragraph (1), item (xvii) which have the nature of Securities specified in item (xvi) of that paragraph;
- (e) rights that must be indicated on the Securities specified in sub-item (a) or sub-item (b) above, or rights that must be indicated on the Securities under sub-item (c) or sub-item (d) above which are specified by Cabinet Office Ordinance, which are deemed to be Securities pursuant to paragraph (2);
- (f) rights specified in paragraph (2), item (v) or item (vi) which are deemed to be Securities pursuant to that paragraph; and
- (g) the Securities other than those set forth in sub-items (a) to (f) inclusive which are specified by Cabinet Order.
- (viii) Secondary Distribution of Securities or exclusive Offer to Sell, etc. to Professional Investors;
- (ix) the handling of a Public Offering or Secondary Distribution of Securities, or the handling of a Private Placement of Securities or exclusive Offer to Sell, etc. to Professional Investors;
- (x) the purchase and sale of Securities or intermediation, brokerage, or agency for it, using an electronic data processing system, conducted through any of the following price formation methods or other similar methods, with a large number of persons participating simultaneously as parties on one side of the transaction or as parties on both sides of the transaction (excluding those specified by Cabinet Order as transactions that are found to be inappropriate in terms of investor protection if conducted outside a Financial Instruments Exchange Market or an Over-the-Counter Securities Market (meaning an Over-the-Counter Securities Market provided for in Article 67, paragraph (2)));
  - (a) by auction (but only if the trading volume of Securities does not exceed the criteria specified by Cabinet Order);
  - (b) for Securities listed on a Financial Instruments Exchange, by using the trading price of the Securities on the Financial Instruments Exchange Market that is operated by the relevant Financial Instruments Exchange;
  - (c) for Securities registered under Article 67-11, paragraph (1) (hereinafter referred to as "Over-the-Counter Traded Securities"), by using the trading price of the Securities which is published by the Authorized Financial Instruments Firms Association to which the Securities are registered;
  - (d) by using the price decided by negotiation between the customers; and
  - (e) methods other than those set forth in sub-item (a) to (d) inclusive, which are specified by Cabinet Office Ordinance.
- (xi) conclusion of a contract in which one of the parties promises to provide the other party with oral, written (excluding newspapers, magazines, books, or any other written work that is issued for sale to many and unspecified

persons and which many and unspecified persons can buy as needed), or any other form of advice about the following things, and the other party promises to pay remuneration for this (such a contract is hereinafter referred to as an "Investment Advisory Contract"), and provision of advice under such Investment Advisory Contract;

- (a) the value, etc. of Securities (meaning the value of Securities, the amount receivable for Options on Securities (meaning the right to conduct a transaction provided for in Article 28, paragraph (8), item (iii), sub-item (c) on a Financial Instruments Market in accordance with the standards and means prescribed by the person operating the Financial Instruments Market, the right to conduct a transaction similar to the transaction provided for in Article 28, paragraph (8), item (iii), sub-item (c) on a foreign Financial Instruments Market, or the right to conduct a transaction set forth in item (iv), sub-item (c) or sub-item (d) of that paragraph without using a Financial Instruments Market or foreign Financial Instruments Market), and the movement of Securities indicators (meaning the price or interest rate of Securities and anything else specified by Cabinet Office Ordinance as being equivalent thereto, or figures calculated based thereon)); or
- (b) investment decisions (meaning decisions on the classes, issues, volumes, or prices of Securities targeted for investment, as well as whether the Securities are purchased or sold and by what method and at what timing, and decisions on what should be the contents and timing of any Derivatives Transactions that are conducted; the same applies hereinafter) based on an analysis of the values, etc. of Financial Instruments (meaning the value of Financial Instruments(in the case of those listed in paragraph (xxiv), item (iii)-2, limited to those listed on a Financial Instruments Exchange), amount receivable for Options, and movement of Financial Indicators(in the case of those pertaining to the Financial Instruments listed in that item, limited to those listed on a Financial Instruments Exchange); the same applies hereinafter).
- (xii) conclusion of the following contracts, and the management of money or any other property (including instructions for that management; the same applies hereinafter), based on such contract, as an investment in Securities or in rights connected with Derivatives Transactions, based on investment decisions that are grounded in an analysis of the values, etc. of Financial Instruments;
  - (a) an entrustment contract for the asset management provided for in Article 188, paragraph (1), item (iv) of the Act on Investment Trusts and Investment Corporations, concluded with a registered investment corporation as defined in Article 2, paragraph (13) of that Act; or



- (b) a contract other than what is set forth in sub-item (a), in which one of the parties is fully or partly entrusted by the other party with the discretion to make investment decisions based on an analysis of the values, etc. of Financial Instruments, and is also entrusted with the authority necessary to make investments on behalf of the other party based on such investment decisions (such a contract is hereinafter referred to as a "Discretionary Investment Contract").
- (xiii) agency or intermediation for the conclusion of an Investment Advisory Contract or a Discretionary Investment Contract;
- (xiv) the management (excluding management that falls under the category of act set forth in (xii)) of money or other property contributed by a person that holds rights indicated on the Securities specified in paragraph (1), item (x) or other rights specified by Cabinet Order, as an investment in Securities or in rights connected with Derivatives Transactions, based on investment decisions that are grounded in an analysis of the values, etc. of Financial Instruments;
- (xv) the management (excluding management that falls under the category of act set forth in (xii)) of money or other property invested or contributed by a person that holds the following rights or other rights specified by Cabinet Order, as an investment mainly in Securities or in rights connected with Derivatives Transactions, based on investment decisions that are grounded in an analysis of the values, etc. of Financial Instruments;
  - (a) rights indicated on the Securities specified in paragraph (1), item (xiv) or Securities specified in item (xvii) of that paragraph (limited to those that have the nature of the Securities specified in item (xiv) of that paragraph);
  - (b) rights set forth in paragraph (2), item (i) or (ii); or
  - (c) rights set forth in paragraph (2), item (v) or (vi).
- (xvi) the acceptance of deposits of money or securities or the certificates set forth in the items of paragraph (1) from customers, in connection with an act set forth in items (i) to (x) inclusive of this paragraph (in the case of conducting the acts listed in item (ii), (iii) or (v) pertaining to Commodity-Related Market Transactions of Derivatives, including acceptance from the customer of deposits of commodities (meaning those listed in paragraph (24), item (iii)-2; hereinafter the same shall apply in this item), or securities or certificates issued pertaining to the deposited commodity in relation to these acts);
- (xvii) the transfer of bonds, etc. in response to the opening of an account in order to carry out a transfer of the bonds, etc. defined in Article 2, paragraph (1) of the Act on Transfer of Corporate Bonds, etc. (Act No. 75 of 2001); or
- (xviii) acts specified by Cabinet Order as being similar to the acts set forth in the preceding items.

- (9) The term "Financial Instruments Business Operator " as used in this Act means a person registered by the Prime Minister pursuant to Article 29.
- (10) The term "Prospectus" as used in this Act means a document describing the business and other particulars of an Issuer of Securities, which is prepared for a Public Offering or Secondary Distribution of Securities, a General Solicitation for Involving Securities Acquired by a Qualified Institutional Investor as defined in Article 4, paragraph (2) (excluding those falling under the category of Secondary Distribution of Securities), or a General Solicitation Involving Securities Acquired by a Professional Investor as set forth in Article 4, paragraph (3) (excluding those falling under the category of a Secondary Distribution of Securities), and which is delivered, or is to be delivered upon request, to the other party to the Public Offering or Secondary Distribution.
- (11) The term "Financial Instruments Intermediary Service" as used in this Act means services that fall under the category of any of the following acts (excluding the act provided for in item (iv) below if performed by a person engaged in Investment Management Business as defined in Article 28, paragraph (4)), which are provided for and under entrustment from a Financial Instruments Business Operator (limited to a person that engages in the Type I Financial Instruments Business provided for in Article 28, paragraph (1) or Investment Management Business provided for in Article 28, paragraph (4)) or a registered financial institution (meaning a bank, Cooperative Financial Institution, or other financial institution specified by Cabinet Order, which is registered as under Article 33-2; the same applies hereinafter):
- (i) intermediation for the purchase and sale of Securities (excluding intermediation set forth in paragraph (8), item (x));
  - (ii) the intermediation set forth in paragraph (8), item (iii);
  - (iii) the act set forth in paragraph (8), item (ix); or
  - (iv) the intermediation set forth in paragraph (8), item (xiii).
- (12) The term "Financial Instruments Intermediary Service Provider" as used in this Act means a person registered by the Prime Minister pursuant to Article 66.
- (13) The term "Authorized Financial Instruments Firms Association" as used in this Act means a person incorporated based on the provisions of Chapter IV, Section 1, Subsection 1.
- (14) The term "Financial Instruments Market" as used in this Act means a market on which the purchase and sale of Securities or Market Transactions of Derivatives are conducted. (excluding a market in which only Commodity-Related Market Transactions of Derivatives are conducted)
- (15) The term "Financial Instruments Incorporated Association" as used in this Act means a membership association incorporated based on the provisions of Chapter V, Section 2, Subsection 1 for the purpose of operating a Financial

Instruments Market.

- (16) The term "Financial Instruments Exchange" as used in this Act means a Financial Instruments Incorporated Association or stock company which operates a Financial Instruments Market after being licensed by the Prime Minister pursuant to Article 80, paragraph (1).
- (17) The term "Financial Instruments Exchange Market" as used in this Act means a Financial Instruments Market operated by a Financial Instruments Exchange.
- (18) The term "Financial Instruments Exchange Holding Company" as used in this Act means a stock company whose Subsidiary Companies (meaning a Subsidiary Company as set forth in Article 87-3, paragraph (3)) include a stock company that operates a Financial Instruments Exchange Market (hereinafter referred to as a "Stock Company-Operated Financial Instruments Exchange"), which is incorporated after obtaining the authorization of the Prime Minister pursuant Article 106-10, paragraph (1) or which has obtained the authorization of the Prime Minister pursuant to that paragraph or the proviso to paragraph (3) of that Article.
- (19) The term "Trading Participant" as used in this Act means a person that is allowed to participate in the purchase and sale of Securities or Market Transactions of Derivatives on a Financial Instruments Exchange Market, based on a trading license under Article 112, paragraph (1) paragraph (2), or Article 113, paragraph (1) or paragraph (2).
- (20) The term "Derivatives Transactions" as used in this Act means Market Transaction of Derivatives, Over-the-Counter Transactions of Derivatives or Foreign Market Derivatives Transaction.
- (21) The term "Market Transactions of Derivatives" as used in this Act means the following transactions as conducted on a Financial Instruments Market in compliance with the standards and means prescribed by the person that operates the Financial Instruments Market:
  - (i) a transaction comprising a purchase and sale in which the parties promise to deliver and take delivery of a Financial Instrument and its value at a fixed time in the future, which the parties may settle by delivering and taking delivery of the difference in values if they sell or buy back the underlying Financial Instrument;
  - (ii) a transaction comprising the parties' promises to pay and receive an amount of money calculated based on the difference between the numerical value of a Financial Indicator upon which the parties agree in advance (hereinafter referred to as the "Agreed Figure") and the actual numerical value of the Financial Indicator at a fixed time in the future (hereinafter referred to as the "Actual Figure");
  - (iii) a transaction comprising the first party's promise to grant the second

party the option of effecting one of the following transactions between them by a unilateral manifestation of the second party's intention alone, and the second party's promise to pay the value of that option:

- (a) the purchase and sale of Financial Instruments (excluding a transaction provided for in item (i)); or
  - (b) a transaction provided for in one of the preceding two items or in the following item to item (vi) inclusive (including any transaction designated by the Financial Instruments Exchange that is equivalent to a transaction specified in the preceding item or item (iv)-2).
- (iv) a transaction comprising the parties' mutual promise that, for the amount of money they have set as the principal, the first party will pay money to the second based on the rate of change in the interest rate, etc. (meaning the interest rate or any other rate specified by Cabinet Office Ordinance as being equivalent thereto; the same applies hereinafter) of an agreed-upon Financial Instrument (excluding those set forth in Article 2, paragraph (24), item (iii) and item (iii)-2) or based on the rate of change in an agreed-upon Financial Indicator (excluding interest rates, etc. of Financial Instruments (excluding those set forth in Article 2, paragraph (24), item (iii) and item (iii)-2) and figures calculated based on them; hereinafter the same applies in this item and item (v) of the following paragraph) during the period they have agreed to, and the second party will pay money to the first based on the rate of change in the interest rate, etc. of an agreed-upon Financial Instrument (excluding those set forth in these items) or based on the rate of change in an agreed-upon Financial Indicator during the period they have agreed to (including transactions in which the parties promise that, in addition to paying such amounts, they will also pay or deliver and receive money or Financial Instruments equivalent to the amount they have set as the principal);
- (iv)-2 transactions wherein the parties mutually promise that, for the Financial Instruments (limited to those listed in paragraph (24), item (iii)-2; hereinafter the same shall apply in this item) of the quantity the parties have agreed to, one of the parties will pay the amount of money calculated based on the rate of change in the agreed period of a Financial Indicator pertaining to said Financial Instruments agreed with the other party, and the other party will pay the amount of money calculated based on the rate of change in the agreed period of said Financial Indicator agreed with the former party;
- (v) a transaction comprising the first party's promise to pay money to the second, and the second party's promise to pay money to the first if one of the following causes that the parties have stipulated in advance occurs (including transactions comprising the first party's promise to transfer a

- Financial Instrument, the rights connected to a Financial Instrument, or a monetary claim (other than a claim that constitutes a Financial Instrument or the rights connected to a Financial Instrument), but excluding transactions set forth in item (ii) to the preceding item):
- (a) a cause involving the credit status of a corporation or other similar cause as specified by Cabinet Order; or
  - (b) a cause on whose occurrence it is impossible or extremely difficult for either party to exert an influence, and which is specified by Cabinet Order as something that may have material impact on the business activities of the parties or other business persons or firms (excluding causes specified in sub-item (a)).
- (vi) transactions similar to a transaction set forth in the preceding items and specified by Cabinet Order.
- (22) The term "Over-the-Counter Transactions of Derivatives" as used in this Act means the following transactions as conducted neither on a Financial Instruments Market nor on a foreign Financial Instruments Market (except those that are specified by Cabinet Order as transactions which, in consideration of their content and other related factors, are found not to compromise the public interest or the protection of investors).
- (i) a transaction comprising a purchase and sale in which the parties to the purchase and sale promise to deliver and take delivery of a Financial Instrument (other than one set forth in paragraph (24), item (iii)-2 and item (v); the same applies in item (iii) and item (vi)) and its value at a fixed time in the future, and which the parties may settle by delivering and taking delivery of the difference in values if they sell back or buy back the underlying Financial Instrument or if they take some other action that is specified by Cabinet Order;
  - (ii) a transaction comprising the parties' promises to pay and receive an amount of money calculated based on the difference between the Agreed Figure (excluding a figure of a Financial Indicator pertaining to the Financial Instruments listed in paragraph (24), item (iii)-2 or item (v)) and the Actual Figure (excluding a figure of a Financial Indicator pertaining to the Financial Instruments listed in those items) or any transaction similar thereto; and
  - (iii) a transaction comprising the first party's promise to grant the second party the option of effecting one of the following transactions between them by a unilateral manifestation of the second party's intention alone, and the second party's promise to pay the value of that option, or any transaction similar thereto:
    - (a) the purchase and sale of Financial Instruments (excluding the transactions specified in item (i)); or

- (b) a transaction provided for in the preceding two items or items (v) to (vii) inclusive;
- (iv) a transaction comprising, on one side, the first party's promise to grant the second party the option of effecting a transaction by a unilateral manifestation of the second party's intention alone, in which the parties pay and receive the amount of money calculated based on the difference between the numerical value that they have agreed in advance to use as the Agreed Figure for the relevant Financial Indicator if the second party manifests the intention to effect the transaction, and the Actual Figure of the Financial Indicator(excluding a Financial Indicator pertaining to the Financial Instruments listed in paragraph (24), item (iii)-2 or item (v)) at the time the second party manifests that intention, and, on the other side, the second party's promise to pay the value of that option, or any transaction similar thereto;
- (v) a transaction comprising the parties' mutual promise that, for the amount they have set as the principal, the first party will pay money to the second based on the interest rate, etc. of an agreed-upon Financial Instrument (excluding one as set forth in Article 2, paragraph (24), item (iii) , item (iii)-2 and item (v)) or based on the rate of change in an agreed-upon Financial Indicator during the period they have agreed to, and the second party will pay money to the first based on the interest rate, etc. of an agreed-upon Financial Instrument (excluding those set forth in these items) or based on the rate of change in an agreed-upon Financial Indicator during the period they have agreed to (including transactions in which the parties promise that, in addition paying such amounts, they will also pay or deliver and receive money or Financial Instruments (excluding those listed in item (iii)-2 and item (v) of that paragraph) equivalent to the amount they have set as the principal), or any transaction similar thereto;
- (vi) a transaction comprising the first party's promise to pay money to the second, and the second party's promise to pay money to the first if one of the following causes that the parties have stipulated in advance occurs (including transactions comprising the first party's promise to transfer a Financial Instrument, the rights connected to a Financial Instrument, or a monetary claim (other than a claim that constitutes a Financial Instrument or the rights connected to a Financial Instrument), but excluding the transactions set forth in item (ii) to the preceding item inclusive), or any transaction similar thereto:
  - (a) a cause involving the credit status of a corporation or other similar cause as specified by Cabinet Order; or
  - (b) a cause on whose occurrence it is impossible or extremely difficult for either party to exert an influence, and which is specified by Cabinet Order

as something that may have a material impact on the business activities of the parties or other persons or firms (excluding causes specified in sub-item (a)).

(vii) a transaction other than what is set forth in the preceding items, but which has an economic nature similar thereto and is specified by Cabinet Order as a transaction regarding which it is found to be necessary to ensure the public interest or the protection of investors.

(23) The term "Foreign Market Derivatives Transaction " as used in this Act means a transaction that is conducted on a foreign Financial Instruments Market and is similar to a Market Transaction of Derivatives(excluding those pertaining to the Financial Instruments (limited to those listed in item (iii)-2 of the following paragraph) or Financial Indicators (limited to the prices of said Financial Instruments and the figures calculated based thereon)).

(24) The term "Financial Instruments" as used in this Act means the following:

(i) Securities;

(ii) rights such as claims based on a deposit contract, or securities or certificates indicating such rights, which are specified by Cabinet Order (excluding those specified in the preceding item);

(iii) currencies;

(iii)-2 Commodities (meaning commodities prescribed in Article 2, paragraph (1) of the Commodity Futures Trading Act (Act No. 239 of 1950) specified by Cabinet Order as those which are deemed unlikely to be adversely affected, in terms of proper price formation, by the Market Transactions of Derivatives pertaining to said Commodity and are deemed conducive to the national economy if the Market Transactions of Derivatives pertaining to said Commodity are conducted in a Financial Instruments Exchange Market, by taking into consideration the existence or non-existence of measures for the stabilization of price of such Commodity in accordance with the provisions of laws and regulations and other conditions of price formation and supply and demand of said Commodity; the same shall apply hereinafter);

(iv) assets other than what is set forth in each of the preceding items, of which there are many of the same kind, which have substantial price volatility, and which are specified by Cabinet Order as assets in connection with which it is found necessary to secure the protection of investors with regard to Derivatives Transactions (or other similar transactions) thereof (excluding commodities defined in Article 2, paragraph (1) of the Commodity Futures Act); and

(v) standardized instruments used by a Financial Instruments Exchange for the purpose of facilitating Market Transactions of Derivatives by standardizing interest rates, the maturity period, or other conditions of

Financial Instruments set forth in item (i) or item (ii) or the preceding item and specified by Cabinet Office Ordinance.

(25) The term "Financial Indicator" as used in this Act means the following:

- (i) the price of a Financial Instrument or the interest rate, etc. of a Financial Instrument (excluding those specified in item (iii) and item (iii)-2 of the preceding paragraph);
- (ii) the numerical values associated with the results of meteorological observations published by the Meteorological Agency and others;
- (iii) among indicators on whose fluctuation it is impossible or extremely difficult for a person to exert an influence and which may have material impact on the business activities of business firms (excluding indicators provided for in the preceding item) and statistical values associated with social or economic conditions, the indicators and values specified by Cabinet Order as those in connection with which it is found to be necessary to ensure protection for investors with regard to Derivatives Transactions (or other similar transactions) related thereto (excluding commodity indices provided for in Article 2, paragraph (2) of the Commodity Futures Act which are calculated based on the prices of commodities defined in paragraph (1) of that Article other than Commodities); and
- (iv) numerical values calculated based on anything provided for in the preceding three items.

(26) The term "Foreign Financial Instruments Exchange" as used in this Act means a person that has obtained the authorization of the Prime Minister pursuant to Article 155, paragraph (1).

(27) The term "Brokerage for Clearing of Securities, etc." as used in this Act means a subject transaction (meaning a "subject transaction" as defined in the following paragraph; hereinafter the same applies in this paragraph) that is effected by a Financial Instruments Business Operator or registered financial institution under entrustment from a customer and for the account of the customer in accordance with the business rules of the Financial Instruments Clearing Organization or Foreign Financial Instruments Clearing Organization, which is effected on the condition that the obligation that arises from the subject transaction will be assumed by the Financial Instruments Clearing Organization (if such Financial Instruments Clearing Organization performs collaborative Financial Instruments Obligation Assumption Services prescribed in Article 156-20-16, paragraph (1), this includes the collaborating Clearing Organization, etc. set forth in said paragraph) or the Foreign Financial Instruments Clearing Organization, and which satisfies either of the following requirements:

- (i) the subject transaction is effected by the customer on behalf of the Financial Instruments Business Operator or registered financial institution; or



- (ii) the customer specifies the other party to the subject transaction and other particulars specified by Cabinet Office Ordinance in advance, at the time of the entrustment.
- (28) The term "Financial Instruments Obligation Assumption Services" as used in this Act means taking over, novating, or in any other way bearing, on a regular basis, the obligations of a Financial Instruments Business Operator, registered financial institution, or Securities Finance Company (hereinafter referred to as a "Business Counterparty to Financial Instruments Obligation Assumption Services" in this paragraph) which arise from subject transactions (meaning the purchase and sale of Securities, Derivatives Transactions (except those that are specified by Cabinet Order as transactions which, in consideration of the status of the transactions, the impact exerted on Japan's capital market, and other circumstances, are found not to compromise the public interest or the protection of investors), or transactions specified by Cabinet Order as incidental or related thereto) effected by, a Business Counterparty to Financial Instruments Obligation Assumption Services.
- (29) The term "Financial Instruments Clearing Organization" as used in this Act means a person that engages in Financial Instruments Obligation Assumption Services after being licensed by the Prime Minister or obtaining the approval of the Prime Minister pursuant to Article 156-2 or Article 156-19, paragraph (1), and the term "Foreign Financial Instruments Clearing Organization" as used in this Act means a person that engages in Financial Instruments Obligation Assumption Service after being licensed by the Prime Minister pursuant to Article 156-20-2.
- (30) The term "Securities Finance Company" as used in this Act means a person that has been licensed by the Prime Minister pursuant to Article 156-24.
- (31) The term "Professional Investor" as used in this Act means the following:
  - (i) Qualified Institutional Investors;
  - (ii) the State;
  - (iii) the Bank of Japan; and
  - (iv) Investor Protection Funds prescribed in Article 79-21 and other corporations specified by Cabinet Office Ordinance beyond those set forth in the preceding three items.
- (32) The term "Specified Financial Instruments Exchange Market" as used in this Act means a Financial Instruments Exchange Market on which, pursuant to the provisions of Article 117-2, paragraph (1), it is prohibited to make a Purchase for a General Investor as defined in that paragraph.
- (33) The term "Specified Listed Securities" as used in this Act means Securities listed only on a Specified Financial Instruments Exchange Market.
- (34) The term "Credit Rating" as used in this Act means a grade which indicates, through symbols or figures (including anything specified by Cabinet Office

Ordinance as being similar thereto), the results of an assessment of the credit status of a Financial Instrument or a corporation (including anything specified by Cabinet Office Ordinance as being similar thereto) (such assessment is hereinafter referred to as "Creditworthiness" in this paragraph) (such grade excludes grades specified by Cabinet Office Ordinance as being determined mainly in consideration of any particular other than Creditworthiness).

- (35) The term "Credit Rating Services" as used in this Act means engagement in the act of determining Credit Ratings and providing them or making them available for inspection (excluding acts specified by Cabinet Office Ordinance as those that are found to have little likelihood of resulting in insufficient investor protection, in light of the scope of the other party to the act and any other circumstances) on a regular basis.
- (36) The term "Credit Rating Agency" as used in this Act means a person registered by the Prime Minister pursuant to Article 66-27.
- (37) The term "Financial Instruments Exchange Engaged in the Operation of a Commodity Market" as used in this Act means a Stock Company-Operated Financial Instruments Exchange that operates the necessary market for effecting Commodity Futures Transactions (meaning Futures Transactions prescribed in Article 2, paragraph (3) of the Commodity Futures Act; the same applies hereinafter), with the authorization referred to in the proviso to Article 87-2, paragraph (1).
- (38) The term "Commodity Exchange" as used in this Act means an Incorporated Association-Operated Commodity Exchange Operated as an (meaning an Incorporated Association-Operated Commodity Exchange as prescribed in Article 2, paragraph (5) of the Commodity Futures Act) or a Stock Company-Operated Commodity Exchange (meaning a Stock Company-Operated Commodity Exchange as prescribed in paragraph (6) of that Article and limited to those specified by Cabinet Order as being subject to restrictions that are found to be of the same level as restrictions on a Stock Company-Operated Financial Instruments Exchange).
- (39) The term "Commodity Exchange Holding Company" as used in this Act means a Commodity Exchange Holding Company as defined in Article 2, paragraph (11) of the Commodity Futures Act (limited to those specified by Cabinet Order as being subject to restrictions that are found to be of the same level as restrictions on a Financial Instruments Exchange Holding Company).
- (40) The term "Specified Financial Indicator" as used in this Act means a Financial Indicator specified by the Prime Minister as that which, in light of the mode of the Derivatives Transactions or transactions of Securities pertaining to said Financial Indicator, a decline in its credibility could have a material impact on Japan's capital market.

## Chapter II Disclosure of Corporate Affairs

(Reorganization and Other Terms Used in This Chapter)

Article 2-2 (1) The term "Reorganization" as used in this Chapter means merger, company split, share exchange, or other act involving the organization of a company which is specified by Cabinet Order.

(2) The term "Procedures Related to the Issuance of Securities During a Reorganization" as used in this Chapter means the Keeping of Documents, etc. (meaning the keeping of the documents or electronic or magnetic records under Article 782, paragraph (1) of the Companies Act (Act No. 86 of 2005) or the keeping of the documents or electronic or magnetic records under Article 803, paragraph (1) of that Act; the same applies in the following paragraph) connected with a Reorganization in which new Securities are issued (including cases specified by Cabinet Office Ordinance as being similar thereto (such cases are referred to as "Procedures for Cases Similar to the Issuance of Securities During a Reorganization" in the following paragraph)), and other acts specified by Cabinet Order.

(3) The term "Procedures Related to the Delivery of Securities During a Reorganization" as used in this Chapter means the Keeping of Documents, etc. connected to a Reorganization in which existing Securities are delivered (excluding cases that fall under the category of Procedures for Cases Similar to the Issuance of Securities During a Reorganization), and other acts specified by Cabinet Order.

(4) The term "Specified Procedures Related to the Issuance of Securities During a Reorganization" as used in this Chapter means, among Procedures Related to the Issuance of Securities During a Reorganization, those that fall under cases specified in item (i) or (ii) below if the Procedures Related to the Issuance of Securities During a Reorganization involve Article 2 (1) Securities, and those that fall under cases specified in item (iii) if the Procedures Related to the Issuance of Securities During a Reorganization involve Article 2 (2) Securities:

(i) cases specified by Cabinet Order as those in which a large number of persons are holders of share certificates (including share option certificates and other Securities specified by Cabinet Order) whose issuer is a company that, due to a Reorganization, will become a Company Disappearing in an Absorption-Type Merger (meaning a Company Disappearing in an Absorption-Type Merger as defined in Article 749, paragraph (1), item (i) of the Companies Act), or a Wholly Owned Subsidiary Company in a Share Exchange (meaning the Wholly Owned Subsidiary Company in a Share Exchange as defined in Article 768, paragraph (1), item (i) of that Act), or whose issuer is any other company specified by Cabinet Order (referred to as the "Reorganizing Company" in Article 4, paragraph (1), item (ii), sub-item

- (a)) (such holders are hereinafter referred to as the "Reorganizing Company's Shareholders, etc.")(such cases exclude those in which the Reorganizing Company's Shareholders, etc. consist exclusively of Qualified Institutional Investors);
- (ii) cases other than those provided for in the preceding item, which do not fall under any of the following:
  - (a) cases in which the Reorganizing Company's Shareholders, etc. consist exclusively of Qualified Institutional Investors, and which are specified by Cabinet Order as those in which there is little likelihood of the Securities that are subject to the Procedures Related to the Issuance of Securities During a Reorganization being transferred from a person that acquires them to any person other than a Qualified Institutional Investor; or
  - (b) cases other than those specified in the preceding item (i) or in sub-item (a) (excluding cases satisfying the requirements that are specified by Cabinet Order in consideration of the status, etc. of issuance and delivery of Securities of the same class as the Securities subject to the Procedures Related to the Issuance of Securities During the Reorganization), which are specified by Cabinet Order as those in which there is little likelihood of the Securities that are subject to said Procedures Related to the Issuance of Securities During the Reorganization being held by a large number of persons.
  - (iii) cases specified by Cabinet Order as those in which the Reorganizing Company's Shareholders, etc. constitute a considerably large number of persons.
- (5) The term "Specified Procedures Related to the Delivery of Securities During a Reorganization" as used in this Chapter means, among the Procedures Related to the Delivery of Securities During a Reorganization, those that fall under cases specified in item (i) or item (ii) if the Procedures Related to the Delivery of Securities During a Reorganization involve Article 2 (1) Securities, and those that fall under cases specified in item (iii) if the Procedures Related to the Delivery of Securities During a Reorganization involve Article 2 (2) Securities:
  - (i) cases specified by Cabinet Order as those in which the Reorganizing Company's Shareholders, etc. constitute a large number of persons (excluding cases in which the Reorganizing Company's Shareholders, etc. consist exclusively of Qualified Institutional Investors); and
  - (ii) cases other than those provided for in the preceding item, which do not fall under any of the following:
    - (a) cases in which the Reorganizing Company's Shareholders, etc. consist exclusively of Qualified Institutional Investors, and which are specified by Cabinet Order as those in which there is little likelihood of the Securities that are subject to the Procedures Related to the Delivery of Securities

- During a Reorganization being transferred from a person that acquires them to any person other than a Qualified Institutional Investor; and
- (b) cases other than those specified in the preceding item or in sub-item (a) (excluding cases satisfying the requirements that are specified by Cabinet Order in consideration of the status, etc. of issuance and delivery of Securities of the same class as the Securities subject to the Procedures Related to the Delivery of Securities During a Reorganization), which are specified by Cabinet Order as those in which there is little likelihood of the Securities that are subject to said Procedures Related to the Delivery of Securities During a Reorganization being held by a large number of persons; and
- (iii) cases specified by Cabinet Order as those in which the Reorganizing Company's Shareholders, etc. constitute a considerably large number of persons.

(Exempted Securities)

Article 3 The provisions of this Chapter do not apply to the following Securities:

- (i) Securities set forth in Article 2, paragraph (1), items (i) and (ii);
- (ii) Securities set forth in Article 2, paragraph (1), items (iii), (vi), and (xii) (excluding Securities that are specified by Cabinet Order as Securities with regard to which the public interest or the protection of investors makes it necessary and appropriate for corporate affairs to be disclosed); and
- (iii) rights set forth in the items of Article 2, paragraph (2) which are deemed to be Securities pursuant to the provisions of Article 2, paragraph (2) (excluding the following rights (hereinafter referred to as "Rights in a Securities Investment Business, etc." in Article 24, paragraph (1))):
  - (a) among the rights set forth in Article 2, paragraph (2), item (v), those specified by Cabinet Order as a right in Invested Business (meaning Invested Business as defined in Article 2, paragraph (2), item (v)) that is mainly conducted through investment in Securities;
  - (b) among the rights set forth in Article 2, paragraph (2), items (i) to (iv) inclusive, (vi), or (vii), those specified by Cabinet Order as being similar to the rights set forth in sub-item (a) above; and
  - (c) other rights specified by Cabinet Order.
- (iv) corporate bond certificates for which the government guarantees the redemption of the principal or the payment of interest; and
- (v) Securities specified by Cabinet Order other than those set forth in the preceding items.

(Notification of Public Offering or Secondary Distribution)

Article 4 (1) It is not permitted for a person to conduct a Public Offering of

Securities (including Specified Procedures Related to the Issuance of Securities During a Reorganization; the same applies hereinafter in this Chapter and the following Chapter, except in Article 13 and Article 15, paragraphs (2) to (6) inclusive) or a Secondary Distribution of Securities (excluding those falling under the category of General Solicitation Involving for Securities Acquired by a Qualified Institutional Investor as defined in the following paragraph or of General Solicitation Involving Securities Acquired by a Professional Investor as defined in paragraph (3), but including Specified Procedures Related to the Delivery of Securities During a Reorganization; hereinafter the same applies in this paragraph) unless the Issuer has filed a notification of the Public Offering or Secondary Distribution of Securities with the Prime Minister; provided, however, that this does not apply to a Public Offering or Secondary Distribution of Securities that falls under one of the following items:

- (i) a Public Offering or Secondary Distribution of Securities in a case specified by Cabinet Order as one in which the other parties thereto have already obtained or can easily obtain information about the particulars set forth in the items of paragraph (1) of the following Article for the relevant Securities;
- (ii) a Public Offering or Secondary Distribution of Securities for which the pertinent Procedures Related to the Issuance of Securities During a Reorganization or Procedures Related to the Delivery of Securities During a Reorganization fall under either of the following cases (excluding a Public Offering or Secondary Distribution as specified in the preceding item)
  - (a) cases not falling under a case in which disclosure has been made with regard to share certificates (including share option certificates and other Securities specified by Cabinet Order) whose issuer is the Reorganization Company; or
  - (b) a case in which disclosure has been made with regard to the Securities that will be newly issued in connection with the Procedures Related to the Issuance of Securities During a Reorganization, or a case in which disclosure has been made with regard to previously issued Securities subject to the Procedures Related to the Delivery of Securities During a Reorganization.
- (iii) a Secondary Distribution of Securities in a case in which disclosure has been made with regard to the Securities (excluding a Secondary Distribution provided for in the preceding two items);
- (iv) a Secondary Distribution of Securities that have already been issued in a foreign state or of Securities specified by Cabinet Order as being equivalent thereto (limited to those conducted by a Financial Instruments Business Operator, etc.), which satisfies the requirement that information on the trading price of the Securities in Japan can be easily obtained and any other requirements specified by Cabinet Order (excluding a Secondary Distribution

- provided for in the preceding three items); or
- (v) a Public Offering or Secondary Distribution of Securities with a total issue value or total distribution value of less than 100 million yen, which is specified by Cabinet Office Ordinance (excluding those specified in the preceding items).
- (2) It is not permitted for a person to issue a solicitation with a view to delivering existing securities (meaning an Offer to Sell, etc. or Procedures Related to the Delivery of Securities During a Reorganization; the same applies hereinafter) that involves Securities that have been involved in a solicitation with a view to issuing new securities (meaning the Solicitation of Offers to Acquire or the Procedures Related to the Issuance of Securities During a Reorganization; the same applies hereinafter) or a solicitation with a view to delivering existing securities falling under any of the following cases (in the case set forth in item (ii), limited to the Securities acquired by Qualified Institutional Investors that have been excluded from the large number of persons pursuant to Article 2, paragraph (3), item (i), and in the case set forth in item (iv), limited to the Securities acquired by Qualified Institutional Investors that have been excluded from the large number of persons pursuant to paragraph (4), item (i) of that Article), and that involves a Qualified Institutional Investor soliciting persons other than Qualified Institutional Investors (such a solicitation is hereinafter referred to as a "General Solicitation Involving Securities Acquired by a Qualified Institutional Investor"), unless the Issuer of the Securities has filed a notification of the relevant General Solicitation Involving for Securities Acquired by the a Qualified Institutional Investor with the Prime Minister; provided, however, that this does not apply to a case in which disclosure has been made with regard to the Securities, or to a case in which the General Solicitation Involving for Securities Acquired by the Qualified Institutional Investor will be issued for a compelling reason specified by Cabinet Office Ordinance, or otherwise satisfies the requirements specified by Cabinet Office Ordinance:
- (i) the case set forth in Article 2, paragraph (3), item (ii), sub-item (a);
  - (ii) the case set forth in Article 2, paragraph (3), item (ii), sub-item (c) (but only if it comes to no longer fall under the case set forth in item (i) of that paragraph due to the Qualified Institutional Investors' being excluded from the large number of persons pursuant to that item);
  - (iii) the case set forth in Article 2, paragraph (4), item (ii), sub-item (a);
  - (iv) the case set forth in Article 2, paragraph (4), item (ii), sub-item (c) (but only if it comes to no longer fall under the case set forth in item (i) of that paragraph due to the Qualified Institutional Investors' being excluded from the large number of persons pursuant to that item);
  - (v) the case set forth in Article 2-2, paragraph (4), item (ii), sub-item (a); and

- (vi) the case set forth in Article 2-2, paragraph (5), item (ii), sub-item (a).
- (3) It is not permitted for a person to issue a solicitation with a view to delivering existing securities that involves Securities falling under any of the following items (excluding Securities falling under any of the items of Article 24, paragraph (1) or Securities specified by Cabinet Order as those which it is found are unlikely to be held by a large number of Professional Investors; hereinafter referred to as the "Securities for Professional Investors"), but that does not involve a Financial Instruments Business Operator, etc. being entrusted to solicit Professional Investors, etc. (with the exception of a solicitation issued to the State, the Bank of Japan, or Qualified Institutional Investors, and also with the exception of solicitation specified by Cabinet Order; hereinafter referred to as a "General Solicitation Involving Securities Acquired by a Professional Investor"), unless the Issuer of Securities has filed a notification of the relevant General Solicitation Involving Securities Acquired by a Professional Investor with the Prime Minister; provided, however, that this does not apply in a case in which disclosure has been made with regard to the Securities for Professional Investors and in any other case that is specified by Cabinet Office Ordinance as one in which the non-filing of a notification for a General Solicitation Involving Securities Acquired by a Professional Investor does not damage the public interest or result in insufficient investor protection:
- (i) Securities for which the Solicitation of Offers to Acquire fell under the case specified in Article 2, paragraph (3), item (ii), sub-item (b) (hereinafter referred to as a "Exclusive Solicitation of Offers to Acquire Targeting Professional Investors");
  - (ii) Securities for which the Offer to Sell, etc. was an exclusive Offer to Sell, etc. to Professional Investors;
  - (iii) Securities issued by an Issuer of the Securities provided for in either of the preceding two items, which are specified by Cabinet Office Ordinance as being the same class of Securities as those provided for in either of the preceding two items; or
  - (iv) Specified Listed Securities and other Securities specified by Cabinet Order as having equivalent distribution statuses thereto.
- (4) If a Public Offering or Secondary Distribution of Securities (including a General Solicitation Involving Securities Acquired by a Qualified Institutional Investor (excluding those falling under the category of a Secondary Distribution of Securities), a General Solicitation Involving Securities Acquired by a Professional Investor (excluding those falling under the category of a Secondary Distribution of Securities), and Procedures Related to the Delivery of Securities During a Reorganization; hereinafter the same applies in this Chapter and the following Chapter, except in the following paragraph and paragraph (6) of this Article, Article 13, and Article 15, paragraphs (2) to (6)



inclusive) will be made for the shareholders (including preferred equity investors provided for in the Act on Preferred Equity Investment) that have been stated or recorded in the shareholder register (including the preferred equity investor register provided for in the Act on Preferred Equity Investment) as of a certain date, the notification for the Public Offering or Secondary Distribution under the preceding three paragraphs must be made 25 days prior; provided, however, that this does not apply in the cases that are specified by Cabinet Office Ordinance in consideration of the issue price or distribution price of the Securities or other factors.

- (5) Materials that are used for a Public Offering or Secondary Distribution of Securities specified in paragraph (1), item (v), for a General Solicitation for Involving Securities Acquired by a Qualified Institutional Investor which is excluded from the application of the main clause of paragraph (2) pursuant to the proviso to that paragraph, or for a General Solicitation Involving Securities Acquired by a Professional Investor which is excluded from the application of the main clause of paragraph (3) pursuant to the proviso to that paragraph, which falls under the category of a Secondary Distribution of Securities, or which does not fall under the category of a Secondary Distribution of Securities and does not fall under a case in which disclosure has been made (hereinafter referred to as a "Specified Public Offering" in this paragraph and the following paragraph), and materials that are used in causing the Securities in a Specified Public Offering to be acquired or in selling such Securities, must indicate that the main clause of paragraph (1), the main clause of paragraph (2) or the main clause of paragraph (3) does not apply to said Specified Public Offering.
- (6) Whenever a Specified Public Offering or Secondary Distribution of Securities set forth in paragraph (1), item (iii) (hereinafter collectively referred to as a "Specified Public Offering, etc." in this paragraph) is conducted, the Issuer of the Securities in the Specified Public Offering, etc. shall submit a written notice of the Specified Public Offering, etc. to the Prime Minister pursuant to the provisions of Cabinet Office Ordinance, before the Specified Public Offering, etc. begins; provided, however, that this does not apply to a Secondary Distribution of Securities as set forth in paragraph (4) whose total distribution value is less than 100 million yen in a case in which disclosure has been made, nor to a Secondary Distribution of Securities as set forth in paragraph (1), item (iii) conducted by a person other than the Issuer of said Securities or a person specified by Cabinet Office Ordinance, nor to a Public Offering or Secondary Distribution of Securities as set forth in item (v) of that paragraph whose total issue value or total distribution value is less than the amount specified by Cabinet Office Ordinance.
- (7) As set forth in sub-items (a) and (b) of item (ii) and item (iii) of paragraph (1),

paragraph (2), paragraph (3) and the preceding two paragraphs, a case in which disclosure has been made means one of the following cases:

- (i) a notification under paragraph (1) is in effect for a Public Offering or Secondary Distribution which has already been conducted with regard to the relevant Securities (excluding one that falls under the category of a General Solicitation Involving Securities Acquired by a Qualified Institutional Investor or a General Solicitation Involving Securities Acquired by a Professional Investor); a notification under paragraph (2) is in effect for a General Solicitation Involving Securities Acquired by a Qualified Institutional Investor which has already been conducted with regard to said Securities; or a notification under paragraph (3) is in effect for a General Solicitation Involving Securities Acquired by a Professional Investor which has already been conducted with regard to said Securities (unless the proviso to Article 24, paragraph (1) is applicable (including as applied mutatis mutandis pursuant to Article 24, paragraph (5) and as these provisions apply mutatis mutandis pursuant to Article 27) to the Issuer of the Securities); or
- (ii) cases specified by Cabinet Office Ordinance as being equivalent to the cases provided for in the preceding item.

(Submission of Securities Registration Statements)

Article 5 (1) If an Issuer seeking to file a notification for a Public Offering or Secondary Distribution of Securities under paragraphs (1) to (3) inclusive of the preceding Article (excluding a Public Offering or Secondary Distribution of Securities for regulated Securities (meaning Securities specified by Cabinet Order as those for which the information materially influencing investors' investment decisions is information on asset management or other similar business that the Issuer conducts; hereinafter the same applies in this paragraph, paragraph (5), paragraph (10) and paragraph (11) of this Article, Article 7, paragraph (4) and Article 24); hereinafter the same applies in this paragraph and the following paragraph) is a company (including a foreign company; the same applies hereinafter, except in Article 50-2, paragraph (9), Article 66-40, paragraph (5) and Article 156-3, paragraph (2), item (iii)) (including if the company will be incorporated by the issuance of said Securities (excluding regulated Securities; hereinafter the same applies in this paragraph to paragraph (4) inclusive)), it must submit a statement to the Prime Minister in which it states the following particulars, pursuant to the provisions of Cabinet Office Ordinance; provided, however, that, if it is necessary to conduct the Public Offering of Securities before deciding their issue price or in other cases specified by Cabinet Office Ordinance, the Issuer may submit the statement without giving the issue price or other particulars in item (i) that are specified by Cabinet Office Ordinance:

- (i) the particulars of the Public Offering or Secondary Distribution; and
  - (ii) the trade name of the company, the financial condition of the corporate group (meaning the group consisting of the relevant company and persons (limited to companies and other entities specified by Cabinet Office Ordinance) satisfying the requirements that Cabinet Office Ordinance specifies, as other companies in which the relevant company holds majority voting rights or as persons that are otherwise closely related to the relevant company; the same applies hereinafter) to which the company belongs and the company's own financial condition and other material particulars about the company's business, and other particulars that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors.
- (2) In its statement, a person not falling under any of the following items which seeks to submit a statement set forth in the preceding paragraph for a Public Offering or a Secondary Distribution of Securities to which the main clause of paragraph (1), the main clause of paragraph (2), or the main clause of paragraph (3) of the preceding Article applies, the total issue value or the total distribution value of which is less than 500 million yen and which is specified by Cabinet Office Ordinance for this purpose (such a Public Offering or Secondary Distribution of Securities is referred to as "Low Value Public Offering, etc." in Article 24, paragraph (2)), may state the particulars set forth in Article 24, paragraph (2), item (ii) which is specified by Cabinet Office Ordinance as being pertinent with regard to the relevant company, instead of stating the particulars set forth in that item:
- (i) an Issuer of Securities that fall under any of the categories specified in Article 24, paragraph (1), item (i), (ii) or (iv);
  - (ii) a person that submits or is required to submit a statement under the preceding paragraph in which it states the particulars set forth in item (ii) of the preceding paragraph for a Public Offering or Secondary Distribution of Securities to which the main clause of paragraph (1), the main clause of paragraph (2), or the main clause of paragraph (3) of the preceding Article has been applied (excluding the persons specified in the preceding item); or
  - (iii) a person that has already submitted an Annual Securities Report (meaning a report as set forth in Article 24, paragraph (1); hereinafter the same applies in this Article and Article 7) in which it states the particulars set forth in the main clause of Article 24, paragraph (1), a Quarterly Securities Report as set forth in Article 24-4-7, paragraph (1) or (2) (hereinafter referred to as a "Quarterly Securities Report" in this Article) which it states the particulars set forth in Article 24-4-7, paragraph (1), or a Semiannual Securities Report (meaning a report as set forth in Article 24-5, paragraph (1); hereinafter the same applies in this Article, Article 7, paragraph (4) and

Article 24, paragraph (2)) which it states the particulars set forth in Article 24-5, paragraph (1) (excluding a person provided for in the preceding two items).

- (3) If a person that has continuously filed Annual Securities Reports as specified by Cabinet Office Ordinance during the period specified by Cabinet Office Ordinance seeks to file a notification under paragraphs (1) to (3) inclusive of the preceding Article, instead of stating the particulars set forth in paragraph (1), item (ii), such person, pursuant to the provisions of Cabinet Office Ordinance, may interfile a copy of its latest Annual Securities Report and the accompanying documents, a copy of any Quarterly Securities Report or Semiannual Securities Report submitted after the submission of the Annual Securities Report, and a copy of any amended report connected with the foregoing reports in the statement set forth in paragraph (1), and enter in that statement any facts specified by Cabinet Office Ordinance which come into play after the submission of the Annual Securities Report.
- (4) If a person that satisfies all of the requirements set forth below seeks to file a notification under paragraphs (1) to (3) inclusive of the preceding Article, and the person enters in the statement set forth in paragraph (1), pursuant to the provisions of Cabinet Office Ordinance, that reference should be made to the latest Annual Securities Report and accompanying documents, the Quarterly Securities Report, Semiannual Securities Report, or Extraordinary Report (meaning a report as set forth in Article 24-5, paragraph (4)) submitted after the submission of the Annual Securities Report, or any amended report connected with them (hereinafter collectively referred to as "Reference Documents"), the person is deemed to have stated the particulars set forth in item (ii) of paragraph (1) in the statement:
  - (i) the person must have continuously filed Annual Securities Reports as specified by Cabinet Office Ordinance during the period specified by Cabinet Office Ordinance; and
  - (ii) the person must satisfy the criteria specified by Cabinet Office Ordinance as a person with regard to which information about the particulars set forth in paragraph (1), item (ii) is widely available to the public, with regard to the status of transactions on Financial Instruments Exchange Markets in issued Securities of which the person is the issuer.
- (5) The provisions of paragraph (1) to the preceding paragraph inclusive apply mutatis mutandis if the Securities for which the notification set forth in paragraph (1) is filed are regulated Securities. In this case, in paragraph (1), the phrase "excluding a Public Offering or Secondary Distribution of Securities" is deemed to be replaced with "limited to a Public Offering or Secondary Distribution of Securities" and the phrase "said Securities (excluding regulated Securities; hereinafter the same applies in this paragraph

to paragraph (4) inclusive)" is deemed to be replaced with "said Securities"; in item (ii) of that paragraph, the phrase "trade name of the company, the financial condition of the corporate group (meaning the group consisting of the relevant company and persons (limited to companies and other entities specified by Cabinet Office Ordinance) satisfying the requirements that Cabinet Office Ordinance specifies, as other companies in which the relevant company holds majority voting rights or as persons that are otherwise closely related to the relevant company; the same applies hereinafter) to which the company belongs and the company's own financial condition and other material particulars of the company's business" is deemed to be replaced with "financial condition of its asset management or other similar business conducted by the company and other material particulars of the company's assets"; in paragraph (2), the phrase "a Public Offering or Secondary Distribution of Securities" is deemed to be replaced with "a Public Offering or Secondary Distribution of regulated Securities"; in item (i) of that paragraph, the phrase "Securities falling under any of the categories" is deemed to be replaced with "regulated Securities falling under any of the categories of Securities"; in item (ii) of that paragraph, the phrase "Public Offering or Secondary Distribution of Securities" is deemed to be replaced with "Public Offering or Secondary Distribution of regulated Securities"; in item (iii) of that paragraph, the phrase "the main clause of Article 24, paragraph (1)" is deemed to be replaced with "the main clause of Article 24, paragraph (1) as applied mutatis mutandis pursuant to Article 24, paragraph (5)", the phrase "Article 24-4-7, paragraph (1) or (2)" is deemed to be replaced with "Article 24-4-7, paragraph (1) or (2) as applied mutatis mutandis pursuant to Article 24-4-7, paragraph (3)", the phrase "the particulars set forth in Article 24-4-7, paragraph (1)" is deemed to be replaced with "the particulars set forth in Article 24-4-7, paragraph (1) as applied mutatis mutandis pursuant to Article 24-4-7, paragraph (3)", and the phrase "the particulars set forth in Article 24-5, paragraph (1)" is deemed to be replaced with "the particulars set forth in Article 24-5, paragraph (1) as applied mutatis mutandis pursuant to Article 24-5, paragraph (3)"; and any other necessary technical replacement of terms is specified by Cabinet Order.

(6) In the cases specified by a Cabinet Office Ordinance as cases where the public interest or protection of investors would not be impaired, a foreign company required to submit a statement under paragraph (1) (hereinafter referred to as "Statement-filing Foreign Company") may submit, instead of the statement set forth in that paragraph, the following documents pursuant to the provisions of a Cabinet Office Ordinance:

- (i) A document containing the matters set forth in paragraph (1), item (i); and
- (ii) Reference Documents Disclosed in a Foreign State (meaning the state of having been made available for public inspection in the foreign state based

- on laws and regulations under the foreign state (including the rules provided for by the operator of a Foreign Financial Instruments Market or other person specified by a Cabinet Office Ordinance); the same shall apply hereinafter in Articles 24, paragraph (8), Article 24-4-7, paragraph (6) and Article 24-5, paragraph (7)) or documents similar to the statement set forth in paragraph (1) which are prepared in English.
- (7) When the documents set forth in item (ii) of the preceding paragraph are submitted, Japanese translations of the summary of the matters specified by a Cabinet Office Ordinance as those necessary and appropriate for the public interest or protection of investors among the matters stated in said documents and documents stating the matters specified by a Cabinet Office Ordinance as those necessary and appropriate for the public interest or protection of investors among the matters not stated in said documents, and other documents specified by a Cabinet Office Ordinance (such documents are hereinafter collectively referred to as "Supplementary Documents" in the following paragraph and Article 13, paragraph (2), item (i)) shall be attached to said documents as specified by a Cabinet Office Ordinance.
- (8) The provisions of this Act and orders given thereunder (hereinafter referred to as the "Financial Instruments and Exchange Act and Related Regulations" in this Chapter to Chapter II-IV inclusive) shall apply to cases where a Statement-filing Foreign Company submits the documents listed in the items of paragraph (6) (hereinafter referred to as "Foreign Company Statements" in this Chapter) and Supplementary Documents thereof under the provisions of the preceding two paragraphs, by deeming the Foreign Company Statements and Supplementary Documents thereof to be the statement set forth in paragraph (1) and deeming submission of the former to be submission of the latter.
- (9) The Prime Minister shall, when he/she finds that a Statement-filing Foreign Company which submitted Foreign Company Statements does not satisfy the requirements for being allowed to submit Foreign Company Statements under the provision of paragraph (6), notify thereof to the Statement-filing Foreign Company. In this case, a hearing shall be held irrespective of the categories of procedures for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act (1993 Act No.88).
- (10) With regard to Public Offering or Secondary Distribution of Regulated Securities (limited to those specified by Cabinet Office Ordinance by taking into consideration the status of their Public Offering or Secondary Distribution; hereinafter the same shall apply in this Article and Article 7, paragraph (4)), if a Public Offering or Secondary Distribution of the Regulated Securities has already been being conducted continuously for the period specified by Cabinet Office Ordinance, a company required to submit a

statement pursuant to paragraph (1) (hereinafter referred to as a "Company Submitting a Regulated Securities Registration Statement" in this Article and Article 7) may submit, instead of the statement set forth in that paragraph, a document containing the matters listed in item (i) of that paragraph (hereinafter referred to as a "Document Containing Matters related to Public Offering, etc.." in this Article and Article 7, paragraph (3)) pursuant to the provisions of Cabinet Office Ordinance; provided, however, that this shall be limited to the case where the Public Offering or Secondary Distribution has been being conducted until immediately preceding the submission of the Document Containing Matters related to Public Offering, etc..

- (11) A Company Submitting a Regulated Securities Registration Statement which is to submit a Document Containing Matters related to Public Offering, etc.. pursuant to the preceding paragraph shall submit the Document Containing Matters related to Public Offering, etc.. together with the Annual Securities Report and documents attached thereto in respect of the Specified Period (meaning a Specified Period as defined in Article 24, paragraph (1) as applied mutatis mutandis by replacing certain terms pursuant to paragraph (5) of that Article; hereinafter the same shall apply in this paragraph and Article 7, paragraph (4)) immediately preceding the Specific Period for the Regulated Securities that includes the day of the submission.
- (12) The provisions of the Financial Instruments and Exchange Act and Related Regulations shall apply to cases where a Company Submitting a Regulated Securities Registration Statement submits a Document Containing Matters related to Public Offering, etc.. and an Annual Securities Report and documents attached thereto under the provisions of the preceding two paragraphs, by deeming the Document Containing Matters related to Public Offering, etc.. and the Annual Securities Report to be the statement set forth in paragraph (1) and deeming submission of the former to be submission of the latter.
- (13) The articles of incorporation or other documents that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors must accompany the statement set forth in paragraph (1).

(Submission of Statements and Other Documents to a Financial Instruments Exchange, etc.)

Article 6 An Issuer of the Securities set forth in the following items shall submit a copy of the statement and other documents set forth in paragraph (1) and paragraph (10) of the preceding Article to the person specified in the relevant item without delay after filing the notification under Article 4, paragraphs (1) to (3) inclusive:

- (i) Securities listed on a Financial Instruments Exchange: said Financial Instruments Exchange; and
- (ii) Securities specified by Cabinet Order as having equivalent distribution statuses to the Securities referred to in the preceding item: the Authorized Financial Instruments Firms Association specified by Cabinet Order.

(Voluntary Submission of Amended Statements)

- Article 7 (1) If, on or after the day on which a notification under Article 4, paragraphs (1) to (3) inclusive is filed and before the day on which that notification comes into effect, a material particular that is required to be stated in a statement or other document under Article 5, paragraph (1) or paragraph (13) changes or any other circumstance arises that is specified by Cabinet Office Ordinance as necessitating that the content of such documents be amended in the public interest or for the protection of investors, the person filing the notification (or, if it is after a company is incorporated through the issuance of the Securities for which the notification was filed, the company; the same applies hereinafter) must submit an amended statement to the Prime Minister. The same also applies in the absence of such a reason, if the person filing the notification finds there to be something in the statement or other document that necessitates an amendment.
- (2) The provisions of Article 5, paragraphs (6) to (9) inclusive shall apply mutatis mutandis to cases where a Statement-filing Foreign Company submits an amendment of the Foreign Company Statements under the provision of the preceding paragraph.
  - (3) The provisions of the Financial Instruments and Exchange Act and Related Regulations shall apply to cases where a Company Submitting a Regulated Securities Registration Statement (limited to cases where it submits a Document Containing Matters related to Public Offering, etc.. and an Annual Securities Report and documents attached thereto under the provisions of Article 5, paragraphs (10) and (11); the same shall apply in the following paragraph and paragraph (5)) submits an amendment report for the Annual Securities Report under paragraph (1) as applied mutatis mutandis by replacing certain terms pursuant to Article 24-2, paragraph (1), by deeming the amendment report to be the amendment report set forth in paragraph (1) for a document that has been deemed to be the statement set forth in Article 5, paragraph (1) pursuant to paragraph (12) of that Article, and deeming submission of the former to be submission of the latter.
  - (4) The provisions of the Financial Instruments and Exchange Act and Related Regulations shall apply to cases where a Company Submitting a Regulated Securities Registration Statement submits, with regard to Regulated Securities pertaining to a document that has been deemed to the statement set forth in



Article 5, paragraph (1) pursuant to paragraph (12) of that Article (limited to those for which Public Offering or Secondary Distribution has already been being conducted continuously), a Semiannual Securities Report (or an Annual Securities Report, in cases where the Specific Period for the Regulated Securities does not exceed six months) (hereinafter referred to as a "Semiannual Securities Report, etc." in this paragraph and the following paragraph), by deeming the Semiannual Securities Report, etc. to be the amendment report set forth in paragraph (1) for the statement, and deeming submission of the former to be submission of the latter.

- (5) The provisions of paragraph (3) shall apply *mutatis mutandis* to cases where a Company Submitting a Regulated Securities Registration Statement (limited to one that has submitted the Semiannual Securities Report, etc. set forth in the preceding paragraph) submits an amendment report for the Semiannual Securities Report, etc. under paragraph (1) as applied *mutatis mutandis* by replacing certain terms pursuant to Article 24-5, paragraph (5) (Article 24-2, paragraph (1) in cases where the Semiannual Securities Report, etc. is an Annual Securities Report).

(Effective Date of Notifications)

Article 8 (1) A notification under Article 4, paragraphs (1) to (3) inclusive comes into effect on the day on which 15 days have elapsed since the day on which the Prime Minister accepted the statement under Article 5, paragraph (1) (or, if the particulars referred to in the proviso to Article 5, paragraph (1) are not stated in the statement, the amended statement under paragraph (1) of the preceding Article which is connected with said particulars; the same applies in the following paragraph).

- (2) With regard to the application of the preceding paragraph if an amended statement under the preceding Article is submitted within the period set forth in paragraph (1) of the preceding paragraph, the statement set forth in Article 5, paragraph (1) is deemed to be accepted by the Prime Minister on the day that the Prime Minister accepts the amended statement.

- (3) If the Prime Minister finds that the statement or other documents under Article 5, paragraph (1) or paragraph (13) or paragraph (1) of the preceding Article are easily understandable to the public or finds that information about the particulars set forth in Article 5, paragraph (1), item (ii) with regard to the person that submitted the statement and other documents is already widely available to the public, the Prime Minister may designate a period for the person which is shorter than that referred to in paragraph (1), or may notify the person that the notification under Article 4, paragraphs (1) to (3) inclusive will become effective immediately or on the day after the day on which the Prime Minister accepts the statement referred to in paragraph (1). In such a

case, a notification under Article 4, paragraphs (1) to (3) inclusive becomes effective on the day on which the shorter period has elapsed if a shorter period has been designated, or immediately or on the following day if the person has been so notified.

- (4) The provisions of paragraph (2) apply *mutatis mutandis* if a shorter period is designated as under the preceding paragraph.

(Order to Submit an Amended Statement Due to a Formal Deficiency, etc.)

Article 9 (1) If the Prime Minister finds a formal deficiency in a statement or other document under Article 5, paragraph (1) or paragraph (13) or Article 7, paragraph (1) or finds such statement or other document to insufficiently state a material particular that is required to be stated, the Prime Minister may order the person that submitted it to submit an amended statement. In such a case, irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, the Prime Minister must conduct a hearing.

- (2) The provisions of Article 5, paragraphs (6) to (8) inclusive shall apply *mutatis mutandis* to cases where a Statement-filing Foreign Company submits an amendment of the Foreign Company Statements under the provision of the preceding paragraph.
- (3) Notwithstanding the provisions of Article, if the disposition under the preceding paragraph(1) has been reached, the notification under Article 4, paragraphs (1) to (3) inclusive becomes effective on the day on which the period designated by the Prime Minister has elapsed.
- (4) The provisions of paragraphs (2) to (4) inclusive of the preceding Article apply *mutatis mutandis* in the case referred to in the preceding paragraph.
- (5) The disposition under paragraph (1) may not be reached on or after the day on which the notification under Article 4, paragraphs (1) to (3) inclusive becomes effective; provided, however, that this does not apply to any amended statement submitted pursuant to Article 7, paragraph (1) on or after that day.

(Order to Submit an Amended Statement and Order Suspending the Validity of a Notification Due to a False Statement, etc.)

Article 10 (1) If the Prime Minister discovers that a Securities Registration Statement contains a false statement about a material particular, omits a statement as to a material particular that is required to be stated, or omits a statement of material fact that is necessary to prevent it from being misleading, the Prime Minister, at any time, may order the person submitting the Securities Registration Statement to submit an amended statement, and if the Prime Minister finds it to be necessary, the Prime Minister may order the suspension of the validity of a notification under Article 4, paragraphs (1) to (3)

inclusive. In such a case, irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, the Prime Minister must conduct a hearing.

- (2) The provisions of Article 5, paragraphs (6) to (8) inclusive shall apply mutatis mutandis to cases where a Statement-filing Foreign Company submits an amendment of the Foreign Company Statements under the provision of the preceding paragraph.
- (3) The provisions of paragraphs (2) and (3) of the preceding Article apply mutatis mutandis if an order to submit an amended statement under the preceding paragraph is issued before the notification under Article 4, paragraphs (1) to (3) inclusive comes into effect.
- (3) If an order for suspension under paragraph (1) is issued and an amended statement under that paragraph is submitted, and if the Prime Minister finds the amended statement to be appropriate, the Prime Minister is to cancel the order for suspension under that paragraph.

(Suspension of the Validity of Notifications Made Within One Year After the Submission of a Securities Registration Statement Containing a False Statement)

- Article 11 (1) If a Securities Registration Statement contains a false statement about a material particular and the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may issue an order against the person submitting the Securities Registration Statement with regard to said Securities Registration Statement or with regard to any other statement as set forth in Article 5, paragraph (1), Shelf Registration Statement as set forth in Article 23-3, paragraph (1), or Shelf Registration Supplements as set forth in Article 23-8, paragraph (1) which the person submitting said Securities Registration Statement submits within one year of the day on which the person submitted said Securities Registration Statement, ordering the suspension of the validity of the notification or of the Shelf Registration under the relevant Shelf Registration Statement or Shelf Registration Supplements, or may extend the period stipulated in Article 8, paragraph (1) (including as applied mutatis mutandis pursuant to Article 23-5, paragraph (1)), for the period that the Prime Minister considers appropriate in the public interest or for the protection of investors. In such a case, irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, the Prime Minister must conduct a hearing.
- (2) If a disposition under the preceding paragraph is reached and the Prime Minister finds that the content of an amended statement submitted pursuant to Article 7, paragraph (1) or paragraph (1) of the preceding Article in relation

to the false statement referred to in the preceding paragraph is appropriate, and that allowing the acquisition or sale of Securities issued by the person that submitted the Securities Registration Statement through a Public Offering or Secondary Distribution will not compromise the public interest or the protection of investors, the Prime Minister may cancel the disposition under the preceding paragraph.

(Submission of a Copy of an Amended Statement to a Financial Instruments Exchange, etc.)

Article 12 The provisions of Article 6 apply *mutatis mutandis* when an amended statement is submitted pursuant to Article 7, paragraph (1), Article 9, paragraph (1) or Article 10, paragraph (1).

(Preparation of the Prospectus and Prohibition against the Use of a Prospectus Containing a False Statement)

Article 13 (1) The Issuer of Securities whose Public Offering or Secondary Distribution (including General Solicitation Involving Securities Acquired by a Qualified Institutional Investor (excluding anything falling under the category of a Secondary Distribution of Securities) and also including General Solicitation Involving Securities Acquired by a Professional Investor excluding anything falling under the category of a Secondary Distribution of Securities); hereinafter the same applies in this Article and paragraphs (2) to (4) inclusive and paragraph (6) of Article 15) is subject to the main clause of Article 4, paragraph (1), the main clause of Article 4, paragraph (2) or the main clause of Article 4, paragraph (3), shall prepare a Prospectus for such Public Offering or Secondary Distribution. The same applies to an Issuer of Securities whose Secondary Distribution (excluding one with a total distribution value of less than 100 million yen or one that falls under the categories specified by Cabinet Office Ordinance) falls under a Case In Which Disclosure Has Been Made (meaning a Case In Which Disclosure Has Been Made as referred to in Article 4, paragraph (7); hereinafter the same applies in this Chapter) (such Securities are hereinafter referred to as "Securities for Which Disclosure Has Already Been Made" in this Chapter). ; provided, however, that this shall not apply to cases where the Public Offering of said Securities is conducted by Public Offering of share option certificates (limited to those conducted by Allotment of Share Options without Contribution specified in Article 277 of the Companies Act to which the main clause of paragraph (1), the main clause of paragraph (2) or the main clause of paragraph (3) of Article 4 is applicable) which satisfies all of the following requirements:

- (i) Said share option certificates are listed on a Financial Instruments Exchange, or after issuance thereof, are scheduled to be listed without delay;

and

- (ii) The fact that a notification under the main clause of paragraph (1), the main clause of paragraph (2) or the main clause of paragraph (3) of Article 4 had been made in relation to said share option certificates and any other matters specified by Cabinet Office Ordinance are published in a daily newspaper that publishes matters on current affairs after said notification was made without delay.
- (2) For the category of cases set forth in one of the following items, the details of the particulars that are specified in that item must be stated in the Prospectus referred to in the preceding paragraph; provided, however, that if a statement under the main clause of Article 5, paragraph (1) has been submitted pursuant to the proviso to Article 5, paragraph (1), without the issue price or any other particular specified by Cabinet Office Ordinance being stated among those in item (i) of that paragraph (hereinafter referred to as the "Issue Price, etc." in this paragraph and Article 15, paragraph (5)), the Prospectus in the case set forth in item (i), below, is not required to state the Issue Price, etc.:
  - (i) if the Prospectus must be delivered pursuant to the main clause of Article 15, paragraph (2): for a category of Securities specified in the following sub-item (a) or (b), the particulars set forth in the relevant sub-item:
    - (a) Securities whose Public Offering or Secondary Distribution is subject to the main clause of Article 4, paragraph (1), the main clause of Article 4, paragraph (2), or the main clause of Article 4, paragraph (3): the following particulars:
      - 1. among those set forth in the items of Article 5, paragraph (1), (in cases where Foreign Company Statements and Supplementary Documents thereof are submitted under the provisions of paragraphs (6) and (7) of that Article for said Public Offering or Secondary Distribution, matters that should be stated therein under said provisions; hereinafter the same shall apply in this paragraph), the particulars specified by Cabinet Office Ordinance as having a very material influence on investors' investment decisions; and
      - 2. particulars specified by Cabinet Office Ordinance other than those set forth in the items of Article 5, paragraph (1).
    - (b) Securities for Which Disclosure Has Already Been Made: the following particulars:
      - 1. the particulars set forth in sub-item (a)1., above; and
      - 2. particulars specified by Cabinet Office Ordinance other than those set forth in the items of Article 5, paragraph (1).
  - (ii) if the Prospectus must be delivered pursuant to Article 15, paragraph (3): for a category of Securities specified in the following sub-item (a) or (b), the particulars specified in the relevant sub-item:

- (a) Securities whose Public Offering or Secondary Distribution is subject to the main clause of Article 4, paragraph (1), the main clause of Article 4, paragraph (2), or the main clause of Article 4, paragraph (3): the following particulars:
  - 1. among those set forth in the items of Article 5, paragraph (1), the particulars specified by Cabinet Office Ordinance as having a material influence on investors' investment decisions; and
  - 2. particulars specified by Cabinet Office Ordinance other than those set forth in the items of Article 5, paragraph (1).
- (b) Securities for Which Disclosure Has Already Been Made: the following particulars:
  - 1. the particulars set forth in sub-item (a)1., above; and
  - 2. particulars specified by Cabinet Office Ordinance other than those set forth in the items of Article 5, paragraph (1).
- (iii) if the Prospectus must be delivered pursuant to the main clause of Article 15, paragraph (4): the particulars stated in the amended statement under Article 7, paragraph (1).
- (3) If, in a Prospectus under item (i) or (ii) of the preceding paragraph that a person submitting a notification to which the provisions of Article 5, paragraph (4) apply (including as applied mutatis mutandis pursuant to paragraph (5) of that Article; the same shall apply hereinafter) is required to prepare or that a person satisfying all of the requirements specified in the items of Article 5, paragraph (4) is required to prepare in connection with Securities for Which Disclosure Has Already Been Made, the relevant person has stated that reference should be made to the Reference Documents, said person is deemed to have stated the particulars set forth in Article 5, paragraph (1), item (ii).
- (4) It is prohibited for any person to use a Prospectus referred to in paragraph (1) that contains a false statement or omits a statement as to a detail that is required to be stated, for a Public Offering or Secondary Distribution of Securities that is subject to the main clause of Article 4, paragraph (1), the main clause of Article 4, paragraph (2), or the main clause of Article 4, paragraph (3), or for a Public Offering or Secondary Distribution of Securities for Which Disclosure Has Already Been Made.
- (5) It is prohibited for any person to make a false or misleading representation in documents, drawings, sounds, or other materials (this includes anything that shows the contents of information that has been recorded in electronic or magnetic records (meaning records used in computer data processing which are created in electronic form, magnetic form, or any form that is otherwise impossible to perceive through the human senses alone; the same applies hereinafter), if such materials have been prepared as electronic or magnetic records; the same applies in Article 17) other than the Prospectus referred to in

paragraph (1), which are used for the purpose of a Public Offering or Secondary Distribution of Securities that is subject to the main clause of Article 4, paragraph (1), the main clause of Article 4, paragraph (2), or the main clause of Article 4, paragraph (3) or for a Public Offering or Secondary Distribution of Securities for Which Disclosure Has Already Been Made.

#### Article 14 Deleted

(Prohibition of Transactions in Securities Prior to a Notification Coming into Effect, and Delivery of Prospectus)

Article 15 (1) It is prohibited for an Issuer, person that conducts a Secondary Distribution of Securities, Underwriter (including a person that, with regard to a General Solicitation Involving Securities Acquired by a Qualified Institutional Investor (except in a Case In Which Disclosure Has Been Made with regard to the Securities for which the general solicitation is issued) or with regard to a General Solicitation Involving Securities Acquired by a Professional Investor (except in a Case In Which Disclosure Has Been Made with regard to the Securities for which the general solicitation is issued), conducts any of the acts specified in the items of Article 2, paragraph (6); hereinafter the same applies in this Chapter), Financial Instruments Business Operator, registered financial institution, or Financial Instruments Intermediary Service Provider to cause Securities to be acquired whose Public Offering or Secondary Distribution is subject to the main clause of Article 4, paragraph (1), the main clause of Article 4, paragraph (2), or the main clause of Article 4, paragraph (3), nor may it sell such Securities through a Public Offering or Secondary Distribution, unless the notification under the main clause of Article 4, paragraph (1), the main clause of Article 4, paragraph (2), or the main clause of Article 4, paragraph (3) has become effective.

(2) When an Issuer, person that conducts a Secondary Distribution of Securities, Underwriter, Financial Instruments Business Operator, registered financial institution, or Financial Instruments Intermediary Service Provider causes Securities referred to in the preceding paragraph, or Securities for Which Disclosure Has Already Been Made, to be acquired through a Public Offering or Secondary Distribution, or when it sells such Securities through a Public Offering or Secondary Distribution, it shall deliver a Prospectus that states the particulars specified in Article 13, paragraph (2), item (i) to the other person in advance or at the same time; provided, however, that this does not apply in the following cases:

(i) the Securities are acquired by or sold to a Qualified Institutional Investor (unless the Qualified Institutional Investor requests to be delivered the Prospectus by the time it acquires or is sold the Securities through the Public

- Offering or Secondary Distribution); or
- (ii) the Securities are acquired by or sold to a person set forth in the following, and such person has consented not to be delivered the Prospectus (unless the consenting person requests to be delivered the Prospectus by the time it acquires or is sold the Securities through the Public Offering or Secondary Distribution):
    - (a) a person that already holds the same issue of Securities as the relevant Securities; or
    - (b) a person living with the consenting person has already received the Prospectus or is reliably expected to receive the Prospectus.
  - (iii) cases referred to in the proviso to Article 13, paragraph (1).
- (3) When an Issuer, person that conducts a Secondary Distribution of Securities, Underwriter, Financial Instruments Business Operator, registered financial institution, or Financial Instruments Intermediary Service Provider causes Securities referred to in paragraph (1) (limited to those specified by Cabinet Order; hereinafter the same applies in this paragraph), or Securities for Which Disclosure Has Already Been Made, to be acquired through a Public Offering or Secondary Distribution, or when it sells such Securities through a Public Offering or Secondary Distribution, if the counterparty requests to be delivered a Prospectus that states the particulars specified in Article 13, paragraph (2), item (ii) by the time the counterparty acquires or is sold the Securities through the Public Offering or Secondary Distribution, the Issuer, person that conducts the Secondary Distribution of Securities, Underwriter, Financial Instruments Business Operator, registered financial institution, or Financial Instruments Intermediary Service Provider shall deliver said Prospectus immediately.
- (4) When an Issuer, person that conducts a Secondary Distribution of Securities, Underwriter, Financial Instruments Business Operator, registered financial institution, or Financial Instruments Intermediary Service Provider causes Securities referred to in paragraph (1) or Securities for Which Disclosure Has Already Been Made to be acquired through a Public Offering or Secondary Distribution, or when it sells such Securities through a Public Offering or Secondary Distribution, if an amended statement under Article 7, paragraph (1) has been submitted in connection with the statement referred to in the main clause of Article 5, paragraph (1) for the relevant Securities, the Issuer, person that conducts the Secondary Distribution of Securities, Underwriter, Financial Instruments Business Operator registered financial institution, or Financial Instruments Intermediary Service Provider shall deliver a Prospectus that states the particulars specified in Article 13, paragraph (2), item (iii) in advance, or at the same time; provided, however, that this does not apply in the cases specified in the items of paragraph (2).
- (5) The main clause of the preceding paragraph does not apply if an indication



that the Issue Price, etc. will be announced separately and the means of its announcement (limited to means specified by Cabinet Office Ordinance) are stated in a Prospectus referred to under paragraph (2) which has been delivered without the Issue Price, etc. being stated pursuant to the proviso to Article 13, paragraph (2), and if the Issue Price, etc. has actually been announced by said means.

- (6) The provisions of paragraph (2) to the preceding paragraph apply mutatis mutandis if the remainder of the Securities referred to in paragraph (1) that are not acquired by any person through a Public Offering or Secondary Distribution (excluding Securities that fall under any of the categories specified in Article 24, paragraph (1), items (i) and (ii)) is caused to be acquired or is sold other than through a Public Offering or Secondary Distribution within three months (excluding, if an order for suspension under Article 10, paragraph (1) or Article 11, paragraph (1) has been issued, the period from the day on which the order for suspension was issued until the day on which the order was canceled) from the day on which the notification under Article 4, paragraphs (1) to (3) inclusive for the Public Offering or Secondary Distribution came into effect.

(Compensatory Liability of Violators)

Article 16 A person violates the preceding Article in causing Securities to be acquired is liable to compensate the person that acquires the Securities for damage arising from the violation.

(Compensatory Liability of a Person Using a Prospectus Containing a False Statement)

Article 17 A person that, in a Public Offering or Secondary Distribution of Securities that is subject to the main clause of Article 4, paragraph (1), the main clause of Article 4, paragraph (2) or the main clause of Article 4, paragraph (3) or of Securities for Which Disclosure Has Already Been Made, causes Securities to be acquired while using a Prospectus referred to in Article 13, paragraph (1) that contains a false statement about a material particular, omits a statement as to a material particular that is required to be stated, or omits a statement of material fact that is necessary to prevent it from being misleading, or while using materials that contain a false or misleading representation about a material particular, or that omit a representation of material fact that is necessary to prevent them from being misleading, is liable to compensate for damage sustained by a person that acquires the Securities without knowing that the statement is false or has been omitted, that the representation is false or misleading, or that a representation has been omitted; provided, however, that this does not apply if the person that would be

liable to compensate proves it did not know, and in the exercise of reasonable care could not have known, that the statement was false or had been omitted, or that the representation was false or misleading.

(Compensatory Liability of the Person Submitting a Securities Registration Statement Containing a False Statement)

Article 18 (1) If a Securities Registration Statement contains a false statement about a material particular, omits a statement as to a material particular that is required to be stated, or omits a statement of material fact that is necessary to prevent it from being misleading, the person that submitted the Securities Registration Statement is liable to compensate for damage sustained by a person that acquires the Securities through the Public Offering or Secondary Distribution; provided, however, that this does not apply if the person that acquires the Securities knows that the statement is false or has been omitted at the time the person offers to acquire the Securities.

(2) The preceding paragraph applies mutatis mutandis if a Prospectus referred to in Article 13, paragraph (1) contains a false statement about a material particular, omits a statement as to a material particular that is required to be stated, or omits a statement of material fact that is necessary to prevent it from being misleading. In this case, in the preceding paragraph, the phrase "the person that submitted the Securities Registration Statement" is deemed to be replaced with "the Issuer that prepared the Prospectus" and the phrase "through the Public Offering or Secondary Distribution" is deemed to be replaced with "through the Public Offering or Secondary Distribution after receiving the Prospectus."

(Amount of Compensatory Liability Person Submitting a Securities Registration Statement That Contains a False Statement, etc.)

Article 19 (1) The amount of compensation for which a person is liable pursuant to the preceding Article is the amount calculated by deducting the amount specified in each of the following items from the amount that the claimant paid to acquire the Securities:

(i) the market value of the Securities at the time the claimant claims damages pursuant to the preceding Article (or, if they have no market value, their estimated disposal value at such time); or

(ii) the disposal value of the Securities, if they were disposed of before the time referred to in the preceding item.

(2) If the person that would be liable to compensate pursuant to the preceding Article proves that the whole or part of the damage sustained by the claimant is due to circumstances other than the decline in the value of the Securities that would have arisen from the Securities Registration Statement or the

Prospectus containing a false statement about a material particular, omitting a statement as to a material particular that is required to be stated, or omitting a statement of material fact that is necessary to prevent it from being, the person is not liable for the whole or such part of the compensation.

(Prescription of the Right to Claim Compensation from the Person Submitting a Securities Registration Statement That Contains a False Statement, etc.)

Article 20 A claim for compensation under Article 18 extinguishes if compensation is not claimed within three years of when the claimant comes to know, or in exercise of reasonable care could have come to know, that the Securities Registration Statement or the Prospectus includes a false statement about a material particular, omits a statement as to a material particular that is required to be stated, or omits a statement of material fact that is necessary to prevent it from being misleading. The same applies if compensation is not claimed within seven years (excluding, if an order for suspension under Article 10, paragraph (1) or Article 11, paragraph (1) has been issued, the period from the day on which the order for suspension is issued to the day on which the order is canceled) of the time that the notification under Article 4, paragraphs (1) to (3) inclusive for the relevant Public Offering or Secondary Distribution of the Securities comes into effect or the Prospectus is delivered.

(Compensatory Liability of the Officers, etc. of a Company Submitting a Statement That Contains a False Statement)

Article 21 (1) If a Securities Registration Statement contains a false statement about a material particular, omits a statement as to a material particular that is required to be stated, or omits a statement of material fact that is necessary to prevent it from being misleading, the following persons are liable to compensate a person that acquires the relevant Securities through a Public Offering or Secondary Distribution, for damage arising from the statement being false or having been omitted; provided, however, that this does not apply if the person that acquires the Securities knows that the statement is false or has been omitted at the time the person offers to acquire the Securities:

- (i) a person that, at the time of submission of the Securities Registration Statement, is an officer (meaning a director, accounting advisor, company auditor, executive officer, or a person equivalent thereto; the same applies hereinafter, except in Article 163 to Article 167 inclusive) of the company that submitted the Securities Registration Statement, or an incorporator of said company (limited to cases in which the Securities Registration Statement was submitted before the incorporation of the company);
- (ii) the holder of the Securities subject to the Secondary Distribution (or, if the holder had acquired the Securities from their previous holder by entering

- into a contract specifying that the Securities would be sold through a Secondary Distribution, the previous holder that is the other party to the contract);
- (iii) a certified public accountant or the auditing firm that, in the audit certification provided for in Article 193-2, paragraph (1) in connection with the Securities Registration Statement, certifies a statement in the documents under the audit certification which is false or has been omitted, as not being false or as not having been omitted; and
  - (iv) the Financial Instruments Business Operator or registered financial institution that concludes the Original Underwriting Contract with the Issuer of the Securities subject to the Public Offering or with either person specified in item (ii).
- (2) In the case referred to in the preceding paragraph, a person set forth in one of the following items is not liable for the compensation set forth in that paragraph, if said person proves the particular set forth in the relevant item:
- (i) the person specified in item (i) or (ii) of the preceding paragraph: it did not know, and in the exercise of reasonable care could not have known, that the statement was false or had been omitted;
  - (ii) a person or firm specified in item (iii) of the preceding paragraph: it did not intentionally or negligently provide such inappropriate certification; and
  - (iii) the person or firm specified in item (iv) of the preceding paragraph: it did not know, and, with respect to parts other than the part involving documents related to financial accounting provided for in Article 193-2, paragraph (1), in the exercise of reasonable care it could not have known, that the statement was false or had been omitted.
- (3) The provisions of items (i) and (ii) of paragraph (1) and item (i) of the preceding paragraph apply mutatis mutandis if a Prospectus referred to in Article 13, paragraph (1) contains a false statement about a material particular, omits a statement as to a material particular that is required to be stated, or omits a statement of material fact that is necessary to prevent it from being misleading. In this case, in paragraph (1), the phrase "through the relevant Public Offering or Secondary Distribution" is deemed to be replaced with "through the relevant Public Offering or Secondary Distribution after receipt of the Prospectus", the phrase "the company that submitted the Securities Registration Statement" is deemed to be replaced with "the company that prepared the Prospectus", the phrase "at the time of submission" is deemed to be replaced with "at the time of preparation", and the phrase "was submitted" is deemed to be replaced with "was prepared".
- (4) The term "Original Underwriting Contract" as used in paragraph (1), item (iv) means either of the following contracts as concluded for a Public Offering or Secondary Distribution of Securities:

- (i) a contract stipulating that the Underwriter will acquire all or part of the relevant Securities from the Issuer or holder (excluding a Financial Instruments Business Operator or registered financial institution; the same applies in the following item and item (iii)), with the aim of having other persons acquire them; or
- (ii) a contract stipulating that if no other person acquires all or part of the relevant Securities, the Underwriter will acquire those that remain from the Issuer or holder.; or
- (iii) in cases where the Securities are share option certificates (including the Securities specified by Cabinet Office Ordinance as being equivalent thereto; hereinafter the same shall apply in this item), the person who acquired said share option certificates concludes a contract to acquire, when he/she does not exercise share options (including the rights specified by Cabinet Office Ordinance as being equivalent thereto; hereinafter the same shall apply in this item) for all or part of said share option certificates, the share option certificates pertaining to said unexercised share options from the issuer or holder thereof in order for said person or a third party to exercise said share options.

(Compensatory Liability of a Person Submitting a Document That Contains a False Statement, etc.)

Article 21-2 (1) If a document set forth in one of the items of Article 25, paragraph (1) (excluding items (v) and (ix)) (hereinafter referred to as a "Document" in this Article) contains a false statement about a material particular, omits a statement as to a material particular that is required to be stated, or omits a statement of material fact that is necessary to prevent it from being misleading, the person submitting the Document is liable to compensate a person that, during the period the Document is being made available for public inspection as required by Article 25, paragraph (1), acquires or disposes of Securities issued by the person submitting the Document (excluding a document set forth in Article 25, paragraph (1), item (xii)) or by a person whose Parent Company, etc. (meaning a Parent Company, etc. as defined by Article 24-7, paragraph (1)) is the person submitting the Document (limited to a document set forth in Article 25, paragraph (1), item (xii)) other than through a Public Offering or Secondary Distribution, for damage arising from the statement being false or having been omitted (hereinafter collectively referred to as being a "False Statement, etc." in this Article), to an extent not exceeding the amount calculated in accordance with the rule provided in Article 19, paragraph (1); provided, however, that this does not apply if the person that acquires or disposes of the Securities knows of the False Statement, etc. at the time of the acquisition or disposal.

- (2) In the case referred to in the preceding paragraph, if the person that would be liable to compensate proves that he/she did not intentionally or negligently make the False Statement, etc. in the relevant Document, the person is not liable for the compensation under the provisions of that paragraph.
- (3) In the case referred to in the main clause of paragraph (1), if the fact that a false statement, etc. in the relevant Document is contained is disclosed, a person that has acquired the relevant Securities within the one year prior to the day of the disclosure of the existence of the false statement, etc. (hereinafter referred to as the "Disclosure Date" in this paragraph) and that continues to hold the Securities on the Disclosure Date, may assert the amount calculated by deducting the average market value (or, if no market value exists, the estimated disposal value; hereinafter the same applies in this paragraph) during the one month after the Disclosure Date from the average market value during one month prior to the Disclosure Date, to be the amount of damage arising from the Document's False Statement, etc.
- (4) The term "disclosure of the existence of a false statement, etc." as used in the preceding paragraph means that the person submitting the Document or a person that has statutory authority over the person submitting the Document has taken measures to put the material particular that is required to be stated and that the Document's false statement, etc. concerns or the material fact that is necessary to prevent the Document from being misleading in connection with the same, into a form that allows for a large number of persons to learn of it through public inspection provided in Article 25, paragraph (1) or through other means.
- (5) In the case referred to in paragraph (3), if the person that would be liable to compensate proves that the whole or part of the damage sustained by the claimant was due to circumstances other than the decline in the value of the Securities that could have arisen from the Document's false statement, etc., the person is not liable for the whole or such part of the compensation.
- (6) In a case referred to in paragraph (3) other than one referred to in the preceding paragraph, if the court finds that the whole or part of the damage sustained by the claimant was due to circumstances other than the decline in the value of the Securities that could have arisen from the Document's false statement, etc., but that it is extremely difficult to prove the amount of damage arising from such other circumstances due to the nature thereof, based on the entire import of oral arguments and the results of an examination of evidence, the court may determine an appropriate amount as the amount of damage for which the relevant person is not liable to compensate.

(Prescription of the Right to Claim Compensation from a Person Submitting a Document That Contains a False Statement, etc.)

Article 21-3 The provisions of Article 20 apply mutatis mutandis to a claim for compensation under the preceding Article. In this case, in Article 20, the phrase "Article 18" is deemed to be replaced with "Article 21-2", the phrase "the Securities Registration Statement or the Prospectus" is deemed to be replaced with "a document set forth in one of the items of Article 25, paragraph (1) (excluding items (v) and (ix))", the phrase "three years" is deemed to be replaced with "two years", and the phrase "within seven years (excluding, if an order for suspension under Article 10, paragraph (1) or Article 11, paragraph (1) has been issued, the period from the day on which the order for suspension is issued to the day on which the order is canceled) of the time that the notification under Article 4, paragraphs (1) to (3) inclusive for the relevant Public Offering or Secondary Distribution of the Securities comes into effect or the Prospectus is delivered" is deemed to be replaced with "within five years of the time that the document is submitted".

(Compensatory Liability of the Officers, etc. of a Company Submitting a Statement That Contains a False Statement, etc.)

Article 22 (1) If a Securities Registration Statement contains a false statement about a material particular, omits a statement as to a material particular that is required to be stated, or omits a statement of material fact that is necessary to prevent it from being misleading, persons set forth in Article 21, paragraph (1), items (i) and (iii) are liable to compensate a person that, without knowing that the statement is false or has been omitted, acquires or disposes of Securities issued by the person submitting the Securities Registration Statement other than through a Public Offering or Secondary Distribution, for damage arising from the statement being false or having been omitted.

(2) The provisions of Article 21, paragraph (2), items (i) and (ii) apply mutatis mutandis to a person that would be liable for the compensation set forth in the preceding paragraph.

(Prohibition on Presuming the Veracity of a Securities Registration Statement)

Article 23 (1) No person may deem, based on a notification under Article 4, paragraphs (1) to (3) inclusive for a Public Offering or Secondary Distribution of Securities having been made and having come into effect, nor based on the an order for suspension under Article 10, paragraph (1) or Article 11, paragraph (1) having been canceled, that the Prime Minister certifies a statement contained in the Securities Registration Statement submitted for the notification to be true and accurate, that the Prime Minister certifies that the Securities Registration Statement does not omit a statement as to a material particular, or that the Prime Minister guarantees or recognizes the value of the Securities.

- (2) No person may make a representation that is in violation of the provisions of the preceding paragraph.

(Replacement of Terms for Application of Relevant Provisions When Reference Should Be Made to Reference Documents)

Article 23-2 With regard to the application of Article 7, Articles 9 to 11 inclusive, Articles 17 to 21 inclusive, Article 22, and the preceding Article if a statement to which Article 5, paragraph (4) is applicable is submitted or an amended statement is submitted in connection with such a statement, or if a Prospectus to which Article 13, paragraph (3) is applicable is prepared, in Article 7 paragraph (1), the phrase "a statement or other document under Article 5, paragraph (1) or paragraph (6)" is deemed to be replaced with "a statement or other document under Article 5, paragraph (1) or paragraph (6) (including the Reference Documents for the statement, if it is one to which Article 5, paragraph (4) is applicable (including as applied mutatis mutandis pursuant to Article 5, paragraph (5); the same applies in Articles 9 to 11 inclusive); the same applies in this paragraph)"; in Article 9, paragraph (1), the phrase "a statement or other document under Article 5, paragraph (1) or paragraph (6) or Article 7, paragraph (1)," is deemed to be replaced with "a statement or other document under Article 5, paragraph (1) or paragraph (6) or Article 7 (including the Reference Documents for the statement or amended statement, if it is a statement to which Article 5, paragraph (4) is applicable or an amended statement under Article 7, paragraph (1), that has been submitted in connection with such a statement)"; in Article 10, paragraph (1), the term "Securities Registration Statement" is deemed to be replaced with "Securities Registration Statement (including the Reference Documents for the statement or amended statement, if it is a statement to which Article 5, paragraph (4) is applicable or an amended statement under Article 7, paragraph (1), paragraph (1) of the preceding Article or this paragraph which has been submitted in connection with such a statement)"; in Article 10, paragraph (4), the term "amended statement" is deemed to be replaced with "amended statement (including the Reference Documents for the amended statement, if it is connected with a statement to which Article 5, paragraph (4) is applicable)"; in Article 11, paragraph (1), the phrase "a Securities Registration Statement contains" is deemed to be replaced with "a Securities Registration Statement (or a Securities Registration Statement or Reference Documents for that Securities Registration Statement, if it is a statement to which Article 5, paragraph (4) is applicable or an amended statement under Article 7 paragraph (1), Article 9, paragraph (1) or paragraph (1) of the preceding Article which has been submitted in connection with such a statement) contains"; in Article 11, paragraph (2), the term "amended statement" is



deemed to be replaced with "amended statement (including the Reference Documents for the amended statement, if it is connected with a statement to which Article 5, paragraph (4) is applicable)"; in Article 17, the term "Prospectus" is deemed to be replaced with "Prospectus (including the Reference Documents for the Prospectus, if it is a Prospectus to which Article 13, paragraph (3) is applicable)"; in Article 18, paragraph (1), the phrase "a Securities Registration Statement contains" is deemed to be replaced with "a Securities Registration Statement (or a Securities Registration Statement or Reference Documents for that Securities Registration Statement, if it is a statement to which Article 5, paragraph (4) is applicable or an amended statement under Article 7, Article 9, paragraph (1) or Article 10, paragraph (1) which has been submitted in connection with such a statement) contains"; in Article 18, paragraph (2), the phrase "a Prospectus referred to in Article 13, paragraph (1) contains" is deemed to be replaced with "a Prospectus referred to in Article 13, paragraph (1) (or a Prospectus or Reference Documents for that Prospectus, if it is a Prospectus to which Article 13, paragraph (3) is applicable) contains"; in Article 19, paragraph (2) and the first sentence of Article 20, the term " Securities Registration Statement" is deemed to be replaced with " Securities Registration Statement (including the Reference Documents for the Securities Registration Statement, if it is a statement to which Article 5, paragraph (4) is applicable or an amended statement under Article 7 paragraph (1),, Article 9, paragraph (1) or Article 10, paragraph (1) which has been submitted in connection with such a statement)" and the term "Prospectus" is deemed to be replaced with "Prospectus (or a Prospectus or Reference Documents for that Prospectus, if it is a Prospectus to which Article 13, paragraph (3) is applicable)"; in Article 21, paragraph (1), the phrase "a Securities Registration Statement contains" is deemed to be replaced with "a Securities Registration Statement (or a Securities Registration Statement or Reference Documents for that Securities Registration Statement, if it is a statement to which Article 5, paragraph (4) is applicable or an amended statement under Article 7, paragraph (1), Article 9, paragraph (1) or Article 10, paragraph (1) which has been submitted in connection with such a statement) contains"; in Article 21, paragraph (3), the phrase "a Prospectus referred to in Article 13, paragraph (1) contains" is deemed to be replaced with "a Prospectus referred to in Article 13, paragraph (1) (or a Prospectus or Reference Documents for the Prospectus, if it is a Prospectus to which Article 13, paragraph (3) is applicable) contains"; in Article 22, paragraph (1), the phrase "a Securities Registration Statement contains" is deemed to be replaced with "a Securities Registration Statement (or a Securities Registration Statement or Reference Documents for that Securities Registration Statement, if it is a statement to which Article 5, paragraph (4) is applicable or an amended

statement under Article 7, paragraph (1), Article 9, paragraph (1) or Article 10, paragraph (1) which has been submitted in connection with such a statement) contains"; and in paragraph (1) of the preceding Article, the term "Securities Registration Statement" is deemed to be replaced with "Registration Statement (including the Reference Documents for the statement or amended statement, if it is a statement to which Article 5, paragraph (4) is applicable or an amended statement under Article 7, paragraph (1), Article 9, paragraph (1) or Article 10, paragraph (1) which has been submitted in connection with such a statement)."

(Submission of a Shelf Registration Statement)

Article 23-3 (1) If an Issuer of Securities that is planning a Public Offering or Secondary Distribution satisfies the requirements specified in Article 5, paragraph (4) and the total issue value or the total distribution value of the Securities for which the Issuer is planning the Public Offering or Secondary Distribution (hereinafter referred to as the "Planned Amount of Issuance") is 100 million yen or more (if the Securities for which the Issuer is planning the Public Offering or Secondary Distribution are share option certificates, this includes when the amount calculated by adding the total amount to be paid in upon the exercise of share options under said share option certificates to the Planned Amount of Issuance is 100 million yen or more), the Issuer of Securities may register said Public Offering or Secondary Distribution of Securities by submitting a document that, pursuant to the provisions of Cabinet Office Ordinance, states the particulars that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors, including the period for which the Issuer is planning the Public Offering or Secondary Distribution of the Securities (hereinafter referred to as the "Planned Issuance Period"), the class of the Securities, the Planned Amount of Issuance or the maximum outstanding balance, and the names of principal Financial Instruments Business Operators and registered financial institution Institutions that plan to underwrite the Securities (such document is hereinafter referred to as a "Shelf Registration Statement") to the Prime Minister; provided, however, that this does not apply if the Issuer is planning a Secondary Distribution of Securities that have been the subject of a solicitation with a view to issuing new securities or a solicitation with a view to delivering existing securities that fell under the category of an Exclusive Solicitation to Qualified Institutional Investors set forth in Article 23-13, paragraph (1) (limited to an Exclusive Solicitation to Qualified Institutional Investors to which the main clause of Article 23-13, paragraph (1) is applicable) (excluding a Case In Which Disclosure Has Been Made with regard to the Securities), a Secondary Distribution of Securities for Professional

Investors (excluding a Case In Which Disclosure Has Been Made with regard to the Securities), or a Secondary Distribution of Securities that have been the subject of a solicitation with a view to issuing new securities that fell under the category of a Solicitation to a Small Number of Investors set forth in Article 23-13, paragraph (4) (limited to a Solicitation to a Small Number of Investors to which the main clause of Article 23-13, paragraph (4) is applicable) (excluding a Case In Which Disclosure Has Been Made for the Securities).

- (2) The preceding paragraph applies only if, in addition to the particulars specified by Cabinet Office Ordinance which are referred to in said paragraph, the Shelf Registration Statement referred to in said paragraph states, pursuant to the provisions of Cabinet Office Ordinance, that reference should be made to the latest Reference Documents for said Issuer with regard to the particulars set forth in Article 5, paragraph (1), item (ii), and only if such Shelf Registration Statement is accompanied by the documents that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors.
- (3) The provisions of Article 4, paragraph (1) to (3) inclusive do not apply to a Public Offering or Secondary Distribution of the Securities for which a registration under paragraph (1) (hereinafter referred to as a "Shelf Registration") has been made.
- (4) A company that is the Issuer of Securities for which a Shelf Registration has been made may continue to submit Annual Securities Reports and accompanying documents under Article 24, paragraph (1) (including as applied mutatis mutandis pursuant to Article 24, paragraph (5); hereinafter the same applies in this paragraph), even after the obligation to submit an Annual Securities Report under Article 24, paragraph (1) extinguishes, if their submission is necessary to satisfy the requirements set forth in Article 5, paragraph (4).

(Submission of an Amended Shelf Registration Statement)

Article 23-4 If, on or after the day on which a Shelf Registration was made and before the day on which the Shelf Registration ceases to be effective, new documents are submitted that are of the same type as the Reference Documents to which the Shelf Registration Statement states, pursuant to paragraph (2) of the preceding Article, that reference should be made (excluding the case where the Shelf Registration Statement states the due date for the submission of said same type of documents and the said same type of documents are submitted by the due date) or any other circumstance arises that is specified by Cabinet Office Ordinance as necessitating that the content of the Shelf Registration Statement and accompanying documents (hereinafter collectively referred to as "Shelf Registration Documents" in this Article) be

amended in the public interest or for the protection of investors, the person that made the Shelf Registration (hereinafter referred to as the "Shelf Registrant") must submit an Amended Shelf Registration Statement to the Prime Minister pursuant to the provisions of Cabinet Office Ordinance. The same also applies in the absence of such a circumstance, if the Shelf Registrant finds there to be something in the Shelf Registration Documents that necessitates an amendment. In this, the Shelf Registrant may not make an amendment in order to increase the Planned Amount of Issuance or the maximum outstanding balance, change the Planned Issuance Period, or change any other particular specified by Cabinet Office Ordinance.

(Effective Date of a Shelf Registration Statement)

Article 23-5 (1) The provisions of Article 8 apply mutatis mutandis to effectuation of a Shelf Registration Statement. In this case, in Article 8, paragraph (1), the phrase "the statement under Article 5, paragraph (1) (or, if the particulars referred to in the proviso to Article 5, paragraph (1) are not stated in the statement, the amended statement under the paragraph (1) of preceding Article which is connected with said particulars; the same applies in the following paragraph)" is deemed to be replaced with "Shelf Registration Statement provided for in Article 23-3, paragraph (1) (hereinafter referred to as a 'Shelf Registration Statement' in this Article to Article 23 inclusive)"; in Article 8, paragraph (2), the phrase "an amended statement under paragraph (1) of the preceding Article" is deemed to be replaced with "an Amended Shelf Registration Statement under Article 23-4" and the phrase "the statement set forth Article 5, paragraph (1)" is deemed to be replaced with "the Shelf Registration Statement"; and in Article 8, paragraph (3), the phrase "statement or other document under Article 5, paragraph (1) or, paragraph (13) or paragraph (1) of the preceding Article" is deemed to be replaced with "Shelf Registration Statement and accompanying documents or an Amended Shelf Registration Statement under Article 23-4 submitted before the day on which the Shelf Registration prescribed in Article 23-3, paragraph (3) (hereinafter referred to as a 'Shelf Registration' in this Article to Article 23) comes into effect" and the phrase "person submitting the statement and other documents" is deemed to be replaced with "person submitting that document".

(2) If, pursuant to the preceding Article, an Amended Shelf Registration Statement is submitted on or after the day on which a Shelf Registration comes into effect and the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order the suspension of the validity of the Shelf Registration during a fixed period of no longer than 15 days designated thereby.

(Planned Issuance Period for Securities under Shelf Registration)

Article 23-6 (1) The Planned Issuance Period for Securities under Shelf

Registration is the period that is specified by Cabinet Office Ordinance of up to two years from the day on which the Shelf Registration comes into effect.

(2) A Shelf Registration ceases to be effective on the day on which the Planned Issuance Period under the preceding paragraph has elapsed.

(Submission of a Written Withdrawal of Shelf Registration)

Article 23-7 (1) If a Public Offering or Secondary Distribution has ended for

Securities comprising the entire Planned Amount of Issuance before the day on which the Planned Issuance Period set forth in paragraph (1) of the preceding Article elapses, the Shelf Registrant shall withdraw the Shelf Registration by submitting a written withdrawal of Shelf Registration in which it indicates this to the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance.

(2) Notwithstanding the provisions of paragraph (2) of the preceding Article, in a case referred to in the preceding paragraph, the Shelf Registration ceases to be effective on the day on which the Prime Minister accepts the written withdrawal of Shelf Registration.

(Submission of Shelf Registration Supplements)

Article 23-8 (1) It is prohibited for an Issuer, person that engages in the

Secondary Distribution of Securities, Underwriter, Financial Instruments Business Operator, or registered financial institution to cause Securities whose Public Offerings or Secondary Distributions have been registered in advance through a Shelf Registration to be acquired through Public Offerings or Secondary Distributions, or to sell such Securities through Public Offerings or Secondary Distributions, unless the Shelf Registration has come into effect and a document stating the total issue value or total distribution value, conditions of issuance or distribution of the Securities, and any other particulars that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors (hereinafter referred to as "Shelf Registration Supplement") has been submitted to the Prime Minister for each Public Offering or Secondary Distribution, pursuant to the provisions of Cabinet Office Ordinance; provided however, that this does not apply to Public Offerings or Secondary Distributions specified by Cabinet Office Ordinance if the total issue value or total distribution value of each Public Offering or Secondary Distribution is less than 100 million.

(2) Notwithstanding the provisions of the preceding paragraph, the Issuer, person that engages in the Secondary Distribution of Securities, Underwriter, Financial Instruments Business Operator, or registered financial institution may cause short-term corporate bonds provided for in Article 66, item (i) of the

Act on Book-entry Transfer of Corporate Bonds, etc. or any other bonds, etc. specified by Cabinet Order that are among the book-entry bonds, etc. set forth in Article 129, paragraph (1) of that Act (limited to those with an outstanding balance that is made available for public inspection by the Book-Entry Transfer Institution (meaning a Book-Entry Transfer Institution provided for in Article 2, paragraph (2) of that Act) that deals in the relevant book-entry bonds, etc.), whose Public Offerings or Secondary Distributions have been registered in advance through a Shelf Registration, to be acquired through Public Offerings or Secondary Distributions or to sell such bonds, etc. through Public Offerings or Secondary Distributions, if the Shelf Registration has come into effect.

- (3) If a Public Offering or Secondary Distribution of Securities will be made only to shareholders that are stated or recorded in the shareholder register as of a certain date, the Shelf Registration Supplement for said Public Offering or Secondary Distribution must be submitted by 10 days prior to that date; provided, however, that this does not apply in the cases that are specified by Cabinet Office Ordinance in consideration of the issue price or distribution price or other circumstances.
- (4) The provisions of Article 4, paragraphs (5) and (6) apply *mutatis mutandis* to a Public Offering or Secondary Distribution of Securities to which the proviso to paragraph (1) is applicable. In this case, in Article 4, paragraph (5), the phrase "in a Specified Public Offering" is deemed to be replaced with "in a Public Offering or Secondary Distribution" and the phrase "apply to said Specified Public Offering" is deemed to be replaced with "apply to said Public Offering or Secondary Distribution"; and in Article 4, paragraph (6), the phrase "the Securities in the Specified Public Offering, etc.," is deemed to be replaced with "said Securities", the phrase "the Specified Public Offering, etc. begins" is deemed to be replaced with "the Public Offering or Secondary Distribution begins", the phrase "a written notice of the Specified Public Offering, etc." is deemed to be replaced with "a written notice of the Public Offering or Secondary Distribution", and the phrase "a Secondary Distribution of Securities set forth in paragraph (4) whose total distribution value is less than 100 million yen in a Case In Which Disclosure Has Been Made, nor to a Secondary Distribution of Securities as set forth in paragraph (1), item (iii) conducted by a person other than the Issuer of said Securities or a person specified by Cabinet Office Ordinance, nor to a Public Offering or Secondary Distribution of Securities as set forth in item (v) of that paragraph whose total issue value" is deemed to be replaced with "a Public Offering or Secondary Distribution whose total issue value".
- (5) As well as stating, pursuant to the provisions of Cabinet Office Ordinance and in addition to the particulars specified by Cabinet Office Ordinance which are

referred to in paragraph (1), that reference should be made to the latest Reference Documents on the Issuer with regard to the particulars set forth in Article 5, paragraph (1), item (ii), the Shelf Registration Supplements referred to in paragraph (1) must be accompanied by the documents that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest for the protection of investors.

(Order to Submit an Amended Shelf Registration Statement Due to a Formal Deficiency, etc.)

- Article 23-9 (1) If the Prime Minister finds a formal deficiency in a Shelf Registration Statement (including Reference Documents for that Registration Statement) or accompanying document or in an Amended Shelf Registration Statement under Article 23-4 (including Reference Documents for that Amended Registration Statement), or finds one of these documents to insufficiently state a material particular that is required to be stated therein, the Prime Minister may order the person submitting the document to submit an Amended Shelf Registration Statement. In such a case, irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, the Prime Minister must conduct a hearing.
- (2) Notwithstanding the provisions of Article 8 as applied *mutatis mutandis* pursuant to Article 23-5, paragraph (1), if a disposition under the preceding paragraph is reached before the day on which the Shelf Registration comes into effect, the Shelf Registration comes into effect on the day on which the period designated by the Prime Minister elapses following the day on which the Prime Minister accepts the Shelf Registration Statement for that Shelf Registration.
- (3) In a case referred to in the preceding paragraph, if an Amended Shelf Registration Statement under Article 23-4 is submitted during the period designated by the Prime Minister, the Shelf Registration Statement is deemed to have been accepted by the Prime Minister on the day on which the Prime Minister accepts the Amended Shelf Registration Statement.
- (4) In a case referred to in the preceding paragraph, if the Prime Minister finds that an Amended Shelf Registration Statement under Article 23-4 is easily understandable to the public or finds that information about the particulars set forth in Article 5, paragraph (1), item (ii) with regard to the person that submitted the Amended Shelf Registration Statement is already widely available to the public, the Prime Minister may designate a period that is shorter than that which the Prime Minister has designated as under paragraph (2). In such a case, the Shelf Registration comes into effect on the day on which the shorter period has elapsed.
- (5) The provisions of paragraph (3) apply *mutatis mutandis* if the shorter period

under the preceding paragraph is designated and an Amended Shelf Registration Statement under Article 23-4 is submitted during that shorter period.

(Order to Submit an Amended Shelf Registration Statement Due to a False Statement, etc.)

- Article 23-10 (1) If the Prime Minister finds that a Shelf Registration Statement (including Reference Documents for that Shelf Registration Statement) or accompanying document, an Amended Shelf Registration Statement under Article 23-4 or paragraph (1) of the preceding Article (including Reference Documents for that Amended Shelf Registration Statement), or a Shelf Registration Supplement (including a Reference Document for a Shelf Registration Supplement) or accompanying document contains a false statement about a material particular, omits a statement as to a material particular that is required to be stated, or omits a statement of material fact that is necessary to prevent it from being misleading, the Prime Minister, at any time, may order the person submitting the document to submit an Amended Shelf Registration Statement. In such a case, irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, the Prime Minister must conduct a hearing.
- (2) The provisions of paragraphs (2) to (5) inclusive of the preceding Article apply *mutatis mutandis* if an order is issued to submit an Amended Shelf Registration Statement under the preceding paragraph before the day on which the Shelf Registration comes into effect.
- (3) If the Prime Minister finds it to be necessary upon reaching a disposition under paragraph (1) on or after the day that a Shelf Registration comes into effect the Prime Minister may order the suspension of the validity of the Shelf Registration.
- (4) If an order for suspension under the preceding paragraph is issued and an Amended Shelf Registration Statement under paragraph (1) is submitted, and if the Prime Minister finds the Amended Shelf Registration Statement to be appropriate, the Prime Minister cancels the order for suspension under the preceding paragraph.
- (5) The provisions of the preceding paragraphs apply *mutatis mutandis* if the Prime Minister finds that an Amended Shelf Registration Statement submitted pursuant to paragraph (1) (including Reference Documents referenced therein) contains a false statement about a material particular, omits a statement as to a material particular that is required to be stated, or omits a statement of material fact that is necessary to prevent it from being misleading.



(Suspension of the Validity of a Shelf Registration Due to a False Statement)

Article 23-11 (1) If a Shelf Registration Statement or an accompanying document, an Amended Shelf Registration Statement under Article 23-4, Article 23-9, paragraph (1) or paragraph (1) of the preceding Article (including as applied mutatis mutandis pursuant to Article 23-10, paragraph (5)), a Shelf Registration Supplement or an accompanying document, or a Reference Document for any of the foregoing documents, contains a false statement about a material particular and the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may issue an order against the person submitting that document, with regard to any Shelf Registration Statement or accompanying document, Amended Shelf Registration Statement, or Shelf Registration Supplement or accompanying document (hereinafter collectively referred to as a "Shelf Registration Document, etc." in this Article), or with regard to any statement as set forth in Article 5, paragraph (1), Shelf Registration Statement, or Shelf Registration Supplement, that the person submitting the relevant Shelf Registration Document, etc. submits within one year of the day on which the person submits said Shelf Registration Document, etc., ordering the suspension of the validity of the Shelf Registration under the Shelf Registration Document, etc., the validity of the notification under such a statement, or the validity of the Shelf Registration under such a Shelf Registration Statement or Shelf Registration Supplement, or may extend the period stipulated in Article 8, paragraph (1) (including as applied mutatis mutandis pursuant to Article 23-5, paragraph (1)), for the period that the Prime Minister considers appropriate in the public interest or for the protection of investors. In such a case, irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, the Prime Minister must conduct a hearing.

(2) If a disposition under the preceding paragraph is reached and the Prime Minister finds that the content of an Amended Shelf Registration Statement (including Reference Documents referenced therein) submitted pursuant to Article 23-4 or paragraph (1) of the preceding Article (including as applied mutatis mutandis pursuant to Article 23-10, paragraph (5)) in relation to the false statement referred to in the preceding paragraph is appropriate, and that allowing the acquisition or sale of Securities issued by the person that submitted the Shelf Registration Documents through a Public Offering or Secondary Distribution will not compromise the public interest or the protection of investors, the Prime Minister may cancel the disposition under the preceding paragraph.

(Mutatis Mutandis Application, etc. of Relevant Provisions for Shelf

Registration Statements, etc.)

- Article 23-12 (1) The provisions of Article 6 apply mutatis mutandis if a Shelf Registration Statement and accompanying documents, an Amended Shelf Registration Statement under Article 23-4, Article 23-9, paragraph (1) or Article 23-10, paragraph (1) (including as applied mutatis mutandis pursuant to Article 23-10, paragraph (5)) or Shelf Registration Supplements and accompanying documents are submitted.
- (2) The provisions of Article 13, paragraph (1) apply mutatis mutandis to the Issuer of Securities for which a Shelf Registration is filed, the main clause of Article 13, paragraph (2) applies mutatis mutandis to the Prospectus prepared by the Issuer of Securities for which a Shelf Registration is filed, and the provisions of Article 13, paragraphs (4) and (5) apply mutatis mutandis to a Public Offering or Secondary Distribution of Securities for which a Shelf Registration is filed. In this case, in the main clause of Article 13, paragraph (2), the phrase "For a category set forth in one of the following items, the details of the particulars that are specified in that item" is deemed to be replaced with "The details that are required to be stated in a Shelf Registration Statement, an Amended Shelf Registration Statement under Article 23-4, or Shelf Registration Supplements, and the details specified by Cabinet Office Ordinance".
- (3) The provisions of Article 15, paragraphs (2) and (6) apply mutatis mutandis to a Public Offering or Secondary Distribution of Securities for which a Shelf Registration is filed. In this case, in Article 15, paragraph (2), the phrase "a Prospectus that states the particulars specified in Article 13, paragraph (2), item (i)" is deemed to be replaced with "the Prospectus referred to in Article 13, paragraph (1) as applied mutatis mutandis pursuant to Article 23-12, paragraph (2)"; and in Article 15, paragraph (6), the phrase "paragraph (2) to the preceding paragraph" is deemed to be replaced with "paragraph (2)", the phrase "Article 10, paragraph (1) or Article 11, paragraph (1)" is deemed to be replaced with "Article 23-10, paragraph (3) or Article 23-11, paragraph (1)", and the phrase "the notification under Article 4, paragraphs (1) to (3) inclusive for the Public Offering or Secondary Distribution came into effect" is deemed to be replaced with "the Shelf Registration Supplements are submitted for a Shelf Registration that has been filed for the Public Offering or Secondary Distribution and has already come into effect".
- (4) The provisions of Article 16 apply mutatis mutandis to a person that violates the provisions of Article 23-8, paragraph (1) or (2), or Article 15, paragraph (2) or (6) as applied mutatis mutandis pursuant to the preceding paragraph in causing Securities to be acquired.
- (5) The provisions of Articles 17 to 21 inclusive, Article 22, and Article 23 apply mutatis mutandis to a Public Offering or Secondary Distribution of Securities

for which a Shelf Registration is filed. In this case, in Article 17, the phrase "Prospectus referred to in Article 13, paragraph (1)" is deemed to be replaced with "Prospectus referred to in Article 13, paragraph (1) as applied mutatis mutandis pursuant to Article 23-12, paragraph (2) (including Reference Documents referenced therein)"; in Article 18, paragraph (1), the phrase "a Securities Registration Statement contains" is deemed to be replaced with "Shelf Registration Documents, an Amended Shelf Registration Statement under Article 23-4, Article 23-9, paragraph (1) or Article 23-10, paragraph (1) (including as applied mutatis mutandis pursuant to Article 23-10, paragraph (5)) (hereinafter referred to as an 'Amended Shelf Registration Statement'), Shelf Registration Supplements and accompanying documents, or Reference Documents for any of these documents (hereinafter referred to as 'Shelf Registration Documents, etc.') contain", the phrase "the Securities Registration Statement" is deemed to be replaced with "Shelf Registration Documents, Amended Shelf Registration Statement, Shelf Registration Supplements, or accompanying documents for any of these", the phrase "a Prospectus referred to in Article 13, paragraph (1) contains" in Article 18, paragraph (2) is deemed to be replaced with "a Prospectus referred to in Article 13, paragraph (1) (including Reference Documents for that Prospectus) contains"; in Article 19, paragraph (2), the phrase "the Securities Registration Statement" is deemed to be replaced with "the Shelf Registration Documents, etc." and the phrase "the Prospectus" is deemed to be replaced with "the Prospectus (including Reference Documents for that Prospectus)"; in Article 20, the phrase "the Securities Registration Statement" is deemed to be replaced with "the Shelf Registration Documents, etc.", the phrase "the Prospectus contains" is deemed to be replaced with "the Prospectus (including Reference Documents for that Prospectus) contains", the phrase "Article 10, paragraph (1) or Article 11, paragraph (1)" is deemed to be replaced with "Article 23-10, paragraph (3) or Article 23-11, paragraph (1)", and the phrase "from the time that the notification under Article 4, paragraphs (1) to (3) inclusive for the relevant Public Offering or Secondary Distribution of the Securities comes into effect" is deemed to be replaced with "from the time that the Shelf Registration Supplements are submitted for a Shelf Registration that has been filed for the relevant Public Offering or Secondary Distribution and has already come into effect"; in the non-itemized part of Article 21, paragraph (1), the phrase "a Securities Registration Statement contains" is deemed to be replaced with "Shelf Registration Documents, etc. contain"; in items (i) and (iii) of Article 21, paragraph (1), the phrase "the Securities Registration Statement" is deemed to be replaced with "the Shelf Registration Documents, Amended Shelf Registration Statement, Shelf Registration Supplements, or accompanying documents for any of these"; in Article 21, paragraph (3), the phrase "a

Prospectus referred to in Article 13, paragraph (1) contains" is deemed to be replaced with "Prospectus referred to in Article 13, paragraph (1) (including Reference Documents for that Prospectus)"; in Article 22, paragraph (1), the phrase "a Securities Registration Statement contains" is deemed to be replaced with "the Shelf Registration Documents, etc. contain" and the phrase "the Securities Registration Statement" is deemed to be replaced with "the Shelf Registration Documents, Amended Shelf Registration Statement, Shelf Registration Supplements, or accompanying documents for any of these"; and in Article 23, the phrase "a notification under Article 4, paragraphs (1) to (3) inclusive for a Public Offering or Secondary Distribution of Securities having been made and having come into effect" is deemed to be replaced with "a Shelf Registration having come into effect and Shelf Registration Supplements for it having been submitted (or, for a Public Offering or Secondary Distribution of Securities referred to in Article 23-8, paragraph (2), based on the Shelf Registration for it having come into effect)", the phrase "Article 10, paragraph (1) or Article 11, paragraph (1)" is deemed to be replaced with "Article 23-10, paragraph (3) or Article 23-11, paragraph (1)", the phrase "the Securities Registration Statement" is deemed to be replaced with "the Shelf Registration Documents, etc."; and the term "the notification" is deemed to be replaced with "the Shelf Registration".

- (6) The provisions of paragraphs (2) and (3) and the provisions of Article 17, Article 18, paragraph (2) and Article 21, paragraph (3) as applied mutatis mutandis pursuant to the preceding paragraph do not apply to Securities referred to in Article 23-8, paragraph (2).
- (7) In cases where the Issuer, a person who engages in Secondary Distribution of Securities, an Underwriter, a Financial Instruments Business Operator, a Registered Financial Institution or a Financial Instruments Intermediary Service Provider has another person acquire Securities for which the Public Offering or Secondary Distribution has been registered under the Shelf Registration, or sell such Securities to another person, through Public Offering or Secondary Distribution, after the submission of a Shelf Registration Statement for said Securities or Shelf Registration Statement and Amended Shelf Registration Statement for said Shelf Registration Statement under Article 23-4, when a document stating the matters that should be stated in said Shelf Registration Statement, Amended Shelf Registration Statement thereof and Shelf Registration Supplements thereof under Article 23-3, paragraphs (1) and (2), Article 23-4 and Article 23-8, paragraph (1) (excluding, among the conditions of issuance, issue price and any other matters specified by Cabinet Office Ordinance (hereinafter referred to as the "Issue Price, etc." in this paragraph)) as well as to the effect that the Issue Price, etc. will be announced and announcement method (limited to those specified by Cabinet

Office Ordinance) has been delivered in advance, and said Issue Price, etc. is announced by the method stated in said document, said document shall be deemed to be the Prospectus under Article 13, paragraph (1) as applied mutatis mutandis pursuant to paragraph (2), and the announcement of said Issue Price, etc. shall be deemed to be the delivery under Article 15, paragraph (2) as applied mutatis mutandis pursuant to paragraph (3), notwithstanding the provisions of Articles 15, paragraphs (2) and (6) as applied mutatis mutandis pursuant to paragraph (3).

(Notification, etc. of Exclusive Solicitation to Qualified Institutional Investors)  
Article 23-13 (1) A person that issues a solicitation with a view to issuing new securities or a solicitation with a view to delivering existing securities which falls under a case set forth in the following items (in item (ii), limited to a solicitation issued to Qualified Institutional Investors that are excluded from the large number of persons pursuant to the provisions of Article 2, paragraph (3), item (i), and in a case set forth in item (iv), limited a solicitation issued to Qualified Institutional Investors that are excluded from the large number of persons pursuant to paragraph (4), item (i) of that Article; hereinafter collectively referred to as "Exclusive Solicitation to Qualified Institutional Investors" in this Article), must notify the solicited persons that the Exclusive Solicitation to Qualified Institutional Investors falls under one of the following cases and that therefore the notification under Article 4, paragraph (1) has not been made for the Exclusive Solicitation to Qualified Institutional Investors, and of any other particular that is specified by Cabinet Office Ordinance; provided, however, that this does not apply to a Case In Which Disclosure Has Been Made with regard to the Securities that are subject to the Exclusive Solicitation to Qualified Institutional Investors nor does it apply to a case specified by Cabinet Office Ordinance that constitutes an Exclusive Solicitation to Qualified Institutional Investors with a total issue value or transfer value of less than 100 million yen:

- (i) a case set forth in Article 2, paragraph (3), item (ii), sub-item (a);
- (ii) a case set forth in Article 2, paragraph (3), item (ii), sub-item (c) (but only if it comes to no longer fall under the category of case set forth in item (i) of that paragraph, due to the Qualified Institutional Investors' being excluded from the large number of persons pursuant to that item);
- (iii) a case set forth in Article 2, paragraph (4), item (ii), sub-item (a);
- (iv) a case set forth in Article 2, paragraph (4), item (ii), sub-item (c) (but only if it comes to no longer fall under the category of case set forth in item (i) of that paragraph, due to the Qualified Institutional Investors' being excluded from the large number of persons pursuant to that item);
- (v) a case set forth in Article 2-2, paragraph (4), item (ii), sub-item (a); or

- (vi) a case set forth in Article 2-2, paragraph (5), item (ii), sub-item (a).
- (2) If a person that issues an Exclusive Solicitation to Qualified Institutional Investors to which the main clause of the preceding paragraph is applicable causes Securities to be acquired or sells Securities through that Exclusive Solicitation to Qualified Institutional Investors, such person must deliver a document stating the particulars for which notice is required to be given pursuant to the preceding paragraph to the other party in advance of, or at the same time as, the acquisition or sale.
- (3) A person performing an act set forth in one of the following items must notify the person solicited of the particulars provided for in the relevant item, pursuant to the provisions of Cabinet Office Ordinance; provided, however, that this does not apply to a Case In Which Disclosure Has Been Made for the Securities with regard to which such act was performed:
- (i) the Exclusive Solicitation of Offers to Acquire Targeting Professional Investors or an exclusive Offer to Sell, etc. to Professional Investors: that a notification under Article 4, paragraph (1) has not been given for the Exclusive Solicitation of Offers to Acquire Targeting Professional Investors or exclusive Offer to Sell, etc. to Professional Investors, and any other particular specified by Cabinet Office Ordinance; and
- (ii) solicitation with a view to delivering existing securities which is connected with Securities for Professional Investors and which does not fall under the category of either an exclusive Offer to Sell, etc. to Professional Investors or a General Solicitation Involving Securities Acquired by a Professional Investor (limited to those to which the main clause of Article 4, paragraph (3) is applicable): that the solicitation does not fall under a Case In Which Disclosure Has Been Made in connection with the Securities for Professional Investors, and any other particular specified by Cabinet Office Ordinance.
- (4) A person that issues a solicitation with a view to issuing new securities or solicitation with a view to delivering existing securities that falls under a case set forth in one of the following items for the class of Securities set forth in the relevant item (excluding a case that falls under the category of a solicitation with a view to issuing new securities or solicitation with a view to delivering existing securities for the Securities set forth in Article 2, paragraph (1), item (ix) or those specified by Cabinet Order, and in the case set forth in item (i), sub-item (a) or (b), Exclusive Solicitation to Qualified Institutional Investors is excluded; hereinafter collectively referred to as the "Solicitation to a Small Number of Investors" in this Article) must notify the solicited persons that the solicitation with a view to issuing new securities falls under a case set forth in one of the following items (for item (i), sub-item (a) or (b), this excludes a case in which the Solicitation to a Small Number of Investors falls under the category of an Exclusive Solicitation to Qualified Institutional Investors) for

the class of Securities set forth in the relevant item and therefore the notification under Article 4, paragraph (1) has not been given for the solicitation with a view to issuing new securities, and of any other particular that is specified by Cabinet Office Ordinance; provided, however, that this does not apply to a Case In Which Disclosure Has Been Made with regard to the Securities that are subject to the relevant Solicitation to a Small Number of Investors, nor does it apply in a case specified by Cabinet Office Ordinance that constitutes a Solicitation to a Small Number of Investors with a total issue value or transfer value of less than 100 million yen:

(i) Article 2 (1) Securities: any of the following cases:

- (a) one that falls under Article 2, paragraph (3), item (ii), sub-item (c);
- (b) one that falls under Article 2, paragraph (4), item (ii), sub-item (c);
- (c) one that falls under Article 2-2, paragraph (4), item (ii), sub-item (b);
- (d) one that falls under Article 2-2, paragraph (5), item (ii), sub-item (b).

(ii) Article 2 (2) Securities: any of the following cases:

- (a) one that does not fall under the category of cases set forth in Article 2, paragraph (3), item (iii);
- (b) one that does not fall under the category of cases set forth in Article 2-2, paragraph (4), item (iii).

(5) If a person that issues a Solicitation to a Small Number of Investors to which the main clause of the preceding paragraph is applicable causes Securities to be acquired or sells the same through the Solicitation to a Small Number of Investors, such person must deliver a document stating the particulars for which notice is required to be given pursuant to the preceding paragraph to the other party in advance of, or at the same time as, the acquisition or sale.

(Submission of Annual Securities Reports)

Article 24 (1) If Securities issued by a company (excluding regulated Securities; hereinafter the same applies in this Article, except in the following items) fall under one of the categories set forth in the following items, the company that is the Issuer of the Securities must submit, for each business year, a report stating the trade name of the company, the financial condition of the corporate group to which the company belongs and the company's own financial condition, other material particulars of the company's business, and other particulars specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors (hereinafter referred to as an "Annual Securities Report") to the Prime Minister, within three months after the end of that business year (or, if there is a compelling reason that the company cannot submit the document within such period, within a period approved in advance by the Prime Minister pursuant to the provisions of Cabinet Office Ordinance), for a domestic company, or within the period that is

specified by Cabinet Order as necessary and appropriate in the public interest or for the protection of investors, for a foreign company, pursuant to the provisions of Cabinet Office Ordinance; provided however, that this does not apply if the Securities issued by the company fall under the category of Securities specified in item (iii) below (limited to share certificates and other Securities specified by Cabinet Order) and the numbers of holders of the Securities on the last day of that business year and on the last days of each of the business years that began within four years before the day on which the relevant business year began are smaller than the number calculated pursuant to the provisions of Cabinet Order, and the company receives the acknowledgement of the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance, as a company whose non-submission of an Annual Securities Report does not damage the public interest or result in insufficient investor protection (limited to a company that has already had five years elapse since the end of the first year of report submission (meaning the business year that includes the day on which the main clause of Article 4, paragraph (1), the main clause of Article 4, paragraph (2), the main clause of Article 4, paragraph (3), or the main clause of Article 23-8, paragraph (1) or (2) became applicable to the Public Offering or Secondary Distribution of Securities, and if there are two or more First Years of Report Submission, this means the most recent one); nor does it apply if the Securities issued by the company fall under the category of Securities specified in item (iv) below, and the stated capital is less than 500 million yen (or, if the Securities are Rights in a Securities Investment Business, etc. that are deemed to be Securities pursuant to Article 2, paragraph (2), and the amount that is specified by Cabinet Order as the stated capital is less than the amount specified by Cabinet Order on the last day of that business year) or the number of holders of the Securities on the last day of that business year is smaller than the number specified by Cabinet Order; nor does it apply if the Securities issued by the company fall under the category of Securities specified in item (iii) or (iv) below, and the company receives the acknowledgement of the Prime Minister, pursuant to Cabinet Order, as a company whose non-submission of an Annual Securities Report does not damage the public interest or result in insufficient investor protection:

- (i) Securities listed on a Financial Instruments Exchange (excluding Specified Listed Securities);
- (ii) Securities specified by Cabinet Order as having equivalent distribution statuses to the Securities set forth in the preceding item (excluding Securities specified by Cabinet Order as having equivalent distribution statuses to Specified Listed Securities);
- (iii) Securities to whose Public Offering or Secondary Distribution the main clause of Article 4, paragraph (1), the main clause of Article 4, paragraph (2),



- the main clause of Article 4, paragraph (3), or the main clause of Article 23-8, paragraph (1) or (2) applies (excluding those specified in the preceding two items); or
- (iv) Securities (limited to share certificates, Rights in a Securities Investment Business, etc. that are deemed to be Securities pursuant to Article 2, paragraph (2), and other Securities specified by Cabinet Order) that are issued by the company, for which the number of holders on the last day of the relevant business year or on the last day of any of the business years that began within four years before the day on which the relevant business year began is at least the number specified by Cabinet Order (or, for Rights in a Securities Investment Business, etc. that are deemed to be Securities pursuant to Article 2, paragraph (2), if the number of holders on the last day of the relevant business year is at least the number specified by Cabinet Order) (excluding Securities specified in the preceding three items).
- (2) In the Annual Securities Report that a company must submit pursuant to the main clause of the preceding paragraph, a company that is an Issuer of Securities that fall under the category of Securities specified in item (iii) of the preceding paragraph, which has submitted a statement provided for in Article 5, paragraph (1) stating the particulars specified in Article 5, paragraph (2) with regard to a Low-Value Public Offering, etc., and which does not fall under any of the following categories, may state the particulars set forth in the main clause of the preceding paragraph that are specified by Cabinet Office Ordinance as being relevant to that company, instead of stating the particulars set forth in the main clause of the preceding paragraph:
- (i) a person that has already submitted an Annual Securities Report stating the particulars set forth in the main clause of the preceding paragraph, a Quarterly Securities Report under Article 24-4-7, paragraph (1) or (2) stating the particulars set forth in Article 24-4-7, paragraph (1), or a Semiannual Securities Report stating the particulars set forth in Article 24-5, paragraph (1); and
- (ii) a person that has submitted or is required to submit a statement provided for in Article 5, paragraph (1) stating the particulars set forth in Article 5, paragraph (1), item (ii) for a Public Offering or Secondary Distribution of Securities to which the main clause of Article 4, paragraph (1), the main clause of Article 4, paragraph (2), or the main clause of Article 4, paragraph (3) applies (other than a person specified in the preceding item).
- (3) If the Securities issued by a company to which the main clause of paragraph (1) does not apply, come to fall under a category of Securities specified in items (i) to (iii) inclusive of that paragraph (except in the cases specified by Cabinet Office Ordinance), the company must submit an Annual Securities Report to the Prime Minister without delay for the business year immediately prior to

- the business year that includes the day on which the Securities come to fall under such category, pursuant to the provisions of Cabinet Office Ordinance.
- (4) Necessary particulars relevant to the calculation of the number of holders set forth in paragraph (1), item (iv) are specified by Cabinet Office Ordinance.
- (5) The provisions of the preceding paragraphs apply mutatis mutandis if regulated Securities issued by a company fall under a category specified in an item of paragraph (1). In this case, in the main clause paragraph (1), the phrase "the company that is the Issuer of the Securities" is deemed to be replaced with "the company that is the Issuer of the Securities (other than a person specified by Cabinet Office Ordinance, for Securities that are specified by Cabinet Office Ordinance)", the phrase "excluding regulated Securities" is deemed to be replaced with "limited to regulated Securities", the phrase "the trade name of the company, the financial condition of the corporate group to which the company belongs and the company's own financial condition, other material particulars of the company's business" is deemed to be replaced with "the status of the company's asset accounting in connection with asset management and other similar business conducted by the company, other material particulars of the company's assets", the phrase "for each business year" is deemed to be replaced with "for each of the periods of time specified by Cabinet Office Ordinance for the regulated Securities (hereinafter referred to as a "Specified Period" in this Article)", and the phrase "that business year" is deemed to be replaced with "that Specified Period"; in the proviso to that paragraph, the phrase "this does not apply if the Securities issued by the company fall under the category of Securities specified in item (iii) below (limited to share certificates and other Securities specified by Cabinet Order) and the numbers of holders of the Securities on the last day of that business year and on the last days of each of the business years that began within four years before the day on which that business year began are smaller than the number calculated pursuant to the provisions of Cabinet Order, and the company receives the acknowledgement of the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance, as a company whose non-submission of an Annual Securities Report does not damage the public interest or result in insufficient investor protection (limited to a company that has already had five years elapse since the end of the first year of report submission (meaning the business year that includes the day on which the main clause of Article 4, paragraph (1), the main clause of Article 4, paragraph (2), the main clause of Article 4, paragraph (3), or the main clause of Article 23-8, paragraph (1) or (2) became applicable to the Public Offering or Secondary Distribution of Securities, and if there are two or more First Years of Report Submission, this means the most recent one); nor does it apply if the Securities issued by the company fall under the category of Securities specified in item (iv) below" is

deemed to be replaced with "this does not apply if the regulated Securities issued by the company fall under the category of Securities specified in item (iv) below" and the phrase "or the number of holders of the Securities on the last day of that business year is smaller than the number specified by Cabinet Order; nor" is deemed to be replaced with "; nor"; in item (iv) of paragraph (1), the phrase "share certificates, Rights in a Securities Investment Business, etc. that are deemed to be Securities pursuant to Article 2, paragraph (2)" is deemed to be replaced with "Rights in a Securities Investment Business, etc. that are deemed to be Securities pursuant to Article 2, paragraph (2)" and the phrase "for which the number of holders on the last day of the relevant business year or on the last day of any of the business years that began within four years before the day on which the relevant business year began is at least the number specified by Cabinet Order (or, for Rights in a Securities Investment Business, etc. that are deemed to be Securities pursuant to Article 2, paragraph (2), if the number of holders on the last day of the relevant business year is at least the number specified by Cabinet Order)" is deemed to be replaced with "for which the number of holders on the last day of the relevant Specified Period is at least the number specified by Cabinet Order"; in paragraph (2), the phrase "Securities that fall" is deemed to be replaced with "regulated Securities that fall"; in paragraph (3), the phrase "the main clause of paragraph (1)" is deemed to be replaced with "the main clause of paragraph (1) as applied mutatis mutandis pursuant to paragraph (5)", the phrase "business year" is deemed to be replaced with "Specified Period", and the phrase "the day on which the Securities came to fall under" is deemed to be replaced with "the day on which the regulated Securities came to fall under"; and any other necessary technical replacement of terms is specified by Cabinet Order.

- (6) The articles of incorporation or other documents that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors must accompany an Annual Securities Report.
- (7) The provisions of Article 6 apply mutatis mutandis if an Annual Securities Report and accompanying documents are submitted pursuant to paragraphs (1) to (3) inclusive (including as applied mutatis mutandis pursuant to paragraph (5)) and the preceding paragraph.
- (8) In a case that is specified by Cabinet Office Ordinance as one in which this does not damage the public interest or result in insufficient investor protection, instead of an Annual Securities Report under paragraph (1) and the documents that are required to accompany it pursuant to paragraph (6) (hereinafter collectively referred to as an "Annual Securities Report, etc." in this Article), a foreign company that is required to submit an Annual Securities Report pursuant to paragraph (1) (including as applied mutatis mutandis pursuant to

paragraph (5); hereinafter the same applies in this paragraph to paragraph (13) inclusive) (including a foreign company that has submitted an Annual Securities Report pursuant to Article 23-3, paragraph (4); hereinafter referred to as a "Reporting Foreign Company"), may submit a document that is similar to an Annual Securities Report, etc., but that has been prepared in English and disclosed in a foreign state (such a document is hereinafter referred to as a "Foreign Company Report" in this Chapter).

- (9) A Japanese translation of the summary of the particulars stated in a Foreign Company Report that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors, as well as documents stating the particulars not stated in a Foreign Company Report that are specified by Cabinet Office Ordinance as necessary and appropriate for the public interest or for the protection of investors, and other documents specified by Cabinet Office Ordinance (such documents are hereinafter collectively referred to as "Supplementary Documents" in this Article and paragraph (4) of the following Article) must accompany a Foreign Company Report, as specified by Cabinet Office Ordinance.
- (10) If a Reporting Foreign Company submits a Foreign Company Report and its Supplementary Documents instead of an Annual Securities Report, etc. pursuant to the preceding two paragraphs, in paragraph (1), the phrase "within three months after the end of that business year (or, if there is a compelling reason that the company cannot submit the document within such period, within a period approved in advance by the Prime Minister pursuant to the provisions of Cabinet Office Ordinance), for a domestic company, or within the period that is specified by Cabinet Order as necessary and appropriate in the public interest or for the protection of investors, for a foreign company" is deemed to be replaced with "within the period that is specified by Cabinet Order as necessary and appropriate in the public interest or for the protection of investors" and in paragraph (5), the phrase "in the main clause of paragraph (1), the term 'that business year' is deemed to be replaced with 'that Specified Period' " is deemed to be replaced with "the phrase 'within three months after the end of that business year (or, if there is a compelling reason that the company cannot submit the document within such period, within a period approved in advance by the Prime Minister pursuant to the provisions of Cabinet Office Ordinance), for a domestic company, or within the period that is specified by Cabinet Order as necessary and appropriate in the public interest or for the protection of investors, for a foreign company' is deemed to be replaced with 'within the period that is specified by Cabinet Order as necessary and appropriate in the public interest or for the protection of investors following the Specified Period has elapsed' ".
- (11) If a Reporting Foreign Company submits a Foreign Company Report and its

Supplementary Documents pursuant to paragraphs (8) and (9), the Foreign Company Report and Supplementary Documents are deemed to be an Annual Securities Report, their submission is deemed to be the submission of an Annual Securities Report, etc., and the provisions of this Act and orders based on Financial Instruments and Exchange Act and Related Regulations apply.

- (12) If the Prime Minister finds that a Reporting Foreign Company that has submitted a Foreign Company Report does not satisfy the requirements referred to in the provision of paragraph (8) for being allowed to submit a Foreign Company Report, the Prime Minister must notify the Reporting Foreign Company of this. In such a case, irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, the Prime Minister must conduct a hearing.
- (13) Notwithstanding the provisions of paragraph (1), if a Reporting Foreign Company receives a notice under the preceding paragraph, it must submit an Annual Securities Report under the provisions of paragraph (1) within the period that is specified by Cabinet Order as necessary and in the public interest or for the protection of investors, with the day on which the notice is made as the first day for the calculation of that period.
- (14) If, pursuant to the provisions of Cabinet Office Ordinance, a company that is required to submit an Annual Securities Report pursuant to paragraph (1) (but only as applied *mutatis mutandis* pursuant to paragraph (5); hereinafter the same applies in this Article) submits the documents stating a part of the particulars specified by Cabinet Office Ordinance that are provided for in paragraph (1) (limited to documents prepared based on laws and regulations or the rules of a Financial Instruments Exchange (including anything specified by Cabinet Office Ordinance as being similar to such rules); such documents are hereinafter referred to as "Documents Substituted for Part of an Annual Securities Report" in this paragraph and the following paragraph) together with an Annual Securities Report to the Prime Minister, with regard to the application of paragraphs (1) and (2) to cases in which a company receives the acknowledgement of the Prime Minister, pursuant to Cabinet Office Ordinance, as one whose doing so does not damage the public interest or result in insufficient investor protection, in paragraph (1), the phrase "other particulars that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors" is deemed to be replaced with "other particulars that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors (other than the particulars stated in the Documents Substituted for Part of the Annual Securities Report prescribed in paragraph (14))" and in paragraph (2), the phrase "the particulars set forth in the main clause of the preceding paragraph" is deemed to be replaced with "the particulars set forth

in the main clause of the preceding paragraph (other than the particulars stated in Documents Substituted for Part of the Annual Securities Report provided for in paragraph (14)).

- (15) If Documents Substituted for Part of an Annual Securities Report are submitted together with an Annual Securities Report referred to in paragraph (1) as it applies through the replacement of certain terms pursuant to the preceding paragraph, the Documents Substituted for Part of the Annual Securities Report are deemed to form a part of the Annual Securities Report, the submission of the Documents Substituted for Part of the Annual Securities Report is deemed to be the submission of the Documents Substituted for Part of the Annual Securities Report as a part of the Annual Securities Report, and the provisions of the Financial Instruments and Exchange Act and Related Regulations apply.

(Mutatis Mutandis Application of Provisions on Amended Statements)

Article 24-2 (1) The provisions of Article 7, paragraph (1), Article 9, paragraph (1), and Article 10, paragraph (1) apply mutatis mutandis to an Annual Securities Report and accompanying documents. In this case, in Article 7, paragraph (1), the phrase "If, on or after the day on which a notification under Article 4, paragraphs (1) to (3) inclusive is filed and before the day on which that notification comes into effect, a material particular that is required to be stated in a statement or other document under Article 5, paragraph (1) or paragraph (13) changes" is deemed to be replaced with "If a material particular that is required to be stated in an Annual Securities Report or accompanying document changes", the phrase "the person filing the notification" is deemed to be replaced with "the person submitting the Annual Securities Report", and the term "amended statement" is deemed to be replaced with "amended report"; in Article 9, paragraph (1), the phrase "the person that submitted it" is deemed to be replaced with "the person that submitted the Annual Securities Report" and the term "amended statement" is deemed to be replaced with "amended report"; and in Article 10, paragraph (1), the phrase "the person submitting the Securities Registration Statement" is deemed to be replaced with "the person submitting the amended report" and the phrase "to submit an amended statement, and if the Prime Minister finds it to be necessary, the Prime Minister may order the suspension of the validity of a notification under Article 4, paragraphs (1) to (3) inclusive" is deemed to be replaced with "to submit an amended report".

- (2) If a company that is an Issuer of Securities submits an amended report, pursuant to Article 7, paragraph (1) or Article 10, paragraph (1) as applied mutatis mutandis pursuant to the preceding paragraph, with regard to a material particular for inclusion in its Annual Securities Report, it must give

public notice of this pursuant to the provisions of Cabinet Order.

- (3) The provisions of Article 6 apply mutatis mutandis if an amended report is submitted in connection with an Annual Securities Report or accompanying document, pursuant to Article 7, paragraph (1), Article 9, paragraph (1) or Article 10, paragraph (1) as applied mutatis mutandis pursuant to paragraph (1).
- (4) The provisions of paragraphs (8), (9) and (11) of the preceding Article apply mutatis mutandis if a Reporting Foreign Company submits an amended report in connection with the Foreign Company Report and Supplementary Documents that the company has submitted pursuant to Article 7, paragraph (1), Article 9, paragraph (1) or Article 10, paragraph (1) as applied mutatis mutandis through the replacement of certain terms pursuant to paragraph (1).

(Suspension of the Validity of Notifications Made Within One Year After the Submission of an Annual Securities Report Containing a False Statement)

Article 24-3 The provisions of Article 11 apply mutatis mutandis to any statement specified in Article 5, paragraph (1), Shelf Registration Statement, or Shelf Registration Supplements that a person that has submitted an Annual Securities Report (including any amended report in connection with it; the same applies in the following Article) that contained a false statement with regard to a material particular, submits within one year from the day on which that person submits an amended report in connection with that false statement pursuant to Article 7, paragraph (1) as applied mutatis mutandis pursuant to paragraph (1) of the preceding Article, or is ordered to submit an amended report in connection with that false statement pursuant to Article 10, paragraph (1) as applied mutatis mutandis pursuant to Article 24-2, paragraph (1).

(Compensatory Liability of the Officers, etc. of a Company Submitting an Annual Securities Report That Contains a False Statement)

Article 24-4 The provisions of Article 22 apply mutatis mutandis if an Annual Securities Report contains a false statement about a material particular, omits a statement as to a material particular that is required to be stated, or omits a statement of material fact that is necessary to prevent it from being misleading. In this case, in Article 22, paragraph (1), the phrase "has acquired Securities issued by the person submitting the Securities Registration Statement other than through a Public Offering or Secondary Distribution" is deemed to be replaced with "has acquired Securities issued by the person submitting the Securities Registration Statement".

(Submission of a Confirmation Letter for the Content of Statements in an

Annual Securities Report)

- Article 24-4-2 (1) A company that is required to submit an Annual Securities Report under Article 24, paragraph (1) (including a company that has submitted an Annual Securities Report under Article 23-3, paragraph (4); the same applies in the following paragraph) and which is the Issuer of Securities set forth in Article 24, paragraph (1), item (i), or any other company specified by Cabinet Order, must submit a letter to the Prime Minister in which it confirms that the content of statements in the Annual Securities Report is appropriate and in accordance with the Financial Instruments and Exchange Act and Related Regulations (hereinafter referred to as a "Confirmation Letter" in this and the following Articles), together with said Annual Securities Report (or a Foreign Company Report, if the company submits a Foreign Company Report instead of the Annual Securities Report, etc. set forth in Article 24, paragraph (8), pursuant to that paragraph), pursuant to the provisions of Cabinet Office Ordinance.
- (2) A company that is required to submit an Annual Securities Report under Article 24, paragraph (1) may submit the Confirmation Letter provided for in the preceding paragraph voluntarily, even if it is not a company that is required to submit a Confirmation Letter together with an Annual Securities Report (excluding companies as specified by Cabinet Order) pursuant to the preceding paragraph.
- (3) The provisions of the preceding two paragraphs apply mutatis mutandis to a company specified by Cabinet Order that is required to submit an Annual Securities Report under Article 24, paragraph (1) as applied mutatis mutandis pursuant to Article 24, paragraph (5) (including a company that has submitted an Annual Securities Report under Article 23-3, paragraph (4)).
- (4) The provisions of the preceding three paragraphs apply mutatis mutandis if an amended report is submitted pursuant to Article 7, paragraph (1), Article 9, paragraph (1) and Article 10, paragraph (1) as applied mutatis mutandis through the replacement of certain terms pursuant to Article 24-2, paragraph (1). The necessary technical replacement of terms for such a case is specified by Cabinet Order.
- (5) The provisions of Article 6 apply mutatis mutandis if a Confirmation Letter is submitted pursuant to paragraph (1) or (2) (including as applied mutatis mutandis pursuant to paragraph (3) (including as applied mutatis mutandis pursuant to the preceding paragraph) or the preceding paragraph; hereinafter the same applies in this Article). The necessary technical replacement of terms for such a case is specified by Cabinet Order.
- (6) The provisions of Article 24, paragraphs (8), (9) and (11) to (13) inclusive apply mutatis mutandis if a Reporting Foreign Company submits a Confirmation Letter pursuant to paragraph (1) or (2) of this Article (limited to



if a Reporting Foreign Company submits a Foreign Company Report). In this case, in Article 24, paragraph (8), the phrase "a foreign company that is required to submit an Annual Securities Report pursuant to paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (5); hereinafter the same applies in this paragraph to paragraph (13) inclusive) (including a foreign company that has submitted an Annual Securities Report pursuant to Article 23-3, paragraph (4); hereinafter referred to as a 'Reporting Foreign Company')" is deemed to be replaced with "a foreign company that is required to submit an Annual Securities Report pursuant to paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (5); hereinafter the same applies in this paragraph to paragraph (13) inclusive)", the phrase "an Annual Securities Report under paragraph (1) and the documents are required to accompany it pursuant to paragraph (6) (hereinafter collectively referred to as an 'Annual Securities Report, etc.' in this Article)" is deemed to be replaced with "a Confirmation Letter under Article 24-4-2, paragraph (1) or (2) (including as applied mutatis mutandis pursuant to Article 24-4-2, paragraph (3) (including as applied mutatis mutandis pursuant to Article 24-4-2, paragraph (4)) or Article 24-4-2, paragraph (4))", and the phrase "similar to an Annual Securities Report, etc., but that has been prepared in English and disclosed in a foreign state is deemed to be replaced with "in which it has stated the particulars that are required to be stated in a Confirmation Letter"; in Article 24, paragraph (9), the phrase "documents stating the particulars not stated in the Foreign Company Report that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors, and other" is deemed to be replaced with "other"; in Article 24, paragraph (11), the term "an Annual Securities Report, etc." is deemed to be replaced with "a Confirmation Letter under Article 24-4-2, paragraph (1) or (2) (including as applied mutatis mutandis pursuant to Article 24-4-2, paragraph (3) (including as applied mutatis mutandis pursuant to Article 24-4-2, paragraph (4)) or Article 24-4-2, paragraph (4))"; and any other necessary technical replacement of terms is specified by Cabinet Order.

(Submission of an Amended Confirmation Letter)

Article 24-4-3 (1) The provisions of Article 7, paragraph (1), Article 9, paragraph (1), and Article 10, paragraph (1) apply mutatis mutandis to a Confirmation Letter. In this case, in Article 7, paragraph (1), the phrase "If, on or after the day on which a notification under Article 4, paragraphs (1) to (3) inclusive is filed and before the day on which that notification comes into effect, a material particular that is required to be stated in a statement or other document under Article 5, paragraph (1) or paragraph (13) changes" is deemed to be replaced with "If a material particular that is required to be stated in a Confirmation

Letter changes", the phrase "the person filing the notification" is deemed to be replaced with "the Person Submitting the Confirmation Letter", and the term "amended statement" is deemed to be replaced with "amended Confirmation Letter"; in Article 9, paragraph (1), the phrase "the person that submitted it" is deemed to be replaced with "the Person Submitting the Confirmation Letter" and the term "amended statement" is deemed to be replaced with "amended Confirmation Letter"; in Article 10, paragraph (1)), the phrase "the person submitting the Securities Registration Statement" is deemed to be replaced with "the Person Submitting the Confirmation Letter" and the phrase "to submit an amended statement, and if the Prime Minister finds it to be necessary, the Prime Minister may order the suspension of the validity of a notification under Article 4, paragraphs (1) to (3) inclusive" is deemed to be replaced with "to submit an amended Confirmation Letter"; and any other necessary technical replacement of terms is specified by Cabinet Order.

- (2) The provisions of Article 6 apply mutatis mutandis if an amended Confirmation Letter is submitted for a Confirmation Letter pursuant to Article 7, paragraph (1), Article 9, paragraph (1), or Article 10, paragraph (1), as applied mutatis mutandis pursuant to the preceding paragraph. The necessary technical replacement of terms for such a case is specified by Cabinet Order.
- (3) The provisions of Article 24, paragraphs (8), (9), and (11) apply mutatis mutandis if an amended Confirmation Letter is submitted for a Confirmation Letter that a foreign company has submitted pursuant to Article 7, paragraph (1), Article 9, paragraph (1), or Article 10, paragraph (1), as applied mutatis mutandis through the replacement of certain terms pursuant to paragraph (1). The necessary technical replacement of terms for such a case is specified by Cabinet Order.

(Evaluation of the System for Ensuring the Appropriateness of Documents and Other Information Related to Financial Accounting)

Article 24-4-4 (1) For each business year, a company required to submit an Annual Securities Report under Article 24, paragraph (1) (including one that has submitted an Annual Securities Report under Article 23-3, paragraph (4); the same applies in the following paragraph) which is the Issuer of Securities set forth in Article 24, paragraph (1), item (i) or which is any other company specified by Cabinet Order, shall submit a report to the Prime Minister in which the system specified by Cabinet Office Ordinance as necessary for ensuring the appropriateness of documents and other information related to the financial accounting of the corporate group to which the company belongs and of the company is evaluated pursuant to the provisions of Cabinet Office Ordinance (hereinafter referred to as an "Internal Control Report"), together with its Annual Securities Report (or a Foreign Company Report, if the

company submits a Foreign Company Report instead of the Annual Securities Report, etc. set forth in Article 24, paragraph (8), pursuant to that paragraph), pursuant to the provisions of Cabinet Office Ordinance.

- (2) A company that is required to submit an Annual Securities Report under Article 24, paragraph (1) but that is not required to submit an Internal Control Report together with an Annual Securities Report pursuant to the preceding paragraph (except a company specified by Cabinet Order), may voluntarily submit the Internal Control Report provided for in the preceding paragraph.
- (3) The provisions of the preceding two paragraphs apply mutatis mutandis to a company specified by Cabinet Order that is required to submit an Annual Securities Report under Article 24, paragraph (1) as applied mutatis mutandis pursuant to paragraph (5) of that Article (including a company that has submitted an Annual Securities Report pursuant to Article 23-3, paragraph (4)). In this case, in paragraph (1), the phrase "or any other company specified by Cabinet Order" is deemed to be replaced with "or any other company specified by Cabinet Order (limited to one that is the Issuer of regulated Securities (meaning regulated Securities provided for in Article 5, paragraph (1); hereinafter the same applies in this paragraph))", the term "business year" is deemed to be replaced with "Specified Period (meaning the Specified Period provided for in Article 24, paragraph (1) as applied mutatis mutandis pursuant to Article 24, paragraph (5)) designated for the regulated Securities", the phrase "of the corporate group to which the company belongs and of the company" is deemed to be replaced with "for assets connected with the asset management and other similar business conducted by the company"; and any other necessary technical replacement of terms is specified by Cabinet Order.
- (4) A document stating the particulars of the system specified by Cabinet Office Ordinance which is referred to in paragraph (1), and other documents that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors, must accompany an Internal Control Report.
- (5) The provisions of Article 6 apply mutatis mutandis if an Internal Control Report and accompanying documents are submitted pursuant to paragraph (1) or (2) (including as applied mutatis mutandis pursuant to paragraph (3); hereinafter the same applies in this Article) and the preceding paragraph. The necessary technical replacement of terms for such a case is specified by Cabinet Order.
- (6) The provisions of Article 24, paragraphs (8), (9), and (11) to (13) inclusive apply mutatis mutandis if a Reporting Foreign Company submits the Internal Control Report under paragraph (1) or (2) of this Article (but only if the Reporting Foreign Company submits Foreign Company Reports). In this case, in Article 24, paragraph (8), the phrase "a foreign company that is required to

submit an Annual Securities Report pursuant to paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (5); hereinafter the same applies in this paragraph to paragraph (13) inclusive) (including a foreign company that has submitted an Annual Securities Report pursuant to Article 23-3, paragraph (4); hereinafter referred to as a 'Reporting Foreign Company'))" is deemed to be replaced with "a foreign company that is required to submit an Annual Securities Report pursuant to paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (5); hereinafter the same applies in this paragraph to paragraph (13) inclusive)", the phrase "an Annual Securities Report under paragraph (1) and the documents that are required to accompany it pursuant to paragraph (6) (hereinafter collectively referred to as an "Annual Securities Report, etc." in this Article)" is deemed to be replaced with "an Internal Control Report under Article 24-4-4, paragraph (1) or (2) (including as applied mutatis mutandis pursuant to Article 24-4-4, paragraph (3)) and documents that are required to accompany it pursuant to Article 24-4-4, paragraph (4) (hereinafter collectively referred to as an 'Internal Control Report, etc.))", and the phrase "similar to an Annual Securities Report, etc., but that has been prepared in English and disclosed in a foreign state is deemed to be replaced with "in which it has stated the particulars that are required to be stated in an Internal Control Report, etc."; in Article 24, paragraph (9), the phrase "documents stating the particulars not stated in the Foreign Company Report that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors, and other" is deemed to be replaced with "other"; in Article 24, paragraph (11), the phrase "an Annual Securities Report, etc." is deemed to be replaced with "an Internal Control Report, etc."; and any other necessary technical replacement of terms is specified by Cabinet Order.

(Submission of an Amended Internal Control Report)

Article 24-4-5 (1) The provisions of Article 7, paragraph (1), Article 9, paragraph (1), and Article 10, paragraph (1) apply mutatis mutandis to an Internal Control Report and accompanying documents. In this case, in Article 7, paragraph (1), the phrase "If, on or after the day on which a notification under Article 4, paragraphs (1) to (3) inclusive is filed and before the day on which that notification comes into effect, a material particular that is required to be stated in a statement or other document under Article 5, paragraph (1) or paragraph (13) changes" is deemed to be replaced with "If a material particular that is required to be stated in an Internal Control Report or accompanying document changes", the phrase "the person filing the notification" is deemed to be replaced with "the person submitting the Internal Control Report", and the term "amended statement" is deemed to be replaced with "amended report"; in

Article 9, paragraph (1), the phrase "the person that submitted it" is deemed to be replaced with "the person that submitted the Internal Control Report" and the term "amended statement" is deemed to be replaced with "amended report"; in Article 10, paragraph (1)), the phrase "the person submitting the Securities Registration Statement" is deemed to be replaced with "the person submitting the Internal Control Report" and the phrase "to submit an amended statement, and if the Prime Minister finds it to be necessary, the Prime Minister may order the suspension of the validity of a notification under Article 4, paragraphs (1) to (3) inclusive" is deemed to be replaced with "to submit an amended report"; and any other necessary technical replacement of terms is specified by Cabinet Order.

- (2) The provisions of Article 6 apply mutatis mutandis if an amended report is submitted pursuant to Article 7, paragraph (1), Article 9, paragraph (1) and Article 10, paragraph (1) as applied mutatis mutandis pursuant to the preceding paragraph in connection with an Internal Control Report or accompanying document. The necessary technical replacement of terms for such a case is specified by Cabinet Order.
- (3) The provisions of Article 24, paragraphs (8), (9), and (11) apply mutatis mutandis if an amended report is submitted in connection with an Internal Control Report that has been submitted by a foreign company pursuant to Article 7, paragraph (1), Article 9, paragraph (1), or Article 10, paragraph (1) as applied mutatis mutandis through the replacement of certain terms pursuant to paragraph (1). The necessary technical replacement of terms for such a case is specified by Cabinet Order.

(Mutatis Mutandis Application of Provisions on Compensatory Liability)

Article 24-4-6 The provisions of Article 22 apply mutatis mutandis if an Internal Control Report (including any accompanying document) contains a false statement about a material particular, omits a statement as to a material particular that is required to be stated, or omits a statement of material fact that is necessary to prevent it from being misleading. In this case, in Article 22, paragraph (1), the phrase "a person that, without knowing that the statement is false or has been omitted, acquires Securities issued by the person submitting the Securities Registration Statement other than through a Public Offering or Secondary Distribution" is deemed to be replaced with "a person that, without knowing that the statement is false or has been omitted, acquires Securities issued by the person submitting the Internal Control Report (including any amended report in connection with this)", and any other necessary technical replacement of terms is specified by Cabinet Order.

(Submission of Quarterly Securities Reports)

Article 24-4-7 (1) For each three-month period of the business year if the business year is longer than three months (excluding periods specified by Cabinet Order; the same applies hereinafter), a company required to submit an Annual Securities Report set forth in Article 24, paragraph (1) (including a company which submits Annual Securities Reports under Article 23-3, paragraph (4); the same applies in the following paragraph), which is the Issuer of Securities set forth in Article 24, paragraph (1), item (i) or which is any other company specified by Cabinet Order (hereinafter, such a company is referred to as a "Listed Company, etc." in this paragraph and the following paragraph) shall submit a report (hereinafter referred to as a "Quarterly Securities Report") stating the financial condition of the corporate group to which the company belongs and other particulars that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors (hereinafter referred to as the "Particulars for Inclusion in a Quarterly Securities Report" in this paragraph) to the Prime Minister within the period designated by Cabinet Order but not exceeding 45 days after the three-month period (if there is a compelling reason that the company cannot submit it within such a period, within a period approved in advance by the Prime Minister pursuant to the provisions of Cabinet Office Ordinance). In this, a Listed Company, etc. conducting business specified by Cabinet Office Ordinance shall submit a Quarterly Securities Report stating, in addition to the Particulars for Inclusion in a Quarterly Securities Report, the financial condition of the company and other particulars that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors to the Prime Minister within the period specified by Cabinet Order but not exceeding 60 days after the three-month period (if there is a compelling reason that the company cannot submit it within such a period, within a period approved in advance by the Prime Minister pursuant to the provisions of Cabinet Office Ordinance).

(2) A company (other than one specified by Cabinet Order) other than a Listed Company, etc. which is required to submit an Annual Securities Report set forth in Article 24, paragraph (1) may voluntarily submit Quarterly Securities Reports.

(3) The provisions of the preceding two paragraphs apply mutatis mutandis to a company specified by Cabinet Order which is required to submit an Annual Securities Report under Article 24, paragraph (1) as applied mutatis mutandis pursuant to paragraph (5) of that Article (including a company that has submitted an Annual Securities Report under Article 23-3, paragraph (4)). In this case, in paragraph (1), the phrase "specified by Cabinet Order" is deemed to be replaced with "specified by Cabinet Order (limited to the Issuer of regulated Securities (meaning regulated Securities provided for in Article 5,

paragraph (1); hereinafter the same applies in this paragraph);", the phrase "if the business year" is deemed to be replaced with "if the Specified Period (meaning a Specified Period provided for in Article 24, paragraph (1) as applied mutatis mutandis pursuant to Article 24, paragraph (5); hereinafter the same applies in this paragraph) designated for the Securities", the phrase "of the business years" is deemed to be replaced with "of the Specified Period", the phrase "the corporate group to which the company belongs" is deemed to be replaced with "asset management and other similar business conducted by the company", and the phrase "financial condition of the company" is deemed to be replaced with "asset accounting in connection with asset management and other similar business conducted by the company"; and any other necessary technical replacement of terms is specified by Cabinet Order.

- (4) The provisions of Articles 7, paragraph (1), Article 9, paragraph (1), and Article 10, paragraph (1) apply mutatis mutandis to Quarterly Securities Reports, and Article 22 applies mutatis mutandis if a Quarterly Securities Report or the related amended report contains a false statement about a material particular, omits a statement as to a material particular that is required to be stated, or omits a statement of material fact that is necessary to prevent it from being misleading. In this case, in Article 7, paragraph (1), the phrase "If, on or after the day on which a notification under Article 4, paragraphs (1) to (3) inclusive is filed and before the day on which that notification comes into effect, a material particular that is required to be stated in a statement or other document under Article 5, paragraph (1) or paragraph (13) changes" is deemed to be replaced with "If a material particular that is required to be stated in a Quarterly Securities Report (meaning a Quarterly Securities Report set forth in Article 24-4-7, paragraph (1) or (2) (including as applied mutatis mutandis pursuant to Article 24-4-7, paragraph (3); hereinafter the same applies in this Article, Article 9, paragraph (1), Article 11, paragraph (1) and Article 22) changes", the phrase "the person filing the notification" is deemed to be replaced with "the person submitting the Quarterly Securities Report", and the term "amended statement" is deemed to be replaced with "amended report"; in Article 9, paragraph (1), the phrase "the person that submitted it" is deemed to be replaced with "the person that submitted the Quarterly Securities Report" and the term "amended statement" is deemed to be replaced with "amended report"; in Article 10, paragraph (1), the phrase "the person submitting the Securities Registration Statement" is deemed to be replaced with "the person submitting the Quarterly Securities Report" and the phrase "to submit an amended statement, and if the Prime Minister finds it to be necessary, the Prime Minister may order the suspension of the validity of a notification under Article 4, paragraphs (1) to (3) inclusive" is deemed to be replaced with "to submit an amended report"; in Article 22,

paragraph (1), the phrase "a person that, without knowing that the statement is false or has been omitted, acquires Securities issued by the person submitting the Securities Registration Statement other than through a Public Offering or Secondary Distribution" is deemed to be replaced with "a person that, without knowing that the statement is false or has been omitted, acquires Securities issued by the person submitting the Quarterly Securities Report and any amended report"; in Article 22, paragraph (2), the phrase "the preceding paragraph" is deemed to be replaced with "the preceding paragraph as applied mutatis mutandis pursuant to Article 24-4-7, paragraph (4)"; and any other necessary technical replacement of terms is specified by Cabinet Order.

- (5) The provisions of Article 6 apply mutatis mutandis if a Quarterly Securities Report is submitted pursuant to paragraph (1) or (2) (including as applied mutatis mutandis pursuant to paragraph (3); the same applies in the following paragraph to paragraph (11) inclusive) or if an amended report is submitted in connection with that Report pursuant to the provisions of Article 7, paragraph (1), Article 9, paragraph (1) or Article 10, paragraph (1) as applied mutatis mutandis pursuant to the preceding paragraph. The necessary technical replacement of terms for such a case is specified by Cabinet Order.
- (6) In a case that is specified by Cabinet Office Ordinance as one in which this does not damage the public interest or result in insufficient investor protection, instead of the Quarterly Securities Report under paragraph (1), a Reporting Foreign Company that is required to submit a Quarterly Securities Report pursuant to paragraph (1) (including a Reporting Foreign Company and that submits a Quarterly Securities Report pursuant to paragraph (2); hereinafter the same applies in this Article) may submit a document that is similar to a Quarterly Securities Report, but that has been prepared in English and disclosed in a foreign state (such a document is hereinafter referred to as a "Foreign Company Quarterly Securities Report" in this Article).
- (7) A Japanese translation of the summary of the particulars stated in a Foreign Company Quarterly Securities Report that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors, as well as the documents stating the particulars not stated in the Foreign Company Quarterly Securities Report that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors and other documents specified by Cabinet Office Ordinance (such documents are hereinafter collectively referred to as "Supplementary Documents" in this Article) must accompany the Foreign Company Quarterly Securities Report, pursuant to the provisions of Cabinet Office Ordinance.
- (8) If a Reporting Foreign Company submits a Foreign Company Quarterly Securities Report and Supplementary Documents pursuant to the preceding



two paragraphs, the Foreign Company Quarterly Securities Report and Supplementary Documents are deemed to be a Quarterly Securities Report, the submission of the former is deemed to be the submission of the latter, and the provisions of the Financial Instruments and Exchange Act and Related Regulations apply.

- (9) If the Prime Minister finds that a Reporting Foreign Company that submitted a Foreign Company Quarterly Securities Report does not satisfy the requirements for being allowed to submit the Foreign Company Quarterly Securities Report referred to in the provision of paragraph (6), the Prime Minister must notify the Reporting Foreign Company of this. In such a case, irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, the Prime Minister must conduct a hearing.
- (10) Notwithstanding the provisions of paragraph (1), if a Reporting Foreign Company receives a notice under the preceding paragraph, it must submit a Quarterly Securities Report under paragraph (1) within the period that is specified by Cabinet Order as necessary and appropriate in the public interest or for the protection of investors, with the day on which the notice is made as the first day for the calculation of that period.
- (11) The provisions of paragraphs (6) to (8) inclusive apply *mutatis mutandis* if an amended report is submitted to amend a Foreign Company Quarterly Securities Report that has been submitted by a Reporting Foreign Company pursuant to the provisions of Article 7, paragraph (1), Article 9, paragraph (1), or Article 10, paragraph (1), as applied *mutatis mutandis* through the replacement of certain terms pursuant to paragraph (4), or to amend its Supplementary Documents. The necessary technical replacement of terms for such a case is specified by Cabinet Order.
- (12) If, pursuant to the provisions of Cabinet Office Ordinance, a company that is required to submit a Quarterly Securities Report pursuant to paragraph (1) (limited to as applied *mutatis mutandis* pursuant to paragraph (3); hereinafter the same applies in this Article) (including a company that submits the Quarterly Securities Report under paragraph (2) (limited to as applied *mutatis mutandis* pursuant to paragraph (3))) submits the documents stating a part of the particulars specified by Cabinet Office Ordinance under paragraph (1) (limited to documents prepared based on laws and regulations or the rules of a Financial Instruments Exchange (including anything specified by Cabinet Office Ordinance as being similar to such rules); such documents are hereinafter referred to as "Documents Substituted for Part of a Quarterly Securities Report" in this paragraph and the following paragraph) together with a Quarterly Securities Report to the Prime Minister, with regard to the application of paragraph (1) to a case in which a company receives the

acknowledgement of the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance, as one whose doing so does not damage the public interest or result in insufficient investor protection, in paragraph (1), the phrase "other particulars that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors" is deemed to be replaced with "other particulars that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors (excluding particulars stated in Documents Substituted for Part of the Quarterly Securities Report as defined in paragraph (12))".

- (13) If Documents Substituted for Part of a Quarterly Securities Report are submitted together with the Quarterly Securities Report referred to in paragraph (1) as it applies through the replacement of certain terms pursuant to the preceding paragraph, the Documents Substituted for Part of the Quarterly Securities Report are deemed to form a part of the Quarterly Securities Report, the submission of the Documents Substituted for Part of the Quarterly Securities Report is deemed to be the submission of the Documents Substituted for Part of the Quarterly Securities Report as a part of the Quarterly Securities Report, and the provisions of the Financial Instruments and Exchange Act and Related Regulations apply.

(Mutatis Mutandis Application of Provisions Concerning Confirmation Letters to Quarterly Securities Reports)

- Article 24-4-8 (1) The provisions of Article 24-4-2 apply mutatis mutandis if a Quarterly Securities Report is submitted pursuant to paragraph (1) or (2) of the preceding Article (including as applied mutatis mutandis pursuant to Article 24-4-7, paragraph (3)) or if an amended report is submitted pursuant to Article 7, paragraph (1), Article 9, paragraph (1), or Article 10, paragraph (1) as applied mutatis mutandis through the replacement of certain terms pursuant to Article 24-4-7, paragraph (4). In this case, in Article 24-4-2, paragraph (1), the phrase "the content of statements in the Annual Securities Report" is deemed to be replaced with "the content of statements in the Quarterly Securities Report (including any amended report in connection with this; hereinafter the same applies in this Article)", the phrase "Foreign Company Report instead of the Annual Securities Report, etc." is deemed to be replaced with "Foreign Company Quarterly Securities Report instead of the Quarterly Securities Report", and the phrase "or a Foreign Company Report" is deemed to be replaced with "or a Foreign Company Quarterly Securities Report"; in Article 24-4-2, paragraph (2), the phrase "together with an Annual Securities Report" is deemed to be replaced with "together with a Quarterly Securities Report"; in Article 24-4-2, paragraph (6) the phrase "a Confirmation Letter under Article 24-4-2, paragraph (1) or (2) (including as applied mutatis

mutandis pursuant to Article 24-4-2, paragraph (3) (including as applied mutatis mutandis pursuant to Article 24-4-2, paragraph (4)) or Article 24-4-2, paragraph (4))" is deemed to be replaced with "a Confirmation Letter under Article 24-4-2, paragraph (1) or (2) (including as applied mutatis mutandis pursuant to Article 24-4-2, paragraph (3) (including as applied mutatis mutandis pursuant to Article 24-4-2, paragraph (4)) or Article 24-4-2, paragraph (4)) as applied mutatis mutandis through the replacement of certain terms pursuant to Article 24-4-8"; and any other necessary technical replacement of terms is specified by Cabinet Order.

- (2) The provisions of Article 24-4-3 apply mutatis mutandis if an amended Confirmation Letter is submitted for a Confirmation Letter that has been submitted pursuant to the preceding paragraph. The necessary technical replacement of terms for such a case is specified by Cabinet Order.

(Submission of Semiannual Securities Reports and Extraordinary Reports)

Article 24-5 (1) If the business year of a company that is required to submit the Annual Securities Report set forth in Article 24, paragraph (1) (including one that has submitted an Annual Securities Report under Article 23-3, paragraph (4); the same applies in paragraph (4)) but that is not required to submit the Quarterly Securities Report under Article 24-4-7, paragraph (1) (including one that has submitted the Quarterly Securities Report under Article 24-4-7, paragraph (2); the same applies in paragraph (3)) is longer than six months, that company must submit, pursuant to the provisions of Cabinet Office Ordinance, a report for each business year stating financial condition of the corporate group to which it belongs and its own financial condition, other material particulars of the company's business, and other particulars that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors in connection with the first six months of the relevant business year (such a report is hereinafter referred to as a "Semiannual Securities Report") to the Prime Minister within three months after the end of the first six months (if there is a compelling reason that the company cannot submit it within such period, within the period approved in advance by the Prime Minister pursuant to the provisions of Cabinet Office Ordinance).

- (2) Unless it falls under any of the categories of persons specified in the following items, a company submitting or seeking to submit an Annual Securities Report under Article 24, paragraph (1) that states the particulars specified in paragraph (2) of that Article, may state the particulars set forth in the preceding paragraph that are specified by Cabinet Office Ordinance as being relevant to that company, instead of stating all of the particulars set forth in the preceding paragraph, in the Semiannual Securities Report that it is

required to submit pursuant to the preceding paragraph:

- (i) a person that has already submitted an Annual Securities Report stating the particulars specified in the main clause of Article 24, paragraph (1) or a Semiannual Securities Report stating the particulars specified in the preceding paragraph; and
  - (ii) a person that has submitted or is required to submit a statement under Article 5, paragraph (1) stating the particulars set forth in Article 5, paragraph (1), item (ii) for a Public Offering or Secondary Distribution of Securities to which the main clause of Article 4, paragraph (1), the main clause of Article 4, paragraph (2), or the main clause of Article 4, paragraph (3) applies (excluding a person set forth in the preceding item).
- (3) The provisions of the preceding two paragraphs apply mutatis mutandis to a company that is required to submit the Annual Securities Report under Article 24, paragraph (1) as applied mutatis mutandis pursuant to paragraph (5) of that Article (including a company that submits the Annual Securities Report under Article 23-3, paragraph (4); the same applies in the following paragraph and paragraph (20)) but that is not required to submit the Quarterly Securities Report under Article 24-4-7, paragraph (1) as applied mutatis mutandis pursuant to paragraph (3) of that Article. In this case, in paragraph (1), the phrase "of a company that is required" is deemed to be replaced with "of a company (limited to the Issuer of regulated Securities (meaning regulated Securities as defined in Article 5, paragraph (1); hereinafter the same applies in this paragraph and the following paragraph)) that is required", the term "the business year" is deemed to be replaced with "the Specified Period (meaning a Specified Period provided for in Article 24, paragraph (1) as applied mutatis mutandis pursuant to paragraph (5) of that Article; hereinafter the same applies in this paragraph) designated for the regulated Securities", the phrase "for each business year" is deemed to be replaced with "for each Specified Period", the phrase "the relevant business year" is deemed to be replaced with "the relevant Specified Period", and the phrase "financial condition of the corporate group to which it belongs and its own financial condition, other material particulars of the company's business" is deemed to be replaced with "asset accounting in connection with asset management and other similar business conducted by the company, other material particulars of the company's assets"; and in paragraph (2), the term "of Securities" is deemed to be replaced with "of regulated Securities".
- (4) If a Public Offering or Secondary Distribution of Securities issued by a company that is required to submit the Annual Securities Report under Article 24, paragraph (1) (including as applied mutatis mutandis pursuant to Article 24, paragraph (5)) is conducted in a foreign state or in other cases that are specified by Cabinet Office Ordinance as necessary and appropriate in the

public interest or for the protection of investors, said company, pursuant to the provisions of Cabinet Office Ordinance, must submit a report stating the details of it (hereinafter referred to as an "Extraordinary Report") to the Prime Minister without delay.

- (5) The provisions of Article 7, paragraph (1), Article 9, paragraph (1), and Article 10, paragraph (1) apply mutatis mutandis to Semiannual Securities Reports and Extraordinary Reports, and the provisions of Article 22 apply mutatis mutandis if a Semiannual Securities Report, Extraordinary Report, or any amended report in connection with either of these contains a false statement about a material particular, omits a statement as to a material particular that is required to be stated, or omits a statement of material fact that is necessary to prevent it from being misleading. In this case, in Article 7, paragraph (1), the phrase "If, on or after the day on which a notification under Article 4, paragraphs (1) to (3) inclusive is filed and before the day on which that notification comes into effect, a material particular that is required to be stated in a statement or other document under Article 5, paragraph (1) or paragraph (13) changes" is deemed to be replaced with "If a material particular that is required to be stated in a Semiannual Securities Report (meaning a Semiannual Securities Report as set forth in Article 24-5, paragraph (1) (including as applied mutatis mutandis pursuant to Article 24-5, paragraph (3)); hereinafter the same applies in this Article, Article 9, paragraph (1), Article 10, paragraph (1), and Article 22) or an Extraordinary Report (meaning an Extraordinary Report as set forth in Article 24-5, paragraph (4); hereinafter the same applies in this Article, Article 9, paragraph (1), Article 10, paragraph (1), and Article 22) changes", the phrase "the person filing the notification" is deemed to be replaced with "the person submitting the Semiannual Securities Report or Extraordinary Report", and the term "amended statement" is deemed to be replaced with "amended report"; in Article 9, paragraph (1), the phrase "the person that submitted it" is deemed to be replaced with "the person that submitted the Semiannual Securities Report or Extraordinary Report" and the phrase "amended statement" is deemed to be replaced with "amended report"; in Article 10, paragraph (1), the phrase "the person submitting the Securities Registration Statement" is deemed to be replaced with "the person submitting the Semiannual Securities Report or Extraordinary Report"; in Article 10, paragraph (1), the phrase "to submit an amended statement, and if the Prime Minister finds it to be necessary, the Prime Minister may order the suspension of the validity of a notification under Article 4, paragraphs (1) to (3) inclusive" is deemed to be replaced with "to submit an amended report"; in Article 22, paragraph (1), the phrase "a person that, without knowing that the statement is false or has been omitted, acquires Securities issued by the person submitting the Securities Registration Statement other than through a Public

Offering or Secondary Distribution" is deemed to be replaced with "a person that, without knowing that the statement is false or has been omitted, acquires Securities issued by the person submitting the Semiannual Securities Report or Extraordinary Report, or any amended report in connection with these"; and in Article 22, paragraph (2), the phrase "the preceding paragraph" is deemed to be replaced with "the preceding paragraph as applied mutatis mutandis pursuant to Article 24-5, paragraph (5)".

- (6) The provisions of Article 6 apply mutatis mutandis if a Semiannual Securities Report or Extraordinary Report is submitted pursuant to paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (3); the same applies in the following paragraph to paragraph (12) inclusive) or paragraph (4) and an amended report is submitted in connection with it pursuant to the provisions of Article 7, paragraph (1), Article 9, paragraph (1), or Article 10, paragraph (1), as applied mutatis mutandis pursuant to the preceding paragraph.
- (7) In a case that is specified by Cabinet Office Ordinance as one in which this does not damage the public interest or result in insufficient investor protection, instead of a Semiannual Securities Report under paragraph (1), a Reporting Foreign Company that is required to submit a Semiannual Securities Report pursuant to said paragraph may submit a document that is similar to a Semiannual Securities Report, but that has been prepared in English and disclosed in a foreign state (such documents are hereinafter referred to as a "Foreign Company Semiannual Securities Report" in this Article).
- (8) A Japanese translation of the summary of the particulars stated in a Foreign Company Semiannual Securities Report that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors, as well as documents stating the particulars not stated in a Foreign Company Semiannual Securities Report that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors, and other documents that are specified by Cabinet Office Ordinance (such documents are hereinafter collectively referred to as "Supplementary Documents" in this Article) must accompany a Foreign Company Semiannual Securities Report, pursuant to the provisions of Cabinet Office Ordinance.
- (9) If a Reporting Foreign Company submits a Foreign Company Semiannual Securities Report and Supplementary Documents pursuant to the preceding two paragraphs, the Foreign Company Semiannual Securities Report and Supplementary Documents are deemed to be a Semiannual Securities Report, the submission of the former is deemed to be the submission of the latter, and the provisions of the Financial Instruments and Exchange Act and Related Regulations apply.

- (10) If the Prime Minister finds that a Reporting Foreign Company that has submitted a Foreign Company Semiannual Securities Report does not satisfy the requirements for being allowed to submit a Foreign Company Semiannual Securities Report under the provision of paragraph (7), the Prime Minister must notify the Reporting Foreign Company of this. In such a case, irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, the Prime Minister must conduct a hearing.
- (11) Notwithstanding the provisions of paragraph (1), if a Reporting Foreign Company receives a notice under the preceding paragraph, it must submit a Semiannual Securities Report under paragraph (1) within the period that is specified by Cabinet Order as necessary and appropriate in the public interest or for the protection of investors, with the day on which the notice is made as the first day for the calculation of that period.
- (12) The provisions of paragraphs (7) to (9) inclusive apply *mutatis mutandis* if an amended report is submitted to amend a Foreign Company Semiannual Securities Report and Supplementary Documents for it that has have submitted by a Reporting Foreign Company pursuant to Article 7, paragraph (1), Article 9, paragraph (1), or Article 10, paragraph (1), as applied *mutatis mutandis* through the replacement of certain terms pursuant to paragraph (5).
- (13) If, pursuant to the provisions of Cabinet Office Ordinance, a company that is required to submit the Semiannual Securities Report under paragraph (1) (limited to as applied *mutatis mutandis* pursuant to paragraph (3); hereinafter the same applies in this paragraph and following paragraph) submits the documents stating a part of the particulars specified by Cabinet Office Ordinance under paragraph (1) (limited to documents prepared based on laws and regulations or the rules of a Financial Instruments Exchange (including anything specified by Cabinet Office Ordinance as being similar to such rules); such documents are hereinafter referred to as "Documents Substituted for Part of a Semiannual Securities Report" in this paragraph and the following paragraph) together with a Semiannual Securities Report to the Prime Minister, with regard to the application of paragraphs (1) and (2) to cases in which a company receives the acknowledgement of the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance, as one whose doing so does not damage the public interest or result in insufficient investor protection, in paragraph (1), the phrase "other particulars that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors" is deemed to be replaced with "other particulars that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors (excluding particulars stated in Documents Substituted for Part of a Semiannual Securities Report as defined

in paragraph (13))" and in paragraph (2), the term "the particulars set forth in the preceding paragraph" is deemed to be replaced with "the particulars set forth in the preceding paragraph (excluding particulars stated in the Documents Substituted for Part of a Semiannual Securities Report as defined in paragraph (13))".

- (14) If Documents Substituted for Part of a Semiannual Securities Report are submitted together with the Semiannual Securities Report referred to in paragraph (1) as it applies through the replacement of certain terms pursuant to the preceding paragraph, the Documents Substituted for Part of the Semiannual Securities Report are deemed to form a part of the Semiannual Securities Report, the submission of the Documents Substituted for Part of the Semiannual Securities Report is deemed to be the submission of the Documents Substituted for Part of the Semiannual Securities Report as a part of the Semiannual Securities Report, and the provisions of the Financial Instruments and Exchange Act and Related Regulations apply.
- (15) In cases where a Reporting Foreign Company is required to submit an Extraordinary Report under paragraph (4) and falls under cases specified by a Cabinet Office Ordinance as those which would not hinder the public interest or the protection of investors, in lieu of the Extraordinary Report under the provision of said paragraph, a document stating in English the matters to be stated under the provision of said paragraph (hereinafter referred to as "Foreign Company Extraordinary Report" in this Article) may be submitted, pursuant to the provisions of Cabinet Office Ordinance.
- (16) The provisions of the Financial Instruments and Exchange Act and Related Regulations shall apply to cases where a Reporting Foreign Company submits a Foreign Company Extraordinary Report under the provision of the preceding paragraph, by deeming said Foreign Company Extraordinary Report to be the Extraordinary Report, and deeming submission of the former to be submission of the latter.
- (17) The Prime Minister shall, when he/she finds that a Reporting Foreign Company which submitted a Foreign Company Extraordinary Report does not satisfy the requirements for being allowed to submit a Foreign Company Extraordinary Report under the provision of paragraph (15), notify thereof to the Reporting Foreign Company. In this case, a hearing shall be held irrespective of the categories of procedures for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act.
- (18) Notwithstanding the provision of paragraph (4), a Reporting Foreign Company, when receiving a notice made under the preceding paragraph, shall submit an Extraordinary Report set forth in said paragraph without delay.
- (19) The provisions of paragraphs (15) to (18) inclusive shall apply mutatis mutandis to cases where amendment reports are submitted to amend a Foreign



Company Extraordinary Report submitted by a Reporting Foreign Company under Article 7, paragraph (1), Article 9, paragraph (1) or Article 10, paragraph (1) as applied mutatis mutandis by replacing certain terms pursuant to paragraph (5).

(20) If, pursuant to the provisions of Cabinet Office Ordinance, a company that is required to submit an Extraordinary Report pursuant to paragraph (4) (limited to a company that is required to submit the Annual Securities Report under Article 24, paragraph (1) as applied mutatis mutandis pursuant to Article 24, paragraph (5)) submits documents stating a part of the contents that are required to be stated in an Extraordinary Report set forth in paragraph (4) (limited to documents prepared based on laws and regulations or rules of a Financial Instruments Exchange (including anything specified by Cabinet Office Ordinance as being similar to such rules); such documents are hereinafter referred to as "Documents Substituted for Part of an Extraordinary Report" in this paragraph and the following paragraph) together with an Extraordinary Report to the Prime Minister, with regard to the application of paragraph (4) to cases in which a company receives the acknowledgement of the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance, as one whose doing so does not damage the public interest or result in insufficient investor protection, in paragraph (4), the phrase "a report stating the details of it" is deemed to be replaced with "a report stating the details of it (excluding the details stated in Documents Substituted for Part of an Extraordinary Report as defined in paragraph (20))".

(21) If Documents Substituted for Part of an Extraordinary Report are submitted together with the Extraordinary Report referred to in paragraph (4) as it applies through the replacement of certain terms pursuant to the preceding paragraph, the Documents Substituted for Part of the Extraordinary Report are deemed to form a part of the Extraordinary Report, the submission of the Documents Substituted for Part of the Extraordinary Report is deemed to be the submission of the Documents Substituted for Part of the Extraordinary Report as a part of the Extraordinary Report, and the provisions of the Financial Instruments and Exchange Act and Related Regulations apply.

(Mutatis Mutandis Application of Provisions on Confirmation Letters to Semiannual Securities Reports)

Article 24-5-2 (1) The provisions of Article 24-4-2 apply mutatis mutandis if a Semiannual Securities Report is submitted pursuant to paragraph (1) of the preceding Article (including as applied mutatis mutandis pursuant to Article 24-5, paragraph (3)) or if an amended report is submitted pursuant to Article 7, paragraph (1), Article 9, paragraph (1), or Article 10, paragraph (1), as applied mutatis mutandis through the replacement of certain terms pursuant

to Article 24-5, paragraph (5). In this case, in Article 24-4-2, paragraph (1), the phrase "a Foreign Company Report" is deemed to be replaced with "a Foreign Company Semiannual Securities Report", the phrase "Foreign Company Report instead of the Annual Securities Report, etc." is deemed to be replaced with "Foreign Company Semiannual Securities Report instead of the Semiannual Securities Report", and the phrase "the content of statements in the Annual Securities Report" is deemed to be replaced with "the content of statements in the Semiannual Securities Report (including any amended report in connection with this; hereinafter the same applies in this Article)"; in Article 24-4-2, paragraph (2), the phrase "together with an Annual Securities Report" is deemed to be replaced with "together with a Semiannual Securities Report"; in Article 24-4-2, paragraph (6), the phrase "a Confirmation Letter under Article 24-4-2, paragraph (1) or (2) (including as applied mutatis mutandis pursuant to Article 24-4-2, paragraph (3) (including as applied mutatis mutandis pursuant to Article 24-4-2, paragraph (4)) or Article 24-4-2, paragraph (4))" is deemed to be replaced with "a Confirmation Letter under Article 24-4-2, paragraph (1) or (2) (including as applied mutatis mutandis pursuant to Article 24-4-2, paragraph (3) (including as applied mutatis mutandis pursuant to Article 24-4-2, paragraph (4)) or Article 24-4-2, paragraph (4)) as applied mutatis mutandis through the replacement of certain terms pursuant to Article 24-5-2"; and any other necessary technical replacement of terms is specified by Cabinet Order.

(2) The provisions of Article 24-4-3 apply mutatis mutandis if an amended Confirmation Letter is submitted for a Confirmation Letter that has been submitted pursuant to the preceding paragraph. The necessary technical replacement of terms for such a case is specified by Cabinet Order.

(Submission of Reports on Repurchase)

Article 24-6 (1) An Issuer of share certificates listed in a Financial Instruments Exchange, share certificates specified by Cabinet Order as those of which the state of distribution can be regarded as being equivalent to share certificates listed in a Financial Instruments Exchange or other Securities specified by Cabinet Order (hereinafter collectively referred to as "Listed Share Certificates, etc." in this Article, Articles 27-22-2 to 27-22-4 inclusive and Article 167) shall, when a resolution of a shareholders meeting or board of directors' meeting set forth in Article 156, paragraph (1) of the Companies Act (including the cases where it is applied by replacing certain terms pursuant to Article 165, paragraph (3) of that Act) or a decision of an organization specified by Cabinet Order as being equivalent thereto is made (hereinafter referred to as the "Resolution, etc." in this paragraph), submit a report which, pursuant to the provisions of Cabinet Office Ordinance, states matters pertaining to the status of buyback of Listed Share Certificates, etc. for its own shares or equity

conducted based on the Resolution, etc. of the shareholders meeting or board of directors' meeting or a meeting specified by Cabinet Order as being equivalent thereto (hereinafter referred to as the "Shareholders Meeting, etc." in this paragraph) during each month from the month which includes the day when the Shareholders Meeting, etc. in which the Resolution, etc. was made was concluded to the month which includes the day when the period set forth in Article 156, paragraph (1), item (iii) of that Act is to expire or the day specified by Cabinet Order as being equivalent thereto (each month is referred to as the "Reporting Month" in this paragraph) (including the cases where no buyback is conducted) and other matters specified by Cabinet Office Ordinance as necessary and appropriate for the public interest or protection of investors to the Prime Minister by the 15th day of the month following each Reporting Month.

- (2) The provisions of Article 7, paragraph (1), Article 9, paragraph (1), and Article 10, paragraph (1) apply mutatis mutandis to a report set forth in the preceding paragraph (hereinafter referred to as a "Report on Repurchase"), and the provisions of Article 22 apply mutatis mutandis if a Report on Repurchase contains a false statement about a material particular, omits a statement as to a material particular that is required to be stated, or omits a statement of material fact that is necessary to prevent it from being misleading. In this case, in Article 7, paragraph (1), the phrase "If, on or after the day on which a notification under Article 4, paragraphs (1) to (3) inclusive is filed and before the day on which that notification comes into effect, a material particular that is required to be stated in a statement or other document under Article 5, paragraph (1) or paragraph (13) changes" is deemed to be replaced with "If a material particular that is required to be stated in a Report on Repurchase (meaning a report set forth in Article 24-6, paragraph (1); hereinafter the same applies in this Article, Article 9, paragraph (1), Article 10, paragraph (1), and Article 22) changes", the phrase "the person filing the notification" is deemed to be replaced with "the person submitting the Report on Repurchase", and the term "amended statement" is deemed to be replaced with "amended report"; in Article 9, paragraph (1) the phrase "the person that submitted it" is deemed to be replaced with "the person that submitted the Report on Repurchase" and the term "amended statement" is deemed to be replaced with "amended report"; in Article 10, paragraph (1), the phrase "the person submitting the Securities Registration Statement" is deemed to be replaced with "the person submitting the Report on Repurchase" and the phrase "to submit an amended statement, and if the Prime Minister finds it to be necessary, the Prime Minister may order the suspension of the validity of a notification under Article 4, paragraphs (1) to (3) inclusive" is deemed to be replaced with "to submit an amended report"; in Article 22, paragraph (1), the phrase "persons set forth in

Article 21, paragraph (1), items (i) and (iii)" is deemed to be replaced with "person that, at the time of submission of the Report on Repurchase, is an officer of the Issuer that submitted that Report", and the phrase "a person that, without knowing that the statement is false or has been omitted, acquires Securities issued by the person submitting the Securities Registration Statement other than through a Public Offering or Secondary Distribution" is deemed to be replaced with "a person that, without knowing that the statement is false or has been omitted, acquires Securities issued by the person submitting the Report on Repurchase"; and in Article 22, paragraph (2), the phrase "Article 21, paragraph (2), items (i) and (ii)" is deemed to be replaced with "Article 21, paragraph (2), item (i)" and the phrase "the preceding paragraph" is deemed to be replaced with "the preceding paragraph as applied mutatis mutandis pursuant to Article 24-6, paragraph (2)".

- (3) The provisions of Article 6 apply mutatis mutandis if a Report on Repurchase is submitted pursuant to paragraph (1) and if an amended report is submitted in connection with a Report on Repurchase, pursuant to Article 7, paragraph (1), Article 9, paragraph (1) or Article 10, paragraph (1) as applied mutatis mutandis pursuant to the preceding paragraph.

(Submission of a Parent Company, etc. Status Report)

Article 24-7 (1) A company that holds the majority of voting rights in a company that is required to submit an Annual Securities Report pursuant to Article 24, paragraph (1) (but only one that is the Issuer of Securities set forth in Article 24, paragraph (1), item (i) or (ii); such a company is referred to as a "Subsidiary Company Submitting an Annual Securities Report" in paragraph (4) of this Article, paragraph (5) of the following Article and Article 27-30-10), or which is otherwise specified by Cabinet Order as being closely related to a company that is required to submit an Annual Securities Report (excluding a company that is required to submit an Annual Securities Report pursuant to Article 24, paragraph (1) (including as applied mutatis mutandis pursuant to Article 24, paragraph (5); the same applies in the items of paragraph (4) of this Article) (including a company that has submitted an Annual Securities Report pursuant to Article 23-3, paragraph (4) or that is otherwise specified by Cabinet Office Ordinance); hereinafter, a company that holds the majority of voting rights in, or is otherwise closely related to, such a company, is referred to as a "Parent Company, etc." in this Article and paragraphs (2), (4) and (5) of the following Article) shall submit a report that, pursuant to the provisions of Cabinet Office Ordinance, states the particulars of persons that hold shares in the Parent Company, etc. and other particulars that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors, for each business year of the Parent Company, etc. (or

for each period specified by Cabinet Office Ordinance, if the Parent Company, etc. is an Issuer of regulated Securities; hereinafter the same applies in this paragraph and the following paragraph) (hereinafter referred to as a "Parent Company, etc. Status Report") to the Prime Minister within three months after the end of each business year (or, if the Parent Company, etc. is a foreign company, within the period that is specified by Cabinet Order as necessary and appropriate in the public interest or for the protection of investors); provided, however, that this does not apply if a company receives the acknowledgement of the Prime Minister, pursuant to the provisions of Cabinet Order, as a company whose non-submission of a Parent Company, etc. Status Report does not damage the public interest or result in insufficient investor protection.

- (2) If a company that is excluded from the application of the main clause of the preceding paragraph becomes a Parent Company, etc., the company that has become a Parent Company, etc. must submit a Parent Company, etc. Status Report to the Prime Minister without delay, pursuant to the provisions of Cabinet Office Ordinance, for the business year immediately prior to the business year that includes the day on which the company becomes a Parent Company, etc.; provided, however, that this does not apply if the company has received the acknowledgment of the Prime Minister, pursuant to the provisions of Cabinet Order, as a company whose non-submission of a Parent Company, etc. Status Report does not damage the public interest or result in insufficient investor protection.
- (3) The provisions of Article 7, paragraph (1), Article 9, paragraph (1), and Article 10, paragraph (1) apply mutatis mutandis to a Parent Company, etc. Status Report. In this case, in Article 7, paragraph (1), the phrase "If, on or after the day on which a notification under Article 4, paragraphs (1) to (3) inclusive is filed and before the day on which that notification comes into effect, a material particular that is required to be stated in a statement or other document under Article 5, paragraph (1) or paragraph (13) changes" is deemed to be replaced with "If a material particular that is required to be stated in a Parent Company, etc. Status Report (meaning a Parent Company, etc. Status Report as provided for in Article 24-7, paragraph (1); the same applies hereinafter) changes", the phrase "the person filing the notification" is deemed to be replaced with "the person submitting the Parent Company, etc. Status Report", and the term "amended statement" is deemed to be replaced with "amended report"; in Article 9, paragraph (1) the phrase "the person that submitted it" is deemed to be replaced with "the person submitting the Parent Company, etc. Status Report" and the term "amended statement" is deemed to be replaced with "amended report"; in Article 10, paragraph (1)), the phrase "the person submitting the Securities Registration Statement" is deemed to be replaced with "the person submitting the Parent Company, etc. Status Report" and the

phrase "to submit an amended statement, and if the Prime Minister finds it to be necessary, the Prime Minister may order the suspension of the validity of a notification under Article 4, paragraphs (1) to (3) inclusive" is deemed to be replaced with "to submit an amended report"; and any other necessary technical replacement of terms is specified by Cabinet Order.

- (4) A Parent Company, etc. that has submitted a Parent Company, etc. Status Report pursuant to the main clause of paragraph (1) or the main clause of paragraph (2), or that has submitted an amended report in connection with a Parent Company, etc. Status Report pursuant to Article 7, paragraph (1), Article 9, paragraph (1), or Article 10, paragraph (1), as applied *mutatis mutandis* pursuant to the preceding paragraph, shall send a copy of it to the Subsidiary Company Submitting Annual Securities Reports without delay, and shall also submit a copy of it to the person specified in the relevant of following items for the category of Securities set forth in said item that were issued by the Subsidiary Company Submitting Annual Securities Reports:
- (i) Securities set forth in Article 24, paragraph (1), item (i): the Financial Instruments Exchange referred to in Article 24, paragraph (1), item (i); or
  - (ii) Securities set forth in Article 24, paragraph (1), item (ii): the Authorized Financial Instruments Firms Association specified by Cabinet Order.
- (5) The provisions of Article 24, paragraphs (8), (9), and (11) to (13) inclusive apply *mutatis mutandis* if a Parent Company, etc. that is a foreign company submits a Parent Company, etc. Status Report. In this case, in Article 24, paragraph (8), the phrase "a foreign company that is required to submit an Annual Securities Report pursuant to paragraph (1) (including as applied *mutatis mutandis* pursuant to paragraph (5); hereinafter the same applies in this paragraph to paragraph (13) inclusive) (including a foreign company that has submitted an Annual Securities Report pursuant to Article 23-3, paragraph (4); hereinafter referred to as a 'Reporting Foreign Company'))" is deemed to be replaced with "a Parent Company, etc. (meaning Parent Company, etc. as defined by Article 24-7, paragraph (1); hereinafter the same applies in this Article) which is a foreign company that is required to submit an Annual Securities Report pursuant to paragraph (1) (including as applied *mutatis mutandis* pursuant to paragraph (5); hereinafter the same applies in this paragraph to paragraph (13) inclusive)" and the phrase "similar to an Annual Securities Report, etc., but that has been prepared in English and disclosed in a foreign state is deemed to be replaced with "in which it has stated the particulars that are required to be stated in the Parent Company, etc. Status Report"; in Article 24, paragraph (9), the phrase "documents stating the particulars not stated in the Foreign Company Report that are specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors, and other" is deemed to be replaced with

"other"; and any other necessary technical replacement of terms is specified by Cabinet Order.

- (6) The provisions of the preceding paragraphs apply *mutatis mutandis* if the Parent Company, etc. is a person other than a company. In this case, in paragraph (1), the phrase "A company that holds the majority of voting rights" is deemed to be replaced with "A person that is other than a company and that holds the majority of voting rights", the phrase "which is otherwise specified by Cabinet Order as being closely related to" is deemed to be replaced with "that is otherwise specified by Cabinet Order as being a person that is other than a company and that is closely related to", and the phrase "persons that hold shares in the Parent Company, etc." is deemed to be replaced with "equity investors in the Parent Company, etc. and other persons"; in paragraph (2), the term "company" is deemed to be replaced with "person that is other than a company and"; in the preceding paragraph the phrase "that is a foreign company" is deemed to be replaced with "that is a foreign person"; and any other necessary technical replacement of terms is specified by Cabinet Order.

(Public Inspection of Registration Statements, etc.)

Article 25 (1) The Prime Minister shall make the documents set forth in each of the following items (hereinafter referred to as "Public Documents" in this Article and paragraph (1) of the following Article) available for public inspection pursuant to the provisions of Cabinet Office Ordinance, for the period specified in the relevant item from the day on which the Prime Minister receives the Public Document (or for an amended statement, Amended Shelf Registration Statement, amended report, or amended Confirmation Letter set forth in one of the following items, the period specified in the relevant item from the day on which the Prime Minister receives the statement and accompanying documents under Article 5, paragraphs (1) and (13), the statement and accompanying documents to which Article 5, paragraph (4) is applicable, or the Shelf Registration Statement and accompanying documents, Annual Securities Report and accompanying documents, Confirmation Letter, Internal Control Report and accompanying documents, Quarterly Securities Report, Semiannual Securities Report, Extraordinary Report, Report on Repurchase, or Parent Company, etc. Status Report subject to that amendment; and for a Confirmation Letter set forth in item (v) or (ix) (but only if the subject of the Confirmation Letter is an amended report connected with an Annual Securities Report and accompanying documents, an amended report connected with a Quarterly Securities Report, or an amended report connected with a Semiannual Securities Report), the period specified in the relevant item from the day on which the Prime Minister receives the Annual Securities Report and accompanying documents, Quarterly Securities Report, or

Semiannual Securities Report that is subject to that amendment):

- (i) a statement and accompanying documents under Article 5, paragraphs (1) and (13), as well as any amended statement connected with them (excluding a statement and accompanying documents or amended statement connected with them, to which Article 5, paragraph (4) is applicable): five years;
  - (ii) a statement and accompanying documents, as well as any amended statement connected with them, to which Article 5, paragraph (4) is applicable: one year;
  - (iii) a Shelf Registration Statement and accompanying documents or Shelf Registration Supplements and accompanying documents, as well as any Amended Shelf Registration Statement connected with them: until the Shelf Registration Statement ceases to be effective;
  - (iv) an Annual Securities Report and accompanying documents, as well as any amended report connected with them: five years;
  - (v) a Confirmation Letter under Article 24-4-2 and any amended Confirmation Letter connected with it: five years;
  - (vi) an Internal Control Report and accompanying documents, as well as any amended report connected with them: five years;
  - (vii) a Quarterly Securities Report and any amended report connected with it: three years;
  - (viii) a Semiannual Securities Report and any amended report connected with it: three years;
  - (ix) a Confirmation Letter under Article 24-4-2 as applied *mutatis mutandis* pursuant to Article 24-4-8 or Article 24-5-2, and any amended Confirmation Letter connected with it: three years;
  - (x) an Extraordinary Report and any amended report connected with it: one year;
  - (xi) a Report on Repurchase and any amended report connected with it: one year; and
  - (xii) a Parent Company, etc. Status Report and any amended report connected with it: five years.
- (2) An Issuer of Securities that has submitted a document set forth in one of the items (i) to (xi) inclusive of the preceding paragraph, or an Issuer of Securities whose Parent Company, etc. has submitted the document set forth in item (xii) of the preceding paragraph, shall keep a copy of such document at its head office and principal branch offices, and make the document available for public inspection for the period from the day on which the document is submitted to the Prime Minister to the day on which the period specified in the relevant item of the preceding paragraph has elapsed, pursuant to the provisions of Cabinet Office Ordinance.
- (3) Pursuant to the provisions of Cabinet Office Ordinance, Financial



Instruments Exchanges and the Authorized Financial Instruments Firms Associations specified by Cabinet Order shall keep copies of the documents submitted pursuant to Article 6 (including as applied mutatis mutandis pursuant to Article 12; Article 23-12, paragraph (1); Article 24, paragraph (7); Article 24-2, paragraph (3); Article 24-4-2, paragraph (5) (including as applied mutatis mutandis pursuant to Article 24-4-8, paragraph (1) and Article 24-5-2, paragraph (1)); Article 24-4-3, paragraph (2) (including as applied mutatis mutandis pursuant to Article 24-4-8, paragraph (2) and Article 24-5-2, paragraph (2)); Article 24-4-4, paragraph (5); Article 24-4-5, paragraph (2); Article 24-4-7, paragraph (5); Article 24-5, paragraph (6); and Article 24-6, paragraph (3); the same applies in paragraph (5)) and paragraph (4) of the preceding Article at their office, and make copies of the Public Documents available for public inspection for the period from the day on which the copies of these documents are submitted to the day on which the period specified in the relevant item of paragraph (1) has elapsed.

- (4) Notwithstanding the provisions of the preceding three paragraphs, if, due to a need to maintain the confidentiality of a trade secret, an Issuer of Securities that has submitted a document set forth in one of items (i) to (x) inclusive of paragraph (1), or a Parent Company, etc. that has submitted a document set forth in item (xii) of that paragraph, files a petition with the Prime Minister for a part of the documents referred to in the preceding three paragraphs not to be made available for public inspection and the Prime Minister approves it, that part of the documents is not to be made available for public inspection.
- (5) When an Issuer of Securities or Parent Company, etc. that has obtained the approval referred to in the preceding paragraph sends a copy of a Public Document to a Subsidiary Company Submitting Annual Securities Reports or submits a copy of such documents to a Financial Instruments Exchange or to an Authorized Financial Instruments Firms Association specified by Cabinet Order pursuant to Article 6 or paragraph (4) of the preceding Article, before sending or submitting the copy of such documents, it may remove or delete from them the part that, pursuant to the preceding paragraph, it has been decided will not be made available for public inspection.
- (6) Notwithstanding the provisions of paragraph (1), if the Prime Minister issues one of the following dispositions, the Prime Minister may decide that all or part of the Public Documents that are connected with the disposition are not to be made available for public inspection:
  - (i) an order to submit an amended statement under the provisions of Article 9, paragraph (1) or Article 10, paragraph (1);
  - (ii) an order to submit an Amended Shelf Registration Statement under Article 23-9, paragraph (1) or Article 23-10, paragraph (1), or under Article 23-10, paragraph (1) as applied mutatis mutandis pursuant to Article 23-10,

- paragraph (5);
- (iii) an order to submit an amended report under Article 9, paragraph (1) or Article 10, paragraph (1) as applied mutatis mutandis pursuant to Article 24-2, paragraph (1); Article 24-4-5, paragraph (1); Article 24-4-7, paragraph (4); Article 24-5, paragraph (5); Article 24-6, paragraph (2); or paragraph (3) of the preceding Article (including as applied mutatis mutandis pursuant to paragraph (6) of that Article); or
- (iv) an order to submit an amended Confirmation Letter under Article 9, paragraph (1) or Article 10, paragraph (1) as applied mutatis mutandis pursuant to Article 24-4-3, paragraph (1).
- (7) In the case referred to in the preceding paragraph, the Prime Minister is to notify a person that makes copies of Public Documents available for public inspection pursuant to paragraph (2) (or the person submitting such Public Documents and the person that makes copies of them available for public inspection, if the Public Documents comprise a Parent Company, etc. Status Report or an amended report in connection with one; such a person is referred to as the "Submitter, etc." in the following paragraph), as well as the Financial Instruments Exchange or the Authorized Financial Instruments Firms Association specified by Cabinet Order which is referred to in paragraph (3), which makes copies of those Public Documents available for public inspection pursuant to the provisions of paragraph (3), that the Prime Minister has decided that all or part of those Public Documents will not be made available for public inspection.
- (8) If the Submitter, etc. or a Financial Instruments Exchange or Authorized Financial Instruments Firms Association has been notified by the Prime Minister pursuant to the provisions of the preceding paragraph, the provisions of paragraphs (2) and (3) do not apply thereafter to the copies of the Public Documents for which the notice was made.

(Collection of Reports and Inspection of a Person Submitting a Securities Registration Statement, etc.)

- Article 26 (1) Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order a person that has submitted Public Documents, a person that is found to be required to submit such documents, an Underwriter of Securities, or any other concerned party or witnesses, to submit reports or materials that should serve as a reference, and may have the relevant officials inspect that person's books and documents or any other articles.
- (2) When the Prime Minister finds it necessary with regard to the order for report or submission of materials or the inspection under the preceding paragraph, he/she may inquire to public offices or public or private

organizations and request them to report necessary matters.

(Mutatis Mutandis Application of Provisions for an Issuer That Is Not a Company)

Article 27 The provisions of Article 2-2; Articles 5 to 13 inclusive; Articles 15 to 24-5-2 inclusive; and Article 24-7 to the preceding Article inclusive apply mutatis mutandis if the Issuer is a person other than a company (with regard to the mutatis mutandis application of Article 5, paragraphs (6) to (9) inclusive, Article 7, paragraph (2), Article 9, paragraph (2), Article 10, paragraph (2), Article 24, paragraphs (8) to (13) inclusive; Article 24-2, paragraph (4); Article 24-4-2, paragraph (6) (including as applied mutatis mutandis pursuant to Article 24-4-8, paragraph (1) and Article 24-5-2, paragraph (1)); Article 24-4-3, paragraph (3); Article 24-4-4, paragraph (6); Article 24-4-5, paragraph (3); Article 24-4-7, paragraphs (6) to (11) inclusive; and Article 24-5, paragraphs (7) to (12) inclusive and paragraphs (15) to (19) inclusive, this is limited to if the Issuer is a foreign person). In this case, in Article 5, paragraph (6) and Article 24, paragraph (8), the phrase "a foreign company that is required to submit" is deemed to be replaced with "a foreign person other than a company which is required to submit"; the term "Statement-filing Foreign Company" in Article 5, paragraphs (6), (8) and (9), Article 7, paragraph (2), Article 9, paragraph (2) and Article 10, paragraph (2) shall be deemed to be "Statement-filing Foreign Person"; in Article 5, paragraphs (10) to (12) inclusive and Article 7, paragraphs (3) to (5) inclusive the term "Company Submitting a Regulated Securities Registration Statement" shall be deemed to be "Person Submitting a Regulated Securities Registration Statement"; in Article 24, paragraphs (8) and (10) to (13) inclusive; Article 24-2, paragraph (4); Article 24-4-2, paragraph (6), Article 24-4-4, paragraph (6) ;Article 24-4-7, paragraphs (6) and (8) to (11) inclusive; and Article 24-5, paragraphs (7), paragraphs (9) to (12) inclusive and paragraphs (15) to (19) inclusive, the phrase "Reporting Foreign Company" is deemed to be replaced with "Reporting Foreign Person"; and any other necessary technical replacement of terms or other necessary particulars relevant to the application of these provisions is specified by Cabinet Order.

**Chapter II-2 Disclosure in a Tender Offer**

**Section 1 Tender Offers for Share Certificates, etc. by Persons Other than the Issuer**

(Tender Offers for Share Certificates, etc. by Persons Other than the Issuer)

Article 27-2 (1) Any purchase, etc. of share certificates, corporate bond certificates with share options, or other Securities specified by Cabinet Order (hereinafter collectively referred to as "Share Certificates, etc." in this Chapter

and Article 27-30-11 (excluding Article 27-30-11, paragraph (4))) (a purchase, etc. means a purchase or other acquisition for compensation of Share Certificates, etc., and includes acts specified by Cabinet Order as being similar to this; hereinafter the same applies in this Section) whose Issuer is required to submit an Annual Securities Report, or of the Share Certificates, etc. of an Issuer of Specified Listed Securities (including those specified by Cabinet Order as having equivalent distribution statuses to these, and limited to Share Certificates, etc.), which is effected by a person other than the Issuer and which falls under any of the categories set forth in the following items, must be effected by means of a Tender Offer; provided, however, that this does not apply to a Purchase, etc. Excluded from Application (meaning a purchase, etc. of Share Certificates, etc. that the holder of share options(excluding those allotted under the provision of Article 277 of the Companies Act and specified by a Cabinet Office Ordinance as those which would not hinder the protection of investors even if acquired by means other than a Tender Offer by ensuring the exercise of said share option; hereinafter the same shall apply in this paragraph) effects by exercising those share options, to a purchase, etc. of Share Certificates, etc. that the person effecting the purchase, etc. makes from its Specially Related Party (limited to a person set forth in paragraph (7), item (i) and specified by Cabinet Office Ordinance), or to any other purchase, etc. of Share Certificates, etc. that is specified by Cabinet Order; the same shall apply in item (iv)):

- (i) a purchase, etc. of Share Certificates, etc. outside a Financial Instruments Exchange Market (excluding a purchase, etc. of Share Certificates, etc. effected through a transaction specified by Cabinet Order as being equivalent to the purchase and sale, etc. of Securities on a Financial Instruments Exchange Market and excluding a purchase, etc. of Share Certificates, etc. that is specified by Cabinet Order as a purchase, etc. made from an extremely small number of persons), if after that purchase, etc. the Ownership Ratio of Share Certificates, etc., in terms of the Share Certificates, etc. that the relevant person holds (including cases specified by Cabinet Order as equivalent to holding them; hereinafter the same applies in this Section) (or, if the person has any Specially Related Parties (other than Specially Related Parties specified in paragraph (7), item (i) and specified by Cabinet Office Ordinance), the Ownership Ratio of Share Certificates, etc. calculated by adding the Ownership Ratio of Share Certificates, etc. of the Specially Related Parties to that of the person; hereinafter the same applies in this paragraph), exceeds five percent;
- (ii) a purchase, etc. of Share Certificates, etc. outside a Financial Instruments Exchange Market (excluding a purchase, etc. of Share Certificates, etc. effected through a transaction specified by Cabinet Order as being equivalent

- to the purchase and sale, etc. of Securities on a Financial Instruments Exchange Market; the same applies in item (iv)) which falls under the category of a purchase, etc. of Share Certificates, etc. that is specified by Cabinet Order as a purchase, etc. made from an extremely small number of persons, if after that purchase, etc. the Ownership Ratio of Share Certificates, etc., in terms of the Share Certificates, etc. that the relevant person holds, exceeds one third;
- (iii) a purchase, etc. of Share Certificates, etc. through a purchase and sale, etc. of Securities on a Financial Instruments Exchange Market which is specified by the Prime Minister as being a purchase and sale, etc. of Securities based on a method other than an auction method (such a purchase and sale, etc. of Securities is hereinafter referred to as a "Specified Purchase and Sale, etc." in this paragraph), if after that purchase, etc. the Ownership Ratio of Share Certificates, etc., in terms of the Share Certificates, etc. that the relevant person holds, exceeds one third;
- (iv) a purchase, etc. of Share Certificates, etc., if Share Certificates, etc. in excess of the proportion specified by Cabinet Order are acquired during the period of not more than six months that is specified by Cabinet Order, through that purchase, etc. of Share Certificates, etc. or through the acquisition of a new issue (meaning the acquisition of Share Certificates, etc. newly issued by their Issuer; hereinafter the same applies in this item) (if the acquisition is effected through a purchase, etc. of Share Certificates, etc., this is limited to an acquisition through a purchase, etc. of Share Certificates, etc. in excess of the proportion specified by Cabinet Order that is effected through a Specified Purchase and Sale, etc. or that is effected outside a Financial Instruments Exchange Market (excluding one effected through a Tender Offer and any Purchase, etc. Excluded from Application)), and if after the purchase, etc. or acquisition, the Ownership Ratio of Share Certificates, etc., in terms of the Share Certificates, etc. that the relevant person holds, exceeds one third (other than purchases, etc. set forth in the preceding three items);
- (v) a purchase, etc. of Share Certificates, etc., if a Tender Offer is underway for those Share Certificates, etc., and a person other than the Issuer of the Share Certificates, etc. effects a purchase, etc. of them in excess of the proportion specified by Cabinet Order during the period of not more than six months that is specified by Cabinet Order (but only if the Ownership Ratio of Share Certificates, etc. in terms of the Share Certificates, etc. that the person holds, exceeds one third) (other than purchases, etc. set forth in the preceding items); and
- (vi) any other purchase, etc. of Share Certificates, etc. specified by Cabinet Order as being equivalent to a purchase, etc. of Share Certificates, etc. set

- forth in any of the preceding items.
- (2) A purchase, etc. of Share Certificates, etc. through a Tender Offer, as specified in the main clause of the preceding paragraph, must be effected after a purchase, etc. period is set that is within the scope of the period specified by Cabinet Order.
  - (3) If a purchase, etc. of Share Certificates, etc. is effected through a Tender Offer, as provided for in the main clause of paragraph (1), the purchase, etc. price (or, for anything other than a purchase, etc., the thing that is specified by Cabinet Order as being equivalent to the purchase, etc. price; hereinafter the same applies in this Section) must be based on a single set of conditions, pursuant to the provisions of Cabinet Order.
  - (4) If a purchase, etc. of Share Certificates, etc. is effected through a Tender Offer, as provided in the main clause of paragraph (1), a Financial Instruments Business Operator (limited to one engaged in Type I Financial Instruments Business as defined in Article 28, paragraph (1); the same applies in Article 27-12, paragraph (3)) or a bank, etc. (meaning a bank, Cooperative Financial Institution, or other financial institution specified by Cabinet Order; the same applies in Article 27-12, paragraph (3)) must be made to manage the Share Certificates, etc., effect payment for the purchase, etc., and conduct other affairs specified by Cabinet Order.
  - (5) If a purchase, etc. of Share Certificates, etc. is effected through a Tender Offer, as provided in the main clause of paragraph (1), it must be in accordance with the conditions and methods specified by Cabinet Order, in addition to what is prescribed in the preceding three paragraphs and other provisions of this Section.
  - (6) As used in this Article, effecting a "Tender Offer" means offering to effect purchase, etc. of Share Certificates, etc. or soliciting offers to sell, etc. them (meaning effecting a sale or other transfer for consideration; hereinafter the same applies in this Section) from many and unspecified persons through a public notice, and then effecting the purchase, etc. of Share Certificates, etc. outside of a Financial Instruments Exchange Market.
  - (7) The term "Specially Related Party" as used in paragraph (1) means one of the following persons:
    - (i) a person with a shareholding relationship, familial relationship, or other special relationship specified by Cabinet Order to the person effecting the purchase, etc. of Share Certificates, etc.; and
    - (ii) a person with which a person effecting a purchase, etc. of Share Certificates, etc. has agreed to jointly acquire or transfer the Share Certificates, etc. or to jointly exercise voting rights or other rights as shareholders in the Issuer of the Share Certificates, etc., or to transfer or acquire the Share Certificates, etc. to or from each other after the purchase, etc. of the Share Certificates,

etc.

(8) The term "Ownership Ratio of Share Certificates, etc." as used in paragraph (1) means either of the following:

- (i) in terms of the person effecting a purchase, etc. of Share Certificates, etc., the ratio arrived at, pursuant to the provisions of Cabinet Office Ordinance, when the total number of voting rights (meaning the number of voting rights represented by shares calculated pursuant to the provisions of Cabinet Office Ordinance, for share certificates, or the number of voting rights specified by Cabinet Office Ordinance, for Securities other than share certificates; hereinafter the same applies in this paragraph) with respect to the Share Certificates, etc. that the person holds (excluding those that are specified by Cabinet Office Ordinance in consideration of the manner in which they are held or other circumstances; hereinafter the same applies in this paragraph), are divided by the number arrived at when the total number of voting rights issued by the Issuer is added to the number of voting rights with respect to corporate bond certificates with share options and other Securities specified by Cabinet Order issued by the Issuer and held by that person and Specially Related Parties of that person; or
- (ii) for Specially Related Parties as defined in the preceding paragraph (excluding persons that fall under the category specified in item (ii) of the preceding paragraph and that purchase, etc. any Share Certificates, etc. issued by the Issuer of the Share Certificates, etc.), the rate arrived at, pursuant to the provisions of Cabinet Office Ordinance, when the number of voting rights with respect to the Share Certificates, etc. that the party holds, is divided by the number arrived at when the total of the number of voting rights issued by the Issuer is added to the number of voting rights with respect to corporate bond certificates with share options and other Securities specified by Cabinet Order issued by the Issuer and held by that party and the person effecting a purchase, etc. of Share Certificates, etc. that is set forth in the preceding item.

(Public Notice of the Commencement of a Tender Offer and Submission of a Tender Offer Statement)

Article 27-3 (1) A person that, pursuant to the main clause of paragraph (1) of the preceding Article, is required to effect any purchase, etc. of Share Certificates, etc. through a Tender Offer as prescribed in Article 27-2, paragraph (1) (hereinafter referred to as a "Tender Offer" in this Section) shall, pursuant to the provisions of Cabinet Order, issue public notice of the purpose of the Tender Offer, the purchase, etc. price, the number of Share Certificates, etc. sought for purchase (meaning the number of shares, for share certificates, or the number of shares specified by Cabinet Office Ordinance for Securities

other than share certificates; hereinafter the same applies in this Section), the purchase, etc. period, and other particulars specified by Cabinet Office Ordinance. In this, if the purchase, etc. period is shorter than the period specified by Cabinet Order, it must be clearly indicated in the public notice that the purchase, etc. period may be extended pursuant to Article 27-10, paragraph (3).

- (2) A person that issues the public notice under the preceding paragraph (hereinafter referred to as a "Public Notice of the Commencement of a Tender Offer" in this Section) (such a person is hereinafter referred to as a "Tender Offeror" in this Section) must submit a document stating the following particulars and the accompanying documents specified by Cabinet Office Ordinance (hereinafter collectively referred to as the "Tender Offer Statement" in this Section and Articles 197 and 197-2) to the Prime Minister on the day on which it issues the Public Notice of the Commencement of the Tender Offer, pursuant to the provisions of Cabinet Office Ordinance; provided, however, that, if the day on which the person is required to submit the Tender Offer Statement falls on a Sunday or other day specified by Cabinet Office Ordinance, that person is to submit the Tender Offer Statement on the following day:
  - (i) the purchase, etc. price, the number of Share Certificates, etc. sought for purchase, the purchase, etc. period (including the detail indicated in the public notice pursuant to the second sentence of the preceding paragraph), the terms of delivery in connection with the purchase, etc., and other terms of settlement and purchase, etc. set by the Tender Offeror (hereinafter collectively referred to as the "Terms of Purchase, etc." in this Section);
  - (ii) the details of any contract to purchase, etc. the Share Certificates, etc. that are subject to the Tender Offer, other than through said Tender Offer, on or after the day on which the Tender Offeror issues the Public Notice of the Commencement of the Tender Offer; and
  - (iii) the purpose of the Tender Offer, the particulars of the Tender Offeror, and other particulars specified by Cabinet Office Ordinance.
- (3) It is prohibited for a Tender Offeror, the Specially Related Party of a Tender Offeror (meaning a Specially Related Party as defined in Article 27-2, paragraph (7); hereinafter the same applies in this Section), or any other relevant party specified by Cabinet Order (hereinafter collectively referred to as the "Tender Offeror, etc." in this Section) to solicit offers to sell, etc. Share Certificates, etc. or to perform other acts specified by Cabinet Order in connection with a Tender Offer, on or after the day following the day on which the Public Notice of the Commencement of the Tender Offer is issued, unless the Tender Offeror has submitted the Tender Offer Statement to the Prime Minister.
- (4) Immediately after the submission of a Tender Offer Statement, the Tender



Offeror shall send a copy of the Tender Offer Statement to the Issuer of the Share Certificates, etc. involved in the Tender Offer (and to any person that has already submitted a Tender Offer Statement for the Share Certificates, etc. of that Issuer as of the day on which the Tender Offeror submits the Tender Offer Statement), and, if the Share Certificates, etc. involved in the Tender Offer fall under a category set forth in one of the following items, the Tender Offeror must also send a copy of the Tender Offer Statement to the person specified in the relevant item for the category of Share Certificates, etc. set forth in that item. The necessary particulars relevant to the sending of the copies in such a case is specified by Cabinet Office Ordinance:

- (i) Share Certificates, etc. listed on a Financial Instruments Exchange: the Financial Instruments Exchange; and
- (ii) Share Certificates, etc. specified by Cabinet Order as having equivalent distribution statuses to the Share Certificates, etc. referred to in the preceding item: the Authorized Financial Instruments Firms Association specified by Cabinet Order.

(Purchases, etc. in Which Securities Are Delivered as the Consideration)

Article 27-4 (1) Except in a case provided for in the following paragraph, if a Tender Offeror, etc. makes Securities the consideration for its purchases, etc. in a Tender Offer, and a Public Offering or Secondary Distribution of the relevant Securities is subject to the main clause of Article 4, paragraph (1), the main clause of Article 4, paragraph (2), or the main clause of Article 4, paragraph (3), the Tender Offeror, etc. must not solicit offers to sell, etc. or perform other acts specified by Cabinet Office Ordinance in connection with the Tender Offer unless the Issuer of the Securities provides the Prime Minister with the notification under those provisions at the same time as the submission of the Tender Offer Statement or an amended statement.

(2) In a case referred to in the preceding paragraph, if a Shelf Registration has been made for the Securities referred to in that paragraph, the Tender Offeror, etc. must not solicit offers to sell, etc. or perform other acts specified by Cabinet Order in connection with the Tender Offer unless the Shelf Registration has come into effect and the Shelf Registrant of the Securities submits Shelf Registration Supplements to the Prime Minister at the same time as the submission of the Tender Offer Statement or an amended statement.

(3) Notwithstanding the provisions of paragraph (2) of the preceding Article, in a Tender Offer that has Securities as the consideration for purchase, etc., if the notification under Article 4, paragraphs (1) to (3) inclusive has been made or the Shelf Registration Supplements have been submitted for the Securities, part of the particulars that are required to be included in a Tender Offer

Statement and accompanying documents may be omitted as specified by Cabinet Office Ordinance in the Tender Offer Statement that is required to be submitted for the Tender Offer.

(Prohibition of Purchases, etc. Not through a Tender Offer)

Article 27-5 A Tender Offeror, etc. must not purchase, etc. Share Certificates, etc. that are issued by the Issuer of the Share Certificates, etc. involved in the relevant Tender Offer, other than through said Tender Offer, during the Tender Offer period (meaning the period from the day on which it issues the Public Notice of the Commencement of the Tender Offer to the last day of the purchase, etc. period, and including the extended period, if any; hereinafter the same applies in this Section); provided, however, that this does not apply in the following cases:

- (i) if the contract for effecting a purchase, etc. of Share Certificates, etc. that are issued by the Issuer of the relevant Share Certificates, etc., other than through said Tender Offer, is concluded before the Public Notice of the Commencement of the Tender Offer, and the existence and details of that contract are stated in the Tender Offer Statement;
- (ii) if a person set forth in Article 27-2, paragraph (7), item (i) (except one that also falls under the category of persons specified in Article 27-2, paragraph (7), item (ii)) notifies the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance, that the person does not fall under the category of persons specified in Article 27-2, paragraph (7), item (ii); or
- (iii) other cases specified by Cabinet Order.

(Changes to the Terms of Purchase, etc. for a Tender Offer)

Article 27-6 (1) A Tender Offeror may not make any of the following changes to the Terms of Purchase, etc.:

- (i) the lowering of the purchase, etc. price (excluding what is implemented if the Public Notice of the Commencement of the Tender Offer and the Tender Offer Statement states, as one of the Terms of Purchase, etc., that the purchase, etc. price may be lowered according to the standards specified by Cabinet Office Ordinance if the Target Company (meaning a Target Company provided for in Article 27-10, paragraph (1)) conducts a share split or performs any other act specified by Cabinet Order during the Tender Offer period);
  - (ii) reduction of the number of Share Certificates, etc. sought for purchase;
  - (iii) shortening of the purchase, etc. period; or
  - (iv) any other changes in the Terms of Purchase, etc. specified by Cabinet Order.
- (2) A Tender Offeror may make any change to the Terms of Purchase, etc. other

than one that is specified in the items of the preceding paragraph. In this, a Tender Offeror seeking to make such a change must issue public notice of the details of the change to the Terms of Purchase, etc. (excluding an extension of the purchase, etc. period, if it is extended pursuant to Article 27-10, paragraph (3)) and other particulars specified by Cabinet Office Ordinance during the Tender Offer period, pursuant to the provisions of Cabinet Order.

- (3) If it is difficult for a Tender Offeror to issue the public notice under the preceding paragraph by the last day of the Tender Offer period, the Tender Offeror must publicly announce the details and the particulars specified in the preceding paragraph pursuant to the provisions of Cabinet Office Ordinance, and issue a public notice based on the rules provided for in the preceding paragraph immediately after that.

(Amendment of a Public Notice of the Commencement of a Tender Offer)

Article 27-7 (1) If a Tender Offeror that has issued a Public Notice of the Commencement of a Tender Offer (including a public notice under paragraph (2) or (3) of the preceding Article and a public announcement under Article 27-6, paragraph (3); the same applies in the following paragraph) finds a formal deficiency in the content of said notice or finds that the content of the notice conflicts with the facts of the matter, the Tender Offeror must amend its content and issue a public notice or a public announcement pursuant to the provisions of Cabinet Office Ordinance.

- (2) If the Prime Minister finds it to be necessary for a Public Notice of the Commencement of a Tender Offer to be amended, the Prime Minister may order the Tender Offeror that issued the Public Notice of the Commencement of the Tender Offer to issue a public notice or a public announcement of the details of the amendment pursuant to the provisions of Cabinet Office Ordinance, within the time limit designated by the Prime Minister.

- (3) A disposition under the preceding paragraph may not be reached after the last day of the Tender Offer period (including the period by which it is required to be extended pursuant to paragraph (8) of the following Article).

(Submission of an Amended Statement in Connection with a Tender Offer Statement)

Article 27-8 (1) If a Tender Offeror that has submitted a Tender Offer Statement (including any amended statement in connection with it; hereinafter the same applies in this Article) finds that there is a formal deficiency in the Tender Offer Statement, that its content conflicts with the facts of the matter, that it insufficiently states or omits a statement as to a particular that is required to be stated, or that it insufficiently states or omits a statement as to a fact that is necessary to prevent it from being misleading, the Tender Offeror must

submit an amended statement to the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance.

- (2) If, on or after the day on which a Tender Offer Statement is submitted and before the last day of the Tender Offer period, the Terms of Purchase, etc. change (other than an extension of the purchase, etc. period under Article 27-10, paragraph (3)), any other material particular that is required to be stated in a Tender Offer Statement changes, or any other circumstance specified by Cabinet Office Ordinance arises that requires the Tender Offer Statement to be amended, the Tender Offeror that submitted the Tender Offer Statement must immediately submit an amended statement to the Prime Minister pursuant to the provisions of Cabinet Office Ordinance.
- (3) If Prime Minister finds it to be clear that any of the following facts have occurred, the Prime Minister may order the Tender Offeror that submitted the Tender Offer Statement to submit an amended statement within the time limit designated by the Prime Minister:
  - (i) the Tender Offer Statement contains a formal deficiency;
  - (ii) the Terms of Purchase, etc. stated in the Tender Offer Statement do not comply with the provisions of this Section; or
  - (iii) the change in the Terms of Purchase, etc. that is stated in the amended statement violates Article 27-6, paragraph (1).
- (4) Except in a case under the provisions of the preceding paragraph, on discovering any of the following facts to have occurred, the Prime Minister may order a Tender Offeror that has submitted a Tender Offer Statement to submit an amended statement within the time limit designated by the Prime Minister. In such a case, irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, the Prime Minister must conduct a hearing:
  - (i) the Tender Offer Statement contains a false statement about a material particular; or
  - (ii) the Tender Offer Statement omits a statement as to a material particular that is required to be stated or omits a statement of material fact that is necessary to prevent it from being misleading.
- (5) A disposition under paragraph (3) may not be reached after the last day of the Tender Offer period (including the period by which it is required to be extended pursuant to paragraph (8); the same applies in paragraph (7)) (or, for a disposition resulting in an amended statement being submitted after the last day of the Tender Offer period, after the day on which five years have elapsed since the day following the last day of the Tender Offer period), and a disposition under the preceding paragraph may not be reached after the day on which five years have elapsed since the day following the last day of the Tender Offer period.

- (6) The provisions of Article 27-3, paragraph (4) apply mutatis mutandis if an amended statement is submitted pursuant to the provisions of paragraphs (1) to (4) inclusive.
- (7) If a disposition under paragraph (3) or (4) is reached during the Tender Offer period, the Tender Offeror, etc. must not solicit offers to sell, etc. or perform any other act specified by Cabinet Order for the Tender Offer until the amended statement required by the disposition is submitted.
- (8) If an amended statement under paragraph (1) or (2) is submitted or an order to submit an amended statement under paragraph (3) or (4) is issued during the Tender Offer period, except in a case specified by Cabinet Office Ordinance, the Tender Offeror must extend the purchase, etc. period in that Tender Offer by a period specified by Cabinet Office Ordinance and immediately issue public notice of this or publicly announce it, pursuant to the provisions of Cabinet Office Ordinance.
- (9) If the purchase, etc. period in a Tender Offer is required to be extended pursuant to the preceding paragraph, the Tender Offeror must not acquire the Share Certificates, etc. subject to the Tender Offer or conduct other settlement procedures for the Tender Offer until the last day of the required period of extension.
- (10) If the purchase, etc. period in a Tender Offer is required to be extended pursuant to paragraph (8), the provisions of Article 27-5 apply mutatis mutandis until the last day of the required period of extension.
- (11) If a Tender Offeror submits an amended statement pursuant to the provisions of paragraphs (1) to (4) inclusive, it shall issue public notice of the contents stated in the amended statement that pertain to the contents stated in the Tender Offer Statement, pursuant to the provisions of Cabinet Order, or publicly announce them pursuant to the provisions of Cabinet Office Ordinance; provided, however, that this does not apply if the Tender Offeror has issued the public notice under Article 27-6, paragraph (2) or issued a public notice and public announcement under Article 27-6, paragraph (3), nor does it apply if the Tender Offeror has submitted an amended statement under paragraph (1) that is specified by Cabinet Office Ordinance as one whose content is of minor importance.
- (12) The preceding Article applies mutatis mutandis to a public notice or public announcement under paragraph (8) or the preceding paragraph.

(Preparation and Delivery of a Tender Offer Explanation, etc.)

Article 27-9 (1) A Tender Offeror shall prepare a document that states the particulars specified by Cabinet Office Ordinance from among the particulars that are required to be stated in a Tender Offer Statement and the particulars that are specified by Cabinet Office Ordinance as necessary and appropriate in

the public interest or for the protection of investors (hereinafter referred to as a "Tender Offer Explanation" in this Section and Articles 197-2 and 200), pursuant to the provisions of Cabinet Office Ordinance.

- (2) When effecting a purchase, etc. of Share Certificates, etc. through a Tender Offer, the Tender Offeror shall deliver a Tender Offer Explanation to a person seeking to sell, etc. those Share Certificates, etc., pursuant to the provisions of Cabinet Office Ordinance.
- (3) If a Tender Offeror has submitted an amended statement pursuant to the provisions of paragraphs (1) to (4) inclusive of the preceding Article, it must immediately amend the Tender Offer Explanation pursuant to the provisions of Cabinet Office Ordinance and deliver the amended Tender Offer Explanation to any person to which the Tender Offer Explanation has already been delivered.

(Submission of a Target Company's Position Statement, Tender Offeror's Answer, etc.)

Article 27-10 (1) The Issuer of the Share Certificates, etc. involved in a Tender Offer (hereinafter referred to as the "Target Company" in this Section and Article 27-30-11, paragraph (3)), pursuant to the provisions of Cabinet Office Ordinance, shall submit a document that states its opinion about the Tender Offer and other particulars specified by Cabinet Office Ordinance (hereinafter referred to as the "Target Company's Position Statement") to the Prime Minister within a period specified by Cabinet Order from the date on which the Public Notice of the Commencement of the Tender Offer is issued.

- (2) The Target Company may include the following particulars in the Target Company's Position Statement, in addition to its opinion about the Tender Offer:
  - (i) questions for the Tender Offeror; or
  - (ii) a request for an extension of the purchase, etc. period indicated in the Public Notice of the Commencement of the Tender Offer to the period specified by Cabinet Order (but only if the purchase, etc. period is shorter than the period specified by Cabinet Order).
- (3) If the request set forth in item (ii) of the preceding paragraph has been included in the Target Company's Position Statement pursuant to the preceding paragraph and the Prime Minister makes the Target Company's Position Statement available for public inspection pursuant to Article 27-14, paragraph (1), the Tender Offeror must extend the purchase, etc. period to the period specified by Cabinet Order.
- (4) If a Target Company makes the request set forth in item (ii) of paragraph (2) in the Target Company's Position Statement under paragraph (2), the Target Company, pursuant to the provisions of Cabinet Order, must issue public notice of the purchase, etc. period after the extension under the preceding

- paragraph, and of the other particulars specified by Cabinet Office Ordinance, by the day following the last day of the period set forth in paragraph (1).
- (5) If a Target Company that issues the public notice under the preceding paragraph (hereinafter referred to as the "Public Notice of a Request for a Period Extension" in the following paragraph) finds a formal deficiency in the content of said public notice or finds that its content conflicts with the facts of the matter, the Target Company must amend this content and issue a public notice or a public announcement pursuant to the provisions of Cabinet Office Ordinance.
- (6) If the Prime Minister finds it to be necessary for the Public Notice of a Request for a Period Extension to be amended, the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance, may order the Target Company that issued said public notice to issue a public notice or public announcement of the details of the amended statement within the time limit designated by the Prime Minister.
- (7) A disposition under the preceding paragraph may not be reached after the last day of the Tender Offer period (including the period by which it is required to be extended pursuant to Article 27-8, paragraph (8)).
- (8) The provisions of Article 27-8, paragraphs (1) to (5) inclusive (excluding Article 27-8, paragraph (3), items (ii) and (iii)) apply mutatis mutandis to a Target Company's Position Statement. In this case, in Article 27-8, paragraph (1), the term "Tender Offeror" is deemed to be replaced with "Target Company as defined in Article 27-10, paragraph (1)" and the term "amended statement" is deemed to be replaced with "amended report"; in Article 27-8, paragraph (2), the phrase "the Terms of Purchase, etc. change" is deemed to be replaced with "opinion about the Tender Offer changes", the term "Tender Offeror" is deemed to be replaced with "Target Company defined in Article 27-10, paragraph (1)", and the term "amended statement" is deemed to be replaced with "amended report"; in Article 27-8, paragraphs (3) and (4), the term "Tender Offeror" is deemed to be replaced with "Target Company defined in Article 27-10, paragraph (1)" and the term "amended statement" is deemed to be replaced with "amended report"; and in Article 27-8, paragraph (5), the phrase "A disposition under paragraph (3)" is deemed to be replaced with "A disposition under paragraph (3) as applied mutatis mutandis pursuant to Article 27-10, paragraph (8)", the term "amended statement" is deemed to be replaced with "amended report", and the phrase "disposition under the preceding paragraph" is deemed to be replaced with "disposition under the preceding paragraph as applied mutatis mutandis pursuant to Article 27-10, paragraph (8)".
- (9) Immediately after submitting a Target Company's Position Statement, the Target Company in a Tender Offer shall send a copy of the Target Company's Position Statement to the Tender Offeror involved in the Tender Offer (and to

any person that has already submitted a Tender Offer Statement for Share Certificates, etc. of which the Target Company is the Issuer as of the day on which it submits the Target Company's Position Statement), and, if the Share Certificates, etc. involved in the Tender Offer fall under a category set forth in one of the items of Article 27-3, paragraph (4), the Target Company must also send a copy of the Target Company's Position Statement to the person specified in the relevant item for the category of Share Certificates, etc. set forth in that item.

- (10) The preceding paragraph applies mutatis mutandis if an amended report is submitted pursuant to Article 27-8, paragraphs (1) to (4) inclusive as applied mutatis mutandis pursuant to paragraph (8).
- (11) If a question referred to in paragraph (2), item (i) has been included in a Target Company's Position Statement, a Tender Offeror that receives a copy of the Target Company's Position Statement pursuant to paragraph (9) must submit a document, pursuant to the provisions of Cabinet Office Ordinance, stating an answer to the question (or, if it finds that it is not necessary to answer the question, the reason why it finds this to be so) and other particulars specified by Cabinet Office Ordinance (hereinafter referred to as the "Tender Offeror's Answer") to the Prime Minister within a period specified by Cabinet Order from the date on which it receives the copy of the Target Company's Position Statement.
- (12) The provisions of Article 27-8, paragraphs (1) to (5) inclusive (excluding Article 27-8, paragraph (3), items (ii) and (iii)) apply mutatis mutandis to a Tender Offeror's Answer. In this case, in Article 27-8, paragraph (1), the term "amended statement" is deemed to be replaced with "amended report"; in Article 27-8, paragraph (2), the phrase "Terms of Purchase, etc. change" is deemed to be replaced with "answer changes" and the term "amended statement" is deemed to be replaced with "amended report"; in Article 27-8, paragraphs (3) and (4), the term "amended statement" is deemed to be replaced with "amended report"; and in Article 27-8, paragraph (5), the phrase "A disposition under paragraph (3)" is deemed to be replaced with "A disposition under paragraph (3) as applied mutatis mutandis pursuant to Article 27-10, paragraph (12)", the term "amended statement" is deemed to be replaced with "amended report", and the phrase "disposition under the preceding paragraph" is deemed to be replaced with "disposition under the preceding paragraph as applied mutatis mutandis pursuant to Article 27-10, paragraph (12)".
- (13) Immediately after submitting a Tender Offeror's Answer, the Tender Offeror shall send a copy of the Tender Offeror's Answer to the Target Company (and to any person that has already submitted a Tender Offer Statement for Share Certificates, etc. of which the Target Company is the Issuer as of the day on which it submits the Tender Offeror's Answer), and, if the Share Certificates,



etc. involved in the Tender Offer fall under a category set forth in one of the items of Article 27-3, paragraph (4), the Tender Offeror must also send a copy of the Tender Offeror's Answer to the person specified in the relevant item for the category of Share Certificates, etc. set forth in that item.

- (14) The provisions of the preceding paragraph apply mutatis mutandis if an amended report is submitted pursuant to Article 27-8, paragraphs (1) to (4) inclusive as applied mutatis mutandis pursuant to paragraph (12).

(Tender Offer Withdrawal, etc. and Cancellation of Contracts by the Tender Offeror)

Article 27-11 (1) A Tender Offeror may not withdraw offers or cancel contracts in connection with a Tender Offer (hereinafter collectively referred to as "Tender Offer Withdrawal, etc." in this Section) after having issued Public Notice of the Commencement of the Tender Offer; provided, however, that this does not apply if the Tender Offeror states as one of the Terms of Purchase, etc. in the Public Notice of the Commencement of the Tender Offer and in the Tender Offer Statement that the Tender Offer may be withdrawn if a material change occurs in the business or property of the Issuer of the Share Certificates, etc. that are involved in the Tender Offer or in its Subsidiary (meaning a Subsidiary as defined in Article 2, item (iii) of the Companies Act) or any other circumstance occurs that would significantly compromise its ability to achieve the purpose of the Tender Offer (limited to circumstances specified by Cabinet Order), or if an order to commence bankruptcy proceedings is issued against the Tender Offeror or any other material change in circumstances specified by Cabinet Order occurs.

- (2) If the Tender Offeror seeks to effect a Tender Offer Withdrawal, etc. under the proviso to the preceding paragraph, the Tender Offeror must issue a public notice indicating that it will effect a Tender Offer Withdrawal, etc., the reason for this, and other particulars specified by Cabinet Office Ordinance by the last day of the Tender Offer period, pursuant to the provisions of Cabinet Order; provided, however, that if it is difficult for the Tender Offeror to issue such a public notice by the last day of the Tender Offer period, the Tender Offeror is to issue a public announcement of the details that are required to be stated in the public notice, pursuant to the provisions of Cabinet Office Ordinance, and issue the public notice immediately following.

- (3) A person issuing a public notice or public announcement under the preceding paragraph shall submit a document to the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance, in which it states the details that are required to be stated in the public notice provided for in the preceding paragraph and other particulars specified by Cabinet Office Ordinance (hereinafter referred to as a "Written Tender Offer Withdrawal Notice" in this

Section and Articles 197 and 197-2) on the day on which said person issues the public notice or public announcement.

- (4) The provisions of Article 27-3, paragraph (4) apply mutatis mutandis to a Written Tender Offer Withdrawal Notice. In this case, in Article 27-3, paragraph (4), the phrase "the Issuer of the Share Certificates, etc. involved in the Tender Offer is made (and to any person that has already submitted a Tender Offer Statement for the Share Certificates, etc. of that Issuer as of the day on which the Tender Offeror submits the Tender Offer Statement)" is deemed to be replaced with "the Issuer of the Share Certificates, etc. involved in the Tender Offer".
- (5) A Tender Offer Withdrawal, etc. comes into effect only if public notice is given pursuant to paragraph (2). In this, the Tender Offer Withdrawal, etc. comes into effect at the time at which the public notice is given (or at the time when the public announcement is made, if the public announcement and the public notice are given pursuant to the proviso to paragraph (2)).

(Cancellation of a Contract by a Tendering Shareholder, etc.)

- Article 27-12 (1) A tendering shareholder, etc. (meaning a person that accepts an offer to purchase, etc. the Share Certificates, etc. involved in a Tender Offer or that offers to sell, etc. them; hereinafter the same applies in this Section) may cancel a contract involving a Tender Offer at any time during the Tender Offer period (including the period by which it is required to be extended pursuant to Article 27-8, paragraph (8); the same applies in paragraphs (1) and (4) of the following Article, Article 27-14, paragraph (1) and Article 27-21, paragraphs (1) and (2)).
- (2) If a Public Notice of the Commencement of a Tender Offer and a Tender Offer Statement includes the condition that any cancellation of a contract connected with the Tender Offer be done by a method specified by Cabinet Order, a tendering shareholder, etc. that cancels a contract pursuant to the preceding paragraph must do so by that method. In this, the cancellation of the contract comes into effect at the time specified by Cabinet Order.
- (3) If a tendering shareholder, etc. cancels a contract pursuant to paragraph (1), the Tender Offeror may not request the tendering shareholder, etc. to pay damages or penalties, and if the Tender Offeror is having a Financial Instruments Business Operator or a bank, etc. manage the tendered Share Certificates, etc. (meaning Share Certificates, etc. that the tendering shareholders, etc. sell, etc. in response to the Tender Offer; hereinafter the same applies in this Section), the Tender Offeror bears the cost required to return them.

(Public Notice of the Number of Tendered Share Certificates, etc. in a Tender

Offer and Submission of a Tender Offer Report, etc.)

Article 27-13 (1) A Tender Offeror, pursuant to the provisions of Cabinet Order, shall issue a public notice or public announcement of the number of tendered Share Certificates, etc. and other particulars specified by Cabinet Office Ordinance on the day following the last day of the Tender Offer period; provided, however, that this does not apply if a public notice has been issued pursuant to Article 27-11, paragraph (2).

(2) A Tender Offeror issuing a public notice or public announcement under the main clause of the preceding paragraph shall submit a document to the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance, in which it states the details of that public notice or public announcement and other particulars specified by Cabinet Office Ordinance (hereinafter referred to as a "Tender Offer Report" in this Section and Articles 197 and 197-2) on the day on which it issues the public notice or public announcement.

(3) The provisions of Article 27-3, paragraph (4) and Article 27-8, paragraphs (1) to (6) inclusive apply mutatis mutandis to a Tender Offer Report. In this case, in Article 27-3, paragraph (4), the phrase "the Tender Offeror shall send a copy of the Tender Offer Statement to the Issuer of the Share Certificates, etc. involved in the Tender Offer (and to any person that has already submitted a Tender Offer Statement for the Share Certificates, etc. of that Issuer as of the day on which the Tender Offeror submits the Tender Offer Statement)" is deemed to be replaced with "the Issuer of the Share Certificates, etc. involved in the Tender Offer"; in Article 27-8, paragraph (1), the term "amended statement" is deemed to be replaced with "amended report"; in Article 27-8, paragraph (2), the phrase "submitted and before the last day of the Tender Offer period, the Terms of Purchase, etc. change (other than an extension of the purchase, etc. period under Article 27-10, paragraph (3)), any other material particular that is required to be stated in a Tender Offer Statement changes, or any other circumstance specified by Cabinet Office Ordinance arises that requires the Tender Offer Statement to be amended" is deemed to be replaced with "submitted, the number of Share Certificates, etc. for which a purchase, etc. will be effected is fixed by the Pro Rata Method set forth in Article 27-13, paragraph (5)" and the term "amended statement" is deemed to be replaced with "amended report"; in Article 27-8, paragraph (3), the term "amended statement" is deemed to be replaced with "amended report", the term "Terms of Purchase, etc." is deemed to be replaced with "delivery and other settlement methods", the phrase "the provisions of this Section" is deemed to be replaced with "Article 27-13, paragraphs (4) and (5)", the phrase "the change in the Terms of Purchase, etc. that is stated in the amended statement violates Article 27-6, paragraph (1)" is deemed to be replaced with "the result of calculations for deciding the number of Share Certificates, etc. being purchased,

etc. contravenes the Pro Rata Method specified by Cabinet Office Ordinance that is stipulated in Article 27-13, paragraph (5)"; in Article 27-8, paragraph (4), the term "amended statement" is deemed to be replaced with "amended report"; in Article 27-8, paragraph (5), the phrase "disposition under paragraph (3)" is deemed to be replaced with "disposition under paragraph (3) and the preceding paragraph as applied mutatis mutandis pursuant to Article 27-13, paragraph (3)" and the phrase "the last day of the Tender Offer period (including the period by which it is required to be extended pursuant to paragraph (8); the same applies in paragraph (7)) (or, for a disposition resulting in an amended statement being submitted after the last day of the Tender Offer period, after the day on which five years have elapsed since the day following the last day of the Tender Offer period), and the disposition under the preceding paragraph may not be reached after the day on which five years have elapsed since the day following the last day of the Tender Offer period" is deemed to be replaced with "the day on which five years have elapsed since the day following the last day of the Tender Offer period"; and in Article 27-8, paragraph (6), the term "amended statement" is deemed to be replaced with "amended report" and the phrase "paragraphs (1) to (4) inclusive" is deemed to be replaced with "paragraphs (1) to (4) inclusive as applied mutatis mutandis pursuant to Article 27-13, paragraph (3)".

- (4) Unless a Tender Offeror, during the Tender Offer period, effects a Tender Offer Withdrawal, etc. pursuant to the proviso to Article 27-11, paragraph (1) for all of the tendered Share Certificates, etc., or unless the Tender Offeror has included one of the following conditions in the Public Notice of the Commencement of the Tender Offer and in the Tender Offer Statement (if the Tender Offeror has included the condition referred to in item (ii), this is only if the Ownership Ratio of Share Certificates, etc. (meaning Ownership Ratio of Share Certificates, etc. as defined in Article 27-2, paragraph (8)), in terms of the Share Certificates, etc. that the Tender Offeror will hold after the Tender Offer (if the Tender Offeror has a Specially Related Party as specified in Article 27-2, paragraph (1), item (i), the Ownership Ratio of Share Certificates, etc. as defined in Article 27-2, paragraph (8), in terms of the Share Certificates, etc. that Specially Related Party holds, is added to calculate this) will be below the proportion specified by Cabinet Order), the Tender Offeror must acquire or otherwise effect settlement procedures for its purchase, etc. based on the Terms of Purchase, etc. it has stated in the Public Notice of the Commencement of the Tender Offer and in the Tender Offer Statement (or, if it has changed the Terms of Purchase, etc. in accordance with a public notice under Article 27-6, paragraph (2) or a public announcement and public notice under Article 27-6, paragraph (3), based on the Terms of Purchase, etc. after the change) for all tendered Share Certificates, etc.:

- (i) that if the total number of tendered Share Certificates, etc. does not reach the number of Share Certificates, etc. designated in advance in the Public Notice of the Commencement of the Tender Offer and in the Tender Offer Statement as the whole number of Share Certificates, etc. sought for purchase or a portion of them, the Tender Offeror will not purchase, etc. any of the tendered Share Certificates, etc.; or
  - (ii) that if the total number of tendered Share Certificates, etc. exceeds the number of Share Certificates, etc. sought for purchase, the Tender Offeror will not purchase, etc. tendered Share Certificates, etc. in excess of the number of Share Certificates, etc. sought for purchase.
- (5) If the condition specified in item (ii) of the preceding paragraph has been given, and the total number of tendered Share Certificates, etc. exceeds the number of Share Certificates, etc. sought for purchase, the Tender Offeror must acquire Share Certificates, etc. and effect other settlement procedures for their purchase, etc. using the pro rata method specified by Cabinet Office Ordinance (hereinafter referred to as the "Pro Rata Method" in this Section).

(Public Inspection of a Tender Offer Statement, etc.)

Article 27-14 (1) The Prime Minister must make a Tender Offer Statement (including any amended statement in connection with it; the same applies in paragraph (1) of the following Article), Written Tender Offer Withdrawal Notice, Tender Offer Report, Target Company's Position Statement, and Tender Offeror's Answer (including any amended report in connection with them; the same applies in paragraph (1) of the following Article) available for public inspection, pursuant to the provisions of Cabinet Office Ordinance, during the period from the day that the Prime Minister accepts them to the day on which five years have elapsed since the day following the last day of the Tender Offer period in the relevant Tender Offer.

- (2) Pursuant to the provisions of Cabinet Office Ordinance, a person that has submitted a document prescribed in the preceding paragraph (hereinafter referred to as a "Public Document" in this Article) (such a person is hereinafter referred to as the "Submitter" in this Article) must keep a copy of that Public Document at its head office or principal office and make it available for public inspection during the period that the Prime Minister makes that Public Document available for public inspection pursuant to the preceding paragraph.
- (3) Pursuant to the provisions of Cabinet Office Ordinance, Financial Instruments Exchanges and the Authorized Financial Instruments Firms Associations specified by Cabinet Order must keep copies of the Public Documents they have been sent pursuant to Article 27-3, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27-8, paragraph (6), Article 27-11, paragraph (4) and paragraph (3) of the preceding Article), Article

27-10, paragraph (9) (including as applied mutatis mutandis pursuant to Article 27-10, paragraph (10)), and Article 27-10, paragraph (13) (including as applied mutatis mutandis pursuant to Article 27-10, paragraph (14)) at their offices and make them available for public inspection during the period that the Prime Minister makes those Public Documents available for public inspection pursuant to the provisions of paragraph (1).

- (4) Beyond what is provided for in the preceding three paragraphs, the necessary matters relevant to the public inspection referred to in paragraph (1) are specified by Cabinet Office Ordinance.
- (5) Notwithstanding the provisions of paragraph (1), if the Prime Minister issues one of the following dispositions, the Prime Minister may decide not to make all or part of the Public Documents that are connected with the disposition available for public inspection:
  - (i) an order to submit an amended statement under the provisions of Article 27-8, paragraph (3) or (4);
  - (ii) an order to submit an amended report under Article 27-8, paragraph (3) or (4) as applied mutatis mutandis pursuant to Article 27-10, paragraph (8) or (12), or paragraph (3) of the preceding Article.
- (6) In a case referred to in the preceding paragraph, the Prime Minister is to notify the Submitter that makes the copies of the Public Documents available for public inspection pursuant to paragraph (2), as well as the Financial Instruments Exchanges or the Authorized Financial Instruments Firms Associations specified by Cabinet Order which are referred to in paragraph (3), which make copies of the Public Documents available for public inspection pursuant to the provisions of paragraph (3), that the Prime Minister has decided that all or part of the Public Documents will not be made available for public inspection.
- (7) If a Submitter or a Financial Instruments Exchange or Authorized Financial Instruments Firms Association has been notified by the Prime Minister pursuant to the provisions of the preceding paragraph, the provisions of paragraphs (2) and (3) do not apply after that time to the copies of the Public Documents to which the notice pertains.

(Prohibition on Presuming the Veracity of a Tender Offer Statement, etc.)

Article 27-15 (1) No person may deem, due to a Tender Offer Statement, Written Tender Offer Withdrawal Notice, Tender Offer Report, Target Company's Position Statement, or Tender Offeror's Answer having been accepted, that the Prime Minister certifies a statement contained in these documents to be true and accurate, or that the Prime Minister certifies these documents not to omit a statement as to a material particular.

- (2) It is not permitted for the Tender Offeror, etc. or the Target Company to

make a representation that is in violation of the preceding paragraph.

(Compensatory Liability for Violations Connected with a Tender Offer)

Article 27-16 The provisions of Article 16 apply *mutatis mutandis* to a person that violates the provisions of Article 27-3, paragraph (3) or Article 27-8, paragraph (7) in performing an act specified by Cabinet Office Ordinance, or that violates the provisions of Article 27-9, paragraph (2) or (3) in effecting a purchase, etc. of Share Certificates, etc. In this case, in Article 16, the phrase "the person that acquires the Securities" is deemed to be replaced with "the person that sells, etc. its Share Certificates, etc. in response to the Tender Offer".

Article 27-17 (1) A Tender Offeror, etc. that violates the provisions of Article 27-5 (including as applied *mutatis mutandis* pursuant to Article 27-8, paragraph (10); hereinafter the same applies in this paragraph) in effecting a purchase, etc. of Share Certificates, etc. is liable to compensate for damage sustained by a person that sells, etc. its Share Certificates, etc. in response to the Tender Offer (excluding persons that sell, etc. Share Certificates, etc. to which Article 27-5 is applicable and the part of the persons that are prescribed in paragraph (2), item (i) of the following Article).

(2) The amount of compensation for which the Tender Offeror, etc. is liable pursuant to the preceding paragraph is the price that the Tender Offeror, etc. pays at the time it effects a purchase, etc. referred to in the preceding paragraph (this includes providing a benefit equivalent to such a price, and if prices are not the same for all purchases, etc., the most favorable of them is used) less the Tender Offer price (meaning the purchase, etc. price stated in the Public Notice of the Commencement of the Tender Offer and Tender Offer Statement, or, if the Tender Offeror, etc. changes the purchase, etc. price pursuant to a public notice or public announcement under Article 27-6, paragraph (2) or (3), this means the purchase, etc. price after the change; hereinafter the same applies in this Section), multiplied by the number of tendered Share Certificates, etc. of a claimant under the preceding paragraph (excluding tendered Share Certificates, etc. that could not have been sold, etc. through the Pro Rata Method; the same applies in paragraph (2) of the following Article and Article 27-20, paragraph (2)).

Article 27-18 (1) A person that, in acquiring Share Certificates, etc. or effecting other settlement procedures for a purchase, etc. of Share Certificates, etc. through a Tender Offer (hereinafter referred to as a "Tender Offer Purchaser" in this Article) violates the provisions of Article 27-13, paragraph (4), is liable to compensate for damage sustained by a person that sells, etc. its Share

Certificates, etc. in response to the Tender Offer (in a case set forth in item (i) of the following paragraph, this excludes a person that sells, etc. its Share Certificates, etc. at a price that is more favorable than the Tender Offer price (this includes being provided with a benefit equivalent to such a price; hereinafter the same applies in this Article); and in a case set forth in item (ii) of the following paragraph, it includes a person that could not sell, etc. its Share Certificates, etc. due to the Tender Offer Purchaser's use of the different method referred to in item (ii)).

(2) In the following cases, the amount of compensation for which a Tender Offer Purchaser is liable pursuant to the preceding paragraph is the amount specified in the relevant of the following items for the category set forth in that item:

- (i) if the Tender Offer Purchaser only purchases, etc. Share Certificates, etc. at a price that is more favorable than the Tender Offer price from a part of the persons that sell, etc. their Share Certificates, etc. in response to the Tender Offer: the favorable price (if two or more favorable prices are used for the purchases, etc., the most favorable price) less the Tender Offer price, multiplied by the number of tendered Share Certificates, etc. of a claimant under the preceding paragraph; and
- (ii) if the Tender Offer Purchaser purchases, etc. Share Certificates, etc. through a method that is different from the Pro Rata Method stated in the Tender Offer Statement: the number of Share Certificates, etc. that should have been purchased, etc. from a claimant under the preceding paragraph, as calculated using that Pro Rata Method, less the number of Share Certificates, etc. that the Tender Offer Purchaser actually purchased, etc. from the claimant (or, if the Tender Offer Purchaser did not purchase, etc. any Share Certificates, etc. from the claimant, the number of the Share Certificates, etc. that should have been purchased, etc. from the claimant, as calculated using that Pro Rata Method), multiplied by the difference between the Tender Offer price (or the price paid by the Tender Offeror as specified in Article 27-17, paragraph (2), in a case to which paragraph (1) of the preceding Article is also applicable; the favorable price referred to in the preceding item, in a case to which the preceding item is also applicable; or the more favorable of these prices, in a case to which both Article 27-17, paragraph (1) and the preceding item are also applicable) and the market price of the Share Certificates, etc. at the time the claimant claims damages under the preceding paragraph (this is the estimated disposal price, if there is no market price for the Share Certificates, etc., or the disposal price, if the Share Certificates, etc. are disposed of prior to the claim being filed).

(Compensatory Liability of a Person Using a Tender Offer Explanation That



Contains a False Statement, etc.)

Article 27-19 The provisions of Article 17 apply *mutatis mutandis* to a person that has caused a person to sell, etc. Share Certificates, etc. through the use of a Tender Offer Explanation or other representation that contains a false statement about a material particular, omits a representation as to a material particular that is required to be represented, or omits a representation of material fact that is necessary to prevent it from being misleading. In this case, in Article 17, the phrase "a person that acquires the Securities" is deemed to be replaced with "a person that sells, etc. its Share Certificates, etc. in response to the Tender Offer".

(Compensatory Liability of a Person Issuing a Public Notice of the

Commencement of a Tender Offer Which Contains a False Statement, etc.)

Article 27-20 (1) The provisions of Article 18, paragraph (1) apply *mutatis mutandis* to the following persons. In this case, in Article 18, paragraph (1), both the phrase "person that acquires the Securities through the Public Offering or Secondary Distribution" and the phrase "person that acquires the Securities" are deemed to be replaced with "person that sells, etc. its Share Certificates, etc. in response to the Tender Offer", and the phrase "at the time the person offers to acquire the Securities" is deemed to be replaced with "at the time the person sells, etc. its Share Certificates, etc.":

- (i) a person that issues a Public Notice of the Commencement of the Tender Offer or a public notice or public announcement under Article 27-6, paragraph (2) or (3), Article 27-7, paragraph (1) or (2) (including as applied *mutatis mutandis* pursuant to Article 27-8, paragraph (12)) or Article 27-8, paragraph (8) or (11) (hereinafter collectively referred to as "Public Notice of the Commencement of a Tender Offer, etc." in this and the following Article) that contains a false representation about a material particular, omits a representation as to a material particular that is required to be represented, or omits a representation of material fact that is necessary to prevent it from being misleading;
- (ii) a person that submits a Tender Offer Statement (including any amended statement in connection with it; hereinafter the same applies in this and the following Articles) that contains a false statement about a material particular, omits a statement as to a material particular that is required to be stated, or omits a statement of material fact that is necessary to prevent it from being misleading;
- (iii) a person that prepares a Tender Offer Explanation (including a Tender Offer Explanation amended pursuant to Article 27-9, paragraph (3); hereinafter the same applies in this and the following Articles) that contains a false statement about a material particular, omits a statement as to a

material particular that is required to be stated, or omits a statement of material fact that is necessary to prevent it from being misleading; and (iv) a person that submits a Tender Offeror's Answer (including any amended report in connection with this; hereinafter the same applies in this and the following Articles) that contains a false statement about a material particular, omits a statement as to a material particular that is required to be stated, or omits a statement of material fact that is necessary to prevent it from being misleading.

- (2) If the provisions of the preceding paragraph (excluding items (i) and (iv)) are applicable and, in spite of having concluded a contract to purchase, etc., after the last day of the Tender Offer period, Share Certificates, etc. that are subject to the Tender Offer other than through that Tender Offer, the Tender Offeror does not state this in the Tender Offer Statement or Tender Offer Explanation but then effects the purchase, etc. under the contract after the last day of the Tender Offer period, the amount of compensation that the Tender Offer is liable for to a person that sells, etc. its Share Certificates, etc. in response to the Tender Offer (excluding a person that sells, etc. Share Certificates, etc. pursuant to such a contract, a person that sells, etc. Share Certificates, etc. to which Article 27-5 is applicable, and the part of the persons referred to in Article 27-18, paragraph (2), item (i)) is the price at which the Tender Offeror, etc. purchases, etc. them (this includes providing a benefit equivalent to such a price, and if prices are not the same for all purchases, etc., the most favorable of them is used) less the Tender Offer price, multiplied by the number of tendered Share Certificates, etc. of the claimant under Article 18, paragraph (1) as applied mutatis mutandis pursuant to the preceding paragraph.
- (3) Except for cases to which the preceding paragraph is applicable, the persons specified in the following items are jointly and severally liable for compensation under paragraph (1) with the persons set forth in the items of paragraph (1); provided, however, that this does not apply if the person specified in the following items proves that it did not know, and in the exercise of reasonable care could not have known, that the statement was false or had been omitted:
- (i) the Specially Related Party (limited to a person specified in Article 27-2, paragraph (7), item (ii)) of a person set forth in one of the items of paragraph (1); and
  - (ii) if a person set forth in one of the items of paragraph (1) is a corporation or other organization, its director, accounting advisor, company auditor, executive officer, board member, auditor, or person equivalent thereto, at the time it submitted the Public Notice of the Commencement of the Tender Offer, etc., the Tender Offer Statement, or the Tender Offeror's Answer, or at the time it prepared the Tender Offeror Explanation.

(Prescription of the Right to Claim Compensation Due to a Violation of Provisions Relevant to a Tender Offer)

Article 27-21 (1) A claim under Article 27-17, paragraph (1) or a claim under Article 27-18, paragraph (1) in a case to which Article 27-18, paragraph (2) is applicable extinguishes by prescription if it is not exercised within one year from when the claimant comes to know, or in exercise of reasonable care could have come to know, of the violation. The same applies if the claim is not exercised within five years from the day following the last day of the Tender Offer period in the relevant Tender Offer.

(2) A claim under Article 27-20, paragraph (1) in a case to which paragraph (2) of the preceding Article is applicable extinguishes by prescription if it is not exercised within one year from when the claimant comes to know, or in exercise of reasonable care could have come to know, that the Public Notice of the Commencement of the Tender Offer, etc., Tender Offer Statement, Tender Offer Explanation, or Tender Offeror's Answer contains a false statement or false representation about a material particular, omits a statement as to a material particular that is required to be stated or represented, or omits a statement of material fact that is necessary to prevent it from being misleading. The same applies if the claim is not exercised within five years from the day following the last day of the Tender Offer period in the relevant Tender Offer.

(Collection of Reports and Inspection of a Tender Offeror)

Article 27-22 (1) Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order a Tender Offeror, a person that that is found to be required to purchase, etc. Share Certificates, etc. through a Tender Offer pursuant to the main clause of Article 27-2, paragraph (1), a Specially Related Party of either of these persons, or any other concerned party or witness, to submit reports or materials that should serve as a reference, and may have the relevant officials inspect these persons' books and documents or any other articles.

(2) Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order a person that has submitted a Target Company's Position Statement, a person that is found to be required to submit the same, or any other concerned party or witness, to submit reports or materials that should serve as a reference, and may have the relevant officials inspect these persons' books and documents or any other articles.

(3) When the Prime Minister finds it necessary with regard to the order for report or submission of materials or the inspection under the preceding two

paragraphs, he/she may inquire to public offices or public or private organizations and request them to report necessary matters.

## **Section 2 Tender Offers for Listed Share Certificates, etc. by the Issuer**

(Tender Offers for Listed Share Certificates, etc. by the Issuer)

Article 27-22-2 (1) A purchase, etc. (meaning a purchase or other acquisition for compensation; hereinafter the same applies in this and the following Articles) of Listed Share Certificates, etc. outside a Financial Instruments Exchange Market by the Issuer of those Listed Share Certificates, etc. must be effected by means of a Tender Offer, if it falls under one of the following categories; provided, however, that this does not apply to a purchase, etc. through a transaction specified by Cabinet Order as being equivalent to a purchase and sale, etc. of Securities on a Financial Instruments Exchange Market:

- (i) a purchase, etc. under Article 156, paragraph (1) of the Companies Act (including as it applies through the replacement of certain terms pursuant to Article 165, paragraph (3) of that Act; hereinafter the same shall apply in this item) or under the provisions of other laws and regulations specified by Cabinet Order as being equivalent to Article 156, paragraph (1) of said Act (unless the Issuer gives the notice under Article 158, paragraph (1) of that Act as provided in Article 160, paragraph (1) of that Act); or
- (ii) a purchase, etc. effected by an Issuer of Listed Share Certificates, etc. that is a foreign company, which is specified by Cabinet Order as a purchase, etc. effected by a method that makes the particulars of that purchase, etc. available to a large number of persons.

(2) The provisions of Article 27-2, paragraphs (2) to (6) inclusive; Article 27-3 (excluding the second sentence of paragraph (1) and item (ii) of paragraph (2)); Article 27-4; Article 27-5 (limited to the non-itemized part thereof; the same applies in paragraph (5) and Article 27-22-3, paragraph (5)); Articles 27-6 to 27-9 inclusive (excluding Article 27-8, paragraphs (6), (10), and (12)); Article 27-11 to 27-15 inclusive (excluding Article 27-11, paragraph (4) and Article 27-13, paragraph (3) and paragraph (4), item (i)); Article 27-17; Article 27-18; Article 27-21, paragraph (1); and the preceding Article(excluding paragraph (2)) apply mutatis mutandis if a purchase, etc. is effected through a Tender Offer pursuant to the preceding paragraph. In this case, in these provisions (excluding Article 27-3, paragraph (4) and the proviso to Article 27-11, paragraph (1)), the term "Share Certificates, etc." is deemed to be replaced with "Listed Share Certificates, etc."; in Article 27-2, paragraph (6), the phrase "sell, etc. them (meaning effecting a sale or other transfer for consideration; hereinafter the same applies in this Section)" is deemed to be replaced with "sell, etc. them"; in Article 27-3, paragraph (2), the phrase "the following

particulars" is deemed to be replaced with "the particulars set forth in items (i) and (iii) below"; in Article 27-3, paragraph (2), item (i), the phrase "purchase, etc. period (including the detail indicated in the public notice pursuant to the second sentence of the preceding paragraph)" is deemed to be replaced with "purchase, etc. period"; in Article 27-3, paragraph (3), the phrase "a Tender Offeror, the Specially Related Party of a Tender Offeror (meaning a Specially Related Party as defined in Article 27-2, paragraph (7); hereinafter the same applies in this Section), or any other relevant party specified by Cabinet Order" is deemed to be replaced with "a Tender Offeror or any other relevant party specified by Cabinet Order"; in the first sentence of Article 27-3, paragraph (4), the phrase "the Tender Offeror shall send a copy of the Tender Offer Statement to the Issuer of the Share Certificates, etc. involved in the Tender Offer (and to any person that has already submitted a Tender Offer Statement for the Share Certificates, etc. of that Issuer as of the day on which the Tender Offeror submits the Tender Offer Statement), and, if the Share Certificates, etc. involved in the Tender Offer fall under a category set forth in one of the following items, the Tender Offeror must also send a copy of the Tender Offer Statement to the person specified in the relevant item for the category of Share Certificates, etc. set forth in that item" is deemed to be replaced with "the Tender Offeror, for the categories of Listed Share Certificates, etc. set forth in the following items, shall send the person set forth in the relevant item a copy of the Tender Offer Statement, and shall also send a copy of the Tender Offer Statement to any person that has already submitted a Tender Offer Statement for Share Certificates, etc. of which the Tender Offeror is the Issuer, as of the day on which it submits the Tender Offer Statement"; in the items of Article 27-3, paragraph (4), the term "Share Certificates, etc." is deemed to be replaced with "Listed Share Certificates, etc."; in the proviso to Article 27-5, the phrase "the following cases" is deemed to be replaced with "the cases specified by Cabinet Order"; in Article 27-6, paragraph (1), item (i), the phrase "the lowering of the purchase, etc. price (excluding what is implemented if the Public Notice of the Commencement of the Tender Offer and the Tender Offer Statement states, as one of the Terms of Purchase, etc., that the purchase, etc. price may be lowered according to the standards specified by Cabinet Office Ordinance if the Target Company (meaning a Target Company provided for in Article 27-10, paragraph (1)) conducts a share split or performs any other act specified by Cabinet Order during the Tender Offer period)" is deemed to be replaced with "the lowering of the purchase, etc. price"; in Article 27-6, paragraph (2), the phrase "the details of the change to the Terms of Purchase, etc. (excluding the extension of the purchase, etc. period, if it is extended pursuant to Article 27-10, paragraph (3))" is deemed to be replaced with "the details of the change to the Terms of Purchase, etc."; in Article 27-8, paragraph

(2), the phrase "the Terms of Purchase, etc. change (other than an extension of the purchase, etc. period under Article 27-10, paragraph (3))" is deemed to be replaced with "the Terms of Purchase, etc. change"; in the proviso to Article 27-11, paragraph (1), the phrase "the Tender Offeror states as one of the Terms of Purchase, etc. in the Public Notice of the Commencement of the Tender Offer and in the Tender Offer Statement that the Tender Offer may be withdrawn if a material change occurs in the business or property of the Issuer of the Share Certificates, etc. that are involved in the Tender Offer or in its Subsidiary (meaning a Subsidiary as defined in Article 2, item (iii) of the Companies Act) or any other circumstance occurs that would significantly compromise its ability to achieve the purpose of the Tender Offer (limited to circumstances specified by Cabinet Order), or if an order to commence bankruptcy proceedings is issued against the Tender Offeror or any other material change in circumstances specified by Cabinet Order occurs" is deemed to be replaced with "effecting a purchase, etc. of Listed Share Certificates, etc. through the Tender Offer would violate any other law or regulation, or if any circumstance occurs that is specified by Cabinet Order as involving a risk of violation of any other law or regulation"; in Article 27-13, paragraph (4), the phrase "has included one of the following conditions in the Public Notice of the Commencement of the Tender Offer and in the Tender Offer Statement (if the Tender Offeror has included the condition referred to in item (ii), this is only if the Ownership Ratio of Share Certificates, etc. (meaning Ownership Ratio of Share Certificates, etc. as defined in Article 27-2, paragraph (8)), in terms of the Share Certificates, etc. that the Tender Offeror will hold after the Tender Offer (if the Tender Offeror has a Specially Related Party as specified in Article 27-2, paragraph (1), item (i), the Ownership Ratio of Share Certificates, etc. as defined in Article 27-2, paragraph (8) in terms of the Share Certificates, etc. that Specially Related Party holds is added to calculate this) will be below the proportion specified by Cabinet Order)" is deemed to be replaced with "has included the condition specified in item (ii) below in the Public Notice of the Commencement of the Tender Offer and in the Tender Offer Statement"; in Article 27-14, paragraph (1), the phrase "Tender Offer Report, the Target Company's Position Statement, and the Tender Offeror's Answer (including any amended report in connection with them" is deemed to be replaced with "and a Tender Offer Report (including any amended report in connection with it"; in Article 27-14, paragraph (3), the phrase ", Article 27-10, paragraph (9) (including as applied mutatis mutandis pursuant to Article 27-10, paragraph (10)) and Article 27-10, paragraph (13) (including as applied mutatis mutandis pursuant to Article 27-10, paragraph (14)) at" is deemed to be replaced with "at"; in Article 27-14, paragraph (5), item (i), the phrase "Article 27-8, paragraph (3)" is deemed to be replaced with "Article 27-8, paragraph (3) as

applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)"; in Article 27-14, paragraph (5), item (ii), the phrase "Article 27-10, paragraph (8) or (12), or paragraph (3) of the preceding Article" is deemed to be replaced with "Article 27-22-2, paragraph (7)"; in Article 27-15, paragraph (1), the phrase ", Tender Offer Report, Target Company's Position Statement, or Tender Offeror's Answer" is deemed to be replaced with "or Tender Offer Report"; in Article 27-15, paragraph (2), the phrase "Tender Offeror, etc. and the Target Company" is deemed to be replaced with "Tender Offeror, etc."; and in paragraph (1) of the preceding Article, the phrase "a person that that is found to be required to purchase, etc. Share Certificates, etc. through a Tender Offer pursuant to the main clause of Article 27-2, paragraph (1), a Specially Related Party of either of these persons" is deemed to be replaced with "a person that is found to be required to purchase, etc. Listed Share Certificates, etc. through a Tender Offer pursuant to the main clause of Article 27-22-2, paragraph (1)" ; and the term "the preceding two paragraphs" in paragraph (3) of that Article shall be deemed to be replaced with "paragraph (1) as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2).".

- (3) The provisions of Article 27-3, paragraph (4) apply mutatis mutandis if an amended statement is submitted pursuant to Article 27-8, paragraphs (1) to (4) inclusive as applied mutatis mutandis pursuant to the preceding paragraph. In this case, in the first sentence of Article 27-3, paragraph (4), the phrase "the Tender Offeror shall send a copy of the Tender Offer Statement to the Issuer of the Share Certificates, etc. involved in the Tender Offer (and to any person that has already submitted a Tender Offer Statement for the Share Certificates, etc. of that Issuer as of the day on which the Tender Offeror submits the Tender Offer Statement), and, if the Share Certificates, etc. involved in the Tender Offer fall under a category set forth in one of the following items, the Tender Offeror must also send a copy of the Tender Offer Statement to the person specified in the relevant item for the category of Share Certificates, etc. set forth in that item" is deemed to be replaced with "the Tender Offeror, for the categories of Listed Share Certificates, etc. set forth in the following items, shall send the person set forth in the relevant item a copy of the Tender Offer Statement, and shall also send a copy of the Tender Offer Statement to any person that has already submitted a Tender Offer Statement for Share Certificates, etc. of which the Tender Offeror is the Issuer, as of the day on which it submits the amended statement"; and in the items of Article 27-3, paragraph (4), the term "Share Certificates, etc." is deemed to be replaced with "Listed Share Certificates, etc."
- (4) A Tender Offeror (meaning Tender Offeror as defined in Article 27-3, paragraph (2) as applied mutatis mutandis pursuant to paragraph (2); hereinafter the same applies in this Section), immediately after submitting a

Written Tender Offer Withdrawal Notice (meaning a Written Tender Offer Withdrawal Notice as defined in Article 27-11, paragraph (3) as applied mutatis mutandis pursuant to paragraph (2); hereinafter the same applies in this Section) or Tender Offer Report (meaning a Tender Offer Report as defined in Article 27-13, paragraph (2) as applied mutatis mutandis pursuant to paragraph (2); hereinafter the same applies in this Section), shall send a copy of the Written Tender Offer Withdrawal Notice or Tender Offer Report to the person specified in the relevant item of Article 27-3, paragraph (4) for the category of Listed Share Certificates, etc. set forth in that item. The necessary particulars relevant to the sending of those copies in such a case are specified by Cabinet Office Ordinance.

- (5) If the purchase, etc. period in a Tender Offer is required to be extended pursuant to Article 27-8, paragraph (8) as applied mutatis mutandis pursuant to paragraph (2), the provisions of Article 27-5 apply mutatis mutandis until the last day of the required period of extension. In this case, in Article 27-5, the term "Share Certificates, etc." is deemed to be replaced with "Listed Share Certificates, etc." and the phrase "the following cases" is deemed to be replaced with "the cases specified by Cabinet Order".
- (6) The provisions of Article 27-7 apply mutatis mutandis to a public notice or public announcement under Article 27-8, paragraphs (8) and (11) as applied mutatis mutandis pursuant to paragraph (2).
- (7) The provisions of Article 27-8, paragraphs (1) to (5) inclusive apply mutatis mutandis to a Tender Offer Report. In this case, in Article 27-8, paragraph (1), the term "amended statement" is deemed to be replaced with "amended report"; in Article 27-8, paragraph (2), the phrase "submitted and before the last day of the Tender Offer period, the Terms of Purchase, etc. change (other than an extension of the purchase, etc. period under Article 27-10, paragraph (3)), any other material particular that is required to be stated in a Tender Offer Statement changes, or any other circumstance specified by Cabinet Office Ordinance arises that requires the Tender Offer Statement to be amended" is deemed to be replaced with "submitted, the number of Listed Share Certificates, etc. for which a purchase, etc. will be effected is fixed by the Pro Rata Method set forth in Article 27-13, paragraph (5) as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2) on or after the day on which the Tender Offer Statement is submitted" and the term "amended statement" is deemed to be replaced with "amended report"; in Article 27-8, paragraph (3), the term "amended statement" is deemed to be replaced with "amended report", the phrase "the Terms of Purchase, etc. stated in the Tender Offer Statement do not comply with the provisions of this Section" is deemed to be replaced with "the delivery and other settlement methods for the purchase, etc. stated in the Tender Offer Statement do not comply with Article 27-13,



paragraph (4) (excluding 27-13, paragraph (4), item (i)) and Article 27-13, paragraph (5) as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)", and the phrase "the change in the Terms of Purchase, etc. that is stated in the amended statement violates Article 27-6, paragraph (1)" is deemed to be replaced with "the result of calculation stated in the amended statement for deciding the number of Listed Share Certificates, etc. to purchase, etc., contravenes the pro rata method specified by the Cabinet Office Ordinance set forth in Article 27-13, paragraph (5) as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)"; in Article 27-8, paragraph (4), the term "amended statement" is deemed to be replaced with "amended report"; in Article 27-8, paragraph (5), the phrase "disposition under paragraph (3)" is deemed to be replaced with "disposition under paragraph (3) or the preceding paragraph as applied mutatis mutandis pursuant to Article 27-22, paragraph (7)", and the phrase "the last day of the Tender Offer period (including the period by which it is required to be extended under paragraph (8); the same applies in paragraph (7)) (or, for a disposition resulting in an amended statement being submitted after the last day of the Tender Offer period, after the day on which five years have elapsed since the day following the last day of the Tender Offer period), and the disposition under the preceding paragraph may not be reached after the day on which five years have elapsed since the day following the last day of the Tender Offer period" is deemed to be replaced with "the day on which five years have elapsed since the day following the last day of the Tender Offer period".

- (8) The provisions of paragraph (4) apply mutatis mutandis to an amended report provided for in Article 27-8, paragraphs (1) to (4) inclusive as applied mutatis mutandis pursuant to the preceding paragraph. In this case, in Article 27-8, paragraph (4), the phrase "Written Tender Offer Withdrawal Notice (meaning a Written Tender Offer Withdrawal Notice as defined in Article 27-11, paragraph (3) as applied mutatis mutandis pursuant to paragraph (2); hereinafter the same applies in this Section) or Tender Offer Report (meaning a Tender Offer Report as defined in Article 27-13, paragraph (2) as applied mutatis mutandis pursuant to paragraph (2); hereinafter the same applies in this Section)" is deemed to be replaced with "amended report (meaning an amended report provided for in Article 27-8, paragraphs (1) to (4) inclusive as applied mutatis mutandis pursuant to paragraph (7))" and the phrase "the Written Tender Offer Withdrawal Notice or Tender Offer Report" is deemed to be replaced with "the amended report".
- (9) The provisions of Article 16 apply mutatis mutandis to a person that violates the provisions of Article 27-3, paragraph (3) or Article 27-8, paragraph (7) as applied mutatis mutandis pursuant to paragraph (2) in performing the act specified by Cabinet Office Ordinance or that violates the provisions of Article

27-9, paragraph (2) or (3) as applied mutatis mutandis pursuant to paragraph (2) in effecting a purchase, etc. of Listed Share Certificates, etc. In this case, in Article 16, the term "the person that acquires the Securities" is deemed to be replaced with "the person that sells, etc. its Listed Share Certificates, etc. in response to the Tender Offer".

- (10) The provisions of Article 17 apply mutatis mutandis to a person that has caused a person to sell, etc. its Listed Share Certificates, etc. through the use of a Tender Offer Explanation (meaning Tender Offer Explanation as defined in Article 27-9, paragraph (1) as applied mutatis mutandis pursuant to paragraph (2); hereinafter the same applies in this Section) or other representation that contains a false statement about a material particular, omits a representation as to a material particular that is required to be represented, or omits a representation of material fact that is necessary to prevent it from being misleading. In this case, in Article 17, the phrase "the person that acquires the Securities" is deemed to be replaced with "the person that sells, etc. its Listed Share Certificates, etc. in response to the Tender Offer".
- (11) The provisions of Article 18, paragraph (1) apply mutatis mutandis to the following persons. In this case, in Article 18, paragraph (1), both of the phrases "person that acquires the Securities through the Public Offering or Secondary Distribution" and "person that acquires the Securities" are deemed to be replaced with "person that sells, etc. its Listed Share Certificates, etc. in response to the Tender Offer", and the term "at the time the person offers to acquire the Securities" is deemed to be replaced with "at the time the person sells, etc. its Listed Share Certificates":
- (i) a person that issues a Public Notice of the Commencement of a Tender Offer as defined in Article 27-3, paragraph (2) as applied mutatis mutandis pursuant to paragraph (2), or a public notice or public announcement under Article 27-6, paragraph (2) or (3); Article 27-7, paragraph (1) or (2); or Article 27-8, paragraph (8) or (11) as applied mutatis mutandis pursuant to paragraph (2); or Article 27-7, paragraph (1) or (2) as applied mutatis mutandis pursuant to paragraph (6) (collectively referred to as a "Public Notice of the Commencement of the Tender Offer, etc." in the following paragraph) that contains a false representation about a material particular, omits a representation as to a material particular that is required to be represented, or omits a representation of material fact that is necessary to prevent it from being misleading;
  - (ii) a person that submits a Tender Offer Statement as defined in Article 27-3, paragraph (2) as applied mutatis mutandis pursuant to paragraph (2) (including any amended statement in connection with it; the same applies in the following paragraph) that contains a false statement about a material

- particular, omits a statement as to a material particular that is required to be stated, or omits a statement of material fact that is necessary to prevent it from being misleading; or
- (iii) a person that prepares a Tender Offer Explanation (including a Tender Offer Explanation amended pursuant to Article 27-9, paragraph (3) as applied mutatis mutandis pursuant to paragraph (2); the same applies in the following paragraph) that contains a false statement about a material particular, omits a statement as to a material particular that is required to be stated, or omits a statement of material fact that is necessary to prevent it from being misleading.
- (12) In a case to which Article 18, paragraph (1) is applicable as applied mutatis mutandis pursuant to the preceding paragraph, an officer of the Issuer at the time of its submission of a Public Notice of the Commencement of the Tender Offer, etc. or Tender Offer Statement, or at the time of the preparation of the Tender Offer Explanation is jointly and severally liable with the Issuer for compensation under the preceding paragraph; provided, however, that this does not apply if the officer proves that that officer did not know, and in the exercise of reasonable care could not have known, that the statement was false or had been omitted.
- (13) In a case referred to in paragraph (2), (3), or (5) to (11) inclusive, beyond what is provided for in those provisions, any other necessary technical replacement of terms is specified by Cabinet Order.

(Disclosure of a Material Fact About Business)

- Article 27-22-3 (1) If a material fact has occurred with regard to an Issuer who seeks to purchase, etc. Listed Share Certificates, etc. through a Tender Offer provided for in paragraph (1) of the preceding Article (meaning a material fact about its business which is provided for in Article 166, paragraph (1) (excluding those specified by Cabinet Office Ordinance); hereinafter the same applies in this and the following Articles), and this has not been disclosed as provided for in Article 166, paragraph (1), the Issuer must disclose that material fact pursuant to the provisions of Cabinet Office Ordinance before the day on which it submits the Tender Offer Statement (meaning a Tender Offer Statement as defined in Article 27-3, paragraph (2) as applied mutatis mutandis pursuant to paragraph (2) of the preceding Article; hereinafter the same applies in this and the following Articles).
- (2) If a purchase, etc. of Listed Share Certificates, etc. is effected through a Tender Offer as provided for in paragraph (1) of the preceding Article, and any new material fact occurs at the Issuer that is the Tender Offeror (including if it becomes clear that a material fact had occurred before the day on which the Tender Offeror submitted the Tender Offer Statement, but that this has not

been disclosed as provided for in Article 166, paragraph (1)) between the day on which it submits the Tender Offer Statement and the last day of the Tender Offer period (including the period by which it is required to be extended pursuant to Article 27-8, paragraph (8) as applied mutatis mutandis pursuant to paragraph (4) of this Article; the same applies in the following Article) as defined in Article 27-5 as applied mutatis mutandis pursuant to paragraph (2) of the preceding Article, the Issuer must immediately disclose the material fact and notify persons that have accepted the offer to purchase, etc. Listed Share Certificates, etc. through the Tender Offer, persons that have offered to sell, etc. their Listed Share Certificates, etc. in connection with the Tender Offer, and persons seeking to sell, etc. such Listed Share Certificates, etc., of the content of what it has disclosed, pursuant to the provisions of Cabinet Office Ordinance.

- (3) Once the period specified by Cabinet Order has elapsed after the disclosure under the preceding two paragraphs is made, the disclosure prescribed in Article 166, paragraph (1) is deemed to have been made.
- (4) The provisions of Article 27-8, paragraphs (8) and (9) apply mutatis mutandis to the disclosure under paragraph (2). In this case, in Article 27-8, paragraph (8), the phrase "If an amended statement under paragraph (1) or (2) is submitted or an order to submit an amended statement under paragraph (3) or (4) is issued during the Tender Offer period, except in a case specified by Cabinet Office Ordinance" is deemed to be replaced with "If a material fact is required to be disclosed pursuant to Article 27-22-3, paragraph (2)"; and in Article 27-8, paragraph (9), the phrase "the preceding paragraph" is deemed to be replaced with "the preceding paragraph as applied mutatis mutandis pursuant to Article 27-22-3, paragraph (4)" and the term "Share Certificates, etc." is deemed to be replaced with "Listed Share Certificates, etc.".
- (5) If the purchase, etc. period in a Tender Offer is required to be extended pursuant to Article 27-8, paragraph (8) as applied mutatis mutandis pursuant to the preceding paragraph, the provisions of Article 27-5 apply mutatis mutandis until the last day of the required period of extension. In this case, in Article 27-5, the term "Share Certificates, etc." is deemed to be replaced with "Listed Share Certificates, etc." and the phrase "the following cases" is deemed to be replaced with "the cases specified by Cabinet Order".
- (6) The provisions of Article 18, paragraph (1) apply mutatis mutandis to an Issuer that issues a public notice or public announcement under Article 27-8, paragraph (8) as applied mutatis mutandis pursuant to paragraph (4), which contains a false representation with regard to a material particular, omits a representation as to a material particular that is required to be represented, or omits a representation of material fact that is necessary to prevent it from being misleading. In this case, in Article 18, paragraph (1), both the phrase

"person that acquires the Securities through the Public Offering or Secondary Distribution" and the phrase "person that acquires the Securities" are deemed to be replaced with "person that sells, etc. the Listed Share Certificates, etc. in response to the Tender Offer", and the phrase "at the time the person offers to acquire the Securities" is deemed to be replaced with "at the time the person sells, etc. the Listed Share Certificates".

- (7) In a case to which Article 18, paragraph (1) is applicable as applied *mutatis mutandis* pursuant to the preceding paragraph, an officer of an Issuer at the time the Issuer issues a public notice or public announcement provided for in the preceding paragraph is jointly and severally liable with the Issuer for compensation under the preceding paragraph; provided, however, that this does not apply if the officer proves that the officer did not know, and in the exercise of reasonable care could not have known, that the statement was false or had been omitted.
- (8) The provisions of Article 27-17 apply *mutatis mutandis* if a person violates the provisions of Article 27-5 as applied *mutatis mutandis* pursuant to paragraph (5) in purchasing, etc. Listed Share Certificates, etc. In this case, in Article 27-17, the term "Share Certificates, etc." is deemed to be replaced with "Listed Share Certificates, etc.", and any other necessary technical replacement of terms is specified by Cabinet Order.

(Compensatory Liability for Damage Due to Failure to Disclose or False Disclosure)

Article 27-22-4 (1) An Issuer that fails to make a disclosure or issue a notice under paragraph (1) or (2) of the preceding Article (hereinafter collectively referred to as "Disclosure" in this Article) with regard to a material fact requiring Disclosure, or an Issuer that makes a false Disclosure with regard to such a fact, is liable to compensate a person that sells, etc. its Listed Share Certificates, etc. in response to the Tender Offer, for damage arising from the company's failure to make Disclosure or from its false Disclosure; provided, however, that this does not apply in the following cases:

- (i) the person that sells, etc. the Listed Share Certificates, etc. in response to the Tender Offer knows that the material fact has occurred at the Issuer or knows that the content of the Disclosure is false; or
- (ii) the Issuer proves that it did not know that the material fact had occurred at said Issuer or that the content of the Disclosure was false, and that in the exercise of reasonable care it could not have known this at the time of the Tender Offer (meaning when the Public Notice of the Commencement of the Tender Offer is submitted, in terms of disclosure under paragraph (1) of the preceding Article, or the period between when the Public Notice of the Commencement of the Tender Offer is submitted and the last day of the

Tender Offer period, in terms of the disclosure or notice under Article 27-22-3, paragraph (2); the same applies in the following paragraph).

- (2) In a case to which the main clause of the preceding paragraph is applicable, an officer of an Issuer at the time of a Tender Offer is jointly and severally liable with the Issuer for compensation under the preceding paragraph; provided, however, that this does not apply if the officer proves that the officer did not know that the material fact had occurred at the Issuer or that the content of the Disclosure was false, and in the exercise of reasonable care could not have known this at the time of the Tender Offer.

### **Chapter II-3 Disclosure of the Status of Large-Volume Holdings in Share Certificates, etc.**

(Submission of Statements of Large-Volume Holdings)

Article 27-23 (1) A holder of Subject Securities (including what is specified by Cabinet Order as indicating a right connected to Securities set forth in Article 2, paragraph (1), item (xix) and other Securities specified by Cabinet Order that indicate an Option on Subject Securities (limited to an Option that causes the person that exercises it to acquire the position of the buyer in a purchase and sale of the Subject Securities linked to the Option (hereinafter collectively referred to as "Share Certificates, etc." in this Chapter and Article 27-30-11, paragraph (4))) issued by a corporation (or, with regard to the Securities specified by Cabinet Office Ordinance, a person specified by Cabinet Office Ordinance; hereinafter the same applies in this Chapter and Article 27-30-11, paragraph (4), except for Article 27-30, paragraph (2)) that is the Issuer of share certificates, corporate bond certificates with share options, and other Securities specified by Cabinet Order (hereinafter referred to as the "Share-related Securities" in this paragraph) that are listed on a Financial Instruments Exchange (including the Share-related Securities specified by Cabinet Order as having equivalent distribution statuses to said Securities), and whose Ownership Ratio of Share Certificates, etc. with respect to the relevant Share Certificates, etc. exceeds five percent (such a holder is hereinafter referred to as a "Large-Volume Holder" in this Chapter) must submit a statement in which it states the particulars of its Ownership Ratio of Share Certificates, etc., the particulars of the funds for the acquisition, the purpose of the holdings, and any other particulars specified by Cabinet Office Ordinance (such a statement is hereinafter referred to as a "Statement of Large-Volume Holdings") to the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance, within five days from the date on which it becomes a Large-Volume Holder (Sundays and other holidays specified by Cabinet Order are not included for the purpose of counting days; the same applies in Article

27-25, paragraph (1) and Article 27-26); provided, however, that this does not apply if the total number of Share Certificates, etc. held which are provided for in paragraph (4) does not increase, nor does it apply in any other case specified by Cabinet Office Ordinance.

- (2) The term "Subject Securities" as used in the preceding paragraph means the share certificates, corporate bond certificates with share options, and other Securities specified by Cabinet Order.
- (3) The holder referred to in paragraph (1) includes the following persons, in addition to persons that own Share Certificates, etc. in their own names or in the name of another person (or under a fictitious name) (including a person that holds the right to request the delivery of Share Certificates, etc. under a purchase and sale contract or any other contract, or any other person specified by Cabinet Order as being equivalent); provided, however, that the person set forth in item (i) is deemed to become a holder on the day on which that person comes to know that the person has the authority prescribed in that item, only within the scope of the Share Certificates, etc. (including the Securities set forth in Article 2, paragraph (1), item (xx) indicating the rights to Share Certificates, etc., and other Securities specified by Cabinet Office Ordinance; hereinafter the same applies in this paragraph and the following Article) regarding which the person comes to know that said that person has that authority:
  - (i) a person that has the authority to exercise voting rights or any other rights as a shareholder in the Issuer of the Share Certificates, etc., or to give instructions as to the exercise of said voting rights or any other rights, based on a money trust contract or any other contract or the provisions of the law (except for a person that falls under the following item), and that has the aim of controlling the business activities of said Issuer; or
  - (ii) a person that has the necessary authority to invest in Share Certificates, etc., based on a Discretionary Investment Contract or any other contract or the provisions of the law.
- (4) The term " Ownership Ratio of Share Certificates, etc." as used in paragraph (1) means the ratio arrived at when the number of Share Certificates, etc. issued by the Issuer of the relevant Share Certificates, etc., which the holder (meaning a holder as set forth in paragraph (1); hereinafter the same applies in this Chapter) is obligated to transfer (excluding those that the holder is obligated to transfer to a Joint Holder) due to having acquired them through a margin transaction provided for in Article 161-2, paragraph (1) or any other transaction method specified by Cabinet Office Ordinance, is deducted from the total number of Share Certificates, etc. (excluding Treasury Shares (meaning Treasury Shares as defined in Article 113, paragraph (4) of the Companies Act) and the Share Certificates, etc. that are specified by Cabinet Office Ordinance

in consideration of the manner in which they are held or any other circumstance; hereinafter the same applies in this paragraph) held by the holder of the relevant Share Certificates, etc. (meaning the number of represented shares, if they are share certificates, or the number specified by Cabinet Office Ordinance, if they are other Securities; hereinafter the same applies in this Chapter) (this includes if the holder has the authority set forth in the items of the preceding paragraph with regard to those Share Certificates, etc.; hereinafter the same applies in this Chapter) (the number of Share Certificates, etc. after this deduction is hereinafter referred to as the "Number of Share Certificates, etc. Held" in this Chapter); the Number of Share Certificates, etc. Held by Joint Holders of the Share Certificates, etc. issued by that Issuer (excluding those for which a right to request delivery or any other right specified by Cabinet Order exists between the holder and a Joint Holder) is added (the number of Share Certificates, etc. after this addition is hereinafter referred to as the "Total Number of Share Certificates, etc. Held" in this Chapter); and this is divided by the sum of either the total number of the Issuer's issued shares or the number specified by Cabinet Office Ordinance as being equivalent to this, and the number of Share Certificates, etc. that are held by the holder and the Joint Holders (excluding share certificates and other Securities that are specified by Cabinet Office Ordinance).

- (5) The term "Joint Holder" as used in the preceding paragraph means the other holder of the relevant Share Certificates, etc., in a case in which the holder of Share Certificates, etc. has agreed to jointly acquire or transfer said Share Certificates, etc., or to jointly exercise voting rights and other rights as the Issuer's shareholder, together with another holder of Share Certificates, etc. issued by the Issuer of the relevant Share Certificates, etc.
- (6) If a first holder of Share Certificates, etc. and another holder of Share Certificates, etc. that are issued by the Issuer of the relevant Share Certificates, etc. are related to each other through a shareholding relationship, familial relationship, or other special relationship specified by Cabinet Order, the other holder is deemed to be a Joint Holder referred to in paragraph (4) in relation to that holder; provided, however, that this does not apply if the Number of Share Certificates, etc. Held by either the first holder or the other holder is the number specified by Cabinet Office Ordinance or less.

(Preparation and Delivery of a Written Notice of Shareholding Status)

Article 27-24 A person set forth in paragraph (3), item (ii) of the preceding Article, pursuant to the provisions of Cabinet Office Ordinance, shall prepare a written notice that accounts for the status of holdings in the relevant Share Certificates, etc. and deliver it to customers that have the authority to exercise their voting rights or any other rights as shareholders in the Issuer of those



Share Certificates, etc. or to give instructions as to the exercise of their voting rights or any other rights, at least once a month.

(Submission of a Statement of Changes to a Statement of Large-Volume Holdings)

Article 27-25 (1) If, after the day on which a person that is required to submit a Statement of Large-Volume Holdings has become a Large-Volume Holder, the Ownership Ratio of Share Certificates, etc. (meaning the Ownership Ratio of Share Certificates, etc. set forth in Article 27-23, paragraph (4); hereinafter the same applies in this Chapter) has increased or decreased by one percent or more (unless this is not linked to an increase or decrease in the Total Number of Share Certificates, etc. Held by said person; hereinafter the same applies in this Chapter), or if there has been any other change that is specified by Cabinet Order as a change in a material particular that is required to be stated in the Statement of Large-Volume Holdings, such person must submit a report on the particulars of the change (hereinafter referred to as a "Statement of Changes") to the Prime Minister, within five days after the day of the change, pursuant to the provisions of Cabinet Office Ordinance; provided, however, that this does not apply that this shall not apply to cases where a Change Report reporting that the Holding Ratio of Share Certificates, etc. are five percent or less has already been submitted or to other cases specified by Cabinet Office Ordinance..

(2) In a case that falls under the criteria specified by Cabinet Order as a case in which a large number of Share Certificates, etc. have been transferred within a short period, a person that submits a Statement of Changes due to a decrease in the Ownership Ratio of Share Certificates, etc. must also state in said Statement of Changes the particulars of the party to which the Share Certificates, etc. have been transferred and the consideration received (with regard to a person specified by Cabinet Order as a person to whom an insignificant number of Share Certificates, etc. have been transferred, limited to the particulars of the consideration received), pursuant to the provisions of Cabinet Office Ordinance.

(3) If a person that has submitted a Statement of Large-Volume Holdings or a Statement of Changes finds that its content conflicts with the facts of the matter, that such a document insufficiently states or omits a statement as to a material particular that is required to be stated, or that such a document insufficiently states or omits a statement as to a material fact that is necessary to prevent it from being misleading, said person shall submit an amended report to the Prime Minister.

(Special Provisions for Statements by Large-Volume Holders of Share

Certificates, etc. Subject to Special Provisions)

Article 27-26 (1) Notwithstanding the provisions of the main clause of Article 27-23, paragraph (1), a Statement of Large-Volume Holdings in Share Certificates, etc. that a Financial Instruments Business Operator (limited to one that engages in Type I Financial Instruments Business provided for in Article 28, paragraph (1), or that engages in Investment Management Business provided for in paragraph (4) of that Article; hereinafter the same applies in this Article), a bank, or any other person specified by Cabinet Office Ordinance (limited to one that has notified the Prime Minister of the reference date provided for in paragraph (3)) holds, but which it does not hold for the purpose of performing an act specified by Cabinet Order as something that materially changes or materially influences the business activities of the Issuer of said Share Certificates, etc. (such an act is referred to as a "Material Proposal" in paragraphs (4) and (5)) (unless the Ownership Ratio of Share Certificates, etc. exceeds the ratio specified by Cabinet Office Ordinance and excluding any other cases that are specified by Cabinet Office Ordinance in consideration of the manner in which the Share Certificates, etc. are held and other circumstances), or which are held by the State, local government, or any other person specified by Cabinet Office Ordinance (limited to those that have notified the Prime Minister of the reference date provided for in paragraph (3)) (such Share Certificates, etc. are hereinafter collectively referred to as "Share Certificates, etc. Subject to Special Provisions" in this Article) must be submitted to the Prime Minister with a statement of the particulars specified by Cabinet Office Ordinance with regard to the status of Share Certificate, etc. holdings as of the reference date on which the Ownership Ratio of Share Certificates, etc. comes to exceed five percent for the first time, within five days from said reference date, pursuant to the provisions of Cabinet Office Ordinance.

(2) Notwithstanding the provisions of the main clause of paragraph (1) of the preceding Article, a Statement of Changes for Share Certificates, etc. Subject to Special Provisions (excluding a Statement of Changes for a change that occurs if the relevant Share Certificates, etc. come to fall under a category other than Share Certificates, etc. Subject to Special Provisions) must be submitted to the Prime Minister by the date that is specified in the relevant of the following items for the category of cases set forth in that item, pursuant to the provisions of Cabinet Office Ordinance:

- (i) if the Ownership Ratio of Share Certificates, etc. as of the reference date that comes after the reference date of the Statement of Large-Volume Holdings set forth in the preceding paragraph increases or decreases by one percent or more from the Ownership Ratio of Share Certificates, etc. that is stated in said Statement of Large-Volume Holdings, or if there has been any

- other change that is specified by Cabinet Order as a change in a material particular that is required to be stated in said Statement of Large-Volume Holdings: within five days from the later reference date;
- (ii) if the Ownership Ratio of Share Certificates, etc. as of the reference date that comes after the reference date of the Statement of Changes increases or decreases by one percent or more from the Ownership Ratio of Share Certificates, etc. that was stated in said Statement of Changes, or if there has been any other change that is specified by Cabinet Order as a change in a material particular that is required to be stated in the Statement of Large-Volume Holdings: within five days from the later reference date;
  - (iii) if the Ownership Ratio of Share Certificates, etc. falls below the ratio specified by Cabinet Office Ordinance, and the relevant Share Certificates, etc. have become Share Certificates, etc. Subject to Special Provisions: within five days from the date on which the Share Certificates, etc. become Share Certificates, etc. Subject to Special Provisions; and
  - (iv) a case specified by Cabinet Office Ordinance as being equivalent to any of the preceding three items: the date specified by Cabinet Office Ordinance.
- (3) The reference date referred to in the preceding two paragraphs means the date on which a Holder of Share Certificates, etc. Subject to Special Provisions notifies the Prime Minister pursuant to the provisions of Cabinet Office Ordinance, from among the combinations of two or more days in each month designated pursuant to the provisions of Cabinet Order.
- (4) Notwithstanding the provisions of paragraph (1), if the Financial Instruments Business Operator, bank, or other person specified by Cabinet Office Ordinance provided for in that paragraph makes a Material Proposal within a period specified by Cabinet Order from the date on which the Ownership Ratio of Share Certificates, etc. comes to exceed five percent, it must submit the Statement of Large-Volume Holdings referred to in that paragraph to the Prime Minister by five days prior to the date on which it makes the Material Proposal, pursuant to the provisions of Cabinet Office Ordinance.
- (5) Notwithstanding the provisions of paragraph (2), if the Ownership Ratio of Share Certificates, etc. of the Financial Instruments Business Operator, bank, or other person specified by Cabinet Office Ordinance provided for in paragraph (1) increases by one percent or more after the submission of the Statement of Large-Volume Holdings referred to in that paragraph or the Statement of Changes referred to in paragraph (2), and if it makes a Material Proposal within the period specified by Cabinet Order from the date of the increase, it must submit the Statement of Changes referred to in that paragraph to the Prime Minister by five days prior to the date on which it makes the Material Proposal, pursuant to the provisions of Cabinet Office Ordinance.

- (6) The provisions of paragraph (3) of the preceding Article apply mutatis mutandis to the Statement of Large-Volume Holdings referred to in paragraph (1) or (4), or the Statement of Changes referred to in paragraph (2) or the preceding paragraph.

(Submission of a Copy of a Statement of Large-Volume Holdings, etc. to a Financial Instruments Exchange, etc.)

Article 27-27 If a Holder of Share Certificates, etc. has submitted a Statement of Large-Volume Holdings, Statement of Changes, or amended reports in connection with them, said holder must send the copies of these documents without delay to the Issuer of the relevant Share Certificates, etc., and to the person specified in the relevant of the following items for the category of Share Certificates, etc. set forth in that item:

- (i) Share Certificates, etc. issued by an Issuer of Share Certificates, etc. listed on a Financial Instruments Exchange: said Financial Instruments Exchange; and
- (ii) Share Certificates, etc. issued by an Issuer of Share Certificates, etc., which are specified by Cabinet Order as having equivalent distribution statuses to the Share Certificates, etc. set forth in the preceding item: the Authorized Financial Instruments Firms Association specified by Cabinet Order.

(Public Inspection of Statements of Large-Volume Holdings)

Article 27-28 (1) The Prime Minister, pursuant to the provisions of Cabinet Office Ordinance, must make Statements of Large-Volume Holdings and Statements of Changes, as well as amended reports in connection with them, available for public inspection for five years from the day on which the Prime Minister receives these documents (or for an amended report, the day on which the Prime Minister receives the Statement of Large-Volume Holdings or Statement of Change that is subject to that amendment).

- (2) Pursuant to the provisions of Cabinet Office Ordinance, Financial Instruments Exchanges and the Authorized Financial Instruments Firms Associations specified by Cabinet Order must keep at their offices the copies of the documents prescribed in the preceding paragraph that have been sent to them pursuant to the provisions of the preceding Article (hereinafter referred to as "Public Documents" in this Article), and must make copies of them available for public inspection for five years from the day on which they receive those copies of the Public Documents.
- (3) Notwithstanding the provisions of paragraph (1), with regard to the particulars of funds for acquisition as stated in a Public Document, if said funds have been borrowed from a bank, Cooperative Financial Institution, or any other financial institution specified by Cabinet Order (hereinafter

collectively referred to as a "Bank, etc." in this paragraph) (excluding the cases specified by Cabinet Office Ordinance), the Prime Minister is not to make the name of the Bank, etc. available for public inspection, and the person that has submitted the Public Documents is to delete the name of the Bank, etc. before sending the copy of the Public Document.

- (4) Notwithstanding the provisions of paragraph (1), if the Prime Minister issues a submission order for an amended report under Article 9, paragraph (1) or Article 10, paragraph (1) as applied mutatis mutandis pursuant to paragraph (1) of the following Article, the Prime Minister may decide not to make all or part of the Public Document that is connected with the order available for public inspection.
- (5) In a case referred to in the preceding paragraph, the Prime Minister is to notify a Large-Volume Holder, and the Financial Instruments Exchange or the Authorized Financial Instruments Firms Association specified by Cabinet Order that is referred to in paragraph (2), that makes copies of Public Documents available for public inspection pursuant to the provisions of paragraph (2), that the Prime Minister has decided that all or part of the Public Document will not be made available for public inspection.
- (6) If a Financial Instruments Exchange or an Authorized Financial Instruments Firms Association receives a notice from the Prime Minister pursuant to the provisions of the preceding paragraph, the provisions of paragraph (2) do not apply after that time to the Public Document to which the notice pertains.

(Order to Submit an Amended Report in Connection with a Statement of Large-Volume Holdings, etc.)

- Article 27-29 (1) The provisions of Article 9, paragraph (1) and Article 10, paragraph (1) apply mutatis mutandis to Statements of Large-Volume Holdings and Statements of Changes. In this case, in Article 10, paragraph (1), the phrase "to submit an amended statement, and if the Prime Minister finds it to be necessary, the Prime Minister may order the suspension of the validity of a notification under Article 4, paragraphs (1) to (3) inclusive" is deemed to be replaced with "to submit an amended statement".
- (2) The provisions of the preceding two Articles apply mutatis mutandis if an amended report in connection with a Statement of Large-Volume Holdings or a Statement of Changes has been submitted pursuant to the provisions of Article 9, paragraph (1) or Article 10, paragraph (1), as applied mutatis mutandis pursuant to the preceding paragraph.

(Collection of Reports and Inspection of a Person Submitting a Statement of Large-Volume Holdings, etc.)

- Article 27-30 (1) Whenever the Prime Minister finds it to be necessary and

appropriate in the public interest or for the protection of investors, the Prime Minister may order a person that has submitted a Statement of Large-Volume Holdings, a person that is found to be required to submit the same, a Joint Holder (meaning a Joint Holder as prescribed in Article 27-23, paragraph (5)) of either of such persons, or any other concerned party or witness to submit reports or materials that should serve as a reference, and may have the relevant officials inspect that person's books and documents or any other articles.

(2) Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order the Issuer of Share Certificates, etc. to which a Statement of Large-Volume Holdings pertains or a witness, to submit reports or materials that should serve as a reference.

(3) When the Prime Minister finds it necessary with regard to the order for submission of reports or materials or the inspection under paragraph (1) or the order for submission of reports or materials under the preceding paragraph, he/she may inquire to public offices or public or private organizations and request them to report necessary matters.

#### **Chapter II-4 Special Provisions, etc. on Carrying Out Procedures Via an Electronic Data Processing System for Disclosure**

(Definition of Electronic Data Processing Systems for Disclosure)

Article 27-30-2 The term "Electronic Data Processing System for Disclosure" as used in this Chapter means an electronic data processing system through which a computer used by the Cabinet Office (including its input and output devices; hereinafter the same applies in this Chapter), and the input and output devices used by a person that carries out the procedures under the provisions of Article 5, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (5) of that Article (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27); Article 7, paragraph (1), (including as applied mutatis mutandis pursuant to Article 24-2, paragraph (1); Article 24-4-3, paragraph (1) (including as applied mutatis mutandis pursuant to Article 24-4-8, paragraph (2) and Article 24-5-2, paragraph (2)); Article 24-4-5, paragraph (1); Article 24-4-7, paragraph (4); Article 24-5, paragraph (5) and Article 24-7, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27); Article 24-6, paragraph (2); and Article 27)); Article 9, paragraph (1) (excluding the second sentence of that paragraph, and including as applied mutatis mutandis pursuant to Article 24-2, paragraph (1); Article 24-4-3, paragraph (1) (including as applied mutatis mutandis pursuant to Article 24-4-8, paragraph (2) and Article 24-5-2,

paragraph (2)); Article 24-4-5, paragraph (1); Article 24-4-7, paragraph (4); Article 24-5, paragraph (5) and Article 24-7, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27); Article 24-6, paragraph (2); and Article 27); Article 10, paragraph (1) (excluding the second sentence of that paragraph, and including as applied mutatis mutandis pursuant to Article 24-2, paragraph (1); Article 24-4-3, paragraph (1) (including as applied mutatis mutandis pursuant to Article 24-4-8, paragraph (2) and Article 24-5-2, paragraph (2)); Article 24-4-5, paragraph (1); Article 24-4-7, paragraph (4); Article 24-5, paragraph (5) and Article 24-7, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27); Article 24-6, paragraph (2); and Article 27); Article 23-3, paragraph (1) and (4) (including as applied mutatis mutandis pursuant to Article 27); Article 23-4 (including as applied mutatis mutandis pursuant to Article 27); Article 23-7, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27); Article 23-8, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27); Article 23-9, paragraph (1) (excluding the second sentence of that paragraph, and including as applied mutatis mutandis pursuant to Article 27); Article 23-10, paragraph (1) (excluding the second sentence of that paragraph, and including as applied mutatis mutandis pursuant to Article 23-10, paragraph (5) (including as applied mutatis mutandis pursuant to Article 27); and Article 27), Article 24, paragraph (1) and (3) (including as applied mutatis mutandis pursuant to Article 24, paragraph (5) (including as applied mutatis mutandis pursuant to Article 27) and Article 27); Article 24-4-2, paragraph (1) and (2) (including as applied mutatis mutandis pursuant to Article 24-2, paragraph (3) (including as applied mutatis mutandis pursuant to Article 24-2, paragraph (4)) and Article 24-2, paragraph (4) (including as applied mutatis mutandis pursuant to Article 24-4-8, paragraph (1) and Article 24-5-2, paragraph (1), and including as applied mutatis mutandis pursuant to Article 27) and Article 27); Article 24-4-4, paragraph (1) and (2) (including as applied mutatis mutandis pursuant to Article 24-4-4, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27) and Article 27); Article 24-4-7, paragraph (1) and (2) (including as applied mutatis mutandis pursuant to Article 24-4-7, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27) and Article 27); Article 24-5, paragraph (1) (including as applied mutatis mutandis pursuant to Article 24-5, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27); Article 24-5, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27); Article 24-6, paragraph (1); Article 24-7, paragraph (1) and (2) (including as applied mutatis mutandis pursuant to Article 24-7, paragraph (6) (including as applied mutatis mutandis pursuant to Article 27); and Article 27); Article 25, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27); Article 27-3, paragraph (2)

(including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); Article 27-8, paragraphs (1) to (4) inclusive (excluding the second sentence of paragraph (4), and including as applied mutatis mutandis pursuant to Article 27-10, paragraphs (8) and (12); Article 27-13, paragraph (3); and Article 27-22-2, paragraphs (2) and (7)); Article 27-10, paragraph (1) and (11); Article 27-11, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); Article 27-13, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); Article 27-23, paragraph (1); Article 27-25, paragraph (1) or (3); the paragraphs of Article 27-26; or the provisions of Article 9, paragraph (1) (excluding the second sentence of that paragraph) and Article 10, paragraph (1) (excluding the second sentence of that paragraph) as applied mutatis mutandis pursuant to Article 27-29, paragraph (1) (including the submission of anything that must accompany documents if they are submitted via these procedures; hereinafter referred to as "Electronic Disclosure" in this Chapter); or the procedures under Article 4, paragraph (6) (including as applied mutatis mutandis pursuant to Article 23-8, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27)), the procedures prescribed in Article 27-5, item (ii), and other procedures specified by Cabinet Order (including the submission of anything that must accompany documents if they are submitted through these procedures; hereinafter referred to as "Voluntary Electronic Disclosure" in this Chapter) are connected over a telecommunications line, or an electronic data processing system through which a computer used by the Cabinet Office and the input and output devices used by a Financial Instruments Exchange or by an Authorized Financial Instruments Firms Association designated by Cabinet Order are connected over a telecommunications line.

(Use of an Electronic Data Processing System for Disclosure for Electronic Disclosure)

- Article 27-30-3 (1) A person that carries out Electronic Disclosure must use an Electronic Data Processing System for Disclosure to do so, pursuant to the provisions of Cabinet Order.
- (2) A person that carries out Voluntary Electronic Disclosure may use an Electronic Data Processing System for Disclosure to do so, pursuant to the provisions of Cabinet Order.
- (3) Electronic Disclosure or Voluntary Electronic Disclosure that is carried out pursuant to the provisions of the preceding two paragraphs is deemed to reach the Cabinet Office when it is recorded in a file stored on the computer referred to in the preceding Article (hereinafter simply referred to as the "File" in this Chapter).
- (4) Electronic Disclosure or Voluntary Electronic Disclosure that is carried out



pursuant to the provisions of paragraph (1) or (2) is deemed to have been carried out using the paper documents specified in the provisions of the Financial Instruments and Exchange Act and Related Regulations which stipulate that these procedures are to be carried out using paper documents, and the Financial Instruments and Exchange Act and Related Regulations apply.

- (5) The provisions of Article 3 of the Act on the Utilization of Information and Communications Technology in Administrative Procedures (Act No. 151 of 2002) do not apply to Electronic Disclosure and Voluntary Electronic Disclosure.

(Special Provisions for Times When an Electronic Data Processing System for Disclosure Is Unusable)

Article 27-30-4 (1) Notwithstanding the provisions of paragraph (1) of the preceding Article, if a person that carries out Electronic Disclosure is unable to carry out Electronic Disclosure through the use of an Electronic Data Processing System for Disclosure due to a failure in telecommunication lines or any other cause, the person may carry out Electronic Disclosure by submitting a magnetic disk (including anything on which it is possible to reliably record specific particulars through use of a similar means; hereinafter the same applies in this Chapter), instead of using an Electronic Data Processing System for Disclosure, with the approval of the Prime Minister and pursuant to the provisions of Cabinet Order.

- (2) If a person that carries out Voluntary Electronic Disclosure by use of an Electronic Data Processing System for Disclosure is unable to carry out Voluntary Electronic Disclosure using an Electronic Data Processing System for Disclosure due to a failure in telecommunication lines or any other cause, said person may carry out Voluntary Electronic Disclosure by submitting a magnetic disk, instead of using an Electronic Data Processing System for Disclosure, with an approval of the Prime Minister and pursuant to the provisions of Cabinet Order.
- (3) If Electronic Disclosure or Voluntary Electronic Disclosure is carried out through the submission of a magnetic disk pursuant to the provisions of the preceding two paragraphs, the Prime Minister must immediately record the particulars recorded on that magnetic disk into the File, pursuant to the provisions of Cabinet Office Ordinance. In this, the particulars recorded on the magnetic disk are deemed to reach the Cabinet Office when those particulars are recorded into the File.
- (4) The provisions of paragraph (4) of the preceding Article apply mutatis mutandis to Electronic Disclosure or Voluntary Electronic Disclosure carried out pursuant to the provisions of the preceding three paragraphs.

(Special Provisions for Times When an Electronic Data Processing System for Disclosure Malfunctions, etc.)

Article 27-30-5 (1) The provisions of Article 27-30-3, paragraph (1) do not apply to a case that falls under one of the following items, if the Prime Minister gives approval:

(i) it is found that there has been a malfunction in the computer referred to in Article 27-30-2 or there are otherwise found to be grounds specified by Cabinet Order; or

(ii) it is found to be extremely difficult for the relevant person to carry out Electronic Disclosure using an Electronic Data Processing System for Disclosure.

(2) The procedures for the approval referred to in the preceding paragraph are specified by Cabinet Office Ordinance.

(Notice etc. in Lieu of the Submission, etc. of Copies of Documents to a Financial Instruments Exchange, etc.)

Article 27-30-6 (1) Notwithstanding the provisions of Article 6 (including as applied mutatis mutandis pursuant to Article 12; Article 23-12, paragraph (1); Article 24, paragraph (7); Article 24-2, paragraph (3); Article 24-4-2, paragraph (5) (including as applied mutatis mutandis pursuant to Article 24-4-8, paragraph (1) and Article 24-5-2, paragraph (1)); Article 24-4-3, paragraph (2) (including as applied mutatis mutandis pursuant to Article 24-4-8, paragraph (2) and Article 24-5-2, paragraph (2)); Article 24-4-4, paragraph (5); Article 24-4-5, paragraph (2); Article 24-4-7, paragraph (5) and Article 24-5, paragraph (6) (including as applied mutatis mutandis pursuant to Article 27); Article 24-6, paragraph (3); and Article 27)); Article 24-7, paragraph (4) (including as applied mutatis mutandis pursuant to Article 24-7, paragraph (6) (including as applied mutatis mutandis pursuant to Article 27) and Article 27); Article 27-3, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27-8, paragraph (6) (including as applied mutatis mutandis pursuant to Article 27-13, paragraph (3)); Article 27-11, paragraph (4); Article 27-13, paragraph (3); and Article 27-22-2, paragraphs (2) and (3)); Article 27-10, paragraph (9) (including as applied mutatis mutandis pursuant to Article 27-10, paragraph (10)); and Article 27-10, paragraph (13) (including as applied mutatis mutandis pursuant to Article 27-10, paragraph (14)); Article 27-22-2, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (8)); and Article 27-27 (including as applied mutatis mutandis pursuant to Article 27-29, paragraph (2)); if a person that carries out Electronic Disclosure or Voluntary Electronic Disclosure has carried out such procedures using an Electronic Data Processing System for Disclosure (including if the person has

carried out those procedures by submission of a magnetic disk), in lieu of copies of the documents that are required to be submitted or sent to a Financial Instruments Exchange or to an Authorized Financial Instruments Firms Association specified by Cabinet Order pursuant to the provisions referred to above, that person is to notify these persons of the particulars, as per the copies of those documents (excluding the parts that are not to be made available for public inspection pursuant to the provisions of Article 27-28, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27-29, paragraph (2)), that are required to be stated in the documents set forth in the items of Article 25, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27) or the documents prescribed in Article 27-14, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)) or Article 27-27 (including as applied mutatis mutandis pursuant to Article 27-29, paragraph (2)); provided, however, that the person may elect not to notify these persons of a part that is not to be made available for public inspection pursuant to the provisions of Article 25, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27).

(2) The notice under the provisions of the preceding paragraph is deemed to have been sent by a person that has carried out the Electronic Disclosure or Voluntary Electronic Disclosure referred to in that paragraph at the time it is recorded in the File, and is presumed to have reached the addressee of the notice at the time that the period normally required to output it has elapsed after its recording.

(3) If a Holder of Share Certificates, etc. as prescribed in Article 27-27 (including as applied mutatis mutandis pursuant to Article 27-29, paragraph (2); hereinafter the same shall apply in this paragraph) has followed the procedure for submitting any of the documents prescribed in Article 27-27 (hereinafter referred to as the "Statement of Large-Volume Holdings, etc." in this paragraph) by using an Electronic Data Processing System for Disclosure (including the case of having followed said procedure by submitting a magnetic disk), the Holder of Share Certificates, etc. is not required to send a copy of said Statement of Large-Volume Holdings, etc. to the Issuer as required under that Article.

(Public Inspection When Procedures Are Carried Out by Use of an Electronic Data Processing System for Disclosure)

Article 27-30-7 (1) If Electronic Disclosure or Voluntary Electronic Disclosure has been carried out by use of an Electronic Data Processing System for Disclosure (including if such procedures have been carried out through the submission of a magnetic disk), the Prime Minister is to make the particulars (excluding the parts that are not to be made available for public inspection

- pursuant to the provisions of Article 25, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27) or Article 27-28, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27-29, paragraph (2)) and also excluding the Specified Portion) that have been recorded into the File in connection with the documents prescribed in Article 25, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27); Article 27-14, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); or Article 27-28, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27-29, paragraph (2)), or documents stating those particulars, available for public inspection, pursuant to the provisions of Cabinet Order,.
- (2) The term "Specified Portion" as used in the preceding paragraph means the portion of a document that is not to be made available for public inspection pursuant to the provisions of Article 25, paragraph (6) (including as applied mutatis mutandis pursuant to Article 27), Article 27-14, paragraph (5) (including as applied mutatis mutandis through the replacement of certain terms pursuant to Article 27-22-2, paragraph (2)), or Article 27-28, paragraph (4).
- (3) The provisions of Article 5 of the Act on the Utilization of Information and Communications Technology in Administrative Procedures do not apply to the public inspection of documents under the provisions of paragraph (1).
- (4) If the particulars that have been recorded into the File set forth in paragraph (1) or documents stating those particulars are made available for public inspection pursuant to the provisions of paragraph (1), the documents prescribed in Article 25, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27); Article 27-14, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); and Article 27-28, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27-29, paragraph (2)) are deemed to have been made available for public inspection pursuant to those provisions, and the provisions of the Financial Instruments and Exchange Act and Related Regulations apply.
- (5) In a case referred to in paragraph (1), if the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may make an indication of having rendered a disposition set forth in one of the items of Article 25, paragraph (6) (including as applied mutatis mutandis pursuant to Article 27) or in one of the items of Article 27-14, paragraph (5) (including as applied mutatis mutandis through the replacement of certain terms pursuant to Article 27-22-2, paragraph (2)), an indication of having issued a submission order under Article 27-28, paragraph (4), or any other information with a bearing on the particulars set forth in paragraph (1), which has a material influence on investors' investment

decisions (hereinafter referred to as "Material Reference Information" in the following paragraph) available for public inspection, together with the relevant particulars.

- (6) In a case referred to in the preceding paragraph, the Prime Minister is to notify the Financial Instruments Exchange or the Authorized Financial Instruments Firms Association specified by Cabinet Order referred to in paragraph (1) of the following Article, that makes the particulars set forth in that paragraph that involve Material Reference Information available for public inspection pursuant to the provisions of that paragraph, and the person that makes the particulars set forth in the relevant Article that involve Material Reference Information available for public inspection pursuant to the provisions of Article 25, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27) and Article 27-14, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)) or Article 27-30-10, that the Material Reference Information has been made available for public inspection pursuant to the provisions of the preceding paragraph.

(Public Inspection by a Financial Instruments Exchange, etc.)

Article 27-30-8 (1) A Financial Instruments Exchange or an Authorized Financial Instruments Firms Association specified by Cabinet Order which has been notified pursuant to the provisions of Article 27-30-6 is to make the particulars (excluding the parts that are not to be made available for public inspection pursuant to the provisions of Article 25, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27) and also excluding the Specified Portion (meaning the Specified Portion prescribed in paragraph (2) of the preceding Article; the same applies in Article 27-30-10) of which it has been notified pursuant to the provisions of Article 27-30-6 in connection with the copies of documents prescribed in Article 25, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27); Article 27-14, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); or Article 27-28, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27-29, paragraph (2)), or the documents stating those particulars, available for public inspection, pursuant to the provisions of Cabinet Order.

- (2) If particulars under a notification that is set forth in the preceding paragraph or a document stating those particulars is made available for public inspection pursuant to the provisions of that paragraph, the documents prescribed in Article 25, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27); Article 27-14, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); and Article 27-28, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27-

29, paragraph (2)) are deemed to have been made available for public inspection pursuant to those provisions, and the provisions of the Financial Instruments and Exchange Act and Related Regulations apply.

(Providing, etc. Persons with the Particulars Stated in a Prospectus by Means of an Electronic Data Processing System or by Other Means)

Article 27-30-9 (1) In the cases specified by Cabinet Office Ordinance, in lieu of delivering a Prospectus, a person that is required to deliver a Prospectus pursuant to the provisions of Article 15, paragraphs (2) to (4) inclusive (including as applied mutatis mutandis pursuant to Article 15, paragraph (6) (including as applied mutatis mutandis pursuant to Article 23-12, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27) and Article 27); Article 23-12, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27); and Article 27) may provide the relevant persons with the particulars that have been stated in the Prospectus by means of an electronic data processing system or by any other means specified by Cabinet Office Ordinance. In such a case, the person that provides the other person with those particulars is deemed to have delivered the Prospectus.

(2) The provisions of the preceding paragraph apply mutatis mutandis to documents that are required to be delivered pursuant to the provisions of Article 23-14, paragraph (2); to a Tender Offer Explanation (meaning a Tender Offer Explanation provided for in Article 27-9, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)), and also including an amended Tender Offer Explanation) that is required to be delivered pursuant to the provisions of Article 27-9, paragraph (2) or (3) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); and to a written notice that is required to be delivered pursuant to the provisions of Article 27-24.

(Public Inspection by the Issuer, etc.)

Article 27-30-10 In a case specified by Cabinet Office Ordinance, in lieu of making the copies of the documents that are required to be made available for public inspection pursuant to the provisions of Article 25, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27) or Article 27-14, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)) available for public inspection, the Subsidiary Company Submitting Annual Securities Reports of a person that has carried out Electronic Disclosure for the documents set forth in Article 25, paragraph (1), items (i) to (xi) inclusive (including as applied mutatis mutandis pursuant to Article 27); the Subsidiary Company Submitting Annual Securities Reports of a person that has carried out Electronic Disclosure for the documents set forth in

Article 25, paragraph (1), item (xii) (including as applied mutatis mutandis pursuant to Article 27); or a person that has carried out Electronic Disclosure for the document prescribed in Article 27-14, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)) may make the particulars, as per the copies of those documents (excluding the parts that are not to be made available for public inspection pursuant to the provisions of Article 25, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27) and also excluding the Specified Portion), that are required to be stated in the documents set forth in each item of Article 25, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27) or the documents prescribed in Article 27-14, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)) available for public inspection by displaying those particulars on the screen of an output device or by any other means specified by Cabinet Office Ordinance. In such a case, the person that makes those particulars available for public inspection is deemed to have made the copies of those documents available for public inspection.

(Providing, etc. Persons with the Particulars Stated in a Tender Offer Statement by Means of an Electronic Data Processing System or by Other Means)

Article 27-30-11 (1) In the cases specified by Cabinet Office Ordinance, in lieu of sending the copies of the documents that a Tender Offeror (meaning a Tender Offeror as prescribed in Article 27-3, paragraph (2); hereinafter the same applies in this paragraph and paragraph (3)) is required to send to the Issuer (and to any person that has already submitted a Tender Offer Statement for the Share Certificates, etc. of that Issuer as of the day on which the Tender Offeror submits the Tender Offer Statement in connection with the relevant Tender Offer (meaning a Tender Offer Statement as prescribed in Article 27-3, paragraph (2) and including any amended statement in connection with it; hereinafter the same applies in this paragraph and paragraph (3))) of the Share Certificates, etc. that are subject to the Tender Offer (meaning a Tender Offer as prescribed in Article 27-3, paragraph (1); hereinafter the same applies in this paragraph and paragraph (3)), pursuant to the provisions of Article 27-3, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27-8, paragraph (6) (including as applied mutatis mutandis pursuant to Article 27-13, paragraph (3))); Article 27-11, paragraph (4); and Article 27-13, paragraph (3)) or Article 27-10, paragraph (13) (including as applied mutatis mutandis pursuant to Article 27-10, paragraph (14)), the Tender Offeror may provide the Issuer with the particulars, as per the copies of those documents, that are required to be stated in the Tender Offer Notification, Written Tender Offer

Withdrawal Notice (meaning a Written Tender Offer Withdrawal Notice as prescribed in Article 27-11, paragraph (3)), Tender Offer Report (meaning a Tender Offer Report as prescribed in Article 27-13, paragraph (2) and including any amended report in connection with it), and Tender Offeror's Answer, by means of an electronic data processing system or by any other means specified by Cabinet Office Ordinance. In such a case, the Tender Offeror is deemed to have sent the copies of those documents.

(2) In the cases specified by Cabinet Office Ordinance, in lieu of sending the copies of the documents that a Tender Offeror (meaning a Tender Offeror as prescribed in Article 27-3, paragraph (2) as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2); hereinafter the same applies in this paragraph) is required to send pursuant to the provisions of Article 27-3, paragraph (4) as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2) or (3) if a person has already submitted a Tender Offer Statement (meaning a Tender Offer Statement as prescribed in Article 27-3, paragraph (2)) for Share Certificates, etc. issued by the Issuer that is the Tender Offeror, as of the date on which the Tender Offeror submits the Tender Offer Statement (meaning a Tender Offer Statement as prescribed in Article 27-3, paragraph (2) as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2), and including any amended statement in connection with it) in the relevant Tender Offer (meaning a Tender Offer as prescribed in Article 27-3, paragraph (1) as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2); hereinafter the same applies in this paragraph), the Tender Offeror may provide the relevant person with the particulars for that Tender Offer that are required to be stated in the Tender Offer Statement (meaning the Tender Offer Statement prescribed in Article 27-3, paragraph (2) as applied mutatis mutandis to Article 27-22-2, paragraph (2), and including any amended statement in connection with it) by means of an electronic data processing system or by any other means specified by Cabinet Office Ordinance. In such a case, the Tender Offeror is deemed to have sent the copies of those documents.

(3) In the cases specified by Cabinet Office Ordinance, in lieu of sending the copies of the documents that the Target Company of a Tender Offer is required to send to the Tender Offeror that is involved in the relevant Tender Offer pursuant to the provisions of Article 27-10, paragraph (9) (including as applied mutatis mutandis pursuant to Article 27-10, paragraph (10)) (and to any person other than the Tender Offeror that has already submitted a Tender Offer Statement for the Share Certificates, etc. of the Issuer that are subject to said Tender Offer as of the day on which the Target Company submits the Target Company's Position Statement in connection with the relevant Tender Offer (including any amended reports in connection with it; hereinafter the



same applies in this paragraph)), the Target Company may provide the Tender Offeror with the particulars that are required to be stated in the Target Company's Position Statement by means of an electronic data processing system or by any other means specified by Cabinet Office Ordinance. In such a case, the Target Company of the Tender Offer is deemed to have sent the copies of those documents.

- (4) In the cases specified by Cabinet Office Ordinance, in lieu of sending the copies of the documents that the holder of Share Certificates, etc. is required to send to the Issuer of those Share Certificates, etc. pursuant to the provisions of Article 27-27 (including as applied mutatis mutandis pursuant to Article 27-29, paragraph (2)), the holder of the Share Certificates, etc. may provide the company with the particulars, as per the copies of those documents, that are required to be stated in the documents prescribed in Article 27-27 (including as applied mutatis mutandis pursuant to Article 27-29, paragraph (2)) (excluding parts that are not to be made available for public inspection pursuant to the provisions of Article 27-28, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27-29, paragraph (2))) by means of an electronic data processing system or by any other means specified by Cabinet Office Ordinance. In such a case, the holder of Share Certificates, etc. is deemed to have delivered the copies of those documents.

## **Chapter II-5 Provision or Disclosure of Specified Information on Securities, etc.**

(Provision or Disclosure of Specified Information on Securities)

Article 27-31 (1) An Issuer may not issue an Exclusive Solicitation of Offers to Acquire Targeting Professional Investors or any other category of solicitation with a view to issuing new securities specified by Cabinet Order which is not subject to the application of the main clause of Article 4, paragraph (1) (hereinafter referred to as "Exclusive Solicitation of Offers to Acquire" in this Article and Chapter VI-2) or an exclusive Offer to Sell, etc. to Professional Investors (unless the Securities subject to the relevant exclusive Offer to Sell, etc. to Professional Investors fall under the category of Securities for Professional Investors, and the exclusive Offer to Sell, etc. to Professional Investors falls under the category of a case specified by Cabinet Order as one in which a small number of persons are the other parties) or any other category of solicitation with a view to delivering existing securities specified by Cabinet Order that is not subject to the application of the main clause of Article 4, paragraph (1), the main clause of Article 4, paragraph (2), or the main clause of Article 4, paragraph (3) (hereinafter referred to as a "Specified Offer to Sell, etc." in this Article and Chapter VI-2) unless the Issuer of the Securities that

- are subject to the Exclusive Solicitation of Offers to Acquire or the Specified Offer to Sell, etc. (hereinafter collectively referred to as "Specified Solicitation, etc.") has provided to the solicited person, or has disclosed, information specified by Cabinet Office Ordinance as the basic information about the Securities and the Issuer that must be disclosed to investors (hereinafter referred to as "Specified Information on Securities"), prior to the Specified Solicitation, etc. and pursuant to the provisions of the following paragraph.
- (2) An Issuer seeking to provide or disclose Specified Information on Securities must provide the Specified Information on Securities itself or entrust another party to do so, or must disclose such information using the Internet or through other means, pursuant to the provisions of Cabinet Office Ordinance.
- (3) When an Issuer that has been disclosing Information on the Issuer (meaning Information on the Issuer as prescribed in paragraph (1) of the following Article; hereinafter the same applies in this paragraph) continuously for the period specified by Cabinet Office Ordinance pursuant to the provisions of paragraph (1) of the following Article seeks to provide or disclose Specified Information on Securities pursuant to the provisions of the preceding paragraph, and the Issuer has indicated in said Specified Information on Securities, pursuant to the provisions of Cabinet Office Ordinance, that reference should be made to the latest Information on the Issuer and to the Amended Information on the Issuer set forth in paragraph (3) of that Article with respect that that Issuer (hereinafter referred to as "Reference Information"), the Issuer is deemed to have provided or disclosed the information specified by Cabinet Office Ordinance as information about the Issuer that is part of the Specified Information on Securities.
- (4) If, between the day on which an Issuer that provides or discloses Specified Information on Securities pursuant to the provisions of paragraph (2), provides or discloses that information and the day on which one year has elapsed since that day (or, in the cases specified by Cabinet Office Ordinance as those in which it is found not to damage the public interest or result in insufficient investor protection, within the period specified by Cabinet Office Ordinance), there is a particular requiring amendment in the Specified Information on Securities, the Issuer must provide or disclose information indicating that it is amending that particular (hereinafter referred to as "Amended Specified Information on Securities"), pursuant to the provisions of Cabinet Office Ordinance.
- (5) An Issuer that has disclosed Specified Information on Securities pursuant to the provisions of paragraph (2) must continue to disclose such Specified Information on Securities (if any Amended Specified Information on Securities has been disclosed, such Amended Specified Information on Securities is included), until one year has elapsed since the date that it disclosed the

Specified Information on Securities (or, in the cases specified by Cabinet Office Ordinance as those in which it is found not to damage the public interest or result in insufficient investor protection, for the period specified by Cabinet Office Ordinance).

(Provision or Disclosure of Information on the Issuer)

- Article 27-32 (1) The Issuer set forth in each of the following items, pursuant to the provisions of Cabinet Office Ordinance, must provide the holders of the Securities set forth in the relevant item with the information about that Issuer that is specified by Cabinet Office Ordinance (hereinafter referred to as "Information on the Issuer") or disclose the same, at least once each business year (if the Issuer is not a company or in any other cases specified by Cabinet Office Ordinance, the period specified by Cabinet Office Ordinance; the same applies in paragraph (4), Article 172-11, paragraph (1) and Article 185-7, paragraph (31), item (v)); provided, however, that this does not apply in the cases that are specified by Cabinet Office Ordinance as those in which, in consideration of liquidity and other circumstances, not doing so is found not to damage the public interest or result in insufficient investor protection:
- (i) an Issuer of Securities for Professional Investors: Securities for Professional Investors issued by the Issuer; or
  - (ii) an Issuer that has provided or disclosed Specified Information on Securities pursuant to the provisions of paragraph (2) of the preceding Article (excluding the Issuer specified in the preceding item): the Securities to which the provided or disclosed Specified Information on Securities pertains.
- (2) If Securities that did not fall under the category of Securities for Professional Investors have come to fall under this category (except in a case specified by Cabinet Office Ordinance), the Issuer of such Securities must provide the holder of such Securities with the Information on the Issuer or disclose the same, without delay, pursuant to the provisions of Cabinet Office Ordinance.
- (3) If there is a particular that is required to be amended in the Information on the Issuer, an Issuer set forth in one of the items of paragraph (1) must provide or disclose information indicating that it is amending that particular (hereinafter referred to as the "Amended Information on the Issuer"), pursuant to the provisions of Cabinet Office Ordinance.
- (4) An Issuer that has disclosed the Information on the Issuer pursuant to the provisions of paragraph (1) or (2) must continue to disclose such Information on the Issuer (if any Amended Information on the Issuer has been disclosed, such Amended Information on the Issuer is included), from the date on which it discloses that Information on the Issuer until the date on which it provides or discloses the Information on the Issuer for the business year following that in which it discloses the relevant Information on the Issuer (if Securities for

Professional Investors to which the Information on the Issuer pertains come to no longer fall under the category of Securities for Professional Investors or in any other case specified by Cabinet Office Ordinance, for the period specified by Cabinet Office Ordinance).

(Provision or Disclosure of Foreign Securities Information)

- Article 27-32-2 (1) If a Financial Instruments Business Operator, etc. sells Securities through a Secondary Distribution of Securities falling under Article 4, paragraph (1), item (iv) (hereinafter referred to as a "Secondary Distribution of Foreign Securities"), the Financial Instruments Business Operator, etc., in advance of selling of, or at the same time as it sells such Securities, must provide the other party with the information specified by Cabinet Office Ordinance as information about the Securities and about the Issuer of the Securities (hereinafter collectively referred to as the "Foreign Securities Information"), or must disclose such information; provided, however, that this does not apply if the Issuer of the Securities has already disclosed Specified Information on Securities, etc. for the relevant Securities, nor does it apply in any other case specified by Cabinet Office Ordinance.
- (2) If a Financial Instruments Business Operator, etc. making a Secondary Distribution of Foreign Securities is so requested by a person that acquires the Securities through the Secondary Distribution of Foreign Securities and entrusts those Securities to the custody of the Financial Instruments Business Operator, etc.; if it is so requested by a person specified by Cabinet Office Ordinance as being equivalent thereto; or in a case specified by Cabinet Office Ordinance as one in which a fact has occurred that may have a material influence on the investors' investment decisions, the Financial Instruments Business Operator, etc. must provide the Foreign Securities Information to that person or must disclose such information; provided, however that this does not apply in the cases that are specified by Cabinet Office Ordinance as those in which, in light of the availability of information on the relevant Securities, the status of holding of the Securities, and other considerations, not doing so is found not to damage the public interest or result in insufficient investor protection.
- (3) A Financial Instruments Business Operator, etc. seeking to provide or disclose Foreign Securities Information pursuant to the preceding two paragraphs must provide the Foreign Securities Information personally or entrust another party to do so, or must disclose the same using the Internet or through any other means, pursuant to the provisions of Cabinet Office Ordinance.

(Compensatory Liability in Connection with False Specified Information on

Securities, etc.)

Article 27-33 The provisions of Article 18, paragraph (1); Article 19; Article 20; and Article 21 (excluding item (iii) of paragraph (1); items (ii) and (iii) of paragraph (2); and also excluding paragraph (3)) apply mutatis mutandis to the Specified Information on Securities, etc. (meaning the Specified Information on Securities, the Reference Information in connection with Specified Information on Securities to which Article 27-31, paragraph (3) is applicable, or the Amended Specified Information on Securities (including Reference Information in connection with the Amended Specified Information on Securities; the same applies hereinafter)). In this case, in Article 18, paragraph (1), the term "a Securities Registration Statement" is deemed to be replaced with "any Specified Information on Securities, etc. (meaning the Specified Information on Securities, etc. prescribed in Article 27-33; the same applies hereinafter)", the phrase "false statement" is deemed to be replaced with "false information", the phrase "that is required to be stated" is deemed to be replaced with "that is required to be provided or disclosed", the phrase "omits a statement of material fact" is deemed to be replaced with "omits to give information concerning a material fact", the phrase "the person that submitted the Securities Registration Statement" is deemed to be replaced with "the Issuer that provided or disclosed the Specified Information on Securities, etc.", the phrase "person that acquires the Securities through the Public Offering or Secondary Distribution" is deemed to be replaced with "person that acquires the Securities through a Specified Solicitation, etc. (meaning a Specified Solicitation, etc. prescribed in Article 27-31, paragraph (1); the same applies hereinafter) to which the Specified Information on Securities, etc. pertains (if the Specified Information on Securities, etc. has not been disclosed, this is limited to a person that has been provided with the Specified Information on Securities, etc.; hereinafter the same applies in this paragraph and Article 21 as applied mutatis mutandis through the replacement of certain terms pursuant to Article 27-33), and the phrase "statement was false" is deemed to be replaced with the "information was false"; in Article 19, paragraph (2), the phrase "the Securities Registration Statement or the Prospectus" is deemed to be replaced with the "Specified Information on Securities, etc.", the phrase "false statement" is deemed to be replaced with "false information", the phrase "that is required to be stated" is deemed to be replaced with "that is required to be provided or disclosed", and the phrase "omits a statement of material fact" is deemed to be replaced with "omits to give information concerning a material fact"; in Article 20, the phrase "Article 18" is deemed to be replaced with "Article 18 as applied mutatis mutandis through the replacement of certain terms pursuant to Article 27-33", the phrase "the Securities Registration Statement or the Prospectus" is deemed

to be replaced with "the Specified Information on Securities, etc.", the phrase "false statement" is deemed to be replaced with "false information", the phrase "that is required to be stated" is deemed to be replaced with "that is required to be provided or disclosed", the phrase "omits a statement of material fact" is deemed to be replaced with "omits to give information concerning a material fact", and the phrase "within seven years (excluding, if an order for suspension under Article 10, paragraph (1) or Article 11, paragraph (1) has been issued, the period from the day on which the order for suspension is issued to the day on which the order is canceled) of the time that the notification under Article 4, paragraphs (1) to (3) inclusive for the relevant Public Offering or Secondary Distribution of the Securities comes into effect or the Prospectus is delivered" is deemed to be replaced with "within seven years of the time that the Specified Information on Securities, etc. is provided or disclosed"; in the non-itemized part of Article 21, paragraph (1), the term "Securities Registration Statement" is deemed to be replaced with "Specified Information on Securities, etc.", the phrase "false statement" is deemed to be replaced with "false information", the phrase "that is required to be stated" is deemed to be replaced with "that is required to be provided or disclosed", the phrase "omits a statement of material fact" is deemed to be replaced with "omits to give information concerning a material fact", the phrase "Public Offering or Secondary Distribution" is deemed to be replaced with "Specified Solicitation, etc.", and the phrase "statement was false" is deemed to be replaced with "information was false"; in Article 21, paragraph (1), item (i), the phrase "company that submitted the Securities Registration Statement" is deemed to be replaced with "Issuer that has provided or disclosed the Specified Information on Securities, etc.", the phrase "at the time of submission of the Securities Registration Statement" is deemed to be replaced with "at the time that the Specified Information on Securities, etc. was provided or disclosed", the phrase "incorporator of the company" is deemed to be replaced with "incorporator of the Issuer or any other person that can be regarded as equivalent thereto", and the phrase "the Securities Registration Statement was submitted before the incorporation of the company" is deemed to be replaced with "the Specified Information on Securities, etc. was provided or disclosed before the establishment or inauguration of the Issuer"; in Article 21, paragraph (1), item (ii), the phrase "for which the Secondary Distribution was made" is deemed to be replaced with "for which the Specified Solicitation, etc. (limited to Specified Solicitation, etc. falling under the category of a Specified Offer to Sell, etc. (meaning a Specified Offer to Sell, etc. as prescribed in Article 27-31, paragraph (1); hereinafter the same applies in this item) was made" and the phrase "through a Secondary Distribution" is deemed to be replaced with "through a Specified Offer to Sell, etc."; in Article 21, paragraph (1), item (iv), the phrase "the Public Offering" is

deemed to be replaced with "the Specified Solicitation, etc. (limited to Specified Solicitation, etc. falling under the category of an Exclusive Solicitation of Offers to Acquire (meaning an Exclusive Solicitation of Offers to Acquire as prescribed in Article 27-31, paragraph (1)); in Article 21, paragraph (2), item (i), the phrase "or (ii)" is deemed to be replaced with ", (ii), or (iv)"; in Article 21, paragraph (2), item (i), the phrase "statement was false" is deemed to be replaced with "information was false"; in Article 21, paragraph (4), the phrase "Public Offering or Secondary Distribution of Securities" is deemed to be replaced with "Specified Solicitation, etc."; in item (i) of that paragraph, the term "Securities" is deemed to be replaced with "Securities for which the Specified Solicitation, etc. was made"; in Article 21, paragraph (4), item (ii), the term "Securities" is deemed to be replaced with "Securities for which the Specified Solicitation, etc. was made"; the term "Securities" in Article 21, paragraph (4), item (iii) shall be deemed to be replaced with "Securities for which the Specified Solicitation, etc. was made"; and any other necessary technical replacement of terms is specified by Cabinet Order.

(Compensatory Liability in Connection with False Specified Information)

Article 27-34 The provisions of Articles 21-2 to 22 inclusive apply mutatis mutandis to Specified Information (meaning Specified Information on Securities, etc. or Information on the Issuer, etc. (meaning Information on the Issuer or Amended Information on the Issuer; the same applies hereinafter); the same applies in Article 27-35, paragraph (1)). In this case, in Article 21-2, paragraph (1), the phrase "a document set forth in one of the items of Article 25, paragraph (1) (excluding items (v) and (ix)) (hereinafter referred to as a 'Document' in this Article)" is deemed to be replaced with "the Specified Information (meaning the Specified Information prescribed in Article 27-34; the same applies hereinafter) disclosed pursuant to the provisions of Article 27-31, paragraph (2), (4), or (5) or Article 27-32 (hereinafter referred to as 'Disclosed Information')", the phrase "false statement" is deemed to be replaced with "false information", the phrase "that is required to be stated" is deemed to be replaced with "that is required to be provided or disclosed", the phrase "omits a statement of material fact" is deemed to be replaced with "omits to give information concerning a material fact", the phrase "the person submitting the Document" is deemed to be replaced with "the Issuer disclosing the Disclosed Information", the phrase "a person that, during the period that the Document is being made available for public inspection as required by Article 25, paragraph (1), acquires Securities issued by the person submitting that Document (excluding a document set forth in Article 25, paragraph (1), item (xii)) or by a person whose Parent Company, etc. (meaning a Parent Company, etc. as defined by Article 24-7, paragraph (1)) is the person submitting the

document (limited to a document set forth in Article 25, paragraph (1), item (xii))" is deemed to be replaced with "a person that, during the period that the Document is being disclosed pursuant to any of these provisions, acquires Securities issued by said Issuer", the phrase "or Secondary Distribution" is deemed to be replaced with ", Secondary Distribution, or Specified Solicitation, etc. (meaning the Specified Solicitation, etc. prescribed in Article 27-31, paragraph (1); the same applies hereinafter)", the phrase "statement being false" is deemed to be replaced with "information being false", and the phrase "False Statement, etc." is deemed to be replaced with "False Information, etc."; in Article 21-2, paragraph (2), the phrase "False Statement, etc. in the relevant Document" is deemed to be replaced with "False Information, etc. that pertains to the relevant Disclosed Information"; in Article 21-2, paragraph (3), the phrase "False Statement, etc. in the relevant Document" is deemed to be replaced with "False Information, etc. that pertains to the relevant Disclosed Information" and the phrase "the day of the Disclosure of the False Statement, etc." is deemed to be replaced with "the day of the Disclosure of the False Information, etc."; in Article 21-2, paragraph (4), the phrase "Disclosure of a False Statement, etc." is deemed to be replaced with "Disclosure of False Information, etc.", the phrase "means that the person submitting the document" is deemed to be replaced with "means that the Issuer disclosing the Disclosed Information", the phrase "over the person submitting the Document" is deemed to be replaced with "over the Issuer", the phrase "that the Document's False Statement, etc. concerns" is deemed to be replaced with "that the False Statement, etc. in the Disclosed Information concerns", the phrase "that is required to be stated" is deemed to be replaced with "that is required to be provided or disclosed", and the phrase "through public inspection provided for in Article 25, paragraph (1) or through other means" is deemed to be replaced with "pursuant to the provisions of Cabinet Office Ordinance"; in Article 21-2, paragraphs (5) and (6), the phrase "the Document's False Statement, etc." is deemed to be replaced with "the False Information, etc. in the Disclosed Information"; in Article 21-3, the phrase "Article 21-2" is deemed to be replaced with "Article 21-2 as applied mutatis mutandis through the replacement of certain terms pursuant to Article 27-34", the phrase "a document set forth in one of the items of Article 25, paragraph (1) (excluding Article 25, paragraph (1), items (v) and (ix))" is deemed to be replaced with "the Disclosed Information (meaning the Disclosed Information prescribed in Article 21-2, paragraph (1) as applied mutatis mutandis through the replacement of certain terms pursuant to Article 27-34; the same applies hereinafter)", the phrase "the phrase 'three years' is deemed to be replaced with 'two years' " is deemed to be replaced with "the phrase 'false statement' is deemed to be replaced with 'false information', the phrase 'that is required to be stated' is



deemed to be replaced with 'that is required to be provided or disclosed', the phrase 'omits a statement as to a material particular' is deemed to be replaced with 'omits to give information concerning a material fact', the phrase 'three years' is deemed to be replaced with 'two years' ", and the phrase "within five years of the time that the document is submitted" is deemed to be replaced with "within five years of the day on which the Disclosed Information is disclosed"; in Article 22, paragraph (1), the phrase "If a Securities Registration Statement contains" is deemed to be replaced with "If Specified Information contains", the phrase "a false statement" is deemed to be replaced with "false information", the phrase "that is required to be stated" is deemed to be replaced with "that is required to be provided or disclosed", the phrase "omits a statement as to a material particular" is deemed to be replaced with "omits to give information concerning a material fact", the phrase "persons set forth in Article 21, paragraph (1), items (i) and (iii)" is deemed to be replaced with "a person that, at the time of the provision or disclosure of the Specified Information, is an officer (meaning an officer as prescribed in Article 21, paragraph (1), item (i)) of the Issuer that provided or disclosed said Specified Information, or an incorporator or founder of the Issuer or any other person equivalent thereto (but only if the Specified Information, etc. is provided or disclosed before the incorporation or inauguration of the Issuer)", the phrase "statement is false" is deemed to be replaced with the "information is false" and the phrase "acquires or disposes of Securities issued by the person submitting the Securities Registration Statement other than through a Public Offering or Secondary Distribution" is deemed to be replaced with "acquires (if the Specified Information has not been disclosed, this is limited to a person that has been provided with the Specified Information; and, if the Specified Information falls under the category of Specified Information on Securities, etc. (meaning the Specified Information on Securities, etc. prescribed in Article 27-33), this is limited to a person that has acquired such Securities other than through a Public Offering, Secondary Distribution, or Specified Solicitation, etc.) or disposes (if the Specific Information has not been disclosed, this is limited to a person that has been provided with the Specified Information) of Securities of the Issuer that provided or disclosed the Specified Information"; in Article 22, paragraph (2), the phrase "Article 21, paragraph (2), items (i) and (ii)" is deemed to be replaced with "Article 21, paragraph (2), item (i)"; and any other necessary technical replacement of terms is specified by Cabinet Order.

(Compensatory Liability of a Violator in Connection with Foreign Securities Information)

Article 27-34-2 (1) A Financial Instruments Business Operator, etc. that violates the provisions of Article 27-32-2, paragraph (1) in selling Securities is liable to

compensate a person that purchases those Securities, for damage arising from the violation.

(2) A Financial Instruments Business Operator, etc. that sells Securities through a Secondary Distribution of Foreign Securities, using Foreign Securities Information that contains false information about a material particular, omits information about a material particular that is required to be provided or disclosed, or omits to give information concerning a material fact that is necessary to prevent it from being misleading, is liable to compensate for damage sustained by a person that purchases said Securities without knowing that the information is false or has been omitted; provided, however, that this does not apply if the Financial Instruments Business Operator, etc. that would be liable for such compensation proves that it did not know, and in the exercise of reasonable care could not have known, that the information was false or had been omitted.

(3) If Foreign Securities Information that is disclosed pursuant to the provisions of Article 27-32-2, paragraph (3) (hereinafter referred to as "Disclosed Information" in this paragraph) contains false information about a material particular, omits information about a material particular that is required to be provided or disclosed, or omits to give information concerning a material fact that is necessary to prevent it from being misleading, the Financial Instruments Business Operator, etc. that discloses the Disclosed Information is liable to compensate a person that, without knowing that the information is false or has been omitted, acquires or disposes of Securities to which the Disclosed Information pertains from the Financial Instruments Business Operator other than through a Public Offering or Secondary Distribution or Exclusive Solicitation of Offers to Acquire, etc., during the period in which the Disclosed Information is being disclosed pursuant to paragraph (3) of that Article, for damage arising from the information being false or having been omitted; provided, however, that this does not apply if the Financial Instruments Business Operator, etc. that would be liable for such damages proves that it did not know, and in the exercise of reasonable care could not have known, that the information was false or had been omitted.

(Collection of Reports and Inspection of a Provider of Specified Information)

Article 27-35 (1) Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order an Issuer that has provided or disclosed Specified Information, an Issuer that is found to be required to provide or disclose Specified Information, the Underwriter of Securities to which Specified Information pertains, or any other concerned party or witness to submit reports or materials that should serve as a reference, and may have the

relevant officials inspect that person's books and documents or any other articles of theirs.

- (2) When the Prime Minister finds it necessary with regard to the order for report or submission of materials or the inspection under the preceding paragraph, he/she may inquire to public offices or public or private organizations and request them to report necessary matters.

### **Chapter III Financial Instruments Business Operators, etc.**

#### **Section 1 General Provisions**

##### **Subsection 1 General Rules**

Article 28 (1) The term "Type I Financial Instruments Business" as used in this Chapter means the performance of one of the following acts on a regular basis, within the Financial Instruments Business:

- (i) an act set forth in Article 2, paragraph (8), items (i) to (iii) inclusive, item (v), item (viii), or item (ix) with regard to Securities (excluding rights set forth in the items of Article 2, paragraph (2) that are deemed to be Securities pursuant to the provisions of that paragraph);
  - (i)-2 acts listed in Article 2, paragraph (8), item (ii), (iii) or (v) with regard to Commodity-Related Market Transactions of Derivatives;
  - (ii) an act set forth in Article 2, paragraph (8), item (iv), or an act set forth in item (v) of that paragraph in relation to Over-the-Counter Transactions of Derivatives;
  - (iii) an act falling under one of the following sub-items (a) to (c) inclusive:
    - (a) the Wholesale Underwriting of Securities that is specified by Cabinet Order as involving a high necessity to manage the risk of loss;
    - (b) the Wholesale Underwriting of Securities other than that which is set forth in sub-item (a); or
    - (c) an act set forth in Article 2, paragraph (8), item (vi) other than the Wholesale Underwriting of Securities.
  - (iv) an act set forth in Article 2, paragraph (8), item (x); or
  - (v) an act set forth in Article 2, paragraph (8), item (xvi) or (xvii).
- (2) The term "Type II Financial Instruments Business" as used in this Chapter means the performance of one of the following acts on a regular basis, within the Financial Instruments Business:
- (i) an act set forth in Article 2, paragraph (8), item (vii);
  - (ii) an act set forth in Article 2, paragraph (8), items (i) to (iii) inclusive, item (v), item (viii), or item (ix) with regard to rights set forth in the items of Article 2, paragraph (2) that are deemed to be Securities pursuant to the provisions of that paragraph;
  - (iii) an act set forth in Article 2, paragraph (8), items (i) to (iii) inclusive or

- item (v) (other than one that is set forth in item (i) , (i)-2 or (ii) of the preceding paragraph or the preceding item); or
  - (iv) an act set forth in Article 2, paragraph (8), item (xviii).
- (3) The term "Investment Advisory and Agency Business" as used in this Chapter means the performance of one of the following acts on a regular basis, within the Financial Instruments Business:
  - (i) an act set forth in Article 2, paragraph (8), item (xi); or
  - (ii) an act set forth in Article 2, paragraph (8), item (xiii).
- (4) The term "Investment Management Business" as used in this Chapter means the performance of one of the following acts on a regular basis, within the Financial Instruments Business, and includes the performance of such an act by a bank, by a Cooperative Financial Institution, or by any other financial institution specified by Cabinet Order, on a regular basis:
  - (i) an act set forth in Article 2, paragraph (8), item (xii);
  - (ii) an act set forth in Article 2, paragraph (8), item (xiv); or
  - (iii) an act set forth in Article 2, paragraph (8), item (xv).
- (5) The term "Securities, etc. Management" as used in this Chapter means services within the Type I Financial Instruments Business which are connected with the act set forth in paragraph (1), item (v).
- (6) The term "Investment Advisory Business" as used in this Chapter means services within Investment Advisory and Agency Business which are connected with the act set forth in paragraph (3), item (i).
- (7) The term "Wholesale Underwriting of Securities" as used in this Chapter means the underwriting of Securities prescribed in Article 2, paragraph (8), item (vi) which falls under a category set forth in one of the following items:
  - (i) the acquisition of all or part of the relevant Securities from the Issuer or holder (excluding Financial Instruments Business Operators and registered financial institutions; the same applies in the following item and item (iii)) with the aim of having other persons acquire said Securities;
  - (ii) the conclusion of a contract stipulating that if no other person acquires all or part of the relevant Securities, the Underwriter will acquire those that remain from the Issuer or holder.
  - (iii) in cases where the Securities are share option certificates (including the Securities specified by Cabinet Office Ordinance as being equivalent thereto; hereinafter the same shall apply in this item), the person who acquired said share option certificates concludes a contract to acquire, when he/she does not exercise share options (including the rights specified by Cabinet Office Ordinance as being equivalent thereto; hereinafter the same shall apply in this item) for all or part of said share option certificates, the share option certificates pertaining to said unexercised share options from the issuer or holder thereof in order for said person or a third party to exercise said share

options.

- (8) The term "Securities Services" as used in this Chapter means the performance of one of the following acts on a regular basis:
- (i) the purchase and sale of Securities, or intermediation, brokerage (excluding Brokerage for Clearing of Securities, etc.), or agency for the same;
  - (ii) intermediation, brokerage, or agency for entrustment of the purchase and sale of Securities on a Financial Instruments Exchange Market or foreign Financial Instruments Market;
  - (iii) the following transactions, among Market Transactions of Derivatives:
    - (a) a transaction comprising a purchase and sale in which the parties to the purchase and sale promise to deliver and take delivery of a Security (including a standardized instrument as set forth in Article 2, paragraph (24), item (v) which is connected with a Security, other than one that is specified by Cabinet Order; hereinafter the same applies in this item) and its value at a fixed time in the future, and which the parties may settle by delivering and taking delivery of the difference in values if they sell or buy back the underlying Security;
    - (b) a transaction comprising the parties' promises to pay and receive an amount of money calculated based on the difference between the numerical value of a Securities indicator upon which the parties agree in advance (hereinafter referred to as the "Agreed Figure for the Securities" in this Chapter) and the actual numerical value of the Securities indicator at a fixed time in the future (hereinafter referred to as the "Actual Figure for the Securities" in this Chapter);
    - (c) a transaction comprising the first party's promise to grant the second party the option of effecting one of the following transactions between them by a unilateral manifestation of the second party's intention alone, and the second party's promise to pay the value of that option:
      - 1. a purchase and sale of Securities; and
      - 2. a transaction set forth in one of sub-items (a), (b), (d), or (e) (including a transaction equivalent to the transaction set forth in sub-item (b) that is prescribed by the Financial Instruments Exchange).
    - (d) a transaction comprising the parties' mutual promise that, for the amount of money they have set as the principal, the first party will pay money to the second based on the interest rate, etc. of agreed-upon Securities or based on the rate of change in an agreed-upon Securities indicator (excluding the interest rate, etc. of Securities and numerical values calculated based on them; the same applies in this sub-item (d) and sub-item (e) of the following item) during the period they have agreed to, and the second party will pay money to the first based on an agreed-upon money rate or the interest rate, etc. of agreed-upon Securities, or based on

- the value of an agreed-upon currency or the rate of change in an agreed-upon Securities indicator during the period they have agreed to (including transactions in which the parties promise that, in addition to paying such amounts, they will also deliver and take delivery of money or Securities equivalent to the amount they have set as the principal); and
- (e) a transaction specified by Cabinet Order which is similar to one of the transactions set forth in sub-items (a) to (d) inclusive.
- (iv) the following transactions, among Over-the-Counter Transactions of Derivatives:
- (a) a transaction comprising a purchase and sale in which the parties to the purchase and sale promise to deliver and take delivery of a Security (other than one specified by Cabinet Order; hereinafter the same applies in this item) and its value at a fixed time in the future, and which the parties may settle by delivering and taking delivery of the difference in values if they sell back or buy back the underlying Security or if they take some other action that is specified by Cabinet Order;
  - (b) a transaction comprising the parties' promises to pay and receive an amount of money calculated based on the difference between the Agreed Figure for the Securities and the Actual Figure for the Securities, or a transaction similar thereto;
  - (c) a transaction comprising the first party's promise to grant the second party the option of effecting one of the following transactions between them by a unilateral manifestation of the second party's intention alone, and the other party's promise to pay the value of that option, or any transaction similar thereto:
    - 1. a purchase and sale of Securities; and
    - 2. a transaction set forth in sub-items (a), (b), (e), and (f).
  - (d) a transaction comprising, on one side, the first party's promise to grant the second party the option of effecting a transaction by a unilateral manifestation of the second party's intention alone, in which the parties pay and receive the amount of money calculated based on the difference between the numerical value that they have agreed in advance to use as the Agreed Figure for the relevant Securities indicator if the second party manifests the intention to effect the transaction, and the Actual Figure of the Securities indicator at the time the second party manifests that intention, and, on the other side, the second party's promise to pay the value of that option, or any transaction similar thereto;
  - (e) a transaction comprising the parties' mutual promise that, for the amount of money they have set as the principal, the first party will pay money to the second based on the interest rate, etc. of agreed-upon Securities or based on the rate of change in an agreed-upon Securities indicator during

the period they have agreed to, and the second party will pay money to the first based on an agreed-upon money rate or the interest rate, etc. of agreed-upon Securities, or based on the value of agreed-upon currencies or the rate of change in an agreed-upon Securities indicator during the period they have agreed to (including transactions comprising the parties' promise that, in addition to paying such amounts, they will also deliver and take delivery of money or Securities equivalent to the amount they have set as the principal), or any transaction similar thereto; and

- (f) a transaction, other than what is set forth in sub-items (a) to (e) inclusive, that has an economic nature similar to these, and that is specified by Cabinet Order as a transaction regarding which it is found to be necessary to ensure the public interest or the protection of investors.
- (v) a transaction conducted on a foreign Financial Instruments Market that is similar to a transaction set forth in item (iii);
- (vi) intermediation, brokerage (excluding Brokerage for Clearing of Securities, etc.), or agency for a transaction set forth in one of the preceding three items (hereinafter referred to as a "Transaction of Securities-Related Derivatives") or intermediation, brokerage, or agency for the entrustment of a transaction set forth in item (iii) or the preceding item;
- (vii) an act set forth in Article 2, paragraph (8), item (v) that is connected with the purchase and sale of a Security, a Transaction of Securities-Related Derivatives, or any other transaction specified by Cabinet Order; or
- (viii) an act set forth in Article 2, paragraph (8), item (vi), (viii), or (ix).

## **Subsection 2 Financial Instruments Business Operators**

### **(Registration)**

Article 29 A person may not engage in Financial Instruments Business if that person has not been registered by the Prime Minister.

### **(Application for Registration)**

Article 29-2 (1) A person seeking the registration referred to in the preceding Article must submit a written application for registration to the Prime Minister, in which it states the following particulars:

- (i) the person's trade name or name;
- (ii) the amount of stated capital or the total amount of contributions, if it is a corporation (or if it is a foreign corporation seeking to engage in Type I Financial Instruments Business, the amount of stated capital or the total amount of contributions and the amount of brought-in capital (meaning assets corresponding to the stated capital that are brought into Japan; the same applies hereinafter));

- (iii) the names of its officers, if it is a corporation (including the domestic representative, if it is a foreign corporation; hereinafter the same applies in this Chapter (excluding Article 29-4, paragraph (1), item (v), sub-item (e)3.) and Section 5) to Chapter III-3 inclusive);
  - (iv) if the person has an employee as specified by Cabinet Order, the name of that employee;
  - (v) the business category (meaning which of the acts set forth in Article 28, paragraph (1), item (i), item (i)-2, item (ii), item (iii), sub-items (a) to (c) inclusive, or item (iv), or which, among Securities, etc. Management, Type II Financial Instruments Business, Investment Advisory and Agency Business, or Investment Management Business, is the business category for which the person seeks registration);
  - (vi) if the person provides an Electronic Public Offering Service (meaning performing the act set forth in Article 2, paragraph (8), item (ix) on a regular basis by means of an electronic data processing system or by any other means of information and communications technology specified by Cabinet Office Ordinance; hereinafter the same shall apply in this Chapter) with regard to Securities set forth in the items of Article 3 or Securities not listed on a Financial Instruments Exchange (excluding those specified by Cabinet Order), an indication of this;
  - (vii) the name and location of the head office and other business offices or offices (or if it is a foreign corporation, the head office, and the principal business office or office in Japan, or other business offices or offices in Japan);
  - (viii) if the person engages in other business, the business type; and
  - (ix) other particulars specified by Cabinet Office Ordinance.
- (2) The following documents must accompany the written application for registration referred to in the preceding paragraph:
- (i) a document pledging that the applicant does not fall under any of the items of Article 29-4, paragraph (1) (other than item (i), sub-items (d) to (f) inclusive or item (v), sub-item (c));
  - (ii) a document stating the things specified by Cabinet Office Ordinance as constituting the business outline and business methods, and any other documents specified by Cabinet Office Ordinance; and
  - (iii) in addition to what is set forth in the preceding two items, if the person is a corporation, its articles of incorporation, its certificate of registered information, and any other document specified by Cabinet Office Ordinance.
- (3) As concerns the documents set forth in item (iii) of the preceding paragraph accompanying a written application for registration, if the articles of incorporation have been prepared as electronic or magnetic records, such electronic or magnetic records (limited to those specified by Cabinet Office



Ordinance) may accompany the written application in lieu of paper documents.  
(4) Calculation of brought-in capital is specified by Cabinet Order.

(Registration in the Register)

Article 29-3 (1) Whenever an application is filed for the registration referred to in Article 29, unless the Prime Minister refuses the registration pursuant to the provisions of paragraph (1) of the following Article, the Prime Minister shall register the following particulars in the Financial Instruments Business Operators' register:

- (i) the particulars set forth in the items of paragraph (1) of the preceding Article; and
  - (ii) the date of registration and the registration number.
- (2) The Prime Minister must make the Financial Instruments Business Operators register available for public inspection.

(Refusal of Registration)

Article 29-4 (1) The Prime Minister must refuse to effect a registration if the applicant for registration falls under one of the following items, or if the written application for registration or a document or electronic or magnetic record that is required to accompany it contains a false statement or record or omits a statement or record of a material fact:

- (i) a person falling under one of the following:
  - (a) a person that has had the registration referred to in Article 29 rescinded pursuant to the provisions of Article 52, paragraph (1); Article 53, paragraph (3); or Article 57-6, paragraph (3); had the permission referred to in Article 60, paragraph (1) rescinded pursuant to the provisions of Article 60-8, paragraph (1) had the permission under Article 60-14, paragraph (1) rescinded under the provisions of Article 60-8, paragraph (1) as applied mutatis mutandis pursuant to Article 60-14, paragraph (2),; had the registration referred to in Article 66 rescinded pursuant to the provisions of Article 66-20, paragraph (1); or had the registration referred to in Article 66-27 rescinded pursuant to the provisions of Article 66-42, paragraph (1); if five years have not yet passed since the date of the rescission; or a person that had obtained a registration or license of the same kind in a foreign state pursuant to the provisions of a foreign law or regulation that is equivalent to this Act (including authorization or any other administrative disposition similar to such a license or registration), but that has had that registration or license rescinded, if five years have not yet passed since the date of the rescission;
  - (b) a person falling under one of the following:
    - 1. a person that has made a notification under Article 50-2, paragraph (1)

to the effect that the person falls under item (ii), (vi) or (vii) of that paragraph, within the period from the day on which a notice was made under Article 15 of the Administrative Procedure Act with regard to rescission of the registration set forth in Article 29 under Article 52, paragraph (1), Article 53, paragraph (3) or Article 57-6, paragraph (3) to the day on which said disposition is made or the day on which the disposition is decided not to be made (excluding a person that had made, before the day on which said notice was made, a decision (if the person is a corporation, a decision by the organ that is responsible for making decisions about the execution of its operations) about discontinuing its Financial Instruments Business, having the whole of its business linked with Financial Instruments Business succeeded to through a split, or transferring the whole of its business linked with Financial Instruments Business), if five years have not yet passed since the date of the notification;

2. in the case where, within the period from the day on which a notice was made under Article 15 of the Administrative Procedure Act with regard to rescission of the permission set forth in Article 60, paragraph (1) under Article 60-8, paragraph (1) to the day on which said disposition is made or the day on which the disposition is decided not to be made, a notification has been made under Article 60-7 to the effect that a person falls under the case prescribed in said Article as a result of discontinuing its On-Exchange Transaction Services (meaning the On-Exchange Transaction Services prescribed in Article 60, paragraph (1); hereinafter the same shall apply in this item and sub-item (f)2. of the following item), the Authorized Operator for On-Exchange Transactions (meaning the Authorized Operator for On-Exchange Transactions prescribed in Article 60-4, paragraph (1); hereinafter the same shall apply in this item and the following item) pertaining to said notification (excluding a person that has made, before the day on which said notice was made, a decision (meaning a decision by the organ that is responsible for making decisions about the execution of operations of said Authorized Operator for On-Exchange Transactions) about discontinuing its On-Exchange Transaction Services), if five years have not yet passed since the date of the notification;
3. a person that has made a notification under Article 66-19, paragraph (1) to the effect that the person falls under item (i) of that paragraph, within the period from the day on which a notice was made under Article 15 of the Administrative Procedure Act with regard to rescission of the registration set forth in Article 66 under Article 66-20, paragraph (1) to the day on which said disposition is made or the day

on which the disposition is decided not to be made (excluding a person that had made, before the day on which said notice was made, a decision (if the person is a corporation, a decision by the organ that is responsible for making decisions about the execution of its operations) about discontinuing its Financial Instruments Intermediary Service, having the whole of its business linked with Financial Instruments Intermediary Service succeeded to through a split, or transferring the whole of its business linked with Financial Instruments Intermediary Service), if five years have not yet passed since the date of the notification; or

4. a person that has made a notification under Article 66-40, paragraph (1) to the effect that the person falls under item (i) of that paragraph, within the period from the day on which a notice was made under Article 15 of the Administrative Procedure Act with regard to rescission of the registration set forth in Article 66-27 under Article 66-42, paragraph (1) to the day on which said disposition is made or the day on which the disposition is decided not to be made (excluding a person that had made, before the day on which said notice was made, a decision (meaning a decision by the organ that is responsible for making decisions about the execution of operations of said person) about discontinuing its Credit Rating Services, having the whole of its business linked with Credit Rating Services succeeded to through a split, or transferring the whole of its business linked with Credit Rating Services), if five years have not yet passed since the date of the notification;
- (c) a person that has been sentenced to a fine (including an equivalent sentence under foreign laws and regulations) for violating the provisions of this Act; the Secured Bonds Trust Act (Act No. 52 of 1905); the Act on Engagement in Trust Business by a Financial Institution (Act No. 43 of 1943); the Commodity Futures Act; the Act on Investment Trusts and Investment Corporations; the Real Estate Brokerage Act (Act No. 176 of 1952); the Act Regulating the Receipt of Contributions, the Receipt of Deposits, and Interest Rates (Act No. 195 of 1954); the Installment Sales Act (Act No. 159 of 1961); the Money Lending Business Act (Act No. 32 of 1983); the Act on the Deposit, etc. Transaction Agreements of Specified Commodities, etc. (Act No. 62 of 1986); the Act Regulating Business Involving Commodity Investment (Act No. 66 of 1991); the Specified Joint Real Estate Ventures Act; the Act on the Securitization of Assets; the Act on Corporate Bond Issuance for Financial Corporations' Loan Business (Act No. 32 of 1999); the Trust Business Act (Act No. 154 of 2004); or any other Act specified by Cabinet Order, or for violating the provisions of a

- foreign law or regulation that is equivalent to one of these Acts, if five years have not yet passed since the day on which the person finished serving the sentence or ceased to be subject to its enforcement;
- (d) a person that does other business which is found to be contrary to the public interest;
  - (e) a person that does not have a sufficient personnel structure to perform Financial Instruments Business in an appropriate manner; or
  - (f) a person that is found not to have in place the necessary system for performing Financial Instruments Business in an appropriate manner.
- (ii) a corporation that has a person falling under one of the following as its officer (including an advisor, consultant, or any other person, irrespective of title, that is found to have at least the same amount of authority over the corporation as a director, executive officer, or any equivalent person; hereinafter the same applies in this item, Article 52, paragraph (2); Article 52-2, paragraph (2); and Article 57-20, paragraph (1), item (i) and paragraph (3)) or among those of its employees as are specified by Cabinet Order:
- (a) an adult ward, a person under curatorship, or a person that is treated in the same manner under foreign laws and regulations;
  - (b) a person that has become subject to an order to commence bankruptcy proceedings and has not obtained a restoration of rights, or a person that is treated in the same manner under foreign laws and regulations;
  - (c) a person that has been sentenced to imprisonment or a heavier punishment (including an equivalent sentence under foreign laws and regulations), if five years have not yet passed since the day on which that person finished serving the sentence or ceased to be subject to its enforcement;
  - (d) a person that, during the 30 days prior to the date of rescission, was the officer of a corporation, in a case in which the corporation was a Financial Instruments Business Operator but has had the registration referred to in Article 29 rescinded pursuant to the provisions of Article 52, paragraph (1), Article 53, paragraph (3), or Article 57-6, paragraph (3); in a case in which the corporation was an Authorized Operator for On-Exchange Transactions but has had the permission referred to in Article 60, paragraph (1) rescinded pursuant to the provisions of Article 60-8, paragraph (1); in a case in which juridical person that was an Authorized Electronic Over-the-Counter Transactions of Derivatives, etc. Business Operator prescribed in Article 60-14, paragraph (2) has had its permission under Article 60-14, paragraph (1) rescinded under the provisions of Article 60-8, paragraph (1) as applied mutatis mutandis pursuant to Article 60-14, paragraph (1) ; in a case in which the corporation was a Financial Instruments Intermediary Service Provider but has had the registration referred to in Article 66

rescinded pursuant to the provisions of Article 66-20, paragraph (1); in a case in which the corporation was a Credit Rating Agency but has had the registration referred to in Article 66-27 rescinded pursuant to the provisions of Article 66-42, paragraph (1); or in a case in which the corporation had obtained a registration or permission of the same kind in a foreign state pursuant to the provisions of a foreign law or regulation that is equivalent to this Act (including authorization or any other administrative disposition similar to such a registration or permission), but has had that registration or permission rescinded; if five years have not yet passed since the date of the rescission;

(e) an individual that was a Financial Instruments Business Operator but that has had the registration referred to in Article 29 rescinded pursuant to the provisions of Article 52, paragraph (1); an individual that was a Financial Instruments Intermediary Service Provider but that has had the registration referred to in Article 66 rescinded pursuant to the provisions of Article 66-20, paragraph (1); or an individual that had obtained a registration of the same kind in a foreign state pursuant to the provisions of a foreign law or regulation that is equivalent to this Act (including permission or any other administrative disposition similar to such a registration) or that had obtained permission of the same kind as the permission referred to in Article 60, paragraph (1) or Article 60-14, paragraph (1) in a foreign state pursuant to the provisions of a foreign law or regulation that is equivalent to this Act (including permission or any other administrative disposition that is similar to such permission), but that has had that registration or permission rescinded; if five years have not yet passed since the date of the rescission;

(f) a person falling under one of the following:

1. in the case where a person that has made a notification under Article 50-2, paragraph (1) to the effect that the person falls under any of items (ii) to (vii) inclusive of that paragraph, within the period from the day on which a notice was made under Article 15 of the Administrative Procedure Act with regard to rescission of the registration set forth in Article 29 under Article 52, paragraph (1), Article 53, paragraph (3) or Article 57-6, paragraph (3) to the day on which said disposition is made or the day on which the disposition is decided not to be made (in the case of having made a notification under Article 50-2, paragraph (1) to the effect that the person falls under any of items (iii) to (v) inclusive of that paragraph, such person is a corporation that was the Financial Instruments Business Operator pertaining to said notification, and such person excludes a person that had made, before the day on which said notice was made, a decision (meaning a decision by the organ that

is responsible for making decisions about the execution of operations of said person) about discontinuing its Financial Instruments Business, effecting a merger (limited to a merger in the case where the Financial Instruments Business Operator disappears as a result of the merger), dissolving, having the whole of its business linked with Financial Instruments Business succeeded to through a split, or transferring the whole of its business linked with Financial Instruments Business) was a corporation, a person that was an officer of said corporation, if five years have not yet passed since the date of the notification;

2. in the case where, within the period from the day on which a notice was made under Article 15 of the Administrative Procedure Act with regard to rescission of the permission set forth in Article 60, paragraph (1) under Article 60-8, paragraph (1) to the day on which said disposition is made or the day on which the disposition is decided not to be made, a notification has been made under Article 60-7 to the effect that a person falls under the case prescribed in said Article, a person that was an officer of the Authorized Operator for On-Exchange Transactions pertaining to said notification (excluding a person that has made, before the day on which said notice was made, a decision (meaning a decision by the organ that is responsible for making decisions about the execution of operations of said Authorized Operator for On-Exchange Transactions) about dissolving or discontinuing its On-Exchange Transaction Services), if five years have not yet passed since the date of the notification;
3. in the case where a person that has made a notification under Article 66-19, paragraph (1) to the effect that the person falls under any of item (i) or items (iii) to (v) inclusive of that paragraph, within the period from the day on which a notice was made under Article 15 of the Administrative Procedure Act with regard to rescission of the registration set forth in Article 66 under Article 66-20, paragraph (1) to the day on which said disposition is made or the day on which the disposition is decided not to be made (in the case of having made a notification under Article 66-19, paragraph (1) to the effect that the person falls under any of items (iii) to (v) inclusive of that paragraph, such person is a corporation that was the Financial Instruments Intermediary Service Provider pertaining to said notification, and such person excludes a person that had made, before the day on which said notice was made, a decision (meaning a decision by the organ that is responsible for making decisions about the execution of operations of said person) about discontinuing its Financial Instruments Intermediary Service, having the whole of its business linked with

- Financial Instruments Intermediary Service succeeded to through a split, transferring the whole of its business linked with Financial Instruments Intermediary Service, effecting a merger (limited to a merger in the case where the Financial Instruments Intermediary Service Provider disappears as a result of the merger) or dissolving) was a corporation, a person that was an officer of said corporation, if five years have not yet passed since the date of the notification; or
4. a person that was an officer of a person that has made a notification under Article 66-40, paragraph (1) to the effect that the person falls under any of the items of that paragraph, within the period from the day on which a notice was made under Article 15 of the Administrative Procedure Act with regard to rescission of the registration set forth in Article 66-27 under Article 66-42, paragraph (1) to the day on which said disposition is made or the day on which the disposition is decided not to be made (in the case of having made a notification under Article 66-40, paragraph (1) to the effect that the person falls under any of items (ii) to (iv) inclusive of that paragraph, such person is a corporation that was the Credit Rating Agency pertaining to said notification, and such person excludes a person that had made, before the day on which said notice was made, a decision (meaning a decision by the organ that is responsible for making decisions about the execution of operations of said person) about discontinuing its Credit Rating Services, having the whole of its business linked with Credit Rating Services succeeded to through a split, transferring the whole of its business linked with Credit Rating Services, effecting a merger (limited to a merger in the case where the Credit Rating Agency disappears as a result of the merger) or dissolving), if five years have not yet passed since the date of the notification.
  - (g) an individual that falls under sub-item (b) of the preceding item;
  - (h) a person falling under the category of an officer whose dismissal or removal has been ordered pursuant to the provisions of Article 52, paragraph (2), Article 60-8, paragraph (2) (including the cases where it is applied mutatis mutandis pursuant to Article 60-14, paragraph (2)); Article 66-20, paragraph (2); or Article 66-42, paragraph (2); or an officer whose dismissal or removal has been ordered in a foreign state pursuant to the provisions of a foreign law or regulation that is equivalent to this Act, if five years have not yet passed since the day of the disposition; or
  - (i) a person that has been sentenced to a fine (including an equivalent sentence under foreign laws and regulations) for violating the provisions of one of the Acts prescribed in sub-item (c) of the preceding item or the Act to Prevent Illegal Activities by Members of Organized Crime Groups (Act

No. 77 of 1991) (excluding the provisions of Article 32-2, paragraph (7) of that Act), or for violating the provisions of a foreign law or regulation that is equivalent to one of these Acts, or committing a crime specified by the Penal Code (Act No. 45 of 1907) or the Act on Punishment of Violent Acts (Act No. 60, 1926), if five years have not yet passed since the day on which the person finished serving the sentence or ceased to be subject to its enforcement.

- (iii) an individual that falls under any of sub-items (a) to (h) inclusive or (i) (excluding the part that involves the provisions of Acts prescribed in item (i), sub-item (c)) of the preceding item, or an individual that has an employee specified by Cabinet Order that falls under any of sub-items (a) to (i) inclusive of the preceding item;
- (iv) a person (other than an individual) falling under one of the following and seeking to engage in Type I Financial Instruments Business, Type II Financial Instruments Business, or Investment Management Business:
  - (a) a person whose stated capital or contributes in total are less than the amount of money that is specified by Cabinet Order as necessary and appropriate in the public interest or for the protection of investors;
  - (b) a person that does not have a business office or office in Japan;
  - (c) a foreign corporation that has not designated a domestic representative (limited to one responsible for business at all business offices or offices that the foreign corporation operates in Japan so as to engage in Type I Financial Instruments Business, Type II Financial Instruments Business or Investment Management Business); or
  - (d) a person that has not joined an Association (meaning an Authorized Financial Instruments Firms Association or Certified Financial Instruments Business Association prescribed in Article 78, paragraph (2) and limited to one whose main association members or members are persons that conduct the business which the applicant for registration intends to conduct; hereinafter the same applies in this item and Article 33-5, paragraph (1), item (iv)) and that has not prepared internal rules (meaning rules with which said person or its officers or employees should comply) that have contents equivalent to the articles of incorporation or other rules (limited to those for ensuring fair and smooth purchase and sales and other transactions of Securities or ensuring fair and smooth Derivatives Transactions, etc. as prescribed in Article 33, paragraph (3) or for protecting investors) of the Association or that has not established a system for complying with said internal rules.
- (v) a person falling under one of the following and seeking to engage in Type I Financial Instruments Business or Investment Management Business:
  - (a) a person other than a stock company (limited to one that has a board of



- directors, company auditors, supervisory committee, or Nominating Committee, etc. (meaning the Nominating Committee, etc. prescribed in Article 2, item (xii) of the Companies Act; the same shall apply hereinafter)) and a corporation of the same kind as a company with a board of directors incorporated in compliance with foreign laws and regulations (if a person seeks to engage in Type I Financial Instruments Business, limited to a person that engages in the same kind of business as Type I Financial Instruments Business in a foreign state in compliance with foreign laws and regulations (including a person specified by Cabinet Order as equivalent to such a person));
- (b) a person whose net assets (meaning the figure arrived at when the total amount of liabilities is deducted from the total amount of assets pursuant to the provisions of Cabinet Office Ordinance) are less than the amount of money that is specified by Cabinet Order as necessary and appropriate in the public interest or for the protection of investors;
  - (c) a person engaged in other business that does not fall under one of the categories of business prescribed in Article 35, paragraph (1) or business set forth in the items of Article 35, paragraph (2), and that is found to compromise investor protection due to difficulties in managing the risk of loss in connection with said business;
  - (d) a corporation (excluding a foreign corporation) that has a person falling under one of the following as an individual Major Shareholder (if the applicant is a Subsidiary Company of a Holding Company (meaning a holding company as prescribed in Article 9, paragraph (4), item (i) of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947); hereinafter the same applies in this item and Article 32-4), this includes a Major Shareholder of said Holding Company; the same applies in sub-items (e) and (f)):
    - 1. an adult ward or a person under curatorship, or a person that is treated in the same manner under foreign laws and regulations, whose statutory representative falls under one of sub-items (a) to (i) inclusive of item (ii); or
    - 2. a person falling under one of sub-items (b) to (i) inclusive of item (ii).
  - (e) a corporation (excluding a foreign corporation) that has a person falling under one of the following as a corporate Major Shareholder; or
    - 1. a corporation falling under item (i), sub-item (a) or (b);
    - 2. a corporation that has been sentenced to a fine (including an equivalent sentence under foreign laws and regulations) for violating the provisions of one of the Acts prescribed in item (i), sub-item (c) or for violating the provisions of a foreign law or regulation that is equivalent to one of such Acts, if five years have not yet passed since

- the day on which the person finished serving the sentence or ceased to be subject to its enforcement; or
3. a corporation that has a person falling under one of sub-items (a) to (g) inclusive of item (ii) among the officers that represent it.
- (f) a foreign corporation for which the foreign regulatory authority (meaning the Foreign Regulatory Authority for Financial Instruments defined in Article 189, paragraph (1) or any other regulatory authority specified by Cabinet Order that enforces foreign laws and regulations) has not confirmed that a person equivalent to a Major Shareholder is unlikely to compromise the sound and appropriate operation of Financial Instruments Business.
- (vi) a person falling under one of the following and seeking to engage in Type I Financial Instruments Business:
- (a) a person whose ratio as calculated based on the provisions of Article 46-6, paragraph (1) is less than 120 percent; or
- (b) a person seeking to use a trade name that another Financial Instruments Business Operator (limited to those engaged in Type I Financial Instruments Business; the same applies in this sub-item (b)) is already using or a trade name that could give rise to the misconception that it is another Financial Instruments Business Operator.
- (2) The term "Major Shareholder" as used in sub-items (d) to (f) inclusive of item (v) of the preceding paragraph means a person that holds voting rights (excluding the voting rights that are specified by Cabinet Office Ordinance in consideration of the manner in which they are held and other circumstances; hereinafter referred to as "Subject Voting Rights" in paragraph (4), Article 32, paragraphs (1) and (4)) constituting 20 percent or more (or 15 percent or more, if a fact has occurred that is specified by Cabinet Office Ordinance as something that is presumed to have a material influence on decisions about the company's financial and operational policies) of all shareholders', etc. voting rights (meaning the voting rights of all shareholders, all members, all partners, and all equity investors, and for a stock company, excluding voting rights in respect of shares that do not allow voting rights to be exercised with regard to all matters that can be resolved at a shareholders meeting, and including voting rights in respect of shares that are deemed to have voting rights pursuant to the provisions of Article 879, paragraph (3) of the Companies Act; the same applies hereinafter).
- (3) The term "Subsidiary Company" as used in paragraph (1), item (v), sub-item (d) means a second company in which a first company holds the majority of all shareholders', etc. voting rights. In such a case, a second company in which a first company and one or more of its Subsidiary Companies hold the majority of all shareholders', etc. voting rights, or in which one or more of a first

- company's Subsidiary Companies hold the majority of all shareholders', etc. voting rights, is deemed to be the Subsidiary Company of said first company.
- (4) With regard to the application of the provisions of paragraph (2) in a case set forth in one of the following items, the person set forth in the relevant item is deemed to hold the Subject Voting Rights prescribed in that item:
- (i) if a person has the authority to exercise the company's Subject Voting Rights or the authority to give instructions on the exercise of said voting rights based on a money trust contract or other contract or based on the provisions of the law: said Subject Voting Rights; and
  - (ii) if a person that is related to the relevant person through a shareholding relationship, familial relationship, or other special relationship specified by Cabinet Order, holds Subject Voting Rights in a corporation: the Subject Voting Rights held by the person with the special relationship to the relevant person.
- (5) The necessary particulars relevant to the application of the provisions of paragraph (2) and the preceding paragraph are specified by Cabinet Order.

(Special Provisions on Registration, etc. of Type I Small Amount Electronic Public Offering Service Provider)

- Article 29-4-2 (1) With regard to the application of the provisions of Article 29-2, paragraph (1), item (vi) and paragraph (2), item (i) to Type I Small Amount Electronic Public Offering Service in cases where a person who intends to obtain the registration set forth in Article 29 intends to only engage in Type I Small Amount Electronic Public Offering Service from among Type I Financial Instruments Businesses, the term "a statement to that effect" in Article 29-2, paragraph (1), item (vi) is deemed to be replaced with "a statement to that effect (in the case of only engaging in the Type I Small Amount Electronic Public Offering Service prescribed in Article 29-4-2, paragraph (10) from among Type I Financial Instruments Businesses, including a statement to that effect)" and the term "and item (v), sub-item (c)" in paragraph (2), item (i) of that Article is deemed to be replaced with ", item (v), sub-item (c) and item (vi), sub-item (a)."
- (2) The provisions of paragraph (1), item (v), sub-item (c) and item (vi), sub-item (a) of the preceding Article (including the cases where these provisions are applied mutatis mutandis pursuant to Article 31, paragraph (5)) do not apply to Type I Small Amount Electronic Public Offering Service in the case referred to in the preceding paragraph or in the case where a person who intends to obtain the registration of change set forth in Article 31, paragraph (4) intends to only engage in Type I Small Amount Electronic Public Offering Service from among Type I Financial Instruments Businesses.
- (3) A Type I Small Amount Electronic Public Offering Service Provider (excluding

a person who engages in Investment Management Business; hereinafter the same applies in the following paragraph) is not required to notify the Prime Minister to the effect that it will start to engage in any of the businesses listed in the items of Article 35, paragraph (2), notwithstanding the provision of Article 35, paragraph (3).

- (4) When a Type I Small Amount Electronic Public Offering Service Provider conducts a business other than Financial Instruments Business and the businesses prescribed in Article 35, paragraphs (1) and (2), the service provider is not required to obtain approval from the Prime Minister, notwithstanding the provision of paragraph (4) of that Article.
- (5) The provisions of Article 36-2, paragraph (1) do not apply to the case where a Type I Small Amount Electronic Public Offering Service Provider engages in Type I Small Amount Electronic Public Offering Service.
- (6) The provisions of Articles 46-5 and 46-6 do not apply to a Type I Small Amount Electronic Public Offering Service Provider.
- (7) With regard to the application of the provisions of Article 2, paragraph (11), Article 27-2, paragraph (4) (including the cases where applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)), Article 27-26, paragraph (1) and Article 66-2, paragraph (1), item (iv) in cases where a Type I Small Amount Electronic Public Offering Service Provider engages in Type I Small Amount Electronic Public Offering Service, the term "Type I Financial Instruments Business" in these provisions is deemed to be replaced with "Type I Financial Instruments Business (excluding the Type I Small Amount Electronic Public Offering Service prescribed in Article 29-4-2, paragraph (10))" and the term "paragraph (4) of that Article" in Article 2, paragraph (11) and Article 27-26, paragraph (1) is deemed to be replaced with "Article 28, paragraph (4)."
- (8) A Type I Small Amount Electronic Public Offering Service Provider must publicize its trade name, registration number and other matters specified by Cabinet Office Ordinance by means of an electronic data processing system or by any other means of information and communications technology specified by Cabinet Office Ordinance, pursuant to the provisions of Cabinet Office Ordinance.
- (9) The term "Type I Small Amount Electronic Public Offering Service Provider" as used in paragraph (3) to the preceding paragraph inclusive means a person who has obtained the registration set forth in Article 29 or the registration of change set forth in Article 31, paragraph (4) by stating in the written application for registration to the effect that the person will only engage in Type I Small Amount Electronic Public Offering Service from among Type I Financial Instruments Businesses.
- (10) The term "Type I Small Amount Electronic Public Offering Service" as used

in paragraphs (1), (2), (5) and (7) and the preceding paragraph means Electronic Public Offering Service (limited to handling of Public Offering or handling of Private Placement of the Securities set forth in Article 2, paragraph (1), item (ix) (limited to Securities not listed on a Financial Instruments Exchange and excluding those specified by Cabinet Order; hereinafter the same applies in this paragraph) which satisfies the requirements specified by Cabinet Order as being such handling where the total issue value of the Securities and the amount to be paid by the person who acquires the Securities are small; hereinafter the same applies in this paragraph) or receiving of a deposit of money from customers in relation to Electronic Public Offering Service.

(Special Provisions on Registration, etc. of Type II Small Amount Electronic Public Offering Service Provider)

Article 29-4-3 (1) With regard to the application of the provisions of Article 29-2, paragraph (1), item (vi) to Type II Small Amount Electronic Public Offering Service in cases where a person who intends to obtain the registration set forth in Article 29 intends to only engage in Type II Small Amount Electronic Public Offering Service from among Type II Financial Instruments Businesses, the term "a statement to that effect" in Article 29-2, paragraph (1), item (vi) is deemed to be replaced with "a statement to that effect (in the case of only engaging in the Type II Small Amount Electronic Public Offering Service prescribed in Article 29-4-3, paragraph (4) from among Type II Financial Instruments Businesses, including a statement to that effect)."

(2) The provisions of Article 36-2, paragraph (1) do not apply to the case where a Type II Small Amount Electronic Public Offering Service Provider (meaning a person who has obtained the registration set forth in Article 29 or the registration of change set forth in Article 31, paragraph (4) by stating in the written application for registration to the effect that the person will only engage in Type II Small Amount Electronic Public Offering Service from among Type II Financial Instruments Businesses; the same applies in the following paragraph) engages in Type II Small Amount Electronic Public Offering Service.

(3) A Type II Small Amount Electronic Public Offering Service Provider must publicize its trade name or name, registration number and other matters specified by Cabinet Office Ordinance by means of an electronic data processing system or by any other means of information and communications technology specified by Cabinet Office Ordinance, pursuant to the provisions of Cabinet Office Ordinance.

(4) The term "Type II Small Amount Electronic Public Offering Service" as used in paragraphs (1) and (2) means, among Electronic Public Offering Service,

handling of Public Offering or handling of Private Placement of Securities (limited to rights set forth in item Article 2, paragraph (2), item (v) or (vi) which are deemed to be Securities pursuant to that paragraph and which are set forth in Article 3, item (iii) or which are not listed on a Financial Instruments Exchange, and excluding those specified by Cabinet Order; hereinafter the same shall apply in this paragraph) which satisfies the requirements specified by Cabinet Order as being such handling where the total issue value of the Securities and the amount to be paid by the person who acquires the Securities are small.

(Special Provisions for Registration, etc. of Business concerning Qualified Investors)

Article 29-5 (1) With regard to the application of the provisions of Article 29-2, paragraph (1), item (v) and Article 29-4, paragraph 1, item (v), sub-item (a) (including as applied mutatis mutandis pursuant to Article 31, paragraph (5); hereinafter the same shall apply in this paragraph) to an Investment Management Business that satisfies all of the following requirements (hereinafter referred to as "Investment Management Business for Qualified Investors" in this Article) in cases where a person who intends to obtain registration under Article 29 or registration of change under Article 31, paragraph (4) intends to engage in an Investment Management Business for Qualified Investors, the term "what category of businesses the person intends to conduct" in Article 29-2, paragraph (1), item (v) shall be deemed to be replaced with "what category of businesses the person intends to conduct (in the case of an Investment Management Business for Qualified Investors prescribed in Article 29-5, paragraph (1), including a statement to that effect)"; and the terms "a board of directors, company auditors," and "a company with a board of directors" in Article 29-4, paragraph (1), item (v), sub-item (a) shall be deemed to be replaced with "company auditors," and "a company with company auditors, a company with supervisory committee, or a company with nominating committee, etc.," respectively.

(i) Rights Holders (meaning Rights Holders prescribed in Article 42, paragraph (1), including Investors (meaning Investors prescribed in Article 2, paragraph (16) of the Act on Investment Trust and Investment Corporations) of Registered Investment Corporations (meaning Registered Investment Corporations prescribed in Article 2, paragraph (13) of said Act) who are counterparties to the contracts referred to in Article 2, paragraph (8), item (xii), sub-item (a), or any other person specified by Cabinet Order as being equivalent to them) for all Investment Properties (meaning Investment Properties prescribed in Article 35, paragraph (1), item (xv); the same shall apply in the following item) consist exclusively of Qualified Investors; and

- (ii) The total amount of all Investment Properties does not exceed the amount specified by Cabinet Order in consideration of the actual state of the Investment Management Business, the impact exerted on Japan's capital market and other circumstances.
- (2) With regard to the application of the provisions of this Act and other laws and regulations to cases where a Financial Instruments Business Operator who obtained registration under Article 29 or registration of change under Article 31, paragraph (4) for engaging in an Investment Management Business for Qualified Investors has been entrusted with full authority to invest money or other property invested or contributed from a person who holds rights indicated on the following Securities under a contract referred to in Article 2, paragraph (8), item (xii), sub-item (b), business involving dealings in Private Placement of said Securities made with Qualified Investors by said Financial Instruments Business Operator (limited to those specified by Cabinet Order as being not likely to involve the transfer of said Securities from the Qualified Institutional Investor who acquired them to persons other than Qualified Investors, etc.) shall be deemed to be Type II Financial Instruments Business:
- (i) Securities set forth in Article 2, paragraph (1), item (x);
  - (ii) Securities set forth in Article 2, paragraph (1), item (xi);
  - (iii) Securities set forth in Article 2, paragraph (1), item (xiv) or Securities set forth in item (xvii) of that paragraph (limited to those having the nature of the Securities set forth in item (xiv) of that paragraph);
  - (iv) Securities set forth in Article 2, paragraph (1), item (xxi) that indicate the rights specified by Cabinet Order as prescribed to in Article 2, paragraph (8), item (xiv) or (xv); or
  - (v) Rights to be indicated on Securities set forth in the preceding items that are deemed to be Securities under the provision of Article 2, paragraph (2).
- (3) "Qualified Investor" referred to in paragraph (1), item (i) and the preceding paragraph shall mean Professional Investor, or any other person specified by Cabinet Office Ordinance as those equivalent to Professional Investor in light of his/her knowledge, experience and state of property or person specified by Cabinet Order as having a close relationship with a Financial Instruments Business Operator (including those who intend to obtain registration under Article 29).
- (4) With regard to the application of the provisions of paragraphs (1) and (2), the following persons shall be deemed not to be Qualified Investors prescribed in the preceding paragraph:
- (i) a Special Purpose Company (meaning the Special Purpose Company provided in Article 2, paragraph (3) of the Act on Securitization of Assets), if Asset Backed Securities (meaning the Asset Backed Securities provided in Article 2, paragraph (11) of that Act) issued by it are held by persons other

- than Qualified Investors (meaning Qualified Investors prescribed in the preceding paragraph; the same shall apply in the following item);
- (ii) a person who engages, or intends to engage in a Securities investment business based on a contract or any other juristic acts (limited to rights based on said contract or other juristic acts that fall under the rights referred to in Article 2, paragraph (2), item (v) or (vi)) pertaining to the Securities investment business to which the counterparty is a person other than a Qualified Investor by appropriating money or other property invested or contributed from said counterparty (excluding cases in which the investment of property pertaining to said investment business is conducted by a Financial Instruments Business Operator, etc. prescribed in Article 34 (limited to those who engage in Investment Management Business) or any other person specified by Cabinet Order); or
  - (iii) a person who is specified by Cabinet Office Ordinance as a person equivalent to the persons listed in the preceding two sub-items.
- (5) With regard to the application of the provisions of Article 2, paragraph (11) and Article 66-2, paragraph (1), item (iv) to cases where a Financial Instruments Business Operator who obtained the registration under Article 29 or registration of change under Article 31, paragraph (4) for engaging in an Investment Management Business for Qualified Investors engages in an Investment Management Business for Qualified Investors, the term "Investment Management Business defined in Article 28, paragraph (4)" in Article 2, paragraph (11) shall be deemed to be replaced with "Investment Management Business defined in Article 28, paragraph (4) (excluding the Investment Management Business for Qualified Investors defined in Article 29-5, paragraph (1))"; and the phrase "Investment Management as prescribed in Article 28, paragraph (4)" in Article 66-2, paragraph (1), item (iv) shall be deemed to be replaced with "Investment Management Business as prescribed in Article 28, paragraph (4) (excluding the Investment Management Business for Qualified Investors defined in Article 29-5, paragraph (1))."

#### (Authorization)

- Article 30 (1) A Financial Instruments Business Operator must obtain the authorization of the Prime Minister if it seeks to perform the acts set forth in Article 2, paragraph (8), item (x) on a regular basis.
- (2) Upon granting the authorization referred to in the preceding paragraph to a Financial Instruments Business Operator, the Prime Minister shall note this in said Financial Instruments Business Operator's registration.

#### (Conditions on Authorization)

- Article 30-2 (1) The Prime Minister may attach conditions to the authorization



referred to in paragraph (1) of the preceding Article.

- (2) The conditions referred to in the preceding paragraph must constitute the minimum level of conditions that are necessary in the public interest and for the protection of investors.

(Application for Authorization)

Article 30-3 (1) A Financial Instruments Business Operator seeking the authorization referred to in Article 30, paragraph (1) must submit a written application for authorization to the Prime Minister, in which it states the following particulars:

- (i) its trade name; and
  - (ii) the date of registration and its registration number.
- (2) A document stating how the person manages the risk of loss, how duties are divided, and the other things specified by Cabinet Office Ordinance as constituting the business outline and business methods, and other documents specified by Cabinet Office Ordinance must accompany the written application for authorization referred to in the preceding paragraph.

(Criteria for Authorization)

Article 30-4 Before seeking to grant the authorization referred to in Article 30, paragraph (1), the Prime Minister shall examine whether there is compliance with the following criteria:

- (i) an appropriate system and regulations are in place for managing the risk of loss;
- (ii) the amount of stated capital exceeds the amount of money that is specified by Cabinet Order as necessary and appropriate in the public interest or for the protection of investors;
- (iii) the amount of net assets exceeds the amount of money prescribed in the preceding item;
- (iv) the provisions of Article 46-6, paragraph (2) are not being violated; and
- (v) the applicant's price formation method, its methods of transfer and other settlement, and its Cabinet-Office-Ordinance-specified business outline and business methods are necessary and appropriate in the public interest or for the protection of investors.

(Registration of a Change)

Article 31 (1) If a particular set forth in the items of Article 29-2, paragraph (1) (excluding items (v) and (vi)) changes, the Financial Instruments Business Operator must notify the Prime Minister of this within two weeks from the day of the change.

- (2) Upon accepting a notification under the preceding paragraph, the Prime

Minister shall register the particulars given in the notification in the Financial Instruments Business Operator register.

- (3) If the business outline or business methods that a Financial Instruments Business Operator has stated in the documents set forth in Article 29-2, paragraph (2), item (ii) change, the Financial Instruments Business Operator must notify the Prime Minister of this without delay pursuant to the provisions of Cabinet Office Ordinance.
- (4) If a Financial Instruments Business Operator seeks to change the particular set forth in Article 29-2, paragraph (1), item (v) or (vi), it must have that change registered by the Prime Minister pursuant to the provisions of Cabinet Office Ordinance.
- (5) The provisions of Article 29-3 and Article 29-4 apply mutatis mutandis to the registration of a change referred to in the preceding paragraph. In this case, in Article 29-3, paragraph (1), the phrase "the following particulars" is deemed to be replaced with "the particulars subject to the change"; in Article 29-4, paragraph (1), the phrase "the following items" is deemed to be replaced with "the following items (excluding item (i), sub-items (a) to (d) inclusive, item (ii), and item (iii))"; and any other necessary technical replacement of terms is specified by Cabinet Order.
- (6) Notwithstanding the provisions of paragraph (3), if a Financial Instruments Business Operator that has obtained the authorization referred to in Article 30, paragraph (1) seeks to change the way it manages the risk of loss, its price formation method, its methods of transfer and other settlement, or the Cabinet-Office-Ordinance-specified business outline and business methods for which it has obtained that authorization, it must obtain the authorization of the Prime Minister.

(Security Deposits for Operations)

- Article 31-2 (1) A Financial Instruments Business Operator (limited to individuals seeking to engage in Type II Financial Instruments Business and persons seeking to engage in Investment Advisory and Agency Business only; hereinafter the same applies in this Article) must deposit a business security deposit with the deposit office nearest to its principal business office or office.
- (2) The amount of the business security deposit referred to in the preceding paragraph is specified by Cabinet Order in consideration of the actual condition of a Financial Instruments Business Operator's business and the need to protect investors.
  - (3) If a Financial Instruments Business Operator concludes a contract stating that the required business security deposit of the Financial Instruments Business Operator will be deposited if ordered by the Prime Minister, and has notified the Prime Minister of this, pursuant to the provisions of Cabinet Order,

so long as that contract remains valid, the Financial Instruments Business Operator may refrain from depositing all or part of the business security deposit referred to in paragraph (1), in line with the amount of money that will be deposited pursuant to the contract (hereinafter referred to as the "Contract Amount" in this Article).

- (4) If the Prime Minister finds it to be necessary for the protection of investors, the Prime Minister may order a person that has concluded a contract as referred to in the preceding paragraph with a Financial Instruments Business Operator, or may order the relevant Financial Instruments Business Operator, to deposit all or part of the amount equivalent to the Contract Amount.
- (5) A Financial Instruments Business Operator must not begin Financial Instruments Business until it deposits the business security deposit referred to in paragraph (1) (or until it concludes a contract set forth in paragraph (3)) and notifies the Prime Minister of this.
- (6) A person that concludes an Investment Advisory Contract with a Financial Instruments Business Operator, a person that concludes an Investment Advisory Contract or Discretionary Investment Contract based on a Financial Instruments Business Operator's agency or intermediation for that Investment Advisory Contract or an Discretionary Investment Contract, or a person that concludes a purchase and sale contract for Securities based on a Financial Instruments Business Operator's purchase and sale of Securities or its intermediation, brokerage, or agency for such a purchase and sale, has the right to receive payment of a claim arising from such a contract out of the business security deposit furnished by the Financial Instruments Business Operator, in preference over other creditors.
- (7) The necessary particulars relevant to the exercise of the right referred to in the preceding paragraph are specified by Cabinet Order.
- (8) If the amount of a business security deposit (including the Contract Amount; the same applies in paragraph (10)) comes to fall short of the amount specified by Cabinet Order as prescribed in paragraph (2) due to the exercise of the right referred to in paragraph (6) or for any other reason, the Financial Instruments Business Operator shall deposit the shortfall (or conclude a contract set forth in paragraph (3)) within three weeks from the day specified by Cabinet Office Ordinance and notify the Prime Minister of this without delay.
- (9) National government bonds, municipal bonds, and other Securities specified by Cabinet Office Ordinance may serve as a business security deposit that is deposited pursuant to the provisions of paragraph (1) or the preceding paragraph.
- (10) If the registration referred to in Article 29 is rescinded pursuant to the provisions of Article 52, paragraph (1) or (4) or Article 54, if the registration referred to in Article 29 loses its effect pursuant to the provisions of Article 50-

2, paragraph (2), if a person has had a change registered as referred to in paragraph (4) of the preceding Article in connection with its engagement in the Financial Instruments Business other than in Type II Financial Instruments Business (but only if an individual engages in such business) or Investment Advisory and Agency Business, or if the amount of a business security deposit exceeds the amount specified by Cabinet Order as prescribed in paragraph (2), all or part of the business security deposit that is deposited pursuant to the provisions of paragraph (1), (4), or (8) may be refunded pursuant to the provisions of Cabinet Order.

(11) Beyond what is prescribed in the preceding paragraphs, the necessary particulars relevant to a business security deposit are specified by Cabinet Office Ordinance and by Ordinance of the Ministry of Justice.

(Restriction on the Use of Trade Names)

Article 31-3 A person that is not a Financial Instruments Business Operator must not use a trade name or name that refers to it as a Financial Instruments Business Operator, and must not use any trade name or name that is confusingly similar to this.

(Prohibition of Indication, etc. of Engagement in Financial Instruments Business)

Article 31-3-2 Anyone other than a Financial Instruments Business Operator, etc. (meaning a Financial Instruments Business Operator, etc. prescribed in Article 34), Financial Instruments Intermediary Service Provider, or any other person who is allowed to engage in Financial Instruments Business (including the Registered Financial Institution Business prescribed in Article 33-5, paragraph (1), item (iii); hereinafter the same shall apply in this Article) under the provisions of laws and regulations shall not conduct any of the following acts:

- (i) Posting of a sign prescribed in Article 36-2, paragraph (1) or any sign similar thereto, or any other indication that a Financial Instruments Business is being conducted; or
- (ii) Soliciting for conclusion of a Contract for Financial Instruments Transaction (meaning Contract for Financial Instruments Transaction prescribed in Article 34) for the purpose of engaging in Financial Instruments Business (excluding those that fall under the acts listed in the items of Article 2, paragraph (8)).

(Notification on Assumption of the Position of Director)

Article 31-4 (1) If the director or executive officer of a Financial Instruments Business Operator (limited to a person engaged in Type I Financial

Instruments Business or Investment Management Business; hereinafter the same applies in this paragraph) assumes the position of director, accounting advisor (or, if the accounting advisor is a corporation, the position of a staff member that performs those duties; hereinafter the same applies in this and the following paragraphs), company auditor, or executive officer of another company (including if a director, accounting advisor, company auditor, or executive officer of another company is to concurrently hold the position of director or executive officer of the Financial Instruments Business Operator), or if that person resigns from the position of director, accounting advisor, company auditor, or executive officer of another company, that person must notify the Prime Minister of this without delay, pursuant to the provisions of Cabinet Office Ordinance.

- (2) If the director or executive officer of a Financial Instruments Business Operator (limited to a person engaged in Securities Services other than Type I Financial Instruments Business) assumes the position of director, accounting advisor, company auditor, or executive officer of the Parent Bank, etc. or Subsidiary Bank, etc. of said Financial Instruments Business Operator (including if a director, accounting advisor, company auditor or executive officer of the Parent Bank, etc. or Subsidiary Bank, etc. comes to concurrently hold the position of director or executive officer of the Financial Instruments Business Operator), or if that person resigns from the position of director, accounting advisor, company auditor, or executive officer of the Parent Bank, etc. or Subsidiary Bank, etc., that person must notify the Prime Minister of this without delay, pursuant to the provisions of Cabinet Office Ordinance.
- (3) The term "Parent Bank, etc." as used in the preceding paragraph means a bank or Cooperative Financial Institution, or a person that falls under any other category of financial institution specified by Cabinet Order, which Cabinet Order specifies as satisfying the requirement of being a corporation or other organization that holds the majority of all shareholders', etc. voting rights in a Financial Instruments Business Operator, or of being a corporation or other organization which is otherwise closely related to such a Financial Instruments Business Operator (such a corporation or other organization is referred to as a "Parent Corporation, etc." in Article 33-3, paragraph (2), item (iii) and Article 44-3).
- (4) The term "Subsidiary Bank, etc." as used in paragraph (2) means a bank or Cooperative Financial Institution, or a person that falls under any other category of financial institution specified by Cabinet Order, which Cabinet Order specifies as satisfying the requirement of being a corporation or other organization in which a Financial Instruments Business Operator holds the majority of all shareholders', etc. voting rights, or of being a corporation or other organization which is otherwise closely related to such a Financial

Instruments Business Operator (such a corporation or other organization is referred to as a "Subsidiary Corporation, etc." in Article 33-3, paragraph (2), item (iii) and Article 44-3).

- (5) The necessary particulars relevant to a determination of whether the majority of all shareholders', etc. voting rights are held as prescribed in paragraph (3) are specified by Cabinet Office Ordinance in consideration of the manner in which they are held and other circumstances.

(Eligibility as a Director)

Article 31-5 The provisions of the proviso to Article 331, paragraph (2)

(including as applied mutatis mutandis pursuant to Article 335, paragraph (1) of the Companies Act); Article 332, paragraph (2) (including as applied mutatis mutandis pursuant to Article 334, paragraph (1) of that Act); Article 336, paragraph (2); and the proviso to Article 402, paragraph (5) of that Act do not apply to Financial Instruments Business Operators (limited to those engaged in Type I Financial Instruments Business or Investment Management Business).

### **Subsection 3 Major Shareholders**

(Submission of a Statement of Holdings in Subject Voting Rights)

Article 32 (1) A person that has become the Major Shareholder (meaning a Major Shareholder as prescribed in Article 29-4, paragraph (2); hereinafter the same applies in this Section) of a Financial Instruments Business Operator (limited to one engaged in Type I Financial Instruments Business or Investment Management Business and excluding foreign corporations; hereinafter the same applies in this Subsection) must submit a statement of holdings in Subject Voting Rights which states the Subject Voting Right holding rate (meaning the rate arrived at when the number of Subject Voting Rights held by the holder of said Subject Voting Rights is divided by the number of all shareholders', etc. voting rights in said Financial Instruments Business Operator), the purpose for which they are held, and other particulars specified by Cabinet Office Ordinance to the Prime Minister, without delay, pursuant to the provisions of Cabinet Office Ordinance.

- (2) A document pledging that the relevant person does not fall under the purview of Article 29-4, paragraph (1), item (v), sub-item (d)1. or 2., or sub-item (e)1. to 3. inclusive, and other documents specified by Cabinet Office Ordinance must accompany the statement of holdings in Subject Voting Rights referred to in the preceding paragraph.

- (3) If a Major Shareholder other than the Specified Major Shareholder of a Financial Instruments Business Operator becomes the Specified Major

Shareholder of said Financial Instruments Business Operator, it must notify the Prime Minister of this without delay, pursuant to the provisions of Cabinet Office Ordinance.

- (4) The term "Specified Major Shareholder" as used in the preceding paragraph means a person that holds Subject Voting Rights exceeding 50 percent of all shareholders', etc. voting rights in a company.
- (5) The provisions of Article 29-4, paragraph (4) apply mutatis mutandis if the provisions of the preceding paragraph are applicable.

(Order for Measures to Be Taken by a Major Shareholder)

Article 32-2 (1) If the Major Shareholder of a Financial Instruments Business Operator falls under one of the categories in Article 29-4, paragraph (1), item (v), sub-item (d)1. or 2. or sub-item (e)1. to 3. inclusive, the Prime Minister may order said Major Shareholder to take measures so that it will cease to be the Major Shareholder of said Financial Instruments Business Operator or to take any other necessary measures within a fixed period of no longer than three months.

- (2) If the Prime Minister finds it to be particularly necessary in the public interest or for the protection of investors in light of state of the business or assets of the Specified Major Shareholder (meaning a Specified Major Shareholder as provided for in paragraph (4) of the preceding Article; the same applies hereinafter) of a Financial Instruments Business Operator (if such a Specified Major Shareholder is a corporation, this includes the state of the assets of a Subsidiary Corporation, etc. of such Specified Major Shareholder (meaning a person falling under the category of a corporation or other organization in which the Specified Major Shareholder holds the majority of all shareholders', etc. voting rights, or that otherwise satisfies the requirements specified by Cabinet Order as a corporation or other organization that is closely related to the Specified Major Shareholder)), the Prime Minister, within the scope of this necessity, may order said Specified Major Shareholder to take measures that are necessary for improving the Financial Instruments Business Operator's business operations or the state of its assets.

- (3) If the Specified Major Shareholder of a Financial Instruments Business Operator violates an order under the preceding paragraph, the Prime Minister may order the Specified Major Shareholder to take measures so that it will cease to be the Major Shareholder of said Financial Instruments Business Operator or to take other necessary measures within a fixed period of no longer than three months.

(Notification of Having Ceased to Be a Major Shareholder)

Article 32-3 (1) If the Major Shareholder of a Financial Instruments Business

Operator ceases to be the Major Shareholder of said Financial Instruments Business Operator, it must notify the Prime Minister of this without delay.

- (2) If the Specified Major Shareholder of a Financial Instruments Business Operator becomes a Major Shareholder other than the Specified Major Shareholder of said Financial Instruments Business Operator, it shall notify the Prime Minister of this without delay, pursuant to the provisions of Cabinet Office Ordinance.

(Mutatis Mutandis Application of Provisions on Major Shareholders)

Article 32-4 The provisions of Article 32, paragraphs (1) and (2), Article 32-2, paragraph (1) and paragraph (1) of the preceding Article apply mutatis mutandis to the shareholders or equity investors of a Holding Company that has a Financial Instruments Business Operator as its Subsidiary Company (meaning a Subsidiary Company as prescribed in Article 29-4, paragraph (3)).

#### **Subsection 4 Registered Financial Institutions**

(Prohibition on Engagement in Securities Services by Financial Institutions)

Article 33 (1) It is prohibited for a bank or Cooperative Financial Institution, or for any other financial institution specified by Cabinet Order (hereinafter collectively referred to as a "Financial Institution" in this Article, the following Article and Article 201) to engage in Securities Services or Investment Management Business; provided, however, that with regard to Securities Services, this does not apply if the Financial Institution conducts the sale and purchase of Securities or Transactions of Securities-Related Derivatives for the purpose of investment pursuant to the provisions of other Acts or on the account of a person that entrusts it to do so based on a trust contract.

- (2) The provisions of the main clause of the preceding paragraph do not apply if a Financial Institution conducts brokerage with written orders (meaning conducting a purchase and sale of Securities or a Transaction of Securities-Related Derivatives on a customer's account upon receiving written orders from the customer, and excluding transactions conducted based on its solicitation of a customer for such an order and transactions conducted upon the receipt of an order from the customer in connection with the Financial Institution's Investment Advisory Business; the same applies in item (i) of the following Article) or performs the act set forth in the relevant of the following items in connection with the Securities or transactions set forth in that item:
- (i) Securities set forth in Article 2, paragraph (1), items (i) and (ii); Securities set forth in Article 2, paragraph (1), item (iii) (limited to those for which the government guarantees the redemption of the principal or the payment of interest, short-term bonds prescribed in Article 54-4, paragraph (1) of the



- Credit Union Act (Act No. 238 of 1951), and short-term agriculture and forestry bonds prescribed in Article 62-2, paragraph (1) of the Agriculture and Forestry Credit Union Act (Act No. 93 of 2001)); Securities set forth in Article 2, paragraph (1), item (iv); Securities set forth in Article 2, paragraph (1), item (v) (limited to those for which the government guarantees the redemption of the principal or the payment of interest, and short-term corporate bonds prescribed in Article 66, paragraph (1) of the Act on the Transfer of Corporate Bonds, etc. or those specified by Cabinet Order as similar to these); Securities set forth in Article 2, paragraph (1), item (viii); Securities set forth in Article 2, paragraph (1), item (xi) (limited to short-term investment corporation bonds prescribed in Article 139-12, paragraph (1) of the Act on Investment Trusts and Investment Corporations and those specified by Cabinet Order as similar to these; referred to as "Short-Term Investment Corporation Bonds, etc." in the following item); Securities set forth in Article 2, paragraph (1), items (xii) to (xiv) inclusive; Securities set forth in Article 2, paragraph (1), item (xv) (limited to those with a term between the day of issuance and the day of redemption of less than one year); Securities set forth in Article 2, paragraph (1), item (xvi); Securities specified by Cabinet Order among those set forth in Article 2, paragraph (1), item (xvii); Securities set forth in Article 2, paragraph (1), item (xviii); Securities specified by Cabinet Order among those set forth in Article 2, paragraph (1), item (xxi); and rights set forth in the items of Article 2, paragraph (2) that are deemed to be Securities pursuant to the provisions of that paragraph (excluding rights specified by Cabinet Order set forth in item (iv)): acts set forth in Article 2, paragraph (8), items (i) to (iii) inclusive, (vi), (viii), and (ix);
- (ii) Securities set forth in Article 2, paragraph (1), items (x) and (xi) (excluding Short-Term Investment Corporation Bonds, etc.): acts set forth in Article 2, paragraph (8), items (i) to (iii) inclusive, and acts set forth in Article 2, paragraph (8), item (ix) (excluding dealings in a Secondary Distribution of Securities and in an exclusive Offer to Sell, etc. to Professional Investors);
- (iii) Securities set forth in Article 2, paragraph (1), item (xvii) that have the nature set forth in Article 2, paragraph (1), item (i): the following acts:
- (a) Market Transactions of Derivatives, Foreign Market Derivatives Transaction, and acts set forth in Article 2, paragraph (8), item (ii) or (iii) in connection with these transactions;
  - (b) dealings in a Private Placement; and
  - (c) acts set forth in Article 2, paragraph (11), items (i) to (iii) inclusive (excluding those set forth in sub-items (a) and (b)) that the Financial Institution is entrusted with by a Financial Instruments Business Operator (limited to those engaged in Type I Financial Instruments

- Business) and performs for said Financial Instruments Business Operator.
- (iv) Securities other than those set forth in the preceding three items, and rights set forth in Article 2, paragraph (2), items (iii) and (iv) that are deemed to be Securities pursuant to the provisions of Article 2, paragraph (2) and that are specified by Cabinet Order: the following acts:
    - (a) dealings in a Private Placement (excluding those involving Securities specified by Cabinet Order); and
    - (b) acts set forth in Article 2, paragraph (11), items (i) to (iii) inclusive (excluding those set forth in sub-item (a)) that the Financial Institution is entrusted with by a Financial Instruments Business Operator (limited to those engaged in Type I Financial Instruments Business) and performs for said Financial Instruments Business Operator.
  - (v) the following transactions: acts set forth in Article 2, paragraph (8), item (iv) (with regard to transactions set forth in sub-item (b), excluding those that fall under the category of cases specified by Cabinet Order as those in which the transaction is conducted with a large number of persons as the other parties thereto):
    - (a) Over-the-Counter Transactions of Derivatives of Securities set forth in item (i) (including indices calculated by the method agreed upon between the parties based on the prices of two or more Securities connected with the relevant Securities); and
    - (b) Over-the-Counter Transactions of Derivatives that are connected with the Securities set forth in the preceding three items (including indices calculated by the method agreed between the parties based on prices of two or more Securities pertaining to said Securities), and that can only be settled through the delivery and receipt of the difference in prices.
  - (vi) the purchase and sale of Securities, Transactions of Securities-Related Derivatives, and other transactions specified by Cabinet Order: Brokerage for Clearing of Securities, etc.
- (3) The provisions of Article 29 do not apply if a Financial Institution performs acts other than those set forth in Article 28, paragraph (8), items (iii) to (vi) inclusive (hereinafter referred to as "Transactions of Securities-Related Derivatives, etc.") among the following acts (hereinafter referred to as "Derivatives Transactions, etc.") on a regular basis, performs acts other than those set forth in Article 28, paragraph (8), item (vii) among those specified in Article 2, paragraph (8), item (v) on a regular basis, performs acts set forth in Article 2, paragraph (8), item (vii) on a regular basis, or provides Investment Advisory and Agency Business or Securities, etc. Management:
- (i) Market Transactions of Derivatives, etc. (meaning Market Transactions of Derivatives and acts set forth in Article 2, paragraph (8), item (ii) or (iii) in connection with the same);

- (ii) Over-the-Counter Transactions of Derivatives, etc.; and
- (iii) Foreign Market Derivatives Transaction, etc. (meaning Foreign Market Derivatives Transaction and acts set forth in Article 2, paragraph (8), item (ii) or (iii) in connection with the same).

(Registration of Financial Institutions)

Article 33-2 A Financial Institution must be registered by the Prime Minister if it seeks to perform any of the following acts on a regular basis, or if it seeks to provide Investment Advisory and Agency Business or engage in Securities, etc. Management:

- (i) brokerage with written orders;
- (ii) an act specified in one of the items of paragraph (2) of the preceding Article in connection with the Securities or transactions set forth in the relevant item (excluding those falling under the proviso to paragraph (1) of that Article);
- (iii) Derivatives Transactions, etc. other than Transactions of Securities-Related Derivatives, etc. (excluding those conducted for the purpose of investment pursuant to the provisions of other Acts or on the account of a person that entrusts the Financial Institution to do so based on a trust contract and Commodity-Related Market Transactions of Derivatives)), or acts other than those set forth in Article 28, paragraph (8), item (vii) among those specified in Article 2, paragraph (8), item (v); or
- (iv) acts set forth in Article 2, paragraph (8), item (vii).

(Application for the Registration of a Financial Institution)

Article 33-3 (1) A person seeking the registration referred to in the preceding Article must submit a written application for registration to the Prime Minister, in which it states the following particulars:

- (i) its trade name or name;
- (ii) the amount of stated capital, the total amount of funds, or the total amount of contributions;
- (iii) the names of its officers;
- (iv) the names of its accounting advisors, if it is a company with accounting advisors;
- (v) if the person provides an Electronic Public Offering Service with regard to Securities set forth in the items of Article 3 or Securities not listed on a Financial Instruments Exchange (excluding those specified by Cabinet Order as prescribed in Article 29-2, paragraph (1), item (vi)), an indication of this;
- (vi) the names and locations of its head office and other business offices or offices;
- (vii) if the person engages in other business, the business type; and

- (viii) other particulars specified by Cabinet Office Ordinance.
- (2) The following documents must accompany the written application for registration referred to in the preceding paragraph:
- (i) a document pledging that the applicant does not fall under Article 33-5, paragraph (1), items (i) and (ii);
  - (ii) a document stating the person's way of managing the risk of loss, the way that duties are divided, and the other things specified by Cabinet Office Ordinance as constituting the business outline and business methods;
  - (iii) a document stating the things specified by Cabinet Office Ordinance as constituting the person's status as a Parent Corporation, etc., Subsidiary Corporation, etc., or other affiliated company; and
  - (iv) its articles of incorporation, certificate of registered information, balance sheet, profit and loss statement, and other documents specified by Cabinet Office Ordinance, other than those that are set forth in the preceding three items.
- (3) As concerns the documents set forth in item (iv) of the preceding paragraph accompanying a written application for registration, if the articles of incorporation or balance sheet have been prepared as electronic or magnetic records or if electronic or magnetic records have been prepared for a profit and loss statement in lieu of a written document, such electronic or magnetic records (limited to those specified by Cabinet Office Ordinance) may accompany the written application for registration in lieu of the written documents.

(Registration in a Financial Institutions Register)

- Article 33-4 (1) Whenever an application is filed for the registration referred to in Article 33-2, unless the Prime Minister refuses the registration pursuant to the provisions of paragraph (1) of the following Article, the Prime Minister shall register the following particulars in a financial institutions register:
- (i) the particulars set forth in the items of paragraph (1) of the preceding Article; and
  - (ii) the date of registration and the registration number.
- (2) The Prime Minister must make the financial institutions register available for public inspection.

(Refusal etc. to Register a Financial Institution)

- Article 33-5 (1) The Prime Minister must refuse to effect a registration if the applicant for registration falls under one of the following items (with regard to item (iii), this excludes if the applicant seeks to conduct only Investment Advisory and Agency Business), or if the written application for registration or a document or electronic or magnetic record that is required to accompany it

contains a false statement or record or omits a statement or record of a material fact:

- (i) a person that has had the registration referred to in Article 33-2 rescinded pursuant to the provisions of Article 52-2, paragraph (1); that has had the registration referred to in Article 66 rescinded pursuant to the provisions of Article 66-20, paragraph (1); or that has had the registration referred to in Article 66-27 rescinded pursuant to Article 66-42, paragraph (1); if five years have not yet passed since the date of that rescission; or a person that had obtained a registration of the same kind in a foreign state pursuant to the provisions of a foreign law or regulation that is equivalent to this Act (including permission or any other administrative disposition similar to such a registration), but that has had that registration rescinded, if five years have not yet passed since the date of the rescission;
- (ii) a person that has been sentenced to a fine (including an equivalent sentence under foreign laws and regulations) for violating the provisions of this Act; the Secured Bonds Trust Act; the Act on Engagement in Trust Business by a Financial Institution; the Commodity Futures Act; the Act on Investment Trusts and Investment Corporations; the Real Estate Brokerage Act; the Act Regulating the Receipt of Contributions, the Receipt of Deposits, and Interest Rates; the Installment Sales Act; the Money Lending Business Act; the Act on the Deposit, etc. Transaction Agreements of Specified Commodities, etc.; the Act Regulating Business Involving Commodity Investment; the Specified Joint Real Estate Ventures Act; the Act on the Securitization of Assets; the Act on Corporate Bond Issuance for Financial Corporations' Loan Business; the Trust Business Act; or any other Act specified by Cabinet Order, or for violating the provisions of a foreign law or regulation that is equivalent to one of these Acts, if five years have not yet passed since the day on which the person finished serving the sentence or ceased to be subject to its enforcement;
- (iii) a person that does not have a sufficient personnel structure to perform the services of a registered financial institution (meaning business in connection with the registration set forth in Article 33-2; the same applies hereinafter) in an appropriate manner;
- (iv) a person that has not joined an Association and that has not prepared internal rules (meaning rules with which said person or its officers or employees should comply) that have contents equivalent to the articles of incorporation or other rules (limited to those for ensuring fair and smooth purchase and sales and other transactions of Securities or ensuring fair and smooth Derivatives Transactions, etc. or for protecting investors) of the Association or that has not established a system for complying with said internal rules;

(v) a person that is found not to have in place the necessary system for performing Services of a Registered Financial Institution in an appropriate manner.

(2) If the Prime Minister registers that a bank or Cooperative Financial Institution, or any other financial institution specified by Cabinet Order, performs the act specified in Article 33, paragraph (2), item (v) in connection with transactions set forth in that item on a regular basis, the Prime Minister must add the conditions specified by Cabinet Office Ordinance within the necessary scope for ensuring fair transactions in connection with share certificates.

#### (Notification of a Change)

Article 33-6 (1) If the particulars set forth in one of the items of Article 33-3, paragraph (1) changes, the registered financial institution must notify the Prime Minister of this within two weeks from the day of the change.

(2) Upon accepting a notification under the preceding paragraph, the Prime Minister shall register the particulars given in the notification in a financial institutions register.

(3) If the business outline or business methods that a registered financial institution has stated in the documents set forth in Article 33-3, paragraph (2), item (ii) change, the registered financial institution must notify the Prime Minister of this without delay pursuant to the provisions of Cabinet Office Ordinance.

#### (Provisions on Interpretation)

Article 33-7 The provisions of Article 33 do not preclude the Prime Minister from granting the registration referred to in Article 29 or the authorization referred to in Article 30, paragraph (1) to a person in which a bank or Cooperative Financial Institution, or any other financial institution specified by Cabinet Order, holds the majority of all shareholders', etc. voting rights

#### (Special Provisions, etc. for When Trust Business Is Engaged In)

Article 33-8 (1) With regard to the application of the provisions of Article 33, paragraphs (1) and (2); Article 33-2; and Article 52-2, paragraph (1), item (iv) if a bank or Cooperative Financial Institution, or any other financial institution specified by Cabinet Order, is a financial institution that has obtained the authorization referred to in Article 1, paragraph (1) of the Act on Engagement in Trust Business by a Financial Institution, in Article 33, paragraph (1), the phrase "Securities Services or Investment Management Business" is deemed to be replaced with "Securities Services"; in Article 33, paragraph (2), the term "excluding transactions conducted based on its solicitation of a customer for

such an order and transactions conducted upon the receipt of an order from the customer in connection with the Financial Institution's Investment Advisory Business" is deemed to be replaced with "excluding transactions conducted based on its solicitation of a customer for such an order"; in Article 33-2, the term "Investment Advisory and Agency Business or Securities, etc. Management" is deemed to be replaced with "Investment Advisory and Agency Business, Investment Management Business (excluding the business of performing the acts set forth in Article 2, paragraph (8), item (xiv) or (xv) (limited to acts performed with the money under these provisions or other properties held as trust property); hereinafter the same applies in this Chapter), or Securities, etc. Management"; and in Article 52-2, paragraph (1), item (iv), the term "Investment Advisory and Agency Business" is deemed to be replaced with "Investment Advisory and Agency Business or Investment Management Business".

- (2) The provisions of Article 29 do not apply if a person set forth in one of the following items acts as the agent for a registered financial institution in providing the services prescribed in the relevant item (hereinafter referred to as "Specified Financial Instruments Business" in this Article) pursuant to the provisions of Cabinet Order. In this case, the person that provides Specified Financial Instruments Business is deemed to be an employee of the registered financial institution that the person acts as the agent for, and the provisions of this Act apply:
- (i) a person that acts as the agent for a registered financial institution and that is specified by Cabinet Order: the business of performing acts specified in Article 33, paragraph (2), item (ii) with regard to Securities set forth in that item;
  - (ii) a person that acts as agent for a registered financial institution and that is set forth in the following: among transactions set forth in Article 2, paragraph (22), item (ii) that are connected with the Financial Indicators set forth in Article 2, paragraph (25), item (ii), the business of performing acts in which the registered financial institution promises to receive money from the other party to a transaction and to pay the other party the amount of money calculated based on the difference between the Agreed Figure and the Actual Figure (but only if said other party has no risk of incurring a loss exceeding the amount of money the other party has paid in advance due to the fluctuation of a Financial Indicator set forth in Article 2, paragraph (25), item (ii));
    - (a) a Non-life Insurance Agent (meaning a Non-life Insurance Agent as prescribed in Article 2, paragraph (21) of the Insurance Business Act; hereinafter the same applies in this item) that is an individual;
    - (b) the employee of an individual Non-life Insurance Agent, for which the

- notification under the provisions of Article 302 of the Insurance Business Act has been made;
- (c) the officer or employee of a corporate Non-life Insurance Agent, for which a notification under the provisions of Article 302 of the Insurance Business Act has been made; and
  - (d) an officer that holds the authority of representation for a corporate Non-life Insurance Agent.
- (3) A registered financial institution for which a person that provides Specified Financial Instruments Business acts as an agent is liable for the damages that the person causes to a customer in connection with Specified Financial Instruments Transaction Services; provided, however, that this does not apply if the registered financial institution exercises due care in appointing the person, and endeavors to prevent the damage that the person causes to a customer in connection with the Specified Financial Instruments Business that the person performs.

### **Subsection 5 Professional Investors**

(Obligation to Notify Professional Investors)

Article 34 If a Financial Instruments Business Operator, etc. (meaning a Financial Instruments Business Operator or registered financial institution; the same applies hereinafter) receives an offer from a Professional Investor (limited to one set forth in Article 2, paragraph (31), item (iv)) for a contract for the Financial Instruments Business Operator, etc. to perform an act that constitutes a Financial Instruments transaction (meaning an act as set forth in the items of Article 2, paragraph (8); the same applies hereinafter) with the customer as the other party or on behalf of the customer (hereinafter such contract is referred to as a "Financial Instruments Transaction Contract"), and has never in the past concluded a Financial Instruments Transaction Contract with that Professional Investor of a type specified by Cabinet Office Ordinance as constituting the same contract type as the Financial Instruments Transaction Contract to which the offer pertains (hereinafter referred to as a "Contract Type" in this Subsection), the Financial Instruments Business Operator, etc., before concluding the Financial Instruments Transaction Contract to which the offer pertains, must notify that Professional Investor that the Professional Investor may make a request under the provisions of paragraph (1) of the following Article.

(Cases in Which a Professional Investor Is Deemed to Be a Customer Other Than a Professional Investor)

Article 34-2 (1) For each Contract Type, a Professional Investor (limited to one



as set forth in Article 2, paragraph (31), item (iv)) may request a Financial Instruments Business Operator, etc. to treat the Professional Investor as a customer other than a Professional Investor with regard to Financial Instruments Transaction Contracts that are of the same Contract Type.

- (2) Upon receiving a request under the provisions of the preceding paragraph, a Financial Instruments Business Operator, etc. must approve that request by the time it solicits the conclusion of the first Financial Instruments Transaction Contract thereafter that is of the same Contract Type as that to which the request pertains (hereinafter referred to as a "Subject Contract" in this Article) or by the time it concludes such a contract.
- (3) Before a Financial Instruments Business Operator, etc. approves a request pursuant to the provisions of the preceding paragraph, it shall deliver a document stating the following particulars to the Professional Investor that submitted the request under paragraph (1) (hereinafter referred to as a "Applicant" in this Article):
  - (i) the day on which the request is approved pursuant to the provisions of the preceding paragraph (hereinafter referred to as the "Approval Date" in this Article);
  - (ii) the Contract Type to which the Subject Contract belongs;
  - (iii) an indication that it will treat the Applicant as a customer other than a Professional Investor if it solicits the Applicant to conclude a Subject Contract or concludes a Subject Contract with the Applicant on or after the Approval Date; and
  - (iv) other particulars specified by Cabinet Office Ordinance.
- (4) With the consent of the Applicant and pursuant to the provisions of Cabinet Order, in lieu of delivering the document under the provisions of the preceding paragraph, a Financial Instruments Business Operator, etc. may provide the Applicant with the particulars that are required to be stated in that document by means of an electronic data processing system or by any other means of information and communications technology specified by Cabinet Office Ordinance. In doing this, the Financial Instruments Business Operator, etc. is deemed to have delivered the document.
- (5) With regard to the application of the provisions of this Act (excluding Article 29-5, paragraph (3) and this Subsection) if a Financial Instruments Business Operator, etc. gives the approval under the provisions of paragraph (2) or delivers the document under the provisions of paragraph (3), and the Applicant is a person set forth in one of the following items, the Applicant is deemed to be a customer other than a Professional Investor:
  - (i) the other party to the Financial Instruments Business Operator's, etc. solicitation to conclude a Subject Contract on or after the Approval Date; or
  - (ii) the other party with which the Financial Instruments Business Operator,

- etc. concludes a Subject Contract on or after the Approval Date.
- (6) If the preceding paragraph applies to an Applicant with regard to the conclusion of a Subject Contract (limited to one that entails the Financial Instruments Business Operator, etc. acting as an agent as provided in Article 2, paragraph (8), items (ii) to (iv) inclusive, (x) and (xiii); hereinafter referred to as a "Specified Subject Contract" in this paragraph and paragraph (8)), before the Financial Instruments Business Operator, etc. concludes a Financial Instruments Transaction Contract on behalf of the Applicant based on the Specified Subject Contract, the Financial Instruments Business Operator, etc. must notify the other Financial Instruments Business Operator, etc. with which the Financial Instruments Transaction Contract is to be concluded (hereinafter referred to as the "Counterparty Financial Instruments Business Operator, etc." in the following paragraph and paragraph (8)) that the Applicant is deemed to be a customer other than a Professional Investor in connection with the Financial Instruments Transaction Contract.
- (7) If a Financial Instruments Business Operator, etc. gives a notification under the preceding paragraph, the provisions of the preceding Article do not apply to the Counterparty Financial Instruments Business Operator, etc.
- (8) If a Financial Instruments Business Operator, etc. that has concluded a Specified Subject Contract gives a notification under the provisions of paragraph (6), the Applicant is deemed to be a customer other than a Professional Investor with regard to any Financial Instruments Transaction Contract that the Financial Instruments Business Operator, etc. concludes with the Counterparty Financial Instruments Business Operator, etc. on behalf of the Applicant based on the Specified Subject Contract, and the provisions of this Act (excluding Article 29-5, paragraph (3) and this Subsection) apply.
- (9) If an Applicant newly becomes a Qualified Institutional Investor on or after the Approval Date, the provisions of paragraphs (5) to (9) inclusive do not apply to the Applicant on or after the day on which the Applicant becomes a Qualified Institutional Investor.
- (10) An Applicant may request a Financial Instruments Business Operator, etc. to treat the Applicant as a Professional Investor again with regard to Subject Contracts, at any time on or after the Approval Date;
- (11) Before approving a request under the preceding paragraph, a Financial Instruments Business Operator, etc. must obtain the written consent of the person making that request (such person is referred to as the "Person Requesting Reinstatement" in the following paragraph), on a document that states the day on which the request has the approval under this paragraph and any other particulars specified by Cabinet Office Ordinance.
- (12) With the agreement of the Person Requesting Reinstatement and pursuant to the provisions of Cabinet Order, in lieu of obtaining the written consent

under the preceding paragraph, a Financial Instruments Business Operator, etc. may obtain written consent by means of an electronic data processing system or any other means of information and communications technology that is specified by Cabinet Office Ordinance. In doing this, the Financial Instruments Business Operator, etc. is deemed to have obtained written consent.

- (13) If a Financial Instruments Business Operator, etc. gives the approval under paragraph (11), the provisions of paragraphs (5), (6), and (8) do not apply during the period from the day on which it gives the approval under paragraph (11) until the day immediately preceding the day on which it gives the new approval pursuant to paragraph (2).

(When a Customer Other than a Professional Investor Is a Corporation and That Corporation Is Deemed to Be a Professional Investor)

Article 34-3 (1) For each Contract Type, a corporation (excluding a Professional Investor) may request a Financial Instruments Business Operator, etc. to treat it as a Professional Investor with regard to Financial Instruments Transaction Contracts that are of the same Contract Type.

- (2) Before approving a request under the preceding paragraph, a Financial Instruments Business Operator, etc. must obtain the written consent of the corporation making the request (hereinafter referred to as the "Applicant" in this Article), on a document that states the following particulars. In this, it shall make the End Date provided for in item (ii) the day on which one year elapses counting from the Approval Date provided for in item (i) (or, in a case specified by Cabinet Office Ordinance, a day before that one year elapses, which is specified by Cabinet Office Ordinance):

- (i) the day on which it gives the approval under this paragraph (hereinafter referred to as the "Approval Date" in this Article);
- (ii) the last day of the period during which it will treat the Applicant as a Professional Investor in soliciting the Applicant to conclude a Financial Instruments Transaction Contract that is of the same Contract Type as the one to which the request pertains (hereinafter such a contract is referred to as a "Subject Contract" in this Article; hereinafter such day is referred to as the "End Date" in this Article) or in concluding a Subject Contract with said Applicant before the End Date;
- (iii) the Contract Type to which the Subject Contract belongs;
- (iv) an indication that the Applicant understands the following particulars:
  - (a) particulars specified by Cabinet Office Ordinance as special provisions for the application of this Act if a Professional Investor is solicited to conclude a Subject Contract by a Financial Instruments Business Operator, etc., if a Professional Investor offers a Subject Contract to the Financial

- Instruments Business Operator, etc., or concludes a Subject Contract with the Financial Instruments Business Operator, etc.; and
- (b) an indication of the risk of insufficient protection involved, if a person that it is inappropriate to treat as a Professional Investor in connection with the Subject Contracts, in light of its knowledge, experience, and the state of its assets, will be treated as a Professional Investor.
  - (v) an indication that it will treat the Applicant as a Professional Investor in soliciting the Applicant to conclude a Subject Contract before the End Date or in concluding a Subject Contract with the Applicant before the End Date;
  - (vi) an indication that it will treat the Applicant as a customer other than a Professional Investor in soliciting the Applicant to conclude a Subject Contract after the End Date or in concluding a Subject Contract with the Applicant after the End Date; and
  - (vii) other particulars specified by Cabinet Office Ordinance.
- (3) The provisions of paragraph (12) of the preceding Article apply mutatis mutandis to the written consent under the preceding paragraph.
- (4) With regard to the application of the provisions of this Act (excluding Article 29-5, paragraph (3) and this Subsection) if a Financial Instruments Business Operator, etc. gives the approval under paragraph (2), the Applicant gives the written consent under that paragraph, and the Applicant is a person set forth in one of the following items, the Applicant is deemed to be a Professional Investor:
- (i) a person that the Financial Instruments Business Operator, etc. solicits to conclude a Subject Contract during the period from the Approval Date to the End Date; or
  - (ii) a person with which the Financial Instruments Business Operator, etc. concludes a Subject Contract during the period from the Approval Date to the End Date.
- (5) If the preceding paragraph applies to an Applicant in connection with the conclusion of a Subject Contract (limited to one that entails the Financial Instruments Business Operator, etc. acting as an agent as provided in Article 2, paragraph (8), items (ii) to (iv) inclusive, (x) and (xiii); hereinafter referred to as a "Specified Subject Contract" in this and the following paragraphs), and the Financial Instruments Business Operator, etc., acting as the Applicant's agent based on that Specified Subject Contract, concludes a Financial Instruments Transaction Contract before the Approval Date, it must notify the Counterparty Financial Instruments Business Operator, etc. with which the Financial Instruments Transaction Contract is to be concluded (referred to as the "Counterparty Financial Instruments Business Operator, etc." in the following paragraph) in advance, that the Applicant is deemed to be a Professional Investor with regard to the Financial Instruments Transaction

Contract.

- (6) If a Financial Instruments Business Operator, etc. that has concluded a Specified Subject Contract gives a notification under the preceding paragraph, the Applicant is deemed to be a Professional Investor with regard to a Financial Instruments Transaction Contract that the Financial Instruments Business Operator, etc. concludes with the Counterparty Financial Instruments Business Operator, etc. while acting as the agent of the Applicant pursuant to the Specified Subject Contract (limited to a Financial Instruments Transaction Contract concluded before the End Date), and the provisions of this Act (excluding Article 29-5, paragraph (3) and this Subsection) apply.
- (7) If the Applicant makes a request under paragraph (1) before the End Date for the same Contract Type as the Subject Contracts (such a request is referred to as the "Request for Renewal" in the following paragraph), the Applicant must do so on or after the day on which the period specified by Cabinet Office Ordinance elapses counting from the Approval Date.
- (8) With regard to the application of the provisions of paragraph (2) and the preceding paragraph if an Applicant makes a Request for Renewal, in paragraph (2), the phrase "Approval Date prescribed in item (i)" is deemed to be replaced with "day following the previous End Date" and in the preceding paragraph, the term "Approval Date" is deemed to be replaced with "day following the previous End Date".
- (9) An Applicant may request a Financial Instruments Business Operator, etc. to treat it as a customer other than a Professional Investor again with regard to Subject Contracts, at any time on or after the Approval Date.
- (10) After receiving a request under the provisions of the preceding paragraph, a Financial Instruments Business Operator, etc. must approve said request by the time it solicits the conclusion of the first Subject Contract thereafter or by the time it first concludes such a contract thereafter.
- (11) Before approving a request pursuant to the provisions of the preceding paragraph, a Financial Instruments Business Operator, etc. must deliver a document stating the day on which it gives the approval under the preceding paragraph and any other particulars specified by Cabinet Office Ordinance to the corporation that submitted the request under paragraph (9).
- (12) The provisions of paragraph (4) of the preceding Article apply *mutatis mutandis* to the delivery of documents under the preceding paragraph.
- (13) If a Financial Instruments Business Operator, etc. gives the approval under paragraph (10), the provisions of paragraphs (4) to (9) inclusive do not apply for the period from the day of approval under paragraph (10) to the day immediately preceding the day on which it newly gives approval under paragraph (2).

(When a Customer Other Than a Professional Investor Is an Individual and That Individual Is Deemed to Be a Professional Investor)

Article 34-4 (1) For each Contract Type, an individual set forth in the following (excluding Qualified Institutional Investors) may request a Financial Instruments Business Operator, etc. to treat that individual as a Professional Investor with regard to Financial Instruments Transaction Contracts that are of the same Contract Type:

- (i) an individual that is the proprietor of a business and that has concluded an silent partnership agreement as prescribed in Article 535 of the Commercial Code (excluding those specified by Cabinet Office Ordinance), or any other individual specified by Cabinet Office Ordinance as being similar thereto; and
  - (ii) an individual other than one set forth in the preceding item, which satisfies the requirements specified by Cabinet Office Ordinance as a person equivalent to a Professional Investor, in light of such individual's knowledge and experience and the state of that individual's assets.
- (2) If a Financial Instruments Business Operator, etc. receives a request under the preceding paragraph, it must deliver a document stating the particulars set forth in paragraph (2), item (iv), sub-items (a) and (b) of the preceding Article to the individual that submitted the request (hereinafter referred to as a "Applicant" in this Article), and must confirm that the Applicant falls under one of the categories of persons set forth in the items of the preceding paragraph.
- (3) The provisions of Article 34-2, paragraph (4) apply mutatis mutandis to the delivery of a document under the preceding paragraph.
- (4) An Applicant may request a Financial Instruments Business Operator, etc. to treat it as a customer other than a Professional Investor again with regard to Financial Instruments Transaction Contracts that are of the same Contract Type as the one to which the request under paragraph (1) pertains, at any time on or after the day on which the Financial Instruments Business Operator, etc. gives the approval under paragraph (2) of the preceding Article as applied mutatis mutandis pursuant to paragraph (6).
- (5) After receiving a request under the provisions of the preceding paragraph, a Financial Instruments Business Operator, etc. must approve said request by the time it solicits the conclusion of the first Financial Instruments Transaction Contract thereafter that is of the Contract Type to which the request pertains, or by the time it concludes the first such contract thereafter.
- (6) The provisions of paragraphs (2) to (8) inclusive of the preceding Article apply mutatis mutandis if a Financial Instruments Business Operator, etc. approves a request under paragraph (1), and the provisions of paragraphs (11) to (13) inclusive of that Article apply mutatis mutandis if a Financial Instruments

Business Operator, etc. approves a request under paragraph (4). In this case, in Article 34-3, paragraph (2), the phrase "the corporation making the request" is deemed to be replaced with "the Applicant under paragraph (2) of the following Article"; in Article 34-3, paragraph (4), the phrase "the approval under paragraph (2)" is deemed to be replaced with "the delivery of a document and the confirmation under paragraph (2) of the following Article and the approval under paragraph (2)"; in Article 34-3, paragraph (7), the term "paragraph (1)" is deemed to be replaced with "paragraph (1) of the following Article"; in Article 34-3, paragraph (11), the phrase "the preceding paragraph" is deemed to be replaced with "paragraph (5) of the following Article" and the phrase "the corporation that submitted the request under paragraph (9)" is deemed to be replaced with "the individual that submitted the request under paragraph (4) of that Article"; in Article 34-3, paragraph (13), the term "paragraph (10)" is deemed to be replaced with "paragraph (5) of the following Article", the phrase "gives approval under paragraph (2)" is deemed to be replaced with "delivers the documents and makes the confirmation under the provisions of paragraph (2) of that Article, as well as giving approval under paragraph (2)", and the term "(9) inclusive" is deemed to be replaced with "(8) inclusive and paragraph (4) of the following Article"; and any other necessary technical replacement of terms is specified by Cabinet Order.

(Delegation to Cabinet Order)

Article 34-5 Beyond what is provided for in this Subsection, procedures for if a Professional Investor is deemed to be a customer other than a Professional Investor or if a customer other than a Professional Investor is deemed to be a Professional Investor and necessary particulars otherwise relevant to the application of the provisions of this Subsection are specified by Cabinet Order.

## **Section 2 Services**

### **Subsection 1 General Rules**

(Scope of Services for Persons Engaged in Type I Financial Instruments Business or Investment Management Business)

Article 35 (1) A Financial Instruments Business Operator (limited to one engaged in Type I Financial Instruments Business or Investment Management Business; hereinafter the same applies in this Article), in addition to the Financial Instruments Business, may perform the following acts on a regular basis and provide any other services incidental to the Financial Instruments Business:

- (i) the lending and borrowing of Securities, or intermediation or agency for the same;

- (ii) money lending incidental to margin transactions prescribed in Article 156-24, paragraph (1);
- (iii) money lending secured by Securities that are deposited for safe custody by customers (limited to those specified by Cabinet Office Ordinance);
- (iv) the provision of agency for customers in connection with Securities;
- (v) the provision of agency for services by the settlor company of an investment trust defined in Article 2, paragraph (11) of the Act on Investment Trusts and Investment Corporations, which involve the payment of earnings, redemption moneys, or cancellation moneys in connection with Securities set forth in Article 2, paragraph (1), item (x), or for services by such a settler company which involve the delivery of Securities or any other assets that are among trust property in connection with the relevant Securities;
- (vi) the provision of agency for services by an investment corporation as defined in Article 2, paragraph (12) of the Act on Investment Trusts and Investment Corporations, which involve the distribution of money, the distribution of refunds or residual assets, or the payment of interest or redemption moneys in connection with Securities set forth in Article 2, paragraph (1), item (xi) conducted;
- (vii) the conclusion of a contract for cumulative investment (meaning a contract in which a Financial Instruments Business Operator (limited to one that engages in Securities, etc. Management) receives money deposited by a customer and sells Securities to that customer continuously on dates designated in advance while receiving consideration from that money) (limited to contracts specified by Cabinet Office Ordinance);
- (viii) the provision of information or advice in relation to Securities (excluding acts falling under Article 2, paragraph (8), item (xi));
- (ix) the provision of agency for services by a Counterparty Financial Instruments Business Operator, etc. (limited to agency involving the Financial Instruments Business (including services of a registered financial institution conducted by a registered financial institution) and any other services incidental to the Financial Instruments Business (excluding services prescribed in this item), which the relevant Financial Instruments Business Operator, etc. may conduct, and excluding those specified in item (v) above);
- (x) the retention of the assets of a registered investment corporation as defined in Article 2, paragraph (13) of the Act on Investment Trusts and Investment Corporations;
- (xi) the provision of consultation to any other person or firm in business with regard to a business transfer, merger, company split, share exchange, or share transfer, or intermediation in connection with the same;
- (xii) the provision of consultation to any other person or firm in business with regard to management;



- (xiii) the purchase and sale of currencies and other assets specified by Cabinet Order as being related to Derivatives Transactions (excluding Transactions of Securities-Related Derivatives) or intermediation, brokerage, or agency for the same;
  - (xiv) the purchase and sale of negotiable deposits and other monetary claims (excluding those that fall under the category of Securities), or intermediation, brokerage, or agency for the same; and
  - (xv) investment of invested assets (meaning money and other property invested by a Financial Instruments Business Operator, etc. that engages in Investment Management Business on behalf of a rights holder as provided for in Article 42, paragraph (1), as investments in the following assets; the same applies hereinafter):
    - (a) specified assets defined in Article 2, paragraph (1) of the Act on Investment Trusts and Investment Corporations (excluding real estate and other assets specified by Cabinet Order); and
    - (b) assets specified by Cabinet Order other than those set forth in sub-item (a).
- (2) A Financial Instruments Business Operator, in addition to the Financial Instruments Business and other services provided pursuant to the provisions of the preceding paragraph, may provide the following services:
- (i) services connected with transactions on a commodity market, etc. defined in Article 2, paragraph (21) of the Commodity Futures Act;
  - (ii) services connected with transactions conducted by using fluctuations in Commodity prices and other indicators, market gaps, etc. as specified by Cabinet Office Ordinance (other than services already specified in the preceding item);
  - (iii) services connected with the money lending business as defined in Article 2, paragraph (1) of the Money Lending Business Act or other money loans, or intermediation for the lending and borrowing of money;
  - (iv) services connected with real estate brokerage as defined in Article 2, item (ii) of the Real Estate Brokerage Act or with the lease of real estate prescribed in item (i) of that Article;
  - (v) specified joint real estate ventures as defined in Article 2, paragraph (4) of the Specified Joint Real Estate Ventures Act;
  - (v)-2 services for investing money or other assets on behalf of another person, by means of commodity investment defined by Article 2, paragraph (1) of the Act Regulating Business Involving Commodity Investment, or through the acquisition (including production), transfer, or use of goods with substantial price volatility or goods specified by Cabinet Order as goods that make it difficult to estimate the profit generated from their use (excluding the designated items prescribed in item (iii) of that paragraph) or by means of

- having such goods used (excluding services that fall under the category of service set forth in items (i) and (ii));
- (vi) services for investing invested assets (excluding services that fall under the category of services that entails performing the acts specified in item (xv) of the preceding paragraph, and also excluding services that fall under the category of services specified in items (i), (ii), and the preceding item) as an investment in assets other than Securities or rights arising from Derivatives Transactions; and
- (vii) other services specified by Cabinet Office Ordinance.
- (3) If a Financial Instruments Business Operator comes to engage in any of the services set forth in the items of the preceding paragraph, it must notify the Prime Minister of this without delay pursuant to the provisions of Cabinet Office Ordinance.
- (4) A Financial Instruments Business Operator, in addition to the Financial Instruments Business and the services provided pursuant to paragraph (1) and paragraph (2), may perform services for which it has obtained the approval of the Prime Minister.
- (5) When an application is filed for the approval referred to in the preceding paragraph, the Prime Minister may only choose not to grant approval if it is found that the provision of the services under the application would be contrary to the public interest or if it is found that they would compromise the protection of investors due to the difficulty in managing the risk of loss in connection with the services.
- (6) If a Financial Instruments Business Operator discontinues services of which it has given notice pursuant to paragraph (3) or services for which it has obtained approval pursuant to paragraph (4), it must notify the Prime Minister of this without delay.
- (7) If a Financial Instruments Business Operator engages in services set forth in the items of paragraph (1) or items of paragraph (2) or engages in services for which it has received the approval referred to in paragraph (4), the provisions of paragraph (1), paragraph (2), and paragraph (4) must not be construed to preclude the application of Acts concerning these services.

(Scope of Concurrent Business by Persons Who Only Engage in Type II Financial Instruments Business or Investment Advisory and Agency Business)

Article 35-2 (1) A Financial Instruments Business Operator (limited to one that only engages in Type II Financial Instruments Business or Investment Advisory and Agency Business; the same applies in the following paragraph), in addition to doing Financial Instruments Business (limited to Type II Financial Instruments Business or Investment Advisory and Agency Business),

may also do other business, concurrently.

- (2) If a Financial Instruments Business Operator does any other business concurrently as prescribed in the preceding paragraph, the provisions of that paragraph must not be construed to preclude the application of Acts concerning that business.

(Establishment of an Operational Control System)

Article 35-3 A Financial Instruments Business Operator, etc. must establish an operational control system for the fair and appropriate performance of its Financial Instruments Business or Services of a Registered Financial Institution, pursuant to the provisions of Cabinet Office Ordinance.

(Duty of Sincerity to Customers)

Article 36 (1) A Financial Instruments Business Operator, etc. as well as its officers and employees must be sincere and fair to customers in the performance of its services.

- (2) A Specified Financial Instruments Business Operator, etc., pursuant to the provisions of Cabinet Office Ordinance, must appropriately manage information connected with Financial Instruments services (meaning services entailing acts that constitute Financial Instruments transactions and any other services specified by Cabinet Office Ordinance), and must establish a system for properly supervising the implementation status of Financial Instruments services and take any other measures as are necessary, in line with the transactions that the Specified Financial Instruments Business Operator, etc. or its Parent Financial Institution, etc. or Subsidiary Financial Institution, etc. conducts, so that the interests of the customers of the Financial Instruments services that the Specified Financial Instruments Business Operator, etc. or its Subsidiary Financial Institution, etc. provides are not unjustly prejudiced.

- (3) The term "Specified Financial Instruments Business Operator, etc." as used in this Article means a Financial Instruments Business Operator, etc. that conducts Securities Services (limited to a person registered as referred to in Article 29 to engage in Type I Financial Instruments Business), or that is specified by Cabinet Order.

- (4) The term "Parent Financial Institution, etc." as used in paragraph (2) means a Financial Instruments Business Operator, a bank, a Cooperative Financial Institution, or any other person engaged in finance that is specified by Cabinet Order, which Cabinet Order specifies as being a person that holds the majority of all shareholders', etc. voting rights in a Specified Financial Instruments Business Operator, etc. or as being otherwise closely related to the relevant Specified Financial Instruments Business Operator.

- (5) The term "Subsidiary Financial Institution, etc." as used in paragraph (2) means a Financial Instruments Business Operator, a bank, a Cooperative Financial Institution, or any other person engaged in finance that is specified by Cabinet Order, which Cabinet Order specifies as being a person in which a Specified Financial Instruments Business Operator, etc. holds the majority of all shareholders', etc. voting rights or as being otherwise closely related to the relevant Specified Financial Instruments Business Operator, etc.

(Posting of Signs)

- Article 36-2 (1) A Financial Instruments Business Operator, etc. must post a sign in the format specified by Cabinet Office Ordinance in a place that is accessible to the public at each of its business offices or other offices.
- (2) A person other than a Financial Instruments Business Operator, etc. (limited to Financial Instruments Intermediary Service Provider, or any other person who is allowed to engage in Financial Instruments Business under the provisions of laws and regulations) must not post the sign referred to in the preceding paragraph or a sign similar thereto.

(Prohibition on Name Lending)

- Article 36-3 A Financial Instruments Business Operator, etc. must not allow another person to engage in Financial Instruments Business (or, if it is a registered financial institution, to engage in the services of a registered financial institution; hereinafter the same applies in this Subsection) using the name of said Financial Instruments Business Operator, etc.

(Prohibition on Corporate Bond Management)

- Article 36-4 (1) A Financial Instruments Business Operator (limited to one that engages in Securities Services; the same applies in the following paragraph) may not become a bond manager as provided for in Article 7, paragraph (1), 02 of the Companies Act, nor may it become the trustee company under a trust contract provided for in Article 2, paragraph (1) of the Secured Bonds Trust Act.
- (2) Notwithstanding the provisions of other Acts, a Financial Instruments Business Operator may become an Underwriter.

(Regulation of Advertising)

- Article 37 (1) When advertising the contents of its Financial Instruments Business or performing any similar act specified by Cabinet Office Ordinance, a Financial Instruments Business Operator, etc. must give the following particulars, pursuant to the provisions of Cabinet Office Ordinance:
- (i) the trade name or name of the Financial Instruments Business Operator, etc.;

- (ii) an indication that it is a Financial Instruments Business Operator, etc., and its registration number; and
  - (iii) the particulars of the contents of the Financial Instruments Business that the Financial Instruments Business Operator, etc. engages in, which is specified by Cabinet Order as material particulars that may have an impact on customers' judgment.
- (2) When advertising the contents of its Financial Instruments Business or engaging in any similar act specified by Cabinet Office Ordinance, a Financial Instruments Business Operator, etc. must not make a representation that significantly conflicts with the fact of the matter or that could cause a person to have a serious misconception about the prospect of profiting from the performance of an act that constitutes a Financial Instruments transaction, or about any other matter that is specified by Cabinet Office Ordinance.

(Obligation to Clarify the Conditions of Transactions in Advance)

Article 37-2 When a Financial Instruments Business Operator, etc. has had an order from a customer for the purchase or sale of Securities or for an Over-the-Counter Transaction of Derivatives, it must give the customer clear notice, in advance, regarding whether said Financial Instruments Business Operator, etc. will conclude the purchase and sale or the transaction with the customer personally, as the other party, or whether it will conduct intermediation, brokerage, or agency for the purchase and sale or the transaction.

(Delivery of Documents Prior to the Conclusion of a Contract)

Article 37-3 (1) If a Financial Instruments Business Operator, etc. seeks to conclude a Financial Instruments Transaction Contract, it must deliver a document stating the following particulars to the customer in advance, pursuant to the provisions of Cabinet Office Ordinance; provided, however, that this does not apply in cases specified by Cabinet Office Ordinance as those in which its not doing so does not compromise the protection of investors:

- (i) the trade name or name and address of the Financial Instruments Business Operator, etc.;
- (ii) an indication that it is a Financial Instruments Business Operator, etc., and its registration number;
- (iii) an outline of the relevant Financial Instruments Transaction Contract;
- (iv) the particulars specified by Cabinet Office Ordinance with regard to any fees, remuneration, or other consideration payable by the customer in connection with the Financial Instruments Transaction Contract;
- (v) an indication of any risk that a loss will be incurred due to fluctuations in the money rate, the value of currencies, quotations on the Financial Instruments Market, and other indicators, in connection with an act that

- constitutes a Financial Instruments transaction carried out by the customer;
- (vi) an indication of any risk that the amount of the loss set forth in the preceding item will exceed the amount of customer margin or any other security deposit specified by Cabinet Office Ordinance that is payable by the customer; and
- (vii) the particulars of the contents of the relevant Financial Instruments Business other than what is set forth in the preceding items, which are specified by Cabinet Office Ordinance as material particulars that may have an impact on customers' judgment.
- (2) The provisions of Article 34-2, paragraph (4) apply *mutatis mutandis* to the delivery of a document under the preceding paragraph.
- (3) Before soliciting (limited to a Public Offering or Secondary Distribution, or dealings in a Public Offering or Secondary Distribution specified by Cabinet Order) the conclusion of a Financial Instruments Transaction Contract for any of the rights set forth in the items of Article 2, paragraph (2) that are deemed to be Securities under that paragraph, a Financial Instruments Business Operator, etc. must notify the Prime Minister of the contents of the document set forth in paragraph (1) regarding said Financial Instruments Transaction Contract; provided, however, that this does not apply in cases specified by Cabinet Office Ordinance as those in which its not doing so does not compromise the protection of investors.

(Delivery of Documents upon the Conclusion of a Contract)

- Article 37-4 (1) When a Financial Instruments Business Operator, etc. effects a Financial Instruments Transaction Contract or when otherwise specified by Cabinet Office Ordinance, the Financial Instruments Business Operator, etc. shall prepare a document and deliver it to the customer, without delay and pursuant to the provisions of Cabinet Office Ordinance; provided, however, that this does not apply in the cases that are specified by Cabinet Office Ordinance as those in which, in consideration of the contents of the Financial Instruments Transaction Contract and other circumstances, it is found that even if the document is not delivered to the customer, this does not compromise the public interest or the protection of investors.
- (2) The provisions of Article 34-2, paragraph (4) apply *mutatis mutandis* to the delivery of a document under the preceding paragraph.

(Delivery of Documents in Connection with the Receipt of a Security Deposit)

- Article 37-5 (1) Whenever a Financial Instruments Business Operator, etc. receives a security deposit that is payable by the customer (limited to those specified by Cabinet Office Ordinance) in connection the Financial Instruments Business that it conducts, it must immediately deliver a document stating this

to the customer, pursuant to the provisions of Cabinet Office Ordinance.

- (2) The provisions of Article 34-2, paragraph (4) apply mutatis mutandis to the delivery of a document under the preceding paragraph.

(Written Cancellation)

- Article 37-6 (1) Except as otherwise specified by Cabinet Office Ordinance, a customer that has concluded a Financial Instruments Transaction Contract (limited to one that is specified by Cabinet Order in consideration of the contents of such a Financial Instruments Transaction Contract and other circumstances) with a Financial Instruments Business Operator, etc. may cancel said Financial Instruments Transaction Contract in writing, until the number of days specified by Cabinet Order has elapsed since the day on which the customer received the document set forth in Article 37-4, paragraph (1).
- (2) The cancellation of a Financial Instruments Transaction Contract under the preceding paragraph takes effect when a document indicating that the Financial Instruments Transaction Contract is cancelled is issued.
- (3) If a Financial Instruments Transaction Contract becomes subject to a cancellation under paragraph (1), the Financial Instruments Business Operator, etc. may not request the customer to pay damages or a penalty for the cancellation of that Financial Instruments Transaction Contract beyond the amount specified by Cabinet Office Ordinance as the amount of fees, remuneration, or other consideration payable by the customer with regard to that Financial Instruments Transaction Contract (referred to as a "Consideration" in the following paragraph) for the period until the cancellation of that Financial Instruments Transaction Contract.
- (4) If a Financial Instruments Transaction Contract becomes subject to a cancellation under paragraph (1), the Financial Instruments Business Operator, etc. shall refund any Consideration paid in advance for the relevant Financial Instruments Transaction Contract to the customer that paid it; provided, however, that this does not apply to the amount specified by Cabinet Office Ordinance as prescribed in the preceding paragraph.
- (5) Any special provision that is contrary to the provisions of the preceding paragraphs and disadvantageous to a customer is void.

(Obligation to Conclude a Contract with a Designated Dispute Resolution Organization)

Article 37-7 (1) A Financial Instruments Business Operator, etc. must take the measures specified in the relevant of the following items for the category of cases set forth in said item:

- (i) if the Financial Instruments Business Operator, etc. (excluding a registered financial institution; the same applies in the following item to item (iv)

inclusive) engages in Type I Financial Instruments Business: the measures specified in the relevant of the following sub-items (a) and (b) for the category of cases set forth in each sub-item:

- (a) if there is a Designated Type I Dispute Resolution Organization (meaning a Designated Dispute Resolution Organization (meaning a Designated Dispute Resolution Organization as defined in Article 156-38, paragraph (1); hereinafter the same applies in this Chapter and Chapter V-4) for which the Category of Dispute Resolution Services (meaning the Category of Dispute Resolution Services as defined in paragraph (12) of that Article; hereinafter the same applies in this Chapter and Chapter V-4) is Specified Type I Financial Instruments Business (meaning Specified Type I Financial Instruments Business as defined in paragraph (2) of that Article; hereinafter the same applies in this item); hereinafter the same applies in this item and paragraph (3), item (ii)): measures to conclude a Basic Contract for the Implementation of Dispute Resolution Procedures (meaning a Basic Contract for the Implementation of Dispute Resolution Procedures as defined in paragraph (13) of that Article; hereinafter the same applies in this Chapter and Chapter V-4) in connection with Specified Type I Financial Instruments Business with a single Designated Type I Dispute Resolution Organization);
- (b) if there is no Designated Type I Dispute Resolution Organization: complaint processing measures (meaning measures to have the person set forth in Article 156-50, paragraph (3), item (iii) provide advice or guidance to the employee or any other workers engaged in the business of processing complaints from customers (including the rights holders provided for in Article 42, paragraph (1) that are other than customers; the same applies in this sub-item (b)) or any other measures specified by Cabinet Office Ordinance as being equivalent thereto; hereinafter the same applies in this Chapter and Chapter V-4)) and dispute resolution measures (meaning measures to resolve disputes with customers through Certified Dispute Resolution Procedures (meaning Certified Dispute Resolution Procedures as defined in Article 2, item (iii) of the Act on Promotion of Use of Alternative Dispute Resolution (Act No. 151 of 2004)) or any other measures specified by Cabinet Office Ordinance as being equivalent thereto) in connection with Specified Type I Financial Instruments Business.
- (ii) if the Financial Instruments Business Operator, etc. engages in Type II Financial Instruments Business: the measures specified in the relevant of the following sub-items (a) and (b) for the category of cases set forth in each sub-item:
  - (a) if there is a Designated Type II Dispute Resolution Organization



- (meaning a Designated Dispute Resolution Organization for which the Category of Dispute Resolution Services is Specified Type II Financial Instruments Business (meaning Specified Type II Financial Instruments Business defined in Article 156-38, paragraph (3); hereinafter the same applies in this item); hereinafter the same applies in this item and paragraph (3), item (ii)): measures to conclude a Basic Contract for the Implementation of Dispute Resolution Procedures in connection with Specified Type II Financial Instruments Business with a single Designated Type II Dispute Resolution Organization;
- (b) if there is no Designated Type II Dispute Resolution Organization: complaint processing measures and dispute resolution measures in connection with Specified Type II Financial Instruments Business;
- (iii) if the Financial Instruments Business Operator, etc. engages in Investment Advisory and Agency Business: the measures specified in the relevant of the following sub-items (a) and (b) for the category of cases set forth in each sub-item:
- (a) if there is a Designated Investment Advisory and Agency Business Dispute Resolution Organization (meaning a Designated Dispute Resolution Organization for which the Category of Dispute Resolution Services is Specified Investment Advisory and Agency Business (meaning Specified Investment Advisory and Agency Business as defined in Article 156-38, paragraph (4); hereinafter the same applies in this item); hereinafter the same applies in this item and paragraph (3), item (ii)): measures to conclude a Basic Contract for the Implementation of Dispute Resolution Procedures in connection with Specified Investment Advisory and Agency Business with a single Designated Investment Advisory and Agency Business Dispute Resolution Organization;
- (b) if there is no Designated Investment Advisory and Agency Business Dispute Resolution Organization: complaint processing measures and dispute resolution measures in connection with Specified Investment Advisory and Agency Business;
- (iv) if the Financial Instruments Business Operator, etc. engages in Investment Management Business: the measures specified in the relevant of the following sub-items (a) and (b) for the category of cases set forth in each sub-item:
- (a) if there is a Designated Investment Management Dispute Resolution Organization (meaning a Designated Dispute Resolution Organization for which the Category of Dispute Resolution Services is Specified Investment Management Business (meaning Specified Investment Management Business as defined in Article 156-38, paragraph (5); hereinafter the same applies in this item); hereinafter the same applies in this item and

- paragraph (3), item (ii)): measures to conclude a Basic Contract for the Implementation of Dispute Resolution Procedures in connection with Specified Investment Management Business with a single Designated Investment Management Dispute Resolution Organization;
- (b) if there is no Designated Investment Management Dispute Resolution Organization: complaint processing measures and dispute resolution measures in connection with Specified Investment Management Business;
- (v) if the Financial Instruments Business Operator, etc. is a registered financial institution: the measures specified in the relevant of the following sub-items (a) and (b) for the category of cases set forth in said sub-item:
- (a) if there is a Designated Dispute Resolution Organization for registered financial institutions (meaning a Designated Dispute Resolution Organization for which the Category of Dispute Resolution Services is the Specified Services of a Registered Financial Institution (meaning Specified Services of a Registered Financial Institution as defined in Article 156-38, paragraph (6); hereinafter the same applies in this item); hereinafter the same applies in this item and paragraph (3), item (ii)): measures to conclude a Basic Contract for the Implementation of Dispute Resolution Procedures in connection with the Specified Services of a Registered Financial Institution with a single Designated Dispute Resolution Organization for registered financial institutions;
- (b) if there is no Designated Registered Financial Institutions Dispute Resolution Organization: complaint processing measures and dispute resolution measures in connection with the Specified Services of a Registered Financial Institution.
- (2) Once a Financial Instruments Business Operator has taken measures to conclude a Basic Contract for the Implementation of Dispute Resolution Procedures pursuant to the provisions of the preceding paragraph, it must disclose the trade name or name of the Designated Dispute Resolution Organization that is the counterparty to the Basic Contract for the Implementation of Dispute Resolution Procedures.
- (3) The provisions of paragraph (1) do not apply during the period specified in the relevant of the following items for the category of cases set forth in each item:
- (i) if a case that fell under a category of cases set forth in paragraph (1), item (i), sub-item (a); item (ii), sub-item (a); item (iii), sub-item (a); item (iv), sub-item (a); or item (v), sub-item (a); has come to fall under a category of cases set forth in item (i), sub-item (b); item (ii), sub-item (b); item (iii), sub-item (b); item (iv), sub-item (b); or item (v), sub-item (b) of that paragraph: the period specified by the Prime Minister as the period needed for taking the measures specified in paragraph (1), item (i), sub-item (b); item (ii), sub-item (b); item (iii), sub-item (b); item (iv), sub-item (b); or item (v), sub-item (b); at

- the time of granting authorization for the discontinuation of Dispute Resolution Services under Article 156-60, paragraph (1) or at the time of rescinding the designation under Article 156-61, paragraph (1);
- (ii) if a case formerly fell under a category of cases set forth in paragraph (1), item (i), sub-item (a); item (ii), sub-item (a); item (iii), sub-item (a); item (iv), sub-item (a); or item (v), sub-item (a); but the discontinuation of the Dispute Resolution Services of a single Designated Type I Dispute Resolution Organization under item (i), sub-item (a) of that paragraph; a single Designated Type II Dispute Resolution Organization under item (ii), sub-item (a) of that paragraph; a single Designated Investment Advisory and Agency Business Dispute Resolution Organization under item (iii), sub-item (a) of that paragraph; a single Designated Investment Management Dispute Resolution Organization under item (iv), sub-item (a) of that paragraph; or a single Designated Dispute Resolution Organization for registered financial institutions (hereinafter collectively referred to as the "Designated Dispute Resolution Organization for Each Category of Business" in this item) has been authorized under Article 156-60, paragraph (1) or the designation under Article 156-39, paragraph (1) has been rescinded for the Designated Dispute Resolution Organization for Each Category of Business pursuant to Article 156-61, paragraph (1) (excluding in a case set forth in the preceding item): the period specified by the Prime Minister as the period needed for taking the measures specified in paragraph (1), item (i), sub-item (a); item (ii), sub-item (a); item (iii), sub-item (a); item (iv), sub-item (a); or item (v), sub-item (a); at the time of granting such authorization or at the time of rescinding the designation; and
- (iii) if a case formerly fell under a category of cases set forth in paragraph (1), item (i), sub-item (b); item (ii), sub-item (b); item (iii), sub-item (b); item (iv), sub-item (b); or item (v), sub-item (b); but come to fall under the cases set forth in item (i), sub-item (a); item (ii), sub-item (a); item (iii), sub-item (a); item (iv), sub-item (a); or item (v), sub-item (a) of that paragraph: the period specified by the Prime Minister as the period needed for taking the measures specified in paragraph (1), item (i), sub-item (a); item (ii), sub-item (a); item (iii), sub-item (a); item (iv), sub-item (a); or item (v), sub-item (a) at the time of the designation under Article 156-39, paragraph (1).

(Prohibited Acts)

Article 38 It is prohibited for a Financial Instruments Business Operator, etc. or the officer or employee thereof to engage in any of the following acts; provided, however, that this excludes acts set forth in items (iv) to (vi) inclusive that are specified by Cabinet Office Ordinance as being unlikely to result in insufficient investor protection, harm the fairness of transactions, or cause a loss of

confidence in the Financial Instruments Business:

- (i) providing a customer with false information in connection with the conclusion of a Financial Instruments Transaction Contract or in connection with the solicitation thereof;
- (ii) providing a customer with a conclusive assessment of a matter that is uncertain or with information that could mislead the customer into believing that a matter that is uncertain is actually certain, thereby soliciting the customer to conclude a Financial Instruments Transaction Contract;
- (iii) supplying a customer with a Credit Rating that has been determined by a person engaged in Credit Rating Services other than a Credit Rating Agency (excluding a Credit Rating specified by Cabinet Office Ordinance as one that is found to have little likelihood of resulting in insufficient investor protection), without informing the customer that the person giving the Credit Rating is not registered as referred to in Article 66-27 and without informing the customer of the matters specified by Cabinet Office Ordinance, including the significance of such a registration and any other matters, thereby soliciting the customer to conclude a Financial Instruments Transaction Contract;
- (iv) visiting or telephoning a customer that is not asking to be solicited for the conclusion of a Financial Instruments Transaction Contract (limited to one that is specified by Cabinet Order in consideration of the content of the Financial Instruments Transaction Contract and other circumstances, as a contract in connection with which it is particularly necessary to ensure the protection of investors), and soliciting such a customer to conclude a Financial Instruments Transaction Contract;
- (v) soliciting a customer to conclude a Financial Instruments Transaction Contract (limited to one that is specified by Cabinet Order in consideration of the contents of the Financial Instruments Transaction Contract and other circumstances, as a contract in connection with which it is necessary to ensure the protection of investors) without obtaining confirmation from the customer, prior to solicitation, regarding whether or not the customer is willing to be solicited;
- (vi) continuing to solicit a customer to conclude a Financial Instruments Transaction Contract (limited one that is specified by Cabinet Order in consideration of the content of the Financial Instruments Transaction Contract and other circumstances, as a contract in connection with which it is necessary to ensure the protection of investors) despite the customer having manifested an intention that indicates an unwillingness to conclude such a Financial Instruments Transaction Contract (including the an intention that indicates a wish not to continue to be solicited) after being solicited;

- (vii) providing a Specified Financial Indicator Calculation Agent (meaning the Specified Financial Indicator Calculation Agent prescribed in Article 156-85, paragraph (1); hereinafter the same shall apply in this item) with Calculation Basis Data (meaning the price, indicator, figure, or any other information provided to the Specified Financial Indicator Calculation Agent as the basis for calculation of Specified Financial Indicators) to benefit itself or a third party;
- (viii) acts other than what is set forth in the preceding items, which are specified by Cabinet Office Ordinance as acts that result in insufficient investor protection, harm the fairness of transactions, or cause a loss of confidence in the Financial Instruments Business.

Article 38-2 A Financial Instruments Business Operator, etc. must not engage in any of the following acts in connection with the Investment Advisory and Agency Business or Investment Management Business it conducts:

- (i) using fraudulent means, committing assault, or using intimidation in connection with the conclusion or cancellation of an Investment Advisory Contract, Discretionary Investment Contract, or contract specified in Article 2, paragraph (8), item (xii), sub-item (b); and
- (ii) promising a customer, at the time of solicitation, that any loss that may arise will be compensated in whole or in part.

(Prohibition on Compensation of Loss)

Article 39 (1) A Financial Instruments Business Operator, etc. must not engage in any of the following acts:

- (i) making an offer or promise, or having a third party make an offer or promise, in connection with a purchase and sale or other transaction of Securities (excluding a purchase and sale with a repurchase requirement and a predetermined repurchase price, and other transactions specified by Cabinet Order) or a Derivatives Transaction (hereinafter collectively referred to as a "Purchase and Sale or Other Transaction of Securities, etc." in this Article), to a customer or to a person designated by the customer, that in the event that the customer (if a Trust Company, etc. (meaning a trust company or a financial institution that has obtained the authorization referred to in Article 1, paragraph (1) of the Act on Engagement in Trust Business by a Financial Institution; the same applies hereinafter) conducts the purchase and sale of Securities or a Derivatives Transaction on the account of a person that establishes a trust based a trust contract, this includes the person that establishes the trust; hereinafter the same applies in this Article) incurs a loss from the Securities or Derivatives Transaction (hereinafter collectively referred to as "Securities, etc." in this Article), or in the event that a

- predetermined amount of profit does not accrue from those Securities, etc., the Financial Instruments Business Operator, etc. or a third party will cover the whole or part of the loss or provide the customer or a third party with an economic benefit to supplement its profits;
- (ii) making an offer or promise, or having a third party make an offer or promise, in connection with a Purchase and Sale or Other Transaction of Securities, etc., to a customer or to a person designated by the customer, that the Financial Instruments Business Operator, etc. or a third party will cover the whole or part of a loss that the customer has incurred in connection with the relevant Securities, etc., or will add to the profits that the customer has accrued in connection with those Securities, etc.; and
  - (iii) providing an economic benefit to a customer or third party, or having a third party provide an economic benefit to a customer or third party, in connection with a Purchase and Sale or Other Transaction of Securities, etc., in order to cover the whole or part of a loss that the customer has incurred in connection with the relevant Securities, etc., or in order to add to the profit that the customer has accrued in connection with those Securities, etc.
- (2) The customer of a Financial Instruments Business Operator, etc. must not engage in any of the following acts:
- (i) being party to, or having a third party be party to, the promise referred to in item (i) of the preceding paragraph (but only if that promise is based on a request that the customer makes personally or has a third party make), with the Financial Instruments Business Operator, etc. or a third party, in connection with a Purchase and Sale or Other Transaction of Securities, etc.;
  - (ii) being party to, or having a third party be party to, the promise referred to in item (ii) of the preceding paragraph (but only if that promise is based on a request that the customer makes personally or has a third party make), with the Financial Instruments Business Operator, etc. or a third party in connection with a Purchase and Sale or Other Transaction of Securities, etc.; and
  - (iii) receiving an economic benefit that is provided as referred to in item (iii) of the preceding paragraph or having a third party receive such an economic benefit (but only if this is based on a promise referred to in one of the preceding two items, if that promise is based on a request that the customer makes personally or has a third party make, and if the economic benefit is provided based on a request that the customer makes personally or has a third party make) from a Financial Instruments Business Operator, etc. or a third party, in connection with a Purchase and Sale or Other Transaction of Securities, etc.
- (3) The provisions of paragraph (1) do not apply if the offer, promise, or provision of an economic benefit as referred to in the items of that paragraph is done in

order to cover the whole or a part of a loss incurred due to problematic conduct (meaning illegal or wrongful conduct by a Financial Instruments Business Operator, etc. or its officer or employee, which is specified by Cabinet Office Ordinance as a potential cause of a dispute between a Financial Instruments Business Operator, etc. and its customer; hereinafter the same applies in this and the following Sections); provided, however, that with regard to the offer or promise referred to in item (ii) of that paragraph or the provision of an economic benefit as referred to in item (iii) of that paragraph, this only applies if the Financial Instruments Business Operator, etc. receives confirmation from the Prime Minister in advance that the loss to be covered was incurred due to problematic conduct, or in a case that is otherwise specified by Cabinet Office Ordinance.

- (4) The provisions of paragraph (2) do not apply if the promise referred to in item (i) or (ii) of that paragraph is a promise to cover the whole or part of a loss incurred due to problematic conduct, or if the economic benefit referred to in item (iii) of that paragraph is provided in order to cover the whole or part of a loss incurred due to problematic conduct.
- (5) A person seeking to receive the confirmation referred to in the proviso to paragraph (3) must submit a written application stating the fact regarding which confirmation is sought and other particulars specified by Cabinet Office Ordinance to the Prime Minister pursuant to the provisions of Cabinet Office Ordinance, accompanied by a document specified by Cabinet Office Ordinance as being necessary for proving the relevant fact.

(The Principle of Suitability)

Article 40 A Financial Instruments Business Operator, etc. shall conduct its business in such a manner that the state of its business operations does not fall under one of the following items:

- (i) its issuance of a solicitation in connection with an act that constitutes a Financial Instruments transaction which is found to be inappropriate in light of customer knowledge, customer experience, the state of customer assets, or the purpose for which a Financial Instruments Transaction Contract is concluded, results in or is likely to result in insufficient investor protection; and
- (ii) beyond what is set forth in the preceding item, the state of business operations is such that the Financial Instruments Business Operator, etc. is found not to have taken measures to ensure the appropriate handling of customer information it has obtained in the course of the business, or business operations are otherwise in a state specified by Cabinet Office Ordinance as one that is contrary to the public interest or that is likely to compromise the protection of investors.

(Best Execution Policy)

- Article 40-2 (1) A Financial Instruments Business Operator, etc., pursuant to the provisions of Cabinet Order, must establish a policy and method for executing orders from customers for the purchase and sale of Securities and Derivatives Transactions (excluding those specified by Cabinet Order; hereinafter referred to as "Transactions of Securities, etc." in this Article) under the best terms and conditions (hereinafter referred to as the "Best Execution Policy, etc." in this Article).
- (2) A Financial Instruments Business Operator, etc. must disclose its Best Execution Policy, etc. pursuant to the provisions of Cabinet Office Ordinance.
- (3) A Financial Instruments Business Operator, etc. must execute orders for Transactions of Securities, etc. in accordance with its Best Execution Policy, etc.
- (4) Before accepting an order from a customer for a purchase and sale of Securities listed on a Financial Instruments Exchange, purchase and sale of Over-the-Counter Traded Securities, or other transaction specified by Cabinet Order, a Financial Instruments Business Operator, etc., pursuant to the provisions of Cabinet Office Ordinance, must deliver a document to the customer stating its Best Execution Policy, etc. for the relevant transaction; provided, however, that this does not apply if it has already delivered such a document (or a document stating the revised policy, if its Best Execution Policy, etc. has been revised).
- (5) If a Financial Instruments Business Operator, etc. is so requested by a customer within a period specified by Cabinet Office Ordinance after executing the customer's order for a Transaction of Securities, etc., it must deliver a document to the customer, pursuant to the provisions of Cabinet Office Ordinance, which explains, pursuant to the provisions of Cabinet Office Ordinance, that the order has been executed in accordance with its Best Execution Policy, etc.
- (6) The provisions of Article 34-2, paragraph (4) apply mutatis mutandis to the delivery of a document under the preceding two paragraphs.

(Prohibition of Purchase and Sale, etc. If Separate Management Is Not Ensured)

Article 40-3 With regard to the rights set forth in Article 2, paragraph (2), item (v) or (vi) or the Securities set forth in Article 2, paragraph (1), item (xxi) (limited to those specified by Cabinet Order) or the rights set forth in Article 2, paragraph (2), item (vii) (limited to those specified by Cabinet Order), a Financial Instruments Business Operator, etc. must not perform any of the acts set forth in Article 2, paragraph (8), item (i), (ii), or (vii) to (ix) inclusive



unless the relevant right or Securities are specified by Cabinet Office Ordinance as those for which a contract or other juridical act involving the right or Securities ensures that the money invested or contributed for the right or Securities (including anything specified by Cabinet Order as being similar to money; hereinafter the same applies in this Article) is managed separately from the assets that belong to the person conducting the relevant business conducts by allocating such money, and is managed separately from any other assets connected with other business conducted by that person.

(Prohibition of Public Offering, etc. Where Money Has Been Diverted)

Article 40-3-2 A Financial Instruments Business Operator, etc. must not conduct one of the acts specified in Article 2, paragraph (8), items (vii) to (ix) inclusive with regard to the rights set forth in Article 2, paragraph (2), item (v) or (vi) or the rights set forth in item (vii) of that paragraph (limited to rights specified by Cabinet Order as having an economic nature similar to the rights set forth in item (v) or (vi) of that paragraph), knowing that the money invested or contributed for such rights (including anything specified by Cabinet Order as being similar thereto; hereinafter the same applies in this Article) is not allocated to the business that is to be conducted by allocating said money.

(Restrictions on the Sale and Purchase, etc. of Securities for Professional Investors)

Article 40-4 A Financial Instruments Business Operator, etc. must not perform any of the acts set forth in Article 2, paragraph (8), items (i) to (iv) inclusive and (x) in connection with the Securities for Professional Investors with a general investor (meaning a person other than a Professional Investor, etc. or Issuer of Securities for Professional Investors, or any other person specified by Cabinet Office Ordinance; hereinafter the same applies in this Article); provided, however, that this does not apply in a Case In Which Disclosure Has Been Made (meaning a Case In Which Disclosure Has Been Made as prescribed in Article 4, paragraph (7); the same applies in Article 40-5, paragraph (1) and Article 66-14-2) with regard to the relevant Securities for Professional Investors, nor does it apply in a case in which the Financial Instruments Business Operator, etc. intermediates a sale for the general investor without having solicited the general investors, nor does it in any case specified by Cabinet Office Ordinance as one in which there is little likelihood of this resulting in insufficient investor protection.

(Obligation to Notify in Connection with Securities for Professional Investors)

Article 40-5 (1) If a Financial Instruments Business Operator, etc. sells Securities for Professional Investors in a case not falling under the category of

a Case In Which Disclosure Has Been Made, or performs any other act specified by Cabinet Order in connection with such Securities, without issuing a Solicitation of Offers to Acquire or an Offer to Sell, etc., it must notify the other party to the sale or other act, pursuant to the provisions of Cabinet Office Ordinance and with regard to the Securities for Professional Investors, that the case does not fall under the category of a Case In Which Disclosure Has Been Made, as well as notifying the other party of any other matters that are specified by Cabinet Office Ordinance.

(2) The first time that a Financial Instruments Business Operator, etc. receives an offer from a Professional Investor, etc. (excluding a person set forth in Article 2, paragraph (31), items (i) to (iii) inclusive) for a contract for transactions in Securities for Professional Investors (meaning a contract for performing an act set forth in Article 2, paragraph (8), item (i) to (iv) inclusive, or item (x) in connection with Securities for Professional Investors (excluding a contract for effecting a sale and purchase of Securities for Professional Investors through an act set forth in item (x) of that paragraph (this is limited to a sale and purchase effected through the intermediation, brokerage, or agency of the Financial Instruments Business Operator that effects the relevant act) or any other contract that is specified by Cabinet Office Ordinance in consideration of the contents of the contract and the characteristics of the counterparty); hereinafter the same applies in this paragraph), it must notify the Professional Investor, etc. of the following matters and deliver a document to the Professional Investor, etc. that states those matters, before it concludes the contract for transactions in Securities for Professional Investors to which the offer pertains:

- (i) the contents of the information provided in connection with the Securities for Professional Investors, the nature of the transaction, and any other matters specified by Cabinet Office Ordinance as material matters of which an investor must be made aware in connection with Securities for Professional Investors; and
- (ii) an indication of the risk of insufficient protection involved, if a transaction of Securities for Professional Investors will be conducted by a person whose knowledge or experience, or the state of whose assets, makes it inappropriate for the person to do so;

(3) The provisions of Article 34-2, paragraph (4) apply mutatis mutandis to the delivery of the documents set forth in the preceding paragraph.

(Prohibition of Trading Against)

Article 40-6 When a Financial Instruments Business Operator, etc. accepts consignment of a Commodity-Related Market Transaction of Derivatives, etc. (meaning a Commodity-Related Transaction of Derivatives, or intermediary,

brokerage, or agency service for the entrustment thereof; hereinafter the same shall apply in this Article), it shall not close a transaction by becoming the counterparty itself instead of carrying out such Commodity-Related Transaction of Derivatives, etc. pertaining to such consignment.

(Obligation to Use Electronic Data Processing System Concerning Over-the-Counter Transactions of Derivatives, etc.)

Article 40-7 (1) When a Financial Instruments Business Operator, etc. (limited to a Financial Instruments Business Operator, etc. who conducts Over-the-Counter Transactions of Derivatives on a regular basis) conducts specified Over-the-Counter Transactions of Derivatives (meaning Over-the-Counter Transactions of Derivatives specified by Cabinet Office Ordinance as transactions that require expeditious disclosure of information concerning the outline of said transactions for securing fairness in said transactions, in light of the transaction volume and other transaction status; the same shall apply in the following paragraph, Article 58-2 and Article 60-14, paragraph (1)), it shall use the Electronic Data Processing System used by said Financial Instruments Business Operator, etc. for its business of Over-the-Counter Transactions of Derivatives or the Electronic Data Processing System used by another Financial Instruments Business Operator, etc. (limited to a Financial Instruments Business Operator, etc. who conducts Over-the-Counter Transactions of Derivatives, etc. on a regular basis) or an Authorized Electronic Over-the-Counter Transactions of Derivatives, etc. Business Operator prescribed in Article 60-14, paragraph (2) for its business of Over-the-Counter Transactions of Derivatives, etc.

(2) A person who used the Electronic Data Processing System pursuant to the provisions of the preceding paragraph shall, with regard to the specified Over-the-counter Transactions of Derivatives conducted using said Electronic Data Processing System, publicly announce the price, quantity and other outline of the transaction pursuant to the provisions of Cabinet Office Ordinance.

## **Subsection 2 Special Provisions on Investment Advisory Business**

(Duty to Customers)

Article 41 (1) A Financial Instruments Business Operator, etc. must work faithfully on behalf of its customers in providing its Investment Advisory Business.

(2) A Financial Instruments Business Operator, etc. must provide its Investment Advisory Business with the due care of a prudent manager toward its customers.

(Prohibited Acts)

Article 41-2 A Financial Instruments Business Operator, etc. must not perform any of the following acts in connection with the Investment Advisory Business it conducts:

- (i) advising customers to conduct a transaction between or among themselves that would be detrimental to a particular customer's interests in the interest of another customer;
- (ii) giving advice regarding a particular Financial Instrument, Financial Indicator, or Option for which there is no justifiable basis, with the aim of using fluctuations in the price, indicator, figure, or amount receivable based on a customer's transaction, to benefit itself or a third party other than that customer;
- (iii) advising a customer to conduct a transaction under terms and conditions that are different from the ordinary terms and conditions and detrimental to the customer's interests (other than as is specified in item (i) above);
- (iv) making a purchase and sale or other transaction of Securities, or a Derivatives Transaction (hereinafter referred to as "Purchase and Sale or Other Transaction of Securities, etc."), on its own account, using information from a transaction conducted by a customer that has received its advice;
- (v) providing an economic benefit to a customer or a third party or having a third party provide an economic benefit to a customer, in order to cover the whole or part of a loss incurred by the customer due to a transaction about which the customer has received its advice, or in order to add to the profit that a customer has accrued in connection with a transaction about which the customer has received its advice (unless this is to cover the whole or part of a loss incurred due to problematic conduct); and
- (vi) beyond what is set forth in the preceding items, any act specified by Cabinet Office Ordinance as resulting in insufficient investor protection, harming the fairness of transactions, or causing a loss of confidence in the Financial Instruments Business.

(Prohibition on the Purchase and Sale of Securities, etc.)

Article 41-3 A Financial Instruments Business Operator, etc. must not perform any of the acts set forth in Article 2, paragraph (8), items (i) to (iv) inclusive, in connection with the Investment Advisory Business it conducts, with a customer as the counterparty or on behalf of a customer; provided, however, that this does not apply if it does so as Type I Financial Instruments Business, or if it does so in a case that is specified by Cabinet Order.

(Prohibition on Receiving Deposits of Money or Securities)

Article 41-4 A Financial Instruments Business Operator, etc. must not, for any

reason, receive a deposit of money or Securities from a customer, or have a person specified by Cabinet Order as being closely related to the Financial Instruments Business Operator, etc. deposit a customer's money or Securities, in connection with the Investment Advisory Business it conducts, unless it does so as Securities, etc. Management, or unless it does so in a case that is specified by Cabinet Order.

(Prohibition on the Lending, etc. of Money or Securities)

Article 41-5 A Financial Instruments Business Operator, etc. must not lend money or Securities to a customer or perform intermediation, brokerage, or agency for a third party's lending of money or Securities to a customer in connection with the Investment Advisory Business it conducts; provided, however, that this does not apply if a Financial Instruments Business Operator lends money or Securities to a customer in the course of a margin transaction prescribed in Article 156-24, paragraph (1), or if it performs one of such acts in a case that is specified by Cabinet Order.

### **Subsection 3 Special Provisions on Investment Management Business**

(Duty to Rights Holders)

Article 42 (1) A Financial Instruments Business Operator, etc. must work faithfully on behalf of rights holders (meaning persons prescribed in the relevant of the following items for the category of business set forth in each item; hereinafter the same applies in this Subsection) in providing Investment Management Business:

- (i) the business of performing the act specified in Article 2, paragraph (8), item (xii): the other party to the contract set forth in sub-item (a) or (b) of that item;
  - (ii) the business of performing the act specified in Article 2, paragraph (8), item (xiv): the person that holds the rights indicated on the Securities provided for in that item or other rights specified by Cabinet Order; and
  - (iii) the business of performing the act specified in Article 2, paragraph (8), item (xv): the person that holds rights set forth in sub-items (a) to (c) inclusive of that item or other rights specified by Cabinet Order as prescribed in that item.
- (2) A Financial Instruments Business Operator, etc. must provide Investment Management Business with the due care of a prudent manager toward rights holders.

(Prohibited Acts)

Article 42-2 A Financial Instruments Business Operator, etc. must not perform

any of the following acts in connection with the Investment Management Business it conducts; provided, however, that this excludes acts set forth in items (i) and (ii) below that are specified by Cabinet Office Ordinance as being unlikely to result in insufficient investor protection, harm the fairness of transactions, or cause a loss of confidence in the Financial Instruments Business:

- (i) making an investment that involves a transaction being conducted with the Financial Instruments Business Operator, etc. or a director or executive officer thereof;
- (ii) making an investment that involves a transaction being conducted between or among invested assets;
- (iii) making an investment in a particular Financial Instrument, Financial Indicator, or Option, which involves a transaction being conducted for which there is no justifiable basis, with the aim of using fluctuations in the price, indicator, figure, or amount receivable based on the transaction, to benefit itself or a third party other than the rights holder;
- (iv) making an investment that involves a transaction being conducted under terms and conditions that are different from the ordinary terms and conditions, and that are detrimental to the rights holder's interests;
- (v) making a Purchase and Sale or Other Transaction of Securities, etc. on its own account using information about a transaction that it has conducted as an investment;
- (vi) providing an economic benefit to a rights holder or a third party or having a third party provide an economic benefit to a rights holder or third party, in order to cover the whole or part of a loss that a rights holder has incurred due to a transaction conducted as an investment of invested assets, or in order to add to the profit that a rights holder has accrued from a transaction conducted as an investment of invested assets (unless this is done to cover the whole or part of a loss incurred due to problematic conduct or a loss caused to the principal of an Investment Trust (meaning the investment trust defined in Article 2, paragraph (3) of the Act on Investment Trusts and Investment Corporations) specified by Cabinet Office Ordinance as those of which beneficial interest is acquired or held for the purpose of providing it for paying or receiving money in the sales and purchase of Securities or any other transactions between the Right Holder and the Financial Instruments Business Operator, etc.); and
- (vii) beyond what is set forth in the preceding items, any act specified by Cabinet Office Ordinance as resulting in insufficient investor protection, harming the fairness of transactions, or causing a loss of confidence in the Financial Instruments Business.

(Entrustment of Authority to Invest)

Article 42-3 (1) A Financial Instruments Business Operator, etc. may entrust the whole or part of the authority to make investments on behalf of a rights holder to another Financial Instruments Business Operator, etc. (limited to one does Investment Management Business) or other person specified by Cabinet Order, but only if the matters specified by Cabinet Office Ordinance are stipulated in a contract or other juridical act set forth in one of the following items:

- (i) the contract set forth in Article 2, paragraph (8), item (xii), sub-item (a) or (b);
- (ii) a contract concerning the rights indicated on Securities or other rights specified by Cabinet Order as prescribed in Article 2, paragraph (8), item (xiv); and
- (iii) a contract or other juridical act concerning the rights set forth in Article 2, paragraph (8), item (xv), sub-items (a) to (c) inclusive or other rights specified by Cabinet Order as prescribed in that item.

(2) Notwithstanding the provisions of the preceding paragraph, a Financial Instruments Business Operator, etc. must not entrust the whole of the authority to invest all invested assets to the person specified by Cabinet Order that is referred to in that paragraph.

(3) With regard to the application of the provisions of Article 42, paragraph (1) if a Financial Instruments Business Operator, etc. effected an entrustment pursuant to paragraph (1), in Article 42, paragraph (1), the phrase "Financial Instruments Business Operator, etc." is deemed to be replaced with "Financial Instruments Business Operator, etc. (including a person specified by Cabinet Order that is referred to in Article 42-3, paragraph (1) and that has been entrusted by the relevant Financial Instruments Business Operator, etc. pursuant to that paragraph; the same applies in the following paragraph and the following Article)".

(Separate Management)

Article 42-4 A Financial Instruments Business Operator, etc. must manage invested assets separately from its own assets and other invested assets, pursuant to the provisions of Cabinet Office Ordinance, in connection with the Investment Management Business (limited to the business of performing the act specified in Article 2, paragraph (8), item (xv)) it conducts.

(Prohibition on Receiving Deposits of Money or Securities)

Article 42-5 A Financial Instruments Business Operator, etc. must not, for any reason, receive a deposit of money or Securities from a customer, or have a person specified by Cabinet Order as being closely related to the Financial Instruments Business Operator, etc. deposit a customer's money or Securities,

in connection with the Investment Management Business it conducts (limited to the business of performing the acts specified in Article 2, paragraph (8), item (xii); hereinafter the same applies in this and the following Articles), unless it does so as Securities, etc. Management, or unless it does so in a case that is specified by Cabinet Order; provided, however, that this does not apply if the Financial Instruments Business Operator, etc. performs one of the acts set forth in Article 2, paragraph (8), items (i) to (iv) inclusive or Commodity-Related Market Transactions of Derivatives in connection with its Investment Management Business on behalf of a customer, and such a deposit is necessary for the settlement of the transaction conducted through such an act.

(Prohibition on the Lending of Money or Securities)

Article 42-6 A Financial Instruments Business Operator, etc. must not lend money or Securities to a customer or perform intermediation, brokerage, or agency for a third party's lending of money or Securities to a customer in connection with the Investment Management Business it conducts; provided, however, that this does not apply if a Financial Instruments Business Operator lends money or Securities to a customer in the course of a margin transaction prescribed in Article 156-24, paragraph (1), or if it performs one of these acts in a case that is specified by Cabinet Order.

(Delivery of an Investment Report)

- Article 42-7 (1) A Financial Instruments Business Operator, etc., pursuant to the provisions of Cabinet Office Ordinance, must periodically prepare an investment report for invested assets and deliver it to any known rights holders affiliated with those invested assets; provided, however, that this does not apply in the cases specified by Cabinet Office Ordinance as those in which, even if no investment report is delivered to such rights holders, this will not compromise the protection of the rights holders.
- (2) The provisions of Article 34-2, paragraph (4) apply mutatis mutandis to the delivery of an investment report under the preceding paragraph.
- (3) When a Financial Instruments Business Operator, etc. has prepared an investment report set forth in paragraph (1) in connection with the Investment Management Business it conducts (limited to the business of performing the act specified in Article 2, paragraph (8), item (xv)), it shall notify the Prime Minister of this without delay; provided, however, that this does not apply if the number of rights holders to a set of invested assets is below the number specified by Cabinet Order, nor does it apply in the cases specified by Cabinet Office Ordinance as those in which its not doing so does not compromise the protection of investors.



(Exclusion from Application of the Trust Business Act)

Article 42-8 The provisions of Chapter IV of the Trust Business Act do not apply if a Financial Instruments Business Operator, etc. engages in Investment Management Business.

#### **Subsection 4 Special Provisions on Securities, etc. Management**

(Duty of Due Care of a Prudent Manager)

Article 43 A Financial Instruments Business Operator, etc. must engage in Securities, etc. Management with the due care of a prudent manager toward its customers.

(Separate Management)

Article 43-2 (1) A Financial Instruments Business Operator, etc. must manage the following Securities (excluding the Securities to be managed under the following paragraph) in the way specified by Cabinet Office Ordinance as a reliable and orderly way of managing property, and must do so separately from its own property:

- (i) the Securities that a customer deposits with the Financial Instruments Business Operator, etc. pursuant Article 119 (limited to those deposited in connection with Transactions of Securities-Related Derivatives) or Securities that a customer deposits with the Financial Instruments Business Operator, etc. pursuant to Article 161-2; and
- (ii) the Securities in the possession of the Financial Instruments Business Operator, etc. on the account of a customer or Securities that a customer has deposited with the Financial Instruments Business Operator, etc. (excluding Securities set forth in the preceding item, Securities that a Financial Instruments Business Operator, etc. may use pursuant to a contract, and Securities specified by Cabinet Order), in connection with transactions involved in Securities Services or other services specified by Cabinet Office Ordinance as being incidental to Securities Services (excluding Over-the-Counter Transactions of Derivatives (limited to transactions to be made with a Financial Instruments Business Operator that is engaged in Securities Services and is registered as referred to in Article 29 to engage in Type I Financial Instruments Business as the counterparty, and other transactions that are specified by Cabinet Office Ordinance in consideration of the characteristics of the counterparty to the transaction) and other transactions specified by Cabinet Order; hereinafter referred to as "Transactions Related to Subject Securities" in item (ii) of the following paragraph, Article 79-20 and Article 79-49).

(2) As regards the money or Securities set forth in the following items, a

Financial Instruments Business Operator, etc. must manage the amount of money calculated pursuant to the provisions of Cabinet Office Ordinance as the amount to be refunded to the customer in the event that said Financial Instruments Business Operator, etc. discontinues its Financial Instruments Business (including Services of a Registered Financial Institution; hereinafter the same applies in this paragraph) or otherwise ceases to operate in the Financial Instruments Business, separately from its own assets, and must establish a trust with a Trust Company, etc. in Japan, pursuant to the provisions of Cabinet Office Ordinance, for the purpose of managing the amount of money to be refunded to the customer in the event that said Financial Instruments Business Operator, etc. discontinues its Financial Instruments Business or otherwise ceases to operate in the Financial Instruments Business:

- (i) money that a customer deposits with the Financial Instruments Business Operator, etc. (limited to money deposited in connection with Transactions of Securities-Related Derivatives) pursuant to Article 119, or money that a customer deposits with the Financial Instruments Business Operator, etc. pursuant to Article 161-2;
  - (ii) money on the account of a customer or money that a customer deposits with the Financial Instruments Business Operator, etc. (excluding the money set forth in the preceding item) in connection with a Transaction Related to Subject Securities; and
  - (iii) Securities set forth in the items of the preceding paragraph that have been furnished as security pursuant to Article 43-4, paragraph (1).
- (3) A Financial Instruments Business Operator, etc. must periodically undergo an audit by a certified public accountant (this includes a foreign certified public accountant as prescribed in Article 16-2, paragraph (5) of the Certified Public Accountants Act (Act No. 103 of 1948); the same applies in Article 193-2 and Article 193-3) or audit by an auditing firm, pursuant to the provisions of Cabinet Office Ordinance, as regards the management conditions under the preceding two paragraphs.

Article 43-2-2 A Financial Instruments Business Operator, etc. shall, with regard to his/her transactions pertaining to the acts listed in Article 2, paragraph (8), item (ii) or item (iii) for Commodity-Related Market Transactions of Derivatives (hereinafter referred to as "Commodity-Related Market Transactions of Derivatives Brokerage, etc." in this Article, the following Article and Article 79-20) or his/her transactions pertaining to the business prescribed in Article 35, paragraph (1) specified by Cabinet Office Ordinance as a business incidental to a business pertaining to Commodity-Related Market Transactions of Derivatives Brokerage, etc. (hereinafter

collectively referred to as "Subject Commodity Derivatives Transaction-Related Transactions" in Article 79-20 and Article 79-49), manage the money or Securities deposited from a customer under the provisions of Article 119 or other property deposited from a customer, or money or other property belonging to the account of a customer, separately from his/her own property pursuant to the provisions of Cabinet Office Ordinance.

Article 43-3 (1) A Financial Instruments Business Operator, etc. must manage the money or Securities that a customer deposits pursuant to Article 119 and other security deposits and Securities in connection with the Derivatives Transactions, etc. it conducts (excluding those that fall under the category of Transactions of Securities-Related Derivatives, etc. , Commodity-Related Market Transactions of Derivatives or Commodity-Related Market Transactions of Derivatives Brokerage, etc.; the same applies in the following paragraph), separately from its own property, pursuant to the provisions of Cabinet Office Ordinance.

(2) A Financial Instruments Business Operator, etc. must manage the money and other assets that are equivalent to the amount of Financial Instruments that are part of the customer's account in connection with the Derivatives Transactions, etc. it conducts, pursuant to the provisions of Cabinet Office Ordinance.

(Restriction on the Act of Furnishing a Customer's Securities, etc. as Collateral)

Article 43-4 (1) If a Financial Instruments Business Operator, etc. furnishes the Securities in its possession on a customer's account or Securities deposited with it by a customer as collateral, or lends such Securities to another person, it must obtain written consent from said customer pursuant to the provisions of Cabinet Office Ordinance.

(2) A Financial Instruments Business Operator, etc. shall, when furnishing as security the Commodity possessed by him/her based on a customer's account (including securities or certificates issued in relation to deposited Commodity; hereinafter the same shall apply in this paragraph) or a Commodity deposited to him/her from a customer or loaning such Commodities to another person, with regard to the business pertaining to the acts listed in Article 2, paragraph (8), item (ii), (iii) or (v) for Commodity-Related Market Transactions of Derivatives, obtain written consent from the customer pursuant to the provisions of Cabinet Office Ordinance.

(3) The provisions of Article 34-2, paragraph (12) apply mutatis mutandis to the written consent prescribed in the preceding two paragraphs.

### **Subsection 5 Special Provisions on Electronic Public Offering Services**

Article 43-5 When a Financial Instruments Business Operator, etc. provides an Electronic Public Offering Service with regard to Securities set forth in the items of Article 3 or Securities not listed on a Financial Instruments Exchange (excluding those specified by Cabinet Order as prescribed in Article 29-2, paragraph (1), item (vi)), it must, pursuant to the provisions of Cabinet Office Ordinance, make the particulars to be stated in the document to be delivered pursuant to Article 37-3, paragraph (1) which are specified by Cabinet Office Ordinance as having a material influence on decisions by the other party to the Electronic Public Offering Service available for inspection by said other party, by means of an electronic data processing system or by any other means of information and communications technology specified by Cabinet Office Ordinance, throughout the period in which it provides an Electronic Public Offering Service with regard to such Securities.

### **Subsection 6 Preventive Measures against Adverse Effects**

(Prohibited Acts When Doing Business in Two or More Business Categories)

Article 44 If a Financial Instruments Business Operator, etc. or its officer or employee does business in two or more business categories (meaning business categories provided for in Article 29-2, paragraph (1), item (v)), the operator, etc., officer, or employee must not perform any of the following acts:

- (i) soliciting a customer to entrust, etc. it (meaning to request it to provide intermediation, brokerage, or agency; the same applies hereinafter) with a Purchase and Sale or Other Transaction of Securities, etc., using information about a Purchase and Sale or Other Transaction of Securities, etc. conducted by a customer that has received advice in connection with Investment Advisory Business or using information about a Purchase and Sale or Other Transaction of Securities, etc. conducted by such a customer as an investment in connection with Investment Management Business;
- (ii) giving advice in connection with the Investment Advisory Business it conducts, that would involve a transaction being conducted that is unnecessary in light of the transaction policy, the amount of the transaction, or the market conditions, or making an investment in connection with the Investment Management Business it conducts, that involves a transaction being conducted that is unnecessary in light of the investment policy, the amount of invested assets, or the market conditions, with the aim of benefitting from business other than Investment Advisory Business and Investment Management Business; and
- (iii) any act other than what is set forth in the preceding two items, which is

specified by Cabinet Office Ordinance as resulting in insufficient investor protection, harming the fairness of transactions, or causing a loss of confidence in the Financial Instruments Business.

(Prohibited Acts Involving Other Business)

Article 44-2 (1) If a Financial Instruments Business Operator, etc. or the officer or employee thereof does business other than in the Financial Instruments Business and services incidental thereto (hereinafter referred to as "Business Activities Other Than Those of a Financial Instruments Business Operator" in item (ii) and item (iii) below), the operator, etc., officer, or employee must not perform any of the following acts:

- (i) making its becoming entrusted, etc. with a purchase and sale of Securities (meaning causing a person to entrust, etc. it with such purchase and sale; hereinafter the same applies) conditional upon it lending money or otherwise granting credit to a person through a means other than a margin transaction prescribed in Article 156-24, paragraph (1) (excluding acts specified by Cabinet Office Ordinance as acts that are found to have little likelihood of resulting in insufficient investor protection);
- (ii) giving advice in connection with the Investment Advisory Business it conducts, that would involve a transaction being conducted that is unnecessary in light of the transaction policy, the amount of the transaction, or the market conditions, or making an investment in connection with the Investment Management Business it conducts, that involves a transaction being conducted that is unnecessary in light of the investment policy, the amount of invested assets, or the market conditions, with the aim of benefitting from Business Activities Other Than Those of a Financial Instruments Business Operator; and
- (iii) any act other than what is set forth in the preceding two items, which is set forth in the items of Article 2, paragraph (8), which is performed in connection with Business Activities Other Than Those of a Financial Instruments Business Operator, and which is specified by Cabinet Office Ordinance as resulting in insufficient investor protection, harming the fairness of transactions, or causing a loss of confidence in the Financial Instruments Business.

(2) If a registered financial institution or its officer or employee does business other than engaging in the services of a registered financial institution (referred to as "Business Activities Other Than Those of a Registered Financial Institution" in item (ii) and item (iii) below), the institution, officer, or employee must not perform any of the following acts:

- (i) making its becoming entrusted, etc. with a purchase and sale of Securities, conditional on it lending money or otherwise granting credit to a person

- (excluding acts specified by Cabinet Office Ordinance as acts that are found to have little likelihood of resulting in insufficient investor protection);
- (ii) giving advice in connection with the Investment Advisory Business it conducts, that would involve a transaction being conducted that is unnecessary in light of the transaction policy, the amount of the transaction, or the market conditions, or making an investment in connection with the Investment Management Business it conducts, that involves a transaction being conducted that is unnecessary in light of the investment policy, the amount of invested assets, or the market conditions, with the aim of benefitting from Business Activities Other Than Those of a Registered Financial Institution; and
  - (iii) any act other than what is set forth in the preceding two items, which is performed in connection with Business Activities Other Than Those of a Registered Financial Institution and which is specified by Cabinet Office Ordinance as resulting in insufficient investor protection, harming the fairness of transactions, or causing a loss of confidence in the Financial Instruments Business.

(Restriction on Acts Involving Parent Corporations, etc. or Subsidiary Corporations, etc.)

Article 44-3 (1) It is prohibited for a Financial Instruments Business Operator, etc. or its officer or employee to perform any of the following acts; provided, however, that this does not apply if the approval of the Prime Minister is obtained for the relevant act as one that is found not to compromise the public interest or the protection of investors:

- (i) conducting a purchase and sale or other transaction of Securities or an Over-the-Counter Transaction of Derivatives with the Parent Corporation, etc. or Subsidiary Corporation, etc. of the Financial Instruments Business Operator, etc., under terms and conditions that are different from ordinary terms and conditions and that are likely to be detrimental to the fairness of transactions;
- (ii) concluding a contract with a customer for any of the acts set forth in the items of Article 2, paragraph (8), knowing that the Parent Corporation, etc. or Subsidiary Corporation, etc. of the Financial Instruments Business Operator, etc. has granted credit to the customer on the condition that said contract be concluded with the Financial Instruments Business Operator, etc.;
- (iii) giving advice in connection with the Investment Advisory Business it conducts, that would involve a transaction being conducted that is unnecessary in light of the transaction policy, the amount of the transaction, or the market conditions, or making an investment in connection with the

- Investment Management Business it conducts, that involves a transaction being conducted that is unnecessary in light of the investment policy, the amount of invested assets, or the market conditions, with the aim of benefitting the Parent Corporation, etc. or Subsidiary Corporation, etc. of the Financial Instruments Business Operator, etc.; and
- (iv) any act other than what is set forth in the preceding three items, which involves the Parent Corporation, etc. or Subsidiary Corporation, etc. of the Financial Instruments Business Operator, etc. and which is specified by Cabinet Office Ordinance as being likely to compromise the protection of investors, harm the fairness of transactions, or cause a loss of confidence in the Financial Instruments Business.
- (2) It is prohibited for a registered financial institution or its officer or employee to perform any of the following acts; provided, however, that this does not apply if the approval of the Prime Minister is obtained for the relevant act as one that is found not to compromise the public interest or the protection of investors:
- (i) conducting a purchase and sale or other transaction of Securities or an Over-the-Counter Transaction of Derivatives with the Parent Corporation, etc. or Subsidiary Corporation, etc. of the registered financial institution, under terms and conditions that are different from ordinary terms and conditions and that are likely to be detrimental to the fairness of transactions;
  - (ii) performing the act specified in Article 33, paragraph (2), item (iv), sub-item (b) with a customer, while granting credit to the customer on the condition that a contract for any of the acts set forth in the items of Article 2, paragraph (8) be concluded with the Parent Corporation, etc. or Subsidiary Corporation, etc. of the registered financial institution;
  - (iii) giving advice in connection with the Investment Advisory Business it conducts, that would involve a transaction being conducted that is unnecessary in light of the transaction policy, the amount of the transaction, or the market conditions, or making an investment in connection with the Investment Management Business it conducts, that involves a transaction being conducted that is unnecessary in light of the investment policy, the amount of invested assets, or the market conditions, with the aim of benefitting the Parent Corporation, etc. or Subsidiary Corporation, etc. of the registered financial institution; and
  - (iv) any act other than what is set forth in the preceding three items, which involves the Parent Corporation, etc. or Subsidiary Corporation, etc. of the registered financial institution and which is specified by Cabinet Office Ordinance as being likely to compromise the protection of investors, harm the fairness of transactions, or cause a loss of confidence in the business of

the registered financial institution.

(Restriction on Credit Granting by the Underwriter)

Article 44-4 If a Financial Instruments Business Operator that has become an Underwriter of Securities sells said Securities (in the case of a Financial Instruments Business Operator who conducts the act specified in Article 2, paragraph (6), item (iii), the Securities acquired by exercising share options prescribed in said item), it must not lend money or otherwise grant credit for the purchase price to the purchaser of the Securities until six months have elapsed since the day on which the Financial Instruments Business Operator became an Underwriter.

### **Subsection 7 Miscellaneous Provisions**

Article 45 The provisions set forth in each of the following items do not apply if the person specified in the relevant item is a Professional Investor; provided, however, that this does not apply to the cases specified by Cabinet Office Ordinance as those in which the public interest or the protection of Professional Investors could be compromised:

- (i) Article 37; Article 38, items (iv) to (vi) inclusive; and Article 40, item (i): the other party that the Financial Instruments Business Operator, etc. solicits to conclude a Financial Instruments Transaction Contract;
- (ii) Articles 37-2 to 37-6 inclusive; Article 40-2, paragraph (4); and Article 43-4: the other party to a Financial Instruments Transaction Contract for which a Financial Instruments Business Operator, etc. has received an offer or which a Financial Instruments Business Operator, etc. has concluded;
- (iii) Article 41-4 and Article 41-5: the other party to an Investment Advisory Contract concluded by a Financial Instruments Business Operator, etc.; and
- (iv) Articles 42-5 to 42-7 inclusive: the other party to a Discretionary Investment Contract concluded by a Financial Instruments Business Operator, etc.

## **Section 3 Accounting**

### **Subsection 1 Financial Instruments Business Operators Engaged in Type I Financial Instruments Business**

(The Business Year)

Article 46 The business year of a Financial Instruments Business Operator (limited to one that is engaged in Type I Financial Instruments Business; hereinafter the same applies in this Subsection) is from the first day of a month selected by the Financial Instruments Business Operator to the day on



which one year has elapsed since said day; provided, however, that this does not apply to the first business year after changing the last day of the business year.

(Business Books and Documents)

Article 46-2 A Financial Instruments Business Operator shall prepare and archive its business books and documents pursuant to the provisions of Cabinet Office Ordinance.

(Submission, etc. of Business Reports)

Article 46-3 (1) Each business year, pursuant to the provisions of Cabinet Office Ordinance, a Financial Instruments Business Operator shall prepare a business report and submit it to the Prime Minister within three months after the end of the business year.

(2) In addition to submitting a business report pursuant to the provisions of the preceding paragraph, a Financial Instruments Business Operator shall report the state of its business and assets to the Prime Minister pursuant to the provisions of Cabinet Office Ordinance.

(3) If the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister, pursuant to the provisions of Cabinet Order, may order a Financial Instruments Business Operator to issue public notice of all or part of the business report referred to in paragraph (1).

(Public Inspection of Explanatory Documents)

Article 46-4 Each business year, a Financial Instruments Business Operator shall prepare explanatory documents stating the particulars specified by Cabinet Office Ordinance as pertinent to the state of its business and assets, and shall keep those explanatory documents at all of its business offices and offices and make them available for public inspection during the one-year period beginning from the day on which the period specified by Cabinet Order elapses following the end of each business year.

(Financial Instruments Transaction Liability Reserves)

Article 46-5 (1) A Financial Instruments Business Operator shall lay aside financial instruments transaction liability reserves, pursuant to the provisions of Cabinet Office Ordinance, in proportion to the transaction volume of the purchases and sales and other transactions of Securities and Derivatives Transactions, etc.

(2) The financial instruments transaction liability reserves referred to in the preceding paragraph must not be used other than when allocated to cover a

loss that arises due to problematic conduct in connection with a purchase and sale or other transaction of Securities or a Derivatives Transaction, etc., or in cases otherwise specified by Cabinet Office Ordinance.

(Capital Adequacy Ratio)

- Article 46-6 (1) A Financial Instruments Business Operator must calculate the ratio of the sum total of its stated capital, reserve funds, and other amounts specified by Cabinet Office Ordinance less the sum total of its fixed assets and any other things specified by Cabinet Office Ordinance, to the sum total of the amount specified by Cabinet Office Ordinance as the amount for covering possible risks which may arise due to fluctuations in the prices of the Securities held or due to other reasons (hereinafter referred to as the "Capital Adequacy Ratio"), and notify the Prime Minister of this ratio at the end of each month and in the cases specified by Cabinet Office Ordinance.
- (2) A Financial Instruments Business Operator must not allow its Capital Adequacy Ratio to fall below 120 percent.
- (3) A Financial Instruments Business Operator shall prepare documents stating its Capital Adequacy Ratio as of the last day of a Quarter (meaning each three-month period of the business year (for the first business year after changing the last day of the business year, each period specified by Cabinet Office ordinance); the same shall apply in Article 57-2, paragraph (5) and article 57-5, paragraphs (2) and (3)), keep them at all of its business offices and offices, and make them available for public inspection for the three-month period starting from the day on which one month has elapsed since the last day of the relevant month.

## **Subsection 2 Financial Instruments Business Operators Not Engaged in Type I Financial Instruments Business**

(Business Books and Documents)

- Article 47 A Financial Instruments Business Operator (other than one that is engaged in Type I Financial Instruments Business; hereinafter the same applies in this Subsection) shall prepare and archive its business books and documents pursuant to the provisions of Cabinet Office Ordinance.

(Submission of Business Reports)

- Article 47-2 Each business year, pursuant to the provisions of Cabinet Office Ordinance, a Financial Instruments Business Operator shall prepare a business report and submit it to the Prime Minister within three months after the end of the business year.

(Public Inspection of Explanatory Documents)

Article 47-3 Each business year, pursuant to the provisions of Cabinet Office Ordinance, a Financial Instruments Business Operator shall prepare explanatory documents stating those of the particulars stated in the business report referred to in the preceding Article which are specified by Cabinet Office Ordinance as particulars that are found to be necessary in terms of investor protection, and shall keep them at all of its business offices and offices and make them available for public inspection during the one-year period beginning from the day on which the period specified by Cabinet Order elapses following the end of each business year.

**Subsection 3 Registered Financial Institutions**

(Business Books and Documents)

Article 48 A registered financial institution shall prepare and archive its business books and documents pursuant to the provisions of Cabinet Office Ordinance.

(Submission, etc. of Business Reports)

Article 48-2 (1) Each business year, pursuant to the provisions of Cabinet Office Ordinance, a registered financial institution shall prepare a business report and submit it to the Prime Minister within three months after the end of the business year.

(2) In addition to submitting a business report pursuant to the provisions of the preceding paragraph, a registered financial institution shall report the state of its business and assets to the Prime Minister pursuant to the provisions of Cabinet Office Ordinance.

(3) If the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister, pursuant to the provisions of Cabinet Order, may order a registered financial institution to give public notice of all or part of the business report under paragraph (1).

(Financial Instruments Transaction Liability Reserves)

Article 48-3 (1) A registered financial institution shall lay aside financial instruments transaction liability reserves, pursuant to the provisions of Cabinet Office Ordinance, in proportion to the transaction volume of the purchases and sales and other transactions of Securities and Derivatives Transactions, etc.

(2) The financial instruments transaction liability reserves referred to in the preceding paragraph must not be used other than when allocated to cover a loss that arises due to problematic conduct involving a purchase and sale or

other transaction of Securities or a Derivatives Transaction, etc., or in cases otherwise specified by Cabinet Office Ordinance.

#### **Subsection 4 Special Provisions for Foreign Corporations, etc.**

(Special Provisions on the Submission of Business Reports)

Article 49 (1) With regard to the application of Article 46-3, paragraph (1) if a Financial Instruments Business Operator is a foreign corporation, in that paragraph, the phrase "within three months" shall be deemed to be replaced with "within the period specified by Cabinet Order."

(2) With regard to the application of Article 46-6, paragraph (1) if a Financial Instruments Business Operator is a foreign corporation, in that paragraph, the term "stated capital" shall be deemed to be replaced with "brought-in capital," the term "reserve funds" shall be deemed to be replaced with "reserve funds laid aside in its business offices and offices in Japan," and the term "fixed assets" shall be deemed to be replaced with "fixed assets of its business offices and offices in Japan."

(3) With regard to the application of Article 47-2 if a Financial Instruments Business Operator is a foreign corporation or an individual domiciled in a foreign state, and with regard to the application of Article 48-2, paragraph (1) if a registered financial institution is a foreign corporation, in those provisions, the phrase "within three months" is deemed to be replaced with "within the period specified by Cabinet Order".

(Submission of Other Documents)

Article 49-3 (1) Each business year, pursuant to the provisions of Cabinet Office Ordinance, a Financial Instruments Business Operator (but only a foreign corporation engaged in Type I Financial Instruments Business; hereinafter the same applies in this Subsection) shall submit a balance sheet, profit and loss statement, and other financial accounting documents prepared in connection with all of its business, as well as documents summarizing business in the relevant business year, to the Prime Minister within the period specified by Cabinet Order after the end of that business year.

(2) In addition to submitting documents pursuant to the provisions of the preceding paragraph, a Financial Instruments Business Operator shall report the state of its business and assets to the Prime Minister pursuant to the provisions of Cabinet Office Ordinance.

(Reserves for Loss)

Article 49-4 (1) Until the amount of money specified by Cabinet Order as referred to in Article 29-4, paragraph (1), item (iv), sub-item (a) is reached, a

Financial Instruments Business Operator shall lay aside reserves for loss at its principal business office or office in Japan, pursuant to the provisions of Cabinet Office Ordinance, in at least the amount arrived at by multiplying the amount of profit from the business conducted at all business offices and offices in Japan that it has established for the purpose of engaging in the Financial Instruments Business (hereinafter referred to as "All Business Offices and Offices" in the following paragraph and following Article), by the rate of no more than ten percent that is specified by Cabinet Office Ordinance.

- (2) The reserves for loss referred to in the preceding paragraph must not be used other than when allocated to cover a net loss linked to the business of All Business Offices and Offices of the Financial Instruments Business Operator, with the approval of the Prime Minister.

(Retention of Assets Within Japan)

Article 49-5 Pursuant to the provisions of Cabinet Office Ordinance, a Financial Instruments Business Operator must retain assets equivalent to the sum total of its financial instruments transaction liability reserves, reserves for loss, and the amount of liability on the accounts of All Business Offices and Offices as specified by Cabinet Order, in Japan.

## **Section 4 Supervision**

(Notification of Suspension)

Article 50 (1) If a Financial Instruments Business Operator, etc. comes to fall under one of the following items, it must notify the Prime Minister of this without delay:

- (i) it suspends its business (limited to Financial Instruments Business or services of a registered financial institution (hereinafter referred to as "Financial Instruments Business, etc." in this Section) or resumes business (with regard to a Financial Instruments Business Operator that has obtained the authorization referred to in Article 30, paragraph (1), this includes if it suspends or resumes the business subject to said authorization);
- (ii) it discontinues business that was under the authorization referred to in Article 30, paragraph (1);
- (iii) the Financial Instruments Business Operator is a corporation, and that corporation merges with another corporation (excluding if the Financial Instruments Business Operator is a corporation and that corporation disappears in the merger), succeeds to all or part of another corporation's business undertakings (limited to those in the Financial Instruments Business, etc.; hereinafter the same applies in this item and the following Article) in a company split, or acquires all or part of another corporation's

- business;
- (iv) the Financial Instruments Business Operator (limited to one engaged in Securities Services; the same applies in the following item) acquires or comes to hold the majority of all shareholders', etc. voting rights in a bank, a Cooperative Financial Institution, or any other financial institution specified by Cabinet Order; in a corporation in a foreign state that engages in the same kind of business as that conducted by such persons; or in a Financial Instruments Business Operator (limited to a corporation), a foreign corporation that engages in Financial Instruments Business, or any other corporation specified by Cabinet Office Ordinance (collectively referred to as a "Bank, etc." in the following item and Article 56-2, paragraph (1));
  - (v) the Financial Instruments Business Operator comes to no longer hold the majority of all shareholders', etc. voting rights in a Bank, etc. in which it used to hold the majority of all shareholders', etc. voting rights, or such Bank, etc. merges, is dissolved, or discontinues the whole of its business;
  - (vi) the majority of all shareholders', etc. voting rights in the Financial Instruments Business Operator (limited to one engaged in Type I Financial Instruments Business or Investment Management Business) has come to be held by another corporation or other organization;
  - (vii) it files a petition to commence bankruptcy proceedings, rehabilitation proceedings, or reorganization proceedings; or
  - (viii) it falls under any other case specified by Cabinet Office Ordinance.
- (2) Necessary particulars relevant to the determination of whether the majority of all shareholders', etc. voting rights are held as prescribed in item (iv) of the preceding paragraph are specified by Cabinet Office Ordinance in consideration of the manner in which they are held and other circumstances.

(Notification of Business Discontinuance)

Article 50-2 (1) If a Financial Instruments Business Operator, etc. comes to fall under one of the following items, the person specified in that item must notify the Prime Minister of this within 30 days from the day in question:

- (i) the Financial Instruments Business Operator is an individual, and that individual dies: the heir;
- (ii) the Financial Instruments Business Operator, etc. discontinues Financial Instruments Business, etc.: that corporation or individual;
- (iii) the Financial Instruments Business Operator, etc. is a corporation, and that corporation disappears in a merger: the officer that represented the corporation;
- (iv) the Financial Instruments Business Operator, etc. is a corporation, and that corporation is dissolved due to an order to commence bankruptcy proceedings: the bankruptcy trustee;

- (v) the Financial Instruments Business Operator, etc. is a corporation, and that corporation is dissolved for reasons other than a merger or an order to commence bankruptcy proceedings: the liquidator;
  - (vi) the Financial Instruments Business Operator, etc. is a corporation, and that corporation has the whole or part of its business succeeded to in a company split: that corporation; or
  - (vii) the Financial Instruments Business Operator, etc. transfers the whole or part of its business: that corporation or individual.
- (2) If a Financial Instruments Business Operator, etc. comes to fall under one of the items of the preceding paragraph (in item (vi) of the preceding paragraph, this is only if a Financial Instruments Business Operator, etc. has the whole of its business succeeded to in a company split, and in item (vii) of the preceding paragraph, this is only if a Financial Instruments Business Operator, etc. transfers the whole of its business), the Article 29 or Article 33-2 registration of the Financial Instruments Business Operator, etc. ceases to be valid.
- (3) If a Financial Instruments Business Operator is an individual (limited to one engaged in Investment Advisory Business) and that individual dies, the heir may continue to engage in Financial Instruments Business for 60 days after the death of the decedent (if, during that period, a disposition to refuse registration under Article 29-4, paragraph (1) is reached or the discontinuation of Financial Instruments Business (limited to Investment Advisory Business; hereinafter the same applies in this paragraph to paragraph (5) inclusive) is ordered pursuant to Article 52, paragraph (1) as it applies through the replacement of certain terms pursuant to the provisions of the following paragraph, the heir may continue to engage in Financial Instruments Business until the day on which the disposition is reached or the discontinuation is ordered; hereinafter referred to as the "Business Continuation Period" in this paragraph). The same applies until a disposition to make a registration or deny a registration in connection with an application is reached, if the heir files an application for the registration referred to in Article 29 (or, if the heir is a Financial Instruments Business Operator and files an application for the registration of a change referred to in Article 31, paragraph (4); hereinafter the same applies in this paragraph) during the Business Continuation Period and the Business Continuation Period elapses.
- (4) If it is permissible for an heir to continue engaging in Financial Instruments Business pursuant to the provisions of the preceding paragraph, the heir is deemed to be a Financial Instruments Business Operator (limited to one engaged in Investment Advisory Business), and the provisions of Articles 36 to 36-3 inclusive; Article 37; Article 37-3; Article 37-4; Articles 37-6 to 38-2 inclusive; Article 40; Articles 41 to 41-5 inclusive; Articles 44 to 44-3 inclusive; Article 45; Articles 47 to 47-3 inclusive; Article 49, paragraph (3); Article 49-4;

- Article 49-5; Article 51; Article 52, paragraph (1) (limited to the part that involves item (i) and items (vi) to (ix) inclusive); Article 52, paragraph (4) or (5); and Article 56-2 (limited to paragraph (1), (3) or (4)) (including the penal provisions linked with these provisions) apply. In this case, in Article 52, paragraph (1), the term "rescind its Article 29 registration" is deemed to be replaced with "order the discontinuation of Financial Instruments Business".
- (5) With regard to the application of the provisions of Article 29-4, paragraph (1) if the discontinuation of Financial Instruments Business is ordered pursuant to Article 52, paragraph (1) as it applies through the replacement of certain terms pursuant to the provisions of the preceding paragraph, the heir that is subject to the order for discontinuation is deemed to be a person that has had the registration referred to in Article 29 rescinded pursuant to the provisions of Article 52, paragraph (1), and the day on which the discontinuation is ordered is deemed to be the day on which the registration referred to in Article 29 is rescinded pursuant to the provisions of Article 52, paragraph (1).
- (6) If a Financial Instruments Business Operator, etc. seeks to discontinue Financial Instruments Business, etc. (excluding Investment Advisory and Agency Business; the same applies in paragraph (8) and Article 56, paragraph (1)), to implement a merger (limited to a merger in which the Financial Instruments Business Operator, etc. disappears), to dissolve for reasons other than merger or an order to commence bankruptcy proceedings, to have all or part of its business succeeded to in a company split, or to transfer all or part of its business, it must issue public notice of this and post a notice in a place easily seen by the public at all of its business offices and offices pursuant to the provisions of Cabinet Office Ordinance, by 30 days prior to the day on which it does so.
- (7) If a Financial Instruments Business Operator, etc. issues a public notice under the preceding paragraph, it must notify the Prime Minister of this immediately.
- (8) If a Financial Instruments Business Operator, etc. issues a public notice under paragraph (6) (unless it issues that public notice in connection with the succession of the whole or part of its business upon merger or in a company split or in connection with the transfer of the whole or part of its business), the Financial Instruments Business Operator, etc. must promptly complete the sales and purchases and other transactions of Securities and Derivatives Transactions, etc. it is conducting (referred to as "Customer Transactions" in Article 56 and Article 57-9) and return the assets that customers have deposited with it in connection with its Financial Instruments Business, etc. and the assets on its customers' accounts that are in its possession without delay.
- (9) The provisions of Article 940, paragraph (1) (limited to the part that involves



item (i)) and Article 940, paragraph (3) of the Companies Act apply mutatis mutandis if a Financial Instruments Business Operator, etc. (limited to one that is a company) issues a public notice under paragraph (6) through an Electronic Public Notice (meaning an Electronic Public Notice as provided for in Article 2, item (xxxiv) of that Act; the same applies hereinafter). The necessary technical replacement of terms for such a case is specified by Cabinet Order.

(10) The provisions of Article 940, paragraph (1) (limited to the part that involves item (i)) of the Companies Act and Article 940, paragraph (3); Article 941; Article 946; Article 947; Article 951; paragraph (2); Article 953; and Article 955 of that Act apply mutatis mutandis if a Financial Instruments Business Operator, etc. (limited to one that is a foreign company) issues a public notice under paragraph (6) through an Electronic Public Notice. The necessary technical replacement of terms for such a case is specified by Cabinet Order.

(Issuing a Business Improvement Order to a Financial Instruments Business Operator)

Article 51 If the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors as concerns a Financial Instruments Business Operator's business operations or the state of its assets, the Prime Minister, within the scope of this necessity, may order the Financial Instruments Business Operator to change its business methods or to otherwise take measures that are necessary for improving its business operations or the state of its assets.

(Issuing a Business Improvement Order to a Registered Financial Institution)

Article 51-2 If the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors as concerns a registered financial institution's business operations, the Prime Minister, within the scope of this necessity, may order the registered financial institution to change its business methods or to otherwise take measures that are necessary for improving its business operations.

(Supervisory Measures for Financial Instruments Business Operators)

Article 52 (1) If a Financial Instruments Business Operator falls under one of the following items, the Prime Minister may rescind its Article 29 registration, rescind its Article 30, paragraph (1) authorization, or order the suspension of all or a part of business activities during a fixed period of no longer than six months:

- (i) it comes to fall under Article 29-4, paragraph (1), item (i), (ii), or (iii);
- (ii) a Financial Instruments Business Operator engaged in Type I Financial

- Instruments Business, Type II Financial Instruments Business, or Investment Management Business comes to fall under Article 29-4, paragraph (1), item (iv);
- (iii) a Financial Instruments Business Operator engaged in Type I Financial Instruments Business or Investment Management Business comes to fall under Article 29-4, paragraph (1), item (v), sub-item (a) or (b);
  - (iv) a Financial Instruments Business Operator engaged in Type I Financial Instruments Business comes to fall under Article 29-4, paragraph (1), item (vi), sub-item (b);
  - (v) it has received its Article 29 registration by wrongful means;
  - (vi) it violates a law or regulation (other than Article 46-6, paragraph (2)) or a disposition by a government agency which is based on a law or regulation, in connection with the Financial Instruments Business or services incidental thereto;
  - (vii) in light of the state of its business or assets, it is likely to become insolvent;
  - (viii) a fact has occurred in connection with the operation of Investment Advisory and Agency Business or Investment Management Business, which is detrimental to the investors' interests;
  - (ix) it commits a wrongful or extremely unjust act in connection with the Financial Instruments Business, and the circumstances surrounding this are particularly serious;
  - (x) it violates the conditions attached to its Article 30, paragraph (1) authorization; or
  - (xi) a Financial Instruments Business Operator that has obtained Article 30, paragraph (1) authorization becomes unable to satisfy the criteria set forth in Article 30-4, items (i) to (iii) inclusive or (v).
- (2) If the officer of a Financial Instruments Business Operator (for a foreign corporation, this is limited to an officer stationed at its domestic business office or office and its domestic representative; hereinafter the same applies in this paragraph and paragraph (2) of the following Article) comes to fall under one of the categories in Article 29-4, paragraph (1), item (ii), sub-items (a) to (i) inclusive, is discovered to have fallen under one of the categories in sub-items (a) to (i) inclusive of that item at the time of the Article 29 registration, or comes to fall under one of the categories in item (vi) or items (viii) to (x) inclusive of the preceding paragraph, the Prime Minister may order the Financial Instruments Business Operator to dismiss that officer.
- (3) If a Financial Instruments Business Operator that has obtained Article 30, paragraph (1) authorization comes to fall under Article 50, paragraph (1), item (ii), or if the Article 29 registration of the Financial Instruments Business Operator loses its validity pursuant to the provisions of Article 50-2, paragraph

- (2) or is rescinded pursuant to the provisions of paragraph (1), the following paragraph, Article 53, paragraph (3), Article 54 or Article 57-6, paragraph (3), that authorization ceases to be valid.
- (4) If the Prime Minister is unable to ascertain the location of the business offices or offices of a Financial Instruments Business Operator or is unable to ascertain the whereabouts of a Financial Instruments Business Operator (in the case of a corporation, the whereabouts of the officer representing the corporation), the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance, may issue public notice of that fact and rescind the registration of the Financial Instruments Business Operator if no filing is made by the Financial Instruments Business Operator even after 30 days past the day of the public notice.
- (5) The provisions of Chapter III of the Administrative Procedure Act do not apply to a disposition under the preceding paragraph.

(Supervisory Measures for Registered Financial Institutions)

- Article 52-2 (1) If a registered financial institution falls one of the following items, the Prime Minister may rescind its registration under Article 33-2, or order the suspension of all or a part of business activities during a fixed period of no longer than six months:
- (i) it has come to fall under any of the items of Article 33-5, paragraph (1);
  - (ii) it has received its Article 33-2 registration by wrongful means;
  - (iii) it violates a law or regulation or a disposition by a government agency which is based on a law or regulation, in connection with the services of a registered financial institution or services incidental thereto;
  - (iv) a fact has occurred in connection with the operation of its Investment Advisory and Agency Business, which is detrimental to the investors' interests ; or
  - (v) it has committed a wrongful or unjust act in connection with the services of a registered financial institution, and the circumstances surrounding this are particularly serious.
- (2) If the officer of a registered financial institution comes to fall under one of the categories in items (iii) to (v) inclusive of the preceding paragraph, the Prime Minister may order the registered financial institution to dismiss that officer.
- (3) If the Prime Minister is unable to ascertain the location of the business offices or offices of a registered financial institution or is unable to ascertain the whereabouts of the officer representing the registered financial institution, the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance, may issue public notice of that fact and rescind the registration of the registered financial institution if no filing is made by the registered financial institution even after 30 days past the day of the public notice.

- (4) The provisions of Chapter III of the Administrative Procedure Act do not apply to a disposition under the preceding paragraph.

(Orders Involving the Capital Adequacy Ratio)

Article 53 (1) If a Financial Instruments Business Operator (limited to one engaged in Type I Financial Instruments Business; hereinafter the same applies in this Article) violates the provisions of Article 46-6, paragraph (2) and the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister, within the scope of this necessity, may order a change of business methods, order assets to be deposited, or issue orders with respect to matters that are otherwise necessary from a supervisory perspective.

(2) If a Financial Instruments Business Operator violates the provisions of Article 46-6, paragraph (2) (but only if the Capital Adequacy Ratio is less than 100 percent) and the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister, within the scope of this necessity, may order the suspension of all or a part of business activities during a fixed period of no longer than three months.

(3) If the Prime Minister orders the suspension of all or a part of business activities pursuant to the provisions of the preceding paragraph, and finds that the Capital Adequacy Ratio of the Financial Instruments Business Operator as of the day on which three months have elapsed since the day of the order continues to be less than 100 percent and that the Financial Instruments Business Operator's Capital Adequacy Ratio status is not likely to recover, the Prime Minister may rescind the Article 29 registration of that Financial Instruments Business Operator.

(Rescission of Registration Due to Non-commencement or Suspension of Business)

Article 54 If, without legitimate grounds for doing so, a Financial Instruments Business Operator, etc. does not commence business within three months of the day on which it is permitted to begin engaging in Financial Instruments Business, etc. or suspends business for three months or more continually, the Prime Minister may rescind the Article 29 or Article 33-2 registration of that Financial Instruments Business Operator, etc.

(Public Notice of Supervisory Measures)

Article 54-2 In the cases set forth as follows, the Prime Minister shall issue public notice indicating as follows, pursuant to the provisions of Cabinet Office Ordinance:

- (i) the Prime Minister rescinds an Article 29 or Article 33-2 registration or an

- Article 30, paragraph (1) authorization, or orders the suspension of all or a part of business activities pursuant to the provisions of Article 52, paragraph (1) or Article 52-2, paragraph (1);
- (ii) the Prime Minister orders the suspension of all or a part of business activities pursuant to the provisions of Article 53, paragraph (2); or
- (iii) the Prime Minister rescinds an Article 29 or Article 33-2 registration pursuant to the provisions of Article 52, paragraph (4); Article 52-2, paragraph (3); Article 53, paragraph (3); or the preceding Article.

(Deletion of a Registration)

- Article 55 (1) If an Article 29 or Article 33-2 registration loses its validity pursuant to the provisions of Article 50-2, paragraph (2) or if the Prime Minister rescinds an Article 29 or Article 33-2 registration pursuant to the provisions of Article 52, paragraph (1) or (4); Article 52-2, paragraph (1) or (3); Article 53, paragraph (3); or Article 54; the Prime Minister must delete that registration.
- (2) If the Prime Minister rescinds an Article 30, paragraph (1) authorization pursuant to the provisions of Article 52, paragraph (1) or an Article 30, paragraph (1) authorization loses its validity pursuant to the provisions of Article 52, paragraph (3), the Prime Minister must delete the supplementary note indicating that the Article 30, paragraph (2) authorization has been given.

(Completion of Remaining Business)

- Article 56 (1) The provisions of Article 50-2, paragraph (8) apply mutatis mutandis to a person that was a Financial Instruments Business Operator, etc. if that Financial Instruments Business Operator, etc. dissolves or discontinues Financial Instruments Business, etc., or has its Article 29 or Article 33-2 registration rescinded pursuant to the provisions of Article 52, paragraph (1); Article 52-2, paragraph (1); Article 53, paragraph (3); or Article 54. In such a case, the person that was the Financial Instruments Business Operator, etc. is deemed to still be a Financial Instruments Business Operator, etc. inasmuch as the task of completing Customer Transactions is concerned.
- (2) Except in a case to which the provisions of the preceding paragraph are applicable, the provisions of Article 50-2, paragraph (8) apply mutatis mutandis to the Customer Transactions involved in the business of a Financial Instruments Business Operator if a Financial Instruments Business Operator that has obtained Article 30, paragraph (1) authorization discontinues the business to which that authorization pertains or has that authorization rescinded pursuant to the provisions of Article 52, paragraph (1). In such a case, the Financial Instruments Business Operator is deemed to still have Article 30, paragraph (1) authorization inasmuch as the task of completing the

Customer Transactions involved in that business is concerned.

(Collection of Reports and Inspections)

- Article 56-2 (1) Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order a Financial Instruments Business Operator, etc., a person that conducts transactions with a Financial Instruments Business Operator, etc., a Bank, etc. in which a Financial Instruments Business Operator, etc. (excluding a registered financial institution) holds the majority of all shareholders', etc. voting rights (hereinafter such a Bank, etc. is referred to as a "Specified Subsidiary Corporation" in this paragraph), a Holding Company (meaning a holding company as prescribed in Article 9, paragraph (4), item (i) of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade; hereinafter the same applies in this Article) that has a Financial Instruments Business Operator, etc. as its Subsidiary Company (meaning a Subsidiary Company as prescribed in Article 29-4, paragraph (3); hereinafter the same applies in this Article), or the person that a Financial Instruments Business Operator, etc. has entrusted with its business(including a person who has received entrustment from such person (including entrustment via two or more layers); hereinafter the same shall apply in this paragraph), to submit reports or materials that should serve as a reference in connection with the business or assets of the Financial Instruments Business Operator, etc. (but may only order a Specified Subsidiary Corporation submit reports or materials that should serve as a reference in connection with the assets of the Financial Instruments Business Operator, etc. (excluding a registered financial institution)), and may have the relevant officials inspect the state of the business or assets, or the books and documents or any other articles, of a Financial Instruments Business Operator, etc., a Specified Subsidiary Corporation, a Holding Company that has a Financial Instruments Business Operator, etc. as its Subsidiary Company, or the person that a Financial Instruments Business Operator, etc. has entrusted with its business (but may only have the relevant officials inspect a Specified Subsidiary Corporation as is necessary in connection with the assets of the Financial Instruments Business Operator, etc. (excluding a registered financial institution), and may only have the relevant officials inspect a Holding Company that has a Financial Instruments Business Operator, etc. as its Subsidiary Company, or the person that a Financial Instruments Business Operator, etc. has entrusted with its business, as is necessary in connection with the business or assets of the Financial Instruments Business Operator, etc.).
- (2) Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order

the Major Shareholder (meaning a Major Shareholder as provided for in Article 29-4, paragraph (2); hereinafter the same applies in this paragraph) of a Financial Instruments Business Operator (limited to one engaged in Type I Financial Instruments Business or Investment Management Business, and excluding a foreign corporation; hereinafter the same applies in this paragraph) or the Major Shareholder of a Holding Company that has a Financial Instruments Business Operator as its Subsidiary Company to submit a notification or take measures referred to in Articles 32 to 32-3 inclusive (this means Article 32, paragraph (1) or (2); Article 32-2, paragraph (1); or Article 32-3, paragraph (1) as applied mutatis mutandis pursuant to Article 32-4 in the case of the Major Shareholder of a Holding Company that has a Financial Instruments Business Operator as its Subsidiary Company; hereinafter the same applies in this paragraph), and to submit reports or materials that should serve as a reference in connection with the business or assets of a Financial Instruments Business Operator, and may have the relevant officials inspect documents or other articles of such a Major Shareholder (but only as is necessary in connection with the notification or measures referred to in Articles 32 to 32-3 inclusive or the business or assets of the Financial Instruments Business Operator, etc.).

- (3) In a case other than what is provided for in paragraph (1), whenever the Prime Minister finds it to be necessary and appropriate for ensuring compliance with the provisions of Article 36, paragraph (2), the Prime Minister may order the Parent Financial Institution, etc. (meaning a Parent Financial Institution, etc. provided for in Article 36, paragraph (4); hereinafter the same applies in this paragraph) or Subsidiary Financial Institution, etc. (meaning a Subsidiary Financial Institution, etc. provided for in Article 36, paragraph (5); hereinafter the same applies in this paragraph) of a Specified Financial Instruments Business Operator, etc. (meaning a Specified Financial Instruments Business Operator, etc. provided for in Article 36, paragraph (3); hereinafter the same applies in this paragraph) to submit reports or materials that should serve as a reference in connection with the business or assets of the Specified Financial Instruments Business Operator, etc., and may have the relevant officials inspect the state of the business or assets, or the books and documents or any other articles, of the Parent Financial Institution, etc. or the Subsidiary Financial Institution, etc. of the relevant Specified Financial Instruments Business Operator, etc.
- (4) In a case other than what is provided for in paragraph (1), whenever the Prime Minister finds it to be necessary and appropriate for ensuring compliance with Article 44-3, the Prime Minister may order the Parent Bank, etc. (meaning a Parent Bank, etc. provided for in Article 31-4, paragraph (3); hereinafter the same applies in this paragraph) or Subsidiary Bank, etc.

(meaning a Subsidiary Bank, etc. provided for in Article 31-4, paragraph (4); hereinafter the same applies in this paragraph) of a Financial Instruments Business Operator to submit reports or materials that should serve as a reference in connection with the business or assets of the Financial Instruments Business Operator, and may have the relevant officials inspect the state of the business or assets, or the books and documents or any other articles, of the Parent Bank, etc. or Subsidiary Bank, etc. of the relevant Financial Instruments Business Operator.

(Retention of Assets Within Japan)

Article 56-3 Beyond what is provided for in Article 49-5, if the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order a Financial Instruments Business Operator to keep the portion of its assets that is specified by Cabinet Order within Japan.

(Hearing)

- Article 57 (1) Before seeking to refuse an Article 29 or Article 33-2 registration, an Article 30, paragraph (1) authorization, or an Article 31, paragraph (4) registration of a change, the Prime Minister must notify the applicant for registration or the Financial Instruments Business Operator, and have the relevant officials conduct a hearing regarding the applicant for registration or the Financial Instruments Business Operator.
- (2) Irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, before seeking to issue a disposition based on the provisions of Article 51; Article 51-2; Article 52, paragraph (1); Article 52-2, paragraph (1); Article 53; Article 54; or the preceding Article, the Prime Minister must conduct a hearing.
- (3) Upon deciding to grant or to refuse an Article 29 or Article 33-2 registration, the an Article 30, paragraph (1) or Article 31, paragraph (6) authorization, an Article 31, paragraph (4) registration of a change, or an Article 35, paragraph (4) approval, to attach conditions pursuant to the provisions of Article 30-2, paragraph (1), or to issue a disposition based on the provisions of Article 51; Article 51-2; Article 52, paragraph (1) or (2); Article 52-2, paragraph (1) or (2); Article 53; Article 54; or the preceding Article, the Prime Minister must notify the applicant for registration or the Financial Instruments Business Operator, etc. of this in writing.

**Section 4-2 Special Provisions on Special Financial Instruments  
Business Operators, etc.**

**Subsection 1 Special Financial Instruments Business Operators**



(Notifications for Special Financial Instruments Business Operators)

Article 57-2 (1) If the total asset value (meaning the total monetary value of assets calculated pursuant to the provisions of Cabinet Office Ordinance; hereinafter the same applies in this Article) of a Financial Instruments Business Operator (limited to one engaged in Type I Financial Instruments Business, excluding foreign corporations; hereinafter the same applies in this Subsection) exceeds the amount of money specified by Cabinet Order as representing the scope of all assets required for ensuring the sound and appropriate operation of the business of the group consisting of the Financial Instruments Business Operator and its Subsidiary Corporations, etc. (hereinafter referred to as the "Total Asset Value Threshold" in this Article), the Financial Instruments Business Operator must notify the Prime Minister of this, of the total asset value, and of the basis for its calculation within two weeks from the day on which that value is exceeded; provided, however, that if the total asset value comes to be equal to or lower than the Total Asset Value Threshold after the Financial Instruments Business Operator has made the notification under the main clause of this paragraph, but the total asset value of the Financial Instruments Business Operator again comes to exceed the Total Asset Value Threshold by the time that two years have elapsed counting from the day on which the total asset value came to be equal to or lower than the Total Asset Value Threshold, the Financial Instruments Business Operator is not required to submit notification of this or of the total asset value and the basis for its calculation.

(2) A Special Financial Instruments Business Operator (meaning a Financial Instruments Business Operator that has made the notification under the provisions of the preceding paragraph, excluding one that comes to fall under paragraph (6), item (ii) after making that notification; hereinafter the same applies in this Section) shall submit the following documents within the period specified by Cabinet Order counting from the day on which it makes the notification under the provisions of the preceding paragraph (hereinafter referred to as the "Notification Date" in this Subsection) if that Special Financial Instruments Business Operator has a Parent Company as of the Notification Date:

- (i) a document in which it states the trade name or name of the Parent Company of the Special Financial Instruments Business Operator and other particulars specified by Cabinet Office Ordinance;
- (ii) the latest Quarterly Securities Report of the company that, among the Parent Companies of the Special Financial Instruments Business Operator, itself has no Parent Company, and other documents in which it describes the state of the business and assets of the Parent Company of the Special

- Financial Instruments Business Operator and its Subsidiary Corporations, etc. pursuant to the provisions of Cabinet Office Ordinance;
- (iii) if the group consisting of the Parent Company of the Special Financial Instruments Business Operator and its Subsidiary Corporations, etc. is under the supervision of an administrative organization based on other laws and regulations (including if the group is under the supervision of an administrative organization in a foreign state or any other equivalent organization based on foreign laws and regulations) with respect to the state of its business operations and assets, a document explaining this; and
  - (iv) if the Parent Company of the Special Financial Instruments Business Operator does the management and administration of the Special Financial Instruments Business Operator or if the Parent Company of the Special Financial Instruments Business Operator or its Subsidiary Corporation, etc. provides assistance related to fund procurement to the Special Financial Instruments Business Operator, a document in which it states the content and methods of this management and administration or assistance, pursuant to the provisions of Cabinet Office Ordinance.
- (3) If a Special Financial Instruments Business Operator comes to have a Parent Company on or after the Notification Date, the Special Financial Instruments Business Operator must submit the documents set forth in the items of the preceding paragraph to the Prime Minister within the period specified by Cabinet Order, as calculated beginning from the day on which it came to have that Parent Company.
- (4) If a particular stated in a document set forth in item (i), (iii) or (iv) of paragraph (2) changes (excluding a document specified by Cabinet Office Ordinance which concerns a Designated Parent Company as prescribed in Article 57-12, paragraph (3) or its Subsidiary Corporation, etc.), the Special Financial Instruments Business Operator (limited to one with a Parent Company) that has submitted the document set forth in the relevant item of paragraph (2) pursuant to the provisions of the preceding two paragraphs must notify the Prime Minister of this without delay, pursuant to the provisions of Cabinet Office Ordinance.
- (5) For each Quarter, a Special Financial Instruments Business Operator (limited to one with a Parent Company) that submits the documents set forth in the items of paragraph (2) pursuant to the provisions of paragraph (2) or (3), shall submit the Quarterly Securities Report of the company that, among the Parent Companies of that Special Financial Instruments Business Operator, itself has no Parent Company, and submit other documents in which it describes the state of the business and assets of the Parent Company of the Special Financial Instruments Business Operator and its Subsidiary Corporations, etc. pursuant to the provisions of Cabinet Office Ordinance

(excluding documents specified by Cabinet Office Ordinance which concern the Highest Designated Parent Company provided for in Article 57-12, paragraph (3) or its Subsidiary Corporations, etc.), to the Prime Minister within the period specified by Cabinet Order after the end of the Quarter.

- (6) If a Special Financial Instruments Business Operator comes to fall under one of the following items, it must notify the Prime Minister of this without delay:
  - (i) it comes to no longer have a Parent Company; or
  - (ii) two years have elapsed counting from the day on which the total asset value came to be equal to or lower than the Total Asset Value Threshold, without the total asset value exceeding the Total Asset Value Threshold.
- (7) If the Prime Minister accepts a notification under paragraph (1), the Prime Minister must note that the Financial Instruments Business Operator that has made such notification is a Special Financial Instruments Business Operator in said Financial Instruments Business Operator's registration.
- (8) The term "Parent Company" as used in paragraphs (2) to (6) inclusive means a first company that has a second company as its Subsidiary Company (meaning a Subsidiary Company as prescribed in Article 29-4, paragraph (3); hereinafter the same applies in the following paragraph).
- (9) The term "Subsidiary Corporation, etc." as used in paragraphs (1), (2), (4), and (5) means the Subsidiary Company of another company or any other person that falls under the requirements specified by Cabinet Order as a corporation or other organization that is closely related to that other company.

(Submission of Business Reports)

- Article 57-3 (1) In and after the business year that includes the day on which the period specified by Cabinet Order elapses counting from the Notification Date, pursuant to the provisions of Cabinet Office Ordinance, a Special Financial Instruments Business Operator (limited to a Special Financial Instruments Business Operator with a Subsidiary Corporation, etc. (meaning a Subsidiary Corporation, etc. as prescribed in paragraph (9) of the preceding Article; hereinafter the same applies in this Subsection)) shall prepare a business report on a consolidated basis describing the state of the business and assets of the Special Financial Instruments Business Operator and its Subsidiary Corporation, etc., and submit that business report to the Prime Minister within three months after the end of each business year.
- (2) In addition to submitting a business report pursuant to the provisions of the preceding paragraph, a Special Financial Instruments Business Operator shall report the state of the business and assets of the Special Financial Instruments Business Operator and its Subsidiary Corporations, etc. to the Prime Minister pursuant to the provisions of Cabinet Office Ordinance.
  - (3) If the Prime Minister finds it to be necessary and appropriate in the public

interest or for the protection of investors, the Prime Minister may order a Special Financial Instruments Business Operator to make public notice of all or part of the business report referred to in paragraph (1), pursuant to the provisions of Cabinet Order.

(Public Inspection of Explanatory Documents)

Article 57-4 In and after the business year that includes the day on which the period specified by Cabinet Order elapses counting from the Notification Date, a Special Financial Instruments Business Operator shall prepare explanatory documents on a consolidated basis for the Special Financial Instruments Business Operator and its Subsidiary Corporations, etc., stating the particulars specified by Cabinet Office Ordinance as pertinent to the state of the business and assets of the Special Financial Instruments Business Operator and its Subsidiary Corporations, etc., and shall keep those explanatory documents at all of its business offices and offices and make them available for public inspection during the one-year period beginning from the day on which the period specified by Cabinet Order elapses following the end of each business year.

(Written Notification Stating the Soundness of Management)

Article 57-5 (1) In order to contribute to the sound and appropriate operation of the business of a Special Financial Instruments Business Operator, the Prime Minister shall establish criteria for whether the capital adequacy of the Special Financial Instruments Business Operator and its Subsidiary Corporations, etc. is appropriate in light of the assets, etc. held by the Special Financial Instruments Business Operator and its Subsidiary Corporations, etc. and other criteria that indicate soundness in the management of the Special Financial Instruments Business Operator and its Subsidiary Corporation, etc., as criteria by which the Special Financial Instruments Business Operator is to judge the soundness of its management.

(2) For each Quarter in and after the Quarter that includes the day on which the period specified by Cabinet Order elapses counting from the Notification Date, a Special Financial Instruments Business Operator shall submit a document to the Prime Minister in which it describes the soundness of its management as of the last day of the Quarter, as indicated by the criteria prescribed in the preceding paragraph (hereinafter simply referred to as the "Soundness of Management" in the following paragraph and the following Article), pursuant to the provisions of Cabinet Office Ordinance.

(3) For each Quarter in and after the Quarter that includes the day on which the period specified by Cabinet Order elapses counting from the Notification Date and pursuant to the provisions of Cabinet Office Ordinance, a Special Financial

Instruments Business Operator shall keep a document in which it describes the Soundness of Management at all of its business offices and offices and make this document available for public inspection during the three-month period beginning from the day on which the period specified by Cabinet Order elapses counting from the end of the Quarter.

(Supervisory Measures Corresponding with the Soundness of Management)

Article 57-6 (1) If the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors in light of the Soundness of Management of a Special Financial Instruments Business Operator and its Subsidiary Corporations, etc., the Prime Minister, within the scope of this necessity, may order a Special Financial Instruments Business Operator to suspend all or a part of business activities during a fixed period of no longer than three months, may order it to change business methods or to deposit assets, and may issue orders to it in respect of matters that are otherwise necessary from a supervisory perspective.

(2) An order under the provisions of the preceding paragraph is to be given so as to correspond with the classification of the Soundness of Management of a Special Financial Instruments Business Operator and its Subsidiary Corporations, etc., and the Prime Minister must determine such classifications and the nature of the corresponding orders in advance and issue public notice of the same.

(3) If the Prime Minister orders a Special Financial Instruments Business Operator to suspend all or a part of its business activities pursuant to the provisions of paragraph (1), and the Soundness of Management of the Special Financial Instruments Business Operator and its Subsidiary Corporation, etc. does not improve and is found to have no prospect of improving as of the day on which three months have elapsed since the day of the order, the Prime Minister may rescind the Article 29 registration of the Special Financial Instruments Business Operator.

(Public Notice of Supervisory Measures)

Article 57-7 In the cases set forth as follows, the Prime Minister shall make a public notice indicating as follows, pursuant to the provisions of Cabinet Office Ordinance:

- (i) the Prime Minister orders the suspension of all or a part of business activities pursuant to the provisions of paragraph (1) of the preceding Article; or
- (ii) the Prime Minister rescinds an Article 29 registration pursuant to the provisions of paragraph (3) of the preceding Article.

(Deletion of Registration)

- Article 57-8 (1) If the Prime Minister rescinds an Article 29 registration pursuant to the provisions of Article 57-6, paragraph (3), the Prime Minister must delete that registration.
- (2) If the Prime Minister accepts a notification under the provisions of Article 57-2, paragraph (6), item (ii), the Prime Minister must delete the supplementary note indicating that the person is a Special Financial Instruments Business Operator as prescribed in paragraph (7) of that Article.

(Completion of Remaining Business)

- Article 57-9 The provisions of Article 50-2, paragraph (8) apply *mutatis mutandis* to a person that was a Special Financial Instruments Business Operator if the Special Financial Instruments Business Operator has had the registration referred to in Article 29 rescinded pursuant to the provisions of Article 57-6, paragraph (3). In such a case, the person that was the Special Financial Instruments Business Operator is deemed to still be a Financial Instruments Business Operator inasmuch as the task of completing Customer Transactions is concerned.

(Collection of Reports and Inspections)

- Article 57-10 (1) Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order the Subsidiary Company, etc. of a Special Financial Instruments Business Operator to submit reports or materials that should serve as a reference in connection with the assets of the Special Financial Instruments Business Operator, and may have the relevant officials inspect the state of the business or assets, or the books and documents or any other articles, of such a Subsidiary Company, etc. (but only as is necessary in connection with the property of the Special Financial Instruments Business Operator).
- (2) The term "Subsidiary Company, etc." as used in the preceding paragraph means a second company, etc. with a parent company, etc. (meaning a company, etc. (meaning a company, partnership, or other equivalent business entity, including anything that is equivalent to these in a foreign state; hereinafter the same applies in this paragraph) specified by Cabinet Office Ordinance as a first company, etc. that controls the mechanism that decides the financial and operational or business policies of a second company, etc. (meaning the shareholders or other equivalent body; hereinafter referred to as the "Decision-Making Body" in this paragraph)) that controls its Decision-Making Body. In such a case, a second company, etc. whose Decision-Making Body is controlled by a parent company, etc. and its Subsidiary Company, etc. or whose Decision-

Making Body is controlled by the Subsidiary Company, etc. of such a parent company, etc. is deemed to be a Subsidiary Company, etc. of that parent company, etc.

(Hearings)

- Article 57-11 (1) Irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, before seeking to issue a disposition based on the provisions of Article 57-6, paragraph (1) or (3), the Prime Minister must conduct a hearing.
- (2) If the Prime Minister decides to issue a disposition based on the provisions of Article 57-6, paragraph (1) or (3), the Prime Minister must notify the Special Financial Instruments Business Operator of this in writing.

### **Subsection 2 Designated Parent Company**

(Designation)

- Article 57-12 (1) If the Parent Company (meaning a Parent Company as prescribed in Article 57-2, paragraph (8); hereinafter the same applies in this Section) of a Special Financial Instruments Business Operator or its Subsidiary Corporation, etc. satisfies one of the following requirements, and the Prime Minister finds that ensuring the sound and appropriate operation of the business of the Parent Company and its Subsidiary Corporations, etc. is particularly necessary in the public interest or for the protection of investors, the Prime Minister is to designate the Parent Company as a person that is subject to the application of the provisions of this Subsection:
- (i) the Parent Company does the management and administration of the Special Financial Instruments Business Operator on a regular basis; or
  - (ii) the Parent Company or its Subsidiary Corporation, etc. lends funds to, guarantees obligations for, or provides other similar assistance with fund procurement to the Special Financial Instruments Business Operator for the purpose of its business operations, and it is found that the suspension of such assistance would be likely to substantially compromise the sound and appropriate operation of the business of the Special Financial Instruments Business Operator.
- (2) If the group consisting of the Parent Company of a Special Financial Instruments Business Operator and its Subsidiary Corporations, etc. is found to be under appropriate supervision by an administrative organization based on other laws and regulations (including if the group is found to be under appropriate supervision by a foreign administrative organization or any other equivalent organization based on foreign laws and regulations) with respect to the state of its business operations and assets, the Prime Minister may choose

not to make the designation under the provisions of the preceding paragraph.

- (3) Upon effecting a designation under the provisions of paragraph (1), the Prime Minister shall notify the person subject to the designation (hereinafter referred to as "Designated Parent Company") in writing of this, as well as notifying it of the trade name of the Special Financial Instruments Business Operator connected with that designation (hereinafter referred to as "Subject Special Financial Instruments Business Operator"), and whether or not it, as the Designated Parent Company, is the Highest Designated Parent Company (meaning a Designated Parent Company that does not have a Parent Company which is the Designated Parent Company of the same Subject Special Financial Instruments Business Operator as itself; hereinafter the same applies in this Subsection). The same applies if these matters change.
- (4) Upon making a designation under the provisions of paragraph (1), the Prime Minister shall make public notice of the trade name or name and the location of the head office or principal office of the Designated Parent Company (for a foreign company that has an office in Japan, this includes the location of its principal office in Japan; hereinafter the same applies in paragraph (1), item (iv) of the following Article), and the trade name of the Subject Special Financial Instruments Business Operator in the official gazette. The same applies if one of these particulars changes.
- (5) If the Prime Minister finds that the grounds for a Designated Parent Company becoming subject to a designation under the provisions of paragraph (1) have ceased to exist, the Prime Minister, in addition to cancelling that designation, must give written notice of this to the Designated Parent Company whose designation is being cancelled.
- (6) If the Prime Minister cancels a designation pursuant to the provisions of the preceding paragraph, the Prime Minister shall issue public notice of this in the official gazette.

(Notification by a Designated Parent Company)

Article 57-13 (1) A Designated Parent Company shall submit a document to the Prime Minister in which it states the following particulars, by the day on which the period specified by Cabinet Order has elapsed since the day it became subject to the designation under the provisions of paragraph (1) of the preceding Article; provided, however, that this does not apply if the Designated Parent Company is no longer the Parent Company of the Subject Special Financial Instruments Business Operator by such day:

- (i) its trade name or name;
- (ii) the amount of stated capital or the total amount of contributions;
- (iii) the names of its officers;
- (iv) the name and location of its head office or principal office;



- (v) if applicable, an indication that the group consisting of the Designated Parent Company and its Subsidiary Corporations, etc. is under the supervision of an administrative organization based on other laws and regulations (including if the group is under the supervision of a foreign administrative organization or any other equivalent organization based on foreign laws and regulations) with respect to the state of its business operations and assets;
  - (vi) the things specified by Cabinet Office Ordinance as constituting the business outline and business methods as regards the management and administration of the Subject Special Financial Instruments Business Operator by the Designated Parent Company or assistance with fund procurement given to the Subject Special Financial Instruments Business Operator by the Designated Parent Company or its Subsidiary Corporation, etc.; and
  - (vii) other particulars specified by Cabinet Office Ordinance.
- (2) The following documents must accompany the document referred to in the preceding paragraph:
- (i) a document pledging that the Designated Parent Company does not fall under the purview of Article 57-20, paragraph (1), item (i) or (iv) (in the case of a foreign company, item (i) of that paragraph); and
  - (ii) its articles of incorporation, its certificate of registered information, and other documents specified by Cabinet Office Ordinance.
- (3) As concerns the documents set forth in item (ii) of the preceding paragraph accompanying the document under paragraph (1), if the articles of incorporation have been prepared as electronic or magnetic records, such electronic or magnetic records (limited to those specified by Cabinet Office Ordinance) may accompany that document in lieu of written documents.

(Notification of a Change)

Article 57-14 If the particulars set forth in one of the items of paragraph (1) of the preceding Article changes, the Designated Parent Company must notify the Prime Minister of this within two weeks from the day of the change, pursuant to the provisions of Cabinet Office Ordinance.

(Submission of Business Reports)

Article 57-15 (1) In and after the business year that includes the day on which the period specified by Cabinet Order elapses counting from the day on which a company becomes the Highest Designated Parent Company and pursuant to the provisions of Cabinet Office Ordinance, the Highest Designated Parent Company shall prepare a business report on a consolidated basis, in which it describes the state of the business and assets of the Highest Designated Parent

Company and its Subsidiary Corporations, etc., and submit this business report to the Prime Minister within three months after the end of each business year.

- (2) In addition to submitting a business report pursuant to the provisions of the preceding paragraph, the Highest Designated Parent Company shall report the state of the business and assets of the Highest Designated Parent Company and its Subsidiary Corporations, etc. to the Prime Minister pursuant to the provisions of Cabinet Office Ordinance.
- (3) If the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister, pursuant to the provisions of Cabinet Order, may order the Highest Designated Parent Company to make public notice of all or part of the business report referred to in paragraph (1).

(Public Inspection of Explanatory Documents)

Article 57-16 In and after the business year that includes the day on which the period specified by Cabinet Order elapses counting from the day on which a company becomes the Highest Designated Parent Company, the Highest Designated Parent Company shall prepare explanatory documents on a consolidated basis for the Highest Designated Parent Company and its Subsidiary Corporations, etc., stating the particulars specified by Cabinet Office Ordinance as pertinent to the state of the business and assets of the Highest Designated Parent Company and its Subsidiary Corporations, etc., and shall keep these explanatory documents at all of the business offices and offices of the Subject Special Financial Instruments Business Operator and make them available for public inspection during the one-year period beginning from the day on which the period specified by Cabinet Order elapses following the end of each business year.

(Written Notification Stating the Soundness of Management)

- Article 57-17 (1) In order to contribute to the sound and appropriate operation of the business of a Subject Special Financial Instruments Business Operator, the Prime Minister shall establish criteria for whether the capital adequacy of the Highest Designated Parent Company and its Subsidiary Corporations, etc. is appropriate in light of the assets, etc. held by the Highest Designated Parent Company and its Subsidiary Corporations, etc. and other criteria that indicate soundness in the management of the Highest Designated Parent Company and its Subsidiary Corporations, etc., as criteria by which the Highest Designated Parent Company is to judge the soundness in the management of the Highest Designated Parent Company and its Subsidiary Corporations, etc.
- (2) For each Highest Designated Parent Company Quarter (meaning each of the

periods categorized into January to March, April to June, July to September, and October to December; hereinafter the same shall apply in this Article) in and after the Highest Designated Parent Company Quarter that includes the day on which the period specified by Cabinet Order elapses counting from the day on which a company becomes the Highest Designated Parent Company, the Highest Designated Parent Company shall submit a document to the Prime Minister in which it describes the soundness of its management as of the last day of the Highest Designated Parent Company Quarter, as indicated by the criteria prescribed in the preceding paragraph (hereinafter simply referred to as "Soundness of Management" in the following paragraph and Article 57-21, paragraphs (1) to (3) inclusive), pursuant to the provisions of Cabinet Office Ordinance.

- (3) For each Highest Designated Parent Company Quarter in and after the Highest Designated Parent Company Quarter that includes the day on which the period specified by Cabinet Order elapses counting from the day on which a company becomes the Highest Designated Parent Company, the Highest Designated Parent Company shall keep a document in which it describes the Soundness of Management at all of the business offices or offices of the Subject Special Financial Instruments Business Operator and make this document available for public inspection during the three-month period beginning from the day on which the period specified by Cabinet Order elapses counting from the end of the Highest Designated Parent Company Quarter, pursuant to the provisions of Cabinet Office Ordinance.

(Notifications)

Article 57-18 (1) If a Designated Parent Company comes to fall under any of the following items, it must notify the Prime Minister of this without delay, pursuant to the provisions of Cabinet Office Ordinance:

- (i) it merges with another corporation (unless the Designated Parent Company disappears in the merger);
- (ii) it files a petition to commence bankruptcy proceedings, rehabilitation proceedings, or reorganization proceedings; or
- (iii) it falls under any other case specified by Cabinet Office Ordinance.

(2) If a Designated Parent Company comes to fall under one of the following items, the person specified in that item must notify the Prime Minister of this within 30 days from the day in question:

- (i) it comes to no longer be the Parent Company of the Subject Special Financial Instruments Business Operator: the company that used to be the Designated Parent Company;
- (ii) it disappears in a merger: the officer that represented the Designated Parent Company;

- (iii) it dissolves as a result of an order to commence bankruptcy proceedings: the bankruptcy trustee; or
  - (iv) it dissolves for reasons other than a merger or an order to commence bankruptcy proceedings: the liquidator.
- (3) If a Designated Parent Company comes to fall under one of the items of the preceding paragraph, the designation under the provisions of Article 57-12, paragraph (1) ceases to be valid.
- (4) If there has been a notification under the provisions of paragraph (2), the Prime Minister shall issue public notice that the designation has lost its validity pursuant to the provisions of the preceding paragraph in the official gazette.

(Issuing a Business Improvement Order to a Designated Parent Company)

Article 57-19 (1) If the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors in light of the state of the business of a Designated Parent Company or the state of the assets of a Designated Parent Company and its Subsidiary Corporations, etc., the Prime Minister, within the scope of this necessity, may order the Designated Parent Company to take measures that are necessary for improving the state of the business operations or the assets of Subject Special Financial Instruments Business Operator.

- (2) If the Prime Minister issues an order under the provisions of the preceding paragraph to a Designated Parent Company and finds it to be particularly necessary in light of the execution status of measures under that order, the Prime Minister may order the Subject Special Financial Instruments Business Operator to take measures that are necessary for improving its business operations or the state of its assets.

(Order for Measures to Be Taken by a Designated Parent Company)

Article 57-20 (1) If a Designated Parent Company falls under one of the following items, the Prime Minister may order the Designated Parent Company to take measures so that it will cease to be the Parent Company of a Subject Special Financial Instruments Business Operator or to take other necessary measures within a fixed a period of no longer than three months:

- (i) it has a person falling under one of sub-items (a) to (i) inclusive of Article 29-4, paragraph (1), item (ii) as an officer;
- (ii) its business is found to be contrary to the public interest;
- (iii) in light of the personnel structure of the Designated Parent Company, the sound and appropriate operation of the business of the Subject Special Financial Instruments Business Operator is likely to be impaired; or
- (iv) it is a domestic company, but is not a stock company (meaning a stock

company that has in place the following organs):

- (a) a board of directors; and
  - (b) a board of company auditors, a supervisory committee, or a nominating committee, etc.; and
- (2) If a Designated Parent Company falls under one of the following items, the Prime Minister may order the Designated Parent Company to take measures so that it will cease to be the Parent Company of a Subject Special Financial Instruments Business Operator or to take other necessary measures within a fixed period of no longer than three months, or may order the Subject Special Financial Instruments Business Operator to suspend all or a part of its business activities during a fixed period of no longer than six months:
- (i) it violates a law or regulation or a disposition by the Prime Minister based on a law or regulation; or
  - (ii) in light of the state of its business or assets, it is likely to become insolvent.
- (3) If the officer of a Designated Parent Company (for a foreign company, this is limited to an officer stationed at its domestic offices; hereinafter the same applies in this paragraph) comes to fall under one of the categories in Article 29-4, paragraph (1), item (ii), sub-items (a) to (i) inclusive, or comes to fall under item (i) of the preceding paragraph, the Prime Minister may order the Designated Parent Company to dismiss that officer.

(Supervisory Measures Corresponding with the Soundness of Management)

Article 57-21 (1) If the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors in light of the Soundness of Management of a Highest Designated Parent Company and its Subsidiary Corporations, etc., the Prime Minister, within the scope of this necessity, may issue orders to the Highest Designated Parent Company with regard to matters that are necessary from a supervisor perspective.

- (2) If the Prime Minister issues an order under the provisions of the preceding paragraph to a Highest Designated Parent Company, and the Soundness of Management of the Highest Designated Parent Company and its Subsidiary Corporation, etc. does not improve and is found to have no prospect of improving as of the day on which three months have elapsed since the day of the order, the Prime Minister may order the Highest Designated Parent Company to take measures so that it will cease to be the Parent Company of the Subject Special Financial Instruments Business Operator or to take other necessary measures, within a fixed period of no longer than three months.
- (3) An order under the provisions of the preceding two paragraphs is to be given so as to correspond with the classification of the Soundness of Management of the Highest Designated Parent Company and its Subsidiary Corporations, etc., and the Prime Minister must determine such classifications and the nature of

the corresponding orders in advance and make public notice of the same .

- (4) If the Prime Minister issues an order under the provision of paragraph (1) to a Highest Designated Parent Company and finds it to be particularly necessary in light of the execution status of measures under that order, the Prime Minister may order the Subject Special Financial Instruments Business Operator to take any measures that are necessary from a supervisory perspective.

(Public Notice of Supervisory Measures)

Article 57-22 In the cases set forth as follows, the Prime Minister shall make a public notice indicating as follows, pursuant to the provisions of Cabinet Office Ordinance:

- (i) the Prime Minister orders measures to be taken pursuant to the provisions of Article 57-20, paragraph (1);
- (ii) the Prime Minister orders measures to be taken pursuant to the provisions of Article 57-20, paragraph (2), or orders the suspension of all or a part of business activities; or
- (iii) the Prime Minister orders measures to be taken pursuant to the provisions of paragraph (2) of the preceding Article.

(Collection of Reports and Inspections)

Article 57-23 Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order a Designated Parent Company, a person that conducts transactions with a Designated Parent Company, the Subsidiary Company, etc. of a Designated Parent Company (meaning a Subsidiary Company, etc. provided for in Article 57-10, paragraph (2); hereinafter the same applies in this Article), or the person that a Designated Parent Company has entrusted with its business (including a person who has received entrustment from such person (including entrustment via two or more layers); hereinafter the same shall apply in this Article), to submit reports or materials that should serve as a reference with regard to the business or assets of the Subject Special Financial Instruments Business Operator or the Designated Parent Company (but may only order a Subsidiary Company, etc. to submit reports or materials that should serve as a reference in connection with the assets of the Subject Special Financial Instruments Business Operator or the Designated Parent Company), and may have the relevant officials inspect the state of the business or assets, documents, and other objects of a Designated Parent Company, a Subsidiary Company, etc., or the person that a Designated Parent Company has entrusted with its business (but may only have the relevant officials inspect a Subsidiary Company, etc. as is necessary in connection with the

assets of the Subject Special Financial Instruments Business Operator or the Designated Parent Company, and may only have the relevant officials inspect the person that a Designated Parent Company has entrusted with its business as is necessary in connection with the business or assets of the Subject Special Financial Instruments Business Operator or the Designated Parent Company).

(Hearings)

- Article 57-24 (1) Irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, before seeking to issue a disposition based on the provisions of Article 57-19, Article 57-20, paragraph (1) or (2) or Article 57-21, paragraph (1), (2) or (4), the Prime Minister must conduct a hearing.
- (2) If the Prime Minister decides to issue a disposition based on the provisions of Article 57-19; Article 57-20; or Article 57-21, paragraph (1), (2), or (4), the Prime Minister must notify the Designated Parent Company or the Subject Special Financial Instruments Business Operator of this in writing.

(Exclusion from Application)

- Article 57-25 The provisions of Articles 57-3 to 57-7 inclusive; Article 57-8, paragraph (1); Article 57-9; and Article 57-11 do not apply to a Subject Special Financial Instruments Business Operator.

### **Subsection 3 Miscellaneous Provisions**

(Measures concerning the Major Shareholders of a Designated Parent Company)

- Article 57-26 (1) The provisions of Article 32, paragraphs (1) and (2); Article 32-2, paragraph (1); and Article 32-3, paragraph (1) apply mutatis mutandis to the Shareholders and equity investors of a Designated Parent Company.
- (2) Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order the Major Shareholder of a Designated Parent Company (meaning a Major Shareholder as prescribed in Article 29-4, paragraph (2); hereinafter the same applies in this paragraph) to submit reports or materials that should serve as reference with regard to a notification or measures under Article 32, paragraph (1) or (2); Article 32-2, paragraph (1); or Article 32-3, paragraph (1) as applied mutatis mutandis pursuant to the provisions of the preceding paragraph, or with regard to the business or assets of the Subject Special Financial Instruments Business Operator or the Designated Parent Company, or may have the relevant officials inspect documents or other articles of such a Major Shareholder (but only as is necessary in connection with the notification or

measures under Article 32, paragraph (1) or (2); Article 32-2, paragraph (1); or Article 32-3, paragraph (1) as applied mutatis mutandis pursuant to the provisions of the preceding paragraph or in connection with the business or assets of the Subject Special Financial Instruments Business Operator or the Designated Parent Company).

(Technical Replacement of Terms for the Application of the Provisions of This Act to a Foreign Company)

Article 57-27 The technical replacement of the terms for the application of the provisions of this Act to the Parent Company of a Special Financial Instruments Business Operator that is a foreign company and necessary particulars otherwise relevant to the application of the provisions of this Act to such a foreign company are specified by Cabinet Order.

## **Section 5 Special Provisions for Foreign Persons or Firms**

### **Subsection 1 Foreign Securities Services Provider**

(Definitions)

Article 58 The term "Foreign Securities Services Provider" as used in this Section means a person other than a Financial Instruments Business Operator, bank, Cooperative Financial Institution, or financial institution specified by Cabinet Order, which is governed by foreign laws and regulations, and which engages in Securities Services in a foreign state.

(Services in Which a Foreign Securities Services Provider May Engage)

Article 58-2 A Foreign Securities Services Provider must not perform any act set forth in the items of Article 28, paragraph (8) with a person in Japan as the counterparty; provided, however, that this does not apply if a Foreign Securities Services Provider performs such an act with a Financial Instruments Business Operator engaged in Securities Services as the counterparty(excluding cases where said Foreign Securities Broker conducts specified Over-the-Counter Transactions of Derivatives, or intermediary, brokerage (excluding Brokerage for Clearing of Securities, etc.), or agency service therefor using the Electronic Data Processing System used by said Foreign Securities Broker for its business of Over-the-Counter Transactions of Derivatives, etc.), or if it does so in a case that is specified by Cabinet Order.

### **Subsection 2 Permission for Some Underwriting Activities**

(Permission for Some Underwriting Activities)

Article 59 (1) Notwithstanding the provisions of Article 29 and the preceding



Article, with the permission of the Prime Minister, a Foreign Securities Services Provider may participate in an Underwriting Contract (meaning an Underwriting Contract as prescribed in Article 21, paragraph (4); hereinafter the same applies in paragraph (1), item (vi), sub-item (f) of the following Article) and perform other acts specified by Cabinet Order in Japan, as a part of the underwriting of Securities that it carries out (hereinafter collectively referred to as the "Underwriting" in this Section).

- (2) The Prime Minister may attach conditions to the permission referred to in the preceding paragraph.
- (3) The conditions referred to in the preceding paragraph must constitute the minimum level of conditions that are necessary for the public interest and the protection of investors.
- (4) If the Prime Minister decides to attach conditions pursuant to the provisions of paragraph (2), the Prime Minister must notify the applicant for permission of this in writing.

(Application for Permission for Some Underwriting Activities)

Article 59-2 (1) A person seeking to obtain the permission referred to in paragraph (1) of the preceding Article must submit a written application for permission to the Prime Minister, in which the person states the following particulars (if the applicant for permission is an individual, the particulars set forth in items (iii) and (iv) are excluded):

- (i) its trade name or name;
- (ii) the location of its head office or principal office;
- (iii) the amount of stated capital or the total amount of contributions;
- (iv) the title and the name of the officer that has the authority of representation;
- (v) the name, and the address, residence, or other contact address in Japan, of the person that will perform the activities to which the application pertains;
- (vi) the following particulars, as scheduled, of the Securities that are connected with the activities to which the application pertains:
  - (a) the Issuer or holder;
  - (b) the class;
  - (c) the volume and amount;
  - (d) the issuance or sales location;
  - (e) the date of issuance or sale;
  - (f) the other Financial Instruments Business Operator managing the Underwriting (meaning the Financial Instruments Business Operator that holds discussions with the Issuer or holder of the Securities in order to fix the contents of the Underwriting Contract, when an Underwriting Contract is being concluded); and

- (vii) the amount that the applicant for permission seeks to underwrite.
- (2) The calculation of the amount of stated capital or the total amount of contributions as prescribed in item (iii) of the preceding paragraph is specified by Cabinet Order.
- (3) The following documents must accompany the written application for permission referred to in paragraph (1); provided, however, that if a document provided for in item (i) or (iv) has the same content as an accompanying document submitted within the one year prior to the date on which the written application for permission provided for in paragraph (1) is submitted, a document stating the submission date of said document and indicating that reference should be made to said document may be used:
  - (i) a document giving the business outline;
  - (ii) a document summarizing Underwriting in the most recent one-year period;
  - (iii) a document in which the officer that has the authority of representation pledges that the applicant does not fall under the purview of Article 59-4, paragraph (1), item (i) or (ii), and that no officer falls under any of the categories in Article 29-4, paragraph (1), item (ii), sub-items (a) to (i) inclusive (if the applicant for permission is an individual, a document in which the individual pledges that said individual does not fall under the purview of Article 59-4, paragraph (1), item (i) or (ii) or under any of the categories in Article 29-4, paragraph (1), item (ii), sub-items (a) to (i) inclusive); and
  - (iv) the balance sheet and profit and loss statement for each business year ending in the most recent one-year period.

(Examination Criteria for Permission for Some Underwriting Activities)

Article 59-3 Before seeking to grant the permission referred to in Article 59, paragraph (1), the Prime Minister shall examine whether there is compliance with the following criteria:

- (i) the applicant has been continuously engaged in the same type of business in a foreign state as the business for which it seeks to obtain permission, for a period longer than the period specified by Cabinet Order;
- (ii) the applicant is a corporation whose stated capital or total contributions are not less than the amount specified by Cabinet Order as the amount necessary and appropriate in the public interest or for the protection of investors in light of the mode of business for which the applicant seeks to obtain permission; and
- (iii) the net assets provided for in Article 29-4, paragraph (1), item (v), sub-item (b) are not less than the amount specified by Cabinet Order as provided for in the preceding item.

(Requirement to Refuse Permission for Some Underwriting Activities)

Article 59-4 (1) The Prime Minister must refuse permission if an applicant for permission falls under one of the following items, or if the written application for permission or an accompanying document contains a false statement or omits a statement of material fact:

- (i) the applicant is a person that has had the registration referred to in Article 29 rescinded pursuant to the provisions of Article 53, paragraph (3); that has had the permission referred to in Article 59, paragraph (1) rescinded pursuant to the provisions of paragraph (1) of the following Article; that has had the registration referred to in Article 66 rescinded pursuant to the provisions of Article 66-20, paragraph (1); that has had the registration referred to in Article 66-27 rescinded pursuant to Article 66-42, paragraph (1); or that had obtained a registration of the same kind as the registration referred to in Article 29, Article 66, or Article 66-27 in the state where its head office is located (including permission or any other administrative disposition similar to such a registration), but that has had that registration rescinded pursuant to a foreign law or regulation that is equivalent to this Act; and five years have yet to pass since the day of the rescission;
  - (ii) the applicant has been sentenced to a fine (including an equivalent sentence under foreign laws and regulations) for violating the provisions of this Act; the Act on Investment Trusts and Investment Corporations; the Commodity Futures Act; the Act Regulating Business Involving Commodity Investment; the Money Lending Business Act; or the Act Regulating the Receipt of Contributions, the Receipt of Deposits, and Interest Rates; or for violating the provisions of a foreign law or regulation that is equivalent to one of these Acts, and five years have yet to pass since the day on which the applicant finished serving the sentence or ceased to be subject to its enforcement; and
  - (iii) the applicant is a corporation that has a person falling under the category of one of the persons set forth in Article 29-4, paragraph (1), item (ii), sub-items (a) to (i) inclusive, as an officer (including a person that is found to have at least the same amount of authority as an officer over the corporation, irrespective of title; hereinafter the same applies in paragraph (1), item (iii) of the following Article, Article 60-3, paragraph (1) and Article 60-8, paragraph (2)) or domestic representative (meaning the representative in Japan of a Foreign Securities Services Provider prescribed in Article 817, paragraph (1) of the Companies Act; hereinafter the same applies in this Section).
- (2) Before seeking to refuse the permission referred to in Article 59, paragraph (1), the Prime Minister must notify the applicant for permission and have the relevant officials conduct a hearing regarding the applicant for permission.

- (3) Upon deciding to grant or not to grant the permission referred to in Article 59, paragraph (1), the Prime Minister must notify the applicant for permission of this in writing.

(Rescission of Permission for Some Underwriting Activities)

Article 59-5 (1) If a Foreign Securities Services Provider that obtains the permission referred to in Article 59, paragraph (1) falls under one of the following items, the Prime Minister may rescind its permission:

- (i) the Foreign Securities Services Provider comes to fall under paragraph (1), item (i) or (ii) of the preceding Article;
  - (ii) the Foreign Securities Services Provider violates a law or regulation (including a foreign law or regulation) or a disposition by a government agency which is based on a law or regulation, or violates a condition attached to its permission or to the registration, etc. it has obtained in the state where its head office is located (meaning a registration of the same kind as the registration referred to in Article 29 (including permission or any other administrative disposition similar to such a registration); hereinafter the same applies in Article 60-3, paragraph (1), item (i), sub-items (b) and (g)), and rescinding its permission is found to be necessary and appropriate in the public interest or for the protection of investors; or
  - (iii) the officer or the domestic representative of the Foreign Securities Services Provider (or, if the Foreign Securities Services Provider is an individual, that individual) comes to fall under one of the categories of persons set forth in Article 29-4, paragraph (1), item (ii), sub-items (a) to (g) inclusive, or has acted as set forth in the preceding item, and it is found to be likely that the activities subject to the permission will not be performed fairly.
- (2) Before seeking to rescind the permission referred to in Article 59, paragraph (1) pursuant to the provisions of the preceding paragraph, the Prime Minister must notify the Foreign Securities Services Provider of this in writing.
- (3) If the Prime Minister rescinds the permission referred to in Article 59, paragraph (1) pursuant to the provisions of paragraph (1), the Prime Minister must make a public notice of this, pursuant to the provisions of Cabinet Office Ordinance.

(Regulation of Underwriting)

Article 59-6 The provisions of Article 36, paragraph (1); Article 36-3; Article 36-4, paragraph (1); Article 38 (limited to the part that involves items (i) to (iii) inclusive and (viii)); and Article 44-4 apply mutatis mutandis to the Underwriting of the Foreign Securities Services Provider that has obtained the permission referred to in Article 59, paragraph (1).

### **Subsection 3 Permission for On-Exchange Transaction Services**

#### **(Permission for On-Exchange Transaction Services)**

Article 60 (1) Notwithstanding the provisions of Article 29 and Article 58-2, with the permission of the Prime Minister, a Foreign Securities Services Provider may engage in the purchase and sale of Securities and Market Transactions of Derivatives on a Financial Instruments Exchange (including if said Foreign Securities Services Provider conducts these transactions on behalf of a person that provides Brokerage for Clearing of Securities, etc. (limited to brokerage to which Article 2, paragraph (27), item (i) pertains; hereinafter the same applies in this paragraph) as an entruster of Brokerage for Clearing of Securities, etc.; such a transaction is hereinafter collectively referred to as an "On-Exchange Transaction") on a regular basis (hereinafter referred to as the "On-Exchange Transaction Services" in this Subsection)

- (2) The Prime Minister may attach conditions to the permission referred to in the preceding paragraph.
- (3) The conditions referred to in the preceding paragraph must constitute the minimum level of conditions that are necessary in the public interest and for the protection of investors.
- (4) If the Prime Minister decides to attach the conditions referred to in the provisions of paragraph (2), the Prime Minister must notify the applicant for permission of this in writing.

#### **(Application for Permission for On-Exchange Transaction Services)**

Article 60-2 (1) A person seeking to obtain the permission referred to in paragraph (1) of the preceding Article must designate a domestic representative and submit a written application for permission to the Prime Minister, in which the person states the following particulars:

- (i) its trade name and the location of its head office;
- (ii) the amount of stated capital;
- (iii) the title and name of the officer (including a representative person in the state where the business offices or offices for On-Exchange Transaction Services are located (excluding the state where its head office is located) (hereinafter referred to as the "On-Exchange Transaction Office"; such a representative is hereinafter referred to as the "Representative in the State Where the On-Exchange Transaction Office is Located" in paragraph (1), item (i), sub-item (j) of the following Article));
- (iv) the name of the On-Exchange Transaction Office and the state and place where it is located;
- (v) if the person engages in other business, the business type;
- (vi) the trade name or name of the foreign Financial Instruments trading

- market operator of which the head office and the On-Exchange Transaction Office are members (meaning the person that operates that foreign Financial Instruments trading market; hereinafter the same applies in paragraph (1), item (i), sub-item (d) and item (iii) of the following Article);
- (vii) the location of its domestic offices and other facilities, if any;
  - (viii) the name and domestic address of the domestic representative;
  - (ix) the trade name or name of the Financial Instruments Exchange in which the applicant would become a Trading Participant; and
  - (x) other particulars specified by Cabinet Office Ordinance.
- (2) The calculation of the amount of stated capital provided for in item (ii) of the preceding paragraph is specified by Cabinet Order.
- (3) The following documents must accompany the written application for permission referred to in paragraph (1):
- (i) a document pledging that the applicant does not fall under the purview of paragraph (1), item (i), sub-items (a) to (h) inclusive, or sub-item (j) of the following Article;
  - (ii) a document stating the things specified by Cabinet Office Ordinance as constituting the business outline and business methods for On-Exchange Transaction Services at the On-Exchange Transaction Office;
  - (iii) the articles of incorporation and the certificate of registered information of the applicant for permission (including any document equivalent to these), and a document giving its business outline and stating its business methods;
  - (iv) the certificate of registered information in Japan of the applicant for permission;
  - (v) the balance sheets and profit and loss statements for each business year ending during the latest three years; and
  - (vi) other documents specified by Cabinet Office Ordinance.

(Requirement to Refuse Permission for On-Exchange Transaction Services)

Article 60-3 (1) The Prime Minister must refuse permission if the application for permission referred to in the provisions of paragraph (1) of the preceding Article falls under one of the following items:

- (i) the applicant for permission falls under one of the following:
  - (a) it is not a corporation of the same type as a company with board of directors;
  - (b) it has not obtained registration, etc. in the state where its head office is located or in any state in which its On-Exchange Transaction Offices are located;
  - (c) it has not continuously conducted business that involves the same type of transactions as the On-Exchange Transaction in any of its On-Exchange Transaction Offices, for at least the period specified by Cabinet Order

- (unless this falls under a case specified by Cabinet Order);
- (d) none of its On-Exchange Transaction Offices is the member of a foreign Financial Instruments trading market operator (limited one that has obtained the same kind of license as the license referred to in Article 80, paragraph (1), or a permission or other administrative disposition similar to this, in the relevant state; hereinafter the same applies in item (iii)) in a state where those On-Exchange Transaction Offices are located;
  - (e) it is a corporation whose stated capital as provided for in paragraph (1), item (ii) of the preceding Article is less than the amount that is specified by Cabinet Order as being necessary and appropriate in the public interest or for the protection of investors;
  - (f) it is a corporation whose net assets are less than the amount prescribed in sub-item (e);
  - (g) it has had the registration referred to in Article 29 or Article 33-2 rescinded pursuant to the provisions of Article 52, paragraph (1) or 52-2, paragraph (1); has had the permission referred to in Article 60, paragraph (1) rescinded pursuant to the provisions of Article 60-8, paragraph (1); has had the permission under Article 60-14, paragraph (1) rescinded under the provision of Article 60-8, paragraph (1) as applied *mutatis mutandis* pursuant to Article 60-14, paragraph (2); has had the registration referred to in Article 66 rescinded pursuant to the provisions of Article 66-20, paragraph (1); has had the registration referred to in Article 66-27 rescinded pursuant to the provisions of Article 66-42, paragraph (1); or it had obtained registration, etc. in the state where its head office or an On-Exchange Transaction Office is located, but has had that registration, etc. rescinded pursuant to a foreign law or regulation that is equivalent to this Act; and five years have yet to pass since the date of rescission;
  - (h) it has been sentenced to a fine (including an equivalent sentence under foreign laws and regulations) for violating the provisions of one of the Acts prescribed in Article 59-4, paragraph (1), item (ii) or for violating the provisions of a foreign law or regulation that is equivalent to one of such Acts, and five years have yet to pass since the day on which it finished serving the sentence or ceased to be subject to its enforcement;
  - (i) its other business is found to be contrary to the public interest;
  - (j) it is a corporation whose officer, Representative in the State Where the On-Exchange Transaction Office is Located, or domestic representative falls under one of the categories set forth in of Article 29-4, paragraph (1), item (ii), sub-items (a) to (i) inclusive; or
  - (k) it does not have the sufficient personnel structure to perform On-Exchange Transaction Services in an appropriate manner.
- (ii) the Foreign Regulatory Authority for Financial Instruments provided for in

- Article 189, paragraph (1), in the state where the head office or one of the On-Exchange Transaction Offices of the applicant for permission is located has not given the assurance prescribed in Article 189, paragraph (2), item (i);
- (iii) the foreign Financial Instruments trading market operator of which the On-Exchange Transaction Office of the applicant for permission is a member and the Financial Instruments Exchange in which the applicant for permission would become a Trading Participant have not concluded any agreement concerning the provision of information, and no other measures are in place for the Financial Instruments Exchange to exercise the authority accorded to it under this Act, an order issued based on this Act, or its articles of incorporation or other rules; or
- (iv) the application for permission or an accompanying document includes a false statement or omits a statement of material fact.
- (2) Before seeking to refuse the permission referred to in Article 60, paragraph (1), the Prime Minister must notify the applicant for permission and have the relevant officials conduct a hearing regarding the applicant for permission.
- (3) Upon deciding to grant or not to grant the permission referred to in Article 60, paragraph (1), the Prime Minister must notify the applicant for permission of this in writing.

(Acting Representatives)

- Article 60-4 (1) If there is a position vacancy for the domestic representative of a Foreign Securities Services Provider that has obtained the permission referred to in Article 60, paragraph (1) (hereinafter referred to as an "Authorized Operator for On-Exchange Transactions"), and the Prime Minister finds it to be necessary, the Prime Minister may appoint a person to temporarily perform the duties of the domestic representative (referred to as the "Acting Representative" in the following paragraph). In such a case, the Authorized Operator for On-Exchange Transactions must register that person in connection with the domicile of the domestic representative from before the position of domestic representative became vacant.
- (2) If the Prime Minister appoints an Acting Representative pursuant to the provisions of the preceding paragraph, the Prime Minister may order the Authorized Operator for On-Exchange Transactions to pay a reasonable amount of remuneration to the Acting Representative.

(Notification of a Change to Basic Particulars)

- Article 60-5 (1) If the particulars set forth in one of the items of Article 60-2, paragraph (1) changes, the Authorized Operator for On-Exchange Transactions must notify the Prime Minister of this within two weeks from the day of the change.



(2) If the business outline or business methods for On-Exchange Transaction Services which an Authorized Operator for On-Exchange Transactions has stated in a document set forth in Article 60-2, paragraph (3), item (ii) change, or in any other case specified by Cabinet Office Ordinance, the Authorized Operator for On-Exchange Transactions must notify the Prime Minister of this without delay, pursuant to the provisions of Cabinet Office Ordinance.

(Business Reports)

Article 60-6 The provisions of Article 46-2, Article 46-3, and Article 49-3 apply mutatis mutandis to the On-Exchange Transaction Services of an Authorized Operator for On-Exchange Transactions. In this case, in Article 46-3, paragraph (1), the phrase "within three months" is deemed to be replaced with "within the period specified by Cabinet Order".

(Validity of Permission If an Authorized Operator for On-Exchange Transactions Is Dissolved)

Article 60-7 If an Authorized Operator for On-Exchange Transactions is dissolved, or if On-Exchange Transaction Services are discontinued, the permission under Article 60, paragraph (1) ceases to be valid. In such a case, the domestic representative or the former domestic representative must notify the Prime Minister of this within 30 days from the day in question .

(Supervisory Measures for Authorized Operators for On-Exchange Transactions)

Article 60-8 (1) If an Authorized Operator for On-Exchange Transactions falls under one of the following items, the Prime Minister may rescind the Article 60, paragraph (1) permission of the Authorized Operator for On-Exchange Transactions, order the suspension of all or a part of On-Exchange Transaction Services during a fixed period of no longer than six months, order a change of business methods for On-Exchange Transaction Services, or issue orders with respect to matters that are otherwise necessary from a supervisory perspective:

- (i) it comes to fall under Article 60-3, paragraph (1), item (i) (excluding sub-items (c) and (j)), or item (ii) or (iii);
- (ii) it obtains the permission referred to in Article 60, paragraph (1) by wrongful means;
- (iii) it violates a law or regulation (including a foreign law or regulation) or a disposition by a government agency which is based on a law or regulation, in connection with its On-Exchange Transaction Services or any services incidental to them (excluding if it violates the provisions of Article 46-6, paragraph (2));
- (iv) in light of the state of its business or assets, it is likely to become

- insolvent; or
- (v) it violates the conditions attached to the permission referred to in Article 60, paragraph (1).
- (2) If the domestic representative of an Authorized Operator for On-Exchange Transactions (if the Authorized Operator for On-Exchange Transactions has a domestic office or other facilities, this includes any officer stationed there) comes to fall under one of the categories set forth in Article 29-4, paragraph (1), item (ii), sub-items (a) to (i) inclusive, or engages in conduct that falls under item (iii) or (v) of the preceding paragraph, the Prime Minister may order the Authorized Operator for On-Exchange Transactions to dismiss or remove that domestic representative.
- (3) If the Prime Minister rescinds the permission referred to in Article 60, paragraph (1) pursuant to the provisions of paragraph (1), or orders the suspension of all or a part of services, the Prime Minister must give public notice of this pursuant to the provisions of Cabinet Office Ordinance.
- (4) If the Prime Minister decides to issue a disposition pursuant to the provisions of paragraph (1) or (2), the Prime Minister must notify the Authorized Operator for On-Exchange Transactions of this in writing.
- (5) Irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, before seeking to issue a disposition pursuant to the provisions of paragraph (1) or (2), the Prime Minister must conduct a hearing.

(Rescission of Permission If On-Exchange Transaction Services Are Suspended)

- Article 60-9 (1) If, without legitimate grounds for doing so, an Authorized Operator for On-Exchange Transactions does not commence business within three months of the day on which it is permitted to begin engaging in On-Exchange Transaction Services, or suspends business for three months or more continually, the Prime Minister may rescind the Article 60, paragraph (1) permission of that Authorized Operator for On-Exchange Transactions.
- (2) If the Prime Minister decides to issue a disposition based on the provisions of the preceding paragraph, the Prime Minister must notify the Authorized Operator for On-Exchange Transactions of this in writing.

(Completion of Remaining Business)

- Article 60-10 If an Authorized Operator for On-Exchange Transactions is dissolved or On-Exchange Transaction Services are discontinued, the Authorized Operator for On-Exchange Transactions is deemed to still have Article 60, paragraph (1) permission, inasmuch as the task of completing On-Exchange Transactions is concerned.

(Orders to Submit Reports and Inspections)

Article 60-11 Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order an Authorized Operator for On-Exchange Transactions, a person that conducts transactions with an Authorized Operator for On-Exchange Transactions, or the person that an Authorized Operator for On-Exchange Transactions has entrusted with its business (including a person who has received entrustment from such person (including entrustment via two or more layers); hereinafter the same shall apply in this Article), to submit reports or materials that should serve as a reference with regard to the On-Exchange Transaction Services or assets of that Authorized Operator for On-Exchange Transactions, and may have the relevant officials inspect the state of On-Exchange Transaction Services by an Authorized Operator for On-Exchange Transactions, the state of its assets, or its books and documents or any other articles (but may only have the relevant officials inspect the person that an Authorized Operator for On-Exchange Transactions has entrusted with its business as is necessary in connection with the state of the business or assets of the Authorized Operator for On-Exchange Transactions).

(The Court's Request for an Investigation)

Article 60-12 (1) In liquidation proceedings, bankruptcy proceedings, rehabilitation proceedings, reorganization proceedings, or recognition and assistance proceedings in Japan for an Authorized Operator for On-Exchange Transactions (including one that is deemed to have been granted the permission referred to in Article 60, paragraph (1), as prescribed in Article 60-10), the court may request the opinion of, or an inspection or investigation by, the Prime Minister.

(2) If the Prime Minister finds it to be necessary, the Prime Minister may state an opinion to the court during the proceedings prescribed in the preceding paragraph.

(3) The provisions of the preceding Article apply mutatis mutandis if the Prime Minister receives an inspection or investigation request from the court pursuant to the provisions of paragraph (1).

(Regulation of On-Exchange Transaction Services)

Article 60-13 The provisions of Article 36, paragraph (1); Article 36-3; Article 38 (limited to the part that involves item (viii)); and Article 40 (limited to the part that involves item (ii)) apply mutatis mutandis to the On-Exchange Transaction Services of an Authorized Operator for On-Exchange Transactions.

**Subsection 4 Permission of Electronic Over-the-Counter Transactions**

## **of Derivatives, etc. Business**

- Article 60-14 (1) A person who is governed by the laws and regulations of a foreign state and conducts Over-the-Counter Transactions of Derivatives, etc. on a regular basis in a foreign state, who falls under neither Financial Instruments Business Operator nor financial institution (meaning a bank, Cooperative Structured Financial Institution or other financial institutions specified by Cabinet Order) may, in cases where such person conducts said acts to a person engaged in Securities-Related Business as the counterparty or any other cases similar thereto specified by Cabinet Order, notwithstanding the provisions of Article 29 and Article 58-2, with the permission of the Prime Minister, engage in specified Over-the-Counter Transactions of Derivatives, or intermediary, brokerage (excluding Brokerage for Clearing of Securities, etc.) or agency service thereof on a regular basis, using the Electronic Data Processing System used by it for its business of Over-the-Counter Transactions of Derivatives, etc. (referred to as "Electronic Over-the-Counter Transactions of Derivatives, etc. Business" in the following paragraph).
- (2) The provisions of Article 60, paragraphs (2) to (4), Article 60-2 (excluding paragraph (1), items (vi) and (ix)) and Article 60-3 (excluding paragraph (1), item (i), sub-item (d) and item (iii)) shall apply mutatis mutandis to the permission prescribed in the preceding paragraph and the provisions of Article 40-7, paragraph (2) and Article 60-4 to the preceding Article shall apply mutatis mutandis to Electronic Over-the-Counter Transactions of Derivatives, etc. Business conducted by a person who has obtained the permission prescribed in the preceding paragraph (hereinafter referred to as an "Authorized Electronic Over-the-Counter Transactions of Derivatives, etc. Business Operator"). In this case, the term "A person who used the Electronic Data Processing System pursuant to the provisions of the preceding paragraph shall, with regard to the specified Over-the-counter Transactions of Derivatives conducted using said Electronic Data Processing System" in Article 40-7, paragraph (2) shall be deemed to be replaced with "An Authorized Electronic Over-the-Counter Transactions of Derivatives, etc. Business Operator prescribed in Article 60-14, paragraph (2) shall, with regard to the specified Over-the-counter Transactions of Derivatives conducted using the Electronic Data Processing System used for its business of Over-the-Counter Transactions of Derivatives"; and any other necessary technical replacement of terms shall be specified by Cabinet Order.

## **Subsection 5 Persons Engaging in Investment Advisory Business or Investment Management Business in a Foreign State**

Article 61 (1) Notwithstanding the provisions of Article 29, a corporation incorporated based on foreign laws and regulations or an individual domiciled in a foreign state and engaged in Investment Advisory Business in a foreign state (other than one with Article 29 registration) may engage in Investment Advisory Business, but only with a Financial Instruments Business Operator that is engaged in Investment Management Business or a person specified by Cabinet Order as the counterparty.

(2) Notwithstanding the provisions of Article 29, a corporation incorporated based on foreign laws and regulations and engaged in Investment Management Business in a foreign state (limited to the business of performing the act set forth in Article 2, paragraph (8), item (xii) based on a Discretionary Investment Contract; hereinafter the same applies in this paragraph) (excluding persons with Article 29 registration other than for Investment Advisory and Agency Business among the Categories of Businesses prescribed in Article 29-2, paragraph (1), item (v)) may engage in Investment Management Business, but only with a Financial Instruments Business Operator that is engaged in Investment Management Business or a person specified by Cabinet Order as the counterparty.

(3) Notwithstanding the provisions of Article 29, a corporation incorporated based on foreign laws and regulations and engaged in Investment Management Business in a foreign state (limited to the business of performing the act set forth in Article 2, paragraph (8), item (xv)) (excluding persons with Article 29 registration other than for Investment Advisory and Agency Business among the Categories of Businesses prescribed in Article 29-2, paragraph (1), item (v)) may engage in Investment Management Business (limited to the business specified in Article 2, paragraph (8), item (xv)), but only with a Financial Instruments Business Operator that is engaged in Investment Management Business or a person specified by Cabinet Order as the counterparty. In such a case, the provisions of Article 63, paragraph (2) and Article 63-3, paragraphs (1) and (3) do not apply.

(4) The provisions of Section 2, Subsections 1 and 3 of this Chapter shall not apply to cases where a person who is subject to the provisions of the preceding two paragraphs and has obtained registration under Article 29 only for Investment Advisory and Agency Business among the Categories of Businesses prescribed in Article 29-2, paragraph (1), item (v) engages in a business that he/she is allowed to engage in under the provisions of the preceding two paragraphs.

#### **Subsection 6 Establishment of Facilities for Collecting Information**

Article 62 (1) Before seeking to establish a representative office or any other

facility in Japan for the purpose of collecting or providing information on the securities market and the market of financial indicators of Securities, or to conduct other services related to Financial Instruments Business, etc. which are specified by Cabinet Office Ordinance (including before seeking to conduct said business in a facility established for other purposes), a Foreign Securities Services Provider (including a person specified by Cabinet Office Ordinance whose business is closely related to Securities Services; hereinafter the same applies in this Article) or a person that engages in Investment Advisory Business or Investment Management Business in a foreign state (excluding persons with Article 29 or Article 33-2 registration; hereinafter the same applies in this Article) must notify the Prime Minister of its business outline and the location of that facility, and of any other matters specified by Cabinet Office Ordinance.

- (2) Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order a Foreign Securities Services Provider or a person that conducts Investment Advisory Business or Investment Management Business in a foreign state to submit reports or materials concerning the business set forth in the preceding paragraph.
- (3) If a Foreign Securities Services Provider or a person that conducts Investment Advisory Business or Investment Management Business in a foreign state discontinues the facility or the services referred to in paragraph (1), or if it changes a matter of which it has provided notification pursuant to the provisions of that paragraph, it must notify the Prime Minister of this without delay.

## **Section 6 Special Provisions on Specially Permitted Services for Qualified Institutional Investors, etc.**

(Specially Permitted Services for Qualified Institutional Investors, etc.)

Article 63 (1) The provisions of Articles 29 and 33-2 inclusive do not apply to the acts set forth in the following items:

- (i) the Private Placement of rights set forth in Article 2, paragraph (2), item (v) or (vi) with Qualified Institutional Investors, etc. (meaning persons that are not Qualified Institutional Investors but that are specified by Cabinet Order (but only if they are no greater in number than the number specified by Cabinet Order) and Qualified Institutional Investors; hereinafter the same applies in this Article) that do not fall under one of the following categories, as the counterparties (limited to Private Placements specified by Cabinet Order as having little likelihood of allowing persons that are not Qualified Institutional Investors, etc. (that is, Qualified Institutional

Investors, etc. that do not fall under one of the following categories) to acquire the relevant rights):

- (a) a Special Purpose Company (meaning a Special Purpose Company as provided in Article 2, paragraph (3) of the Act on Securitization of Assets) that issues Asset Backed Securities (meaning Asset Backed Securities as provided in Article 2, paragraph (11) of that Act) which have been acquired by persons other than Qualified Institutional Investors;
  - (b) the proprietor of a business or a person seeking to become the proprietor of a business in an Silent Partnership Agreement (meaning an Silent Partnership Agreement as provided in Article 535 of the Commercial Code) that concerns the rights specified in Article 2, paragraph (2), item (v) or (vi) and that has a person other than a Qualified Institutional Investor as a silent partner; and
  - (c) a person that is specified by Cabinet Office Ordinance as being equivalent to a person set forth in sub-item (a) or (b).
- (ii) the act set forth in Article 2, paragraph (8), item (xv), of investing money (including anything specified by Cabinet Order as being similar to money) that has been invested or contributed by a Qualified Institutional Investor, etc. that holds a right set forth in Article 2, paragraph (2), item (v) or (vi) (limited to rights in an Invested Business (meaning an Invested Business as provided in Article 2, paragraph (2), item (v)) in which Qualified Institutional Investors, etc. are the only holders of those rights (limited to Qualified Institutional Investors, etc. that do not fall under any of the categories in sub-items (a) to (c) inclusive of the preceding item)).
- (2) A person that will engage in specially permitted services for Qualified Institutional Investors, etc. (meaning performing any of the acts set forth in the items of the preceding paragraph on a regular basis; the same applies hereinafter) (excluding Financial Instruments Business Operators, etc.) must notify the Prime Minister of the following particulars in advance, pursuant to the provisions of Cabinet Office Ordinance:
- (i) the person's trade name or name;
  - (ii) the amount of stated capital or total amount of contributions, if it is a corporation;
  - (iii) the names of its officers, if it is a corporation;
  - (iv) if the person has an employee as specified by Cabinet Order, the name of that employee;
  - (v) the business category (meaning which of the acts set forth in the items of the preceding paragraph is the business category of which the person is giving notice);
  - (vi) the name and location of the person's principal business office or principal office;

- (vii) if the person engages in other business, the business type; and
  - (viii) other particulars specified by Cabinet Office Ordinance.
- (3) If a particular set forth in one of the items of the preceding paragraph changes, the person providing notification based on the preceding paragraph (hereinafter referred to as a "Notifier of Specially Permitted Services") must notify the Prime Minister of this without delay.
- (4) If a Notifier of Specially Permitted Services engages in a specially permitted service for Qualified Institutional Investors, etc. the Notifier of Specially Permitted Services is deemed to be a Financial Instruments Business Operator and Articles 38 (limited to the part that involves item (i)) and Article 39, and the provisions of Chapters VIII and VIII-2 in connection with these Articles apply.
- (5) If a business activity connected with an act set forth in paragraph (1), item (ii) which a Notifier of Specially Permitted Services has commenced as a specially permitted business activity for Qualified Institutional Investors, etc. comes to no longer come under the purview of a specially permitted business activity for Qualified Institutional Investors, etc. (but only if a person that is not a Qualified Institutional Investor, etc. (that is, a Qualified Institutional Investor, etc. that does not fall under one of the categories in paragraph (1), item (i), sub-items (a) to (c) inclusive) comes to hold the right prescribed in paragraph (1), item (ii); the same applies in the following paragraph), the Prime Minister may order the Notifier of Specially Permitted Services to take the necessary measures within a fixed period of no longer than three months.
- (6) If a business activity connected with an act set forth in paragraph (1), item (ii) which a Notifier of Specially Permitted Services has commenced as a specially permitted business activity for Qualified Institutional Investors, etc. comes to no longer come under the purview of a specially permitted business activity for Qualified Institutional Investors, etc., the Notifier of Specially Permitted Services must notify the Prime Minister of this without delay.
- (7) If the Prime Minister finds it to be particularly necessary for confirming the business activity status of a Notifier of Specially Permitted Services, the Prime Minister, within the scope of this necessity, may order the Notifier of Specially Permitted Services, a person that conducts transactions with the Notifier of Specially Permitted Services, or a person that the Notifier of Specially Permitted Services has entrusted with its business (including a person who has received entrustment from such person (including entrustment via two or more layers); the same shall apply in the following paragraph), to submit reports or materials that should serve as a reference with regard to a notification under paragraph (2).
- (8) If the Prime Minister finds it to be particularly necessary for confirming the business activity status of a Notifier of Specially Permitted Services in



connection with an act set forth in paragraph (1), item (ii), the Prime Minister, within the scope of this necessity, may have the relevant officials enter the business office, office, or other facilities of the Notifier of Specially Permitted Services or of a person that the Notifier of Specially Permitted Services has entrusted with its business, may have those officials inquire about the notification under paragraph (2), and may have those officials inspect documents and other articles of the Notifier of Specially Permitted Services (but only as is necessary in connection with the notification under that paragraph).

(Succession to the Position of a Notifier of Specially Permitted Services)

Article 63-2 (1) If a Notifier of Specially Permitted Services transfers the whole of its business linked with specially permitted services for Qualified Institutional Investors, etc., or is subject to a merger, split (limited to one in which the whole of business is succeeded to), or inheritance, the person to which the whole of business is transferred, the corporation surviving the merger, the corporation incorporated in the merger, or the corporation or heir that succeeds to the whole of business in the split (or, if there are two or more heirs and they reach an agreement in which they decide which of the heirs is to succeed to business, said person) succeeds to the position of a Notifier of Specially Permitted Services, unless that person is a Financial Instruments Business Operator, etc.

(2) A person that succeeds to the position of a Notifier of Specially Permitted Services pursuant to the provisions of the preceding paragraph must notify the Prime Minister of this without delay.

(3) If a Notifier of Specially Permitted Services comes to fall under one of the following items, it must notify the Prime Minister of this without delay:

(i) it suspends or resumes specially permitted services for Qualified Institutional Investors, etc.;

(ii) it discontinues specially permitted services for Qualified Institutional Investors, etc.; or

(iii) it falls under any other case specified by Cabinet Office Ordinance.

(4) If a Notifier of Specially Permitted Services is a corporation, and that corporation is dissolved for reasons other than a merger, the liquidator (or, if the dissolution is due to an order to commence bankruptcy proceedings, the bankruptcy trustee) must notify the Prime Minister of this without delay.

(When a Financial Instruments Business Operator, etc. Engages in Specially Permitted Businesses for Qualified Institutional Investors, etc.)

Article 63-3 (1) Before a Financial Instruments Business Operator, etc. engages in specially permitted services for Qualified Institutional Investors, etc.

(excluding one that has Article 29 or Article 33-2 registration for performing an act set forth in the items of Article 63, paragraph (1) on a regular basis), it must notify the Prime Minister of this and of the business category prescribed in Article 63, paragraph (2), item (v) and any other matters specified by Cabinet Office Ordinance, pursuant to the provisions of Cabinet Office Ordinance.

- (2) The provisions of Article 63, paragraphs(3), (5) and (6) and paragraph (3) of the preceding Article apply mutatis mutandis to a Financial Instruments Business Operator, etc. that makes a notification under the provisions of the preceding paragraph. In this case, in these provisions, the term "Notifier of Specially Permitted Services" is deemed to be replaced with "Financial Instruments Business Operator, etc." , the terms "the preceding paragraph" and "matters listed in the items of the preceding paragraph" in Article 63, paragraph (3) shall be deemed to be replaced with "Article 63-3, paragraph (1)" and "Category of Business prescribed in that paragraph and any other matters specified by Cabinet Office Ordinance", respectively, and any other necessary technical replacement of terms is specified by Cabinet Order.
- (3) If a Financial Instruments Business Operator, etc. engages in the business set forth in one of the following items, the provisions prescribed in said item do not apply:
- (i) the business of performing the act set forth in Article 63, paragraph (1), item (i): the provisions of Section 2, Subsection 1 (excluding Article 38 (limited to the part that involves item (i)) and Article 39); and
  - (ii) the business of performing the act set forth in Article 63, paragraph (1), item (ii): the provisions of Section 2, Subsection 1 (excluding Article 38 (limited to the part that involves item (i)) and Article 39) and Subsection 3.

(Delegation to Cabinet Order)

Article 63-4 Beyond what is provided for in this Section, procedures for notification in connection with specially permitted services for Qualified Institutional Investors, etc. and necessary particulars otherwise relevant to the application of the provisions of this Section are specified by Cabinet Order.

## **Section 7 Sales Representatives**

(Registration of Sales Representatives)

Article 64 (1) A Financial Instruments Business Operator, etc. must have a registration made in a sales representatives register that is kept in a location set forth by Cabinet Office Ordinance (hereinafter referred to as the "Register"), bearing the name, birth date, and any other particular specified by Cabinet Office Ordinance, for any solicitor, sales person, agent, or other person among

its officers and employees, irrespective of title, that performs the following acts on its behalf (hereinafter referred to as a "Sales Representative"):

(i) the following acts involving Securities (excluding rights set forth in the items of Article 2, paragraph (2) that are deemed to be Securities pursuant to the provisions of that paragraph):

(a) acts set forth in Article 2, paragraph (8), items (i) to (iii) inclusive, item (v), item (viii), and item (ix); and

(b) the following acts:

1. the solicitation of offers in connection with a purchase and sale or in connection with intermediation, brokerage (excluding Brokerage for Clearing of Securities, etc.), or agency for a purchase and sale;
2. the solicitation of offers in connection with Market Transactions of Derivatives or Foreign Market Derivatives Transaction, or in connection with intermediation, brokerage (excluding Brokerage for Clearing of Securities, etc.), or agency for Market Transaction of Derivatives or Foreign Market Derivatives Transaction; and
3. the solicitation of entrustment with Market Transaction of Derivatives or Foreign Market Derivatives Transaction.

(ii) the following acts:

(a) acts set forth in Article 2, paragraph (8), items (iv), (vi), and (x); and

(b) solicitation of offers in connection with Over-the-Counter Transactions of Derivatives, etc.

(iii) beyond what is set forth in the preceding two items, acts specified by Cabinet Order.

(2) A Financial Instruments Business Operator, etc. must not allow a person other than one for which a registration has been made pursuant to the preceding paragraph to perform the duties of a Sales Representative (meaning acts set forth in the items of that paragraph; the same applies hereinafter).

(3) A Financial Instruments Business Operator, etc. seeking to have a registration made pursuant to the provisions of paragraph (1) must submit a written application for registration to the Prime Minister, in which it states the following particulars:

(i) the trade name or name of the applicant for registration;

(ii) the name of its representative, if the applicant for registration is a corporation;

(iii) the following particulars of the Sales Representative to which the application for registration pertains:

(a) the person's name and birth date;

(b) whether the person is an officer or an employee;

(c) whether the person has ever performed the duties of a Sales Representative, and if the person has performed the duties of a Sales

- Representative before, the trade name or name of the Financial Instruments Business Operator, etc. or Financial Instruments Intermediary Service Provider of which the person was a part and the period during which the person performed those duties;
- (d) whether the person has ever engaged in Financial Instruments Intermediary Service, and if the person has engaged in Financial Instruments Intermediary Service before, the period during which the person engaged in such services; and
- (iv) other particulars specified by Cabinet Office Ordinance.
- (4) The resume of the Sales Representative that the applicant seeks to have registered and other documents specified by Cabinet Office Ordinance must accompany the written application for registration referred to in the preceding paragraph.
- (5) Whenever an application for registration under paragraph (3) is filed, unless the Prime Minister refuses the registration pursuant to the provisions of paragraph (1) of the following Article, the Prime Minister must immediately register the particulars prescribed in paragraph (1) in the Register.
- (6) Upon effecting a registration referred to in paragraph (1), the Prime Minister shall notify the applicant of this in writing.

(Refusal of Registration)

- Article 64-2 (1) If the Sales Representative to which an application for registration pertains falls under one of the following items, or if a written application for registration or an accompanying document includes a false statement or omits a statement of material fact, the Prime Minister must refuse that registration:
- (i) a person set forth in Article 29-4, paragraph (1), item (ii), sub-items (a) to (i) inclusive;
- (ii) a person that has had a registration as a Sales Representative rescinded pursuant to the provisions of Article 64-5, paragraph (1), if five years have not yet passed since the date of the rescission;
- (iii) a person registered as being a Sales Representative affiliated with a Financial Instruments Business Operator, etc. or Financial Instruments Intermediary Service Provider other than the applicant for registration; or
- (iv) a person that has been registered pursuant to the provisions of Article 66.
- (2) Before seeking to refuse the registration referred to in paragraph (1) of the preceding Article, the Prime Minister must notify the applicant for registration and have the relevant officials conduct a hearing regarding the applicant for registration.
- (3) If the Prime Minister decides to refuse the registration referred to in paragraph (1) of the preceding Article, the Prime Minister must notify the

applicant for registration of this in writing.

(Authority of a Sales Representative)

- Article 64-3 (1) A Sales Representative is deemed to have the authority to perform any extra-judicial act in connection with the acts set forth in the items of Article 64, paragraph (1) on behalf of the Financial Instruments Business Operator, etc. to which the Sales Representative is affiliated.
- (2) The provisions of the preceding paragraph do not apply if the other party has acted in bad faith.

(Notification of a Change to Registered Information)

- Article 64-4 If a fact falling under one of the following items occurs with regard to a Sales Representative that a Financial Instruments Business Operator, etc. has had registered pursuant to the provisions of Article 64, paragraph (1), it must notify the Prime Minister of this without delay:
- (i) a particular set forth in Article 64, paragraph (3), item (iii), sub-item (a) or (b) changes;
  - (ii) the person comes to fall under any of Article 29-4, paragraph (1), item (ii), sub-items (a) to (i) inclusive; or
  - (iii) the person stops performing the duties of a Sales Representative due to having left the position or for other reasons.

(Supervisory Measures for Sales Representatives)

- Article 64-5 (1) If a registered Sales Representative falls under one of the following items, the Prime Minister may rescind the registration or order a suspension of duties during a fixed period of no longer than two years:
- (i) the person comes to fall under one of the categories in Article 29-4, paragraph (1), item (ii), sub-items (a) to (i) inclusive, or is discovered to have fallen under one of the items of Article 64-2, paragraph (1) at the time of registration;
  - (ii) the person violates a law or regulation in connection with business involving the undertaking of any act set forth in the items of Article 64, paragraph (1) (or in connection with the services of a registered financial institution, if it is a registered financial institution) or services incidental thereto within the Financial Instruments Business, or the person is otherwise found to have committed an extremely inappropriate act in the course of duties as a Sales Representative; or
  - (iii) the person has had a registration rescinded pursuant to the provisions of item (iii) of the following Article during the last five years, and an act that the person performed during the period while the registration was in effect (limited to acts during the last five years) is discovered to have fallen under

the preceding item.

- (2) Irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, before seeking to issue a disposition pursuant to the provisions of the preceding paragraph, the Prime Minister must conduct a hearing.
- (3) If the Prime Minister decides to issue a disposition based on the provisions of paragraph (1), the Prime Minister must notify the applicant for registration of this in writing.

#### (Deletion of Registrations)

Article 64-6 In the following cases, the Prime Minister deletes the registration of a Sales Representative from the Register:

- (i) the Prime Minister rescinds the registration of the Sales Representative pursuant to the provisions of paragraph (1) of the preceding Article;
- (ii) the Financial Instruments Business Operator, etc. with which the Sales Representative is affiliated is dissolved or discontinues the business of performing the acts set forth in the items of Article 64, paragraph (1) (or discontinues the services of a registered financial institution, if it is a registered financial institution) within the Financial Instruments Business;
- (iii) it is confirmed that the person has stopped performing the duties of a Sales Representative due to having left the position or for other reasons; and
- (iv) beyond what is set forth in the preceding three items, when so specified by Cabinet Office Ordinance.

#### (Delegation of Registration Work)

Article 64-7 (1) The Prime Minister may have an association (meaning an Authorized Financial Instruments Firms Association or Certified Financial Instruments Business Association as prescribed in Article 78, paragraph (2); hereinafter the same applies in this Section) do the work involved in the registration prescribed in Article 64, Article 64-2, and the preceding three Articles (hereinafter referred to as "Registration Work" in this Article and Article 64-9) in connection with the Sales Representative of a Financial Instruments Business Operator, etc. belonging to that association, pursuant to the provisions of Cabinet Office Ordinance.

- (2) The Prime Minister may designate one association and have it do the Registration Work (excluding the work to which Article 64-5 pertains) in connection with the Sales Representative of a Financial Instruments Business Operator, etc. that does not belong to an association, pursuant to the provisions of Cabinet Office Ordinance.
- (3) If the Prime Minister decides to have an association do the Registration Work pursuant to the provisions of the preceding two paragraphs, the Prime

Minister is not to conduct that Registration Work.

- (4) If an association decides to do the Registration Work pursuant to the provisions of paragraph (1) or (2), it must specify the particulars of its registration of Sales Representatives in its articles of incorporation and obtain the authorization of the Prime Minister.
- (5) If an association that does Registration Work pursuant to the provisions of paragraph (1) or (2) makes a registration under Article 64, paragraph (5), makes a change to a registration in connection with a notification under Article 64-4, reaches a disposition under Article 64-5, paragraph (1) (excluding the deletion of a registration), or deletes a registration as under the preceding Article, it must notify the Prime Minister of this without delay, pursuant to the provisions of Cabinet Office Ordinance.
- (6) If there are two or more associations that do the Registration Work under the provisions of paragraph (1) or (2), each association is to promote information exchange between or among related associations and endeavor to provide the necessary cooperation and information to other associations so as to ensure the appropriate implementation of Registration Work.
- (7) If the Sales Representative of a Financial Instruments Business Operator, etc. which belongs to an association that does Registration Work pursuant to the provisions of paragraph (1) falls under one of the categories in Article 64-5, paragraph (1), items (i) to (iii) inclusive but the association does not take a measure prescribed in that paragraph, and the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order the association to take a measure prescribed in that paragraph.
- (8) Irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, before seeking to issue a disposition based on the provisions of the preceding paragraph, the Prime Minister must conduct a hearing.

#### (Registration Fee)

- Article 64-8 (1) A Financial Instruments Business Operator, etc. seeking to have a Sales Representative registered must pay a registration fee to the government (if registering with an association pursuant to the provisions of paragraph (1) or (2) of the preceding Article, to the Association) pursuant to the provisions of Cabinet Order.
- (2) The fee set forth in the preceding paragraph and paid to an association is the revenue of said association.

#### (Requests for Review in Connection with Registration Work)

Article 64-9 A Financial Instruments Business Operator, etc. that objects to the

inaction of an association that does the Registration Work under Article 64-7, paragraph (1) or (2) in connection with an application for registration under Article 64, paragraph (3), that objects to such an association's refusal of a registration under Article 64-2, paragraph (1), or that objects to the Article 64-5, paragraph (1) disposition of an association that does the Registration Work under Article 64-7, paragraph (1), may file a request for review with the Prime Minister. In this case, with regard to the application of the provisions of Article 25, paragraphs (2) and (3), Article 46, paragraphs (1) and (2), and Article 49, paragraph (3) of the Administrative Appeal Act (Act No. 68 of 2014), the Prime Minister shall be deemed to be the higher administrative agency of the association.

## **Section 8 Miscellaneous Provisions**

(Acting Representatives)

Article 65 (1) If there is a position vacancy for the domestic representative of a Financial Instruments Business Operator, etc. (limited to a foreign corporation; hereinafter the same applies in this Article), and the Prime Minister finds it to be necessary, the Prime Minister may appoint a person to temporarily perform the duties of the domestic representative (referred to as an "Acting Representative" in the following paragraph). If this is the case, the Financial Instruments Business Operator, etc. must register the appointment in connection with the location of the principal business office or principal office in Japan.

(2) If the Prime Minister appoints an Acting Representative pursuant to the provisions of the preceding paragraph, the Prime Minister may order the Financial Instruments Business Operator, etc. to pay the Acting Representative a reasonable amount of remuneration.

(Technical Replacement of Terms in the Application of Provisions of This Act to Foreign Corporations)

Article 65-2 If a Financial Instruments Business Operator, etc. is a foreign corporation or an individual domiciled in a foreign state, the technical replacement of the terms in the application of the provisions of this Act and necessary particulars otherwise relevant in the application of the provisions of this Act to the foreign corporation or individual are specified by Cabinet Order.

(The Court's Request for an Investigation)

Article 65-3 (1) In liquidation proceedings, bankruptcy proceedings, rehabilitation proceedings, reorganization proceedings, or recognition and assistance proceedings for a Financial Instruments Business Operator



- (including those that is deemed as a Financial Instruments Business Operator under the provision of Article 56, paragraph (1) or Article 57-9), the court may request the opinion of, or an inspection or investigation by, the Prime Minister.
- (2) If the Prime Minister finds it to be necessary, the Prime Minister may state an opinion to the court during the proceedings prescribed in the preceding paragraph.
- (3) The provisions of Article 56-2, paragraph (1) apply *mutatis mutandis* if the Prime Minister receives an inspection or investigation request from the court pursuant to the provisions of paragraph (1).

(Delegation to Cabinet Office Ordinance)

Article 65-4 Beyond what is provided for in Article 34-5 and Article 63-4, procedures for the implementation of the provisions of Article 29 to the preceding Article inclusive and particulars that are otherwise necessary for their implementation are specified by Cabinet Office Ordinance.

(Exclusion from Application)

Article 65-5 (1) Notwithstanding the provisions of Article 29, a trust company (excluding a management-type trust company as prescribed in Article 2, paragraph (4) of the Trust Business Act; the same applies in the following paragraph and paragraph (5)), a foreign trust company (excluding a management-type foreign trust company as prescribed in Article 2, paragraph (7) of that Act; the same applies in the following paragraph and paragraph (5)), or a person registered as referred to in Article 50-2, paragraph (1) of that Act may perform the following acts in the course of its business in connection with the rights set forth in Article 2, paragraph (2), item (i) or (ii) (referred to as the "Purchase and Sale, etc. of a Beneficial Interest in a Trust" in the following paragraph):

- (i) a purchase and sale (except one that falls under the category of a Derivatives Transaction), or agency or intermediation for a purchase and sale; and
  - (ii) the acts set forth in Article 2, paragraph (8), item (viii) or (ix).
- (2) If a trust company, a foreign trust company, or a person registered as referred to in Article 50-2, paragraph (1) of the Trust Business Act makes a Purchase and Sale, etc. of a Beneficial Interest in a Trust in the course of its business pursuant to the provisions of the preceding paragraph, it is deemed to be a Financial Instruments Business Operator, and the provisions of Articles 34 to 34-5 inclusive; Article 36, paragraph (1); Article 36-2, paragraph (1) (but only if a person registered as referred to Article 50-2, paragraph (1) of the Trust Business Act makes a Purchase and Sale, etc. of a Beneficial Interest in a Trust in the course of its business); Article 36-3; Article 37 (excluding

paragraph (1), item (ii)); Article 37-2; Article 37-3 (excluding paragraph (1), item (ii)); Article 37-4; Article 37-6; Article 38 (excluding item (vii)); Article 39; Article 40; Article 40-4; Article 40-5; Article 45, items (i) and (ii); Articles 47 to 47-3 inclusive; Article 51; Article 52, paragraphs (1) and (2); Article 56-2, paragraph (1); Article 190; and Article 194-5, paragraph (2), and the provisions of Chapters VIII and VIII-2 connected with these provisions apply. In this case, in Article 52, paragraph (1), the phrase "any of the following items" is deemed to be replaced with "item (vi) or (ix)" and the phrase "rescind its Article 29 registration, rescind its Article 30, paragraph (1) authorization, or order the suspension of all or part of its business during a fixed period of no longer than six months" is deemed to be replaced with "order the suspension of all or part of its business during a fixed period of no longer than six months"; and in Article 52, paragraph (2), the phrase "is discovered to have fallen under one of the categories in sub-items (a) to (i) inclusive of that item at the time of the Article 29 registration, or comes to fall under one of the categories in item (vi) or items (viii) to (x) inclusive of the preceding paragraph" is deemed to be replaced with "or comes to fall under one of the categories in item (vi) or (ix) of the preceding paragraph".

- (3) The provisions of Article 29 do not apply if the Japan Housing Finance Agency, Independent Administrative Agency (referred to as the "Agency" in the following paragraph) is sells rights indicated on the Securities set forth in Article 2, paragraph (1), item (xiv) or the Securities set forth in Article 2, paragraph (1), item (xvii) (limited to ones that have the nature of the Securities set forth in item (xiv) of that paragraph) or sells rights set forth in Article 2, paragraph (2), item (i) or (ii), pursuant to Article 22 of the Act on the Japan Housing Finance Agency, Independent Administrative Agency (Act No. 82 of 2005)(referred to as the "Sells a Beneficial Interest in a Trust" in the following paragraph).
- (4) If the Agency Sells a Beneficial Interest in a Trust, the Agency is deemed to be a Financial Instruments Business Operator, and the provisions of Articles 34 to 34-5 inclusive; Article 36, paragraph (1); Article 37 (excluding paragraph (1), item (ii)); Article 37-3 (excluding paragraph (1), item (ii)); Article 37-4; Article 37-6; Article 38 (excluding item (vii)); Article 39; Article 40; Article 40-4; Article 40-5; and Article 45, items (i) and (ii), and the provisions of Chapters VIII and VIII-2 connected with these provisions apply.
- (5) The provisions of this Chapter do not apply if a trust company, foreign trust company, person registered as referred to in Article 50-2, paragraph (1) of the Trust Business Act, person that has made a notification under Article 51, paragraph (2) of that Act, or person registered as referred to in Article 52, paragraph (1) of that Act performs an act set forth in Article 2, paragraph (8), item (xiv) or (xv) (limited to one that it conducts while holding the money or

other assets referred to in these provisions as trust property).

(Respect for the Voluntary Efforts of Financial Instruments Business Operators, etc.)

Article 65-6 The Prime Minister, in supervising a Financial Instruments Business Operator, etc. or Authorized Exchange Transaction Operator, Authorized Electronic Over-the-Counter Transactions of Derivatives, etc. Business Operator or in supervising a Foreign Securities Services Provider that has received Article 59, paragraph (1) permission, must give due consideration to respecting the voluntary efforts of the Financial Instruments Business Operator, etc., Authorized Operator for On-Exchange Transactions, Authorized Electronic Over-the-Counter Transactions of Derivatives, etc. Business Operator or Foreign Securities Services Provider with that paragraph permission, to run its business.

### **Chapter III-2 Financial Instruments Intermediary Service Providers**

#### **Section 1 General Provisions**

(Registration)

Article 66 Notwithstanding the provisions of Article 29, a person other than a bank, a Cooperative Financial Institution, or a financial institution specified by Cabinet Order (but not a person engaged in Type I Financial Instruments Business (meaning Type I Financial Instruments Business as prescribed in Article 28, paragraph (1); hereinafter the same applies in this Chapter) and not the officer or employee of a registered financial institution) may be registered by the Prime Minister and engage in Financial Instruments Intermediary Service.

(Application for Registration)

Article 66-2 (1) A person seeking to be registered as referred to in the preceding Article must submit a written application for registration to the Prime Minister, in which it state the following particulars:

- (i) the trade name or name;
- (ii) the names of its officers, if it is a corporation;
- (iii) the name and location of the business office or office for engaging in Financial Instruments Intermediary Service;
- (iv) the trade name or name of the Financial Instruments Business Operator (limited to one engaged in Type I Financial Instruments Business or Investment Management Business (meaning Investment Management Business as prescribed in Article 28, paragraph (4); the same applies in Article 66-14, item (i), sub-item (d)) or registered financial institution

- entrusting the applicant (hereinafter referred to as the "Entrusting Financial Instruments Business Operator, etc." in this Chapter and Chapter IV);
- (v) if the person engages in other business, the business type; and
  - (vi) other particulars specified by Cabinet Office Ordinance.
- (2) The following documents must accompany the written application for registration referred to in the preceding paragraph:
- (i) a document pledging that the applicant does not fall under the purview of Article 66-4, item (i) or (ii);
  - (ii) a document stating the things specified by Cabinet Office Ordinance as constituting the business outline and business methods for Financial Instruments Intermediary Service;
  - (iii) its articles of incorporation and the certificate of registered information for the company (including documents equivalent to these), if it is a corporation; and
  - (iv) other documents specified by Cabinet Office Ordinance.
- (3) In the case referred to in item (iii) of the preceding paragraph, if the articles of incorporation have been prepared as electronic or magnetic records, electronic or magnetic records (limited to those specified by Cabinet Office Ordinance) may accompany a written application for registration lieu of written documents.

(Registration in a Register)

- Article 66-3 (1) Whenever an application is filed for the registration referred to in Article 66, unless the Prime Minister refuses the registration pursuant to the provisions of the following Article, the Prime Minister must register the following particulars in a Financial Instruments Intermediary Service Providers register:
- (i) the particulars set forth in the items of paragraph (1) of the preceding Article; and
  - (ii) the date of registration and registration number.
- (2) The Prime Minister must make the Financial Instruments Intermediary Service Providers register available for public inspection.

(Refusal of Registration)

- Article 66-4 The Prime Minister must refuse a registration if the applicant for registration falls under one of the following items, if the written application for registration or a document or electronic or magnetic record that is required to accompany it contains a false statement or record, or if it omits a statement or record of a material fact:
- (i) the applicant for registration is an individual that falls under one of the categories in sub-items (a) to (i) inclusive of Article 29-4, paragraph (1), item

- (ii);
- (ii) the applicant for registration is a corporation that falls under one of the following categories:
  - (a) a person that falls under any of sub-items (a) to (c) inclusive of Article 29-4, paragraph (1), item (i); or
  - (b) a person that has a person falling under any of sub-items (a) to (i) inclusive of Article 29-4, paragraph (1), item (ii) as an officer.
- (iii) a person whose other business is found to be contrary to the public interest;
- (iv) a person that is found not to have the knowledge or experience to perform Financial Instruments Intermediary Service in an appropriate manner;
- (v) the applicant for registration has an Entrusting Financial Instruments Business Operator, etc. that is not a member of an association (meaning an Authorized Financial Instruments Firms Association or a Certified Financial Instruments Firms Association as prescribed in Article 78, paragraph (2)); or
- (vi) a Financial Instruments Business Operator (but only a person engaged in Type I Financial Instruments Business).

#### (Notification of a Change)

Article 66-5 (1) If a particular set forth in one of the items of Article 66-2, paragraph (1) changes, the Financial Instruments Intermediary Service Provider must notify the Prime Minister of this within two weeks from the day of the change.

(2) Upon accepting a notification under the preceding paragraph, the Prime Minister shall register the particulars given in the notification in a Financial Instruments Intermediary Service Providers register.

(3) If the business outline or business methods that a Financial Instruments Intermediary Service Provider has stated in a document set forth in Article 66-2, paragraph (2), item (ii) change, the Financial Instruments Intermediary Service Provider must notify the Prime Minister of this without delay, pursuant to the provisions of Cabinet Office Ordinance.

#### (Restriction on the Use of a Trade Name)

Article 66-6 A person that is not a Financial Instruments Intermediary Service Provider must not use a trade name or name that refers to it as a Financial Instruments Intermediary Service Provider, and must not use any trade name or name that is confusingly similar to this.

## **Section 2 Services**

#### (Duty of Sincerity to Customers)

Article 66-7 A Financial Instruments Intermediary Service Provider as well as its officers and employees must be sincere and fair to customers in the performance of its services.

(Posting of Signs)

Article 66-8 (1) A Financial Instruments Intermediary Service Provider must post a sign in the format specified by Cabinet Office Ordinance in a place that is accessible to the public at each of its business offices or other offices.

(2) A person other than a Financial Instruments Intermediary Service Provider must not post the sign referred to in the preceding paragraph or a sign similar thereto.

(Prohibition on Name Lending)

Article 66-9 A Financial Instruments Intermediary Service Provider must not allow another person to engage in Financial Instruments Intermediary Services using the name of said Financial Instruments Intermediary Service Provider.

(Regulation of Advertising)

Article 66-10 (1) When advertising the contents of its Financial Instruments Intermediary Service or performing any similar act specified by Cabinet Office Ordinance, a Financial Instruments Intermediary Service Provider shall give the following particulars, pursuant to the provisions of Cabinet Office Ordinance:

- (i) the trade name or name of the Financial Instruments Intermediary Service Provider;
- (ii) an indication that the Financial Instruments Intermediary Service Provider is a Financial Instruments Intermediary Service Provider, and its registration number; and
- (iii) the particulars of the contents of the Financial Instruments Intermediary Service that the Financial Instruments Intermediary Service Provider engages in, which is specified by Cabinet Order as material particulars that may have an impact on customers' judgment.

(2) When advertising the contents of its Financial Instruments Intermediary Service or engaging in any similar act specified by Cabinet Office Ordinance, a Financial Instruments Intermediary Service Provider must not make a representation that significantly conflicts with the fact of the matter or that could cause a person to have a serious misconception about the prospect of profiting from the performance of an act that constitutes a Financial Instruments transaction, or about any other matter that is specified by Cabinet Office Ordinance.

(Clear Indication of Trade Name)

Article 66-11 If a Financial Instruments Intermediary Service Provider seeks to perform an act set forth in one of the items of Article 2, paragraph (11) (hereinafter referred to as the "Intermediation for Financial Instruments " in this Chapter), it must clearly indicate the following particulars to customers in advance:

- (i) the trade name or the name of the Entrusting Financial Instruments Business Operator, etc.;
- (ii) that the Financial Instruments Intermediary Service Provider does not have authority of representation in respect of the Entrusting Financial Instruments Business Operator, etc.;
- (iii) the import of the provisions of Article 66-13; and
- (iv) other matters specified by Cabinet Office Ordinance.

(Limitations on Financial Instruments Intermediary Service Providers)

Article 66-12 A Financial Instruments Intermediary Service Provider (excluding a person that is a Financial Instruments Business Operator) must not engage in any act set forth in the items of Article 2, paragraph (8), except for the Intermediation for Financial Instruments to which a customer of its Financial Instruments Intermediary Service is the other party, as entrusted by the Entrusting Financial Instruments Business Operator, etc.

(Prohibition on the Depositing of Money)

Article 66-13 A Financial Instruments Intermediary Service Provider must not, for any reason, receive a deposit of money or Securities from a customer, or have a person specified by Cabinet Order as being closely related to said Financial Instruments Intermediary Service Provider deposit a customer's money or Securities, in connection with the Financial Instruments Intermediary Service it conducts.

(Prohibited Acts)

Article 66-14 It is prohibited for a Financial Instruments Intermediary Service Provider or its officer or employee to engage in the following acts:

- (i) the performance of one of the following acts in connection with Financial Instruments Intermediary Service:
  - (a) an act that falls under Article 38, item (i);
  - (b) an act that falls under one of the categories in Article 38, items (ii) to (vi) inclusive;
  - (c) an act that falls under Article 38, item (vii);
  - (d) if it provides Investment Advisory Business (meaning Investment

Advisory Business set forth in Article 28, paragraph (6); the same applies in this sub-item (c)), using information about a Purchase and Sale or Other Transaction of Securities, etc. that a customer makes based on the advice provided through its Investment Advisory Business in order to solicit a customer other than the customer in question; or if it engages in Investment Management Business, using information about a Purchase and Sale or Other Transaction of Securities, etc. made as an investment in connection with its Investment Management Business, in order to solicit a customer other than the customer in question;

- (e) if it engages in business other than Financial Instruments Intermediary Service, using information about an Issuer of Securities learned in the course of that other business (limited to undisclosed information about the operations, business, or assets of an Issuer of Securities that would influence customers' investment decisions in connection with Financial Instruments Intermediary Service) to conduct solicitation; or
- (f) conducting a solicitation with the Financial Instruments Intermediary Service Provider's lending of money or granting of other credit as a condition (excluding acts specified in Cabinet Office Ordinance as acts that are found to have little likelihood of resulting in insufficient investor protection).
- (ii) making a Purchase and Sale or Other Transaction of Securities, etc. on the intermediary's, officer's, or employee's own account, using the ordering trends for Purchase and Sales and Other Transactions of Securities, etc. made by customers of its Financial Instruments Intermediary Service or other special information learned in the course of Financial Instruments Intermediary Service; and
- (iii) acts beyond what is set forth in the preceding two items, which are specified by Cabinet Office Ordinance as acts that result in insufficient investor protection, harm the fairness of transactions, or cause a loss of confidence in Financial Instruments Intermediary Services.

(Limitation on Intermediation for the Purchase and Sale of Securities for Professional Investors)

Article 66-14-2 A Financial Instruments Intermediary Service Provider must not conduct one of the acts specified in Article 2, paragraph (11), item (i) or (ii) in connection with Securities for Professional Investors with a general investor (meaning a person other than a Professional Investor, etc., the Issuer of the Securities for Professional Investors, or any other person specified by Cabinet Office Ordinance; hereinafter the same applies in this Article) as the other party; provided, however, that this does not apply in a Case In Which Disclosure Has Been Made with regard to the Securities for Professional



Investors, a case in which the Financial Instruments Intermediary Service Provider intermediates, a purchase for an Entrusting Financial Instruments Business Operator, etc. which is not based on a solicitation of general investors, or any other case specified by Cabinet Office Ordinance as having little likelihood of resulting in insufficient investor protection.

(Applications Mutatis Mutandis of Provisions on Financial Instruments Business Operators, etc. in Relation to the Prohibition on Loss Compensation)

Article 66-15 The provisions of Article 38-2, Article 39, paragraphs (1), (3), and (5) and Article 40 apply mutatis mutandis to a Financial Instruments Intermediary Service Provider, and Article 39, paragraphs (2) and (4) apply mutatis mutandis to the customer of a Financial Instruments Intermediary Service Provider. In this case, in Article 39, paragraph (3), the phrase "if the Financial Instruments Business Operator, etc. receives" is deemed to be replaced with "if the Entrusting Financial Instruments Business Operator, etc. of the Financial Instruments Intermediary Service Provider receives", and any other necessary technical replacement of terms is specified by Cabinet Order.

### **Section 3 Accounting**

(Business Books and Documents)

Article 66-16 A Financial Instruments Intermediary Service Provider shall prepare and archive books and documents for its Financial Instruments Intermediary Service pursuant to the provisions of Cabinet Office Ordinance.

(Submission of Business Reports)

Article 66-17 (1) Each business year, a Financial Instruments Intermediary Service Provider shall prepare a report on its Financial Instruments Intermediary Service and submit it to the Prime Minister within three months after the end of the business year, pursuant to the provisions of Cabinet Office Ordinance.

(2) Each business year, pursuant to the provisions of Cabinet Office Ordinance, a Financial Instruments Intermediary Service Provider shall prepare documents stating those of the particulars stated in the business report referred to in the preceding Article which are specified by Cabinet Office Ordinance as particulars that are found to be necessary in terms of investor protection, and shall keep those documents at all of the business offices and offices at which it conducts Financial Instruments Intermediary Service and make them available for public inspection.

(Public Inspection of Explanatory Documents)

Article 66-18 For each business year of an Entrusting Financial Instruments Business Operator, etc. and pursuant to the provisions of Cabinet Office Ordinance, a Financial Instruments Intermediary Service Provider shall keep the explanatory documents that the Entrusting Financial Instruments Business Operator, etc. prepares pursuant to the provisions of Article 46-4 or Article 47-3 (if the Entrusting Financial Instruments Business Operator, etc., is a registered financial institution, the documents that it prepares pursuant to the provisions of Article 21, paragraphs (1) and (2) of the Banking Act (Act No. 59 of 1981) or other provisions specified by Cabinet Order) at all of the business offices and offices at which it conducts Financial Instruments Intermediary Service, and shall make them available for public inspection.

**Section 4 Supervision**

(Notification of Business Discontinuance)

Article 66-19 (1) If a Financial Instruments Intermediary Service Provider comes to fall under one of the following items, the person specified in the relevant item must notify the Prime Minister of this within 30 days from the day in question:

- (i) the Financial Instruments Intermediary Service Provider discontinues Financial Instruments Intermediary Service (including if the Financial Instruments Intermediary Service Provider has the whole of its business (limited to business involved in Financial Instruments Intermediary Service; hereinafter the same applies in this item) succeeded to in a company split or transfers the whole of business)): the individual or the corporation that discontinues or transfers the Financial Instruments Intermediary Services, or has the Financial Instruments Intermediary Services succeeded to;
  - (ii) the Financial Instruments Intermediary Service Provider is an individual, and that individual dies: the heir thereof;
  - (iii) the Financial Instruments Intermediary Service Provider is a corporation, and that corporation disappears in a merger: the officer that represented the corporation;
  - (iv) the Financial Instruments Intermediary Service Provider is a corporation, and that corporation becomes subject to an order to commence bankruptcy proceedings: the bankruptcy trustee; and
  - (v) the Financial Instruments Intermediary Service Provider is a corporation, and that corporation is dissolved for reasons other than a merger or an order to commence bankruptcy proceedings: the liquidator.
- (2) If a Financial Instruments Intermediary Service Provider comes to fall under one of the items of the preceding paragraph, if it no longer has an Entrusting

Financial Instruments Business Operator, etc., or if it becomes registered as referred to in Article 29 (but only if the registered Financial Instruments Business Operator engages in Type I Financial Instruments Business), its Article 66 registration ceases to be valid.

(Supervisory Measures)

Article 66-20 (1) If a Financial Instruments Intermediary Service Provider falls under one of the following items, the Prime Minister may rescind its Article 66 registration, order the suspension of all or a part of business activities during a fixed period of no longer than six months, order a change of business methods, or issue orders with respect to matters that are otherwise necessary from a supervisory perspective:

- (i) the Financial Instruments Intermediary Service Provider comes to fall under one of the categories in items (i) to (v) inclusive of Article 66-4 (excluding item (ii), sub-item (b));
  - (ii) the Financial Instruments Intermediary Service Provider receives its Article 66 registration by wrongful means; or
  - (iii) the Financial Instruments Intermediary Service Provider violates a law or regulation or a disposition made by a government agency which is based on a law or regulation, in connection with Financial Instruments Intermediary Services.
- (2) If the officer of a Financial Instruments Intermediary Service Provider comes to fall under one of the categories in Article 29-4, paragraph (1), item (ii), sub-items (a) to (i) inclusive, or engages in an act that falls under item (iii) of the preceding paragraph, the Prime Minister may order the Financial Instruments Intermediary Service Provider to dismiss that officer.

(Deletion of Registrations)

Article 66-21 If an Article 66 registration loses its validity pursuant to the provisions of Article 66-19, paragraph (2) or if the Prime Minister rescinds an Article 66 registration pursuant to the provisions of paragraph (1) of the preceding Article, the Prime Minister must delete that registration.

(Collection of Reports and Inspections)

Article 66-22 Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order a Financial Instruments Intermediary Service Provider or a person that conducts transactions with a Financial Instruments Intermediary Service Provider to submit reports or materials that should serve as a reference with regard to the Financial Instruments Intermediary Service of the Financial Instruments Intermediary Service Provider, or may have the

relevant officials inspect the state of the Financial Instruments Intermediary Service of the Financial Instruments Intermediary Service Provider or inspect its documents or other articles.

(Mutatis Mutandis Application)

Article 66-23 The provisions of Article 57, paragraphs (1) and (3) apply mutatis mutandis to the registration referred to in Article 66, and the provisions of Article 57, paragraphs (2) and (3) and Article 65-6 apply mutatis mutandis to a Financial Instruments Intermediary Service Provider. The necessary technical replacement of terms for such a case is specified by Cabinet Order.

## **Section 5 Miscellaneous Provisions**

(Compensatory Liability of an Entrusting Financial Instruments Business Operator, etc.)

Article 66-24 The Entrusting Financial Instruments Business Operator, etc., of a Financial Instruments Intermediary Service Provider is liable for damages that that the Financial Instruments Intermediary Service Provider it entrusts causes to a customer in connection with Financial Instruments Intermediary Services; provided, however, that this does not apply if the Entrusting Financial Instruments Business Operator, etc. exercises due care in entrusting the Financial Instruments Intermediary Service Provider, and endeavors to prevent the damage that the person causes to a customer in connection with the Intermediation for Financial Instruments that the person performs.

(Mutatis Mutandis Application)

Article 66-25 The provisions of Articles 64 to 64-9 inclusive (excluding Article 64-7, paragraph (2)) apply mutatis mutandis to a Financial Instruments Intermediary Service Provider. The necessary technical replacement of terms for such a case is specified by Cabinet Order.

(Delegation to Cabinet Office Ordinance)

Article 66-26 Procedures for the implementation of the provisions of Article 66 to the preceding Article inclusive and particulars that are otherwise necessary for their implementation are specified by Cabinet Office Ordinance.

## **Chapter III-3 Credit Rating Agencies**

### **Section 1 General Provisions**

(Registration)

Article 66-27 A corporation engaged in Credit Rating Services (including an

organization without legal personality whose representative or administrator has been designated; hereinafter the same applies in this Chapter, except in paragraph (1), item (ii) of the following Article and Article 66-47) may be registered by the Prime Minister.

(Application for Registration)

Article 66-28 (1) A person seeking to be registered as referred to in the preceding Article must submit a written application for registration to the Prime Minister, in which it states the following particulars. In such a case, a foreign corporation must designate a domestic representative (limited to one responsible for business at all business offices or offices that the foreign corporation operates in Japan so as to engage in Credit Rating Services) or a person specified by Cabinet Office Ordinance as equivalent to this, before submitting such a written application for registration:

- (i) its trade name or name;
- (ii) the names of its officers (including the representative or administrator of an organization without legal personality for which a representative or administrator has been designated; hereinafter the same applies in this Chapter);
- (iii) the name and location of the business offices or offices for Credit Rating Services (or the head office, principal business office or office, or any other business office or office in Japan, for a foreign corporation);
- (iv) if it engages in other business, the business type; and
- (v) other particulars specified by Cabinet Office Ordinance.

(2) The following documents must accompany the written application for registration referred to in the preceding paragraph:

- (i) a document pledging that the applicant does not fall under the purview of Article 66-30, paragraph (1), item (ii) or (iii);
- (ii) a document stating the things specified by Cabinet Office Ordinance as constituting the business outline and business methods for Credit Rating Services;
- (iii) the articles of incorporation and the certificate of registered information for the company (including documents equivalent to these); and
- (iv) other documents specified by Cabinet Office Ordinance.

(3) In the case referred to in item (iii) of the preceding paragraph, if the articles of incorporation have been prepared as electronic or magnetic records, electronic or magnetic records (limited to that specified by Cabinet Office Ordinance) may accompany a written application for registration in lieu of documents.

(Registration in a Register)

Article 66-29 (1) Whenever an application is filed for the registration referred to in Article 66-27, unless the Prime Minister refuses the registration pursuant to the provisions of the following Article, the Prime Minister shall register the following particulars in a Credit Rating Agencies register:

- (i) the particulars set forth in the items of paragraph (1) of the preceding Article; and
  - (ii) the date of registration and registration number.
- (2) The Prime Minister must make the Credit Rating Agencies register available to the public.

(Refusal of Registration)

Article 66-30 (1) The Prime Minister must refuse to effect a registration if an applicant for registration falls under one of the following items, if the written application for registration or a document or electronic or magnetic record that is required to accompany it contains a false statement or record, or if it omits a statement or record of a material fact:

- (i) a person other than a corporation;
  - (ii) a corporation that falls under any of sub-items (a) to (c) inclusive of Article 29-4, paragraph (1);
  - (iii) a corporation that has a person falling under any of sub-items (a) to (i) inclusive of Article 29-4, paragraph (2), item (ii) as an officer;
  - (iv) a corporation whose other business is found to be contrary to the public interest; or
  - (v) a corporation that is found not to have in place the necessary system for fairly and appropriately performing Credit Rating Services.
- (2) In addition to what is provided for in the preceding paragraph, the Prime Minister must refuse a registration if the applicant for registration is a foreign corporation and has no business office or office in Japan; provided, however, that this does not apply in cases specified by Cabinet Office Ordinance as those in which the applicant for registration is found to be under appropriate supervision by a foreign administrative organization that supervises persons conducting business that is found to be equivalent to Credit Rating Services, or by any other organization equivalent to such an organization, and does not apply to a case in which refusal to effect a registration pursuant to the main clause of this paragraph would preclude the sincere implementation of a treaty or other international agreement.

(Notification of a Change)

Article 66-31 (1) If a particular set forth in one of the items of Article 66-28, paragraph (1) changes, the Credit Rating Agency must notify the Prime Minister of this within two weeks from the day of the change.

- (2) Upon accepting a notification under the preceding paragraph, the Prime Minister shall register the particulars given in the notification in a Credit Rating Agencies register.
- (3) If a particular stated in a document set forth in Article 66-28, paragraph (2), item (ii) changes, the Credit Rating Agency must notify the Prime Minister of this without delay, pursuant to the provisions of Cabinet Office Ordinance.

## **Section 2 Services**

### **(Duty of Sincerity)**

Article 66-32 A Credit Rating Agency as well as its officers and employees must be sincere and fair in the performance of its services, from an independent standpoint.

### **(Establishment of an Operational Control System)**

Article 66-33 (1) A Credit Rating Agency must establish an operational control system for the fair and appropriate performance of its Credit Rating Services, pursuant to the provisions of Cabinet Office Ordinance.

- (2) The operational control system referred to in the preceding paragraph must include measures for assigning persons with expert knowledge and skills and for otherwise managing the quality of business, measures for preventing the investors' interests from being harmed with the aim of benefiting the Credit Rating Agency itself or a person associated with a rating (meaning a person specified by Cabinet Office Ordinance as having an interest in the thing on which a Credit Rating is based; the same applies in Article 66-35) and other measures for ensuring the proper execution of business.

### **(Prohibition on Name Lending)**

Article 66-34 A Credit Rating Agency must not allow another person to engage in Credit Rating Services using the name of said Credit Rating Agency.

### **(Prohibited Acts)**

Article 66-35 It is prohibited for a Credit Rating Agency or its officer or employee to engage in the following acts with regard to its Credit Rating Services:

- (i) providing or making available for inspection a Credit Rating that is based on anything specified by Cabinet Office Ordinance as those in which a person associated with a rating has an interest, if the Credit Rating Agency or its officer or employee is closely related as specified by Cabinet Office Ordinance to the person associated with that rating;
- (ii) providing a Credit Rating or making it available for inspection, if the

Credit Rating Agency or its officer or employee has given advice to the person associated with the rating about a matter specified by Cabinet Office Ordinance as those that may have a material influence on the Credit Rating of the person associated with that rating (this excludes the Credit Rating Agency or its officer or employee informing the person associated with a rating of the details of the Rating Policy as defined in paragraph (1) of the following Article at that person's request, and also excludes cases specified by Cabinet Office Ordinance as those in which such advice is found to have little likelihood of resulting in insufficient investor protection, in light of the form of that advice); and

- (iii) any act beyond what is set forth in the preceding two items, which is specified by Cabinet Office Ordinance as resulting in insufficient investor protection or as causing a loss of confidence in Credit Rating Services.

(Rating Policy)

Article 66-36 (1) A Credit Rating Agency, pursuant to the provisions of Cabinet Office Ordinance, must set a policy and methodology for determining Credit Ratings and for providing them or making them available for inspection (such a policy is referred to as a "Rating Policy" in the following paragraph) and must disclose the same. The same applies if the Credit Rating Agency changes its Rating Policy.

- (2) A Credit Rating Agency must carry out its Credit Rating Services in accordance with the Rating Policy.

### **Section 3 Accounting**

(Business Books and Documents)

Article 66-37 A Credit Rating Agency shall prepare and archive books and documents related to its Credit Rating Services pursuant to the provisions of Cabinet Office Ordinance.

(Submission of Business Reports)

Article 66-38 Each business year, pursuant to the provisions of Cabinet Office Ordinance, a Credit Rating Agency shall prepare a business report and submit it to the Prime Minister within the period specified by Cabinet Order after the end of the business year.

(Public Inspection of Explanatory Documents)

Article 66-39 Each business year, a Credit Rating Agency shall prepare explanatory documents stating the particulars specified by Cabinet Office Ordinance as pertinent to the state of its business, and during the one-year



period beginning from the day on which the period specified by Cabinet Order elapses following the end of each business year, in addition to keeping these explanatory documents at all of its business offices and offices and making them available for public inspection, it shall disclose them over the Internet or by any other means, pursuant to the provisions of Cabinet Office Ordinance.

#### **Section 4 Supervision**

(Notification of Business Discontinuance)

Article 66-40 (1) If a Credit Rating Agency comes to fall under one of the following items, the person specified in the relevant item must notify the Prime Minister of this within 30 days from the day in question:

- (i) the Credit Rating Agency discontinues Credit Rating Services (including if the Credit Rating Agency has the whole of its business (limited to business involved in Credit Rating Services; hereinafter the same applies in this Article) succeeded to in a company split or transfers the whole of business): the corporation that discontinues or transfers the Credit Rating Services or that has the Credit Rating Services succeeded to;
  - (ii) the Credit Rating Agency is a corporation, and that corporation disappears in a merger: the officer that represented the corporation;
  - (iii) the Credit Rating Agency is a corporation, and that corporation is dissolved due to an order to commence bankruptcy proceedings: the bankruptcy trustee; and
  - (iv) the Credit Rating Agency is a corporation, and that corporation is dissolved for reasons other than a merger or an order to commence bankruptcy proceedings: the liquidator.
- (2) If a Credit Rating Agency comes to fall under one of the items of the preceding paragraph, the Article 66-27 registration of the Credit Rating Agency ceases to be valid.
- (3) If a Credit Rating Agency seeks to apply for the deletion of its Article 66-27 registration, to discontinue its Credit Rating Services, to implement a merger (limited to one in which the Credit Rating Agency disappears due to merger), to dissolve for reasons other than a merger or an order to commence bankruptcy proceedings, to have the whole of its business succeeded to in a company split, or to transfer the whole of its business, it shall issue public notice of this, pursuant to the provisions of Cabinet Office Ordinance, by 30 days prior to that day on which it seeks to do so.
- (4) If a Credit Rating Agency issues a public notice under the preceding paragraph, it must immediately notify the Prime Minister of this.
- (5) The provisions of Article 940, paragraph (1) (limited to the part that involves item (i)) and paragraph (3) of the Companies Act apply mutatis mutandis if a

Credit Rating Agency (limited to one that is a company) issues a public notice under paragraph (3) through an Electronic Public Notice. The necessary technical replacement of terms for such a case is specified by Cabinet Order.

- (6) The provisions of Article 940, paragraph (1) (limited to the part that involves item (i)) and paragraph (3) of the Companies Act and Article 941; Article 946; Article 947; Article 951; paragraph (2); Article 953; and Article 955 of that Act apply *mutatis mutandis* if a Credit Rating Agency (limited to one that is a foreign company) issues a public notice under paragraph (3) through an Electronic Public Notice. The necessary technical replacement of terms for such a case is specified by Cabinet Order.

(Business Improvement Orders)

Article 66-41 If the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors as concerns the state of a Credit Rating Agency's business operations, the Prime Minister, within the scope of this necessity, may order the Credit Rating Agency to change its business methods or may otherwise order it to take measures that are necessary for improving the state of its business operations.

(Supervisory Measures)

Article 66-42 (1) If a Credit Rating Agency falls under one of the following items, the Prime Minister may rescind its Article 66-27 registration, or may order the suspension of all or a part of business activities during a fixed period of no longer than six months:

- (i) the Credit Rating Agency comes to fall under one of the items (excluding item (iii)) of Article 66-30, paragraph (1);
- (ii) the Credit Rating Agency comes to fall under the purview of grounds upon which the Prime Minister is required to refuse registration pursuant to Article 66-30, paragraph (2),
- (iii) the Credit Rating Agency has received its Article 66-27 registration by wrongful means;
- (iv) the Credit Rating Agency violates a law or regulation or a disposition by a government agency which is based on a law or regulation, in connection with its Credit Rating Services;
- (v) a fact has occurred in connection with the operation of its Credit Rating Services, which is detrimental to investors' interests; or
- (vi) the Credit Rating Agency commits a wrongful or extremely unjust act in connection with Credit Rating Services, and the circumstances surrounding this are especially serious.

- (2) If the officer of a Credit Rating Agency (for a foreign corporation, this is limited to an officer stationed at its domestic business office or office and its

domestic representative; hereinafter the same applies in this paragraph) comes to fall under one of the categories in Article 29-4, paragraph (1), item (ii), sub-items (a) to (i) inclusive, is discovered to have fallen under one of the categories in sub-items (a) to (i) inclusive of that item at the time of the Article 66-27 registration, or comes to fall under one of the categories in items (iv) to (vi) inclusive of the preceding paragraph, the Prime Minister may order the Credit Rating Agency to dismiss that officer.

- (3) If the Prime Minister is unable to ascertain the location of the business offices or offices of a Credit Rating Agency or is unable to ascertain the whereabouts of the officer representing the Credit Rating Agency, the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance, may issue public notice of that fact and rescind the registration of the Credit Rating Agency if no filing is made by the Credit Rating Agency even after 30 days past the day of the public notice.
- (4) The provisions of Chapter III of the Administrative Procedure Act do not apply to a disposition under the preceding paragraph.

(Public Notice of Supervisory Measures)

Article 66-43 If the Prime Minister rescinds an Article 66-27 registration pursuant to the provisions of paragraph (1) or (3) of the preceding Article or orders the suspension of all or a part of business activities pursuant to paragraph (1) of the preceding Article, the Prime Minister must issue public notice of this pursuant to the provisions of Cabinet Office Ordinance.

(Deletion of Registrations)

Article 66-44 Whenever an application is filed by a Credit Rating Agency for the deletion of an Article 66-27 registration, or if an Article 66-27 registration loses its validity pursuant to the provisions of Article 66-40, paragraph (2) or the Prime Minister rescinds an Article 66-27 registration pursuant to the provisions of Article 66-42, paragraph (1) or (3), the Prime Minister must delete that registration.

(Collection of Reports and Inspection)

Article 66-45 (1) Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order a Credit Rating Agency, a person that conducts transactions with a Credit Rating Agency, the person that a Credit Rating Agency has entrusted with its business (including a person who has received entrustment from such person (including entrustment via two or more layers); hereinafter the same shall apply in this paragraph), or the affiliated corporation of a Credit Rating Agency (meaning the Subsidiary Corporation of

a Credit Rating Agency, a corporation that has a Credit Rating Agency as its Subsidiary Corporation, or the Subsidiary Corporation of a corporation that has a Credit Rating Agency as its Subsidiary Corporation (other than the relevant Credit Rating Agency itself), which performs the act of determining Credit Ratings and providing them or making them available for inspection in the course of business; hereinafter the same applies in this paragraph) to submit reports or materials that should serve as a reference with regard to the business of the Credit Rating Agency, or may have the relevant officials inspect the state of business, documents, or other articles of a Credit Rating Agency, the person that a Credit Rating Agency has entrusted with its business, or the affiliated corporation of a Credit Rating Agency (but may only have the relevant officials inspect the person that a Credit Rating Agency has entrusted with its business or the affiliated corporation of a Credit Rating Agency as is necessary in connection with the business of the Credit Rating Agency).

- (2) The term "Subsidiary Corporation" as used in the preceding paragraph means a second corporation in which a first corporation holds the majority of all shareholders', etc. voting rights. In such a case, a second corporation in which a first corporation and one or more of its Subsidiary Corporations hold the majority all shareholders', etc. voting rights, or in which one or more of a first corporation's Subsidiary Corporations hold the majority all shareholders', etc. voting rights, is deemed to be the Subsidiary Corporation of that first corporation.

## **Section 5 Miscellaneous Provisions**

(Acting Representative)

Article 66-46 (1) If there is a position vacancy for the domestic representative of a Credit Rating Agency (limited to a foreign corporation; hereinafter the same applies in this Article), and the Prime Minister finds it to be necessary, the Prime Minister may appoint a person to temporarily perform the duties of the domestic representative (referred to as the "Acting Representative" in the following paragraph). In such a case, the Credit Rating Agency must register the appointment in connection with the location of the principal business office or office in Japan.

- (2) If the Prime Minister appoints an Acting Representative pursuant to the provisions of the preceding paragraph, the Prime Minister may order the Credit Rating Agency to pay the Acting Representative a reasonable amount of remuneration.

(Technical Replacement of Terms in the Application of Provisions of This Act to Foreign Corporations)

Article 66-47 If a Credit Rating Agency is a foreign corporation or an organization without legal personality for which a representative or administrator has been designated, the technical replacement of terms in the application of the provisions of this Act and necessary particulars otherwise relevant in the application of the provisions of this Act to the foreign corporation or to the organization without legal personality for which a representative or administrator has been designated are specified by Cabinet Order.

(Mutatis Mutandis Application)

Article 66-48 The provisions of Article 57, paragraphs (1) and (3) apply mutatis mutandis to the registration referred to in Article 66-27, and the provisions of Article 57, paragraphs (2) and (3) and Article 65-6 apply mutatis mutandis to a Credit Rating Agency. The necessary technical replacement of terms for such a case is specified by Cabinet Order.

(Delegation to Cabinet Office Ordinance)

Article 66-49 Procedures for the implementation of the provisions of Article 66-27 to the preceding Article inclusive and particulars that are otherwise necessary for their implementation are specified by Cabinet Office Ordinance.

## **Chapter IV Financial Instruments Firms Associations**

### **Section 1 Authorized Financial Instruments Firms Associations**

#### **Subsection 1 Incorporation and Services**

(Purpose of an Authorized Association)

Article 67 (1) An Authorized Financial Instruments Firms Association (hereinafter referred to as an "Authorized Association" in this Chapter) aims to ensure fair and smooth purchase and sales and other transactions of Securities and to ensure fair and smooth Derivatives Transactions, etc., as well as to contribute to the sound development of the Financial Instruments Business and to the protection of investors.

(2) An Authorized Association may operate a market in which Over-the-Counter Traded Securities are traded (but only if the association members (meaning the members of an Authorized Association; hereinafter the same applies in this Section) make such transactions on their own accounts, and if association members provide intermediation, brokerage, or agency; the same applies in Article 67-11, paragraph (1)) (hereinafter referred to as an "Over-the-Counter Securities Market"), in order to facilitate the distribution of Securities (limited to Securities not listed on a Financial Instruments Exchange; the same applies in Article 67-11, paragraph (1)), to ensure fairness in purchase and sales and

- other transactions of Securities, and to contribute to the protection of investors.
- (3) For each Over-the-Counter Securities Market it operates, an Authorized Association may prohibit association members from making a purchase of Securities as requested by a person other than a Professional Investor, etc. (excluding the Issuer of the Securities or any other person specified by Cabinet Office Ordinance) (such a purchase is referred to as a "Purchase for a General Investor" in Article 67-12, item (v)), as prescribed in its articles of incorporation.
- (4) An Authorized Association is as a juridical person.
- (5) A person that is not an Authorized Association must not use a term in its name which could give rise to the misconception that it is an Authorized Financial Instruments Firms Association.

(Authorization for Incorporation)

- Article 67-2 (1) An Authorized Association may be incorporated only by a Financial Instruments Business Operator.
- (2) A Financial Instruments Business Operator must obtain the authorization of the Prime Minister if it seeks to incorporate as an Authorized Association.
- (3) A registered financial institution is deemed to be a Financial Instruments Business Operator with regard to the application of the provisions of the preceding two paragraphs; Article 68, paragraphs (1) and (2); Article 78, paragraph (1); Article 79-7, paragraph (1); and Article 79-11, within the scope of the performance of the services of a registered financial institution.

(Submission of a Written Application for Authorization)

- Article 67-3 (1) A person seeking the authorization referred to in paragraph (2) of the preceding Article must submit a written application for authorization to the Prime Minister, in which it states the following particulars:
- (i) its name;
  - (ii) the location of its office; and
  - (iii) the names of its officers and names of its association members.
- (2) The articles of incorporation and other rules as well as other documents specified by Cabinet Office Ordinance must accompany the written application for authorization referred to in the preceding paragraph.

(Examination of Applications for Authorization)

- Article 67-4 (1) Whenever an application for authorization under paragraph (1) of the preceding Article is filed, the Prime Minister shall examine whether the application conforms to the following criteria:
- (i) the provisions of the articles of incorporation and other rules conform to laws and regulations, and are sufficient for ensuring fair and smooth

purchase and sales and other transactions of Securities and for ensuring fair and smooth Derivatives Transactions, etc., as well as contributing to the sound development of the Financial Instruments Business and the protection of investors; and

(ii) the Authorized Association to which the application pertains will be organized in a manner that conforms to the provisions of this Act.

(2) If, as a result of having conducted an examination pursuant to the provisions of the preceding paragraph, the Prime Minister finds that an application for authorization conforms to the criteria in that paragraph, the Prime Minister must authorize incorporation, except in a case that falls under one of the following items:

(i) the applicant for authorization is a person that has been sentenced to a fine pursuant to the provisions of this Act, and five years have yet to pass since the day on which the person finished serving that sentence or ceased to be subject to its enforcement;

(ii) the applicant has a person falling under one of sub-items (a) to (i) inclusive of Article 29-4, paragraph (1), item (ii) as an officer; or

(iii) the written application for authorization or an accompanying document contains a false statement about a material particular.

#### (Hearing and Notification of an Applicant for Authorization)

Article 67-5 (1) If an application for authorization under Article 67-3, paragraph (1) is filed and the Prime Minister finds it inappropriate to grant that authorization, the Prime Minister shall notify the applicant for authorization and have the relevant officials conduct a hearing.

(2) Upon deciding to grant or to refuse to grant the authorization under Article 67-2, paragraph (2), the Prime Minister shall notify the applicant for authorization of this in writing without delay.

#### (Rescission of Authorization)

Article 67-6 If an Authorized Association is discovered to have fallen under one of the categories in the items of Article 67-4, paragraph (2) at the time it obtained its authorization for incorporation, the Prime Minister may rescind its authorization.

#### (Prohibition of Profit-Seeking)

Article 67-7 An Authorized Association must not engage in any business for profit.

#### (Particulars Required to Be Included in the Articles of Incorporation)

Article 67-8 (1) The articles of incorporation of an Authorized Association must

include the following particulars (limited to an Authorized Association that operates an Over-the-Counter Securities Market, with regard to the particulars set forth in item (xiii)):

- (i) the purpose of the Authorized Association;
  - (ii) its name;
  - (iii) the location of its offices;
  - (iv) the particulars of its association members;
  - (v) the particulars of its general meetings;
  - (vi) the particulars of its officers;
  - (vii) the particulars of its board meetings and other meetings;
  - (viii) the particulars of its execution of business operations;
  - (ix) the particulars of its improvement in the quality of officers and employees of the association members, and qualities of Financial Instruments Intermediary Service Providers (limited to Financial Instruments Intermediary Service Providers whose Entrusting Financial Instruments Business Operators, etc. are association members; hereinafter the same applies in this Section) and their officers and employees;
  - (x) the particulars involved in the preparation of rules;
  - (xi) the particulars involved in complaints from investors concerning the operations of the association members or Financial Instruments Intermediary Service Providers, and dispute resolution;
  - (xii) the particulars of purchase and sales and other transactions of Securities solicited by association members or Financial Instruments Intermediary Service Providers;
  - (xiii) the particulars of its Over-the-Counter Securities Market;
  - (xiv) the particulars of investigations into association members' and Financial Instruments Intermediary Service Providers' compliance with laws and regulations, dispositions by government agencies which are based on laws and regulations, the articles of incorporation and other rules, and the principle of good faith in their transactions;
  - (xv) the particulars of membership fees;
  - (xvi) the particulars of its accounting and assets; and
  - (xvii) its method of public notice.
- (2) An Authorized Association must obtain the authorization of the Prime Minister if it seeks to change its articles of incorporation.
- (3) If a particular set forth in Article 67-3, paragraph (1), item (ii) or (iii) changes, the Authorized Association must notify the Prime Minister of this without delay. The same applies when the rules of an Authorized Association (excluding the articles of incorporation; and with regard to an Authorized Association that operates an Over-the-Counter Securities Market, excluding the rules set forth in Article 67-12) are prepared, if they change, or if they are



discontinued.

(Representatives' Capacity in Respect of Tortious Acts)

Article 67-9 An Authorized Association is liable for the damages that its president or board members cause another person in the performance of their duties.

(Address of an Authorized Association)

Article 67-10 The address of an Authorized Association is the address at which its principal office is located.

(Registration in the Over-the-Counter Traded Securities Register)

Article 67-11 (1) An Authorized Association that operates an Over-the-Counter Securities Market shall register the class and issues of Securities to be sold and purchased on that Over-the-Counter Securities Market in an Over-the-Counter Traded Securities register that is kept at the Authorized Association. (2) The Authorized Association set forth in the preceding paragraph shall keep a copy of the Over-the-Counter Traded Securities register at its office and make the copy available for public inspection, pursuant to the provisions of Cabinet Office Ordinance.

(Authorization for Regulations)

Article 67-12 If an Authorized Association seeks to establish an Over-the-Counter Securities Market, it must provide for the following matters in its rules, in connection with the registration under paragraph (1) of the preceding Article and Over-the-Counter Traded Securities, and obtain the authorization of the Prime Minister. The same applies if the Authorized Association seeks to change or discontinue those rules:

- (i) the criteria and process for registration, and for rescission of registrations;
- (ii) the particulars involved in the reporting and announcement of trading prices;
- (iii) the process for concluding a contract for a purchase and sale or other transaction;
- (iv) delivery and other means of settlement;
- (v) if the Authorized Association prohibits Purchases for General Investors pursuant to the provisions of Article 67, paragraph (3), the following matters, in addition to those set forth in the preceding items:
  - (a) the particulars of limitations imposed on association members' acceptance of requests to entrust them with the purchase and sale of Securities on the Over-the-Counter Securities Market; and
  - (b) the content and the means of provision or timing for the disclosure of the

Specified Information on Securities and Information on the Issuer that the Issuer of Securities for Professional Investors that are traded on that Over-the-Counter Securities Market (hereinafter referred to as "Over-the-Counter Traded Securities for Professional Investors" in this item) is required to provide or disclose, and necessary particulars otherwise relevant to the provision or disclosure of information on Over-the-Counter Traded Securities for Professional Investors.

- (vi) necessary particulars relevant to purchase and sales and other transactions of Over-the-Counter Traded Securities, other than the particulars set forth in the preceding items.

(Notification of Registration)

Article 67-13 If an Authorized Association seeks to make a registration under Article 67-11, paragraph (1) or to rescind such registration, it must notify the Prime Minister of this.

(Order to Register Share Certificates)

Article 67-14 If the Issuer of Over-the-Counter Traded Securities that an Authorized Association registers (limited to share certificates or the securities or certificates set forth in Article 2, paragraph (1), item (xx) that indicate a right connected with share certificates (hereinafter referred to as "Share Certificates, etc." in this Article and in Article 125)) issues Share Certificates, etc. that the Authorized Association does not register as under the provisions of Article 67-11, paragraph (1), and the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors for the Authorized Association to register those Share Certificates, etc. pursuant to that paragraph, the Prime Minister may order the Authorized Association to register those Share Certificates, etc. pursuant to the provisions of that paragraph.

(Order to Rescind a Registration)

Article 67-15 (1) If an Authorized Association violates the rules provided for in Article 67-12 as they pertain to item (i) of that Article in seeking to make or having made a registration of Securities under the provisions of Article 67-11, paragraph (1), or in seeking to rescind or having rescinded such a registration, the Prime Minister may order the Authorized Association to rescind the registration of those Securities or to re-register Securities whose registration has been rescinded, or to otherwise take the necessary measures to rectify the violation. In such a case, irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, the Prime Minister must conduct a hearing.

(2) With regard to the application of the provisions of Chapter III, Section 2 of the Administrative Procedure Act if the notice referred to in Article 15, paragraph (1) of that Act is given at the hearing for a disposition under the provisions of the preceding paragraph, the Issuer of the relevant Securities is deemed to be the person that receives the notice referred to in Article 15, paragraph (1) of that Act.

(Notification of Suspension of Purchase and Sales)

Article 67-16 If an Authorized Association suspends or cancels the suspension of purchase and sales on the Over-the-Counter Securities Market of Over-the-Counter Traded Securities that it has registered, it must notify the Prime Minister of this without delay.

(Order to Suspend Purchase and Sales)

Article 67-17 (1) If an Issuer of Over-the-Counter Traded Securities violates this Act, an order given based on this Act, or the rules of the Authorized Association that has registered the relevant Over-the-Counter Traded Securities, and the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order the Authorized Association to suspend purchase and sales of, or to rescind the registration of, the Over-the-Counter Traded Securities on the Over-the-Counter Securities Market that it operates. In such a case, irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, the Prime Minister must conduct a hearing.

(2) With regard to the application of the provisions of Chapter III, Section 2 of the Administrative Procedure Act if the notice referred to in Article 15, paragraph (1) of that Act is given at the hearing for a disposition under the provisions of the preceding paragraph, the Issuer referred to in the preceding paragraph is deemed to be the person that receives the notice referred to in Article 15, paragraph (1) of that Act.

(Reporting to an Authorized Association)

Article 67-18 In a case set forth in one of the following items, an association member (in a case set forth in items (i) to (iii) inclusive, this is limited to the association member of an Authorized Association that operates an Over-the-Counter Securities Market) must report the particulars specified in that item to the Authorized Association to which it belongs, pursuant to the provisions of Cabinet Office Ordinance:

(i) if a purchase and sale of Over-the-Counter Traded Securities is made on the association member's own account, or a purchase and sale of Over-the-

- Counter Traded Securities is made and the association member provides intermediation, brokerage, or agency for it: the class, issue, price, volume, and other particulars specified by Cabinet Office Ordinance, with regard to the Securities subject to the purchase and sale;
- (ii) if the association member makes an offer to sell or purchase Over-the-Counter Traded Securities on its own account: the class, issue, price, and other particulars specified by Cabinet Office Ordinance, with regard to the Securities subject to the offer to sell or purchase;
  - (iii) if the association member is entrusted, etc. with a purchase and sale of Over-the-Counter Traded Securities: the class, issues, price, volume, and other particulars specified by Cabinet Office Ordinance, with regard to the Securities subject to the entrustment, etc.;
  - (iv) if a purchase and sale of tradable Securities (meaning Share Certificates, corporate bond certificates with share options, or any other Securities specified by Cabinet Office Ordinance, with regard to which the Authorized Association does not prohibit solicitation for purchase and sales and other transactions in its rules (excluding Securities listed on a Financial Instruments Exchange, Over-the-Counter Traded Securities, and those specified by the Prime Minister as Securities of which transferability is found to be restricted under said rules); the same applies hereinafter) is made on the association member's own account, or a purchase and sale of tradable Securities is made and the association member provides intermediation, brokerage, or agency for it: the class, issue, price, volume, and other particulars specified by Cabinet Office Ordinance, with regard to the Securities subject to the purchase and sale;
  - (v) if the association member makes an offer to sell or purchase tradable Securities on its own account: the class, issue, price, and other particulars specified by Cabinet Office Ordinance, with regard to the Securities subject to the offer to sell or purchase;
  - (vi) if the association member is entrusted, etc. with the purchase and sale of tradable Securities: the class, issue, price, volume, and other particulars specified by Cabinet Office Ordinance, with regard to the Securities subject to the entrustment, etc.;
  - (vii) if a purchase and sale of Listed Share Certificates, etc. (meaning share certificates, corporate bond certificates with share options, or any other Securities specified by Cabinet Office Ordinance, which are listed on a Financial Instruments Exchange; hereinafter the same applies in this Article to Article 78-5 inclusive) is made outside of a Financial Instruments Exchange Market and on the association member's own account; or a purchase and sale of Listed Share Certificates, etc. is made outside of a Financial Instruments Exchange Market, and the association member

provides intermediation, brokerage, or agency for it: the class, issue, price, volume, and other particulars specified by Cabinet Office Ordinance, with regard to the Listed Share Certificates, etc. subject to the purchase and sale; or

(viii) if the association member makes an offer to sell or purchase Listed Share Certificates, etc. to a large number of persons simultaneously outside of a Financial Instruments Exchange Market, or in any other case specified by Cabinet Office Ordinance: the class, issue, price, and other particulars specified by Cabinet Office Ordinance, with regard to the Securities subject to the offer to sell or purchase.

(Notice of Trading Volume, Price, etc.)

Article 67-19 Pursuant to the provisions of Cabinet Office Ordinance and based on the reports under the provisions of the preceding Article, an Authorized Association shall notify its association members of, and disclose to the public, the daily trading volume and the highest price, lowest price, closing price, and other particulars, for each day and for each issue, in respect of purchase and sales of Over-the-Counter Traded Securities, purchase and sales of tradable Securities, and purchase and sales of Listed Share Certificates, etc. outside a Financial Instruments Exchange Market, on the Over-the-Counter Securities Market that it operates (limited to those which the association members make on their own accounts and those for which the association members provide intermediation, brokerage, or agency; hereinafter the same applies in the following Article).

(Reporting of Trading Volume, Price, etc.)

Article 67-20 Pursuant to the provisions of Cabinet Office Ordinance, an Authorized Association shall report the daily trading volume and the highest price, lowest price, closing price, and other particulars, for each day and for each issue, in respect of purchase and sales of Over-the-Counter Traded Securities, purchase and sales of tradable Securities, and purchase and sales of Listed Share Certificates, etc. outside of a Financial Instruments Exchange Market, on the Over-the-Counter Securities Market that it operates, to the Prime Minister.

## **Subsection 2 Association Members**

(Eligibility for Association Membership and Restrictions on Joining an Authorized Association)

Article 68 (1) Membership in an Authorized Association is limited to Financial Instruments Business Operators.

- (2) Except in a case set forth in paragraph (5), an Authorized Association must stipulate in its articles of incorporation that any Financial Instruments Business Operator may join as an association member; provided, however, that this does not apply if membership is restricted by reason of a condition as to the geographic location or business type of the Financial Instruments Business Operator.
- (3) An Authorized Association must stipulate in its articles of incorporation that it will endeavor to prevent fraudulent acts, market manipulation, the collection of unreasonable fees and costs, and profiteering by association members and Financial Instruments Intermediary Service Providers, as well as to promote the principle of good faith in their transactions.
- (4) An Authorized Association must stipulate in its articles of incorporation that it will endeavor to prevent acts that are in violation of laws and regulations or the Authorized Association's articles of incorporation and other rules, and to ensure confidence of investors, by having internal rules and control systems established so that its association members and the Financial Instruments Intermediary Service Providers that have those association members as Entrusting Financial Instruments Business Operators, etc. comply with laws and regulations and with the Authorized Association's articles of incorporation and other rules.
- (5) An Authorized Association may stipulate in its articles of incorporation that it may refuse admission as an association member if an applicant has been ordered to suspend purchase and sales and other transactions of Securities or to suspend Derivatives Transactions, etc.; or has been expelled from the membership of, or had its trading license rescinded by, an Authorized Association or a Financial Instruments Exchange, on account of having violated a law or regulation, a disposition by a government agency which is based on a law or regulation, or the articles of incorporation or other rules of the Authorized Association or Financial Instrument Exchange, or on account of having engaged in an act that is contrary to the principle of good faith in transactions.
- (6) An Authorized Association must make a list of association members available for public inspection.

(Dispositions against Association Members)

Article 68-2 An Authorized Association must stipulate in its articles of incorporation that, if an association member or a Financial Instruments Intermediary Service Provider whose Entrusting Financial Instruments Business Operator, etc. is an association member violates a law or regulation, a disposition by a government agency which is based on a law or regulation, or the Authorized Association's articles of incorporation or other rules, or if it

violates the principle of good faith in transactions, the Authorized Association will impose an administrative surcharge on the association member, order the suspension or restriction of its rights as an association member as provided in the articles of incorporation, or expel it from the Authorized Association.

### **Subsection 3 Management**

#### **(Appointment of Officers and Their Official Authority)**

Article 69 (1) An Authorized Association has one president, two or more board members, and two or more inspectors as its officers.

(2) A president represents an Authorized Association and presides over its affairs.

(3) A board member, pursuant to the provisions of the articles of incorporation, represents an Authorized Association, assists the president in administering the affairs of the Authorized Association, acts as a proxy in handling the duties of the president if the president is unable to attend to them, and performs the duties of the president if the position is vacant.

(4) An inspector examines the affairs of an Authorized Association.

(5) An officer loses the position of officer upon coming to fall under one of the categories in Article 29-4, paragraph (1), item (ii), sub-items (a) to (i) inclusive.

#### **(Order to Dismiss an Officer)**

Article 70 If the Prime Minister discovers that a person has become the officer of an Authorized Association by wrongful means, or if the officer of an Authorized Association violates a law or regulation, a disposition by a government agency which is based on a law or regulation, or the articles of incorporation, the Prime Minister may order the Authorized Association to dismiss that officer.

#### **(Provisional Board Members and Provisional Inspectors)**

Article 71 If there is no one to perform the duties of a board member or inspector and the Prime Minister finds it to be necessary, the Prime Minister may appoint a provisional board member or provisional inspector.

#### **(Duty of Confidentiality of the Officers and Employees)**

Article 72 (1) It is prohibited for the officer or employee of an Authorized Association, or for a person that that has held one of these positions, to divulge or misappropriate any secret learned in the course of duty.

(2) It is prohibited for the officer or employee of an Authorized Association, or for a person that has held one of these positions, to use information learned in the course of duty for a purpose other than the business uses of the Authorized Association for which the information is provided.

#### **Subsection 4 Supervision**

(Order to Change the Articles of Incorporation, Operational Rules, etc.)

Article 73 If the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors in connection with an Authorized Association's articles of incorporation or other rules, its trade practices, or its business operations or the state of its assets, the Prime Minister, within the scope of this necessity, may order the Authorized Association to change its articles of incorporation or other rules, to change its trade practices, or to otherwise take measures that are necessary from a supervisory perspective. In such a case, irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, the Prime Minister must conduct a hearing.

(Rescission of Authorization, Suspension of Business, and Dismissal of Officers, Due to Violation of Laws and Regulations)

Article 74 (1) If an Authorized Association violates a law or regulation, a disposition by a government agency which is based on a law or regulation, or its articles of incorporation or other rules (hereinafter referred to as a "Law or Regulation, etc." in this Article); or, even though an association member, a Financial Instruments Intermediary Service Provider, or an Issuer of Over-the-Counter Traded Securities or tradable Securities has violated a Law or Regulation, etc. or engaged in an act that is contrary to the principle of good faith in transactions as specified in the articles of incorporation or other rules, the Authorized Association fails to exercise the powers accorded it under this Act, an order based on this Act, or its articles of incorporation or other rules, or to take other necessary measures to cause the person to observe Laws and Regulations, etc. or the principle of good faith in transactions; and the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may rescind its authorization for incorporation, order the suspension of all or a part of its business activities during a fixed period of no longer than one year, order a change to its business methods, issue an order prohibiting a part of its business activities, order the dismissal of its officers, or order it to take any necessary measures that are specified in the articles of incorporation or other rules.

(2) Irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, before seeking to order the suspension of all or a part of business activities, to order a change of business methods, to issue an order prohibiting a part of business activities, or to issue an order to take any necessary measures that are specified in the articles of incorporation or other rules pursuant to the



provisions of the preceding paragraph, the Prime Minister must conduct a hearing.

(Collection of Reports and Inspections)

Article 75 Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order an Authorized Association, an Issuer of Over-the-Counter Traded Securities or tradable Securities, or the person that an Authorized Association has entrusted with its business (including a person who has received entrustment from such person (including entrustment via two or more layers); hereinafter the same shall apply in this Article), to submit reports or materials that should serve as a reference with regard to the business or assets of the Authorized Association, and may have the relevant officials inspect the state of the business or assets, or the books and documents or any other articles, of an Authorized Association or the person that an Authorized Association has entrusted with its business (but may only have the relevant officials inspect the person that an Authorized Association has entrusted with its business as is necessary in connection with the business or assets of the Authorized Association).

(Documents to Be Submitted to the Prime Minister)

Article 76 An Authorized Association shall submit the following documents to the Prime Minister within three months from the day on which each business year begins:

- (i) the business summary report for the previous business year and the business plan for the current business year;
- (ii) the inventory of assets as of the end of the previous business year; and
- (iii) the statement of accounts for the previous business year and the budget statements for the current business year.

**Subsection 5 Miscellaneous Provisions**

(Responding to Complaints from Investors)

Article 77 (1) If an investor files for the resolution of a complaint involving business carried out by an association member or a Financial Instruments Intermediary Service Provider, in addition to providing the claimant with the necessary advice and investigating the circumstances to which the complaint pertains based on its consultation with the claimant, the Authorized Association must notify the association member or Financial Instruments Intermediary Service Provider of the substance and content of the complaint and request that it process the complaint expeditiously.

- (2) If an Authorized Association finds that it is necessary in connection with the resolution of a complaint under a filing referred to in the preceding paragraph, it may request the relevant association member or Financial Instruments Intermediary Service Provider to provide a written or oral explanation or submit materials.
- (3) If an association member or Financial Instruments Intermediary Service Provider has had a request under the preceding paragraph from an Authorized Association, it must not refuse this request without just cause for doing so.
- (4) An Authorized Association must fully inform its association members and Financial Instruments Intermediary Service Providers about any filing as referred to in paragraph (1), the circumstances to which the complaint pertains, and the outcome of its resolution.
- (5) The provisions of paragraph (1) do not apply if an Authorized Association has obtained a designation under Article 156-39, paragraph (1) and the filing referred to in paragraph (1) is for a complaint in the Category of Dispute Resolution Services (meaning a Category of Dispute Resolution Services as prescribed in Article 156-38, paragraph (12); the same applies in paragraph (9) of the following Article (including as applied *mutatis mutandis* pursuant to Article 79-13) to which that designation pertains).

(Mediation by Authorized Associations)

- Article 77-2 (1) If there is a dispute about a purchase and sale or other transaction of Securities or about a Derivatives Transaction, etc. conducted by an association member or a Financial Instruments Intermediary Service Provider, any of the parties to the transaction may file for mediation with an Authorized Association, for the purpose of attempting to resolve that dispute.
- (2) If an Authorized Association receives a filing under the preceding paragraph, it must appoint a mediator that has the relevant knowledge and experience and that has no special interest in the parties to the dispute subject to that filing (hereinafter referred to as the "Case" in this Article), and must refer the Case to mediation by that mediator; provided, however, that a mediator must not mediate if the mediator finds that the Case is not suited for mediation due to its nature, or that the party has filed for mediation for unjust purposes and without due cause.
  - (3) A mediator may hear the opinions of the parties and witnesses, request them to submit reports, and request the parties to submit books and documents or other articles that should serve as reference; and may prepare the mediation proposal that is needed to resolve the Case and recommend that the parties accept it, as the mediator finds appropriate.
  - (4) In the cases referred to in the preceding three paragraphs, if a Financial Instruments Intermediary Service Provider is a party, its Entrusting Financial

Instruments Business Operator, etc. is also deemed to be a party.

- (5) If an association member or a Financial Instruments Intermediary Service Provider has had a request under the provisions of paragraph (3), it must not refuse this request without just cause.
- (6) An Authorized Association may collect from the parties all or part of the expenses incurred in relation to mediation.
- (7) It is prohibited for a mediator or former mediator to divulge or misappropriate any secret learned in the course of duty.
- (8) It is prohibited for a mediator or former mediator to use information learned in the course of duty for a purpose other than the business use of the Authorized Association for which the information is provided.
- (9) The provisions of paragraph (1) do not apply if an Authorized Association has obtained a designation under Article 156-39, paragraph (1) and the dispute referred to in paragraph (1) is in the Category of Dispute Resolution Services to which that designation pertains.

(Entrustment of Mediation Services to Third Parties)

Article 77-3 (1) An Authorized Association may entrust the complaint resolution services prescribed in Article 77, paragraph (1) and the mediation services prescribed in paragraph (1) of the preceding Article to a person that has a sufficient financial basis and personnel structure for performing these services in an appropriate manner.

- (2) Notwithstanding the provisions of the preceding paragraph, an Authorized Association may not entrust the complaint resolution services and mediation services referred to in that paragraph to a person that falls under one of the following items:
  - (i) a person that has been sentenced pursuant to any provision of this Act, if two years have not yet passed since the day on which the person finished serving that sentence or ceased to be subject to its enforcement;
  - (ii) a person whose authorization has been rescinded pursuant to Article 74, paragraph (1), if two years have not yet passed since the date of rescission; or
  - (iii) a person that has a person falling under one of the following as an officer conducting its business:
    - (a) a person that has been sentenced to imprisonment or a heavier punishment or that has been sentenced pursuant to any provision of this Act, if two years have not yet passed since the day on which the person finished serving that sentence or ceased to be subject to its enforcement; or
    - (b) a person that, during the 30 days before the date of rescission, was the officer of an Authorized Association whose authorization has been rescinded pursuant to Article 74, paragraph (1), if two years have not yet

passed since the date of rescission.

- (3) A person entrusted with services pursuant to the provisions of paragraph (1) may not further entrust the services under that entrustment.
- (4) The provisions of the preceding two Articles apply mutatis mutandis to the services entrusted by an Authorized Association pursuant to the provisions of paragraph (1).

(Educational Activities by Authorized Associations)

Article 77-4 An Authorized Association must endeavor to facilitate the sound development of the Financial Instruments Business and the protection of investors through the dissemination of financial knowledge and through educational and publicity campaigns.

(Registration of Associations)

- Article 77-5 (1) An Authorized Association must register pursuant to the provisions of Cabinet Order.
- (2) An Authorized Association is established by a registration of its incorporation being recorded in connection with the location of its principal office.
  - (3) The particulars that must be registered pursuant to the provisions of paragraph (1) may not be duly asserted against a third party until after their registration.

(Grounds for the Dissolution of an Association)

Article 77-6 (1) An Authorized Association is dissolved for the following reasons:

- (i) the occurrence of a cause specified by the articles of incorporation;
  - (ii) a general meeting resolution;
  - (iii) the number of association members falls to five or below;
  - (iv) an order to commence bankruptcy proceedings; or
  - (v) the rescission of the authorization for incorporation of the Authorized Association.
- (2) A general meeting resolution concerning the dissolution of an Authorized Association does not become effective without the authorization of the Prime Minister.
  - (3) If an Authorized Association has been dissolved pursuant to the provisions of item (i) or (iii) of paragraph (1), the former representative must notify the Prime Minister of this without delay.
  - (4) If an order to commence bankruptcy proceedings or an order to terminate bankruptcy proceedings is issued with regard to an Authorized Association, or if the rescission of an order to commence bankruptcy proceedings, or an order to discontinue bankruptcy proceedings, becomes final and binding with regard to an Authorized Association, the court clerk must notify the Prime Minister of

this.

- (5) Beyond what is provided for in the preceding paragraphs, necessary particulars relevant to the dissolution of an Authorized Association are specified by Cabinet Order.

(Delegation to Cabinet Office Ordinance)

Article 77-7 Procedures for the implementation of the provisions of Article 67 to the preceding Article inclusive and particulars that are otherwise necessary for their enforcement are specified by Cabinet Office Ordinance.

## **Section 2 Certified Financial Instruments Business Associations**

### **Subsection 1 Certification and Services**

(Certification of Certified Financial Instruments Business Associations)

Article 78 (1) The Prime Minister, pursuant to the provisions of Cabinet Order, may certify a general incorporated association that has been incorporated by a Financial Instruments Business Operator and that is found to satisfy the following requirements, to conduct the services set forth in the following paragraph, at the application of such a general incorporated association:

- (i) its aim is to ensure fair and smooth purchase and sales and other transactions of Securities and to ensure fair and smooth Derivatives Transactions, etc., as well as contributing to the sound development of the Financial Instruments Business and to the protection of investors;
  - (ii) its articles of incorporation stipulate that its members be Financial Instruments Business Operators;
  - (iii) it has established the necessary methods of business implementation for it to perform the services prescribed in the following paragraph properly and reliably; and
  - (iv) it has the necessary knowledge, ability, and financial basis for performing the services prescribed in the following paragraph properly and reliably.
- (2) A general incorporated association certified pursuant to the preceding paragraph (hereinafter referred to as a "Certified Financial Instruments Business Association" in this paragraph and the following Article) is to conduct the following services:
- (i) providing its members and Financial Instruments Intermediary Service Providers (limited to those whose Entrusting Financial Instruments Business Operators, etc. are its members; hereinafter the same applies in this Section) with guidance, recommendations, and other services in order to have them comply the provisions of this Act and other laws and regulations while operating in Financial Instruments Business;
  - (ii) conducting the necessary investigations and providing the necessary

- guidance, recommendations, and other services for ensuring the propriety of contracts and of asset management, and for otherwise protecting investors with regard to the Financial Instruments Business in which its members and Financial Instruments Intermediary Service Providers operate;
- (iii) investigating members' and Financial Instruments Intermediary Service Providers' compliance with this Act, orders that are based on this Act, dispositions that are based on this Act or on such orders, the articles of incorporation and other rules, and the principle of good faith in transactions;
  - (iv) resolving complaints filed by investors with regard to the Financial Instruments Business in which its members and Financial Instruments Intermediary Service Providers operate;
  - (v) resolving disputes arisen from the Financial Instruments Business in which its members and Financial Instruments Intermediary Service Providers operate;
  - (vi) carrying out the Registration Work that is done pursuant to Article 64-7, paragraph (1) (including as applied mutatis mutandis pursuant to Article 66-25) or Article 64-7, paragraph (2);
  - (vii) establishing the necessary rules and providing other services for ensuring propriety in its members' and Financial Instruments Intermediary Service Providers' solicitation in respect of purchase and sales and other transactions of Securities;
  - (viii) conducting public relations aimed at investors and providing other services that are necessary for the Certified Financial Instruments Business Association to achieve its purpose; and
  - (ix) services beyond what is set forth in the preceding items, which contribute to the sound development of the Financial Instruments Business and to the protection of investors.

(Furtherance of Investors Protection)

- Article 78-2 (1) A Certified Financial Instruments Business Association (hereinafter referred to as a "Certified Association" in this Chapter) must endeavor to further the sound development of the Financial Instruments Business and the protection of investors through the dissemination of financial knowledge, and through educational and publicity campaigns, in addition to what is set forth in the items of paragraph (2) of the preceding Article.
- (2) A Certified Association must make the membership list available for public inspection.
  - (3) A person that is not a Certified Association must not use a term in its name which could give rise to the misconception that it is a Certified Financial Instruments Business Association.

(Reporting to Certified Associations)

Article 78-3 In a case set forth in one of the following items, the member of a Certified Association must report the particulars prescribed in that item to the Certified Association, pursuant to the provisions of Cabinet Office Ordinance:

- (i) a purchase and sale of Listed Share Certificates, etc. is made outside of a Financial Instruments Exchange Market and on the member's own account, or a purchase and sale of Listed Share Certificates, etc. is made outside of a Financial Instruments Exchange Market and the member provides intermediation, brokerage, or agency for it: the class, issue, price, volume, and other particulars specified by Cabinet Office Ordinance, with regard to the Listed Share Certificates, etc. that are subject to the purchase and sale; and
- (ii) the member makes an offer to sell or purchase Listed Share Certificates, etc. to a large number of persons simultaneously outside of a Financial Instruments Exchange Market, or in any other case specified by Cabinet Office Ordinance: the class, issue, price, volume, and other particulars specified by Cabinet Office Ordinance, with regard to the Listed Share Certificates, etc. subject to the offer to sell or purchase.

(Notice of Trading Volume, Price, etc.)

Article 78-4 Pursuant to the provisions of Cabinet Office Ordinance and based on the reports under the provisions of the preceding Article, a Certified Association shall notify its members of, and disclose to the public, the daily trading volume and the highest price, lowest price, closing price, and other particulars, for each day and for each issue, in respect of purchase and sales of Listed Share Certificates, etc. outside a Financial Instruments Exchange Market (limited to those made by its member on their own accounts, and those for which its members provide intermediation, brokerage, or agency; the same applies in the following Article).

(Reporting of Trading Volume, Price, etc.)

Article 78-5 Pursuant to the provisions of Cabinet Office Ordinance, a Certified Association shall report the daily trading volume and the highest price, lowest price, closing price, and other particulars, for each day and for each issue, in respect of purchase and sales of Listed Share Certificates, etc. outside of a Financial Instruments Exchange Market, to the Prime Minister.

(Responding to Complaints from Investors)

Article 78-6 The provisions of Article 77 apply mutatis mutandis to the resolution of investors' complaints by a Certified Association. In this case, in that Article, the term "association member" is deemed to be replaced with

"member".

(Mediation by Certified Associations)

Article 78-7 The provisions of Article 77-2 apply mutatis mutandis to mediation conducted by a Certified Association. In this case, in paragraphs (1) and (5) of that Article, the term "association member" is deemed to be replaced with "member".

(Entrustment of Mediation Services to a Third Party)

Article 78-8 (1) A Certified Association may entrust the complaint resolution services prescribed in Article 77, paragraph (1) as applied mutatis mutandis pursuant to Article 78-6 and the mediation services prescribed in Article 77-2, paragraph (1) as applied mutatis mutandis pursuant to the preceding Article to a person that has the financial basis and personnel structure to perform these services in an appropriate manner.

(2) Notwithstanding the provisions of the preceding paragraph, the complaint resolution services and mediation services referred to in that paragraph may not be entrusted to a person that falls under one of the following items:

(i) a person that has been sentenced pursuant to any provision of this Act, if two years have not yet passed since the day on which the person finished serving that sentence or ceased to be subject to its enforcement;

(ii) a person whose recognition has been rescinded pursuant to Article 79-6, paragraph (2), if two years have not yet passed since the date of the rescission; or

(iii) a person that has a person falling under one of the following as an officer conducting its business:

(a) a person that has been sentenced to imprisonment or a heavier punishment or has been sentenced pursuant to any provision of this Act, if two years have not yet passed since the day on which the person finished serving that sentence or ceased to be subject to its enforcement; or

(b) a person that, during the 30 days prior to the date of rescission, was the officer of a corporation whose recognition has been rescinded pursuant to Article 79-6, paragraph (2), if two years have not yet passed since the date of the rescission.

(3) A person entrusted with services pursuant to paragraph (1) may not further entrust the services under that entrustment.

(4) The provisions of Article 77 as applied mutatis mutandis pursuant to Article 78-6, and Article 77-2 as applied mutatis mutandis pursuant to the preceding Article, apply to the services performed by the person that a Certified Association entrusts with its services pursuant to paragraph (1).



(Duty of Confidentiality of the Officers and Employees)

Article 79 The provisions of Article 72 apply to the officers and employees of a Certified Association, and to any person that has held one of these positions.

## **Subsection 2 Supervision**

(Particulars Required to Be Included in the Articles of Incorporation)

Article 79-2 In addition to the matters set forth in the items of Article 11, paragraph (1) of the Act on General Incorporated Associations and General Incorporated Foundations (Act No. 48 of 2006) and the provisions of the articles of incorporation as set forth in Article 78, paragraph (1), item (ii), a Certified Association must stipulate in its articles of incorporation that if a member violates this Act, an order that is based on this Act, a disposition that is based on this Act or on such an order, or the articles of incorporation or other rules of the Certified Association, or if a member engages in an act that is contrary to the principle of good faith in transactions, the Certified Association will impose a surcharge on the member, order the suspension or restriction of its rights as a member as provided in the articles of incorporation, or expel it from the Certified Association.

(Operational Rules)

Article 79-3 (1) A Certified Association must establish rules concerning the following particulars and must obtain the authorization of the Prime Minister for the same. The same applies if the Certified Association seeks to change the rules:

- (i) the particulars of the services prescribed in Article 78, paragraph (2); and
- (ii) the particulars of the classes of share certificates, corporate bond certificates with share options, or Securities specified by Cabinet Office Ordinance (excluding Securities listed on a Financial Instruments Exchange and Over-the-Counter Traded Securities) with no prohibition on solicitation being carried out in respect of purchase and sales and other transactions.

(2) A Certified Association must notify the Prime Minister of any change in its officers or members without delay.

(Submission of Reports and On-Site Inspections)

Article 79-4 Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order a Certified Association or the person that a Certified Association has entrusted with its business (including a person who has received entrustment from such person (including entrustment via two or more layers); hereinafter the same shall apply in this Article), to submit reports or

materials that should serve as a reference with regard to the business or assets of the Certified Association or person, and may have the relevant officials enter the office of a Certified Association or the person that a Certified Association has entrusted with its business to inspect the state of its business or assets or its books and documents or any other articles (but may only have the relevant officials inspect the person that a Certified Association has entrusted with its business as is necessary in connection with the business or assets of the Certified Association) or to question the relevant persons (but may only have the relevant officials question the person that a Certified Association has entrusted with its business as is necessary in connection with the business or assets of the Certified Association).

(Cooperation with the Prime Minister)

Article 79-5 For the purpose of promoting the smooth implementation of the provisions of this Section, the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance, may have a Certified Association submit materials or make notifications as prescribed in the relevant provisions of this Section, or provide cooperation with regard to particulars that are otherwise necessary.

(Issuance of Supervision Orders against Certified Associations)

Article 79-6 (1) If the Prime Minister finds that improvement is needed in connection with the business operations of a Certified Association, the Prime Minister, within the scope that is necessary for the implementation of the provisions of this Section, may order the Certified Association to take measures that are necessary for this improvement.

(2) If the Prime Minister finds a Certified Association's business operations to be in violation of this Act, an order that is based on this Act, or a disposition that is based on this Act or on such an order, the Prime Minister may rescind its recognition or order the suspension of all or part of its business activities during a fixed period of no longer than six months.

### **Section 3 Certified Investor Protection Organizations**

(Purpose and Services of Certified Investor Protection Organizations)

Article 79-7 (1) A corporation (including an organization without legal personality for which a representative or administrator has been designated, and excluding an Authorized Association or a Certified Association; hereinafter the same applies in item (iii), sub-item (b) of the following Article) that seeks to provide the services set forth in each of the following items with the aim of ensuring fair and smooth purchase and sales and other transactions of Securities and of ensuring fair and smooth Derivatives Transactions, etc. as

well as contributing to the sound development of the Financial Instruments Business and to the protection of investors, may obtain the certification of the Prime Minister:

- (i) resolution of complaints about Financial Instruments Business that a Financial Instruments Business Operator or a Financial Instruments Intermediary Service Provider engages in;
  - (ii) mediation in the event of a dispute about Financial Instruments Business that a Financial Instruments Business Operator or a Financial Instruments Intermediary Service Provider engages in; and
  - (iii) services beyond what is set forth in the preceding two items, which contribute to the sound development of the Financial Instruments Business and to the protection of investors.
- (2) A person seeking to obtain the certification referred to in the preceding paragraph must file an application with the Prime Minister pursuant to the provisions of Cabinet Order.
- (3) Upon granting the certification referred to in paragraph (1), the Prime Minister shall issue public notice of this.

(Ineligibility)

Article 79-8 A person that falls under one of the following items may not obtain the certification referred to in paragraph (1) of the preceding Article:

- (i) a person that has been sentenced pursuant to any provision of this Act, if two years have not yet passed since the day on which the person finished serving that sentence or ceased to be subject to its enforcement;
- (ii) a person whose certification has been rescinded pursuant to Article 79-19, paragraph (1), if two years have not yet passed since the date of the rescission; or
- (iii) a person that has a person falling under one of the following as an officer conducting its business (including the representative or administrator of an organization without legal personality for which a representative or administrator has been designated; hereinafter the same applies in this Article):
  - (a) a person that has been sentenced to imprisonment or a heavier punishment or that has been sentenced pursuant to any provision of this Act, if two years have not yet passed since the day on which the person finished serving that sentence or ceased to be subject to its enforcement; or
  - (b) a person that, during the 30 days prior to the date of rescission, was the officer of a corporation whose certification has been rescinded pursuant to Article 79-19, paragraph (1), if two years have not yet passed since the date of the rescission.

(Criteria for Certification)

Article 79-9 The Prime Minister must not grant a certification unless the Prime Minister finds that an application under Article 79-7, paragraph (2) conforms to all of the following items:

- (i) the applicant has established the necessary methods of business implementation for it to perform the services set forth in the items of Article 79-7, paragraph (1) properly and reliably;
- (ii) the applicant has the necessary knowledge, ability, and financial basis for it to perform the services set forth in the items of Article 79-7, paragraph (1) properly and reliably; and
- (iii) if a person provides services other than what is set forth in one of the items of Article 79-7, paragraph (1), its provision of those services is unlikely to cause any unfairness in the services set forth in that item.

(Notification of the Discontinuation of Services)

Article 79-10 (1) If a person that has received the certification referred to in Article 79-7, paragraph (1) (hereinafter referred to as the "Certified Investor Protection Organization" in paragraph (1) of the following Article) seeks to discontinue the services to which that certification pertains (hereinafter referred to as "Certified Services" in this Section), that person must notify the Prime Minister of this in advance, pursuant to the provisions of Cabinet Order.

(2) If a notification under the provisions of the preceding paragraph is filed, the Prime Minister shall issue public notice of this.

(Covered Operators)

Article 79-11 (1) A Certified Investor Protection Organization (hereinafter referred to as a "Certified Organization" in this Section) must have the Financial Instruments Business Operators and Financial Instruments Intermediary Service Providers that are its constituent members, as well as Financial Instruments Business Operators and Financial Instruments Intermediary Service Providers that agree to be covered by its Certified Services and any other person specified by Cabinet Office Ordinance, as its covered operators (meaning Financial Instruments Business Operators, Financial Instruments Intermediary Service Providers, and any other person specified by Cabinet Office Ordinance, that are covered by the services of the Certified Organization; hereinafter the same applies in this Section).

(2) A Certified Organization must make a list of the covered operators available for public inspection.

(Complaint Processing by Certified Organizations)

Article 79-12 The provisions of Article 77 apply mutatis mutandis when a

Certified Organization works to resolve complaints from investors (limited complaints involving covered operators). In this case, in that Article, the term "association member or Financial Instruments Intermediary Service Provider" is deemed to be replaced with "covered operators prescribed in Article 79-11, paragraph (1)".

(Mediation by Certified Organizations)

Article 79-13 The provisions of Article 77-2, paragraphs (1) to (3) inclusive and paragraphs (5) to (9) inclusive apply mutatis when a Certified Organization engages in mediation (limited to mediation involving covered operators). In this case, in paragraph (1) of that Article, the phrase "association member or Financial Instruments Intermediary Service Provider" is deemed to be replaced with "covered operator as prescribed in Article 79-11, paragraph (1)" and the term "Derivatives Transactions, etc." is deemed to be replaced with "Derivatives Transactions, etc. (including transactions incidental to these and any other transactions specified by Cabinet Office Ordinance)"; and in paragraph (5) of that Article, the phrase "association member or Financial Instruments Intermediary Service Provider" is deemed to be replaced with "covered operator as prescribed in Article 79-11, paragraph (1)".

(Mutatis Mutandis Application of the Duty of Confidentiality of the Officers and Employees)

Article 79-14 The provisions of Article 72 apply mutatis mutandis to the officers and employees of a Certified Organization, and to any person that has held one of these positions.

(Restriction on the Use of Names)

Article 79-15 A person that is not a Certified Organization must not use a name that refers to it as a Certified Investor Protection Organization, and must not use any other name that is confusingly similar to this.

(Collection of Reports)

Article 79-16 The Prime Minister may have a Certified Organization submit a report about its Certified Services, within the scope that this is necessary for implementing the provisions in this Section.

(Investor Protection Guidelines)

Article 79-17 (1) A Certified Organization must endeavor to prepare and publish guidelines that are in line with the purport of the provisions of this Act, with regard to the content of contracts for Financial Instruments Transactions by covered operators, the nature of asset management by covered operators, and

particulars that are otherwise necessary for ensuring the protection of investors (hereinafter referred to as "Investor Protection Guidelines"), in order to ensure the sound development of the Financial Instruments Business and the protection of investors.

- (2) Once a Certified Organization publishes Investor Protection Guidelines pursuant to the preceding paragraph, it must endeavor to provide the covered operators with the necessary guidance and recommendations, and take other measures for having the covered operators comply with the Investor Protection Guidelines.
- (3) A Certified Organization must endeavor to further the sound development of the Financial Instruments Business and the protection of investors through the dissemination of financial knowledge and through educational and publicity campaigns.

(Orders)

Article 79-18 The Prime Minister may order a Certified Organization to improve the implementation methods of its Certified Services, to change the Investor Protection Guidelines, and to take any other necessary measures, within the scope that this is necessary for implementing the provisions in this Section.

(Rescission of Certification)

Article 79-19 (1) If a Certified Organization falls under one of the following items, the Prime Minister may rescind its certification:

- (i) it comes to fall under Article 79-8, item (i) or (iii);
- (ii) it no longer conforms to one of the items of Article 79-9;
- (iii) it fails to comply with an order under the provisions of the preceding Article; or
- (iv) it has obtained Article 79-7, paragraph (1) certification by wrongful means.

(2) Upon rescinding a certification pursuant to the provisions of the preceding paragraph, the Prime Minister must issue public notice of this.

## **Chapter IV-2 Investor Protection Funds**

### **Section 1 General Provisions**

(General Customers)

Article 79-20 (1) The term "General Customer" as used in this Chapter means a customer of a Financial Instruments Business Operator's (limited to a Financial Instruments Business Operator that conducts Securities Services prescribed in Article 28, paragraph (8) (hereinafter referred to as the "Securities-Related Business" in this Chapter) or business related to Commodity-Related Market Transactions of Derivatives Brokerage, etc.

(hereinafter referred to as the "Commodity Derivatives Transaction-Related Business" in this Chapter); hereinafter the same applies in this Chapter) head office or other domestic business office or office (with regard to a Financial Instruments Business Operator that is a foreign judicial person, its business office or office in Japan) which conducts a Transaction Related to Subject Securities or Subject Commodity Derivatives Transaction-Related Transactions with that Financial Instruments Business Operator (excluding the Qualified Institutional Investors, states, local governments, and other persons specified by Cabinet Order).

- (2) Notwithstanding the provisions of the preceding paragraph, if a first Financial Instruments Business Operator conducts a Transaction Related to Subject Securities or Subject Commodity Derivatives Transaction-Related Transactions with a second Financial Instruments Business Operator on the account of the first Financial Instruments Business Operator's General Customer, the first Financial Instruments Business Operator is deemed to be the General Customer of the second Financial Instruments Business Operator, and the provisions of this Chapter apply.
- (3) The term "Customer Assets" as used in this Chapter means the following:
  - (i) the money and Securities that a General Customer deposits with a Financial Instruments Business Operator pursuant to the provisions of Article 119 (limited those deposited in connection with Transactions of Securities-Related Derivatives) and money and Securities that a General Customer deposits with a Financial Instruments Business Operator pursuant to the provisions of Article 161-2;
  - (ii) the money, Securities or other property deposited to a Financial Instruments Business Operator from a General Customer under the provisions of Article 119 specified by Cabinet Office Ordinance and Ordinance of the Ministry of Finance (limited to those deposited in relation to Commodity-Related Market Transactions of Derivatives);
  - (iii) money on the account of a General Customer and money that a General Customer deposits with a Financial Instruments Business Operator (other than money prescribed in item (i)) in connection with Securities-Related Business (excluding Over-the-Counter Transactions of Derivatives or other transactions specified by Cabinet Order; the same applies in item(v));
  - (iv) the money belonging to the account of a General Customer or money deposited to a Financial Instruments Business Operator from a General Customer, with regard to a transaction pertaining to Commodity Derivatives Transaction-Related Business (excluding the money prescribed in item (ii));
  - (v) Securities on the account of a General Customer or Securities that a General Customer deposits with a Financial Instruments Business Operator (other than Securities prescribed in item (i), Securities that a Financial

Instruments Business Operator may expend pursuant to a contract, and Securities specified by Cabinet Order), in connection with a transaction linked to the Securities-Related Business

- (vi) the Securities or Commodities belonging to the account of a General Customer (including securities or certificates issued in relation to deposited Commodities; hereinafter the same shall apply in this item) or Securities or Commodities deposited to a Financial Instruments Business Operator from a General Customer (excluding those listed in item (ii), Securities or Commodities that a Financial Instruments Business Operator may consume under a contract, and other Securities or Commodities specified by Cabinet Order), with regard to a transaction pertaining to Commodity Derivatives Transaction-Related Business; and
- (vii) anything other than what is set forth in each of the preceding items, which is specified by Cabinet Order.

(Purpose)

Article 79-21 The purpose of an Investor Protection Fund (hereinafter referred to as a "Fund" in this Chapter and the Supplementary Provisions) is to ensure the protection of investors through payments to General Customers pursuant to the provisions of Article 79-56, paragraph (1) and through other services, thereby maintaining the credibility of securities transactions or Commodity-Related Market Transactions of Derivatives.

(Legal Personality and Address)

Article 79-22 (1) Funds is a juridical person.

(2) The address of a Fund is the address at which its principal office is located.

(Name)

Article 79-23 (1) A Fund must use the characters "toushisha hogo kikin" (meaning "investor protection fund") in its name.

(2) A person that is not a Fund must not use the characters "toushisha hogo kikin" in its name.

(Registration)

Article 79-24 (1) A Fund must register pursuant to the provisions of Cabinet Order.

(2) Particulars that must be registered pursuant to the provisions of the preceding paragraph may not be asserted against a third party until after their registration.

(Capacity in Respect of Tortious Acts)



Article 79-25 A Fund is liable for the damages that its president or board members cause another person in the performance of their duties.

## **Section 2 Members**

(Eligibility for Membership)

Article 79-26 (1) The scope of persons eligible for membership in a Fund is limited to Financial Instruments Business Operators.

(2) If a Financial Instruments Business Operator seeks to join a Fund, the Fund must not refuse it and must not attach unreasonable conditions to its joining the Fund, unless entry into the Fund is restricted for a special reason related to business type or for any other legitimate reason.

(Obligation to Join)

Article 79-27 (1) A Financial Instruments Business Operator (excluding one that is specified by Cabinet Order) must join any single Fund, as a member.

(2) A person seeking to engage in Financial Instruments Business (limited to Securities-Related Business and Commodity Derivatives Transaction-Related Business; hereinafter the same shall apply in this Chapter) after obtaining Article 29 registration or an Article 31, paragraph (4) registration of a change (excluding a person specified by Cabinet Order) must go through the process for joining any single Fund at the same time as applying for the registration or the registration of the change.

(3) A person that has gone through the process for joining a Fund pursuant to the provisions of the preceding paragraph becomes a member of that Fund at the time that the person becomes registered or has the change registered as referred to in that paragraph.

(4) When a Financial Instruments Business Operator joins a Fund or if it changes the Fund to which it belongs, it must notify the Prime Minister of this without delay.

(Withdrawal)

Article 79-28 (1) A Financial Instruments Business Operator that is a member of a Fund is withdrawn from the Fund to which it belongs by operation of law for the following reasons:

(i) discontinuation of a Financial Instruments Business Operator's Financial Instruments Business (this includes an Article 31, paragraph (4) registration of a change indicating that the Financial Instruments Business Operator stops conducting Securities-Related Business and Commodity Derivatives Transaction-Related Business, and also includes a foreign corporation's discontinuation of Financial Instruments Business at all of the business

- offices and offices it has established in Japan) or the dissolution of the Financial Instruments Business Operator (with regard to a Financial Instruments Business Operator which is a foreign corporation, this includes the commencement of liquidation at a business office or office it has established in Japan); or
- (ii) the Article 52, paragraph (1) or (4); Article 53, paragraph (3); Article 54; or Article 57-6, paragraph (3) rescission of an Article 29 registration.
- (2) A person that is withdrawn from a Fund pursuant to the provisions of the preceding paragraph is deemed to continue to be a Financial Instruments Business Operator and a member of that Fund for the purpose of the application of Articles 79-52 to 79-61 inclusive.
- (3) A Financial Instruments Business Operator may not withdraw from the Fund to which it belongs unless the withdrawal is for a cause set forth in one of the items of paragraph (1) or unless it becomes the member of another Fund with the approval of the Prime Minister and the Minister of Finance.
- (4) Even if a Financial Instruments Business Operator withdraws from the Fund to which it belongs (excluding a case of withdrawal pursuant to the provisions of paragraph (1)), it incurs the obligation to pay the amount calculated by the Fund pursuant to the provisions of its operational rules in dues, for the amount of costs that the withdrawn Financial Instruments Business Operator is required to bear out of the amount of the costs required for the services the Fund provides for the Financial Instruments Business Operator in connection with any notice under the provisions of Article 79-53, paragraph (1) or paragraphs (3) to (5) inclusive, that said Fund receives up until the Operator's withdrawal from the Fund.
- (5) Whenever an application is filed for the approval referred to in paragraph (3), the Prime Minister and the Minister of Finance must not grant that approval unless the following requirements are satisfied:
- (i) the Financial Instruments Business Operator has repaid in full the obligation it bears as a member, to the Fund from which it seeks to withdraw, by the time of filing the application for approval, and its performance of the obligation prescribed in the preceding paragraph is expected to be reliable; and
- (ii) the Financial Instruments Business Operator gone through the process for joining another Fund as a member.

### **Section 3 Incorporation**

(Requirements for Incorporation)

Article 79-29 (1) In order to incorporate a Fund, 20 or more Financial Instruments Business Operators that seek to become its members must become

the founders.

- (2) After preparing the articles of incorporation and operational rules, the founders must invite persons seeking to become members, and hold an organizational meeting, issuing public notice of the articles of incorporation and operational rules as well as the date, time, and place of the meeting by two weeks prior to the day of the meeting.
- (3) Approval of the articles of incorporation and operational rules and decisions about matters that are otherwise necessary for the incorporation of a Fund must be effected by organizational meeting resolution.
- (4) The articles of incorporation and operational rules may be revised at an organizational meeting.
- (5) The items of organizational meeting business that are referred to in paragraph (3) are decided with at least a two-thirds majority of the votes of attendees, at a meeting where at least half of the Financial Instruments Business Operators that have proposed themselves as members to the founders before the opening of the meeting (hereinafter, each such Financial Instruments Business Operator is referred to as an "Expected Member" in this Article) and the founders, are present.
- (6) Notwithstanding the provisions of Article 79-42, paragraph (1), matters that are necessary for business operations in the business year that includes the day of establishment of a Fund (including the budget and financial plan) may be decided by organizational meeting resolution.
- (7) The provisions of Article 79-43 apply mutatis mutandis to the items of business at an organizational meeting that are referred to in the preceding paragraph. In this case, in that Article, the term "all members" is deemed to be replaced with "the Financial Instruments Business Operators that have proposed themselves as members to the founders before the opening of the meeting, and the founders".
- (8) Each of the Expected Members holds an equal voting right for organizational meetings.
- (9) An Expected Member not attending an organizational meeting may vote in writing or by proxy.
- (10) The provisions of the preceding two paragraphs do not apply if it is otherwise provided for in the articles of incorporation.
- (11) If an organizational meeting resolution concerns the relationship between a Fund and a specific Expected Member, that Expected Member has no voting right.

(Application for Authorization)

Article 79-30 (1) Founders must obtain authorization for incorporation by submitting a written application for authorization to the Prime Minister and

the Minister of Finance, in which the founders give the following particulars, without delay after the completion of the organizational meetings:

- (i) the name;
- (ii) the location of the office; and
- (iii) the names of officers and members.

(2) The articles of incorporation, operational rules, and other documents specified by Cabinet Office Ordinance and Ordinance of the Ministry of Finance must accompany the written application for authorization referred to in the preceding paragraph.

(Examination Criteria for Authorization)

Article 79-31 (1) Whenever an application is filed for the authorization under the provisions of paragraph (1) of the preceding Article, the Prime Minister and the Minister of Finance shall examine whether the application conforms to the following criteria:

- (i) procedures for incorporation and the content of the articles of incorporation and operational rules conform to laws and regulations;
- (ii) there is no false statement in the written application for authorization, the articles of incorporation, or the operational rules;
- (iii) a person falling under any of sub-items (a) to (i) inclusive of Article 29-4, paragraph (1), item (ii) is not an officer;
- (iv) the Fund to which the application pertains is found to have the necessary assets for it to conduct its business or it is found to be possible to rely upon the Fund having such assets;
- (v) it is found to be possible to rely upon business operations being conducted properly; and
- (vi) the organization of the Fund to which the application pertains conforms to the provisions of this Act.

(2) If, as a result of having conducted an examination pursuant to the provisions of the preceding paragraph, the Prime Minister and the Minister of Finance find that an application conforms to the criteria in that paragraph, they shall authorize incorporation.

(3) If an application is filed for the authorization under the provisions of paragraph (1) of the preceding Article and the Prime Minister and the Minister of Finance find it inappropriate to grant that authorization, they shall notify the applicant for authorization and have the relevant officials conduct a hearing.

(4) Upon deciding to grant or not to grant authorization for incorporation, the Prime Minister and the Minister of Finance shall notify the applicant for authorization of this in writing without delay.

(The Handing Over of Administrative Affairs to the President)

Article 79-32 Upon having authorization for incorporation, the founders must hand over administrative affairs to the person that is to become the president, without delay.

(Registration)

Article 79-33 (1) A Fund is established by a registration of incorporation being recorded in connection with the location of its principal office.

(2) Once the registration of incorporation referred to in the preceding paragraph has been made, the Fund must notify the Prime Minister and the Minister of Finance of this without delay.

## **Section 4 Management**

(Particulars Required to Be Included in the Articles of Incorporation)

Article 79-34 (1) The articles of incorporation of a Fund must include the following particulars:

- (i) its purposes;
- (ii) its name;
- (iii) the location of its offices;
- (iv) the particulars of its members (if it restricts membership based on a special cause, etc. involving business type, this includes the special cause, etc.);
- (v) the particulars of its general meetings;
- (vi) the particulars of its officers;
- (vii) the particulars of its governing board;
- (viii) the particulars of its business and business execution;
- (ix) the particulars of dues;
- (x) the particulars of its finance and accounting;
- (xi) the particulars involved in changing the articles of incorporation;
- (xii) the particulars of dissolution; and
- (xiii) the means of public notice.

(2) A change to the articles of incorporation does not become effective without the authorization of the Prime Minister and the Minister of Finance.

(3) If a particular set forth in Article 79-30, paragraph (1), item (ii) or (iii) changes, the Fund must notify the Prime Minister and the Minister of Finance of this without delay.

(Officers)

Article 79-35 (1) A Fund has one president, two or more board members, and one or more inspectors as its officers.

- (2) The business of a Fund is decided by majority among the president and board members, unless otherwise provided for in laws and regulations or the articles of incorporation.

(Authority of an Officer)

Article 79-36 (1) The president represents the Fund and presides over its business.

- (2) A board member, pursuant to the provisions of the articles of incorporation, represents the Fund, assists the president in administering the business of the Fund, acts as a proxy in handling the duties of the president if the president is unable to attend to them, and performs the duties of the president if the position is vacant.
- (3) An inspector examines the business of the Fund.
- (4) An inspector may submit an opinion to the president or to the Prime Minister and the Minister of Finance based on the results of an examination if the auditor finds this to be necessary.
- (5) An officer loses the position of officer upon coming to fall under one of the categories in Article 29-4, paragraph (1), item (ii), sub-items (a) to (i) inclusive.

(Appointment, Term of Office, and Dismissal of Officers)

Article 79-37 (1) Officers are appointed and dismissed at a general meeting pursuant to the provisions of the articles of incorporation; provided, however, that the officers at the time of incorporation are appointed at an organizational meeting.

- (2) The appointment (excluding the appointment of the officers at the time of incorporation) or dismissal of the officer of a Fund under the provisions of the preceding paragraph does not become effective without the authorization of the Prime Minister and the Minister of Finance.
- (3) The term of office of an officer is a period specified by the articles of incorporation not exceeding two years.
- (4) Officers may be reappointed.
- (5) If an officer is discovered to have become an officer by wrongful means or if an officer violates a law or regulation, a disposition by a government agency which is based on a law or regulation, or the articles of incorporation, the Prime Minister and the Minister of Finance may order the Fund to dismiss that officer.

(Prohibition on the Concurrent Holding of Positions by Auditors)

Article 79-38 An inspector must not concurrently hold the position of president, board member, member of the governing board, or employee of the Fund.

(Restrictions on the Authority of Representation)

Article 79-39 The president and board members have no authority of representation with regard to a matter that constitutes a conflict of interests between the president or a board member and the Fund. In such a case, an auditor represents the Fund.

(Provisional Board Members and Provisional Auditors)

Article 79-40 If there is no one to perform the duties of a board member or an inspector and the Prime Minister and the Minister of Finance find it to be necessary, they may appoint a provisional board member or provisional inspector .

(General Meetings)

- Article 79-41 (1) The president must call an ordinary general meeting once every business year, pursuant to the provisions of the articles of incorporation.
- (2) The president may call an extraordinary general meeting whenever the president finds this to be necessary.
- (3) A Fund shall report general meeting resolutions to the Prime Minister and the Minister of Finance.
- (4) The Prime Minister and the Minister of Finance may have the relevant officials attend a general meeting and state their opinions.

(Matters for General Meeting Resolution)

- Article 79-42 (1) The following matters, beyond those that are otherwise prescribed in this Chapter, require a general meeting resolution:
- (i) a change in the articles of incorporation;
  - (ii) a decision on or change in the budget or financial plan;
  - (iii) a change in the operational rules;
  - (iv) the settlement of accounts;
  - (v) dissolution; and
  - (vi) material matters beyond those that are otherwise set forth in the preceding items, which are specified by the articles of incorporation.
- (2) The members, at a general meeting, may request an inspector to examine the business of the Fund and report the results of the examination.

(General Meeting Decisions)

Article 79-43 A general meeting decision is effected with over half of the votes of the attendees, at a meeting where at least half of all members are present, and by the chairperson in the case of a tie; provided, however, that a decision on a matter set forth in paragraph (1), item (i), (iii), or (v) of the preceding Article is decided with at least a two-thirds majority of the votes of the attendees.

(Extraordinary General Meetings)

Article 79-44 If at least one-fifth of the members specify the purpose of a general meeting and demand that one be called, the board members must call an extraordinary general meeting; provided, however, that a proportion different from one-fifth of the members may be specified in the articles of incorporation.

(The Calling of a General Meeting)

Article 79-44-2 A convocation notice for a general meeting must specify the purpose of the general meeting, and must be issued as specified by the articles of incorporation by at least five days prior to the day of the meeting.

(Matters for General Meeting Resolution)

Article 79-44-3 Only the matters for which advance notice has been given pursuant to the provisions of the preceding Article may be resolved at a general meeting; provided, however, that, this does not apply if it is otherwise provided for in the articles of incorporation.

(Voting Rights of Members)

Article 79-44-4 (1) Each of the members holds an equal voting right.  
(2) A member not attending a general meeting may vote in writing or by proxy.  
(3) The provisions of the preceding two paragraphs do not apply if it is otherwise provided for in the articles of incorporation.

(When a Member Has No Voting Right)

Article 79-44-5 If a resolution concerns the relationship between a Fund and a specific member, that member has no voting right.

(Governing Council)

Article 79-45 (1) A Fund sets in place a governing council (hereinafter referred to as the "Council") in order to further the appropriate operation of the business of the Fund.  
(2) In the following cases, the president must hear the opinions of the Council in advance:  
(i) before granting a recognition pursuant to the provisions of Article 79-54;  
(ii) before specifying the matters that are required to be specified pursuant to the provisions of Article 79-55, paragraph (1);  
(iii) before making a decision on whether to provide a loan under the provisions of Article 79-59; and  
(iv) other cases specified by the articles of incorporation as cases in which material matters concerning the Fund's business operation are decided.



- (3) A Council comprises of no more than eight members.
- (4) The members are appointed by the president from among persons that have the necessary knowledge and experience to appropriately operate the business of the Fund, with the authorization of the Prime Minister and the Minister of Finance.
- (5) The provisions of Article 79-41, paragraph (4) apply mutatis mutandis to the Council.

(Appointment of Employees)

Article 79-46 The employees of a Fund are appointed by the president.

(Duty of Confidentiality of the Officers and Employees)

- Article 79-47 (1) It is prohibited for the officer or employee of a Fund, a member of the Council, or a person that has held one of these positions, to divulge or misappropriate any secret learned in the course of duty.
- (2) It is prohibited for the officer or employee of a Fund, a member of the Council, or a person that has held one of these positions, to utilize information learned in the course of duty for a purpose other than the business use of the Fund for which the information is provided.

(Position of Officers and Employees)

Article 79-48 With regard to the application of the Penal Code and other penal provisions, the officers and employees of a Fund and the members of a Council are deemed to be officials who are engaged in public service pursuant to laws and regulations.

## **Section 5 Services**

(Scope of Services, etc.)

- Article 79-49 (1) A Fund provides the following services in order to achieve the purpose prescribed in Article 79-21:
- (i) the payment of General Customers under the provisions of Article 79-56, paragraph (1);
  - (ii) the lending of funds under the provision of Article 79-59, paragraph (1);
  - (iii) judicial or non-judicial act prescribed in Article 79-60, paragraph (1);
  - (iv) services for contributing to the expeditious refunding of Customer Assets prescribed in Article 79-61;
  - (v) collection and management of dues (meaning the dues prescribed in Article 79-28, paragraph (4) and Article 79-64, paragraph (1); the same applies in Article 79-51, paragraph (1));
  - (vi) the submission of the customer lists under the provisions of Chapter IV,

- Section 5, Chapter V, Section 3 and Chapter VI, Section 3 of the Act on Special Treatment of Corporate Reorganization Proceedings and Other Insolvency Proceedings of Financial Institutions (Act No. 95 of 1996) and other services under those provisions; and
- (vii) the business of a bankruptcy trustee, provisional administrator, bankruptcy trustee representative, or provisional administrator representative appointed under the Bankruptcy Act (Act No. 75 of 2004), a supervisor, trustee, provisional administrator, trustee representative, or provisional administrator representative appointed under the Civil Rehabilitation Act (Act No. 225 of 1999), a trustee, trustee representative, provisional administrator, provisional administrator representative, or supervisor appointed under the Corporate Reorganization Act (Act No. 154 of 2002), or a recognition trustee, provisional administrator, recognition trustee representative, or provisional administrator representative appointed under the Act on Recognition of and Assistance for Foreign Insolvency Proceedings (Act No. 129 of 2000);
  - (viii) the business of the special surveillance agent prescribed in Article 126-4, paragraph (3) of the Deposit Insurance Act (Act No. 34 of 1971);
  - (ix) the business of the Corporation agent prescribed in Article 126-6, paragraph (1) of the Deposit Insurance Act; and
  - (x) services incidental to the services set forth in the preceding items.
- (2) A Fund may provide in its articles of incorporation that the scope of its business related to Customer Assets shall be limited to the business only pertaining to the Customer Assets listed in Article 79-20, paragraph (3), items (i), (iii), (v) and (vii) (with regard to Customer Assets listed in item (vii), limited to those specified by Cabinet Office Ordinance and Ordinance of the Ministry of Finance as being related to Subject Securities-Related Transactions). In this case, with regard to the application of Article 79-26, paragraph (1), Article 79-28, paragraphs (1), (3) and (5) and Article 79-53, paragraph (1) to said Fund or a Financial Instruments Business Operator who is a member of said Fund, the term "Financial Instruments Business Operator" in Article 79-26, paragraph (1) shall be deemed to be replaced with "Financial Instruments Business Operator who conducts Securities-Related Business"; the term "the registration of change set forth in Article 31, paragraph (4) to the effect that it stops conducting Securities-Related Business and Commodity Derivatives Transaction-Related Business, and" in Article 79-28, paragraph (1), item (i) and Article 79-53, paragraph (1), item (iii) shall be deemed to be replaced with "the registration of change set forth in Article 31, paragraph (4) to the effect that it stops conducting Securities-Related Business and"; the term "becomes a member of another Fund" in Article 79-28, paragraph (3) shall be deemed to be replaced with "becomes a member of another Fund (limited to a

Fund whose articles of incorporation do not include the provisions prescribed in Article 79-49, paragraph (4)) or becomes a member only of another Fund of which it is already a member (limited to a Fund whose articles of incorporation do not include the provisions prescribed in paragraphs (2) and (4) of Article 79-49)"; and the term "has taken procedures to join another Fund as a member" in paragraph (5), item (ii) of Article 79-49 shall be deemed to be replaced with "has taken procedures to join another Fund (limited to a Fund whose articles of incorporation do not include the provisions prescribed in Article 79-49, paragraph (4)) as a member or is already a member of another Fund (limited to a Fund whose articles of incorporation do not include the provisions prescribed in paragraphs (2) and (4) of Article 79-49)."

- (3) A Financial Instruments Business Operator who is a member of a Fund whose articles of incorporation include the provisions prescribed in the preceding paragraph and also conducts Commodity Derivatives Transaction-Related Business (excluding a Financial Instruments Business Operator specified by Cabinet Order prescribed in Article 79-27, paragraph (1)) shall, notwithstanding the provision of paragraph (1) of Article 79-27, join any other Fund whose articles of incorporation do not include said provisions as a member. In this case, such other Fund (limited to a Fund whose articles of incorporation do not include the provisions prescribed in the following paragraph) may, with regard to said Financial Instruments Business Operator, limit the scope of its business pertaining to Customer Assets to the business pertaining to Customer Assets other than Customer Assets prescribed in the preceding paragraph, and with regard to the application of Article 79-28, paragraphs (1), (3) and (5) and Article 79-53, paragraph (1) to a Fund which has prescribed said limitation or a Financial Instruments Business Operator who is a member of said Fund, the term "the registration of change set forth in Article 31, paragraph (4) to the effect that it stops conducting Securities-Related Business and Commodity Derivatives Transaction-Related Business, and" in Article 79-28, paragraph (1), item (i) and Article 79-53, paragraph (1), item (iii) shall be deemed to be replaced with "the registration of change set forth in Article 31, paragraph (4) to the effect that it stops conducting Commodity Derivatives Transaction-Related Business and"; the term "becomes a member of another Fund" in Article 79-28, paragraph (3) shall be deemed to be replaced with "becomes a member of another Fund (limited to a Fund whose articles of incorporation do not include the provisions prescribed in Article 79-49, paragraph (2)) or becomes a member only of another Fund of which it is already a member (limited to a Fund whose articles of incorporation do not include the provisions prescribed in paragraphs (2) and (4) of Article 79-49)"; and the term "has taken procedures to join another Fund as a member" in Article 79-28, paragraph (5), item (ii) shall be deemed to be replaced with "has

taken procedures to join another Fund (limited to a Fund whose articles of incorporation do not include the provisions prescribed in Article 79-49, paragraph (2)) as a member or is already a member of another Fund (limited to a Fund whose articles of incorporation do not include the provisions prescribed in paragraphs (2) and (4) of Article 79-49)."

- (4) A Fund may provide in its articles of incorporation that the scope of its business pertaining to Customer Assets shall be limited to the business only pertaining to Customer Assets listed in Article 79-20, paragraph (3), items (ii), (iv), (vi) and (vii) (with regard to Customer Assets prescribed in item (vii), limited to those specified by Cabinet Office Ordinance and Ordinance of the Ministry of Finance as being related to Subject Commodity Derivatives Transaction-Related Transactions). In this case, with regard to the application of Article 79-26, paragraph (1), Article 79-28, paragraphs (1), (3) and (5) and Article 79-53, paragraph (1) to said Fund or a Financial Instruments Business Operator who is a member of said Fund, the term "Financial Instruments Business Operator" in Article 79-26, paragraph (1) shall be deemed to be replaced with "Financial Instruments Business Operator who conducts Commodity Derivatives Transaction-Related Business"; the term "the registration of change set forth in Article 31, paragraph (4) to the effect that it stops conducting Securities-Related Business and Commodity Derivatives Transaction-Related Business, and" in Article 79-28, paragraph (1), item (i) and Article 79-53, paragraph (1), item (iii) shall be deemed to be replaced with "the registration of change set forth in Article 31, paragraph (4) to the effect that it stops conducting Commodity Derivatives Transaction-Related Business and"; the term "becomes a member of another Fund" in Article 79-28, paragraph (3) shall be deemed to be replaced with "becomes a member of another Fund (limited to a Fund whose articles of incorporation do not include the provisions prescribed in Article 79-49, paragraph (2)) or becomes a member only of another Fund of which it is already a member (limited to a Fund whose articles of incorporation do not include the provisions prescribed in paragraphs (2) and (4) of Article 79-49)"; and the term "has taken procedures to join another Fund as a member" in Article 79-49, paragraph (5), item (ii) shall be deemed to be replaced with "has taken procedures to join another Fund (limited to a Fund whose articles of incorporation do not include the provisions prescribed in Article 79-49, paragraph (2)) as a member or is already a member of another Fund (limited to a Fund whose articles of incorporation do not include the provisions prescribed in paragraphs (2) and (4) of Article 79-49)."
- (5) A Financial Instruments Business Operator who is a member of a Fund whose articles of incorporation include the provisions prescribed in the preceding paragraph and also conducts Securities-Related Business (excluding a Financial Instruments Business Operator specified by Cabinet Order

prescribed in Article 79-27, paragraph (1)) shall, notwithstanding the provisions of paragraph (1) of that Article, join any other Fund whose articles of incorporation do not include said provisions as a member. In this case, such other Fund (limited to a Fund whose articles of incorporation do not include the provisions prescribed in paragraph (2)) may, with regard to said Financial Instruments Business Operator, limit the scope of its business pertaining to Customer Assets to the business pertaining to Customer Assets other than Customer Assets prescribed in the preceding paragraph, and with regard to the application of Article 79-28, paragraphs (1), (3) and (5) and Article 79-53, paragraph (1) to a Fund which has prescribed said limitation or a Financial Instruments Business Operator who is a member of said Fund, the term "the registration of change set forth in Article 31, paragraph (4) to the effect that it stops conducting Securities-Related Business and Commodity Derivatives Transaction-Related Business, and" in Article 79-28, paragraph (1), items (i) and Article 79-53, paragraph (1), item (iii) shall be deemed to be replaced with "the registration of change set forth in Article 31, paragraph (4) to the effect that it stops conducting Securities-Related Business, and"; the term "becomes a member of another Fund" in Article 79-28, paragraph (3) shall be deemed to be replaced with "becomes a member of another Fund (limited to a Fund whose articles of incorporation do not include the provisions prescribed in Article 79-49, paragraph (4)) or becomes a member only of another Fund of which it is already a member (limited to a Fund whose articles of incorporation do not include the provisions prescribed in paragraphs (2) and (4) of Article 79-49); and the term "has taken procedures to join another Fund as a member" in Article 79-49, paragraph (5), item (ii) shall be deemed to be replaced with "has taken procedures to join another Fund (limited to a Fund whose articles of incorporation do not include the provisions prescribed in Article 79-49, paragraph (4)) as a member or is already a member of another Fund (limited to a Fund whose articles of incorporation do not contain the provisions prescribed in paragraphs (2) and (4) of Article 79-49)."

- (6) The provisions of Article 79-27, paragraphs (2) and (3) shall apply mutatis mutandis to a Financial Instruments Business Operator who is a member of a Fund whose articles of incorporation include the provisions prescribed in paragraph (2) or a Financial Instruments Business Operator who is a member of a Fund whose articles of incorporation include the provisions prescribed in paragraph (4), in each case, who intends to conduct Commodity Derivatives Transaction-Related Business or Securities-Related Business by obtaining the registration of change set forth in Article 31, paragraph (4) (excluding a person specified by Cabinet Order prescribed in Article 79-27, paragraph (2)). In this case, the term "any one of the Funds" in Article 79-27, paragraph (2) shall be deemed to be replaced with "any one of the Funds whose articles of

incorporation do not include said provisions."

(Entrustment of Services)

Article 79-50 (1) A Fund may entrust part of its services to a Financial Instruments Firms Association (meaning an Authorized Financial Instruments Firms Association or Certified Financial Instruments Business Association prescribed in Article 78, paragraph (2); the same applies in the following paragraph) or a Financial Instruments Business Operator with the advance authorization of the Prime Minister and the Minister of Finance.

(2) Notwithstanding the provisions of this Act or other laws and regulations, if the authorization prescribed in the preceding paragraph is granted, the Financial Instruments Firms Association or Financial Instruments Business Operator may be entrusted with the services to which that authorization pertains and perform those services.

(Operational Rules)

Article 79-51 (1) The operational rules of a Fund must state the particulars of the payments to General Customers under the provisions of Article 79-56, paragraph (1), the particulars of the method of calculation of dues and their payment, and other matters specified by Cabinet Office Ordinance and Ordinance of the Ministry of Finance.

(2) A Fund must obtain the authorization of the Prime Minister and the Minister of Finance if it seeks to change its operational rules.

(Submission of Reports and Materials)

Article 79-52 (1) Whenever it is necessary in order for a Fund to perform its services, that Fund may request a Financial Instruments Business Operator that is its member to submit reports or materials that should serve as a reference with regard to the state of the business or assets of that Financial Instruments Business Operator.

(2) A Financial Instruments Business Operator that has been requested to submit reports or materials that should serve as a reference with regard to the state of its business or assets pursuant to the provisions of the preceding paragraph, must submit the reports or materials without delay.

(3) The Prime Minister may issue materials to a Fund or allow a Fund to inspect the same, if the Fund has so requested and the Prime Minister finds this to be particularly necessary in order for the Fund to perform its services.

(Notifying the Fund)

Article 79-53 (1) If a Financial Instruments Business Operator that is a member of a Fund falls under one of the following items, it must immediately notify the

Fund to which it belongs of this:

- (i) its Article 29 registration is rescinded pursuant to the provisions of Article 52, paragraph (1); Article 53, paragraph (3); Article 54; or Article 57-6, paragraph (3);
  - (ii) it files a petition to commence bankruptcy proceedings, rehabilitation proceedings, Reorganization proceedings, or special liquidation proceedings (or if the Financial Instruments Business Operator is a foreign corporation, it files a petition to commence bankruptcy proceedings, rehabilitation proceedings, reorganization proceedings, or special liquidation proceedings in Japan, or a petition of the same kind in the state where its head office is located based on the laws and regulations of that state);
  - (iii) it discontinues its Financial Instruments Business (including the registration of change set forth in Article 31, paragraph (4) to the effect that it stops conducting Securities-Related Business and Commodity Derivatives Transaction-Related Business, and with regard to a Financial Instruments Business Operator that is a foreign corporation, this includes the discontinuation of Financial Instruments Business at all business offices and offices it has established in Japan; hereinafter the same applies in this item) or is dissolved (with regard to a Financial Instruments Business Operator that is a foreign corporation, this includes the commencement of liquidation of the business offices and offices it has established in Japan) or it issues a public notice of its discontinuation of Financial Instruments Business, etc. under the provisions of Article 50-2, paragraph (6) or of its dissolution; or
  - (iv) it becomes subject to an order for the suspension of all or a part of business activities under the provisions of Article 52, paragraph (1) (limited to a case falling under item (vii) of that paragraph).
- (2) If a Fund receives a notice under the provisions of the preceding paragraph, it must immediately report this to the Prime Minister and the Minister of Finance.
- (3) If the Prime Minister issues one of the following dispositions with regard to a Financial Instruments Business Operator that is a member of a Fund, the Prime Minister must immediately notify the Minister of Finance and the Fund to which that Financial Instruments Business Operator belongs of this:
- (i) the Article 52, paragraph (1) or (4); Article 53, paragraph (3); Article 54; or Article 57-6, paragraph (3) rescission of an Article 29 registration; or
  - (ii) an order for the suspension of all or a part of business activities under the provisions of Article 52, paragraph (1) (limited to a case falling under item (vii) of that paragraph).
- (4) The Prime Minister shall, when having filed a petition for commencement of reorganization proceedings under the provisions of Article 377, paragraph (1) of the Act on Special Treatment of Corporate Reorganization Proceedings and

Other Insolvency Proceedings of Financial Institutions, a petition for commencement of rehabilitation proceedings under the provisions of Article 446, paragraph (1) of that Act, and a petition for commencement of bankruptcy proceedings under the provision of Article 490, paragraph (1) of that Act with the court with regard to a Financial Instruments Business Operator which is a member of a Fund, immediately notify to that effect to the Minister of Finance and the Fund to which said Financial Instruments Business Operator belongs..

- (5) If the Prime Minister receives a notice under the provisions of Article 379; Article 448; or Article 492 of the Act on Special Treatment of Corporate Reorganization Proceedings and Other Insolvency Proceedings of Financial Institutions or any other notice concerning special liquidation proceedings with regard to a Financial Instruments Business Operator that is a member of a Fund, the Prime Minister must immediately notify the Minister of Finance and the Fund to which the Financial Instruments Business Operator belongs of this.

(Finding of Difficulty in Payment)

Article 79-54 If a Fund receives a notice under the provisions of paragraph (1) or paragraphs (3) to (5) inclusive of the preceding Article, it must, without delay, reach a finding as to whether it is difficult for the Financial Instruments Business Operator to which the notice pertains (hereinafter referred to as a "Financial Instruments Business Operator That Is the Subject of a Notice") to smoothly perform its obligations in connection with the refunding of Customer Assets, unless it is found to be clearly unlikely that not reaching such a finding would result in insufficient investor protection.

(Public Notice of Finding)

Article 79-55 (1) If a Fund, pursuant to the provisions of the preceding Article, reaches the finding that it is difficult for a Financial Instruments Business Operator That Is the Subject of a Notice to smoothly perform its obligations in connection with the refunding of Customer Assets, it must promptly specify the period and place of notification set forth in paragraph (1) of the following Article and other matters specified by Cabinet Order and issue public notice of the same.

- (2) If a public notice under the provisions of Article 197, paragraph (1) of the Bankruptcy Act (including as applied mutatis mutandis pursuant to Article 209, paragraph (3) of that Act) or a notice under the provisions of paragraph (5) is issued or if any other cause specified by Cabinet Order occurs with regard to a Financial Instruments Business Operator that is subject to the finding referred to in the preceding paragraph (hereinafter referred to as a "Distressed Financial Instruments Business Operator") after the Fund has issued public notice pursuant to the provisions of the preceding paragraph, the Fund may



change the period of notification with regard to which it has issued the public notice pursuant to the provisions of that paragraph.

- (3) If a Fund changes the period of notification pursuant to the provisions of the preceding paragraph, it must issue public notice of the particulars of the change without delay.
- (4) When a Fund specifies the matters prescribed in paragraph (1) or if it changes the period of notification pursuant to the provisions of paragraph (2), it must immediately report this to the Prime Minister and the Minister of Finance.
- (5) The bankruptcy trustee must notify the Fund upon providing the notice under the provisions of Article 197, paragraph (1) (including as applied mutatis mutandis pursuant to Article 209, paragraph (3) of the Bankruptcy Act) or Article 204, paragraph (2) of the Bankruptcy Act or upon receipt of permission under the provisions of Article 208, paragraph (1) of that Act in connection with the bankruptcy proceedings of the Distressed Financial Instruments Business Operator.

#### (Payment of Claims to Be Compensated)

Article 79-56 (1) At the request of the General Customer of a Distressed Financial Instruments Business Operator, the Fund is to pay the amount calculated pursuant to the provisions of Cabinet Office Ordinance and Ordinance of the Ministry of Finance on any claim that the General Customer has against the Distressed Financial Instruments Business Operator as of the day that the Fund issues public notice pursuant to the provisions of paragraph (1) of the preceding Article (limited to a claim for the Customer Assets of said General Customer), and which the Fund, pursuant to the provisions of Cabinet Order, finds would be difficult for the Distressed Financial Instruments Business Operator to smoothly pay (hereinafter referred to as "Claims to Be Compensated").

- (2) Notwithstanding the provisions of the preceding paragraph, a Fund is not to make the payment referred to in that paragraph to the officer of a Distressed Financial Instruments Business Operator or to any other person specified by Cabinet Order.
- (3) A request set forth in paragraph (1) may only be made within the period of notification for which public notice is issued pursuant to the provisions of paragraph (1) or (3) of the preceding Article; provided, however, that this does not apply if there has been a natural disaster or if the Fund otherwise finds there to be a compelling reason for the failure to make a request within the period of notification.

#### (Amount of Payment)

Article 79-57 (1) Notwithstanding the provisions of paragraph (1) of the preceding Article, if the General Customer of a Distressed Financial Instruments Business Operator which makes the request set forth in that paragraph falls under one of the following items, the amount that must be paid by the Fund pursuant to the provisions of that paragraph is equivalent to the amount under the provisions of that paragraph less the amount provided for in the relevant item:

- (i) if the General Customer has provided the whole or a part of the Customer Assets that are under the Claim to Be Compensated as the subject matter of a security interest: the amount of the relevant whole or part of the Customer Assets provided as the subject matter of the security interest, as valued pursuant to the provisions of Cabinet Office Ordinance and Ordinance of the Ministry of Finance (or, if that amount exceeds the amount of the secured claim connected with the security interest, the amount of the secured claim connected with that security interest);
  - (ii) if the General Customer has incurred an obligation to the Distressed Financial Instruments Business Operator: the amount of the obligation (or, if the General Customer falls under the preceding item in connection with that obligation, the amount of the obligation less the amount provided for in that item); or
  - (iii) if the Customer Assets that are subject to the Claim to Be Compensated include a Claim to Be Compensated prescribed in Article 60, paragraph (1) of the Act on the Book-Entry of Corporate Bonds: the amount of Customer Assets equivalent to the Claims to Be Compensated set forth in that paragraph, as valued pursuant to the provisions of Cabinet Office Ordinance and Ordinance of the Ministry of Finance (or, if the provisions of paragraph (5) of that Article apply to those Customer Assets, that amount less the amount of payment reduced pursuant to the provisions of that paragraph).
- (2) With regard to the application of paragraph (1) of the preceding Article and the provisions of the preceding paragraph if a Financial Instruments Business Operator is deemed to be a General Customer pursuant to the provisions of Article 79-20, paragraph (2), each General Customer of the Financial Instruments Business Operator which causes the Financial Instruments Business Operator to be deemed a General Customer has the position of a General Customer.
- (3) If the amount that must be paid pursuant to the provisions of paragraph (1) of the preceding Article and paragraph (1) exceeds the amount specified by Cabinet Order, the amount specified by Cabinet Order is the amount that must be paid.
- (4) If a Fund makes the payment referred to in paragraph (1) of the preceding Article, it acquires a Claim to Be Compensated in connection with that

payment and in line with the amount it pays, pursuant to the provisions of Cabinet Order.

(Application of the Income Tax Act)

Article 79-58 (1) If a General Customer is an individual and that individual receives a payment set forth in Article 79-56, paragraph (1) on a Claim to Be Compensated that the individual holds against a Distressed Financial Instruments Business Operator (limited to a claim involving Securities; hereinafter the same applies in this paragraph), the Securities under the Claim to Be Compensated that is connected with that payment (limited to the part of the Claim to Be Compensated that the Fund acquires based on that payment) are deemed to transfer from the individual to the Fund that makes the payment, based on the amount of payment that the individual receives and at the time the individual receives that payment, and the provisions of the Income Tax Act (Act No. 33 of 1965) and other laws and regulations concerning income tax apply.

(2) Necessary particulars relevant to the application of the special provisions of Article 4-2 and Article 4-3 of the Act on Special Measures Concerning Taxation (Act No. 26 of 1957) in a case to which the provisions of the preceding paragraph are applicable are specified by Cabinet Order.

(Loans of Funds for Refunds)

Article 79-59 (1) At the application of a Financial Instruments Business Operator That Is the Subject of a Notice (excluding a Distressed Financial Instruments Business Operator g) or the agent of the beneficiary of a trust prescribed in Article 43-2, paragraph (2) that is connected to a Financial Instruments Business Operator That Is the Subject of a Notice, a Fund may loan the necessary funds for the expeditious performance of obligations connected with the refunding of Customer Assets (hereinafter referred to as a "Loan of Funds for Refunds") to such a person, within the limits of the amount that is found to be necessary.

(2) A person that files an application for a Loan of Funds for Refunds must be recognized by the Prime Minister to satisfy all of the following requirements with regard to the relevant Loan of Funds for Refunds (hereinafter such a recognition is referred to as "Recognition of Eligibility" in this Article), by the time it files that application:

- (i) providing a Loan of Funds for Refund is found to be necessary for the expeditious performance of obligations connected with the refund of Customer Assets; and
- (ii) it is found to be possible to rely upon the proceeds of a Loan of Funds for Refund being used for the expeditious performance of obligations connected

with the refund of Customer Assets.

- (3) Upon granting a Recognition of Eligibility, the Prime Minister shall notify the Minister of Finance and the Fund to which the Financial Instruments Business Operator that has obtained the Recognition of Eligibility belongs (or, if the agent of the beneficiary of a trust prescribed in Article 43-2, paragraph (2) that involves a Financial Instruments Business Operator has obtained that recognition, the Financial Instruments Business Operator) of this.
- (4) Upon receiving an application for a Loan of Funds for Refunds, a Fund must decide whether to provide the Loan of Funds for Refunds to which that application pertains.
- (5) When a Fund has made the decision referred to in the preceding paragraph, it shall immediately report the particulars of the decision to the Prime Minister and the Minister of Finance.

(Preservation of the Claims of General Customers)

Article 79-60 (1) In addition to the performance of acts under the provisions of the Act on Special Treatment of Corporate Reorganization Proceedings and Other Insolvency Proceedings of Financial Institutions, if a Fund finds it to be necessary in order to preserve the fulfillment of a claim that a General Customer has against a Financial Instruments Business Operator That Is the Subject of a Notice (limited to a claim involving the Customer Assets of that General Customer), the Fund, within the scope of this necessity, has the authority to perform any and all judicial and non-judicial acts that are necessary for preserving the fulfillment of that claim on behalf of that General Customer.

- (2) A Fund must be sincere and fair in its performance of the acts referred to in the preceding paragraph on behalf of a General Customer.
- (3) A Fund shall perform the acts set forth in paragraph (1) for General Customers with the due care of a prudent manager.
- (4) Before performing a judicial pursuant to the provisions of paragraph (1), a Fund must notify the General Customer that the Fund represents in that act, of the content of the act.
- (5) A General Customer that has received the notice under the provisions of the preceding paragraph may independently perform any judicial act to which that notice pertains by extinguishing the authority of representation of the Fund by notifying the Fund that the General Customer extinguishes the authority of representation.

(Services for Contributing to Expeditious Payment)

Article 79-61 A Fund may be entrusted by a Financial Instruments Business Operator that is its member, to perform services as the agent of the beneficiary

of a trust prescribed in Article 43-2, paragraph (2) which is connected to the Financial Instruments Business Operator or other services specified by Cabinet Office Ordinance or Ordinance of Ministry of Finance as business for contributing to the expeditious refunding of Customer Assets.

(Delegation to Cabinet Office Ordinance)

Article 79-62 Procedures for the implementation of the provisions of this Section and particulars that are otherwise necessary for their implementation are specified by Cabinet Office Ordinance or Ordinance of the Cabinet Office and the Ministry of Finance.

## **Section 6 Dues**

(Funds for Investor Protection)

Article 79-63 (1) A Fund is to set aside funds that it allocates to cover the costs that are required for the services set forth in the items of Article 79-49, paragraph (1) (hereinafter referred to as "Funds for Investor Protection").  
(2) Funds for Investor Protection must not be used other than when they are allocated to cover the costs that are required for the services set forth in the items of Article 79-49, paragraph (1).

(Dues)

Article 79-64 (1) A Financial Instruments Business Operator shall pay dues to a Fund to which it belongs pursuant to the provisions of the operational rules, so that these can be allocated to Funds for Investor Protection.  
(2) Notwithstanding the provisions of the preceding paragraph, a Fund may waive the dues of a Financial Instruments Business Operator That Is the Subject of a Notice, pursuant to the provisions of the articles of incorporation.

(Method of Calculation of the Amount of Dues)

Article 79-65 (1) The amount of the dues referred to in paragraph (1) of the preceding Article is the amount calculated using the calculation method stipulated in the operational rules.  
(2) The method of calculating dues which is referred to in the preceding paragraph must be specified so as to conform to the following criteria:  
(i) the finances of a Fund will be balanced in the long term in light of the estimated amount of payments set forth in Article 79-56, paragraph (1) and the costs that are required for services linked to Funds for Investor Protection; and  
(ii) no particular Financial Instruments Business Operator is subject to differential treatment.

- (3) The provisions of the preceding paragraph must not be construed as precluding the temporary specification of a method of calculating dues that does not conform to the criterion specified in item (i) of that paragraph, if the payment of dues so calculated would make it impossible for a Financial Instruments Business Operator that is a member to maintain its sound management.

(Delinquency Charges)

Article 79-66 (1) If a Financial Instruments Business Operator fails to pay its dues by the due date for payment specified by the operational rules, it must pay a delinquency charge to the Fund to which it belongs.

- (2) The amount of a delinquency charge is calculated by multiplying the amount of unpaid dues by an annual rate of 14.5 percent, based on the number of days from the day following the due date for payment until the day of payment.

(Delegation to Cabinet Office Ordinance and Ordinance of the Ministry of Finance)

Article 79-67 Procedures for the implementation of the provisions of this Section and particulars that are otherwise necessary for their implementation are specified by Cabinet Office Ordinance and Ordinance of the Ministry of Finance.

## **Section 7 Finance and Accounting**

(The Business Year)

Article 79-68 The business year of a Fund is from April 1 to March 31 of the following year; provided, however, that the business year in that includes the day of establishment of a Fund is from the day of establishment to the following March 31.

(Submission of a Budget and Financial Plan)

Article 79-69 A Fund shall prepare a budget and a financial plan for every business year and submit them to the Prime Minister and the Minister of Finance before the commencement of the relevant business year (with regard to a business year that includes the day of establishment of a Fund, this means without delay after the establishment of the Fund). The same applies if a Fund changes the budget or financial plan.

(Submission of Financial Statements)

Article 79-70 (1) Within three months from the first day of the business year (excluding the business year that includes the day of establishment of a Fund),

a Fund must submit a balance sheet and profit and loss statement, an inventory of assets and business report, and a statement of accounts based on their budget classification (hereinafter collectively referred to as "Financial Statements, etc." in this Article) for the previous business year to the Prime Minister and the Minister of Finance, and obtain their approval.

- (2) When a Fund submits Financial Statements, etc. to the Prime Minister and the Minister of Finance pursuant to the provisions of the preceding paragraph, an inspector's written opinion about the Financial Statements, etc. must accompany them.
- (3) A Fund must keep the Financial Statements, etc. that have been approved by the Prime Minister and the Minister of Finance as under the provisions of paragraph (1) at its office and make them available for public inspection.

#### (Reserve Funds)

Article 79-71 (1) A Fund must lay aside all of the surplus in every business year as reserve funds.

- (2) The reserve funds referred to in the preceding paragraph may be allocated to cover any deficit carried over from the previous business year, and may be transferred to Funds for Investor Protection.
- (3) The reserve funds referred to in paragraph (1) must not be broken into other than as referred to in the preceding paragraph.

#### (Borrowing of Funds)

Article 79-72 If a Fund finds it to be necessary in order for it to perform the services set forth in Article 79-49, paragraph (1), items (i) to (iv) inclusive and item (vi), it may borrow funds (this includes refinancing) from a financial institution, etc. (meaning a bank, a Financial Instruments Business Operator, or any other person specified by Cabinet Office Ordinance or Ordinance of the Ministry of Finance) with the authorization of the Prime Minister and the Minister of Finance, within the limits of the amount specified by Cabinet Order.

#### (Restrictions on the Investment of Funds)

Article 79-73 A Fund must not invest any surplus funds that arise in the course of business or Funds for Investor Protection except in the following manners:

- (i) by holding national government bonds or other Securities designated by the Prime Minister and the Minister of Finance;
- (ii) by depositing them in a financial institution designated by the Prime Minister and the Minister of Finance; or
- (iii) in other ways specified by Cabinet Office Ordinance and Ordinance of the Ministry of Finance.

(Delegation to Cabinet Office Ordinance and Ordinance of the Ministry of Finance)

Article 79-74 Beyond what is provided for in this Act, necessary particulars relevant to the finance and accounting of a Fund are specified by Cabinet Office Ordinance and Ordinance of the Ministry of Finance.

## **Section 8 Supervision**

(Business Improvement Orders)

Article 79-75 If the Prime Minister and the Minister of Finance find it to be necessary and appropriate in the public interest or for the protection of investors, they may order a Fund to change its articles of incorporation or operational rules, or may otherwise issue it orders that are necessary from a supervisory perspective, in connection with its business. In such a case, irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, the Prime Minister and the Minister of Finance must conduct a hearing.

(Rescission of Authorization)

Article 79-76 If a Fund violates a law or regulation, a disposition by a government agency which is based on a law or regulation, or its articles of incorporation or operational rules, or if the Prime Minister and the Minister of Finance find that it will be difficult for a Fund's services to continue due to the state of its services or assets, and the Prime Minister and the Minister of Finance find it to be necessary and appropriate in the public interest or for the protection of investors, they may rescind the authorization for the incorporation of the Fund. In such a case, irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, the Prime Minister and the Minister of Finance must conduct a hearing.

(Collection of Reports and On-Site Inspections)

Article 79-77 Whenever the Prime Minister and the Minister of Finance find that it is necessary and appropriate in the public interest or for the protection of investors, they may order a Fund or a person that a Fund has entrusted with its business to submit reports or materials that should serve as a reference with regard to the business or assets of the Fund, and may have the relevant officials enter the office of a Fund or of the person that a Fund has entrusted with its business to inspect its books and documents or any other articles (but may only have the relevant officials inspect the person that a Fund has entrusted with its business as is necessary in connection with the business or



assets of the Fund).

## **Section 9 Dissolution**

(Grounds for Dissolution)

Article 79-78 (1) A Fund is dissolved for the following reasons:

- (i) general meeting resolution; or
  - (ii) the rescission of authorization for incorporation.
- (2) Dissolution on the grounds specified in item (i) of the preceding paragraph does not become effective without the authorization of the Prime Minister and the Minister of Finance.

(Appointment of a Liquidator)

Article 79-79 In the case of a dissolution under the provisions of paragraph (1), item (i) of the preceding Article, a liquidator is appointed at a general meeting. In the case of a dissolution under the provisions of item (ii) of that paragraph, a liquidator is appointed by the Prime Minister and the Minister of Finance.

(Disposal of Residual Assets)

- Article 79-80 (1) If there are residual assets after the payment of the obligations of a Fund, the liquidator, pursuant to the provisions of Cabinet Office Ordinance and Ordinance of the Ministry of Finance, must cause the residual assets to vest in each of the other Funds that the members join.
- (2) Beyond what is provided for in the preceding paragraph, required measures in connection with the dissolution of a Fund may be specified by Cabinet Order within the scope that is reasonably determined to be necessary.

## **Chapter V Financial Instruments Exchange**

### **Section 1 General Provisions**

(Licensing)

- Article 80 (1) With the exception of an Authorized Financial Instruments Firms Association, a person must not operate a Financial Instruments Market unless it is licensed by the Prime Minister.
- (2) The provisions of the preceding paragraph do not apply if a Financial Instruments Business Operator, etc. or a Financial Instruments Intermediary Service Provider conducts a purchase and sale of Securities or a Market Transaction of Derivatives (other than a transaction conducted outside a Financial Instruments Exchange Market), or intermediation, brokerage, or agency for such a transaction pursuant to the provisions of this Act.

(Application for License)

Article 81 (1) A person seeking the license referred to paragraph (1) of the preceding Article must submit a written license application to the Prime Minister, in which the person states the following particulars:

- (i) its name or trade name;
  - (ii) the location of its office, head office, branch office, or any other business office; and
  - (iii) the names of its officers, and the trade names or names of members or Trading Participants (hereinafter each such member or Trading Participant is referred to as a "Member, etc.").
- (2) The articles of incorporation, the operational rules, the brokerage contract rules, and other documents specified by Cabinet Office Ordinance must accompany the written license application referred to in the preceding paragraph.
- (3) In a case referred to in the preceding paragraph, if the articles of incorporation have been prepared as electronic or magnetic records, such electronic or magnetic records (limited to those specified by Cabinet Office Ordinance) may accompany the written license application in lieu of written documents.

(Licensing Examination Criteria)

Article 82 (1) Whenever a license application under paragraph (1) of the preceding Article is filed, the Prime Minister shall examine whether the application conforms to the following criteria:

- (i) the provisions of the articles of incorporation, the operational rules, and the brokerage contract rules conform to laws and regulations, and are sufficient for ensuring fair and smooth purchase and sales of Securities and Market Transactions of Derivatives on a Financial Instruments Exchange Market, as well as for protecting investors;
  - (ii) the license applicant has a sufficient personnel structure to run a Financial Instruments Exchange Market in an appropriate manner; or
  - (iii) the license applicant will be organized as a Financial Instruments Exchange in a manner that conforms to the provisions of this Act.
- (2) If, as a result of having conducted an examination pursuant to the provisions of the preceding paragraph, the Prime Minister finds that an application conforms to the criteria in that paragraph, the Prime Minister shall grant the license, except in a case that falls under one of the following items:
- (i) the license applicant is a person that has been sentenced to a fine (including an equivalent sentence under foreign laws and regulations) for violating the provisions of this Act or for violating the provisions of a foreign law or regulation that is equivalent to this Act, and five years have yet to pass since

the day on which that person finished serving the sentence or ceased to be subject to its enforcement;

- (ii) the license applicant is a person that has had its license rescinded pursuant to the provisions of Article 148; Article 152, paragraph (1); Article 156-17, paragraph (1) or (2); Article 148 as applied mutatis mutandis pursuant to Article 156-26; or Article 156-32, paragraph (1); has had its registration rescinded pursuant to the provisions of Article 52, paragraph (1); Article 53, paragraph (3); Article 57-6, paragraph (3); Article 66-20, paragraph (1); or Article 66-42, paragraph (1); has had its authorization rescinded pursuant to the provisions of Article 106-7, paragraph (1); Article 106-21, paragraph (1); Article 106-28, paragraph (1); or Article 156-5-9, paragraph (1); or a person that had obtained a license or registration of the same kind in a foreign state pursuant to the provisions of a foreign law or regulation that is equivalent to this Act (including permission or any other administrative disposition similar to such a license or registration), but that has had that license or registration rescinded; and five years have yet to pass since the date of the rescission;
- (iii) the license applicant has a person falling under one of the following sub-items (a) to (f) inclusive as an officer:
  - (a) a person set forth in one of Article 29-4, paragraph (1), item (ii), sub-items (a) to (i) inclusive;
  - (b) a person that, during the 30 days prior to the date of rescission, was the officer (for a Foreign Financial Instruments Exchange or a Foreign Financial Instruments Clearing Organization, this includes the domestic representative; hereinafter the same applies in sub-item(e)) of a Financial Instruments Exchange that has had its license rescinded pursuant to the provisions of Article 148 or Article 152, paragraph (1); the officer of a Financial Instruments Clearing Organization that has had its license rescinded pursuant to the provisions of Article 156-17, paragraph (1) or (2); the officer of a Securities Finance Company that has had its license rescinded pursuant to the provisions of Article 156-32, paragraph (1); the officer of a Foreign Financial Instruments Exchange that has had its authorization rescinded pursuant to the provisions of Article 155-6 or Article 155-10, paragraph (1); the officer a Foreign Financial Instruments Clearing Organization that has had its license rescinded pursuant to the provisions of Article 156-20-14, paragraph (1) or (2); or the officer of a person that had obtained a license or authorization of the same kind in a foreign state pursuant to the provisions of a foreign law or regulation that is equivalent to this Act (including permission or any other administrative disposition similar to such a license or authorization), but that has had that license or authorization rescinded; if five years have yet to pass since

- the date of the rescission;
- (c) a person that, during the 30 days prior to the date of rescission, was a Major Shareholder (meaning a Major Shareholder as prescribed in Article 106-6, paragraph (1); Article 106-20, paragraph (1); or Article 156-5-8; hereinafter the same applies in this item) that has had its authorization rescinded pursuant to the provisions of Article 106-7, paragraph (1); Article 106-21, paragraph (1); or Article 156-5-9, paragraph (1); or was the officer of a Financial Instruments Exchange Holding Company that has had its authorization rescinded pursuant to the provisions of Article 106-28, paragraph (1); if five years have yet to pass since the date of rescission;
  - (d) a person with a Major Shareholder that has had its authorization rescinded pursuant to the provisions of Article 106-7, paragraph (1); Article 106-21, paragraph (1); or Article 156-5-9, paragraph (1), if five years have yet to pass since the date of the rescission;
  - (e) an officer whose dismissal has been ordered pursuant to the provisions of Article 150; Article 152, paragraph (1); Article 155-10, paragraph (2); Article 156-14, paragraph (3); Article 156-17, paragraph (2); Article 156-20-14, paragraph (2); or Article 156-31, paragraph (3), if five years have yet to pass since the day of that disposition; or
  - (f) an officer whose dismissal has been ordered pursuant to the provisions of Article 106-28, paragraph (2), if five years have yet to pass since the day of that disposition.
- (iv) the license application or a document or electronic or magnetic record that is required to accompany it contains a false statement or false record about a material particular.

(Refusal of a License)

- Article 83 (1) If a license application under the provisions of Article 81, paragraph (1) is filed and the Prime Minister finds it inappropriate to grant that license, the Prime Minister shall notify the license applicant and have the relevant officials conduct a hearing.
- (2) Upon deciding to grant or not to grant the license under the provisions of Article 80, paragraph (1), the Prime Minister shall notify the license applicant of this in writing without delay.

(Corporations Eligible to Become Financial Instruments Exchanges)

- Article 83-2 A Financial Instruments Exchange must be a Financial Instruments Incorporated Association or a stock company with a stated capital of not less than the amount specified by Cabinet Order, and have in place the followingorgans:
- (i) a board of directors;

- (ii) a board of company auditors, a supervisory committee, or a nominating committee, etc.; and
- (iii) an accounting auditor.

(Self-Regulatory Services)

Article 84 (1) A Financial Instruments Exchange must perform Self-Regulatory Services in an appropriate manner, in accordance with this Act and with its articles of incorporation and other rules, in order to ensure the fair purchase and sale of Securities and Market Transactions of Derivatives on the Financial Instruments Exchange Market, as well as to protect investors.

(2) The term "Self-Regulatory Services" as used in the preceding paragraph means the following services conducted in respect of a Financial Instruments Exchange:

- (i) services related to the listing and delisting of Financial Instruments, Financial Indicators, and Options (hereinafter referred to as "Financial Instruments, etc." in this Chapter) (excluding those specified by Cabinet Office Ordinance);
- (ii) the investigation of Members', etc. compliance with laws and regulations, dispositions by government agencies which are based on laws and regulations, with the articles of incorporation and other rules, and with the principle of good faith in transactions; and
- (iii) other services specified by Cabinet Office Ordinance as necessary for ensuring fairness in transactions on a Financial Instruments Exchange Market.

(Entrustment of Self-Regulatory Services)

Article 85 (1) With the authorization of the Prime Minister, a Financial Instruments Exchange may entrust the whole or part of the Self-Regulatory Services of the Financial Instruments Exchange to a self-regulatory organization (meaning a corporation incorporated pursuant to the provisions of Subsection 1-2 of the following Section for the purpose of performing Self-Regulatory Services (meaning Self-Regulatory Services as prescribed in paragraph (2) of the preceding Article; hereinafter the same applies in this Chapter); hereinafter the same applies in this Chapter).

- (2) The Prime Minister may attach conditions to the authorization under the preceding paragraph.
- (3) The conditions referred to in the preceding paragraph must constitute the minimum necessary conditions in light of the purpose of the authorization, or for securing the reliable implementation of the things related to the authorization.
- (4) In addition to entrustment in a case under paragraph (1), a Financial

Instruments Exchange may entrust another person with conducting a part of the Self-Regulatory Services of the Financial Instruments Exchange (limited to services connected with a Specified Financial Instruments Exchange Market that are specified by Cabinet Office Ordinance as services which, in consideration of the contents thereof and other related factors, address matters other than those that affect the foundation of investor protection; hereinafter referred to as "Specified Services" in this Article and Article 102-19).

- (5) If a Financial Instruments Exchange seeks to entrust Specified Services pursuant to provisions of the preceding paragraph, it must take measures to ensure the proper implementation of such Specified Services, pursuant to the provisions of Cabinet Office Ordinance.
- (6) If, pursuant to the provisions of paragraph (4), a Specified Stock Company-Operated Financial Instruments Exchange (meaning a Specified Company-Operated Financial Instruments Exchange as prescribed in Article 105-4, paragraph (2); hereinafter the same applies in this paragraph) entrusts another person with its Specified Services, this must be based on the decision of the self-regulatory committee of the Specified Stock Company-Operated Financial Instruments Exchange with regard to that entrustment.

(Submission of a Written Application for Authorization)

Article 85-2 (1) A Financial Instrument Exchange seeking the authorization referred to in paragraph (1) of the preceding Article must submit a written application for authorization to the Prime Minister in which it states the following particulars:

- (i) its name;
  - (ii) the name of the self-regulatory organization it will entrust (hereinafter referred to as an "Entrusted Self-Regulatory Organization" in this Chapter);
  - (iii) a business outline of the Self-Regulatory Services it will entrust; and
  - (iv) other matters specified by Cabinet Office Ordinance.
- (2) Documents giving the details of the entrustment agreement and other documents specified by Cabinet Office Ordinance must accompany the written application for authorization referred to in the preceding paragraph.
  - (3) The provisions of Article 81, paragraph (3) apply mutatis mutandis in the case of the application for authorization referred to in paragraph (1). In this case, the phrase "the articles of incorporation" is deemed to be replaced with "documents giving the details of the entrustment agreement".

(Criteria for Authorization)

Article 85-3 Whenever an application for authorization under the provisions of paragraph (1) of the preceding Article is filed, the Prime Minister shall examine whether the application conforms to the following criteria:

- (i) the Entrusted Self-Regulatory Organization has obtained Article 102-14 authorization;
- (ii) the entrustment agreement appropriately and clearly specifies the cost calculation method under entrustment in a way that allows a self-regulatory organization to conduct the Self-Regulatory Services with which it is entrusted;
- (iii) the entrustment agreement stipulates that the Entrusted Self-Regulatory Organization will not utilize information learned in connection with the Self-Regulatory Services under entrustment for a purpose other than use in the Self-Regulatory Services for which the information is provided; and
- (iv) beyond what is provided for in the preceding three items, the content of the entrustment agreement is sufficient to ensure the proper implementation of the Self-Regulatory Services at the Entrusted Self-Regulatory Organization.

(Hearing When Authorization Is Not Granted)

- Article 85-4 (1) If an application for authorization under the provisions of Article 85-2, paragraph (1) is filed and the Prime Minister finds it inappropriate to grant that authorization, the Prime Minister shall notify the applicant for authorization and have the relevant officials conduct a hearing.
- (2) Upon deciding to grant or not to grant the authorization under the provisions of Article 85, paragraph (1), the Prime Minister shall notify the applicant for authorization of this in writing without delay.

(Trade Name or Name)

- Article 86 (1) A Financial Instruments Exchange must use the characters ""torihikijo" (meaning "exchange") in its name or trade name.
- (2) A person that is not a Financial Instruments Exchange must not use a term in its name or trade name which could give rise to the misconception that it is a Financial Instruments Exchange.

(Dispositions against Members, etc.)

- Article 87 A Financial Instruments Exchange must stipulate in its articles of incorporation that the Members, etc. are to observe laws and regulations, dispositions by government agencies which are based on laws and regulations, and the Financial Instruments Exchange's articles of incorporation, operational rules, brokerage contract rules, and other rules (hereinafter simply referred to as the "Rules" in this Article) as well as the principle of good faith in transactions, and that if a Member, etc. violates a law or regulation, a disposition by a government agency which is based on a law or regulation, or the Rules, or if it engages in an act that is contrary to the principle of good faith in transactions, the Financial Instruments Exchange will impose an

surcharge on that Member, etc., order the suspension or restriction of its purchase and sales of Securities or Market Transactions of Derivatives on the Financial Instruments Exchange Market or its entrustment with Brokerage for Clearing of Securities, etc. for such transactions, or expel it from the Financial Instruments Exchange (or rescind its trading license, if it is a Trading Participant).

(Scope of Business)

- Article 87-2 (1) A Financial Instruments Exchange may not engage in business other than the operation of Financial Instruments Exchange Markets and business incidental thereto; provided, however, that if it obtains the authorization of the Prime Minister pursuant to the provisions of Cabinet Office Ordinance, it may engage in the business of designating numbers for identifying parties to Financial Instruments Transactions (excluding transactions on Financial Instruments Exchange Markets), the business of operating a market for carrying out transactions involving Carbon Dioxide Equivalent Quotas (meaning carbon dioxide equivalent quotas as defined in Article 2, paragraph (6) of the Act on Promotion of Global Warming Countermeasures (Act No. 117 of 1998)), the business of operating the necessary market for effecting Commodity Futures Transactions (but only if this is done by a Stock Company-Operated Financial Instruments Exchange), the business of operating a market for carrying out any other transactions specified by Cabinet Office Ordinance as being similar to Financial Instruments Transactions, or business incidental thereto.
- (2) If an application is filed for the authorization referred to in the proviso to the preceding paragraph, and the Prime Minister finds that the business to which the application pertains may impair confidence in the public nature of the business of the Financial Instruments Exchange or may obstruct the operation of the Financial Instruments Exchange Markets and the sound and appropriate operation of business incidental thereto, the Prime Minister must not to grant that authorization.
- (3) The provisions of Article 30-2 apply mutatis mutandis to the authorization referred to in the proviso to paragraph (1).

(Mutatis Mutandis Application of Provisions on Hearing)

Article 87-2-2 The provisions of Article 85-4 apply mutatis mutandis to the authorization referred to in the proviso to paragraph (1) of the preceding Article.

(Scope of Subsidiary Companies)

Article 87-3 (1) A Financial Instruments Exchange must not have a company



other than one that operates a Financial Instruments Exchange Market or engages in business incidental thereto as its Subsidiary Company; provided, however, that with the authorization of the Prime Minister, it may have a company that engages business that is linked to the operation of a Financial Instruments Exchange Market, a company that is in the business of operating the necessary market for effecting Commodity Futures Transactions (including business incidental thereto; hereinafter referred to as the "Operation of a Commodity Market"), or a company that engages in business that is linked to the operation of the necessary market for effecting Commodity Futures Transactions, as its Subsidiary Company.

- (2) Notwithstanding the provisions of the preceding paragraph, a Financial Instruments Exchange Engaged in the Operation of a Commodity Market may have a company engaged in the Operation of a Commodity Market as its Subsidiary Company.
- (3) The term "Subsidiary Company" as used in the preceding two paragraphs means a company in which a corporation holds the majority of all shareholders', etc. voting rights. In such a case, a company in which a corporation and one or more of its Subsidiary Companies hold the majority of all shareholders', etc. voting rights, or in which one or more of a corporation's Subsidiary Companies hold the majority of all shareholders', etc. voting rights, is deemed to be the Subsidiary Company of that corporation.
- (4) Notwithstanding the provisions of paragraph (1), a Financial Instruments Exchange may incorporate a self-regulatory organization, with the authorization of the Prime Minister.
- (5) The provisions of Article 30-2 apply mutatis mutandis to the authorization referred to in the proviso to paragraph (1).

(Mutatis Mutandis Application of Provisions on Hearings)

Article 87-4 The provisions of Article 85-4 apply mutatis mutandis to the authorizations referred to in the proviso to paragraph (1) and paragraph (4) of the preceding Article.

(Officers)

Article 87-5 The officer of a Financial Instruments Exchange must not hold the position of officer at more than one Financial Instruments Exchange.

(Provisional Board Members and Provisional Directors)

Article 87-6 (1) If there is no one to perform the duties of board member or auditor at a Financial Instruments Incorporated Association that operates a Financial Instruments Exchange Market (hereinafter referred to as a "Incorporated Association-Operated Financial Instruments Exchange") and the

Prime Minister finds it to be necessary, the Prime Minister may appoint a provisional board member or a provisional auditor.

(2) If there is no one to perform the duties of a director (or, for a company with supervisory committee, a director that is a supervisory committee member or any other director), accounting advisor, company auditor, representative director, executive officer, or representative executive officer of a Stock Company-Operated Financial Instruments Exchange and the Prime Minister finds it to be necessary, the Prime Minister may appoint a provisional director (or, for a company with supervisory committee, a provisional director that performs the duties of a supervisory committee member or any other director; the same shall apply in paragraph (1) of the following Article), provisional accounting advisor, provisional company auditor, provisional representative director, provisional executive officer, or provisional representative executive officer.

(3) The provisions of Article 346, paragraph (2); Article 351, paragraph (2); and Article 401, paragraph (3) of the Companies Act (including as applied mutatis mutandis pursuant to Article 403, paragraph (3) and Article 420, paragraph (3) of that Act) do not apply to a Stock Company-Operated Financial Instruments Exchange.

(Registration by Request of the Prime Minister)

Article 87-7 (1) If the Prime Minister appoints a provisional director, provisional accounting advisor, provisional company auditor, provisional representative director, provisional executive officer, or provisional representative executive officer pursuant to the provisions of paragraph (2) of the preceding Article, the Prime Minister must request the registry office for the location of the head office of the Stock Company-Operated Financial Instruments Exchange, to make this registration.

(2) If the Prime Minister requests a registration pursuant to the provisions of the preceding paragraph, the request form must be accompanied by a document evidencing that the Prime Minister has reached a disposition in connection with the circumstances causing the registration.

(Duty of Confidentiality)

Article 87-8 It is prohibited for the officer (or, if the officer is a corporation, a person that performs those duties) or employee of a Financial Instruments Exchange, the board member, auditor, or employee of a self-regulatory organization, or a person that has held one of these positions, to divulge or misappropriate any secret learned in the course of duty.

(Prohibition on Differential Treatment)

Article 87-9 A Financial Instruments Exchange must not subject any particular Member, etc. or any particular Issuer of Securities to unfairly differential treatment.

**Section 2 Financial Instruments Incorporated Associations , Self-  
Regulatory Organizations, and Stock Companies That Operate  
Financial Instruments Exchange Markets  
Subsection 1 Financial Instruments Incorporated Association  
Division 1 Incorporation**

(Legal Personality)

Article 88 (1) Financial Instruments Incorporated Association is a juridical person.

- (2) A Financial Instruments Incorporated Association must use the characters "kaiinsei hojn" (meaning " corporation consisting of its members") in its name.
- (3) A person that is not a Financial Instruments Incorporated Association must not use a term in its name which could give rise to the misconception that it is a Financial Instruments Incorporated Association .

(Founders)

- Article 88-2 (1) It is prohibited for a person other than a Financial Instruments Business Operator, etc. to incorporate a Financial Instruments Incorporated Association.
- (2) For a Financial Instruments Incorporated Association to be incorporated, the Financial Instruments Business Operators, etc. that seek to become its members must become the founders.

(Articles of Incorporation)

- Article 88-3 (1) In order for a Financial Instruments Incorporated Association to be incorporated, the founders must prepare articles of incorporation, and all founders must sign or have their names and seals affixed thereto.
- (2) The following particulars must be stated or recorded in the articles of incorporation of a Financial Instruments Incorporated Association:
    - (i) its purpose;
    - (ii) its name;
    - (iii) the location of its offices;
    - (iv) the particulars of funds and contribution;
    - (v) the particulars of its Members, etc.;
    - (vi) the particulars of investigations into Members', etc. compliance with laws and regulations, dispositions by government agencies which are based on laws and regulations, the articles of incorporation and other rules, and the

- principle of good faith in their transactions;
  - (vii) the particulars of its guarantee funds;
  - (viii) the particulars of its allocation of costs;
  - (ix) the particulars of its officers;
  - (x) the particulars of its meetings;
  - (xi) the particulars of the execution of business;
  - (xii) the particulars of the preparation of rules;
  - (xiii) the particulars of the Financial Instruments Exchange Markets;
  - (xiv) the particulars of its accounting; and
  - (xv) the means of public notice (meaning the means by which the Financial Instruments Incorporated Association makes its public notices (excluding public notices that, pursuant to the provisions of this Act, must be made by means of publication in the Official Gazette); the same applies in Article 89-2, paragraph (2), item (ix)).
- (3) The provisions of Article 30, paragraph (1) of the Companies Act apply mutatis mutandis to the articles of incorporation provided for in paragraph (1).

#### (Organizational Meetings)

- Article 88-4 (1) After preparing the articles of incorporation, the founders shall solicit persons seeking to become members, and hold an organizational meeting, giving public notice of those articles of incorporation, together with the date, time, and place of the meeting, by two weeks prior to the day of the meeting.
- (2) A person planning to become a member of a Financial Instruments Incorporated Association whose incorporation is planned (hereinafter referred to as the "Expected Member" in this Article, the following Article and Article 88-6) must pay the full amount of the contribution before the opening of the organizational meeting.
- (3) Approval of the articles of incorporation and decisions about matters that are otherwise necessary for incorporation must be effected by organizational meeting resolution.
- (4) The articles of incorporation may be revised at an organizational meeting.
- (5) The items of organizational meeting business that are referred to in paragraph (3) are decided with at least a two-thirds majority of the votes of the attendees, at a meeting where at least half of the Expected Members that have paid the full amount of the contribution by the opening of said meeting, are present.
- (6) An Expected Member that does not pay the full amount of the contribution by the time of the establishment of a Financial Instruments Incorporated Association is deemed to have rescinded its application for membership at the time of the establishment of the Financial Instruments Incorporated Association.

(Voting Rights of Expected Members)

Article 88-5 (1) At an organizational meeting, each of the Expected Members holds an equal voting right.

(2) An Expected Member that is not present at an organizational meeting may vote in writing or by proxy.

(3) The provisions of the preceding two paragraphs do not apply if it is otherwise provided for in the articles of incorporation.

(When an Expected Member Has No Voting Right)

Article 88-6 If an organizational meeting resolution concerns the relationship between a Financial Instruments Incorporated Association and a specific Expected Member, that Expected Member has no voting right.

(The Handing Over of Administrative Affairs to the President)

Article 88-7 The founders must hand over administrative affairs to the person becoming the president without delay after completion of its organizational meetings.

(Changing the Articles of Incorporation)

Article 88-8 The articles of incorporation may be changed only with the consent of at least three-fourths of all members; provided, however, that this does not apply if it is otherwise provided for in the articles of incorporation.

(Capacity in Respect of Tortious Acts)

Article 88-9 A Financial Instruments Incorporated Association is liable to compensate for any damage that its president or board members cause another person in the performance of their duties.

(Address)

Article 88-10 The address of a Financial Instruments Incorporated Association is the address at which its principal office is located.

(Inventory of Assets and Directory of Members)

Article 88-11 (1) A Financial Instruments Incorporated Association shall prepare an inventory of assets at the time of incorporation and at any time between January and March of every year, and shall keep this at its principal office at all times; provided, however, that a Financial Instruments Incorporated Association that has adopted any specific business year shall prepare the inventory of assets at the time of its incorporation and at the end of every business year.

(2) A Financial Instruments Incorporated Association shall keep a directory of members and make the necessary changes whenever there is a change in the members.

(Restrictions on Board Members' Authority of Representation)

Article 88-12 Restrictions on the president's or a board member's authority of representation may not be asserted against a third party without knowledge of such limitations.

(Acts in Conflict of Interest)

Article 88-13 The president and board members have no authority of representation with regard to a matter that constitutes a conflict of interest between the Financial Instruments Incorporated Association and the president or board member. In such a case, the court must appoint a special agent, at the request of an interested party or the public prosecutor.

(Ordinary General Meetings)

Article 88-14 The board members of a Financial Instruments Incorporated Association must hold an ordinary general meeting of members at least once a year.

(Extraordinary General Meetings)

Article 88-15 (1) The board members of a Financial Instruments Incorporated Association may call an extraordinary general meeting whenever they find this to be necessary.

(2) If at least one-fifth of all members specify the purpose of a general meeting and demand that one be called, the board members must call an extraordinary general meeting; provided, however, that a proportion other than one-fifth of the members may be stipulated in the articles of incorporation.

(The Calling of a General Meeting)

Article 88-16 A convocation notice for a general meeting must specify the purpose of the general meeting, and must be issued as specified by the articles of incorporation at least five days prior to the day of the meeting.

(Execution of Administrative Functions)

Article 88-17 All administrative functions of a Financial Instruments Incorporated Association are carried out based on general meeting resolutions, except those delegated to the board members or other officers by the articles of incorporation.

(Matters for a General Meeting Resolution)

Article 88-18 At a general meeting, only matters of which advance notice is given pursuant to the provisions of Article 88-16 may be put to a resolution; provided, however, that, this does not apply if it is otherwise provided for in the articles of incorporation.

(Voting Rights of Members)

Article 88-19 (1) Each of the members holds an equal voting right.

(2) A member that is not present at a general meeting may vote in writing or by proxy.

(3) The provisions of the preceding two paragraphs do not apply if it is otherwise provided for in the articles of incorporation.

(When a Member Has No Voting Right)

Article 88-20 If a resolution concerns the relationship between a Financial Instruments Incorporated Association and a specific member, that member has no voting right.

(Jurisdiction over the Appointment of a Special Agent)

Article 88-21 The appointment of a special agent falls under the jurisdiction of the district court for the relevant Financial Instruments Incorporated Association's principal office location.

(Mutatis Mutandis Application of the Companies Act)

Article 88-22 The provisions of Article 828, paragraph (1) of the Companies Act (limited to the part that involves item (i)) and of Article 828, paragraph (2) (limited to the part that involves item (i)); Article 834 (limited to the part that involves item (i)); Article 835, paragraph (1); Article 836, paragraphs (1) and (3); Articles 837 to 839 inclusive; and Article 846 of that Act apply mutatis mutandis to an action to invalidate the incorporation of a Financial Instruments Incorporated Association. In this case, in Article 828, paragraph (2), item (i) of that Act, the phrase "a Shareholder, etc. (meaning a shareholder, director or liquidator (or, for a Company with Company Auditors, it means a shareholder, director, company auditor or liquidator; and for a company with nominating committee, etc., it means a shareholder, director, executive officer, or liquidator); hereinafter the same applies in this Section) of the incorporated Stock Company or a Partner, etc. (meaning a partner or liquidator; hereinafter the same applies in this paragraph) of the incorporated membership Company" is deemed to be replaced with "the members, the president and board members, the auditors, or the liquidators", and any other necessary technical replacement of terms is specified by Cabinet Order.

## **Division 2 Registration**

### **(Establishment)**

Article 89 (1) A Financial Instruments Incorporated Association is established by a registration of incorporation being recorded in connection with the location of its principal office.

(2) Except in a case prescribed in the preceding paragraph, the particulars that are required to be registered pursuant to the provisions of this Act may not be asserted against a third party until after their registration.

### **(Registration)**

Article 89-2 (1) A registration of incorporation must be recorded for a Financial Instruments Incorporated Association in connection with the location of its principal office and within two weeks from the final day of its organizational meetings.

(2) The following particulars must be stated in the registration referred to in the preceding paragraph:

- (i) purposes;
- (ii) name;
- (iii) office address;
- (iv) duration of operation and grounds for dissolution, if specified;
- (v) funds and amount of contributions paid in;
- (vi) unit amount of contributions and method of payment;
- (vii) name, address, and qualifications of the person with the authority of representation;
- (viii) provisions on the scope and limitation of the authority of representation, if any; and
- (ix) means of public notice.

### **(Registration in Connection with a Secondary Office Location)**

Article 89-3 (1) In a case set forth in one of the following items (unless the secondary office set forth in the relevant item is located within the jurisdictional district of the registry office that has jurisdiction over the principal office location), a registration connected with the location of the secondary office location must be recorded in connection with the location of that secondary office within the period prescribed in said item:

- (i) if the secondary office is established upon the incorporation of the Financial Instruments Incorporated Association: within two weeks from the day on which the registration of incorporation was made for the principal office; and
- (ii) if the secondary office is established after the incorporation of the Financial



Instruments Incorporated Association: within three weeks from the day on which the secondary office is established.

- (2) The following particulars must be recorded for a registration connected with a secondary office location; provided, however, that if a secondary office is being newly established within the jurisdictional district of a registry office that has jurisdiction over an existing secondary office location, it is sufficient for the particulars specified in item (iii) to be registered:
- (i) name;
  - (ii) address of the principal office; and
  - (iii) addresses of secondary offices (limited to secondary offices located in the jurisdictional district of the registry office that has jurisdiction over the secondary office location in question).
- (3) If there is a change in a particular set forth in one of the items of the preceding paragraph, the Financial Instruments Incorporated Association must make a change to the registration in connection with the secondary office location within three weeks.

(Registration of the Relocation of an Office)

Article 89-4 (1) If a Financial Instruments Incorporated Association relocates its principal office to the jurisdictional district of any other registry office, it must register the relocation in connection with its former location, and register the particulars set forth in the items of Article 89-2, paragraph (2) in connection with its new location, within two weeks.

- (2) If a Financial Instruments Incorporated Association relocates a secondary office to the jurisdictional district of any other registry office, it must register the relocation in connection with its former location (unless this is within the jurisdictional district of the registry office with jurisdiction over the principal office location) within three weeks, and must register the particulars set forth in the items of paragraph (2) of the preceding Article in connection with its new location (unless this is within the jurisdictional district of the registry office with jurisdiction over the principal office location; hereinafter the same applies in this Article) within four weeks; provided, however, that if the Financial Instruments Incorporated Association newly relocates a secondary office into the jurisdiction of a registry office that has jurisdiction over an existing secondary office location, it is sufficient that it register the particulars specified in item (iii) of that paragraph, in connection with its new location.

(Registration of a Change)

Article 89-5 (1) If there is a change in the particulars set forth in one of the items of Article 89-2, paragraph (2), a Financial Instruments Incorporated Association must register the change in connection with its principal office

location within two weeks.

- (2) A document certifying a change in a particular set forth in the items of Article 89-2, paragraph (2) must accompany a written application to register a change in that particular.

(Registration of a Provisional Disposition Suspending Persons from Discharging Their Duties)

Article 89-6 If an order for a provisional disposition is issued suspending the president of a Financial Instruments Incorporated Association or a board member that represents it from discharging their duties or appointing a person to act in their stead in the performance of those duties, or if a decision is reached that changes or rescinds such an order of provisional disposition, the Financial Instruments Incorporated Association must register this in the in connection with the principal office location.

(Jurisdiction for Registrations)

Article 89-7 (1) The legal affairs bureau or district legal affairs bureau or the branch office or sub-branch office of that bureau (hereinafter simply referred to as the "Registry Office") that has jurisdiction over the office location of a Financial Instruments Incorporated Association is the competent Registry Office for the registration of the Financial Instruments Incorporated Association.

- (2) A Financial Instruments Incorporated Associations register is kept at the Registry Office.

(Application for a Registration of Incorporation)

Article 89-8 (1) A registration of incorporation is made for a Financial Instruments Incorporated Association at the application of the person that is to represent the Financial Instruments Incorporated Association.

- (2) The articles of incorporation and documents evidencing the payment of the contribution and qualifications of the person with the authority of representation must accompany the Financial Instruments Incorporated Association's written application for a registration of incorporation.

(Mutatis Mutandis Application of the Commercial Registration Act)

Article 90 The provisions of Articles 2 to 5 inclusive of the Commercial Registration Act (Act No. 125 of 1963) and Articles 7 to 15 inclusive; Articles 17 to 23-2 inclusive; Article 24 (excluding items (xv) and (xvi)); Articles 25 to 27 inclusive; Article 47, paragraph (1); Articles 48 to 53 inclusive; and Articles 132 to 148 inclusive of that Act apply mutatis mutandis to a registration involving a Financial Instruments Incorporated Association. In this case, in

Article 17, paragraph (2), item (i) of that Act, the phrase "trade name and the head office" is deemed to be replaced with "name and the principal office"; in Article 48, Article 49, paragraph (1), Article 50, paragraphs (2) and (4), and Article 138, paragraphs (1) and (2) of that Act, the term "branch office" is deemed to be replaced with "secondary office"; in Article 17, paragraph (3) and Article 20, paragraph (3) of that Act, the phrase "the branch office of the company" is deemed to be replaced with "the secondary office of the Financial Instruments Incorporated Association"; in Article 25, paragraph (3), Article 48, paragraph (1), Article 49, paragraphs (1) and (3), Article 50, paragraphs (1) to (3) inclusive, Article 51, paragraph (1), Article 53, and Article 138, paragraph (1) of that Act, the term "head office" is deemed to be replaced with "principal office"; in Article 48, paragraph (2) of that Act, the phrase "the respective item of Article 930, paragraph (2) of the Companies Act" is deemed to be replaced with "the relevant item of Article 89-2, paragraph (2) of the Financial Instruments and Exchange Act"; and any other necessary technical replacement of terms is specified by Cabinet Order.

### **Division 3 Members**

(Eligibility for Membership)

Article 91 Membership in a Financial Instruments Incorporated Association is limited to Financial Instruments Business Operators, etc.

(Contribution and Liability)

Article 92 (1) A member must make a contribution pursuant to the provisions of the articles of incorporation.

(2) In addition to a member's liability to a Financial Instruments Incorporated Association being limited to the expenses prescribed in its articles of incorporation and the burden of any damage that member has caused the Financial Instruments Incorporated Association, a member's liability to a Financial Instruments Incorporated Association is limited to the amount of its contribution.

(Transfer of Equity)

Article 93 A member may transfer its equity only if, pursuant to the provisions of the articles of incorporation, that member seeks to withdraw its membership with the approval of the Financial Instruments Incorporated Association.

(Voluntary Withdrawal)

Article 94 A member may withdraw its membership with the approval of the Financial Instruments Incorporated Association, pursuant to the provisions of

the articles of incorporation.

(Statutory Withdrawal)

Article 95 In addition to withdrawal in the case referred to in the preceding Article, the membership of a member is withdrawn for the following reasons:

- (i) the member comes to no longer fall under the category of a Financial Instruments Business Operator, etc.;
- (ii) dissolution; or
- (iii) expulsion.

(Refund of Equity)

Article 96 If a member withdraws its membership, the Financial Instruments Incorporated Association must refund the member's equity, pursuant to the provisions of the articles of corporation.

#### **Division 4 Administration**

(Restriction on Business)

Article 97 A Financial Instruments Incorporated Association must not conduct business for a profit.

(Appointment of Officers)

- Article 98 (1) A Financial Instruments Incorporated Association has one president, two or more board members, and two or more inspectors as its officers.
- (2) The members elect the board members and inspectors, with the exception of the board members appointed pursuant to the following paragraph, pursuant to the provisions of the articles of incorporation, and the board members (other than board members appointed pursuant to that paragraph) elect the president pursuant to the provisions of the articles of incorporation.
  - (3) If there are special provisions in the articles of incorporation, the president appoints the number of board members specified by the articles of incorporation, with the consent of a majority of the board members.
  - (4) A person that falls under one of the categories of persons prescribed in Article 29-4, paragraph (1), item (ii), sub-items (a) to (i) inclusive of this Act or Article 331, paragraph (1), item (iii) of the Companies Act may not become an officer.
  - (5) An officer loses the position of officer upon coming to fall under the category of a person provided for in the preceding paragraph.

(Duties of the Officers)

Article 99 (1) A president represents a Financial Instruments Incorporated

Association and presides over its affairs.

- (2) A board member, pursuant to the provisions of the articles of incorporation, represents a Financial Instruments Incorporated Association, assists the president in administering the affairs of the Financial Instruments Incorporated Association, acts as a proxy in handling the duties of the president if the president is unable to attend to them, and performs the duties of the president if the position is vacant.
- (3) An inspector examines the affairs of a Financial Instruments Incorporated Association.

### **Division 5 Dissolution**

(Grounds for Dissolution)

Article 100 (1) A Financial Instruments Incorporated Association is dissolved for the following reasons:

- (i) the occurrence of a cause for dissolution provided for in the articles of incorporation;
  - (ii) a general meeting resolution;
  - (iii) a merger (but only if the Financial Instruments Incorporated Association disappears as the result of the merger);
  - (iv) the number of members falls to five or below;
  - (v) an order to commence bankruptcy proceedings;
  - (vi) failure to file a license application under the provisions of Article 81, paragraph (1) within six months from the day of establishment;
  - (vii) the decision of the Prime Minister not to grant the license referred to in Article 80, paragraph (1); or
  - (viii) the rescission or expiration of the license referred to in Article 80, paragraph (1).
- (2) A Financial Instruments Incorporated Association may not adopt a resolution to dissolve without the affirmative votes of three-fourths or more of all members; provided, however, that this does not apply if it is otherwise provided for in the articles of incorporation.

(Distribution of Residual Assets)

Article 100-2 The residual assets in the case of the dissolution of a Financial Instruments Incorporated Association must be distributed equally among its members, unless otherwise stipulated by the articles of incorporation or general meeting resolution.

(Period for the Registration of a Dissolution)

Article 100-3 If a Financial Instruments Incorporated Association is dissolved

pursuant to the provisions of Article 100, paragraph (1) (excluding items (iii) and (v)), the dissolution must be registered in connection with its principal office location within two weeks.

(Registration of the Completion of Liquidation)

Article 100-4 Once the liquidation of a Financial Instruments Incorporated Association is complete, the completion of liquidation must be registered in connection with the principal office location within two weeks, and in connection with secondary office locations within three weeks, from the time at which the approval under Article 507, paragraph (3) of the Companies Act as applied mutatis mutandis pursuant to Article 100-17, paragraph (1) is obtained.

(Accompanying Documents for a Written Application for the Registration of a Dissolution)

Article 100-5 (1) A document evidencing the reason for dissolution must accompany an application to register the dissolution of a Mutually Owned Financial Instruments Corporation, and if the president or the board member representing the Financial Instruments Incorporated Association is not the liquidator, a document evidencing that the liquidator is the one representing the Financial Instruments Incorporated Association must accompany that application, as well.

(2) If a Financial Instruments Incorporated Association is dissolved due to a disposition rescinding the license referred to in Article 80, paragraph (1), the registration of the dissolution is made at the request of the Prime Minister.

(Accompanying Documents for a Written Application for the Registration of the Completion of Liquidation)

Article 100-6 A document evidencing that the liquidator has obtained the approval referred to in Article 507, paragraph (3) of the Companies Act as applied mutatis mutandis pursuant to Article 100-17, paragraph (1) must accompany the written application for the registration under the provisions of Article 100-4.

(Commencement of Bankruptcy Proceedings)

Article 100-7 (1) If a Financial Instruments Incorporated Association is unable to pay its debts in full out of its assets, the court, at the petition of the president and the board members or of the creditors, or by its own authority, issues an order to commence bankruptcy proceedings.

(2) In a case provided for in the preceding paragraph, the president and the board members must immediately file a petition to commence bankruptcy proceedings.

(Financial Instruments Incorporated Associations in Liquidation)

Article 100-8 A dissolved Financial Instruments Incorporated Association is deemed to still exist inasmuch as the task of liquidation is concerned, until the completion of liquidation.

(Appointment of a Liquidator by the Court)

Article 100-9 If there is no person that becomes the liquidator pursuant to the provisions of Article 647, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to Article 100-17, paragraph (1), or if any damage is likely to occur due to the position of liquidator being vacant, the court may appoint a liquidator at the request of any interested person or the public prosecutor, or by its own authority.

(Dismissal of Liquidators)

Article 100-10 At the request of an interested person or the public prosecutor or by its own authority, the court may dismiss the liquidator if there are material grounds for it to do so.

(Duties and Authority of a Liquidator)

Article 100-11 (1) The duties of a liquidator are as follows:

- (i) conclusion of current business;
- (ii) collection of debts and performance of obligations; and
- (iii) delivery of residual assets.

(2) A liquidator may undertake any and all acts that are necessary for performing the duties prescribed in the items of the preceding paragraph.

(Demanding the Filing of Claims)

Article 100-12 (1) Within two months from the day on which a liquidator begins to act as liquidator, the liquidator must issue a demand for the creditors to file their claims within a specified period, issuing public notice of this on at least three occasions. In this, the period may not be less than two months.

(2) The public notice referred to in the preceding paragraph must include a supplementary note indicating that if a creditor does not submit a claim within the relevant period, its claim will be excluded from the liquidation process; provided, however, that the liquidator may not exclude any known creditor.

(3) The liquidator must issue an individual demand to each known creditor requiring that creditor to file its claim.

(4) The public notice under paragraph (1) is made through publication in the Official Gazette.

(Filing of a Claim After a Lapse of Period)

Article 100-13 A creditor that submits its claim after the lapse of the period referred to in paragraph (1) of the preceding Article may only make a claim against assets which, after all debts of the Financial Instruments Incorporated Association have been fully paid, have not yet been delivered to the person with vested rights.

(Commencement of Bankruptcy Proceedings for a Financial Instruments Incorporated Associations in Liquidation)

Article 100-14 (1) If it becomes apparent during the liquidation process that the assets of a Financial Instruments Incorporated Association are not sufficient to fully pay its debts, the liquidator must immediately file a petition to commence bankruptcy proceedings, and make public notice indicating this.

(2) If a Financial Instruments Incorporated Association in liquidation becomes subject to an order to commence bankruptcy proceedings, once the administration of the relevant procedures is transferred to the bankruptcy trustee the liquidator's duties are complete.

(3) In the case provided for in the preceding paragraph, if a Financial Instruments Incorporated Association in liquidation has already paid money to a creditor or delivered an asset to the person with vested rights, the bankruptcy trustee may retrieve such money or asset.

(4) The public notice under the provisions of paragraph (1) is made through publication in the Official Gazette.

(Supervision by the Court)

Article 100-15 (1) The dissolution and liquidation of a Financial Instruments Incorporated Association is subject to the supervision of the court.

(2) The court, by its own authority, may conduct any examination that is necessary for the supervision referred to in the preceding paragraph, at any time.

(Notification of the Completion of Liquidation)

Article 100-16 When the liquidation process has been completed, the liquidator must notify the Prime Minister of this.

(Mutatis Mutandis Application of the Companies Act)

Article 100-17 (1) The provisions of Article 492, paragraphs (1) and (3) of the Companies Act and Article 507 (excluding paragraph (2)); Article 644 (excluding item (iii)); Article 647, paragraphs (1) and (4); Article 650, paragraph (2); Article 655, paragraphs (1) to (5) inclusive; and Articles 662 to 664 inclusive of that Act apply mutatis mutandis to the dissolution and



liquidation of a Financial Instruments Incorporated Association. In this case, in Article 492, paragraph (1) of that Act, the phrase "Liquidators (or, for Companies with Board of liquidators, liquidators set forth in each item of paragraph (7) of Article 489)" is deemed to be replaced with "A liquidator"; in that paragraph and Article 507, paragraph (1) of that Act, the term "Ordinance of the Ministry of Justice" is deemed to be replaced with "Cabinet Office Ordinance"; in Article 492, paragraph (3) and Article 507, paragraph (3) of that Act, the term "shareholders meeting" is deemed to be replaced with "general meeting"; in Article 644, item (i) of that Act, the phrase "item (v) of Article 641" is deemed to be replaced with "Article 100, paragraph (1), item (iii) of the Financial Instruments and Exchange Act"; in Article 647, paragraph (1), item (i) of that Act, the phrase "A partner that executes the operations" is deemed to be replaced with "A president and a board member"; in item (iii) of that paragraph, the phrase "prescribed by the consent of a majority of partners (or, if partners that execute the operations are provided for in the articles of incorporation, those partners)" is deemed to be replaced with "appointed by general meeting resolution"; in Article 655, paragraph (3) of that Act, the phrase "from among themselves" is deemed to be replaced with "from among themselves or based on a general meeting resolution"; in paragraph (4) of that Article, the phrase "partners that execute the operations" is deemed to be replaced with "president or board members", the phrase "if the partners that represent the Membership Company are already prescribed" is deemed to be replaced with "if the president or the board members that represent the Mutually Owned Company are already prescribed in the articles of incorporation", and the phrase "such partners that represent" is deemed to be replaced with "such president or board member (excluding president or board member whose authority of representation is limited by the articles of incorporation) that represent"; and any other necessary technical replacement of terms is specified by Cabinet Order.

- (2) The provisions of Article 868, paragraph (1) of the Companies Act; Article 871; Article 874 (limited to the part that involves item (i)); Article 875; and Article 876 of that Act apply mutatis mutandis to the liquidation of a Financial Instruments Incorporated Association. The necessary technical replacement of terms for such a case is specified by Cabinet Order.

#### (Jurisdiction Over a Case Involving a Liquidator)

Article 100-18 The district court for the principal office location of a Financial Instruments Incorporated Association has jurisdiction over a case that involves the liquidator of that Financial Instruments Incorporated Association.

#### (Appeal on Judicial Decision for Appointment of Liquidators)

Article 100-19 A judicial decision appointing the liquidator of a Financial Instruments Incorporated Association may not be appealed.

(Remuneration of Liquidators)

Article 100-20 If the court appoints a liquidator for a Financial Instruments Incorporated Association pursuant to the provisions of Article 100-9, it may order the Financial Instruments Incorporated Association to pay the liquidator remuneration. The amount of remuneration paid to a liquidator is determined by the court, after hearing the statement of that liquidator and of an auditor.

(Dismissal of the Liquidator)

Article 100-21 An immediate appeal may be filed against a judicial decision dismissing the liquidator of a Financial Instruments Incorporated Association and against a judicial decision under the provisions of the preceding Article.

(Appointment of an Examiner)

Article 100-22 (1) The court may appoint an examiner to conduct the examinations that are necessary for supervising the dissolution and liquidation of a Financial Instruments Incorporated Association.

(2) The provisions of the preceding three Articles apply mutatis mutandis if the court appoints an examiner pursuant to the provisions of the preceding paragraph.

(Court Request for Investigation)

Article 100-23 (1) The court supervising the dissolution and liquidation of a Financial Instruments Incorporated Association may seek the opinion of, or commission an investigation by, the Prime Minister.

(2) The Prime Minister may state an opinion to the court prescribed in the preceding paragraph.

(Liquidators' Capacity in Respect of Tortious Acts)

Article 100-24 The provisions of Article 88-9 and Articles 88-12 to 88-15 inclusive apply mutatis mutandis when a liquidator performs liquidation duties.

(Mutatis Mutandis Application of the Commercial Registration Act)

Article 100-25 The provisions of Article 71, paragraph (1) of the Commercial Registration Act apply mutatis mutandis to registration of the dissolution of a Financial Instruments Incorporated Association under this Act.

## **Division 6 Organizational Conversion**

(Organizational Conversion from an Incorporated Association-Operated Financial Instruments Exchange to a Stock Company-Operated Financial Instruments Exchange)

Article 101 An Incorporated Association-Operated Financial Instruments Exchange may become a Stock Company-Operated Financial Instruments Exchange through an organizational conversion.

(Organizational Conversion Plan)

Article 101-2 (1) In order to implement the organizational conversion referred to in the preceding Article (hereinafter referred to as an "Organizational Conversion" in this Division), an Incorporated Association-Operated Financial Instruments Exchange must prepare an Organizational Conversion plan and have it approved by general meeting resolution.

(2) An Incorporated Association-Operated Financial Instruments Exchange may not adopt a resolution for an Organizational Conversion without the affirmative votes of three-fourths or more of all the members; provided, however, that this does not apply if otherwise provided for in the articles of incorporation.

(3) To call the general meeting referred to in paragraph (1), an outline of the Organizational Conversion plan and the articles of incorporation of the stock company after the Organizational Conversion (hereinafter referred to as the "Stock Company-Operated Financial Instruments Exchange after Organizational Conversion" in this Division), must be presented by at least five days prior to the day of the meeting, in addition to the purpose of the meeting.

(4) If an Incorporated Association-Operated Financial Instruments Exchange implements an Organizational Conversion, that Incorporated Association-Operated Financial Instruments Exchange must provide for the following matters in the Organizational Conversion plan:

(i) the purpose, trade name, location of the head office, and total number of authorized shares in the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion;

(ii) matters beyond those set forth in the preceding item, which are specified by the articles of incorporation of the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion;

(iii) the names of directors and name of the accounting auditor of the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion;

(iv) the particulars specified in the relevant of the following sub-items (a) and (b) for the category of cases set forth in that sub-item:

(a) if the Stock Company-Operated Financial Instruments Exchange after

- Organizational Conversion will be a company with accounting advisors: the names of the accounting advisors of the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion; or
- (b) if the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion will be a company with company auditors: the names of the company auditors of the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion.
- (v) the number of shares in the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion which the members of the Incorporated Association-Operated Financial Instruments Exchange implementing the Organizational Conversion will acquire upon Organizational Conversion (if the Stock Company-Operated Financial Instruments Exchange after the Organizational Conversion will be a company with class shares, the classes of shares and the number of shares in each class) or the method of calculating it;
- (vi) the particulars of the allotment of the shares referred to in the preceding item to members of the Incorporated Association-Operated Financial Instruments Exchange implementing the Organizational Conversion;
- (vii) if the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion, upon implementation of the Organizational Conversion, will deliver money to the members of then Incorporated Association-Operated Financial Instruments Exchange implementing the Organizational Conversion, the amount of money or the method of calculating it;
- (viii) in the case prescribed in the preceding item, the particulars of the allotment of the money referred to in that item to the members of the Incorporated Association-Operated Financial Instruments Exchange implementing the Organizational Conversion;
- (ix) the particulars of the amount of stated capital and reserve funds of the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion; and
- (x) the day on which the Organizational Conversion will become effective (hereinafter referred to as the "Effective Date" in this Division), and other matters specified by Cabinet Office Ordinance.
- (5) If the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion is a company with supervisory committee, the matters set forth in item (iii) of the preceding paragraph (limited to the names of directors of the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion) must be provided separately with regard to directors that are to be supervisory committee members and any other directors.

(The Keeping and Inspection of Organizational Conversion Plan Documents)

Article 101-3 (1) During the period from five days prior to the day of the general meeting set referred to in paragraph (1) of the preceding Article until the day immediately before the Effective Date, an Incorporated Association-Operated Financial Instruments Exchange implementing an Organizational Conversion shall keep the documents or electronic or magnetic records that state or contain a record of the particulars of the Organizational Conversion plan and other particulars specified by Cabinet Office Ordinance, at its principal office.

(2) The member or creditor of a Incorporated Association-Operated Financial Instruments Exchange implementing an Organizational Conversion may make the following requests of the Incorporated Association-Operated Financial Instruments Exchange at any time during its business hours; provided, however, that in making the request set forth in item (ii) or (iv), the member or creditor must pay the cost determined by the Incorporated Association-Operated Financial Instruments Exchange:

- (i) a request to inspect a document referred to in the preceding paragraph;
- (ii) a request to be issued a certified copy or extract of a document set forth in the preceding paragraph;
- (iii) a request to inspect something that shows the particulars that have been recorded in the electronic or magnetic records referred to in the preceding paragraph, through a means specified by Cabinet Office Ordinance; and
- (iv) a request to be provided with the particulars that have been recorded in the electronic or magnetic records referred to in the preceding paragraph by an electronic or magnetic means specified by Cabinet Office Ordinance, or a request to be issued a document that states those particulars.

(Objection by the Creditors)

Article 101-4 (1) The creditor of a Incorporated Association-Operated Financial Instruments Exchange implementing an Organizational Conversion may state an objection to the Incorporated Association-Operated Financial Instruments Exchange with regard to the Organizational Conversion.

(2) A Incorporated Association-Operated Financial Instruments Exchange implementing an Organizational Conversion shall issue public notice of the following particulars in the Official Gazette, and shall issue a notice of those particulars to its known creditors individually; provided, however, that the period set forth in item (ii) may not be less than one month:

- (i) that an Organizational Conversion will be implemented; and
- (ii) that a creditor may state an objection within a specified period.

(3) If a creditor does not state an objection within the period set forth in item (ii) of the preceding paragraph, the creditor is deemed to accept the Organizational

Conversion.

- (4) If a creditor states an objection within the period referred to in paragraph (2), item (ii), the Incorporated Association-Operated Financial Instruments Exchange implementing the Organizational Conversion shall pay its debt or provide commensurate collateral to the creditor, or shall deposit commensurate property with a trust company, etc. for the purpose of allowing that creditor to receive payment for the debt; provided, however, that this does not apply if the Organizational Conversion is unlikely to be detrimental to the creditor.

(The Keeping and Inspection of Documents on the Progress of the Organizational Conversion Process)

Article 101-5 (1) During the six-month period beginning from the Effective Date, a Post-Organizational-Conversion Financial Instruments Exchange shall keep the documents or electronic or magnetic records set forth in Article 101-3, paragraph (1), and the documents or electronic or magnetic records that state or contain a record of the progress of the process under the preceding Article and other particulars specified by Cabinet Office Ordinance as pertinent to the Organizational Conversion, at its head office.

- (2) The shareholder or creditor of a Stock Company-Operated Financial Instruments Exchange after an Organizational Conversion may make the following requests of the Stock Company-Operated Financial Instruments Exchange after the Organizational Conversion at any time during its business hours; provided, however, that in making the request set forth in item (ii) or (iv), the shareholder or creditor must pay the cost determined by the a Incorporated Association-Operated Financial Instruments Exchange after the Organizational Conversion:

- (i) a request to inspect the documents referred to in the preceding paragraph;
- (ii) a request to be issued a certified copy or extract of the documents referred to in the preceding paragraph;
- (iii) a request to inspect something that shows the particulars recorded in the electronic or magnetic records referred to in the preceding paragraph, through a means specified by Cabinet Office Ordinance; and
- (iv) a request to be provided with the particulars that have been recorded in the electronic or magnetic records referred to in the preceding paragraph by an electronic or magnetic means specified by Cabinet Office Ordinance, or a request to be issued a document that states those particulars.

(Allotment of Shares to the Members)

Article 101-6 (1) The member of a Incorporated Association-Operated Financial Instruments Exchange is to be allotted shares in the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion or is to be

allotted money, in accordance with the Organizational Conversion plan.

- (2) The provisions of Article 234, paragraph (1) of the Companies Act (excluding the items) and paragraphs (2) to (5) inclusive of that Article; Article 868, paragraph (1), Article 869; Article 871; Article 874 (limited to the part that involves item (iv)); Article 875; and Article 876 of that Act apply mutatis mutandis if shares or money are allotted to a member pursuant to the provisions of the preceding paragraph. The necessary technical replacement of terms for such a case is specified by Cabinet Order.

(Amount Required to Be Reported as Stated Capital)

Article 101-7 The amount that is required to be reported as the stated capital of a Stock Company-Operated Financial Instruments Exchange after Organizational Conversion is specified by Cabinet Office Ordinance.

(Amount Required to Be Reported as Capital Reserves)

Article 101-8 The amount that is required to be reported as capital reserves at the time of Organizational Conversion and necessary particulars otherwise relevant to accounting in connection with Organizational Conversion are specified by Cabinet Office Ordinance.

(Issuance of Shares upon Organizational Conversion)

Article 101-9 At the time of an Organizational Conversion, a Incorporated Association-Operated Financial Instruments Exchange Operated may issue shares in the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion, in addition to allotting shares under Article 101-6, paragraph (1). In doing this, it must specify the following particulars in the Organizational Conversion plan:

- (i) the number of shares that will be issued pursuant to the provisions of this Article (hereinafter referred to as the "Shares Issued upon Organizational Conversion" in this Division) (if a Stock Company-Operated Financial Instruments Exchange after Organizational Conversion is a company with class shares, the classes and the number of Shares Issued upon Organizational Conversion);
- (ii) the amount to be paid in for the Shares Issued upon Organizational Conversion (meaning the amount of money to be paid in or property other than money to be delivered, in exchange for one Share Issued upon Organizational Conversion) or the method of calculating it;
- (iii) if property other than money will be the subject of contribution, an indication of this, as well as a description and the value of that property;
- (iv) the date for the payment of money or the delivery of the property referred to in the preceding item, in exchange for the Shares Issued upon

- Organizational Conversion; and
- (v) the particulars of the increased stated capital or capital reserves.

(Offers Involving Shares Issued upon Organizational Conversion)

Article 101-10 (1) A Incorporated Association-Operated Financial Instruments Exchange must notify a person that seeks to make an offer to subscribe for Shares Issued upon Organizational Conversion, of the following particulars:

- (i) the trade name of the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion;
- (ii) the particulars set forth in the items of the preceding Article;
- (iii) if money is to be paid in, the place accepting payments; and
- (iv) particulars beyond what is set forth in the preceding three items, which are specified by Cabinet Office Ordinance.
- (2) A person making an offer to subscribe for Shares Issued upon Organizational Conversion must deliver a document to the Incorporated Association-Operated Financial Instruments Exchange, in which the person states the following particulars:
- (i) the name and address of the person offering to subscribe; and
- (ii) the number of Shares Issued upon Organizational Conversion for which the person seeks to subscribe.
- (3) In lieu of delivering the document referred to in the preceding paragraph, a person making the offer referred to in the preceding paragraph may provide an Incorporated Association-Operated Financial Instruments Exchange with the particulars that are required to be stated in the document referred to in that paragraph by electronic or magnetic means, with the consent of the Incorporated Association-Operated Financial Instruments Exchange and pursuant to the provisions of Cabinet Order. In doing this, the person making the offer is deemed to have delivered the document referred to in that paragraph.
- (4) If a particular set forth in an item of paragraph (1) changes, the Incorporated Association-Operated Financial Instruments Exchange must immediately notify any person that has made the offer referred to in paragraph (2) (hereinafter referred to as an "Offeror" in this Division) of this, and of the particulars that have changed.
- (5) It is sufficient for a notice or demand that an Incorporated Association-Operated Financial Instruments Exchange issues to an Offeror to be sent to the address referred to in paragraph (2), item (i) (or, if the Offeror notifies the Incorporated Association-Operated Financial Instruments Exchange of another place or contact address for receiving notices or demands, such a place or contact address).
- (6) The notice or demand referred to in the preceding paragraph is deemed to



arrive at the time that such a notice or demand would normally arrive.

(Allotment of Shares Issued upon Organizational Conversion)

Article 101-11 (1) An Incorporated Association-Operated Financial Instruments Exchange must decide which persons among the Offerors the Shares Issued upon Organizational Conversion will be allotted to, and decide the number of Shares Issued upon Organizational Conversion that will be allotted to such persons. In this, the Incorporated Association-Operated Financial Instruments Exchange may reduce the number of Shares Issued upon Organizational Conversion that it will allot to such Offerors to below the number referred to in paragraph (2), item (ii) of the preceding Article.

(2) An Incorporated Association-Operated Financial Instruments Exchange must notify an Offeror of the number of the Shares Issued upon Organizational Conversion that will be allotted to that Offeror by the day immediately preceding the date set forth in Article 101-9, item (iv).

(Subscription for Shares Issued upon Organizational Conversion)

Article 101-12 The Offerors become the subscribers for Shares Issued upon Organizational Conversion, in respect of the number of Shares Issued upon Organizational Conversion that are allotted to them by the Incorporated Association-Operated Financial Instruments Exchange.

(Contribution)

Article 101-13 (1) On the date referred to in Article 101-9, item (iv), a subscriber for Shares Issued upon Organizational Conversion (excluding a person delivering the property referred to in Article 101-9, item (iii) (hereinafter referred to as "Property Contributed in Kind" in this Division)) must pay the full amount to be paid in for the Shares Issued upon Organizational Conversion for which that subscriber has subscribed, at the Bank, etc. (meaning a Bank, etc. as prescribed in Article 34, paragraph (2) of the Companies Act) specified by the Incorporated Association-Operated Financial Instruments Exchange which constitutes the place accepting payments.

(2) On the date referred to in Article 101-9, item (iv), a subscriber for Shares Issued upon Organizational Conversion (limited to a person delivering Property Contributed in Kind) must deliver Property Contributed in Kind that is equivalent in value to the entire amount to be paid in for the Shares Issued upon Organizational Conversion for which that subscriber has subscribed.

(3) A subscriber for Shares Issued upon Organizational Conversion may not set off its obligation to make the payment prescribed in paragraph (1) or to effect the delivery under the provisions of the preceding paragraph (hereinafter referred to as the "Contribution" in this Division) against a claim that the

subscriber has against the Incorporated Association-Operated Financial Instruments Exchange.

- (4) The transfer of the right to become the shareholder of Shares Issued upon Organizational Conversion through the making of the Contribution may not be asserted against the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion.
- (5) If a subscriber for Shares Issued upon Organizational Conversion fails to make the Contribution, it loses the right to become the shareholder of Shares Issued upon Organizational Conversion through the making of the Contribution.

(Timing of Becoming a Shareholder)

Article 101-14 A subscriber for Shares Issued upon Organizational Conversion becomes the shareholder of the Shares Issued upon Organizational Conversion for which the subscriber has made the Contribution, on the Effective Date.

(Restriction on the Invalidation or Rescission of a Subscription)

- Article 101-15 (1) The provisions of the proviso to Article 93 and Article 94, paragraph (1) of the Civil Code do not apply to the manifestation of an intention involving an offer to subscribe for Shares Issued upon Organizational Conversion or the allotment of such shares.
- (2) Once one year has elapsed since the Effective Date or once the subscriber for Shares Issued upon Organizational Conversion exercises a right in respect of those shares, the subscriber may not assert the invalidity of the subscription for the Shares Issued upon Organizational Conversion on the grounds of a mistake, nor may the subscriber rescind the subscription for the Shares Issued upon Organizational Conversion on the grounds of fraud or duress.

(Contribution of Property Other than Money)

- Article 101-16 (1) If, after the registration of incorporation referred to in Article 101-20, paragraph (1), there are shares that are unsubscribed for, the president and board members of the Incorporated Association-Operated Financial Instruments Exchange as of the time of the general meeting resolution referred to in Article 101-2, paragraph (1), and the directors of the Stock Company-Operated Financial Instruments Exchange as of the Effective Date are deemed to have jointly subscribed for those shares. The same applies if an offer to subscribe for shares is rescinded.
- (2) If, after the registration of incorporation referred to in Article 101-20, paragraph (1), there are shares that are unpaid for, the president and board members of the Incorporated Association-Operated Financial Instruments Exchange as of the time of the general meeting resolution referred to in Article

101-2, paragraph (1), and the directors of the Stock Company-Operated Financial Instruments Exchange as of the Effective Date have the joint and several obligation to pay for them.

- (3) The provisions of Article 207 of the Companies Act and of Article 212 (excluding paragraph (1), item (i)); Article 213 (excluding items (i) and (iii) of paragraph (1)); Article 868, paragraph (1); Article 870 (limited to the part that involves items (ii) and (vii)); Article 871; Article 872 (limited to the part that involves item (iv)); Article 874 (limited to the part that involves item (i)); Article 875; and Article 876 of that Act apply mutatis mutandis if property other than money is the subject of contribution as prescribed in Article 101-9, item (iii). In this case, in Article 207, paragraphs (1) and (7) and paragraph (9), items (ii) to (v) inclusive and Article 212, paragraph (1), item (ii) and paragraph (2) of that Act, the phrase "Article 199 (1)(iii)" is deemed to be replaced with "Article 101-9, item (iii) of the Financial Instruments and Exchange Act"; in Article 207, paragraphs (4) and (6) and paragraph (9), item (iii) and Article 213, paragraph (1), item (ii) of that Act, the term "Ordinance of the Ministry of Justice" is deemed to be replaced with "Cabinet Office Ordinance"; in Article 207, paragraph (8) and Article 212, paragraph (2) of that Act, the phrase "applications for subscription for Shares for Subscription, or his/her manifestation of intention relating to the contract provided for in Article 205, paragraph (1)" is deemed to be replaced with "the manifestation of an intention involving the offer to subscribe for Shares for Subscription"; in Article 207, paragraph (10), item (i) of that Act, the phrase "A director, an accounting advisor, a company auditor or executive officer" is deemed to be replaced with "The president, a board member, or an inspector of an Incorporated Association-Operated Financial Instruments Exchange"; in Article 212, paragraph (1), item (ii) of that Act, the phrase "Article 209, paragraph (1)" is deemed to be replaced with "Article 101-14 of the Financial Instruments and Exchange Act"; and any other necessary technical replacement of terms is specified by Cabinet Order.

(Authorization for Organizational Conversion)

- Article 101-17 (1) An Organizational Conversion does not become effective without the authorization of the Prime Minister.
- (2) A person seeking the authorization referred to in the preceding paragraph must submit a written application for the authorization of an Organizational Conversion to the Prime Minister, in which it states the following particulars about the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion:
- (i) its trade name;
  - (ii) the locations of its head office, branch offices, and any other business

- offices; and
  - (iii) the names of the officers, and names or trade names of Trading Participants.
- (3) A document detailing the Organizational Conversion plan, as well as the articles of incorporation, the operational rules, and the brokerage contract rules of the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion and other documents specified by Cabinet Office Ordinance, must accompany the written application for the authorization of an Organizational Conversion which is referred to in the preceding paragraph.

(Criteria for Authorization)

Article 101-18 (1) Whenever an application for authorization under paragraph (2) of the preceding Article is filed, the Prime Minister shall examine whether the application conforms to the following criteria:

- (i) the provisions of the articles of incorporation, the operational rules, and the brokerage contract rules of the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion conform to laws and regulations, and are sufficient for ensuring fair and smooth purchase and sales of Securities and Market Transactions of Derivatives on the Financial Instruments Exchange Market, as well as for protecting investors;
  - (ii) the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion has a sufficient personnel structure to run a Financial Instruments Exchange Market in an appropriate manner; and
  - (iii) the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion will be organized as a Financial Instruments Exchange in a way that conforms to the provisions of this Act.
- (2) If, as a result of having conducted an examination pursuant to the provisions of the preceding paragraph, the Prime Minister finds that an application conforms to the criteria in that paragraph, the Prime Minister shall grant authorization for Organizational Conversion, except in a case that falls under one of the following items:
- (i) the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion would have a person falling under one of the categories in Article 29-4, paragraph (1), item (ii), sub-items (a) to (i) inclusive of this Act, or Article 331, paragraph (1), item (iii) of the Companies Act as an officer; or
  - (ii) the application for the authorization of an Organizational Conversion or an accompanying document contains a false statement about a material particular.

(Coming into Effect of Organizational Conversion)

- Article 101-19 (1) An Incorporated Association-Operated Financial Instruments Exchange implementing an Organizational Conversion becomes a Stock Company-Operated Financial Instruments Exchange on the Effective Date.
- (2) A member of an Incorporated Association-Operated Financial Instruments Exchange implementing an Organizational Conversion becomes a shareholder of the shares set forth in Article 101-2, paragraph (4), item (v), in accordance with the provisions on the particulars set forth in item (iv) of that paragraph on the Effective Date.
- (3) The provisions of the preceding two paragraphs do not apply if the process under Article 101-4 is not complete or if the Organizational Conversion is suspended.

(Registration)

- Article 101-20 (1) Once an Incorporated Association-Operated Financial Instruments Exchange implements an Organizational Conversion, it must file for a registration of dissolution as regards the Incorporated Association-Operated Financial Instruments Exchange implementing the Organizational Conversion; file for a registration of incorporation as regards the head office of the Stock Company-Operated Financial Instruments Exchange after the Organizational Conversion; and file for a registration of the particulars set forth in the items of Article 930, paragraph (2) of the Companies Act as regards the branch offices of the Stock Company-Operated Financial Instruments Exchange after the Organizational Conversion; and these filings must be done within two weeks from the Effective Date in connection with the principal office and the head office locations, and within three weeks from the Effective Date in connection with the secondary office and branch office locations.
- (2) In addition to the documents specified in Articles 18, 19, and 46 of the Commercial Registration Act, the following documents must accompany a written application for the registration of incorporation referred to in the preceding paragraph:
- (i) the Organizational Conversion plan;
  - (ii) the articles of incorporation;
  - (iii) the minutes of the general meeting concerning the Organizational Conversion of the Incorporated Association-Operated Financial Instruments Exchange implementing the Organizational Conversion;
  - (iv) a document evidencing that the public notice and notice under the provisions of Article 101-4, paragraph (2) have been issued, and if a creditor has stated an objection, a document evidencing that the debt has been paid or commensurate collateral has been provided to that creditor, that commensurate property has been deposited in trust for the purpose of allowing the creditor to receive payment for the debt, or that the

- Organizational Conversion is unlikely to be detrimental to said creditor;
- (v) a document evidencing the amount of net assets currently existing at the Incorporated Association-Operated Financial Instruments Exchange implementing the Organizational Conversion as of the Effective Date;
  - (vi) a document evidencing that the directors of the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion (or, if the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion will be a company with company auditors, the directors and the company auditors) have accepted those positions;
  - (vii) if an accounting advisor or accounting auditor has been appointed for the Stock Company-Operated Financial Instruments Exchange after Organizational Conversion, the documents set forth in the items of Article 54, paragraph (2) of the Commercial Registration Act;
  - (viii) if the administrator of the shareholder register has been appointed, a document evidencing the contract with that person;
  - (ix) if shares have been issued upon Organizational Conversion pursuant to the provisions of Article 101-9, the following documents:
    - (a) a document evidencing the offers to subscribe for shares;
    - (b) if money is the subject of contributions, a document evidencing that the payment under Article 101-13, paragraph (1) has been made; and
    - (c) if property other than money is the subject of contributions, the following documents:
      - 1. if an inspector has been appointed, a document containing the investigation report by the inspector and the annexed documents to the same;
      - 2. in a case set forth in Article 207, paragraph (9), item (iii) of the Companies Act as applied mutatis mutandis pursuant to Article 101-16, paragraph (3), a document evidencing the market price of the Securities;
      - 3. in a case set forth in Article 207, paragraph (9), item (iv) of the Companies Act as applied mutatis mutandis pursuant to Article 101-16, paragraph (3), a document containing the verification prescribed in that item and the annexed documents to the same; and
      - 4. in a case set forth in Article 207, paragraph (9), item (v) of the Companies Act as applied mutatis mutandis pursuant to Article 101-16, paragraph (3), the account book in which the monetary claim prescribed in that item has been entered.
    - (d) if a judicial decision has been reached in connection with a report by an inspector, a certified copy of that judicial decision.
- (3) The provisions of Articles 76 and 78 of the Commercial Registration Act apply mutatis mutandis to the cases set forth in paragraph (1).

(Action to invalidate Organizational Conversion)

Article 102 (1) The provisions of Article 828, paragraph (1) of the Companies Act (limited to the part that involves item (vi)) and of Article 828, paragraph (2) (limited to the part that involves item (vi)); Article 834 (limited to the part that involves item (vi)); Article 835, paragraph (1); Articles 836 to 839 inclusive; Article 846; and Article 937, paragraph (3) (limited to the part that involves item (i)) of that Act apply mutatis mutandis to an action to invalidate the Organizational Conversion of a Incorporated Association-Operated Financial Instruments Exchange. In this case, in Article 828, paragraph (2), item (vi) of that Act, the phrase "Shareholders, etc. or a Partner, etc. of the Company implementing Entity Conversion" is deemed to be replaced with "member, etc. (meaning a member, the president, a board member, an inspector, or a liquidator) of a Incorporated Association-Operated Financial Instruments Exchange implementing the Organizational Conversion" and the term "Shareholders, etc., a Partner, etc., the trustee in bankruptcy or a creditor, who did not give approval to the Entity Conversion, of the Company after Entity Conversion" is deemed to be replaced with "shareholder, etc. (meaning a shareholder, director, or liquidator (or, for a company with a board of company auditors, meaning a shareholder, director, company auditor, or liquidator; and for a Company with Nominating Committee, etc., meaning a shareholder, director, executive officer, or liquidator)), trustee in bankruptcy, or creditor, that did not approve or accept the Organizational Conversion of an Incorporated Association-Operated Financial Instruments Exchange after Organizational Conversion"; in Article 937, paragraph (3) of that Act, the phrase "the head office of each Company" is deemed to be replaced with "the head office and branch offices, and the principal office and secondary offices, of the Financial Instruments Exchange"; and any other necessary technical replacement of terms is specified by Cabinet Order.

(2) The provisions of Article 840 of the Companies Act apply mutatis mutandis to an action to invalidate an Organizational Conversion prescribed in Article 828, paragraph (1) of that Act (limited to the part that involves item (vi)) as applied mutatis mutandis pursuant to the provisions of the preceding paragraph, if the Shares Issued upon Organizational Conversion are issued pursuant to the provisions of Article 101-9; and the provisions of Article 868, paragraph (1) of that Act and the main clause of Article 871; Article 872 (limited to the part that involves item (ii)); the main clause of Article 873; Articles 875 to 877 inclusive; and Article 878, paragraph (1) of that Act apply mutatis mutandis to a petition under Article 840, paragraph (2) of that Act as applied mutatis mutandis pursuant to this paragraph. The necessary technical replacement of terms for such a case is specified by Cabinet Order.

## **Subsection 1-2 Self-Regulatory Organizations**

### **Division 1 Incorporation**

#### **(Legal Personality)**

Article 102-2 (1) Self-regulatory organizations is a juridical person.

(2) A self-regulatory organization must use the characters " jishu kisei hojin" (meaning "self-regulatory organization") in its name.

(3) A person that is not a self-regulatory organization must not use a term in its name which could give rise to the misconception that it is a self-regulatory organization.

#### **(Founders)**

Article 102-3 (1) It is not permissible for a person other than a Financial Instruments Exchange, a Financial Instruments Exchange Holding Company, or a parent Commodity Exchange, etc. (meaning a Commodity Exchange (excluding one that is a Financial Instruments Exchange; the same applies hereinafter) that has a Financial Instruments Exchange as its Subsidiary Company (meaning a Subsidiary Company as prescribed in Article 87-3, paragraph (3); hereinafter the same applies in this paragraph) or a Commodity Exchange Holding Company that has a Financial Instruments Exchange as its Subsidiary Company (excluding a Commodity Exchange Holding Company that is a Financial Instruments Exchange Holding Company; the same applies hereinafter); hereinafter the same applies in this Chapter) to incorporate as a self-regulatory organization.

(2) For a self-regulatory organization to be incorporated, a Financial Instrument Exchange, Financial Instruments Exchange Holding Company, or parent Commodity Exchange, etc. that seeks to be a member must become a founder.

#### **(Articles of Incorporation)**

Article 102-4 (1) In order to incorporate as a self-regulatory organization, the founders must prepare articles of incorporation, and all founders must sign or have their names and seals affixed thereto.

(2) The following particulars must be stated or recorded in the articles of incorporation of a self-regulatory organization:

- (i) its purposes;
- (ii) its name;
- (iii) the location of its office;
- (iv) the particulars of funds and contributions;
- (v) the particulars of its members;
- (vi) the particulars of its allocation of costs;



- (vii) the particulars of its officers;
  - (viii) the particulars of its meetings;
  - (ix) the particulars of its execution of business;
  - (x) the particulars of its preparation of rules;
  - (xi) the particulars of the Self-Regulatory Services it is entrusted with and performs;
  - (xii) the particulars of its accounting; and
  - (xiii) the means of public notice (meaning the means by which the self-regulatory organization makes its public notices (excluding public notices that, pursuant to the provisions of this Act, must be made by means of publication in the Official Gazette); the same applies in Article 102-9, paragraph (2), item (ix)).
- (3) The provisions of Article 30, paragraph (1) of the Companies Act apply *mutatis mutandis* to the articles of incorporation referred to in paragraph (1).

#### (Organizational Meetings)

- Article 102-5 (1) After preparing the articles of incorporation, the founders must solicit persons seeking to become members, and hold an organizational meeting, making public notice of the articles of incorporation, together with the date, time, and place of the meeting, by two weeks prior to the day of the meeting.
- (2) A person planning to become the member of a self-regulatory organization whose incorporation is planned (hereinafter referred to as an "Expected Member" in this Article) must pay the full amount of contribution before the opening of the organizational meeting.
- (3) Approval of the articles of incorporation and decisions about matters that are otherwise necessary for incorporation must be effected by organizational meeting resolution.
- (4) The articles of incorporation may be amended at an organizational meeting.
- (5) The items of organizational meeting business that are referred to in paragraph (3) are decided with at least a two-thirds majority of the votes of the attendees, at a meeting where at least half of the Expected Members that have paid the full amount of the contribution by the opening of the meeting, are present.
- (6) An Expected Member that does not pay the full amount of the contribution by the time of the establishment of a self-regulatory organization is deemed to have rescinded its application for membership at the time of the establishment of the self-regulatory organization.

#### (Provisions Applied *Mutatis Mutandis*)

- Article 102-6 The provisions of Articles 88-5 to 88-21 inclusive apply *mutatis mutandis* to the incorporation of a self-regulatory organization.

(Mutatis Mutandis Application of Companies Act)

Article 102-7 The provisions of Article 828, paragraph (1) of the Companies Act (limited to the part that involves item (i)) and of Article 828, paragraph (2) (limited to the part that involves item (i)); Article 834 (limited to the part that involves item (i)); Article 835, paragraph (1); Article 836, paragraphs (1) and (3); Articles 837 to 839 inclusive; and Article 846 of that Act apply mutatis mutandis to an action to invalidate the incorporation of a self-regulatory organization. In this case, in Article 828, paragraph (2), item (i) of that Act, the phrase "a Shareholder, etc. (meaning a shareholder, director or liquidator (or, for a Company with Company Auditors, it means a shareholder, director, company auditor or liquidator, and for a Company with Nominating Committee, etc., it means a shareholder, director, executive officer, or liquidator); hereinafter the same applies in this Section) of the incorporated Stock Company or a Partner, etc. (meaning a partner or liquidator; hereinafter the same applies in this paragraph) of the incorporated membership company" is deemed to be replaced with "the members, the president and board members, the auditors, or the liquidators of the incorporated Stock Company", and any other necessary technical replacement of terms is specified by Cabinet Order.

## **Division 2 Registration**

(Establishment)

Article 102-8 (1) A self-regulatory organization is established by a registration of its incorporation being recorded in connection with the location of its principal office.

(2) Except in a case prescribed in the preceding paragraph, the particulars that are required to be registered pursuant to the provisions of this Act may not be asserted against a third party until after their registration.

(Registration)

Article 102-9 (1) A registration of the incorporation of a self-regulatory organization must be made within two weeks from the day of completion of its organizational meetings.

(2) The following particulars must be stated in the registration referred to in the preceding paragraph:

- (i) purpose;
- (ii) name;
- (iii) office address;
- (iv) term of operation and grounds for dissolution, if specified;
- (v) funds and amount of contributions paid in;

- (vi) unit amount of contributions and method of payment;
- (vii) name, address, and qualifications of the person with the authority of representation;
- (viii) provisions on the scope and limitation of the authority of representation, if; and
- (ix) means of public notice.

(Mutatis Mutandis Application of Provisions on the Registration Process)

Article 102-10 The provisions of Articles 89-3 to 89-8 inclusive apply mutatis mutandis to a self-regulatory organization. In this case, in Article 89-4 and Article 89-5, the phrase "Article 89-2, paragraph (2)" is deemed to be replaced with "Article 102-9, paragraph (2)", and any other necessary technical replacement of terms is specified by Cabinet Order.

(Mutatis Mutandis Application of the Commercial Registration Act)

Article 102-11 The provisions of Articles 2 to 5 inclusive of the Commercial Registration Act and Articles 7 to 15 inclusive; Articles 17 to 23-2 inclusive; Article 24 (excluding items (xv) and (xvi)); Articles 25 to 27 inclusive; Article 47, paragraph (1); Articles 48 to 53 inclusive; and Articles 132 to 148 inclusive of that Act apply mutatis mutandis to a registration involving a self-regulatory organization. In this case, in Article 17, paragraph (2), item (i) of that Act, the phrase "trade name and the head office" is deemed to be replaced with "name and the principal office"; in Article 48, Article 49, paragraph (1), Article 50, paragraphs (2) and (4), and Article 138, paragraphs (1) and (2) of that Act, the term "branch office" is deemed to be replaced with "secondary office"; in Article 17, paragraph (3) and Article 20, paragraph (3) of that Act, the phrase "the branch office of the company" is deemed to be replaced with "the secondary office of the self-regulatory organization"; in Article 25, paragraph (3), Article 48, paragraph (1), Article 49, paragraphs (1) and (3), Article 50, paragraphs (1) to (3) inclusive, Article 51, paragraph (1), Article 53, and Article 138, paragraph (1) of that Act, the term "head office" is deemed to be replaced with "principal office"; in Article 48, paragraph (2) of that Act, the phrase "the items of Article 930, paragraph (2) of the Companies Act" is deemed to be replaced with "the items of Article 102-9, paragraph (2) of the Financial Instruments and Exchange Act"; and any other necessary technical replacement of terms is specified by Cabinet Order.

### **Division 3 Members**

(Eligibility for Membership)

Article 102-12 Membership in a self-regulatory organization is limited to

Financial Instruments Exchanges, Financial Instruments Exchange Holding Companies, and parent Commodity Exchanges, etc.

(Provisions Applied Mutatis Mutandis)

Article 102-13 The provisions of Articles 92 to 96 inclusive apply mutatis mutandis to the members of a self-regulatory organization.

#### **Division 4 Self-Regulatory Services**

(Self-Regulatory Services by a Self-Regulatory Organization)

Article 102-14 A self-regulatory organization must obtain the authorization of the Prime Minister if it seeks to perform Self-Regulatory Services.

(Application for Authorization)

Article 102-15 (1) A self-regulatory organization seeking the authorization referred to in the preceding Article must submit a written application for authorization to the Prime Minister, in which it states the following particulars:

- (i) its name;
  - (ii) the locations of its offices; and
  - (iii) the names of its officers, and the trade names and names of its members.
- (2) The articles of incorporation, the operational rules, and the documents specified by Cabinet Office Ordinance must accompany the written application for authorization referred to in the preceding paragraph.
- (3) The provisions of Article 81, paragraph (3) apply mutatis mutandis to the written application for authorization referred to in paragraph (1).

(Criteria for Authorization)

Article 102-16 (1) Whenever an application for authorization under the provisions of paragraph (1) of the preceding Article is filed, the Prime Minister shall examine whether the application conforms to the following criteria:

- (i) the provisions of the articles of incorporation and the operational rules conform to laws and regulations, and are sufficient to allow the proper operation of Self-Regulatory Services;
  - (ii) the applicant for authorization has a sufficient personnel structure to administer Self-Regulatory Services in an appropriate manner; and
  - (iii) the applicant for authorization is organized as a self-regulatory organization in a manner that conforms to the provisions of this Act.
- (2) The provisions of Article 82, paragraph (2) apply mutatis mutandis to the application for authorization referred to in the preceding paragraph. In this case, in Article 82, paragraph (2), item (ii), the phrase "Article 106-28,

paragraph (1)" is deemed to be replaced with "Article 106-28, paragraph (1), or Article 148, or Article 152, paragraph (1) as applied mutatis mutandis pursuant to Article 153-4, paragraph (1)"; in Article 82, paragraph (2), item (iii), sub-item (b), the phrase "has had its license rescinded pursuant to the provisions of Article 148 or Article 152, paragraph (1)" is deemed to be replaced with "has had its license rescinded pursuant to the provisions of Article 148 or Article 152, paragraph (1) or has had its authorization rescinded pursuant to the provisions of Article 148 or Article 152, paragraph (1) as applied mutatis mutandis pursuant to the provisions of Article 153-4"; in Article 82, paragraph (2), item (ii), sub-item (e), the phrase "Article 150; Article 152, paragraph (1)" is deemed to be replaced with "Article 150 or Article 152, paragraph (1) (including as applied mutatis mutandis pursuant to Article 153-4)"; and any other necessary technical replacement of terms is specified by Cabinet Order.

(Mutatis Mutandis Application of Provisions on Hearings)

Article 102-17 The provisions of Article 85-4 apply mutatis mutandis to Article 102-14 authorization.

(Entrusted Services)

Article 102-18 A self-regulatory organization is entrusted by a Financial Instruments Exchange and performs Self-Regulatory Services for that Financial Instruments Exchange.

(Prohibition of Re-entrustment)

Article 102-19 (1) A self-regulatory organization that has been entrusted with Self-Regulatory Services pursuant to the provisions of the preceding Article may not entrust the Self-Regulatory Services with which it has been entrusted to another person; provided, however, that this does not apply if a self-regulatory organization entrusts another person to perform Specified Services with the consent of the entrusting Financial Instruments Exchange (meaning the Financial Instruments Exchange that has entrusted a self-regulatory organization with Self-Regulatory Services; hereinafter the same applies in this Chapter).

(2) The provisions of Article 85, paragraph (5) apply mutatis mutandis if a self-regulatory organization entrusts a person with Specified Services pursuant to the provisions of the proviso to the preceding paragraph. In this case, in paragraph (5) of that Article, the phrase "the preceding paragraph" is deemed to be replaced with "the proviso to Article 102-19, paragraph (1)".

(Termination of Entrustment Relations)

Article 102-20 The Self-Regulatory Services with which a Financial Instrument

Exchange entrusts a self-regulatory organization and which that self-regulatory organization performs, terminate if the self-regulatory organization dissolves for a reason set forth in one of the items of Article 102-35, paragraph (1). In such a case, the entrusting Financial Instruments Exchange must perform the Self-Regulatory Services that were under entrustment.

## **Division 5 Administration**

### **(Restriction on Services)**

Article 102-21 A self-regulatory organization must not perform services for profit.

### **(Scope of Services)**

Article 102-22 A self-regulatory organization may not perform any service other than Self-Regulatory Services and the services incidental thereto.

### **(Appointment of Officers)**

- Article 102-23 (1) A self-regulatory organization has one president, three or more board members, and two or more inspectors as its officers.
- (2) Board members and inspectors are appointed by general meeting resolution.
  - (3) The majority of board members must be outside board members (meaning board members elected from among persons that are not directors, board members or executive officers, or managers or other employees of an entrusting Financial Instruments Exchange and its Subsidiary Companies (meaning Subsidiary Companies as prescribed in Article 87-3, paragraph (3); hereinafter the same applies in this Chapter) and that have at no time in the past served as directors, board members or executive officers, or managers or other employees of the entrusting Financial Instruments Exchange or its Subsidiary Company; hereinafter the same applies in this Division).
  - (4) A person that falls under one of the categories prescribed in Article 29-4, paragraph (1), item (i), sub-items (a) to (i) inclusive of this Act, or Article 331, paragraph (1), item (iii) of the Companies Act may not become an officer.
  - (5) An officer loses that position if the officer comes to fall under a category of a person prescribed in the preceding paragraph.
  - (6) The president is appointed from among the outside board members, based on a vote among the board members.

### **(Duties of the Officers)**

- Article 102-24 (1) A president represents a self-regulatory organization and presides over its affairs.
- (2) A board member, pursuant to the provisions of the articles of incorporation,

represents a self-regulatory organization, assists the president in administering the affairs of the self-regulatory organization, acts as a proxy in handling the duties of the president if the president is unable to attend to them, and performs the duties of the president if the position is vacant.

(3) An inspector examines the affairs of a self-regulatory organization.

(Term of Office of Board Members)

Article 102-25 (1) The term of office of a board member continues until the conclusion of the general meeting for the last business year that ends within two years from the time of the appointment.

(2) A board member may be reappointed only twice.

(3) A board member is not dismissed unless it is agreed upon at a general meeting, through a resolution by at least a four-fifths majority of the attending members, at a general meeting where the majority of the members are present.

(Board Members' Attendance at Board of Directors Meetings)

Article 102-26 A board member may attend a meeting of the board of directors or the board meeting of an entrusting Financial Instruments Exchange and state an opinion, if the board member finds this to be necessary.

(The Holding of Board Meetings)

Article 102-27 (1) A self-regulatory organization board (hereinafter referred to as a "Board" in this Subsection) must meet at least once every three months.

(2) The president calls the Board Meetings.

(Board Members' Demand for the Calling of a Board Meeting)

Article 102-28 A board member may demand that the president call a Board Meeting by specifying the purpose of the Board Meeting and the grounds for calling one.

(Procedures for Calling Board Meetings)

Article 102-29 (1) A person that calls a Board Meeting must issue notice of this to each board member no later than one week prior to the day of the Board Meeting (or, if a shorter period has been specified at a Board Meeting, such a period).

(2) Notwithstanding the provisions of the preceding paragraph, with the consent of all of the board members, a Board Meeting may be held without the procedures for calling meetings being followed.

(Board Meeting Resolutions)

Article 102-30 (1) A Board Meeting resolution is adopted by a majority of the

attending board members, and by a majority of the attending outside board members, at a Board Meeting where the majority of the board members that are entitled to participate in the vote, are present.

- (2) A board member with a special interest in the resolution referred to the preceding paragraph may not participate in the vote.
- (3) The minutes of a Board Meeting must be prepared pursuant to the provisions of Cabinet Office Ordinance, and if the minutes are prepared in writing, the board members present at the meeting must sign them or have their names and seals affixed to them.
- (4) If the minutes referred to in the preceding paragraph are prepared as electronic or magnetic records, relevant persons must use the measures in lieu of signing or having their names and seals affixed which are specified by Cabinet Office Ordinance, for the matters recorded in electronic or magnetic records.

(Minutes)

- Article 102-31 (1) A self-regulatory organization shall keep the minutes referred to in paragraph (3) of the preceding Article at its principal office for a ten-year period beginning from the day of the Board Meeting.
- (2) If it is necessary in order for the member of a self-regulatory organization to exercise its rights, with the permission of the court, the member may request to inspect or copy the following things as respects the minutes referred to in the preceding paragraph:
    - (i) if the minutes referred to in the preceding paragraph are prepared in writing, the relevant written document; and
    - (ii) if the minutes referred to in the preceding paragraph are prepared as electronic or magnetic records, something that shows the particulars that have been recorded in such electronic or magnetic records, through a means specified by Cabinet Office Ordinance.
  - (3) The court may not give the permission referred to in the preceding paragraph if it finds that the inspection or copying to which the request referred to in the preceding paragraph pertains is likely to cause substantial detriment to the relevant Entrusting Financial Instruments Exchange, to a person that has that Entrusting Financial Instruments Exchange as its Subsidiary Company, or to a Subsidiary Company of that Entrusting Financial Instruments Exchange.
  - (4) The provisions of Article 868, paragraph (1) of the Companies Act and of Article 869; Article 870 (limited to the part that involves item (i)); the main clause of Article 871; Article 872 (limited to the part that involves item (iv)); the main clause of Article 873; Article 875; and Article 876 of that Act apply mutatis mutandis to the permission referred to in paragraph (2). The necessary technical replacement of terms for such a case is specified by Cabinet Order.



(Treatment of Changes in Operational Rules)

Article 102-32 An entrusting Financial Instruments Exchange must obtain the consent of the Entrusted Self-Regulatory Organization if it seeks to change or discontinue a particular that is prescribed in the operational rules or other rules of the Financial Instruments Exchange, and that is specified by Cabinet Office Ordinance as being connected with Self-Regulatory Services.

(Advice on Necessary Measures from the Board)

Article 102-33 (1) If the Board finds it to be necessary, it may give advice to an entrusting Financial Instruments Exchange about the necessary measures that should be taken in order to ensure fair and smooth purchase and sales of Securities and Market Transactions of Derivatives on a Financial Instruments Exchange Market operated by the entrusting Financial Instruments Exchange, and to contribute to the sound development of the Financial Instruments Business and to the protection of investors.

(2) If the Board gives the advice referred to in the preceding paragraph, and the entrusting Financial Instruments Exchange that receives the advice takes it, it shall report to the Board the details of the measures taken; if the entrusting Financial Instruments Exchange does not take that advice, it shall report to the Board that it has not taken any measures.

(Reporting Business to the Board)

Article 102-34 (1) An entrusting Financial Instruments Exchange must periodically report the status of business execution to the Board, pursuant to the provisions of Cabinet Office Ordinance.

(2) The Board may request the president, the directors and executive officers, and the managers and other employees of an entrusting Financial Instruments Exchange to report the particulars of the discharge of their duties.

## **Division 6 Dissolution**

(Grounds for Dissolution of a Self-Regulatory Organization)

Article 102-35 (1) A self-regulatory organization is dissolved for the following reasons:

- (i) the occurrence of a cause for dissolution specified by the articles of incorporation;
- (ii) a general meeting resolution;
- (iii) the self-regulatory organization comes to have no members;
- (iv) an order to commence bankruptcy proceedings;
- (v) the failure to file an application for authorization under the provisions of

- Article 102-15, paragraph (1) within six months from the day of establishment;
- (vi) the decision of the Prime Minister not to grant Article 102-14 authorization; or
- (vii) rescission of Article 102-14 authorization.
- (2) A self-regulatory organization may not adopt a resolution to dissolve without the affirmative votes of at least three-fourths of all members; provided, however, that this does not apply if it is otherwise provided for in the articles of incorporation.

(Mutatis Mutandis Application of Provisions on the Dissolution Process)

Article 102-36 The provisions of Articles 100-2 to 100-16 inclusive and Articles 100-18 to 100-23 inclusive apply mutatis mutandis to a self-regulatory organization. In this case, in Article 100-3, the phrase "Article 100, paragraph (1) (excluding items (iii) and (v))" is deemed to be replaced with "Article 102-35 (excluding item (iv))"; in Article 100-4, Article 100-6, and Article 100-9, the phrase "Article 100-17, paragraph (1)" is deemed to be replaced with "Article 102-37, paragraph (1)"; in Article 100-5, paragraph (2), the phrase "rescinding the license referred to in Article 80, paragraph (1)" is deemed to be replaced with "rescinding the authorization referred to Article 102-14"; in Article 100-6, the phrase "Article 100-4" is deemed to be replaced with "Article 100-4 as applied mutatis mutandis pursuant to Article 102-36"; and any other necessary technical replacement of terms is specified by Cabinet Order.

(Mutatis Mutandis Application of the Companies Act)

Article 102-37 (1) The provisions of Article 492, paragraphs (1) and (3) of the Companies Act and of Article 507 (excluding paragraph (2)); Article 644 (excluding item (iii)); Article 647, paragraphs (1) and (4); Article 650, paragraph (2); Article 655, paragraphs (1) to (5) inclusive; and Articles 662 to 664 inclusive of that Act apply mutatis mutandis to the dissolution and liquidation of a self-regulatory organization. In this case, in Article 492, paragraph (1) of that Act, the phrase "Liquidators (or, for Companies with Board of Liquidators, liquidators listed in each item of paragraph (7) of Article 489)" is deemed to be replaced with "A liquidator"; in the same paragraph and in Article 507, paragraph (1) of that Act, the term "Ordinance of the Ministry of Justice" is deemed to be replaced with "Cabinet Office Ordinance"; in Article 492, paragraph (3) and Article 507, paragraph (3) of that Act, the term "shareholders meeting" is deemed to be replaced with "general meeting"; in Article 644, item (i) of that Act, the phrase "have dissolved on the grounds set forth in item (v) of Article 641 or unless membership companies have dissolved as a result of a ruling for commencement of bankruptcy procedures and such

bankruptcy procedures have not ended" is deemed to be replaced with "have dissolved as a result of an order to commence bankruptcy proceedings and the bankruptcy proceedings have not ended"; in Article 647, paragraph (1), item (i) of that Act, the phrase "A partner who executes the operations" is deemed to be replaced with "The president and a board member"; in item (iii) of that paragraph, the phrase "prescribed by the consent of a majority of partners (or, if partners who execute the operations are provided for in the articles of incorporation, those partners)" is deemed to be replaced with "appointed by general meeting resolution"; in Article 655, paragraph (3) of that Act, the phrase "from among themselves" is deemed to be replaced with "from among themselves or based on a general meeting resolution"; in paragraph (4) of that Article, the phrase "partners who execute the operations" is deemed to be replaced with "the president or board members", the phrase "if the partners that represent the membership company are already prescribed" is deemed to be replaced with "if the president or the board members that represent it are already prescribed in the articles of incorporation", and the phrase "such partners that represent" is deemed to be replaced with "the president or board member (excluding a president or board member whose authority of representation is limited by the articles of incorporation) that represents"; and any other necessary technical replacement of terms is specified by Cabinet Order.

- (2) The provisions of Article 868, paragraph (1) of the Companies Act and of Article 871; Article 874 (limited to the part that involves item (i)); Article 875; and Article 876 of that Act apply mutatis mutandis to the liquidation of a self-regulatory organization. The necessary technical replacement of terms for such a case is specified by Cabinet Order.

(Liquidators' Capacity in Respect of Tortious Acts)

Article 102-38 The provisions of Article 88-9, Articles 88-12 to 88-15 inclusive, and Article 100-23 apply mutatis mutandis when the liquidator of a self-regulatory organization performs liquidation duties. The necessary technical replacement of terms for such a case is specified by Cabinet Order.

(Mutatis Mutandis Application of the Commercial Registration Act)

Article 102-39 The provisions of Article 71, paragraph (1) of the Commercial Registration Act apply mutatis mutandis to registration of the dissolution of a self-regulatory organization under this Act.

**Subsection 2 Stock Companies That Operate Financial Instruments**  
**Exchange Markets**  
**Division 1 General Provisions**

(Articles of Incorporation)

Article 103 In addition to the matters set forth in the items of Article 27 of the Companies Act, the following particulars must be stated or recorded in the articles of incorporation of a Stock Company-Operated Financial Instruments Exchange:

- (i) the particulars involved in investigations into Trading Participants' compliance with laws and regulations, dispositions by government agencies which are based on laws and regulations, the articles of incorporation and other rules, and the principle of good faith in their transactions;
- (ii) the particulars of the preparation of rules;
- (iii) the particulars of the Financial Instruments Exchange Markets; and
- (iv) if a self-regulatory committee will be established, an indication of this.

(Restrictions on the Holding of Voting Rights)

Article 103-2 (1) It is prohibited for any person to acquire or hold a number of voting rights (excluding the voting rights that are specified by Cabinet Office Ordinance in consideration of the manner in which they are acquired or held and any other circumstances; hereinafter referred to as "Subject Voting Rights" in this Chapter) constituting 20 percent or more (or 15 percent or more, if a fact has occurred that is specified by Cabinet Office Ordinance as something that is presumed to have a material influence on decisions about financial and operational policies; hereinafter referred to as the "Threshold Holding Ratio" in this Chapter) of all shareholders' voting rights in a Stock Company-Operated Financial Instruments Exchange; provided, however, that this does not apply if an Authorized Financial Instruments Firms Association, Financial Instruments Exchange, Financial Instruments Exchange Holding Company, Commodity Exchange, or Commodity Exchange Holding Company acquires or holds Subject Voting Rights.

- (2) If the number of Subject Voting Rights that the person holds does not increase or in any other case specified by Cabinet Office Ordinance, the provisions of the main clause of the preceding paragraph do not apply to a person acquiring or holding a number of Subject Voting Rights in a Stock Company-Operated Financial Instruments Exchange which is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights.
- (3) In the case referred to in the preceding paragraph, a person that comes to acquire or hold a number of Subject Voting Rights in a Stock Company-Operated Financial Instruments Exchange which is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights (hereinafter referred to as a "Specified Holder" in this Article) shall notify the Prime Minister without delay that that person has become a Specified Holder, and of

the matters specified by Cabinet Office Ordinance.

- (4) In the case referred to in paragraph (2), a Specified Holder must take the necessary measures to become the holder of a number of Subject Voting Rights in the Stock Company-Operated Financial Instruments Exchange which is less than the Threshold Holding Ratio within three months from the day on which the person becomes a Specified Holder; provided, however, that this does not apply if the Specified Holder is a Local Government, etc. provided for in Article 106-3, paragraph (1) and that Local Government, etc. has obtained the authorization of the Prime Minister pursuant to the provisions of that paragraph.
- (5) With regard to the application of the provisions of the preceding paragraphs to a case set forth in one of the following items, the relevant person is deemed to acquire or hold the Subject Voting Rights prescribed in the relevant item:
- (i) a person has or will have the authority to exercise Subject Voting Rights in a Stock Company-Operated Financial Instruments Exchange or the authority to give instructions on the exercise of such voting rights, pursuant to the provisions of a money trust contract or other contract or based on the provisions of law: the Subject Voting Rights in question; and
  - (ii) a person that is related to the person in question through a shareholding relationship, familial relationship, or other special relationship specified by Cabinet Order, acquires or holds Subject Voting Rights in a Stock Company-Operated Financial Instruments Exchange: the Subject Voting Rights acquired or held by the person with the special relationship to the person in question.
- (6) Necessary particulars relevant to the application of the provisions of each of the preceding paragraphs are specified by Cabinet Order.

(Submission of a Statement of Holdings in Subject Voting Rights)

- Article 103-3 (1) A person that becomes the holder of Subject Voting Rights exceeding five percent of all shareholders' voting rights in a Stock Company-Operated Financial Instruments Exchange (hereinafter referred to as the "Holder of Subject Voting Rights" in this paragraph) must submit a statement of holdings in Subject Voting Rights to the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance and without delay, in which the holder states the Subject Voting Rights holding rate (meaning the rate arrived at by dividing the number of Subject Voting Rights held by the Holder of Subject Voting Rights by the number representing all shareholders' voting rights in the Stock Company-Operated Financial Instruments Exchange), the purpose of the holding, and the matters otherwise specified by Cabinet Office Ordinance.
- (2) The provisions of paragraph (5) of the preceding Article apply mutatis mutandis when the provisions of the preceding paragraph are applicable.

(Collection of Reports and Inspection of a Person Submitting a Statement of Holdings in Subject Voting Rights)

Article 103-4 If the Prime Minister suspects that a statement of holdings in Subject Voting Rights which is referred to in paragraph (1) of the preceding Article contains a false statement or omits a statement as to a particular that is required to be stated, the Prime Minister may order the person submitting the statement of holdings in Subject Voting Rights to submit reports or materials that should serve as a reference, or may have the relevant officials inspect the documents and other articles of that person (but only as is necessary in connection with the statements contained in the statement of holdings in Subject Voting Rights).

(Public Inspection of the Total Number of Issued Shares)

Article 104 A Stock Company-Operated Financial Instruments Exchange must make available for public inspection its total number of issued shares, the number that represents all shareholders' voting rights, and other matters specified by Cabinet Office Ordinance, pursuant to the provisions of Cabinet Office Ordinance.

(Eligibility as a Director)

Article 104-2 The provisions of the proviso to paragraph (2) of Article 331 of the Companies Act (including as applied mutatis mutandis pursuant to Article 335, paragraph (1) of that Act) and of Article 332, paragraph (2) (including as applied mutatis mutandis pursuant to Article 334, paragraph (1) of that Act); Article 336, paragraph (2); and the proviso to Article 402, paragraph (5) of that Act do not apply to a Stock Company-Operated Financial Instruments Exchange.

(Authorization for a Reduction of Capital)

Article 105 (1) A Stock Company-Operated Financial Instruments Exchange must obtain the authorization of the Prime Minister if it seeks to reduce its stated capital.  
(2) A Stock Company-Operated Financial Instruments Exchange must notify the Prime Minister pursuant to the provisions of Cabinet Office Ordinance if it seeks to increase its stated capital.

(Special Provisions on Officers)

Article 105-2 The provisions of Article 98, paragraphs (4) and (5) apply mutatis mutandis to the officers of a Stock Company-Operated Financial Instruments Exchange.

(The Court's Request for an Investigation)

- Article 105-3 (1) In liquidation proceedings, bankruptcy proceedings, rehabilitation proceedings, reorganization proceedings, or recognition and assistance proceedings for a Stock Company-Operated Financial Instruments Exchange, the court may request the opinion of, or an inspection or investigation by, the Prime Minister.
- (2) If the Prime Minister finds it to be necessary, the Prime Minister may state an opinion to the court during the proceedings prescribed in the preceding paragraph.

## **Division 2 Self-Regulatory Committee**

(Authority)

- Article 105-4 (1) A Stock Company-Operated Financial Instruments Exchange may set in place a self-regulatory committee pursuant to the provisions of its articles of incorporation, unless Self-Regulatory Services are entrusted to a self-regulatory organization.
- (2) A self-regulatory committee makes the decisions about matters related to the Self-Regulatory Services of the Stock Company-Operated Financial Instruments Exchange that has in place that self-regulatory committee (hereinafter referred to as a "Specified Stock Company-Operated Financial Instruments Exchange" in this Division).
- (3) A self-regulatory committee is deemed to be entrusted by the board of directors with decisions about matters related to Self-Regulatory Services.
- (4) Notwithstanding the provisions of Article 362, paragraph (4), Article 399-13, paragraphs (4) to (6) inclusive, and Article 416, paragraph (4) of the Companies Act, the self-regulatory committee of a Specified Stock Company-Operated Financial Instruments Exchange may not entrust executive officers or directors with a decision about a matter related to Self-Regulatory Services.
- (5) Notwithstanding the provisions of Article 362, paragraph (4), Article 399-13, paragraphs (4) to (6) inclusive, and Article 416, paragraph (4) of the Companies Act, the board of directors of a Specified Stock Company-Operated Financial Instruments Exchange may not entrust the authority to select the members of a self-regulatory committee provided for in paragraph (2) of the following Article or to remove the members of a self-regulatory committee provided for in Article 105-7, paragraph (1), to an executive officer or director.

(Organization)

- Article 105-5 (1) A self-regulatory committee must be composed of three or more members, and the majority of those members must be outside directors.

- (2) Members of the self-regulatory committee are selected from among the directors of a Specified Stock Company-Operated Financial Instruments Exchange by resolution of the board of directors.
- (3) The resolution referred to in the preceding paragraph is adopted by a majority (or, if a higher proportion is provided for in the articles of incorporation, at least such a proportion) of the attending directors, and by a majority of the attending outside directors, at a meeting where the majority (or, if a higher proportion is provided for in the articles of incorporation, at least such a proportion) of the directors that are entitled to participate in the vote, are present.
- (4) The self-regulatory committee has a self-regulatory committee chairperson, and this chairperson is designated from among the outside directors based on a vote among the members of the self-regulatory committee.
- (5) The chairperson of the self-regulatory committee presides over the affairs of the self-regulatory committee.
- (6) The self-regulatory committee must designate a person from among the members of the self-regulatory committee to act as a proxy in handling the duties of the chairperson of the self-regulatory committee in the event that the chairperson is unable to attend to them, in advance.

(Term of Office)

- Article 105-6 (1) The term of office of a self-regulatory committee member continues until the conclusion of the annual shareholders meeting for the last business year that ends within one year from the time of the member's selection.
- (2) The members of a self-regulatory committee may be reselected only four times.

(Removal)

- Article 105-7 (1) The member of a self-regulatory committee may be removed by a resolution of the board of directors of the Specified Stock Company-Operated Financial Instruments Exchange.
- (2) The resolution referred to in the preceding paragraph is adopted by a majority (or, if a higher proportion is provided for in the articles of incorporation, at least such a proportion) of the attending directors, and by a majority of the attending members of the self-regulatory committee, at a meeting where the majority (or, if a higher proportion is provided for in the articles of incorporation, at least such a proportion) of the directors that are entitled to participate in the vote, are present.
  - (3) If there is a position vacancy that results in a shortfall in the number of members of a self-regulatory committee provided for in Article 105-5, paragraph (1), a member of the self-regulatory committee that has left the



position due to the expiration of the term of office or because the member resigned, continues to have rights and obligations as a member of the self-regulatory committee until a newly selected self-regulatory committee member (including a person as referred to in the following paragraph that will temporarily perform the duties of a member of the self-regulatory committee) assumes that position.

- (4) In the case prescribed in the preceding paragraph, if the court finds it to be necessary, it may appoint a person to temporarily perform the duties of a member of the self-regulatory committee, at the petition of an interested party.
- (5) If the court appoints a person to temporarily perform the duties of a member of a self-regulatory committee as referred to in the preceding paragraph, it may set the amount of remuneration that the Specified Stock Company-Operated Financial Instruments Exchange is to pay to that person.
- (6) The provisions of Article 868, paragraph (1) of the Companies Act and of Article 870 (limited to the part that involves item (ii)); Article 871; Article 872 (limited to the part that involves item (iv)); Article 874 (limited to the part that involves item (i)); Article 875; and Article 876 of that Act apply mutatis mutandis if the petition referred to in paragraph (4) is filed. The necessary technical replacement of terms for such a case is specified by Cabinet Order.

#### (Appointment and Dismissal of Directors)

Article 105-8 The provisions of Article 105-5, paragraph (3) apply mutatis mutandis if a Specified Stock Company-Operated Financial Instruments Exchange which is a company with a board of company auditors or a company with supervisory committee reaches a decision on the contents of proposals regarding the appointment and dismissal of directors to be submitted to the shareholders at a shareholders meeting.

#### (Emergency Handling)

- Article 105-9 (1) Notwithstanding the provisions of Article 105-4, paragraphs (2) and (3), if the representative director or representative executive officer of a Specified Stock Company-Operated Financial Instruments Exchange finds it to be particularly necessary for ensuring the public interest or the protection of investors, and there is an urgent necessity in light of the circumstances, the representative director or representative executive officer may make a decision to delist or a decision about any other matter related to Self-Regulatory Services that is specified by Cabinet Office Ordinance.
- (2) If a Specified Stock Company-Operated Financial Instruments Exchange decides to delist or makes a decision about any other matter related to Self-Regulatory Services that is specified by Cabinet Office Ordinance pursuant to the provisions of the preceding paragraph, the representative director or the

representative executive officer of the Specified Stock Company-Operated Financial Instruments Exchange must promptly report this to the self-regulatory committee.

(Enjoinment of the Act of an Executive Officer or Director)

Article 105-10 (1) If the executive officer or director of a Specified Stock Company-Operated Financial Instruments Exchange acts or is likely to act in an way that violates a decision of the self-regulatory committee with regard to Self-Regulatory Services, and if that act is likely to substantially compromise the appropriate operation of Self-Regulatory Services, a member of the self-regulatory committee may demand the executive officer or director to cease engaging in that act.

(2) In the case referred to in the preceding paragraph, if the court issues a provisional disposition ordering the executive officer or director referred to in that paragraph to cease engaging in that act, the court is not to make the executive officer or director provide collateral.

(Treatment of a Change in the Operational Rules)

Article 105-11 A Specified Stock Company-Operated Financial Instruments Exchange must obtain the consent of the self-regulatory committee if it seeks to change or discontinue a particular that is prescribed in the operational rules or other rules of the Stock Company-Operated Financial Instruments Exchange, and that is specified by Cabinet Office Ordinance as being related to Self-Regulatory Services.

(Convenor)

Article 105-12 The self-regulatory committee is convened by the chairperson of the self-regulatory committee prescribed in Article 105-5, paragraph (4) (or by the person that acts as a proxy in handling the duties of the chairperson of the self-regulatory committee as prescribed in Article 105-5, paragraph (6), if the chairperson of the self-regulatory committee is unable to attend to those duties; the same applies to the following Article and Article 105-14).

(Demand for the Calling of a Meeting)

Article 105-13 The member of a self-regulatory committee may demand that the chairperson of the self-regulatory committee call a meeting of the self-regulatory committee by specifying the purpose of a self-regulatory committee meeting and showing grounds for calling one.

(Procedures for Calling Meetings)

Article 105-14 (1) To call a meeting of the self-regulatory committee, the

chairperson of the self-regulatory committee must give a notice of the meeting to each member of the self-regulatory committee, no later than one week prior to the day of the self-regulatory committee meeting (or, if a shorter period has been specified by the self-regulatory committee, such a period).

(2) Notwithstanding the provisions of the preceding paragraph, with the consent of all members of the self-regulatory committee, a meeting of the self-regulatory committee may be held without the procedures for calling meetings being followed.

(3) If the executive officer, director, accounting advisor, or accounting auditor of a Specified Stock Company-Operated Financial Instruments Exchange is so requested by the self-regulatory committee, the officer, director, accounting advisor, or accounting auditor must attend a meeting of the self-regulatory committee and explain a matter regarding which the self-regulatory committee requests an explanation.

#### (Resolutions)

Article 105-15 (1) A self-regulatory committee resolution is adopted by a majority of the attending members of the self-regulatory committee, and by a majority of the attending members of the self-regulatory committee that are outside directors, at a meeting where the majority of the members of the self-regulatory committee that are entitled to participate in the vote, are present.

(2) A member of the self-regulatory committee with a special interest in the resolution referred to in the preceding paragraph may not participate in the vote.

(3) The minutes of a self-regulatory committee meeting must be prepared pursuant to the provisions of Cabinet Office Ordinance, and if the minutes are prepared in writing, the members of the self-regulatory committee present at the meeting must sign them or have their names and seals affixed to them.

(4) Without delay following a resolution under paragraph (1), the member of a self-regulatory committee that the self-regulatory committee selects shall, report the content of the resolution to the board of directors.

(5) If the minutes prescribed in the paragraph (3) are prepared as electronic or magnetic records, the relevant persons must use the measures in lieu of signing or having their names and seals affixed which are specified by Cabinet Office Ordinance shall be taken, for the particulars that are recorded in the electronic or magnetic records.

(6) Beyond what is provided for in the preceding paragraphs, meeting procedures and necessary particulars otherwise relevant to the operation of the self-regulatory committee are specified by the self-regulatory committee.

#### (Minutes)

Article 105-16 (1) A Specified Stock Company-Operated Financial Instruments Exchange shall keep the minutes referred to in paragraph (3) of the preceding Article at its head office for a ten-year period beginning from the day of the self-regulatory committee meeting.

(2) The directors of the Stock Company-Operated Financial Instruments Exchange may inspect or copy the following:

- (i) if the minutes referred to in the preceding paragraph are prepared in writing, the relevant written documents; and
- (ii) if the minutes referred to in the preceding paragraph are prepared as electronic or magnetic records, something that shows the particulars that have been recorded in such electronic or magnetic records, through a means specified by Cabinet Office Ordinance.

(3) If it is necessary in order for the shareholder of a Stock Company-Operated Financial Instruments Exchange to exercise its rights, with the permission of the court, the shareholder may request to inspect or copy the things set forth in the items of the preceding paragraph as respects the minutes referred to in paragraph (1).

(4) The provisions of the preceding paragraph apply *mutatis mutandis* if it is necessary in order for the creditor of a Stock Company-Operated Financial Instruments Exchange to inquire into the liability of the members of the self-regulatory committee, or if it is necessary in order for the shareholders or members of a person that has such a Stock Company-Operated Financial Instruments Exchange as its Subsidiary Company to exercise their voting rights.

(5) The court may not give the permission referred to in paragraph (3) (including as applied *mutatis mutandis* pursuant to the provisions of the preceding paragraph; hereinafter the same applies in this and the following paragraphs) if it finds that the inspection or copying to which the request referred to in that paragraph pertains is likely to cause substantial detriment to the Stock Company-Operated Financial Instruments Exchange, to a person that has the Stock Company-Operated Financial Instruments Exchange as its Subsidiary Company, or to a Subsidiary Company of that Stock Company-Operated Financial Instruments Exchange.

(6) The provisions of Article 868, paragraph (1) of the Companies Act or of Article 869; Article 870 (limited to the part that involves item (i)); the main clause of Article 871; Article 872 (limited to the part that involves item (iv)); the main clause of Article 873; Article 875; and Article 876 of that Act apply *mutatis mutandis* to the permission referred to in paragraph (3). The necessary technical replacement of terms for such a case is specified by Cabinet Order.

(Omission of Reports)

Article 105-17 If the executive officer, director, accounting advisor, or accounting auditor of a Specified Stock Company-Type Financial Instruments Exchange Stock Company-Operated Financial Instruments Exchange notifies all members of the self-regulatory committee of the particulars that are required to be reported to the self-regulatory committee, it is not required that those particulars be reported to the self-regulatory committee.

(Public Inspection)

Article 105-18 A Specified Stock Company-Operated Financial Instruments Exchange shall make the directory of the members of the self-regulatory committee available for public inspection.

(Decisions That Allow a Self-Regulatory Committee to Discharge Its Functions)

Article 106 The board of directors of a Specified Stock Company-Operated Financial Instruments Exchange must reach a decision on the particulars that are specified by Cabinet Office Ordinance as being necessary in order to allow the self-regulatory committee to discharge its functions.

(Attendance of the Company Auditors)

Article 106-2 The company auditor of a Specified Stock Company-Operated Financial Instruments Exchange that is a company with a board of company auditors, the supervisory committee member selected by the supervisory committee of a Specified Stock Company-Operated Financial Instruments Exchange that is a company with supervisory committee, or the audit committee member selected by the audit committee of a Specified Stock Company-Operated Financial Instruments Exchange that is a company with nominating committee, etc., may attend a meeting of the self-regulatory committee of the Specified Stock Company-Operated Financial Instruments Exchange to state an opinion, if the company auditor or audit committee member finds this to be necessary.

### **Division 3 Major Shareholders**

(Authorization)

Article 106-3 (1) Notwithstanding the provisions of Article 103-2, paragraph (1), the local government or any other person specified by Cabinet Order (hereinafter collectively referred to as the "Local Government, etc." in this Article, Article 106-14 and Article 106-17) may, with the authorization of the Prime Minister, acquire or hold a number of Subject Voting Rights that is equal to or greater than the Threshold Holding Ratio, but no greater than 50 percent, of all shareholders' voting rights in a Stock Company-Operated

Financial Instruments Exchange, pursuant to the provisions of Cabinet Office Ordinance.

- (2) Notwithstanding the provisions of the preceding paragraph and Article 103-2, paragraph (1), if the number of Subject Voting Rights that it holds does not increase, or in any other case specified by Cabinet Office Ordinance, a Local Government, etc. that has obtained the authorization referred to in the preceding paragraph may acquire or hold Subject Voting Rights exceeding 50 percent of all shareholders' voting rights in a Stock Company-Operated Financial Instruments Exchange.
- (3) In the case referred to in the preceding paragraph, the Local Government, etc. that has come to acquire or hold Subject Voting Rights exceeding 50 percent of all shareholders' voting rights in a Stock Company-Operated Financial Instruments Exchange (hereinafter referred to as a "Specified Holding Entity, etc." in this Article) shall notify the Prime Minister without delay that it has become a Specified Holding Entity, etc. and of the other matters specified by Cabinet Office Ordinance.
- (4) In the case referred to in paragraph (2), the Specified Holding Entity, etc. shall take the necessary measures for it to become the holder of a number of Subject Voting Rights that constitutes 50 percent or less of all shareholders' voting rights in the Stock Company-Operated Financial Instruments Exchange, within three months from the day on which it becomes a Specified Holding Entity, etc.
- (5) If, pursuant to the provisions of the preceding paragraph, a Specified Holding Entity, etc. becomes the holder of a number of Subject Voting Rights that constitutes 50 percent or less of all shareholders' voting rights in the Stock Company-Operated Financial Instruments Exchange, it must notify the Prime Minister of this without delay.
- (6) The provisions of Article 30-2 apply mutatis mutandis to the authorization referred to in paragraph (1).

(Criteria for Authorization)

Article 106-4 (1) Whenever an application is filed for the authorization referred to in paragraph (1) of the preceding Article, the Prime Minister shall examine whether the application conforms to the following criteria:

- (i) the applicant for authorization's exercise of the Subject Voting Rights is not likely to impair the sound and appropriate operation of the business of the Stock Company-Operated Financial Instruments Exchange; and
  - (ii) the applicant for authorization has a sufficient understanding of the public nature of the business of a Financial Instruments Exchange.
- (2) The provisions of Article 82, paragraph (2) apply mutatis mutandis to the authorization referred to in paragraph (1) of the preceding Article. In this case,

in Article 82, paragraph (2), the phrase "the preceding paragraph" is deemed to be replaced with "Article 106-4, paragraph (1)", the phrase ", Article 156-17, paragraph (1) or (2)" is deemed to be replaced with ", Article 156-17, paragraph (1) or (2); Article 156-20-14, paragraph (1) or (2)", and the phrase ", Article 106-28, paragraph (1)" is deemed to be replaced with ", Article 106-28, paragraph (1); Article 155-6, Article 155-10, paragraph (1)".

(Mutatis Mutandis Application of Provisions on the Refusal of Authorization)

Article 106-5 The provisions of Article 85-4 apply mutatis mutandis to the authorization referred to in Article 106-3, paragraph (1).

(Collection of Reports and Inspections)

Article 106-6 (1) If the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order the major shareholder of a Stock Company-Operated Financial Instruments Exchange (meaning a person that has obtained authorization under Article 106-3, paragraph (1); hereinafter the same applies in this Division) to submit reports or materials of reference in connection with the business or assets of the Stock Company-Operated Financial Instruments Exchange, or may have the relevant officials inspect the documents and other articles of such a major shareholder (but only as is necessary in connection with the business or assets of the Stock Company-Operated Financial Instruments Exchange).

(2) The provisions of the preceding paragraph apply mutatis mutandis to a Commodity Exchange or Commodity Exchange Holding Company that holds a number of Subject Voting Rights in a Stock Company-Operated Financial Instruments Exchange which is equal to or greater than the Threshold Holding Ratio.

(Supervisory Measures)

Article 106-7 (1) If the major shareholder of a Stock Company-Operated Financial Instruments Exchange violates a law or regulation or if it is found that the conduct of a major shareholder is likely to impair the sound and appropriate operation of the business of a Stock Company-Operated Financial Instruments Exchange, the Prime Minister may rescind the major shareholder's Article 106-3, paragraph (1) authorization or order the major shareholder to take measures that are necessary from a supervisory perspective.

(2) A person that has the authorization referred to in Article 106-3, paragraph (1) rescinded pursuant to the provisions of the preceding paragraph must take the necessary measures to become the holder of a number of Subject Voting Rights

in a Stock Company-Operated Financial Instruments Exchange which is less than the Threshold Holding Ratio, within three months from the day that the authorization is rescinded.

- (3) Irrespective of the category of proceeding for hearing statements of opinions under Article 13, paragraph (1) of the Administrative Procedure Act, before seeking to order the necessary measures under the provisions of paragraph (1), the Prime Minister must conduct a hearing.
- (4) The provisions of paragraph (1) and the preceding paragraph apply mutatis mutandis to an Authorized Financial Instruments Firms Association, Financial Instruments Exchange, Financial Instruments Exchange Holding Company, Commodity Exchange, or Commodity Exchange Holding Company that holds a number of Subject Voting Rights in a Stock Company-Operated Financial Instruments Exchange which is equal to or greater than the Threshold Holding Ratio.

(Lapse of Authorization)

Article 106-8 (1) If the major shareholder of a Stock Company-Operated Financial Instruments Exchange comes to fall under one of the following items, the Article 106-3, paragraph (1) authorization ceases to be effective:

- (i) the major shareholder fails to become the holder of a number of Subject Voting Rights that is equal to or greater than the Threshold Holding Ratio within six months from the date on which it obtains the authorization;
  - (ii) the major shareholder becomes the holder of a number of Subject Voting Rights that is less than the Threshold Holding Ratio; or
  - (iii) the major shareholder becomes a Financial Instruments Exchange, Financial Instruments Exchange Holding Company, Commodity Exchange, or Commodity Exchange Holding Company.
- (2) If an authorization ceases to be effective pursuant to the provisions of the preceding paragraph (in a case to which item (iii) of that paragraph pertains, this is only if the major shareholder becomes a Commodity Exchange or Commodity Exchange Holding Company), the person that was formerly a major shareholder must notify the Prime Minister of this without delay.

(Mutatis Mutandis Application of Provisions on Subject Voting Rights)

Article 106-9 The provisions of Article 103-2, paragraph (5) apply mutatis mutandis if the provisions of Article 106-3, paragraphs (1) to (5) inclusive; Article 106-4, paragraph (1); Article 106-6, paragraph (2); Article 106-7, paragraphs (2) and (4); and paragraph (1) of the preceding Article are applicable.

**Division 4 Financial Instruments Exchange Holding Companies**



(Authorization)

Article 106-10 (1) A person seeking to have a Stock Company-Operated Financial Instruments Exchange as its Subsidiary Company, or a person seeking to incorporate as a company that has a Stock Company-Operated Financial Instruments Exchange as its Subsidiary Company must obtain the authorization of the Prime Minister in advance to do so; provided, however that this does not apply if an Authorized Financial Instruments Firms Association, Financial Instruments Exchange, Commodity Exchange, or Commodity Exchange Holding Company has a Stock Company-Operated Financial Instruments Exchange as its Subsidiary Company.

(2) If the number of Subject Voting Rights that the person holds does not increase or if the case is otherwise specified by Cabinet Office Ordinance, and the person will come to have a Stock Company-Operated Financial Instruments Exchange as its Subsidiary Company, the provisions of the main clause of the preceding paragraph do not apply.

(3) In the case prescribed in the preceding paragraph, a company that comes to have a Stock Company-Operated Financial Instruments Exchange as its Subsidiary Company (hereinafter referred to as a "Specified Holding Company" in this Article) must take the necessary measures for it to cease to be a company that has a Stock Company-Operated Financial Instruments Exchange as its Subsidiary Company, within three months from the day on which the company becomes a Specified Holding Company; provided, however, that this does not apply if the Specified Holding Company obtains the authorization of the Prime Minister as a company that has a Stock Company-Operated Financial Instruments Exchange as its Subsidiary Company.

(4) The provisions of Article 106-3, paragraphs (3) and (5) apply mutatis mutandis to a Specified Holding Company. In this case, in paragraph (3) of that Article, the phrase "the preceding paragraph" is deemed to be replaced with "Article 106-10, paragraph (2)"; and in Article 106-3, paragraph (5), the phrase "the preceding paragraph" is deemed to be replaced with "Article 106-10, paragraph (3)" and the phrase "becomes the holder of a number of Subject Voting Rights that constitutes 50 percent or less of all shareholders' voting rights in a Stock Company-Operated Financial Instruments Exchange" is deemed to be replaced with "ceases to be a company that has a Stock Company-Operated Financial Instruments Exchange as its Subsidiary Company".

(5) The provisions of Article 30-2 apply mutatis mutandis to the authorization referred to in paragraph (1) or in the proviso to paragraph (3).

(Application for Authorization)

Article 106-11 (1) A person seeking the authorization referred to in paragraph

- (1) or in the proviso to paragraph (3) of the preceding Article must submit a written application for authorization to the Prime Minister, in which it states the following particulars:
- (i) its trade name;
  - (ii) the amount of stated capital;
  - (iii) the names of its directors and company auditors (or, for a company with supervisory committee, its directors; and for a company with nominating committee, etc., its directors and executive officers);
  - (iv) for a company with accounting advisors, the names of its accounting advisors; and
  - (v) the names and locations of its head office and other business offices.
- (2) The articles of incorporation and other documents specified by Cabinet Office Ordinance must accompany the written application for authorization referred to in the preceding paragraph.
- (3) The provisions of Article 81, paragraph (3) apply mutatis mutandis to the articles of incorporation referred to in the preceding paragraph.

(Examination Criteria for Authorization)

Article 106-12 (1) Whenever an application for authorization under the provisions of paragraph (1) of the preceding Article is filed, the Prime Minister shall examine whether the application conforms to the following criteria:

- (i) the applicant for authorization or the company that would be incorporated after obtaining authorization (hereinafter collectively referred to as the "Applicant for Authorization, etc." in this Article) is a person whose sole purpose is to have a Stock Company-Operated Financial Instruments Exchange, a Stock Company-Operated Financial Instruments Exchange, or one of the following companies, as its Subsidiary Company:
  - (a) a company engaged in business incidental to the operation of a Financial Instruments Exchange Market;
  - (b) a company engaged in business that is linked to the operation of a Financial Instruments Exchange Market;
  - (c) a company engaged in the Operation of a Commodity Market; or
  - (d) a company engaged in business that is linked to the operation of the necessary market for effecting Commodity Futures Transactions.
- (ii) the Applicant for Authorization, etc. and the Stock Company-Operated Financial Instruments Exchange that would become its Subsidiary Company have good prospects in terms of income and expenditures;
- (iii) in light of its personnel structure, the Applicant for Authorization, etc. has the knowledge and experience to perform the business administration of the Stock Company-Operated Financial Instruments Exchange that would become its Subsidiary Company, in an appropriate and fair manner; and

- (iv) the applicant for authorization has sufficient social credibility.
- (2) If, as a result of having conducted an examination pursuant to the provisions of the preceding paragraph, the Prime Minister finds that an application conforms to the criteria in that paragraph, the Prime Minister shall grant authorization, except in a case that falls under one of the following items:
  - (i) the Applicant for Authorization, etc. is not a stock company (meaning a stock company that has in place the following organs):
    - (a) a board of directors; and
    - (b) a company auditor, supervisory committee, or nominating committee, etc..
  - (ii) the applicant for authorization is a person that has been sentenced to a fine (including an equivalent sentence under foreign laws and regulations) for violating the provisions of this Act or for violating the provisions of a foreign law or regulation that is equivalent to this Act, and five years have not yet passed since the day on which the person finished serving the sentence or ceased to be subject to its enforcement;
  - (iii) the applicant for authorization is a person that has had its license rescinded pursuant to the provisions of Article 148, Article 152, paragraph (1), Article 156-17, paragraph (1) or (2), Article 148 as applied *mutatis mutandis* under Article 156-26, or Article 156-32, paragraph (1); has had its registration rescinded pursuant to the provisions of Article 52, paragraph (1), Article 53, paragraph (3), Article 57-6, paragraph (3), Article 66-20, paragraph (1), or Article 66-42, paragraph (1); has had its authorization rescinded pursuant to the provisions of Article 106-7, paragraph (1), Article 106-21, paragraph (1), Article 106-28, paragraph (1), or Article 156-5-9, paragraph (1); or is a person that had obtained a license or registration of the same kind in a foreign state pursuant to the provisions of a foreign law or regulation that is equivalent to this Act (including permission or any other administrative disposition similar to such a license or registration), but that has had that license or registration rescinded; and five years have not yet passed since the date of the rescission;
  - (iv) the Applicant for Authorization, etc. has a person falling under one of the categories in Article 82, paragraph (2), item (iii), sub-items (a) to (f) inclusive as an officer; or
  - (v) the application for authorization or a document or electronic or magnetic record that is required to accompany it contains a false statement or false record about a material particular.

(*Mutatis Mutandis Application of Provisions on Refusal of Authorization*)  
Article 106-13 The provisions of Article 85-4 apply *mutatis mutandis* to the authorization referred to in paragraph (1) and in the proviso to paragraph (3) of Article 106-10.

(Limitation on the Holding of Voting Rights)

- Article 106-14 (1) It is prohibited for any person to acquire or hold a number of Subject Voting Rights in a Financial Instruments Exchange Holding Company which is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights; provided, however, that this does not apply if an Authorized Financial Instruments Firms Association, Financial Instruments Exchange, or Commodity Exchange acquires or holds Subject Voting Rights.
- (2) If the number of Subject Voting Rights that the person holds does not increase or in any other case specified by Cabinet Office Ordinance, the provisions of the main clause of the preceding paragraph do not apply to a person acquiring or holding a number of Subject Voting Rights in a Financial Instruments Exchange Holding Company which is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights.
- (3) In the case referred to in the preceding paragraph, a person that comes to acquire or hold a number of Subject Voting Rights in a Financial Instruments Exchange Holding Company which is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights (hereinafter referred to as a "Specified Holder" in this Article) must notify the Prime Minister without delay that it has become a Specified Holder and of the matters specified by Cabinet Office Ordinance.
- (4) In the case referred to in paragraph (2), a Specified Holder must take the necessary measures to become the holder of a number of Subject Voting Rights in a Financial Instruments Exchange Holding Company which is less than the Threshold Holding Ratio, within three months from the day on which that person becomes a Specified Holder; provided, however, that this does not apply if the Specified Holder is a Local Government, etc. and the Local Government, etc. obtains the authorization of the Prime Minister pursuant to the provisions of Article 106-17, paragraph (1).
- (5) Necessary particulars relevant to the application of the provisions of each of the preceding paragraphs are specified by Cabinet Order.

(Submission of a Statement of Holdings in Subject Voting Rights)

- Article 106-15 A person that becomes the holder of Subject Voting Rights exceeding five percent of all shareholders' voting rights in a Financial Instruments Exchange Holding Company (hereinafter referred to as the "Holder of Subject Voting Rights" in this Article) must submit a statement of holdings in Subject Voting Rights to the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance and without delay, in which that person states the Subject Voting Rights holding ratio (meaning the ratio arrived at by dividing the number of Subject Voting Rights that the Holder of Subject Voting

Rights holds by the number that represents all shareholders' voting rights in the Financial Instruments Exchange Holding Company), the purpose for which they are held, and the matters specified by Cabinet Office Ordinance.

(Collection of Reports and Inspection of a Person Submitting a Statement of Holdings in Subject Voting Rights)

Article 106-16 If the Prime Minister suspects that a statement of holdings in Subject Voting Rights as referred to in the preceding Article contains a false statement or omits a statement as to a particular that is required to be stated, the Prime Minister may order the person submitting the statement of holdings in Subject Voting Rights to submit reports or materials that should serve as a reference, or may have the relevant officials inspect the documents and other articles of that person (but only as is necessary in connection with what is stated in the statement of holdings in Subject Voting Rights).

(Authorization as a Major Shareholder)

Article 106-17 (1) Notwithstanding the provisions of Article 106-14, paragraph (1), with the authorization of the Prime Minister, a Local Government, etc. may acquire or hold a number of Subject Voting Rights that is equal to or greater than the Threshold Holding Ratio, but no greater than 50 percent, of all shareholders' voting rights in a Financial Instruments Exchange Holding Company, pursuant to the provisions of Cabinet Office Ordinance.

(2) Notwithstanding the provisions of the preceding paragraph and Article 106-14, paragraph (1), if the number of Subject Voting Rights that it holds does not increase or in any other case specified by Cabinet Office Ordinance, a Local Government, etc. that has obtained the authorization under the preceding paragraph may acquire or hold Subject Voting Rights exceeding 50 percent of all shareholders' voting rights in a Financial Instruments Exchange Holding Company.

(3) In the case referred to in the preceding paragraph, a Local Government, etc. that comes to acquire or hold Subject Voting Rights exceeding 50 percent of all shareholders' voting rights in a Financial Instruments Exchange Holding Company (hereinafter referred to as a "Specified Holding Entity, etc." in this Article) must take the necessary measures for it to become the holder of a number of Subject Voting Rights which constitutes 50 percent or less of all shareholders' voting rights in the Financial Instruments Exchange Holding Company, within three months from the day on which it becomes a Specified Holding Entity, etc.

(4) The provisions of Article 106-3, paragraphs (3) and (5) apply mutatis mutandis to a Specified Holding Entity, etc. In this case, in paragraph (3) of that Article, the phrase "the preceding paragraph" is deemed to be replaced

with "Article 106-17, paragraph (2)", and in Article 106-3, paragraph (5), the phrase "the preceding paragraph" is deemed to be replaced with "Article 106-17, paragraph (3)".

- (5) The provisions of Article 30-2 apply mutatis mutandis to the authorization referred to in paragraph (1).

(Criteria for Authorization as a Major Shareholder)

Article 106-18 (1) Whenever an application is filed for the authorization referred to in paragraph (1) of the preceding Article, the Prime Minister shall examine whether the application conforms to the following criteria:

(i) the applicant for authorization's exercise of the Subject Voting Rights is not likely to impair the sound and appropriate operation of the business of a Stock Company-Operated Financial Instruments Exchange that is the Subsidiary Company of the Financial Instruments Exchange Holding Company; and

(ii) the applicant for authorization has a sufficient understanding of the public nature of the business of a Financial Instruments Exchange.

- (2) The provisions of Article 82, paragraph (2) apply mutatis mutandis to the authorization referred to in paragraph (1) of the preceding Article. In this case, in Article 82, paragraph (2), the phrase "the preceding paragraph" is deemed to be replaced with "Article 106-18, paragraph (1)", the phrase ", Article 156-17, paragraph (1) or (2)" is deemed to be replaced with ", Article 156-17, paragraph (1) or (2); Article 156-20-14, paragraph (1) or (2)", and the phrase ", Article 106-28, paragraph (1)" is deemed to be replaced with ", Article 106-28, paragraph (1); Article 155-6; Article 155-10, paragraph (1)"; and any other necessary technical replacement of terms is specified by Cabinet Order.

(Mutatis Mutandis Application of Provisions on Refusal of Authorization)

Article 106-19 The provisions of Article 85-4 apply mutatis mutandis to the authorization referred to in Article 106-17, paragraph (1).

(Collection of Reports and Inspection of a Major Shareholder)

Article 106-20 (1) If the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order the major shareholder of a Financial Instruments Exchange Holding Company (meaning a person that has obtained the authorization referred to in Article 106-17, paragraph (1); hereinafter the same applies in this Division) to submit reports or materials of reference in connection with the business or assets of the Financial Instruments Exchange Holding Company or a Stock Company-Operated Financial Instruments Exchange that is its Subsidiary Company, or may have the relevant officials inspect the documents and other

articles of such a major shareholder (but only as is necessary in connection with the business or assets of the Financial Instruments Exchange Holding Company or a Stock Company-Operated Financial Instruments Exchange that is its Subsidiary Company).

- (2) The provisions of the preceding paragraph apply mutatis mutandis to a Commodity Exchange that holds a number of Subject Voting Rights in a Stock Company-Operated Financial Instruments Exchange which is equal to or greater than the Threshold Holding Ratio.

(Supervisory Measures for Major Shareholders)

Article 106-21 (1) If the major shareholder of a Financial Instruments Exchange Holding Company violates a law or regulation, or if it is found that the conduct of a major shareholder is likely to impair the sound and appropriate operation of the business of a Stock Company-Operated Financial Instruments Exchange that is a Subsidiary Company of such a Financial Instruments Exchange Holding Company, the Prime Minister may rescind the major shareholder's Article 106-17, paragraph (1) authorization, or order the major shareholder to take measures that are necessary from a supervisory perspective.

- (2) A person that has its Article 106-17, paragraph (1) authorization rescinded pursuant to the provisions of the preceding paragraph must take the necessary measures to become the holder of a number of Subject Voting Rights in a Financial Instruments Exchange Holding Company which is less than the Threshold Holding Ratio, within three months from the day on which the authorization is rescinded.

- (3) Irrespective of the category of proceeding for hearing statements of opinions under Article 13, paragraph (1) of the Administrative Procedure Act, before seeking to order the necessary measures under the provisions of paragraph (1), the Prime Minister must conduct a hearing.

- (4) The provisions of paragraph (1) and the preceding paragraph apply mutatis mutandis to an Authorized Financial Instruments Firms Association, Financial Instruments Exchange, or Commodity Exchange that holds a number of Subject Voting Rights in a Financial Instruments Exchange Holding Company which is equal to or greater than the Threshold Holding Ratio.

(Lapse of Authorization as a Major Shareholder)

Article 106-22 (1) If the major shareholder of a Financial Instruments Exchange Holding Company comes to fall under one of the following items, the authorization referred to in Article 106-17, paragraph (1) ceases to be effective:

- (i) the major shareholder fails to become the holder of a number of Subject Voting Rights that is equal to or greater than the Threshold Holding Ratio within six months from the date on which the major shareholder obtains the

authorization;

- (ii) the major shareholder becomes the holder of a number of Subject Voting Rights that is less than the Threshold Holding Ratio; or
- (iii) the major shareholder becomes a Financial Instruments Exchange or a Commodity Exchange.

(2) If an authorization has ceased to be effective pursuant to the provisions of the preceding paragraph (in a case to which item (iii) of that paragraph pertains, this is only if the major shareholder becomes a Commodity Exchange), the person that was a major shareholder must notify the Prime Minister of this without delay.

#### (Scope of Business)

Article 106-23 (1) A Financial Instruments Exchange Holding Company may not conduct any business other than the business administration of the Stock Company-Operated Financial Instruments Exchange or company set forth in Article 106-12, paragraph (1), item (i), sub-items (a) to (d) inclusive which is its Subsidiary Company, and other business incidental thereto.

(2) In conducting its business, a Financial Instruments Exchange Holding Company shall endeavor to ensure the appropriate business administration of the Stock Company-Operated Financial Instruments Exchange that is its Subsidiary Company, so as not to impair confidence in the public nature or the sound and appropriate operation of the business of the Subsidiary Company.

#### (Scope of Subsidiary Companies)

Article 106-24 (1) A Financial Instruments Exchange Holding Company must not have a company other than one that operates a Financial Instruments Exchange Market and performs other business incidental thereto as its Subsidiary Company; provided, however, that with the authorization of the Prime Minister, it may have a company set forth in Article 106-12, paragraph (1), item (i), sub-item (b) to (d) inclusive as its Subsidiary Company.

(2) The provisions of Article 30-2 apply mutatis mutandis to the authorization referred to in the proviso to the preceding paragraph.

#### (Mutatis Mutandis Application of Provisions on Refusal of Authorization)

Article 106-25 The provisions of Article 85-4 apply mutatis mutandis to the authorization referred to in the proviso to paragraph (1) of the preceding Article.

#### (Rescission of Authorization)

Article 106-26 If a Financial Instruments Exchange Holding Company is discovered to have fallen under one of the categories in the items of Article



106-12, paragraph (2) at the time it obtained authorization, the Prime Minister may rescind its authorization.

(Collection of Reports and Inspections)

Article 106-27 Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order a Financial Instruments Exchange Holding Company or its Subsidiary Company to submit reports or materials that should serve as a reference with regard to the business or assets of the Financial Instruments Exchange Holding Company, and may have the relevant officials inspect the state of the business or assets, or the books and documents or any other articles, of a Financial Instruments Exchange Holding Company or its Subsidiary Company (but may only have the relevant officials inspect such a Subsidiary Company as is necessary in connection with the business or assets of the Financial Instruments Exchange Holding Company).

(Supervisory Measures)

Article 106-28 (1) If a Financial Instruments Exchange Holding Company violates a law or regulation, or if the Prime Minister finds it to be necessary, in light of the state of the business of a Financial Instruments Exchange Holding Company, for ensuring confidence in the public nature of the business of a Stock Company-Operated Financial Instruments Exchange that is its Subsidiary Company and to ensure the sound and appropriate operation of that business, the Prime Minister may rescind the Financial Instruments Exchange Holding Company's Article 106-10, paragraph (1) authorization or the authorization referred to in the proviso to paragraph (3) of that Article or the proviso to Article 106-24, paragraph (1), or may order the Financial Instruments Exchange Holding Company to take measures that are necessary from a supervisory perspective.

(2) If the director, accounting advisor, company auditor, or executive officer of a Financial Instruments Exchange Holding Company violates a law or regulation or a disposition by a government agency which is based on a law or regulation, the Prime Minister may order the Financial Instruments Exchange Holding Company to dismiss that director, accounting advisor, company auditor, or executive officer.

(3) A Financial Instruments Exchange Holding Company that has the authorization referred to in Article 106-10, paragraph (1) or the proviso to paragraph (3) of that Article rescinded pursuant to the provisions of paragraph (1) must promptly take the necessary measures for it to cease to be a company that has a Stock Company-Operated Financial Instruments Exchange as its Subsidiary Company.

- (4) If the measures referred to the preceding paragraph are taken but the person that takes those measures remains the holder of a number of Subject Voting Rights in a Stock Company-Operated Financial Instruments Exchange which is equal to or greater than the Threshold Holding Ratio, the date on which the company ceases to be a person that has the Stock Company-Operated Financial Instruments Exchange as its Subsidiary Company is deemed to be the date on which the person becomes a Specified Holder as referred to in that paragraph, and the provisions of Article 103-2, paragraph (4) apply.
- (5) Irrespective of the category of proceeding for hearing statements of opinions under Article 13, paragraph (1) of the Administrative Procedure Act, before seeking to order the necessary measures pursuant to the provisions of paragraph (1), the Prime Minister must conduct a hearing.

(Lapse of Authorization)

Article 107 (1) If a Financial Instruments Exchange Holding Company comes to fall under one of the following items, Article 106-10, paragraph (1) authorization or the authorization referred to in the proviso to paragraph (3) of that Article ceases to be effective:

- (i) it ceases to be a company that has a Stock Company-Operated Financial Instruments Exchange as its Subsidiary Company (excluding the cases that are specified by Cabinet Office Ordinance in consideration of the manner in which voting rights are held in the Stock Company-Operated Financial Instruments Exchange, or any other relevant circumstances);
  - (ii) it is dissolved;
  - (iii) a judgment invalidating its incorporation or a merger (but only if the company incorporated in the merger is a Financial Instrument Exchange Holding Company) or incorporation-type split (but only if the company incorporated in the incorporation-type split is a Financial Instrument Exchange Holding Company) becomes final and binding;
  - (iv) it fails to become a company that has a Stock Company-Operated Financial Instruments Exchange as its Subsidiary Company within six months from the date on which authorization is obtained; or
  - (v) it becomes a Financial Instruments Exchange or a Commodity Exchange.
- (2) If an authorization has ceased to be effective pursuant to the provisions of the preceding paragraph (in a case to which item (v) of that paragraph pertains, this is only if the Financial Instruments Exchange Holding Company becomes a Commodity Exchange), the person that was the Financial Instruments Exchange Holding Company must notify the Prime Minister of this without delay.

(Mutatis Mutandis Application of Provisions on Subject Voting Rights)

Article 108 The provisions of Article 103-2, paragraph (5) apply mutatis mutandis if Article 106-14; Article 106-15; Article 106-17, paragraphs (1) to (3) inclusive; Article 106-3, paragraphs (3) and (5) as applied mutatis mutandis pursuant to Article 106-17, paragraph (4); Article 106-18, paragraph (1); Article 106-20, paragraph (2); Article 106-21, paragraphs (2) and (4); Article 106-22, paragraph (1); and Article 106-28, paragraph (4) are applicable.

(Mutatis Mutandis Application of Provisions on Supervisory Measures)

Article 109 The provisions of Article 106-23, paragraph (2) and Article 106-28, paragraphs (1) and (5) apply mutatis mutandis to an Authorized Financial Instruments Firms Association or Financial Instruments Exchange that has a Stock Company-Operated Financial Instruments Exchange as its Subsidiary Company and to an Authorized Financial Instruments Firms Association or Financial Instruments Exchange that has a Financial Instruments Exchange Holding Company as its Subsidiary Company, and the provisions of Article 106-23, paragraph (2), Article 106-27, and Article 106-28, paragraphs (1) and (5) apply mutatis mutandis to a parent Commodity Exchange, etc. or Commodity Exchange that has a Financial Instruments Exchange Holding Company as its Subsidiary Company.

### **Section 3 The Purchase and Sales of Securities, etc. on a Financial Instruments Exchange Market**

(Purpose of Operation)

Article 110 A Financial Instruments Exchange Market must be operated so as to ensure fair and smooth purchase and sales of Securities and Market Transactions of Derivatives, as well as to contribute to the protection of investors.

(Persons Allowed to Conduct Financial Instruments Transactions on a Financial Instruments Exchange)

Article 111 (1) Only the Member, etc. of a Financial Instruments Exchange that operates a Financial Instruments Exchange Market may make a purchase and sale of Securities or a Market Transaction of Derivatives on that Financial Instruments Exchange Market.

(2) The provisions of the preceding paragraph do not apply if a Member, etc. referred to in that paragraph entrusts a Clearing Member provided for in Article 156-7, paragraph (2), item (iii) with Brokerage for Clearing of Securities, etc., and the Clearing Member conducts a transaction provided by Cabinet Office Ordinance.

(Trading Participants in an Incorporated Association-Operated Financial Instruments Exchange)

Article 112 (1) An Incorporated Association-Operated Financial Instruments Exchange, in accordance with the articles of incorporation, may grant a person set forth in one of the following (limited to a persons that is not a member) a trading license for engaging in the purchase and sale of Securities and conducting Market Transactions of Derivatives on the Financial Instruments Exchange Market that the Incorporated Association-Operated Financial Instruments Exchange operates (of a person as set forth in item (ii), this is limited to transactions involving the services of a registered financial institution):

(i) a Financial Instruments Business Operator or Authorized Operator for On-Exchange Transactions; and

(ii) a registered financial institution.

(2) In addition to what is provided for in the preceding paragraph, a Membership-Type Financial Instruments Exchange may, in accordance with the provisions of articles of incorporation, grant the qualification for trading for conducting only Commodity-Related Market Transactions of Derivatives in the Financial Instruments Exchange Market established by said Membership-Type Financial Instruments Exchange. In this case, it shall not grant the qualification for trading to an individual, a person falling under any of sub-items (a) to (c) inclusive of Article 29-4, paragraph (1), item (i), or a juridical person who has an officer falling under any of sub-items (a) to (i) inclusive of item (ii) of that paragraph.

(3) The provisions of Articles 94 and 95 apply mutatis mutandis to a persons that is granted a trading license pursuant to the provisions of the preceding two paragraphs. In this case, in Article 94, the term "Financial Instruments Incorporated Association" is deemed to be replaced with "Incorporated Association-Operated Financial Instruments Exchange" and the term "withdraw" is deemed to be replaced with "forfeit its trading license"; in Article 95, the term "following grounds" shall be deemed to be replaced with "following grounds (with regard to a Commodity Trading Participant prescribed in Article 151, excluding the grounds listed in item (i))"; in Article 95, the term "withdraw" is deemed to be replaced with "forfeit its trading license"; in Article 95, item (i), the term "Financial Instruments Business Operator, etc." is deemed to be replaced with "person set forth in one of the items of Article 112, paragraph (1)"; and in Article 95, item (iii), the term "expulsion" is deemed to be replaced with "rescission of its trading license".

(Trading Participants in a Stock Company-Operated Financial Instruments Exchange)

Article 113 (1) A Stock Company-Operated Financial Instruments Exchange, in accordance with the operational rules, may grant a person set forth in one of the following a trading license for engaging in the purchase and sale of Securities and Market Transactions of Derivatives on the Financial Instruments Exchange Market operated by that Stock Company-Operated Financial Instruments Exchange (for a person as set forth in item (ii), this is limited to transactions involving the services of a registered financial institution):

(i) a Financial Instruments Business Operator or Authorized Operator for On-Exchange Transactions; and

(ii) a registered financial institution.

(2) In addition to what is provided for in the preceding paragraph, a Stock Company-Operated Financial Instruments Exchange may, in accordance with the operational rules, grant the qualification for trading for conducting only Commodity-Related Market Transactions of Derivatives in the Financial Instruments Exchange Market established by said Stock Company-Operated Financial Instruments Exchange. In this case, it shall not grant the qualification for trading to an individual, a person falling under any of sub-items (a) to (c) inclusive of Article 29-4, paragraph (1), item (i), or a juridical person that has an officer falling under any of sub-items (a) to (i) inclusive of item (ii) of that paragraph.

(3) The provisions of Articles 94 and 95 apply mutatis mutandis to a person that is granted a trading license pursuant to the provisions of the preceding paragraph. In this case, in Article 94, the term "articles of incorporation" is deemed to be replaced with "operational rules", the term "Financial Instruments Incorporated Association" is deemed to be replaced with "Stock Company-Operated Financial Instruments Exchange", and the term "withdraw" is deemed to be replaced with "forfeit its trading license"; in Article 95 the term "withdraw" is deemed to be replaced with "forfeit its trading license"; in Article 95, item (i), the term "Financial Instruments Business Operator, etc." is deemed to be replaced with "person set forth in one of the items of Article 113, paragraph (1)"; and in Article 95, item (iii), the term "expulsion" is deemed to be replaced with "rescission of its trading license".

(Guarantee Funds)

Article 114 (1) A Member, etc. shall deposit guarantee funds with a Financial Instruments Exchange, in accordance with the articles of incorporation (or the operational rules, if this is a Stock Company-Operated Financial Instruments Exchange; hereinafter the same applies in the following paragraph and paragraph (3) of this Article, paragraph (1) of the following Article (including as applied mutatis mutandis pursuant to Article 119, paragraph (6)), Article

116, paragraph (1) (including as applied *mutatis mutandis* pursuant to Article 132), and Article 119, paragraph (1)).

- (2) Securities may serve as guarantee funds, pursuant to the provisions of the articles of incorporation.
- (3) A Financial Instruments Exchange must specify how guarantee funds are managed in its articles of incorporation.
- (4) A person that entrusts a Member, etc. with the purchase and sale of Securities or a Market Transaction of Derivatives on a Financial Instruments Exchange Market has the right to receive payment of a claim arising due to that entrustment out of the guarantee funds of that Member, etc., in preference over other creditors.

#### (Damages Due to Default)

- Article 115 (1) If a Member, etc. causes damage to another Member, etc. or to the Financial Instruments Exchange or Financial Instruments Clearing Organization (limited to one specified in the articles of incorporation of the Financial Instruments Exchange) due to a default on an obligation arising from a purchase and sale of Securities or a Market Transaction of Derivatives on the Financial Instruments Exchange Market, the Member, etc., Financial Instruments Exchange, or Financial Instruments Clearing Organization that incurs the damage has the right to receive payment out of the guarantee funds of the Member, etc. that causes that damage, in preference over other creditors.
- (2) The right of priority of a person that entrusts a person with a purchase and sale of Securities or a Market Transaction of Derivatives on a Financial Instruments Exchange Market under paragraph (4) of the preceding Article prevails over the right of priority under the preceding paragraph.

#### (Completion of Transactions Incidental to the Forfeiture of a Trading License)

- Article 116 (1) If a Member, etc. withdraws from a Financial Instruments Exchange (or if a Trading Participant forfeits its trading license), the Financial Instruments Exchange, in accordance with the articles of incorporation, must have the former Member, etc., its general successor, or another Member, etc. complete the purchase and sales of Securities and Market Transactions of Derivatives being conducted by the former Member, etc. on the Financial Instruments Exchange Market. In such a case, the former Member, etc. or its general successor is deemed to still be a Member, etc. inasmuch as the task of completing such transactions is concerned.
- (2) If a Financial Instruments Exchange has another Member, etc. complete the transactions prescribed in the preceding paragraph pursuant to the provisions of that paragraph, a contract of mandate is deemed to have been established between the former Member, etc. or its general successor, and that other

Member, etc.

(Particulars for Inclusion in the Operational Rules)

Article 117 (1) A Financial Instruments Exchange must establish detailed regulations in respect of the following matters in connection with the Financial Instruments Exchange Markets it operates, for each of its Financial Instruments Exchange Markets (excluding items (i) and (ii), if it is an Incorporated Association-Operated Financial Instruments Exchange), in its operational rules:

- (i) the particulars of its Trading Participants;
- (ii) the particulars of guarantee funds;
- (iii) the particulars of clearing margins;
- (iv) the standards and methods for the listing and delisting of Securities subject to purchase and sales of Securities;
- (v) the type and period of purchase and sales of Securities or Market Transactions of Derivatives;
- (vi) the starting, ending, and suspension of purchase and sales of Securities or Market Transactions of Derivatives;
- (vii) the process for concluding a contract for the purchase and sale of Securities or a Market Transaction of Derivatives;
- (viii) delivery and other means of settlement for purchase and sales of Securities or Market Transactions of Derivatives; and
- (ix) necessary particulars relevant to the purchase and sale of Securities or Market Transactions of Derivatives, other than the particulars set forth in the preceding items.

(2) A Financial Instruments Exchange shall, when establishing a Financial Instruments Exchange Market in which Commodity-Related Market Transactions of Derivatives are conducted, specify in its operational rules, in addition to what is listed in each item of the preceding paragraph, the detailed regulations on the Financial Instruments, etc. pertaining to such Commodity-Related Market Transactions of Derivatives, for each type of Commodity-Related Market Transactions of Derivatives in said Financial Instruments Exchange Market, for each Financial Instruments Exchange Market established by it.

(Specified Financial Instruments Exchange Markets)

Article 117-2 (1) For each Financial Instruments Exchange Market that a Financial Instruments Exchange operates, the Financial Instruments Exchange may prohibit Members, etc. from making purchases of Securities with which it has been entrusted by a person other than a Professional Investor, etc. (excluding the Issuer of the Securities or a person specified by

Cabinet Office Ordinance) (such a purchase is referred to as a "Purchase for a General Investor" in the following paragraph), as prescribed by its operational rules.

- (2) If a Financial Instruments Exchange prohibits Purchases for General Investors pursuant to the provisions of the preceding paragraph, in addition to the matters set forth in the items of paragraph (1) of the preceding Article, it must make provisions in its operational rules for the following matters in connection with its Specified Financial Instruments Exchange Markets:
- (i) the particulars of limitations imposed on Members', etc. acceptance of requests to entrust them with the sale and purchase of Securities; and
  - (ii) the contents, and the means of provision or timing for the disclosure of the Specified Information on Securities and Information on the Issuer that an Issuer of Specified Listed Securities is required to provide or disclose, and necessary particulars otherwise relevant to the provision or disclosure of information on Specified Listed Securities.

(Standardized Instruments)

- Article 118 (1) A Financial Instruments Exchange may use a standardized instrument as set forth in Article 2, paragraph (24), item (v) for Market Transactions of Derivatives, in accordance with the articles of incorporation.
- (2) In the case referred to in the preceding paragraph, the Financial Instruments Exchange must make provisions in its operational rules for the conditions of the standardized instrument and necessary particulars otherwise relevant to transactions in standardized instruments.

(The Depositing of Clearing Margin)

- Article 119 (1) A Financial Instruments Exchange (or, if it is specified in the articles of incorporation that the Financial Instruments Exchange will have another Financial Instruments Clearing Organization perform Financial Instruments Obligation Assumption Service with regard to the whole or part of the Market Transactions of Derivatives on its Financial Instruments Exchange Markets (excluding those designated by the Prime Minister; hereinafter the same applies in this Article), the Financial Instruments Clearing Organization that performs Financial Instruments Obligation Assumption Services for Market Transactions of Derivatives; the same applies in paragraph (4)), pursuant to the provisions of Cabinet Office Ordinance, must receive a deposit of clearing margin for a Market Transaction of Derivatives from the person specified in the relevant of the following items for the category of cases set forth in that item:
- (i) a Member, etc. conducts a Market Transaction of Derivatives on its own account; or a Member, etc. conducts a Market Transaction of Derivatives



- with which it has been entrusted, after receiving a deposit of customer margin based on the provisions of paragraph (3): the Member, etc.;
- (ii) a Member, etc. conducts a Market Transaction of Derivatives with which it has been entrusted (excluding a Market Transaction of Derivatives with which the Member, etc. has been entrusted by a person that has undertaken brokerage (hereinafter referred to as a "Broker" in this Article) for entrusting a Market Transaction of Derivatives to that Member, etc. (hereinafter referred to as a "Brokered Market Transaction of Derivatives" in this Article; hereinafter the same applies in this item) (other than in a case specified in the preceding item): the person entrusting the Market Transaction of Derivatives (meaning the person that entrusts a Member, etc. with a Market Transaction of Derivatives, which is not a Broker; hereinafter the same applies in paragraph (3));
  - (iii) a Member, etc. conducts a Brokered Market Transaction of Derivatives with which it has been entrusted by a Broker that has received a deposit of brokerage margin based on the provisions of the following paragraph (other than in a case specified in item (i)): the Broker; or
  - (iv) a Member, etc. conducts a Brokered Market Transaction of Derivatives (other than in a case specified in item (i) or the preceding item): the person that requested the Broker to broker the entrustment of the Brokered Market Transaction of Derivatives (hereinafter referred to as the "Applicant" in this Article).
- (2) Pursuant to the provisions of Cabinet Office Ordinance, a Broker may have an Applicant deposit a brokerage margin with the Broker for undertaking to broker the entrustment of a Market Transaction of Derivatives.
  - (3) Pursuant to the provisions of Cabinet Office Ordinance, a Member, etc. may have the person entrusting a Derivatives Transaction or the Broker (or the Applicant, if the Market Transaction of Derivatives falls under the category of a Brokered Market Transaction of Derivatives with which a Member, etc. is entrusted by a Broker that has not a deposit of brokerage margin from the Applicant based on the provisions of the preceding paragraph) deposit customer margin with the Member, etc. in connection with its becoming entrusted with a Market Transaction of Derivatives.
  - (4) A Financial Instruments Exchange must manage the clearing margin that has been deposited with it based on the provisions of paragraph (1) pursuant to the provisions of Cabinet Office Ordinance.
  - (5) Securities and other instruments prescribed by Cabinet Office Ordinance may serve as the clearing margin referred to in paragraph (1), brokerage margin referred to in paragraph (2), and customer margin referred to in paragraph (3), pursuant to the provisions of Cabinet Office Ordinance.
  - (6) The provisions of Article 115, paragraph (1) apply mutatis mutandis to the

clearing margin referred to in paragraph (1) (limited to that which is specified by Cabinet Office Ordinance). In this case, in Article 115, paragraph (1), the phrase "purchase and sale of Securities or Market Transaction of Derivatives" is deemed to be replaced with "Market Transaction of Derivatives".

(Notification of the Irregular or Temporary Start of an Exchange's Financial Instruments Transactions)

Article 120 If a Financial Instruments Exchange has irregularly or temporarily opened, closed, or suspended the purchase and sale of Securities or Market Transactions of Derivatives or cancelled such a suspension, it must notify the Prime Minister of this, for each Financial Instruments Exchange Market operated by the Financial Instruments Exchange, without delay.

(Notification of Listing)

Article 121 If a Financial Instruments Exchange seeks to list Securities for purchase and sale or to list Financial Instruments, etc. for Market Transactions of Derivatives, it must notify the Prime Minister of this for each Financial Instruments Exchange Market on which it seeks to list them.

(Approval of Listing)

Article 122 (1) If a Financial Instruments Exchange Holding Company seeks to list the Securities issued by the Financial Instruments Exchange for purchase and sale, or to list such Securities, Financial Indicators connected to them or Options on them for the purpose of Market Transactions of Derivatives, on a Financial Instruments Exchange Market or on a market specified by Cabinet Order (other than a Financial Instruments Exchange Market operated by the relevant Financial Instruments Exchange, by a Financial Instruments Exchange that is the Subsidiary Company of the relevant Financial Instruments Exchange, by a Financial Instruments Exchange in which the relevant Financial Instruments Exchange holds a number of Subject Voting Rights that is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights, by a Financial Instruments Exchange that is the Subsidiary Company of a person in which the relevant Financial Instruments Exchange holds a number of Subject Voting Rights that is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights, or by a Financial Instruments Exchange that has the relevant Financial Instruments Exchange as its Subsidiary Company), it must obtain the approval of the Prime Minister for the listing, for each Financial Instruments Exchange Market or for each of the markets prescribed by Cabinet Order on which it seeks to list them; provided, however, that this does not apply if such listing is made based on an order under the provisions of Article 125.

- (2) If an application is filed for the approval referred to in the preceding paragraph and the Prime Minister finds that the listing to which the application pertains is likely to impair the sound and appropriate operation of the business of the Financial Instruments Exchange, or a Financial Instruments Exchange that is its Subsidiary Company, the Prime Minister must not grant the approval referred to in that paragraph.

(Mutatis Mutandis Application to Financial Instruments Exchange Holding Companies)

Article 123 (1) The provisions of the preceding Article apply mutatis mutandis to a Financial Instruments Exchange Holding Company. In this case, in Article 122, paragraph (1), the phrase "operated by the relevant Financial Instruments Exchange, by a Financial Instruments Exchange that is the Subsidiary Company of the relevant Financial Instruments Exchange, by a Financial Instruments Exchange in which the relevant Financial Instruments Exchange holds a number of Subject Voting Rights that is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights, by a Financial Instruments Exchange that is the Subsidiary Company of a person in which the relevant Financial Instruments Exchange holds a number of Subject Voting Rights that is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights, or by a Financial Instruments Exchange that has the relevant Financial Instruments Exchange as its Subsidiary Company" is deemed to be replaced with "operated by a Financial Instruments Exchange that is the Subsidiary Company of the Financial Instruments Exchange Holding Company, by a Financial Instruments Exchange in which the Financial Instruments Exchange Holding Company holds a number of Subject Voting Rights that is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights, by a Financial Instruments Exchange that is the Subsidiary Company of a person in which the Financial Instruments Exchange Holding Company holds a number of Subject Voting Rights that is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights, or by a Financial Instruments Exchange that has the Financial Instruments Exchange Holding Company as its Subsidiary Company", and in Article 122, paragraph (2), the phrase "the Financial Instruments Exchange, or a Financial Instruments Exchange that is its Subsidiary Company" is deemed to be replaced with "a Financial Instruments Exchange that is its Subsidiary Company".

- (2) The provisions of the preceding Article apply mutatis mutandis to a parent Commodity Exchange, etc. In this case, in Article 122, paragraph (1), the phrase "operated by the relevant Financial Instruments Exchange, by a Financial Instruments Exchange that is the Subsidiary Company of the

relevant Financial Instruments Exchange, by a Financial Instruments Exchange in which the relevant Financial Instruments Exchange holds a number of Subject Voting Rights that is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights, by a Financial Instruments Exchange that is the Subsidiary Company of a person in which the relevant Financial Instruments Exchange holds a number of Subject Voting Rights that is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights, or by a Financial Instruments Exchange that has the relevant Financial Instruments Exchange as its Subsidiary Company" is deemed to be replaced with "operated by a Financial Instruments Exchange that is the Subsidiary Company of the relevant parent Commodity Exchange, etc., by a Financial Instruments Exchange in which the relevant parent Commodity Exchange, etc. holds a number of Subject Voting Rights that is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights, by a Financial Instruments Exchange that is the Subsidiary Company of a person in which the relevant Parent Commodity Exchange, etc. holds a number of Subject Voting Rights that is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights, or by a Financial Instruments Exchange that has the relevant parent Commodity Exchange, etc. as its Subsidiary Company", and in Article 122, paragraph (2), the phrase "the Financial Instruments Exchange, or a Financial Instruments Exchange that is its Subsidiary Company" is deemed to be replaced with "the Financial Instruments Exchange that is a Subsidiary Company of the relevant Parent Commodity Exchange, etc.".

(Approval of a Financial Instruments Exchange's Listing on a Financial Instruments Exchange Market It Operates)

Article 124 (1) Notwithstanding the provisions of Article 121, if a Financial Instruments Exchange seeks to list Securities issued by the following persons for purchase and sale on a Financial Instruments Exchange Market it operates, or to list such Securities, Financial Indicators connected to them, or Options on them for Market Transactions of Derivatives on a Financial Instruments Exchange Market it operates, it must obtain the approval of the Prime Minister for the listing, on each occasion and for each Financial Instruments Exchange Market on which it seeks to list them; provided, however, that this does not apply if such a listing is made based on an order under the provisions of the following Article:

- (i) the Financial Instruments Exchange in question;
- (ii) a person that has the Financial Instruments Exchange as its Subsidiary Company;
- (iii) a Stock Company-Operated Financial Instruments Exchange or Financial

- Instruments Exchange Holding Company that holds a number of Subject Voting Rights in a person set forth in one of the preceding two items which is equal to or greater than the Threshold Holding Right of all shareholders' voting rights (other than a person set forth in the preceding item);
- (iv) a Stock Company-Operated Financial Instruments Exchange or Financial Instruments Exchange Holding Company that is a Subsidiary Company of the Financial Instruments Exchange;
  - (v) a parent Commodity Exchange, etc. that holds a number of Subject Voting Rights in a person set forth in item (i) or (ii) which is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights (other than a person set forth in item (ii)); or
  - (vi) a parent Commodity Exchange, etc. that is a Subsidiary Company of the Financial Instruments Exchange.
- (2) If an application is filed for the approval referred to in the preceding paragraph and the Prime Minister finds the application to fall under one of the following items, the Prime Minister must not grant the approval referred to in that paragraph:
- (i) the listing to which the application pertains is likely to impair the sound and appropriate operation of the business of one of the following Financial Instruments Exchanges:
    - (a) the Financial Instruments Exchange in question;
    - (b) a Financial Instruments Exchange that has the relevant Financial Instruments Exchange as its Subsidiary Company;
    - (c) a Stock Company-Operated Financial Instruments Exchange that holds a number of Subject Voting Rights in the relevant Financial Instruments Exchange (including a person that has the relevant Financial Instruments Exchange as its Subsidiary Company) which is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights (other than a person set forth in sub-item (b));
    - (d) a Stock Company-Operated Financial Instruments Exchange that is a Subsidiary Company of the relevant Financial Instruments Exchange;
    - (e) a Stock Company-Operated Financial Instruments Exchange that is the Subsidiary Company of a person that has the relevant Financial Instruments Exchange as its Subsidiary Company (other than a person set forth in one of sub-items (a) to (d) inclusive); and
    - (f) a Stock Company-Operated Financial Instruments Exchange that is the Subsidiary Company of a person that holds a number of Subject Voting Rights in the relevant Financial Instruments Exchange (including a person that has the relevant Financial Instruments Exchange as its Subsidiary Company) which is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights (other than a person set forth in one of sub-

- items (a) to (e) inclusive).
- (ii) the fairness of transactions on the Financial Instruments Exchange Market is not ensured for the listing to which the application pertains.
- (3) Notwithstanding the provisions of Article 121, if a Financial Instruments Exchange seeks to list Securities issued by one of the following persons for purchase and sale on a Financial Instruments Exchange Market it operates, or to list such Securities, Financial Indicators connected to them, or Options on them for the purpose of Market Transactions of Derivatives on a Financial Instruments Exchange Market it operates, it must obtain the approval of the Prime Minister for the listing, for each occasion and for each Financial Instruments Exchange Market on which it seeks to list them; provided, however, that this does not apply if such a listing is made based on an order under the provisions of the following Article:
- (i) a person that holds a number of Subject Voting Rights in the Financial Instruments Exchange (including a person that has the Financial Instruments Exchange as its Subsidiary Company) which is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights (other than a person set forth in one of the items of paragraph (1)); or
- (ii) a Subsidiary Company of the Financial Instruments Exchange (unless the Subsidiary Company is a Stock Company-Operated Financial Instruments Exchange, Financial Instruments Exchange Holding Company, or parent Commodity Exchange, etc.).
- (4) If an application is filed for the approval referred to in the preceding paragraph and the Prime Minister finds that the fairness of transactions on the Financial Instruments Exchange Market is not ensured for the listing to which the application pertains, the Prime Minister must not grant the approval referred to in that paragraph..

(Order to List Share Certificates)

Article 125 If the Issuer of Share Certificates, etc. that a Financial Instruments Exchange lists issues Share Certificates, etc. that the Financial Instruments Exchange does not list, and the Prime Minister finds it to be necessary and proper in the public interest or for the protection of investors, the Prime Minister may order the Financial Instruments Exchange to list those Share Certificates, etc.

(Notification of Delisting)

Article 126 (1) If a Financial Instruments Exchange seeks to delist Securities listed for purchase and sale or Financial Instruments, etc. listed for Market Transactions of Derivatives, it must notify the Prime Minister of this, for each Financial Instruments Exchange Market from which it seeks to delist them.

(2) Notwithstanding the provisions of the preceding paragraph, if a Financial Instruments Exchange lists Securities specified in Article 124, paragraph (1) for purchase and sale on a Financial Instruments Exchange Market it operates, or lists Securities, Financial Indicators, or Options under that paragraph for Market Transactions of Derivatives on a Financial Instruments Exchange Market it operates, and it seeks to delist those Securities, Financial Indicators, or Options, it must obtain the approval of the Prime Minister for the delisting, for each Financial Instruments Exchange Market from which it seeks to delist them; provided, however, that this does not apply if the delisting is made based on an order under Article 129, paragraph (1).

(Order to Delist)

Article 127 (1) If a Financial Instruments Exchange violates its operational rules in seeking to list or delist Financial Instruments, etc. or in listing or delisting them, the Prime Minister may order the Financial Instruments Exchange to delist the listed Financial Instruments, etc., to re-list the delisted Financial Instruments, etc., or to take the necessary measures to rectify the violation. In such a case, irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, the Prime Minister must conduct a hearing.

(2) With regard to the application of the provisions of Chapter III, Section 2 of the Administrative Procedure Act if the notice referred to in Article 15, paragraph (1) of that Act is given at the hearing for a disposition under the provisions of the preceding paragraph, the Issuer of Securities that are among the Financial Instruments, etc. referred to in the preceding paragraph, is deemed to be the person that receives the notice referred to in Article 15, paragraph (1) of that Act.

(Notification of Suspension of Purchase and Sales)

Article 128 If a Financial Instruments Exchange suspends or cancels the suspension of the purchase and sale of Securities or Market Transactions of Derivatives on a Financial Instruments Exchange Market it operates for Financial Instruments, etc. it lists, it must notify the Prime Minister of this without delay, for each Financial Instruments Exchange Market it operates.

(Order to Suspend Purchase and Sales)

Article 129 (1) If an Issuer of Securities that a Financial Instruments Exchange lists violates this Act, an order based on this Act, or the rules of the Financial Instruments Exchange that lists the Securities, and the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order the Financial Instruments Exchange

to suspend the purchase and sale of those Securities on the Financial Instruments Exchange Market or to delist them. In such a case, irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, the Prime Minister must conduct a hearing.

- (2) With regard to the application of the provisions of Chapter III, Section 2 of the Administrative Procedure Act if the notice referred to in Article 15, paragraph (1) of that Act is given at the hearing for a disposition under the provisions of the preceding paragraph, the Issuer provided for in the preceding paragraph is deemed to be the person that receives the notice referred to in Article 15, paragraph (1) of that Act.

(Notice of Total Transaction Volume, Price, etc.)

Article 130 Pursuant to the provisions of Cabinet Office Ordinance, a Financial Instruments Exchange must notify its Members, etc. of, and also disclose to the public, the daily total transaction volume on the Financial Instruments Exchange Markets it operates and the highest price, lowest price, closing price, Agreed Figure, amount receivable, and other particulars, for each day and for each issue of Financial Instruments, etc. it lists.

(Reporting of Total Transaction Volume, Price, etc.)

Article 131 (1) Pursuant to the provisions of Cabinet Office Ordinance, a Financial Instruments Exchange must report to the Prime Minister the daily total transaction volume on the Financial Instruments Exchange Markets it operates and the highest price, lowest price, closing price, Agreed Figure, amount receivable, and other particulars, for each day and for each issue of Financial Instruments, etc. it lists.

- (2) The Prime Minister shall notify the Minister Having Jurisdiction Over a Commodity Market prescribed in Article 194-6-2, pursuant to the provisions of Cabinet Office Ordinance, of the matters reported to him/her under the provision of the preceding paragraph which are specified by Cabinet Office Ordinance as the matters concerning Commodity-Related Market Transactions of Derivatives.

(Mutatis Mutandis Application of Provisions on the Completion of Transactions Incidental to the Forfeiture of a Trading License)

Article 132 The provisions of Article 116 apply mutatis mutandis if a Member's, etc. purchase and sales of Securities or Market Transactions of Derivatives on a Financial Instruments Exchange Market are suspended pursuant to the provisions of this Act or the articles of incorporation of the Financial Instruments Exchange.



(Brokerage Contract Rules and Particulars for Inclusion in Them)

Article 133 (1) A Member, etc. must comply with the brokerage contract rules prescribed by the Financial Instruments Exchange to which it belongs in becoming entrusted with the purchase and sale of Securities or Market Transactions of Derivatives on a Financial Instruments Exchange Market (excluding Brokerage for Clearing of Securities, etc.).

(2) A Financial Instruments Exchange must establish detailed regulations in respect of the following matters in connection with the Financial Instruments Exchange Markets it operates, for each of its Financial Instruments Exchange Markets, in its brokerage contract rules:

- (i) the conditions for becoming entrusted with the purchase and sale of Securities or Market Transactions of Derivatives;
- (ii) delivery and other means of settlement for purchase and sales of Securities or Market Transactions of Derivatives;
- (iii) the particulars of granting credit for becoming entrusted with the purchase and sale of Securities; and
- (iv) necessary particulars relevant to becoming entrusted with the purchase and sale of Securities or Market Transactions of Derivatives, other than the particulars set forth in the preceding three items.

(Mutatis Mutandis Application of Provisions on Subject Voting Rights)

Article 133-2 The provisions of Article 103-2, paragraph (5) apply mutatis mutandis if the provisions of Article 122, paragraph (1), Article 123 and Article 124, paragraphs (1) to (3) inclusive are applicable.

## **Section 4 Dissolution of a Financial Instruments Exchange**

### **Subsection 1 Dissolution**

(Lapse of License)

Article 134 (1) The license referred to in Article 80, paragraph (1) ceases to be valid if a Financial Instruments Exchange falls under one of the following items:

- (i) the number of Trading Participants falls to five or below (but only if it is a Stock Company-Operated Financial Instruments Exchange);
- (ii) it closes all of its Financial Instruments Exchange Markets;
- (iii) it is dissolved;
- (iv) a judgment invalidating its incorporation, merger (but only if the person incorporated in the merger is a Financial Instruments Exchange), or incorporation-type split (but only if the person incorporated in the incorporation-type split is that Financial Instruments Exchange) becomes

- final and binding; or
- (v) it does not operate a Financial Instruments Exchange Market within six months from the date on which it obtains the license (unless there is any compelling reason and it has obtained the approval of the Prime Minister in advance).
- (2) If a license ceases to be valid pursuant to item (i) or (iv) of the preceding paragraph, the representative or the former representative of the Financial Instruments Exchange must notify the Prime Minister of this without delay.

(Authorization for Dissolution)

Article 135 (1) The following matters do not come become effective without the authorization of the Prime Minister:

- (i) a general meeting resolution to dissolve a Financial Instruments Exchange; and
- (ii) a merger in which Financial Instruments Exchanges constitute all or part of the parties (excluding a merger under Article 140, paragraph (1)).
- (2) If a Financial Instruments Exchange is dissolved for one of the following reasons, its former representative must notify the Prime Minister of this without delay:
- (i) the occurrence of a cause of dissolution specified in the articles of incorporation;
- (ii) the number of members falls to five or below; or
- (iii) a judicial decision ordering dissolution.

**Subsection 2 Merger**

**Division 1 General Rules**

Article 136 (1) An Incorporated Association-Operated Financial Instruments Exchange may merge with another Incorporated Association-Operated Financial Instruments Exchange or with a Stock Company-Operated Financial Instruments Exchange. In such a case, the Financial Instruments Exchanges effecting the merger must conclude a merger agreement.

- (2) In the case referred to in the preceding paragraph, if an Incorporated Association-Operated Financial Instruments Exchange effects an absorption-type merger (meaning the merger of one Financial Instruments Exchange with another Financial Instruments Exchange, in which the Financial Instruments Exchange surviving the merger (hereinafter referred to as the "Financial Instruments Exchange Surviving an Absorption-Type Merger" in this Subsection) succeeds to all of the rights and obligations of the Financial Instruments Exchange that disappears in the merger (hereinafter referred to as a "Financial Instruments Exchange Disappearing in an Absorption-Type

Merger" in this Subsection); the same applies hereinafter), or a consolidation-type merger (meaning a merger between two or more Financial Instruments Exchanges in which the Financial Instruments Exchange that is incorporated in the merger (hereinafter referred to as the "Financial Instruments Exchange Incorporated in a Consolidation-Type Merger" in this Subsection) succeeds to all of the rights and obligations of the Financial Instruments Exchanges that disappear as a result of the merger (hereinafter each is referred to as a "Financial Instruments Exchange Disappearing in a Consolidation-Type Merger" in this Subsection); the same applies hereinafter), the Financial Instruments Exchange Surviving the Absorption-Type Merger or the Financial Instruments Exchange Incorporated in the Consolidation-Type Merger must be the person specified in the relevant of the following items for the category of cases set forth in that item:

- (i) a merger between an Incorporated Association-Operated Financial Instruments Exchange and an Incorporated Association-Operated Financial Instruments Exchange; an Incorporated Association-Operated Financial Instruments Exchange; or
- (ii) a merger between an Incorporated Association-Operated Financial Instruments Exchange and a Stock Company-Operated Financial Instruments Exchange; a Stock Company-Operated Financial Instruments Exchange.

**Division 2 Mergers between an Incorporated Association-Operated Financial Instruments Exchange and an Incorporated Association-Operated Financial Instruments Exchange**

(Absorption-Type Merger Agreements between an Incorporated Association-Operated Financial Instruments Exchange and an Incorporated Association-Operated Financial Instruments Exchange)

Article 137 If an Incorporated Association-Operated Financial Instruments Exchange and an Incorporated Association-Operated Financial Instruments Exchange effect an absorption-type merger, they must specify the following particulars in the absorption-type merger agreement:

- (i) the name and address of the Incorporated Association-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger (hereinafter referred to as the "Incorporated Association-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger" in this Subsection) and the name and address of the Incorporated Association-Operated Financial Instruments Exchange that will disappear in the absorption-type merger (hereinafter referred to as the "Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Absorption-Type Merger" in this

Subsection); and

- (ii) the day on which the absorption-type merger comes into effect (hereinafter referred to as the "Effective Date" in this Subsection) and other matters specified by Cabinet Office Ordinance.

(Consolidation-Type Merger Agreements between an Incorporated Association-Operated Financial Instruments Exchange and an Incorporated Association-Operated Financial Instruments Exchange)

Article 138 If an Incorporated Association-Operated Financial Instruments Exchange and an Incorporated Association-Operated Financial Instruments Exchange effect a consolidation-type merger, they must specify the following particulars in the consolidation-type merger agreement:

- (i) the names and addresses of the Incorporated Association-Operated Financial Instruments Exchange that will disappear in the consolidation-type merger (hereinafter each is referred to as an "Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger" in this Subsection);
- (ii) the purpose, name, and the location of the principal office of the Incorporated Association-Operated Financial Instruments Exchange that will be incorporated in the consolidation-type merger (hereinafter referred to as the "Incorporated Association-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger" in this Subsection);
- (iii) beyond what is set forth in the preceding item, the matters specified by the articles of incorporation of the Incorporated Association-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger; and
- (iv) the names of the persons that will become the president, board members, and inspectors at the time of the incorporation of the Incorporated Association-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger, and other matters specified by Cabinet Office Ordinance.

### **Division 3 Mergers between an Incorporated Association-Operated Financial Instruments Exchange and a Stock Company-Operated Financial Instruments Exchange**

(Absorption-Type Merger Agreements between an Incorporated Association-Operated Financial Instruments Exchange and a Stock Company-Operated Financial Instruments Exchange)

Article 139 If an Incorporated Association-Operated Financial Instruments Exchange and a Stock Company-Operated Financial Instruments Exchange effect an absorption-type merger, they must specify the following particulars in

the absorption-type merger agreement:

- (i) the trade name and address of the Stock Company-Operated Financial Instruments Exchange that will survive the absorption-type merger (hereinafter referred to as the "Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger" in this Subsection), and the name and address of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Absorption-Type Merger;
- (ii) if the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger will deliver shares, etc. (meaning shares or money; hereinafter the same applies in this Subsection) to members of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Absorption-Type Merger at the time of the absorption-type merger in lieu of equity, the following matters in connection with those shares, etc.:
  - (a) if the shares, etc. are shares in the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger, the number of them (for a company with class shares, the classes of shares and the number of shares in each class) or the method of calculating their number, and the particulars of the stated capital and reserve funds of the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger; and
  - (b) if the shares, etc. are money, the amount of that money or the method of calculating it.
- (iii) in the case prescribed in the preceding item, the particulars of the allotment of the shares, etc. referred to in that item to members of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Absorption-Type Merger; and
- (iv) the Effective Date and other matters specified by Cabinet Office Ordinance.

(Consolidation-Type Merger Agreements between an Incorporated Association-Operated Financial Instruments Exchange and a Stock Company-Operated Financial Instruments Exchange)

Article 139-2 (1) If a Incorporated Association-Operated Financial Instruments Exchange and a Stock Company-Operated Financial Instruments Exchange implement a consolidation-type merger, they must specify the following particulars in the consolidation-type merger agreement:

- (i) the name and address of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger, and the trade name and address of the Stock Company-Operated Financial Instruments Exchange that will disappear in the consolidation-type merger

- (hereinafter referred to as the "Stock Company-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger" in this Subsection);
- (ii) the purpose, trade name, location of the head office, and total number of authorized shares in the Stock Company-Operated Financial Instruments Exchange that will be incorporated in the consolidation-type merger (hereinafter referred to as the "Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger" in this Subsection);
  - (iii) beyond what is set forth in the preceding item, the matters specified in the articles of incorporation of the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger;
  - (iv) the names of the persons that will become directors at the time of the incorporation of the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger, and the names of the persons that will become accounting auditors at the time of its establishment;
  - (v) the matters specified in the relevant of the following sub-items (a) and (b) for the category of cases set forth in the item:
    - (a) if the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger is a company with accounting advisors: the names of the persons that will become accounting advisors at the time of the incorporation of the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger; or
    - (b) if the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger is a company with company auditors: the names of the persons that will become company auditors at the time of the incorporation of the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger.
  - (vi) the number of shares in the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger (for a company with class shares, the classes of shares and the number of shares in each class) that the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger will deliver to members of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger or shareholders of the Stock Company-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger at the time of the consolidation-type merger in lieu of their equity or shares, or the method of calculating that number; and the particulars of the stated capital and reserve funds of the

- Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger;
- (vii) the particulars of the allotment of the shares referred to in the preceding item to members of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger or shareholders of the Stock Company-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger (other than a shareholder that constitutes the Financial Instruments Exchange Disappearing in the Consolidation-Type Merger);
- (viii) if the Stock Company-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger has issued share options, the following matters as regards the share options in the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger or the money that the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger will deliver to the holders of the share options at the time of the Consolidation-Type Merger, in lieu of their share options:
- (a) if it will deliver share options in the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger to the holders of share options in the Stock Company-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger, the features and number of share options or the method of calculating that number;
- (b) in the case prescribed in sub-item (a), if the share options in the Stock Company-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger referred to in sub-item (a) are the share options that are attached to corporate bond certificates with share options, an indication that the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger will succeed to the obligations connected with corporate bonds in respect of the relevant corporate bond certificates with share options, the classes of corporate bonds subject to the succession, and the total amounts of the corporate bonds in each class or the method of calculating such amounts; and
- (c) if it will deliver money to holders of share options in the Stock Company-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger, the amount of that money or the method of calculating it.
- (ix) in the case prescribed in the preceding item, the particulars of the allotment of share options in the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger or the money set forth in that item to the holders of share options in the Stock

Company-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger.

- (2) If the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger is a company with supervisory committee, the matters set forth in item (iv) of the preceding paragraph (limited to the names of directors of the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger) must be provided separately with regard to directors that are to be supervisory committee members and any other directors.
- (3) In a case prescribed in paragraph (1), if the whole or part of the Stock Company-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger is a company with class shares, the following particulars may be specified as the particulars set forth in item (vii) of that paragraph (limited to the particulars of the shareholders of the Stock Company-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger; the same applies in the following paragraph) in accordance with the features of the class shares issued by the Stock Company-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger:
- (i) if it will not allot shares in the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger to shareholders of certain classes of shares, an indication of this and the relevant classes of shares; and
  - (ii) if it will handle the allotment of shares in the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger differently for each class of shares but other than as is set forth in the preceding item, an indication of this and the details of the differing handling.
- (4) In a case prescribed in paragraph (1), the provisions with regard to the particulars set forth in item (vii) of that paragraph must provide that shares in the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger will be delivered in proportion to the number of shares (if the particulars set forth in item (ii) of the preceding paragraph are provided for, the number of shares for each class) held by the shareholders of the Stock Company-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger (other than a shareholder that constitutes one of the Financial Instruments Exchanges Disappearing in the Consolidation-Type Merger and shareholders of the class of shares set forth in item (i) of the preceding paragraph).

#### **Division 4 Merger Procedures for Incorporated Association-Operated**



## **Financial Instruments Exchanges**

(Procedures for an Incorporated Association-Operated Financial Instruments Exchange Disappearing in an Absorption-Type Merger)

Article 139-3 (1) During the period from five days prior to the day of the general meeting referred to in paragraph (3) until the Effective Date, an Incorporated Association-Operated Financial Instruments Exchange Disappearing in an Absorption-Type Merger must keep documents or electronic or magnetic records that state or contain a record of the details of the absorption-type merger agreement and other particulars specified by Cabinet Office Ordinance at its principal office.

(2) The member or creditor of an Incorporated Association-Operated Financial Instruments Exchange Disappearing in an Absorption-Type Merger may make the following requests of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Absorption-Type Merger at any time during its business hours; provided, however, that in making the request referred to in item (ii) or (iv), the member or creditor must pay the cost determined by the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Absorption-Type Merger:

(i) a request to inspect a document referred to in the preceding paragraph;

(ii) a request to be issued a certified copy or extract of a document referred to in the preceding paragraph;

(iii) a request to inspect something that shows the particulars that have been recorded in the electronic or magnetic records referred to in the preceding paragraph, through a means specified by Cabinet Office Ordinance; and

(iv) a request to be provided with the information that has been recorded in the electronic or magnetic records referred to in the preceding paragraph by an electronic or magnetic means specified by Cabinet Office Ordinance, or a request to be issued a document that states those particulars.

(3) An Incorporated Association-Operated Financial Instruments Exchange Disappearing in an Absorption-Type Merger must obtain approval for the absorption-type merger agreement by general meeting resolution, by the day immediately preceding the Effective Date.

(4) An Incorporated Association-Operated Financial Instruments Exchange Disappearing in a Absorption-Type Merger may not adopt a resolution approving an absorption-type merger agreement without the affirmative votes of three-fourths or more of all of the members; provided, however, that this does not apply if it is otherwise provided for in the articles of incorporation.

(5) If an absorption-type merger violates laws and regulations or articles of incorporation, and members of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in an Absorption-Type Merger

are likely to suffer disadvantages, members of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in an Absorption-Type Merger may demand the Incorporated Association-Operated Financial Instruments Exchange Disappearing in an Absorption-Type Merger to refrain from effecting the absorption-type merger.

- (6) The provisions of Article 101-4 apply mutatis mutandis to an Incorporated Association-Operated Financial Instruments Exchange Disappearing in an Absorption-Type Merger.
- (7) If an Incorporated Association-Operated Financial Instruments Exchange Disappearing in an Absorption-Type Merger issues the public notice under Article 101-4, paragraph (2) as applied mutatis mutandis pursuant to the preceding paragraph both in the Official Gazette and by the means of public notice (meaning the means by which the Incorporated Association-Operated Financial Instruments Exchange gives its public notices (excluding public notices that, pursuant to the provisions of this Act, must be given by means of publication in the Official Gazette); hereinafter the same applies in this Division) set forth in Article 939, paragraph (1), item (ii) of the Companies Act, in accordance with the provisions of the articles of incorporation under Article 939, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to the following paragraph, the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Absorption-Type Merger is not required to give the individual notice under Article 101-4, paragraph (2) as applied mutatis mutandis pursuant to the preceding paragraph.
- (8) The provisions of Article 939, paragraph (1) (limited to the part that involves items (i) and (ii)) of the Companies Act apply mutatis mutandis to the public notice referred to in the preceding paragraph.
- (9) An Incorporated Association-Operated Financial Instruments Exchange Disappearing in an Absorption-Type Merger may change the Effective Date by agreement with the Financial Instruments Exchange Surviving the Absorption-Type Merger.
- (10) In the case referred to in the preceding paragraph, the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Absorption-Type Merger shall issue public notice of the new Effective Date by the day immediately preceding the old Effective Date (or, if the new Effective Date comes before the old Effective Date, by the day immediately preceding the new Effective Date).
- (11) If the Effective Date is changed pursuant to the provisions of paragraph (8), the new Effective Date is deemed to be the Effective Date and the provisions of this Subsection apply.

(Procedures for an Incorporated Association-Operated Financial Instruments

Exchange Surviving an Absorption-Type Merger)

- Article 139-4 (1) During the period from five days prior to the day of the general meeting referred to in the following paragraph until the day on which six months have elapsed since the Effective Date, the Incorporated Association-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger shall keep the documents or electronic or magnetic records that state or contain a record of the details of the absorption-type merger agreement and other particulars specified by Cabinet Office Ordinance, at its principal office.
- (2) An Incorporated Association-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger must obtain approval for the absorption-type merger agreement by general meeting resolution, by the day immediately preceding the Effective Date.
- (3) An Incorporated Association-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger may not adopt a resolution approving an absorption-type merger agreement without the affirmative votes of three-fourths or more of all of the members; provided, however, that this does not apply if it is otherwise provided for in the articles of incorporation.
- (4) If an absorption-type merger violates laws and regulations or articles of incorporation, and members of the Incorporated Association-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger are likely to suffer disadvantages, members of the Incorporated Association-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger may demand the Incorporated Association-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger to refrain from effecting the absorption-type merger.
- (5) The provisions of Article 101-4 apply mutatis mutandis to an Incorporated Association-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger.
- (6) If an Incorporated Association-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger gives a public notice under Article 101-4, paragraph (2) as applied mutatis mutandis pursuant to the preceding paragraph both in the Official Gazette and by the means of public notice set forth in Article 939, paragraph (1), item (ii) of the Companies Act, in accordance with the provisions of the articles of incorporation under Article 939, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to the following paragraph, the Incorporated Association-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger is not required to give the individual notice under Article 101-4, paragraph (2) as applied mutatis mutandis pursuant to the preceding paragraph.
- (7) The provisions of Article 939, paragraph (1) (limited to the part that involves items (i) and (ii)) of the Companies Act apply mutatis mutandis to the public

notice referred to in the preceding paragraph.

- (8) An Incorporated Association-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger shall prepare documents or electronic or magnetic records that state or contain a record of the particulars of the rights and obligations of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Absorption-Type Merger to which the Incorporated Association-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger has succeeded as a result of the absorption-type merger, and that state or contain a record of other particulars specified by Cabinet Office Ordinance as pertinent to the absorption-type merger, without delay after the Effective Date.
- (9) During the six-month period beginning from the Effective Date, an Incorporated Association-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger shall keep the documents or electronic or magnetic records set forth in the preceding paragraph at its principal office.
- (10) The member or creditor of an Incorporated Association-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger may make the following requests of the Incorporated Association-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger at any time during its business hours; provided, however, that in making the request set forth in item (ii) or (iv), the member or creditor must pay the cost determined by the Incorporated Association-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger:
- (i) a request to inspect a document referred to in paragraph (1) or the preceding paragraph;
  - (ii) a request to be issued a certified copy or extract of a document referred to in paragraph (1) or the preceding paragraph;
  - (iii) a request to inspect something that shows the particulars that have been recorded in the electronic or magnetic records referred to in paragraph (1) or the preceding paragraph, through a means specified by Cabinet Office Ordinance; and
  - (iv) a request to be provided with the particulars that have been recorded in the electronic or magnetic records referred to in paragraph (1) or the preceding paragraph by an electronic or magnetic means specified by Cabinet Office Ordinance, or a request to be issued a document that states those particulars.

(Procedures for an Incorporated Association-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger)

Article 139-5 (1) During the period from 10 days prior to the day of the general meeting referred to in paragraph (3) until the day of the establishment of the

Financial Instruments Exchange Incorporated in the Consolidation-Type Merger, an Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger shall keep documents or electronic or magnetic records that state or contain a record of the details of the consolidation-type merger agreement and other particulars specified by Cabinet Office Ordinance, at its principal office.

- (2) The member or creditor of an Incorporated Association-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger may make the following requests of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger at any time during its business hours; provided, however, that in making the request set forth in item (ii) or (iv), the member or creditor must pay the cost determined by the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger:
  - (i) a request to inspect a document referred to in the preceding paragraph;
  - (ii) a request to be issued a certified copy or extract of a document referred to in the preceding paragraph;
  - (iii) a request to inspect something that shows the particulars that have been recorded in the electronic or magnetic records referred to in the preceding paragraph, through a means specified by Cabinet Office Ordinance; and
  - (iv) a request to be provided with the particulars that have been recorded in the electronic or magnetic records referred to in the preceding paragraph by an electronic or magnetic means specified by Cabinet Office Ordinance, or a request to be issued a document that states those particulars.
- (3) An Incorporated Association-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger must obtain approval for the consolidation-type merger agreement by general meeting resolution, by the day immediately preceding the Effective Date.
- (4) An Incorporated Association-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger may not adopt a resolution approving a consolidation-type merger agreement without the affirmative votes of three-fourths or more of all of the members; provided, however, that this does not apply if it is otherwise provided for in the articles of incorporation.
- (5) If a consolidation-type merger violates laws and regulations or articles of incorporation, and members of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger are likely to suffer disadvantages, members of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger may demand the Incorporated Association-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger to refrain from effecting the consolidation-type merger.

- (6) The provisions of Article 101-4 apply mutatis mutandis to an Incorporated Association-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger.
- (7) If an Incorporated Association-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger gives the public notice under Article 101-4, paragraph (2) as applied mutatis mutandis pursuant to the preceding paragraph both in the Official Gazette and by the means of public notice set forth in Article 939, paragraph (1), item (ii) of the Companies Act, in accordance with the provisions of the articles of incorporation under Article 939, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to the following paragraph, the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger is not required to give the individual notice under Article 101-4, paragraph (2) as applied mutatis mutandis pursuant to the preceding paragraph.
- (8) The provisions of Article 939, paragraph (1) (limited to the part that involves items (i) and (ii)) of the Companies Act apply mutatis mutandis to the public notice referred to in the preceding paragraph.

(Procedures for the Incorporated Association-Operated Financial Instruments Exchange Incorporated in a Consolidation-Type Merger)

- Article 139-6 (1) The provisions of Article 88-3, paragraphs (1) and (3), Article 88-4 and Article 88-22 do not apply to the incorporation of the Incorporated Association-Operated Financial Instruments Exchange Incorporated in a Consolidation-Type Merger.
- (2) The Incorporated Association-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger shall prepare the articles of incorporation of the Incorporated Association-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger.
  - (3) The Incorporated Association-Operated Financial Instruments Exchange Incorporated in a Consolidation-Type Merger shall prepare documents or electronic or magnetic records that state or contain a record of the particulars of the rights and obligations of the Incorporated Association-Operated Financial Instruments Exchanges Disappearing in the Consolidation-Type Merger to which the Incorporated Association-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger has succeeded as a result of the Consolidation-Type Merger, and that state or contain a record of other particulars specified by Cabinet Office Ordinance as pertinent to the Consolidation-Type Merger, without delay after the day of its establishment.
  - (4) During the six-month period beginning from the day of its establishment, the Incorporated Association-Operated Financial Instruments Exchange Incorporated in a Consolidation-Type Merger shall keep the documents or

electronic or magnetic records referred to in the preceding paragraph, and documents or electronic or magnetic records that state or contain a record of the details of the Consolidation-Type Merger agreement and other particulars specified by Cabinet Office Ordinance, at its principal office.

- (5) The member or creditor of a Incorporated Association–Operated Financial Instruments Exchange Incorporated in a Consolidation-Type Merger may make the following requests of the Incorporated Association–Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger at any time during its business hours; provided, however, that in making the request set forth in item (ii) or (iv), the member or creditor must pay the cost determined by the Incorporated Association–Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger:
- (i) a request to inspect a document referred to in the preceding paragraph;
  - (ii) a request to be issued a certified copy or extract of a document referred to in the preceding paragraph;
  - (iii) a request to inspect something that shows the particulars that have been recorded in the electronic or magnetic records referred to in the preceding paragraph, through a means specified by Cabinet Office Ordinance; and
  - (iv) a request to be provided with the particulars that have been recorded in the electronic or magnetic records referred to in the preceding paragraph by an electronic or magnetic means specified by Cabinet Office Ordinance, or a request to be issued a document that states those particulars.

#### **Division 5 Merger Procedures for Financial Instruments Exchanges Operated as a Stock Company**

(The Keeping and Inspection of Absorption-Type Merger Agreement Documents)

- Article 139-7 (1) During the period from any of the following days, whichever comes the earliest, until the day on which six months have elapsed since the Effective Date, a Stock Company-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger (limited to the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger in an absorption-type merger between an Incorporated Association-Operated Financial Instruments Exchange and a Stock Company-Operated Financial Instruments Exchange; hereinafter the same applies in this Division) shall keep documents or electronic or magnetic records that state or contain a record of the details of the absorption-type merger agreement and other particulars specified by Cabinet Office Ordinance, at its head office:
- (i) if approval for the absorption-type merger agreement must be obtained by a shareholders resolution (including a class shareholders resolution;

- hereinafter the same applies in this item): the day two weeks prior to the day of the relevant shareholders meeting;
- (ii) the day of the notice under Article 139-10, paragraph (1) or the day of the public notice under Article 139-10, paragraph (2), whichever comes earlier; or
  - (iii) if the procedures under Article 139-12 are required: the day of the public notice under Article 139-12, paragraph (2) or the day of the notice under that paragraph, whichever comes earlier.
- (2) The shareholder or creditor of a Stock Company-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger may make the following requests of the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger at any time during business hours; provided, however, that in making the request set forth in item (ii) or (iv), the shareholder or creditor must pay the cost determined by the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger:
- (i) a request to inspect a document referred to in the preceding paragraph;
  - (ii) a request to be issued a certified copy or extract of a document referred to in the preceding paragraph;
  - (iii) a request to inspect something that shows the particulars that have been recorded in the electronic or magnetic records referred to in the preceding paragraph, through a means specified by Cabinet Office Ordinance; and
  - (iv) a request to be provided with the particulars that have been recorded in the electronic or magnetic records referred to in the preceding paragraph by an electronic or magnetic means specified by Cabinet Office Ordinance, or a request to be issued a document that states those particulars.

(Approval of an Absorption-Type Merger Agreement)

- Article 139-8 (1) The Stock Company-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger must obtain approval for the absorption-type merger agreement by a shareholders resolution, by the day immediately preceding the Effective Date.
- (2) If the assets of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in an Absorption-Type Merger which are to be succeeded to include shares in the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger, the directors must give an explanation of matters related to those shares before the shareholders referred to in the preceding paragraph.
  - (3) If the Stock Company-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger is a company with class shares, and the shares, etc. delivered to members of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Absorption-Type Merger are shares



in the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger, the Absorption-Type Merger does not become effective without a resolution of the class shareholders for the class shares set forth in Article 139, item (ii), sub-item (a) (limited to shares with a restriction on transfer for which the provisions of the articles of incorporation which are referred to in Article 199, paragraph (4) of the Companies Act have not been made) (or, if there are two or more classes of shares associated with such class shareholders, without the resolutions of each group of class shareholders whose constituent members are the class shareholders in each separate class of those two or more classes of shares); provided, however, that this does not apply if there are no shareholders that are entitled to exercise voting rights at the class shareholders meeting.

- (4) The shareholders resolution referred to in paragraph (1) must be effected with at least a two-thirds majority (or, if a higher proportion is provided for in the articles of incorporation, such a proportion or more) of the votes of the attending shareholders, at a meeting where shareholders holding over half the voting rights (if a proportion of one-third or more is specified by the articles of incorporation, at least such a proportion) of the shareholders that are entitled to exercise voting rights at the shareholders meeting, are present. In such a case, the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger is not precluded from setting provisions in its articles of incorporation requiring at least a certain number of affirmative votes from the shareholders or other requirements, in addition to the requirement for such a resolution.
- (5) The provisions of the preceding paragraph apply mutatis mutandis to the class shareholders referred to in paragraph (3).

(When Approval for an Absorption-Type Merger Agreement Is Not Required)

Article 139-9 (1) The provisions of paragraphs (1) and (2) of the preceding Article do not apply unless the proportion of the amount set forth in item (i) to the amount set forth in item (ii) exceeds one-fifth (or, if a smaller proportion is prescribed in the articles of incorporation of the Stock Company-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger, such a proportion); provided, however, that this does not apply if all or part of the shares, etc. delivered to the members of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Absorption-Type Merger are shares with a restriction on transfer in the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger, and the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger is not a Public Company (meaning a Public Company as prescribed in Article 2, item (v) of the Companies Act; the same applies in

Article 139-10, paragraph (2), item (i) and Article 139-15, paragraph (3)):

(i) the total of the amounts set forth in the following:

(a) the amount arrived at when the number of shares in the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger to be delivered to members of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Absorption-Type Merger is multiplied by the Amount of Net Assets per Share (meaning the Amount of Net Assets per Share as prescribed in Article 141, paragraph (2) of the Companies Act); and

(b) the total amount of money to be delivered to members of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Absorption-Type Merger.

(ii) the amount calculated as the amount of net assets of the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger, by the method specified by Cabinet Office Ordinance.

(2) In a case prescribed in the main clause of the preceding paragraph, if shareholders holding the number of shares specified by Cabinet Office Ordinance (limited to shares in respect of which voting rights may be exercised at the shareholders meeting referred to in paragraph (1) of the preceding Article) notify the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger that they are against the absorption-type merger within two weeks from the day of the notice under Article 139-10, paragraph (1) or within two weeks from the day of the public notice referred to in paragraph (2) of that Article, the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger must obtain approval for the absorption-type merger agreement by shareholders resolution, by the day immediately preceding the Effective Date.

(Demand to Refrain from Effecting an Absorption-type Merger)

Article 139-9-2 If an absorption-type merger violates laws and regulations or articles of incorporation, and members of the Stock Company-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger are likely to suffer disadvantages, members of the Stock Company-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger may demand the Stock Company-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger to refrain from effecting the absorption-type merger; provided, however, that this does not apply to the case prescribed in the main clause of paragraph (1) of the preceding Article (excluding the case prescribed in the proviso to that paragraph or in paragraph (2) of that Article).

(Notifying the Shareholders)

Article 139-10 (1) The Stock Company-Operated Financial Instruments

Exchange Surviving an Absorption-Type Merger must notify its shareholders and holders of share options that the absorption-type merger will be effected and indicate the name and address of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Absorption-Type Merger (and of the matters related to the shares which are referred to in Article 139-8, paragraph (2), in the case prescribed in that paragraph), by 20 days prior to the Effective Date.

(2) In the following cases, public notice may be substituted for the notice under the preceding paragraph:

(i) the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger is a Public Company; or

(ii) the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger obtains approval for the absorption-type merger agreement by the shareholders resolution referred to in Article 139-8, paragraph (1).

(3) The provisions of Article 940, paragraph (1) (limited to the part that involves item (i)) and paragraph (3) of the Companies Act apply mutatis mutandis if the Stock Company-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger issues the public notice referred to in the preceding paragraph through an Electronic Public Notice. The necessary technical replacement of terms for such a case is specified by Cabinet Order.

(Demanding a Share Buy-out)

Article 139-11 (1) If an absorption-type merger is effected, in a case set forth in one of the following items, the shareholder set forth in that item may demand the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger to buy-out its shares at a fair price; provided, however, that this does not apply to the case prescribed in the main clause of Article 139-9, paragraph (1) (excluding the case prescribed in the proviso to that paragraph or to paragraph (2) of that Article):

(i) if a shareholders resolution (including a class shareholders resolution) is required in order for the absorption-type merger to be effected: the following shareholders:

(a) a shareholder that notifies the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger that it is against the absorption-type merger prior to the shareholders meeting, and that opposes the absorption-type merger at the shareholders meeting (limited to one that is entitled to exercise voting rights at that shareholders meeting); or

(b) a shareholder that is not entitled to exercise the voting rights at the

shareholders meeting.

(ii) cases other than that prescribed in the preceding item: all shareholders.

(2) The provisions of Article 797, paragraphs (5) to (9) inclusive of the Companies Act and of Article 798; Article 868, paragraph (1); Article 870 (limited to the part that involves item (iv)); the main clause of Article 871; Article 872 (limited to the part that involves item (iv)); the main clause of Article 873; Article 875; and Article 876 of that Act apply mutatis mutandis to a demand under the preceding paragraph. The necessary technical replacement of terms for such a case is specified by Cabinet Order.

(Objection of the Creditors)

Article 139-12 (1) The creditor of a Stock Company-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger may state an objection to the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger with regard to the absorption-type merger.

(2) The Stock Company-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger shall make a public notice of the following particulars in the Official Gazette, and shall give a notice of those particulars to its known creditors individually (including to the corporate bond manager under Article 702 of the Companies Act (simply referred to as the "Corporate Bond Manager" in paragraph (8)), if there is a Corporate Bond Manager); provided, however, that the period set forth in item (iv) may not be less than one month:

(i) that an absorption-type merger will be effected;

(ii) the name and address of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Absorption-Type Merger;

(iii) particulars specified by Cabinet Office Ordinance as pertinent to the financial statements of the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger; and

(iv) that a creditor may state an objection within a specified period.

(3) Notwithstanding the provisions of the preceding paragraph, if the Stock Company-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger makes a public notice under in that paragraph both in the Official Gazette and by the Means of Public Notice set forth in Article 939, paragraph (1), item (ii) of the Companies Act (meaning a Means of Public Notice as defined in Article 2, item (xxxiii) of that Act) or through an Electronic Public Notice, in accordance with the provisions of the articles of incorporation under Article 939, paragraph (1) of that Act, the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger is not required to give the individual notice under the preceding paragraph.

(4) If a creditor does not state an objection within the period referred to in

paragraph (2), item (iv), the creditor is deemed to accept the absorption-type merger.

- (5) If a creditor states an objection within the period referred to in paragraph (2), item (iv), the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger shall pay its debt or provide suitable collateral to the creditor, or shall deposit suitable property with a Trust Company, etc. for the purpose of allowing the creditor to receive payment for the debt; provided, however, that this does not apply if the Absorption-Type Merger is unlikely to be detrimental to the creditor.
- (6) The provisions of Article 940, paragraph (1) (limited to the part that involves item (iii)) and paragraph (3) of the Companies Act apply mutatis mutandis if the Stock Company-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger makes a public notice under paragraph (2) through an Electronic Public Notice. The necessary technical replacement of terms for such a case is specified by Cabinet Order.
- (7) In order for corporate bondholders to state an objection pursuant to the provisions of paragraph (1), they must do so pursuant to a corporate bondholders meeting resolution. In such a case, the court may extend the period for a corporate bondholder to state an objection, at the petition of an interested party.
- (8) Notwithstanding the provisions of the preceding paragraph, a Corporate Bond Manager may state an objection on behalf of a corporate bondholder; provided, however, that this does not apply if otherwise provided for in the contract for entrustment under Article 702 of the Companies Act.
- (9) The provisions of Article 868, paragraph (4) of the Companies Act and of Article 870 (limited to the part that involves item (xi)); the main clause of Article 871; Article 872 (limited to the part that involves item (iv)); Article 875; and Article 876 of that Act apply mutatis mutandis to a case that is subject to the petition referred to in paragraph (7).

(The Keeping and Inspection of Absorption-Type Merger Documents)

Article 139-13 (1) The Stock Company-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger shall prepare documents or electronic or magnetic records that state or contain a record of the rights and obligations of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Absorption-Type Merger to which Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger has succeeded as a result of the absorption-type merger, and that state or contain a record of other particulars specified by Cabinet Office Ordinance as pertinent to the absorption-type merger, without delay after the Effective Date.

- (2) During the six-month period beginning from the Effective Date, the Stock Company-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger shall keep the documents or electronic or magnetic records set forth in the preceding paragraph at its head office.
- (3) The shareholder or creditor of a Stock Company-Operated Financial Instruments Exchange Surviving an Absorption-Type Merger may make the following requests of the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger at any time during its business hours; provided, however, that in making the request set forth in item (ii) or (iv), the shareholder or creditor must pay the cost determined by the Stock Company-Operated Financial Instruments Exchange Surviving the Absorption-Type Merger:
- (i) a request to inspect a document referred to in the preceding paragraph;
  - (ii) a request to be issued a certified copy or extract of a document referred to in the preceding paragraph;
  - (iii) a request to inspect something that shows the particulars that have been recorded in the electronic or magnetic records referred to in the preceding paragraph, through a means specified by Cabinet Office Ordinance; and
  - (iv) a request to be provided with the particulars that have been recorded in the electronic or magnetic records referred to in the preceding paragraph by the electronic or magnetic means specified by Cabinet Office Ordinance, or a request to be issued a document that states those particulars.

(The Keeping and Inspection of Consolidation-Type Merger Documents)

- Article 139-14 (1) During the period from two weeks prior to the day of the shareholders meeting referred to in the paragraph (1) of the following Article until the day of establishment of the Stock Company-Operated Financial Instruments Exchange Incorporated in a Consolidation-Type Merger, the Stock Company-Operated Financial Instruments Exchanges Disappearing in the Consolidation-Type Merger (limited to the Stock Company-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger, in the case of a consolidation-type merger between an Incorporated Association-Operated Financial Instruments Exchange and a Stock Company-Operated Financial Instruments Exchange; hereinafter the same applies in this Division) shall keep documents or electronic or magnetic records that state or contain a record of the details of the Consolidation-Type Merger agreement and other particulars specified by Cabinet Office Ordinance, at their head offices.
- (2) The shareholder or creditor of a Stock Company-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger may make the following requests of the Stock Company-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger at any

time during its business hours; provided, however, that in making the request set forth in item (ii) or (iv), the shareholder or creditor must pay the cost determined by the Stock Company-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger:

- (i) a request to inspect a document referred to in the preceding paragraph;
- (ii) a request to be issued a certified copy or extract of a document referred to in the preceding paragraph;
- (iii) a request to inspect something that shows the particulars that have been recorded in the electronic or magnetic records referred to in the preceding paragraph, through a means specified by Cabinet Office Ordinance; and
- (iv) a request to be provided with the particulars that have been recorded in the electronic or magnetic records referred to in the preceding paragraph by an electronic or magnetic means specified by Cabinet Office Ordinance, or a request to be issued a document that states those particulars.

(Approval of Consolidation-Type Merger Agreement)

Article 139-15 (1) A Stock Company-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger must obtain approval for the consolidation-type merger agreement by a shareholders resolution.

(2) The shareholders resolution referred to in the preceding paragraph must be effected with at least a two-thirds majority (or, if a higher proportion is provided for in the articles of incorporation, at least such a proportion) of the votes of the attending shareholders, at a meeting where shareholders holding over half the voting rights (if a proportion of one-third or more is specified by the articles of incorporation, at least such a proportion) of the shareholders that are entitled to exercise voting rights at the relevant shareholders meeting, are present. In such a case, a Stock Company-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger is not precluded from setting provisions in its articles of incorporation requiring at least a certain number of affirmative votes from the shareholders or other requirements, in addition to the requirement for such a resolution.

(3) Notwithstanding the provisions of the preceding paragraph, if a Stock Company-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger is a Public Company, and all or part of the shares in the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger that will be delivered to the shareholders of the Stock Company-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger are shares with a restriction on transfer, the shareholders resolution referred to in paragraph (1) (excluding a shareholders resolution at a company with class shares) must be in accordance with Article 309, paragraph (3) of the Companies Act.

- (4) If a Stock Company-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger is a company with class shares, and all or part of the shares in the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger that will be delivered to the shareholders of the Stock Company-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger are shares with a restriction on transfer, the Consolidation-Type Merger does not become effective without a resolution of the class shareholders for the class of shares (other than shares with a restriction on transfer) subject to the allotment of shares with a restriction on transfer (or, if there are two or more classes of shares associated with such class shareholders, without the resolutions of each group of class shareholders whose constituent members are the class shareholders in each separate class of those two or more classes of shares); provided, however, that this does not apply if there are no shareholders that are entitled to exercise their voting rights at such a class shareholders meeting.
- (5) The class shareholders resolution referred to in the preceding paragraph is effected with a majority that constitutes at least two-thirds (or, if a higher proportion is provided for in the articles of incorporation, such a proportion) of the votes of at least half (or, if a higher proportion is provided for in the articles of incorporation, at least such a proportion) of the number of shareholders that are entitled to exercise voting rights at the relevant class shareholders meeting.

(Demand to Refrain from Effecting an Consolidation-type Merger)

Article 139-15-2 If a consolidation-type merger violates laws and regulations or articles of incorporation, and members of the Stock Company-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger are likely to suffer disadvantages, members of the Stock Company-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger may demand the Stock Company-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger to refrain from effecting the consolidation-type merger.

(Notifying the Shareholders)

Article 139-16 (1) A Stock Company-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger must notify its shareholders and registered pledgees of shares as well as the holders of share options and registered pledgees of share options that a consolidation-type merger will be effected, and must indicate the names or trade names and addresses of any other Financial Instruments Exchange Disappearing in the Consolidation-Type Merger and of the Stock Company-Operated Financial Instruments Exchange



Incorporated in the Consolidation-Type Merger, within two weeks from the day of the shareholders resolution set forth in Article 139-15, paragraph (1).

(2) Public notice may be substituted for the notice under the preceding paragraph.

(3) The provisions of Article 940, paragraph (1) (limited to the part that involves item (i)) and paragraph (3) of the Companies Act apply mutatis mutandis if a Stock Company-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger makes the public notice referred to in the preceding paragraph through an Electronic Public Notice. The necessary technical replacement of terms for such a case is specified by Cabinet Order.

#### (Demanding a Share Buy-out)

Article 139-17 (1) If a consolidation-type merger is effected, the following shareholders may demand a Stock Company-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger to buy-out its shares at a fair price:

(i) a shareholder that notifies the Stock Company-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger that it is against the consolidation-type merger prior to the shareholders meeting (including a class shareholders meeting) for approving the consolidation-type merger agreement, and that opposes the consolidation-type merger at the shareholders meeting (limited to one that is entitled to exercise voting rights at that shareholders meeting); and

(ii) a shareholder that is not entitled to exercise voting rights at such a shareholders meeting.

(2) The provisions of Article 806, paragraphs (5) to (9) inclusive of the Companies Act and of Article 807; Article 868, paragraph (1); Article 870 (limited to the part that involves item (iv)); the main clause of Article 871; Article 872 (limited to the part that involves item (iv)); the main clause of Article 873; Article 875; and Article 876 of that Act apply mutatis mutandis to a demand under the preceding paragraph. The necessary technical replacement of terms for such a case is specified by Cabinet Order.

#### (Demanding a Share Option Buy-out)

Article 139-18 (1) If a consolidation-type merger is effected, a holder of share options in a Stock Company-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger may request the Stock Company-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger to buy out its share options at a fair price.

(2) The provisions of Article 808, paragraphs (5) to (10) inclusive of the Companies Act and of Article 809; Article 868, paragraph (1); Article 870 (limited to the part that involves item (iv)); the main clause of Article 871;

Article 872 (limited to the part that involves item (iv)); the main clause of Article 873; Article 875; and Article 876 of that Act apply mutatis mutandis to a demand under the preceding paragraph. The necessary technical replacement of terms for such a case is specified by Cabinet Order.

(Provisions Applied Mutatis Mutandis)

Article 139-19 The provisions of Article 139-12 apply mutatis mutandis to a Stock Company-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger.

(Special Provisions on the Incorporation of a Stock Company-Operated Financial Instruments Exchange)

Article 139-20 (1) The provisions of Part II, Chapter I (excluding Article 27 (other than items (iv) and (v)); Article 29; Article 31; Article 37, paragraph (3); Article 39; Section 6; and Article 49) of the Companies Act do not apply to the incorporation of a Stock Company-Operated Financial Instruments Exchange Incorporated in a Consolidation-Type Merger.

(2) The Financial Instruments Exchanges Disappearing in a Consolidation-Type Merger shall prepare the articles of incorporation of the Stock Company-Operated Financial Instruments Exchange Established in the Consolidation-Type Merger.

(The Keeping and Inspection of Consolidation-Type Merger Agreement Documents)

Article 139-21 (1) The Stock Company-Operated Financial Instruments Exchange Incorporated in a Consolidation-Type Merger shall prepare documents or electronic or magnetic records that state or contain a record of the rights and obligations of the Financial Instruments Exchanges Disappearing in the Consolidation-Type Merger to which the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger has succeeded as a result of the consolidation-type merger, and that state or contain a record of other particulars specified by Cabinet Office Ordinance as pertinent to the consolidation-type merger, without delay after the day of its establishment.

(2) During the six-month period beginning from the day of its establishment, the Stock Company-Operated Financial Instruments Exchange Incorporated in a Consolidation-Type Merger shall keep the documents or electronic or magnetic records referred to in the preceding paragraph at its head office.

(3) The shareholder or creditor of a Stock Company-Operated Financial Instruments Exchange Incorporated in a Consolidation-Type Merger may make the following requests of the Stock Company-Operated Financial Instruments

Exchange Incorporated in the Consolidation-Type Merger at any time during its business hours; provided, however, that in making the request set forth in item (ii) or (iv), the shareholder or creditor must pay the cost determined by the Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger:

- (i) a request to inspect a document referred to in the preceding paragraph;
- (ii) a request to be issued a certified copy or extract of a document referred to in the preceding paragraph;
- (iii) a request to inspect something that shows the particulars that have been recorded in the electronic or magnetic records referred to in the preceding paragraph, through a means specified by Cabinet Office Ordinance; and
- (iv) a request to be provided with the particulars that have been recorded in the electronic or magnetic records referred to in the preceding paragraph by an electronic or magnetic means specified by Cabinet Office Ordinance, or a request to be issued a document that states those particulars.

#### **Division 6 The Coming Into Effect of a Merger**

(Authorization for a Merger)

Article 140 (1) A merger in which Financial Instruments Exchanges constitute all or part of the parties (limited to a merger in which the person surviving the merger or the person incorporated in the merger is a Financial Instruments Exchange) does not become effective without the authorization of the Prime Minister.

- (2) A person seeking the authorization referred to in the preceding paragraph must submit a written application for authorization of a merger to the Prime Minister, in which it states the following particulars with regard to the Financial Instruments Exchange surviving the merger or the Financial Instruments Exchange incorporated in the merger (hereinafter collectively referred to as the "Financial Instruments Exchange Resulting from a Merger" in this Division):
  - (i) its name or trade name;
  - (ii) the locations of its offices, head office, branch offices, and any other business offices; and
  - (iii) the names of its officers, and the trade names or names of its Members, etc.
- (3) Documents or electronic or magnetic records that state or contain a record of the contents of a merger agreement (limited to those specified by Cabinet Office Ordinance; hereinafter the same applies in this paragraph), and the articles of incorporation, operational rules, brokerage contract rules, and other documents or electronic or magnetic records specified by Cabinet Office Ordinance with regard to the Financial Instruments Exchange Resulting from

a Merger must accompany the written application for authorization of a merger referred to in the preceding paragraph.

(Criteria for Authorization)

Article 141 (1) Whenever an application for authorization under paragraph (2) of the preceding Article is filed, the Prime Minister shall examine whether the application conforms to the following criteria:

- (i) the provisions of the articles of incorporation, operational rules, and brokerage contract rules of the Financial Instruments Exchange Resulting from the Merger conform to laws and regulations, and are sufficient for ensuring fair and smooth purchase and sales of Securities and Market Transactions of Derivatives on the Financial Instruments Exchange Market, as well as for protecting investors;
  - (ii) the Financial Instruments Exchange Resulting from the Merger has a sufficient personnel structure to run a Financial Instruments Exchange Market in an appropriate manner;
  - (iii) the Financial Instruments Exchange Resulting from the Merger will be organized as a Financial Instruments Exchange in a manner that conforms to the provisions of this Act; and
  - (iv) it is reliable to expect that the Financial Instruments Exchange Resulting from the Merger will smoothly and appropriately succeed to business connected with the purchase and sale of Securities and Market Transactions of Derivatives on the Financial Instruments Exchange Markets operated by the Financial Instruments Exchanges that disappear as a result of the merger.
- (2) If, as a result of having conducted an examination pursuant to the provisions of the preceding paragraph, the Prime Minister finds that an application conforms to the criteria in that paragraph, the Prime Minister shall authorize the merger, except in a case that falls under one of the following items:
- (i) a person falling under one of Article 29-4, paragraph (1), item (ii), sub-items (a) to (i) inclusive of this Act or Article 331, paragraph (1), item (iii) of the Companies Act is an officer; or
  - (ii) the written application for authorization of the merger or a document or electronic or magnetic record that is required to accompany it contains a false statement or false record about a material particular.

(Deemed License)

- Article 142 (1) A Financial Instruments Exchange that is incorporated after obtaining Article 140, paragraph (1) authorization is deemed to have been licensed as referred to in Article 80, paragraph (1) at the time of incorporation.
- (2) The Financial Instruments Exchange Surviving an Absorption-Type Merger

succeeds to the rights and obligations of the Financial Instruments Exchange Disappearing in the Absorption-Type Merger (including the rights and obligations that the Financial Instruments Exchange Disappearing in the Absorption-Type Merger has in connection with business it conducts based on the authorization or any other disposition of a government agency) on the Effective Date.

- (3) The dissolution of a Financial Instruments Exchange Disappearing in an Absorption-Type Merger as a result of the absorption-type merger may not be asserted against a third party until after the registration of the absorption-type merger.
- (4) A Financial Instruments Exchange Incorporated in a Consolidation-Type Merger succeeds to the rights and obligations of the Financial Instruments Exchanges Disappearing in the Consolidation-Type Merger on the day of its establishment (including the rights and obligations that the Financial Instruments Exchanges Disappearing in the Consolidation-Type Merger have in connection with business they conduct based on the authorization or any other disposition of a government agency).
- (5) When a merger pertaining to the authorization prescribed in Article 140, paragraph (1) is a merger where an Incorporated Commodity Exchange (meaning the Incorporated Commodity Exchange prescribed in Article 2, paragraph (6) of the Commodity Futures Trading Act; hereinafter the same shall apply in this Article) is part of the parties thereto and a Stock Company-Type Financial Instruments Exchange is established as a result of said merger, said Stock Company-Type Financial Instruments Exchange shall succeed to the rights and obligations of the Stock Company-Type Financial Instruments Exchange extinguished as a result of said merger (including the rights and obligations which said Stock Company-Type Financial Instruments Exchange has in relation to its business, under authorization or any other disposition given by a government agency) on the day of the establishment.
- (6) In the cases prescribed in the provisions that are set forth in the following items, the members of an Incorporated Association-Operated Financial Instruments Exchange Disappearing in an Absorption-Type Merger, the members of an Incorporated Association-Operated Financial Instruments Exchange Operated Disappearing in a Consolidation-Type Merger, or the shareholders of a Stock Company-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger, become shareholders of the shares prescribed in the provisions that are set forth in the relevant item, in accordance with the provisions on the particulars provided for in that item:
  - (i) Article 139, item (ii), sub-item (a): particulars set forth in item (iii) of that Article; and
  - (ii) Article 139-2, paragraph (1), item (vi): particulars set forth in item (vii) of

that paragraph.

- (7) Share options in a Stock Company-Operated Financial Instruments Exchange that disappears as a result of a merger disappear on the Effective Date.
- (8) The outstanding purchase and sales of Securities and Market Transactions of Derivatives entered into on a Financial Instruments Exchange Market that was operated by a Financial Instruments Exchange that has disappeared as a result of a merger are deemed to be transactions entered into on the Financial Instruments Exchange Market operated by the Financial Instruments Exchange Resulting from the Merger, under the same conditions.
- (9) When a merger pertaining to the authorization prescribed in Article 140, paragraph (1) is a merger where an Incorporated Commodity Exchange is part of the parties thereto and an Incorporated Commodity Exchange extinguishes as a result of said merger, the provisions of this Act shall apply to transactions closed on a Commodity Market (meaning Commodity Market prescribed in Article 2, paragraph (9) of the Commodity Futures Trading Act; hereinafter the same shall apply in this paragraph) established by the Incorporated Commodity Exchange extinguished as a result of said merger of which settlement has not been completed (limited to those falling under futures trading prescribed in Article 2, paragraph (3) of said Act which pertain to commodity or commodity indices prescribed in paragraph (2) of that Article (excluding commodity indices calculated based on the prices of commodities defined in paragraph (1) of that Article other than Commodities)) by deeming said transactions as Market Transactions of Derivatives which have been effected on the Financial Instruments Exchange Market established by the Financial Instruments Exchange Resulting from a Merger under the same conditions. In this case, a Commodity Futures Transactions Dealer (meaning Commodity Futures Transactions Dealer prescribed in Article 2, paragraph (23) of the Commodity Futures Trading Act; the same shall apply in Article 202, paragraph (2), item (iii)) who has conducted transactions which have been deemed to be said Market Transactions of Derivatives in said Commodity Market shall be deemed to be a Financial Instruments Business Operator who is a Trading Participant in the Financial Instruments Exchange Resulting from a Merger within the scope of the purpose to complete the settlement of said transaction.
- (10) The provisions of the preceding paragraphs do not apply to the following cases:
  - (i) the procedures under Article 101-4, as applied mutatis mutandis pursuant to Article 139-3, paragraph (6) or Article 139-4, paragraph (5), or the procedures under Article 139-12 (including as applied mutatis mutandis pursuant to Article 139-19) have not been completed; or
  - (ii) the absorption-type merger is suspended.

(Dealing with Parts Less than the Whole)

Article 143 (1) The provisions of Article 234, paragraphs (1) to (5) inclusive of the Companies Act and of Article 868, paragraph (1); Article 869; Article 871; Article 874 (limited to the part that involves item (iv)); Article 875; and Article 876 of that Act apply *mutatis mutandis* if parts that constitute less than one unit of contribution or one share result from the merger under Article 136, paragraph (1). The necessary technical replacement of terms for such a case is specified by Cabinet Order.

(2) The amounts that are required to be included in the capital reserves at the time of a merger and necessary particulars otherwise relevant to the accounting at the time of a merger are specified by Cabinet Office Ordinance.

(Submission of Share Certificates)

Article 144 (1) The provisions of Article 219, paragraph (1) (limited to the part that involves item (vi)), paragraph (2) (limited to the part that involves item (iv)) and paragraph (3) of the Companies Act and of Article 220 and Article 293, paragraph (1) (limited to the part that involves item (iii)), paragraph (2) (limited to the part that involves item (iv)), and paragraphs (3) and (5) of that Act apply *mutatis mutandis* to a Stock Company-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger. The necessary technical replacement of terms for such a case is specified by Cabinet Order.

(2) The provisions of Article 940, paragraph (1) (limited to the part that involves item (i)) and paragraph (3) of the Companies Act apply *mutatis mutandis* if a Stock Company-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger makes a public notice under Article 219, paragraph (1) or Article 293, paragraph (1) of that Act as applied *mutatis mutandis* pursuant to the preceding paragraph through an Electronic Public Notice; and the provisions of Article 940, paragraph (1) (limited to the part that involves item (iii)) and paragraph (3) of that Act apply *mutatis mutandis* if a Stock Company-Operated Financial Instruments Exchange Disappearing in a Consolidation-Type Merger issues the public notice under Article 220, paragraph (1) of that Act as applied *mutatis mutandis* pursuant to the preceding paragraph (including as applied *mutatis mutandis* pursuant to Article 293, paragraph (5) of that Act, as applied *mutatis mutandis* pursuant to the preceding paragraph) through an Electronic Public Notice. The necessary technical replacement of terms for such a case is specified by Cabinet Order.

(3) The provisions of Article 154, paragraph (2) (limited to the part that involves item (iii)) and Article 272, paragraph (3) (limited to the part that involves item (iii)) of the Companies Act shall apply *mutatis mutandis* to the case where an

Incorporated Association-Operated Financial Instruments Exchange and a Stock Company-Operated Financial Instruments Exchange effect a consolidation-type merger. In this case, in Article 154, paragraph (2), item (iii) and Article 272, paragraph (3), item (iii) of that Act, the phrase "Company Surviving an Absorption-type Merger prescribed in Article 749 (1) or a Company Incorporated in a Consolidation-type Merger prescribed in Article 753 (1)" shall be deemed to be replaced with "Stock Company-Operated Financial Instruments Exchange Incorporated in the Consolidation-Type Merger prescribed in Article 139-2, paragraph (1), item (ii) of the Financial Instruments and Exchange Act."

(Mutatis Mutandis Application of the Commercial Registration Act)

Article 145 (1) The provisions of Article 79 of the Commercial Registration Act and of Article 80 (excluding items (ii), (vi), (ix) and (x)); Article 81 (excluding items (iii), (vi), (ix) and (x)); Article 82; and Article 83 of that Act shall mutatis mutandis to the registration of an Incorporated Association- Operated Financial Instruments Exchange upon merger in a case set forth in Article 136, paragraph (2), item (i). In this case, in Article 79 of that Act, the phrase "trade name and head office" is deemed to be replaced with "name and principal office"; in Article 80, items (iii) and (viii), and Article 81, item (viii) of that Act, the phrase "publication in a daily newspaper that publishes matters on current affairs or by means of electronic public notices" is deemed to be replaced with "publication in a daily newspaper that publishes information on current affairs"; in Article 80, item (iv) of that Act, the phrase "amount of stated capital" is deemed to be replaced with "total amount of contributions"; in Article 80, item (v) and Article 81, item (v) of that Act, the term "head office" is deemed to be replaced with "office"; in Article 80, item (vii) of that Act, the phrase "in cases where a company absorbed in absorption-type merger is a membership company, a document evidencing that the consent of all members has been obtained (or, in cases where otherwise provided for in its articles of incorporation, that the procedures under such provision have been performed)" is deemed to be replaced with "minutes of the general meeting of members concerning the merger of the Incorporated Association-Operated Financial Instruments Exchange effecting the absorption-type merger"; in Article 80, item (viii) and Article 81, item (viii) of that Act, the phrase "a stock company or a limited liability company" is deemed to be replaced with " Incorporated Association- Operated Financial Instruments Exchange " and in those Articles, the phrase "the following documents" is deemed to be replaced with "the following documents and a document evidencing the credentials of the person with the authority of representation"; in Article 81, item (vii) of that Act, the phrase "in cases where a company consolidated through consolidation-type



merger is a membership company, a document evidencing that the consent of all members has been obtained (or, in cases where otherwise provided for in its articles of incorporation, that the procedures under said provision have been performed)" is deemed to be replaced with "minutes of the general meetings of members concerning the merger of the Incorporated Association-Operated Financial Instruments Exchanges Disappearing in the Consolidation-Type Merger"; in Article 82, paragraphs (2) to (4) inclusive and Article 83 of that Act, the term "head office" is deemed to be replaced with "principal office"; and any other necessary technical replacement of terms is specified by Cabinet Order.

(2) The provisions of Article 79 of the Commercial Registration Act and of Article 80 (excluding items (vi), (ix) and (x)) and Articles 81 to 83 inclusive of that Act apply mutatis mutandis to the registration of a Incorporated Association-Operated Financial Instruments Exchange or Stock Company-Operated Financial Instruments Exchange upon merger in a case set forth in Article 136, paragraph (2), item (ii). In this case, in Article 79 of that Act, the phrase "trade name and head office" is deemed to be replaced with "name or trade name, and the principal office or head office"; in Article 80, item (v) of that Act, the term "head office" is deemed to be replaced with "office"; in Article 80, item (vii) of that Act, the phrase "in cases where a company absorbed in absorption-type merger is a membership company, a document evidencing that the consent of all members has been obtained (or, in cases where otherwise provided for in its articles of incorporation, that the procedures under such provision have been performed)" is deemed to be replaced with "minutes of the general meeting of members concerning the merger of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Absorption-Type Merger"; in Article 80, item (viii) of that Act, the phrase "publication in a daily newspaper that publishes matters on current affairs or by means of electronic public notices" is deemed to be replaced with "publication in a daily newspaper that publishes information on current affairs" and the phrase "a stock company or a limited liability company" is deemed to be replaced with "an Incorporated Association-Operated Financial Instruments Exchange "; in Article 81, item (v) of that Act, the term "head office" is deemed to be replaced with "office or head office"; in Article 81, item (vii) of that Act, the phrase "in cases where a company consolidated through consolidation-type merger is a membership company, a documents evidencing that the consent of all members has been obtained (or, in cases where otherwise provided for in its articles of incorporation, that the procedures under said provision have been performed)" is deemed to be replaced with "minutes of the general meetings of members concerning the merger of the Incorporated Association-Operated Financial Instruments Exchange Disappearing in the Consolidation-Type Merger"; in Article 81, item (viii) of that Act, the phrase "a stock company or a limited

liability company" is deemed to be replaced with "an Incorporated Association-Operated Financial Instruments Exchange or Stock Company-Operated Financial Instruments Exchange"; in Article 83, paragraph (2) of that Act, the phrase "the head office of a company consolidated through consolidation-type merger" is deemed to be replaced with "the principal offices and head offices of the Financial Instruments Exchanges Disappearing in the Consolidation-Type Merger"; and any other necessary technical replacement of terms is specified by Cabinet Order.

(Action to Invalidate a Merger)

Article 146 The provisions of Article 828, paragraph (1) (limited to the part that involves item (vii) and item (viii)) and paragraph (2) (limited to the part that involves item (vii) and item (viii)) of the Companies Act and of Article 834 (limited to the part that involves item (vii) and item (viii)); Article 835, paragraph (1); Articles 836 to 839 inclusive; Article 843 (excluding paragraph (1), item (iii) and item (iv) and the proviso to paragraph (2)); Article 846; and Article 937, paragraph (3) (limited to the part that involves item (ii) and item (iii)) and paragraph (4) of that Act apply mutatis mutandis to the action to invalidate a merger referred to in Article 136, paragraph (1); and the provisions of Article 868, paragraph (6) of the Companies Act and of Article 870, paragraph (2) (limited to the part that involves item (vi)); Article 872-2; the main clause of Article 871; Article 872 (limited to the part that involves item (v)); Article 872-2; the main clause of Article 873; Article 875; and Article 876 of that Act apply mutatis mutandis to the petition referred to in Article 843, paragraph (4) of that Act as applied mutatis mutandis pursuant to this Article. In this case, in Article 828, paragraph (2), item (vii) of the Companies Act, the phrase "a Shareholder, etc. or a Partner, etc." is deemed to be replaced with "a Member, etc. (meaning a member, president, director, inspector, or liquidator; hereinafter the same applies in this item)" and the phrase "a Shareholder, etc., a Partner, etc." is deemed to be replaced with "a Member, etc., Shareholder, etc. (meaning a shareholder, director, or liquidator (if it is a company with company auditors, this means a shareholder, director, company auditor, or liquidator; and if it is a company with nominating committee, etc., this means a shareholder, director, executive officer, or liquidator))"; in item (viii) of the same Article, the phrase "a Shareholders, etc. or a Partner, etc." is deemed to be replaced with "a Member, etc. (meaning a member, president, director, inspector, or liquidator; hereinafter the same applies in this item) or Shareholder, etc. (meaning a shareholder, director, or liquidator (if it is a company with company auditors, this means a shareholder, director, company auditor, or liquidator; and if it is a company with nominating committee, etc., this means a shareholder, director, executive officer, or liquidator; hereinafter

the same applies in this item)" and the phrase "a Shareholder, etc., a Partner, etc." is deemed to be replaced with "a Member, etc., Shareholder, etc."; in Article 937, paragraph (3) of that Act, the term "head office" is deemed to be replaced with "head office (if it is an Incorporated Association-Operated Financial Instruments Exchange, the principal office and secondary offices)"; and any other necessary technical replacement of terms is specified by Cabinet Order.

(Application of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade)

Article 147 (1) If an Incorporated Association-Operated Financial Instruments Exchange and a Stock Company-Operated Financial Instruments Exchange effect a merger, the Incorporated Association-Operated Financial Instruments Exchange is deemed to be a company, and Article 15 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade and the provisions of that Act that are related to that Article apply.

(2) If a Stock Company-Operated Financial Instruments Exchange is transferred the whole or part an Incorporated Association-Operated Financial Instruments Exchange's business, the Incorporated Association-Operated Financial Instruments Exchange is deemed to be a company, and Article 467 of the Companies Act and the provisions of that Act which are related to that Article, as well as Article 16 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade and the provisions of that Act which are related to that Article, apply.

## **Section 5 Supervision**

(Rescission of a License)

Article 148 If a Financial Instruments Exchange is discovered to have fallen under one of the categories in the items of Article 82, paragraph (2) at the time it obtained its license, the Prime Minister may rescind its license.

(Authorization to Change the Articles of Incorporation)

Article 149 (1) A Financial Instruments Exchange must obtain the authorization of the Prime Minister if it seeks to change its articles of incorporation, operational rules, or brokerage contract rules.

(2) If a particular set forth in Article 81, paragraph (1), item (ii) or (iii) changes, the Financial Instruments Exchange must notify the Prime Minister of this without delay. The same applies if the rules of a Financial Instruments Exchange (excluding the articles of incorporation, operational rules, and brokerage contract rules, and business rules for providing Financial

Instruments Obligation Assumption Services under Article 156-19, paragraph (1) approval) are prepared, if they change, or if they are discontinued, or if all business conducted with the authorization referred to in the proviso to Article 87-2, paragraph (1) is discontinued.

(Dismissal of Officers)

- Article 150 (1) If the Prime Minister discovers that a person has become the officer of a Financial Instruments Exchange by wrongful means, or if the officer of a Financial Instruments Exchange violates a law or regulation, the articles of incorporation, or a disposition by a government agency which is based on a law or regulation, the Prime Minister may order the Financial Instruments Exchange to dismiss that officer.
- (2) The provisions of the preceding paragraph apply mutatis mutandis to self-regulatory organizations' officers and members of self-regulatory committees.

(Collection of Reports and Inspections)

- Article 151 Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order a Financial Instruments Exchange, its Subsidiary Company, its Commodity Trading Participant (meaning a person who has been granted the qualification for trading under the provision of Article 112, paragraph (2) or Article 113, paragraph (2); hereinafter the same shall apply), an Issuer of Securities listed on a Financial Instruments Exchange, or the person that a Financial Instruments Exchange has entrusted with its business (including a person who has received entrustment from such person (including entrustment via two or more layers); hereinafter the same shall apply in this Article), to submit reports or materials that should serve as a reference with regard to the business or assets of the Financial Instruments Exchange or its Subsidiary Company, or said Commodity Trading Participant (in the case of said Commodity Trading Participant, limited to the business related to its Commodity-Related Market Transactions of Derivatives) or may have the relevant officials inspect the state of the business (in the case of said Commodity Trading Participant, limited to the business related to its Commodity-Related Market Transactions of Derivatives) or assets, or the books and documents or any other articles, of a Financial Instruments Exchange, its Subsidiary Company, said Commodity Trading Participant or the person that a Financial Instruments Exchange has entrusted with its business (but may only have the relevant officials inspect a Subsidiary Company or the person that a Financial Instruments Exchange has entrusted with its business as is necessary in connection with the business or assets of the Financial Instruments Exchange).

(Supervisory Measures for Financial Instruments Exchanges)

Article 152 (1) If a Financial Instruments Exchange falls under a case specified in one of the following items and the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may issue the disposition provided for in the relevant item:

- (i) if it violates a law or regulation, a disposition by a government agency which is based on a law or regulation, a condition attached to the authorization referred to in the proviso to Article 87-2, paragraph (1) or in the proviso to Article 87-3, paragraph (1), or the articles of incorporation or any other rules; or, even though a Member, etc. or an Issuer of Securities listed by a Financial Instruments Exchange has violated a law or regulation, a disposition by a government agency which is based on a law or regulation, or the Financial Instruments Exchange's articles of incorporation, operational rules, brokerage contract rules, or any other rules (hereinafter referred to as "Laws and Regulations, etc." in this item), or has engaged in an act that is contrary to the principle of good faith in transactions as specified in the articles of incorporation or any other rules, the Financial Instruments Exchange fails to exercise the powers accorded it under this Act, an order based on this Act, or its articles of incorporation or any other rules, or to take any other necessary measures to cause the person to observe the Laws and Regulations, etc. or the principle of good faith in transactions: rescinding the license referred to in Article 80, paragraph (1), ordering the suspension of all or a part of its business activities during a fixed period of no longer than one year, ordering a change in its business activities, issuing an order prohibiting a part of its business activities, ordering the dismissal of its officers, or ordering the Financial Instruments Exchange to take the necessary measures specified in the articles of incorporation or any other rules;
- (ii) if the conduct of the Financial Instruments Exchange, or the status of purchase and sales of Securities or Market Transactions of Derivatives on a Financial Instruments Exchange Market operated by the Financial Instruments Exchange, is found to be harmful to the public interest or to the protection of investors: ordering the suspension of all or a part of purchase and sales of Securities or Market Transactions of Derivatives on the Financial Instruments Exchange Market during a fixed period of no longer than 10 days, or, subject to a cabinet decision, ordering the suspension of all or a part of its business during a fixed period of no longer than three months;
- (iii) if the business it conducts after obtaining authorization pursuant to the proviso to Article 87-2, paragraph (1) is found likely to impair confidence in the public nature of the business of a Financial Instruments Exchange or

- likely to impair the sound and appropriate operation in the business of operating, etc. a Financial Instruments Market (meaning the operation of a Financial Instruments Exchange Market and business incidental thereto; the same applies in the following item), or the Financial Instruments Exchange violates the conditions attached to the authorization referred to in the proviso to that paragraph: rescinding the authorization referred to in the proviso to that paragraph; or
- (iv) if the conduct of its Subsidiary Company that has obtained authorization pursuant to the proviso to Article 87-3, paragraph (1) is found likely to impair confidence in the public nature of the business of the Financial Instruments Exchange or likely to impair the sound and appropriate operation in the Financial Instruments Exchange's business of operating, etc. a Financial Instruments Market, or the Subsidiary Company violates the conditions attached to the authorization referred to in the proviso to that paragraph: rescinding the authorization referred to in the proviso to that paragraph.
- (2) Irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, before seeking to order the suspension of all or a part of business activities, to order a change in business activities, to issue an order prohibiting a part of business activities, or to issue an order to take any necessary measures that are specified in the articles of incorporation or any other rules pursuant to item (i) of the preceding paragraph, the Prime Minister must conduct a hearing.
- (3) No request for review may be filed against a disposition under the provisions of paragraph (1), item (ii) of this Article.

(Business Improvement Orders)

Article 153 If the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors as concerns a Financial Instruments Exchange's articles of incorporation, operational rules, brokerage contract rules, other rules, or its trade practices, or as concerns its business operations or the state of its assets, the Prime Minister, within the scope of this necessity, may order the Financial Instruments Exchange to change its articles of incorporation, operational rules, brokerage contract rules, other rules, or its trade practices, or to take measures that are necessary from a supervisory perspective. In such a case, irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, the Prime Minister must conduct a hearing.

(Rescission of Authorization)

Article 153-2 If Self-Regulatory Services entrusted under Article 85, paragraph

(1) authorization fall under one of the following items, the Prime Minister may rescind the Entrusting Financial Instruments Exchange's Article 85, paragraph (1) authorization, order it to change the method of entrustment, prohibit part or all of that entrustment, or order it to take measures that are necessary from a supervisory perspective:

- (i) the entrustment agreement is found to be insufficient for ensuring appropriate implementation of Self-Regulatory Services by the Entrusted Self-Regulatory Organization; or
- (ii) the Self-Regulatory Services by the Entrusted Self-Regulatory Organization are otherwise found to be inappropriate in terms of the status of performance of the Self-Regulatory Services.

(Changes to an Entrustment Agreement)

Article 153-3 If a particular set forth in Article 85-2, paragraph (1), item (iii) changes, the Financial Instruments Exchange that has obtained the authorization referred to in Article 85, paragraph (1) must notify the Prime Minister of this without delay. The same applies if the content of the entrustment agreement with the Entrusted Self-Regulatory Organization changes.

(Application of Supervisory Provisions to Self-Regulatory Organizations)

Article 153-4 The provisions of Articles 148; 149; 150, paragraph (1); and Articles 151 to 153 inclusive apply mutatis mutandis to the supervision of a self-regulatory organization that provides Self-Regulatory Services for a Financial Instruments Exchange with which it is entrusted by the Financial Instruments Exchange based on the authorization referred to in Article 85, paragraph (1). The necessary technical replacement of terms for such a case is specified by Cabinet Order.

(Disposition Rendered to a Commodity Trading Participant for the Purpose of Supervision)

Article 153-5 When a Commodity Trading Participant violates this Act or an order given under this Act, the Prime Minister may order a Financial Instruments Exchange to rescind the qualification for trading of said Commodity Trading Participant or suspend or restrict Commodity-Related Market Transactions of Derivatives of said Commodity Trading Participant, specifying a period not exceeding six months. In this case, a hearing shall be held irrespective of the categories of procedures for hearing statements of opinions under Article 13, paragraph (1) of the Administrative Procedure Act.

## **Section 6 Miscellaneous Provisions**

(Notice of the Commencement of Bankruptcy Proceedings)

Article 154 If an order to commence bankruptcy proceedings or an order to terminate bankruptcy proceedings is issued with regard to a Financial Instruments Exchange, or if the rescission of an order to commence bankruptcy proceedings, or an order to discontinue bankruptcy proceedings, becomes final and binding with regard to a Financial Instruments Exchange, the court clerk must notify the Prime Minister of this.

(Delegation to Cabinet Office Ordinance)

Article 154-2 Procedures for the implementation of the provisions of Article 80 to the preceding Article inclusive and particulars that are otherwise necessary for their implementation are specified by Cabinet Office Ordinance.

## **Chapter V-2 Foreign Financial Instruments Exchanges**

### **Section 1 General Provisions**

(Authorization)

Article 155 (1) Notwithstanding the provisions of Article 29 and Article 80, paragraph (1), with the authorization of the Prime Minister, the operator of a foreign Financial Instruments Market may allow the persons set forth in the following items to effect purchase and sales of Securities and Foreign Market Derivatives Transactions on the foreign Financial Instruments Market (with regard to the person set forth in item (ii), this is limited to transactions involving the services of a registered financial institution) through a connection between its electronic data processing system and the input and output devices used by those persons (hereinafter referred to as the "Input and Output Devices Connected to a Foreign Financial Instruments Exchange"):

- (i) a Financial Instruments Business Operator; and
- (ii) a registered financial institution.

(2) The provisions of Article 30-2 apply mutatis mutandis to the authorization referred to the preceding paragraph.

(Application for Authorization)

Article 155-2 (1) A person seeking the authorization referred to in paragraph (1) of the preceding Article must designate a domestic representative and submit a written application for authorization to the Prime Minister, in which it states the following particulars:

- (i) its trade name or name;
- (ii) the location of its head office or principle office;
- (iii) the location of its office in Japan, if any;



- (iv) the titles and names of its officers;
  - (v) the name and domestic address of its domestic representative;
  - (vi) the types and names of the foreign Financial Instruments Markets in which the participants in the Foreign Financial Instruments Exchange (meaning the persons that effect purchase and sales of Securities and Foreign Market Derivatives Transactions on the foreign Financial Instruments Market, using Input and Output Devices Connected to the Foreign Financial Instruments Exchange (hereinafter each such transaction is referred to as a "Foreign Market Transaction"); the same applies hereinafter) conduct Foreign Market Transactions;
  - (vii) the trade names or names of participants in the Foreign Financial Instruments Exchange; and
  - (viii) other matters specified by Cabinet Office Ordinance.
- (2) The following documents must accompany the written application for authorization referred to in the preceding paragraph:
- (i) the articles of incorporation, as well as the operational rules and brokerage contract rules for Foreign Market Transactions (including anything equivalent to these; hereinafter collectively referred to as the "Operational Regulations" in this Chapter);
  - (ii) documents stating the things specified by Cabinet Office Ordinance as constituting the business outline and business methods as relates to Foreign Market Transactions; and
  - (iii) other documents specified by Cabinet Office Ordinance.

(Examination Criteria for Authorization)

- Article 155-3 (1) Whenever an application for authorization under paragraph (1) of the preceding Article is filed, the Prime Minister shall examine whether the application conforms to the following criteria:
- (i) the applicant for authorization has obtained the same kind of license as that referred to in Article 80, paragraph (1) or has obtained permission or any other administrative disposition similar to such a license in the state where its head office or principle office is located;
  - (ii) the applicant for authorization is able to take the necessary measures to cause a participant in the Foreign Financial Instruments Exchange which has violated a law or regulation, a disposition by a government agency which is based on a law or regulation (hereinafter referred to as "Laws and Regulations, etc." in this item and Article 155-10), or the Operational Regulations, observe the Laws and Regulations, etc. or Operational Regulations; and
  - (iii) the Operational Regulations of the applicant for authorization are sufficient for ensuring that the Foreign Market Transactions that the

participants in the Foreign Financial Instruments Exchange conduct are fair and smooth, and for protecting investors.

- (2) If, as a result of having conducted an examination pursuant to the provisions of the preceding paragraph, the Prime Minister finds that an application conforms to the criteria in that paragraph, the Prime Minister shall grant the authorization, except in a case that falls under one of the following items:
- (i) the applicant for authorization is a person that has yet to have the period specified by Cabinet Order pass since the establishment of the foreign Financial Instruments Market in which participants in the Foreign Financial Instruments Exchange conduct Foreign Market Transactions (unless this falls under a case specified by Cabinet Order);
  - (ii) the applicant for authorization is a person that has been sentenced to a fine (including an equivalent sentence under foreign laws and regulations) for violating the provisions of this Act or for violating the provisions of a foreign law or regulation that is equivalent to this Act, and five years have yet to pass since the day on which the person finished serving the sentence or ceased to be subject to its enforcement;
  - (iii) the applicant for authorization is a person that has had the authorization referred to in Article 155, paragraph (1) rescinded pursuant to the provisions of Article 155-6 or Article 155-10, paragraph (1); has had the license referred to in Article 156-20-2 rescinded pursuant to the provisions of Article 156-20-14, paragraph (1) or (2); has had the registration referred to in Article 29 or Article 33-2 rescinded pursuant to the provisions of Article 52, paragraph (1) or (4), Article 52-2, paragraph (1) or (3), Article 53, paragraph (3), Article 54, or Article 57-6, paragraph (3); has had the permission referred to in Article 60, paragraph (1) rescinded pursuant to the provisions of Article 60-8, paragraph (1) or Article 60-9, paragraph (1); has had the permission granted under Article 60-14, paragraph (1) rescinded under the provisions of Article 60-8, paragraph (1) or Article 60-9, paragraph (1) as applied *mutatis mutandis* pursuant to Article 60-14, paragraph (2); has had the registration referred to in Article 66 rescinded pursuant to the provisions of Article 66-20, paragraph (1); has had the registration referred to in Article 66-27 rescinded pursuant to the provisions of Article 66-42, paragraph (1) or (3); or is a person that had obtained a registration or license of the same kind as the registration referred to in Article 29, Article 66, or Article 66-27 or the license referred to in Article 80, paragraph (1), Article 156-2, or Article 156-24, paragraph (1) in the state where its head office or principle office is located (including permission or any other administrative disposition similar to such a registration or license), but that has had that registration or license rescinded; and five years have yet to pass since the date of the rescission;

- (iv) the applicant for authorization has a person falling under one of the categories in Article 82, paragraph (2), item (iii), sub-item (a), (b), or (e) as an officer or domestic representative;
- (v) the authority responsible for the enforcement of the foreign laws or regulations that are equivalent to this Act in the state where the head office or principal office of the Applicant for authorization is located has not given the assurance prescribed in Article 189, paragraph (2), item (i) or done anything else that is found to be equivalent to such assurance; and
- (vi) the written application for authorization or a document that is required to accompany it contains a false statement about a material particular.

#### (Refusal of Authorization)

- Article 155-4 (1) If an application for authorization under the provisions of Article 155-2, paragraph (1) is filed and the Prime Minister finds it inappropriate to grant that authorization, the Prime Minister shall notify the Applicant for authorization and have the relevant officials conduct a hearing.
- (2) Upon deciding to grant or not to grant the authorization under the provisions of Article 155, paragraph (1), the Prime Minister shall notify the applicant for authorization of this in writing without delay.

#### (Submission of Business Reports)

- Article 155-5 Pursuant to the provisions of Cabinet Office Ordinance, a Foreign Financial Instruments Exchange shall prepare a business report on the Foreign Market Transactions effected during the period from April of each year to March of the subsequent year and submit the same to the Prime Minister within three months after the end of that period.

## **Section 2 Supervision**

#### (Rescission of Authorization)

- Article 155-6 If a Foreign Financial Instruments Exchange is discovered to have fallen under one of the categories in the items of Article 155-3, paragraph (2) at the time of it obtained the Article 155, paragraph (1) authorization, the Prime Minister may rescind its authorization.

#### (Notification of a Change)

- Article 155-7 If a particular set forth in one of the items of Article 155-2, paragraph (1) changes; if the business outline or business methods that a Foreign Financial Instruments Exchange has stated in a document set forth in Article 155-2, paragraph (2), item (ii) changes; if there is a material change in Operational Regulations; or in a case specified by Cabinet Office Ordinance,

the Foreign Financial Instruments Exchange must notify the Prime Minister of this within two weeks from the day of the change.

(Lapse of Authorization)

Article 155-8 (1) If a Foreign Financial Instruments Exchange falls under one of the following items, its Article 155, paragraph (1) authorization ceases to be valid:

- (i) it comes to have no participants in the Foreign Financial Instruments Exchange which effect Foreign Market Transactions;
  - (ii) it closes all its foreign Financial Instruments Markets in which Foreign Market Transactions are effected; and
  - (iii) it is dissolved.
- (2) If authorization ceases to be valid pursuant to the provisions of the preceding paragraph, the domestic representative or the former domestic representative of the Foreign Financial Instruments Exchange must notify the Prime Minister of this without delay.

(Collection of Reports and Inspections)

Article 155-9 Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order a Foreign Financial Instruments Exchange, Foreign Financial Instruments Exchange Participant, or a person that the relevant Foreign Financial Instruments Exchange has entrusted with its business (including a person who has received entrustment from such person (including entrustment via two or more layers)), to submit reports or materials that should serve as a reference with regard to Foreign Market Transactions, or may have the relevant officials inspect the state of the business, or documents and other articles, of the relevant Foreign Financial Instruments Exchange in connection to its Foreign Market Transactions.

(Supervisory Measures for Foreign Financial Instruments Exchanges)

Article 155-10 (1) If a Foreign Financial Instruments Exchange falls under one of the cases in the following items and the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may rescind the Foreign Financial Instruments Exchange's Article 155, paragraph (1) authorization, order the suspension of all or a part of Foreign Market Transactions during a fixed period of no longer than six months, order a change in the business activities linked to Foreign Market Transactions, or issue an order prohibiting a part of the business activities linked to Foreign Market Transactions:

- (i) it becomes unable to satisfy the criteria set forth in the items of Article 155-

- 3, paragraph (1);
- (ii) it comes to fall under Article 155-3, paragraph (2), items (ii) to (v) inclusive;
  - (iii) it violates the conditions attached to the authorization;
  - (iv) it violates Laws and Regulations, etc. or the Operational Regulations, or, even though a participant in the Foreign Financial Instruments Exchange acts in violation of Laws and Regulations, etc. or the Operational Regulations, the Foreign Financial Instruments Exchange fails to exercise the powers accorded to it or to take any other necessary measures to cause the participant in the Foreign Financial Instruments Exchange to observe the Laws and Regulations, etc. or the Operational Regulations; or
  - (v) the actions of the Foreign Financial Instruments Exchange or the status of Foreign Market Transactions on the foreign Financial Instruments Market it operates is found to be harmful for the public interest or to the protection of investors.
- (2) If the domestic representative of a Foreign Financial Instruments Exchange (if a Foreign Financial Instruments Exchange has a domestic office, this includes any officer stationed there; hereinafter the same applies in this paragraph) violates the Laws and Regulations, etc., the Prime Minister may order the Foreign Financial Instruments Exchange to dismiss that domestic representative.
- (3) Irrespective the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, before seeking to order the suspension of all or a part of Foreign Market Transactions, order a change in the business activities linked to Foreign Market Transactions, or issue an order prohibiting a part of the business activities linked to Foreign Market Transactions, under paragraph (1), the Prime Minister must conduct a hearing.

### **Section 3 Miscellaneous Provisions**

Article 156 Procedures for the implementation of the provisions of Article 155 to the preceding Article inclusive and particulars that are otherwise necessary for their implementation are specified by Cabinet Office Ordinance.

## **Chapter V-3 Financial Instruments Clearing Organizations, etc.**

### **Section 1 Financial Instruments Clearing Organizations**

(License)

Article 156-2 A person not licensed by the Prime Minister must not perform Financial Instruments Obligation Assumption Services.

(License Application)

Article 156-3 (1) A person seeking to obtain the license referred to in the preceding Article must submit a written license application to the Prime Minister, in which it states the following particulars:

- (i) its trade name;
  - (ii) the amount of stated capital;
  - (iii) the names and locations of its head office and other business offices;
  - (iv) the names of the directors and company auditors (or of the directors, if it is a company with supervisory committee; or of the directors and executive officers, if it is a company with nominating committee, etc.);
  - (v) the names of its accounting advisors, if it is a company with accounting advisors; and
  - (vi) if it conducts business other than Financial Instruments Obligation Assumption Services, the business referred to in Article 156-6, paragraph (1) (hereinafter referred to as "Financial Instruments Obligation Assumption Services, etc."), or business incidental to either of these, an outline of that business.
- (2) The following documents must accompany the written license application referred to in the preceding paragraph:
- (i) a document pledging that the applicant does not fall under the purview of the requirements set forth in paragraph (2), items (ii) to (iv) inclusive of the following Article;
  - (ii) the articles of incorporation;
  - (iii) the company's certificate of registered information;
  - (iv) the business rules;
  - (v) the balance sheet and profit and loss statement;
  - (vi) documents stating expected income and expenditures;
  - (vii) a document outlining the method of securing the collateral needed to settle outstanding obligations (meaning outstanding obligations as prescribed in Article 156-11-2, paragraph (1); hereinafter the same applies in paragraph (1), item (iv) of the following Article) and other arrangements for settling them, and outlining the facilities, staff, and other systems for performing such settlement operations; and
  - (viii) in addition to what is set forth in the preceding items, documents specified by Cabinet Office Ordinance.
- (3) In the case referred to in the preceding paragraph, if the articles of incorporation or a balance sheet has been prepared as an electronic or magnetic record or an electronic or magnetic record has been prepared for a profit and loss statement in lieu of a written document, such electronic or magnetic record (limited to one specified by Cabinet Office Ordinance) may accompany the written license application in lieu of written documents.

(Licensing Examination Criteria)

Article 156-4 (1) Whenever a license application under the provisions of paragraph (1) of the preceding Article is filed, the Prime Minister shall examine whether the application conforms to the following criteria:

- (i) the provisions of the articles of incorporation and business rules conform to laws and regulations and are sufficient to allow Financial Instruments Obligation Assumption Services to be performed properly and reliably;
  - (ii) the applicant has a sufficient financial basis to soundly perform Financial Instruments Obligation Assumption Services, and has good prospects in terms of expected income and expenditures in connection with Financial Instruments Obligation Assumption Services;
  - (iii) in light of its personnel structure, the Applicant has sufficient knowledge and experience to perform Financial Instruments Obligation Assumption Services properly and reliably, and has sufficient social credibility.
  - (iv) the applicant has an adequately developed structure and system for properly securing collateral to allocate for settling outstanding obligations, for managing highly reliable facilities in order to facilitate such settlement, and for otherwise executing such settlement properly and reliably.
- (2) If, as a result of having conducted an examination pursuant to the provisions of the preceding paragraph, the Prime Minister finds that an application conforms to the criteria in that paragraph, the Prime Minister shall grant the license, except in a case that falls under one of the following items:
- (i) the license applicant is not a stock company (meaning a stock company that has the following organs):
    - (a) a board of directors; or
    - (b) company auditors, a supervisory committee, or a nominating committee, etc.
  - (ii) the license applicant is a company that has been sentenced to a fine (including an equivalent sentence under foreign laws and regulations) for violating the provisions of this Act or for violating the provisions of a foreign law or regulation that is equivalent to this Act, and five years have yet to pass since the day on which it finished serving the sentence or ceased to be subject to its enforcement;
  - (iii) the license applicant is a company that has had its license rescinded pursuant to the provisions of Article 148, Article 152, paragraph (1), Article 156-17, paragraph (1) or (2), Article 148 as applied mutatis mutandis pursuant to Article 156-26, or Article 156-32, paragraph (1); has had its registration rescinded pursuant to the provisions of Article 52, paragraph (1), Article 53, paragraph (3), Article 57-6, paragraph (3), Article 66-20, paragraph (1), or Article 66-42, paragraph (1); has had its authorization

rescinded pursuant to the provisions of Article 106-7, paragraph (1), Article 106-21, paragraph (1), Article 106-28, paragraph (1), or Article 156-5-9, paragraph (1); or is a company that had obtained a license or registration of the same kind in a foreign state pursuant to the provisions of a foreign law or regulation that is equivalent to this Act (including permission or any other administrative disposition similar to such a license or registration), but it has had that license or registration rescinded; and five years have yet to pass since the date of the rescission;

- (iv) the license applicant is a company that has a person falling under one of the categories in Article 82, paragraph (2), item (iii), sub-items (a) to (f) inclusive as a director, accounting advisor, company auditor, or executive officer; or
- (v) the written license application or a document or electronic or magnetic record that is required to accompany it contains a false statement or false record about a material particular.

#### (Refusal of a License)

Article 156-5 (1) If a license application under the provisions of Article 156-3, paragraph (1) is filed and the Prime Minister finds it inappropriate to grant that license, the Prime Minister shall notify the license applicant and have the relevant officials conduct a hearing.

- (2) Upon deciding to grant or not to grant the license referred to in Article 156-2, the Prime Minister shall notify the license applicant of this in writing without delay.

#### (Amount of Stated Capital)

Article 156-5-2 The stated capital of a Financial Instruments Clearing Organization (other than a Financial Instruments Clearing Organization that is a Financial Instruments Exchange; hereinafter the same applies in the following Article; Article 156-5-5, paragraphs (1) to (5) inclusive; Article 156-5-6, paragraph (1); Article 156-5-8; Article 156-5-9, paragraphs (1) and (2); Article 156-5-10, paragraph (2); Article 156-6, paragraphs (2) and (3); Article 156-12-2 to Article 156-14 inclusive; and Article 156-17, paragraph (1)) must be at least the amount specified by Cabinet Order.

#### (Submission of a Statement of Holdings in Subject Voting Rights)

Article 156-5-3 (1) A person that becomes the holder of voting rights (including voting rights in respect of shares that cannot be asserted against the Issuer pursuant to the provisions of Article 147, paragraph (1) or Article 148, paragraph (1) of the Act on the Book-Entry Transfer of Corporate Bonds, Shares, etc., excluding voting rights that are specified by Cabinet Office



Ordinance in consideration of the manner in which they are acquired or held and other circumstances; hereinafter referred to as "Subject Voting Rights" in this Section) exceeding five percent of all shareholders' voting rights in a Financial Instruments Clearing Organization, must submit a statement of holdings in Subject Voting Rights to the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance and without delay, in which the person states the ratio arrived at by dividing the number of Subject Voting Rights held by the number that represents all shareholders' voting rights in the Financial Instruments Clearing Organization, and states the purpose of the holdings and the particulars of the Subject Voting Rights that are otherwise specified by Cabinet Office Ordinance.

- (2) With regard to the application of the provisions of the preceding paragraph in a case set forth in one of the following items, the relevant person is deemed to hold the Subject Voting Rights specified in the relevant item:
- (i) if a person has the authority to exercise Subject Voting Rights in a Financial Instruments Clearing Organization or the authority to give instructions on the exercise of such voting rights based on the provisions of a money trust contract or other contract or based on the provisions of law: the Subject Voting Rights in question; and
  - (ii) a person that is related to the person in question through a shareholding relationship, familial relationship, or other special relationship specified by Cabinet Order, holds Subject Voting Rights in a Financial Instruments Clearing Organization: the Subject Voting Rights held by the person with the special relationship to the person in question.

(Collection of Reports and Inspection of a Person Submitting a Statement of Holdings in Subject Voting Rights)

Article 156-5-4 If the Prime Minister suspects that a statement of holdings in Subject Voting Rights referred to in paragraph (1) of the preceding Article contains a false statement or omits a statement as to a particular that is required to be stated, the Prime Minister may order the person submitting that statement of holdings in Subject Voting Rights to report or submit materials that should serve as a reference, or may have the relevant officials inspect the documents and other articles of that person (but only as is necessary in connection with what is stated in the statement of holdings in Subject Voting Rights).

(Authorization, etc. as a Major Shareholder)

Article 156-5-5 (1) A person seeking to acquire or hold a number of Subject Voting Rights that constitutes 20 percent or more (or 15 percent or more, if a fact has occurred that is specified by Cabinet Office Ordinance as something

that is presumed to have a material influence on decisions about financial and operational policies; hereinafter referred to as the "Threshold Holding Ratio" in this Section) of all shareholders' voting rights in a Financial Instruments Clearing Organization or a person seeking to incorporate as a company or other corporation with the intention to acquire or hold a number of Subject Voting Rights that is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights in a Financial Instruments Clearing Organization, must obtain the authorization of the Prime Minister before doing so.

- (2) If the number of Subject Voting Rights that the person holds does not increase or in any other case specified by Cabinet Office Ordinance, the provisions of the preceding paragraph do not apply to a person acquiring or holding a number of Subject Voting Rights in a Financial Instruments Clearing Organization which is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights.
- (3) In the case referred to in the preceding paragraph, the person that has come to acquire or hold a number of Subject Voting Rights in a Financial Instruments Clearing Organization which is equal to or greater than the Threshold Holding Ratio of all shareholders' voting rights (hereinafter referred to as a "Specified Holder" in this Article) shall notify the Prime Minister without delay that it has become a Specified Holder and of any other matters specified by Cabinet Office Ordinance.
- (4) In the case referred to in paragraph (2), a Specified Holder must take the necessary measures to become the holder of a number of Subject Voting Rights in a Financial Instruments Clearing Organization which is less than the Threshold Holding Ratio within three months from the day on which the person becomes a Specified Holder; provided, however, that this does not apply if the Specified Holder obtains the authorization of the Prime Minister.
- (5) When a Specified Holder becomes the holder of a number of Subject Voting Rights in a Financial Instruments Clearing Organization which is less than the Threshold Holding Ratio, the holder must notify the Prime Minister of this without delay.
- (6) The provisions of Article 30-2 apply mutatis mutandis to the authorization referred to in paragraph (1) and in the proviso to paragraph (4).

(Criteria for Authorization as a Major Shareholder)

Article 156-5-6 (1) Whenever an application is filed for the authorization referred to in paragraph (1) of the preceding Article or in the proviso to paragraph (4) of that Article, the Prime Minister shall examine whether the application conforms to the following criteria:

- (i) the applicant for authorization's exercise of the Subject Voting Rights is not likely to impair the sound and appropriate operation of the business of the

Financial Instruments Clearing Organization;

(ii) the applicant for authorization has a sufficient understanding of the public nature of the business of a Financial Instruments Clearing Organization; and

(iii) the applicant for authorization has sufficient social credibility.

(2) The provisions of Article 156-4, paragraph (2) (excluding item (i)) apply mutatis mutandis to the authorization referred to in paragraph (1) and in the proviso to paragraph (4) of the preceding Article. In this case, in Article 156-4, paragraph (2), the phrase "the preceding paragraph" is deemed to be replaced with "Article 156-5-6, paragraph (1)", the phrase "Article 156-17, paragraph (1) or (2)" is deemed to be replaced with "Article 156-17, paragraph (1) or (2); Article 156-20-14, paragraph (1) or (2)", the phrase "Article 106-28, paragraph (1)" is deemed to be replaced with "Article 106-28, paragraph (1); Article 155-6; Article 155-10, paragraph (1)"; and any other necessary technical replacement of terms is specified by Cabinet Order.

(Hearing When Authorization Is Not Granted)

Article 156-5-7 (1) If an application is filed for the authorization referred to in the provisions of Article 156-5-5, paragraph (1) or in the proviso to paragraph (4) of that Article and the Prime Minister finds it inappropriate to grant that authorization, the Prime Minister shall notify the applicant for authorization and have the relevant officials conduct a hearing.

(2) Upon deciding to grant or not to grant the authorization under the provisions of Article 156-5-5, paragraph (1) or the proviso to paragraph (4) of that Article, the Prime Minister shall notify the applicant for authorization of the in writing without delay.

(Collection of Reports and Inspection of a Major Shareholder)

Article 156-5-8 Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order the major shareholder of a Financial Instruments Clearing Organization (meaning a person that holds a number of Subject Voting Rights that is equal to or greater than the Threshold Holding Ratio, in a Financial Instruments Clearing Organization that has been incorporated after obtaining Article 156-5-5, paragraph (1) authorization or that has obtained the authorization referred to in that paragraph or in the proviso to paragraph (4) of that Article; hereinafter the same applies in this Section) to report or submit materials that should serve as a reference in connection with the business or assets of the Financial Instruments Clearing Organization, and may have the relevant officials inspect the documents and other articles of such a major shareholder (but only as is necessary in connection with the business or assets

of the Financial Instruments Clearing Organization).

(Supervisory Measures for Major Shareholders)

Article 156-5-9 (1) If the major shareholder of a Financial Instruments Clearing Organization violates a law or regulation, or if it is found that the conduct of a major shareholder is likely to impair the sound and appropriate operation of the business of the Financial Instruments Clearing Organization, the Prime Minister may rescind the major shareholder's Article 156-5-5, paragraph (1) authorization or the authorization referred to in the proviso to paragraph (4) of that Article, or order the major shareholder to take measures that are necessary from a supervisory perspective.

(2) A person that has the authorization referred to in Article 156-5-5, paragraph (1) or in the proviso to paragraph (4) of that Article rescinded pursuant to the provisions of the preceding paragraph must take the necessary measures to become the holder of a number of Subject Voting Rights in a Financial Instruments Clearing Organization which is less than the Threshold Holding Ratio, within three months from the day that the authorization is rescinded.

(3) Irrespective the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, before seeking to order the necessary measures pursuant to the provisions of paragraph (1), the Prime Minister must conduct a hearing.

(Lapse of Authorization as a Major Shareholder)

Article 156-5-10 (1) If a person that has obtained Article 156-5-5, paragraph (1) authorization does not become the holder of a number of Subject Voting Rights that is equal to or greater than the Threshold Holding Ratio, or does not incorporate as a company or other corporation that holds a number of Subject Voting Rights that is equal to or greater than the Threshold Holding Ratio within six months from the day on which that person obtains the authorization, that authorization ceases to be valid. In such a case, the person that obtained the authorization must notify the Prime Minister of this without delay.

(2) If the major shareholder of a Financial Instruments Clearing Organization has become the holder of a number of Subject Voting Rights that is less than the Threshold Holding Ratio, the authorization referred to in Article 156-5-5, paragraph (1) or in the proviso to paragraph (4) of that Article ceases to be valid. In such a case, the person that was formerly a major shareholder must notify the Prime Minister of this without delay.

(Mutatis Mutandis Application of Provisions Regarding Subject Voting Rights)

Article 156-5-11 The provisions of Article 156-5-3, paragraph (2) apply mutatis mutandis if the provisions of Article 156-5-5, paragraphs (1) to (5) inclusive;

Article 156-5-6, paragraph (1); Article 156-5-8; Article 156-5-9, paragraph (2); and the preceding Article are applicable. In this case, in Article 156-5-3, paragraph (2), the term "hold" is deemed to be replaced with "acquire or hold", and in item (i) of that paragraph, the term "has" is deemed to be replaced with "has, or will have".

(Restriction on Business)

- Article 156-6 (1) Pursuant to the provisions of its business rules, a Financial Instruments Clearing Organization, on a regular basis, may take over, novate, or in any other way bear the obligations of a person other than a Business Counterparty to Financial Instruments Obligation Assumption Services (meaning a Business Counterparty to Financial Instruments Obligation Assumption Services as prescribed in Article 2, paragraph (28); hereinafter the same applies in this paragraph) which arise from a subject transaction (meaning a subject transaction as prescribed in Article 2, paragraph (28); hereinafter the same applies in this Chapter) effected by a person other than a Business Counterparty to Financial Instruments Obligation Assumption Services.
- (2) A Financial Instruments Clearing Organization may not conduct business other than Financial Instruments Obligation Assumption Services, etc. and business incidental thereto; provided, however, that this does not apply if the Financial Instruments Clearing Organization obtains the approval of the Prime Minister pursuant to the provisions of Cabinet Office Ordinance, for business related to Financial Instruments Obligation Assumption Services or Commodity Transaction Debt Assumption Services, etc. (meaning Commodity Transaction Debt Assumption Services, etc. as prescribed in Article 170, paragraph (2) of the Commodity Futures Act; the same applies hereinafter) and business incidental thereto which is found to carry no risk of compromising the Financial Instruments Clearing Organization's proper and reliable performance of Financial Instruments Obligation Assumption Services.
- (3) If a Financial Instruments Clearing Organization discontinues the business for which it has obtained the approval referred to in the proviso to the preceding paragraph, it must notify the Prime Minister of this pursuant to the provisions of Cabinet Office Ordinance.
- (4) The Prime Minister may attach conditions to the approval referred to in the proviso to paragraph (2).
- (5) The conditions referred to in the preceding paragraph must constitute the minimum level of conditions that are necessary for the public interest and the protection of investors.

(Business Rules)

Article 156-7 (1) A Financial Instruments Clearing Organization must conduct its business pursuant to the provisions of its business rules.

(2) The following matters must be specified in the business rules:

- (i) that the business set forth in paragraph (1) of the preceding Article is conducted, if applicable;
- (ii) the transactions giving rise to obligations that are subject to Financial Instruments Obligation Assumption Services (or, if the business set forth in paragraph (1) of the preceding Article is conducted, Financial Instruments Obligation Assumption Services, etc.; hereinafter the same applies in this paragraph, Article 156-10 and Article 156-11-2, paragraph (1));
- (iii) the particulars of the requirements for becoming the counterparty to the Financial Instruments Obligation Assumption Services (hereinafter referred to as a "Clearing Member");
- (iv) the particulars of the taking over, novating, or other bearing of obligations that the clearing organization performs as Financial Instruments Obligation Assumption Services, and the particulars of the performance of such obligations;
- (v) the particulars involved in ensuring the performance of the obligations of a Clearing Member;
- (vi) the particulars of Brokerage for Clearing of Securities, etc.;
- (vii) if collaborative Financial Instruments Obligation Assumption Services (meaning collaborative Financial Instruments Obligation Assumption Services as prescribed in Article 156-20-16, paragraph (1); hereinafter the same applies in this item) are performed, the particulars of the collaborative Financial Instruments Obligation Assumption Services; and
- (viii) other matters specified by Cabinet Office Ordinance.

(Duty of Confidentiality)

Article 156-8 (1) It is prohibited for the officer (or, if an officer is a corporation, the person that performs those duties) or employee of a Financial Instruments Clearing Organization, or for a person that has held one of these positions, to divulge or misappropriate any secret learned in connection with the business of that organization.

(2) It is prohibited for the officer (or, if an officer is a corporation, the person that performs those duties) or employee of a Financial Instruments Clearing Organization, or for a person that has held one of these positions, to utilize information learned in the course of duty for a purpose other than the business uses of the Financial Instruments Clearing Organization for which the information is provided.

(Prohibition on Unfairly Differential Treatment)

Article 156-9 A Financial Instruments Clearing Organization must not subject any particular Clearing Member to unfairly differential treatment.

(Measures to Ensure the Proper Conduct of Financial Instruments Obligation Assumption Services)

Article 156-10 A Financial Instruments Clearing Organization must take measures to ensure the proper conduct of Financial Instruments Obligation Assumption Services, such as stipulating in its business rules that if a loss is incurred due to Financial Instruments Obligation Assumption Services, a Clearing Member bears all of that loss.

(Clearing Deposit)

Article 156-11 If a Financial Instruments Clearing Organization makes provisions in its business rules for a Clearing Deposit (meaning money or other property (limited to that which is specified by Cabinet Office Ordinance) deposited with a Financial Instruments Clearing Organization by a Clearing Member as collateral against the performance of obligations; hereinafter the same applies in this Article), and a Clearing Member causes damage to the Financial Instruments Clearing Organization by defaulting on an obligation, the Financial Instruments Clearing Organization that incurs the damage has the right to receive payment from the Clearing Deposit that has been deposited by the Clearing Member that caused the damage, in preference over other creditors

(Procedures at the Commencement of Special Liquidation Proceedings)

Article 156-11-2 (1) If a Financial Instruments Clearing Organization makes provisions in its business rules for the method of netting off outstanding obligations (meaning obligations which have arisen from subject transactions, etc. (meaning a subject transactions, Transactions on a Commodity Market (meaning Transactions on a Commodity Market as defined in Article 2, paragraph (10) of the Commodity Futures Act), or Over-the-Counter Commodity Derivatives Transactions (meaning Over-the-Counter Commodity Derivatives Transactions as defined in paragraph (14) of that Article); hereinafter the same applies in this Article) that a Clearing Member has effected, and which the clearing organization has taken over from the other parties to the subject transactions or has novated or in any other way borne as Financial Instruments Obligation Assumption Services or Commodity Transaction Debt Assumption Services, etc.; claims (limited to claims with the same contents as such obligations) that the clearing organization has acquired against such a Clearing Member as the consideration for the obligations which have arisen out of subject transactions, etc. and which the clearing

organization has borne for that Clearing Member; and collateral; hereinafter the same applies in this paragraph), the method of allocating collateral to cover outstanding obligations, or other means of settling outstanding obligations, and special liquidation proceedings, bankruptcy proceedings, rehabilitation proceedings, or reorganization proceedings commence for a Clearing Member, the calculation of the amount of the claim that the Financial Instruments Clearing Organization or the Clearing Member has in terms of outstanding obligations and other means of settlement in relation to these proceedings, are to be in accordance with the provisions of the business rules.

- (2) In bankruptcy proceedings, rehabilitation proceedings, or reorganization proceedings, the claims provided for in the preceding paragraph which a Financial Instruments Clearing Organization has are bankruptcy claims, rehabilitation claims, or reorganization claims, and the claims provided for in that paragraph which a Clearing Member has are the property that is part of the bankruptcy estate, rehabilitation debtor's assets, the property of the corporation in need of reorganization, or the property of the cooperative financial institution in need of reorganization.

(Authorization to Change the Articles of Incorporation or Business Rules)

Article 156-12 A Financial Instruments Clearing Organization must obtain the authorization of the Prime Minister if it seeks to change its articles of incorporation or business rules.

(Public Inspection of the Total Number of Issued Shares)

Article 156-12-2 A Financial Instruments Clearing Organization must make its total number of issued shares, the number that represents all shareholders' voting rights and other matters specified by Cabinet Office Ordinance available for public inspection, pursuant to the provisions of Cabinet Office Ordinance.

(Authorization to Reduce Capital)

Article 156-12-3 (1) A Financial Instruments Clearing Organization must obtain the authorization of the Prime Minister if it seeks to reduce its stated capital.

- (2) A Financial Instruments Clearing Organization must notify the Prime Minister pursuant to the provisions of Cabinet Office Ordinance if it seeks to increase its stated capital.

(Notification of a Change of Business Offices)

Article 156-13 If a particular set forth in Article 156-3, paragraph (1), item (iii) to (v) inclusive changes, the Financial Instruments Clearing Organization must notify the Prime Minister of this, pursuant to the provisions of Cabinet Office Ordinance, supplying a document specified in paragraph (2), item (i) or



(iii) of that Article.

(Causes for Ineligibility as an Officer)

Article 156-14 (1) A person falling under one of the categories in Article 82, paragraph (2), item (iii), sub-items (a) to (f) inclusive may not become the director, accounting advisor, company auditor, or executive officer of a Financial Instruments Clearing Organization.

(2) The director, accounting advisor, company auditor, or executive officer of a Financial Instruments Clearing Organization loses that position upon coming to fall under the category of person provided for in the preceding paragraph.

(3) If the director, accounting advisor, company auditor, or executive officer of a Financial Instruments Clearing Organization is discovered to have become a director, accounting advisor, company auditor, or executive officer by wrongful means or if the director, accounting advisor, company auditor, or executive officer of a Financial Instruments Clearing Organization violates a law or regulation or a disposition by a government agency which is based on a law or regulation, the Prime Minister may order the Financial Instruments Clearing Organization to dismiss that director, accounting advisor, company auditor, or executive officer.

(4) The provisions of the proviso to Article 331, paragraph (2) of the Companies Act (including as applied mutatis mutandis pursuant to Article 335, paragraph (1) of that Act) and of Article 332, paragraph (2) (including as applied mutatis mutandis pursuant to Article 334, paragraph (1) of that Act); Article 336, paragraph (2); and the proviso to Article 402, paragraph (5) of that Act do not apply to Financial Instruments Clearing Organizations.

(Collection of Reports and Inspections)

Article 156-15 Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order a Financial Instruments Clearing Organization, its Clearing Member, or the person that a Financial Instruments Clearing Organization has entrusted with its business (including a person who has received entrustment from such person (including entrustment via two or more layers); hereinafter the same shall apply in this Article), to report or submit materials that should serve as a reference with regard to the business or assets of the Financial Instruments Clearing Organization, and may have the relevant officials inspect the state of the business or assets, or the books and documents or any other articles, of a Financial Instruments Clearing Organization or the person that a Financial Instruments Clearing Organization has entrusted with its business (but may only have the relevant officials inspect the person that a Financial Instruments Clearing Organization

has entrusted with its business as is necessary in connection with the business or assets of the Financial Instruments Clearing Organization).

(Business Improvement Orders)

Article 156-16 If the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors as concerns a Financial Instruments Clearing Organization's business operations or the state of its assets, the Prime Minister, within the scope of this necessity, may order the Financial Instruments Clearing Organization to change its business outline or its business methods, or to otherwise take measures that are necessary for improving its business operations or the state of its assets.

(Rescission of a License)

Article 156-17 (1) If a Financial Instruments Clearing Organization is discovered to have fallen under one of the categories in the items of Article 156-4, paragraph (2) at the time it obtained its license, the Prime Minister may rescind the license.

(2) If a Financial Instruments Clearing Organization violates a law or regulation, a disposition by a government agency which is based on a law or regulation, or a condition attached to the approval referred to in the proviso to Article 156-6, paragraph (2) or in Article 156-19, paragraph (1), the Prime Minister may rescind the license referred to in Article 156-2 or the approval referred to in the proviso to Article 156-6, paragraph (2) or in Article 156-19, paragraph (1), order the suspension of all or a part of its business activities during a fixed period of no longer than six months, or order the dismissal of its officers.

(Authorization for Dissolution)

Article 156-18 A resolution to discontinue the Financial Instruments Obligation Assumption Services of a Financial Instruments Clearing Organization or a resolution to dissolve a Financial Instruments Clearing Organization does not become effective without the authorization of the Prime Minister.

(Financial Instruments Obligation Assumption Services, etc.)

Article 156-19 (1) Notwithstanding the provisions of Article 87-2, paragraph (1) and Article 156-2, a Financial Instruments Exchange may perform Financial Instruments Obligation Assumption Services, etc. and business incidental thereto with the approval of the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance.

(2) Notwithstanding the provisions of Article 87-2, paragraph (1), a Financial Instruments Exchange Engaged in the Operation of a Commodity Market may perform Commodity Transaction Debt Assumption Services, etc. and business

incidental thereto with the approval of the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance.

- (3) If a Financial Instruments Exchange Engaged in the Operation of a Commodity Market discontinues the business for which it has obtained the approval referred to in the preceding paragraph, it must notify the Prime Minister of this pursuant to the provisions of Cabinet Office Ordinance.
- (4) The provisions of Article 156-6, paragraphs (4) and (5) apply mutatis mutandis to the approval referred to in paragraph (1) or (2).

(Rescission of Approval for the Financial Instruments Obligation Assumption Services, etc. of a Financial Instruments Exchange)

Article 156-20 (1) If a Financial Instruments Exchange that obtains the approval referred to in paragraph (1) of the preceding Article falls under one of the following items, the Prime Minister may rescind the approval:

- (i) it obtains the approval referred to in the preceding Article by wrongful means;
  - (ii) the license referred to in Article 80, paragraph (1) has been rescinded; or
  - (iii) it falls under one of the items of Article 134, paragraph (1).
- (2) If a Financial Instruments Exchange Engaged in the Operation of a Commodity Market that has obtained the approval referred to in paragraph (2) of the preceding Article violates a law or regulation, a disposition by a government agency which is based on a law or regulation, or a condition attached to the approval referred to in that paragraph, the Prime Minister may rescind the approval referred to in that paragraph.

## **Section 2 Foreign Financial Instruments Clearing Organizations**

(Licenses)

Article 156-20-2 Notwithstanding the provisions of the preceding Section, a corporation incorporated based on foreign laws and regulations which performs services of the same type as Financial Instruments Obligation Assumption Services in a foreign state may conduct Financial Instruments Obligation Assumption Services if licensed by the Prime Minister pursuant to the provisions of this Section.

(License Application)

Article 156-20-3 (1) A person seeking the license referred to in the preceding Article must designate a domestic representative and submit a written license application to the Prime Minister, in which it states the following particulars:

- (i) its trade name or name;
- (ii) the amount of stated capital or the total amount of contributions;

- (iii) the location of its head office or principal office;
  - (iv) the location of its office in Japan, if any;
  - (v) the titles and names of its officers;
  - (vi) the name and domestic address of its domestic representative; and
  - (vii) if the person conducts business other than Financial Instruments Obligation Assumption Services, etc. and business incidental to this, the outline of that business.
- (2) The following documents must accompany the written license application referred to in the preceding paragraph:
- (i) a document pledging that the applicant does not fall under the purview of the requirements set forth in paragraph (2), items (i) to (iv) inclusive of the following Article;
  - (ii) the articles of incorporation (including anything equivalent thereto; hereinafter the same applies in this Chapter);
  - (iii) the business rules;
  - (iv) the balance sheet and profit and loss statement;
  - (v) documents stating expected income and expenditures;
  - (vi) a document outlining the method of securing the collateral needed to settle outstanding obligations (meaning outstanding obligations as prescribed in Article 156-20-9, paragraph (1); hereinafter the same applies in paragraph (1), item (v) of the following Article) and other arrangements for settling them, and outlining the facilities, staff, and other systems for performing such settlement operations; and
  - (vii) beyond what is set forth in the preceding items, documents specified by Cabinet Office Ordinance.

(Licensing Examination Criteria)

Article 156-20-4 (1) Whenever a license application under paragraph (1) of the preceding Article is filed, the Prime Minister shall examine whether the application conforms to the following criteria:

- (i) the license applicant has obtained the same kind of license as that referred to in Article 156-2 or permission or any other administrative disposition similar to such a license in the state where its head office or principal office is located;
- (ii) the provisions of the articles of incorporation and business rules conform to laws and regulations and are sufficient to allow Financial Instruments Obligation Assumption Services to be performed properly and reliably;
- (iii) the applicant has a sufficient financial basis to soundly perform Financial Instruments Obligation Assumption Services, and has good prospects in terms of expected income and expenditures in connection with Financial Instruments Obligation Assumption Services;

- (iv) in light of its personnel structure, the applicant has sufficient knowledge and experience to perform Financial Instruments Obligation Assumption Service properly and reliably, and has sufficient social credibility; and
  - (v) the applicant has an adequately developed structure and system for properly securing collateral to allocate for settling outstanding obligations, for managing highly reliable facilities in order to facilitate such settlement, and for otherwise executing such settlement properly and reliably.
- (2) If, as a result of having conducted an examination pursuant to the provisions of the preceding paragraph, the Prime Minister finds that an application conforms to the criteria in that paragraph, the Prime Minister must grant the license, except in a case that falls under one of the following items:
- (i) the license applicant is a person that has not yet had the period specified by Cabinet Order pass since it commenced the same kind of business as Financial Instruments Obligation Assumption Services in a foreign state based on foreign laws and regulations (unless this falls under a case specified by Cabinet Order);
  - (ii) the license applicant is a person that has been sentenced to a fine (including an equivalent sentence under foreign laws and regulations) for violating the provisions of this Act or for violating the provisions of a foreign law or regulation that is equivalent to this Act, and five years have yet to pass since the day on which the person finished serving the sentence or ceased to be subject to its enforcement;
  - (iii) the license applicant is a person that has had its license rescinded pursuant to the provisions of Article 156-20-14, paragraph (1) or (2); has had its registration rescinded pursuant to the provisions of Article 52, paragraph (1), Article 53, paragraph (3), Article 57-6, paragraph (3), Article 66-20, paragraph (1), or Article 66-42, paragraph (1); has had its permission rescinded pursuant to the provisions of Article 60-8, paragraph (1) (including the cases where it is applied *mutatis mutandis* pursuant to Article 60-14, paragraph (2)); or has had its authorization rescinded pursuant to the provisions of Article 106-7, paragraph (1), Article 106-21, paragraph (1), Article 106-28, paragraph (1), Article 155-6, Article 155-10, paragraph (1), or Article 156-5-9, paragraph (1); or is a person that had obtained a license or registration of the same kind in a foreign state pursuant to the provisions of a foreign law or regulation that is equivalent to this Act (including permission or any other administrative disposition similar to such a license or registration), but that has had its license or registration rescinded; and five years have yet to pass since the date of the rescission;
  - (iv) the license applicant has a person falling under one of the categories in Article 82, paragraph (2), item (iii), sub-items (a) to (f) inclusive as an officer or domestic representative;

- (v) the authority responsible for the enforcement of the foreign law or regulation that is equivalent to this Act in the state where the head office or principal office of the license applicant is located has not given the assurance prescribed in Article 189, paragraph (2), item (i) or done anything else that is found to be equivalent to such assurance; or
- (vi) the license application or a document or electronic or magnetic record that is required to accompany it contains a false statement or false record about a material particular.

(Refusal of License, etc.))

- Article 156-20-5 (1) If a license application under the provisions of Article 156-20-3, paragraph (1) is filed and the Prime Minister finds it inappropriate to grant that license, the Prime Minister must notify the license applicant and have the relevant officials conduct a hearing.
- (2) Upon deciding to grant or not to grant the license referred to in Article 156-20-2, the Prime Minister shall notify the license applicant of this in writing without delay.

(Business Rules)

- Article 156-20-6 (1) A Foreign Financial Instruments Clearing Organization must perform Financial Instruments Obligation Assumption Services pursuant to the provisions of its business rules.
- (2) The following matters must be specified in the business rules:
- (i) the transactions giving rise to obligations that are subject to Financial Instruments Obligation Assumption Services;
  - (ii) the particulars of the requirements for a Clearing Member;
  - (iii) the particulars of the taking over, novating, or other methods of assuming obligations that the clearing organization performs as Financial Instruments Obligation Assumption Services, and the particulars of performance of such obligations;
  - (iv) the particulars involved in ensuring the performance of the obligations of a Clearing Member;
  - (v) the particulars of Brokerage for Clearing of Securities, etc.; and
  - (vi) other matters specified by Cabinet Office Ordinance.

(Duty of Confidentiality)

- Article 156-20-7 (1) It is prohibited for the officer (or, if an officer is a corporation, the person that performs those duties) or employee of a Foreign Financial Instruments Clearing Organization, or for a person that has held one of these positions, to divulge or misappropriate any secret learned in connection with Financial Instruments Obligation Assumption Services.

(2) It is prohibited for the officer (or, if an officer is a corporation, the person that performs those duties) or employee of a Foreign Financial Instruments Clearing Organization, or for a person that has held one of these positions, to utilize information learned in connection with the operation of Financial Instruments Obligation Assumption Services, for a purpose other than the use in Financial Instruments Obligation Assumption Services for which the information is provided.

(Prohibition on Unfairly Differential Treatment)

Article 156-20-8 A Foreign Financial Instruments Clearing Organization must not subject any particular Clearing Member to unfairly differential treatment.

(Procedures at the Commencement of Special Liquidation Proceedings)

Article 156-20-9 (1) If a Foreign Financial Instruments Clearing Organization makes provisions in its business rules for the method of netting off outstanding obligations (meaning obligations which have arisen from the subject transactions that a Clearing Member has effected, and which the clearing organization has taken over from the other parties to those subject transactions or has novated or in any other way borne as Financial Instruments Obligation Assumption Services; claims (limited to claims with the same contents as such obligations) that the clearing organization has acquired against a Clearing Member as the consideration for the obligations which have arisen out of subject transactions and which the clearing organization has borne for the Clearing Member; and collateral; hereinafter the same applies in this paragraph), the method of allocating collateral to cover outstanding obligations, or other means of settling outstanding obligations, and special liquidation proceedings, bankruptcy proceedings, rehabilitation proceedings, or reorganization proceedings have been commenced for a Clearing Member, the calculation of the amount of the claim that the Foreign Financial Instruments Clearing Organization or the Clearing Member has in terms of the outstanding obligations and other means of settlement in relation to these proceedings, are to be in accordance with the provisions of the business rules.

(2) In bankruptcy proceedings, rehabilitation proceedings, or reorganization proceedings, the claims provided for in the preceding paragraph which a Foreign Financial Instruments Clearing Organization has are bankruptcy claims, rehabilitation claims, or reorganization claims, and the claims provided for in that paragraph which a Clearing Member has are the property that is part of the bankruptcy estate, rehabilitation debtor's assets, the property of the corporation in need of reorganization, or the property of the cooperative financial institution in need of reorganization.

(Authorization to Change the Articles of Incorporation or Business Rules)

Article 156-20-10 A Foreign Financial Instruments Clearing Organization must obtain the authorization of the Prime Minister if it seeks to change its articles of incorporation (limited to the part related to Financial Instruments Obligation Assumption Services) or business rules.

(Notification of a Change in the Amount of Stated Capital)

Article 156-20-11 If a particular set forth in Article 156-20-3, paragraph (1), items (ii) to (vii) inclusive changes, the Foreign Financial Instruments Clearing Organization must notify the Prime Minister of this, pursuant to the provisions of Cabinet Office Ordinance, supplying the document set forth in paragraph (2), item (i) of that Article.

(Collection of Reports and Inspections)

Article 156-20-12 Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order a Foreign Financial Instruments Clearing Organization, its Clearing Member, or the person that a Foreign Financial Instruments Clearing Organization has entrusted with its business (including a person who has received entrustment from such person (including entrustment via two or more layers); hereinafter the same shall apply in this Article), to report or submit materials that should serve as a reference with regard to business or assets linked to the Financial Instruments Obligation Assumption Services of the Foreign Financial Instruments Clearing Organization, and may have the relevant officials inspect the state of the business or assets, or the books and documents or any other articles, of a Foreign Financial Instruments Clearing Organization or the person that a Foreign Financial Instruments Clearing Organization has entrusted with its business (but may only have the relevant officials inspect the person that a Foreign Financial Instruments Clearing Organization has entrusted with its business as is necessary in connection with the business or assets linked to the Financial Instruments Obligation Assumption Services of the Foreign Financial Instruments Clearing Organization).

(Business Improvement Orders)

Article 156-20-13 If the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors as concerns a Foreign Financial Instruments Clearing Organization's business operations or the state of its assets as relates to Financial Instruments Obligation Assumption Services, the Prime Minister, within the scope of this necessity, may order the



Foreign Financial Instruments Clearing Organization to change the its business outline or its business methods, or to otherwise take measures that are necessary for improving its business operations or the state of its assets.

(Rescission of Licenses)

Article 156-20-14 (1) If a Foreign Financial Instruments Clearing Organization is discovered to have fallen under one of the categories in the items of Article 156-20-4, paragraph (2) at the time it was licensed, the Prime Minister may rescind the license.

(2) If a Foreign Financial Instruments Clearing Organization violates a law or regulation or a disposition by a government agency which is based on a law or regulation, the Prime Minister may rescind the license referred to in Article 156-20-2, order the suspension of all or a part of its business activities during a fixed period of no longer than six months, or order the dismissal of its domestic representative (if a Foreign Financial Instruments Clearing Organization has a domestic office, this includes any officer stationed there).

(Authorization to Discontinue Financial Instruments Obligation Assumption Services)

Article 156-20-15 A Foreign Financial Instruments Clearing Organization must obtain the authorization of the Prime Minister if it seeks to discontinue Financial Instruments Obligation Assumption Service.

### **Section 3 Interoperation between a Financial Instruments Clearing Organization and Other Financial Instruments Clearing Organizations, etc.**

(Authorization When Interoperating with Other Financial Instruments Clearing Organizations, etc.)

Article 156-20-16 (1) With the authorization of the Prime Minister, a Financial Instruments Clearing Organization may conclude a contract for collaborative Financial Instruments Obligation Assumption Services (meaning the performance, on a regular basis, of an act specified by Cabinet Office Ordinance as the act of having a third party bear the obligations of a Clearing Member in connection with a subject transaction that is other than a transaction set forth in Article 156-62, item (i), and personally bearing the obligations of the other party to the subject transaction with that Clearing Member; the same applies hereinafter) with a collaborating Clearing Organization, etc. (meaning other Financial Instruments Clearing Organization, Foreign Financial Instruments Clearing Organization, or corporation incorporated based on foreign laws and regulations that performs

services of the same type as Financial Instruments Obligation Assumption Services; hereinafter the same applies) and perform collaborative Financial Instruments Obligation Assumption Services.

- (2) A Financial Instruments Clearing Organization must receive the authorization referred to in the preceding paragraph for each collaborating Clearing Organization, etc. with which it concludes a contract for collaborative Financial Instruments Obligation Assumption Services.
- (3) Notwithstanding the provisions of the preceding two Sections, the Interoperable Clearing Organization, etc. (limited to those other than Financial Instruments Clearing Organization or Foreign Financial Instruments Clearing Organization) that concluded a contract for a Interoperable Financial Instruments Obligation Assumption Business with a Financial Instruments Clearing Organization that has obtained the authorization under paragraph (1) (hereinafter referred to as "Authorized Financial Instruments Clearing Organization" in this Section) may conduct a Financial Instruments Obligation Assumption Service relating to such Interoperable Financial Instruments Obligation Assumption Business.
- (4) The provisions of Article 30-2 apply mutatis mutandis to the authorization referred to in paragraph (1).

(Application for Authorization)

Article 156-20-17 (1) A Financial Instruments Clearing Organization seeking the authorization referred to in paragraph (1) of the preceding Article must submit a written application for authorization to the Prime Minister, in which it states the following particulars:

- (i) its trade name;
- (ii) the trade name or name of the collaborating Clearing Organization, etc.;
- (iii) if the collaborating Clearing Organization, etc. is neither a Financial Instruments Clearing Organization nor a Foreign Financial Instruments Clearing Organization, the following matters:
  - (a) the amount of stated capital or total amount of contributions of the collaborating Clearing Organization, etc.;
  - (b) the location of the head office or principal office of the collaborating Clearing Organization, etc.;
  - (c) if an office of the collaborating Clearing Organization, etc. is in Japan, its location; and
  - (d) the titles and names of the officers of the collaborating Clearing Organization, etc.
- (iv) the transactions giving rise to obligations that are subject to collaborative Financial Instruments Obligation Assumption Services; and
- (v) the particulars of the business method for collaborative Financial

Instruments Obligation Assumption Services.

- (2) The following documents must accompany the written application for authorization referred to in the preceding paragraph:
  - (i) a copy of the contract for collaborative Financial Instruments Obligation Assumption Services (hereinafter referred to as the "Collaboration Agreement");
  - (ii) a document stating the things specified by Cabinet Office Ordinance as constituting the business outline and business methods for collaborative Financial Instruments Obligation Assumption Services;
  - (iii) if the collaborating Clearing Organization, etc. is neither a Financial Instruments Clearing Organization nor a Foreign Financial Instruments Clearing Organization, the following matters:
    - (a) a document pledging that the collaborating Clearing Organization, etc. does not fall under the purview of the requirement set forth in paragraph (2), items (i) to (iv) inclusive of the following Article;
    - (b) the articles of incorporation and business rules of the collaborating Clearing Organization, etc. (including anything equivalent to these, and limited to those that are related to collaborative Financial Instruments Obligation Assumption Services; hereinafter the same applies in this Section);
    - (c) a document stating the things specified by Cabinet Office Ordinance as constituting the business outline and business methods of the collaborating Clearing Organization, etc. (limited to business related to collaborative Financial Instruments Obligation Assumption Services);
    - (d) the balance sheet and profit and loss statement of the collaborating Clearing Organization, etc.; and
    - (e) documents stating the expected income and expenditures of the collaborating Clearing Organization, etc.
  - (iv) a document outlining the method of securing the collateral needed to settle outstanding obligations (meaning outstanding obligations as prescribed in Article 156-20-19, paragraph (1); hereinafter the same applies in paragraph (1), item (v) of the following Article) and other arrangements for settling them, and outlining the facilities, staff, and other systems for performing such settlement operations; and
  - (v) in addition to what is set forth in the preceding items, documents specified by Cabinet Office Ordinance.
- (3) In the case referred to in the preceding paragraph, if the articles of incorporation or balance sheet has been prepared as an electronic or magnetic record or an electronic or magnetic record has been prepared for a profit and loss statement in lieu of a written document, the electronic or magnetic record (limited to those specified by Cabinet Office Ordinance) may accompany the

written application for authorization in lieu of the written document.

(Examination Criteria for Authorization)

Article 156-20-18 (1) Whenever an application for authorization under the provisions of paragraph (1) of the preceding Article is filed, the Prime Minister shall examine whether the application conforms to the following criteria:

- (i) the collaborating Clearing Organization, etc. (limited to one other than a Financial Instruments Clearing Organization or Foreign Financial Instruments Clearing Organization; hereinafter the same applies in the following paragraph and the following Article) has obtained the same kind of license as that referred to in Article 156-2 or permission or any other administrative disposition similar to such a license in the state where its head office or principal office is located;
- (ii) the provisions of the articles of incorporation and business rules of the collaborating Clearing Organization, etc., as well as the provisions of the Collaboration Agreement, conform to laws and regulations; and the provisions of the articles of incorporation and business rules of the applicant for authorization and the collaborating Clearing Organization, etc., as well as the provisions of the Collaboration Agreement, are sufficient to allow collaborative Financial Instruments Obligation Assumption Services and business of the collaborating Clearing Organization, etc. (limited to business related to collaborative Financial Instruments Obligation Assumption Services) to be performed properly and reliably;
- (iii) the applicant for authorization and the collaborating Clearing Organization, etc. have a sufficient financial basis to soundly perform collaborative Financial Instruments Obligation Assumption Services and conduct the business of the collaborating Clearing Organization, etc. (limited to those related to collaborative Financial Instruments Obligation Assumption Services) and have good prospects in terms of expected income and expenditures in connection with collaborative Financial Instruments Obligation Assumption Services;
- (iv) in light of their personnel structures, the applicant for authorization and the collaborating Clearing Organization, etc. have sufficient knowledge and experience to perform collaborative Financial Instruments Obligation Assumption Services and to conduct the business of the collaborating Clearing Organization, etc. (limited to business related to collaborative Financial Instruments Obligation Assumption Services) properly and reliably, and have sufficient social credibility;
- (v) there is an adequately developed structure and system for properly securing collateral to allocate for settling outstanding obligations, for managing highly reliable facilities in order to facilitate such settlement, and for

- otherwise executing such settlement properly and reliably;
- (vi) the articles of incorporation, business rules, or Collaboration Agreement stipulates that the applicant for authorization will reliably perform the obligations of the other party to a subject transaction by a Clearing Member that the applicant for authorization bears; and
  - (vii) it is unlikely that the applicant for authorization's engagement in collaborative Financial Instruments Obligation Assumption Services will compromise its proper and reliable operation of Financial Instruments Obligation Assumption Services.
- (2) If, as a result of having conducted an examination pursuant to the provisions of the preceding paragraph, the Prime Minister finds that an application conforms to the criteria in that paragraph, the Prime Minister shall grant the authorization, except in a case that falls under one of the following items:
- (i) the collaborating Clearing Organization, etc. is a person that has not yet had the period specified by Cabinet Order pass since it commenced the same kind of business as Financial Instruments Obligation Assumption Services in a foreign state based on a foreign law or regulation (unless this falls under a case specified by Cabinet Order);
  - (ii) the collaborating Clearing Organization, etc. is a person that has been sentenced to a fine (including an equivalent sentence under foreign laws and regulations) for violating the provisions of this Act or for violating the provisions of a foreign law or regulation that is equivalent to this Act, and five years have yet to pass since the day on which the person finished serving the sentence or ceased to be subject to its enforcement;
  - (iii) the collaborating Clearing Organization, etc. is a person that has had its license rescinded pursuant to the provisions of Article 156-20-14, paragraph (1) or (2); has had its registration rescinded pursuant to the provision of Article 52, paragraph (1), Article 53, paragraph (3), Article 57-6, paragraph (3), Article 66-20, paragraph (1), or Article 66-42, paragraph (1); has had its permission rescinded pursuant to the provisions of Article 60-8, paragraph (1) (including the cases where it is applied *mutatis mutandis* pursuant to Article 60-14, paragraph (2)); or has had its authorization rescinded pursuant to the provisions of Article 106-7, paragraph (1), Article 106-21, paragraph (1), Article 106-28, paragraph (1), Article 155-6, Article 155-10, paragraph (1), or Article 156-5-9, paragraph (1); or is a person that had obtained a license or registration of the same kind in a foreign state pursuant to the provisions of a foreign law or regulation that is equivalent to this Act (including permission or any other administrative disposition similar to such a license or registration), but that has had that license or registration rescinded; and five years have yet to pass since the date of the rescission;

- (iv) the collaborating Clearing Organization, etc. has a person falling under one of the categories in Article 82, paragraph (2), item (iii), sub-items (a) to (f) inclusive as an officer;
- (v) the authority responsible for the enforcement of the foreign law or regulation that is equivalent to this Act in the state where the head office or principal office of the collaborating Clearing Organization, etc. is located has not given the assurance prescribed in Article 189, paragraph (2), item (i) or done anything else that is found to be equivalent to such assurance; or
- (vi) the application for authorization or a document or electronic or magnetic record that is required to accompany it contains a false statement or false record with regard to an important particular.

(Procedures at the Commencement of Special Liquidation Proceedings)

Article 156-20-19 (1) If a collaborating Clearing Organization, etc. makes provisions in its business rules for the method of netting off outstanding obligations (meaning obligations which have arisen out of subject transactions effected by a Clearing Member and which the collaborating Clearing Organization, etc. has taken over from the other parties to those subject transactions or has novated or in any other way borne as Financial Instruments Obligation Assumption Services; claims (limited to claims with the same contents as such obligations) that the collaborating Clearing Organization, etc. has acquired against a Clearing Member as the value of the obligations which have arisen out of subject transactions and which the collaborating Clearing Organization, etc. has borne for the Clearing Member; and collateral; hereinafter the same applies in this paragraph), the method of allocating collateral to cover outstanding obligations, or other means of settling outstanding obligations, and special liquidation proceedings, bankruptcy proceedings, rehabilitation proceedings, or reorganization proceedings have been commenced for a Clearing Member, the calculation of the amount of the claim that the collaborating Clearing Organization, etc. or the Clearing Member has in terms of the outstanding obligations and other means of settlement in relation to these proceedings, are to be in accordance with the provisions of the business rules.

- (2) In bankruptcy proceedings, rehabilitation proceedings, or reorganization proceedings, the claims provided for in the preceding paragraph which a collaborating Clearing Organization, etc. has are bankruptcy claims, rehabilitation claims, or reorganization claims, and the claims provided for in that paragraph which a Clearing Member has are the property that is part of the bankruptcy estate, rehabilitation debtor's assets, the property of the corporation in need of reorganization, or the property of the cooperative financial institution in need of reorganization.

(Rescission of Authorization)

Article 156-20-20 If an Authorized Financial Instruments Clearing Organization is discovered to have fallen under Article 156-20-18, paragraph (2), item (vi) at the time it obtained the authorization referred to in Article 156-20-16, paragraph (1), or if the collaborating Clearing Organization, etc. subject to that authorization is discovered to have fallen under one of the categories in items (i) to (v) inclusive of Article 156-20-18, paragraph (2), the Prime Minister may rescind that authorization.

(Authorization of Changes)

- Article 156-20-21 (1) An Authorized Financial Instruments Clearing Organization must obtain the authorization of the Prime Minister if it seeks to change a particular set forth in Article 156-20-17, paragraph (1), item (iv) or (v) or a particular stated in a document set forth in item (i) or (ii) of paragraph (2) of that Article.
- (2) If a particular set forth in Article 156-20-17, paragraph (1), item (ii) or (iii), or a particular stated in a document set forth in paragraph (2), item (iii), sub-item (b) or (c) of that Article changes, the Authorized Financial Instruments Clearing Organization must notify the Prime Minister of this, pursuant to the provisions of Cabinet Office Ordinance.
- (3) If an Authorized Financial Instruments Clearing Organization discontinues collaborative Financial Instruments Obligation Assumption Services, the authorization referred to in Article 156-20-16, paragraph (1) ceases to be valid. In such a case, the Authorized Financial Instruments Clearing Organization must notify the Prime Minister of this, pursuant to the provisions of Cabinet Office Ordinance.

(Supervisory Measures for Authorized Financial Instruments Clearing Organizations)

Article 156-20-22 If an Authorized Financial Instruments Clearing Organization or the collaborating Clearing Organization, etc. subject to the authorization falls under one of the following items and the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may rescind the Authorized Financial Instruments Clearing Organization's Article 156-20-16, paragraph (1) authorization, order the suspension of all or a part of its collaborative Financial Instruments Obligation Assumption Services during a fixed period of no longer than six months, order a change in its collaborative Financial Instruments Obligation Assumption Services, or issue an order prohibiting a part of its collaborative Financial Instruments Obligation Assumption

Services:

- (i) the Authorized Financial Instruments Clearing Organization falls under one of the following:
  - (a) it becomes unable to satisfy a criterion set forth in one of the items of Article 156-20-18, paragraph (1) (excluding item (i));
  - (b) it violates the conditions attached to authorization; or
  - (c) it violates a law or regulation, a disposition by a government agency which is based on a law or regulation, the Authorized Financial Instruments Clearing Organization's business rules, or the Collaboration Agreement.
- (ii) the collaborating Clearing Organization, etc. subject to authorization falls under one of the following:
  - (a) it becomes unable to satisfy a criterion set forth in one of Article 156-20-18, paragraph (1), items (i) to (v) inclusive;
  - (b) it comes to fall under one of the categories in Article 156-20-18, paragraph (2), items (ii) to (v) inclusive,;
  - (c) it violates a law or regulation, a disposition by a government agency which is based on a law or regulation, or the business rules of the collaborating Clearing Organization, etc., or the Collaboration Agreement.

#### **Section 4 Miscellaneous Provisions**

(Hearing of Opinions from the Bank of Japan)

Article 156-20-23 If the Prime Minister finds it to be necessary in order to reach a disposition based on the provisions of this Chapter, the Prime Minister may seek the opinion of the Bank of Japan.

(Application to Brokerage for Clearing of Securities)

Article 156-21 (1) In Brokerage for Clearing of Securities, etc., the customer that entrusts a person with Brokerage for Clearing of Securities, etc. is deemed to be the person conducting the subject transaction that is connected with the Brokerage for Clearing of Securities, etc., and the provisions of Article 116 (including as applied mutatis mutandis pursuant to Article 132) and Article 119, paragraphs (1) to (3) inclusive apply.

(2) In the brokerage of a person's entrustment with Brokerage for Clearing of Securities, etc. in connection with a Market Transaction of Derivatives, the customer that entrusts a person with the Brokerage for Clearing of Securities, etc. is deemed to be the person conducting the brokerage for the Market Transaction of Derivatives, and the provisions of Article 119, paragraphs (1) to (3) inclusive apply.



(Delegation to Cabinet Office Ordinance)

Article 156-22 Procedures for the implementation of the provisions of Articles 156-2 to the preceding Article inclusive and particulars that are otherwise necessary for their implementation are specified by Cabinet Office Ordinance.

#### **Chapter V-4 Securities Finance Company**

(Minimum Amount of Stated Capital)

Article 156-23 A Securities Finance Company must be a stock company whose amount of stated capital exceeds the amount that is specified by Cabinet Order as being necessary and appropriate in order for it to perform the business prescribed in paragraph (1) of the following Article.

(Licenses and License Applications)

Article 156-24 (1) A person seeking use the clearing framework of a Financial Instruments Exchange Market operated by a Financial Instruments Exchange or the clearing framework of an Over-the-Counter Securities Market operated by an Authorized Financial Instruments Firms Association, to engage in the business of lending, to the Members, etc. of that Financial Instruments Exchange or to the association members of that Authorized Financial Instruments Firms Association, the money or Securities that are needed for the settlement of purchase and sales and other transactions of Securities that a Financial Instruments Business Operator effects by granting credit to a customer (hereinafter referred to as a "Margin Transaction") or for the settlement of a transaction specified by Cabinet Order, must be licensed by the Prime Minister.

(2) A stock company seeking the license referred to in the preceding paragraph must submit a written application to the Prime Minister, in which it states the following particulars:

- (i) its trade name and amount of stated capital;
- (ii) the names and locations of its head office, branch offices, and other business offices; and
- (iii) the names of its officers.

(3) The articles of incorporation, documents giving a business outline and stating the business methods, and other documents specified by Cabinet Office Ordinance must accompany the written application referred to in the preceding paragraph.

(4) The provisions of Article 81, paragraph (3) apply mutatis mutandis to the articles of incorporation referred to in the preceding paragraph.

(Licensing Examination Criteria)

Article 156-25 (1) Whenever a written application under the provisions of paragraph (2) of the preceding Article is submitted, the Prime Minister shall examine whether the applicant is sufficiently qualified to conduct business as a Securities Finance Company, in light of its personnel structure, credit status, and capacity for fund procurement.

(2) If, as a result of having conducted an examination pursuant to the provisions of the preceding paragraph, the Prime Minister finds that an application conforms to the criteria in that paragraph, the Prime Minister shall grant the license, except in a case that falls under one of the following items:

- (i) the license applicant is not a stock company with a stated capital exceeding the amount specified by Cabinet Order which is referred to in Article 156-23;
- (ii) the license applicant is not a stock company (meaning a stock company that has the following organs):
  - (a) a board of directors; or
  - (b) a company auditor, a supervisory committee, or a nominating committee, etc.
- (iii) the license applicant is a person that falls under Article 29-4, paragraph (1), item (i), sub-item (c);
- (iv) the license applicant is a company that has had the license referred to in Article 80, paragraph (1) rescinded pursuant to the provisions of Article 148 or Article 152, paragraph (1); has had the license referred to in Article 156-2 rescinded pursuant to the provisions of Article 156-17, paragraph (1) or (2); has had the license referred to in paragraph (1) of the preceding Article rescinded pursuant to the provisions of Article 148 or Article 156-32, paragraph (1) as applied mutatis mutandis pursuant to the following Article; has had the registration referred to in Article 29 rescinded pursuant to the provisions of Article 52, paragraph (1), Article 53, paragraph (3), Article 54, or Article 57-6, paragraph (3); has had the registration referred to in Article 66 rescinded pursuant to the provisions of Article 66-20, paragraph (1); or the license applicant is a company that had obtained a license or registration of the same kind in a foreign state pursuant to the provisions of a foreign law or regulation that is equivalent to this Act (including permission or any other administrative disposition similar to such a license or registration), but that has had that license or registration rescinded or is a company that has had the registration referred to in Article 66-27 rescinded pursuant to the provisions of Article 66-42, paragraph (1); and five years have yet to pass since the date of the rescission;
- (v) the license applicant is a company that has a person falling under one of the categories in Article 82, paragraph (2), item (iii), sub-items (a), (b) and (e) as a director, accounting advisor, company auditor, or executive officer; or
- (vi) the license application or a document or electronic or magnetic record that

is required to accompany it contains a false statement or false record about a material particular.

(Mutatis Mutandis Application of Provisions for Refusal of a License)

Article 156-26 The provisions of Articles 83 and 148 apply mutatis mutandis to the license of a Securities Finance Company. In this case, in Article 148, the phrase "one of the categories in the items of Article 82, paragraph (2)" is deemed to be replaced with "one of the categories in the items of Article 156-25, paragraph (2)".

(Restriction on Concurrent Business)

Article 156-27 (1) A Securities Finance Company may conduct the following business in addition to the business prescribed in Article 156-24, paragraph (1), to the extent that such concurrent business does not obstruct the execution of the business prescribed in that paragraph:

- (i) the lending and borrowing of Securities (excluding the business prescribed in Article 156-24, paragraph (1)), or intermediation or agency for the lending and borrowing of Securities;
- (ii) the lending of money to Financial Instruments Business Operators (excluding business prescribed in Article 156-24, paragraph (1));
- (iii) the lending of money to the customers of Financial Instruments Business Operators; and
- (iv) other business specified by Cabinet Office Ordinance.

(2) If a Securities Finance Company seeks to conduct business prescribed in one of the items of the preceding paragraph, it must notify the Prime Minister of this pursuant to the provisions of Cabinet Office Ordinance.

(3) A Securities Finance Company may conduct business for which it has obtained the approval of the Prime Minister, in addition to business prescribed in paragraph (1) of this Article and Article 156-24, paragraph (1).

(4) If a Securities Finance Company seeks the approval referred to in the preceding paragraph but the Prime Minister finds that the Securities Finance Company's concurrent engagement in the business for which it seeks approval would impede its execution of the business prescribed in Article 156-24, paragraph (1), the Prime Minister may refuse to grant the approval referred to in the preceding paragraph, after notifying the Securities Finance Company and having the relevant official conduct a hearing.

(Authorization of Changes to a Business Outline)

Article 156-28 (1) A Securities Finance Company must obtain the authorization of the Prime Minister if it seeks to change the business outline or business methods for business prescribed in Article 156-24, paragraph (1), or to reduce

its stated capital.

- (2) A Securities Finance Company shall notify the Prime Minister pursuant to the provisions of Cabinet Office Ordinance if it seeks to set or change the conditions for lending money or Securities (limited to lendings in connection with the business prescribed in Article 156-24, paragraph (1)), to increase its stated capital, or to change its trade name.
- (3) If a Securities Finance Company comes to fall under one of the following items, it must notify the Prime Minister of this without delay, pursuant to the provisions of Cabinet Office Ordinance:
  - (i) a particular set forth in Article 156-24, paragraph (2), item (ii) or (iii) changes;
  - (ii) it discontinues the business to which the notification referred to in paragraph (2) of the preceding Article pertains; or
  - (iii) it discontinues the business to which the approval referred to in paragraph (3) of the preceding Article pertains.

(Order for a Change of Business Methods)

Article 156-29 The Prime Minister may order a change of methods by which or conditions under which a Securities Finance Company lends money or Securities (limited to lending connected with the business prescribed in Article 156-24, paragraph (1)), if those methods or conditions are found to have become inappropriate in light of general economic conditions or the transactions on the Financial Instruments Exchange Market or Over-the-Counter Securities Market tend to be unsound, and the Prime Minister finds it to be particularly necessary for facilitating fair purchase and sales on the Financial Instruments Exchange Market or Over-the-Counter Securities Market as well as for achieving a smooth distribution of Securities. In such a case, irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, the Prime Minister must conduct a hearing.

(Eligibility as a Representative Director)

Article 156-30 (1) The representative director or representative executive officer of a Securities Finance Company must be a person that is not the officer or employee of a Financial Instruments Business Operator.

- (2) The provisions of the proviso to Article 331, paragraph (2) of the Companies Act (including as applied mutatis mutandis pursuant to Article 335, paragraph (1) of that Act) and of Article 332, paragraph (2) (including as applied mutatis mutandis pursuant to Article 334, paragraph (1) of that Act); Article 336, paragraph (2); and the proviso to Article 402, paragraph (5) of that Act do not apply to a Securities Finance Company.

(Restriction on the Concurrent Holding of Positions by Directors)

Article 156-31 (1) A person that falls under one of the categories in Article 82, paragraph (2), item (iii), sub-items (a), (b) or (e) may not become the director, accounting advisor, company auditor, or executive officer of a Securities Finance Company.

(2) The officer of a Securities Finance Company loses that position if that officer comes to fall under a category of person provided for in the preceding paragraph.

(3) If the Prime Minister discovers that a person has become the officer of a Securities Finance Company by wrongful means, or if a Securities Finance Company or its officer violates a law or regulation or a disposition by a government agency which is based on a law or regulation, the Prime Minister may order the Securities Finance Company to dismiss that officer.

(Obligation to Conclude a Contract with a Designated Dispute Resolution Organization)

Article 156-31-2 (1) A Securities Finance Company that conducts the business referred to in Article 156-27, paragraph (1), item (i), (iii), or (iv) must take the measures specified in the relevant of the following items for the category of cases set forth in that item:

(i) if there is a Designated Dispute Resolution Organization for Securities Finance Companies (meaning a Designated Dispute Resolution Organization for which the Category of Dispute Resolution Services is the Specified Services of a Securities Finance Company (meaning the Specified Services of a Securities Finance Company as defined in Article 156-38, paragraph (7); hereinafter the same applies in this paragraph); hereinafter the same applies in this Article): measures to conclude a Basic Contract for the Implementation of Dispute Resolution Procedures in connection with the Specified Services of a Securities Finance Company with a single Designated Dispute Resolution Organization for Securities Finance Companies; or

(ii) if there is no Designated Dispute Resolution Organization for Securities Finance Companies: complaint processing measures and dispute resolution measures in connection with the Specified Services of a Securities Finance Company.

(2) If a Securities Finance Company takes measures to conclude a Basic Contract for the Implementation of Dispute Resolution Procedures pursuant to the provisions of the preceding paragraph, it shall publicly announce the trade name or name of the Designated Dispute Resolution Organization for Securities Finance Companies that is the other party to the Basic Contract for the Implementation of Dispute Resolution Procedures.

- (3) The provisions of paragraph (1) do not apply to the period specified in the relevant of the following items for the category of cases set forth in that item:
- (i) a case that formerly fell under the category of case set forth in paragraph (1), item (i), which has come to fall under the category of case set forth in item (ii) of that paragraph: the period that the Prime Minister specifies as the period necessary for taking the measures set forth in paragraph (1), item (ii) at the time of granting the authorization to discontinue Dispute Resolution Services, etc. under Article 156-60, paragraph (1) or at the time of rescinding the designation under Article 156-61, paragraph (1);
  - (ii) a case that formerly fell under the category of case set forth in paragraph (1), item (i), in which the discontinuation of the Dispute Resolution Services, etc. of a single Designated Dispute Resolution Organization for Securities Finance Companies under that item has been authorized pursuant to Article 156-60, paragraph (1) or the designation under Article 156-39, paragraph (1) of a single Designated Dispute Resolution Organization for Securities Finance Companies under that item has been rescinded pursuant to Article 156-61, paragraph (1) (excluding a case set forth in the preceding item): the period specified by the Prime Minister as the period necessary for taking the measures set forth in paragraph (1), item (i) at the time of granting that authorization or making such rescission; or
  - (iii) a case that formerly fell under the category of case set forth in paragraph (1), item (ii), which has come to fall under the category of case set forth in item (i) of that paragraph: the period specified by the Prime Minister as the period necessary for taking the measures set forth in that item at the time of the designation under Article 156-39, paragraph (1).

(Supervisory Measures)

- Article 156-32 (1) If a Securities Finance Company violates a law or regulation or a disposition by a government agency which is based on a law or regulation, the Prime Minister may rescind its license or order the suspension of all or a part of its business activities during a fixed period of no longer than six months.
- (2) Irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, before seeking to order the suspension of business pursuant to the provisions of the preceding paragraph, the Prime Minister must conduct a hearing.

(Business Improvement Orders)

- Article 156-33 (1) In addition to issuing an order under Article 156-29, if the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors as concerns a Securities Finance Company's business operations or the state of its assets, the Prime Minister, within the

scope of this necessity, may order the Securities Finance Company to change its business outline or business methods, or to otherwise take measures that are necessary for improving its business operations or the state of its assets.

- (2) Irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, before seeking to issue an order under the provisions of the preceding paragraph, the Prime Minister must conduct a hearing.

(Collection of Reports and Inspections)

Article 156-34 Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order a Securities Finance Company or the person that a Securities Finance Company has entrusted with its business (including a person who has received entrustment from such person (including entrustment via two or more layers); hereinafter the same shall apply in this Article) to report or submit materials that should serve as a reference with regard to the business or assets of the Securities Finance Company, and may have the relevant officials inspect the state of the business or assets, or the books and documents or any other articles, of a Securities Finance Company or the person that a Securities Finance Company has entrusted with its business (but may only have the relevant officials inspect the person that a Securities Finance Company has entrusted with its business as is necessary in connection with the business or assets of the Securities Finance Company).

(Submission of Business Report)

Article 156-35 Each business year, pursuant to the provisions of Cabinet Office Ordinance, a Securities Finance Company shall prepare a business report and submit it to the Prime Minister within three months after the end of the business year.

(Authorization for Business Discontinuance)

Article 156-36 The following particulars do not become effective without the authorization of the Prime Minister:

- (i) a resolution to discontinue the business of a Securities Finance Company (limited to the business prescribed in Article 156-24, paragraph (1)), or a resolution to dissolve a Securities Finance Company; and
- (ii) a merger, company split, or transfer or acquisition of all or a part of business operations, to which a Securities Finance Company is the party.

(Delegation to Cabinet Office Ordinance)

Article 156-37 Procedures for the implementation of the provisions of Article

156-23 to the preceding Article inclusive and particulars that are otherwise necessary for their implementation are specified by Cabinet Office Ordinance.

## **Chapter V-5 Designated Dispute Resolution Organizations**

### **Section 1 General Provisions**

(Definitions)

- Article 156-38 (1) The term "Designated Dispute Resolution Organization" as used in this Chapter means a person that has obtained the designation under paragraph (1) of the following Article.
- (2) The term "Specified Type I Financial Instruments Business" as used in this Chapter means services that a Financial Instruments Business Operator performs in connection with the acts set forth in the items of Article 28, paragraph (1) and services it performs pursuant to Article 35, paragraph (1), as well as services that a Financial Instruments Intermediary Service Provider provides on behalf of a Financial Instruments Business Operator, in connection with the acts set forth in Article 2, paragraph (11), items (i) to (iii) inclusive.
- (3) The term "Specified Type II Financial Instruments Business" as used in this Chapter means services that a Financial Instruments Business Operator performs in connection with the acts set forth in the items of Article 28, paragraph (2) (excluding services in connection with the acts set forth in Article 63, paragraph (1), item (i)) and services incidental thereto.
- (4) The term "Specified Investment Advisory and Agency Business" as used in this Chapter means services that a Financial Instruments Business Operator performs in connection with the acts set forth in the items of Article 28, paragraph (3), and services incidental thereto.
- (5) The term "Specified Investment Management Business" as used in this Chapter means services that a Financial Instruments Business Operator performs in connection with the acts set forth in the items of Article 28, paragraph (4) (excluding services in connection with the acts set forth in Article 63, paragraph (1), item (ii)) and services it performs pursuant to Article 35, paragraph (1), as well as services that a Financial Instruments Intermediary Service Provider performs on behalf of a Financial Instruments Business Operator, in connection with the acts set forth in Article 2, paragraph (11), item (iv).
- (6) The term "Specified Services of a Registered Financial Institution" as used in this Chapter means services that a registered financial institution performs in connection with the registration under Article 33-2 and services incidental thereto, the Specified Financial Instruments Business (meaning Specified Financial Instruments Business defined in Article 33-8, paragraph (2); hereinafter the same applies in this paragraph) that a person performing



Specified Financial Instruments Business for that registered financial institution performs, as well as services that a Financial Instruments Intermediary Service Provider performs on behalf of the registered financial institution, in connection with the acts set forth in Article 2, paragraph (11), items (i) to (iv) inclusive.

- (7) The term "Specified Services of a Securities Finance Company" as used in this Chapter means services that a Securities Finance Company performs pursuant to the provisions of Article 156-27, paragraph (1), items (i), (iii) and (iv).
- (8) The term "Financial Instruments Transaction Services" as used in this Chapter means Specified Type I Financial Instruments Business, Specified Type II Financial Instruments Business, Specified Investment Advisory and Agency Business, Specified Investment Management Business, the Specified Services of a Registered Financial Institution, or the Specified Services of a Securities Finance Company.
- (9) The term "Complaint Processing Procedures" as used in this Chapter means procedures for processing complaints related to Financial Instruments Transaction Services (meaning the complaints about Financial Instruments Transaction Services; the same applies in Article 156-44, Article 156-45 and Article 156-49).
- (10) The term "Dispute Resolution Procedures" as used in this Chapter means procedures to resolve disputes related to Financial Instruments Transaction Services (meaning disputes concerning Financial Instruments Transaction Services which can be settled between the parties; the same applies in Article 156-44, Article 156-45 and Articles 156-50 to 156-52 inclusive) without using court proceedings.
- (11) The term "Dispute Resolution Services, etc." as used in this Chapter means to the services involved in Complaint Processing Procedures and Dispute Resolution Procedures, as well as services incidental thereto.
- (12) The term "Category of Dispute Resolution Services" as used in this Chapter means whether Dispute Resolution Services, etc. are connected with Specified Type I Financial Instruments Business, Specified Type II Financial Instruments Business, Specified Investment Advisory and Agency Business, Specified Investment Management Business, the Specified Services of a Registered Financial Institution, or the Specified Services of a Securities Finance Company.
- (13) The term "Basic Contract for the Implementation of Dispute Resolution Procedures" as used in this Chapter means a contract concluded between a Designated Dispute Resolution Organization and a person or firm involved in Financial Instruments Transactions (meaning a Financial Instruments Business Operator, etc. or a Securities Finance Company; the same applies in the following Article, Article 156-42, paragraph (2), Article 156-44, and Article

156-56, item (i)) with regard to the implementation of Dispute Resolution Services, etc.

(Designation of a Person to Conduct Dispute Resolution Services, etc.)

Article 156-39 (1) At the application of a person satisfying the following requirements, the Prime Minister may designate that person as a person that conducts Dispute Resolution Services, etc.:

- (i) it is a corporation (including an organization without legal personality for which a representative or administrator has been designated and excluding a corporation incorporated based on foreign laws and regulations and any other foreign organizations; the same applies in item (iv), sub-item (d));
- (ii) it does not fall under the category of a person that has had a designation under this paragraph rescinded pursuant to Article 156-61, paragraph (1) and not yet had five years pass since the date of the rescission, nor does it fall under the category of a person that has had the designation under the provisions of other Acts which is specified by Cabinet Order as involving business equivalent to Dispute Resolution Services, etc. rescinded, and not yet had five years pass since the date of the rescission;
- (iii) it does not fall under the category of a person that has been sentenced to a fine (including an equivalent sentence under foreign laws and regulations) for violating the provisions of this Act or the Attorney Act (Act No. 205 of 1949) or for violating the provisions of a foreign law or regulation that is equivalent to one of these Acts, and not yet had five years pass since the day on which it finished serving the sentence or ceased to be subject to its enforcement;
- (iv) it has no officer (including the representative or administrator of an organization without legal personality for which a representative or administrator has been designated; hereinafter the same applies in this Chapter) that falls under one of the following categories of persons:
  - (a) an adult ward or a person under curatorship, or a person that is treated in the same manner under foreign laws and regulations;
  - (b) a bankrupt that has not obtained a restoration of rights, or a person that is treated in the same manner under foreign laws and regulations;
  - (c) a person that has been sentenced to imprisonment or a heavier punishment (including an equivalent sentence under foreign laws and regulations), if five years have not yet passed since the day on which the person finished serving the sentence or ceased to be subject to its enforcement;
  - (d) a person that, during the 30 days prior to the date of rescission, was the officer (including a person treated in the same manner under foreign laws and regulations; the same applies in this sub-item (d)) of a corporation, in

a case in which a designation under this paragraph has been rescinded pursuant to the provisions of Article 156-61, paragraph (1) or an administrative disposition which is similar to such a designation and which a corporation has received in a foreign state pursuant to the provisions of a foreign law or regulation that is equivalent to this Act, has been rescinded, and five years have not yet passed since the date of rescission; or a person that, during the 30 days prior to the date of rescission, was the officer of a corporation, in a case in which a designation under the provisions of other Acts, which is specified by Cabinet Order as being for business equivalent to Dispute Resolution Services, etc., has been rescinded or an administrative disposition which is similar to that designation, which is specified by Cabinet Order, and which a corporation has been issued in a foreign state pursuant to the provisions of a foreign law or regulation that is equivalent to one of those other Acts, has been rescinded, and five years have not yet passed since the date of the rescission; or

- (e) a person that has been sentenced to a fine (including an equivalent sentence under foreign laws and regulations) for violating the provisions of this Act or the Attorney Act, or for violating the provisions of a foreign law or regulation that is equivalent to one of these Acts, if five years have not yet passed since the day on which the person finished serving the sentence or ceased to be subject to its enforcement.
- (v) it has a sufficient financial and technical basis to perform Dispute Resolution Services, etc. in an appropriate manner;
- (vi) the composition of its officers and employees is unlikely to compromise the fair implementation of Dispute Resolution Services, etc.;
- (vii) its rules for implementing Dispute Resolution Services, etc. (hereinafter referred to as the "Operational Rules") conform to laws and regulations and are found to be sufficient for allowing it to implement Dispute Resolution Services, etc. fairly and appropriately pursuant to the provisions of this Act; and
- (viii) the result of the hearing of opinions held pursuant to the following paragraph is that the proportion of the number of persons and firms involved in Financial Instruments Transactions that have stated an objection to the particulars of the cancellation of the Basic Contract for the Implementation of Dispute Resolution Procedures, other contents of the Basic Contract for the Implementation of Dispute Resolution Procedures (excluding the matters set forth in the items of Article 156-44, paragraph (2)), and other contents of the Operational Rules (excluding the matters that are to constitute the content of those rules pursuant to paragraph (3) of that Article and the particulars that are necessary for conforming to the criteria set forth in the

- items of paragraph (4) of that Article and paragraph (5), item (i)) (limited to objections for which there are reasonable grounds), to the total number of persons and firms involved in Financial Instruments Transactions, is less than the proportion specified by Cabinet Order.
- (2) A person seeking to file the application referred to in the preceding paragraph shall explain the contents of the Operational Rules to persons and firms involved in Financial Instruments Transactions, hear opinions as to whether there are any objections to these (if there are objections, this includes the grounds for them) and prepare documents stating the results of this, in advance and pursuant to the provisions of Cabinet Office Ordinance,.
- (3) Before seeking to make a designation under paragraph (1), the Prime Minister shall consult the Minister of Justice with regard to the relevant person satisfying the requirements set forth in items (v) to (vii) inclusive of that paragraph (limited to the part related to the operation of Dispute Resolution Procedures, and with regard to the requirements set forth in item (vii), limited to the requirements involving the criteria set forth in the items of Article 156-44, paragraph (4) and the items of paragraph (5) of that Article).
- (4) A designation under paragraph (1) is to be made for each Category of Dispute Resolution Services, and the proportion under item (viii) of that item is to be calculated for each Category of Dispute Resolution Services.
- (5) Upon making a designation under paragraph (1), the Prime Minister shall make a public notice of the trade name or name and the location of the principal business office or office of the Designated Dispute Resolution Organization and the Category of Dispute Resolution Services under designation, as well as the day on which the Prime Minister made the designation, in the official gazette.

(Application for Designation)

- Article 156-40 (1) A person seeking designation under paragraph (1) of the preceding Article must submit a written application for designation to the Prime Minister, in which it states the following particulars:
- (i) the Category of Dispute Resolution Services for which it seeks designation;
  - (ii) its trade name or name;
  - (iii) the name and location of its principal business office or office or any other business offices or offices for Dispute Resolution Services, etc.; and
  - (iv) the names or trade names of its officers.
- (2) The following documents must accompany the written application for designation referred to in the preceding paragraph:
- (i) a document pledging that the applicant satisfies the requirements set forth in items (iii) and (iv) of paragraph (1) of the preceding Article;
  - (ii) the articles of incorporation and the corporation's certificate of registered

- information (including anything equivalent to these);
- (iii) the Operational Rules;
  - (iv) documents stating matters relevant to the organization;
  - (v) an inventory of assets, balance sheet, and any other documents clarifying that the applicant has the necessary financial basis for conducting Dispute Resolution Services, etc. which are specified by Cabinet Office Ordinance;
  - (vi) the documents prescribed in paragraph (2) of the preceding Article and any other documents specified by Cabinet Office Ordinance as evidencing that the applicant satisfies the requirements set forth in item (viii) of paragraph (1) of that Article; and
  - (vii) other documents specified by Cabinet Office Ordinance.
- (3) In the case referred to in the preceding paragraph, if the articles of incorporation, inventory of assets, or balance sheet has been prepared as an electronic or magnetic record, such electronic or magnetic record may accompany the written application for designation in lieu of the written document.

(Duty of Confidentiality)

- Article 156-41 (1) It is prohibited for a Dispute Resolution Mediator (meaning a Dispute Resolution Mediator appointed pursuant to Article 156-50, paragraph (2); the same applies in the following paragraph, paragraph (2) of the following Article, and Article 156-44, paragraphs (2) and (4)), the officer or employee of a Designated Dispute Resolution Organization, or a person that has held one of these positions, to divulge or use for personal benefit any secret learned in connection with Dispute Resolution Services, etc.
- (2) With regard to the application of the Penal Code and other penal provisions, the Dispute Resolution Mediator or officer or employee of a Designated Dispute Resolution Organization is deemed to be an official engaged in public service pursuant to laws and regulations.

## **Section 2 Services**

(Services of a Designated Dispute Resolution Organization)

- Article 156-42 (1) A Designated Dispute Resolution Organization is to perform Dispute Resolution Services, etc. pursuant to the provisions of this Act and the Operational Rules.
- (2) A Designated Dispute Resolution Organization (including a Dispute Resolution Mediator) may receive dues, fees, or any other remuneration for performing Dispute Resolution Services, etc., pursuant to the Basic Contract for the Implementation of Dispute Resolution Procedures or any other contract concluded with a member person or firm involved in Financial Instruments

Transactions (meaning a person or firm involved in Financial Instruments Transactions with which a Basic Contract for the Implementation of Dispute Resolution Procedures has been concluded; hereinafter the same applies in this Chapter) that is a party to procedures or with its customer (including a rights holder prescribed in Article 42, paragraph (1) other than a customer; hereinafter the same applies in this Chapter) or concluded with a person other than such persons.

(Entrustment of the Operation of Complaint Processing Procedures or Dispute Resolution Procedures)

Article 156-43 A Designated Dispute Resolution Organization must not entrust a person other than another Designated Dispute Resolution Organization or a person that has obtained designation under the provisions of another Act which is specified by Cabinet Order as being for services equivalent to Dispute Resolution Services, etc. (such other Designated Dispute Resolution Organization or person is referred to as an "Entrusted Dispute Resolution Organization" in Article 165-50, paragraph (4) or (5)) with the operation of Complaint Processing Procedures or Dispute Resolution Procedures.

(Operational Rules)

Article 156-44 (1) A Designated Dispute Resolution Organization must establish Operational Rules in respect of the following matters:

- (i) matters relevant to the contents of the Basic Contract for the Implementation of Dispute Resolution Procedures;
- (ii) matters relevant to the conclusion of a Basic Contract for Implementation of Dispute Resolution Procedures;
- (iii) matters relevant to the implementation of Dispute Resolution Services, etc.;
- (iv) matters relevant to the dues that a member person or firm involved in Financial Instruments Transactions incurs for the cost required for Dispute Resolution Services, etc.;
- (v) if it collects fees for implementing Dispute Resolution Services, etc. from the member person or firm involved in Financial Instruments Transactions which is a party to its services or from its customer (hereinafter, such a member person or firm or customer is simply referred to as a "Party" in this Chapter), matters relevant to those fees;
- (vi) matters relevant to coordination with other Designated Dispute Resolution Organizations, national organs, local governments, private firms, or any other persons processing complaints or implementing dispute resolution;
- (vii) matters relevant to the processing of complaints about Dispute Resolution Services, etc.; and

- (viii) matters specified by Cabinet Office Ordinance as being necessary for the implementation of Dispute Resolution Services, etc., other than what is set forth in the preceding items.
- (2) The Basic Contract for the Implementation of Dispute Resolution Procedures referred to in item (i) of the preceding paragraph must have the following matters as its content:
- (i) that the Designated Dispute Resolution Organization commences Complaint Processing Procedures based on an application for the resolution of a complaint related to Financial Instruments Transaction Services from the customer of a member person or firm involved in Financial Instruments Transactions, and commences Dispute Resolution Procedures based on an application for Dispute Resolution Procedures from a Party;
  - (ii) that when the Designated Dispute Resolution Organization or Dispute Resolution Mediator commences Complaint Processing Procedures, or when one of them commences Dispute Resolution Procedures based on an application from the customer of a member person or firm involved in Financial Instruments Transactions, the Designated Dispute Resolution Organization or Dispute Resolution Mediator may request the member person or firm involved in Financial Instruments Transactions to comply with these procedures, and that the member person or firm involved in Financial Instruments Transactions must not refuse such a request without just cause for doing so;
  - (iii) that the Designated Dispute Resolution Organization or Dispute Resolution Mediator may request a member person or firm involved in Financial Instruments Transactions to make a report or to submit books and documents or any other articles in the course of Complaint Processing Procedures or Dispute Resolution Procedures, and that the member person or firm involved in Financial Instruments Transactions must not refuse such a request without just cause for doing so;
  - (iv) that the Dispute Resolution Mediator may prepare the settlement proposal that is needed for resolving a dispute related to Financial Instruments Transaction Services in the course of Dispute Resolution Procedures, and recommend that the Parties accept it;
  - (v) that, if there is no prospect of reaching a settlement between the Parties by recommending that they accept the settlement proposal referred to in the preceding item, and the Dispute Resolution Mediator finds it to be reasonable in light of the nature of the case, the intentions of the Parties, the Parties' pursuance of the procedures, or any other circumstances, the Dispute Resolution Mediator may prepare the Special Conciliation Proposal that is needed for resolving the dispute related to Financial Instruments Transaction Services and present it to the Parties, giving them the reason for

- this;
- (vi) that, if Dispute Resolution Procedures are commenced for a claim in pending litigation, the member person or firm involved in Financial Instruments Transactions must report to the Designated Dispute Resolution Organization indicating that litigation is pending, the grounds for the claim under litigation, and the progress of the litigation;
  - (vii) that, if litigation is filed in connection with a claim that is subject to Dispute Resolution Procedures, the member person or firm involved in Financial Instruments Transactions must report to the Designated Dispute Resolution Organization indicating that litigation has been filed and the grounds for the claim under litigation;
  - (viii) that, in addition to what is provided for in the preceding two items, if a member person or firm involved in Financial Instruments Transactions is requested to report the progress of litigation connected to a claim that is subject to Dispute Resolution Procedures or any other matter, it must report that matter to the Designated Dispute Resolution Organization;
  - (ix) that, if the litigation referred to in item (vi) or (viii) comes to be no longer pending before the court, or if the judicial decision on the litigation becomes final and binding, the member person or firm involved in Financial Instruments Transactions must report this to the Designated Dispute Resolution Organization and give the details thereof;
  - (x) that a member person or firm involved in Financial Instruments Transactions must provide the necessary information or take other measures that are necessary for informing its customers of the implementation of Dispute Resolution Services, etc. by the Designated Dispute Resolution Organization; and
  - (xi) in addition to what is provided for in the preceding items, matters specified by Cabinet Office Ordinance as necessary for facilitating the processing of complaints related to Financial Instruments Transaction Services or the resolution of disputes related to Financial Instruments Transaction Services.
- (3) The Operational Rules with regard to the matters related to the conclusion of the Basic Contract for the Implementation of Dispute Resolution Procedures referred to in paragraph (1), item (ii) must have as their contents that, if the Designated Dispute Resolution Organization receives an offer to conclude a Basic Contract for the Implementation of Dispute Resolution Procedures from a member person or firm involved in Financial Instruments Transactions, unless the member person or firm involved in Financial Instruments Transactions' performance of the obligations connected with the Basic Contract for the Implementation of Dispute Resolution Procedures or any other obligations connected with the implementation of Dispute Resolution Services, etc. is expected to be unreliable, the Designated Dispute Resolution Organization



must not refuse the offer.

- (4) The Operational Rules with regard to the matters set forth in paragraph (1), item (iii), must conform to the following criteria:
- (i) measures have been taken to ensure coordination between Complaint Processing Procedures and Dispute Resolution Procedures;
  - (ii) the Operational Rules establish the method for appointing a Dispute Resolution Mediator and for excluding a Dispute Resolution Mediator if that mediator has an interest in the Party to a dispute related to Financial Instruments Transaction Services or if there are any other circumstances that are likely to hinder the fair implementation of Dispute Resolution Procedures;
  - (iii) if the Designated Dispute Resolution Organization has decided to carry out operations for Dispute Resolution Procedures in a dispute related to Financial Instruments Transaction Services to which its substantial controller, etc. (meaning a person specified by Cabinet Office Ordinance as one that is related to the Designated Dispute Resolution Organization in such a way as to substantially control the business of the Designated Dispute Resolution Organization or to have a material influence on its business due to its holding of shares in the Designated Dispute Resolution Organization, its financing of the Designated Dispute Resolution Organization, or any other circumstance) or its Subsidiary Company, etc. (meaning a person specified by Cabinet Office Ordinance as one to which the Designated Dispute Resolution Organization is related in such a way as to substantially control its business due the holding of its shares or any other circumstance) is a Party, measures have been taken to prevent the substantial controller, etc., Subsidiary Company, etc., or Designated Dispute Resolution Organization from exercising undue influence on the Dispute Resolution Mediator;
  - (iv) the Operational Rules establish measures for receiving the advice of an attorney-at-law when the Dispute Resolution Mediator is not an attorney-at-law (unless the Dispute Resolution Mediator is a judicial scrivener as prescribed in Article 3, paragraph (2) of the Judicial Scriveners Act (Act No. 197 of 1950), and the Dispute Resolution Procedures are carried out for a dispute set forth in Article 3, paragraph (1), item (vii) of that Act) and the implementation of Dispute Resolution Procedures necessitates expert knowledge with regard to the interpretation and application of laws and regulations;
  - (v) the Operational Rules establish an appropriate means of giving notice upon implementing Dispute Resolution Procedures;
  - (vi) the Operational Rules establish a standard operation process from the commencement to the termination of Dispute Resolution Procedures;

- (vii) the Operational Rules establish the requirements and formalities for the customer of a member person or firm involved in Financial Instruments Transactions to file an application for the resolution of a complaint related to Financial Instruments Transaction Services with the Designated Dispute Resolution Organization, or for a Party to a dispute related to Financial Instruments Transaction Services to file an application for Dispute Resolution Procedures with the Designated Dispute Resolution Organization;
- (viii) the Operational Rules establish procedures for the Designated Dispute Resolution Organization to promptly notify the customer of a member person or firm involved in Financial Instruments Transactions which is to be the other Party to a dispute related to Financial Instruments Transaction Services whenever it receives an application for Dispute Resolution Procedures from a member person or firm involved in Financial Instruments Transactions, as well as for confirming with the customer whether or not it requests the implementation of Dispute Resolution Procedures in response to this;
- (ix) the Operational Rules establish procedures for the Designated Dispute Resolution Organization to promptly notify the member person or firm involved in Financial Instruments Transactions which is to be the other Party to a dispute related to Financial Instruments Transaction Services whenever it receives an application for Dispute Resolution Procedures as referred to in item (vii) from the customer of the member person or firm involved in Financial Instruments Transactions;
- (x) the Operational Rules establish the way of retaining, returning, and otherwise handling books and documents and any other articles submitted in the course of Dispute Resolution Procedures;
- (xi) the Operational Rules establish a method for properly keeping the confidential information of the Parties to a dispute related to Financial Instruments Transaction Services and of any third party, that is included in an opinion stated or books and documents or any other article submitted or presented in the course of Dispute Resolution Procedures, in accordance with the nature of the confidential information; the same applies to confidential information stated in the dispute resolution procedures record referred to in Article 156-50, paragraph (9);
- (xii) the Operational Rules establish the requirements and formalities for the Parties to a dispute related to Financial Instruments Transaction Services to terminate the Dispute Resolution Procedures;
- (xiii) the Operational Rules stipulate that if the Dispute Resolution Mediator judges there to be no prospect of reaching a settlement between the Parties to the dispute related to Financial Instruments Transaction Services through Dispute Resolution Procedures, the Dispute Resolution Mediator will

- promptly terminate the Dispute Resolution Procedures and notify the Parties to the dispute related to Financial Instruments Transaction Services of the same; and
- (xiv) the Operational Rules establish measures for the Dispute Resolution Mediators and the officers and employees of the Designated Dispute Resolution Organization to reliably retain any confidential information learned in the course of Dispute Resolution Services, etc.
- (5) The Operational Rules with regard to the matters set forth in paragraph (1), items (iv) and (v) must conform to the following criteria:
- (i) the Operational Rules establish the amount of the dues provided for in paragraph (1), item (iv), the fees referred to in item (v) of that paragraph, or the method of calculating them, as well as the method of payment for the same (collectively referred to as the "Amount of Dues, etc." in the following item); and
- (ii) the Amount of Dues, etc. are not such as to be extremely unreasonable.
- (6) The term "Special Conciliation Proposal" as used in paragraph (2), item (v) means a settlement proposal that the member person or firm involved in Financial Instruments Transactions must accept except in one of the following cases:
- (i) the customer of the member person or firm involved in Financial Instruments Transactions that is a Party (hereinafter simply referred to as the "Customer" in this paragraph) does not accept the settlement proposal;
- (ii) at the time the settlement proposal is presented, litigation has not been filed in connection with a claim subject to the Dispute Resolution Procedures, but by one month after the day on which the member person or firm involved in Financial Instruments Transactions learns that the Customer accepts the settlement proposal, litigation has been filed in connection with such a claim and not withdrawn;
- (iii) at the time the settlement proposal is presented, litigation has been filed in connection with a claim subject to the Dispute Resolution Procedures, and by one month after the day on which the member person or firm involved in Financial Instruments Transactions learns that the Customer accepts the settlement proposal, that litigation has not been withdrawn; or
- (iv) by one month after the day on which the member person or firm involved in Financial Instruments Transactions learns that the Customer accepts the settlement proposal, an arbitration agreement provided for in Article 2, paragraph (1) of the Arbitration Act (Act No. 138 of 2003) is entered into or a settlement or conciliation other than through the relevant settlement proposal is reached between the Parties with regard to the dispute related to Financial Instruments Transaction Services for which the Dispute Resolution Procedures have been implemented.

- (7) Changes to the Operational Rules do not become effective without the authorization of the Prime Minister.
- (8) Before seeking to grant the authorization under the preceding paragraph, the Prime Minister must consult the Minister of Justice as to whether the Operational Rules subject to that authorization conform to the criteria set forth in the items of paragraph (4) and the items of paragraph (5) (limited to the part related to the operation of Dispute Resolution Procedures).

(Disclosure of the Fact of a Breach of a Basic Contract for the Implementation of Dispute Resolution Procedures)

Article 156-45 (1) If the obligations that a member business operator involved in Financial Instruments Transactions bears pursuant to a Basic Contract for the Implementation of Dispute Resolution Procedures are breached, and the Designated Dispute Resolution Organization hears the opinion of the member person or firm involved in Financial Instruments Transactions and finds there to be no legitimate reason for the breach, the Designated Dispute Resolution Organization shall disclose the trade name or name of the member person or firm involved in Financial Instruments Transactions and the fact of the breach to the public, as well as reporting it to the Prime Minister, without delay.

(2) A Designated Dispute Resolution Organization must endeavor to provide information, consultation, and other support to member person or firms involved in Financial Instruments Transactions and to other persons, in order to preemptively prevent complaints related to Financial Instruments Transaction Services and disputes related to Financial Instruments Transaction Services, and to facilitate the processing of complaints related to Financial Instruments Transaction Services and the resolution of disputes related to Financial Instruments Transaction Services.

(Prohibition on the Employment of a Member of an Organized Crime Group)

Article 156-46 A Designated Dispute Resolution Organization must not allow the member, etc. of an organized crime group (meaning a Member of an Organized Crime Group as defined in Article 2, item (vi) of the Act to Prevent Illegal Activities by Members of Organized Crime Groups (hereinafter referred to as the "Member of an Organized Crime Group" in this Article) or a person that has not yet had five years pass since the day on which that person ceased to be the Member of an Organized Crime Group) to engage in Dispute Resolution Services, etc., nor may it use such a person as an assistant in Dispute Resolution Services, etc.

(Prohibition on Differential Treatment)

Article 156-47 A Designated Dispute Resolution Organization must not subject

any particular member person or firm involved in Financial Instruments Transactions to unfairly differential treatment.

(Archiving Records)

Article 156-48 A Designated Dispute Resolution Organization shall prepare and archive records of its Dispute Resolution Services, etc. pursuant to the provisions of Cabinet Office Ordinance, in addition to the records under the provisions of Article 156-50, paragraph (9).

(Complaint Processing Procedures by a Designated Dispute Resolution Organization)

Article 156-49 If the customer of a member person or firm involved in Financial Instruments Transactions files an application for the resolution of a complaint related to Financial Instruments Transaction Services, in addition to providing the customer with the necessary advice and investigating the circumstances to which the complaint related to Financial Instruments Transaction Services pertains based on its consultation with the customer, the Designated Dispute Resolution Organization must notify the member person or firm involved in Financial Instruments Transactions of the substance and content of the complaint related to Financial Instruments Transaction Services, and request that the member person or firm involved in Financial Instruments Transactions process the complaint expeditiously.

(Dispute Resolution Procedures by a Designated Dispute Resolution Organization)

Article 156-50 (1) The Party to a dispute related to Financial Instruments Transaction Services may file an application for Dispute Resolution Procedures with the Designated Dispute Resolution Organization with which the member person or firm involved in Financial Instruments Transactions has concluded a Basic Contract for the Implementation of Dispute Resolution Procedures, for the purpose of resolving the dispute related to the Financial Instruments Transaction Services of the member person or firm involved in Financial Instruments Transactions.

(2) When a Designated Dispute Resolution Organization receives the application referred to in the preceding paragraph, it is to appoint Dispute Resolution Mediators.

(3) Dispute Resolution Mediators are to be appointed from among persons of the highest moral character that fall under one of the following items (excluding any person that has an interest in a Party connected with the application referred to in paragraph (1)). In such a case, at least one of the Dispute Resolution Mediators must be a person that falls under item (i) or (iii) (or in

- item (i), (iii) or (iv), if the application pertains to a dispute provided for in Article 3, paragraph (1), item (vii) of the Judicial Scrivener Act):
- (i) an attorney-at-law who has been practicing for five years or more in total;
  - (ii) a person that has engaged in Financial Instruments Transaction Services for ten years or more in total;
  - (iii) a person provided for by Cabinet Office Ordinance as having specialized knowledge of and experience in consulting on complaints that arise between consumers and person or firms in business with regard to consumer affairs or on any other consumer affairs matters;
  - (iv) if the application pertains to a dispute prescribed in Article 3, paragraph (1), item (vii) of the Judicial Scriveners Act, a judicial scrivener as prescribed in paragraph (2) of that Article that has engaged in summary court legal representation services, etc. as defined in that paragraph for five years or more in total; or
  - (v) a person specified by Cabinet Office Ordinance as being equivalent to a person set forth in one of the preceding items.
- (4) A Designated Dispute Resolution Organization is to send the application referred to in paragraph (1) into Dispute Resolution Procedures by the Dispute Resolution Mediators appointed pursuant to paragraph (2) (hereinafter simply referred to as "Dispute Resolution Mediators" in this Article and paragraph (1) of the following Article); provided, however, that if the Dispute Resolution Mediators find that it is not appropriate to carry out Dispute Resolution Procedures due to it being found that the customer of the member person or firm involved in Financial Instruments Transactions that is a Party under that application has sufficient ability to properly resolve the dispute related to Financial Instruments Transaction Services or due to any other grounds, or if the Dispute Resolution Mediators find that a Party has filed the application referred to in paragraph (1) for unjust purposes and without due cause, they are not to implement Dispute Resolution Procedures, and if the Dispute Resolution Mediators find it to be appropriate to send the application into procedures equivalent to Dispute Resolution Procedures at an Entrusted Dispute Resolution Organization, the Designated Dispute Resolution Organization is to entrust the operation of Dispute Resolution Procedures to an Entrusted Dispute Resolution Organization.
- (5) If the Dispute Resolution Mediators decide not to implement Dispute Resolution Procedures pursuant to the proviso to the preceding paragraph, or if they decide to entrust the operation to an Entrusted Dispute Resolution Organization, the Designated Dispute Resolution Organization is to notify the person that filed the application referred to in paragraph (1), indicating that they have done so and giving the reason.
- (6) A Dispute Resolution Mediator may hear the opinions of the Parties and

witnesses, request them to submit written reports, request the Parties to submit books and documents or other articles that should serve as a reference, prepare the settlement proposal that is needed to resolve the case and recommend that the Parties accept it, or implement a special conciliation (meaning presenting the Special Conciliation Proposal provided for in Article 56-44, paragraph (6)).

- (7) Dispute Resolution Procedures are not open to the public; provided, however, that a Dispute Resolution Mediator may allow the attendance of a person that is considered to be appropriate, with the consent of the Parties.
- (8) Prior to the commencement of Dispute Resolution Procedures and pursuant to the provisions of Cabinet Office Ordinance, a Designated Dispute Resolution Organization must deliver a document that states the following particulars or provide an electronic or magnetic record in which these have been recorded to the customer of the member person or firm involved in Financial Instruments Transactions that is a Party to the dispute, and give an explanation of the same:
  - (i) the particulars of the fees to be paid by the customer;
  - (ii) the standard operation process from the commencement to the termination of Dispute Resolution Procedures, as provided in Article 156-44, paragraph (4), item (vi); and
  - (iii) in addition to what is set forth in the preceding two items, matters specified by Cabinet Office Ordinance.
- (9) A Designated Dispute Resolution Organization shall prepare and archive a dispute resolution procedures record detailing the following matters with regard to the Dispute Resolution Procedures it implemented, pursuant to the provisions of Cabinet Office Ordinance:
  - (i) the date on which the Party to the dispute related to Financial Instruments Transaction Services filed the application for Dispute Resolution Procedures;
  - (ii) the name or trade name of the Parties to the dispute related to Financial Instruments Transaction Services and the agents thereof;
  - (iii) the names of the Dispute Resolution Mediators;
  - (iv) the particulars of the Dispute Resolution Procedures;
  - (v) the results of the Dispute Resolution Procedures (including the reasons for the termination of Dispute Resolution Procedures and the date thereof); and
  - (vi) the particulars necessary for clarifying the contents of the implemented Dispute Resolution Procedures which are specified by Cabinet Office Ordinance, other than what is set forth in the preceding items.

(Interruption of Prescription)

Article 156-51 (1) If the Dispute Resolution Mediators terminate Dispute Resolution Procedures on the grounds that there is no prospect of reaching a

settlement between the Parties to a dispute related to Financial Instruments Transaction Services through Dispute Resolution Procedures, and the Party to the dispute related to Financial Instruments Transaction Services which filed the application for Dispute Resolution Procedures files an action on a claim that was subject to the Dispute Resolution Procedures within one month from the day on which that Party receives notice of the termination, the action is deemed to have been filed at the time that the claim was filed in Dispute Resolution Procedures in terms of the interruption of prescription.

- (2) The provisions of the preceding paragraph also apply if the discontinuation of Dispute Resolution Services, etc. by a Designated Dispute Resolution Organization is authorized pursuant to Article 156-60, paragraph (1) or if the designation under Article 156-39, paragraph (1) is rescinded pursuant to Article 156-61, paragraph (1) and there is a dispute related to Financial Instruments Transaction Services for which Dispute Resolution Procedures have been implemented as of the day of authorization or rescission, and the Party to the dispute related to Financial Instruments Transaction Services which has filed the application for Dispute Resolution Procedures files an action on a claim that was subject to those Dispute Resolution Procedures within one month from the day on which the Party receives the notice under Article 156-60, paragraph (3) or Article 156-61, paragraph (3), or within one month from the day on which the Party comes to know of the authorization or rescission, whichever comes earlier.

(Suspension of Court Proceedings)

Article 156-52 (1) If litigation is pending with regard to a dispute related to Financial Instruments Transaction Services between the Parties to a dispute related to Financial Instruments Transaction Services, and if any of the following grounds exist and the Parties to the dispute related to Financial Instruments Transaction Services file a joint petition, the court in charge of the case may decide to suspend the court proceedings for a fixed period of no longer than four months:

- (i) Dispute Resolution Procedures have been implemented for a dispute related to Financial Instruments Transaction Services, between the Parties to the relevant dispute related to Financial Instruments Transaction Services; and
  - (ii) in addition to the case referred to in the preceding item, the Parties to the dispute related to Financial Instruments Transaction Services reach an agreement to endeavor to resolve the dispute related to Financial Instruments Transaction Services through Dispute Resolution Procedures.
- (2) The court in charge of the case may rescind the decision referred to in the preceding paragraph at any time.
- (3) No appeal may be entered against a decision dismissing the petition referred



to in paragraph (1) or a decision rescinding the decision referred to in paragraph (1).

(Public Inspection of the Register of Member Persons and Firms Involved in Financial Instruments Transactions)

Article 156-53 A Designated Dispute Resolution Organization must make the register of member persons and firms involved in Financial Instruments Transactions available for public inspection.

(Restriction on the Use of Names)

Article 156-54 A person that is not a Designated Dispute Resolution Organization (other than a person that has obtained the designation under Article 52-62, paragraph (1) of the Banking Act or any other person specified by Cabinet Order as being similar thereto) must not use a term in its name or trade name which could give rise to the misconception that it is a Designated Dispute Resolution Organization.

### **Section 3 Supervision**

(Notification of a Change)

Article 156-55 (1) If a particular set forth in Article 156-40, paragraph (1), item (ii) to (iv) inclusive changes, the Designated Dispute Resolution Organization must notify the Prime Minister of this.

(2) If the Prime Minister is notified of a change in the trade name or name of a Designated Dispute Resolution Organization or in the location of its principal business office or office, the Prime Minister must give public notice of this in the official gazette.

(Notification of the Conclusion of a Basic Contract for the Implementation of Dispute Resolution Procedures)

Article 156-56 If a Designated Dispute Resolution Organization falls under one of the following items, it must notify the Prime Minister of this pursuant to the provisions of Cabinet Office Ordinance:

- (i) it concludes a Basic Contract for the Implementation of Dispute Resolution Procedures with a person or firm involved in Financial Instruments Transactions, or it terminates such a Basic Contract for the Implementation of Dispute Resolution Procedures; and
- (ii) cases other than what is set forth in the preceding item, which are specified by Cabinet Office Ordinance.

(Submission of Business Reports)

- Article 156-57 (1) Each business year, a Designated Dispute Resolution Organization shall prepare a report on the Dispute Resolution Services, etc. in that business year and submit it to the Prime Minister.
- (2) The particulars for inclusion in the report referred to the preceding paragraph, the submission date, and other necessary particulars are specified by Cabinet Office Ordinance.

(Collection of Reports and On-Site Inspections)

- Article 156-58 (1) If the Prime Minister finds it to be necessary for the fair and appropriate execution of Dispute Resolution Services, etc., the Prime Minister may order a Designated Dispute Resolution Organization to make reports or submit materials relevant to its business, and may have the relevant officials enter the business office, office, or any other facilities of the Designated Dispute Resolution Organization to ask questions about the state of the business of the Designated Dispute Resolution Organization or to inspect its books and documents or any other articles.
- (2) If the Prime Minister finds it to be particularly necessary for the fair and appropriate execution of Dispute Resolution Services, etc., the Prime Minister, within the scope of this necessity, may order a Designated Dispute Resolution Organization's member person or firm involved in Financial Instruments Transactions or the person that a Designated Dispute Resolution Organization has entrusted with its business, to make reports or submit materials, and may have the relevant officials enter the business office, office, or any other facilities of such persons, ask questions about the state of the business of the Designated Dispute Resolution Organization, or inspect their books and documents or any other articles.

(Business Improvement Orders)

- Article 156-59 (1) If the Prime Minister finds it to be necessary for ensuring the fair and appropriate execution of Dispute Resolution Services, etc. as concerns a Designated Dispute Resolution Organization's operation of Dispute Resolution Services, etc., the Prime Minister, within the scope of this necessity, may order the Designated Dispute Resolution Organization to take measures that are necessary for improving its business operations.
- (2) If a Designated Dispute Resolution Organization falls under one of the following items, the Prime Minister must consult with the Minister of Justice before seeking to give the order under the preceding paragraph:
- (i) it comes to no longer satisfy the requirements set forth in Article 156-39, paragraph (1), items (v) to (vii) inclusive (limited to the part that involves the operation of Dispute Resolution Procedures, the requirement set forth in item (vii) of that paragraph involving the criteria set forth in the items of

- Article 156-44, paragraph (4) or the items of paragraph (5) of that Article; hereinafter the same applies in this item), or it is found to be likely that it will come to no longer satisfy the requirements set forth in Article 156-39, paragraph (1), items (v) to (vii) inclusive; or
- (ii) it violates the provisions of Article 156-42, Article 156-43, Article 156-46, or Article 156-50 (but only if such violation is related to the operation of Dispute Resolution Procedures).

(Suspension or Discontinuation of Dispute Resolution Services, etc.)

- Article 156-60 (1) A Designated Dispute Resolution Organization must obtain the authorization of the Prime Minister if it seeks to suspend (excluding suspension on the grounds prescribed in the following paragraph) or discontinue the whole or part of the Dispute Resolution Services, etc.
- (2) If a Designated Dispute Resolution Organization suspends all or part of its Dispute Resolution Services, etc. due to a natural disaster or for any other compelling reason, it must immediately notify the Prime Minister of this, indicating that it has done so and giving the reason. The same applies when the Designated Dispute Resolution Organization recommences all or a part of the Dispute Resolution Services, etc. so suspended.
- (3) A Designated Dispute Resolution Organization that obtains the authorization for suspension or discontinuation under paragraph (1) or that implements the suspension referred to in the preceding paragraph must notify a Party for which Complaint Processing Procedures or Dispute Resolution Procedures have been implemented as of the day of the suspension or discontinuation (if the Designated Dispute Resolution Organization has been entrusted with business by another Designated Dispute Resolution Organization or by a person that has obtained a designation under the provisions of other Acts which is specified by Cabinet Order as being connected with business equivalent to Dispute Resolution Services, etc. (hereinafter collectively referred to as an "Entrusting Dispute Resolution Organization" in this paragraph), this includes procedures for processing complaints for the Entrusting Dispute Resolution Organization in connection with that entrustment and procedures for resolving disputes that have been implemented as of the day of the suspension or discontinuation; the same applies in paragraph (3) of the following Article), the member persons and firms involved in Financial Instruments Transactions that are not Parties, and other Designated Dispute Resolution Organizations, of the suspension or discontinuation, within two weeks from the day of the suspension or discontinuation. The same applies if the Designated Dispute Resolution Organization recommences all or a part of Dispute Resolution Services, etc. so suspended.

(Rescission of a Designation)

Article 156-61 (1) If a Designated Dispute Resolution Organization falls under one of the following items, the Prime Minister may rescind the designation under Article 156-39, paragraph (1) or order the suspension of all or a part of its business activities during a fixed period of no longer than six months:

- (i) it comes to no longer satisfy the requirements set forth in Article 156-39, paragraph (1), items (ii) to (vii) inclusive, or it is discovered not to have fallen under one of the items of that paragraph at the time it obtained the designation;
- (ii) it has obtained the designation under Article 156-39, paragraph (1) by wrongful means; or
- (iii) it violates a law or regulation or a disposition based on a law or regulation.

(2) If a Designated Dispute Resolution Organization falls under one of the following items, the Prime Minister must consult with the Minister of Justice before seeking to issue a disposition or order under the preceding paragraph:

- (i) it comes to no longer satisfy the requirements set forth in Article 156-39, paragraph (1), items (v) to (vii) inclusive (limited to the part that involves the operation of Dispute Resolution Procedures; the requirement set forth in item (vii) of that paragraph is limited to that which is related to the criteria set forth in the items of Article 156-44, paragraph (4) or the items of paragraph (5) of that Article; hereinafter the same applies in this item), or it is discovered not to have satisfied the requirements set forth in Article 156-39, paragraph (1), items (v) to (vii) inclusive at the time it obtained the designation under Article 156-29, paragraph (1); or
- (ii) it violates the provisions of Article 156-42, Article 156-43, Article 156-46, or Article 156-50 (but only if that violation is related to the operation of Dispute Resolution Procedures).

(3) A person that is issued a disposition for the rescission of a designation under Article 156-39, paragraph (1) or an order for the suspension of all or a part of its business activities pursuant to the provisions of paragraph (1) must notify a Party for which Complaint Processing Procedures or Dispute Resolution Procedures have been implemented as of the day of that disposition or order, the member persons and firms involved in Financial Instruments Transactions that are not Parties, and other Designated Dispute Resolution Organizations, that it has been issued the disposition or order, within two weeks from the day of the disposition or order.

(4) If the Prime Minister rescinds a designation under Article 156-39, paragraph (1) pursuant to the provisions of paragraph (1), the Prime Minister must give public notice of this in the official gazette.

## **Chapter V-6 Trade Repositories**

## **Section 1 Centralization of Clearing**

Article 156-62 If a Financial Instruments Business Operator, etc. conducts a transaction set forth in one of the following items, it must have the person prescribed in the relevant item bear its obligations and the counterparty's obligations from that transaction:

- (i) the Over-the-Counter Transactions of Derivatives and other transactions specified by Cabinet Office Ordinance as those which, in light of the transaction volume and other conditions of the transaction, if defaulted on, the default could have a material impact on Japan's capital market, and which, in consideration of the character of the transaction, need to be cleared in Japan: a Financial Instruments Clearing Organization
- (ii) the Over-the-Counter Transactions of Derivatives and other transactions specified by Cabinet Office Ordinance as those which, in light of the transaction volume and other conditions of the transaction, if defaulted on, the default could have a material impact on Japan's capital market (other than a transaction set forth in the preceding item): a Financial Instruments Clearing Organization (if the Financial Instruments Clearing Organization provides collaborative Financial Instruments Obligation Assumption Services, this includes the collaborating Clearing Organization, etc. ) or Foreign Financial Instruments Clearing Organization

## **Section 2 Archiving and Reporting Transaction Information**

(The Archiving and Reporting of Transaction Information by a Financial Instruments Clearing Organization, etc.)

Article 156-63 (1) A Financial Instruments Clearing Organization, etc. (meaning a Financial Instruments Clearing Organization or Foreign Financial Instruments Clearing Organization; hereinafter the same applies in this Section) must prepare and archive records of the particulars specified by Cabinet Office Ordinance as regards data on centrally cleared trades (meaning data on the transactions set forth in the items of the preceding Article and other transactions that are specified by Cabinet Office Ordinance in consideration of the conditions of the transaction, in which the Financial Instruments Clearing Organization, etc. bears the obligations; hereinafter the same applies in this Section), pursuant to the provisions of Cabinet Office Ordinance.

(2) A Financial Instruments Clearing Organization, etc. shall, pursuant to the provisions of Cabinet Office Ordinance, report the Transaction Information on Concentration of Clearing, etc. it has preserved to the Prime Minister.

(The Archiving and Reporting of Transaction Information by a Financial Instruments Business Operator, etc.)

- Article 156-64 (1) A Financial Instruments Business Operator, etc. shall, pursuant to the provisions of Cabinet Office Ordinance, prepare and preserve records on matters specified by Cabinet Office Ordinance on Transaction Information (meaning information on transactions specified by Cabinet Office Ordinance whose transaction status needs to be revealed for the protection of investors (excluding Transaction Information on Concentration of Clearing, etc.); hereinafter the same shall apply in this Chapter).
- (2) A Financial Instruments Business Operator, etc. shall, pursuant to the provisions of Cabinet Office Ordinance, report the Transaction Information it has preserved to the Prime Minister
- (3) The provisions of the preceding two paragraphs shall not apply to cases in which a Financial Instruments Business Operator, etc. provides, pursuant to the provisions of Cabinet Office Ordinance, Transaction Information to a Trade Repository (meaning a person who has been designated under the provision of Article 156-67, paragraph (1); the same shall apply hereinafter) or a Designated Foreign Trade Repository (meaning a person who conducts a similar business to a Trade Repository Business (meaning a business concerning the collection and preservation of Transaction Information; the same shall apply hereinafter) in a foreign state who is designated by the Prime Minister as a person expected for the Prime Minister to obtain Transaction Information to be collected and preserved by said person).

(The Archiving and Reporting of Transaction Information by Trade Repositories)

- Article 156-65 (1) A Trade Repository shall, pursuant to the provisions of Cabinet Office Ordinance, prepare and preserve records on matters specified by Cabinet Office Ordinance on Transaction Information subject to Trade Repository Business.
- (2) A Trade Repository shall, pursuant to the provisions of Cabinet Office Ordinance, report the Transaction Information it has preserved to the Prime Minister.

(Disclosure of Transaction Information)

- Article 156-66 (1) The Prime Minister is to disclose the scale of the transactions that are subject to reporting under the provisions of Article 156-63, paragraph (2), Article 156-64, paragraph (2) and paragraph (2) of the preceding Article, and particulars that are otherwise necessary for giving a clear outline of such transactions.
- (2) When the Prime Minister finds it necessary, he/she may order a Financial

Instruments Clearing Organization, etc. or a Trade Repository to publicly announce the size of transactions subject to the Transaction Information on Concentration of Clearing, etc. Transaction Information has preserved and other matters required for revealing the outline of said transactions.

### **Section 3 Trade Repositories**

(Designation of an Entity to Perform Trade Repository Services)

- Article 156-67 (1) At the application of an entity satisfying the following requirements, the Prime Minister may designate that entity as an entity that performs trade repository services pursuant to the provisions of this Section:
- (i) it is a corporation (including an organization without legal personality for which a representative or administrator has been designated and excluding a corporation incorporated based on foreign laws and regulations or any other foreign organization);
  - (ii) it does not fall under the category of an entity that has had a designation under this paragraph rescinded pursuant to Article 156-83, paragraph (1) and not yet had five years pass since the date of the rescission;
  - (iii) it does not fall under the category of an entity that has been sentenced to a fine (including an equivalent sentence under foreign laws and regulations) for violating the provisions of this Act or for violating the provisions of a foreign law or regulation that is equivalent to this Act and not yet had five years pass since the day on which it finished serving the sentence or ceased to be subject to its enforcement;
  - (iv) it has no officer (including the representative or administrator of an organization without legal personality for which a representative or administrator has been designated; hereinafter the same applies in this Section) that falls under one of the following categories of persons:
    - (a) an adult ward or a person under curatorship, or a person that is treated in the same manner under foreign laws and regulations;
    - (b) a bankrupt that has not obtained a restoration of rights, or a person that is treated in the same manner under foreign laws and regulations;
    - (c) a person that has been sentenced to imprisonment or a heavier punishment (including an equivalent sentence under foreign laws and regulations), if five years have not yet passed since the day on which the person finished serving the sentence or ceased to be subject to its enforcement;
    - (d) a person that, during the 30 days prior to the date of rescission, was the officer (including a person treated in the same manner under foreign laws and regulations; the same applies in this sub-item (e)) of a corporation (including an organization without legal personality for which a

representative or administrator has been designated and a corporation incorporated based on foreign laws and regulations or any other foreign organization), in a case in which the designation under this paragraph has been rescinded pursuant to the provisions of Article 156-83, paragraph (1) or in a case in which an administrative disposition that is similar to such a designation and that has been issued in a foreign state pursuant to the provisions of a foreign law or regulation that is equivalent to this Act, has been rescinded; if five years have not yet passed since the date of the rescission;

- (e) a person falling under the category of an officer whose dismissal has been ordered pursuant to the provisions of Article 156-83, paragraph (1) or the provisions of a foreign law or regulation that is equivalent to this Act, if five years have not yet passed since the day of the disposition; or
  - (f) a person that has been sentenced to a fine (including an equivalent sentence under foreign laws and regulations) for violating the provisions of this Act or for violating the provisions of a foreign law or regulation that is equivalent to this Act, if five years have not yet passed since the day on which the person finished serving the sentence or ceased to be subject to its enforcement.
  - (v) the relevant entity has a sufficient financial basis to soundly perform trade repository services, and has good prospects in terms of expected income and expenditures in connection with the trade repository services; and
  - (vi) in light of its personnel structure, the relevant entity is found to have sufficient knowledge and experience for conducting trade repository services properly and reliably, and to have sufficient social credibility.
- (2) Upon making a designation under the preceding paragraph, the Prime Minister must make public notice of the trade name or name and the location of the principal business office or office of the trade repository, and of the day on which the Prime Minister made that designation, in the official gazette.

(Application for Designation)

Article 156-68 (1) An entity seeking designation under paragraph (1) of the preceding Article must submit a written application for designation to the Prime Minister, in which it states the following particulars:

- (i) its trade name or name;
- (ii) the name and location of its principal business office or office and any other business offices or offices for trade repository services;
- (iii) the names or trade names of its officers;
- (iv) transactions subject to trade repository services; and
- (v) if the entity conducts business other than trade repository services and business incidental to trade repository services, the outline of that business.



- (2) The following documents must accompany the written application for designation referred to in the preceding paragraph:
- (i) a document pledging that the applicant satisfies the requirements set forth in items (iii) and (iv) of paragraph (1) of the preceding Article;
  - (ii) the articles of incorporation and certificate of registered matters of the corporation (including those equivalent thereto);
  - (iii) its Operational Rules;
  - (iv) an inventory of assets, balance sheet, profit and loss statement or income statement, and business report;
  - (v) documents stating expected income and expenditures; and
  - (vi) documents other than what is set forth in the preceding items, which are specified by Cabinet Office Ordinance.
- (3) In the case referred to in the preceding paragraph, if the articles of incorporation, inventory of assets, balance sheet, profit and loss statement or income statement, or business report has been prepared as an electronic or magnetic record, such electronic or magnetic record may accompany the written application for designation in lieu of the written document.

(Restriction on the Concurrent Holding of Positions by the Officers of a Trade Repository)

Article 156-69 Unless the representative of a trade repository or an officer engaging in its day-to-day business obtains the authorization of the Prime Minister to do so, it is prohibited for that representative or officer to become the representative of a Financial Instruments Business Operator, etc. or other corporation specified by Cabinet Office Ordinance or engage in its day-to-day business, or for that representative or officer to engage in Financial Instruments Business or any other business specified by Cabinet Office Ordinance.

(Duty of Confidentiality)

Article 156-70 It is prohibited for the officer or employee of a trade repository or a person that has held one of these positions to divulge or misappropriate any secret learned in connection with trade repository services.

(The Services of a Trade Repository)

Article 156-71 A trade repository is to conduct trade repository services pursuant to the provisions of this Section and its Operational Rules.

(Restriction on Concurrent Business)

Article 156-72 (1) A trade repository may not conduct business other than trade repository services and business incidental thereto; provided, however, that

this does not apply if the trade repository has obtained the approval of the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance, for business that is found to be unlikely to compromise the trade repository's ability to properly and reliably conduct trade repository services.

- (2) If a trade repository discontinues business for which it has obtained the approval referred to in the proviso to the preceding paragraph, that approval ceases to be valid. In such a case, the trade repository must notify the Prime Minister of this pursuant to the provisions of Cabinet Office Ordinance.
- (3) If the written application for designation referred to in Article 156-68, paragraph (1) states that the applicant will conduct business other than trade repository services and business incidental thereto, and the applicant has received a designation under the provisions of Article 156-67, paragraph (1), the applicant is deemed to have obtained the approval referred to in the proviso to paragraph (1) for conducting that business.

#### (Entrustment of Part of Trade Repository Services)

Article 156-73 (1) A trade repository may entrust a part of trade repository services to another party with the approval of the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance.

- (2) A person that takes on an entrustment under the provisions of the preceding paragraph may further entrust a part of the trade repository services with which it is entrusted, with the consent of the entrusting trade repository.
- (3) A person that takes on an entrustment under the provisions of the preceding paragraph may further entrust a part of the trade repository services with which it is entrusted, with the consent of the person taking on the entrustment provided for in that paragraph and the trade repository referred to in that paragraph.

#### (Approval of the Operational Rules)

Article 156-74 (1) A trade repository must establish Operational Rules in respect of the following matters relevant to its trade repository services and obtain the authorization of the Prime Minister for them. The same applies if the trade repository seeks to change the Operational Rules:

- (i) matters relevant to conclusion of a contract with a Financial Instruments Business Operator, etc. to be provided with Transaction Information (hereinafter referred to as "Contract for Collection of Trade Information");
- (ii) matters relevant to the transactions that are subject to trade repository services;
- (iii) matters relevant to the collection and archiving of Transaction Information;
- (iv) matters relevant to preventing the improper disclosure, loss, or damage of

- Transaction Information, and other matters relevant to the secure management of Transaction Information;
  - (v) matters relevant to ensuring the accuracy of transaction information;
  - (vi) matters relevant to fees;
  - (vii) if it entrusts a part of trade repository services to another party, matters relevant to the measures for ensuring that the entrusted business is performed properly and reliably; and
  - (viii) in addition to what is listed in the preceding items, matters specified by Cabinet Office Ordinance as those necessary for the implementation of Trade Repository Business.
- (2) The Operational Rules on the matters set forth in item (vi) of the preceding paragraph must have as their content that the fees for trade repository services are to be fair and proper in light of reasonable costs under efficient business operations.
- (3) If the Prime Minister finds that Operational Rules for which the Prime Minister has given the approval referred to in paragraph (1) have become inappropriate from the perspective of the proper and reliable implementation of trade repository services, the Prime Minister may order the trade repository to change those Operational Rules.

(Prohibition on Differential Treatment)

Article 156-75 A trade repository must not subject any particular Financial Instruments Business Operator, etc. to unfairly differential treatment.

(Restriction on the Use of Names)

Article 156-76 A person that is not a trade repository must not use a term in its name or trade name which could give rise to the misconception that it is a trade repository.

(Notification of a Change)

- Article 156-77 (1) If a particular set forth in Article 156-68, paragraph (1), items (i) to (iii) inclusive changes, the trade repository must notify the Prime Minister of this.
- (2) If the Prime Minister is notified of a change in the trade name or name of a trade repository or in the location of its principal business office or office pursuant to the provisions of the preceding paragraph, the Prime Minister must give public notice of this in the official gazette.

(Notification of the Commencement of Approved Concurrent Business)

Article 156-78 (1) When a trade repository commences business for which it has obtained the approval referred to in the proviso to paragraph (1) of Article 156-

72, it must notify the Prime Minister of this pursuant to the provisions of Cabinet Office Ordinance.

- (2) When the representative or an officer engaged in the day-to-day business of a trade repository who has been granted the authorization referred to in Article 156-69 becomes the representative of the corporation for which that authorization has been granted or comes to engage in that corporation's day-to-day business, or when such a representative or officer commences the business for which that authorization has been granted, the representative or officer shall notify the Prime Minister of this pursuant to the provisions of Cabinet Office Ordinance.
- (3) If a trade repository changes the articles of incorporation (including anything equivalent to these) or when specified by Cabinet Office Ordinance, the trade repository must notify the Prime Minister of this, pursuant to the provisions of Cabinet Office Ordinance.

(Submission of Business and Asset Reports)

Article 156-79 (1) Each business year, a trade repository shall prepare a report on its business and assets in the relevant business year and submit it to the Prime Minister.

- (2) The particulars for inclusion in the report referred to in the preceding paragraph, the submission date, and other necessary particulars relevant to the preparation and submission of such a report, are specified by Cabinet Office Ordinance.

(Collection of Reports and Inspections)

Article 156-80 Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order a trade repository, a person that has concluded a Contract for Collection of Trade Information with a trade repository, or a person that has taken on the entrustment under the provisions of the paragraphs of Article 156-73, to report or submit materials that should serve as a reference with regard to the business or assets of the trade repository, and may have the relevant officials inspect the state of the business or assets, or the books and documents or any other articles, of a trade repository or a person that has taken on the entrustment under the provisions of the paragraphs of that Article (but may only have the relevant officials inspect a person that has taken on the entrustment under the provisions of the paragraphs of that Article as is necessary in connection with the business or assets of the trade repository).

(Business Improvement Orders)

Article 156-81 If the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors as concerns a trade repository's operation of trade repository services or the state of its assets, the Prime Minister, within the scope of this necessity, may order the trade repository to take measures that are necessary for improving its business operations or the state of its assets.

(Suspension or Discontinuation of Trade Repository Services)

Article 156-82 (1) A trade repository must obtain the authorization of the Prime Minister if it seeks to suspend (excluding a suspension on the grounds prescribed in the following paragraph) the whole or part of its trade repository services or to discontinue its trade repository services.

(2) If a trade repository suspends all or part of its trade repository services due to a natural disaster or for any other compelling reason, it must immediately notify the Prime Minister of this, indicating that it has done so and giving the reason, as well as notifying persons with which the trade repository has concluded a Contract for Collection of Trade Information. The same applies when the trade repository recommences all or part of the trade repository services so suspended.

(Rescission of a Designation)

Article 156-83 (1) If a trade repository falls under one of the following items, the Prime Minister may rescind the designation under Article 156-67, paragraph (1) or the approval set forth in the proviso to Article 156-72, paragraph (1), order the suspension of all or a part of its business activities during a fixed period of no longer than six months, or order the dismissal of its officers:

- (i) it comes to no longer satisfy the requirements set forth in Article 156-67 paragraph (1), items (iii) to (vi) inclusive, or it is discovered not to have fallen under one of the items of that paragraph at the time it obtained the designation;
- (ii) it has obtained the designation under Article 156-67, paragraph (1) by wrongful means; or
- (iii) it violates a law or regulation or a disposition that is based on a law or regulation.

(2) If the Prime Minister rescinds a designation under Article 156-67, paragraph (1) pursuant to the provisions of the preceding paragraph, the Prime Minister must make a public notice of this in the official gazette.

(Order to Transfer Trade Repository Services)

Article 156-84 (1) If a trade repository falls under one of the following items, the Prime Minister may order the trade repository to have all or part of its trade

repository services conducted by another trade repository:

- (i) the Prime Minister rescinds its designation under Article 156-67, paragraph (1) rescinded pursuant to the provisions of paragraph (1) of the preceding Article or orders it to suspend all or a part of its business activities (limited to trade repository services);
  - (ii) the Prime Minister grants the authorization referred to in Article 156-82, paragraph (1);
  - (iii) it is found to be likely for circumstances to occur in which the payment of debt that is due and payable substantially compromises the continuation of trade repository services, or for a fact to occur that causes the commencement of bankruptcy proceedings; or
  - (iv) it has become difficult for the trade repository to implement all or part of its trade repository services due to a natural disaster or any other reason.
- (2) If the Prime Minister issues an order under the provisions of the preceding paragraph, the Prime Minister must make a public notice of this in the official gazette.

## **Chapter V-7 Specified Financial Indicator Calculation Agents**

(Designation of Specified Financial Indicator Calculation Agent)

- Article 156-85 (1) When the Prime Minister finds that securing appropriate performance of Specified Financial Indicator Calculation Business (meaning the business of calculating and publicizing Specified Financial Indicators; the same applies hereinafter) conducted by a person engaged in Specified Financial Indicator Calculation Business is necessary for the public interest or protection of investors, the Prime Minister may designate said person as a Specified Financial Indicator Calculation Agent.
- (2) When the Prime Minister makes designation under the provision of the preceding paragraph (hereinafter simply referred to as "Designation" in this Chapter), the Prime Minister must give written notice to that effect and of the name of the Specified Financial Indicator(s) subject to the Designation to the Specified Financial Indicator Calculation Agent.
- (3) When the Prime Minister makes Designation, the Prime Minister must give public notice of the trade name or name and the location of the head office or principal business office or office of the Specified Financial Indicator Calculation Agent (in the case of a foreign person who has a business office or office in Japan, including the location of its principal business office or office in Japan; the same applies in paragraph (1), item (iv) of the following Article), and the name of the Specified Financial Indicator(s) subject to the Designation in the official gazette. The same applies in the event of any changes in the foregoing matters.

- (4) When the Prime Minister determines that the reason for Designation of a Specified Financial Indicator Calculation Agent no longer exists, the Prime Minister must rescind such Designation and give written notice to that effect to the Specified Financial Indicator Calculation Agent.
- (5) When the Prime Minister rescinds Designation under the provision of the preceding paragraph, the Prime Minister must give public notice to that effect in the official gazette.
- (6) When a person engaged in Specified Financial Indicator Calculation Business is a person specified by Cabinet Office Ordinance as a person who is found to be under appropriate supervision with respect to its Specified Financial Indicator Calculation Business by a foreign administrative organization or any other equivalent organization based on foreign laws and regulations, the Prime Minister is not to make Designation, notwithstanding the provision of paragraph (1).

(Notification)

Article 156-86 (1) A Specified Financial Indicator Calculation Agent shall submit a document to the Prime Minister in which it states the following particulars, within the period specified by Cabinet Order from the day it became subject to Designation; provided, however, that this does not apply if the Specified Financial Indicator Calculation Agent discontinues the Specified Financial Indicator Calculation Business subject to the Designation within such period:

- (i) its trade name or name;
  - (ii) the amount of stated capital or total amount of contributions, if it is a corporation;
  - (iii) the names of its officers, if it is a corporation;
  - (iv) the name and location of its head office, principal business office or principal office; and
  - (v) other particulars specified by Cabinet Office Ordinance.
- (2) The articles of incorporation, the certificate of registered information, and other documents specified by Cabinet Office Ordinance must accompany the document referred to in the preceding paragraph.
  - (3) As concerns the documents set forth in the preceding paragraph accompanying the document under paragraph (1), if the articles of incorporation have been prepared as electronic or magnetic records, such electronic or magnetic records (limited to those specified by Cabinet Office Ordinance) may accompany that document in lieu of written documents.
  - (4) If a particular set forth in one of the items of paragraph (1) changes, the Specified Financial Indicator Calculation Agent must notify the Prime Minister of this, pursuant to the provisions of Cabinet Office Ordinance.

(Operational Rules)

- Article 156-87 (1) A Specified Financial Indicator Calculation Agent must formulate Operational Rules concerning Specified Financial Indicator Calculation Business pursuant to the provisions of Cabinet Office Ordinance and obtain authorization from the Prime Minister within the period specified by Cabinet Order from the day of receiving Designation.
- (2) The Operational Rules set forth in the preceding paragraph must provide for the following matters and any other matters specified by Cabinet Office Ordinance:
- (i) matters concerning the policy and method of calculation and publication of Specified Financial Indicators;
  - (ii) matters concerning the operational control system for the proper execution of Specified Financial Indicator Calculation Business;
  - (iii) rules to be observed by a person who provides Calculation Basis Data (meaning the calculation basis data prescribed in Article 38, item (vii); the same applies in Article 156-89, paragraph (2)) to the Specified Financial Indicator Calculation Agent (such person is referred to as a "Data Provider" in the following item and Article 156-89, paragraph (2), and such rules are referred to as the "Code of Conduct" in the following item);
  - (iv) matters concerning the conclusion of a contract (including a contract pertaining to the Code of Conduct) with a Data Provider;
  - (v) matters concerning entrustment of Specified Financial Indicator Calculation Business;
  - (vi) matters concerning audits pertaining to Specified Financial Indicator Calculation Business;
  - (vii) matters concerning public inspection of explanatory documents pertaining to Specified Financial Indicator Calculation Business; and
  - (viii) matters concerning suspension or discontinuation of Specified Financial Indicator Calculation Business.
- (3) When a Specified Financial Indicator Calculation Agent intends to change its Operational Rules, it must obtain authorization from the Prime Minister.
- (4) After obtaining the authorization set forth in paragraph (1) or the preceding paragraph for its Operational Rules, a Specified Financial Indicator Calculation Agent must conduct its Specified Financial Indicator Calculation Business pursuant to the provisions of the Operational Rules.

(Notification of Suspension or Discontinuation)

- Article 156-88 If a Specified Financial Indicator Calculation Agent seeks to suspend or discontinue its Specified Financial Indicator Calculation Business, it must notify the Prime Minister of this in advance, pursuant to the provisions of Cabinet Office Ordinance.



(Collection of Reports and Inspections)

Article 156-89 (1) Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order a Specified Financial Indicator Calculation Agent or the person that the Specified Financial Indicator Calculation Agent has entrusted with its business (including a person who has received entrustment from such person (including entrustment via two or more layers); hereinafter the same shall apply in this paragraph), to submit reports or materials that should serve as a reference in connection with the Specified Financial Indicator Calculation Business, and may have the relevant officials inspect the state of the business, or the books and documents or any other articles, of the Specified Financial Indicator Calculation Agent or the person that the Specified Financial Indicator Calculation Agent has entrusted with its business (but may only have the relevant officials inspect the Specified Financial Indicator Calculation Agent as is necessary in connection with the Specified Financial Indicator Calculation Business).

(2) Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister, within the scope that is found to be necessary for confirming the accuracy of the Calculation Basis Data provided to a Specified Financial Indicator Calculation Agent, may order the Data Provider to submit reports or materials that should serve as a reference in connection with the Calculation Basis Data, and may have the relevant officials inspect the state of the business, or the books and documents or any other articles, of the Data Provider.

(Improvement Orders, etc.)

Article 156-90 (1) If the Prime Minister finds that improvement is needed in connection with operations of a Specified Financial Indicator Calculation Business, the Prime Minister, within the scope of this necessity, may order the Specified Financial Indicator Calculation Agent to take measures that are necessary for this improvement.

(2) If a Specified Financial Indicator Calculation Agent violates a law or regulation or a disposition based on a law or regulation in connection with its Specified Financial Indicator Calculation Business, the Prime Minister may order the suspension of all or part of its business activities during a fixed period of no longer than six months.

(3) If the Prime Minister orders the suspension of all or part of business activities pursuant to the provisions of the preceding paragraph, the Prime Minister shall issue public notice of this in the official gazette.

(4) Irrespective of the category of proceeding for hearing statements of opinion

under Article 13, paragraph (1) of the Administrative Procedure Act, before seeking to issue a disposition based on the provisions of paragraph (1) or (2), the Prime Minister must conduct a hearing.

(Recommendation to Transfer Business)

Article 156-91 If a Specified Financial Indicator Calculation Agent seeks to suspend or discontinue its Specified Financial Indicator Calculation Business or in any other case specified by Cabinet Office Ordinance, the Prime Minister may recommend the Specified Financial Indicator Calculation Agent to have all or part of its Specified Financial Indicator Calculation Business conducted by another person.

(Delegation to Cabinet Office Ordinance)

Article 156-92 Procedures for the implementation of the provisions of Article 156-85 to the preceding Article inclusive and particulars that are otherwise necessary for their implementation are specified by Cabinet Office Ordinance.

## **Chapter VI Regulations on Securities Transactions**

(Prohibition of Wrongful Acts)

Article 157 It is prohibited for any person to engage in the following acts:

- (i) using wrongful means, schemes, or techniques in a purchase and sale or other transaction of Securities or in a Derivatives Transaction, etc.;
- (ii) acquiring money or other property through the use of a document, or by giving any other indication, that contains a false representation about a material particular or that omits a representation as to a material particular that is necessary to prevent it from being misleading, with regard to the purchase and sale or other transaction of Securities or a Derivatives Transaction, etc.; or
- (iii) using false quotations in order to induce a purchase and sale or other transaction of Securities or a Derivatives Transaction, etc.

(Prohibition on the Spreading of Rumors, the Use of Fraudulent Means, and Assault and Intimidation)

Article 158 It is prohibited for any person to spread rumors, to use fraudulent means, or to commit assault or use intimidation for the purpose of carrying out a Public Offering, Secondary Distribution, purchase and sale or other transaction of Securities, or a Derivatives Transaction, etc. or for the purpose of causing a fluctuation in the market price of a Security, etc. (meaning a Security, an Option, or a Financial Instrument (other than a Security) or Financial Indicator that is connected with a Derivatives Transaction; the same

applies in Article 168, paragraph (1), Article 173, paragraph (1) and Article 197, paragraph (2)).

(Prohibition on Market Manipulation)

Article 159 (1) It is prohibited for any person to engage in one of the following acts with the aim of misleading others into believing that purchase and sales of Securities (limited to purchase and sales of Securities that are listed on a Financial Instruments Exchange, Over-the-Counter Traded Securities, or Tradable Securities; hereinafter the same applies in this Article), Market Transactions of Derivatives, or Over-the-Counter Transactions of Derivatives (limited to those involving Financial Instruments listed on a Financial Instruments Exchange, Over-the-Counter Traded Securities, or Tradable Securities (including Financial Indicators calculated based on their prices or interest rates) or Financial Indicators that are listed on a Financial Instruments Exchange; hereinafter the same applies in this Article) are thriving, or otherwise misleading others about the state of these transactions:

- (i) conducting a false purchase and sale of Securities, a false Market Transaction of Derivatives (limited to one specified in Article 2, paragraph (21), item (i)), or a false Over-the-Counter Transaction of Derivatives (limited to one specified in Article 2, paragraph (22), item (i)) without the intent to transfer the rights;
- (ii) conducting a false Market Transaction of Derivatives (limited to one specified in Article 2, paragraph (21), items (ii) and (iv) to (v) inclusive) or a false Over-the-Counter Transaction of Derivatives (limited to one specified in Article 2, paragraph (22), items (ii), (v) and (vi)) without the intent to pay or receive money;
- (iii) conducting a false Market Transaction of Derivatives (limited to one specified in Article 2, paragraph (21), item (iii)) or a false Over-the-Counter Transaction of Derivatives (limited to one specified in Article 2, paragraph (22), item (iii) or (iv)) without the intent to grant or acquire the Options;
- (iv) selling Financial Instruments (limited to a sale conducted through a transaction set forth in Article 2, paragraph (21), item (i) or paragraph (22), item (i) of that Article, if they are Financial Instruments other than Securities) after colluding in advance with another party that promises to purchase the Financial Instruments at the same price and around the same time as the sale (limited to a purchase conducted through a transaction set forth in Article 2, paragraph (21), item (i) or paragraph (22), item (i) of that Article, if they are Financial Instruments other than Securities);
- (v) purchasing Financial Instruments (limited to sales conducted through Market Transactions of Derivatives (limited to transactions listed in Article 2, paragraph (21), item (i)) in the case of Commodities and limited to a

- purchase conducted through a transaction set forth in Article 2, paragraph (21), item (i) or paragraph (22), item (i) of that Article, if they are Financial Instruments other than Securities) after colluding in advance with another party that promises to sell the Financial Instruments at the same price and around the same time as the purchase (limited to sales conducted through Market Transactions of Derivatives (limited to transactions listed in paragraph (21), item (i) of that Article) in the case of Commodities and limited to a sale conducted through a transaction set forth in Article 2, paragraph (21), item (i) or paragraph (22), item (i) of that Article, if they are Financial Instruments other than Securities);
- (vi) making an offer in connection with a Market Transaction of Derivatives (limited to one set forth in Article 2, paragraph (21), item (ii)) or an Over-the-Counter Transaction of Derivatives (limited to one set forth in paragraph (22), item (ii) of that Article) after colluding in advance with another party that promises to become the other party to the transaction at around the same time as the offer and at the same Agreed Figure as in the offered transaction;
  - (vii) making an offer in connection with a Market Transaction of Derivatives (limited to one set forth in Article 2, paragraph (21), item (iii)) or an Over-the-Counter Transaction of Derivatives (limited to one set forth in paragraph (22), item (iii) or (iv) of that Article) after colluding in advance with another party that promises to become the other party to the transaction at around the same time as the offer and for the same amount of consideration as in the offered transaction;
  - (viii) making an offer in connection with a Market Transaction of Derivatives (limited to one set forth in Article 2, paragraph (21), items (iv) to (v) inclusive) or Over-the-Counter Transaction of Derivatives (limited to one set forth in paragraph (22), item (v) or (vi) of that Article) after colluding in advance with another party that promises to become the other party to the transaction at around the same time as the offer and with the same conditions as in the offered transaction; or
  - (ix) entrusting, etc. a person, etc. with an act set forth in the preceding items or becoming entrusted, etc. with such an act.
- (2) It is prohibited for any person to engage in one of the following acts for the purpose of inducing purchase and sales of Securities, Market Transactions of Derivatives, or Over-the-Counter Transactions of Derivatives (hereinafter referred to "Purchase and Sales of Securities, etc." in this Article):
- (i) conducting a series of Purchase and Sales of Securities, etc. that are likely to mislead a person into believing that Purchase and Sales of Securities, etc. are thriving or to cause fluctuations in market prices of listed Financial Instruments, etc. (meaning Financial Instruments, Financial Indicators, or

- Options listed on a Financial Instruments Exchange Market; hereinafter the same applies in this Article) on a Financial Instruments Exchange Market or prices of Over-the-Counter Traded Securities on an Over-the-Counter Securities Market; offering to conduct such transactions; entrusting, etc. a person with conducting such transactions; or becoming entrusted, etc. with conducting such transactions;
- (ii) spreading a rumor that market prices of listed Financial Instruments, etc. on a Financial Instruments Exchange Market or market prices of Over-the-Counter Traded Securities on an Over-the-Counter Securities Market will fluctuate due to one's own or another party's market manipulation; or
  - (iii) intentionally making a false representation about a material particular or a representation that is likely to mislead, in conducting a Purchase and Sale of Securities, etc.
- (3) It is prohibited for any person to effect a series of Purchase and Sales of Securities, etc., to offer to conduct such transactions, to entrust, etc. a person with conducting such transactions, or to become entrusted, etc. with conducting such transactions, for the purpose of pegging, fixing, or stabilizing market prices of listed Financial Instruments, etc. on a Financial Instruments Exchange Market or the market prices of Over-the-Counter Traded Securities on an Over-the-Counter Securities Market, in a way that constitutes a violation of the provisions of Cabinet Order.

(Compensatory Liability for Market Manipulation)

- Article 160 (1) A person that violates the provisions of the preceding Article is liable to compensate for damages from purchase and sales of Securities on a Financial Instruments Exchange Market, Market Transactions of Derivatives, purchase and sales of Securities on an Over-the-Counter Securities Market, and purchase and sales of Tradable Securities (hereinafter referred to "Purchase and Sales of Securities, etc. on a Financial Instruments Exchange Market, etc." in this paragraph) in connection with a Financial Instrument, Financial Indicator, or Option whose price, Agreed Figure, or amount receivable the person formed through that violation, which damages are incurred by any person that conducts, or entrusts another person with conducting, such a Purchase and Sale of Securities, etc. on a Financial Instruments Exchange Market, etc. at the so-formed price, Agreed Figure, or amount of compensation.
- (2) A claim for compensation under the preceding paragraph extinguishes by prescription if it is not exercised within one year from when the claimant learns that an act that is in violation of the provisions of the preceding Article has taken place or within three years from when the act takes place.

(Restriction on Transactions by a Financial Instruments Business Operator on Its Own Account)

Article 161 (1) The Prime Minister may specify, in Cabinet Office Ordinance, matters that the Prime Minister finds to be necessary and appropriate for ensuring the public interest or the protection of investors, in order to restrict the purchase and sale of the Securities that a Financial Instruments Business Operator, etc. or Authorized Operator for On-Exchange Transactions conducts on its own account, or restrict a Financial Instruments Business Operator, etc. or Authorized Operator for On-Exchange Transactions from conducting excessive volumes of purchase and sales which are found to be detrimental to the order of the Financial Instruments Exchange Market or the Over-the-Counter Securities Market.

(2) The provision of the preceding paragraph shall apply mutatis mutandis to Market Transactions of Derivatives and Over-the-Counter Transactions of Derivatives.

(3) The Prime Minister may specify the matters by Cabinet Office Ordinance, which are found to be necessary and appropriate to secure the public interest or protection of investors, in order to restrict Commodity-Related Market Transactions of Derivatives to be conducted by a Commodity Trading Participant on its own account, or restrict excessive volumes of transactions to be conducted by a Commodity Trading Participant if such transactions are found to disturb the order of a Financial Instruments Exchange Market.

(Depositing Money for Margin Transactions)

Article 161-2 (1) In a margin transaction or other transaction specified by Cabinet Office Ordinance, a Financial Instruments Business Operator, pursuant to the provisions of Cabinet Office Ordinance, must receive money that a customer deposits with it in an amount not less than that arrived at by multiplying the market value of the Securities for which the transaction is to be effected by the rate decided by the Prime Minister with a view to ensuring fairness in purchase and sales and other transactions of Securities.

(2) Securities may serve as the money referred to in the preceding paragraph, pursuant to the provisions of Cabinet Office Ordinance.

(Prohibition of Short Selling and Stop Orders)

Article 162 (1) It is prohibited for any person to engage the following acts in a way that constitutes a violation of Cabinet Order:

- (i) selling Securities without having them or by borrowing them (including cases specified by Cabinet Order as being equivalent thereto), entrusting, etc. a person with such a sale, or becoming entrusted, etc. with such a sale; or
- (ii) entrusting, etc. a person with making an immediate purchase of Securities

if the market price rises above the market price at the time of entrustment to at least the level that the entrusting person indicates, or with making an immediate sale of Securities if the market price falls below the market price at the time of entrustment to at least the level that the entrusting person indicates.

- (2) The provisions of item (ii) of the preceding paragraph apply mutatis mutandis to transactions specified in Article 2, paragraph (21), items (ii) and (iii). In this case, with regard to a transaction set forth in Article 2, paragraph (21), item (ii), in item (ii) of the preceding paragraph, the term "Securities" is deemed to be replaced with "the Agreed Figure," the term "rises" is deemed to be replaced with "goes up to", the phrase "purchase of" is deemed to be replaced with "transaction, so that the entrusting person will receive money in the event that the Actual Figure rises above", the term "falls" is deemed to be replaced with "goes down to", and the phrase "sale of" is deemed to be replaced with "transaction, so that the entrusting person will receive money in the event that the Actual Figure falls below"; and with regard to a transaction set forth in Article 2, paragraph (21), item (iii), in item (ii) of the preceding paragraph, the term "Securities" is deemed to be replaced with "Options," the phrase "purchase of" is deemed to be replaced with "transaction wherein the entrusting party will acquire", and the phrase "sale of" is deemed to be replaced with "transaction wherein the entrusting party will grant".

(Regulation of the Purchase and Sale of Listed or Over-the-Counter Traded Share Certificates by the Issuer of These Shares)

Article 162-2 The Prime Minister, through Cabinet Office Ordinance, may stipulate the particulars that the Prime Minister finds to be necessary and appropriate for preventing manipulation of the market price of share certificates listed on a Financial Instruments Exchange or share certificates falling under the category of Over-the-Counter Traded Securities or other Securities specified by Cabinet Order (hereinafter such share certificates are collectively referred to as "Listed or Over-the-Counter Traded Share Certificates, etc." in this Article) or for ensuring fairness in transactions of Listed or Over-the-Counter Traded Share Certificates, etc., with regard to a company that issues Listed or Over-the-Counter Traded Share Certificates, etc. effecting a purchase and sale of Listed or Over-the-Counter Traded Share Certificates under Article 156, paragraph (1) of the Companies Act (including as it applies through the replacement of certain terms pursuant to the provisions of Article 163 or Article 165, paragraph (3) of that Act), Article 199, paragraph (1) of that Act (including the provisions of laws and regulations specified by Cabinet Order as being equivalent thereto) (but only if the company seeks to solicit persons to subscribe for treasury shares it disposes of),

or a foreign law or regulation that is equivalent to these provisions (but only if the Issuer is a foreign person), or entrusting, etc. a person with such a purchase and sale; with regard to a Trust Company, etc., based on a trust contract, becoming entrusted, etc. with effecting such transactions on the account of a company that issues Listed or Over-the-Counter Traded Share Certificates, etc.; with regard to a Financial Instruments Business Operator or an Authorized Operator for On-Exchange Transactions becoming entrusted, etc. with effecting such transactions; and with regard to anything else that is specified by Cabinet Office Ordinance.

(Submission of Reports on Purchase and Sales of Specified Securities, etc. by the Officer of a Listed Company, etc.)

Article 163 (1) When with regard to the Issuer of Securities specified in Article 2, paragraph (1), item (v), (vii), (ix) or (xi) which are listed in a Financial Instruments Exchange or falling under the category of Over-the-Counter Traded Securities or Tradable Securities (except those specified by Cabinet Order) or of any other Securities designated by Cabinet Order (hereinafter the Issuer is referred to as a "Listed Company, etc." in this Article to Article 166 inclusive and Article 167-2, paragraph (1)), an Officer (including an Officer of an Asset Management Company (meaning the Asset Management Company prescribed in Article 2, paragraph (21) of the Act on Investment Trusts and Investment Corporations; the same shall apply in Article 166) of a Listed Company, etc. which is the investment corporation prescribed in Article 2, paragraph (12) of that Act (referred to as a "Listed Investment Corporation, etc." in Article 166); hereinafter the same shall apply in this Article to Article 165 inclusive) or a Major Shareholder (meaning a shareholder who holds voting rights (excluding those specified by Cabinet Office Ordinance in consideration of the manner of acquisition or holding thereof or other circumstances) exceeding 10 percent of the Voting Rights Held by All the Shareholders, etc. in the name of him/herself or another person (or under a fictitious name); hereinafter the same shall apply in this Article to Article 166 inclusive) of the Listed Company, etc. makes Purchase, etc. of Securities issued by the Listed Company, etc. which fall under any of the categories of Securities specified in Article 2, paragraph (1), item (v), (vii), (ix) or (xi) (excluding those specified by Cabinet Order) or any other Securities specified by Cabinet Order (hereinafter such Securities are referred to as "Specified Securities" in this Article to Article 166 inclusive) or Securities specified in Article 2, paragraph (1), item (xix) which indicate Options pertaining to Specified Securities of the Listed Company, etc. or other Securities specified by Cabinet Order (hereinafter such Securities are referred to as "Related Securities" in this paragraph) (the term "Purchase, etc." means purchase of Specified Securities and Related Securities



(hereinafter these Securities are collectively referred to as "Specified Securities, etc." in this Article to Article 166 inclusive, Article 167-2, paragraph (1), Article 175-2, and Article 197-2, item (xiv)) and other transaction specified by Cabinet Order; hereinafter the same shall apply in this Article, the following Article and Article 165-2) or makes Sales, etc. thereof (meaning sales of Specified Securities, etc. and other transaction specified by Cabinet Order; hereinafter the same shall apply in this Article to Article 165-2 inclusive), on his/her own account (including the cases where the trustee of a trust of which said Officer or said Major Shareholder is the settlor or beneficiary makes Purchase, etc. or Sales, etc. of Specified Securities, etc. of the Listed Company, etc. as specified by Cabinet Office Ordinance; hereinafter the same shall apply in this and the following Articles), said Officer or said Major Shareholder shall submit, pursuant to the provisions of Cabinet Office Ordinance, a report on such sales or purchase or other transaction (hereinafter referred to as "Sales and Purchase, etc." in this paragraph, the following Article and Article 165-2) to the Prime Minister on or before the 15th day of the month following the month which includes the day of such Sales and Purchase, etc.; provided, however, that this shall not apply to the cases so specified by Cabinet Office Ordinance in consideration of the manner of the Purchase, etc. or Sales, etc. or other circumstances.

- (2) If the officer or major shareholder prescribed in the preceding paragraph effects a purchase, etc. or sale, etc. of the Specified Securities, etc. of the Listed Company, etc. by entrusting, etc. a Financial Instruments Business Operator, etc. or Authorized Operator for On-Exchange Transactions with doing so, the report prescribed in the preceding paragraph is to be submitted via the Financial Instruments Business Operator, etc. or Authorized Operator for On-Exchange Transactions. The same applies if the other party to the purchase, etc. or sale, etc. is a Financial Instruments Business Operator, etc. or Authorized Operator for On-Exchange Transactions.

(Restitution by the Officer of a Listed Company, etc. of Profits Arising from Short-Term Purchase and Sales)

Article 164 (1) In order to prevent wrongful use by the officer or major shareholder of a Listed Company, etc. of any secret information acquired in the course of duty or by virtue of position, a Listed Company, etc. may request an officer or major shareholder that effects a sale, etc. of Specified Securities, etc. of the Listed Company, etc. within six months after having effected a purchase, etc. of them on the officer's or major shareholder's own account, or an officer or major shareholder that effects a purchase, etc. of Specified Securities, etc. of the Listed Company, etc. within six months after having effected the sale, etc. of them on the officer's or major shareholder's own account, to provide the

Listed Company, etc. with any profit earned therefrom.

- (2) If a Listed Company, etc. fails to make a request under the preceding paragraph within 60 days from the day on which a shareholder (including a member that is an insurance policy holder, an equity investor, or an investor (meaning an investor as prescribed in Article 2, paragraph (16) of the Act on Investment Trusts and Investment Corporations and including a member of the foreign investment corporation prescribed in paragraph (25) of that Article); hereinafter the same applies in this paragraph) of the Listed Company, etc. demands that the Listed Company, etc. make the request under the preceding paragraph, the shareholder may make the request in subrogation of the Listed Company, etc.
- (3) The right to make a request of the officer or major shareholder of a Listed Company, etc. pursuant to the preceding two paragraphs extinguishes by prescription if that right is not exercised within two years from the time the profit is made.
- (4) If the Prime Minister finds, based on the report referred to in the preceding Article that the officer or major shareholder of a Listed Company, etc. has made the profit referred to in paragraph (1), the Prime Minister is to send a copy of the portion of the report pertaining to the profit (hereinafter referred to as a "Document Related to Profit" in this Article) to the officer or major shareholder, and if there is no filing as referred to in the following paragraph from the officer or major shareholder within the period specified therein with regard to the Document Related to Profit, the Prime Minister is to send a copy of the Document Related to Profit to the Listed Company, etc.; provided, however, that this does not apply if the Prime Minister learns that the profit referred to in paragraph (1) has already been provided to the Listed Company, etc. before the Prime Minister sends the copy of the Document Related to Profit to the officer or major shareholder or to the Listed Company, etc.
- (5) If a copy of a Document Related to Profit is sent to the officer or major shareholder of a Listed Company, etc. pursuant to the main clause of the preceding paragraph, and the officer or major shareholder finds that the officer or major shareholder has not made a Purchase and Sale, etc. as stated in the copy of the Document Related to Profit, the officer or major shareholder may submit a filing indicating this to the Prime Minister within a period not exceeding 20 days from the day on which the officer or major shareholder receives the copy of the Document Related to Profit.
- (6) If a filing indicating that the officer or major shareholder has not made a Purchase and Sale, etc. as stated in the copy of a Document Related to Profit is submitted by the officer or major shareholder pursuant to the preceding paragraph, for the purpose of the application of the main clause of paragraph (4), the portion to which the filing pertains is deemed not to have been included

in the report to the Prime Minister under paragraph (1) of the preceding Article.

- (7) If the Prime Minister sends a copy of a Document Related to Profit to a Listed Company, etc. based on the provisions of paragraph (4), the Prime Minister is to make the copy of the Document Related to Profit available for public inspection during the period starting from the day on which 30 days have elapsed since the day the copy is sent and ending on the day that the right to a request which is provided for in paragraph (3) extinguishes (or the day that the Prime Minister learns that the profit referred to in paragraph (1) has been provided to the Listed Company, etc., if the Prime Minister learns of this before the right to a request extinguishes); provided, however, that this does not apply if the Prime Minister learns that the profit referred to in paragraph (1) has already been provided to the Listed Company, etc. before the Prime Minister makes the copy of the Document Related to Profit available for public inspection.
- (8) The provisions of the preceding paragraphs do not apply if the major shareholder is not a major shareholder either at the time of effecting the purchase, etc. or at the time of effecting the sale, etc., nor do they apply in cases that are specified by Cabinet Office Ordinance in consideration of the features the purchase, etc. or sale, etc. that an officer or major shareholder effects and other circumstances.
- (9) The method of calculating profit if, as in paragraph (4), the Prime Minister finds the officer or major shareholder of a Listed Company, etc. to have made the profit referred to in paragraph (1), is specified by Cabinet Office Ordinance.

(Acts Prohibited for the Officer of a Listed Company, etc.)

Article 165 It is prohibited for the officer or major shareholder of a Listed Company, etc. to engage in the following acts:

- (i) selling Specified Securities, etc. of the Listed Company, etc. or effecting other transactions specified by Cabinet Order (hereinafter referred to as "Specified Transactions" in this Article and paragraph (15) of the following Article), in which the amount of Specified Securities subject to the Specified Transactions (meaning the amount of Specified Securities sold in the case of a sale of Specified Securities, or the amount specified by Cabinet Office Ordinance in the case of any other transaction) exceeds the amount specified by Cabinet Office Ordinance as the amount for Specified Securities that are of the same class as the Specified Securities of the Listed Company, etc. that the officer or major shareholder holds; or
- (ii) effecting a sale, etc. of Specified Securities, etc. of the Listed Company, etc. (other than a Specified Transaction), in which the volume of the Specified Securities, etc. specified by Cabinet Office Ordinance as the basis to be used

for calculating the amount paid or received in the sale, etc. exceeds the volume specified by Cabinet Office Ordinance as the volume for Specified Securities that are of the same class as the Specified Securities of the Listed Company, etc. that the officer or major shareholder holds.

(Specified Securities etc. Among the Assets of Specified Partnerships, etc.)

Article 165-2 (1) In a partnership, etc. (meaning a partnership established based on a partnership contract provided for in Article 667, paragraph (1) of the Civil Code, an Investment Limited Partnership provided for in Article 2, paragraph (2) of the Limited Partnership Act for Investment (hereinafter referred to as an "Investment LPS" in this Article), or a Limited Liability Partnership provided for in Article 2 of the Limited Liability Partnership Act (hereinafter referred to as a "Limited Liability Partnership" in this Article), or any similar organization specified by Cabinet Order; hereinafter the same applies in this Article) whose assets include voting rights in respect of shares in a Listed Company, etc. which constitute 10 percent or more of all shareholders', etc. voting rights (hereinafter referred to as a "Specified Partnership, etc." in this Article), if one of the partners in the Specified Partnership, etc. (including a partner specified by Cabinet Office Ordinance as being similar to such a person; hereinafter the same applies in this Article) effects a purchase, etc. or sale, etc. of the Specified Securities, etc. of a Listed Company, etc. which is connected with the assets of the Specified Partnership, etc. (including if the trustee of a trust in which all of the partners in the Specified Partnership, etc. are the settlor or beneficiary effects a purchase, etc. or sale, etc. of the Specified Securities, etc. of a Listed Company, etc. as specified by Cabinet Office Ordinance; hereinafter the same applies in this Article), the partner that effects the purchase, etc. or sale, etc. (including a partner specified by Cabinet Office Ordinance as equivalent to such a person; hereinafter the same applies in this Article) must submit a report on the Purchase and Sale, etc. to the Prime Minister, pursuant to the provisions of Cabinet Office Ordinance, by the 15th day of the month following the month that includes the day of the Purchase and Sale, etc.; provided, however, that this does not apply in the cases that are specified by Cabinet Office Ordinance in consideration of the features the purchase, etc. or sale, etc. and other circumstances.

(2) If a partner in a Specified Partnership, etc. prescribed in the preceding paragraph effects a purchase, etc. or sale, etc. of the Specified Securities, etc. of a Listed Company, etc. which is connected with the assets of that Specified Partnership, etc. by entrusting, etc. a Financial Instruments Business Operator, etc. or Authorized Operator for On-Exchange Transactions with doing so, the report prescribed in the preceding paragraph is to be submitted via the Financial Instruments Business Operator, etc. or Authorized Operator

for On-Exchange Transactions. The same applies if the other party to the purchase, etc. or sale, etc. is a Financial Instruments Business Operator, etc. or Authorized Operator for On-Exchange Transactions.

- (3) In order to prevent wrongful use by a partner in a Specified Partnership, etc. of any secret information acquired by virtue of position, a Listed Company, etc. may request a partner in a Specified Partnership, etc. that, in connection with the assets of the Specified Partnership, etc., effects a sale, etc. of the Specified Securities, etc. of the Listed Company, etc. within six months after having effected a purchase, etc. of them, or effects a purchase, etc. of the Specified Securities, etc. of the Listed Company, etc. within six months after having effected a sale, etc. of them, to use the assets of the Specified Partnership, etc. to provide the Listed Company, etc. with any profit earned from the sale, etc. or purchase, etc.
- (4) If a Listed Company, etc. makes a request pursuant to the preceding paragraph but the obligation linked to that request and other obligations of the Specified Partnership, etc. cannot be repaid in full using the assets of the Specified Partnership, etc., the Listed Company, etc. may request each person that was a partner in the Specified Partnership, etc., at the time that the profit referred to in that paragraph accrued (excluding limited partners in an Investment LPS and partners in a Limited Liability Partnership and any person specified by Cabinet Office Ordinance as similar to such persons) to provide the Listed Company, etc. with the profit (to the extent of the amount that remains after deducting the amount of the profit already provided to the Listed Company, etc. pursuant to that paragraph) in proportion to the liability of each partner for the obligation of the Specified Partnership, etc.
- (5) In a case prescribed in the preceding paragraph, the provisions of the preceding paragraph also apply if a compulsory execution against the assets of the Specified Partnerships, etc. does not prove effective.
- (6) The preceding paragraph does not apply if a person that was a partner in the Specified Partnership, etc. at the time that the profit referred to in paragraph (3) accrued proves that the Specified Partnership, etc. has sufficient assets against which a compulsory execution may be easily effected.
- (7) If a Listed Company, etc. fails to make a request under paragraphs (3) to (5) within 60 days from the day on which a shareholder (including a member that is an insurance policy holder, or an equity investor; hereinafter the same applies in this paragraph) of the Listed Company, etc. has demanded that the Listed Company, etc. make a request under one of these paragraphs, the shareholder may make the request in subrogation of the Listed Company, etc.
- (8) The right to request the restitution of profit pursuant to paragraphs (3) to (5) inclusive or the preceding paragraph extinguishes by prescription if that right is not exercised within two years from the time that a profit accrues to the

assets of the Specified Partnership, etc.

- (9) If the Prime Minister finds, based on the report referred to in paragraph (1), that the profit referred to in paragraph (3) has accrued to the assets of the Specified Partnership, etc., the Prime Minister is to send a copy of the portion of the report pertaining to the profit (hereinafter referred to as a "Document Related to Partnership Profit" in this Article) to the reporting partner (meaning the partner that has submitted the report (limited to a report of the most recent purchase, etc. or sale, etc.) pursuant to paragraph (1)), and if there is no filing as referred to in the following paragraph from the reporting partner within the period specified therein with regard to the Document Related to Partnership Profit, the Prime Minister is to send a copy of the Document Related to Partnership Profit to the Listed Company, etc.; provided, however, that this does not apply if the Prime Minister learns that the profit referred to in paragraph (3) has already been provided to the Listed Company, etc. before the Prime Minister sends the copy of the Document Related to Partnership Profit to the reporting partner or the Listed Company, etc.
- (10) If a copy of a Document Related to Partnership Profit is sent to a reporting partner pursuant to the main clause of the preceding paragraph, and the reporting partner finds that that the reporting partner has not made a Purchase and Sale, etc. as stated in the copy of the Document Related to Partnership Profit, the reporting partner may submit a filing indicating this to the Prime Minister within a period not exceeding 20 days from the day on which the reporting partner receives the copy of the Document Related to Partnership Profit.
- (11) If a filing indicating that the reporting partner has not made a Purchase and Sale, etc. as stated in the copy of a Document Related to Partnership Profit is submitted by the reporting partner pursuant to the preceding paragraph, for the purpose of the application of the main clause of paragraph (9), the portion to which the filing pertains is deemed not to be included in the report to the Prime Minister under paragraph (1).
- (12) If the Prime Minister sends a copy of a Document Related to Partnership Profit to a Listed Company, etc. based on the provisions of paragraph (9), the Prime Minister is to make the copy of the Document Related to Partnership Profit available for public inspection during the period starting from the day on which 30 days have elapsed since the day the copy is sent and ending on the day that the right to a request which is provided for in paragraph (8) extinguishes (or the day that the Prime Minister learns that the profit referred to in paragraph (3) has been provided to the Listed Company, etc., if the Prime Minister learns of this before the right to a request extinguishes); provided, however, that this does not apply if the Prime Minister learns that the profit referred to in paragraph (3) has been provided to the Listed Company, etc.

before the Prime Minister makes a copy of the Document Related to Partnership Profit available for public inspection.

- (13) The provisions of paragraph (3) to the preceding paragraph inclusive do not apply if a Specified Partnership, etc. was not a Specified Partnership, etc. either at the time at which the purchase, etc. was made in connection with the assets of the Specified Partnership, etc. or at the time the sale, etc. was made in connection with the assets of the Specified Partnership, etc., nor to the cases that are specified by Cabinet Office Ordinance in consideration of the features of the purchase, etc. or sale, etc. that is conducted in connection with the assets of the Specified Partnership, etc. or other circumstances.
- (14) The method of calculating profit if, as in paragraph (9), the Prime Minister finds the profit referred to in paragraph (3) to have accrued to the assets of a Specified Partnership, etc. as provided in paragraph (3), is specified by Cabinet Office Ordinance.
- (15) A partner in a Specified Partnership, etc. must not engage in the following acts with the assets of the Specified Partnership, etc.:
- (i) conducting a Specified Transaction, in which the amount of Specified Securities traded in the Specified Transaction (meaning the amount of Specified Securities sold in the case of a sale of Specified Securities, or the amount specified by Cabinet Office Ordinance in the case of any other transaction) exceeds the amount specified by Cabinet Office Ordinance as the amount for Specified Securities that are of the same class as the Specified Securities of the Listed Company, etc. that the partner holds; or
  - (ii) effecting a sale, etc. of Specified Securities, etc. of the Listed Company, etc. (other than a Specified Transaction), in which the volume of the Specified Securities, etc. specified by Cabinet Office Ordinance as the basis to be used for calculating the amount paid or received in the sale, etc. exceeds the volume specified by Cabinet Office Ordinance as the volume for Specified Securities that are of the same class as the Specified Securities of the Listed Company, etc. that the partner holds.
- (16) The preceding three Articles do not apply to a major shareholder that comes to fall under the category of a major shareholder of a Listed Company, etc. as a result of obtaining shares in the Listed Company, etc. as a part of the assets of a partnership, etc.

(Acts Prohibited for a Company Insider)

Article 166 (1) A person set forth in one of the following items (hereinafter referred to as a "Company Insider" in this Article) that comes to know a material fact about the business of a Listed Company, etc. (in the case of the Company Insider of a Subsidiary Company of the Listed Company, etc. (other than one that falls under the category of a Company Insider of the Listed

Company, etc.), this is limited to a material fact about the business of the Subsidiary Company which is set forth in one of items (v) to (viii) inclusive of the following paragraph; the same applies hereinafter) in the manner prescribed in the relevant item must not effect a purchase and sale, or any other transfer or acquisition for value, succession upon a merger or company split, (meaning to cause the other party to succeed or to succeed upon merger or company split) or Derivatives Transactions (hereinafter referred to as "Sales and Purchase, etc." in this Article), of Specified Securities, etc. of the Listed Company, etc., nor effect a Derivatives Transaction connected with the same (hereinafter referred to as a "Purchase and Sale, etc." in this Article, Article 167-2, paragraph (1), Article 175-2, paragraph (1), and Article 197-2, item (xiv)) before the disclosure of the material fact about its business. The same applies for one year to a Company Insider that comes to know a material fact about the business of a Listed Company, etc. in a manner prescribed in one of the following items even after the person ceases to be the Company Insider as set forth in the relevant item:

- (i) the officer (if the accounting advisor is a corporation, its staff member), agent, employee, or other worker (hereinafter referred to as an "Officer, etc." in this Article and the following Article) of the Listed Company, etc. (including its Parent Company and Subsidiary Companies, and where the Listed Company, etc. is a Listed Investment Corporation, etc., an Asset Management Company of said Listed Company, etc. or a Corporation in Specified Relationship; hereinafter the same applies in this paragraph): coming to know the material fact in the course of duty;
- (ii) a shareholder of the Listed Company, etc. that has the right prescribed in Article 433, paragraph (1) of the Companies Act, an ordinary equity investor in the Listed Company, etc. as prescribed in the Act on Preferred Equity Investment that is specified by Cabinet Office Ordinance as being deemed to have a right similar to such a right, or a member of the Listed Company, etc. that has the right prescribed in Article 433, paragraph (3) of that Act (this includes the Officer, etc. of such a shareholder, ordinary equity investor, or member, if such a shareholder, ordinary equity investor, or member is a corporation (including an organization without legal personality for which a representative or administrator has been designated; hereinafter the same applies in this and the following Articles), and includes the agent or employee of such a shareholder, ordinary equity investor, or member, if such a shareholder, ordinary equity investor, or member is a person other than a corporation): coming to know the material fact in the course of exercising that right;
- (ii)-2 an Investor (meaning an Investor as prescribed in Article 2, paragraph (16) of the Act on Investment Trusts and Investment Corporations;



- hereinafter the same shall apply in this item) of the Listed Company, etc. or an Investor that has the right specified in Article 433, paragraph (3) of the Companies Act as applied mutatis mutandis pursuant to Article 128-3, paragraph (2) of that Act (including an Officer, etc. of such an Investor in cases where such an Investor is a juridical person, and an agent or employee of such an Investor in cases where such an Investor is a person other than a juridical person): where such an Investor has come to know a material fact in the course of exercise of the right specified in Article 128-3, paragraph (1) of the Act on Investment Trusts and Investment Corporations or the right specified in Article 433, paragraph (3) of the Companies Act as applied mutatis mutandis pursuant to paragraph (2) of that Article;
- (iii) a person that has statutory authority over the Listed Company, etc.: coming to know the material fact in the course of exercising that authority;
  - (iv) a person other than an Officer, etc. of the Listed Company, etc., that has concluded, or is in negotiations to conclude, a contract with the Listed Company, etc. (including an Officer, etc. of such a person, if such a person is a corporation, and an agent or employee of such a person, if such a person is a person other than a corporation): coming to know the material fact in the course of concluding, negotiating, or performing the contract; and
  - (v) the Officer, etc. of a person set forth in item (ii) , item (ii)-2 or the preceding item that is a corporation (but only the Officer, etc. of a corporation at which another Officer, etc. comes to know a material fact about the business of the Listed Company, etc. pursuant to item (ii) , item (ii)-2 or the preceding item): coming to know the material fact in the course of duty.
- (2) The material fact about business that is provided for in the preceding paragraph means one of the following facts (for item (i), (ii), (v)(vi) , (ix), (x), (xii) and (xiii), this excludes a fact that falls under the criteria specified by Cabinet Office Ordinance as having only a minor influence on investors' investment decisions):
- (i) the organ that is responsible for making decisions about the execution of operations at the Listed Company, etc. (excluding a Listed Investment Corporation, etc.; hereinafter the same shall apply in this item to item (viii) inclusive) has decided that the Listed Company, etc. will effect one of the following things, or has decided that the Listed Company, etc. will not effect a thing that was subject to such a decision (limited to a decision that has already been disclosed):
    - (a) the solicitation, as prescribed in Article 199, paragraph (1) of the Companies Act, of persons to subscribe for the shares that a stock company issues or the treasury shares it disposes of (including solicitation of persons to subscribe for preferred equity investments that a Cooperative Financial Institution issues) (in the case of solicitation for persons to

- subscribe for treasury shares, this includes solicitation under a foreign law or regulation that is equivalent to this provision of the Companies Act (but only if the Listed Company, etc. is a foreign company; hereinafter the same applies in this Article)), or solicitation, as prescribed in Article 238, paragraph (1) of that Act, of persons to subscribe for share options;
- (b) a reduction of the stated capital;
  - (c) a reduction of the capital reserves or retained earnings reserves;
  - (d) the acquisition of its own shares as prescribed in Article 156, paragraph (1) of the Companies Act (including as it applies through the replacement of certain terms pursuant to the provisions of Articles 163 and Article 165, paragraph (3) of that Act) or under a foreign law or regulation that is equivalent to these provisions of that Act (but only if the Listed Company, etc. is a foreign company; hereinafter the same applies in this Article);
  - (e) the allotment of shares without a contribution or allotment of share option without contribution;
  - (f) a share split (including a split of preferred equity investment as prescribed in the Act on Preferred Equity Investment);
  - (g) a distribution of surplus;
  - (h) a share exchange;
  - (i) a share transfer;
  - (j) a merger;
  - (k) a company split;
  - (l) the transfer or acquisition of all or a part of business;
  - (m) dissolution (other than dissolution as a result of a merger);
  - (n) the commercialization of a new product or new technology; or
  - (o) a business alliance or anything else that is specified by Cabinet Order as being equivalent to the things set forth in sub-items (a) to (n) inclusive.
- (ii) one of the following facts has arisen at the Listed Company, etc.:
    - (a) damage arising from a disaster or in the performance of its operations;
    - (b) any change in its major shareholders;
    - (c) a fact that may be grounds for the delisting of Specified Securities or Options on Specified Securities, or for the recession of their registration; or
    - (d) any fact specified by Cabinet Order as being equivalent to the facts set forth in sub-items (a) to (c) inclusive.
  - (iii) the appearance of a variance in the forecasts that the Listed Company, etc. has newly prepared or in the results in the settlement of accounts for the business year, when compared against the last disclosed forecasts (or disclosed actual figures for the preceding business year, if there are no such forecasts) of net sales, current profits, or net income of the Listed Company, etc. (hereinafter referred to as "Net Sales, etc." in this Article), of the dividends prescribed in item (i), sub-item (g) from the Listed Company, etc.,

- or of the Net Sales, etc. of the corporate group of which the Listed Company, etc. is a part (limited to a variance that falls under the criteria specified by Cabinet Office Ordinance as having a material influence on investors' investment decisions);
- (iv) a material fact other than one of the facts specified in the preceding three items, which concerns the operations, business, or assets of the Listed Company, etc. and has a significant influence on investors' investment decisions;
  - (v) the organ that is responsible for making decisions about the execution of operations at the Subsidiary Company of the Listed Company, etc. has decided that the Subsidiary Company will effect one of the following things, or has decided that the Subsidiary Company will not effect a thing that was subject to such a decision (limited to a decision that has already been disclosed):
    - (a) a share exchange;
    - (b) a share transfer;
    - (c) a merger;
    - (d) a company split;
    - (e) a transfer or acquisition of all or part of business;
    - (f) dissolution (other than dissolution as a result of a merger);
    - (g) the commercialization of a new product or new technology; or
    - (h) a business alliance or any other thing specified by Cabinet Order as being equivalent to one of the things set forth in sub-items (a) to (g) inclusive.
  - (vi) one of the following facts has arisen at a Subsidiary Company of the Listed Company, etc.:
    - (a) damage arising from a disaster or in the performance of its operations; or
    - (b) any fact specified by Cabinet Order as being equivalent to the fact specified in sub-item (a).
  - (vii) the appearance of a variance in the forecasts that a Subsidiary Company (limited to a Subsidiary Company that is the Issuer of Securities specified in Article 2, paragraph (1), item (v), (vii), or (ix) that are listed on a Financial Instruments Exchange, or any other Subsidiary Company specified by Cabinet Office Ordinance) of the Listed Company, etc. has newly prepared or in the results in the settlement of accounts for the business year, when compared against the last disclosed forecasts (or disclosed actual figures for the preceding business year, if there are no such forecasts) of Net Sales, etc. of the Subsidiary Company (limited to a variance that falls under the criteria specified by Cabinet Office Ordinance as having a material influence on investors' investment decisions); or
  - (viii) a material fact, other than one of the facts specified in the preceding three items, which concerns the operations, business, or assets of a

- Subsidiary Company of the Listed Company, etc. and has a significant influence on investors' investment decisions.
- (ix) a decision by the organ of the Listed Company, etc. (limited to a Listed Investment Corporation, etc.; hereinafter the same shall apply in the following item to item (xiv) inclusive) which is responsible for making decisions on the execution of the operations of the Listed Company, etc. to carry out any of the following matters, or a decision by said organ not to carry out the matter which is decided to be carried out in such a decision (limited to acts that have already been Publicized):
- (a) conclusion or cancellation of an entrustment contract for asset investments;
  - (b) solicitation of persons to subscribe for the investment equity issued by an investment corporation as prescribed in Article 82, paragraph (1) of the Act on Investment Trusts and Investment Corporations;
  - (c) acquisition of one's own investment equity as prescribed in Article 80-2, paragraph (1) of the Act on Investment Trusts and Investment Corporations (including the cases where applied mutatis mutandis by replacing certain terms pursuant to Article 80-5, paragraph (2));
  - (d) allotment of investment equity subscription rights without contribution as prescribed in Article 88-13 of the Act on Investment Trusts and Investment Corporations;
  - (e) split of investment equity;
  - (f) distribution of money;
  - (g) merger;
  - (h) dissolution (excluding dissolution by a merger); and
  - (i) matters specified by Cabinet Order as matters equivalent to those set forth in (a) to (h) inclusive;
- (x) occurrence of any of the following facts in the Listed Company, etc.:
- (a) damage arising from disaster or in the course of performing operations;
  - (b) facts that may be grounds for delisting or rescission of registration of Specified Securities or Options pertaining thereto; or
  - (c) matters specified by Cabinet Order as those equivalent to the matters listed in sub-items (a) or (b);
- (xi) existence of a difference (limited to that which is regarded under the criteria specified by Cabinet Office Ordinance as a difference that may have a material influence on investors' Investment Decisions) between, on one hand, the latest Publicized forecasts (or Publicized actual figures of the preceding Business Period (meaning the Business Period prescribed in Article 129, paragraph (2) of the Act on Investment Trusts and Investment Corporations ;hereinafter the same shall apply in this item) in the case of lack of such forecasts) of operating revenue, current profits or net income

- (referred to as "Operating Revenue, etc." in paragraph (4), item (ii)) or of the dividend prescribed in sub-item (f) of item (ix) of the Listed Company, etc., and, on the other hand, new forecasts thereof newly prepared by the Listed Company, etc. or the results in the settlement of accounts for the Business Period of the Listed Company, etc.;
- (xii) a decision by the organ of an Asset Management Company of the Listed Company, etc. which is responsible for making decisions on the execution of the operations of the Asset Management Company to have the Asset Management Company carry out any of the following matters, or a decision by said organ not to have the Asset Management Company carry out the matter which is decided to be carried out in such a decision (limited to acts that have already been Publicized):
- (a) asset investment conducted under entrustment from the Listed Company, etc. involving acquisition, transfer, or lending or borrowing of Specified Assets (meaning the Specified Assets prescribed in Article 2, paragraph (1) of the Act on Investment Trusts and Investment Corporations; the same shall apply in paragraph (5), item (ii)) by the Listed Company, etc.;
  - (b) cancellation of the entrustment contract for asset investment concluded with the Listed Company, etc.;
  - (c) share exchange;
  - (d) share transfer;
  - (e) merger;
  - (f) dissolution (excluding dissolution by a merger);
  - (g) matters specified by Cabinet Order as those equivalent to the matters listed in sub-items (a) to (f) inclusive;
- (xiii) occurrence of any of the following facts in the Asset Management Company of the Listed Company, etc.:
- (a) rescission of the registration conducted under Article 29, under the provisions of Article 52, paragraph (1), disposition of the suspension of business pertaining to asset investment conducted under entrustment from the Listed Company, etc. under the provisions of that paragraph, or a disposition under laws and regulations that is equivalent thereto made by an administrative agency;
  - (b) any change of Corporations in Specified Relationship;
  - (c) any change of its Major Shareholders;
  - (d) matters specified by Cabinet Order as those equivalent to the matters listed in sub-items (a) to (c) inclusive;
- (xiv) in addition to the facts specified in item (ix) to the preceding item, material facts concerning operation, business or property of the Listed Company, etc. that may have a significant influence on investors' Investment Decisions.

- (3) It is prohibited for a person that receives information from a Company Insider (including a Company Insider as prescribed in the second sentence of paragraph (1); hereinafter the same applies in this paragraph) regarding a material fact about business provided for in paragraph (1) that the Company Insider comes to know in a manner prescribed in one of the items of that paragraph (other than a person that is set forth in one of the items of that paragraph and that comes to know the material fact about business in the manner prescribed in the relevant item), or for another Officer, etc., at corporation to which the person that receives this information in the course of duty is affiliated, that comes to know the material fact about business in connection with that person's duties, to effect the Purchase and Sale, etc. of Specified Securities, etc. of the Listed Company, etc. before the material fact about business is disclosed.
- (4) The term "Publicized" as used in paragraph (1), paragraph (2), items (i), (iii), (v), (vii), (ix), (xi) and (xii) and the preceding paragraph means taking, by the persons specified in the following items, of measures specified by Cabinet Order as those for making information available to a large number of persons with regard to the matters listed respectively in those items, or making documents specified in Article 25, paragraph (1) (excluding documents specified in item (xi) of that paragraph (including the cases where applied *mutatis mutandis* pursuant to Article 27)) submitted by the persons respectively specified in those items available for public inspection under Article 25, paragraph (1) in cases where the above-mentioned matters are stated in these documents:
- (i) the Material Fact Pertaining to Business or Other Matters referred to in paragraph (1) of the Listed Company, etc. which is prescribed in paragraph (2), items (i) to (viii) inclusive, the decision by the organ of the Listed Company, etc. (excluding a Listed Investment Corporation, etc.; hereinafter the same shall apply in this item) which is responsible for making decisions on the execution of the operations of the Listed Company, etc., Net Sales, etc. or the dividend prescribed in paragraph (2), item (i), sub-item (g) of the Listed Company, etc., Net Sales, etc. of the Corporate Group to which the Listed Company, etc. belongs, the decision by the organ of the Subsidiary Company of the Listed Company, etc. which is responsible for making decisions on the execution of the operations of the Subsidiary Company, or Net Sales, etc. of the Subsidiary Company of the Listed Company, etc.: the Listed Company, etc. or the Subsidiary Company of the Listed Company, etc. (in the case of the Subsidiary Company, limited to the Material Fact Pertaining to Business or Other Matters referred to in paragraph (1) of the Subsidiary Company, the decision by the organ of the Subsidiary Company which is responsible for making decisions on the execution of the operations

- of the Subsidiary Company or Net Sales, etc. of the Subsidiary Company);
- (ii) the Material Fact Pertaining to Business or Other Matters referred to in paragraph (1) of the Listed Investment Corporation, etc. which is prescribed in paragraph (2), item (ix) or (xi), the decision by the organ of the Listed Investment Corporation, etc. which is responsible for making decisions on the execution of the operations of the Listed Investment Corporation, etc., Net Sales, etc. or the dividend prescribed in paragraph (2), item (ix), sub-item (f) of the Listed Investment Corporation, etc.: the Listed Investment Corporation, etc.;
  - (iii) the Material Fact Pertaining to Business or Other Matters referred to in paragraph (1) of the Listed Investment Corporation, etc. which is prescribed in paragraph (2), item (xii), or the decision by the organ of an Asset Management Company of the Listed Investment Corporation, etc. which is responsible for making decisions on the execution of the operations of the Asset Management Company, etc.: the Asset Management Company of the Listed Investment Corporation, etc.; and
  - (iv) the Material Fact Pertaining to Business or Other Matters referred to in paragraph (1) of the Listed Investment Corporation, etc. which is prescribed in paragraph (2), item (x), (xiii), or (xiv): the Listed Investment Corporation, etc. or the Asset Management Company of the Listed Investment Corporation, etc.
- (5) The term "Parent Company" as used in paragraph (1) and the following Article means a company specified by Cabinet Order as one that controls another company (including a Cooperative Financial Institution; hereinafter the same applies in this paragraph), and the term "Subsidiary Company" as used in this Article means a company stated or recorded as belonging to the corporate group that belongs to another company, in the most recent of the statements under Article 5, paragraph (1), Annual Securities Reports under Article 24, paragraph (1), Quarterly Securities Reports under Article 24-4-7, paragraph (1) or (2), or Semiannual Securities Reports under Article 24-5, paragraph (1), which that other company has submitted, and which has been made available for public inspection pursuant to Article 25, paragraph (1); in the latest Specified Information on Securities disclosed pursuant to Article 27-31, paragraph (2); or in the latest Information on the Issuer disclosed pursuant to Article 27-32, paragraph (1) or (2), and the term "Corporation in Specified Relationship" as used in paragraphs (1) and (2) means a person that falls under either of the following items:
- (i) a company specified by Cabinet Order as a company that has a control of the Asset Management Company of the Listed Investment Corporation, etc.; and
  - (ii) Interested Persons, etc. (meaning the Interested Persons, etc. prescribed in Article 201, paragraph (1) of the Act on Investment Trusts and Investment

- Corporations) of the Asset Management Company of the Listed Investment Corporation, etc. which are specified by Cabinet Order as juridical persons that conduct or have conducted transactions that have a material impact on the value of Specified Assets to be invested by the Asset Management Company under entrustment from the Listed Investment Corporation, etc.
- (6) The provisions of paragraphs (1) and (3) do not apply in the following cases:
- (i) a person with the right prescribed in Article 202, paragraph (1), item (i) of the Companies Act (including the right to be allotted a preferred equity investment prescribed in the Act on Preferred Equity Investment) acquires share certificates (including preferred equity investment certificates as prescribed in the Act on Preferred Equity Investment) by exercising that right;
  - (ii) a person with a share option, etc. (meaning the share option or the investment equity subscription right prescribed in Article 2, paragraph (17) of the Investment Trust and Investment Corporation Act) acquires share certificates or the investment securities prescribed in Article 2, paragraph (1), item (xi) by exercising the share option, etc.;
  - (ii)-2 a person that has acquired an Option on Specified Securities, etc. effects a Sale and Purchase, etc. of Specified Securities, etc. by exercising the Option;
  - (iii) a purchase of shares is demanded pursuant to the provisions of Article 116, paragraph (1); Article 182-4, paragraph (1); Article 469, paragraph (1); Article 785, paragraph (1); Article 797, paragraph (1); or Article 806, paragraph (1) of the Companies Act or purchase of investment equity is demanded under the provisions of Article 141, paragraph (1), Article 149-3, paragraph (1), Article 149-8, paragraph (1), or Article 149-13, paragraph (1) of the Investment Trust and Investment Corporation Act; or a Purchase and Sale, etc. is made based on a statutory obligation
  - (iv) a purchase (or acquisition, in the case of an Option; the same applies in the following item) or other acquisition for value of Specified Securities, etc. of a Listed Company, etc. or of an Option for the purchase and sale thereof (limited to an Option that causes the person that exercises it to acquire the position of the buyer in a purchase and sale of the Specified Securities, etc. subject to that Option) is effected as per the request that the board of directors (including the organ specified by Cabinet Order as being equivalent thereto; the same shall apply in paragraph (5), item (v) of the following Article) of the Listed Company, etc. have decided to make (including a request that a director has decided to make based on the delegation made by resolution of the board of directors under Article 399-13, paragraph (5) of the Companies Act or based on the delegation made by resolution of the board of directors as provided in the articles of incorporation under paragraph (6) of



that Article, if it is a company with supervisory committee; and including a request that an executive officer has decided to make based on the delegation made by resolution of the board of directors under Article 416, paragraph (4) of that Act, if it is a company with nominating committee, etc.) in order to cope with a Tender Offer under Article 27-2, paragraph (1) (but only if the main clause of Article 27-2, paragraph (1) applies) or any other act specified by Cabinet Order as being equivalent to such a Tender Offer, for the Share Certificates, etc. (meaning Share Certificates, etc. as defined in Article 27-2, paragraph (1)) of the Listed Company, etc.;

(iv)-2 where, after resolution of a shareholder meeting or board of directors of the Listed Company, etc. (including a decision of a director made based on the delegation made by resolution of the board of directors under Article 399-13, paragraph (5) of the Companies Act or based on the delegation made by resolution of the board of directors as provided in the articles of incorporation under paragraph (6) of that Article, in the case of a company with supervisory committee; and including a decision of an executive officer made based on the delegation made by resolution of the board of directors under Article 416, paragraph (4) of that Act, in the case of a company with nominating committee, etc.) (limited to resolution on the matters listed in any of the items of Article 156, paragraph (1) of that Act) made under Article 156, paragraph (1) of that Act (including the cases where it is applied by replacing certain terms pursuant to the provisions of Articles 163 and Article 165, paragraph (3) of that Act; hereinafter the same shall apply in this item) or under Article 80-2, paragraph (1) of the Investment Trust and Investment Corporation Act (including the cases where it is applied by replacing certain terms pursuant to the provisions of Articles 80-5, paragraph (2) of that Act; hereinafter the same shall apply in this item) or resolution of a board of officers made under Article 80-2, paragraph (3) of the Investment Trust and Investment Corporation Act (limited to resolution pertaining to the matters listed in the items of paragraph (1) of that Article) or resolution or other similar decision of the Listed Company, etc. made under laws and regulations of a foreign state equivalent to the above-mentioned resolutions with regard to acquisition of own shares provided in Article 156, paragraph (1) of that Act or laws and regulations of a foreign state equivalent to these provisions (these resolutions or decisions are hereinafter referred to as "Resolution of Shareholder Meeting, etc." in this item) is publicized as provided in paragraph (1) (including a decision of the organ of the Listed Company, etc. which is responsible for making decisions on the execution of the operations of the Listed Company, etc., when the Resolution of Shareholder Meeting, etc. has the same content as the organ's decision and it has been publicized as provided in paragraph (1) before the Resolution of

- Shareholder Meeting, etc. is made), purchase of share certificates of said own Shares, etc. Securities indicating the rights pertaining to such share certificates specified in Article 2, paragraph (1), item (xx) or other Securities specified by Cabinet Order (hereinafter referred to as "Share Certificates, etc." in this item) or an Option pertaining to sales and purchases of the Share Certificates, etc. (limited to an Option which cause the person acquire a position as a buyer in the sales and purchase of the Share Certificates, etc. pertaining to said Option; hereinafter the same shall apply in this item) is made under the Resolution of Shareholder Meeting, etc. (excluding the cases where no Material Fact Pertaining to Business or Other Matters provided in paragraph (1) other than the decision on acquisition of said own Shares, etc. made by the organ of the Listed Company, etc. which is responsible for making decisions on the execution of the operations of the Listed Company, etc. has been Publicized as provided in that paragraph (excluding the cases where purchase of Share Certificates, etc. of said own Shares, etc. or an Option pertaining to such Share Certificates, etc. is made pursuant to this item with regard to acquisition of own Shares, etc. under Article 156, paragraph (1) of the Companies Act or Article 80-2, paragraph (1) of the Investment Trust and Investment Corporation Act or laws and regulations of a foreign state equivalent thereto other than acquisition of said own Shares, etc.));
- (v) a Purchase and Sale, etc. is effected pursuant to the provisions of Cabinet Order which are referred to in Article 159, paragraph (3);
  - (vi) a Purchase and Sale, etc. of corporate bond certificates (excluding corporate bond certificates with share options) investment corporation bond certificates prescribed in Article 2, paragraph (1), item (xi) or other Securities specified by Cabinet Order is effected (except in a case specified by Cabinet Office Ordinance);
  - (vii) a Purchase and Sale, etc. is effected between the person that has come to know a Material Fact Pertaining to Business or Other Matters prescribed in paragraph (1) and a person that knows said Material Fact Pertaining to Business or Other Matters, through neither a Financial Instruments Exchange Market nor an Over-the-Counter Securities Market (unless both parties effecting the Purchase and Sale, etc. know that a further Purchase and Sale, etc. of the Specified Securities, etc. linked to that Purchase and Sale, etc. will be effected that is in violation of the provisions of that paragraph or paragraph (3))
  - (viii) where, upon a merger, company split, or transfer or acceptance of all or part of business (hereinafter referred to as a "Merger, etc." in this paragraph and paragraph (5) of the following Article), Specified Securities, etc. are succeeded or the other party is caused to succeed to such Specified Securities,

- etc. and the proportion of the book value of said Specified Securities, etc. to the total amount of the book value of the assets succeeded upon said Merger, etc. is below the proportion specified by Cabinet Office Ordinance as being a particularly low proportion;
- (ix) where a resolution of a board of directors meeting relating to a decision on the content of a contract for a Merger, etc. (in the case of an incorporation-type split, an incorporation-type split plan) has been passed before coming to know a Material Fact Pertaining to Business or Other Matters of a Listed Company, etc. as prescribed in paragraph (1) and Specified Securities, etc. of said Listed Company, etc. are succeeded or the other party is caused to succeed to such Specified Securities, etc. upon said Merger, etc. in accordance with said resolution;
  - (x) where, upon an incorporation-type split, Specified Securities, etc. are succeeded by a company incorporated through an incorporation-type company split (excluding an incorporation-type company split that a corporation effects jointly with another corporation) (meaning a Company Incorporated through Incorporation-type Company Split prescribed in Article 763, paragraph (1) of the Companies Act; the same shall apply in paragraph (5), item (xii) of the following Article);
  - (xi) where, upon a Merger, etc. or share exchange, Specified Securities, etc. of a Listed Company, etc. who is a party to said Merger, etc. or share exchange held by said Listed Company, etc. are delivered or said Specified Securities, etc. which have been delivered are received;
  - (xii) a Purchase and Sale, etc. is effected in performance of a contract for the Purchase and Sale, etc. of Specified Securities, etc. of the Listed Company, etc. that is concluded before the relevant person comes to know the material fact about the business of the Listed Company, etc. which is provided for in paragraph (1), or is effected in the implementation of a plan for the Purchase and Sale, etc. of Specified Securities, etc. of the Listed Company, etc. that is decided before the relevant person comes to know the material fact about the business of the Listed Company, etc., or a Purchase and Sale, etc. is effected that is obviously based on other special circumstances equivalent to such a case (limited to a case specified by Cabinet Office Ordinance).

(Acts Prohibited for Persons Affiliated with the Tender Offeror, etc.)

Article 167 (1) A person set forth in one of the following items (hereinafter referred to as a "Person Affiliated with the Tender Offeror, etc." in this Article) that comes to know the fact that a Tender Offer, etc. will be launched by the person launching a Tender Offer provided for in Article 27-2, paragraph (1) (but only if the main clause of that paragraph applies) or an act specified as equivalent thereto by Cabinet Order or by the person launching a Tender Offer

provided for in Article 27-22-2, paragraph (1) (hereinafter collectively referred to as a "Tender Offer, etc." in this Article) for Share Certificates, etc. provided for in Article 27-2, paragraph (1) that are listed on a Financial Instruments Exchange or that fall under the category of Over-the-Counter Traded Securities or Tradable Securities (hereinafter referred to as "Listed or Other Share Certificates, etc." in this Article) (such a person is hereinafter referred to as the "Tender Offeror, etc." in this Article and paragraph (2) of the following Article) or the fact that a Tender Offer, etc. will be suspended by such Tender Offeror, etc. in a manner as prescribed in the relevant item, must not effect a purchase, etc. (meaning a purchase of Specified Share Certificates, etc. as defined below and Related Share Certificates, etc. as defined below (hereinafter collectively referred to as "Share Certificates, etc." in this Article, paragraph (2) of the following Article, Article 175-2, and Article 197-2, item (xv)) or other transaction designated by Cabinet Order; hereinafter the same applies in this Article, paragraph (2) of the following Article, Article 175-2, paragraph (2), and Article 197-2, item (xv)) of the Listed or Other Share Certificates, etc. subject to the Tender Offer, etc., or of share certificates or corporate bond certificates with share options issued by the company issuing those Listed or Other Share Certificates, etc. or other Securities specified by Cabinet Order (hereinafter referred to as "Specified Share Certificates, etc." in this Article), or of Securities set forth in Article 2, paragraph (1), item (xix) that indicate Options on Specified Share Certificates, etc. or other Securities specified by Cabinet Order (hereinafter referred to as "Related Share Certificates, etc." in this paragraph) if the person comes to know the fact that the Tender Offer, etc. will be launched, and must not effect the sale, etc. (meaning the sale of Share Certificates, etc. and other transactions specified by Cabinet Order; hereinafter the same applies in this Article, paragraph (2) of the following Article, Article 175-2, paragraph (2), and Article 197-2, item (xv)) of Share Certificates, etc. subject to the Tender Offer, etc., if the person comes to know the fact that the Tender Offer, etc. will be suspended, before the fact that the Tender Offer, etc. will be launched or the fact that the Tender Offer, etc. will be suspended is disclosed. The same applies for six months to a Person Affiliated with the Tender Offeror, etc. that comes to know the fact that a Tender Offer, etc. will be launched or the fact that a Tender Offer, etc. will be suspended in a manner prescribed in one of the following items, even after that person ceases to be the Person Affiliated with the Tender Offeror, etc. set forth in the relevant item:

- (i) the Officer, etc. of the Tender Offeror, etc. (including its Parent Company, if the Tender Offeror, etc. is a corporation; hereinafter the same applies in this paragraph) (or, if the Tender Offeror, etc. is a person other than a corporation, its agent or employee): coming to know the relevant fact in the

- course of duty;
- (ii) a shareholder of the Tender Offeror, etc. which has the right prescribed in Article 433, paragraph (1) of the Companies Act, or a member of the Tender Offeror, etc. which has the right prescribed in Article 433, paragraph (3) of that Act (including the Officer, etc. of such a shareholder or member, if such a shareholder or member is a corporation, and the agent or employee of such a shareholder or member, if such a shareholder or member is a person other than a corporation): coming to know the relevant fact in the course of exercising that right;
  - (iii) a person that has statutory authority over the Tender Offeror, etc.: coming to know the relevant fact in the course of exercising that authority;
  - (iv) a person other than the Officer, etc. of the Tender Offeror, etc., if the Tender Offeror, etc. is a corporation, a person other than the agent or employee of the Tender Offeror, etc., if the Tender Offeror, etc. is a person other than a corporation, which has concluded, or is in negotiations to conclude, a contract with the Tender Offer, etc. (including the Officer, etc. of such a person, if such a person is a corporation, and the agent or employee of such a person, if such a person is a person other than a corporation): coming to know the relevant fact in the course of concluding, negotiating, or performing that contract;
  - (v) the Issuer (including its officer, etc.) of Listed or Other Share Certificates, etc. pertaining to the Tender Offer, etc. (excluding the Tender Officer prescribed in Article 27-22-2, paragraph (1) for Listed Share Certificates, etc.): where such a person has come to know the fact by receiving information from the Tender Offeror, etc. (in the case of an officer, etc., where such person has come to know the fact by receiving information from the Tender Offeror, etc. in the course of his/her duty);
  - (vi) the Officer, etc. of a person set forth in item (ii) , item (iv) or the preceding item which is a corporation (but only the Officer, etc. of a corporation at which another Officer, etc. comes to know the fact that the Tender Offer, etc. will be launched or the fact that the Tender Offer, etc. will be suspended by the Tender Offeror, etc. pursuant to item (ii) , item (iv) or the preceding item): coming to know the relevant fact in the course of duty.
- (2) The fact that a Tender Offer, etc. will be launched or the fact that a Tender Offer, etc. will be suspended as provided for in the preceding paragraph means the fact that the Tender Offeror, etc. (or the organ that is responsible for making decisions about the execution of operations at the Tender Offeror, etc., if the Tender Offeror, etc. is a corporation; hereinafter the same applies in this paragraph) has decided to launch a Tender Offer, etc. or that it has decided not to launch a Tender Offer, etc. that it had decided to launch (limited to decisions that have already been disclosed); provided, however, that this does not apply

to a fact that falls under the criteria specified by Cabinet Office Ordinance as one that has only a minor influence on investors' investment decisions.

- (3) It is prohibited for a person that receives information from the Person Affiliated with a Tender Offeror, etc. (including a person prescribed in the second sentence of paragraph (1); hereinafter the same applies in this paragraph and paragraph (5)) about the fact that a Tender Offer, etc. will be launched or the fact that a Tender Offer, etc. will be suspended (hereinafter referred as to the "Facts of the Tender Offer, etc." in this Article, paragraph (2) of the following Article, Article 175-2, paragraph (2), and Article 197-2, item (xv)) as provided in that paragraph, which the Person Affiliated with the Tender Offeror, etc. comes to know in a manner prescribed in one of the items of that paragraph (other than a person that is set forth in one of the items of paragraph (1) and that comes to know the Facts of the Tender Offer, etc. in the manner prescribed in the relevant item), or for another Officer, etc., at a corporation to which the person that comes to know the Facts of the Tender Offer, etc. in the course of duty is affiliated, that comes to know the Facts of the Tender Offer, etc. in connection with that person's duties, to effect a purchase, etc. of the Share Certificates, etc. subject to the Tender Offer, etc., if the person has received information about the fact that a Tender Offer, etc. will be launched as provided in that paragraph, and to effect a sale, etc. of the Share Certificates, etc. subject to the Tender Offer, etc., if the person has received information about the fact that a Tender Offer, etc. will be suspended as provided in that paragraph, before the Facts of the Tender Offer, etc. are disclosed.
- (4) The term "Publicized" as used in paragraph (1) to the preceding paragraph inclusive means the taking by the Tender Offeror, etc. of measures specified by Cabinet Order as those for making information available to a large number of persons with regard to the Fact Concerning Tender Offer, etc., the making of public notice under Article 27-3, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2); the same shall apply in item (viii) of the following paragraph) or public notice or public announcement under Article 27-11, paragraph (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)), or the making of a Tender Offer Notification prescribed in Article 27-3, paragraph (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2); the same shall apply in that item) or Written Withdrawal of Tender Offer prescribed in Article 27-11, paragraph (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)) available for public inspection under Article 27-14, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2); the same shall apply in that item).

- (5) The provisions of paragraphs (1) and (3) do not apply in the following cases:
- (i) a person with the right prescribed in Article 202, paragraph (1), item (i) of the Companies Act acquires share certificates by exercising that right;
  - (ii) a person with a share option (including a right specified by Cabinet Order as being equivalent thereto) acquires share certificates by exercising that share option (including Securities specified by Cabinet Order as being equivalent thereto);
  - (ii)-2 a person that has acquired an Option on Share Certificates, etc. effects a purchase, etc. or sale, etc. of Share Certificates, etc. by exercising that Option;
  - (iii) a purchase of shares is demanded under Article 116, paragraph (1); Article 182-4, paragraph (1); Article 469, paragraph (1); Article 785, paragraph (1); Article 797, paragraph (1); or Article 806, paragraph (1) of the Companies Act (including a demand specified by Cabinet Order as a demand under other laws and regulations that is equivalent thereto), or a purchase, etc. or sale, etc. of Share Certificates, etc. is made based on statutory obligations;
  - (iv) a purchase, etc. of the Listed or Other Share Certificates, etc. that are subject to the Tender Offer, etc. (including an Option for the purchase and sale of such Listed or Other Share Certificates, etc.; hereinafter the same applies in this item) is effected as per the request of the Tender Offeror, etc. (limited to a request that the board of directors of the Tender Offeror, etc. have decided to make, if the Tender Offeror, etc. is a company (this includes a request that a director has decided to make based on the delegation made by resolution of the board of directors under Article 399-13, paragraph (5) of the Companies Act or based on the delegation made by resolution of the board of directors as provided in the articles of incorporation under paragraph (6) of that Article, if it is a company with supervisory committee; and including a request that an executive officer has decided to make based on the delegation made by resolution of the board of directors under Article 416, paragraph (4) of that Act, if it is a company with nominating committee, etc.)) (but only if the purchase, etc. of the Listed or Other Share Certificates, etc. is effected for the purpose of selling, etc. the Listed or Other Share Certificates, etc. to the Tender Offeror, etc.);
  - (v) a purchase, etc. of the Listed or Other Share Certificates, etc. that are subject to the Tender Offer, etc. (these include Options for the purchase and sale of such Listed or Other Share Certificates, etc.) is effected as per a request that the board of directors of the Issuer of the Listed or Other Share Certificates, etc. have decided to make (including a request that a director has decided to make based on the delegation made by resolution of the board of directors under Article 399-13, paragraph (5) of the Companies Act or based on the delegation made by resolution of the board of directors as

- provided in the articles of incorporation under paragraph (6) of that Article, if it is a company with supervisory committee; and including a request that an executive officer has decided to make based on the delegation made by resolution of the board of directors under Article 416, paragraph (4) of that Act, if it is a company with nominating committee, etc.) in order to cope with the Tender Offer, etc.;
- (vi) a purchase, etc. or sale, etc. of Share Certificates, etc. is effected pursuant to the provisions of Cabinet Order referred to in Article 159, paragraph (3);
  - (vii) a person that comes to know the fact that a Tender Offer, etc. will be launched as prescribed in paragraph (1) effects a purchase, etc. from another person that knows the fact that the Tender Offer, etc. will be launched, through neither a Financial Instruments Exchange Market nor a Over-the-Counter Securities Market, or a person that comes to know the fact that a Tender Offer, etc. will be suspended as provided in paragraph (1) effects a sale, etc. to another person that knows the fact that the Tender Offer, etc. will be suspended, through neither a Financial Instruments Exchange Market nor a Over-the-Counter Securities Market (unless both parties to the sale, etc. know that a further sale, etc. of the Share Certificates, etc. linked to that sale, etc. will be effected that is in violation of the provisions of paragraph (1) or (3))
  - (viii) where a person who receives information on a Fact Concerning Launch of a Tender Offer, etc. from a Specified Person Concerned with Tender Offeror, etc. (meaning a Person Concerned with Tender Offeror, etc. who comes to know the Fact Concerning Launch of a Tender Offer, etc. prescribed in paragraph (1) in a manner prescribed in any of the items of that paragraph; the same shall apply in the following item) (including an officer, etc. of such a person in cases where such a person is a juridical person, and an agent or employee of such a person in cases where such a person is a person other than juridical person) makes a Purchase, etc. of Share Certificates, etc. (limited to cases where, in the public notice made by the person who receives the information pursuant to Article 27-3, paragraph (1), the following matters are clearly indicated and a Tender Offer Notification prescribed in paragraph (2) of that Article which contains these matters and is submitted by the person who receives the information is made available for public inspection under Article 27-14, paragraph (1)):
    - (a) the name of the person who provides the information;
    - (b) the time when the information is received; and
    - (c) the matters specified by Cabinet Office Ordinance as contents of the Fact Concerning Launch of a Tender Offer, etc. on which information is received;
  - (ix) where a Specified Person Concerned with Tender Offeror, etc. who is not



- the person set forth in paragraph (1), item (i) or a person who receives information on the Fact Concerning Launch of a Tender Offer, etc. prescribed in that paragraph from a Specified Person Concerned with Tender Offeror, etc. (such a person excludes a Specified Person Concerned with Tender Offeror, etc., and includes an officer, etc. of such a person in cases where such a person is a juridical person, and an agent or employee of such a person in cases where such a person is a person other than juridical person) makes Purchase, etc. of Share Certificates, etc. (limited to cases where six months have passed from the day of coming to know the Fact Concerning Launch of a Tender Offer, etc. in a manner prescribed in any of the items of that paragraph in the case of a Specified Person Concerned with Tender Offeror, etc., and from the day of receiving the information in the case of a person who receives information);
- (x) where, upon a Merger, etc., Share Certificates, etc. are succeeded or the other party is caused to succeed such Share Certificates, etc. and the proportion of the book value of said Share Certificates, etc. to the total amount of the book value of the assets succeeded upon said Merger, etc. is below the proportion specified by Cabinet Office Ordinance as being a particularly low proportion;
  - (xi) where a resolution of a board of directors meeting relating to a decision on the content of a contract for a Merger, etc. (in the case of an incorporation-type split, an incorporation-type split plan) has been passed before coming to know the Fact Concerning Tender Offer, etc. by a Tender Offeror, etc. and Share Certificates, etc. pertaining to said Tender Offer, etc. are succeeded or the other party is caused to succeed to such Share Certificates, etc. upon said Merger, etc. in accordance with said resolution;
  - (xii) where, upon an incorporation-type split, Share Certificates, etc. are succeeded by a company incorporated through incorporation-type company split (excluding incorporation-type company split that a corporation effects jointly with another corporation);
  - (xiii) where, upon a Merger, etc. or share exchange, Share Certificates, etc. of a company who is a party to said Merger, etc. or share exchange and an issuer of Listed or Other Share Certificates, etc. pertaining to a Tender Offer, etc. or Listed Share Certificates, etc. held by said company which have been delivered are received or said Share Certificates, etc. are delivered;
  - (xiv) a purchase, etc. or sale, etc. is effected in performance of a contract for the purchase, etc. or sale, etc. of the Share Certificates, etc. that are subject to the Tender Offer, etc., which is concluded before the person comes to know the Facts of the Tender Offer, etc. launched by the Tender Offeror, etc. or in implementation of a plan for the purchase, etc. or sale, etc. of the Share Certificates, etc. subject to the Tender Offer, etc. which is decided before the

relevant person comes to know the Facts of the Tender Offer, etc. launched by the Tender Offeror, etc., or a purchase, etc. or sale, etc. is effected that is obviously based on other special circumstances equivalent to such a case (limited to a case specified by Cabinet Office Ordinance).

(Prohibition of Providing Information on Unpublished Material Facts)

- Article 167-2 (1) The Corporate Insider prescribed in Article 166, paragraph (1) of a Listed Company, etc. (including the person prescribed in the second sentence of that paragraph) who has come to know a Material Fact Pertaining to Business or Other Matters of the Listed Company, etc. in a manner prescribed in any of the items of that paragraph shall not provide information on the Material Facts Pertaining to Business or Other Matters or recommend the Sales and Purchase, etc. for the purpose of having other persons gain profits or preventing them from incurring losses by having them make Sales and Purchase, etc. of Specified Securities, etc. of the Listed Company, etc. before the publication set forth in that paragraph is made with regard to the Material Facts Pertaining to Business or Other Matters.
- (2) The Person Concerned with Tender Offeror, etc. prescribed in paragraph (1) of the preceding Article (including the person prescribed in the second sentence of that paragraph) pertaining to a Tender Offeror, etc. who has come to know a Fact Concerning Tender Offer, etc. by the Tender Offeror, etc. in a manner prescribed in any of the items of that paragraph shall not provide information on the Fact Concerning Tender Offer, etc. or recommend the Purchase, etc. or the Sales, etc. for the purpose of having other persons gain profits or preventing them from incurring losses by having them make Sales and Purchase, etc. of Share Certificates, etc. pertaining to the Tender Offer, etc. in cases where the fact is the Fact Concerning Launch of a Tender Offer, etc. prescribed in that paragraph, or by having them make Sales, etc. of Share Certificates, etc. pertaining to the Tender Offer, etc. in cases where the fact is the Fact Concerning Suspension of a Tender Offer, etc. prescribed in that paragraph, before the publication set forth in that paragraph is made with regard to the Fact Concerning Tender Offer, etc.

(Prohibition on Trading in an Unlicensed Market)

- Article 167-3 It is prohibited for any person to effect the following transactions on a Financial Instruments Market established in violation of Article 80, paragraph (1):
- (i) the purchase and sale of Securities; or
  - (ii) a Market Transaction of Derivatives.

(Prohibition on Issuing Public Notice of False Quotations)

Article 168 (1) It is prohibited for any person to issue public notice of a false quotation on the market price of Securities, etc., to prepare documents that contain a false quotation on the market price of Securities, etc. with the aim of issuing a public notice with or distributing them, or to distribute such documents.

(2) It is prohibited for any person to accede to the request of the Issuer, person making a Secondary Distribution of Securities, person making an exclusive Offer to Sell, etc. to Professional Investors, Underwriter, or Financial Instruments Business Operator, etc., and prepare documents that contain a false statement about a material particular in respect of Securities issued by, apportioned to, or dealt by that person, with the aim of issuing a public notice or distributing such documents, or to accede to such a request and distribute such documents.

(3) It is prohibited for the Issuer, person making a Secondary Distribution of Securities, person making an exclusive Offer to Sell, etc. to Professional Investors, Underwriter, or Financial Instruments Business Operator, etc. to make the request referred to in the preceding paragraph.

(Restriction on the Receipt of Consideration for Presenting an Opinion in the Newspaper)

Article 169 Any person that receives or promises to receive consideration from an Issuer, person making a Secondary Distribution of Securities, person making an exclusive Offer to Sell, etc. to Professional Investors, Underwriter, or Financial Instruments Business Operator, etc., or from a Tender Offeror, etc. provided for in Article 27-3, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)), to publish an opinion that seems to provide an assessment of investing in respect of a Security or Issuer or in respect of a Tender Offeror provided for in Article 27-3, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)) in a newspaper or magazine, or to present this to the public in writing, through broadcasting, in a film, or by any other means, must convey that the person has received or promised to receive consideration for doing so, together with the opinion; provided, however, that this does not apply if a person that receives or promises to receive an advertising fee presents the opinion as an advertisement in exchange for the advertising fee.

(Prohibition on Representing a Purchase as Advantageous)

Article 170 In soliciting offers to acquire newly issued Securities or in offering to sell or soliciting offers to purchase already-issued Securities to many and unspecified persons (referred to as "Solicitation to Many and Unspecified Number of Persons for Securities" in the following Article), it is prohibited for

any person to represent to such many and unspecified persons that it or any other person will purchase the Securities acquired by those many and unspecified persons at a predetermined price or more (including a price calculated from a predetermined amount using fixed criteria; hereinafter the same applies in this Article), or that it or any other person will arrange for such Securities to be sold at a predetermined price or more, and it is prohibited for any person to make a representation that could give rise to the misconception that this is what is being represented; provided, however, that this does not apply if the Securities are Securities set forth in Article 2, paragraph (1), items (i) to (vi) inclusive or other Securities specified by Cabinet Office Ordinance.

(Prohibition on Representations about a Fixed Amount of Dividends)

Article 171 In a Solicitation to Many and Unspecified Number of Persons for Securities (excluding a solicitation involving the Securities set forth in Article 2, paragraph (1), items (i) to (vi) inclusive or other Securities specified by Cabinet Office Ordinance; hereinafter the same applies in this Article), it is prohibited for the person issuing the Solicitation to Many and Unspecified Number of Persons for Securities, its officer, advisor, consultant, or other person in an equivalent position, or its agent, employee, or other worker to make a representation to many and unspecified persons indicating that a fixed amount of money or more (including an amount that can be calculated in advance using fixed criteria; hereinafter the same applies in this Article) (including anything that can be disposed of to generate a fixed amount or of money or more) will be provided for the Securities after a certain period (including a representation that could give rise to the misconception that this is what is being represented), as a dividend of profits, distribution of profits, or any other kind of apportionment, regardless of what it is called; provided however, that this does not apply if it is clearly indicated that such representation only indicates an expectation.

(Effect of Sale, etc. of Unlisted Securities by an Unregistered Business Operator)

Article 171-2 (1) In cases where an unregistered business operator (meaning a person who engages in Type I Financial Instruments Business as defined in Article 28, paragraph (1) or Type II Financial Instruments Business as defined in Article 28, paragraph (2) without obtaining registration from the Prime Minister in violation of Article 29; hereinafter the same shall apply in this paragraph) performed a sale, etc. of unlisted securities (meaning sales, or intermediary or agency therefor, dealing in Public Offering or Secondary Distribution or any other similar act specified by a Cabinet Order; hereinafter

the same shall apply in this paragraph), the Subject Contract (meaning a contract pertaining to said sale, etc. or a contract concluded based on said sale, etc., in order for the customer to acquire said unlisted securities; hereinafter the same shall apply in this paragraph) shall be void; provided, however, that this shall not apply where said unregistered business operator or the seller or issuer of said unlisted securities pertaining to said Subject Contract (limited to the parties to said Subject Contract) proves that said sale, etc. neither impairs customer protection nor corresponds to an act of unfair profiting in light of the customer's knowledge, experience, the status of property or the purpose of concluding said Subject Contract.

(2) "Unlisted securities" under the preceding paragraph shall mean bonds, share certificates, share option certificates and other securities specified by a Cabinet Order for which it is particularly necessary to ensure appropriate transactions that do not correspond to:

- (i) Securities listed on a Financial Instruments Exchange;
- (ii) Over-the-Counter Traded Securities or Tradable Securities; or
- (iii) in addition to what is listed in the preceding two items, Securities whose trading price or Issuer's Information can easily be obtained as specified by a Cabinet Order.

## **Chapter VI-2 Administrative Surcharges**

### **Section 1 Payment Orders**

(Issuance of an Administrative Surcharge Payment Order against a Person Conducting a Public Offering of Securities Without Having Its Notification Accepted by the Prime Minister)

Article 172 (1) If, in respect of a Public Offering or Secondary Distribution of Securities subject to a notification under Article 4, paragraph (1), a General Solicitation Involving Securities Acquired by a Qualified Institutional Investor subject to a notification under Article 4, paragraph (2), or a General Solicitation Involving Securities Acquired by a Professional Investor subject to a notification under Article 4, paragraph (3), a person conducts a Public Offering or Secondary Distribution, or issues a General Solicitation Involving Securities Acquired by a Qualified Institutional Investor or a General Solicitation Involving Securities Acquired by a Professional Investor without having the notifications for them accepted by the Prime Minister (for a person that makes a Secondary Distribution or that issues a General Solicitation Involving Securities Acquired by a Qualified Institutional Investors or a General Solicitation Involving Securities Acquired by a Professional Investor, this is limited to a person that engages in any of these acts in connection with the Securities owned by that person), the Prime Minister, in accordance with

the proceedings prescribed in the following Section, must order that person to pay an administrative surcharge to the national treasury that is equivalent to the amount specified in the relevant of the following items for the category of cases set forth in that item (if the person falls under both of the following items, the total of the amounts specified in those items):

- (i) the person causes the Securities to be acquired through such a Public Offering: 2.25 percent (or 4.5 percent, if the Securities are share certificates, etc. (meaning share certificates, preferred equity investment certificates under the Act on Preferred Equity Investment, and other Securities specified by Cabinet Order as being equivalent to them; hereinafter the same applies in this Article, the following Article, Article 172-9, and Article 172-10)) of the total issue value of the Securities it causes to be acquired (if the Securities are share option certificates or any other Securities specified by Cabinet Office Ordinance as being equivalent to them, the total issue value includes the amount to be paid in upon the exercise of the share options under the share option certificates or any other amount specified by Cabinet Office Ordinance as being equivalent to this); and
  - (ii) the person sells Securities it owns through such a Secondary Distribution, General Solicitation Involving Securities Acquired by a Qualified Institutional Investor, or General Solicitation Involving Securities Acquired by a Professional Investor: 2.25 percent (or 4.5 percent, if the Securities are share certificates, etc.) of the total distribution value of the Securities it sells (if the Securities are share option certificates or any other Securities specified by Cabinet Office Ordinance as being equivalent to them, the total distribution value includes the amount to be paid in upon the exercise of the share options under the share option certificates or any other amount specified by Cabinet Office Ordinance as being equivalent to this).
- (2) If an Issuer violates the provisions of Article 15, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27) in causing Securities set forth in Article 15, paragraph (1) to be acquired through a Public Offering (meaning a Public Offering of Securities as prescribed in Article 4, paragraph (1); hereinafter the same applies in this Chapter, except in Articles 173 to 174-3 inclusive) or if a person violates such provisions in selling such Securities through a Secondary Distribution (meaning a Secondary Distribution of Securities prescribed in Article 4, paragraph (4); the same applies in this Chapter, except in the following paragraph; Article 172-2, paragraphs (4) and (5); Article 178, paragraphs (3), (5), and (8); and Article 185-7, paragraphs (14) and (15)) (limited to a person that sells Securities that it owns), the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order the Issuer or that person to pay an administrative surcharge to the national treasury that is equivalent to the amount specified in

the relevant of the following items for the category of cases set forth in that item (or, if the Issuer or person falls under both of the following items, the total of the amounts specified in those items):

- (i) the Issuer causes Securities to be acquired through such a Public Offering: 2.25 percent (or 4.5 percent, if the Securities are share certificates, etc.) of the total issue value of the Securities it causes to be acquired (if the Securities are share option certificates or any other Securities specified by Cabinet Office Ordinance as being equivalent to them, the total issue value includes the amount to be paid in upon the exercise of the share options under those share option certificates or any other amount specified by Cabinet Office Ordinance as being equivalent to this);
  - (ii) the person sells Securities that it owns through such a Secondary Distribution: 2.25 percent (or 4.5 percent, if the Securities are share certificates, etc.) of the total distribution value of the Securities it sells (if the Securities are share option certificates or any other Securities specified by Cabinet Office Ordinance as being equivalent to them, the total distribution value includes the amount to be paid in upon the exercise of the share options under those share option certificates or any other amount specified by Cabinet Office Ordinance as being equivalent to this).
- (3) If a person violates the provisions of Article 15, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27) in selling Securities that it owns through a Secondary Distribution without delivering a Prospectus (limited to a Prospectus in a Secondary Distribution of Securities for Which Disclosure Has Already Been Made as prescribed in Article 13, paragraph (1) (meaning a Secondary Distribution of the Securities prescribed in that paragraph; hereinafter the same applies in this paragraph; Article 172-2, paragraphs (4) and (5); Article 178, paragraphs (5) and (8); and Article 185-7, paragraph (14); hereinafter the same applies in this Chapter), the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order that person to pay an administrative surcharge to the national treasury that is equivalent to 2.25 percent (or 4.5 percent, if the Securities are share certificates, etc.) of the total distribution value of the Securities it sells (if the Securities are share option certificates or any other Securities specified by Cabinet Office Ordinance as being equivalent to them, the total distribution value includes the amount to be paid in upon the exercise of the share options under those share option certificates or any other amount specified by Cabinet Office Ordinance as being equivalent to this).
- (4) The provisions of paragraph (2) apply mutatis mutandis if an Issuer violates the provisions of Article 23-8, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27) in causing Securities specified in that paragraph to be acquired through a Public Offering or if a

person violates such provisions in selling those Securities through a Secondary Distribution (limited to a person selling Securities that it owns).

(Issuance of an Administrative Surcharge Payment Order against an Issuer That Submits Offering Disclosure Documents Containing a False Statement)

Article 172-2 (1) If an Issuer that submits an Offering Disclosure Document that contains a false statement about a material particular or omits a statement as to a material particular that is required to be stated, causes Securities to be acquired or sells Securities through a Public Offering or Secondary Distribution (limited to a Secondary Distribution of Securities that it owns) based on such an Offering Disclosure Document, the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order that Issuer to pay an administrative surcharge to the national treasury that is equivalent to the amount specified in the relevant of the following items for the category of cases set forth in that item (if the Issuer falls under both of the following items, the total of the amounts specified in those items):

- (i) the Issuer causes the Securities to be acquired through a Public Offering based on such an Offering Disclosure Document: 2.25 percent (or 4.5 percent, if the Securities are share certificates, etc.) of the total issue value of the Securities it causes to be acquired (if the Securities are share option certificates or any other Securities specified by Cabinet Office Ordinance as being equivalent to them, the total issue value includes the amount to be paid in upon the exercise of the share options under those share option certificates or any other amount specified by Cabinet Office Ordinance as being equivalent to this); or
- (ii) the Issuer sells Securities it owns through a Secondary Distribution based on such an Offering Disclosure Document: 2.25 percent (or 4.5 percent, if the Securities are share certificates, etc.) of the total distribution value of the Securities it sells (if the Securities are share option certificates or any other Securities specified by Cabinet Office Ordinance as being equivalent to them, the total distribution value includes the amount to be paid in upon the exercise of the share options under those share option certificates or any other amount specified by Cabinet Office Ordinance as being equivalent to this).

(2) If an Issuer submits an Offering Disclosure Document that contains a false statement about a material particular or that omits a statement as to a material particular that is required to be stated, and an officer, etc. of that Issuer (meaning an officer, agent, employee, or other worker of the Issuer; hereinafter the same applies in this paragraph, paragraph (5) and Article 172-10, paragraph (2)) that is involved in the submission of the Offering Disclosure Document with the knowledge that the Offering Disclosure Document contains



a false statement or omits a statement as to a material particular that is required to be stated, sells Securities that the officer, etc. owns through a Secondary Distribution based on such an Offering Disclosure Document, the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order that officer, etc. to pay an administrative surcharge to the national treasury that is equivalent to 2.25 percent (or 4.5 percent, if the Securities are share certificates, etc.) of the total distribution value of the Securities the officer, etc. sells (if the Securities are share option certificates or any other Securities specified by Cabinet Office Ordinance as being equivalent to them, the total distribution value includes the amount to be paid in upon the exercise of the share options under those share option certificates or any other amount specified by Cabinet Office Ordinance as being equivalent to this).

- (3) The term "Offering Disclosure Document" as used in the preceding two paragraphs means a statement and other documents under Article 5 (including as applied mutatis mutandis pursuant to Article 27) (including a Reference Document for the statement and other documents, if the statement is one to which the provisions of Article 5, paragraph (4) apply), an amended statement under Article 7, paragraph (1), Article 9, paragraph (1), or Article 10, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27) (including a Reference Document for the amended statement), a Shelf Registration Statement under Article 23-3, paragraphs (1) and (2) (including as applied mutatis mutandis pursuant to Article 27) (including a Reference Document for the Shelf Registration Statement) and accompanying documents, as well as an Amended Shelf Registration Statement under Article 23-4, Article 23-9, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27) or Article 23-10, paragraph (1) (including as applied mutatis mutandis pursuant to Article 23-10, paragraph (5) (including as applied mutatis mutandis pursuant to Article 27) and Article 27) (including a Reference Document for the Amended Shelf Registration Statement) or Shelf Registration Supplement (including a Reference Document for the Shelf Registration Supplement) under Article 23-8, paragraphs (1) and (5) (including as applied mutatis mutandis pursuant to Article 27) (including a Reference Document for the Shelf Registration Supplement) and accompanying documents.
- (4) The provisions of paragraph (1) (excluding item (i)) apply mutatis mutandis if an Issuer that uses a Prospectus that contains a false statement about a material particular (limited to one that constitutes a particular set forth in one of the items of Article 5, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27); hereinafter the same applies in this and the following paragraph) or omits a statement as to a material particular that is required to be stated sells Securities that it owns through a Secondary Distribution involving such a Prospectus.

- (5) The provisions of paragraph (2) apply *mutatis mutandis* if an Issuer uses a Prospectus that contains a false statement about a material particular or omits a statement as to a material particular that is required to be stated, and an officer, etc. of that Issuer that is involved in the preparation of that Prospectus with the knowledge that the Prospectus contains a false statement or omits a statement as to a material particular that is required to be stated, sells Securities that the officer, etc. owns through a Secondary Distribution that involves such a Prospectus.
- (6) If an Issuer that is required to submit an amended Offering Disclosure Document (meaning an amended statement under the first sentence of Article 7, paragraph (1), (including as applied *mutatis mutandis* pursuant to Article 27) or an Amended Shelf Registration Statement under the first sentence of Article 23-4 (including as applied *mutatis mutandis* pursuant to Article 27); hereinafter the same applies in this Chapter) causes Securities to be acquired or sells Securities through a Public Offering or Secondary Distribution (limited to a Secondary Distribution of Securities that the Issuer owns) without submitting the amended Offering Disclosure Document, the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order that Issuer to pay an administrative surcharge to the national treasury that is equivalent to the amount specified in the relevant of the following items for the category of cases set forth in that item (if the Issuer falls under both of the following items, the total of the amounts specified in those items):
- (i) the Issuer causes the Securities to be acquired through a Public Offering without submitting the amended Offering Disclosure Document: 2.25 percent (or 4.5 percent, if the Securities are share certificates, etc.) of the total issue value of the Securities it causes to be acquired (if the Securities are share option certificates or any other Securities specified by Cabinet Office Ordinance as being equivalent to them, the total issue value includes the amount to be paid in upon the exercise of the share options under those share option certificates or any other amount specified by Cabinet Office Ordinance as being equivalent to them); or
  - (ii) the Issuer sells Securities that it owns through a Secondary Distribution without submitting the amended Offering Disclosure Document: 2.25 percent (or 4.5 percent, if the Securities are share certificates, etc.) of the total distribution value of the Securities that it sells (if the Securities are share option certificates or any other Securities specified by Cabinet Office Ordinance as being equivalent to them, the total distribution value includes the amount to be paid in upon the exercise of the share options under those share option certificates or any other amount specified by Cabinet Office Ordinance as being equivalent to this).

(Issuance of an Administrative Surcharge Payment Order against an Issuer  
That Fails to Submit an Annual Securities Report)

- Article 172-3 (1) If an Issuer violates the provisions of Article 24, paragraph (1) or (3) (including as applied mutatis mutandis pursuant to Article 24, paragraph (5), and also including as applied mutatis mutandis pursuant to Article 27) in failing to submit an Annual Securities Report, the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order the Issuer to pay an administrative surcharge to the national treasury that is equivalent to the amount of the audit certification fee (meaning the amount of money or value of other assets as specified by Cabinet Office Ordinance which has been paid or is payable as consideration for the audit certification set forth in Article 193-2, paragraph (1); the same applies in the following paragraph) for the business year immediately preceding the business year for which the Annual Securities Report was required to be submitted pursuant to these provisions (if the Issuer falls under the category of an Issuer of regulated Securities set forth in Article 5, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27), the business year immediately preceding the Specified Period set forth in Article 24, paragraph (1) as applied mutatis mutandis pursuant to Article 24, paragraph (5) (including as applied mutatis mutandis pursuant to Article 27) in relation to such regulated Securities; hereinafter the same applies in this Article, Article 172-4, paragraph (1), and Article 185-7, paragraph (31) (excluding item (v)) (or, if there is no such immediately preceding business year for which an audit certification is required or in other cases specified by Cabinet Office Ordinance as being equivalent thereto, four million yen).
- (2) If an Issuer violates the provisions of Article 24-4-7, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (3) of that Article, and also including as applied mutatis mutandis pursuant to Article 27) or Article 24-5, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (3) of that Article, and also including as applied mutatis mutandis pursuant to Article 27) in failing to submit a Quarterly Securities Report or Semiannual Securities Report (hereinafter referred to as a "Quarterly or Semiannual Securities Report" in this Chapter), the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order the Issuer to pay an administrative surcharge to the national treasury that is equivalent to half of the amount of the audit certification fee for the business year immediately preceding the business year that includes the period for which the Quarterly or Semiannual Securities Report was required to be submitted pursuant to such provisions (or, if there is no such immediately preceding business year for which an audit certification is required or in other cases specified by Cabinet Office Ordinance as being equivalent thereto, two million yen).

(Issuance of an Administrative Surcharge Payment Order against an Issuer That Submits an Annual Securities Report Containing a False Statement)

Article 172-4 (1) If an Issuer submits an Annual Securities Report, etc. (meaning an Annual Securities Report as prescribed in Article 24, paragraph (1) or (3) (including as applied mutatis mutandis pursuant to Article 24, paragraph (5) and also including as applied mutatis mutandis pursuant to Article 27) and Article 24, paragraph (6) (including as applied mutatis mutandis pursuant to Article 27) and accompanying documents, or an amended report as prescribed in Article 7, paragraph (1), Article 9, paragraph (1), or Article 10, paragraph (1) as applied mutatis mutandis pursuant to Article 24-2, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27); hereinafter the same applies in this Chapter) that contains a false statement about a material particular or that omits a statement as to a material particular that is required to be stated, the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order the Issuer to pay an administrative surcharge to the national treasury that is equivalent to the amount specified in item (i) (or, if the amount set forth in item (ii) exceeds the amount set forth in item (i), the amount set forth in item (ii)); provided, however, that if the Issuer's business year is other than one year in length, the Prime Minister must order the Issuer to pay an administrative surcharge to the national treasury that is equivalent to the amount arrived at when the number of months in its business year is divided by 12 and the quotient is multiplied by the relevant of such amounts.

(i) six million yen; or

(ii) the amount arrived at when the amount specified in sub-item (a) is multiplied by the number specified in sub-item (b):

(a) the total market value of index Securities for calculation (meaning share certificates, preferred equity investment certificates under the Act on Preferred Equity Investment, and other Securities specified by Cabinet Order as being equivalent to them; hereinafter the same applies in this item and Article 172-11, paragraph (1)) issued by the Issuer, as calculated pursuant to the provisions of Cabinet Office Ordinance (if the index Securities for calculation have no market value or if the Issuer has not issued any index Securities for calculation, the amount calculated pursuant to the provisions of Cabinet Order as being equivalent to this); and

(b) six hundred thousandths.

(2) If an Issuer submits a Quarterly Securities, Semiannual Securities, or Extraordinary Report, etc. (meaning a Quarterly Securities Report under Article 24-4-7, paragraph (1) or (2) (including as applied mutatis mutandis

pursuant to Article 24-4-7, paragraph (3), and also including as applied mutatis mutandis pursuant to Article 27), a Semiannual Securities Report or Extraordinary Report under Article 24-5, paragraph (1) (including as applied mutatis mutandis pursuant to Article 24-5, paragraph (3)) or paragraph (4) of that Article (including as applied mutatis mutandis pursuant to Article 27), or an amended report under Article 7, paragraph (1), Article 9, paragraph (1), or Article 10, paragraph (1) as applied mutatis mutandis pursuant to Article 24-4-7, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27) and Article 24-5, paragraph (5) (including as applied mutatis mutandis pursuant to Article 27); hereinafter the same applies in this Chapter), which contains false statement about a material particular or omits a statement as to a material particular that is required to be stated, the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order the Issuer to pay an administrative surcharge to the national treasury that is equivalent to half of the amount set forth in item (i) of the preceding paragraph (or, if the amount set forth in item (ii) of that paragraph exceeds the amount set forth in item (i) of that paragraph, the amount set forth in item (ii) of that paragraph). In such a case, the proviso to the preceding paragraph applies mutatis mutandis.

- (3) The provisions of the preceding paragraph apply mutatis mutandis if an Issuer fails to submit an Extraordinary Report under Article 24-5, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27) stating the particulars specified by Cabinet Office Ordinance as having a material influence on investors' investment decisions.
- (4) The number of months referred to in the proviso to paragraph (1) (including as applied mutatis mutandis pursuant to the second sentence of paragraph (2) (including as applied mutatis mutandis pursuant to the preceding paragraph)) is calculated in accordance with the calendar, and if a period of less than one month is subject to calculation, it is counted as one month.

(Issuance of an Administrative Surcharge Payment Order against a Person Effecting a Purchase, etc. of Share Certificates, etc. Without Issuing Public Notice of the Commencement of a Tender Offer)

Article 172-5 If a person violates the provisions of Article 27-3, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2); hereinafter the same applies in this Article) in effecting a purchase, etc. (meaning a purchase, etc. as prescribed in Article 27-2, paragraph (1) or Article 27-22-2, paragraph (1); hereinafter the same applies in this Article, the following Article, and Article 178, paragraph (13)) of Share Certificates, etc. (meaning the Share Certificates, etc. prescribed in Article 27-2, paragraph (1); hereinafter the same applies in this Article, the following Article and Article

178, paragraph (13)) or Listed Share Certificates, etc. (meaning the Listed Share Certificates, etc. prescribed in Article 24-6, paragraph (1); hereinafter the same applies in this Article, the following Article, Article 178, paragraph (13), and Article 185-7, paragraph (15)), without making the public notice under Article 27-3, paragraph (1) (hereinafter referred to as "Public Notice of the Commencement of a Tender Offer" in this Chapter), the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order that person to pay an administrative surcharge to the national treasury that is equivalent to the amount arrived at when the amount specified in item (i) is multiplied by the amount specified in item (ii).

(i) the amount arrived at when the prices for the purchases, etc. of Share Certificates, etc. or Listed Share Certificates, etc. that it effects without making Public Notice of the Commencement of the Tender Offer, are multiplied by the volumes of those purchases, etc.

(ii) 25 percent.

(Issuance of an Administrative Surcharge Payment Order against a Person Issuing a Public Notice of the Commencement of a Tender Offer That Contains a False Representation)

Article 172-6 (1) If a person makes a Public Notice of the Commencement of a Tender Offer, etc. (meaning a Public Notice of the Commencement of a Tender Offer or a public notice or public announcement amending the contents of a Public Notice of the Commencement of the Tender Offer as prescribed in Article 27-7, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); hereinafter the same applies in this Chapter) that contains a false representation about a material particular or that omits a representation as to a material particular that is required to be represented, or if a person submits a Tender Offer Statement, etc. (meaning a Tender Offer Statement as prescribed in Article 27-3, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)), an amended statement under Article 27-8, paragraphs (1) to (4) inclusive (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)), a Tender Offeror's Answer as prescribed in Article 27-10, paragraph (11), or an amended report under Article 27-8, paragraphs (1) to (4) inclusive as applied mutatis mutandis pursuant to Article 27-10, paragraph (12); hereinafter the same applies in this Chapter) that contains a false statement about a material particular or that omits a statement as to a material particular that is required to be stated, the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order that person to pay an administrative surcharge to the national treasury that is equivalent to the amount arrived at when the amount specified in item (i) is multiplied by the amount specified in

item (ii).

(i) the amount arrived at when the closing price of the Share Certificates, etc. or Listed Share Certificates, etc. subject to the Tender Offer (meaning a Tender Offer as prescribed in Article 27-2, paragraph (1) or Article 27-22-2, paragraph (1); hereinafter the same applies in this Article and Article 185-7, paragraphs (8) and (9)) to which that Public Notice of the Commencement of a Tender Offer, etc. or Tender Offer Statement, etc. pertains (meaning the closing price as set forth in Article 67-19 or Article 130 as of the day immediately preceding the day of the Public Notice of the Commencement of the Tender Offer (or, if there is no such price, the amount specified by Cabinet Office Ordinance as being equivalent to this), is multiplied by the number of Share Certificates, etc. or Listed Share Certificates, etc. that the person purchases, etc. through that Tender Offer.

(ii) 25 percent.

(2) The provisions of the preceding paragraph apply mutatis mutandis if a person fails to submit an Amended Tender Offer Statement, etc. (meaning a Tender Offer Statement as prescribed in Article 27-3, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)), an amended statement under Article 27-8, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2), a Tender Offeror's Answer as prescribed in Article 27-10, paragraph (11), or an amended report under Article 27-8, paragraph (2) as applied mutatis mutandis pursuant to Article 27-10, paragraph (12); hereinafter the same applies in this Chapter).

(Issuance of an Administrative Surcharge Payment Order against a Person That Fails to Submit a Statement of Large-Volume Holdings or Changes)

Article 172-7 If a person violates the provisions of Article 27-23, paragraph (1), Article 27-25, paragraph (1), or Article 27-26, paragraph (1), (2), (4), or (5) in failing to submit a Statement of Large-Volume Holdings or a Statement of Changes (hereinafter referred to as a "Statement of Large-Volume Holdings or Changes" in this Chapter), the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order that person to pay an administrative surcharge to the national treasury that is equivalent to the amount arrived at when the amount specified in item (i) is multiplied by the amount specified in item (ii).

(i) the amount arrived at when the closing price as provided in Article 67-19 or Article 130, of the day after that on which the person is required to submit a Statement of Large-Volume Holdings or Changes for share certificates issued by the Issuer (meaning the Issuer as prescribed in Article 27-23, paragraph (1); hereinafter the same applies in this and the following Articles) of Share Certificates, etc. (meaning Share Certificates, etc. as prescribed in Article

27-23, paragraph (1); the same applies in the following Article) that are the subject of the Statement of Large-Volume Holdings or Changes that the person is required to submit or the closing price of Securities specified by Cabinet Office Ordinance as being equivalent to such share certificates on that day, is multiplied by the Issuer's total number of issued shares as of that day or by the number specified by Cabinet Office Ordinance as being equivalent to this (or, if there is no such price, the amount calculated pursuant to the provisions of Cabinet Office Ordinance as being equivalent to this).

(ii) one hundred thousandths.

(Issuance of an Administrative Surcharge Payment Order against a Person Submitting a Statement of Large-Volume Holdings or Changes That Contains a False Statement)

Article 172-8 If a person submits a Statement of Large-Volume Holdings or Changes, etc. (meaning a Statement of Large-Volume Holdings or Changes or an amended statement under prescribed in Article 9, paragraph (1) or Article 10, paragraph (1) as applied mutatis mutandis pursuant to Article 27-25, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27-26, paragraph (6)) or Article 27-29, paragraph (1); hereinafter the same applies in this Chapter) that contains a false statement about a material particular or that omits a statement as to a material particular that is required to be stated, the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order that person to pay an administrative surcharge to the national treasury that is equivalent to the amount arrived at when the amount specified in item (i) is multiplied by the amount specified in item (ii).

(i) the amount arrived at when the closing price as provided in Article 67-19 or Article 130, on of the day after that on which the person is required to submit a Statement of Large-Volume Holdings or Changes for share certificates issued by the Issuer of Share Certificates, etc. that are the subject of that Statement of Large-Volume Holdings or Changes or the closing price of Securities specified by Cabinet Office Ordinance as being equivalent to such share certificates on that day, is multiplied by the Issuer's total number of issued shares as of that day or by the number specified by Cabinet Office Ordinance as being equivalent to this (or, if there is no such price, the amount calculated pursuant to the provisions of Cabinet Office Ordinance as being equivalent to this).

(ii) one hundred thousandth.

(Issuance of an Administrative Surcharge Payment Order against a Person That Issues a Specified Solicitation, etc. Without Providing or Disclosing



Specified Information on Securities)

Article 172-9 If a person issues a Specified Solicitation, etc. (if the person issues a Specified Offer to Sell, etc., this is limited to a Specified Offer to Sell, etc. Securities that the person owns) even though the Issuer of the Securities has not provided the other party with or disclosed the Specified Information on Securities, etc. for the relevant Securities pursuant to the provisions of Article 27-31, paragraph (2), the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order that person to pay an administrative surcharge to the national treasury that is equivalent to the amount specified in the relevant of the following items for the category of cases set forth in that item (if the person falls under both of the following items, the total of the amounts specified in those items):

- (i) the person causes the Securities to be acquired through an Exclusive Solicitation of Offers to Acquire: 2.25 percent (or 4.5 percent, if the Securities are share certificates, etc.) of the total issue value of the Securities acquired (if the Securities are share option certificates or any other Securities specified by Cabinet Office Ordinance as being equivalent to them, the total issue value includes the amount to be paid in upon the exercise of the share options under those share option certificates or any other amount specified by Cabinet Office Ordinance as being equivalent to this).
- (ii) if the person sells Securities that it owns through a Specified an Offer to Sell, etc.: 2.25 percent (or 4.5 percent, if the Securities are share certificates, etc.) of the total price of the Securities that it sells (if the Securities are share option certificates or any other Securities specified by Cabinet Office Ordinance as being equivalent to them, the total price includes the amount to be paid in upon the exercise of the share options under those share option certificates or any other amount specified by Cabinet Office Ordinance as being equivalent to this).

(Administrative Surcharge Payment Order against Issuer, etc. which Has Provided or Disclosed Specified Information on Securities, etc. That Contains a Falsity)

Article 172-10 (1) If an Issuer that provides or discloses Specified Information on Securities, etc. which contains false information about a material particular or which omits information about a material particular that is required to be provided or disclosed (hereinafter referred to as "Specified Information on Securities, etc. That Contains a Falsity, etc." in this Article, Article 172-12, paragraph (1), Article 178, paragraph (20), and Article 185-7, paragraph (15)) causes Securities to be acquired or sells Securities through a Specified Solicitation, etc. involving Specified Information on Securities, etc. That Contains a Falsity, etc. (if this constitutes a Specified an Offer to Sell, etc., it is

limited to a Specified Offer to Sell, etc. Securities that the Issuer owns), the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order the Issuer to pay an administrative surcharge to the national treasury in the amount specified in item (i) (if the Specified Information on Securities, etc. That Contains a Falsity, etc. is not disclosed, the amount arrived at when that amount is multiplied by the number set forth in item (ii)):

(i) the amount equivalent to that set forth in the relevant of the following sub-items for the category of cases set forth in that sub-item (or, in a case that falls under both of the following sub-items, the total of the amounts specified in those sub-items):

(a) the Issuer causes Securities to be acquired through an Exclusive Solicitation of Offers to Acquire involving Specified Information on Securities, etc. That Contains a Falsity, etc.: 2.25 percent (or 4.5 percent, if the Securities are share certificates, etc.) of the total issue value of the Securities it causes to be acquired (if the Securities are share option certificates or any other Securities specified by Cabinet Office Ordinance as being equivalent to them, the total issue value includes the amount to be paid in upon the exercise of the share options under those share option certificates or any other amount specified by Cabinet Office Ordinance as being equivalent to this);

(b) the Issuer sells the Securities it owns through a Specified Offer to Sell, etc. involving Specified Information on Securities, etc. That Contains a Falsity, etc.: 2.25 percent (or 4.5 percent, if the Securities are share certificates, etc.) of the total distribution value of the Securities that it sells (if the Securities are share option certificates or any other Securities specified by Cabinet Office Ordinance as being equivalent to them, the total distribution value includes the amount to be paid in upon the exercise of the share options under those share option certificates or any other amount specified by Cabinet Office Ordinance as being equivalent to this).

(ii) the number arrived at when the number set forth in sub-item (a) is divided by the number set forth in sub-item (b):

(a) the number of persons provided with the Specified Information on Securities, etc. That Contains a Falsity, etc.;

(b) the number of persons to which the Specified Solicitation, etc. is issued.

(2) If an Issuer provides or discloses Specified Information on Securities, etc. That Contains a Falsity, etc., and an officer, etc. that is involved in providing or disclosing that Specified Information on Securities, etc. That Contains a Falsity, etc. with the knowledge that the Specified Information on Securities, etc. That Contains a Falsity, etc. contains false information or omits information about a particular that is required to be provided or disclosed, sells

the Securities that the officer, etc. owns through a Specified Offer to Sell, etc. that involves the Specified Information on Securities, etc. That Contains a Falsity, etc., the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order that officer, etc. to pay an administrative surcharge to the national treasury that is equivalent to 2.25 percent (or 4.5 percent, if the Securities are share certificates, etc.) of the total price of the Securities that the officer, etc. sells (if the Securities are share option certificates or any other Securities specified by Cabinet Office Ordinance as being equivalent to them, the total price includes the amount to be paid in upon the exercise of the share options under those share option certificates or any other amount specified by Cabinet Office Ordinance as being equivalent to this) (or, if the Specified Information on Securities, etc. That Contains a Falsity, etc. is not disclosed, this means the amount arrived at when such an amount is multiplied by the number set forth in item (ii) of the preceding paragraph).

(Issuance of an Administrative Surcharge Payment Order against an Issuer That Provides or Discloses Information on the Issuer, etc. That Contains a Falsity)

Article 172-11 (1) If an Issuer provides or discloses Information on the Issuer that contains false information about a material particular or that omits information about a material particular that is required to be provided or disclosed (hereinafter referred to as "Information on the Issuer, etc. That Contains a Falsity, etc." in this paragraph, paragraph (1) of the following Article, Article 178, paragraph (21), and Article 185-7, paragraph (13)), the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order the Issuer to pay an administrative surcharge to the national treasury that is equivalent to the amount set forth in item (i) below (if the Information on the Issuer, etc. That Contains a Falsity, etc. is not disclosed, this means the amount arrived at when that amount is multiplied by the number set forth in item (ii)); provided, however, that if the Issuer's business year is other than one year in length, the Prime Minister must order the Issuer to pay an administrative surcharge to the national treasury that is equivalent to the amount arrived at when the number of months in its business year is divided by 12 and the quotient is multiplied by the relevant of such amounts:

- (i) the amount specified in sub-item (a) (or, if the amount set forth in sub-item (b) exceeds that set forth in sub-item (a), the amount set forth in sub-item (b)):
  - (a) six million yen;
  - (b) the amount arrived at when the amount set forth in 1. below is multiplied by the number set forth in 2. below:

1. the total market value of the index Securities for calculation issued by the Issuer, as calculated pursuant to the provisions of Cabinet Office Ordinance (or, if there is no market value for the index Securities for calculation or if the Issuer has not issued any index Securities for calculation, the amount equivalent thereto as calculated pursuant to the provisions of Cabinet Order);
  2. six hundred thousandths.
- (ii) the number arrived at when the number set forth in sub-item (a) is divided by the number set forth in sub-item (b):
- (a) the number of persons provided with the Information on the Issuer, etc. That Contains a Falsity, etc.;
  - (b) the number of persons to which the Information on the Issuer, etc. is required to be provided, in a case to which the provisions of Article 27-32, paragraphs (1) to (3) inclusive apply.
- (2) The number of months referred to in the proviso to the preceding paragraph is calculated in accordance with the calendar, and if a period of less than one month is subject to calculation, it is counted as one month.

(Administrative Monetary Penalty Payment Order against Person Who Conducted an Act Which Facilitates or Incites Submission, etc. of Fake Disclosure Documents, etc.)

Article 172-12 (1) When a person falling under any of the categories specified in the following items (such person is referred to as a "Person Submitting Disclosure Documents, etc." in the following paragraph) has submitted, provided or publicly announced any of the documents or information specified in the respective items (such documents and information are referred to as the "Fake Disclosure Documents, etc." in that paragraph) and there is a person who engaged in specified involvement (hereinafter referred to as "Specified Involved Person" in this paragraph), the Prime Minister shall, in accordance with the procedures prescribed in the following Section, order said Specified Involved Person to pay to the national treasury an administrative monetary penalty in the amount specified by Cabinet Office Ordinance as the amount equivalent to the amount of money or the value of other assets which have been paid or is payable as the fees, remuneration or any other consideration for said specified involvement:

- (i) Issuer: Offering Disclosure Documents (meaning the Offering Disclosure Documents prescribed in Article 172-2, paragraph (3)), Annual Securities Report, etc., Quarterly Securities Report, Semiannual Securities Report or Extraordinary Securities Report, etc., which contain any fake statement on important matters or lack a statement on important matters that should be stated, Specified Information on Securities, etc. Containing Fake Information,

etc. or Issuer's Information, etc. Containing Fake Information, etc.; and  
(ii) Tender Offeror prescribed in Article 27-3, paragraph (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)): Tender Offer Notification, etc. which contains any fake statement on important matters or lacks a statement on important matters that should be stated.

(2) The term "specified involvement" used in the preceding paragraph shall mean an act which facilitates the submission, provision or public announcement of Fake Disclosure Documents, etc. by a Person Submitting Disclosure Documents, etc. which falls under any of the following items or an act which incites the submission, provision or public announcement of Fake Disclosure Documents, etc. by a Person Submitting Disclosure Documents, etc.:

- (i) conducting a series of acts to hide or disguise all or part of the facts that should constitute the basis for accounting procedures necessary for the preparation of said Fake Disclosure Documents, etc. and providing advice concerning the preparation of said Fake Disclosure Documents, etc. by the person who prepares said Fake Disclosure Documents, etc. based on said hidden or disguised facts; and
- (ii) with the knowledge that such act constitutes all or part of a series of acts to hide or disguise as prescribed in the preceding paragraph, conducting all or part of a series of acts (excluding an act of making an audit certification prescribed in Article 193-2, paragraph (1)) to hide or disguise.

(Issuance of an Administrative Surcharge Payment Order against a Person That Influences the Price of Securities, etc. by Disseminating Unfounded Rumors)

Article 173 (1) If a person, in violation of the provisions of Article 158, spreads unfounded rumors or trades by fraudulent means, or influences the prices of Securities, etc. by spreading those unfounded rumors or trading by those fraudulent means (such an act is hereinafter referred to as a "Violation" and such person is hereinafter referred to as the "Violator" in this Article), the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order the Violator to pay an administrative surcharge to the national treasury that is equivalent to the amount specified in the relevant of the following items for the category of cases set forth in that item (or, if the Violation falls under two or more of the cases set forth in the following items, the total of the amounts specified in those items):

- (i) in the period from the onset to the end of the Violation (hereinafter referred to as the "Duration of the Violation" in this Article), the volume of Securities Sales, etc. that the Violator effects on the Violator's own account for the Securities, etc. involved in the Violation, exceeds the volume of Securities

Purchases, etc. that the Violator effects on the Violator's own account as pertains to the Securities, etc. involved in the Violation: the amount arrived at when the amount set forth in sub-item (b) below is deducted from the amount set forth in sub-item (a) below (if the resulting amount is less than zero, it is deemed to be zero):

(a) the Value of the volume of Securities Sales, etc. that is in excess;

(b) the amount arrived at when the lowest Securities Purchase, etc. price for the relevant Securities, etc., from among the lowest prices as prescribed in Article 67-19 or Article 130 on each day in the period from the end of the Violation until one month has elapsed since it ended (if there is no such lowest price, this means the price specified by Cabinet Office Ordinance as being equivalent to it; the lowest price on the day on which the Violation ends is the amount specified by Cabinet Office Ordinance), is multiplied by the volume that is in excess.

(ii) during the Duration of the Violation, the volume of Securities Purchases, etc. that the Violator effects on the Violator's own account for the Securities, etc. involved in the Violation, exceeds the volume of Securities Sales, etc. of Securities Sales, etc. that the Violator effects on the Violator's own account for the Securities, etc. involved in the Violation: the amount arrived at when the amount set forth in sub-item (b) below is deducted from the amount set forth in sub-item (a) below (if the resulting amount is less than zero, it is deemed to be zero):

(a) the amount arrived at when the highest Securities Sale, etc. price for the relevant Securities, etc., from among the highest prices as prescribed in Article 67-19 or Article 130 on each day in the period from the end of the Violation until one month has elapsed since it ended (if there is no such highest price, this means the price specified by Cabinet Office Ordinance as being equivalent to it; the highest price on the day on which the Violation ends is the amount specified by Cabinet Office Ordinance), is multiplied by the volume that is in excess;

(b) the Value of the volume of Securities Purchases, etc. that is in excess.

(iii) during the period from the onset of the Violation until one month has elapsed since it ended, the Violator causes the Securities involved in the Violation, which the Violator or a person set forth in the items of paragraph (5) issues, to be acquired through a solicitation with a view to issuing new securities or delivers those Securities in a Reorganization (meaning a Reorganization as prescribed in Article 2-2, paragraph (1); hereinafter the same applies in this Chapter): the amount arrived at when the amount set forth in sub-item (b) below is deducted from the amount set forth in sub-item (a) below (if the resulting amount is less than zero, it is deemed to be zero):

(a) the amount arrived at when the highest Securities Purchase, etc. price for

the Securities that the Violator causes to be acquired through the solicitation with a view to issuing new securities or delivers in the Reorganization, from among the highest prices as prescribed in Article 67-19 or Article 130 on each day in the period from the end of the Violation until one month has elapsed since it ended (if there is no such highest price, this means the price specified by Cabinet Office Ordinance as being equivalent to it; the highest price on the day on which the Violation ends is the amount specified by Cabinet Office Ordinance), is multiplied by the volume of Securities that the Violator causes to be acquired through such solicitation with a view to issuing new securities or delivers in the Reorganization;

- (b) the amount arrived at when the price specified by Cabinet Order as the price of the Securities that the Violator causes to be acquired through the solicitation with a view to issuing new securities or delivers in the Reorganization as of the time immediately preceding the Violation (hereinafter referred to as the "Price Immediately Preceding the Violation" in this Article), is multiplied by the volume of the Securities that the Violator causes to be acquired through the solicitation with a view to issuing new securities or delivers in the Reorganization.
- (iv) during the period from the onset of the Violation until one month has elapsed since it ended, the Violator effects a Securities the Sales, etc. of Securities Sale, etc. or a Securities Purchase, etc. on the account of any person other than itself: the amount specified in sub-item (a) or (b) according to the category of the person that has conducted the Sales, etc. of Securities or the Purchase, etc. of Securities set forth in sub-item (a) or (b):
  - (a) a person that has conducted the Sales, etc. of Securities or the Purchase, etc. of Securities as an investment of Property Subject to Investment (meaning money or other properties invested by a person that conducts any of the acts listed in the items of Article 28, paragraph (4) on a regular basis on behalf of the Right Holders prescribed in Article 42, paragraph (1); hereinafter the same shall apply in this Article to Article 175 inclusive): the amount obtained by multiplying, by three, the amount specified by Cabinet Office Ordinance as an amount equivalent to the consideration for investment of the Property Subject to Investment which is specified by Cabinet Office Ordinance in the month which includes the day of the Sales, etc. of Securities or the Purchase, etc. of Securities (in cases where the Sales, etc. of Securities or the Purchase, etc. of Securities has been conducted over two or more months, the last month of such months); or
  - (b) a person other than the person set forth in sub-item (a): the amount specified by Cabinet Office Ordinance as the amount of fees, remuneration or any other consideration for the Sales, etc. of Securities or the Purchase,

etc. of Securities.

- (2) The term "Securities Sale, etc." as used in this Article means the sale of Securities or Commodities (in the case of Commodities, limited to sales conducted through Market Transactions of Derivatives (limited to transactions listed in Article 2, paragraph (21), item (i)), a transaction listed in item (ii) of that paragraph (limited to a transaction wherein the Violator is the party to pay the money if the Actual Figure exceeds the Agreed Figure), a transaction as set forth in Article 2, paragraph (21), item (iii) (limited to a transaction wherein the relevant person is the party to grant the Option), or any other transaction specified by Cabinet Order.
- (3) The term "Securities Purchase, etc. " as used this Article means a purchase of Securities or Commodities (in the case of Commodities, limited to purchase conducted through Market Transactions of Derivatives (limited to transactions listed in Article 2, paragraph (21), item (i)), a transaction listed in item (ii) of that paragraph (limited to a transaction wherein the relevant person is the party to receive the money if the Actual Figure exceeds the Agreed Figure), a transaction as set forth in Article 2, paragraph (21), item (iii) (limited to a transaction wherein the relevant person is the party to acquire the Option), or any other transaction specified by Cabinet Order.
- (4) The term "Value" as used in paragraph (1) means the amount arrived at when the Securities Sale, etc. price is multiplied by the volume of that sale, etc. or when the Securities Purchase, etc. price is multiplied by the volume of that purchase, etc.
- (5) In the case referred to in paragraph (1), if the Violator effects the Securities Sale, etc. or Securities Purchase, etc. on the account of a person set forth in one of the following items, the Violator is deemed to effect the Securities Sale, etc. or Securities Purchase, etc. on its own account (if the person set forth in the relevant item commits the same Violation as the Violator, this excludes anything that constitutes the same Securities Sale, etc. or Securities Purchase, etc. as one that the person set forth in that item effects on that person's own account), and the provisions of the preceding paragraphs apply:
  - (i) a company in which the Violator holds the majority of all shareholders', etc. voting rights or any other person specified by Cabinet Office Ordinance as being closely related to the Violator.
  - (ii) a person that shares living expenses with the Violator or any other person specified by Cabinet Office Ordinance as being uniquely related to the Violator.
- (6) For the purposes of calculating the amounts set forth in the items of paragraph (1), if the Violator, at the time the Violation begins, effects a sale of the Securities or Commodities involved in the Violation, without possessing those Securities or Commodities (in the case of Commodities, limited to sales



conducted through Market Transactions of Derivatives (limited to transactions listed in Article 2, paragraph (21), item (i))), on the Violator's own account or on the account of a person set forth in one of the items of the preceding paragraph (this means a person other than one committing the same Violation; hereinafter the same applies in this paragraph); if the Violator, as of the time the Violation begins, has agreed to effect a transaction set forth in Article 2, paragraph (21), item (ii) (limited to a transaction of the Securities or Commodities involved in the Violation), wherein the Violator will be the party to pay the money if the Actual Figure exceeds the Agreed Figure, on the Violator's own account or on the account of a person set forth in one of the items of the preceding paragraph; or in any other case specified by Cabinet Order; the Violator, at the time the Violation begins, is deemed to effect a Securities Sales, etc. , at the Price Immediately Preceding the Violation on the Violator's own account.

- (7) For the purposes of calculating the amounts set forth in the items of paragraph (1), if the Violator, at the time the Violation begins, owns the Securities or Commodities involved in the Violation; if the Violator, as of the time the Violation begins, has agreed to effect a transaction set forth in Article 2, paragraph (21), item (ii), wherein the Violator will be the party to receive the money if the Actual Figure exceeds the Agreed Figure (limited to a transaction of the Securities or Commodities involved in the Violation), on the Violator's own account or on the account of a person set forth in one of the items of paragraph (5) (this means a person other than one committing the same Violation); and in any other case specified by Cabinet Order; the Violator, at the time the Violation begins, is deemed to effect the Securities Purchase, etc. at the Price Immediately Preceding the Violation on the Violator's own account.
- (8) The amounts set forth in the items of paragraph (1) are calculated for each issue of Securities.
- (9) If a transaction set forth in Article 2, paragraph (21), item (ii) is settled through the payment and receipt of money based on the Actual Figure; if the Options on a transaction set forth in Article 2, paragraph (21), item (iii) extinguish without being exercised; and in any other case specified by Cabinet Order as being similar; the necessary particulars relevant to the calculation of the administrative surcharge referred to in paragraph (1) are specified by Cabinet Order.
- (10) Beyond what is provided for in paragraph (2) to the preceding paragraph inclusive, the necessary particulars relevant to the calculation of the value of the Securities Sales, etc. and the value of the Securities Purchase, etc. provided for in paragraph (1), and necessary particulars otherwise relevant to the calculation of the administrative surcharge referred to in that paragraph

are specified by Cabinet Order.

(Issuance of an Administrative Surcharge Payment Order against a Person Effects a Purchase and Sale, etc. of Securities with the Aim of Misleading Others About the Status of Transactions)

Article 174 (1) If a person effects a purchase and sale of Securities, Market Transaction of Derivatives, or Over-the-Counter Transaction of Derivatives that is in violation of the provisions of Article 159, paragraph (1), offers to effect such a transaction, or entrusts, etc. a person with effecting such a transaction (such an act is hereinafter referred to as a "Violation" and such a person is hereinafter referred to as a "Violator" in this Article), the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order the Violator to pay an administrative surcharge to the national treasury that is equivalent to the amount specified in the relevant of the following items for the category of cases set forth in that item (or, if the Violation falls under two or more of the cases set forth in the following items, the total of the amounts specified in those items):

(i) in the period from the onset to the end of the Violation (hereinafter referred to as the "Duration of the Violation" in this Article), the volume of the Securities Sales, etc. that the Violator effects on the Violator's own account for the Securities, etc. (meaning Securities or Options, or Financial Instruments (other than Securities) or Financial Indicators connected with Derivatives Transactions; hereinafter the same applies in this and the following Articles) that are involved in the Violation, exceeds the volume of Securities Purchases, etc. that the Violator effects on the Violator's own account for the Securities, etc. that are involved in the Violation: the amount arrived at when the amount set forth in sub-item (b) below is deducted from the amount set forth in sub-item (a) below (if the resulting amount is less than zero, it is deemed to be zero):

(a) the Value of the volume of Securities Sales, etc. that is in excess;

(b) the amount arrived at when the lowest Securities Purchase, etc. price for the relevant Securities, etc., from among the lowest prices as prescribed in Article 67-19 or Article 130 on each day in the period from the end of the Violation until one month has elapsed since the Violation has ended (if there is no such lowest price, this means the price specified by Cabinet Office Ordinance as being equivalent to it and the lowest price on the day on which the Violation ends is the amount specified by Cabinet Office Ordinance), is multiplied by the volume that is in excess.

(ii) during the Duration of the Violation, the volume of Securities Purchases, etc. that the Violator effects on the Violator's own account for the Securities, etc. that are involved in the Violation, exceeds the volume of Securities Sales,

etc. that the Violator effects on the Violator's own account for the Securities, etc. that are involved in the Violation: the amount arrived at when the amount set forth in sub-item (b) below is deducted from the amount set forth in sub-item (a) below (if the resulting amount is less than zero, it is deemed to be zero):

(a) the amount arrived at when the highest Securities Sale, etc. price for the relevant Securities, etc., from among the highest prices as prescribed in Article 67-19 or Article 130 on each day in the period from the end of the Violation until one month has elapsed since it ended (if there is no such highest price, this means the price specified by Cabinet Office Ordinance as being equivalent to it; the highest price on the day on which the Violation ends is the amount specified by Cabinet Office Ordinance), is multiplied by the volume that is in excess;

(b) the Value of the volume of Securities Purchases, etc. that is in excess.

(iii) in the period from the onset of the Violation until one month has elapsed since it ended, the Violator causes the Securities involved in the Violation which the Violator or a person set forth in the items of paragraph (5) issues, to be acquired through a solicitation with a view to issuing new securities or delivers such Securities in a Reorganization: the amount arrived at when the amount set forth in sub-item (b) below is deducted from the amount set forth in sub-item (a) below (if the resulting amount is less than zero, it is deemed to be zero):

(a) the amount arrived at when the highest Securities Purchase, etc. price for the Securities that the Violator causes to be acquired through the solicitation with a view to issuing new securities or delivers in the Reorganization, from among the highest prices as prescribed in Article 67-19 or Article 130 on each day in the period from the end of the Violation until one month has elapsed since it ended (if there is no such highest price, this means the price specified by Cabinet Office Ordinance as being equivalent to it and the highest price on the day on which the Violation ends is the amount specified by Cabinet Office Ordinance), is multiplied by the volume of Securities that the Violator causes to be acquired through the solicitation with a view to issuing new securities or delivers in the Reorganization;

(b) the amount arrived at when the price at the onset of the Violation for the Securities that the Violator causes to be acquired through the solicitation with a view to issuing new securities or delivers in the Reorganization, is multiplied by the volume of Securities that the Violator causes to be acquired through the solicitation with a view to issuing new securities or delivers in the Reorganization.

(iv) in the period from the onset of the Violation until one month has elapsed

since it ended, the Violator commits a Violation or effects a Securities Sale, etc. or Securities Purchase, etc. on the account of any person other than itself the amount specified in sub-item (a) or (b) according to the category of the person that has conducted the Act of Violation, the Sales, etc. of Securities or the Purchase, etc. of Securities set forth in sub-item (a) or (b):

- (a) a person that has conducted the Act of Violation, the Sales, etc. of Securities or the Purchase, etc. of Securities as an investment of Property Subject to Investment: the amount obtained by multiplying, by three, the amount specified by Cabinet Office Ordinance as an amount equivalent to the consideration for investment of the Property Subject to Investment which is specified by Cabinet Office Ordinance in the month which includes the day of the Act of Violation, the Sales, etc. of Securities or the Purchase, etc. of Securities (in cases where the Act of Violation, the Sales, etc. of Securities or the Purchase, etc. of Securities has been conducted over two or more months, the last month of such months); or
- (b) a person other than the person set forth in sub-item (a): the amount specified by Cabinet Office Ordinance as the amount of fees, remuneration or any other consideration for the Act of Violation, the Sales, etc. of Securities or the Purchase, etc. of Securities.

- (2) The term "Securities Sale, etc." as used in this Article means the sale of Securities or Commodities (in the case of Commodities, limited to sales conducted through Market Transactions of Derivatives (limited to transactions listed in Article 2, paragraph (21), item (i))), a transaction listed in item (ii) of that paragraph (limited to a transaction wherein the Violator is the party to pay the money if the Actual Figure exceeds the Agreed Figure), a transaction as set forth in Article 2, paragraph (21), item (iii) (limited to a transaction wherein the relevant person is the party to grant the Option), or any other transaction specified by Cabinet Order.
- (3) The term "Securities Purchase, etc." as used in this Article means a purchase of Securities or Commodities (in the case of Commodities, limited to purchase conducted through Market Transactions of Derivatives (limited to transactions listed in Article 2, paragraph (21), item (i))), a transaction listed in item (ii) of that paragraph (limited to a transaction wherein the Violator is the party to receive the money if the Actual Figure exceeds the Agreed Figure), a transaction as set forth in Article 2, paragraph (21), item (iii) (limited to a transaction wherein the relevant person is the party to acquire the Option), or any other transaction specified by Cabinet Order.
- (4) The term "Value" as used in paragraph (1) means the amount arrived at when the Securities Sale, etc. price is multiplied by the volume of that sale, etc. or when the Securities Purchase, etc. price is multiplied by the volume of that purchase, etc.

- (5) In the case referred to in paragraph (1), if the Violator effects the Securities Sale, etc. or Securities Purchase, etc. on the account of a person set forth in one of the following items, the Violator is deemed to effect the Securities Sale, etc. or Securities Purchase, etc. on its own account (if the person set forth in the relevant item commits the same Violation as the Violator, this excludes anything that constitutes the same Securities Sale, etc. or Securities Purchase, etc. as one that the person set forth in that item effects on that person's own account), and the provisions of the preceding paragraphs apply:
- (i) a company in which the Violator holds the majority of all shareholders', etc. voting rights or any other person specified by Cabinet Office Ordinance as being closely related to the Violator.
  - (ii) a person that shares living expenses with the Violator, or any other person specified by Cabinet Office Ordinance as being uniquely related to the Violator.
- (6) or the purposes of calculating the amount listed in the items of paragraph (1), in the cases where a Violator, at the time of the commencement of said Act of Violation, has conducted sales of the Securities or Commodities subject to an Act of Violation without possessing such Securities or Commodities (in the case of Commodities, limited to sales conducted through Market Transactions of Derivatives (limited to transactions listed in Article 2, paragraph (21), item (i))) on his/her own account or on the account of any person listed in the items of the preceding paragraph (excluding a person who has committed the same Act of Violation; hereinafter the same shall apply in this paragraph), where the Violator, at the time of the commencement of said Act of Violation, has concluded an agreement for a transaction specified in Article 2, paragraph (21), item (ii) (limited to the transactions of Securities or Commodities subject to said Act of Violation) under which the person is obligated to pay money if the Actual Figure exceeds the Agreed Figure on his/her own account or on account of any person listed in the items of the preceding paragraph, or in any other cases specified by Cabinet Order, said Violator shall be deemed to have conducted, on his/her own account, the Sales, etc. of Securities at the time of the commencement of said Act of Violation and at the price as of such time.
- (7) For the purposes of calculating the amounts set forth in the items of paragraph (1), if the Violator, at the time the Violation begins, owns the Securities or Commodities involved in the Violation; if the Violator, as of the time the Violation begins, has agreed to effect a transaction set forth in Article 2, paragraph (21), item (ii), wherein the Violator will be the party to receive the money if the Actual Figure exceeds the Agreed Figure (limited to a transaction of the Securities or Commodities involved in the Violation), on the Violator's own account or on the account of a person set forth in one of the items of paragraph (5) (this means a person other than one committing the

same Violation); and in any other case specified by Cabinet Order; the Violator, at the time the Violation begins, is deemed to effect the Securities Purchase, etc. at the Price Immediately Preceding the Violation on the Violator's own account.

- (8) The amounts set forth in the items of paragraph (1) is calculated for each issue of Securities.
- (9) If a transaction set forth in Article 2, paragraph (21), item (ii) is settled through the payment and receipt of money based on the Actual Figure; if the Options on a transaction set forth in Article 2, paragraph (21), item (iii) extinguish without being exercised; and in any other case specified by Cabinet Order as being similar; the necessary particulars relevant to the calculation of the administrative surcharge referred to in paragraph (1) are specified by Cabinet Order.
- (10) Beyond what is provided for in paragraph (2) to the preceding paragraph inclusive, the necessary particulars relevant to the calculation of the value of the Securities Sale, etc. and the value of the Securities Purchase, etc. provided for in paragraph (1), and necessary particulars otherwise relevant to the calculation of the administrative surcharge referred to in that paragraph are specified by Cabinet Order.

(Issuance of an Administrative Surcharge Payment Order against a Person That Effects a Series of Purchase and Sales, etc. of Securities for the Purpose of Inducing Transactions)

Article 174-2 (1) If a person effects a series of Purchase and Sales of Securities, etc. (meaning Purchase and Sales of Securities, etc. as prescribed in Article 159, paragraph (2)) that is in violation of the provisions of Article 159, paragraph (2), item (i), offers to effect such a series of purchase and sales, or entrusts, etc. a person with effecting such a series of purchase and sales (such an act is hereinafter referred to as a "Violation" and such a person is hereinafter referred to as the "Violator" in this Article), the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order the Violator to pay an administrative surcharge to the national treasury that is equivalent to the total of the amounts set forth in each of the following items (referred to as the "Total Amount" in paragraphs (10) and (11)):

- (i) the amount arrived at when the amount set forth in sub-item (b) below is deducted from the amount set forth in sub-item (a) below:
  - (a) the Value of the Securities Sales, etc. on the Violator's own account (limited to those connected with the Volume of Corresponding Purchases or Sales that is involved in the relevant Violation);
  - (b) the Value of the Securities Purchases, etc. on the Violator's own account (limited to those connected with the Volume of Corresponding Purchases or

Sales that is involved in the relevant Violation).

- (ii) the amount specified in the relevant of the following sub-items (a) to (d) inclusive for the category of cases set forth in that sub-item (or, if the Violation falls under two or more of the cases set forth in the following sub-items (a) to (d) inclusive, the total of the amounts specified in those two or more sub-items):
  - (a) the volume of Securities Sales, etc. on the Violator's own account that are involved in the Violation, exceeds the volume of Securities Purchases, etc. on the Violator's own account that are involved in Violation: the amount arrived at when the amount specified in 2. below is deducted from the amount specified in 1. below (if the resulting amount is less than zero, it is deemed to be zero):
    - 1. the Value of the volume of Securities Sales, etc. that is in excess;
    - 2. the amount arrived at when the lowest Securities Purchase, etc. price for the Securities, etc. involved in the Violation, from among the lowest prices as prescribed in Article 67-19 or Article 130 on each day in the period from the end of the Violation until one month has elapsed since it ended (if there is no such lowest price, this means the price specified by Cabinet Office Ordinance as being equivalent to it; the lowest price on the day on which the Violation ends is the amount specified by Cabinet Office Ordinance), is multiplied by the volume that is in excess.
  - (b) the volume of Securities Purchases, etc. on the Violator's own account that the Violation involves, exceeds the volume of Securities Sales, etc. on the Violator's own account that the Violation involves: the amount arrived at when the amount specified in 2. below is deducted from the amount specified in 1. below (if the resulting amount is less than zero, it is deemed to be zero):
    - 1. the amount arrived at when the highest Securities Sale, etc. price for the Securities, etc. involved in the Violation, from among the highest prices as prescribed in Article 67-19 or Article 130 on each day in the period from the end of the Violation until one month has elapsed since it ended (if there is no such highest price, this means the price specified by Cabinet Office Ordinance as being equivalent to it; the highest price on the day on which the Violation ends is the amount specified by Cabinet Office Ordinance), is multiplied by the volume that is in excess;
    - 2. the Value of the volume of Securities Purchases, etc. that is in excess.
  - (c) during the period from the onset of the Violation until one month has elapsed since it ended, the Violator causes the Securities involved in the Violation that the Violator or a person set forth in the items of paragraph (6) issues, to be acquired through a solicitation with a view to issuing new

securities or delivers such Securities in a Reorganization: the amount arrived at when the amount specified in 2. below is deducted from the amount specified in 1. below (if the resulting amount is less than zero, it is deemed to be zero):

1. the amount arrived at when the highest Securities Purchase, etc. price for the Securities that the Violator causes to be acquired through the solicitation with a view to issuing new securities or delivers in the Reorganization, from among the highest prices as prescribed in Article 67-19 or Article 130 on each day in the period from the end of the Violation until one month has elapsed since it ended (if there is no such highest price, this means the price specified by Cabinet Office Ordinance as being equivalent to it; the highest price on the day on which the Violation ends is the amount specified by Cabinet Office Ordinance), is multiplied by the volume of Securities that the Violator causes to be acquired through the solicitation with a view to issuing new securities or delivers in the Reorganization;
  2. the amount arrived at when the price at the onset of the Violation for the Securities that the Violator causes to be acquired through the solicitation with a view to issuing new securities or delivers in the Reorganization, is multiplied by the volume of Securities that the Violator causes to be acquired through the solicitation with a view to issuing new securities or delivers in the Reorganization.
- (d) during the period from the onset of the Violation until one month has elapsed since it ended, the Violator commits a Violation or effects a Securities Sales, etc. or Securities Purchase, etc. on the account of any person other than itself the amount specified in 1. or 2. below according to the category of the person that has conducted the Act of Violation, the Sales, etc. of Securities or the Purchase, etc. of Securities set forth in 1. or 2.:
1. a person that has conducted the Act of Violation, the Sales, etc. of Securities or the Purchase, etc. of Securities as an investment of Property Subject to Investment: the amount obtained by multiplying, by three, the amount specified by Cabinet Office Ordinance as an amount equivalent to the consideration for investment of the Property Subject to Investment which is specified by Cabinet Office Ordinance in the month which includes the day of the Act of Violation, the Sales, etc. of Securities or the Purchase, etc. of Securities (in cases where the Act of Violation, the Sales, etc. of Securities or the Purchase, etc. of Securities has been conducted over two or more months, the last month of such months); or
  2. a person other than the person set forth in 1.: the amount specified by



Cabinet Office Ordinance as the amount of fees, remuneration or any other consideration for the Act of Violation, the Sales, etc. of Securities or the Purchase, etc. of Securities.

- (2) The term "Securities Sale, etc." as used in this Article means the sale of Securities or Commodities (in the case of Commodities, limited to sales conducted through Market Transactions of Derivatives (limited to transactions listed in Article 2, paragraph (21), item (i))), a transaction listed in item (ii) of that paragraph (limited to a transaction wherein the Violator is the party to pay the money if the Actual Figure exceeds the Agreed Figure), a transaction as set forth in Article 2, paragraph (21), item (iii) (limited to a transaction wherein the relevant person is the party to grant the Option), or any other transaction specified by Cabinet Order.
- (3) The term "Securities Purchase, etc." as used this Article means a purchase of Securities or Commodities (in the case of Commodities, limited to purchase conducted through Market Transactions of Derivatives (limited to transactions listed in Article 2, paragraph (21), item (i))), a transaction listed in item (ii) of that paragraph (limited to a transaction wherein the Violator is the party to receive the money if the Actual Figure exceeds the Agreed Figure), a transaction as set forth in Article 2, paragraph (21), item (iii) (limited to a transaction wherein the relevant person is the party to acquire the Option), or any other transaction specified by Cabinet Order.
- (4) The term "Volume of Corresponding Purchases and Sales" as used in paragraph (1), item (i) means either the volume of Securities Sales, etc. on the Violator's own account that are involved in the Violation, or the volume of Securities Purchases, etc. on the Violator's own account that are involved in the Violation, whichever is smaller.
- (5) The term "Value" as used in paragraph (1) means the amount arrived at when the Securities Sale, etc. price is multiplied by the volume of that sale, etc. or when the Securities Purchase, etc. price is multiplied by the volume of that purchase, etc.
- (6) In the case referred to in paragraph (1), if the Violator commits the Violation or effects the Securities Sale, etc. or Securities Purchase, etc. on the account of a person set forth in one of the following items, the Violator is deemed to commit the Violation or effect the Securities Sale, etc. or Securities Purchase, etc. on the Violator's own account (if the person set forth in the relevant item commits the same Violation as the Violator, this excludes anything that constitutes the same Securities Sale, etc. or Securities Purchase, etc. as one that the person set forth in that item effects on that person's own account), and the provisions of the preceding paragraphs apply:
  - (i) a company in which the Violator holds the majority of all shareholders', etc. voting rights, or any other person specified by Cabinet Office Ordinance as

- being closely related to the Violator;
- (ii) a person that shares living expenses with the Violator, or any other person specified by Cabinet Office Ordinance as being uniquely related to the Violator.
- (7) For the purposes of calculating the amount listed in the items of paragraph (1), with regard to the cases where a Violator, at the time of the commencement of the Act of Violation, has conducted sales of the Securities or Commodities subject to an Act of Violation without possessing such Securities or Commodities (in the case of Commodities, limited to sales conducted through Market Transactions of Derivatives (limited to transactions listed in Article 2, paragraph (21), item (i))), on his/her own account or on the account of any person listed in the items of the preceding paragraph (excluding a person who has committed the same Act of Violation; hereinafter the same shall apply in this paragraph), where the Violator, at the time of the commencement of said Act of Violation, has concluded an agreement for the transaction specified in Article 2, paragraph (21), item (ii) (limited to the transactions of Securities or Commodities subject to said Act of Violation) under which the person is obligated to pay money if the Actual Figure exceeds the Agreed Figure on his/her own account or on the account of any person listed in the items of the preceding paragraph, or in any other cases specified by Cabinet Order, said Violator shall be deemed to have conducted, on his/her own account, the Sales, etc. of Securities subject to the Act of Violation at the time of the commencement of the Act of Violation and at the price as of such time.
- (8) For the purposes of calculating the amounts set forth in the items of paragraph (1), if the Violator, at the time the Violation begins, owns the Securities or Commodities involved in the Violation; if the Violator, as of the time the Violation begins, has agreed to effect a transaction set forth in Article 2, paragraph (21), item (ii), wherein the Violator will be the party to receive the money if the Actual Figure exceeds the Agreed Figure (limited to a transaction of the Securities or Commodities involved in the Violation), on the Violator's own account or on the account of a person set forth in one of the items of paragraph (5) (this means a person other than one committing the same Violation); and in any other case specified by Cabinet Order; the Violator, at the time the Violation begins, is deemed to effect the Securities Purchase, etc. at the Price Immediately Preceding the Violation on the Violator's own account.
- (9) The amounts set forth in the items of paragraph (1) are calculated for each issue of Securities.
- (10) If a negative amount arises from the deduction set forth in paragraph (1), item (i) for a single issue, the Total Amount is the amount arrived at when that negative amount is deducted from the amount specified in item (ii) of that

paragraph for the same issue.

- (11) If there are two or more issues connected with a Violation and the amount for one of those issues is still negative even after a deduction is made pursuant to the provisions of the preceding paragraph, that negative amount is deducted from the Total Amount for other issues.
- (12) If a transaction set forth in Article 2, paragraph (21), item (ii) is settled through the payment and receipt of money based on the Actual Figure; if the Options on a transaction set forth in Article 2, paragraph (21), item (iii) extinguish without being exercised; and in any other case specified by Cabinet Order as being similar; the necessary particulars relevant to the calculation of the administrative surcharge referred to in paragraph (1) are specified by Cabinet Order.
- (13) Beyond what is provided for in paragraph (2) to the preceding paragraph inclusive, the necessary particulars relevant to the calculation of the value of the Securities Sale, etc. and the value of the Securities Purchase, etc. provided for in paragraph (1), and necessary particulars otherwise relevant to the calculation of the administrative surcharge referred to in that paragraph are specified by Cabinet Order.

(Issuance of an Administrative Surcharge Payment Order against a Person Violating the Prohibition on Stabilizing Transactions)

Article 174-3 (1) If a person effects a series of Purchase and Sales of Securities, etc. (meaning Purchase and Sales of Securities, etc. as prescribed in Article 159, paragraph (2)) that is in violation of the provisions of Article 159, paragraph (3), offers to effect such a series of purchase and sales, or entrusts, etc. a person with effecting such a series of purchase and sales (such an act is hereinafter referred to as a "Violation" and such a person is hereinafter referred to as the "Violator" in this Article), the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order the Violator to pay an administrative surcharge to the national treasury that is equivalent to the total of the amounts specified in each of the following items (referred to as the "Total Amount" in paragraphs (11) and (12)):

- (i) the amount arrived at when the amount specified in sub-item (b) below is deducted from the amount specified in sub-item (a) below:
  - (a) the Value of the Securities Sales, etc. on the Violator's own account that the Violation involves.
  - (b) the Value of the Securities Purchases, etc. on the Violator's own account that the Violation involves.
- (ii) the amount specified in the relevant of the following sub-items (a) to (d) inclusive, for the category of cases set forth in that sub-item (or, if the Violation falls under two or more of the cases set forth in the following sub-

items (a) to (d) inclusive, the total of the amounts specified in those two or more sub-items):

(a) at the time the Violation begins, the Violator's Sales Volume, etc. in respect of the listed Financial Instruments, etc. (meaning Listed Financial Instruments, etc. as prescribed in Article 159, paragraph (2), item (i); hereinafter the same applies in this Article) or Over-the-Counter Traded Securities involved in the Violation exceeds the Violator's Purchase Volume, etc. of the same: the amount arrived at when the amount specified in 2. below is deducted from the amount specified in 1. below, and then the difference is multiplied by the volume specified in 3. below (if the resulting amount is less than zero, it is deemed to be zero):

1. the Securities Purchase, etc. price for the listed Financial Instruments, etc. or Over-the-Counter Traded Securities, after the Violation (meaning the average price in the period from the end of the Violation until one month has elapsed since it ended, as calculated pursuant to the provisions of Cabinet Office Ordinance; hereinafter the same applies in this paragraph);
2. the Securities Purchase, etc. price for the listed Financial Instruments, etc. or Over-the-Counter Traded Securities, during the Violation (meaning the average price during the period between when the Violation begins and the when it ends, as calculated pursuant to the provisions of Cabinet Office Ordinance; hereinafter the same applies in this paragraph);
3. the volume that is in excess.

(b) at the time the Violation begins, the Violator's Purchase Volume, etc. in respect of the listed Financial Instruments, etc. or Over-the-Counter Traded Securities involved in the Violation exceeds the Violator's Sales Volume, etc. of the same: the amount arrived at when the amount specified in 2. below is deducted from the amount specified in 1. below, and the difference is multiplied by the volume specified in 3. below (if the resulting amount is less than zero, it is deemed to be zero).

1. the Securities Sale, etc. price for the relevant Listed Financial Instruments, etc. or the Over-the-Counter Traded Securities, during the Violation.
2. the Securities Sale, etc. price for the relevant Listed Financial Instruments, etc. or the Over-the-Counter Traded Securities, after the Violation.
3. the volume that is in excess.

(c) during the period from the onset of the Violation until one month has elapsed since it ended, the Violator causes the Securities involved in the Violation that the Violator or a Person with a Specified Relationship

thereto issues, to be acquired through a solicitation with a view to issuing new securities, or delivers such Securities in a Reorganization: the amount arrived at when the amount set forth in 2. below is deducted from the amount set forth in 1. below, and the difference is multiplied by the volume set forth in 3. below (if the resulting amount is less than zero, it is deemed to be zero):

1. the price, during the Violation, of the Securities that the Violator causes to be acquired through the solicitation with a view to issuing new securities or delivers in the Reorganization;
2. the price, after the Violation, of the Securities that the Violator causes to be acquired through the solicitation with a view to issuing new securities or delivers in the Reorganization;
3. the volume of Securities that the Violator causes to be acquired through the solicitation with a view to issuing new securities or delivers in the Reorganization.

(d) during the period from the onset of the Violation until one month has elapsed since it ended, the Violator commits a Violation or effects a Securities Sales, etc. of, or Securities Purchase, etc. on the account of any person other than itself: (excluding Persons in a Specified Relationship): the amount specified in 1. or 2. below according to the category of the person that has conducted the Act of Violation, the Sales, etc. of Securities or the Purchase, etc. of Securities set forth in 1. or 2.:

1. a person that has conducted the Act of Violation, the Sales, etc. of Securities or the Purchase, etc. of Securities as an investment of Property Subject to Investment: the amount obtained by multiplying, by three, the amount specified by Cabinet Office Ordinance as an amount equivalent to the consideration for investment of the Property Subject to Investment which is specified by Cabinet Office Ordinance in the month which includes the day of the Act of Violation, the Sales, etc. of Securities or the Purchase, etc. of Securities (in cases where the Act of Violation, the Sales, etc. of Securities or the Purchase, etc. of Securities has been conducted over two or more months, the last month of such months); or
2. a person other than the person set forth in 1.: the amount specified by Cabinet Office Ordinance as the amount of fees, remuneration or any other consideration for the Act of Violation, the Sales, etc. of Securities or the Purchase, etc. of Securities.

(2) The term "Securities Sale, etc." as used in this Article means the sale of Securities or Commodities (in the case of Commodities, limited to sales conducted through Market Transactions of Derivatives (limited to transactions listed in Article 2, paragraph (21), item (i))), a transaction listed in item (ii) of

that paragraph (limited to a transaction wherein the Violator is the party to pay the money if the Actual Figure exceeds the Agreed Figure), a transaction as set forth in Article 2, paragraph (21), item (iii) (limited to a transaction wherein the relevant person is the party to grant the Option), or any other transaction specified by Cabinet Order.

- (3) The term "Securities Purchase, etc." as used this Article means a purchase of Securities or Commodities (in the case of Commodities, limited to purchase conducted through Market Transactions of Derivatives (limited to transactions listed in Article 2, paragraph (21), item (i))), a transaction listed in item (ii) of that paragraph (limited to a transaction wherein the Violator is the party to receive the money if the Actual Figure exceeds the Agreed Figure), a transaction as set forth in Article 2, paragraph (21), item (iii) (limited to a transaction wherein the relevant person is the party to acquire the Option), or any other transaction specified by Cabinet Order.
- (4) The term "Value" as used in paragraph (1), item (i) means the amount arrived at when the Securities Sale, etc. price is multiplied by the volume of that sale, etc. or when the Securities Purchase, etc. price is multiplied by the volume of that purchase, etc.
- (5) The term "Volume of Sales, etc." as used in this Article means the volume of the Securities or Commodities pertaining to the transactions in the case where the Violator, on his/her own account or on the account of the Persons in Specified Relationship, has conducted the Sales, etc. of Securities or Commodities without possessing the Securities or Commodities (in the case of Commodities, limited to sales conducted through Market Transactions of Derivatives (limited to transactions listed in Article 2, paragraph (21), item (i))) or any other transactions specified by Cabinet Order; or the volume of the transaction listed in item (ii) of that paragraph (limited to the transaction under which the person becomes a party paying money when the Actual Figure exceeds the Agreed Figure) which the Violator has concluded on his/her own account or on the account of the Persons in Specified Relationship or any other transactions specified by Cabinet Order, as calculated pursuant to the provision of Cabinet Order.
- (6) The term "Purchase Volume, etc." as used in this Article means the volume of the Securities or Commodities that the Violator or a Person with a Specified Relationship thereto owns or any other Securities or Commodities specified by Cabinet Order as being equivalent thereto; and the volume calculated pursuant to the provisions of Cabinet Order as the volume of any transaction as set forth in Article 2, paragraph (21), item (ii) (limited to a transaction wherein the Violator is the party to receive the money if the Actual Figure exceeds the Agreed Figure) or any other transaction specified by Cabinet Order, which the Violator agrees to effect on the Violator's own account or on the account of a

Person with a Specified Relationship thereto.

- (7) The term "Person with a Specified Relationship" as used in this Article means one of the following persons:
- (i) a company in which the Violator holds the majority of all shareholders', etc. voting rights or any other person specified by Cabinet Office Ordinance as being closely related to the Violator.
  - (ii) a person that shares living expenses with the Violator, or any other person specified by Cabinet Office Ordinance as being uniquely related to the Violator.
- (8) In the cases where any Person in Specified Relationship has committed the same Act of Violation as that committed by the Violator, the following volume shall be excluded from the Volume of Sales, etc.: the volume of the Securities or Commodities pertaining to the transactions in the case where, at the time of the commencement of the Act of Violation and with regard to the Listed Financial Instruments, etc. or the Over-the-Counter Traded Securities subject to the Act of Violation, the Person in Specified Relationship has conducted sales of the Securities or Commodities or any transaction specified by Cabinet Order on his/her own account without possessing the Securities or Commodities (in the case of Commodities, limited to sale conducted through Market Transactions of Derivatives (limited to transactions listed in Article 2, paragraph (21), item (i))); or the volume of the transactions calculated pursuant to the provisions of Cabinet Order, in the case where, at the time of the commencement of the Act of Violation and with regard to the Listed Financial Instruments, etc. or the Over-the-Counter Traded Securities subject to the Act of Violation, the Person in Specified Relationship has, on his/her own account, concluded the transaction specified in Article 2, paragraph (21), item (ii) (limited to the transaction under which the person becomes a party paying money when the Actual Figure exceeds the Agreed Figure) or any other transactions specified by Cabinet Order.
- (9) If a Person with a Specified Relationship to the Violator commits the same Violation as the Violator, the volume of the Securities or Commodities that the Person with the Specified Relationship to the Violator owns, and any other Securities or Commodities specified by Cabinet Order as being equivalent thereto, at the time the Violation begins, in respect of the listed Financial Instruments or Over-the-Counter Traded Securities involved in the Violation, is to be deducted from the Purchase Volume, etc.; and the volume calculated pursuant to the provisions of Cabinet Order as the volume of any transaction as set forth in Article 2, paragraph (21), item (ii) (limited to a transaction wherein the Person with the Specified Relationship to the Violator is the party to receive the money if the Actual Figure exceeds the Agreed Figure) or any other transaction specified by Cabinet Order in respect of the listed Financial

Instruments, etc. or Over-the-Counter Traded Securities involved in the Violation, which, as of the time of the Violation, the Person with the Specified Relationship to the Violator has agreed to effect on its own account, is also to be deducted from the Sales Volume, etc.

- (10) The amounts set forth in the items of paragraph (1) are calculated for each issue of Securities.
- (11) If a negative amount arises from the deduction set forth in paragraph (1), item (i) for a single issue, the Total Amount is the amount arrived at when that negative amount is deducted from the amount specified in item (ii) of that paragraph for the same issue.
- (12) If there are two or more issues connected with a Violation and the amount for one of those issues is still negative even after a deduction is made pursuant to the provisions of the preceding paragraph, that negative amount is deducted from the Total Amount for other issues.
- (13) If a transaction set forth in Article 2, paragraph (21), item (ii) is settled through the payment and receipt of money based on the Actual Figure; if the Options on a transaction set forth in Article 2, paragraph (21), item (iii) extinguish without being exercised; and in any other case specified by Cabinet Order as being similar; the necessary particulars relevant to the calculation of the administrative surcharge referred to in paragraph (1) are specified by Cabinet Order.
- (14) Beyond what is provided for in paragraph (2) to the preceding paragraph inclusive, the necessary particulars relevant to the calculation of the value of the Securities Sale, etc. and the value of the Securities Purchase, etc. provided for in paragraph (1), item (i), and necessary particulars otherwise relevant to the calculation of the administrative surcharge referred to in that paragraph are specified by Cabinet Order.

(Administrative Surcharge Payment Order against a Person That Commits a Violation through an Act That Is Prohibited to Company Insiders)

- Article 175 (1) If a person violates the provisions of Article 166 paragraph (1) or (3) in effecting a Purchase and Sale, etc. prescribed in Article 166 paragraph (1), the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order that person to pay an administrative surcharge to the national treasury that is equivalent to the amount specified in the relevant of the following items for the category of cases set forth in that item (or, if the violation falls under two or more of the cases set forth in the following items, the total of the amounts specified in those two or more items):
- (i) the person violates the provisions of Article 166, paragraph (1) or (3) in effecting a Securities Sale, etc. on its own account (limited to one effected within six months prior to the date on which a material fact about the



- business that is provided for in Article 166, paragraph (1) is disclosed (this excludes a Securities Sale, etc. on the date of the disclosure, if it is effected after the disclosure is made); hereinafter the same applies in this item): the amount arrived at when the amount specified in sub-item (b) below is deducted from the amount specified in sub-item (a) below:
- (a) the amount arrived at when the price at which the person effected the Securities Sale, etc., is multiplied by the volume of that Securities Sale, etc.;
  - (b) the amount arrived at when the Lowest Price in the Two Weeks After the Disclosure of the Material Fact About the Business, etc., is multiplied by the volume of that Securities Sale, etc.
- (ii) the person violates the provisions of Article 166, paragraph (1) or (3) in effecting a Securities Purchase, etc. on its own account (limited to one effected within six months prior to the date on which the Material Fact About the Business, etc. set forth in Article 166, paragraph (1) is disclosed (this excludes a Securities Purchase, etc. on the date of disclosure, if it is effected after the disclosure is made); hereinafter the same applies in this item): the amount arrived at when the amount specified in sub-item (b) below is deducted from the amount specified in sub-item (a) below:
- (a) the amount arrived at when the Highest Price in the Two Weeks After the Disclosure of the Material Fact About the Business, etc. is multiplied by the volume of that Securities Purchase, etc.
  - (b) the amount arrived at when the price at which the person effected the Securities Purchase, etc., is multiplied by the volume of that Securities Purchase, etc.
- (iii) the person that effects a Sale and Purchase, etc. as prescribed in Article 166, paragraph (1) has effected that Sale and Purchase, etc. on the account of any person other than itself (excluding the cases where an Officer, etc. prescribed in paragraph (9) has conducted Sales and Purchase, etc. prescribed in that paragraph): the amount specified in sub-item (a) or (b) according to the category of the person that has conducted the Sales and Purchase, etc. set forth in sub-item (a) or (b):
- (a) a person that has conducted the Sales and Purchase, etc. as an investment of Property Subject to Investment: the amount obtained by multiplying, by three, the amount specified by Cabinet Office Ordinance as an amount equivalent to the consideration for investment of the Property Subject to Investment which is specified by Cabinet Office Ordinance in the month which includes the day of the Sales and Purchase, etc. (in cases where the Sales and Purchase, etc. has been conducted over two or more months, the last month of such months); or
  - (b) a person other than the person set forth in sub-item (a): the amount

specified by Cabinet Office Ordinance as the amount of fees, remuneration or any other consideration for the Sales and Purchase, etc.

- (2) If a person violates the provisions of Article 167, paragraph (1) or (3) in effecting a purchase, etc. involving the Specified Share Certificates, etc. or Related Share Certificates, etc. prescribed in Article 167, paragraph (1) or a sale, etc. involving the Share Certificates, etc. prescribed in that paragraph, the Prime Minister, in accordance with the proceedings prescribed in the following Section, must order that person to pay an administrative surcharge to the national treasury that is equivalent to the amount specified in the relevant of the following items for the category of cases set forth in that item (or, if the violation falls under two or more of the cases set forth in the following items, the total of the amounts specified in those two or more items):
- (i) the person violates the provisions of Article 167, paragraph (1) or (3) in effecting a Securities Sale, etc. on its own account (limited to one effected within six months prior to the date on which the fact that a Tender Offer, etc. will be launched or of the fact that a Tender Offer, etc. will be suspended as provided in Article 167, paragraph (1) is disclosed (this excludes a Securities Sale, etc. on the date of disclosure, if it is effected after the disclosure is made); hereinafter the same applies in this item): the amount arrived at when the amount specified in sub-item (b) below is deducted from the amount specified in sub-item (a) below:
    - (a) the amount arrived at when the price at which the person effected the Securities Sale, etc., is multiplied by the volume of that Securities Sale, etc.;
    - (b) the amount arrived at when the Lowest Price in the Two Weeks After the Disclosure of the Fact That the Tender Offer, etc. Will Be Launched or of the Fact That the Tender Offer, etc. Will Be Suspended, in respect of that Securities Sale, etc., is multiplied by the volume of that Securities Sale, etc.
  - (ii) the person violates the provisions of Article 167, paragraph (1) or (3) in effecting a Purchase, etc. of Securities on its own account (limited to one effected within six months prior to the date on which the fact that the Tender Offer, etc. will be launched or the fact that a Tender Offer, etc. will be suspended as provided in Article 167, paragraph (1) is disclosed (this excludes a Securities Purchase, etc. on the date of disclosure, if it is effected after the disclosure is made); hereinafter the same applies in this item): the amount arrived at when the amount specified in sub-item (b) below is deducted from the amount specified in sub-item (a) below:
    - (a) the amount arrived at when the Highest Price in the Two Weeks After the Disclosure of the Fact That the Tender Offer, etc. Will Be Launched or the Fact That the Tender Offer, etc. Will Be Suspended, in respect of that Securities Purchase, etc., is multiplied by the volume of that Securities

- Purchase, etc.;
- (b) the amount arrived at when the price at which the person effected the Securities Purchase, etc., is multiplied by the volume of that Securities Purchase, etc.
  - (iii) the person that effects a purchase, etc. of the Specified Share Certificates, etc. or Related Share Certificates, etc. prescribed in Article 167, paragraph (1), or a Sale, etc. of the Share Certificates, etc. prescribed in that paragraph, effects that purchase, etc. or sale, etc. on the account of any person other than itself: the amount specified in sub-item (a) or (b) according to the category of the person that has conducted the Purchase, etc. or Sales, etc. set forth in sub-item (a) or (b):
    - (a) a person that has conducted the Purchase, etc. or Sales, etc. as an investment of Property Subject to Investment: the amount obtained by multiplying, by three, the amount specified by Cabinet Office Ordinance as an amount equivalent to the consideration for investment of the Property Subject to Investment which is specified by Cabinet Office Ordinance in the month which includes the day of the Purchase, etc. or Sales, etc. (in cases where the Purchase, etc. or Sales, etc. has been conducted over two or more months, the last month of such months); or
    - (b) a person other than the person set forth in sub-item (a): the amount specified by Cabinet Office Ordinance as the amount of fees, remuneration or any other consideration for the Purchase, etc. or Sales, etc.
- (3) The term "Securities Sale, etc." as used in the preceding two paragraphs means the sale of Securities, a transaction as set forth in Article 2, paragraph (21), item (ii) (limited to a transaction wherein the Violator is the party to pay the money if the Actual Figure exceeds the Agreed Figure), a transaction as set forth in Article 2, paragraph (21), item (iii) (limited to a transaction wherein the relevant person is the party to grant the Option), or any other transaction specified by Cabinet Order.
- (4) The term "Securities Purchase, etc." as used in paragraphs (1) and (2) means a purchase of Securities, a transaction as set forth in Article 2, paragraph (21), item (ii) (limited to a transaction wherein the relevant person is the party to receive the money if the Actual Figure exceeds the Agreed Figure), a transaction as set forth in Article 2, paragraph (21), item (iii) (limited to a transaction wherein the relevant person is the party to acquire the Option), or any other transaction specified by Cabinet Order.
- (5) The term "Lowest Price in the Two Weeks After the Disclosure of the Material Fact About the Business" as used in paragraph (1), item (i), sub-item (b) means the lowest price from among the lowest prices as prescribed in Article 67-19 or Article 130 on each day in the period from the day on which a material fact about business which is provided for in Article 166, paragraph (1) is disclosed

until two weeks have elapsed since it was disclosed (if there is no such lowest price, this means the amount specified by Cabinet Office Ordinance as being equivalent to it; the lowest price on the day on which the material fact is disclosed is the amount specified by Cabinet Office Ordinance).

- (6) The term "Highest Price in the Two Weeks After the Disclosure of the Material Fact About the Business" as used in paragraph (1), item (i), sub-item (a) means the highest of the high prices as prescribed in Article 67-19 or Article 130 on each day in the period from the day on which a material fact about business which is provided for in Article 166, paragraph (1) is disclosed until two weeks have elapsed since it was disclosed (if there is no such highest price, this means the amount specified by Cabinet Office Ordinance as being equivalent to it; the highest price on the day on which the material fact is disclosed is the amount specified by Cabinet Office Ordinance).
- (7) The term "Lowest Price in the Two Weeks After the Disclosure of the Fact That the Tender Offer, etc. Will Be Launched or the Fact That the Tender Offer, etc. Will Be Suspended" as used in paragraph (2), item (i), sub-item (b) means the lowest price from among the lowest prices as prescribed in Article 67-19 or Article 130 on each day in the period from the day on which the fact that the Tender Offer, etc. will be launched or of the fact that the Tender Offer, etc. will be suspended as provided in Article 167, paragraph (1) is disclosed until two weeks have elapsed since it was disclosed (if there is no such lowest price, this means the amount specified by Cabinet Office Ordinance as being equivalent to it; the lowest price on the day on which the fact is disclosed is the amount specified by Cabinet Office Ordinance).
- (8) The term "Highest Price in the Two Weeks After the Disclosure of the Fact That the Tender Offer, etc. Will Be Launched or the Fact That the Tender Offer, etc. Will Be Suspended " as used in paragraph (2), item (ii), sub-item (a) means the highest of the high prices as prescribed in Article 67-19 or Article 130 on each day in the period from the day on which the fact that the Tender Offer, etc. will be launched or the fact that the Tender Offer, etc. will be suspended as provided in Article 167, paragraph (1) is disclosed until two weeks have elapsed since it was disclosed (if there is no such highest price, this means the price specified by Cabinet Office Ordinance as being equivalent to it; the highest price on the day on which the fact is disclosed is the amount specified by Cabinet Office Ordinance).
- (9) The provisions of paragraph (1) (excluding item (iii)) apply mutatis mutandis if the Officer, etc., as prescribed in Article 166, paragraph (1), item (i), of a Listed Company, etc. (which means a Listed Company, etc. as prescribed in Article 163, paragraph (1), and includes a Parent Company, Subsidiary Company, Asset Management Company, and Corporation in Specified Relationship as set forth in Article 166, paragraph (1), item (i) ; the same shall

apply in paragraph (13) of the following Article) violates the provisions of Article 166, paragraph (1) or (3) in effecting a Purchase and Sale, etc. prescribed in Article 166, paragraph (1) on the account of that Listed Company, etc. In this case, in paragraph (1), the term "person" is deemed to be replaced with "Listed Company, etc.", and in items (i) and (ii) of that paragraph, the phrase "on its own account" is deemed to be replaced with "on the account of the Listed Company, etc.".

- (10) In the case referred to in paragraph (1), a person that effects a Purchase and Sale, etc. prescribed in Article 166, paragraph (1) on the account of a person set forth in one of the following items, is deemed to effect that Purchase and Sale, etc. on its own account (with the exclusion of any identical Purchase and Sale, etc. as prescribed in paragraph (1) of that Article, if the person set forth in the relevant item has violated the provisions of paragraph (1) or (3) of that Article in effecting it on its own account), and the provisions of paragraph (1) apply:
- (i) a company in which the person that effects the Purchase and Sale, etc. holds the majority of all shareholders', etc. voting rights, or any other person specified by Cabinet Office Ordinance as being closely related to the person that effects that Purchase and Sale, etc.;
  - (ii) a person that shares living expenses with the person that effects the Purchase and Sale, etc., or any other person specified by Cabinet Office Ordinance as being uniquely related to the person that effects that Purchase and Sale, etc.
- (11) In the case referred to in paragraph (2), a person that effects a purchase, etc. of the Specified Share Certificates, etc. or the Related Share Certificates, etc. prescribed in Article 167, paragraph (1) or a sale, etc. of the Share Certificates, etc. prescribed in that paragraph on the account of a person set forth in one of the following items, is deemed to effect that purchase, etc. or sale, etc. on its own account (with the exclusion of any identical purchase, etc. of Specified Share Certificates, etc. or Related Share Certificates, etc. prescribed in paragraph (1) of that Article or sale, etc. of Share Certificates, etc. prescribed in that paragraph, if the person set forth in the relevant item has violated the provisions of paragraph (1) or (3) of that Article in effecting it on its own account), and the provisions of paragraph (2) apply:
- (i) a company in which the person that effects the Purchase and Sale, etc. holds the majority of all shareholders', etc. voting rights, or any other person specified by Cabinet Office Ordinance as being closely related to the person that effects the Purchase and Sale, etc.;
  - (ii) a person that shares living expenses with the person that effects the purchase, etc. or sale, etc., or any other person specified by Cabinet Office Ordinance as being uniquely related to the person that effects the Purchase and Sale, etc.

(12) Beyond what is prescribed in paragraphs (3) to (8) inclusive and the preceding two paragraphs, if the Securities Sale, etc. or Securities Purchase, etc. as provided for in paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (9); hereinafter the same applies in this paragraph) and paragraph (2) constitutes a transaction as set forth in Article 2, paragraph (21), item (ii), the price and volume and necessary particulars otherwise relevant to calculation of the administrative surcharge referred to in paragraph (1) or (2) are specified by Cabinet Order.

(Administrative Monetary Penalty Payment Order against a Person That Has Violated the Prohibition on Providing Information on Unpublished Material Facts)

Article 175-2 (1) When any person, in violation of the provisions of Article 167-2, paragraph (1), has conducted the act of providing information set forth in that paragraph or the act of recommending the Sales and Purchase, etc. set forth in that paragraph (such act shall be hereinafter referred to as an "Act of Violation" and such person shall be hereinafter referred to as the "Violator" in this paragraph), the Prime Minister shall, in accordance with the procedures prescribed in the following Section, order the Violator to pay to the national treasury an administrative monetary penalty equivalent to the amount as prescribed in the following items in accordance with the categories of the cases listed in the respective items only in cases where the person who has received information or the person who has been recommended to make the Sales and Purchase, etc. by the Act of Violation (hereinafter referred to as the "Information Recipient, etc." in this paragraph and paragraph (3)) makes the Sales and Purchase, etc. of Specified Securities, etc. pertaining to the Act of Violation before the publication set forth in Article 166, paragraph (1) is made with regard to the Material Facts Pertaining to Business or Other Matters prescribed in that paragraph pertaining to the Act of Violation (excluding cases that fall under the cases listed in the items of paragraph (6) of that Article):

(i) when the Act of Violation has been committed in relation to business pertaining to the acts listed in Article 2, paragraph (8), item (ii) or (iii), the acts listed in item (iv) of that paragraph (excluding Over-the-Counter Transactions of Derivatives), the acts listed in item (x) of that paragraph (excluding sales and purchase of Securities), or acts specified by Cabinet Order as being equivalent thereto (including acts specified by Cabinet Office Ordinance as business incidental thereto; hereinafter referred to as "Intermediation-Related Business" in this paragraph and the following paragraph) concerning Specified Securities, etc. (excluding the case specified in the following item): the amount obtained by multiplying, by three, the amount specified by Cabinet Office Ordinance as an amount equivalent to

- the consideration for Intermediation-Related Business in the month which includes the day of the Act of Violation (in cases where the Act of Violation has been committed over two or more months, the last month of such months) to be paid by the Information Recipient, etc. to the Violator;
- (ii) when the Act of Violation has been committed in relation to business pertaining to the acts listed in Article 2, paragraph (8), item (ix) concerning Specified Securities, etc. (hereinafter referred to as "Business of Public Offering, etc." in this item, item (ii) of the following paragraph, and Article 185-7, paragraphs (xii) and (xiii)): the total of the amounts listed in sub-items (a) and (b):
- (a) the amount obtained by multiplying, by three, the amount specified by Cabinet Office Ordinance as an amount equivalent to the consideration for Intermediation-Related Business in the month which includes the day of the Act of Violation (in cases where the Act of Violation has been committed over two or more months, the last month of such months) to be paid by the Information Recipient, etc. to the Violator; and
- (b) the amount obtained by multiplying, by one-half, the amount specified by Cabinet Office Ordinance as an amount equivalent to the consideration for the Business of Public Offering, etc. and the business pertaining to the acts listed in Article 2, paragraph (8), item (vi) conducted together with the Business of Public Offering, etc.; and
- (iii) in cases other than the cases listed in the preceding two items: the amount obtained by multiplying, by one-half, the Amount Equivalent to Profit obtained from the Sales and Purchase, etc. conducted by the Information Recipient, etc. through the Act of Violation.
- (2) When any person, in violation of the provision of Article 167-2, paragraph (2), has conducted the act of providing information set forth in that paragraph or the act of recommending the Purchase, etc. or the Sales, etc. set forth in that paragraph (such act shall be hereinafter referred to as an "Act of Violation" and such person shall be hereinafter referred to as the "Violator" in this paragraph), the Prime Minister shall, in accordance with the procedures prescribed in the following Section, order the Violator to pay to the national treasury an administrative monetary penalty equivalent to the amount as prescribed in the following items in accordance with the categories of the cases listed in the respective items only in cases where the person who has received information or the person who has been recommended to make the Purchase, etc. or the Sales, etc. by the Act of Violation (hereinafter referred to as the "Information Recipient, etc." in this paragraph and paragraph (4)) makes the Purchase, etc. or the Sales, etc. of Share Certificates, etc. pertaining to the Act of Violation before the publication set forth in Article 167, paragraph (1) is made with regard to the Fact Concerning Tender Offer, etc. pertaining to the

Act of Violation (excluding cases that fall under the cases listed in the items of paragraph (5) of the Article):

- (i) when the Act of Violation has been committed in relation to Intermediation-Related Business pertaining to Share Certificates, etc. (excluding the case specified in the following item): the amount obtained by multiplying, by three, the amount specified by Cabinet Office Ordinance as an amount equivalent to the consideration for Intermediation-Related Business in the month which includes the day of the Act of Violation (in cases where the Act of Violation has been committed over two or more months, the last month of such months) to be paid by the Information Recipient, etc. to the Violator;
  - (ii) when the Act of Violation has been committed in relation to Business of Public Offering, etc. pertaining to the Share Certificates, etc.: the total of the amounts listed in sub-items (a) and (b):
    - (a) the amount obtained by multiplying, by three, the amount specified by Cabinet Office Ordinance as an amount equivalent to the consideration for Intermediation-Related Business in the month which includes the day of the Act of Violation (in cases where the Act of Violation has been committed over two or more months, the last month of such months) to be paid by the Information Recipient, etc. to the Violator; and
    - (b) the amount obtained by multiplying, by one-half, the amount specified by Cabinet Office Ordinance as an amount equivalent to the consideration for the Business of Public Offering, etc. and the business pertaining to the acts listed in Article 2, paragraph (8), item (vi) conducted together with the Business of Public Offering, etc.; and
  - (iii) in cases other than the cases listed in the preceding two items: the amount obtained by multiplying, by one-half, the Amount Equivalent to Profit obtained from the Purchase, etc. or the Sales, etc. conducted by the Information Recipient, etc. through the Act of Violation.
- (3) The term "Amount Equivalent to Profit" as used in paragraph (1), item (iii) means the amount prescribed in the following items in accordance with the categories of the cases listed in the respective items (in cases where the Information Recipient, etc. falls under both of the following items, the total of the amounts prescribed in these items):
- (i) when the Information Recipient, etc. has made Sales, etc. of Specified Securities, etc.: the amount obtained by deducting the amount set forth in sub-item (b) from the amount set forth in sub-item (a):
    - (a) with regard to the Sales, etc. of Specified Securities, etc., the amount obtained by multiplying the price for the Sales, etc. of Specified Securities, etc. by the volume of such Sales, etc.; and
    - (b) the amount obtained by multiplying the Lowest Price Within Two Weeks After the Publication Set Forth in Paragraph (1) with regard to the Sales,



- etc. of Specified Securities, etc. by the volume of the Sales, etc. of Specified Securities, etc.;
- (ii) when the Information Recipient, etc. has made a Purchase, etc. of Specified Securities, etc.: the amount obtained by deducting the amount set forth in sub-item (b) from the amount set forth in sub-item (a):
    - (a) the amount obtained by multiplying the Highest Price Within Two Weeks After the Publication Set Forth in Paragraph (1) with regard to the Purchase, etc. of Specified Securities, etc. by the volume of the Purchase, etc. of Specified Securities, etc.; and
    - (b) with regard to the Purchase, etc. of Specified Securities, etc., the amount obtained by multiplying the price for the Purchase, etc. of Specified Securities, etc. by the volume of such Purchase, etc.
- (4) The term "Amount Equivalent to Profit" as used in paragraph (2), item (iii) means the amount prescribed in the following items in accordance with the categories of the cases listed in the respective items (in cases where the Information Recipient, etc. falls under both of the following items, the total of the amounts prescribed in these items):
- (i) when the Information Recipient, etc. has made Sales, etc. of Share Certificates, etc.: the amount obtained by deducting the amount set forth in sub-item (b) from the amount set forth in sub-item (a):
    - (a) with regard to the Sales, etc. of Share Certificates, etc., the amount obtained by multiplying the price for the Sales, etc. of Share Certificates, etc. by the volume of such Sales, etc.; and
    - (b) the amount obtained by multiplying the Lowest Price Within Two Weeks After the Publication Set Forth in Paragraph (2) with regard to the Sales, etc. of Share Certificates, etc. by the volume of the Sales, etc. of Share Certificates, etc.;
  - (ii) when the Information Recipient, etc. has made a Purchase, etc. of Share Certificates, etc.: the amount obtained by deducting the amount set forth in sub-item (b) from the amount set forth in sub-item (a):
    - (a) the amount obtained by multiplying the Highest Price Within Two Weeks After the Publication Set Forth in Paragraph (2) with regard to the Purchase, etc. of Share Certificates, etc. by the volume of the Purchase, etc. of Share Certificates, etc.; and
    - (b) with regard to the Purchase, etc. of Share Certificates, etc., the amount obtained by multiplying the price for the Purchase, etc. of Share Certificates, etc. by the volume of such Purchase, etc.
- (5) The term "Sales, etc. of Specified Securities, etc." as used in paragraph (3), item (i) means sales of Specified Securities, etc., a transaction as set forth in Article 2, paragraph (21), item (ii) (limited to a transaction under which the person becomes the party paying money when the Actual Figure exceeds the

- Agreed Figure), a transaction as set forth in item (iii) of that paragraph (limited to the transaction under which the person becomes a party granting Options) and any other transaction specified by Cabinet Order.
- (6) The term "Lowest Price Within Two Weeks After the Publication Set Forth in Paragraph (1)" as used in paragraph (3), item (i), sub-item (b) means the lowest price among the lowest prices as prescribed in Article 67-19 or Article 130 for the respective days between the publication set forth in paragraph (1) and two weeks thereafter (when there is no such price, it shall be what is specified by Cabinet Office Ordinance as being equivalent thereto, and for the day of the publication, it shall be the amount specified by Cabinet Office Ordinance).
- (7) The term "Purchase, etc. of Specified Securities, etc." as used in paragraph (3), item (ii) means the purchase of Specified Securities, etc., a transaction as set forth in Article 2, paragraph (21), item (ii) (limited to a transaction under which the person becomes the party receiving money when the Actual Figure exceeds the Agreed Figure), a transaction as set forth in item (iii) of that paragraph (limited to the transaction under which the person becomes a party acquiring Options) and any other transaction specified by Cabinet Order.
- (8) The term "Highest Price Within Two Weeks After the Publication Set Forth in Paragraph (1)" as used in paragraph (3), item (ii), sub-item (a) means the highest price among the highest prices as prescribed in Article 67-19 or Article 130 for the respective days between the publication set forth in paragraph (1) and two weeks thereafter (when there is no such price, it shall be what is specified by Cabinet Office Ordinance as being equivalent thereto, and for the day of the publication, it shall be the amount specified by Cabinet Office Ordinance).
- (9) The term "Sale, etc. of Share Certificates, etc." as used in paragraph (4), item (i) means the sale of Share Certificates, etc., a transaction as set forth in Article 2, paragraph (21), item (ii) (limited to a transaction under which the person becomes the party paying money when the Actual Figure exceeds the Agreed Figure), a transaction as set forth in item (iii) of that paragraph (limited to a transaction under which the person becomes the party granting Options) and any other transaction specified by Cabinet Order.
- (10) The term "Lowest Price Within Two Weeks After the Publication Set Forth in Paragraph (2)" as used in paragraph (4), item (i), sub-item (b) means the lowest price among the lowest prices as prescribed in Article 67-19 or Article 130 for the respective days between the publication set forth in paragraph (2) and two weeks thereafter (when there is no such price, it shall be what is specified by Cabinet Office Ordinance as being equivalent thereto, and for the day of the publication, it shall be the amount specified by Cabinet Office Ordinance).
- (11) The term "Purchase, etc. of Share Certificates, etc." as used in paragraph (4),

- item (ii) means the purchasing of Share Certificates, etc., a transaction as set forth in Article 2, paragraph (21), item (ii) (limited to a transaction under which the person becomes the party receiving money when the Actual Figure exceeds the Agreed Figure), a transaction as set forth in item (iii) of that paragraph (limited to a transaction under which the person becomes the party acquiring Options) and any other transaction specified by Cabinet Order.
- (12) The term "Highest Price Within Two Weeks After the Publication Set Forth in Paragraph (2)".as used in paragraph (4), item (ii), sub-item (a) means the highest price among the highest prices as prescribed in Article 67-19 or Article 130 for the respective days between the publication set forth in paragraph (2) and two weeks thereafter (when there is no such price, it shall be what is specified by Cabinet Office Ordinance as being equivalent thereto, and for the day of the publication, it shall be the amount specified by Cabinet Office Ordinance).
- (13) The provisions of paragraph (1) shall apply mutatis mutandis to the case where an Officer, etc. specified in Article 166, paragraph (1), item (i) of a Listed Company, etc. has conducted a Specified Act of Providing Information, etc. (meaning an act of providing information as set forth in Article 167-2, paragraph (1) or recommending the Sales and Purchase, etc. as set forth in that paragraph for the purpose prescribed in that paragraph) as the business of the Listed Company, etc. In this case, the term "the Violator" in paragraph (1) shall be deemed to be replaced with "the Listed Company, etc."
- (14) The provisions of paragraph (2) shall apply mutatis mutandis to the case where an Officer, etc. specified in Article 166, paragraph (1), item (i) of a Tender Offeror, etc. (meaning the Tender Offeror, etc. prescribed in Article 167, paragraph (1), and including the Parent Company prescribed in item (i) of that paragraph) has conducted a Specified Act of Providing Information, etc. (meaning an act of providing information as set forth in Article 167-2, paragraph (2) or recommending the Purchase, etc. or the Sales, etc. as set forth in that paragraph for the purpose prescribed in that paragraph) as the business of the Tender Offeror, etc. In this case, the term "the Violator" in paragraph (2) shall be deemed to be replaced with "the Tender Offeror, etc."
- (15) In addition to what is prescribed in paragraphs (3) to (12) inclusive, when the Sales, etc. of Specified Securities, etc. or the Purchase, etc. of Specified Securities, etc. prescribed in paragraph (3) or the Sales, etc. of Share Certificates, etc. or the Purchase, etc. of Share Certificates, etc. prescribed in paragraph (4) falls under the transaction listed in Article 2, paragraph (21), item (ii), the price and volume and any other matters necessary for calculation of an administrative monetary penalty set forth in paragraph (1) (including the cases where applied mutatis mutandis pursuant to paragraph (13)) or paragraph (2) (including the cases where applied mutatis mutandis pursuant

to the preceding paragraph) shall be specified by Cabinet Order.

(Rounding Off in the Calculation of Administrative Surcharge Amounts)

- Article 176 (1) It is not permitted to order the payment of an administrative surcharge if the amount of the administrative surcharge as calculated pursuant to the provisions of Articles 172 to the preceding Article inclusive is less than ten thousand yen.
- (2) If the amount of an administrative surcharge as calculated pursuant to the provisions of Article 172 to the preceding Article inclusive, includes a number to the right of the ten thousands place, such amount is rounded down to the nearest ten thousand yen.
- (3) A person that is issued an order under the provisions of Article 172 to the preceding Article inclusive must pay the administrative surcharge under those provisions.
- (4) If a person prescribed in the paragraphs of Article 172; an Issuer prescribed in Article 172-2, paragraph (1), (4), or (6); an Issuer prescribed in the paragraphs of Article 172-3; an Issuer prescribed in Article 172-4, paragraphs (1) to (3) inclusive; a person prescribed in Article 172-5; a person prescribed in the paragraphs of Article 172-6; a person prescribed in Article 172-7; a person prescribed in Article 172-8; a person prescribed in Article 172-9; an Issuer prescribed in Article 172-10, paragraph (1); an Issuer prescribed in Article 172-11, paragraph (1) a Specified Involved Person prescribed in Article 172-12, paragraph (1); a Violator prescribed in Article 173, paragraph (1); a Violator prescribed in Article 174, paragraph (1); a Violator prescribed in 174-2, paragraph (1); a Violator prescribed in Article 174-3, paragraph (1); a person prescribed in Article 175, paragraph (1), or paragraph (2) of that Article; or a Listed Company, etc. prescribed in paragraph (9) of that Article, a Violator prescribed in paragraph (1) of the preceding Article, a Violator prescribed n paragraph (2) of that Article, a Listed Company, etc. prescribed in paragraph (13) of that Article, or a Tender Offeror, etc. prescribed in paragraph (14) of that Article is a corporation, and if that corporation disappears in a merger, the acts performed by the corporation that has disappeared are deemed to be acts performed by the corporation that has survived the merger or by the corporation incorporated in the merger, and the provisions of Article 172 to the preceding Article inclusive and the preceding three paragraphs apply.

(Collection of Reports and On-Site Inspections)

- Article 177 (1) The Prime Minister may have the relevant officials reach the following dispositions in order to carry out the necessary investigation into a case connected with an administrative surcharge under Article 172-12, paragraph (1), Article 173, paragraph (1); Article 174, paragraph (1); Article

174-2, paragraph (1); Article 174-3, paragraph (1); Article 175, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (9) of that Article) paragraph (2) of that Article, Article 175-2, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (13) of that Article), or paragraph (2) of the Article (including the cases where it is applied mutatis mutandis pursuant to paragraph (14) of that Article):

- (i) requesting to appear and questioning a person concerned in the case or a witness, and having them submit opinions or reports; and
  - (ii) to request persons concerned with a case to submit books and documents or other articles, or to retain the submitted articles; and
  - (iii) entering the business office of a person concerned in the case and other necessary sites to inspect the books and documents or any other articles.
- (2) The Prime Minister may inquire to public offices or public or private organizations and request them to report necessary matters with regard to the investigation under the preceding paragraph.

## **Section 2 Administrative Hearing Proceedings**

(Decision to Commence Administrative Adjudication Proceedings)

Article 178 (1) If the Prime Minister finds one of the following facts to have occurred, the Prime Minister must issue a decision to commence administrative hearing proceedings for a case that involves that fact:

- (i) a fact that falls under Article 172, paragraph (1) or paragraph (2) (including as applied mutatis mutandis pursuant to paragraph (4) of that Article) or paragraph (3) of that Article;
- (ii) a fact that falls under Article 172-2, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (4) of that Article), paragraph (2) of that Article (including as applied mutatis mutandis pursuant to paragraph (5) of that Article), or paragraph (6) of that Article;
- (iii) a fact that falls under one of the paragraphs of Article 172-3;
- (iv) a fact that falls under Article 172-4, paragraph (1) or paragraph (2) (including as applied mutatis mutandis pursuant to paragraph (3) of that Article);
- (v) a fact that falls under Article 172-5.
- (vi) a fact that falls under Article 172-6, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article);
- (vii) a fact that falls under Article 172-7;
- (viii) a fact that falls under Article 172-8;
- (ix) a fact that falls under Article 172-9;
- (x) a fact that falls under the paragraphs of Article 172-10;
- (xi) a fact that falls under Article 172-11, paragraph (1);

- (xi)-2 the fact which falls under Article 172-12, paragraph (1);
  - (xii) a fact that falls under Article 173, paragraph (1);
  - (xiii) a fact that falls under Article 174, paragraph (1);
  - (xiv) a fact that falls under Article 174-2, paragraph (1);
  - (xv) a fact that falls under Article 174-3, paragraph (1); or
  - (xvi) a fact that falls under Article 175, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (9) of that Article) or paragraph (2) of that Article.
  - (xvii) the fact which falls under Article 175-2, paragraph (1) (including the cases where applied mutatis mutandis pursuant to paragraph (13) of that Article) or paragraph (2) of that Article (including the cases where applied mutatis mutandis pursuant to paragraph (14) of that Article).
- (2) Once the Prime Minister issues a decision to commence administrative hearing proceedings, the Prime Minister may not decide to commence administrative hearing proceedings on the grounds that a fact set forth in the item of the preceding paragraph upon which that decision is based also falls under the category of another of the facts set forth in the items of that paragraph.
- (3) Once five years have elapsed since the opening day of a Public Offering or Secondary Distribution of Securities for which a notification under Article 4, paragraph (1) is required, the opening day of a General Solicitation Involving Securities Acquired by a Qualified Institutional Investor for which a notification under paragraph (2) of that Article is required, or the opening day of a General Solicitation Involving Securities Acquired by a Professional Investor for which a notification under paragraph (3) of that Article is required, the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (i) in connection with that Public Offering or Secondary Distribution, General Solicitation Involving Securities Acquired by a Qualified Institutional Investor, or General Solicitation Involving Securities Acquired by a Professional Investor (limited to a fact that falls under Article 172, paragraph (1)).
- (4) Once five years have elapsed since the day on which a person prescribed in Article 15, paragraph (1) violates the provisions of Article 15, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27) in causing the Securities specified in that paragraph to be acquired or selling those Securities through a Public Offering or Secondary Distribution, the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (i) in connection with the Securities that the person causes to be acquired or sells.
- (5) Once five years have elapsed since the day on which a person prescribed in

Article 15, paragraph (2) violates the provisions of Article 15, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27) in selling Securities through a Secondary Distribution without having delivered a Prospectus, the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (i) in connection with the Securities that the person sells.

(6) Once five years have elapsed since the day on which a person prescribed in Article 23-8, paragraph (1) violates the provisions of Article 23-8, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27) in causing the Securities prescribed in that paragraph to be acquired or selling those Securities through a Public Offering or Secondary Distribution, the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (i) in connection with the Securities that the person causes to be acquired or sells.

(7) Once five years have elapsed since the day of submission of an Offering Disclosure Document under Article 172-2, paragraph (3) that contains a false statement about a material particular or that omits a statement as to a material particular that is required to be stated, the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (ii) in connection with that Offering Disclosure Document.

(8) Once five years have elapsed since the opening day of a Secondary Distribution under a Prospectus that contains a false statement about a material particular provided for in Article 172-2, paragraph (4) or omits a statement as to a material particular provided for in that paragraph that is required to be stated, the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (ii) in connection with that Prospectus.

(9) Once five years have elapsed since the day on which the Issuer causes Securities to be acquired or sells Securities through a Public Offering or Secondary Distribution without having submitted an amended Offering Disclosure Document, the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (ii) in connection with the amended Offering Disclosure Document (limited to a fact that falls under Article 172-2, paragraph (6)).

(10) Once five years have elapsed since the due date for the submission of an Annual Securities Report or Quarterly Securities or Semiannual Securities Report (for the Annual Securities Report prescribed in Article 24, paragraph

- (3) (including as applied *mutatis mutandis* pursuant to the provisions of paragraph (5) of that Article and also including as applied *mutatis mutandis* pursuant to Article 27), from the day on which any grounds for the submission of the Annual Securities Report arises), the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (iii) in connection with that Annual Securities Report or Quarterly Securities or Semiannual Securities Report.
- (11) Once five years have elapsed since the day of submission of an Annual Securities Report, etc., Quarterly Securities Report, Semiannual Securities Report, or Extraordinary Report, etc. that contains a false statement about a material particular or that omits a statement as to a particular that is required to be stated, the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (iv) in connection with that Annual Securities Report, etc., Quarterly Securities Report, Semiannual Securities Report, or Extraordinary Report, etc.
- (12) Once five years have elapsed since the day on which any ground for the submission of an Extraordinary Report arises, the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (iv) in connection with that Extraordinary Report (limited to the fact which falls under Article 172-4, paragraph (2), as applied *mutatis mutandis* pursuant to paragraph (3) of that Article).
- (13) Once five years have elapsed since the day on which a purchase, etc. of Share Certificates, etc. or Listed Share Certificates, etc. violates the provisions of Article 27-3, paragraph (1) (including as applied *mutatis mutandis* pursuant to Article 27-22-2, paragraph (2)) in being effected without a Public Notice of the Commencement of a Tender Offer having being given, the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (iv) in connection with that purchase, etc.
- (14) Once five years have elapsed since the day of issuance of Public Notice of the Commencement of a Tender Offer, etc. which contains a false representation about a material particular or which omits a representation as to a material particular that is required to be represented, the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (vi) in connection with that Public Notice for Commencement of Tender Offer, etc.
- (15) Once five years have elapsed since the day of submission of a Tender Offer Statement, etc. that contains a false statement about a material particular or



that omits a statement as to a material particular that is required to be stated, the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (vi) in connection with that Tender Offer Statement, etc.

- (16) Once five years have elapsed since the due date for the submission of an Amended Tender Offer Statement, etc. (or, for an amended statement under Article 27-8, paragraph (2) (including as applied *mutatis mutandis* pursuant to Article 27-22-2, paragraph (2)) or an amended report under Article 27-8, paragraph (2) as applied *mutatis mutandis* pursuant to Article 27-10, paragraph (12), from the day on which any ground for the submission of any of these documents arises), the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (iv) in connection with that Amended Tender Offer Statement, etc. (limited to a fact that falls under Article 172-6, paragraph (1) as applied *mutatis mutandis* pursuant to paragraph (2) of that Article).
- (17) Once five years have elapsed since the due date for the submission of a Statement of Large-Volume Holdings or Changes, the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (iv) involving that Statement of Large-Volume Holdings or Changes.
- (18) Once five years have elapsed since the day on which a person submits a Statement of Large-Volume Holdings or Changes, etc. that contains a false statement about a material particular or that omits a statement as to a material particular that is required to be stated, the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (viii) in connection with that Statement of Large-Volume Holdings or Statement of Changes, etc.
- (19) Once five years have elapsed since the day on which a person commences a Specified Solicitation, etc., the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (ix) in connection with that Specified Solicitation, etc.
- (20) Once five years have elapsed since the day on which a person provides or discloses Specified Information on Securities, etc. That Contains a Falsity, etc., the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (x) in connection with that Specified Information on Securities, etc. That Contains a Falsity, etc.
- (21) Once five years have elapsed since the day on which a person provides or discloses Information on the Issuer, etc. That Contains a Falsity, etc., the

Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (xi) in connection with that Information on the Issuer, etc. That Contains a Falsity, etc.

- (22) When seven years have elapsed from the day when a Person Submitting Disclosure Documents, etc. prescribed in Article 172-12, paragraph (1) submitted, provided or publicly announced the Fake Disclosure Documents, etc. prescribed in that paragraph, the Prime Minister may not issue a decision on the commencement of trial procedures concerning the facts specified in paragraph (1), item (xi)-2 pertaining to said Fake Disclosure Documents, etc.
- (23) Once five years have elapsed since the day on which the Violation set forth in Article 173, paragraph (1) ends, the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (xii) in connection with that Violation.
- (24) Once five years have elapsed since the day on which the Violation prescribed in Article 174, paragraph (1) ends, the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (xiii) in connection with that Violation.
- (25) Once five years have elapsed since the day on which the Violation prescribed in Article 174-2, paragraph (1) ends, the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (xiv) in connection with that Violation.
- (26) Once five years have elapsed since the day on which an Violation prescribed in Article 174-3, paragraph (1) ends, the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (xv) in connection with that Violation.
- (27) Once five years have elapsed since the day on which a Purchase and Sale, etc. prescribed in Article 166, paragraph (1) is effected, the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (xvi) in connection with that Purchase and Sale, etc.
- (28) Once five years have elapsed since the day on which a purchase, etc. of Specified Share Certificates, etc. or Related Share Certificates, etc. prescribed in Article 167, paragraph (1) or a sale, etc. of Share Certificates, etc. prescribed in that paragraph is effected, the Prime Minister may not issue a decision to commence administrative hearing proceedings based on the occurrence of the fact set forth in paragraph (1), item (xvi) in connection with that purchase, etc. or sale, etc.
- (29) When five years have elapsed from the day when the Act of Violation

prescribed in Article 175-2, paragraph (1) or (2) or the Specified Act of Providing Information, etc. prescribed in paragraph (13) or (14) of that Article was conducted, the Prime Minister may not issue a decision on the commencement of trial procedures concerning the facts specified in paragraph (1), item (xvii) pertaining to the Act of Violation or the Specified Act of Providing Information, etc.

(Written Decision to Commence Administrative Hearing Proceedings)

Article 179 (1) A decision to commence administrative hearing proceedings must be issued in writing.

- (2) A written decision to commence administrative hearing proceedings (hereinafter referred to as the "Written Decision to Commence Administrative Hearing Proceedings" in the following paragraph and Article 183) must contain the dates and places for the administrative hearing proceedings, the fact set forth in the item of paragraph (1) of the preceding Article which is connected with the administrative surcharge, the amount of the administrative surcharge that would be required to be paid, and the basis for its computation.
- (3) Administrative hearing proceedings are commenced through the service of a certified copy of a Written Decision to Commence Administrative Hearing Proceedings on the person that would be ordered to pay the administrative surcharge (hereinafter referred to as the "Respondent" in this Section).
- (4) A Respondent must be issued an order to appear on the appearance dates for administrative hearing proceedings.

(Administrative Hearing Proceedings)

Article 180 (1) Administrative hearing proceedings (other than the decision to commence administrative hearing proceedings and a decision under Article 185-7, paragraph (19)) are conducted by a panel comprising three hearing examiners; provided, however, that in a simple case, proceedings are conducted by a single hearing examiner.

- (2) For each administrative hearing case, the Prime Minister must designate hearing examiners constituting the panel referred to in the main clause of the preceding paragraph, or the one hearing examiner referred to in the proviso to that paragraph.
- (3) If the Prime Minister decides to have a panel conduct administrative hearing proceedings, the minister must designate one chief examiner, out of the hearing examiners designated pursuant to the provisions of the preceding paragraph.
- (4) The Prime Minister may not designate a person that has participated in the investigation of the case as a hearing examiner.

(Representative of the Respondent)

Article 181 (1) A Respondent may appoint as its representative an attorney-at-law, legal professional corporation, or an appropriate person that has been approved by the Prime Minister.

(2) The Prime Minister may have the relevant officials designated by the Prime Minister (hereinafter each of such officials is referred to as a "Designated Official" in this Article) participate in administrative hearing proceedings.

(3) A Designated Official may attend an administrative adjudication, offer evidence, and perform other necessary acts.

(4) A Designated Official may, when he/she finds it necessary to change any facts listed in the items of Article 178, paragraph (1), the application of laws or regulations, the amount of administrative monetary penalty to be paid or the basis for computation thereof (limited to the extent specified by Cabinet Office Ordinance), claim that such change be made; provided, however, that this shall not apply if such claim would impair the interests of the respondent.

(Opening of Administrative Hearing Proceedings to the Public)

Article 182 Administrative hearing proceedings are open to the public; provided, however, that this does not apply if it is found to be necessary not to do so, in the public interest.

(Written Answer)

Article 183 (1) Upon being served with a certified copy of a Written Decision to Commence Administrative Hearing Proceedings, the Respondent must submit a written answer to this to the hearing examiners without delay.

(2) If a Respondent submits a written answer acknowledging the fact set forth in the item of Article 178, paragraph (1) which relates to the administrative surcharge and acknowledging the amount of the administrative surcharge the Respondent is required to pay before the appearance date for administrative adjudication specified in the Written Decision to Commence Administrative Hearing Proceedings, the appearance date is not required to be set.

(Statement of Opinions)

Article 184 (1) A Respondent may state an opinion when appearing on the date of an administrative hearing.

(2) If a hearing examiner finds it necessary, the hearing examiner may request the Respondent to state an opinion.

(Directing an Examination of a Witness)

Article 185 (1) A hearing examiner may order a witness to appear so as to conduct an examination, at the petition of the Respondent or ex officio. In such

a case, the Respondent may also question the witness.

- (2) The provisions of Article 190, Article 191, Article 196, Article 197, and Article 201, paragraphs (1) to (4) inclusive of the Code of Civil Procedure (Act No. 109 of 1996) apply *mutatis mutandis* to the proceedings if an examination is directed to a witness pursuant to the provisions of the preceding paragraph.

(Hearing of the Respondent)

Article 185-2 A hearing examiner may hear the Respondent at the petition of the Respondent or *ex officio*.

(Production of Documentary Evidence)

- Article 185-3 (1) The Respondent may submit documentary evidence or an article of evidence during the course of an administrative adjudication; provided, however, that if hearing examiners designates a reasonable period for the Respondent to submit documentary evidence or an article of evidence, the Respondent must submit it within the designated period.
- (2) Hearing examiners may order the person in possession of a document or other article to produce that article and may retain an article so submitted, at the petition of the Respondent or *ex officio*.

(Issuance of an Order to Present an Expert Opinion to a Person with the Relevant Knowledge and Experience)

- Article 185-4 (1) Hearing examiners may order a person with the relevant knowledge and experience to present an expert opinion, at the petition of the Respondent or *ex officio*.
- (2) If hearing examiners order an expert to appear so as to conduct a hearing, the Respondent may examine that expert.
- (3) The provisions of Article 191, Article 197, Article 201, paragraph (1), and Article 212 of the Code of Civil Procedure apply *mutatis mutandis* to proceedings if an expert is ordered to present an expert opinion, pursuant to paragraph (1).

(On-Site Inspections)

Article 185-5 Hearing examiners may enter the business office of a persons concerned in a case and other necessary sites to inspect the books and documents or any other article, at the petition of the Respondent or *ex officio*.

(Submission of a Draft Decision)

Article 185-6 After the completion of administrative hearing proceedings, hearing examiners must prepare a draft decision on the administrative hearing case and submit the draft decision to the Prime Minister.

(Decision to Issue an Administrative Surcharge Payment Order)

- Article 185-7 (1) If, after the completion of administrative hearing proceedings, the Prime Minister finds a fact set forth in one of the items of Article 178, paragraph (1) to have occurred, unless otherwise provided for in this Article, the Prime Minister must issue a decision against the Respondent, ordering the Respondent to pay the administrative surcharge under the provisions of Article 172, paragraph (1), paragraph (2) (including as applied mutatis mutandis pursuant to paragraph (4) of that Article), or paragraph (3) of that Article; Article 172-2, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (4) of that Article), paragraph (2) of that Article (including as applied mutatis mutandis pursuant to paragraph (5) of that Article), or paragraph (6) of that Article; Article 172-3, paragraph (1) or (2); Article 172-4, paragraph (1) or paragraph (2) (including as applied mutatis mutandis pursuant to paragraph (3) of that Article); Article 172-5; Article 172-6, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article); Articles 172-7 to 172-9 inclusive; Article 172-10, paragraph (1) or (2); Article 172-11, paragraph (1), Article 172-12, paragraph (1), Article 173, paragraph (1), Article 174, paragraph (1), Article 174-2, paragraph (1); Article 174-3, paragraph (1); or Article 175, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (9) of that Article) or paragraph (2) of that Article, or Article 175-2, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (13) of that Article) or paragraph (2) of that Article (including the cases where it is applied mutatis mutandis pursuant to paragraph (14) of that Article) to the national treasury.
- (2) If the Prime Minister is required to issue the decision referred to the preceding paragraph in connection with a fact that falls under Article 172, paragraph (1) and a fact that falls under Article 172, paragraph (2) for the same Public Offering or Secondary Distribution (limited to a decision under Article 178, paragraph (1), item (i)), in lieu of the amount under Article 172, paragraph (1) or (2), the Prime Minister must issue an order for the relevant person to pay an administrative surcharge to the national treasury that is equivalent to the amount arrived at when the amount calculated pursuant to paragraph (1) of that Article is proportionally divided in parallel with the amounts calculated pursuant to paragraph (1) and paragraph (2) of that Article in respect of each fact subject to a decision.
- (3) Once the Prime Minister has issued a decision with regard to a Public Offering or Secondary Distribution that falls under both Article 172, paragraph (1) and paragraph (2) pursuant to the provisions of paragraph (1) (but only if the Prime Minister finds the fact set forth in Article 178, paragraph (1), item (i) to have occurred; hereinafter the same applies in this paragraph), the

preceding paragraph, or paragraph (15) (but only if the Prime Minister finds the fact set forth in Article 178, paragraph (1), item (i) to have occurred), the Prime Minister may not issue a new decision with regard to such a Public Offering or Secondary Distribution pursuant to the preceding two paragraphs.

- (4) If the Prime Minister is required to issue the decision referred to in paragraph (1) in connection with the submission of two or more ongoing disclosure documents (meaning an Annual Securities Report or a Quarterly or Semiannual Securities Report; the same applies in the following paragraph) covering the same Business Year Subject to Disclosure (limited to a decision under Article 178, paragraph (1), item (iii)), in lieu of the amount set forth in Article 172-3, paragraph (1) or the amount set forth in Article 172-3, paragraph (2), the Prime Minister must issue an order for the relevant person to pay an administrative surcharge to the national treasury that is equivalent to the amount arrived at when the amount calculated pursuant to paragraph (1) of that Article is proportionally divided in parallel with the amount calculated for each decision (meaning the amount calculated pursuant to Article 172-3, paragraph (1) or (2) in respect of each fact subject to a decision; the same applies in the following paragraph).
- (5) If the Prime Minister is required to issue the decision referred to in paragraph (1) (but only if a fact set forth in Article 178, paragraph (1), item (iii) is found to have occurred; hereinafter the same applies in this paragraph)) or the decision referred to in the preceding paragraph, and is required to issue one or more decisions (hereinafter each is referred to as a "New Decision" in this paragraph) in connection with an ongoing disclosure document for the same Business Year Subject to Disclosure, as an ongoing disclosure document in connection with which the Prime Minister has already issued one or more decisions pursuant to paragraph (1), the preceding paragraph, this paragraph, or paragraph (15) (but only if the Prime Minister found the fact set forth in Article 178, paragraph (1), item (iii) to have occurred; hereinafter the same applies in this paragraph) (each such decision is hereinafter referred to as a "Prior Decision" in this paragraph), in lieu of the amount set forth in Article 172-3, paragraph (1), Article 172-3, paragraph (2), or the preceding paragraph, the Prime Minister must issue an order in respect of the New Decisions, for the relevant person to pay an administrative surcharge to the national treasury that is equivalent to the amount arrived at when the amount specified in item (ii) is deducted from the amount specified in item (i), and the difference is then proportionally divided in parallel with the amount calculated for each decision in respect of each fact subject to a New Decision, pursuant to the provisions of Cabinet Office Ordinance; provided, however, that unless the amount specified in item (i) exceeds the amount specified in item (ii), the Prime Minister may not issue an administrative surcharge payment order under Article 172-3,

- paragraph (1) or (2) or the preceding paragraph:
- (i) the amount calculated pursuant to Article 172-3, paragraph (1).
  - (ii) the sum total of the amounts of the administrative surcharges under Article 172-3, paragraph (1) and (2); the preceding paragraph; this paragraph; and paragraph (15) as relates to the Prior Decision.
- (6) If the Prime Minister is required to issue the decision referred to in paragraph (1) (limited to a decision under Article 178, paragraph (1), item (iv)) in connection with two or more ongoing disclosure documents, etc. covering the same Business Year Subject to Disclosure (meaning an Annual Securities Report, etc. or Quarterly Securities Report, Semiannual Securities Report, Extraordinary Report, etc., but excluding an amended report to amend a false statement contained in any of those documents or to correct a deficiency in respect of a material particular that is required to be stated as prescribed in Article 7, paragraph (1), Article 9, paragraph (1), or Article 10, paragraph (1) as applied mutatis mutandis pursuant to Article 24-2, paragraph (1), Article 24-4-7, paragraph (4), and Article 24-5, paragraph (5) (including as applied mutatis mutandis pursuant to Article 27); the same applies in the following paragraph), and the sum total of the amounts calculated pursuant to Article 172-4, paragraph (1) and (2) (including as applied mutatis mutandis pursuant to paragraph (3) of that Article) in respect of each fact subject to a decision (hereinafter referred to as the "Amount Calculated for Each Decision" in this paragraph, the following paragraph, and paragraph (16) (but only if the Prime Minister finds the fact set forth in Article 178, paragraph (1), item (iv) to have occurred)) exceeds the higher of the amounts set forth in either of the following items, in lieu of the amount provided for in Article 172-4, paragraph (1) or Article 172-4, paragraph (2) (including as applied mutatis mutandis pursuant to paragraph (3) of that Article), the Prime Minister must issue an order for the relevant person to pay an administrative surcharge to the national treasury that is equivalent to the amount arrived at when the higher of those amounts is proportionally divided in parallel with the Amount Calculated for Each Decision, pursuant to the provisions of Cabinet Office Ordinance:
- (i) the highest of the amounts calculated pursuant to Article 172-4, paragraph (1) for the fact that has occurred in respect of the decision, for each Annual Securities Report, etc.;
  - (ii) the highest of the amounts arrived at when the amount calculated pursuant to Article 172-4, paragraph (2) (including as applied mutatis mutandis pursuant to paragraph (3) of that Article) for the fact that has occurred in respect of the decision is multiplied by two, for each Quarterly Securities Report, Semiannual Securities Report, or Extraordinary Report, etc.
- (7) If the Prime Minister is required to issue the decision referred to in paragraph (1) (but only if the Prime Minister finds the fact set forth in Article



178, paragraph (1), item (iv) to have occurred; hereinafter the same applies in this paragraph)) or the decision referred to in the preceding paragraph, and is required to issue one or more decisions (hereinafter each is referred to as a "New Decision" in this paragraph) in connection with an ongoing disclosure document, etc. for the same Business Year Subject to Disclosure, as an ongoing disclosure document, etc. in connection with which the Prime Minister has already issued one or more decisions pursuant to paragraph (1), the preceding paragraph, this paragraph, paragraph (14) (but only if the Prime Minister found the fact set forth in Article 178, paragraph (1), item (iv) to have occurred; hereinafter the same applies in this paragraph), paragraph (15) (but only if the Prime Minister found the fact set forth in Article 178, paragraph (1), item (iv) to have occurred; hereinafter the same applies in this paragraph), or paragraph (16) (but only if the Prime Minister found the fact set forth in Article 178, paragraph (1), item (iv) to have occurred; hereinafter the same applies in this paragraph) (each such a decision is hereinafter referred to as a "Prior Decision" in this paragraph), in lieu of the amount set forth in Article 172-4, paragraph (1) or (2) (including as applied mutatis mutandis pursuant to paragraph (3) of that Article) or the preceding paragraph, the Prime Minister must issue an order in respect of the New Decisions, for the relevant person to pay an administrative surcharge to the national treasury that is equivalent to the amount arrived at when the amount specified in item (ii) is deducted from the amount specified in item (i), and the difference is then proportionally divided in parallel with the Amount Calculated for Each Decision in respect of each fact subject to a New Decision, pursuant to the provisions of Cabinet Office Ordinance; provided, however, that unless the amount specified in item (i) exceeds the amount specified in item (ii), the Prime Minister may not issue an administrative surcharge payment order under paragraph (1) or (2) of that Article (including as applied mutatis mutandis pursuant to paragraph (3) of that Article) or the preceding paragraph:

- (i) the sum total of the Amounts Calculated for Each Decision, in respect of each fact subject to a Prior Decision and to a New Decision (if this amount exceeds the higher of the amounts set forth in the following sub-item (a) or (b), this means the higher of those amounts):
  - (a) the highest of the amounts calculated pursuant to Article 172-4, paragraph (1) in respect of each fact subject to a Prior Decision and to a New Decision for each Annual Report, etc.; or
  - (b) the highest of the amounts arrived at when the amounts calculated pursuant to Article 172-4, paragraph (2) (including as applied mutatis mutandis pursuant to paragraph (3) of that Article) in respect of each fact subject to a Prior Decision and to a New Decision for each Quarterly Report, Semiannual Report, Ad Hoc Report, etc., are multiplied by two.

- (ii) the sum total of the amounts of administrative surcharges under Article 172-4, paragraph (1) or (2) (including as applied *mutatis mutandis* pursuant to paragraph (3) of that Article), the preceding paragraph, this paragraph, and paragraphs (14) to (16) inclusive, in connection with Prior Decisions.
- (8) If the Prime Minister is required to issue the decision referred to in paragraph (1) in connection with two or more Tender Offer documents, etc. (meaning a Public Notice of the Commencement of the Tender Offer, etc. or a Tender Offer Statement; the same applies in the following paragraph) for the same Tender Offer (limited to a decision under Article 178, paragraph (1), item (vi)), in lieu of the amount set forth in Article 172-6, paragraph (1) (including as applied *mutatis mutandis* pursuant to paragraph (2) of that Article), the Prime Minister must issue an order for the relevant person to pay an administrative surcharge to the national treasury that is equivalent to the amount arrived at when the amount calculated pursuant to paragraph (1) of that Article is divided proportionally in parallel with the amounts calculated pursuant to that paragraph (including as applied *mutatis mutandis* pursuant to paragraph (2) of that Article) in respect of each fact subject to a decision.
- (9) If the Prime Minister has already issued a decision pursuant to paragraph (1) (but only if the Prime Minister found the fact set forth in Article 178, paragraph (1), item (vi) to have occurred; hereinafter the same applies in this paragraph), the preceding paragraph, or paragraph (15) (but only if the Prime Minister found the fact set forth in Article 178, paragraph (1), item (vi) to have occurred) in connection with a Tender Offer document, etc., the Prime Minister may not issue a new decision pursuant to paragraph (1) or the preceding paragraph in connection with a Tender Offer document, etc. linked to the same Tender Offer as that Tender Offer document, etc.
- (10) If the Prime Minister is required to issue the decision referred to in paragraph (1) (limited to a decision under Article 178, paragraph (1), item (xi)) in connection with two or more pieces of Information on the Issuer, etc. for the same Business Year Subject to Disclosure (excluding Amended Information on the Issuer that amends false information contained in the relevant Information on the Issuer, etc. or that corrects a deficiency of information about a material particular that is required to be provided or disclosed; the same applies in the following paragraph), in lieu of the amount under Article 172-11, paragraph (1), the Prime Minister must issue an order for the relevant person to pay an administrative surcharge to the national treasury that is equivalent to the amount arrived at when the highest of the amounts calculated pursuant to that paragraph in respect of each fact subject to a decision (hereinafter referred to as the "Amount Calculated for Each Decision" in this paragraph, the following paragraph and paragraph (14) (but only if the Prime Minister finds the fact set forth in Article 178, paragraph (1), item (xi) to have occurred)) is

proportionally divided in parallel with the Amount Calculated for Each Decision, pursuant to the provisions of Cabinet Office Ordinance.

(11) If the Prime Minister is required to issue the decision referred to in paragraph (1) (but only if the Prime Minister finds the fact set forth in Article 178, paragraph (1), item (xi) to have occurred; hereinafter the same applies in this paragraph)) or the preceding paragraph, and must issue one or more decisions (hereinafter each is referred to as a "New Decision" in this paragraph) in connection with Information on the Issuer, etc. for the same Business Year Subject to Disclosure as Information on the Issuer, etc. in connection with which the Prime Minister has already issued one or more decisions pursuant to paragraph (1), the preceding paragraph, this paragraph, paragraph (14) (but only if the Prime Minister found the fact set forth in Article 178, paragraph (1), item (xi) to have occurred; hereinafter the same applies in this paragraph), paragraph (15) (but only if the Prime Minister found the fact set forth in that Article 178, paragraph (1), item (xi) to have occurred; hereinafter the same applies in this paragraph), or paragraph (16) (but only if the Prime Minister found the fact set forth in Article 178, paragraph (1), item (xi) to have occurred; hereinafter the same applies in this paragraph) (each such a decision is hereinafter referred to as a "Prior Decision" in this paragraph), in lieu of the amount set forth in Article 172-11, paragraph (1) or the preceding paragraph, the Prime Minister must issue an order in connection with the New Decisions, for the relevant person to pay an administrative surcharge to the national treasury that is equivalent to the amount arrived at when the amount specified in item (ii) is deducted from the amount specified in item (i) and the difference is then divided proportionally in parallel with the Amount Calculated for Each Decision in respect of each fact subject to a New Decision, pursuant to the provisions of Cabinet Office Ordinance; provided, however, that unless the amount specified in item (i) exceeds the amount specified in item (ii), the Prime Minister may not issue an administrative surcharge payment order under Article 172-11, paragraph (1) or the preceding paragraph:

(i) the highest of the Amounts Calculated for Each Decision in respect of each fact subject to a Prior Decision or to a New Decision.

(ii) the sum total of the amounts of administrative surcharges under Article 172-11, paragraph (1), the preceding paragraph, this paragraph, and paragraphs (14) to (16) inclusive in connection with Prior Decisions.

(12) When the Prime Minister is required to issue decisions under paragraph (1) (limited to the decision pertaining to Article 178, paragraph (1), item (xvii)) in relation to two or more Acts of Violation (meaning the Act of Violation prescribed in Article 175-2, paragraph (1) or (2), and including the Specified Act of Providing Information, etc. prescribed in paragraphs (13) and (14) of

that Article; hereinafter the same shall apply in this paragraph and the following paragraph) committed in relation to the same Business of Public Offering, etc., the Prime Minister shall issue an order to pay to the national treasury an administrative monetary penalty equivalent to the amount obtained by adding the amount set forth in paragraph (1), item (ii), sub-item (a) or paragraph (2), item (ii), sub-item (a) of that Article to the amount obtained by dividing the amount set forth in paragraph (1), item (ii), sub-item (b) or paragraph (2), item (ii), sub-item (b) of that Article by the number of such decisions, for the respective Acts of Violation, in lieu of the amount set forth in Article 175-2, paragraph (1) (including the cases where applied mutatis mutandis pursuant to paragraph (13) of that Article; hereinafter the same shall apply in this paragraph and the following paragraph) or paragraph (2) of that Article (including the cases where it is applied mutatis mutandis pursuant to paragraph (14) of that Article; hereinafter the same shall apply in this paragraph and the following paragraph).

(13) When the Prime Minister is required to issue a decision under paragraph (1) (limited to the cases where any fact specified in Article 178, paragraph (1), item (xvii) has been found; hereinafter the same shall apply in this paragraph) or the preceding paragraph, if he/she needs to issue one or more decisions (hereinafter referred to as the "New Decision" in this paragraph) for the Act of Violation conducted in relation to the same Business of Public Offering, etc. as that pertaining to one or more decisions already issued under paragraph (1), the preceding paragraph, this paragraph, or paragraph (15) (limited to the cases where any fact specified in that item has been found), the Prime Minister shall issue an order to pay to the national treasury an administrative monetary penalty equivalent to the amount set forth in paragraph (1), item (ii), sub-item (a) or paragraph (2), item (ii), sub-item (a) of that Article pertaining to the respective Acts of Violation, in lieu of the amount set forth in Article 175-2, paragraph (1) or (2), with regard to the New Decision.

(14) If the Prime Minister is required to issue the decision referred to in paragraph (1) (but only if the Prime Minister finds a fact set forth in Article 178, paragraph (1), item (ii) to have occurred that comes under the purview of Article 172-2, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (4) of that Article; hereinafter the same applies in this paragraph); finds a fact set forth in Article 178, paragraph (1), item (iv) to have occurred that comes under the purview of Article 172-4, paragraph (1) or (2); finds a fact set forth in Article 178, paragraph (1), item (vii) or a fact set forth in Article 178, paragraph (1), item (x) to have occurred that comes under the purview of Article 172-10, paragraph (1); or finds a fact set forth in Article 178, paragraph (1), item (xi), a fact set forth in Article 178, paragraph (1), item (xi)-2 or Article 178, paragraph (1), item (xvi) to have occurred that comes under

the purview of Article 175, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (9) of that Article); hereinafter the same applies in this paragraph), paragraph (6), paragraph (7), paragraph (10), or paragraph (11) (if the Prime Minister finds a fact set forth in the relevant item to have occurred that comes under the purview of paragraph (1) of the relevant Article (including as applied mutatis mutandis pursuant to paragraph (9) of that Article), this is only if the Purchase and Sale, etc. under Article 166, paragraph (1) involving that fact falls under the category of an acquisition, by a Listed Company, etc. as prescribed in Article 175, paragraph (9), of its own shares, pursuant to the provisions of Article 156, paragraph (1) of the Companies Act (including as it applies through the replacement of certain terms pursuant to the provisions of Article 163 and Article 165, paragraph (3) of that Act) or a foreign law or regulation that is equivalent to those provisions, or in any other case specified by Cabinet Office Ordinance as being equivalent to this), and the person set forth in Column 1 of the following table, prior to the disposition set forth in Column 3 of that table being issued with regard to a fact falling under the provisions set forth in Column 2 of that table, reports that fact to the Prime Minister pursuant to the provisions of Cabinet Office Ordinance, in lieu of the amounts set forth in Column 4 of that table, the Prime Minister must issue an order for the relevant person to pay an administrative surcharge to the national treasury that is equivalent to the amount arrived at when the relevant amount is multiplied by 50 percent.

Column 1	Column 2	Column 3	Column 4
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An Issuer set forth in Article 172-2, paragraph (1)	Article 172-2, paragraph (1)	order for the submission of reports or materials, inspection of books and documents or other articles, as set forth in Article 26, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27), or dispositions listed in each item of Article 177, paragraph (1)	The amount set forth in Article 172-2, paragraph (1) (in cases where the Prime Minister is required to issue a decision under paragraph (1) with regard to the submission of two or more Offering Disclosure Documents (meaning the Offering Disclosure Documents set forth in paragraph (3) of that Article; hereinafter the same shall apply in this paragraph) or with regard to a Secondary Distribution related to two or more Prospectuses, limited to the amount pertaining to the most recently submitted Offering Disclosure Documents or the amount pertaining to the most recently commenced Secondary Distribution related to the Prospectuses.)
An Issuer set forth in Article 172-4, paragraph (1) or (2)	Article 172-4, paragraph (1) or (2)	order for the submission of reports or materials, inspection of books and documents or other articles, as set forth in Article 26, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27), or dispositions listed in each item of Article 177, paragraph (1)	The amount set forth in Article 172-4, paragraph (1) or (2), or Article 185-7, paragraph (6) or (7) (in cases where the Prime Minister is required to issue a decision under Article 185-7, paragraph (1), (6) or (7) with regard to the submission of two or more Annual Securities Reports or Quarterly Securities Reports, Semiannual Securities Reports or Extraordinary Reports, etc., limited to the amount pertaining to the most recently submitted Annual Securities Reports or Quarterly Securities Reports, Semiannual Securities Reports or Extraordinary Reports, etc.)

A person set forth in Article 172-7	Article 172-7	order for the submission of reports or materials, or the inspection of books and documents or other articles, as set forth in Article 27-30, paragraph (1)	The amount set forth in Article 172-7 (in cases where the Prime Minister is required to issue a decision under paragraph (1) with regard to two or more Reports of Possession of Large Volume or Change Reports, limited to the amount pertaining to the Report of Possession of Large Volume or Change Report for which time limit for submission comes latest).
An Issuer set forth in Article 172-10, paragraph (1)	Article 172-10, paragraph (1)	order for the submission of reports or materials, inspection of books and documents or other articles, as set forth in Article 27-35, paragraph (1), or dispositions listed in each item of Article 177, paragraph (1)	The amount set forth in Article 172-10, paragraph (1) (in the cases where the Prime Minister is required to issue a decision under paragraph (1) with regard to the provision or publication of two or more pieces of Specified Information on Securities, etc., limited to the amount pertaining to the latest provision or publication.)
An Issuer set forth in Article 172-11, paragraph (1)	Article 172-11, paragraph (1)	order for the submission of reports or materials, inspection of books and documents or other articles, as set forth in Article 27-35, paragraph (1), or dispositions listed in each item of Article 177, paragraph (1)	The amount set forth in Article 172-11, paragraph (1), or Article 185-7, paragraph (10) or (11) or the preceding two paragraphs (in the cases where the Prime Minister is required to issue a decision under paragraph (1), or Article 185-7, paragraph (10) or (11) or the preceding two paragraphs with regard to the provision or publication of two or more pieces of Issuer's Information, etc., limited to the amount pertaining to the latest provision or publication.)

A Specified Involved Person set forth in Article 172-12, paragraph (1)	Article 172-12, paragraph (1) (excluding the cases where a person set forth in item (ii) of that paragraph has submitted the documents set forth in that item)	order for the submission of reports or materials, inspection of books and documents or other articles, as set forth in Article 26, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27), or dispositions listed in each item of Article 177, paragraph (1)	The amount set forth in Article 172-12, paragraph (1)
A person set forth in Article 175, paragraph (1) or Listed Companies, etc. set forth in Article 175, paragraph (9)	Article 175, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (9) of that Article)	any of the dispositions listed in each item of Article 177, paragraph (1)	The amount set forth in Article 175, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (9) of that Article) (in the cases where the Prime Minister is required to issue a decision under paragraph (1) with regard to two or more occasions of Sales and Purchases, etc. set forth in Article 166, paragraph (1), limited to the amount pertaining to the latest Sales and Purchase, etc.)

(15) If the Prime Minister is required to issue the decision referred to in paragraph (1), paragraph (2), paragraphs (4) to (8) inclusive, or paragraphs (10) to the preceding paragraph inclusive, and the person subject to the decision that is set forth in the left column of the following table, in the five years prior to the date set forth in the middle column of that table, was subject to an administrative surcharge payment order as provided in Article 185-15,



paragraph (1) (if, in connection with such an administrative surcharge payment order, the legal action referred to in Article 185-18, paragraph (1) has been filed, this is only if the judicial decision on the legal action has become final and binding) or to a decision as provided in paragraph (18) (limited to a decision to which paragraph (3), the proviso to paragraph (5), the proviso to paragraph (7), paragraph (9), the proviso to paragraph (11), the proviso to the following paragraph, or the proviso to paragraph (17) is applicable), in lieu of the amount set forth in the provisions specified in the right-hand column of that table, the Prime Minister must issue an order for the relevant person to pay an administrative surcharge to the national treasury that is equivalent to 150 percent of that amount.

Column 1	Column 2	Column 3
A person set forth in Article 172, paragraph (1)	the day when any of the following was commenced: the Public Offering or Secondary Distribution of Securities for which a notification under Article 4, paragraph (1) is required, the General Solicitation for Securities Acquired by Qualified Institutional Investors for which a notification under Article 4, paragraph (2) is required, or the General Solicitation for Securities Acquired by Professional Investors, etc. for which a notification under Article 4, paragraph (3) is required.	Article 172, paragraph (1) or Article 185-7, paragraph (2)
An Issuer set forth in Article 172, paragraph (2) or a person set forth in that paragraph	the day when, in violation of the provision of Article 15, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27), the Securities under that paragraph were acquired or sold through the Public Offering, or through the Secondary Distribution under Article 172, paragraph (2).	Article 172, paragraph (2) or Article 185-7, paragraph (2)

A person set forth in Article 172, paragraph (3)	the day when, in violation of the provision of Article 15, paragraph (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27), the Securities were sold through Secondary Distribution under Article 172, paragraph (3) without a Prospectus having been delivered.	Article 172, paragraph (3)
An Issuer set forth in Article 172, paragraph (4) or a person set forth in that paragraph	the day when, in violation of the provision of Article 23-8, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27), the Securities under that paragraph were acquired or sold through the Public Offering, or through the Secondary Distribution under Article 172, paragraph (2).	Article 172, paragraph (2) as applied mutatis mutandis pursuant to Article 172, paragraph (4)
An Issuer set forth in Article 172-2, paragraph (1) or its Officers, etc. set forth in paragraph (2) of that Article	the day when the Offering Disclosure Documents under Article 172-2, paragraph (3) which contain any fake statement on important matters or lack a statement on any important matters that should be stated therein was submitted.	Article 172-2, paragraph (1) or (2), or the preceding paragraph (limited to the cases where the fact specified in Article 178, paragraph (1), item (ii) which falls under Article 172-2, paragraph (1) has been found).
An Issuer set forth in Article 172-2, paragraph (4) or its Officers, etc. set forth in paragraph (2) of that Article	the day when the Secondary Distribution under Article 172, paragraph (3) pertaining to the Prospectus which contains any fake statement on important matters set forth in Article 172-2, paragraph (4) or lacks a statement on important matters that should be stated therein as set forth in that paragraph was commenced.	Article 172-2, paragraph (1) as applied mutatis mutandis pursuant to Article 172-2, paragraph (4), Article 172-2, paragraph (2) as applied mutatis mutandis pursuant to Article 172-2, paragraph (5), or the preceding paragraph (limited to the cases where any fact specified in Article 178, paragraph (1), item (ii) which falls under Article 172-2, paragraph (1) as applied mutatis mutandis pursuant to Article 172-2, paragraph (4) has been found).

An Issuer set forth in Article 172-2, paragraph (6)	the day when the Securities were acquired or sold through the Public Offering, or through the Secondary Distribution under Article 172, paragraph (2), without the Amended Offering Disclosure Documents having been submitted.	Article 172-2, paragraph (6)
An Issuer set forth in the paragraphs of Article 172-3	the time limit for the submission of each Annual Securities Report or Quarterly or Semiannual Securities Report (with regard to the Annual Securities Report under Article 24, paragraph (3) (including the cases where it is applied mutatis mutandis pursuant to paragraph (5) of that Article, and also including the cases where these provisions are applied mutatis mutandis pursuant to Article 27), the day when the ground for the submission of such Annual Securities Report has arisen)	Article 172-3, paragraph (1) or (2), or Article 185-7, paragraph (4) or (5)
An Issuer set forth in Article 172-4, paragraph (1) or (2)	the day when each of the Annual Securities Reports etc, or Quarterly Securities Reports, Semiannual Securities Reports or Extraordinary Reports, etc. which contains any fake statement on important matters or lacks a statement on important matters that should be stated therein was submitted.	Article 172-4, paragraph (1) or (2), or Article 185-7, paragraph (6), (7) or the preceding paragraph (limited to the cases where any fact specified in Article 178, paragraph (1), item (iv) has been found)
An Issuer set forth in Article 172-4, paragraph (3)	the day on which the ground for the submission of the Extraordinary Report has arisen.	Article 172-4, paragraph (2) as applied mutatis mutandis pursuant to Article 172-4, paragraph (3), or Article 185-7, paragraph (6) or (7)

A person set forth in Article 172-5	the day when, in violation of the provision of Article 27-3, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)), the Purchase, etc. under Article 27-2, paragraph (1) or Article 27-22-2, paragraph (1) with regard to the Share Certificates, etc. or the Listed Share Certificates, etc. set forth in Article 27-2, paragraph (1) was made, without a Public Notice for Commencing Tender Offer having been made	Article 172-5
A person set forth in Article 172-6, paragraph (1)	the day when the Public Notice for Commencing Tender Offer, etc. containing any fake indication on important matters or lacking an indication on important matters was made, or the day when the Tender Offer Notification, etc. containing any fake statement on important matters or lacking a statement on important matters that should be contained therein was submitted.	Article 172-6, paragraph (1) or Article 185-7, paragraph (8)
A person set forth in Article 172-6, paragraph (2)	the time limit for the submission of the Amended Tender Offer Notification, etc. (with regard to the amendment under Article 27-8, paragraph (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)) or the amendment report under Article 27-8, paragraph (2) as applied mutatis mutandis pursuant to Article 27-10, paragraph (12), the day when the ground for the submission of any of these documents has arisen)	Article 172-6, paragraph (1) as applied mutatis mutandis pursuant to Article 172-6, paragraph (2), or Article 185-7, paragraph (8)
A person set forth in Article 172-7	the time limit for the submission of Reports of Possession of Large Volume or Change Reports	Article 172-7 or the preceding paragraph (limited to the case where any fact specified in Article 178, paragraph (1), item (vii) has been found)

A person set forth in Article 172-8	the day when a Report of Possession of Large Volume or Change Report, etc. containing any fake statement on important matters or lacking important matters that should be contained therein was submitted	Article 172-8
A person set forth in Article 172-9	the day when the Specified Solicitation, etc. was commenced	Article 172-9
An Issuer set forth in Article 172-10, paragraph (1) or its Officers, etc. set forth in Article 172-2, paragraph (2)	the day when the Information on Securities, etc. Containing Fake Information, etc. was provided or publicized	Article 172-10, paragraph (1) or (2), or the preceding paragraph (limited to the cases where any fact specified in Article 178, paragraph (1), item (x) has been found)
An Issuer set forth in Article 172-11, paragraph (1)	the day when the Issuer's Information, etc. Containing Fake Information, etc. was provided or publicized	Article 172-11, paragraph (1), Article 185-7, paragraph (10) or (11) or the preceding paragraph (limited to the cases where any fact specified in Article 178, paragraph (1), item (xi) has been found)
A Specified Involved Person set forth in Article 172-12, paragraph (1)	the day when the Specified Involvement set forth in Article 172-12, paragraph (2) was commenced	Article 172-12, paragraph (1) or the preceding paragraph (limited to the cases where any fact specified in Article 178, paragraph (1), item (xi)-2 has been found)
A Violator set forth in Article 173, paragraph (1)	the day when the Act of Violation set forth in Article 173, paragraph (1) was commenced	Article 173, paragraph (1)
A Violator set forth in Article 174, paragraph (1)	the day when the Act of Violation set forth in Article 174, paragraph (1) was commenced	Article 174, paragraph (1)
A Violator set forth in Article 174-2, paragraph (1)	the day when the Act of Violation set forth in Article 174-2, paragraph (1) was commenced	Article 174-2, paragraph (1)

A Violator set forth in Article 174-3, paragraph (1)	the day when the Act of Violation set forth in Article 174-3, paragraph (1) was commenced	Article 174-3, paragraph (1)
A person set forth in Article 175, paragraph (1), a person set forth in Article 175, paragraph (2) or the Listed Companies, etc. set forth in Article 175, paragraph (9)	the day when the Sales and Purchase, etc. under Article 166, paragraph (1) was conducted, or the day when the Purchase, etc. of the Regulated Share Certificates, etc. or Related Share Certificates, etc. under Article 167, paragraph (1), or the Sales, etc. of the Share Certificates, etc. set forth in that paragraph were conducted	Article 175, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (9) of that Article) or paragraph (2) of that Article, or the preceding paragraph (limited to the case where any fact specified in Article 178, paragraph (1), item (xvi) has been found)
A Violator set forth in Article 175-2, paragraph (1), a Violator set forth in Article 175-2, paragraph (2), the Listed Companies, etc. set forth in Article 175-2, paragraph (13) or a Tender Offeror, etc. set forth in Article 175-2, paragraph (14)	the day when the Act of Violation set forth in Article 175-2, paragraph (1) or (2), or the Specified Act of Providing Information, etc. set forth in Article 175-2, paragraph (13) or (14) was conducted	Article 175-2, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (13) of that Article) or paragraph (2) (including the cases where it is applied mutatis mutandis pursuant to paragraph (14) of that Article), or Article 185-7, paragraph (12) or (13)

- (16) If the Prime Minister is required to issue one or more decisions pursuant to paragraph (1) (but only if the Prime Minister finds the fact set forth in Article 178, paragraph (1), item (iv) or (xi) to have occurred), paragraph (6), paragraph (7), paragraph (10), paragraph (11), or the preceding two paragraphs (but only if the Prime Minister finds the fact set forth in Article 178, paragraph (1), item (iv) or (xi) to have occurred; hereinafter the same applies in this paragraph), and a final and binding judicial decision for the same case imposes a fine on the Respondent, in lieu of the amount specified in Article 172-4, paragraph (1) or (2) (including as applied mutatis mutandis pursuant to paragraph (3) of that

Article; hereinafter the same applies in this paragraph), Article 172-11 (1), or Article 185-7, paragraph (6), (7), (10),(11) or the preceding two paragraphs, the Prime Minister must issue an order for the relevant person to pay an administrative surcharge to the national treasury that is equivalent to the amount arrived at when the amount specified in item (ii) is deducted from the amount specified in item (i), and the difference is then proportionally divided in parallel with the Amount Calculated for Each Decision in respect of the facts subject to those one or more decisions, pursuant to the provisions of Cabinet Office Ordinance; provided, however, that unless the amount specified in item (i) exceeds the amount specified in item (ii), the Prime Minister may not issue an administrative surcharge payment order under Article 172-4, paragraph (1) or (2), Article 172-11, paragraph (1), or Article 185-7, paragraph (6), (7),(10) , (11) or the preceding two paragraphs:

- (i) the sum total of the amounts calculated pursuant to the provisions of Article 172-4, paragraph (1) and (2), Article 172-11, paragraph (1), and Article 185-7, paragraph (6), (7), and (10) to (13) inclusive, in respect of the facts subject to those one or more decisions;
- (ii) the amount of the fine.

- (17) In the case referred to in paragraph (1) (but only if the Prime Minister finds a fact set forth in Article 178, paragraph (1), item (xii) to (xvi) inclusive to have occurred), paragraph (14) of that Article (but only if the Prime Minister finds a fact set forth in Article 178, paragraph (1), item (xii) to (xvi) inclusive to have occurred; hereinafter the same applies in this paragraph), or in paragraph (15) of that Article (but only if the Prime Minister finds a fact set forth in Article 178, paragraph (1), items (xii) to (xvi) inclusive to have occurred; hereinafter the same applies in this paragraph), if the final and binding judicial decision in the same case imposes on the Respondent a confiscation of the properties set forth in the items of Article 198-2, paragraph (1) or the collection of the value of the properties set forth in the items of Article 198-2, paragraph (1), in lieu of the amount set forth in Article 173, paragraph (1), Article 174, paragraph (1), Article 174-2, paragraph (1), Article 174-3, paragraph (1), or Article 175, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (9) of that Article) or paragraph (2) of that Article, or Article 185-7, paragraph (14) or (15), the Prime Minister must issue an order for the relevant person to pay an administrative surcharge to the national treasury in the amount of the difference after the amount equivalent to the properties set forth in the items of Article 198-2, paragraph (1) whose confiscation is ordered in that judicial decision, or the amount equivalent to the value of the properties set forth in the items of Article 198-2, paragraph (1) whose collection is ordered in that judicial decision (or, if both the confiscation of the properties set forth in the items of Article 198-2, paragraph (1) and the collection of the value of the

properties set forth in the items of Article 198-2, paragraph (1) are ordered in that judicial decision, this means the sum total of the amount equivalent to the properties set forth in the items of Article 198-2, paragraph (1) whose confiscation is ordered in that judicial decision and the amount equivalent to the values of the properties set forth in the items of Article 198-2, paragraph (1) whose collection is ordered in that judicial decision; hereinafter referred to as the "Amount Equivalent to Confiscated Properties, etc." in this paragraph), is deducted from the relevant of those amounts; provided, however, that unless the amount set forth in Article 173, paragraph (1), Article 174, paragraph (1), Article 174-2, paragraph (1), Article 174-3, paragraph (1), Article 175, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (9) of that Article) or paragraph (2) of that Article, or Article 185-7, paragraph (14) or (15) exceeds the Amount Equivalent to Confiscated Properties, etc., the Prime Minister may not issue an administrative surcharge payment order under those provisions.

- (18) If, after the conclusion of administrative hearing proceedings, the Prime Minister finds no fact to have occurred that falls under an item of Article 178, paragraph (1), or in a case to which paragraph (3), the proviso to paragraph (5), the proviso to paragraph (7), paragraph (9), the proviso to paragraph (11), the proviso to paragraph (16), or the proviso to the preceding paragraph is applicable, the Prime Minister must issue a decision that gives a clear indication of this.
- (19) A decision as referred to in paragraph (1), (2), (4) to (8) inclusive, or (10) to (16) inclusive must be issued in writing based on the draft decision submitted by an hearing examiner pursuant to the provisions of the preceding Article.
- (18) The written decision in respect of a decision provided for in the preceding paragraph must state the facts found by the Prime Minister and the application of laws and regulations to those facts (including the basis for the computation of the administrative surcharge and the due date for its payment, in the case of a decision under paragraph (1), (2), (4) to (8) inclusive, or (10) to (15) inclusive).
- (20) The due date for payment as referred to in the preceding paragraph is the day on which two months have elapsed since the date on which a certified copy of the written decision provided for in that paragraph (limited to one for a decision under paragraph (1), (2), (4) to (8) inclusive, or (10) to (17) inclusive) is issued.
- (22) A decision as provided for in paragraph (19) comes into effect through the service of a certified copy of the pertinent written decision on the Respondent.
- (23) Notwithstanding the provisions of the preceding paragraph, if, at the time of the decision referred to in paragraph (1) (limited to a decision connected with Article 178, paragraph (1), item (iv) or (xi)) or a decision as referred to in



paragraph (6), paragraph (7), paragraph (10), paragraph (11), paragraph (14) (but only if the Prime Minister finds a fact set forth in Article 178, paragraph (1), item (iv) or (xi) to have occurred), or paragraph (15) (but only if the Prime Minister finds a fact set forth in Article 178, paragraph (1), item (iv) or (xi) to have occurred), prosecution has been instituted for the same case and that case is still pending before the court, the decision comes into effect once the judicial decision in that case becomes final and binding; provided, however, that if the final and binding judicial decision in that case imposes a fine on the person subject to the decision, the decision comes into effect once a certified copy of a document concerning a modifying disposition under the provisions of paragraph (6) of the following Article is served.

- (24) Notwithstanding the provisions of paragraph (22), if, at the time of the decision referred to in paragraph (1) (limited to a decision connected with one of Article 178, paragraph (1), items (xii) to (xvi) inclusive), paragraph (14) (but only if the Prime Minister finds a fact set forth in one of Article 178, paragraph (1), items (xii) to (xvi) to have occurred) and paragraph (15) (but only if the Prime Minister finds a fact set forth in one of Article 178, paragraph (1), items (xii) to (xvi) inclusive to have occurred), prosecution has been instituted for the same case and that case is still pending before the court, the decision comes into effect once the judicial decision in that case becomes final and binding; provided, however, that if the final and binding judicial decision in that case imposes the confiscation of the properties set forth in the items of Article 198-2, paragraph (1) or the collection of the value of the properties set forth in the items of Article 198-2, paragraph (1) against the person subject to the decision, the decision comes into effect once a certified copy of a document concerning a modifying disposition under paragraph (7) of the following Article is served.
- (25) The provisions of the main clause of paragraph (21) and the main clause of the preceding paragraph do not apply if a certified copy of the written decision in respect of the decision referred to in paragraph (1), (6), (7), (10) (11), (14) or (15) inclusive is not served as of the time the judicial decision in the same case becomes final and binding.
- (26) The provisions of the proviso to paragraph (23) do not apply if a certified copy of the written decision in respect of the decision referred to in paragraph (1) (limited to a decision connected with Article 178, paragraph (1), item (iv) or (xi)), paragraph (6), paragraph (7), paragraph (10), paragraph (11), paragraph (14) (but only if the Prime Minister finds a fact set forth in Article 178, paragraph (1), item (iv) or (xi) to have occurred) or paragraph (15) (but only if the Prime Minister finds a fact set forth in Article 178, paragraph (1), item (iv) or (xi) to have occurred) is not served as of the time that a certified copy of a document concerning a modifying disposition under paragraph (6) of the following Article is served.

- (27) The provisions of the proviso to paragraph (24) do not apply if a certified copy of the written decision in respect of the decision referred to in paragraph (1) (limited to a decision connected with Article 178, paragraph (1), items (xii) to (xvi) inclusive), paragraph (14) (but only if the Prime Minister finds a fact set forth in one of Article 178, paragraph (1), items (xii) to (xvi) inclusive to have occurred), or paragraph (15) (but only if the Prime Minister finds a fact set forth in one of Article 178, paragraph (1), items (xii) to (xvi) inclusive to have occurred) is not served as of the time that a certified copy of a document concerning a modifying disposition under paragraph (7) of the following Article is served.
- (28) Notwithstanding the provisions of paragraph (21), in the case referred to in the main clause of paragraph (23) or the main clause of paragraph (24), the due date for the payment of an administrative surcharge is the day on which two months have elapsed since the day on which the judicial decision in the case becomes final and binding.
- (29) Notwithstanding the provisions of paragraph (21), in the case referred to in the proviso to paragraph (23) or the proviso to paragraph (24), the due date for the payment of an administrative surcharge is the day on which two months have elapsed since the day on which a certified copy of a document concerning a modifying disposition under the provisions of paragraph (6) or (7) of the following Article is dispatched.
- (30) If the amount of an administrative surcharge as calculated pursuant to the provisions of paragraphs (2), (4), to (8) inclusive, and (10) to (16) inclusive, includes a number to the right of the ones place, such amount is rounded down to the nearest one yen.
- (31) The term "Business Year Subject to Disclosure" as used in paragraphs (4) to (7) inclusive, and paragraphs (10) and (11) means the business year specified in the relevant of the following items for the category of documents or information set forth in that item:
- (i) an Annual Securities Report or accompanying document under Article 24, paragraph (1) or (3) (including as applied mutatis mutandis pursuant to paragraph (5) of that Article, and also including as applied mutatis mutandis pursuant to Article 27) or Article 24, paragraph (6) (including as applied mutatis mutandis pursuant to Article 27), as well as under Article 7, paragraph (1), Article 9, paragraph (1), or Article 10, paragraph (1) as applied mutatis mutandis pursuant to Article 24-2, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27), or any amended report in connection with the same: the business year of the Annual Securities Report or accompanying document;
  - (ii) a Quarterly Securities Report under Article 24-4-7, paragraph (1) or (2) (including as applied mutatis mutandis pursuant to paragraph (3) of that

- Article, and also as applied mutatis mutandis pursuant to Article 27), as well as under Article 7, paragraph (1), Article 9, paragraph (1), or Article 10, paragraph (1) as applied mutatis mutandis pursuant to Article 24-4-7, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27) or any amended report in connection with the same: the business year that includes the period to which that Quarterly Securities Report pertains;
- (iii) a Semiannual Securities Report under Article 24-5, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (3) of that Article, and also including as applied mutatis mutandis pursuant to Article 27), as well as under Article 7, paragraph (1), Article 9, paragraph (1), or Article 10, paragraph (1) as applied mutatis mutandis pursuant to Article 24-5, paragraph (5) (including as applied mutatis mutandis pursuant to Article 27) or any amended report in connection with the same: the business year that includes the period to which that Semiannual Securities Report pertains; and
- (iv) an Extraordinary Report under Article 24-5, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27), as well as under Article 7, paragraph (1), Article 9, paragraph (1), or Article 10, paragraph (1) as applied mutatis mutandis pursuant to Article 24-5, paragraph (5) (including as applied mutatis mutandis pursuant to Article 27) or any amended report in connection with the same: the business year that includes the day on which the Extraordinary Report was submitted; and
- (v) the Information on the Issuer or any amended Information on the Issuer in connection with the same: the business year for the relevant Information on the Issuer.

(Suspension of the Validity of a Decision)

Article 185-8 (1) If, after the decision referred to in paragraph (1) of the preceding Article (limited to a decision connected with Article 178, paragraph (1), item (iv), (xi) or (xii) to (xvi) inclusive; hereinafter the same applies in paragraphs (4), (5), (8), and (11)) or the decision referred to in Article 185-7, paragraph (6), (7), (10), (11), or (14) (but only if the Prime Minister finds a fact set forth in Article 178, paragraph (1), item (iv), (xi), or (xvi) to have occurred; the same applies in paragraphs (4), (5), (8), and (11) of this Article), or Article 185-7, paragraph (15) (but only if the Prime Minister finds a fact set forth in Article 178, paragraph (1), item (iv), (xi) , or (xii) to (xvi) inclusive to have occurred; the same applies in paragraphs (4), (5), (8), and (11) of this Article) is reached and before the due date for payment in connection with that decision, prosecution is instituted against the person subject to that decision in connection with the same case, the Prime Minister must suspend the validity of the decision until the judicial decision in the same case becomes final and

binding; provided, however, that this does not apply if the administrative surcharge under that decision has already been paid in full.

- (2) If the validity of the decision referred to in paragraph (1) of the preceding paragraph (limited to a decision connected with Article 178, paragraph (1), item (iv) or (xi); hereinafter the same applies in paragraph (6)) or the validity of the decision referred to in Article 185-7, paragraph (6), (7), (10), (11), or (14) (but only if the Prime Minister finds a fact set forth in Article 178, paragraph (1), item (iv) or (xi) to have occurred; the same applies in paragraph (6) of this Article), or Article 185-7, paragraph (15) (but only if the Prime Minister finds a fact set forth in Article 178, paragraph (1), item (iv) or (xi) to have occurred; the same applies in paragraph (6) of this Article) is suspended pursuant to the main clause of the preceding paragraph, and the final and binding judicial decision in the case imposes a fine on the person subject to that decision, the Prime Minister must suspend the validity of the decision until a certified copy of a document concerning a modifying disposition under paragraph (6) is served.
- (3) If the validity of the decision referred to in Article 185-7, paragraph (1) (limited to a decision connected with one of Article 178, paragraph (1), items (xii) to (xvi) inclusive; the same applies in paragraph (7) of this Article), Article 185-7, paragraph (14) (but only if the Prime Minister finds a fact set forth in one of Article 178, paragraph (1), items (xii) to (xvi) inclusive to have occurred; the same applies paragraph (7) of this Article), or Article 185-7, paragraph (15) (but only if the Prime Minister finds a fact set forth in one of Article 178, paragraph (1), items (xii) to (xvi) inclusive to have occurred; the same applies in paragraph (7) of this Article) is suspended pursuant to the main clause of paragraph (1), and the final and binding judicial decision in the case imposes a confiscation of the properties set forth in the items of Article 198-2, paragraph (1) or the collection of the value of the properties set forth in the items of Article 198-2, paragraph (1) against the person subject to the decision, the Prime Minister must suspend the validity of the decision until a certified copy of a document concerning a modifying disposition under paragraph (7) is served.
- (4) Notwithstanding the provisions of paragraph (21) of the preceding Article, if the validity of the decision referred to in paragraph (1), (6), (7), (10), (11), (14) or (15) inclusive of that Article is suspended pursuant to the provisions of paragraph (1), the due date for the administrative surcharge payment is the day on which two months have elapsed since the day that the judicial decision in the case becomes final and binding.
- (5) Notwithstanding the provisions of paragraph (21) of the preceding Article and the preceding paragraph, if the validity of the decision referred to in paragraph (1), (6), (7), (10), (11), (14) or (15) inclusive of that Article is suspended pursuant to the provisions of paragraph (2) or (3) of this Article, the due date for the administrative surcharge payment is the day on which two months have

elapsed since the day that a certified copy of a document concerning a modifying disposition under the following paragraph or paragraph (7) is dispatched.

- (6) After the issuance of the decision referred to in paragraph (1) of the preceding Article or the decision referred to in paragraph (6), (7), (10), (11), (14) or (15) inclusive of that Article, if a final and binding judicial decision in the same case imposes a fine on the person subject to the decision, the Prime Minister must modify the amount of the administrative surcharge subject to the decision, from the amount under those provisions to the amount equivalent to what is arrived at when the amount set forth in item (ii) is deducted from the amount set forth in item (i), and the difference is divided proportionally in parallel to the amount of the administrative surcharge subject to the decision, pursuant to the provisions of Cabinet Office Ordinance; provided however, that this does not apply unless the amount set forth in item (i) exceeds the amount set forth in item (ii):

- (i) the sum total of the administrative surcharges subject to the relevant decisions;
- (ii) the amount of the fine.

- (7) After the decision referred to in paragraph (1), (14), or (15) of the preceding Article, if the final and binding judicial decision in the same case imposes a confiscation of the properties set forth in the items of Article 198-2, paragraph (1) or the collection of the value of the properties set forth in the items of Article 198-2, paragraph (1) against the person subject to the decision, the Prime Minister must modify the amount of the administrative surcharge subject to the decision referred to in paragraph (1), (14), or (15) of the preceding Article, to the amount arrived at when the amount set forth in item (ii) is deducted from the amount set forth in item (i); provided, however, this does not apply unless the amount set forth in item (i) exceeds the amount set forth in item (ii):

- (i) the amount specified in the provisions of Article 173, paragraph (1), Article 174, paragraph (1), Article 174-2, paragraph (1), Article 174-3, paragraph (1), Article 175, paragraph (1) (including as applied *mutatis mutandis* pursuant to paragraph (9) of that Article) or paragraph (2) of that Article, or Article 185-7, paragraph (14) or (15);

- (ii) the amount equivalent to the properties set forth in the items of Article 198-2, paragraph (1) whose confiscation is ordered in the judicial decision, or the amount equivalent to the values of the properties set forth in the items of Article 198-2, paragraph (1) whose collection is ordered in the judicial decision (if both the confiscation of the properties set forth in the items of Article 198-2, paragraph (1) and the collection of the value of the properties set forth in the items of Article 198-2, paragraph (1) are ordered in the

- judicial decision, this means the sum total of the amount equivalent to the properties set forth in the items of Article 198-2, paragraph (1) whose confiscation is ordered in the judicial decision and the amount equivalent to the values of the properties set forth in the items of Article 198-2, paragraph (1) whose collection is ordered in the judicial decision).
- (8) In a case as referred to in the proviso to paragraph (6) or the proviso to the preceding paragraph, the Prime Minister must rescind the decision referred to in paragraph (1), (6), (7), (10), (11), (14) or (15) inclusive of the preceding Article.
- (9) A modifying disposition under paragraph (6) or (7) must be made in writing.
- (10) A modifying disposition under paragraph (6) or (7) comes into effect through the service of a certified copy of a document concerning that disposition.
- (11) Prescription of a claim involving an administrative surcharge does not run while the validity of a decision referred to in paragraph (1), (6), (7), (10), (11), (14) or (15) inclusive of the preceding Article is suspended pursuant to the provisions of paragraphs (1) to (3) inclusive.
- (12) If the amount of an administrative surcharge as calculated pursuant to the provisions of paragraph (6), includes a number to the right of the ones place, such amount is rounded down to the nearest one yen.

(Documents to Be Served)

Article 185-9 The documents that are required to be served other than those prescribed in this section are specified by Cabinet Office Ordinance.

(Mutatis Mutandis Application of Code of Civil Procedure)

Article 185-10 The provisions of Article 99 and Articles 101 to 109 inclusive of the Code of Civil Procedure apply mutatis mutandis to the service of documents. In this case, in Article 99, paragraph (1) in that Code, the term "a court execution officer" is deemed to be replaced with "an official of the Financial Services Agency"; in Article 104, paragraph (1) of that Code, the phrase "party, statutory agent, or litigation representative" is deemed to be replaced with "respondent or representative" and the term "court in charge" is deemed to be replaced with "Prime Minister or a hearing examiner"; in Article 107, paragraph (1) of that Code, the term "the court clerk" is deemed to be replaced with "an official of the Financial Services Agency"; in item (iii) of that paragraph, the term "case record" [soshō kiroku] is deemed to be replaced with "case record"; in Article 108 of that Code, the term "presiding judge" is deemed to be replaced with "Prime Minister or the chief hearing examiner (or the hearing examiner, if the proviso to Article 180, paragraph (1) of the Financial Instruments and Exchange Act applies)"; and in Article 109 of that Code, the term "the court" is deemed to be replaced with "the Prime Minister or an

hearing examiner".

(Service by Publication)

Article 185-11 (1) The Prime Minister or an hearing examiner may effect service by publication in the following cases:

- (i) the domicile or residence of the person to be served, or the place where to serve is unknown;
  - (ii) it is not possible to effect service pursuant the provisions of Article 107, paragraph (1) of the Code of Civil Procedure as applied *mutatis mutandis* pursuant to the preceding Article;
  - (iii) with regard to service that must be effected in a foreign country, it is impossible to effect service through the means prescribed in Article 108 of the Code of Civil Procedure as applied *mutatis mutandis* pursuant to the preceding Article, or it is found to be impossible to effect service even through such means; or
  - (iv) even after six months have elapsed since the competent government agency of a foreign country is issued a request to effect service pursuant to the provisions of Article 108 of the Code of Civil Procedure as applied *mutatis mutandis* pursuant to the preceding Article, no document certifying that the agency has effected service is sent.
- (2) Service by publication is effected by a posting being made on the notice board of the Financial Services Agency indicating that the documents that are required to be served will be delivered to the person that is to be served with them at any time.
- (3) Service by publication takes effect after the lapse of two weeks from the date on which the posting under the provisions of the preceding paragraph begins.
- (4) For service by publication in respect of service that must be effected in a foreign country, the period referred to in the preceding paragraph is six weeks.

(Use of an Electronic Data Processing System for Disposition Notices, etc.)

Article 185-12 (1) Notwithstanding the provisions of Article 4, paragraph (1) of the Act on the Utilization of Information and Communications Technology in Administrative Proceedings, a disposition notice, etc. as prescribed in Article 2, item (vii) of that Act, which is to be given by the relevant person being served with a document pursuant to the provisions of this Section or Cabinet Office Ordinance, may not be given using an electronic data processing system unless the recipient of the disposition notice, etc. indicates, in the form specified by Cabinet Office Ordinance, that the recipient will be so served.

- (2) Whenever an official of the Financial Services Agency uses an electronic data processing system to do administrative work involving a disposition notice, etc. as prescribed in the preceding paragraph, the official must use that electronic

data processing system to record the particulars of the service under the provisions of Article 109 of the Code of Civil Procedure as applied *mutatis mutandis* pursuant to Article 185-10, in a file that is stored on a computer (this includes on an input or output device) used by the Financial Services Agency instead of preparing and submitting a document that states those particulars.

(Inspection of the Case Record)

Article 185-13 After a decision to commence administrative hearing proceedings is issued, an interested party may file a request with the Prime Minister to inspect or copy the case records, or to be issued a certified copy of the written decision in respect of a decision prescribed in Article 185-7, paragraph (19), or an extract of the same. In such a case, the Prime Minister may not refuse the request, unless the inspection or issuance would be detrimental to the interests of a third party or unless there are any other legitimate grounds for refusal.

(Demand for Payment)

Article 185-14 (1) If a person fails to pay an administrative surcharge by the due date for its payment, the Prime Minister, through a written demand, must demand payment of the administrative surcharge by the due date designated by the Prime Minister in the written demand.

(2) If the Prime Minister makes the demand for payment under the provisions of the preceding paragraph, the Prime Minister may collect a delinquency charge at a rate of 14.5 percent per annum accrued on the amount of the administrative surcharge referred to in that paragraph, calculated based on the number of days from the day after the due date for payment to the day on which the administrative surcharge is paid; provided, however, that this does not apply if the delinquency charge amounts to less than one thousand yen.

(3) If the amount of a delinquency charge as calculated pursuant to the provisions of the preceding paragraph, includes a number to the right of the one hundreds place, such amount is rounded down to the nearest hundred yen.

(Execution of an Administrative Surcharge Payment Order)

Article 185-15 (1) If a person that is issued a demand pursuant to paragraph (1) of the preceding Article fails to pay the amount that person is required to pay by the designated due date, a decision under Article 185-7, paragraph (1), (2), (4), to (8) or (10) to (17) (including a decision following a modification under Article 185-8, paragraph (6) or (7); hereinafter referred to as an "Administrative Surcharge Payment Order" in this and the following Articles) is executed by order of the Prime Minister. This order has the same effect as that of an enforceable title of obligation.

(2) An Administrative Surcharge Payment Order is executed in accordance with



the provisions of the Civil Execution Act (Act No. 4 of 1979) and other laws and regulations on compulsory execution procedures.

- (3) If the Prime Minister finds it to be necessary for the execution of an Administrative Surcharge Payment Order, the Prime Minister may inquire with public offices or public and private organizations, and request them to report necessary matters.

(Claim to an Administrative Surcharge)

Article 185-16 With regard to the application of the provisions of the Bankruptcy Act, the Civil Rehabilitation Act, the Corporate Reorganization Act, and the Act on Special Treatment of Corporate Reorganization Proceedings and Other Insolvency Proceedings of Financial Institutions, a claim to an administrative surcharge under an Administrative Surcharge Payment Order or a claim to delinquency charges under Article 185-14, paragraph (2) is deemed to be a claim to a non-criminal fine.

(Delegation to Cabinet Office Ordinance)

Article 185-17 Beyond what is provided for in this Section, necessary particulars relevant to administrative hearing proceedings are specified by Cabinet Office Ordinance.

### **Section 3 Litigation**

Article 185-18 (1) An action to rescind a decision under Article 185-7, paragraph (1), (2), (4) to (8) inclusive, or (10) to (15) inclusive must be filed within 30 days from the day on which the decision becomes valid.

- (2) The period set forth in the preceding paragraph is a peremptory term.

### **Section 4 Miscellaneous Provisions**

(Witness' Claim for Travel Expenses)

Article 185-19 A witness or expert that is ordered to appear or to present an expert opinion pursuant to the provisions of Article 177, paragraph (1), item (i) or Article 185, paragraph (1) or Article 185-4, paragraph (1) may claim travel expenses and an allowance, pursuant to the provisions of Cabinet Order.

(Exclusion from Application of the Administrative Procedure Act)

Article 185-20 The provisions of Chapter II and Chapter III of the Administrative Procedure Act do not apply to a decision or other disposition that the Prime Minister reaches pursuant to the provisions of Section 1 or Section 2 (including a disposition that an hearing examiner reaches pursuant

to the provisions of those Sections).

(Requests for Review)

Article 185-21 A request for review may not be filed against a decision or other disposition that the Prime Minister reaches pursuant to the provisions of Section 1 or Section 2 (including a disposition that an hearing examiner reaches pursuant to the provisions of those Sections) or against the inaction of such disposition.

## **Chapter VII Miscellaneous Provisions**

(Procedure in Hearings)

Article 186 (1) If the Prime Minister or the Prime Minister and the Minister of Finance seek to have the relevant officials conduct a hearing pursuant to the provisions of this Act, but the person subject to the hearing fails to comply and is without just cause for doing so, the Prime Minister or the Prime Minister and the Minister of Finance may issue the disposition prescribed in the relevant provisions without having the hearing conducted.

(2) Whenever the Prime Minister or the Prime Minister and the Minister of Finance issue a notice to a person to which they seek to have the relevant officials direct a hearing, the Prime Minister or the Prime Minister and the Minister of Finance must expressly indicate the subject matter and date of the hearing in that notice.

(3) Hearings are open to the public; provided, however, that this does not apply if the person subject to the hearing requests that the hearing be closed to the public (but only if there are found to be reasonable grounds for closing the hearing to the public), or if this is found to be necessary in the public interest.

(4) Whenever the Prime Minister or the Prime Minister and the Minister of Finance have the relevant officials conduct a hearing pursuant to the provisions of this Act, the Prime Minister or the Prime Minister and the Minister of Finance must create a record of this and retain it in their archives for 10 years.

(Hearings Open to the Public)

Article 186-2 Hearings involving a disposition under the provisions of this Act are open to the public; provided, however, that this does not apply if the person subject to the hearing requests that the hearing be closed to the public (but only if there are found to be reasonable grounds for closing the hearing to the public), or if this is found to be necessary in the public interest.

(Dispositions for Investigations Involving Inquiries)

Article 187 (1) The Prime Minister or the Prime Minister and the Minister of Finance may have the relevant officials reach the following dispositions for the purpose of conducting the investigations necessary for a hearing under the provisions of this Act, a hearing involving a disposition under the provisions of this Act, or a petition under the provisions of Article 192:

- (i) ordering a person concerned or a witness to appear in order to hear that person's opinion, or having such a person submit a written opinion or a written report;
  - (ii) ordering an expert to appear so as to have the expert present an expert opinion;
  - (iii) ordering a person concerned to submit books and documents or any other articles, or retaining submitted articles; and
  - (iv) inspecting the state of the business or assets, or the books and documents or any other articles, of a person concerned.
- (2) The Prime Minister or the Prime Minister and Minister of Finance may inquire to public offices or public or private organizations and request them to report necessary matters with regard to the investigation under the preceding paragraph.

(Obligation to Prepare, Archive, and Report Documents Related to the Business of a Financial Instruments Business Operator, etc.)

Article 188 In addition to as otherwise prescribed in this Act, a Financial Instruments Business Operator, etc., Designated Parent Company, Financial Instruments Intermediary Service Provider, Credit Rating Agency, Authorized Financial Instruments Firms Association, Certified Financial Instruments Business Association under Article 78, paragraph (2), Investor Protection Fund, Financial Instruments Exchange or its Member, etc., a self-regulatory organization under Article 85, paragraph (1), Financial Instruments Exchange Holding Company, Foreign Financial Instruments Exchange or the Participant of a Foreign Financial Instruments Exchange, a Financial Instruments Clearing Organization or its Clearing Member, a Foreign Financial Instruments Clearing Organization or its Clearing Member, a Securities Finance Company, Designated Dispute Resolution Organization provided for in Article 156-38, paragraph (1), trade repository, or Specified Financial Indicator Calculation Agent must prepare and archive the books, statements, correspondences, vouchers, and other documents concerning its business, or submit report on its business, pursuant to the provisions of Cabinet Office Ordinance (or, with regard to an Investor Protection Fund, pursuant to Cabinet Office Ordinance and Ordinance of the Ministry of Finance).

(Providing Investigatory Cooperation to a Foreign Regulatory Authority for

Financial Instruments)

Article 189 (1) If the Prime Minister receives a request for cooperation from the foreign authority that is responsible for the enforcement of a foreign law or regulation that is equivalent to this Act (hereinafter referred to as a "Foreign Regulatory Authority for Financial Instruments" in this Article) concerning an administrative investigation it conducts in order to enforce the laws and regulations under its jurisdiction, and the Prime Minister finds it to be appropriate to accommodate the request, the Prime Minister may order a person conducting a purchase and sale or other transaction of Securities or a Derivatives Transaction with a person residing in the foreign state, or any other concerned party or witness, to report or submit materials that should serve as a reference, to the extent that is necessary and appropriate for accommodating the request.

(2) The Prime Minister may not reach the disposition referred to in the preceding paragraph in a case that falls under one of the following items:

(i) the Foreign Regulatory Authority for Financial Instruments has not given its assurance that the authority will accommodate similar requests from Japan;

(ii) it is found that if such a disposition is reached based on the request by the Foreign Regulatory Authority for Financial Instruments, it is likely to have an adverse material impact on the capital market or to otherwise be detrimental to Japan's national interests; or

(iii) there is found to be a risk of the report or materials submitted pursuant to the disposition under the preceding paragraph being used at the Foreign Regulatory Authority for Financial Instruments other than for a purpose that contributes to the discharge of its function.

(3) If the request for cooperation referred to in paragraph (1) is made for the purpose of an administrative disposition (limited to one that would restrict any right of the person subject to the disposition or that which would impose a duty on such a person) by the Foreign Regulatory Authority for Financial Instruments based on a foreign law or regulation that is equivalent to this Act, the Prime Minister is to consult with the Minister of Foreign Affairs before accommodating the request.

(4) Appropriate measures must be taken in respect of a report or materials submitted pursuant to a disposition under paragraph (1), to ensure that they will not be used for criminal proceedings conducted by a court or a judge in a foreign state.

(5) Necessary particulars relevant to the application of the provisions of the preceding paragraphs are specified by Cabinet Order.

(Carrying of Identification Cards by Inspection Officials)

Article 190 (1) An hearing examiner or official that conducts inspection pursuant to the provisions of Article 26, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27); Article 27-22, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)) or paragraph (2) of that Article; Article 27-30, paragraph (1); Article 27-35, paragraph (1); Article 56-2, paragraph (1) (including as applied mutatis mutandis pursuant to Article 65-3, paragraph (3)); Article 56-2, paragraphs (2) to (4) inclusive; Article 57-10, paragraph (1); Article 57-23; Article 57-26, paragraph (2); Article 60-11 (including as applied mutatis mutandis pursuant to Article 60-12, paragraph (3) (including the cases where it is applied mutatis mutandis pursuant to Article 60-14, paragraph (2)) and Article 60-14, paragraph (2)); Article 63, paragraph (8); Article 66-22; Article 66-45, paragraph (1); Article 75; Article 79-4; Article 79-77; Article 103-4; Article 106-6, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article); Article 106-16; Article 106-20, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article); Article 106-27 (including as applied mutatis mutandis pursuant to Article 109); Article 151 (including as applied mutatis mutandis pursuant to Article 153-4); Article 155-9; Article 156-5-4; Article 156-5-8; Article 156-15; Article 156-20-12; Article 156-34; Article 156-58; Article 156-80; Article 156-89; Article 177, paragraph (1), item (iii); Article 185-5; or Article 187 paragraph (1),, item (iv) must carry an identification card and present the same to the person subject to inspection.

(2) The authority for an inspection under one of the provisions specified in the preceding paragraph must not be interpreted as having been accorded for the purpose of a criminal investigation.

(Witness' or Expert's Claim for Expenses)

Article 191 A witness or an expert that is ordered to appear or to present an expert opinion pursuant to Article 187 paragraph (1),, item (i) or (ii) may claim travel and other expenses pursuant to the provisions of Cabinet Office Ordinance, or Cabinet Office Ordinance and Ordinance of the Ministry of Finance.

(Issuance of Prohibition Orders and Stay Orders by the Court)

Article 192 (1) If the court finds it to be urgently necessary and finds it to be necessary and appropriate in the public interest and for the protection of investors, the court may issue an order against a person that has acted or is attempting to act in violation of this Act or an order issued based on this Act, prohibiting or staying that act, at the petition of the Prime Minister or at the petition of the Prime Minister and the Minister of Finance.

- (2) A court may rescind or change an order issued pursuant to the provisions of preceding paragraph.
- (3) The district court governing the domicile of the respondent or the place where the act prescribed in paragraph (1) was conducted or is about to be conducted has jurisdiction over the cases referred to in the preceding two paragraphs.
- (4) The judicial decisions referred to in paragraphs (1) and (2) are governed by the Non-Contentious Cases Procedure Act (Act No. 14 of 1898)

(Publication of Name of a Person Who Has Committed an Act in Violation of a Law or Regulation)

Article 192-2 When the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may, pursuant to the provisions of Cabinet Office Ordinance, make public the name of a person who has committed an act in violation of this Act or orders issued under this Act (hereinafter referred to as the "Act in Violation of a Law or Regulation" in this Article) and other matters necessary for preventing the occurrence or spread of damage from the Act in Violation of a Law or Regulation or for ensuring fairness in transactions..

(Terms, Formats, and Preparation Methods for Financial Statements)

Article 193 A balance sheet, profit and loss statement, or other document related to financial accounting submitted pursuant to the provisions of this Act must be prepared in conformity with the terms, formats, and preparation methods that the Prime Minister prescribes in Cabinet Office Ordinance in accordance with the manner generally accepted as fair and proper.

(Audit Certification by a Certified Public Accountant or Auditing Firm)

Article 193-2 (1) A balance sheet, profit and loss statement, or other document related to financial accounting specified by Cabinet Office Ordinance, which is submitted pursuant to the provisions of this Act by a company issuing Securities listed on a Financial Instruments Exchange or any other person specified by Cabinet Order (such an issuing company or person is referred to as the "Specified Issuer" in the following Article; and such a document is referred to as a "documents on financial accounting" in paragraph (4) and the following Article) require an audit certification by a certified public accountant or auditing firm that has no special interest in the company or person; provided, however, that the above does not apply in the following cases:

- (i) the Issuer of the Securities set forth in Article 2, paragraph (1), item (xvii) which have the nature of Securities set forth in item (ix) of that paragraph or any other Securities specified by Cabinet Order, receives certification that is found to be equivalent to audit certification pursuant to the provisions of

- Cabinet Office Ordinance, from a Foreign Auditing Firm, etc. (meaning a Foreign Auditing Firm, etc. as prescribed in Article 1-3, paragraph (7) of the Certified Public Accountants Act; the same applies in item (i) of the following paragraph, and paragraph (3));
- (ii) the Issuer set forth in the preceding item receives certification that is found to be equivalent to audit certification pursuant to the provisions of Cabinet Office Ordinance, from a person that is specified by Cabinet Office Ordinance as referred to in the proviso to Article 34-35, paragraph (1) of the Certified Public Accountants Act;
  - (iii) the company or person obtains the acknowledgement of the Prime Minister pursuant to Cabinet Office Ordinance as being such that, even if the company or person does not receive audit certification, this does not damage the public interest or result in insufficient investor protection.
- (2) An Internal Control Report that the company issuing Securities listed on a Financial Instruments Exchange or any other person specified by Cabinet Order (referred to as a "Listed Company, etc." in item (iv)) submits pursuant to the provisions of Article 24-4-4 must receive audit certification by a certified public accountant or auditing firm that has no Special Interest in that company or person; provided, however, that this does not apply in the following cases:
- (i) the Issuer set forth in item (i) of the preceding paragraph receives certification that is found to be equivalent to audit certification pursuant to the provisions of Cabinet Office Ordinance, from a Foreign Auditing Firm, etc.;
  - (ii) the Issuer set forth in the preceding item receives certification that is found to be equivalent to audit certification pursuant to the provisions of Cabinet Office Ordinance, from a person that is specified by Cabinet Office Ordinance as referred to in the proviso to Article 34-35, paragraph (1) of the Certified Public Accountants Act;
  - (iii) the company or person obtains the acknowledgement of the Prime Minister pursuant to Cabinet Office Ordinance as being such that, even if the company or person does not receive audit certification, this does not damage the public interest or result in insufficient investor protection;
  - (iv) a Listed Company, etc. (limited to a Listed Company, etc. whose amount of capital or any other scale of management does not reach the criteria specified by Cabinet Office Ordinance) submits an Internal Control Report within the period from the day on which it first became the Issuer of the Securities set forth in Article 24, paragraph (1), item (i) until the day on which three years have elapsed since that day.
- (3) The provisions of item (i) of paragraph (1) and item (i) of the preceding paragraph do not apply if an indication that the Foreign Auditing Firm, etc. set

forth therein has failed to follow the instructions set forth in Article 34-38, paragraph (1) of the Certified Public Accountants Act has been disclosed pursuant to the provisions of paragraph (2) of that Article, or an indication that such a firm has issued a notification under Article 34-39, paragraph (1) of that Act has been disclosed pursuant to the provisions of paragraph (2) of that Article (excluding a case in which the disclosure under Article 34-38, paragraph (2) of that Act is made, or in which the disclosure under paragraph (3) of that Article is made).

- (4) The special interest referred to in paragraphs (1) and (2) means an interest from a relationship as set forth in Article 24 of the Certified Public Accountants Act (including as applied *mutatis mutandis* pursuant to Article 16-2, paragraph (6) of that Act), Article 24-2 of that Act (including as applied *mutatis mutandis* pursuant to Article 16-2, paragraph (6) of that Act), Article 24-3 of that Act (including as applied *mutatis mutandis* pursuant to Article 16-2, paragraph (6) of that Act), Article 34-11, paragraph (1), or Article 34-11-2, paragraph (1) or (2) of that Act, which a certified public accountant or auditing firm has to a person submitting a document on financial accounting or to a person submitting an Internal Control Report; the relationship as a shareholder or an equity investor that a certified public accountant or auditing firm has to such a person; or the relationship which a certified public accountant or auditing firm has in connection with such a person's business or property accounting; and which the Prime Minister specifies in Cabinet Office Ordinance as an interest from a relationship that the Prime Minister finds it to be necessary and appropriate to specify in the public interest or for the protection of investors.
- (5) The audit certification referred to in paragraphs (1) and (2) must be done in accordance with the criteria and procedures specified by Cabinet Office Ordinance.
- (6) Whenever the Prime Minister finds it to be necessary and appropriate in the public interest or for the protection of investors, the Prime Minister may order a certified public accountant or auditing firm that conducts an audit certification under paragraph (1) or (2) to report or submit materials that should serve as a reference.
- (7) If a certified public accountant or auditing firm conducts an audit certification for a document on financial accounting provided for in paragraph (1) or for an Internal Control Report provided for in paragraph (2), and the audit certification falls under the provisions of Article 30 or Article 34-21, paragraph (2), item (i) or (ii) of the Certified Public Accountants Act, or is otherwise wrongful, the Prime Minister may issue a decision not to accept all or part of any Securities Registration Statement, Annual Securities Report (including any amended report in connection with the same), or Internal



Control Report (including any amended report in connection with the same) connected with an audit certification by that certified public accountant or auditing firm, which is submitted within a fixed period of no longer than one year. In such a case, irrespective of the category of proceeding for hearing statements of opinion under Article 13, paragraph (1) of the Administrative Procedure Act, the Prime Minister must conduct a hearing.

- (8) If the Prime Minister issues the decision referred to in the preceding paragraph, the Prime Minister must notify the certified public accountant or auditing firm of this and must publicly announce that decision.

(Responses to the Discovery of a Fact That Constitutes a Violation of Laws and Regulations)

Article 193-3 (1) If a certified public accountant or auditing firm, in the course of the audit certification set forth in paragraph (1) of the preceding Article, discovers a fact in respect of a Specified Issuer which constitutes a violation of laws and regulations, or discovers any other fact that is likely to have an impact on ensuring the appropriateness of a document on financial accounting (referred to as a "Fact Constituting a Violation of Laws and Regulations" in item (i) of the following paragraph), the certified public accountant or auditing firm must issue a written notice to the Specified Issuer, without delay and pursuant to the provisions of Cabinet Office Ordinance, giving the details of that fact, as well as indicating that the Specified Issuer should rectify the violation of laws and regulations that the fact involves or that it should take any other appropriate measures.

- (2) If a certified public accountant or auditing firm that issues a notice under the preceding paragraph finds all of the following particulars to be the case, even after the day on which the period specified by the Cabinet Order has elapsed since the day of that notice, and finds it to be necessary in order to prevent the material impact provided for in item (i), the certified public accountant or auditing firm must file an opinion with respect to those particulars to the Prime Minister pursuant to the provision of Cabinet Office Ordinance. In such a case, the certified public accountant or the auditing firm must give written notice to the Specified Issuer in advance that an opinion will be filed with the Prime Minister:

- (i) the Fact Constituting a Violation of Laws and Regulations could have a material impact on ensuring the appropriateness of the documents on financial accounting of the Specified Issuer; and
- (ii) the Specified Issuer has received the notice under the preceding paragraph but has not implemented any of the appropriate measures provided for in that paragraph.

- (3) A certified public accountant or auditing firm that makes a filing under the

preceding paragraph must issue a written notice to the Specified Issuer that it has made the filing, giving the details of that filing.

(Prohibition against the Solicitation to Allow the Exercise of Voting Rights by Proxy)

Article 194 It is prohibited for any person to solicit a person to allow one's self or a third party to exercise, by proxy, that person's voting rights in respect of shares in a company issuing shares that are listed on a Financial Instruments Exchange, in a way that violates the provisions of Cabinet Order.

(Application of This Act to Transactions on a Foreign Financial Instruments Market)

Article 194-2 The technical replacement of terms when the provisions of this Act are applicable to a purchase and sale of Securities or intermediation, brokerage, or agency for the entrustment of Foreign Market Derivatives Transactions conducted on a foreign Financial Instruments Market, and necessary particulars otherwise relevant to the application of the provisions of this Act to said transactions conducted on a foreign Financial Instruments Market are specified by Cabinet Order.

(Consultation with the Minister of Finance)

Article 194-3 If the Prime Minister finds that effecting one of the following dispositions against a Financial Instruments Business Operator (limited to a person engaged in Type I Financial Instruments Business set forth in Article 28, paragraph (1)), registered financial institution, Authorized Operator for On-Exchange Transactions, Authorized Electronic Over-the-Counter Transactions of Derivatives, etc. Business Operator, Authorized Financial Instruments Firms Association, Financial Instruments Exchange, Foreign Financial Instruments Exchange, Financial Instruments Clearing Organization, Foreign Financial Instruments Clearing Organization, or Securities Finance Company is likely to have a material impact on the distribution of Securities or Market Transactions of Derivatives, the Prime Minister must consult with the Minister of Finance about measures necessary for achieving a smooth distribution of Securities or Market Transactions of Derivatives, before effecting that disposition:

- (i) an order for the suspension of all or a part of business activities under the provisions of Article 52, paragraph (1), Article 52-2, paragraph (1) or Article 53, paragraph (2);
- (ii) the rescission of an Article 29 registration, under the provisions of Article 52, paragraph (1) or Article 53, paragraph (3);
- (iii) the rescission of an Article 33-2 registration, under the provisions of

- Article 52-2, paragraph (1);
- (iii)-2 an order for the suspension of all or a part of business activities under the provisions of Article 57-6, paragraph (1) or Article 57-20, paragraph (2);
  - (iii)-3 the rescission of an Article 29 registration, under the provisions of Article 57-6, paragraph (3);
  - (iv) an order for the suspension of all or a part of business activities under the provisions of Article 60-8, paragraph (1) (including the cases where it is applied *mutatis mutandis* pursuant to Article 60-14, paragraph (2));
  - (v) the rescission of an Article 60, paragraph (1) permission, under the provisions of Article 60-8, paragraph (1) or rescission of the permission granted under Article 60-14, paragraph (1), under the provisions of Article 60-8, paragraph (1) as applied *mutatis mutandis* pursuant to Article 60-14, paragraph (2);
  - (vi) the rescission of Article 67-2, paragraph (2) authorization, under the provisions of Article 67-6 or Article 74, paragraph (1);
  - (vii) an order for the suspension of all or a part of business activities under the provisions of Article 74, paragraph (1);
  - (viii) the rescission of an Article 80, paragraph (1) license, under the provisions of Article 148 or Article 152, paragraph (1), item (i);
  - (ix) an order for the suspension of all or a part of business activities under the provisions of Article 152, paragraph (1), item (i);
  - (x) an order under the provisions of Article 152, paragraph (1), item (ii);
  - (xi) the rescission of Article 155, paragraph (1) authorization, under the provisions of Article 155-6 or Article 155-10, paragraph (1);
  - (xii) an order for the suspension of all or a part of Foreign Market Transactions under Article 155-10, paragraph (1);
  - (xiii) the rescission of an Article 156-2 license, under the provisions of Article 156-17, paragraph (1) or (2); or the rescission of Article 156-19, paragraph (1) approval, under the provisions of Article 156-17, paragraph (2) or Article 156-20, paragraph (1);
  - (xiv) an order for the suspension of all or a part of business activities under the provisions of Article 156-17, paragraph (2);
  - (xiv)-2 the rescission of an Article 156-20-2 license, under the provisions of Article 156-20-14, paragraph (1) or (2);
  - (xiv)-3 an order for the suspension of all or a part of business activities under the provisions of Article 156-20-14, paragraph (2);
  - (xiv)-4 the rescission of Article 156-20-16, paragraph (1) authorization, under the provisions of Article 156-20-20 or Article 156-20-22;
  - (xiv)-5 an order for the suspension of all or a part of business activities under the provisions of Article 156-20-22;
  - (xv) the rescission of an Article 156-24, paragraph (1) license, under the

provisions of Article 148 as applied mutatis mutandis pursuant to Article 156-26, or Article 156-32, paragraph (1); or  
(xvi) an order for the suspension of all or a part of business activities under the provisions of Article 156-32, paragraph (1).

(Notice to the Minister of Finance)

Article 194-4 (1) Upon effecting one of the following dispositions, the Prime Minister is to promptly notify the Minister of Finance of this; provided, however, that this does not apply if the Prime Minister notifies the Minister of Finance pursuant to the provisions of Article 79-53, paragraph (3):

- (i) a registration under the provisions of Article 29 or Article 33-2 (with regard to Article 29 registration, this is only if a Financial Instruments Exchange Services Provider that is registered engages in Type I Financial Instruments Business (meaning the Type I Financial Instruments Business set forth in Article 28, paragraph (1); hereinafter the same applies in this item)), or the registration of a change under Article 31, paragraph (4) (limited to the registration of a change indicating that a person other than a person engaged in Type I Financial Instruments Business has become a person engaged in Type I Financial Instruments Business, or the registration of a change indicating that a person engaged in Type I Financial Instruments Business only engages in business other than Type I Financial Instruments Business);
- (ii) authorization under the provisions of Article 30, paragraph (1);
- (iii) an order under the provisions of Article 52, paragraph (1), Article 52-2, paragraph (1), or Article 53, paragraph (1) or (2);
- (iv) the rescission of an Article 29 registration, under the provisions of Article 52, paragraph (1) or (4), Article 53, paragraph (3) or Article 54;
- (v) the rescission of an Article 33-2 registration, under the provisions of Article 52-2, paragraph (1) or (3) or Article 54;
- (vi) the rescission of Article 30, paragraph (1) authorization, under the provisions of Article 52, paragraph (1);
- (vi)-2 an order under the provisions of Article 57-6, paragraph (1); Article 57-20, paragraph (2); or Article 57-21, paragraph (4) (if this is an order under the provisions of Article 57-20, paragraph (2), it is limited to one that concerns a Subject Special Financial Instruments Business Operator);
- (vi)-3 the rescission of an Article 29 registration, under the provisions of Article 57-6, paragraph (3);
- (vi)-4 a designation under the provisions of Article 57-12, paragraph (1);
- (vi)-5 the rescission of an Article 57-12, paragraph (1) designation, under the provisions of paragraph (5) of that Article;
- (vi)-6 an order under the provisions of Article 57-20, paragraph (1) or (2) or Article 57-21, paragraph (1) or (2) (if this is an order under the provisions of

- Article 57-20, paragraph (2), it is limited to one that concerns a Designated Parent Company);
- (vii) permission under the provisions of Article 60, paragraph (1) or Article 60-14, paragraph (1);
  - (viii) an order under the provisions of Article 60-8, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to Article 60-14, paragraph (2));
  - (ix) the rescission of an Article 60, paragraph (1) permission, under the provisions of Article 60-8, paragraph (1) or Article 60-9, paragraph (1) or rescission of the permission granted under Article 60-14, paragraph (1), under the provisions of Article 60-8, paragraph (1) or Article 60-9, paragraph (1) as applied mutatis mutandis pursuant to Article 60-14, paragraph (2);
  - (x) authorization under the provisions of Article 67-2, paragraph (2);
  - (xi) the rescission of an Article 67-2, paragraph (2) authorization, under the provisions of Article 67-6 or Article 74, paragraph (1);
  - (xii) authorization to change the articles of incorporation in connection with the particulars set forth in Article 67-8, paragraph (1), item (xiii) (limited to authorization for the establishment or closure of an Over-the-Counter Securities Market), under the provisions of Article 67-8, paragraph (2);
  - (xiii) an order for the suspension of all or a part of business activities, an order for a change of business methods, or an order prohibiting a part of business activities, under the provisions of Article 74, paragraph (1);
  - (xiv) authorization under the provisions of Article 77-6, paragraph (2);
  - (xv) a license under the provisions of Article 80, paragraph (1);
  - (xvi) authorization under the provisions of Article 106-3, paragraph (1);
  - (xvii) an order under the provisions of Article 106-7, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (4) of that Article);
  - (xviii) the rescission of an Article 106-3, paragraph (1) authorization, under the provisions of Article 106-7, paragraph (1);
  - (xix) authorization under the provisions of Article 106-10, paragraph (1) or the proviso to paragraph (3) of that Article;
  - (xx) authorization under the provisions of Article 106-17, paragraph (1);
  - (xxi) an order under the provisions of Article 106-21, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (4) of that Article);
  - (xxii) the rescission of an Article 106-17, paragraph (1) authorization, under the provisions of Article 106-21, paragraph (1);
  - (xxiii) the rescission of Article 106-10, paragraph (1) authorization or the authorization referred to in the proviso to paragraph (3) of that Article, under the provisions of Article 106-26;
  - (xxiv) an order under the provisions of Article 106-28, paragraph (1) (including as applied mutatis mutandis pursuant to Article 109);

- (xxv) the rescission of Article 106-10, paragraph (1) authorization or the authorization referred to in the proviso to paragraph (3) of that Article, under the provisions of Article 106-28, paragraph (1);
- (xxvi) authorization under the provisions of Article 135, paragraph (1);
- (xxvii) authorization under the provisions of Article 140, paragraph (1);
- (xxviii) the rescission of an Article 80, paragraph (1) license, under the provisions of Article 148 or Article 152, paragraph (1), item (i);
- (xxix) authorization under the provisions of Article 149, paragraph (1) (limited to authorization for the closure of all Financial Instruments Exchange Markets);
- (xxx) an order for the suspension of all or a part of business activities, an order for a change in business activities, or an order prohibiting a part of business activities, under the provisions of Article 152, paragraph (1), item (i);
- (xxxi) an order under the provisions of Article 152, paragraph (1), item (ii);
- (xxxii) authorization under the provisions of Article 155, paragraph (1);
- (xxxiii) the rescission of Article 155, paragraph (1) authorization, under the provisions of Article 155-6 or 155-10, paragraph (1);
- (xxxiv) an order under the provisions of Article 155-10, paragraph (1);
- (xxxv) a license under the provisions of Article 156-2, or approval under the provisions of Article 156-19, paragraph (1);
- (xxxv)-2 authorization under the provisions of Article 156-5-5, paragraph (1) or the proviso to paragraph (4) of that Article;
- (xxxv)-3 an order under the provisions of Article 156-5-9, paragraph (1);
- (xxxv)-4 the rescission of an Article 156-5-5, paragraph (1) authorization or the authorization referred to in the proviso to paragraph (4) of that Article, under the provisions of Article 156-5-9, paragraph (1);
- (xxxvi) the rescission of an Article 156-2 license, under the provisions of Article 156-17, paragraph (1) or (2); or the rescission of Article 156-19, paragraph (1) approval, under the provisions of Article 156-17, paragraph (2) or Article 156-20, paragraph (1);
- (xxxvii) an order for the suspension of all or a part of business activities under the provisions of Article 156-17, paragraph (2);
- (xxxviii) authorization under the provisions of Article 156-18;
- (xxxviii)-2 a license under the provisions of Article 156-20-2;
- (xxxviii)-3 the rescission of an Article 156-20-2 license, under the provisions of Article 156-20-14, paragraph (1) or (2);
- (xxxviii)-4 an order for the suspension of all or a part of business activities under the provisions of Article 156-20-14, paragraph (2);
- (xxxviii)-5 authorization under the provisions of Article 156-20-15;
- (xxxviii)-6 authorization under the provisions of Article 156-20-16, paragraph (1);

- (xxxviii)-7 the rescission of Article 156-20-16, paragraph (1) authorization, under the provisions of Article 156-20-20 or Article 156-20-22;
  - (xxxviii)-8 an order under the provisions of Article 156-20-22;
  - (xxxix) a license under the provisions of Article 156-24, paragraph (1);
  - (xl) the rescission of an Article 156-24, paragraph (1) license, under the provisions of Article 148 as applied mutatis mutandis pursuant to Article 156-26, or the provisions of Article 156-32, paragraph (1);
  - (xli) an order for the suspension of all or a part of business activities under the provisions of Article 156-32, paragraph (1); or
  - (xlii) authorization under the provisions of Article 156-36.
- (2) Upon accepting one of the following notifications, the Prime Minister is to promptly notify the Minister of Finance to that effect:
- (i) a notification under the provisions of Article 50-2, paragraph (1) or (7);(i)-2
  - (ii) a notification under the provisions of Article 60-7 (including the cases where it is applied mutatis mutandis pursuant to Article 60-14, paragraph (2));
  - (iii) a notification under the provisions of Article 67-16 (limited to notification of the suspension of all purchase and sales of Over-the-Counter Traded Securities registered by an Authorized Financial Instruments Firms Association, or notification of the cancellation of such a suspension);
  - (iv) a notification under the provisions of Article 77-6, paragraph (3);
  - (v) a notification under the provisions of Article 106-8, paragraph (2), Article 106-22, paragraph (2), or Article 107, paragraph (2);
  - (vi) a notification under the provisions of Article 120;
  - (vii) a notification under the provisions of Article 128 (limited to notification of the suspension of all purchase and sales of Securities or Market Transactions of Derivatives for each Financial Instruments Exchange Market, or notification of the cancellation of such a suspension);
  - (viii) a notification under the provisions of Article 134, paragraph (2) or Article 135, paragraph (2); or
  - (ix) a notification under the provisions of Article 155-8, paragraph (2).
- (3) If the Prime Minister receives a notice under the provisions of Article 77-6, paragraph (4) or Article 154 with regard to an Authorized Financial Instruments Firms Association or Financial Instruments Exchange, the Prime Minister is to promptly notify the Minister of Finance to that effect.

(Submission of Materials to the Minister of Finance)

Article 194-5 (1) If the Minister of Finance finds it to be necessary in order to conduct planning or policymaking for financial instruments trading systems as relates to the system for handling failed financial institutions and financial risk management under the minister's jurisdiction, the minister may request

the Prime Minister to provide the necessary materials and explanations.

- (2) If the Minister of Finance finds it to be particularly necessary in order to conduct planning or policymaking for financial instruments trading systems as relates to the system for handling failed financial institutions and financial risk management under the minister's jurisdiction, the Minister of Finance, within the scope of this necessity, may request a Financial Instruments Business Operator, etc., Designated Parent Company, Authorized Operator for On-Exchange Transactions, Authorized Electronic Over-the-Counter Transactions of Derivatives, etc. Business Operator, Financial Instruments Intermediary Service Provider, Authorized Financial Instruments Firms Association, Certified Financial Instruments Business Association (meaning a Certified Financial Instruments Business Association set forth in Article 78, paragraph (2); the same applies in Article 194-7, paragraph (2), item (v)), Financial Instruments Exchange, self-regulatory organization under Article 85, paragraph (1), Financial Instruments Exchange Holding Company, Foreign Financial Instruments Exchange, Financial Instruments Clearing Organization, Foreign Financial Instruments Clearing Organization, Securities Finance Company, or other relevant party to provide materials or explanations or any other cooperation.

(Consultation with the Minister of Agriculture, Forestry and Fisheries and the Minister of Economy, Trade and Industry)

- Article 194-6 (1) Provisions are made by Cabinet Order for consultations with the Minister of Agriculture, Forestry and Fisheries and the Minister of Economy, Trade and Industry, the notification of these ministers, and other processes when, pursuant to the provisions of this Act, the Prime Minister establishes Cabinet Office Ordinance (limited to those specified by Cabinet Order), issues an order or other disposition (limited to those specified by Cabinet Order), or receives a notification (limited to those specified by Cabinet Order) or an application for registration, in respect of the business of performing the following acts in connection with rights set forth in Article 2, paragraph (2), item (i), (ii), (v), and (vi) which fall under the category of rights specified by Cabinet Order as those whose purpose is for a person to engage in the commodity investment provided for in Article 2, paragraph (1) of the Act Regulating Business Involving Commodity Investment, or whose purpose is for a person to invest goods with substantial price volatility or goods generating a profit when used that is difficult to estimate, by acquiring them (this includes producing them), transferring them, using them, or causing them to be used:
- (i) purchase and sales, or intermediation, brokerage, or agency for it;
  - (ii) Public Offerings or Private Placements;
  - (iii) Secondary Distributions; or



- (iv) dealings in Public Offerings or Secondary Distributions, or dealings in Private Placements.
- (2) If the Prime Minister effects an Article 29 or Article 33-2 registration or accepts an Article 31, paragraph (1) or Article 33-6, paragraph (1) notification for a person seeking to perform an act set forth in one of the following items on a regular basis, the Prime Minister is to notify the Minister of Economy, Trade and Industry of the information set forth in Article 29-2, paragraph (1) or Article 33-3, paragraph (1) with regard to that person:
  - (i) an act set forth in Article 2, paragraph (8), item (vii) (limited to an act involving a right based on a limited partnership agreement for investment as set forth in Article 3, paragraph (1) of the Limited Partnership Act for Investment, which falls under a right referred to in Article 2, paragraph (2), item (v) of this Act (hereinafter referred to as a "Right in an Investment Limited Partnership" in this Article)); or
  - (ii) an act set forth in Article 2, paragraph (8), item (xv) (limited to an act involving a Right in an Investment Limited Partnership).
- (3) If the Prime Minister accepts a notification based on the provisions of Article 63, paragraph (2) in connection with a person that seeks to perform an act set forth in one of the following items on a regular basis, the Prime Minister is to notify the Minister of Economy, Trade and Industry of the matters set forth in the items of Article 63, paragraph (2) relevant to that person:
  - (i) an act set forth in Article 63, paragraph (1), item (i) (limited to an act involving a Right in an Investment Limited Partnership); and
  - (ii) an act set forth in Article 63, paragraph (1), item (ii) (limited to an act involving a Right in an Investment Limited Partnership).

(Consultation, etc. with the Minister Having Jurisdiction Over a Commodity Market)

Article 194-6-2 When the Prime Minister makes the following dispositions, he/she shall consult with and obtain consent from the Minister Having Jurisdiction Over a Commodity Market (meaning the Ministers specified in the items of Article 354, paragraph (1) of the Commodity Futures Trading Act according to the categories listed in the respective items; hereinafter the same shall apply) in advance; provided, however, that, with regard to those listed in item (ii), sub-items (c) to (e) inclusive, item (iv), sub-item (b), or item (v), sub-item (b), when there is an urgent necessity for the public interest or protection of investors, it would be sufficient to notify the Minister Having Jurisdiction Over a Commodity Market of the outline of the necessary measures in advance:

- (i) granting of a license under Article 80, paragraph (1) (limited to a license to be granted to a person who intends to establish a Financial Instruments Market for carrying out Commodity-Related Market Transactions of

- Derivatives);
- (ii) a dispositions listed in the following sub-sections (a) to (f) to a Financial Instruments Exchange:
    - (a) issuance of an order under Article 127, paragraph (1) (limited to an order pertaining to Commodity or Financial Indicators (limited the prices of Commodities or the figures calculated based thereon));
    - (b) granting of the authorization for changes to the Operational Rules under Article 149, paragraph (1) (limited to the authorization pertaining to the matters listed in Article 117, paragraph (1), item (v) (limited the matters pertaining to Commodity-Related Market Transactions of Derivatives) or item (viii) (limited to the matters pertaining to transfer of Commodities pertaining to Commodity-Related Market Transactions of Derivatives) or the matters pertaining to the detailed regulations prescribed in paragraph (2) of that Article);
    - (c) issuance of an order under the provisions of Article 152, paragraph (1), item (i) (limited to an order to take necessary measures (limited to the measures for the matters related to clearing margins or other matters specified by Cabinet Order), specified in the articles of incorporation or any other rules, with regard to Commodity-Related Market Transactions of Derivatives);
    - (d) issuance of an order under Article 152, paragraph (1), item (ii) (limited to an order pertaining to Commodity-Related Market Transactions of Derivatives);
    - (e) issuance of an order under Article 153 (limited to an order to change the Operational Rules concerning the matters related to clearing margins pertaining to Commodity Market Transactions of Derivatives or other orders specified by Cabinet Order); and
    - (f) granting of the approval under Article 156-19, paragraph (1) (limited to the approval to a person who intends to conduct Financial Instruments Obligation Assumption Service in relation to Commodity-Related Market Transactions of Derivatives).
  - (iii) granting of a license under Article 156-2 (limited to a license to a person who intends to conduct Financial Instruments Obligation Assumption Service in relation to Commodity-Related Market Transactions of Derivatives);
  - (iv) dispositions listed in the following sub-items (a) and (b) to a Financial Instruments Clearing Organization (excluding a Financial Instruments Clearing Organization which conducts the Business of Assuming Commodity Transaction Debt, etc.):
    - (a) granting of the authorization to amend business rules under Article 156-12 (limited to the authorization pertaining to the matters listed in Article

- 156-7, paragraph (2), item (iv) which pertain to the matters concerning transfer of Commodities related to Commodity-Related Market Transactions of Derivatives; and
- (b) issuance of an order under Article 156-16 (limited to an order to amend business rules concerning the matters related to clearing margins pertaining to Commodity-Related Market Transactions of Derivatives.
- (v) dispositions listed in the following sub-items (a) and (b) to a Financial Instruments Clearing Organization (limited to a Financial Instruments Clearing Organization which conducts the Business of Assuming Commodity Transaction Debt, etc.):
  - (a) granting of the authorization to amend business rules under Article 156-12 (limited to the authorization pertaining to the matters concerning Commodity-Related Market Transactions of Derivatives; and
  - (b) issuance of an order under Article 156-16 (limited to an order to amend business rules concerning the matters related to clearing margins pertaining to Commodity-Related Market Transactions of Derivatives).

(Prior Notice to the Minister With Jurisdiction Over a Commodity Market)

Article 194-6-3 Before issuing one of the following dispositions against a Financial Instruments Business Operator, etc., an Authorized Transaction-at-Exchange Operator, a Financial Instruments Exchange Holding Company or a Financial Instruments Exchange, the Prime Minister is to notify the minister with jurisdiction over the commodity market:

- (i) issuance of an order under Article 52, paragraph (1), Article 52-2, paragraph (1) or Article 60-8, paragraph (1) (limited to an order issued on the grounds that a violation of Cabinet Office Ordinance prescribing the matters concerning Commodity-Related Market Transactions of Derivatives under Article 161, paragraph (1) as applied mutatis mutandis pursuant to paragraph (2) of that Article has been committed);
- (ii) the rescission of Article 106-10, paragraph (1) authorization or the authorization referred to in the proviso to paragraph (3) of that Article (limited to the authorization of a Financial Instruments Exchange Holding Company that has a company in the business of operating the necessary market for effecting Commodity Futures Transactions (hereinafter referred to as "Business Activities Related to a Commodity Market" in this Article) as its Subsidiary Company (meaning a Subsidiary Company as prescribed in Article 87-3, paragraph (3); the same applies in item (iv))), under the provisions of Article 106-26 or Article 106-28, paragraph (1);
- (iii) the rescission of the authorization referred to in the proviso to Article 106-24, paragraph (1) (limited to the authorization of a company engaged in Business Activities Related to a Commodity Market), under the provisions of

- Article 106-28, paragraph (1);
- (iv) the rescission of an Article 80, paragraph (1) license (limited to the license of a Financial Instruments Exchange that has obtained the authorization referred to in the proviso to Article 87-2, paragraph (1) (limited to authorization for Business Activities Related to a Commodity Market) or a Financial Instruments Exchange that has a company engaged in Business Activities Related to a Commodity Market with the authorization referred to in the proviso to Article 87-3, paragraph (1) as its Subsidiary Company), under the provisions of Article 148 or Article 152, paragraph (1), item (i);
  - (v) the rescission of the authorization referred to in the proviso to Article 87-2, paragraph (1) (limited to authorization for Business Activities Related to a Commodity Market), under the provisions of Article 152, paragraph (1), item (iii);
  - (vii) issuance of an order under Article 153-5 (limited to that issued on the grounds that a Commodity Trading Participant has violated Cabinet Office Ordinance under Article 161, paragraph (3)).
  - (v) rescission of the authorization referred to in the proviso to Article 87-3, paragraph (1) (limited to the authorization of a company engaged in Business Activities Related to a Commodity Market) under the provisions of Article 152, paragraph (1), item (iv).

(Delegation of Authority to the Commissioner of the Financial Services Agency)  
Article 194-7 (1) The Prime Minister is to delegate the authority accorded the Prime Minister under this Act to the Commissioner of the Financial Services Agency (except the authority specified by Cabinet Order).

- (2) Among the authority delegated to the Commissioner of the Financial Services Agency pursuant to the provisions of the preceding paragraph, the commissioner is to delegate the authority set forth in the following to the Securities and Exchange Surveillance Commission (hereinafter referred to as the "Commission" in this and the following Article); provided, however, that this does not preclude the Commissioner of the Financial Services Agency from exercising the authority to issue an order for the submission of reports or materials:
- (i) the authority under the provisions of Article 56-2, paragraph (1), (3), and (4) (limited to authority in connection with provisions specified by Cabinet Order as those for securing fairness in purchase and sales and other transactions of Securities or in Derivatives Transactions, etc.);
  - (ii) the authority under the provisions of Article 60-11 (including the cases where it is applied mutatis mutandis pursuant to Article 60-14, paragraph (2)) (limited to authority in connection with the provisions specified by Cabinet Order as those for securing fairness in purchase and sales and other

- transactions of Securities or in Derivatives Transactions, etc.);
  - (iii) the authority under the provisions of Article 66-22 (limited to authority in connection with the provisions specified by Cabinet Order as those for securing fairness in the acts set forth in Article 2, paragraph (11), items (i) to (iii) inclusive);
  - (iii)-2 the authority under the provisions of Article 66-45, paragraph (1) (limited to authority in connection with the provisions specified by Cabinet Order as that for securing fairness in the acts provided for in Article 2, paragraph (35));
  - (iv) the authority under the provisions of Article 75 (limited to authority over the business specified by Cabinet Order as the business of an Authorized Financial Instruments Firms Association in connection with securing fairness in purchase and sales and other transactions of Securities and in Derivatives Transactions, etc.);
  - (v) the authority under the provisions of Article 79-4 (limited to authority over the business specified by Cabinet Order as the business of a Certified Financial Instruments Business Association in connection with securing fairness in purchase and sales and other transactions of Securities and in Derivatives Transactions, etc.);
  - (vi) the authority under the provisions of Article 151 (including as applied mutatis mutandis pursuant to Article 153-4) (limited to authority over the business specified by Cabinet Order as the business of a Financial Instruments Exchange or of a self-regulatory organization provided for in Article 85, paragraph (1), in connection with securing fairness in purchase and sales of Securities and Market Transactions of Derivatives on a Financial Instruments Exchange);
  - (vii) the authority under the provisions of Article 155-9 (limited to authority over the business specified by Cabinet Order as the business of a Foreign Financial Instruments Exchange in connection with securing fairness in Foreign Market Transactions);
  - (viii) the authority under the provisions of Article 177; and
  - (ix) other authority specified by Cabinet Order.
- (3) Among the authority delegated to the Commissioner of the Financial Services Agency pursuant to paragraph (1), the commissioner, pursuant to the provisions of Cabinet Order, may delegate the authority under Article 26 (including as applied mutatis mutandis pursuant to Article 27); Article 27-22, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); Article 27-22, paragraph (2) Article 27-22, paragraph (3) (including the cases where applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); Article 27-30; Article 27-35; Article 56-2, paragraph (1) (including as applied mutatis mutandis pursuant to Article 65-3, paragraph

- (3)); Article 56-2, paragraph (2) to paragraph (4) inclusive; Article 57-10, paragraph (1); Article 57-23; Article 57-26, paragraph (2); Article 60-11 (including as applied mutatis mutandis pursuant to Article 60-12, paragraph (3) (including the cases where it is applied mutatis mutandis pursuant to Article 60-14, paragraph (2)) and Article 60-14, paragraph (2)); Article 63, paragraphs (7) and (8); Article 66-22; Article 66-45, paragraph (1); Article 75; Article 79-4; Article 79-77; Article 103-4; Article 106-6, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article); Article 106-16; Article 106-20, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article); Article 106-27 (including as applied mutatis mutandis pursuant to Article 109); Article 151 (including as applied mutatis mutandis pursuant to Article 153-4); Article 155-9; Article 156-5-4; Article 156-5-8; Article 156-15; Article 156-20-12; Article 156-34; Article 156-58; Article 156-80; Article 156-89; Article 192-2; and Article 193-2, paragraph (6) to the Commission (other than the authority delegated to the Commission pursuant to the provisions of the preceding paragraph).
- (4) Among the authority delegated to the Commissioner of the Financial Services Agency pursuant to the provisions of paragraph (1), the commissioner is to delegate to the Commission the authority set forth in the following (other than authority delegated to the Commission pursuant to the preceding two paragraphs); provided, however, that this does not preclude the Commissioner of the Financial Services Agency from exercising such authority personally:
- (i) the authority under Article 187 (limited to that which involves the authority specified in the following item); and
  - (ii) the authority under Article 192, paragraph (1).
- (5) If the Commission exercises authority delegated to it pursuant to the provisions of the preceding two paragraphs, it is to promptly report the results of this to the Commissioner of the Financial Services Agency.
- (6) The Commissioner of the Financial Services Agency may delegate a part of the authority delegated to the commissioner pursuant to the provisions of paragraph (1) (other than authority delegated to the Commission pursuant to the provisions of paragraphs (2) to (4) inclusive) to the Director-General of a Local Finance Bureau or to the Director-General of a Local Finance Branch Bureau, pursuant to the provisions of Cabinet Order.
- (7) The Commission may delegate a part of the authority delegated to it pursuant to the provisions of paragraphs (2) to (4) inclusive to the commissioner of a finance bureau or to the commissioner of a local finance branch bureau, pursuant to the provisions of Cabinet Order.
- (8) The Commission guides and supervises functions related to the authority that is delegated to the Director-General of the Local Finance Bureau or the Director General of the Local Finance Branch Bureau pursuant to the

provisions of the preceding paragraph.

(Filing of a Request for Review against the Commission)

Article 195 It is only permissible for a request for review which concerns an order for the submission of reports or materials that the Commission issues pursuant to paragraph (2) or (3) of the preceding Article (including an order that the Director-General of a Local Finance Bureau or the Director-General of a Local Finance Branch Bureau issues pursuant to the provisions of paragraph (7) of that Article) to be filed against the Commission.

(Provisions Effected by Voidance)

Article 196 Even if a provision of this Act is held to be void, such voidance does not affect any other provision of this Act.

(Transitional Measures)

Article 196-2 If an order is established, revised, or abolished based on the provisions of this Act, any necessary transitional measures (including transitional measures for penal provisions) may be prescribed in that order, to the extent that is considered to be reasonably necessary for the establishment, revision, or abolition of that order.

## **Chapter VIII Penal Provisions**

Article 197 (1) A person that falls under one of the following items is subject to punishment by imprisonment with required labor for not more than 10 years, a fine of not more than ten million yen, or both:

- (i) a person that submits a statement or other document under Article 5 (including as applied mutatis mutandis pursuant to Article 27) (including any Reference Document for such a statement, if it is a statement to which the provisions of Article 5, paragraph (4) apply); an amended statement under Article 7, paragraph (1); Article 9, paragraph (1); or Article 10, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27) (including any Reference Document for that amended statement); a Shelf Registration Statement under Article 23-3, paragraph (1) or (2) (including as applied mutatis mutandis pursuant to Article 27) (including any Reference Document for that Shelf Registration Statement) and accompanying documents; an Amended Shelf Registration Statement under Article 23-4; Article 23-9, paragraph (1); or Article 23-10, paragraph (1); or under Article 23-10, paragraph (1) as applied mutatis mutandis pursuant to paragraph (5) of that Article (including as applied mutatis mutandis pursuant to Article 27) (including any Reference Document for that Amended Shelf Registration

- Statement); a Shelf Registration Supplement under Article 23-8, paragraph (1) or (5) (including as applied mutatis mutandis pursuant to Article 27) (including any Reference Document for that Shelf Registration Supplement) and accompanying documents; or an Annual Securities Report under Article 24, paragraph (1) or (3) (including as applied mutatis mutandis pursuant to Article 24, paragraph (5) (including as applied mutatis mutandis pursuant to Article 27) or Article 27) or Article 24-2, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27) or any amended report in connection with it, that contains a false statement about a material particular or that omits a statement as to a material particular that is required to be stated;
- (ii) a person that makes a false representation about a material particular in issuing a public notice, making a public announcement, or making a disclosure, under Article 27-3, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); Article 27-6, paragraph (2) or (3) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); Article 27-7, paragraph (1) or (2) (including as applied mutatis mutandis pursuant to Article 27-8, paragraph (12) and Article 27-22-2, paragraphs (2) and (6)); Article 27-8, paragraph (8) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2) and Article 27-22-3, paragraph (4)); Article 27-8, paragraph (11) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); Article 27-10, paragraph (4) to (6) inclusive; Article 27-11, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); or Article 27-13, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2));
- (iii) a person that submits a Tender Offer Statement under Article 27-3, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); amended statement under Article 27-8, paragraph (1) to (4) inclusive (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); Written Tender Offer Withdrawal Notice under Article 27-11, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); Tender Offer Report under Article 27-13, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); or amended report under Article 27-8, paragraph (1) to (4) inclusive as applied mutatis mutandis pursuant to Article 27-13, paragraph (3) and Article 27-22-2, paragraph (7), that contains a false statement about a material particular or that omits a statement as to a material particular that is required to be stated;
- (iv) a person that fails to make a disclosure under Article 27-22-3, paragraph (1) or (2), or that makes a false disclosure;



- (iv)-2 a person that provides or discloses Specified Information on Securities under Article 27-31, paragraph (2) (if this is Specified Information on Securities to which the provisions of paragraph (3) of that Article applies, it includes the Reference Information related to that Specified Information on Securities); amended Specified Information on Securities under paragraph (4) of that Article (including any Reference Information related to the amended Specified Information on Securities), Information on the Issuer under Article 27-32, paragraph (1) or (2); or Amended Information on the Issuer under paragraph (3) of that Article, which contains a false statement about a material particular; or
  - (v) a person that violates the provisions of Article 157, Article 158, or Article 159 (excluding the cases where said violation pertains only to Commodity-Related Market Transactions of Derivatives).
- (2) A person that, by committing the crime referred to in item (v) of the preceding paragraph and for the purpose of gaining an economic benefit, causes the market price of Securities, etc. to fluctuate or that pegs their market price, fixes their market price, or causes their market price to stabilize, and effects a purchase and sale or other transaction of Securities or a Derivatives Transaction, etc. involving those Securities, etc., at the market price that the person has caused to fluctuate or has pegged, fixed, or caused to stabilize(excluding the cases where said crime pertains only to Commodity-Related Market Transactions of Derivatives), is subject to punishment by imprisonment with required labor for not more than ten years or by a fine of not more than thirty million yen.

Article 197-2 A person that falls under one of the following items is subject to punishment by imprisonment with required labor for not more than five years, a fine of not more than five million yen, or both:

- (i) a person that conducts a Public Offering or Secondary Distribution of Securities for which a notification under Article 4, paragraph (1) is required; that issues a General Solicitation Involving Securities Acquired by a Qualified Institutional Investor for which a notification under Article 4, paragraph (2) is required; that issues a General Solicitation Involving Securities Acquired by a Professional Investor for which a notification under Article 4, paragraph (3) is required; or that handles one of these, in spite of the required notifications not having been accepted;
- (ii) a person that, in submitting or sending a copy of a document under Article 6 (including as applied mutatis mutandis pursuant to Article 12; Article 23-12, paragraph (1); Article 24, paragraph (7); Article 24-2, paragraph (3); Article 24-4-4, paragraph (5); Article 24-4-5, paragraph (2); Article 24-4-7, paragraph (5); Article 24-5, paragraph (6); Article 24-6, paragraph (3); and

- these provisions (excluding Article 24-6, paragraph (3)) as applied mutatis mutandis pursuant to Article 27); Article 24-7, paragraph (4) (including as applied mutatis mutandis pursuant to Article 24-7, paragraph (6) (including as applied mutatis mutandis pursuant to Article 27) and Article 27); Article 27-3, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27-8, paragraph (6) (including as applied mutatis mutandis pursuant to Article 27-13, paragraph (3)); Article 27-11, paragraph (4); Article 27-13, paragraph (3); and Article 27-22-2, paragraphs (2) and (3)); or Article 27-22-2, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (8)), submits or sends, as a copy of the original document, a document that contains a false statement about a material particular and whose contents differ from those of the original document;
- (iii) a person that violates the provisions of Article 15, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27); Article 23-8, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27); Article 27-3, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); Article 27-8, paragraph (7) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); or Article 27-8, paragraph (9) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2) and Article 27-22-3, paragraph (4));
  - (iv) a person that fails to issue public notice under Article 27-3, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)) or Article 27-10, paragraph (4);
  - (v) a person that fails to submit an Annual Securities Report under Article 24, paragraph (1) or (3) (including as applied mutatis mutandis pursuant to Article 24, paragraph (5) (including as applied mutatis mutandis pursuant to Article 27) and Article 27) or Article 24, paragraph (6) (including as applied mutatis mutandis pursuant to Article 27) or to submit an accompanying document, amended report under Article 10, paragraph (1) as applied mutatis mutandis pursuant to Article 24-2, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27), an Internal Control Report under Article 24-4-4, paragraph (1) (including as applied mutatis mutandis pursuant to Article 24-4-4, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27) and Article 27) or Article 24-4-4, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27) or an accompanying document for it, an amended report under Article 10, paragraph (1) as applied mutatis mutandis pursuant to Article 24-4-5, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27), Tender Offer Statement under Article 27-3, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)), Written Tender Offer Withdrawal Notice under Article 27-11, paragraph (3)

(including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)), Tender Offer Report under Article 27-13, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)), Statement of Large-Volume Holdings under Article 27-23, paragraph (1) or Article 27-26, paragraph (1), or Statement of Changes under Article 27-25, paragraph (1) or Article 27-26, paragraph (2);

(vi) a person that submits an accompanying document, an Internal Control Report or an accompanying document for the same, or a Quarterly Securities Report, Semiannual Securities Report, Extraordinary Report, or any amended report in connection with one of these, under Article 24, paragraph (6); Article 24-2, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27); Article 24-4-4, paragraph (1) (including as applied mutatis mutandis pursuant to Article 24-4-4, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27) and Article 27); Article 24-4-4, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27); Article 24-4-5, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27); Article 24-4-7, paragraph (1) or (2) (including as applied mutatis mutandis pursuant to Article 24-4-7, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27) and Article 27); Article 24-4-7, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27); Article 24-5, paragraph (1) (including as applied mutatis mutandis pursuant to Article 24-5, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27) and Article 27), or Article 24-5, paragraph (4) or (5) (including as applied mutatis mutandis pursuant to Article 27); a Report on Repurchase under Article 24-6, paragraph (1) or (2) or any amended report in connection with this; a Parent Company, etc. Status Report under Article 7, paragraph (1); Article 9, paragraph (1); or Article 10, paragraph (1) as applied mutatis mutandis pursuant to Article 24-7, paragraph (1) or (2) (including as applied mutatis mutandis pursuant to Article 24-7, paragraph (6) (including as applied mutatis mutandis pursuant to Article 27) and Article 27) or Article 24-7, paragraph (3) (including as applied mutatis mutandis pursuant to Article 24-7, paragraph (6) (including as applied mutatis mutandis pursuant to Article 27) and Article 27) or any amended report in connection with this; a Target Company's Position Statement under Article 27-10, paragraph (1), amended report under Article 27-8, paragraph (1) to (4) inclusive as applied mutatis mutandis pursuant to Article 27-10, paragraph (8), Tender Offeror's Answer under Article 27-10, paragraph (11), amended report under Article 27-8, paragraph (1) to (4) inclusive as applied mutatis mutandis pursuant to Article 27-10, paragraph (12), Statement of Large-Volume Holdings under Article 27-23, paragraph (1) or Article 27-26, paragraph (1), Statement of

- Changes under Article 27-25, paragraph (1) or Article 27-26, paragraph (2), or amended report under Article 9, paragraph (1) or Article 10, paragraph (1) as applied mutatis mutandis pursuant to Article 27-25, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27-26, paragraph (6)) or Article 27-29, paragraph (1) that contains a false statement about a material particular;
- (vii) a person that, in making a copy of a document under Article 25, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27) (other than a document set forth in Article 25, paragraph (1), items (v) and (ix)) available for public inspection, makes a document that contains a false statement about a material particular and whose contents differ from those of the original document available for public inspection, as a copy of the original document;
- (viii) a person that delivers a Tender Offer Explanation under Article 27-9, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)), or a Tender Offer Explanation amended pursuant to Article 27-9, paragraph (3) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)), that contains a false statement about a material particular;
- (ix) a person that issues public notice indicating that it is changing the Terms of Purchase, etc. of a Tender Offer in a way that violates the provisions of Article 27-6, paragraph (1), or that gives public notice indicating that it is effecting a Tender Offer Withdrawal, etc. under the main clause of Article 27-11, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)) in spite of not falling under the provisions of the proviso to Article 27-11, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2));
- (x) a person that fails to give the notice under Article 27-22-3, paragraph (2), or that gives a false notice;
- (x)-2 a person that issues or handles a Specified Solicitation, etc., in spite of the Specified Information on the Securities involved in that Specified Solicitation, etc. not having been provided or disclosed;
- (x)-3 a person that fails to provide or disclose the Information on the Issuer under Article 27-32, paragraph (1) or (2), or a person that commits a violation of the provisions of paragraph (4) of that Article (limited to the part that involves the Information on the Issuer);
- (x)-4 a person who has, in violation of Article 29, conducted Financial Instruments Business without obtaining registration from the Prime Minister;
- (x)-5 a person who has obtained registration under Article 29 by wrongful means;

- (x)-6 a person who has, in violation of Article 36-3, made other persons conduct Financial Instruments Business;
- (x)-7 a person that commits a violation of the provisions of Article 40-4 or Article 66-14-2;
- (xi) an officer of an Incorporated Association-Operated Financial Instruments Exchange (including a provisional board member or provisional inspector; the same applies in the following item) or an employee entrusted with a certain kind of item of business or a specific item of business at an Incorporated Association-Operated Financial Instruments Exchange, that has used a Prospectus, advertisement, or other solicitation document that contains a false statement about a material particular, in soliciting persons to subscribe for shares issued pursuant to the provisions of Article 101-9 (including private placement; hereinafter the same applies in this item);
- (xii) an officer of an Incorporated Association-Operated Financial Instruments Exchange or an employee of an Incorporated Association-Operated Financial Instruments Exchange that is entrusted with certain kind of item of business or a specific item of business, and that borrows and deposits money in order to disguise the payment of shares issued pursuant to the provisions of Article 101-9, or a person that complies with such borrowing and depositing of money; or
- (xiii) a person who has violated the provisions of Article 157, Article 158 or Article 159 (limited to the cases where such violation pertains only to Commodity-Related Market Transactions of Derivatives), or a person who has violated the provisions of Article 166, paragraph (1) or (3) or Article 167, paragraph (1) or (3)
- (xiv) a person who has violated the provisions of Article 167-2, paragraph (1) (limited to the cases where the person who has received information as set forth in that paragraph or the person who has been recommended to make the Sales and Purchase, etc. as set forth in that paragraph by such violation makes the Sales and Purchase, etc. of Specified Securities, etc. pertaining to such violation before the publication set forth in that paragraph is made with regard to the Material Facts Pertaining to Business or Other Matters prescribed in Article 166, paragraph (1) pertaining to such violation (excluding cases that fall under the cases listed in the items of paragraph (6) of that Article)); or
- (xv) a person who has violated the provisions of Article 167-2, paragraph (2) (limited to the cases where the person who has received information as set forth in that paragraph or the person who has been recommended to make the Purchase, etc. or the Sales, etc. as set forth in that paragraph by such violation makes the Purchase, etc. or the Sales, etc. of Share Certificates, etc. pertaining to such violation before the publication set forth in Article 167,

paragraph (1) is made with regard to the Fact Concerning Tender Offer, etc. pertaining to such violation (excluding cases that fall under the cases listed in the items of paragraph (5) of that Article)).

Article 197-3 In the cases of violations of Article 38-2, item (i) (limited to cases where the violation has been committed in connection with an Investment Management Business (meaning the Investment Management Business prescribed in Article 28, paragraph (4); hereinafter the same shall apply in this Chapter)), a representative person, agent, employee or other worker of a Financial Instruments Business Operator, etc. that has committed such act shall be punished by imprisonment with work for not more than five years or by a fine of not more than five million yen, or both.

Article 198 A person that falls under one of the following items is subject to punishment by imprisonment with required labor for not more than three years, a fine of not more than three million yen, or both:

- (i) a person that receives, Article 66, or Article 66-27 registration, an Article 31, paragraph (4) registration of a change, or Article 59, paragraph (1) Article 60, paragraph (1) or Article 60-14, paragraph (1) permission by wrongful means;
- (ii) a person that violates the provisions of Article 36-3, Article 66-9, or Article 66-34 in allowing another person to perform the services of a registered financial institution, Financial Instruments Intermediary Service, or Credit Rating Services;
- (ii)-2 a person who has violated Article 38, item (i) (limited to cases where the violation has been committed in connection with an Investment Management Business);
- (ii)-3 a person who has violated Article 38, item (vii) or Article 66-14, item (i), sub-item (c);
- (ii)-4 a person who has, in violation of Article 42-7, paragraph (1), failed to issue reports, or has issued reports that do not contain matters prescribed in that paragraph or reports that contain fake statement, or provided reports lacking in said matters or provided false matters by way of methods prescribed in Article 34-2, paragraph (4) as applied mutatis mutandis pursuant to Article 42-7, paragraph (2);
- (iii) a person that violates the provisions of Article 59, paragraph (1) ,Article 60 or Article 60-14, paragraph (1), paragraph (1), in conducting business prescribed in Article 59, paragraph (1) Article 60, paragraph (1) or Article 60-14, paragraph (1) without obtaining permission from the Prime Minister;
- (iii)-2 a person that violates the provisions of Article 36-3 as applied mutatis mutandis pursuant to Article 59-6 or Article 60-13 (including the cases where it is applied mutatis mutandis pursuant to Article 61-14, paragraph (2)), in

- causing another person to conduct the business prescribed in Article 59, paragraph (1) Article 60, paragraph (1) or Article 60-14, paragraph (1);
- (iv) a person that violates the provisions of Article 80, paragraph (1) or Article 155, paragraph (1), in establishing a Financial Instruments Market or in causing another person to conduct transactions on a foreign Financial Instruments Market;
- (iv)-2 a person that, in violation of Article 102-14, provides the Self-Regulatory Services prescribed in Article 84, paragraph (2) without obtaining the authorization of the Prime Minister;
- (v) an officer (including a provisional board member or provisional inspector) or inspector of an Incorporated Association-Operated Financial Instruments Exchange, or a person that is to be the director or company auditor of a Stock Company-Operated Financial Instruments Exchange, that has made a false statement to or suppressed a fact from the Prime Minister, the court or the members of a general meeting with regard to subscription or payment for the total number shares to be issued pursuant to the provisions of Article 101-9, the delivery of property other than money, or the matters set forth in Article 101-9, item (iii);
- (vi) a person that violates the provisions of Article 156-2 in conducting Financial Instruments Obligation Assumption Services;
- (vi)-2 a person that, in violation of Article 156-20-16, paragraph (1), engages in collaborative Financial Instruments Obligation Assumption Services without obtaining the authorization of the Prime Minister;
- (vii) a person that, in violation of Article 156-24, paragraph (1), engages in business prescribed in Article 156-24, paragraph (1) without obtaining the license of the Prime Minister; or
- (viii) a person that violates an order of the court under Article 192, paragraph (1) or (2).

Article 198-2 (1) The following property is subject to confiscation; provided, however, that if it is not appropriate to confiscate all or part of that property in light of the circumstances of its acquisition, the progress of a person's performance of the obligation to pay damages, and other circumstances, such property may be exempted from confiscation:

- (i) property obtained through criminal activity in a crime set forth in Article 197, paragraph (1), item (v) or paragraph (2) or Article 197-2, item (xiii); and
  - (ii) property obtained in exchange for property as set forth in the preceding item, or if property as set forth in the preceding item is an Option or other right, property obtained through exercising such rights.
- (2) If property would be confiscated pursuant to the provisions of the preceding paragraph but it is impossible to confiscate it, its value is collected from the

offender.

Article 198-3 In the case of a violation of the provisions of Article 38-2 or Article 39, paragraph (1) (including as applied *mutatis mutandis* pursuant to Article 66-15); Article 41-2, item (ii) or (v); or Article 42-2, item (i), (iii), or (vi) (in the case of violation of Article 38-2, item (i), excluding the case where the violation has been committed in connection with an Investment Management Business), the violating representative, agent, employee, or other worker of a Financial Instruments Business Operator or Financial Instruments Intermediary Service Provider, or the violating Financial Instruments Business Operator or Financial Instruments Intermediary Service Provider, is subject to punishment by imprisonment with required labor for not more than three years, a fine of not more than three million yen, or both.

Article 198-4 A person that violates the provisions of Article 106-10, paragraph (1) or (3) is subject to punishment by imprisonment with required labor for not more than two years, a fine of not more than three million yen, or both.

Article 198-5 If a violation as set forth in one of the following items occurs, the violating representative, agent, employee, or other worker of a Financial Instruments Business Operator, etc., Designated Parent Company, Authorized Operator for On-Exchange Transactions, Authorized Electronic Over-the-Counter Transactions of Derivatives, etc. Business Operator, Financial Instruments Intermediary Service Provider, a Credit Rating Agency, Authorized Financial Instruments Firms Association or Certified Financial Instruments Business Association prescribed in Article 78, paragraph (2), a Financial Instruments Exchange, self-regulatory organization prescribed in Article 85, paragraph (1), Financial Instruments Exchange Holding Company, Foreign Financial Instruments Exchange, Financial Instruments Clearing Organization, Foreign Financial Instruments Clearing Organization, Securities Finance Company, trade repository, or Specified Financial Indicator Calculation Agent, or the violating Financial Instruments Business Operator, Financial Instruments Intermediary Service Provider, or Specified Financial Indicator Calculation Agent is subject to punishment by imprisonment with required labor for not more than two years, a fine of not more than three million yen, or both:

- (i) the person violates the provisions of Article 42-4, Article 43-2, paragraph (1) or (2), Article 43-2-2 or Article 43-3;
- (ii) the person violates a disposition for the suspension of business activities under Article 52, paragraph (1); Article 53, paragraph (2); Article 57-6, paragraph (1); Article 57-20, paragraph (2); Article 60-8, paragraph (1)



- (including the cases where it is applied mutatis mutandis pursuant to Article 60-14, paragraph (2)); Article 66-20, paragraph (1); or Article 66-42, paragraph (1) (excluding a disposition for the suspension of business that is subject to authorization under Article 30, paragraph (1));
- (ii)-2 the person violates an order under Article 57-20, paragraph (1) or (2), Article 57-21, paragraph (2) or Article 153-5 (other than a disposition for the suspension of business activities, if it is an order under Article 57-20, paragraph (2));
- (iii) the person violates a disposition that results in a suspension, change, prohibition, or measure (excluding an order to dismiss officers) under Article 74, paragraph (1), a suspension or measure under Article 79-6, a suspension, change, prohibition, or measure under Article 152, paragraph (1) (including as applied mutatis mutandis pursuant to Article 153-4), a change, prohibition, or measure under Article 153-2, a suspension, change, or prohibition under Article 155-10, paragraph (1), a suspension under Article 156-17, paragraph (2) or Article 156-20-14, paragraph (2), a suspension, change, or prohibition under Article 156-20-22, or a suspension under Article 156-32, paragraph (1), Article 156-83, paragraph (1), or Article 156-90, paragraph (2); or
- (iv) the person violates the provisions of Article 106-28, paragraph (3).

Article 198-6 A person that falls under one of the following items is subject to punishment by imprisonment with required labor for not more than one year, a fine of not more than three million yen, or both:

- (i) a person that makes a false statement or recording in a written application or in an accompanying document or electronic or magnetic record under Article 29-2, paragraphs (1) to (3) inclusive; Article 33-3; Article 59-2, paragraph (1) or (3); Article 60-2, paragraph (1) or (3) (including the cases where these provisions are applied mutatis mutandis pursuant to Article 60-14, paragraph (2)); Article 66-2; Article 66-28; Article 67-3; Article 81; Article 102-15; Article 106-11; Article 155-2; Article 156-3; Article 156-20-3; Article 156-20-17; Article 156-24, paragraph (2) to (4) inclusive; Article 156-40; or Article 156-68, and submits it;
- (ii) a person that violates the provisions of Article 38, item (i) (excluding the case where the violation has been committed in connection with an Investment Management Business) or a person who has violated the provisions of Article 66-14, item (i), sub-item (a);
- (iii) a person that fails to prepare or archive a document under Article 46-2 (including as applied mutatis mutandis pursuant to Article 60-6 (including the cases where it is applied mutatis mutandis pursuant to Article 60-14, paragraph (2)), Article 47, Article 48, Article 66-16, Article 66-37, or Article

- 188, or that prepares a false document;
- (iv) a person that fails to submit a report, document, or written document under Article 46-3, paragraph (1) (including as applied mutatis mutandis pursuant to Article 60-6 (including the cases where it is applied mutatis mutandis pursuant to Article 60-14, paragraph (2); hereinafter the same shall apply in this item)); Article 47-2; Article 48-2, paragraph (1); Article 49-3, paragraph (1) (including as applied mutatis mutandis pursuant to Article 60-6); Article 57-3, paragraph (1); Article 57-15, paragraph (1); Article 66-17, paragraph (1); Article 66-38; Article 155-5; Article 156-35; Article 156-57, paragraph (1); or Article 156-79, paragraph (1), or that submits a report, document, or written document containing a false statement;
  - (v) a person that fails to make a report under Article 46-3, paragraph (2) (including as applied mutatis mutandis pursuant to Article 60-6); Article 48-2, paragraph (2); Article 49-3, paragraph (2) (including as applied mutatis mutandis pursuant to Article 60-6 (including the cases where it is applied mutatis mutandis pursuant to Article 60-14, paragraph (2); hereinafter the same shall apply in this item)); Article 57-3, paragraph (2); or Article 57-15, paragraph (2), or that makes a false report;
  - (vi) a person that fails to make an explanatory document or written document under Article 46-4; Article 46-6, paragraph (3); Article 47-3; Article 57-4; Article 57-5, paragraph (3); Article 57-16; Article 57-17, paragraph (3); Article 66-17, paragraph (2); or Article 66-18 available for public inspection, or that makes an explanatory document or written document in which the person has entered a false statement available for public inspection;
  - (vi)-2 a person that fails to make an explanatory document under Article 66-39 available for public inspection or that makes an explanatory document in which the person has entered a false statement available for public inspection; or a person that fails to make the disclosure under that Article or that makes a false disclosure;
  - (vii) a person that fails to make a notification under Article 46-6, paragraph (1); Article 57-5, paragraph (2); Article 57-17, paragraph (2); Article 63, paragraph (2) or (6) (including as applied mutatis mutandis pursuant to Article 63-3, paragraph (2)); or Article 63-3, paragraph (1), or that makes a false notification;
  - (viii) a person that fails to make a notification under Article 50-2, paragraph (1) or (7); Article 57-18, paragraph (2); Article 60-7 (including the cases where it is applied mutatis mutandis pursuant to Article 60-14, paragraph (2)); or Article 66-40, paragraph (1) or (4), or that makes a false notification;
  - (ix) a person that fails to issue the public notice under Article 50-2, paragraph (6) or Article 66-40, paragraph (3), or that issues a false public notice;
  - (x) a person that fails to make a report or submit materials under Article 56-2,

- Article 57-10, paragraph (1); Article 57-23; Article 57-26, paragraph (2); Article 60-11; Article 63, paragraph (7); Article 66-22; Article 66-45, paragraph (1); Article 103-4; Article 106-6, paragraph (1); Article 106-16; Article 106-20, paragraph (1); Article 156-5-4; Article 156-5-8; or Article 156-89; or that makes a false report or submits false materials;
- (xi) a person that refuses, hinders, or evades an inspection under Article 56-2; Article 57-10, paragraph (1); Article 57-23; Article 57-26, paragraph (2); Article 60-11; Article 63, paragraph (8); Article 66-22; Article 66-45, paragraph (1); Article 75; Article 79-4; Article 103-4; Article 106-6, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article); Article 106-16; Article 106-20, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article); Article 106-27 (including as applied mutatis mutandis pursuant to Article 109); Article 151 (including as applied mutatis mutandis pursuant to Article 153-4); Article 155-9; Article 156-5-4; Article 156-5-8; Article 156-15; Article 156-20-12; Article 156-34; Article 156-80; Article 156-89; Article 185-5; or Article 187, item (iv);
- (xi)-2 a person who has violated an order under Article 56-3
- (xi)-3 a person that fails to make a notification under Article 57-2, paragraph (1), or that makes a false notification;
- (xi)-4 a person that fails to submit a document under Article 57-2, paragraph (2) or (3), or that submits a false document;
- (xi)-5 a person that fails to make a notification under Article 57-13 or that makes a false notification;
- (xii) a person that fails to make a report or submit materials under Article 60-11 as applied mutatis mutandis pursuant to Article 60-12, paragraph (3) (including the cases where it is applied mutatis mutandis pursuant to Article 60-14, paragraph (2)) or Article 56-2, paragraph (1) as applied mutatis mutandis pursuant to Article 65-3, paragraph (3), or a person that makes a false report or submits a false material;
- (xiii) a person that refuses, hinders, or evaded an inspections under Article 60-11 as applied mutatis mutandis pursuant to Article 60-12, paragraph (3) (including the cases where it is applied mutatis mutandis pursuant to Article 60-14, paragraph (2)) or Article 56-2, paragraph (1) as applied mutatis mutandis pursuant to Article 65-3, paragraph (3);
- (xiv) a person that violates an order under Article 63, paragraph (5) (including as applied mutatis mutandis pursuant to Article 63-3, paragraph (2));
- (xv) a person that violates the provisions of Article 156-46;
- (xvi) a person that fails to answer a question asked by officials under Article 156-58, that gives a false answer, or that refuses, hinders, or evades inspection;

- (xvii) a person that violates an order under Article 156-59, paragraph (1);
- (xvii)-2 a person that fails to prepare or archive a record under Article 156-63, paragraph (1); Article 156-64, paragraph (1); or Article 156-65, paragraph (1) or that prepares a false record;
- (xvii)-3 a person that fails to make a report or to submit a report, document, or written document under Article 156-63, paragraph (2), Article 156-64, paragraph (2) or Article 156-65, paragraph (2); or a person that submits a report, document, or written document in which the person has entered a false statement;
- (xvii)-4 a person that fails to make a notification under Article 156-86, paragraph (1), or that makes a false notification;
- (xviii) a person that fails to make a report under Article 188, or that makes a false report.

Article 199 If there is a failure to make a report or to submit materials under Article 75; Article 79-4; Article 106-6, paragraph (1) as applied mutatis mutandis pursuant to paragraph (2) of that Article; Article 106-20, paragraph (1) as applied mutatis mutandis pursuant to paragraph (2) of that Article; Article 106-27 (including as applied mutatis mutandis pursuant to Article 109); Article 151 (including as applied mutatis mutandis pursuant to Article 153-4); Article 155-9; Article 156-15; Article 156-20-12; Article 156-34; Article 156-58; or Article 156-80, or if a false report is made or false materials are submitted, the violating representative, agent, employee, or other worker of an Authorized Financial Instruments Firms Association, Certified Financial Instruments Business Association as prescribed in Article 78, paragraph (2), Financial Instruments Exchange, self-regulatory organization as prescribed in Article 85, paragraph (1), Financial Instruments Exchange Holding Company, Commodity Exchange, Commodity Exchange Holding Company, Foreign Financial Instruments Exchange, Financial Instruments Clearing Organization, Foreign Financial Instruments Clearing Organization, Securities Finance Company, Designated Dispute Resolution Organization as prescribed in Article 156-38, paragraph (1), or trade repository (hereinafter referred to as "Authorized Financial Instruments Firms Association, etc." in this Article); the violating representative, agent, employee, or other worker of the Subsidiary Company of a Financial Instruments Exchange (meaning a Subsidiary Company as prescribed in Article 87-3, paragraph (3); hereinafter the same applies in this Article), Subsidiary Company of a Financial Instruments Exchange Holding Company, Subsidiary Company of a Commodity Exchange, Subsidiary Company of a Commodity Exchange Holding Company Commodity Trading Participant; the violating representative, agent, employee, or other worker of the Issuer of Securities listed on a Financial Instruments Exchange or Over-

the-Counter Traded Securities, of the Participant in a Foreign Financial Instruments Exchange, of the Financial Instruments Clearing Organization or Clearing Member of a Foreign Financial Instruments Clearing Organization, of a person that has concluded a Contract for Collection of Trade Information with a trade repository; or the violating person that has been entrusted with business by an Authorized Financial Instruments Firms Association, etc. (if such a person is a corporation, its representative, agent, employee, or other worker) is subject to punishment by imprisonment with required labor for not more than one year, a fine of not more than three million yen, or both.

Article 200 A person that falls under one of the following items is subject to punishment by imprisonment with required labor for not more than one year, a fine of not more than one million yen, or both:

- (i) a person that fails to submit or send copies of a statement and other related documents under Article 6 (including as applied mutatis mutandis pursuant to Article 12; Article 23-12, paragraph (1); Article 24, paragraph (7); Article 24-2, paragraph (3); Article 24-4-4, paragraph (5); Article 24-4-5, paragraph (2); Article 24-4-7, paragraph (5); Article 24-5, paragraph (6); and Article 24-6, paragraph (3); as these provisions (excluding Article 24-6, paragraph (3)) are applied mutatis mutandis pursuant to Article 27); Article 24-7, paragraph (4) (including as applied mutatis mutandis pursuant to Article 24-7, paragraph (6) (including as applied mutatis mutandis pursuant to Article 27) and Article 27); Article 27-3, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27-8, paragraph (6) (including as applied mutatis mutandis pursuant to Article 27-13, paragraph (3)); Article 27-11, paragraph (4); Article 27-13, paragraph (3); and Article 27-22-2, paragraphs (2) and (3)); or Article 27-22-2, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (8));
- (ii) a person that fails to submit an amended statement under the first sentence of Article 7, paragraph (1); Article 9, paragraph (1); or Article 10, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27);
- (iii) a person that violates the provisions of Article 15, paragraph (2) (including as applied mutatis mutandis pursuant to Article 23-12, paragraph (3), as these provisions are applied mutatis mutandis pursuant to Article 27); Article 15, paragraph (3) or (4) (including as applied mutatis mutandis pursuant to Article 27); Article 27-5 (including as applied mutatis mutandis pursuant to Article 27-8, paragraph (10); Article 27-22-2, paragraphs (2) and (5); and Article 27-22-3, paragraph (5)); or Article 27-13, paragraph (4) or (5) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2));

- (iv) a person that fails to submit an Amended Shelf Registration Statement under the first sentence of Article 23-4; Article 23-9, paragraph (1); or Article 23-10, paragraph (1); or under Article 23-10, paragraph (1) as applied mutatis mutandis pursuant to paragraph (5) of that Article (including as applied mutatis mutandis pursuant to Article 27);
- (v) a person that fails to submit an amended report, Quarterly Securities Report, Semiannual Securities Report, Extraordinary Report, Parent Company, etc. Status Report, or Report on Repurchases under Article 9, paragraph (1) as applied mutatis mutandis pursuant to Article 24-2, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27); Article 9, paragraph (1) as applied mutatis mutandis pursuant to Article 24-4-5, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27); Article 24-4-7, paragraph (1) (including as applied mutatis mutandis pursuant to Article 24-4-7, paragraph (3) as these provisions are applied mutatis mutandis pursuant to Article 27); Article 9, paragraph (1) or Article 10, paragraph (1) as these provisions are applied mutatis mutandis pursuant to Article 24-4-7, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27); Article 24-5, paragraph (1) (including as applied mutatis mutandis pursuant to Article 24-5, paragraph (3) as these provisions are applied mutatis mutandis pursuant to Article 27); Article 24-5, paragraph (4) (including as applied mutatis mutandis pursuant to Article 27); Article 9, paragraph (1) or Article 10, paragraph (1) as these provisions are applied mutatis mutandis pursuant to Article 24-5, paragraph (5) (including as applied mutatis mutandis pursuant to Article 27); Article 24-6, paragraph (1); Article 9, paragraph (1) or Article 10, paragraph (1) as these provisions are applied mutatis mutandis pursuant to Article 24-6, paragraph (2); Article 9, paragraph (1) or Article 10, paragraph (1) as these provisions are applied mutatis mutandis pursuant to Article 24-7, paragraph (1) or (2) (including as applied mutatis mutandis pursuant to Article 24-7, paragraph (6) (including as applied mutatis mutandis pursuant to Article 27) and Article 27); or Article 24-7, paragraph (3) (including as applied mutatis mutandis pursuant to Article 24-7, paragraph (6) (including as applied mutatis mutandis pursuant to Article 27) and Article 27);
- (vi) a person that violates the provisions of Article 25, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27) or Article 27-14, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)) in failing to make copies of a document (other than a document set forth in Article 25, paragraph (1), item (v) or (ix)) available for public inspection;
- (vii) a person that fails to issue the public notice, make the public announcement, or make the disclosure under Article 27-7, paragraph (2)

- (including as applied mutatis mutandis pursuant to Article 27-8, paragraph (12) and Article 27-22-2, paragraphs (2) and (6)); Article 27-8, paragraph (8) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2) and Article 27-22-3, paragraph (4)); Article 27-8, paragraph (11) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); Article 27-10, paragraph (6); or Article 27-13, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2));
- (viii) a person that fails to submit an amended statement under Article 27-8, paragraphs (2) to (4) inclusive (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)) or an amended statement under Article 27-8, paragraph (2) to (4) inclusive as applied mutatis mutandis pursuant to Article 27-13, paragraph (3) and Article 27-22-2, paragraph (7);
- (ix) a person that, in violation of Article 27-9, paragraph (2) or (3) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)), fails to deliver a Tender Offer Explanation or amended Tender Offer Explanation;
- (x) a person that fails to submit Target Company's Position Statement under Article 27-10, paragraph (1) or Tender Offeror's Answer under Article 27-10, paragraph (11);
- (xi) a person that, in sending a copy of a document under Article 27-10, paragraph (9) (including as applied mutatis mutandis pursuant to Article 27-10, paragraph (10)); Article 27-10, paragraph (13) (including as applied mutatis mutandis pursuant to Article 27-10, paragraph (14)); or Article 27-27 (including as applied mutatis mutandis pursuant to Article 27-29, paragraph (2)), sends, as a copy of the original document, a document that contains a false statement about a material particular and whose contents differ from those of the original document;
- (xii) a person that fails to submit an amended report under Article 9, paragraph (1) or Article 10, paragraph (1) as these provisions are applied mutatis mutandis pursuant to Article 27-29, paragraph (1);
- (xii)-2 a person that fails to provide or disclose the Amended Specified Information on Securities under Article 27-31, paragraph (4) in respect of a material particular, or a person that commits a violation of the provisions of Article 27-31, paragraph (5) (limited to the parts involving Amended Specified Information on Securities) in connection with such Amended Specified Information on Securities;
- (xii)-3 a person who has violated the provision of Article 31-3-2;
- (xiii) a person that violates an order under Article 32-2, paragraph (1) (including as applied mutatis mutandis pursuant to Article 32-4 and Article 57-26, paragraph (1)) or (3);
- (xiv) a person that violates the provisions of Article 39, paragraph (2)

- (including as applied mutatis mutandis pursuant to Article 66-15);
- (xv) a person that enters a false statement into a written application or document under Article 39, paragraph (5) (including as applied mutatis mutandis pursuant to Article 66-15) and submits it;
- (xv)-2 a person who has violated the provisions of Article 40-6;
- (xvi) a person that violates the provisions of Article 103-2, paragraph (1) or (4), or Article 106-14, paragraph (1) or (4);
- (xvii) a person that violates the provisions of Article 106-3, paragraph (1) or (4); Article 106-7, paragraph (2); Article 106-17, paragraph (1) or (3); Article 106-21, paragraph (2); Article 156-5-5, paragraph (1) or (4); or Article 156-5-9, paragraph (2);
- (xviii) a person that violates an order under Article 106-7, paragraph (1); Article 106-21, paragraph (1); or Article 156-5-9, paragraph (1);
- (xviii)-2 a person that violates the provisions of Article 156-41, paragraph (1);
- (xix) a person that violates the provisions of Article 167-3;
- (xx) a person that violates the provisions of Article 168; and
- (xxi) a person that violates the provisions of Article 170 or Article 171 in making a representation.

Article 200-2 In the case referred to in item (xiv) of the preceding Article, any economic benefit received by the offender or a third party with knowledge of the circumstances is subject to confiscation. If all or part of an economic benefit cannot be confiscated, an equivalent value is collected.

Article 200-3 (1) If a witness or expert that is sworn in pursuant to the provisions of Article 201, paragraph (1) of the Code of Civil Procedure as applied mutatis mutandis pursuant to Article 185, paragraph (2) or Article 185-4, paragraph (3), gives a false statement or presents a false expert opinion, that witness or expert is subject to punishment by imprisonment with required labor for not less than three months but not more than ten years.

(2) If a person committing the crime set forth in the preceding paragraph makes a voluntary confession prior to the completion of administrative hearing proceedings and before the revelation of that crime, the punishment may be reduced or remitted.

Article 201 If a violation as set forth in one of the following items occurs, the violating representative, agent, employee, or other worker of a Financial Instruments Business Operator, etc., Financial Institution, person that has obtained permission pursuant to Article 59, Authorized Operator for On-Exchange Transactions, Authorized Electronic Over-the-Counter Transactions of Derivatives, etc. Business Operator, Financial Instruments Intermediary



Service Provider, Authorized Financial Instruments Firms Association, Financial Instruments Exchange, self-regulatory organization prescribed in Article 85, paragraph (1), person that has obtained authorization pursuant to Article 106-3, paragraph (1), Financial Instruments Exchange Holding Company, person that has obtained authorization pursuant to Article 106-17, paragraph (1), Commodity Exchange, Commodity Exchange Holding Company, Foreign Financial Instruments Exchange, Financial Instruments Clearing Organization, major shareholder of a Financial Instruments Clearing Organization (meaning a major shareholders as prescribed in Article 156-5-8; hereinafter the same applies in this Article), or Securities Finance Company, or the violating Financial Instruments Business Operator, Financial Instruments Intermediary Service Provider, or major shareholder of a Financial Instruments Clearing Organization, is subject to punishment by imprisonment with required labor for not more than one year, a fine of not more than one million yen, or both:

- (i) the person conducts business prescribed in Article 30, paragraph (1) without obtaining authorization under that paragraph;
- (ii) the person violates conditions attached pursuant to the provisions of Article 30-2, paragraph (1) (including as applied mutatis mutandis pursuant to Article 87-2, paragraph (3); Article 87-3, paragraph (5); Article 106-3, paragraph (6); Article 106-10, paragraph (5); Article 106-17, paragraph (5); Article 106-24, paragraph (2); Article 155, paragraph (2); Article 156-5-5, paragraph (6); or Article 156-20-16, paragraph (4)); Article 59, paragraph (2); Article 60, paragraph (2) (including the cases where it is applied mutatis mutandis pursuant to Article 60-14, paragraph (2)); Article 85, paragraph (2); or Article 156-6, paragraph (4) (including as applied mutatis mutandis pursuant to Article 156-19, paragraph (4));
- (iii) the person violates the provisions of Article 31, paragraph (6);
- (iv) the person violates the provisions of Article 31-2, paragraph (5); Article 33, paragraph (1); Article 33-2; Article 41-3 to 41-5 inclusive; Article 42-5; Article 42-6; or Article 66-13;
- (v) the person conducts Financial Instruments Business or provides the services prescribed in Article 35, paragraph (1) and services other than those set forth in the items of Article 35, paragraph (2), without having obtained approval under Article 35, paragraph (4);
- (vi) the person violates a disposition for the suspension of business under Article 52, paragraph (1) (limited to the part involving the authorization referred to in Article 30, paragraph (1)) or Article 52-2, paragraph (1);
- (vii) the person violates the provisions of Article 64, paragraph (2) (including as applied mutatis mutandis pursuant to Article 66-25) in allowing a person to perform the duties of a Sales Representative;

- (viii) the person violates the provisions of Article 67-7, Article 97, or Article 102-21;
- (ix) the person entrusts the Self-Regulatory Services prescribed in Article 84, paragraph (2) to a self-regulatory organization prescribed in that paragraph without having obtained authorization from the Prime Minister, in violation of Article 85, paragraph (1);
- (x) the person violates an order under Article 106-7, paragraph (1) as applied *mutatis mutandis* pursuant to Article 106-7, paragraph (4), or under Article 106-21, paragraph (1) as applied *mutatis mutandis* pursuant to Article 106-21, paragraph (4);
- (xi) the person violates an order under Article 106-28, paragraph (1) (including as applied *mutatis mutandis* pursuant to Article 109);
- (xii) the person conducts business other than that prescribed in Article 156-24, paragraph (1) and the items of Article 156-27, paragraph (1) without having obtained approval under Article 156-27, paragraph (3); and
- (xiii) the person performs an act that is allowed only with the authorization of the Prime Minister pursuant to Article 156-28, paragraph (1), without having obtained that authorization.

Article 202 (1) A person that acts with the aim of paying or receiving the difference in quotations on a Financial Instruments Exchange Market (including Financial Indicators calculated based on prices or interest rates, etc. of Financial Instruments on a Financial Instruments Exchange Market) other than through a Financial Instruments Exchange Market, is subject to punishment by imprisonment with required labor for not more than one year, a fine of not more than one million yen, or both; provided, however, that this does not preclude the application of the provisions of Article 186 of the Penal Code.

(2) The provisions of the preceding paragraph do not apply to the following transactions:

- (i) Over-the-Counter Transactions of Derivatives wherein one of the parties is a Financial Instruments Business Operator (limited to one that engages in Type I Financial Instruments Business as prescribed in Article 28, paragraph (1); hereinafter the same applies in this paragraph) or a bank, Cooperative Financial Institution, or financial institution specified by Cabinet Order as referred to in Article 33, paragraph (1);
- (ii) Over-the-Counter Transactions of Derivatives for which a Financial Instruments Business Operator or a bank, Cooperative Financial Institution, or financial institution specified by Cabinet Order as referred to in Article 33, paragraph (1) conducts intermediation, brokerage, or agency; and
- (iii) transactions where one of the parties is a Commodity Futures

Transactions Dealer or a person who made a notification prescribed in Article 349, paragraph (1) of the Commodity Futures Trading Act.

- Article 203 (1) If the officer or official of a Financial Instruments Business Operator (or the domestic representative or officer stationed at a business office or office it has established domestically, if the Financial Instruments Business Operator is a foreign corporation; hereinafter the same applies in this paragraph); the officer or official of an Authorized Financial Instruments Firms Association, Certified Financial Instruments Business Association prescribed in Article 78, paragraph (2), or Financial Instruments Exchange (an officer includes a provisional board member, provisional inspector, provisional director, provisional executive officer, or provisional company auditor); or the domestic representative or official of a Foreign Financial Instruments Exchange (if the Foreign Financial Instruments Exchange has a domestic office, this includes any officer stationed there) accepts a bribe in connection with that person's duties (in the case of the officer or official of a Financial Instruments Business Operator, limited to duties involved in the business of a Financial Instruments Business Operator is entrusted by an Investor Protection Fund pursuant to the provisions of Article 79-50, paragraph (1)), or requests or promises to do so, that person is subject to punishment by imprisonment with required labor for not more than five years.
- (2) In a case referred to in the preceding paragraph, any bribe that is accepted is subject to confiscation. If all or part of a bribe cannot be confiscated, an equivalent value is collected.
- (3) A person that provides the bribe referred to in paragraph (1) or that offers or promises to do so is subject to punishment by imprisonment with required labor for not more than three years or by a fine of not more than three million yen.

- Article 203-2 (1) The provisions regarding the crimes referred to in paragraph (1) of the preceding Article also apply to a person that commits a crime referred to in that paragraph outside Japan.
- (2) A crime referred to in paragraph (3) of the preceding Article is dealt with according to the provisions of Article 2 of the Penal Code.

Article 204 A person that violates the provisions of Article 72 (including as applied mutatis mutandis pursuant to Article 79 or Article 79-14); Article 77-2, paragraph (7) or (8) (including as applied mutatis mutandis pursuant to Article 77-3, paragraph (4); Article 78-7; Article 78-8, paragraph (4); or Article 79-13); Article 79-47; Article 87-8; Article 156-8; Article 156-20-7; or Article 156-70 is subject to punishment by imprisonment with required labor for not more than

one year, or a fine of not more than 500 thousand yen.

Article 205 A person that falls under one of the following items is subject to punishment by imprisonment with required labor for not more than six months, a fine of not more than 500 thousand yen, or both:

- (i) a person violates the provisions of Article 4, paragraph (4); Article 4, paragraph (6) (including as applied *mutatis mutandis* pursuant to Article 23-8, paragraph (4)); Article 13, paragraph (4) or (5) (including as applied *mutatis mutandis* pursuant to Article 23-12, paragraph (2) (including as applied *mutatis mutandis* pursuant to Article 27) and Article 27); Article 15, paragraph (2) to (4) inclusive as these provisions are applied *mutatis mutandis* pursuant to Article 15, paragraph (6) (including as applied *mutatis mutandis* pursuant to Article 23-12, paragraph (3) and including as these provisions are applied *mutatis mutandis* pursuant to Article 27); Article 23, paragraph (2) (including as applied *mutatis mutandis* pursuant to Article 23-12, paragraph (5) and including as these provisions are applied *mutatis mutandis* pursuant to Article 27); Article 23-8, paragraph (3) (including as applied *mutatis mutandis* pursuant to Article 27); or Article 24-2, paragraph (2) (including as applied *mutatis mutandis* pursuant to Article 27);
- (ii) a person that fails to submit an amended report under Article 27-8, paragraph (2) to (4) inclusive as these provisions are applied *mutatis mutandis* pursuant to Article 27-10, paragraph (8), or under Article 27-8, paragraph (2) to (4) inclusive as these provisions are applied *mutatis mutandis* pursuant to Article 27-10, paragraph (12);
- (iii) a person that fails to send a copy of a document under Article 27-10, paragraph (9) (including as applied *mutatis mutandis* pursuant to Article 27-10, paragraph (10)); Article 27-10, paragraph (13) (including as applied *mutatis mutandis* pursuant to Article 27-10, paragraph (14)); or Article 27-27 (including as applied *mutatis mutandis* pursuant to Article 27-29, paragraph (2));
- (iv) a person that violates the provisions of Article 27-15, paragraph (2) (including as applied *mutatis mutandis* pursuant to Article 27-22-2, paragraph (2));
- (v) a person that fails to make a report or submit materials under Article 26, paragraph (1) (including as applied *mutatis mutandis* pursuant to Article 27); Article 27-22, paragraph (1) (including as applied *mutatis mutandis* pursuant to Article 27-22-2, paragraph (2)); Article 27-22, paragraph (2); Article 27-30, paragraph (1) or (2); Article 27-35, paragraph (1); or Article 193-2, paragraph (6), or that makes a false report or submits false materials;
- (vi) a person that refuses, hinders, or evades an inspection under Article 26, paragraph (1) (including as applied *mutatis mutandis* pursuant to Article

- 27); Article 27-22, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27-22-2, paragraph (2)); Article 27-22, paragraph (2); Article 27-30, paragraph (1); Article 27-35, paragraph (1); or Article 177, paragraph (1), item (iii);
- (vi)-2 a person that provides or discloses Foreign Securities Information under Article 27-32-2, paragraph (1) or (2) that contains a false statement about a material particular;
  - (vi)-3 a person that, in a Secondary Distribution of Foreign Securities, sells the Securities subject to the Secondary Distribution of Foreign Securities without providing or disclosing the Foreign Securities Information under Article 27-32-2, paragraph (1) in connection with those Secondary Distribution of Foreign Securities;
  - (vi)-4 a person that fails to provide or disclose the Foreign Securities Information under Article 27-32-2, paragraph (2);
  - (vii) a person that enters a false statement into a written application or accompanying document under Article 30-3, Article 64, paragraph (3) or (4) (including as applied mutatis mutandis pursuant to Article 66-25), or Article 85-2, paragraph (1) or (2) and submits it;
  - (viii) a person that, in violation of Article 31-2, paragraph (8), fails to make a deposit;
  - (ix) a person that fails to submit a notification or accompanying document under Article 32, paragraph (1) or (2) (including as applied mutatis mutandis pursuant to Article 32-4 and Article 57-26, paragraph (1)), or submits a false notification or accompanying document;
  - (ix)-2 a person that fails to make a notification under Article 32, paragraph (3), or that makes a false notification;
  - (x) a person that fails to represent a matter prescribed in Article 37, paragraph (1) or Article 66-10, paragraph (1) or that makes a false representation;
  - (xi) a person that violates the provisions of Article 37, paragraph (2) or Article 66-10, paragraph (2);
  - (xii) a person that violates the provisions of Article 37-3, paragraph (1), Article 37-4, paragraph (1), or Article 37-5, paragraph (1) in failing to deliver a written document, in delivering a written document that does not contain the particulars prescribed in those provisions, or in delivering a written document that contains a false statement; or a person that violates those provisions in providing a person with something that lacks those particulars or with something that contains false particulars by the means prescribed in Article 34-2, paragraph (4) as applied mutatis mutandis pursuant to Article 37-3, paragraph (2); Article 37-4, paragraph (2); or Article 37-5, paragraph (2);
  - (xiii) a person that fails to make a notification under Article 37-3, paragraph

- (3); Article 42-7, paragraph (3); Article 103-2, paragraph (3); Article 106-3, paragraph (3) (including as applied mutatis mutandis pursuant to Article 106-10, paragraph (4) or Article 106-17, paragraph (4)); Article 106-14, paragraph (3); or Article 156-5-5, paragraph (3), or that makes a false notification;
- (xiv) a person that, in violation of the provisions of Article 43-5, fails to make the particulars prescribed in that Article available for inspection, or that makes false particulars available for inspection;
- (xv) a person that, in violation of the provisions of Article 67-18, makes a false report;
- (xvi) a person that violates the provisions of Article 86, paragraph (2);
- (xvii) a person that fails to submit a statement of holdings in Subject Voting Rights under Article 103-3, paragraph (1); Article 106-15; or Article 156-5-3, paragraph (1), or that submits a statement of holdings in Subject Voting Rights containing a false statement;
- (xviii) a person that violates the Cabinet Office Ordinance under Article 161, paragraph (1) (including as applied mutatis mutandis pursuant to Article 161, paragraph (2)) or paragraph (3);
- (xix) a person that violates the provisions of Article 163 or Article 165-2, paragraph (1) or (2) in failing to submit a written report or in submitting a written report containing a false statement, or in making a false filing in a filing under Article 164, paragraph (5) or Article 165-2, paragraph (10); or
- (xx) a person that violates the provisions of Article 165; Article 165-2, paragraph (15); or Article 169.

Article 205-2 A person that fails to prepare or archive the records under Article 156-48 or Article 156-50, paragraph (9), or prepares a false record is subject to punishment by a fine of not more than one million yen.

Article 205-2-2 A person that falls under one of the following items is subject to punishment by a fine of not more than 500 thousand yen:

- (i) a person that discontinues Financial Instruments Obligation Assumption Services without obtaining the authorization referred to in Article 156-20-15;
- (ii) a person that suspends or discontinues all or part of Dispute Resolution Services (meaning the Dispute Resolution Services prescribed in Article 156-38, paragraph (11)) without obtaining the authorization referred to in Article 156-60, paragraph (1); or
- (iii) a person that suspends or discontinues all or part of trade repository services without obtaining the authorization referred to in Article 156-82, paragraph (1).

Article 205-2-3 A person that falls under one of the following items is subject to punishment by a fine of not more than 300 thousand yen:

- (i) a person that fails to make a notification under Article 31, paragraph (1) or (3); Article 32-3, paragraph (1) (including as applied *mutatis mutandis* pursuant to Article 32-4 or Article 57-26, paragraph (1)) or paragraph (2); Article 33-6, paragraph (1) or (3); Article 35, paragraph (3) or (6); Article 50, paragraph (1); Article 57-2, paragraph (4) or (6); Article 57-14; Article 57-18, paragraph (1); Article 60-5 (including the cases where it is applied *mutatis mutandis* pursuant to Article 60-14, paragraph (2)); Article 63, paragraph (3) (including the cases where it is applied *mutatis mutandis* pursuant to Article 63-3, paragraph (2)); Article 63-2, paragraph (2); Article 63-2, paragraph (3) (including as applied *mutatis mutandis* pursuant to Article 63-3, paragraph (2)) or paragraph (4); Article 64-4 (including as applied *mutatis mutandis* pursuant to Article 66-25); Article 66-5, paragraph (1) or (3); Article 66-19, paragraph (1); Article 66-31, paragraph (1) or (3); Article 79-27, paragraph (4); Article 106-3, paragraph (5) (including as applied *mutatis mutandis* pursuant to Article 106-10, paragraph (4) or Article 106-17, paragraph (4)); Article 156-5-5, paragraph (5); Article 156-55, paragraph (1); Article 156-56; Article 156-60, paragraph (2); Article 156-82, paragraph (2); Article 156-86, paragraph (4); or Article 156-88, or a person that makes a false notification;
- (ii) a person that violates the provisions of Article 31-3; Article 43-4, paragraph (1) or (2); Article 66-6; or Article 194;
- (iii) a person that violates the provisions of Article 36-2, paragraph (1) or Article 66-8, paragraph (1);
- (iv) a person that, in violation of Article 36-2, paragraph (2) or Article 66-8, paragraph (2), posts a sign under Article 36-2, paragraph (1) or Article 66-8, paragraph (1) or a sign that is similar to one of these;
- (v) a person that violates an order under Article 46-3, paragraph (3) (including as applied *mutatis mutandis* pursuant to Article 60-6 (including the cases where it is applied *mutatis mutandis* pursuant to Article 60-14, paragraph (2))); Article 48-2, paragraph (3); Article 57-3, paragraph (3); or Article 57-15, paragraph (3);
- (vi) a person that, in violation of Article 955, paragraph (1) of the Companies Act as applied *mutatis mutandis* pursuant to Article 50-2, paragraph (10) or Article 66-40, paragraph (6), fails to enter or record the matters specified by Ordinance of the Ministry of Justice with regard to the electronic public notice investigation specified in that paragraph in the Investigation Record Book, etc. (meaning an Investigation Record Book, etc. as prescribed in Article 955, paragraph (1) of the Companies Act; hereinafter the same applies in this item), that enters or records a false statement, or that, in violation of that paragraph, fails to archive an Investigation Record Book,

etc.;

- (vii) a person that fails to submit a document under Article 57-2, paragraph (5), or that submits a false document;
- (viii) a person that violates the provisions of the second sentence of Article 79-3, paragraph (1);
- (ix) a person that fails to make a report under Article 79-16 or Article 156-45, paragraph (1), or that makes a false report;
- (x) a person that enters a false statement in a written application or accompanying document under Article 79-30 and submits it;
- (xi) a person that fails to make a report or submit materials under Article 79-52, paragraph (2), or that makes a false report or submits false materials;
- (xii) a person that, in violation of Article 79-53, paragraph (1); Article 156-60, paragraph (3); Article 156-61, paragraph (3); or Article 156-82, paragraph (2), fails to notify the relevant person or that notifies the relevant person falsely;
- (xiii) a person that fails to make a report or submit materials under Article 79-77, or that makes a false report or submits false materials; or
- (xiv) a person that refuses, hinders, or evades an inspection under Article 79-77.

Article 205-3 A person that falls under one of the following items is subject to punishment by a fine of not more than 200 thousand yen:

- (i) a person that, in violation of a disposition under Article 177, paragraph (1), item (i) to which a person concerned in the relevant case or a witness is subject, fails to appear or to give a statement, gives a false statement, fails to give a report, or gives a false report;
- (ii) a person who has failed to submit articles, in violation of the disposition for persons concerned with a case under Article 177, paragraph (1), item (ii);
- (iii) a person that, in violation of a disposition under Article 185, paragraph (1) to which a witness is subject, fails to appear, fails to give a statement, or gives a false statement;
- (iv) a person that, in violation of an order under Article 201, paragraph (1) of the Code of Civil Procedure as applied *mutatis mutandis* pursuant to Article 185, paragraph (2) or Article 185-4, paragraph (3) to which a witness or expert is subject, fails to swear under oath;
- (v) a person that, in violation of a disposition under Article 185-3, paragraph (2) to which the person in possession of an article is subject, fails to submit the article; or
- (vi) a person that, in violation of a disposition under Article 185-4, paragraph (1) to which an expert is subject, fails to present an expert opinion, or presents a false expert opinion.



Article 206 If a violation as set forth in one of the following items occurs, the violating representative, agent, employee, or other worker of an Authorized Financial Instruments Firms Association, Certified Financial Instruments Business Association as prescribed in Article 78, paragraph (2), Investor Protection Fund, Financial Instruments Exchange, self-regulatory organization as prescribed in Article 85, paragraph (1), Financial Instruments Exchange Holding Company, Parent Commodity Exchange, etc. as prescribed in Article 102-3, paragraph (1), Foreign Financial Instruments Exchange, Financial Instruments Clearing Organization, Foreign Financial Instruments Clearing Organization, Securities Finance Company, trade repository, or Specified Financial Indicator Calculation Agent, or the violating Specified Financial Indicator Calculation Agent is subject to punishment by a fine of not more than 300 thousand yen:

- (i) the person violates the provisions of Article 64-7, paragraph (4) (including as applied mutatis mutandis pursuant to Article 66-25); Article 67-8, paragraph (2); Article 67-12; Article 87-2, paragraph (1); Article 87-3, paragraph (1); Article 105, paragraph (1); Article 106-24, paragraph (1); Article 149, paragraph (1) (including as applied mutatis mutandis pursuant to Article 153-4); or Article 156-12-3, paragraph (1);
- (ii) the person fails to make a notification under the first sentence of Article 67-8, paragraph (3); Article 67-13; Article 121; Article 126, paragraph (1); the first sentence of Article 149, paragraph (2) (including as applied mutatis mutandis pursuant to Article 153-4); Article 153-3; or Article 155-7, or that makes a false notification;
- (iii) the person violates an order under Article 67-14 or Article 125;
- (iv) the person violates an order under Article 67-15, paragraph (1); Article 67-17, paragraph (1); Article 127, paragraph (1); or Article 129, paragraph (1);
- (v) the person, in violation of Article 79-55, paragraph (4) or Article 79-59, paragraph (5), fails to report or gives a false report;
- (vi) the person violates the provisions of Article 122, paragraph (1) (including as applied mutatis mutandis pursuant to Article 123, paragraph (1) or (2)) or Article 124, paragraph (1) or (3) in effecting a listing;
- (vii) the person violates the provisions of Article 126, paragraph (2) in effecting a delisting;
- (viii) the person fails to make a notification under Article 156-6, paragraph (3); Article 156-13; or Article 156-19, paragraph (3), or makes a false notification;
- (ix) the person violates the provisions of Article 156-12; Article 156-20-10; or Article 156-20-21, paragraph (1);
- (ix)-2 the person fails to make a notification under Article 156-20-11 or Article 156-20-21, paragraph (2) or (3), or makes a false notification;
- (x) the person fails to make a notification under Article 156-27, paragraph (2)

- or Article 156-28, paragraph (2) or (3), or makes a false notification;
- (xi) the person fails to make a notification under Article 156-72, paragraph (2); Article 156-77, paragraph (1); or Article 156-78, or makes a false notification; or
- (xii) the person, in violation of the provisions of Article 156-74, paragraph (1), fails to prescribe Operational Rules, fails to obtain the authorization of the Prime Minister for them, or changes the Operational Rules without obtaining the authorization of the Prime Minister;
- (xiii) the person, in violation of the provisions of Article 156-87, paragraph (1), fails to formulate Operational Rules or fails to obtain authorization of the Prime Minister, or, in violation of the provisions of paragraph (3) of that Article, changes the Operational Rules without obtaining the authorization of the Prime Minister.

Article 207 (1) If the representative of a corporation (including an organization without legal personality for which a representative or administrator has been designated; hereinafter the same applies in this paragraph and the following paragraph) or the agent, employee, or other worker of a corporation or individual violates the provisions set forth in one of the following items in connection with the business or property of the corporation or individual, in addition to the offender being subject to punishment, the corporation is subject to punishment by the fine prescribed in the relevant item and the individual is subject to punishment by the fine prescribed in the provisions referred to in the relevant item:

- (i) Article 197: a fine of not more than 700 million yen;
  - (ii) Article 197-2 (excluding items (xi) and (xii) or Article 197-3): a fine of not more than 500 million yen;
  - (iii) Article 198 (excluding items (iv) -2 and (v)) or Article 198-3 to Article 198-5 inclusive: a fine of not more than 300 million yen;
  - (iv) Article 198-6 (excluding items (viii), (ix), (xii), (xiii), and (xv)) or Article 199: a fine of not more than 200 million yen;
  - (v) Article 200 (excluding items (xii)-3, (xv)-2, (xvii), (xviii)-2, and (xix)) or Article 201, item (i), (ii), (iv), (vi), or (ix) to (xi): a fine of not more than 100 million yen; and
  - (vi) Article 198, item (iv)-2, Article 198-6, item (viii), (ix), (xii), (xiii), or (xv); Article 200, item (xii)-3, (xv)-2, (xvii), (xviii)-2, or (xix); Article 201 (excluding items (i), (ii), (iv), (vi), and (ix) to (xi) inclusive); Article 205 to 205-2 inclusive; Article 205-2-3 (excluding items (xiii) and (xiv)); or the preceding Article (excluding item (v)): the fine prescribed in each Article.
- (2) The period of prescription for punishing a corporation or individual by a fine due to a violation referred to in Article 197, Article 197-2 (excluding items (xi)

and (xii)) or Article 197-3 pursuant to the provisions of the preceding paragraph, depends on the period of prescription for the crime referred to in the relevant provisions.

- (3) If an organization other than a corporation is to be punished pursuant to the provisions of paragraph (1), the representative or administrator of that organization represents it with regard to procedural acts, and the provisions of laws on criminal proceedings that have a corporation as the defendant or suspect apply *mutatis mutandis*.

Article 207-2 If the person provided for in Article 197-2, item (xii); Article 198, item (v); or Article 203, paragraph (1) is a corporation, these provisions apply to the violating director or executive officer, or to the violating officer or manager that performs those duties.

Article 207-3 In the following cases, the officer (which includes a provisional board member, provisional auditor, provisional director, provisional accounting advisor, provisional company auditor, or provisional executive officer) of an Authorized Financial Instruments Firms Association, Financial Instruments Exchange, self-regulatory organization as prescribed in Article 85, paragraph (1), or Financial Instruments Exchange Holding Company is subject to punishment by a non-criminal fine of not more than one million yen:

- (i) the officer violates an order under Article 73 or Article 153 (including as applied *mutatis mutandis* pursuant to Article 153-4);
- (ii) the officer fails to report the amount of capital reserves prescribed in Article 101-8;
- (iii) the officer fails to issue a notice under Article 101-10, paragraph (1) or (4);
- (iv) the officer fails to make a registration under Article 101-20, paragraph (1);
- (v) the officer violates the provisions of Article 102-31, paragraph (1) or Article 105-16, paragraph (1) in failing to keep minutes;
- (vi) the officer violates the provisions of Article 105-5, paragraph (1) in failing to select a majority of the members of the self-regulatory committee from among outside directors; or
- (vii) the officer fails to make the list of names under Article 105-18 available for public inspection.

Article 207-4 A person that falls under one of the following items is subject to punishment by a non-criminal fine of not more than one million yen:

- (i) a person that, in violation of the provisions of Article 941 of the Companies Act as applied *mutatis mutandis* pursuant to Article 50-2, paragraph (10) and Article 66-40, paragraph (6), fails to request the investigation referred to in Article 941 of the Companies Act;

- (ii) a person that, in violation of the provisions of Article 946, paragraph (3) of the Companies Act as applied mutatis mutandis pursuant to Article 50-2, paragraph (10) and Article 66-40, paragraph (6), fails to give a report or gives a false report;
- (iii) a person that refuses a request set forth in one of the items of Article 951, paragraph (2) or Article 955, paragraph (2) of the Companies Act as these provisions are applied mutatis mutandis pursuant to Article 50-2, paragraph (10) and Article 66-40, paragraph (6), without just cause; or
- (iv) a person that refuses to allow the inspection or copying under Article 102-31, paragraph (2) or Article 105-16, paragraph (2) or (3) (including as applied mutatis mutandis pursuant to Article 105-16, paragraph (4)), without just cause.

Article 208 In one of the following cases, an Issuer of Securities; the representative or officer of a Financial Instruments Business Operator etc. Specified Major Shareholder of a Financial Instruments Business Operator, Designated Parent Company, or Financial Instruments Intermediary Service Provider; a Financial Instruments Business Operator, Specified Major Shareholder of a Financial Instruments Business Operator, Financial Instruments Intermediary Service Provider, Financial Instruments Business Operator that is a foreign corporation; a person that has obtained permission under Article 59, the domestic representative of an Authorized Operator for On-Exchange Transactions or Authorized Electronic Over-the-Counter Transactions of Derivatives, etc. Business Operator; the officer of a Credit Rating Agency (including the representative or administrator of an organization without legal personality for which a representative or administrator has been designated); the domestic representative of a Credit Rating Agency that is a foreign corporation (including an organization without legal personality for which a representative or administrator has been designated), the officer (including a provisional board member) or the former representative of an Authorized Financial Instruments Firms Association or Certified Financial Instruments Business Association as prescribed in Article 78, paragraph (2); the officer (this includes a provisional board member or provisional inspector) or liquidator of an Investor Protection Fund; the officer (this includes a provisional board member or provisional executive officer), former representative, or liquidator of a Financial Instruments Exchange or self-regulatory organization as prescribed in Article 85, paragraph (1); the domestic representative or former domestic representative of a Foreign Financial Instruments Exchange; the representative or officer of a Financial Instruments Clearing Organization; the domestic representative of a Foreign Financial Instruments Clearing Organization; the representative or officer of a

Securities Finance Company; the officer of a Designated Dispute Resolution Organization provided for in Article 156-38, paragraph (1) (including the representative or administrator of an organization without legal personality for which a representative or administrator has been designated); the officer of a trade repository (including the representative or administrator of an organization without legal personality for which a representative or administrator has been designated); the officer of a Specified Financial Indicator Calculation Agent (including the representative or administrator of an organization without legal personality for which a representative or administrator has been designated) or the Specified Financial Indicator Calculation Agent is subject to punishment by a non-criminal fine of not more than 300 thousand yen:

- (i) the person violates the provisions of Article 4, paragraph (5) (including as applied mutatis mutandis pursuant to Article 23-8, paragraph (4)); Article 44-4 (including as applied mutatis mutandis pursuant to Article 59-6); Article 79-26, paragraph (2); Article 79-73; Article 119, paragraph (1) or (4); or Article 161-2, paragraph (1);
- (ii) the person fails to submit a Confirmation Letter under Article 24-4-2, paragraph (1) (including as applied mutatis mutandis pursuant to Article 24-4-2, paragraph (3) (including as applied mutatis mutandis pursuant to Article 24-4-2, paragraph (4)) or Article 24-4-2, paragraph (4) as these provisions are applied mutatis mutandis pursuant to Article 27) or an amended Confirmation Letter under Article 9, paragraph (1) or Article 10, paragraph (1) as these provisions are applied mutatis mutandis through the replacement of certain terms pursuant to Article 24-4-3, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27);
- (iii) the person, in violation of an order under Article 31-2, paragraph (4), fails to make a deposit;
- (iv) the person, in violation of Article 31-4, paragraph (1) or (2); Article 64-7, paragraph (5) (including as applied mutatis mutandis pursuant to Article 66-25); the second sentence of Article 67-8, paragraph (3); Article 67-16; Article 77-6, paragraph (3); Article 105, paragraph (2); Article 120; Article 128; Article 134, paragraph (2); Article 135, paragraph (2); the second sentence of Article 149, paragraph (2) (including as applied mutatis mutandis pursuant to Article 153-4); Article 155-8, paragraph (2); or Article 156-12-3, paragraph (2), fails to notify;
- (v) the person violates an order under Article 32-2, paragraph (2); Article 51; Article 51-2; Article 53, paragraph (1); Article 57-6, paragraph (1); Article 57-19; Article 57-21, paragraph (1) or (4); Article 60-8, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to Article 60-14, paragraph (2); hereinafter the same shall apply in this item); Article 66-20,

- paragraph (1); Article 66-41; Article 79-37, paragraph (5); Article 79-75; Article 156-16; Article 156-20-13; Article 156-33, paragraph (1); Article 156-81; or Article 156-90, paragraph (1) (if this is an order under Article 57-6, paragraph (1); Article 60-8, paragraph (1); or Article 66-20, paragraph (1), it excludes a disposition for the suspension of business);
- (vi) the person violates the provisions of Article 40-2, paragraph (4) or (5) in not delivering a document;
  - (vi)-2 when having failed to make a public announcement pursuant to Article 40-7, paragraph (2) (including the cases where it is applied *mutatis mutandis* pursuant to Article 60-14, paragraph (2)) or having made a false public announcement;
  - (vii) the person violates the provisions of Article 46-5; Article 48-3; or Article 49-4 in not laying aside reserve funds or in using them;
  - (viii) the person, in violation of Article 49-5 or an order under Article 56-3, does not keep the assets in Japan;
  - (ix) the person, in violation of Article 67-18 or Article 78-3, fails to report;
  - (x) the person, in violation of Article 67-19, Article 78-4, or Article 130, fails to notify or to disclose;
  - (xi) the person, in violation of Article 67-20; Article 78-5; Article 79-41, paragraph (3); Article 79-53, paragraph (2); or Article 131, paragraph (1), fails to report or gives a false report;
  - (xii) the person fails to make the list of names under Article 68, paragraph (6); Article 78-2, paragraph (2); or Article 156-53 available for public inspection;
  - (xiii) the person fails to obtain authorization, in a case that requires the person to obtain the authorization of the Prime Minister and the Minister of Finance pursuant to the provisions of Chapter IV-2;
  - (xiv) the person does not file a notification under Article 79-34, paragraph (3) or files a false notification;
  - (xv) the person conducts business other than that prescribed in Article 79-49 paragraph (1);
  - (xvi) the person fails to submit a document provided for in Article 79-70, paragraph (1) or (2), or submits a false document;
  - (xvii) the person violates the provisions of Article 79-71 in its accounting;
  - (xviii) the person violates the provisions Article 79-80, paragraph (1) in disposing of the residual assets of an Investor Protection Fund;
  - (xix) the person makes a false statement or suppresses a fact from the members of an organizational meeting or of a general meeting of the members of a Financial Instruments Incorporated Association;
  - (xx) the person violates the provisions of Article 88-11 (including as applied *mutatis mutandis* pursuant to Article 102-6); Article 101-3, paragraph (1); Article 101-5, paragraph (1); Article 139-3, paragraph (1); Article 139-4,

- paragraph (1) or (9); Article 139-5, paragraph (1); Article 139-6, paragraph (4); Article 139-7, paragraph (1); Article 139-13, paragraph (2); Article 139-14, paragraph (1); or Article 139-21, paragraph (2) in failing to keep a document, written document, or electronic or magnetic record specified in those provisions or in entering or recording a false statement in it;
- (xxi) the person, in violation of Article 100-12, paragraph (1) or (2) (including as applied *mutatis mutandis* pursuant to Article 102-36); Article 100-14, paragraph (1) (including as applied *mutatis mutandis* pursuant to Article 102-36); Article 101-4, paragraph (2) (including as applied *mutatis mutandis* pursuant to Article 139-3, paragraph (6); Article 139-4, paragraph (5); and Article 139-5, paragraph (6)); Article 139-3, paragraph (10); Article 139-10, paragraph (1); Article 139-12, paragraph (2) (including as applied *mutatis mutandis* pursuant to Article 139-19); or Article 139-16, paragraph (1); or the provisions of the Companies Act as applied *mutatis mutandis* pursuant to this Act, fails to issue a public notice or notice, or issues a false public notice or notice;
- (xxii) the person, in violation of Article 100-7, paragraph (2) or Article 100-14, paragraph (1) (including as applied *mutatis mutandis* pursuant to Article 102-36), fails to file a petition to commence bankruptcy proceedings;
- (xxiii) the person violates Article 664 of the Companies Act as applied *mutatis mutandis* pursuant to Article 100-17, paragraph (1) of this Act in distributing the assets of a Financial Instruments Incorporated Association;
- (xxiv) the person violates the provisions of Article 101-2 in implementing procedures for Organizational Conversion;
- (xxv) the person, in violation of Article 101-3, paragraph (2); Article 101-5, paragraph (2); Article 139-3, paragraph (2); Article 139-4, paragraph (10); Article 139-5, paragraph (2); Article 139-6, paragraph (5); Article 139-7, paragraph (2); Article 139-13, paragraph (3); Article 139-14, paragraph (2); or Article 139-21, paragraph (3), refuses to allow the inspection of a document or something that shows the particulars that have been recorded in an electronic or magnetic record through a means specified by Cabinet Office Ordinance, to issue a certified copy or extract, to provide a person with the particulars that have been recorded in electronic or magnetic records by electronic or magnetic means, or to issue a written document that states those particulars, without justifiable grounds for refusing to do so;
- (xxvi) the person violates the provisions of Article 101-4 (including as applied *mutatis mutandis* pursuant to Article 139-3, paragraph (6), Article 139-4, paragraph (5), and Article 139-5, paragraph (6)), or Article 139-12 (including as applied *mutatis mutandis* pursuant to Article 139-19) in conducting an Organizational Conversion or merger of an Incorporated Association-Operated Financial Instruments Exchange;

- (xxvi)-2 the person fails to make the disclosure under Article 156-66, paragraph (2) or makes a false disclosure;
- (xxvi)-3 the person, in violation of the provisions of Article 156-69, becomes the representative of a corporation, engages in the day-to-day business of a corporation, or conducts the relevant business, without obtaining the authorization of the Prime Minister; or
- (xxvii) the person fails to make a registration (excluding one under Article 101-20, paragraph (1)) provided for by this Act.

Article 208-2 A person that falls under one of the following items is subject to punishment by a non-criminal fine of not more than 300 thousand yen:

- (i) a person that violates the provisions of Article 79-23, paragraph (2);
- (ii) a person that violates the provisions of Article 162, paragraph (1) (including as applied *mutatis mutandis* pursuant to Article 162, paragraph (2));
- (iii) a person that violates the Cabinet Office Ordinance under Article 162-2;
- (iv) a person that violates the provisions of Article 193-3, paragraph (1);
- (v) a person that, in violation of the provisions of Article 193-3, paragraph (2), fails to submit an opinion or submits a false opinion; or
- (vi) a person that, in violation of the provisions of Article 193-3, paragraph (3), fails to notify the relevant persons or falsely notifies them.

Article 208-3 A person that violates the provisions of Article 88, paragraph (3) is subject to punishment by a non-criminal fine of not more than 200 thousand yen.

Article 209 A person that falls under one of the following items is subject to punishment by a non-criminal fine of not more than 100 thousand yen:

- (i) a person that violates the provisions of Article 23-13, paragraph (1), (3), or (4) (including as applied *mutatis mutandis* pursuant to Article 27);
- (ii) a person that, in violation of the provisions of Article 23-13, paragraph (2) or (5) (including as applied *mutatis mutandis* pursuant to Article 27), fails to deliver a written document;
- (iii) a person that fails to submit the copy of a Confirmation Letter under Article 6 as applied *mutatis mutandis* pursuant to Article 24-4-2, paragraph (5) (including as applied *mutatis mutandis* pursuant to Article 24-4-8, paragraph (1) and Article 24-5-2, paragraph (1), and including as these provisions are applied *mutatis mutandis* pursuant to Article 27) or the copy of an amended Confirmation Letter under Article 6 as applied *mutatis mutandis* pursuant to Article 24-4-3, paragraph (2) (including as applied *mutatis mutandis* pursuant to Article 24-4-8, paragraph (2) and Article 24-5-



- 2, paragraph (2), and including as these provisions are applied mutatis mutandis pursuant to Article 27);
- (iv) a person that fails to submit a Confirmation Letter under Article 24-4-2, paragraph (1) (including as applied mutatis mutandis pursuant to Article 24-4-2, paragraph (3) (including as applied mutatis mutandis pursuant to Article 24-4-2, paragraph (4)) and Article 24-4-2, paragraph (4), and including as these provisions are applied mutatis mutandis pursuant to Article 27) as applied mutatis mutandis pursuant to Article 24-4-8, paragraph (1) or Article 24-5-2, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27) or an amended Confirmation Letter under Article 9, paragraph (1) or Article 10, paragraph (1) as these provisions are applied mutatis mutandis through the replacement of certain terms pursuant to Article 24-4-3, paragraph (1) (including as applied mutatis mutandis pursuant to Article 27) as applied mutatis mutandis pursuant to Article 24-4-8, paragraph (2) or Article 24-5-2, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27);
  - (v) a person that violates the provisions of Article 25, paragraph (2) (including as applied mutatis mutandis pursuant to Article 27), in failing to make a copy of a document (limited to a document set forth in Article 25, paragraph (1), item (v) or (ix)) available for public inspection;
  - (vi) a person that, in violation of Article 27-24, fails to deliver a written notice, delivers a written notice in which the person has failed to state the particulars prescribed in Article 27-24, or delivers a written notice in which the person has entered a false statement with regard to those particulars;
  - (vi)-2 a person that violates the provisions of Article 40-5, paragraph (1);
  - (vii) a person that violates an order under Article 60-4, paragraph (2) (including the cases where it is applied mutatis mutandis pursuant to Article 60-14, paragraph (2)); Article 65, paragraph (2); or Article 66-46, paragraph (2);
  - (viii) a person that fails to make a notification under Article 62, paragraph (1) or (3) or Article 79-10, paragraph (1), or that makes a false notification;
  - (ix) a person that fails to make a report or submit materials under Article 62, paragraph (2) or Article 189, paragraph (1), or that makes a false report or submits false materials;
  - (x) a person that violates the provisions of Article 79-15, Article 156-54 or Article 156-76;
  - (xi) a person that, in violation of a disposition under Article 187, paragraph (1), item (i) to which a person concerned in the relevant case or a witness is subject, fails to appear, fails to give a statement, gives a false statement, fails to give a report, or gives a false report;
  - (xii) a person that, in violation of a disposition under Article 187, paragraph (1),

- item (ii) to which an expert is subject, fails to appear, fails to present an expert opinion, or presents a false expert opinion; or
- (xiii) a person that, in violation of a disposition under Article 187, paragraph (1), item (iii) to which the person in possession of an article is subject, fails to submit the relevant article.

(Confiscation of Mixed Property, etc.)

- Article 209-2 (1) If the property to be confiscated pursuant to the provisions of Article 198-2, paragraph (1) or Article 200-2 (hereinafter referred to as "Illegal Property" in paragraph (1) of the following Article and Article 209-4, paragraph (1)) is mixed with property other than the Illegal Property, and said Illegal Property is to be confiscated, the portion of the property resulting from said mixing (referred to as "Mixed Property" in the following paragraph and paragraph (1) of the following Article) which corresponds to the amount or quantity of said Illegal Property (limited to the portion pertaining to said mixing) may be confiscated.
- (2) The provisions of the preceding paragraph also apply if a third party with knowledge of the circumstances acquires Mixed Property (limited to Mixed Property in which Illegal Property pertaining to the provisions of Article 200-2 is mixed).

(Requirements for Confiscation, etc.)

- Article 209-3 (1) Confiscation under Article 198-2, paragraph (2) shall be limited to the case where Illegal Property or the Mixed Property does not belong to any person other than the offender; provided, however, that if a person other than the offender acquires the Illegal Property or the Mixed Property while knowing the circumstances of the crime (excluding the case of accepting property that has been provided as performance of obligations under a law or regulation or the case of accepting property that has been provided as performance of obligations pertaining to a contract (limited to a contract under which the creditor is to provide a considerable amount of economic benefit) that has been concluded without knowing at the time of concluding the contract that that obligations under the contract are performed based on Illegal Property or Mixed Property), the Illegal Property or Mixed Property may be confiscated even where the property belongs to a person other than the offender.
- (2) If property on which a superficies, a mortgage, or any other right exists is to be confiscated pursuant to the provisions of Article 198-2, paragraph (1) or Article 200-2, and if a person other than the offender has acquired the right before the crime or a person other than the offender acquires the right after the crime without knowledge of the circumstances, the right shall be kept in existence.

## **Chapter VIII-2 Special Provisions on Procedures Concerning Confiscation, etc.**

(Procedure for Confiscation of Property of a Third Party, etc.)

Article 209-4 (1) If a Claim, etc. (meaning property other than real property and movables; the same shall apply in paragraph (1) of the following Article and Article 209-7) which is Illegal Property, belongs to a person other than the accused (hereinafter referred to as a "Third Party" in this Article), and the Third Party is not allowed to participate in the proceedings of the case under public prosecution, a judicial decision for confiscation may not be made.

(2) The preceding paragraph shall also apply to the case of intending to confiscate property on which a superficies, a mortgage or any other right of a Third Party exists pursuant to the provisions of Article 198-2, paragraph (1) or Article 200-2, and the Third Party is not allowed to participate in the proceedings of the case under public prosecution.

(3) If property on which a superficies, a mortgage or any other right of a Third Party exists is to be confiscated, and the right is to be kept in existence pursuant to the provisions of paragraph (2) of the preceding Article, the court shall pronounce to that effect simultaneously with the rendering of confiscation.

(4) If a judicial decision for confiscation without the pronouncement set forth in the preceding paragraph becomes final and binding with regard to a right that is to be kept in existence pursuant to the provisions of paragraph (2) of the preceding Article, a person who holds said right and who was unable to claim the right in the proceedings of the case under public prosecution due to a reason unattributable to said person may demand a judicial decision to the effect that the case falls under a case where the right is to be kept in existence.

(5) If the judicial decision set forth in the preceding paragraph is made, compensation shall be made in accordance with the compensation for confiscated property that has been disposed of as specified in the Criminal Compensation Act (Act No. 1 of 1950).

(6) With regard to the procedures concerning confiscation of property provided in paragraphs (1) and (2), in addition to what is specially provided for in this Act, the provisions of the Act on Emergency Measures on Criminal Procedure to Confiscate Items Owned by Third Parties (Act No. 138 of 1963) shall apply *mutatis mutandis*.

(Disposition of a Confiscated Claim, etc.)

Article 209-5 (1) A Claim, etc. that has been confiscated with regard to the crime set forth in Article 197, paragraph (1), item (v) or paragraph (2), Article 197-2, item (xiii), or Article 200, item (xiv) shall be disposed of by a public prosecutor.

(2) If a judicial decision for confiscation of a claim to be confiscated with regard to the crime set forth in Article 197, paragraph (1), item (v) or paragraph (2), Article 197-2, item (xiii), or Article 200, item (xiv) becomes final and binding, a public prosecutor shall notify the debtor of said claim to that effect by sending an extract of the written judgment of the judicial decision for confiscation.

(Registration Based on a Judicial Decision for Confiscation, etc.)

Article 209-6 In the case of requesting a related organization to make registration of transfer of right based on a judicial decision for confiscation of property for which transfer of right requires registration with regard to the crime set forth in Article 197, paragraph (1), item (v) or paragraph (2), Article 197-2, item (xiii), or Article 200, item (xiv), if there is a registration pertaining to restriction on a disposition that has ceased to be effective as a result of the confiscation or a registration pertaining to acquisition of right that has been extinguished as a result of the confiscation, or if there is a registration pertaining to a protective order in anticipation of confiscation or an ancillary protective order under Chapter I, Section 1 of the Act on Punishment of Organized Crimes and Control of Crime Proceeds (Act No. 136 of 1999), a request shall also be made to cancel such registration.

(Special Provisions on Criminal Compensation)

Article 209-7 With regard to the contents of compensation under the Criminal Compensation Act for execution of compensation of a Claim, etc. to be confiscated with regard to the crime set forth in Article 197, paragraph (1), item (v) or paragraph (2), Article 197-2, item (xiii), or Article 200, item (xiv), the provisions of Article 4, paragraph (6) of that Act shall apply *mutatis mutandis*.

## **Chapter IX Investigations in Criminal Cases**

(Questioning, Examination, Retention, etc.)

Article 210 (1) An official of the Securities and Exchange Surveillance Commission (hereinafter referred to as the "Commission" in this Chapter) (such an official is referred to as a "Commission Official" hereinafter in this Chapter) may request a suspect or witness in a criminal case (meaning the case connected with a crime set forth in the Chapter VIII, which is specified by Cabinet Order as a crime that is detrimental to the fairness of purchase and sales or other transactions of Securities or Derivatives Transactions, etc.; hereinafter the same applies in this Chapter) (such a suspect or witness is referred to as a "Suspect, etc. in a Criminal Case" hereinafter in this paragraph) to appear and may question a Suspect, etc. in a Criminal Case,

examine articles in the possession of or discarded by a Suspect, etc. in a Criminal Case, or retain articles that a Suspect, etc. in a Criminal Case voluntarily submits or discards, if this is necessary for the investigation in a criminal case.

- (2) A Commission Official may inquire with public agencies or public or private organizations for the investigation in a criminal case, and may request them to report necessary matters.

(Inspection, Search, and Seizure)

- Article 211 (1) If it is necessary in the investigation of a criminal case, a Commission Official may effect an inspection, search, or seizure in accordance with a warrant issued in advance by the judge of the district court or summary court that has jurisdiction over the locality of the Commission.
- (2) In the case referred to in the preceding paragraph, in case of urgency, a Commission Official may take the measures referred to in that paragraph with a warrant issued in advance by the judge of the district court or summary court that has jurisdiction over the locality of the place to be inspected; the place, person, or article to be searched; or the article to be seized.
- (3) In requesting a warrant as referred to in paragraph (1) or the preceding paragraph (hereinafter referred to as a "Warrant" in this Chapter), a Commission Official must submit materials allowing it to be found that there is a criminal case.
- (4) If the request referred to in the preceding paragraph is filed, the judge of the district court or summary court must issue a Warrant to a Commission Official which states the place to be inspected, the place, person, or article to be searched, or the article to be seized; states the government position and name of the requester; states the valid period; gives the indication that the Warrant may not be executed and must be returned after the valid period ends; states the date of issuance and the name of the court; and bears the judge's name and seal. In such a case, if the name of the suspect in the criminal case or the facts of the criminal offense are clear, these particulars must also be entered in the Warrant.
- (5) A Commission Official may deliver a Warrant to another Commission Official and have that official execute the inspection, search, or seizure.

(Seizure against a Person That Handles Communications)

- Article 211-2 (1) If it is necessary for the investigation in a criminal case, a Commission Official may be issued a Warrant to seize official papers regarding postal items, correspondence, or telegrams sent from or addressed to a suspect in a criminal case, which, based on the provisions of laws and regulations, are stored by or in the possession of a person handling communications.

- (2) In respect of official papers regarding postal items, correspondence, or telegrams that do not fall under the preceding paragraph, which, based on the provisions of laws and regulations, are stored by or in the possession of a person handling communications, a Commission Official may be issued a Warrant to seize only those official papers for which there are sufficient circumstances to find a relationship with the criminal case.
- (3) Upon taking the measures under one of the preceding two paragraphs, a Commission Official must notify the sender or recipient of this; provided, however, that this does not apply if notifying the sender or recipient could hinder the investigation in the criminal case.

(Restriction on the Execution of an Inspection, Search, or Seizure at Night)

- Article 212 (1) It is prohibited for an inspection, search, or seizure to be executed between sunset and sunrise unless the Warrant indicates that the inspection, search, or seizure may be executed at night.
- (2) An official inspection, search, or seizure that begins before sunset may be continued after sunset, if this is found to be necessary.

(Showing a Warrant)

- Article 213 The Warrant for an inspection, search, or seizure must be shown to the person subject to these measures.

(Proof of Identity)

- Article 214 When carrying out questioning or when effecting an examination, retention, inspection, search, or seizure pursuant to the provisions of this Chapter, a Commission Official must carry a card that identifies that official and show it if requested by any person concerned.

(Necessary Measures at the Time of Inspection, Search, or Seizure)

- Article 215 (1) If it is necessary in order to effect an inspection, search, or seizure, a Commission Official may release a lock, open a seal, or take other necessary measures.
- (2) The measures referred to in the preceding paragraph may also be taken with respect to retained articles or seized articles.

(Prohibiting Entrance and Exit During Measures)

- Article 216 While carrying out questioning or effecting an examination, retention, inspection, search, or seizure pursuant to the provisions of this Chapter, a Commission Official may prohibit any person from entering or exiting the place without permission.

(Presence of the Person In Charge)

- Article 217 (1) When executing an inspection, search, or seizure at a person's dwelling or at a residence, building, or other place that a person watches over, a Commission Official must have the owner or manager (these persons include the representative, agent, or other person that may act on the owner's or manager's behalf) or the employee or co-habiting adult relative of the owner or manager, present.
- (2) In the case referred to in the preceding paragraph, if it is impossible to have one of the persons prescribed in that paragraph present, a Commission Official must have the adult neighbor of such a person, or another police official or official of the local government, present.
- (3) When searching a female, a Commission Official must have an adult female present; provided, however, that this does not apply in cases requiring urgency.

(Assistance of Police Officials)

Article 218 A Commission Official may request the assistance of police officials, if this is necessary at the time the Commission Official effects an inspection, search, or seizure.

(Preparation of a Record)

Article 219 Upon carrying out questioning or effecting an examination, retention, inspection, search, or seizure pursuant to the provisions of this Chapter, a Commission Official must prepare a record of this, show it to the person the official questioned or to a person that was present, and sign and seal it, as well as having such persons sign and seal it; provided, however, that if the person that was questioned or the person that was present will not or cannot sign and seal the record, it is sufficient to append a note of this.

(Retention Inventory and Seizure Inventory)

Article 220 Upon effecting a retention or seizure, a Commission Official must prepare an inventory and issue a certified copy of this to the owner or person in possession of the retained article or seized article or to any other person that may act on their behalf.

(Handling of Retained Articles and Seized Articles)

Article 221 A Commission Official may collect a storage certificate and have the owner or person in possession of a retained article or seized article that is inconvenient to transport or store, or any other person that the Commission Official finds to be appropriate, store that article, with the consent of the person in question.

(Return of Retained Articles and Seized Articles)

- Article 222 (1) If it becomes unnecessary to keep a retained article or seized article, the Commission must return it to the person that should receive it.
- (2) If the Commission is unable to return a retained article or seized article as referred to in the preceding paragraph because the address or residence of the person that should receive it is unknown or for any other reason, the Commission must issue public notice of this.
- (3) If no request is filed for the return of the retained article or seized article to which the public notice referred to in the preceding paragraph pertains after six months have elapsed since the day of the public notice, the article vests in the national treasury.

(Reporting to the Commission)

- Article 223 Upon completing an investigation in a criminal case, a Commission Official must report the results of the investigation to the Commission.

(Investigation in a Criminal Case by a Finance Bureau Official)

- Article 224 (1) With the approval of the Commission, the Director-General of a Local Finance Bureau or Director-General of a Local Finance Branch Bureau is to designate persons in charge of investigations in criminal cases from among the officials of the local finance bureau or local finance branch bureau.
- (2) A person designated by the Director-General of a Local Finance Bureau or Director-General of a Local Finance Branch Bureau pursuant to the provisions of the preceding paragraph (hereinafter referred to as the "Official of the Local Finance Bureau, etc." in this Chapter) is deemed to be a Commission Official, and the provisions of Article 210 to the preceding Article inclusive apply. In this case, in Article 211, the term "the Commission" is deemed to be replaced with "the local finance bureau or local finance branch bureau to which the official belongs", and in the preceding two Articles, the term "the Commission" is deemed to be replaced with "the Director-General of a Local Finance Bureau or Director-General of a Local Finance Branch Bureau".
- (3) If the Director-General of a Local Finance Bureau or Director-General of a Local Finance Branch Bureau receives a report from the Official of the Local Finance Bureau, etc. under the provisions of the preceding Article as applied through the replacement of terms in the preceding paragraph, the Director-General must report the details of the report to the Commission.
- (4) The Commission guides and supervises the Director-General of the Local Finance Bureau or Director-General of the Local Finance Branch Bureau in the investigation in a criminal case.
- (5) The Commission may directly guide or supervise the Official of a Local Finance Bureau, etc., if it finds this to be necessary in connection with the



investigation in a criminal case.

(Discharge of Duties Outside the Jurisdictional District)

Article 225 The Official of a Local Finance Bureau, etc. may discharge duties outside of the jurisdictional district of the local finance bureau or local finance branch bureau of which the Official is a part, if it is necessary for the Official to do so in order to conduct the investigation in a criminal case.

(Accusation by the Commission)

Article 226 (1) If the Commission is convinced that a criminal offense has taken place based on the investigation in a criminal case, it must file an accusation and take control of any retained articles or seized articles, together with the retention inventory or seizure inventory.

(2) If a retained article or seized article referred to in the preceding paragraph is in storage as under Article 221, the Commission must use the storage certificate referred to in that Article to take control of it, notifying the custodian referred to in that Article to that effect.

(3) If control of a retained article or seized article is taken pursuant to one of the preceding two paragraphs, that article is deemed to have been seized pursuant to the provisions of the Code of Criminal Procedure (Act No. 131 of 1948).