

Amendments to the Financial Instruments and Exchange Law

This memorandum outlines the recent amendments to the Financial Instruments and Exchange Law (“FIEL”) and the relevant laws¹ pursuant to “the Law for Amendment to the Financial Instruments and Exchange Law, etc.” (Law No. 65 of 2008, the “**Amendment Law**”) that were enacted in the Diet on June 6, 2008, and promulgated on June 13, 2008. The FIEL became effective on September 30, 2007 in the form of an amendment to the previous Securities and Exchange Law and other financial regulations.

This Amendment Law mainly embodies the “Plan for Strengthening the Comprehensiveness of Japan’s Financial and Capital Markets”² (“**FSA Plan**”) announced by the Financial Services Agency (the “FSA”) on December 21, 2007. The FSA Plan took into consideration the reports of the Financial System Council’s subcommittees of the Sectional Committee on Financial System, announced on December 18, 2007³.

In order to strengthen the competitiveness of Japan’s financial and capital markets, the Amendment Law will amend the FIEL and other relevant laws, which include such measures as (i) the development of a framework for markets intended for professionals, (ii) the diversification of investment trust funds (e.g. ETFs), (iii) a revamp of the firewall regulations among banking, securities and insurance businesses, (iv) a review of the administrative monetary penalty system under the FIEL with respect to matters such as the scope of application, the amount of penalty charges and the statute of limitations.

I. Amendments to the Financial Instruments and Exchange Law

1. Development of a Framework for Markets intended for Professional Investors

(1) Background

In other countries, markets with a high degree of freedom, intended for professional investors, are expanding, such as the AIM (Alternative Investment Market) in the United Kingdom and

¹ In addition to the explanations in this newsletter, the Banking Law will be amended to introduce provisions for foreign bank agency services, which shall permit a bank or a Japanese branch of a foreign bank to provide agency or intermediary services for its group foreign bank. Also, the Banking Law, the Insurance Business Law, etc. will be amended to expand the business scope of banks, insurance companies, etc. and their subsidiaries (e.g. Banks shall be able to engage in emission transactions. Banks subsidiaries shall also be able to engage in so-called merchant banking business and Islamic finance.)

² See English translation (<http://www.fsa.go.jp/en/news/2007/20071221.html>)

³ “Towards strengthening the competitiveness of the Japanese Financial and Capital Markets,” the report of the Financial System Council’s 1st Subcommittee of the Sectional Committee on Financial System (the “**First Division Report**”), and the “Review of Business Scope Regulations for Bank Groups and Insurance Company Groups,” the report of the Financial System Council’s 2nd Subcommittee of the Sectional Committee on Financial System. Japanese version of these reports can be found at the URL below:

http://www.fsa.go.jp/singi/singi_kinyu/tosin/20071218-1.html

http://www.fsa.go.jp/singi/singi_kinyu/tosin/20071218-2.html

the market based on Rule 144A of the United States Securities and Exchange Commission (SEC). This trend has intensified the international competition to create attractive markets. The FSA Plan advocates the development of a framework for markets intended for professionals in order to (i) raise the attractiveness of Japan's financial and capital markets as a place for financing and investment by expanding financing opportunities for foreign companies and Japanese start-ups in Japan, and (ii) to promote financial innovation through competition among professional investors.

The Amendment Law will introduce a framework for markets for Professional Investors (*tokutei toushika*)⁴ in the following manner.

(2) Outline

Currently, an issuer of securities that can be acquired or held by a large number of general investors (e.g. securities issued through "public offering" or listed securities) is subject to the statutory disclosure requirements under the FIEL, with the aim of protecting the general investors.

Under the Amendment Law, it will become possible for a financial instruments exchange to establish a market, the participants of which are limited to Professional Investors (see (9) below). On that basis, securities which can be traded only among Professional Investors (i.e. "**Securities for Professional Investors**"; see (3) below) will be exempted from current disclosure requirements (see (4) below). Nevertheless, such securities will be subject to certain information provision requirements pursuant to the rules of the relevant market operator (i.e. the Financial Instruments Exchange or Authorized Association) (see (7) below). Also, the resale of such securities to non-Professional Investors will be restricted (see (5) and (10) below).

(3) Securities for Professional Investors

All of the following securities will be regarded as "Securities for Professional Investors" (Article 4, Paragraph 3 of the FIEL).

- (i) Newly issued securities, the solicitation of an offer for acquisition of which was "Private Placement for Professional Investors" (see (4) below);
- (ii) Already-issued securities, an offer for sale or the solicitation of an offer for purchase of which was "Secondary Distribution for Professional Investors" (see (4) below);
- (iii) Securities that are issued by the issuer of the securities listed in (i) or (ii) above, and that are the same type of securities listed in (i) or (ii) above; and
- (iv) Securities that are listed only on the Financial Instruments Exchange Market for Professional Investors ("**Professional Listed Securities**") and other similar securities prescribed in a Cabinet Order (see (9) below).

⁴ "**Professional Investor** (*tokutei toushika*)" is the terminology newly introduced in the FIEL. "Professional Investor" includes Qualified Institutional Investors, the Japanese government, the Bank of Japan and listed stock corporations (*kabushiki kaisha*) and other companies (Please see details in Attachment). Please note that the term "Professional Investors" is wider than that "Qualified Institutional Investors."

(4) Exemption of Securities for Professional Investors from Current Disclosure Regulations

(a) Offering disclosure requirement

If solicitation of an offer for the acquisition of newly issued securities (“**Solicitation for Acquisition**”) is only made to Professional Investors, and such solicitation satisfies all the following requirements, the solicitation is outside the scope of “offering of securities” in Article 2, Paragraph 3, Item 2 of the FIEL (such solicitation is hereinafter referred to as “**Private Placement for Professional Investors**”), and thus, the filing of the Securities Registration Statement (“SRS”) under Article 4, Paragraph 1 of the FIEL is not required.

- (i) In the case where Solicitation for Acquisition is made to persons other than the Japanese government, the Bank of Japan, or Qualified Institutional Investors (as defined in Article 10 of the Cabinet Office Ordinance on Definitions Provided in Article 2 of the Financial Instruments and Exchange Law), Financial Instruments Dealers shall conduct Solicitation for Acquisition on behalf of its customers or itself; and
- (ii) The securities are not likely to be transferred from the acquirer to people other than Professional Investors or nonresidents as prescribed by a Cabinet Order.

If an offer to sell or the solicitation of an offer to purchase already-issued securities (“**Solicitation of Sales**”) is only made to Professional Investors, and the solicitation satisfies all the following requirements, the solicitation is outside the scope of “secondary distribution of securities” in Article 2, Paragraph 4, Item 1 of the FIEL (such solicitation, hereinafter referred to as “**Secondary Distribution for Professional Investors**”), and thus, the filing of the SRS is not required.

- (i) In the case where Solicitation of Sales is targeted at persons other than the Japanese government, the Bank of Japan, or Qualified Institutional Investors, Financial Instruments Dealers shall conduct the Solicitation of Sales on behalf of its customers or itself; and
- (ii) The securities are not likely to be transferred from the acquirer to people other than Professional Investors or nonresidents as prescribed by a Cabinet Order.

(b) Ongoing disclosure requirements

The current ongoing disclosure requirements for securities (e.g. filing of annual securities reports, semi-annual reports, quarterly reports, or internal control reports) will not apply to Securities for Professional Investors. In particular, the Professional Listed Securities will be excluded from “listed securities” (Article 24, Paragraph 1, Item 1) in respect of the ongoing disclosure requirements.

(5) Prohibition against Solicitations of General Investors

Unless an issuer of such securities has filed an SRS, the solicitation of Securities for Professional Investors is prohibited, other than in the following situations (Article 4, Paragraph 3 of the FIEL):

- (i) Solicitation that has been delegated to Financial Instruments Dealers and is targeted only at Professional Investors (or non-residents prescribed in a Cabinet Order);
- (ii) Solicitation targeted at the government, the Bank of Japan, or Qualified Institutional Investors; and
- (iii) Any other solicitation as may be prescribed in a Cabinet Order.

(6) Informational Solicitations targeted at Professional Investors

A person (i.e. Financial Instruments Dealer, etc.) who conducts a Solicitation for Acquisition of or a Solicitation of Sales of Securities for Professional Investors must inform the counterparty (i.e. Professional Investors) of matters including the fact that an SRS has not been filed in relation to the said solicitation (Article 23-13, Paragraph 3 of the FIEL). Furthermore, Financial Instruments Dealers who sell Securities for Professional Investors must inform the counterparty of such matters even when no solicitation is made toward the counterparty (Article 40-5, Paragraph 1 of the FIEL).

(7) Provision or Public Notice of Information concerning Securities for Professional Investors and Issuers of such Securities

Solicitations for Acquisition or Solicitation of Sales against Professional Investors shall not be made unless the issuer of the Securities for Professional Investors provides information concerning the securities and the issuer to the counterparty (“**Professional Securities Information**”) or makes public such information (Article 27-31 of the FIEL). Such communication can be delegated to a third party or be made through the internet.

The issuer of Securities for Professional Investors shall provide information regarding the issuer (“**Issuer’s Information**”) to the holders of the securities or shall make public such information at least once every business year. (Article 27-32 of the FIEL)

Although details will be determined by a Cabinet Office Ordinance, the contents and format, including the language of communication (e.g. English) and accounting standard (e.g. IFRS), of the Securities Information and Issuer’s Information will be prescribed not by laws and regulations, but by the rules of the relevant financial instruments market operator (i.e. Financial Instruments Exchange or Authorized Association).

(8) Responsibility for Indemnification for false “Professional Information”

In cases where the Professional Securities Information or Issuer’s Information (“**Professional Information**”) contain any misstatement on any material matter, or omit to state any important matter to be stated therein or any important facts necessary to avoid misleading communication, the issuer of the securities is liable to compensate those who have acquired

securities for damages arising from the information being false or omitted (Article 27-33 and 27-34 of the FIEL).

(9) Establishment of Professional Exchange Financial Instruments Market

In cases where a Financial Instruments Exchange (“**FIE**”) establishes a Financial Instruments Exchange Market for Professional Investors (i.e. a market where members of the market are prohibited from buying securities that have been delegated by persons other than Professional Investors), the FIE shall prescribe business regulations detailing matters including restrictions on acceptance of the sales or purchase of securities (Article 117-2 of the FIEL).

In connection with the operation of a Financial Instruments Exchange Market for Professional Investors, an FIE may entrust Self-Regulation Activities (e.g. activities regarding listing or delisting of securities, or investigation of compliance of its members), except for fundamental matters concerning the protection of investors, to a person other than Self-Regulatory Juridical Persons, and a Self-regulatory Juridical Person may entrust such activities to a third person (Article 85 and Article 102-19 of the FIEL). Although the details will be determined by a Cabinet Office Ordinance, this amendment will enable the FIE to entrust the assessment of applicants for listing to a securities company, a law firm, an accounting firm or other third party advisers, in a manner similar to the Nomad (Nominated Adviser) system of the AIM.

In cases where an Authorized Financial Instruments Dealers Association (“**Authorized Association**”), such as the Japan Securities Dealers Association, establishes an over-the-counter securities market in which members are prohibited from purchasing securities on behalf of persons other than Professional Investors, the Authorized Association shall prescribe in its rules matters including restrictions on the acceptance of sales or purchase of securities (Article 67 and Article 67-12 of the FIEL).

(10) Regulation of Transaction for Securities for Professional Investors

Financial Instruments Dealers or Financial Intermediary Dealers are prohibited from the sale and purchase or intermediation in the sale and purchase of Securities for Professional Investors to or for non Professional Investors, except in the case where such intermediation in sales is not based on solicitation targeted at non Professional Investors (Article 40-4 and Article 66-14-2 of the FIEL).

In cases where a Financial Instruments Dealer accepts applications of transactions for Securities for Professional Investors from such Professional Investors (with the exception of the Japanese government, the Bank of Japan, or a Qualified Institutional Investor) who are trading such securities for the first time with the Financial Instruments Dealer, the Financial Instruments Dealer shall inform the Professional Investors of and provide the documents (i) describing the system for Securities for Professional Investors and (ii) containing a statement that where it is inappropriate to trade in Securities for Professional Investors in light of the knowledge, experience and the circumstances of the properties of such Professional Investors, if the Professional Investor nonetheless trades in Securities for Professional Investors, there is a possibility that the protection of said investor shall be compromised (Article 40-5, Paragraph 2 of the FIEL).

(11) Tokyo Stock Exchange and London Stock Exchange to Establish New Growth Market

On October 30, 2007, the Tokyo Stock Exchange Group Inc. (“TSE”) and the London Stock Exchange Group plc (“LSE”) announced their intention to establish a new market for emerging companies in Japan. The market will be operated as a joint venture on an equal basis and will build on both the LSE’s success in creating and developing a market structure designed for smaller companies through the AIM and the TSE’s local expertise and infrastructure.⁵ It is anticipated that the market will be established by the end of 2008 through a joint venture company based in Tokyo. The new market will be based on the AIM regulatory framework and Nomad system, tailored where appropriate to suit the needs of the Japanese and Asian markets⁶.

2. Review of Firewall Regulations among Banking, Securities, and Insurance Businesses

(1) Background

As Japanese banking and securities regulations were modeled on the US Glass-Steagall Act of 1933, which stringently restricted banks from engaging in the securities business, Japanese banks are prohibited from engaging in the securities business in principle pursuant to Article 65 of the Securities and Exchange Law (currently, this article is stipulated as Article 33 of the FIEL).

In 1993, however, banks and securities firms became able to enter into other businesses through their subsidiaries. Instead of this development leading to the relaxation of regulation, further firewall regulations between banks and securities firms were implemented to prevent adverse effects due to conflict of interest and abuse of the dominant bargaining positions of banks.

Thereafter, in the US, the Gramm-Leach-Bliley Act, which relaxed firewall regulations between banks and securities firms, was enacted in 1999. By contrast, in Japan, firewall regulations between banks and securities firms have not been relaxed drastically

Under these circumstances, there has been criticism that current Japanese firewall regulations are excessive in light of their aim to prevent conflict of interest and abuse of the dominant bargaining positions of banks.

⁵ Tokyo Stock Exchange and London Stock Exchange to establish a new growth market (<http://www.londonstockexchange.com/NR/exeres/73DF19C4-44CA-4B26-B76E-4C52D213C23B.htm>)

⁶ With regard to the detail of the new market, please see “Framework for New Growth Market” (<http://www.tse.or.jp/english/rules/newmarket/index.html>) announced by the TSE on July 29, 2008.

Currently, any director, accounting advisor (*kaikei sanyo*), auditor or executive officer (*shikkoyakuin*) of a securities firm⁷ is prohibited from concurrently assuming powers as the director, accounting advisor, auditor, executive officer or employee of its parent bank and subsidiary bank. Furthermore, any managing director of a securities firm is prohibited from concurrent involvement in the daily operation of banks (Article 31-4 of the FIEL).

Furthermore, a securities firm is prohibited from sharing non-public information regarding its clients or clients' transactions with its parent, subsidiaries, or affiliates without the written consent of the client whose affiliated entities have places of business in Japan (Article 44-3, Paragraph 1, Item 4 of the FIEL, Article 153, Item 7 of the Cabinet Office Ordinance concerning the Financial Instruments Business, etc.). This restriction consequently prohibits the employees of a securities firm from concurrently holding posts in the parent, subsidiaries or affiliates (including banks and insurance firms) having places of business in Japan without the consent of the FSA, even if such posts are not those of directors, accounting partners, auditor or executive officers.

The specific measures to be taken under the Amendment Law are as follows:

(2) Abolishment of Restriction on Concurrent Offices of “Directors” of Securities Firm

Under the Amendment Law, a director or an executive officer of a securities firm shall be able to assume the office of a director, an accounting advisor, an auditor or executive officer of a bank or an insurance company that is a parent, a subsidiary or an affiliate of the securities dealer, without obtaining approval from the Prime Minister. Instead, such securities firm shall notify the Prime Minister of such assumption of offices and/or of resignations from such posts without delay. (Article 31-4, Paragraph 2 of the FIEL)

(3) Development of Framework for Protection of Interests of Customers

A securities firm will be required to take appropriate measures including the development of a framework for the appropriate management of information regarding its financial instruments business and the appropriate monitoring of the compliance of the financial instruments business in order to secure the interests of customers when the securities firm or its parent or subsidiary Financial Instruments Dealers or bank conducts Financial Instruments Business (Article 36, Paragraph 2 of the FIEL). It will be stipulated in a Cabinet Office Ordinance that the development of such measures and the establishment of a policy concerning the aggregation of information and the appropriate judgment in cases where a transaction that could be potentially harmful to the interests of customers without due cause is conducted.

Furthermore, banks and insurance companies will be required to take similar measures (Article 13-3-2 of the Banking Law, Article 100-2-2 of the Insurance Business Law, etc.).

⁷ There is no word for “securities firm” in the FIEL; rather, a “securities firm” falls within the definition of a “Financial Instruments Dealer conducting Securities Related Business.” In this memorandum, we refer to these entities as “securities firms”.

According to the “First Division Report” (see footnote 3), these financial institutions will be required to develop an arrangement to manage conflicts of interests. In particular, the FSA will require financial institutions to (i) identify conflicts of interest, (ii) manage such conflicts of interest (i.e. by constituting a Chinese wall), (iii) record such conflicts of interest, and (iv) establish a policy for managing conflicts of interest and making public a summary of the policy under administrative guidelines. In drafting the rules for conflicts of interest, it is said that the FSA will refer to European (e.g. UK Financial Services Authority) and US rules and that the rule will be principle-based and will not contain detailed regulation. In addition, it will be stipulated in a Cabinet Office Ordinance that a securities firm is prohibited from executing or soliciting the execution of a financial instruments contract by using the dominant bargaining position of its parent or subsidiary bank without due cause.

According to the First Division Report, regulations on the sharing of customer information among financial institutions within the same financial group will also be relaxed.

(i) Personal Customer Information

With regard to the sharing of personal customer information between financial institutions, opt-in consent (i.e. explicit consent) of the customer will be required. This is a stringent regulation compared with those under the Personal Information Protection Law⁸.

(ii) Corporate Customer Information

With regard to the sharing of corporate customer information between financial institutions, the opt-out consent of the customer will be required, wherein the financial institution must suspend the provision of such customer’s information upon the customer’s request and the financial institution notifies the customer in advance of the matters for such consent.⁹

(iii) Integrated Internal Management Purpose

For the purpose of integrated internal management (i.e. the integration of compliance divisions, accounting divisions, tax divisions, etc. of the financial institutions in the same financial group), no consent of customers will be required, on condition that an arrangement for the management of conflicts of interest is established and such shared customer information is not used for purposes other than integrated internal management.

⁸ Under the Personal Information Protection Law (Law No. 57 of 2003, as amended), personal data may be shared between entities on the condition that such person is notified in advance of or has ready access to the conditions of such sharing, the items of personal data shared, the scope of the sharing entities, the purpose for which the personal data is used by them, and the name of the operator responsible for the management of the personal data (Article 23, Paragraph 4, Item 3 of the Personal Information Protection Law).

⁹ For the confidentiality obligations of banks, please see the “Report of Study Group for Information Sharing of Corporate Customers between Banks and Securities Dealers,” published by the Japanese Bankers Association (<http://www.zenginkyo.or.jp/en/news/2008/04/15000000.html>).

3. Review of the Administrative Monetary Penalty System

(1) Background

In order to sustain Japan's economic growth and promote changes in investment trends "from savings to investment", it is essential to boost the confidence of markets by further ensuring the fairness and transparency of the markets. In order to improve fairness and transparency and to ensure confidence in Japan's markets, more effective deterrence against market misconduct is needed. Based on this line of thinking, the administrative monetary penalty (*kacho-kin*) system under the FIEL was reviewed by the Amendment Law, with respect to matters including the scope of application, the amount of penalty charges and the statute of limitations.

(2) Raising the amount of administrative monetary penalties

If administrative monetary penalties are lower than profits earned through crimes or misconducts, they do not act as a deterrent for such crimes or misconducts. From this point of view, the Amendment Law raises the administrative monetary penalties as follows:

	Current Provision	Amendment Law
False statements in offering disclosure documents	1% of the total offering or sales amount and 2% in the case of shares (Article 172 of the FIEL)	2.25% of the total offering or sales amount and 4.5% in the case of shares (Article 172-2 of the FIEL)
False statements in ongoing disclosure documents	3/100,000 of the total market value or 3 million yen, whichever is higher, and in the case of quarterly reports, semiannual reports, extraordinary reports, at half of such amount (Article 172-2 of the FIEL)	6/100,000 of the total market value or 6 million yen, whichever is higher, and in the case of quarterly reports, semiannual reports, extraordinary reports, at half of such amount (Article 172-4 of the FIEL) ¹⁰
Dissemination of unfounded rumors, trading by fraudulent means (Article 173 of the FIEL)	Profits and losses realized by sales and purchases during the one-month period after the violation	Based on the highest or lowest price during the one-month period after the violation ¹¹

¹⁰ Under the Amendment Law, failure to submit an extraordinary report for a material matter as prescribed by a Cabinet Office Ordinance will be subject to the same administrative monetary penalties as the false statements in quarterly reports, semiannual reports, and extraordinary reports.

¹¹ In the case that (i) dissemination of unfounded rumors, (ii) market manipulation, (iii) insider trading or (iv) illegal market stabilization violation is made by a Financial Instruments Dealer acting for an account of its customer, an amount equivalent to fees and commissions from the customer will be charged in administrative monetary penalties.

	Current Provision	Amendment Law
Market manipulation	Profits and losses realized by sales and purchases during the one-month period after the violation (Article 174 of the FIEL)	Based on the highest or lowest price during the one-month period after the violation (Article 174-2 of the FIEL)
Insider trading (Article 175 of the FIEL)	Based on the closing price on the day following the day of publication of insider information	Based on the highest or lowest price during the two-week period after the publication of insider information

(3) Review of violations subject to administrative monetary penalties

The following violations will be newly subject to administrative monetary penalties after amendment by the Amendment Law. **It should be noted that even a slight delay in the submission of reports will theoretically be subject to these penalties.**

Failure to submit offering disclosure documents (Article 172 of the FIEL)	2.25% of the total offering or sales amount (4.5% in the case of shares)
Failure to submit ongoing disclosure documents (Article 172-3 of the FIEL)	Amount equivalent to the audit fee
False statements in or failure to submit tender offer disclosure documents (Article 172-5 and Article 172-6 of the FIEL)	25/100 of the total purchase amount
False statements in or failure to submit large shareholding disclosure documents (Article 172-7 and Article 172-8 of the FIEL)	1/100,000 of the total market value
Failure to publicize or publication of false Professional Securities Information (Article 172-9 and Article 172-10 of the FIEL)	2.25% of the total offering or sales amount (4.5% in the case of shares)
Publication of false of Issuer's Information (Article 172-11 of the FIEL)	6/100,000 of the total market value or 6 million yen, whichever is higher
Market manipulation involving wash sales (Article 174 of the FIEL)	Based on the highest price during the one-month period after the violation
Illegal market stabilization (Article 174-3 of the FIEL)	Difference between the average price during the stabilization and the average price during the one-month period after the violation

(4) Extension of Statute of Limitation

The statute of limitations for administrative monetary penalties will be extended from the current three years to five years, after the amendment by the Amendment Law. (Article 178 of the FIEL)

(5) Reducing the Amount of Administrative Monetary Penalties

The amount of administrative monetary penalties will be reduced by half in cases where any of the following acts of violation has been reported prior to an investigation by the authorities, with a view to promote the establishment of compliance systems and prevent recurrence (Article 185-7, Paragraph 12):

- Insider trading in sales and purchases of treasury stock
- False statements in offering disclosure documents and ongoing disclosure documents
- Failure to submit a large shareholding report

(6) Increasing the Amount of Administrative Monetary Penalties

The amount of administrative monetary penalties will be increased to 150% in cases where a person who has been subject to an administrative monetary penalty in the past five years has committed another securities violation. (Article 185-7, Paragraph 13)

4. Diversification into Exchange-Traded Funds (ETFs)**(1) Background**

In overseas exchanges, the diversification of financial instruments, in the form of as exchange-traded funds (ETFs) and derivatives, has been advancing rapidly. ETFs are investment tools that enable investors to diversify their investment easily and effectively at lower costs compared with investment in individual stocks. In addition, when compared with unlisted investment trusts, ETFs enable more flexible trading decisions as they can be traded in a timely manner at market price. From the standpoint of enhancing benefits to the investor, the FSA Plan asserted that there must be further promotion of the diversification of ETFs.

(2) Introduction of Investment Trusts that are Transferable to Commodities in Kind

Currently, investment trust funds with the instruction by the trustor (*itakusya sashizugata toushi shintaku*) are limited to money trusts other than certain securities investment trusts, under Article 8 of the Law concerning Investment Trusts and Investment Corporations (Law No. 198 of 1951, as amended, “**Investment Trust Law**”).

After amendment by the Amendment Law, investment trust funds with the instruction by the trustor, other than money trusts, will be expanded to include investment trusts the purpose of which is mainly investing in and managing assets easily convertible into money. Although the details will be designated by a Cabinet Order and/or a Cabinet Office Ordinance,

according to the FSA Plan, investment trusts that directly invest in or exchange beneficiary certificates for commodities or commodity futures will be made possible.

With this aim in mind, regulations under the Law concerning Regulations of Business for Commodity Investments will be relaxed. In cases where an investment manager manages investments in commodities under an investment trust scheme or investment corporation under the Investment Trust Law, the investment manager shall be able to execute commodity investment agreements or sales of beneficial interests in commodity investment trusts, without entrusting the investment decision to commodity investment advisors. The regulations for commodity investment advisory business will not be applicable in that case (Article 33 and Article 40 of Law concerning Regulations of Business for Commodity Investments).

5. Review of the Scope of Businesses of Financial Instruments Exchanges

Financial Instruments Exchange (e.g. Tokyo Stock Exchange) shall be able to open markets trading in emission credits as their side business. (Article 87-2 of the FIEL)

6. Restrictions on Disclosure Documents Following a Correction Order

Statements on the large shareholding reports of certain issuers,¹² submitted on January 25, 2008 by the Teramento Corporation (“the Corporation”) to the Kanto Local Finance Bureau (hereinafter “the Bureau”), were deemed as “false statements with respect to material matters” pursuant to the provision of Paragraph 1 of Article 10, as applied *mutatis mutandis* pursuant to Paragraph 1 of Article 27-29 of the FIEL. Thereafter, on January 27, 2008, the Bureau issued an administrative order against the Corporation, requiring the Corporation to submit a correction of the above reports based on the FIEL.¹³ Nevertheless, as the FIEL does not authorize the government to remove these statements subject to a correction order, and since the Corporation has not complied with the order, these statements are still in the public domain (i.e. on the Electronic Disclosure for Investors’ NETwork (EDINET)).

The Amendment Law authorizes the government to suspend the disclosure of all or part of the disclosure materials, including offering disclosure materials such as the securities registration report, ongoing disclosure materials such as the annual report, tender offer documents and large shareholding reports, etc. (Article 25, Article 27-14, Article 27-28 and Article 27-30-7 of the FIEL)

II. Effective date

These amendments shall come into effect on a date to be specified by a Cabinet Order, within six months of the day of promulgation, i.e. by December 12, 2008. The amendments regarding the revamp of firewall regulations and establishment of systems for managing conflicts of interest (see I. 2 (2) and (3) above) shall come into effect on a date to be specified by a Cabinet Order, within one year from the day of promulgation, i.e. by June 12, 2009.

¹² These issuers are Astellas Pharma Inc, SONY CORPORATION, Mitsubishi Heavy Industries, Ltd., TOYOTA MOTOR CORPORATION, Fuji Television Network, Incorporated, and NIPPON TELEGRAPH AND TELEPHONE CORPORATION.

¹³ <http://info.edinet-fsa.go.jp/>

(Attachment)

Professional Investors

Investor Category	Subcategory of Investor Category	Entity Type
Professional Investors	(1) Professional Investors that cannot change their status to General Investors	<ul style="list-style-type: none"> - Qualified Institutional Investors - The Japanese government - The Bank of Japan
	(2) Professional Investors that can change their status to General Investors	<ul style="list-style-type: none"> - Listed stock corporations (<i>kabushiki kaisha</i>) - Stock corporations (<i>kabushiki kaisha</i>) whose stated capital is JPY500 million or more - Local governments - Entities incorporated by special acts of incorporation under a special statute - Investors protection funds - Deposit Insurance Corporation of Japan - The Agricultural and Fishery Cooperative Savings Insurance Corporation - Policyholders protection corporations (<i>Hoken Keiyakusha Hogo Kikou</i>) - Special Purpose Companies (<i>Tokutei Mokuteki Kaisha</i> (TMK)) under Article 2, Paragraph 3 of the Act on Securitization of Assets - Financial Instruments Firms, or corporations that have notified to the Prime Minister on their exceptional business under Article 63, Paragraph 3 of the FIEL - Foreign corporations
General Investors	(3) General Investors that can change their status to Professional Investors	<ul style="list-style-type: none"> - Corporations other than those specified in (1) and (2) above. - Individual (i) with trading experience of one year or more, and (ii) whose net asset and invested assets are reasonably believed to be each worth JPY 300 million or more.

Note: Certain Professional Investors will be deemed to be Non-Professional Investors pursuant to Article 34-2 of the FIEL, whereas certain Non-Professional Investors will be deemed to be Professional Investors pursuant to Article 34-3 and Article 34-4 of the FIEL.

Contact Information:

Should you wish to receive further information or advice regarding the above-mentioned matters, please contact Kunihiro Morishita, Masayuki Watanabe or Shinya Takizawa.

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