

# Financial Instruments and Exchange Act

(Act No. 25 of April 13, 1948)

Chapter I General Provisions (Article 1 and Article 2)

Chapter II Disclosure of Corporate Affairs and Other Related Matters (Article 2-2 - Article 27)

Chapter II-2 Disclosure Required for Tender Offer

Section 1 Tender Offer for Share Certificates, etc. by Person Other Than Issuer (Article 27-2 - Article 27-22)

Section 2 Tender Offer for Share Certificates, etc. by Issuer (Article 27-22-2 - Article 27-22-4)

Chapter II-3 Disclosure of Status of Large Volume Holding of Share Certificates, etc. (Article 27-23 - Article 27-30)

Chapter II-4 Special Provisions, etc. for Procedures by Use of Electronic Data Processing System for Disclosure (Article 27-30-2 - Article 27-30-11)

Chapter III Financial Instruments Business Operators, etc.

Section 1 General Provisions

Subsection 1 General Rules (Article 28)

Subsection 2 Financial Instruments Business Operators (Article 29 - Article 31-5)

Subsection 3 Major Shareholders (Article 32 - Article 32-4)

Subsection 4 Registered Financial Institutions (Article 33 - Article 33-8)

Subsection 5 Professional Investors (Article 34 - Article 34-5)

Section 2 Businesses

Subsection 1 General Rules (Article 35 - Article 40-3)

Subsection 2 Special Provisions Concerning Investment Advisory Business (Article 41 - Article 41-5)

Subsection 3 Special Provisions Concerning Investment Management Business (Article 42 - Article 42-8)

Subsection 4 Special Provisions Concerning Securities, etc. Management Business (Article 43 - Article 43-4)

Subsection 5 Preventive Measures against Adverse Effects (Article 44 - Article 44-4)

Subsection 6 Miscellaneous Provisions (Article 45)

Section 3 Accounting

Subsection 1 Financial Instruments Business Operator Engaged in Type I Financial Instruments Business (Article 46 - Article 46-6)

Subsection 2 Financial Instruments Business Operators not Engaged in Type I Financial Instruments Business (Article 47 - Article 47-3)

- Subsection 3 Registered Financial Institutions (Article 48 - Article 48-3)
    - Subsection 4 Special Provisions for Foreign Juridical Persons, etc. (Article 49 - Article 49-5)
  - Section 4 Supervision (Article 50 - Article 57)
  - Section 5 Special Provisions for Foreign Business Operators
    - Subsection 1 Foreign Securities Brokers (Article 58 - Article 58-2)
    - Subsection 2 Permission of Part of Underwriting Business (Article 59 - Article 59-6)
    - Subsection 3 Permission of Transaction-at-Exchange Operation (Article 60 - Article 60-13)
    - Subsection 4 Person Who Conducts Investment Advisory Business or Investment Management Business in Foreign State (Article 61)
    - Subsection 5 Establishment of an Institution for Collecting Information (Article 62)
  - Section 6 Special Provisions Concerning Specially Permitted Businesses for Qualified Institutional Investor, etc. (Article 63 - Article 63-4)
  - Section 7 Sales Representatives (Article 64 - Article 64-9)
  - Section 8 Miscellaneous Provisions (Article 65 - Article 65-6)
- Chapter III-2 Financial Instruments Intermediary Service Providers
  - Section 1 General Provisions (Article 66 - Article 66-6)
  - Section 2 Business (Article 66-7 - Article 66-15)
  - Section 3 Accounting (Article 66-16 - Article 66-18)
  - Section 4 Supervision (Article 66-19 - Article 66-23)
  - Section 5 Miscellaneous Provisions (Article 66-21 - Article 66-26)
- Chapter IV Financial Instruments Firms Association
  - Section 1 Authorized Financial Instruments Firms Association
    - Subsection 1 Establishment and Business (Article 67 - Article 67-20)
    - Subsection 2 Association Members (Article 68 and Article 68-2)
    - Subsection 3 Management (Article 69 - Article 72)
    - Subsection 4 Supervision (Article 73 - Article 76)
    - Subsection 5 Miscellaneous Provisions (Article 77 - Article 77-7)
  - Section 2 Public Interest Corporation-Type Financial Instruments Firms Associations
    - Subsection 1 Recognition and Activities (Article 78 - Article 79)
    - Subsection 2 Supervision (Article 79-2 - Article 79-6)
  - Section 3 Certified Investor Protection Organization (Article 79-7 - Article 79-19)
- Chapter IV-2 Investor Protection Fund
  - Section 1 General Provisions (Article 79-20 - Article 79-25)
  - Section 2 Members (Article 79-26 - Article 79-28)
  - Section 3 Establishment (Article 79-29 - Article 79-33)

Section 4 Management (Article 79-34 - Article 79-48)	
Section 5 Business (Article 79-49 - Article 79-62)	
Section 6 Burden Charge (Article 79-63 - Article 79-67)	
Section 7 Finance and Accounting (Article 68 - Article 79-74)	
Section 8 Supervision (Article 79-75 - Article 79-77)	
Section 9 Dissolution (Article 79-78 - Article 79-80)	
Chapter V Financial Instruments Exchange	
Section 1 General Provisions (Article 80 - Article 89-9)	
Section 2 Financial Instruments Membership Corporation and Self-Regulation Organization; and Stock Company Which Establishes Financial Instruments Exchange Market	
Subsection 1 Financial Instruments Membership Corporation	
Division 1 Establishment (Article 88 - Article 88-22)	
Division 2 Registration (Article 89 - Article 90)	
Division 3 Members (Article 91 - Article 96)	
Division 4 Administration (Article 97 - Article 99)	
Division 5 Dissolution (Article 100 - Article 100-25)	
Division 6 Entity Conversion (Article 101 - Article 102)	
Subsection 1-2 Self-Regulation Organization	
Division 1 Establishment (Article 102-2 - Article 102-7)	
Division 2 Registration (Article 102-8 - Article 102-11)	
Division 3 Membership (Article 102-12 - Article 102-13)	
Division 4 Self-Regulation Related Services (Article 102-14 - Article 102-20)	
Division 5 Administration (Article 102-21 - Article 102-34)	
Division 6 Dissolution (Article 102-35 - Article 102-39)	
Subsection 2 Stock Company which Establishes Financial Instruments Exchange Markets	
Division 1 General Provisions (Article 103 - Article 105-3)	
Division 2 Self-Regulating Committee (Article 105-4 - Article 106-2)	
Division 3 Major Shareholders (Article 106-3 - Article 106-9)	
Division 4 Financial Instruments Exchange Holding Company (Article 106-10 - Article 109)	
Section 3 Sales and Purchase of Securities, etc. in Financial Instruments Exchange Market (Article 110 - Article 133)	
Section 4 Dissolution, etc. of Financial Instruments Exchange	
Subsection 1 Dissolution (Article 134 and Article 135)	
Subsection 2 Merger	
Division 1 General Rules (Article 136)	
Division 2 Merger between Membership-Type Financial Instruments Exchange and Membership-Type Financial Instruments Exchange	

(Article 137, Article 138)

Division 3 Merger between Membership-Type Financial Instruments Exchange and Stock Company-Type Financial Instruments Exchange (Article 139, Article 139-2)

Division 4 Merger Procedures of Membership-Type Financial Instruments Exchange (Article 139-3 - Article 139-6)

Division 5 Merger Procedures of Stock Company-Type Financial Instruments Exchange (Article 139-7 - Article 139-21)

Division 6 Effectuation, etc. of Merger (Article 140 - Article 147)

Section 5 Supervision (Article 148 - Article 153-4)

Section 6 Miscellaneous Provisions (Article 154 and Article 154-2)

Chapter V-2 Foreign Financial Instruments Exchange

Section 1 General Provisions (Article 155 - Article 155-5)

Section 2 Supervision (Article 155-6 - Article 155-10)

Section 3 Miscellaneous Provision (Article 156)

Chapter V-3 Financial Instruments Clearing Organization, etc.

Section 1 Financial Instruments Clearing Organization (Article 156-2 - Article 156-20)

Section 2 Miscellaneous Provisions (Article 156-21, Article 156-22)

Chapter V-4 Securities Finance Company (Article 156-23 - Article 156-37)

Chapter VI Regulations on Transactions, etc. of Securities (Article 157 - Article 171)

Chapter VI-2 Administrative Monetary Penalty

Section 1 Payment Order (Article 172 - Article 177)

Section 2 Trial Procedures (Article 178 - Article 185-17)

Section 3 Lawsuit (Article 185-18)

Section 4 Miscellaneous Provisions (Article 185-19 - Article 185-21)

Chapter VII Miscellaneous Provisions (Article 186 - Article 196-2)

Chapter VIII Penal Provisions (Article 197 - Article 209)

Chapter IX Investigation into a Criminal Case, etc. (Article 210 - Article 227)

Supplementary Provisions

## **Chapter I General Provisions**

(Purpose)

Article 1 The purpose of this Act is, inter alia, by developing systems for disclosure of corporate affairs and other related matters, providing for necessary matters relating to persons who engage in Financial Instruments Business and securing appropriate operation of Financial Instruments Exchanges, to ensure fairness in, inter alia, issuance of the Securities and transactions of Financial Instruments, etc. and to facilitate the smooth

distribution of Securities, as well as to aim at fair price formation of Financial Instruments, etc. through the full utilization of functions of the capital market, thereby contributing to the sound development of the national economy and 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 juridical person under a special Act (excluding those listed in the following item and item (xi));
- (iv) specified bonds prescribed in the Act on the Securitization of Assets (Act No. 105 of 1998);
- (v) bonds (including those issued by a mutual company; the same shall apply hereinafter);
- (vi) investment securities issued by a juridical person established under a special Act (excluding those listed in the following item, item (viii) and item (xi));
- (vii) preferred equity investment certificates prescribed in the Act on Preferred Equity Investment by Cooperative Structured Financial Institutions (Act No. 44 of 1993; (hereinafter referred to as the "Act on Preferred Equity Investment");
- (viii) preferred equity investment certificates and securities indicating preemptive rights for new preferred equity investment prescribed in the Act on the Securitization of Assets;
- (ix) share certificates and share option certificates;
- (x) beneficiary securities of investment trusts or foreign investment trusts prescribed in the Act on Investment Trusts and Investment Corporations (Act No. 198 of 1951);
- (xi) investment securities or investment corporation debentures, or foreign investment securities prescribed in the Act on Investment Trusts and Investment Corporations;
- (xii) beneficiary securities of loan trusts;
- (xiii) beneficiary securities of specific purpose trusts prescribed in the Act on the Securitization of Assets;
- (xiv) beneficiary securities of beneficiary securities issuing trusts prescribed in the Trust Act (Act No. 108 of 2006);
- (xv) promissory notes which have been issued by a juridical person in order to raise funds necessary to operate its business and are specified by a Cabinet Office Ordinance;
- (xvi) mortgage securities prescribed in the Mortgage Securities Act (Act No. 15

- of 1931);
- (xvii) securities or certificates which have been issued by a foreign state or foreign person and have the nature of securities or certificates listed in items (i) to (ix) or item (xvii) up to the preceding item (excluding those specified in the following item);
  - (xviii) securities or certificates which have been issued by a foreign person, indicate a beneficial interest of a trust in which loan claims held by persons engaging in banking business or persons otherwise conducting money loan in the course of trade are entrusted, or indicate any other similar rights, and are specified by a Cabinet Office Ordinance;
  - (xix) securities or certificates which indicate rights pertaining to transactions specified in Article 2 (21)(iii) conducted in a Financial Instruments Market, in accordance with such requirements and by using such methods as prescribed by the operator of the Financial Instruments Market, rights pertaining to transactions which are conducted in a Foreign Financial Instruments Market (meaning the Foreign Financial Instruments Market defined in Article 2 (8)(iii)(b); hereinafter the same shall apply in this item) and are similar to the ones specified in Article 2 (21)(iii), or rights pertaining to transactions specified in Article 2 (22)(iii) or (iv) conducted in neither a Financial Instruments Market nor a Foreign Financial Instruments Market (those rights are hereinafter referred to as "Options");
  - (xx) securities or certificates which have been issued by a person to whom securities or certificates listed in any of the preceding items are deposited and in a state other than the state in which the deposited securities or certificates were issued and which indicate the rights pertaining to the deposited securities or certificates; and
  - (xxi) in addition to what is listed in the preceding items, securities or certificates specified by a Cabinet Order as those for which it is found, when taking into consideration the liquidity thereof and other factors, necessary to secure the public interest or protection of investors.
- (2) Rights to be indicated on Securities listed in items (i) to (xv) of the preceding paragraph, on Securities listed in item (xvii) of said paragraph (excluding those which have the nature of Securities listed in item (xvi) of said paragraph) and on Securities listed in item (xviii) of said paragraph, and rights to be indicated on Securities listed in item (xvi) of said paragraph, on Securities listed in (xvii) of said paragraph (limited to those which have the nature of Securities listed in item (xvi) of said paragraph) and on Securities listed in items (xix) to (xxi) of said paragraph which are specified by a Cabinet Office Ordinance (hereinafter collectively referred to as "Rights to Be Indicated on Securities" in this and following paragraphs) shall, even when Securities indicating these rights have not been issued, be deemed as Securities indicating these rights, and the rights

listed in the following items shall, even when they are not indicated on securities or certificates, be deemed as Securities indicating these rights, and the provisions of this Act shall apply to all these rights:

- (i) beneficial interests of a trust (excluding those to be indicated on beneficiary securities of investment trusts specified in item (x) of the preceding paragraph and those to be indicated on Securities listed in any of items (xii) to (xiv) of said paragraph);
- (ii) rights which are claimable against a foreign person and which have the nature of the rights specified in the preceding item (excluding those to be indicated on beneficiary securities of foreign investment trusts specified in item (x) of the preceding paragraph and those to be indicated on Securities listed in item (xvii) or (xviii) of the same paragraph);
- (iii) membership rights of a general partnership company or limited partnership company (limited to those specified by a Cabinet Order) or membership rights of a limited liability company;
- (iv) membership rights of a foreign juridical person which has the nature of rights specified in the preceding item;
- (v) among rights based on a partnership contract provided in Article 667 (1) of the Civil Code (Act No. 89 of 1896), an anonymous partnership agreement in Article 535 of the Commercial Code (Act No. 48 of 1899), an investment limited partnership agreement provided in Article 3 (1) of the Investment Limited Partnership Act (Act No. 90 of 1998) or a limited liability partnership agreement provided in Article 3 (1) of the Limited Liability Partnership Act (Act No. 40 of 2005), membership rights of an incorporated association or other rights (excluding those based on laws and regulations of a foreign state), rights for which the holders thereof (hereinafter referred to as an "Equity Investor" in this item) can receive dividend of profits arising from the business conducted by using money (including those specified by a Cabinet Order as being similar to money) invested or contributed by the Equity Investors (such business is hereinafter referred to as the "Invested Business" in this item) or distribution of the assets of the Invested Business and which does not fall under any category listed in the following items (excluding Rights to Be Indicated on Securities listed in the items of the preceding paragraph and rights which are regarded as Securities under this paragraph (excluding this item)):
  - (a) rights of an Equity Investor in cases where all of the Equity Investors participate in the Invested Business as specified by a Cabinet Order;
  - (b) rights of an Equity Investor where it is provided that Equity Investors will not receive dividend of profits or distribution of the assets of the Invested Business in an amount exceeding the amount invested or contributed by them (excluding rights listed in (a));

- (c) rights based on an insurance contract in which a person who engages in insurance business as defined in Article 2 (1) of the Insurance Business Act (Act No. 105 of 1995) is the insurer, a mutual aid contract concluded with a cooperative specified in Article 5 of the Agricultural Cooperatives Act (Act No. 132 of 1947) which engages in the service specified in Article 10 (1)(x) of said Act, a mutual aid contract concluded with a cooperative provided in Article 3 of the Small and Medium Sized Enterprise, etc., Cooperatives Act (Act No. 181 of 1949) which engages in the mutual aid service specified in Article 9-2 (7) of said Act or a real estate specified joint enterprise contract defined in Article 2 (3) of the Real Estate Specified Joint Enterprise Act (Act No. 77 of 1994) (excluding rights listed in (a) and (b)); or
  - (d) in addition to what are listed in (a) to (c), rights specified by a Cabinet Order as those for which it is found not to hinder the public interest or protection of Equity Investors even if they are not regarded as Securities.
  - (vi) rights based on laws and regulations of a foreign state which are similar to those specified in the preceding item; or
  - (vii) in addition to what are listed in the preceding items, rights specified by a Cabinet Order as those for which it is found, when taking into consideration the fact that they have an economic nature similar to Securities provided in the preceding paragraph and rights listed in the preceding items and other circumstances, necessary and appropriate to secure the public interest or protection of investors by deeming them as Securities.
- (3) The term "Public Offering of Securities" as used in this Act means, among solicitations of an application to acquire newly issued Securities (including those specified by a Cabinet Office Ordinance as being similar to such solicitation, and hereinafter referred to as "Solicitation for Acquisition" in this paragraph), Solicitation for Acquisition specified in item (i) or (ii) below in the case of those conducted with regard to Securities listed in paragraph (1) or Rights to Be Indicated on Securities which are regarded as Securities under the preceding paragraph (such Securities or rights are referred to as "Paragraph (1) Securities" in item (i) of the following paragraph, paragraphs (4) and (5) of the following Article and Article 23-13 (3)), and Solicitation for Acquisition specified in item (iii) below in the case of those conducted with regard to rights which are regarded as Securities under the items of the preceding paragraph (such rights are referred to as "Paragraph (2) Securities" in item (ii) of the following paragraph, paragraph(4) and (5) of the following Article and Article 23-13 (3)), and the term "Private Placement of Securities" means a Solicitation for Acquisition which does not come within the purview of Public Offering of Securities:
- (i) Solicitation for Acquisition made to a large number of persons (other than Qualified Institutional Investors (meaning persons specified by a Cabinet



- Office Ordinance as those having expert knowledge of and experience with investment in Securities; the same shall apply hereinafter), if Qualified Institutional Investors are included in the persons to which the Solicitation for Acquisition is made and if the solicited Securities are, as specified by a Cabinet Order, not likely to be transferred from the Qualified Institutional Investor who acquired them to any other person other than Qualified Institutional Investors) as specified by a Cabinet Order (excluding those which are made only to Qualified Institutional Investors); and
- (ii) in addition to the Solicitation for Acquisition specified in the preceding item, those which do not fall under any of the following items: and
- (a) Solicitation for Acquisition which is made only to Qualified Institutional Investors, if the solicited Securities are, as specified by a Cabinet Order, not likely to be transferred from the person who acquired them to any other person other than Qualified Institutional Investors; and
- (b) Solicitation for Acquisition which does not fall under the categories specified in the preceding item or (a) of this item (excluding those meeting the requirements specified by a Cabinet Order), if the offered Securities are, as specified by a Cabinet Order, not likely to be transferred from the person who acquired them to a large number of persons.
- (iii) Solicitation for Acquisition which, as specified by a Cabinet Order, will render the Securities pertaining thereto to be held by a considerably large number of persons who respond to the solicitation.
- (4) The term "Secondary Distribution of Securities" as used in this Act means, among solicitations of an application to sell or purchase already-issued Securities (referred to as "Solicitation for Selling, etc." in item (ii)), those falling under the categories specified for each kind of Securities in the following items (excluding those made relating to sales and purchase of Securities in a Financial Instruments Exchange Market and a transaction equivalent thereto and other transactions of Securities specified by a Cabinet Order):
- (i) Paragraph (1) Securities: those to be made to a large number of persons on the same conditions specified by a Cabinet Order; and
- (ii) Paragraph (2) Securities: those which, as specified by a Cabinet Order, will render the Securities pertaining thereto to be held by a considerably large number of persons who respond to the solicitation.
- (5) The term "Issuer" as used in this Act means a person who issues, or intends to issue, Securities (or a person specified by a Cabinet Office Ordinance for Securities specified by the Cabinet Office Ordinance), and rights which are not rights to be indicated on Securities or certificates but are regarded as Securities under paragraph (2) are deemed to be Securities issued by such person as specified for each kind of rights by a Cabinet Office Ordinance at

such time as specified by a Cabinet Office Ordinance.

- (6) The term "Underwriter" as used in this Act (excluding Chapter V) means a person who, at the time of Public Offering, Secondary Distribution and Private Placement of Securities, conducts any of the acts set forth in the following items:
- (i) acquires all or part of the Securities for the purpose of having other persons acquire them; or
  - (ii) concludes a contract in which, with regard to all or part of the Securities, it promises to acquire all of the remaining Securities which are not acquired by any other person.
- (7) The term "Securities Registration Statement" as used in this Act means statements referred to in Article 5 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 5 (5); the same shall apply hereinafter) and documents to be attached thereto under Article 5 (6) and Amendment referred to in Article 7, 9(1) or 10(1).
- (8) The term "Financial Instruments Business" as used in this Act means the following acts (excluding acts specified by a Cabinet Order as those for which it is found not to hinder the protection of investors when taking into account its content and other related factors, and acts listed in item (xii), (xiv) or (xv) in this paragraph or the items of Article 28 (8) conducted by a bank, a Cooperative Structured Financial Institution defined by Article 2 (1) of the Act on Preferred Equity Investment (hereinafter referred to as the "Cooperative Structured Financial Institution") or other financial institution specified by a Cabinet Order) conducted in the course of trade:
- (i) sales and purchase of Securities (excluding those falling under the category of Derivative Transactions; the same shall apply hereinafter), Market Transactions of Derivatives or Foreign Market Derivatives Transactions (excluding sales and purchase of Securities falling under the category of act specified in item (x));
  - (ii) intermediary, brokerage (excluding Brokerage for Clearing of Securities, etc.) or agency service for sales and purchase of Securities, Market Transactions of Derivatives or Foreign Market Derivatives Transactions (excluding intermediary, brokerage or agency service for sales and purchase of Securities falling under the category of act specified in item (x));
  - (iii) intermediary, brokerage or agency service for entrustment of the following transactions:
    - (a) sales and purchase of Securities conducted in a Financial Instruments Exchange Market or Market Transactions of Derivatives; or
    - (b) sales and purchase of Securities conducted in a Foreign Financial Instruments Market (meaning a market in a foreign state similar to Financial Instruments Exchange Market; the same shall apply hereinafter)

- or Foreign Market Derivatives Transactions.
- (iv) Over-the-Counter Transactions of Derivatives or intermediary, brokerage (excluding Brokerage for Clearing of Securities, etc.) or agency service therefor (hereinafter referred to as "Over-the-Counter Transactions of Derivatives, etc.");
  - (v) Brokerage for Clearing of Securities, etc.;
  - (vi) Underwriting of Securities (meaning acts listed in any of the items of paragraph (6) conducted at the time of Public Offering, Secondary Distribution or Private Placement of Securities);
  - (vii) Public Offering or Private Placement of Securities (limited to those listed in the following items);
    - (a) among beneficiary securities of investment trusts specified in item (x) of paragraph (1), those pertaining to beneficial rights of trust for investment based on settlor's instruction defined in Article 2 (1) of the Act on Investment Trusts and Investment Corporations;
    - (b) beneficiary securities of foreign investment trusts specified in item (x) of paragraph (1);
    - (c) Securities specified in item (xvi) of paragraph (1);
    - (d) among Securities specified in item (xvii) of paragraph (1), those which have the nature of Securities specified in item (xvi) of said paragraph;
    - (e) among rights to be indicated on Securities specified in (a) or (b) above, or rights which are to be indicated on Securities specified in (c) or (d) above and particularly specified by a Cabinet Office Ordinance, those which are regarded as Securities under paragraph (2);
    - (f) rights specified in item (v) or (vi) of paragraph (2) which are regarded as Securities under said paragraph; and
    - (g) in addition to those listed in (a) to (f) above, Securities particularly specified by a Cabinet Order.
  - (viii) Secondary Distribution of Securities;
  - (ix) dealing in Public Offering or Secondary Distribution of Securities or dealing in Private Placement of Securities;
  - (x) sales and purchase of Securities or intermediary, brokerage or agency service therefor which is conducted through an electronic data processing system, by using any of the following price formation method or other similar method, and in which a large number of persons participate simultaneously as the one party in the transaction or the transaction is conducted between a large number of persons;
    - (a) a method of auction (limited to cases where the trading volume of Securities does not exceed the criteria specified by a Cabinet Order);
    - (b) with regard to Securities listed in a Financial Instruments Exchange, a method using the trading price of the Securities in the Financial

- Instruments Exchange Market operated by the Financial Instruments Exchange;
- (c) with regard to Securities registered under Article 67-11 (1) (hereinafter referred to as "Over-the-Counter Traded Securities"), a method using the trading price of the Securities published by the Authorized Financial Instruments Firms Association to which the Securities are registered;
  - (d) a method using the price decided by negotiation between customers; and
  - (e) in addition to those listed in (a) to (d) above, other methods specified by a Cabinet Office Ordinance.
- (xi) conclusion of a contract in which one of the parties promises to provide the other party with advice on the following matters, orally, in writing (excluding newspapers, magazines, books or others which are issued to be sold to many and unspecified persons and many and unspecified persons can buy as needed) or otherwise, and the other party promises to pay remuneration therefor (such a contract is hereinafter referred to as an "Investment Advisory Contract"), and provision of advice under the Investment Advisory Contract;
- (a) Values, etc. of Securities (meaning the value of Securities, amount receivable for Securities Related Options (meaning rights pertaining to transactions specified in Article 28 (8)(iii)(c) conducted in a Financial Instruments Market in accordance with the requirements and by using the methods prescribed by the operator of the Financial Instruments Market, rights pertaining to transactions similar to transactions specified in Article 28 (8)(iii)(c) conducted in a Foreign Financial Instruments Market, or rights pertaining to transactions specified in Article 28 (8)(iv)(c) or (d) conducted in neither a Financial Instruments Market nor a Foreign Financial Instruments Market) or movement of Securities Indicators (meaning price or interest rates of Securities, or others specified by a Cabinet Office Ordinance as being equivalent to them or figures calculated based on them)); or
  - (b) Investment Decisions (meaning decisions on kinds, issues, amounts or prices of Securities to be invested as well as whether the Securities shall be purchased or sold, by what method and at what timing, or decision on contents and timing of Derivative Transactions to be conducted; the same shall apply hereinafter) based on analysis of Values, etc. of Financial Instruments (meaning the value of Financial Instruments, amount receivable for Options, or movement of Financial Indicators; the same shall apply hereinafter).
- (xii) conclusion of the following contract, and investment (including instructions of investment; the same shall apply hereinafter) of money or other properties in Securities or rights pertaining to Derivative Transactions

- conducted based on analysis of Values, etc. of Financial Instruments under such a contract;
- (a) a contract on entrustment of assets investment prescribed in 188(1)(iv) of the Act on Investment Trusts and Investment Corporations concluded with a registered investment corporation defined in Article 2 (13) of said Act; or
  - (b) in addition to those listed in (a), a contract wherein one of the parties is fully or partly entrusted by the other party with the discretion in making Investment Decisions based on analysis of Values, etc. of Financial Instruments and is also entrusted with the authorities necessary for making investment 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 intermediary service for conclusion of an Investment Advisory Contract or a Discretionary Investment Contract;
  - (xiv) investment of money or other properties contributed from a person who holds rights indicated on the Securities specified in item (x) of paragraph (1) or other rights specified by a Cabinet Order, as an investment in Securities or rights pertaining to Derivative Transactions conducted based on analysis of Values, etc. of Financial Instruments (excluding acts falling under the category specified in item (xii));
  - (xv) investment of money or other properties invested or contributed from a person who holds the following rights or other rights specified by a Cabinet Order, as an investment mainly in Securities or rights pertaining to Derivative Transactions conducted based on analysis of Values, etc. of Financial Instruments (excluding acts falling under the categories specified in item (xii) and the preceding item);
    - (a) rights indicated on Securities specified in item (xiv) of paragraph (1) or Securities specified in item (xvii) of said paragraph (limited to those which have the nature of Securities specified in item (xiv) of said paragraph);
    - (b) rights listed in item (i) or (ii) of paragraph (2); or
    - (c) rights listed in item (v) or (vi) of paragraph (2).
  - (xvi) acceptance of deposits of money or securities or certificates listed in the items of paragraph (1) from the customers in relation to acts listed in items (i) to (x) of this paragraph;
  - (xvii) transfer of bonds, etc. conducted in response to opening of an account for transfer of bonds, etc. defined in Article 2 (1) of the Act on Transfer of Bonds, etc. (Act No. 75 of 2001); or
  - (xviii) acts specified by a Cabinet Order as being similar to acts listed in the preceding items.
- (9) The term "Financial Instruments Business Operator" as used in this Act means a person registered by the Prime Minister under Article 29.

- (10) The term "Prospectus" as used in this Act means a document which states the business operated by an Issuer of Securities or other matters and prepared for a Public Offering or Secondary Distribution of Securities (excluding those specified in Article 4 (1)(iv)) or for a General Solicitation for Securities Acquired by Qualified Institutional Investor defined by Article 4 (2) (excluding those falling under the category of Secondary Distribution of Securities), and which are delivered, or are to be delivered on request, to the other party of the Public Offering or Secondary Distribution.
- (11) The term "Financial Instruments Intermediary Service" as used in this Act means a service comprised any of the following acts conducted on behalf of a Financial Instruments Business Operator (limited to a person who conducts Type I Financial Instruments Business defined in Article 28 (1) or Investment Management Business defined in Article 28 (4)) or a Registered Financial Institution (meaning a bank, Cooperative Structured Financial Institution or other financial institution specified by a Cabinet Order which is registered under Article 33-2; the same shall apply hereinafter) under the entrustment from them (excluding the act specified in item (iv) below conducted by a person who conducts Investment Management Business as defined in Article 28 (4)):
- (i) intermediary for sales and purchase of Securities (excluding those specified in item (x) of paragraph (8));
  - (ii) intermediary specified in item (iii) of paragraph (8);
  - (iii) act specified in item (ix) of paragraph (8); or
  - (iv) intermediary specified in item (xiii) of paragraph (8).
- (12) The term "Financial Instruments Intermediary Service Provider" as used in this Act means a person who has been granted registration by the Prime Minister under Article 66.
- (13) The term "Authorized Financial Instruments Firms Association" as used in this Act means a person established under Subsection 1 of Section 1 of Chapter IV.
- (14) The term "Financial Instruments Market" as used in this Act means a market in which sales and purchase of Securities or Market Transactions of Derivatives are conducted.
- (15) The term "Financial Instruments Membership Corporation" as used in this Act means a membership association established under Subsection 1 of Section 2 of Chapter V for the purpose of establishing a Financial Instruments Market.
- (16) The term "Financial Instruments Exchange" as used in this Act means a Financial Instruments Membership Corporation or the stock company which has established a Financial Instruments Market with license granted by the Prime Minister under Article 80 (1).
- (17) The term "Financial Instruments Exchange Market" as used in this Act means a Financial Instruments Market established by a Financial Instruments

Exchange.

- (18) The term "Financial Instruments Exchange Holding Company" as used in this Act means a person who has been granted the authorization by the Prime Minister under Article 106-10 (1) or the proviso to Article 106-10 (3).
- (19) The term "Trading Participant" used in this Act means a person who is allowed to participate in the sales and purchase of Securities or Market Transactions of Derivatives in Financial Instruments Exchange Market based on the qualifications for trading granted under Article 112 (1) or 113(1).
- (20) The term "Derivative Transactions" used in this Act means Market Transactions of Derivatives, Over-the-Counter Transactions of Derivatives or Foreign Market Derivatives Transactions.
- (21) The term "Market Transactions of Derivatives" as used in this Act means the following transactions conducted in a Financial Instruments Market, in accordance with requirements and by using methods prescribed by the operator of the Financial Instruments Market:
- (i) transactions wherein the parties thereto promise to deliver or receive Financial Instruments or consideration for them at a fixed time in the future, and, when the resale or repurchase of the underlying Financial Instruments are made, settlement thereof may be made by paying or receiving the difference;
  - (ii) transactions wherein the parties thereto promise to pay or receive the amount of money calculated based on the difference between the figure of a Financial Indicator to which the parties agree in advance (hereinafter referred to as the "Agreed Figure") and the actual figure of the Financial Indicator at a fixed time in the future (hereinafter referred to as the "Actual Figure");
  - (iii) transactions wherein the parties thereto promise that one of the parties thereto grants the other party an option to effect a transaction listed in the following items between the parties only by unilateral manifestation of the other party's intention, and the other party pays the consideration for such option:
    - (a) sales and purchase of Financial Instruments (excluding those specified in item (i)); or
    - (b) any transaction listed in the preceding two items or the following item to item (vi)(including those designated by the Financial Instruments Exchange and equivalent to a transaction specified in the preceding item).
  - (iv) transactions wherein the parties mutually promise that, using the amount the parties have agreed to as the principal, one of the parties will pay the amount of money calculated based on the rate of change in the agreed period of the interest rate, etc. (referred to the interest rate or any other rate specified by a Cabinet Office Ordinance as being equivalent to the interest

- rate; the same shall apply hereinafter) of the Financial Instruments (excluding those listed in Article 2 (24)(iii)) or of a Financial Indicator (excluding interest rates, etc. of Financial Instruments (excluding those listed in Article 2 (24)(iii)) and figures calculated based on them; hereinafter the same shall apply in this item and item (v) of the following paragraph) 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 the interest rate, etc. of the Financial Instruments (excluding those listed in Article 2 (24)(iii)) or of a Financial Indicator agreed with the former party (including transactions wherein the parties promise that, in addition to the payment of such amounts, they will also pay, deliver or receive the amount of money or financial instrument that amounts to the agreed principal);
- (v) transactions wherein one of the parties pays money, and the other party, as the consideration therefor, promises to pay money in cases where a cause agreed by the parties in advance and listed in the following items occurs (including those wherein one of the parties promises to transfer Financial Instruments, a right pertaining to Financial Instruments or monetary claim (excluding claims that are Financial Instruments or rights pertaining to Financial Instruments), but excluding those listed in the preceding three paragraphs); or
    - (a) a cause pertaining to credit status of a juridical person or other similar cause as specified by a Cabinet Order; or
    - (b) a cause which it is impossible or extremely difficult for either party to exert his/her influence on the occurrence of and which may have serious influence on business activities of the parties or other business operators as specified by a Cabinet Order (excluding those specified in (a)).
  - (vi) transactions similar to transactions listed in the preceding items and specified by a Cabinet Order.
- (22) The term "Over-the-Counter Transactions of Derivatives" as used in this Act means the following transactions which are conducted in neither a Financial Instruments Market nor a Foreign Financial Instruments Market (except those specified by a Cabinet Order as those for which it is found not to hinder the public interest or protection of investors when taking into account its content and other related factors).
- (i) transactions wherein the parties thereto promise to deliver or receive Financial Instruments (excluding those listed in Article 2 (24)(v); hereinafter the same shall apply in this paragraph) or consideration for them at a fixed time in the future, and, when the resale or repurchase of the underlying Financial Instruments or other acts specified by a Cabinet Order is made, settlement thereof may be made by paying or receiving the differences;
  - (ii) transactions wherein the parties thereto promise to pay or receive the



- amount of money calculated based on the Agreed Figure and the Actual Figure or any other similar transactions; and
- (iii) transactions wherein the parties thereto promise that one of the parties grants the other party an option to effect a transaction listed in the following items between the parties only by unilateral manifestation of the other party's intention, and the other party pays consideration for such option, or any other similar transactions:
    - (a) sales and purchase of Financial Instruments (excluding those specified in item (i)); or
    - (b) any transaction listed in the preceding two items or items (v) to (vii).
  - (iv) transactions wherein the parties thereto promise that one of the parties grants the other party an option to, only by unilateral manifestation of his/her intention, effect a transaction wherein the parties promise to pay or receive the amount of money calculated based on the difference between a figure which the parties have agreed in advance to use as the Agreed Figure of the Financial Indicator when such manifestation is made and the Actual Figure of the Financial Indicator at the time of such manifestation, and the other party pays the consideration for such option, or any other similar transactions;
  - (v) transactions wherein the parties mutually promise that, using the amount the parties have agreed to as the principal, one of the parties will pay the amount of money calculated based on the rate of change in the agreed period of the interest rate, etc. of the Financial Instruments (excluding those listed in Article 2 (24)(iii)) or of a Financial Indicator 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 the interest rate, etc. of the Financial Instruments (excluding those listed in Article 2 (24)(iii)) or of a Financial Indicator agreed with the former party (including transactions wherein the parties promise that, in addition to the payment of such amounts, they will also pay, deliver or receive the amount of money or financial instruments that amounts to the agreed principal), or any other similar transactions;
  - (vi) transactions wherein one of the parties pays money, and the other party, as the consideration therefor, promises to pay money in cases where a cause agreed by the parties in advance and listed in the following items occurs (including those wherein one of the parties promises to transfer the Financial Instruments, rights pertaining to the Financial Instruments or monetary claim (excluding claims that are Financial Instruments or rights pertaining to the Financial Instruments), but excluding those listed in item (ii) to the preceding item), or any other similar transactions; or
    - (a) a cause pertaining to credit status of a juridical person or other similar cause as specified by a Cabinet Order; or

- (b) a cause which it is impossible or extremely difficult for either party to exert his/her influence on the occurrence of and which may have serious influence on business activities of the parties or other business operators as specified by a Cabinet Order (excluding those specified in (a)).
- (vii) in addition to transactions listed in the preceding items, transactions which have an economic nature similar to these transactions and are specified by a Cabinet Order as those for which it is found necessary to secure the public interest or protection of investors.
- (23) The term "Foreign Market Derivatives Transactions" as used in this Act means transactions which are conducted in a Foreign Financial Instruments Market and are similar to Market Transactions of Derivatives.
- (24) The term "Financial Instruments" as used in this Act means the following:
  - (i) Securities;
  - (ii) among claims based on a deposit contract or other rights, or securities or certificates indicating these claims or rights, those which are specified by a Cabinet Order (excluding those specified in the preceding item);
  - (iii) currencies;
  - (iv) in addition to what is listed in the preceding three items, assets for which there are many of the same kind, which have substantial price volatility, and which are specified by a Cabinet Order as those for which it is found necessary to secure the protection of investors with regard to Derivative Transactions (or other similar transactions) pertaining thereto (excluding commodities defined in Article 2 (4) of the Commodity Exchange Act (Act No. 239 of 1950)); and
  - (v) standardized instruments which are created by a Financial Instruments Exchange for the purpose of facilitating Market Transactions of Derivatives by standardizing interest rates, the maturity period and/or other conditions of Financial Instruments listed in item (i) or (ii) or the preceding item and specified by a Cabinet Office Ordinance.
- (25) The term "Financial Indicator" as used in this Act means the following:
  - (i) prices of Financial Instruments or interest rates, etc. of Financial Instruments (excluding those specified in item (iii) of the preceding paragraph);
  - (ii) figures pertaining to the results of meteorological observations published by the Meteorological Agency or others;
  - (iii) among indicators which it is impossible or extremely difficult for a person to exert his/her influence on the fluctuation in and which may have serious influence on business activities of business operators (excluding those specified in the preceding item) or statistical figures pertaining to social or economic conditions, indicators or figures specified by a Cabinet Order as those for which it is found necessary to secure the protection of investors

- with regard to Derivative Transactions (or other similar transactions) pertaining thereto (excluding commodity indices defined by Article 2 (5) of the Commodity Exchange Act); and
- (iv) figures calculated based on those listed in the preceding three items.
- (26) The term "Foreign Financial Instruments Exchange" as used in this Act means a person who has been granted the authorization by the Prime Minister under Article 155 (1).
- (27) The term "Broking for Clearing of Securities, etc." as used in this Act means a Subject Transaction (meaning a "Subject Transaction" defined in the following paragraph; hereinafter the same shall apply in this paragraph) which is conducted by a Financial Instruments Business Operator or Registered Financial Institution under entrustment by a customer and for the account of the customer in accordance with the business rules of a Financial Instruments Clearing Organization, which is conducted on condition that the obligation arisen from the Subject Transactions will be assumed by the Financial Instruments Clearing Organization, and which satisfies any 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 customers identify the other party in the Subject Transaction and other matters specified by a Cabinet Office Ordinance in advance at the time of the entrustment.
- (28) The term "Financial Instruments Obligation Assumption Service" as used in this Act means provision of service, which is comprised of assumption of obligations arisen from a Subject Transaction (meaning sales and purchase of Securities, Derivative Transactions or other transactions specified by a Cabinet Order) conducted by a Financial Instruments Business Operator, Registered Financial Institution or Securities Finance Company (hereinafter referred to as "Business Operators Covered by Financial Instruments Obligation Assumption Service" in this paragraph), in the course of trade, to Business Operators Covered by Financial Instruments Obligation Assumption Service.
- (29) The term "Financial Instruments Clearing Organization" as used in this Act means a person who has been granted the license or approval by the Prime Minister under Article 156-2 or 156-19.
- (30) The term "Securities Finance Company" as used in this Act means a person who has been granted the license by the Prime Minister under 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) in addition to what is listed in the preceding three items, Investor Protection Funds prescribed by Article 79-21 and other juridical persons specified by a Cabinet Office Ordinance.

## **Chapter II Disclosure of Corporate Affairs and Other Related Matters**

(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 acts specified by a Cabinet Order.
- (2) The term "Procedures Relating to Securities Issuance for Reorganization" as used in this Chapter means keeping of documents, etc. (meaning keeping of documents or Electromagnetic Records required under Article 782 (1) of the Companies Act (Act No. 86 of 2005) or keeping of documents or Electromagnetic Records required under Article 803 (1) of said Act; the same shall apply in the following paragraph) required relating to a Reorganization for which new Securities are issued, or other acts specified by a Cabinet Order.
- (3) The term "Procedures Relating to Securities Delivery for Reorganization" as used in this Chapter means keeping of documents, etc. required relating to a Reorganization for which delivery of existing Securities is made, or other acts specified by a Cabinet Order.
- (4) The term "Specified Procedures Relating to Securities Issuance for Reorganization" as used in this Chapter means, among Procedures Relating to Securities Issuance for Reorganization, those pertaining to Paragraph (1) Securities in the case prescribed in item (i) or (ii) below, or those pertaining to Paragraph (2) Securities in the case prescribed in item (iii):
- (i) in cases where, as specified by a Cabinet Order, there are a number of holders of shares (including share option certificates and other Securities specified by a Cabinet Order) issued by a company that, through a Reorganization, becomes a Company Absorbed in an Absorption-Type Merger (meaning the Company Absorbed in an Absorption-Type Merger as defined in Article 749 (1)(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 (1)(i) of said Act), or by any other kind of company specified by a Cabinet Order (referred to as the "Reorganized Company" in Article 4 (1)(ii)(a)) (such holders are hereinafter referred to as "Shareholders, etc. of the Reorganized Company")(excluding the cases where the Shareholders, etc. of the Reorganized Company consist exclusively of Qualified Institutional Investors);
- (ii) in addition to the case specified in the preceding item, cases other than the following:
- (a) in cases where the Shareholders, etc. of the Reorganized Company consist

- exclusively of Qualified Institutional Investors, if, as specified by a Cabinet Order, it is not likely that Securities pertaining to the Procedures Relating to Securities Issuance for Reorganization will be transferred from any person who acquired them to any other person other than Qualified Institutional Investors; or
- (b) in cases other than the case specified in the preceding item (i) or in (a) above (excluding the cases where the requirements specified by a Cabinet Order are satisfied), if, as specified by a Cabinet Order, it is not likely that Securities pertaining to the Procedures Relating to Securities Issuance for Reorganization will be transferred from any person who acquired them to a large number of persons.
- (iii) in cases where, as specified by a Cabinet Order, there is a considerably large number of Shareholders, etc. of the Reorganized Company.
- (5) The term "Specified Procedures Relating to Securities Delivery for Reorganization" as used in this Chapter means Procedures Relating to Securities Delivery for Reorganization in the cases specified in the following items for each kind of Securities set forth in the respective items:
- (i) Paragraph (1) Securities: in cases where, as specified by a Cabinet Order, there is a large number of Shareholders, etc. of the Reorganized Company; and
- (ii) Paragraph (2) Securities: in cases where, as specified by a Cabinet Order, there is a considerably large number of Shareholders, etc. of the Reorganized Company.

(Exempted Securities)

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

- (i) Securities set forth in Article 2 (1)(i) and (ii);
- (ii) Securities set forth in Article 2 (1)(iii), (vi) and (xii) (except those specified by a Cabinet Order as Securities for which disclosure of corporate affairs and other related matters is necessary and appropriate for the public interest or protection of investors.); and
- (iii) rights set forth in the items of Article 2 (2) as those which shall be deemed as Securities under the provisions of Article 2 (2) (excluding the following rights (hereinafter referred to as "Rights in Securities Investment Business, etc." in Article 24 (1)):
- (a) among the rights set forth in Article 2 (2)(v), those specified by a Cabinet Order as a right to Invested Business (meaning the Invested Business as defined by Article 2 (2)(v)) mainly conducted through investment in Securities;
- (b) among the rights set forth in Article 2 (2)(i) to (iv), (vi) or (vii), those

- specified by a Cabinet Order as being similar to the rights set forth in (a) above; and
- (c) other rights specified by a Cabinet Order.
- (iv) bonds for which the government guarantees the redemption of principals or the payment of interests; and
- (v) among Securities other than Securities set forth in the above items, those specified by a Cabinet Order.

(Notification of Public Offering or Secondary Distribution)

Article 4 (1) A Public Offering of Securities (including Specified Procedures Relating to Securities Issuance for Reorganization; the same shall apply hereinafter in this Chapter and the following Chapter, except in Article 13 and Article 15 (2) to (6)) or Secondary Distribution of Securities (excluding those falling under the category of General Solicitation for Securities Acquired by Qualified Institutional Investor as defined in the following paragraph, but including Specified Procedures Relating to Securities Delivery for Reorganization; the same shall apply hereinafter in this paragraph) may not be made unless the Issuer thereof has made a notification of Public Offering or Secondary Distribution of the Securities to the Prime Minister; provided, however, that this shall not apply to cases that fall under any of the following items:

- (i) a Public Offering or Secondary Distribution of Securities in the case that the other parties thereto have already obtained or can easily obtain information on matters listed in the items of paragraph (1) of the following Article pertaining to the Securities, as specified by a Cabinet Order;
- (ii) a Public Offering or Secondary Distribution of Securities, in cases where any of the Procedures Relating to Securities Issuance for Reorganization or Procedures Relating to Securities Delivery for Reorganization having been conducted relating thereto fall under either of the following cases (excluding those specified in the preceding item);
  - (a) in cases which do not fall under the Case Where Disclosures Have Been Made with regard to shares (including share option certificates and other Securities specified by a Cabinet Order) issued by the Reorganized Company; or
  - (b) in the Case Where Disclosures Have Been Made with regard to the Securities newly issued in the case of Procedures Relating to Securities Issuance for Reorganization or existing Securities in the case of Procedures Relating to Securities Delivery for Reorganization.
- (iii) a Secondary Distribution of Securities in the Case Where Disclosures Have Been Made with regard to the Securities (excluding those specified in the preceding two items);

- (iv) a Secondary Distribution of Securities which is made only to Qualified Institutional Investors, if a Solicitation for Newly Issued Securities, etc. (meaning a solicitation of an application to acquire newly issued Securities and Procedures Relating to Securities Issuance for Reorganization; the same shall apply hereinafter) having been made for the Securities falls under any of the following categories (in cases where the Solicitation for Newly Issued Securities, etc. having been made for the Securities falls under the category set forth in (a) below, limited to a Secondary Distribution of Securities acquired by Qualified Institutional Investors who are excluded under the provision of Article 2 (3)(i) from the number of persons to which the Solicitation for Newly Issued Securities, etc. was made) (excluding those specified in the preceding three items); or
- (a) Solicitation for Acquisition set forth in Article 2 (3)(i);
  - (b) Solicitation for Acquisition set forth in Article 2 (3)(ii)(a); or
  - (c) Procedures Relating to Securities Issuance for Reorganization set forth in Article 2-2 (4)(ii)(a).
- (v) among Public Offerings or Secondary Distributions of Securities of which the total issue price or total distribution price is less than 100 million yen, those which are specified by a Cabinet Office Ordinance (excluding those specified in the preceding items).
- (2) With regard to Securities for which a Solicitation for Newly Issued Securities, etc. falling under any of the following categories was made (in cases where the Solicitation for Newly Issued Securities, etc. having been made for these Securities falls under the category set forth in item (i) below, limited to Securities acquired by Qualified Institutional Investors who are excluded under the provision of Article 2 (3)(i) from the number of persons to which the Solicitation for Newly Issued Securities, etc. was made), a Solicitation for Delivery of Existing Securities, etc. (meaning a solicitation of an application to sell or purchase already-issued Securities and Procedures Relating to Securities Delivery for Reorganization; the same shall apply hereinafter) which are made by a Qualified Institutional Investor to persons other than Qualified Institutional Investors (hereinafter referred to as a "General Solicitation for Securities Acquired by Qualified Institutional Investor") may not be made unless the Issuer of the Securities has made a notification of the General Solicitation for Securities Acquired by Qualified Institutional Investor to the Prime Minister; provided, however, that this shall not apply to the cases where disclosures have been made with regard to the Securities and to the cases where the General Solicitation for Securities Acquired by Qualified Institutional Investor is to be made for a compelling reason as specified by a Cabinet Office Ordinance or otherwise satisfies the requirements specified by a Cabinet Office Ordinance:

- (i) Solicitation for Acquisition set forth in Article 2 (3)(i);
  - (ii) Solicitation for Acquisition set forth in Article 2 (3)(ii)(a); or
  - (iii) Procedures Relating to Securities Issuance for Reorganization set forth in Article 2-2 (4)(ii)(a).
- (3) With regard to a Public Offering or Secondary Distribution of Securities (excluding that falling under the category of Secondary Distribution of Securities set forth in item (iv) of paragraph (1), but including a General Solicitation for Securities Acquired by Qualified Institutional Investor (excluding those falling under the category of Secondary Distribution of Securities) and Procedures Relating to Securities Delivery for Reorganization; the same shall apply hereinafter in this Chapter and the following Chapter, except in the following paragraph and paragraph (5) of this Article, Article 13 and Article 15 (2) to (6)) to be made to shareholders (including preferred equity investors provided in the Act on Preferred Equity Investment) who are stated or recorded in the shareholder registry (including the preferred equity investor registry provided in the Act on Preferred Equity Investment) on a certain date, the notification for the Public Offering or Secondary Distribution under the preceding two paragraphs shall be made twenty five days prior to the day on which the Public Offering or Secondary Distribution is to be made; provided, however, that this shall not apply to the cases specified by a Cabinet Office Ordinance by taking into consideration the Issue Price or distribution price of the Securities or other factors.
- (4) A Prospectus used for, among Public Offerings or Secondary Distributions of Securities specified in item (iii) or (v) of paragraph (1) or general solicitations for Securities acquired by Qualified Institutional Investor excluded from the application of the main clause of paragraph (2) by the proviso to said paragraph, that which falls under the category of Secondary Distribution of Securities or that which does not fall under the category of Secondary Distribution of Securities and does not fall under the Case Where Disclosures Have Been Made (hereinafter referred to as the "Specified Public Offering, etc." in this and the following paragraph), or used for having Securities pertaining to a Specified Public Offering, etc. to be acquired or for selling such Securities, should include a statement to the effect that the main clause of paragraph (1) or the main clause of paragraph (2) does not apply to the Specified Public Offering, etc.
- (5) For a Specified Public Offering, etc., the Issuer of the Securities for which the Specified Public Offering, etc. is to be made shall, pursuant to the provisions of a Cabinet Office Ordinance, submit a written notice of the Specified Public Offering, etc. to the Prime Minister by the day preceding the day on which the Specified Public Offering, etc. is to begin; provided, however, that this shall not apply to the Secondary Distributions of Securities set forth in paragraph (3)



which fall under the Case Where Disclosures Have Been Made and of which the total issue price is less than 100 million yen, and Public Offerings or Secondary Distributions of the Securities set forth in item (v) of paragraph (1) of which the total issue price or total distribution price is less than the amount specified by a Cabinet Office Ordinance.

(6) The term "the Case Where Disclosures Have Been Made" as used in (a) and (b) of item (ii) and item (iii) of paragraph (1), paragraph (2), paragraph (4) and the preceding paragraph means the following cases:

(i) cases where a notification made under paragraph (1) has come into effect with regard to the Public Offering or Secondary Distribution (excluding that falling under the category of General Solicitation for Securities Acquired by Qualified Institutional Investor) that was already made for the Securities, or a notification made under paragraph (2) has come into effect with regard to the General Solicitation for Securities Acquired by Qualified Institutional Investor that was already made for the Securities (excluding the cases where the proviso to Article 24 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 24 (5) or where these provisions are applied mutatis mutandis pursuant to Article 27) applies to the Issuer of the Securities); or

(ii) the case specified by a Cabinet Office Ordinance as being equivalent to the case specified in the preceding item.

(Submission of Securities Registration Statement)

Article 5 (1) The Issuer of Securities who intends to make a notification for Public Offering or Secondary Distribution of Securities (excluding a Public Offering or Secondary Distribution of Securities to be made with regard to Regulated Securities (meaning Securities specified by a Cabinet Order as those for which information that will have material influence on investors' Investment Decisions is information on assets investment or other similar business conducted by the Issuer of the Securities; hereinafter the same shall apply in this paragraph and paragraph (5) of this Article and Article 24); hereinafter the same shall apply in this paragraph and the following paragraph) under paragraph (1) or (2) of the preceding Article shall submit a statement containing descriptions on the following matters to the Prime Minister pursuant to the provisions of a Cabinet Office Ordinance, if the Issuer is a company (including a foreign company; the same shall apply hereinafter, except in Article 50-2 (9) and Article 156-3 (2)(iii)) (including the cases where the company is to be established by issuance of said Securities (excluding Regulated Securities; hereinafter the same shall apply in this paragraph to paragraph (4))); provided, however, that, in cases where it is necessary to make the Public Offering of Securities before deciding their Issue Price or in other

cases specified by a Cabinet Office Ordinance, the statement may be submitted without stating the Issue Price or other matters specified by a Cabinet Office Ordinance among the matters required to be stated under item (i) below:

(i) matters pertaining to the Public Offering or Secondary Distribution; and  
(ii) trade name of the company, financial conditions of the Corporate Group (meaning the group consisting of the company and other persons (limited to companies or other organizations specified by a Cabinet Office Ordinance) who satisfies the requirements specified by a Cabinet Office Ordinance as those for being regarded as having a close relationship with the company, including the requirement that the company holds the majority of voting rights of the person who is a company; the same shall apply hereinafter) to which the company belongs and of the company, other important matters concerning the company's business and other matters specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or protection of investors.

(2) A person who intends to submit a statement set forth in the preceding paragraph for a Public Offering or Secondary Distribution of Securities to which the main clause of paragraph (1) or the main clause of paragraph (2) of the preceding Article applies, of which the total issue price or the total distribution price is less than 500 million yen and which is specified by a Cabinet Office Ordinance for this purpose (such a Public Offering or Secondary Distribution of Securities is referred to as "Small Amount Public Offering, etc." in Article 24 (2)), may state, among the matters set forth in item (ii) of the preceding paragraph, only those specified by a Cabinet Office Ordinance as the matters pertaining to the company, instead of descriptions on all of the matters listed in Article 24 (2)(ii), unless the person falls under any of the categories of persons specified in the following items:

(i) the Issuer of Securities falling under any of the categories specified in Article 24 (1)(i), (ii) or (iv);

(ii) the person who has submitted the statement set forth in the preceding paragraph which contains descriptions on the matters listed in item (ii) of the preceding paragraph for Public Offering or Secondary Distribution of Securities to which the main clause of paragraph (1) or the main clause of paragraph (2) of the preceding Article applied (excluding those specified in the preceding item); or

(iii) the person who has already submitted an Annual Securities Report (meaning the report set forth in Article 24 (1); hereinafter the same shall apply in this Article) which contains descriptions on the matters set forth in the main clause of Article 24 (1), a Quarterly Securities Report set forth in Article 24-4-7 (1) or (2) (hereinafter referred to as a "Quarterly Securities Report" in this Article) which contains descriptions on the matters set forth

- in Article 24-4-7 (1), or a Semiannual Securities Report (meaning the report set forth in Article 24-5 (1); hereinafter the same shall apply in this Article and Article 24 (2)) which contains descriptions on the matters set forth in Article 24-5 (1) (excluding those specified in the preceding two items).
- (3) When a person who has continuously filed Annual Securities Reports as specified by a Cabinet Office Ordinance during the period specified by a Cabinet Office Ordinance makes a notification under paragraph (1) or (2) of the preceding Article, such a person may, instead of descriptions of the matters listed in item (ii) of paragraph (1), insert a copy of the latest Annual Securities Report pertaining to the person and the documents attached thereto, a copy of the Quarterly Securities Report or Semiannual Securities Report submitted after the submission of the Annual Securities Report and a copy of amendment reports submitted with regard to the foregoing reports to the statement set forth in paragraph (1) pursuant to the provisions of a Cabinet Office Ordinance, and state facts that occurred after the submission of the Annual Securities Report and fall under the category of facts specified by a Cabinet Office Ordinance in the statement set forth in paragraph (1).
- (4) When a person who satisfies all of the requirements listed below makes a notification under paragraph (1) or (2) of the preceding Article, if the person states in the statement set forth in paragraph (1) to the effect that reference should be made to the latest Annual Securities Report pertaining to the person and the documents attached thereto, the Quarterly Securities Report or Semiannual Securities Report and Extraordinary Report (meaning the report defined in Article 24-5 (4)) submitted after the submission of the Annual Securities Report and the amendment reports submitted with regard to the foregoing reports (hereinafter collectively referred to as "Reference Documents"), pursuant to the provisions of a Cabinet Office Ordinance, the person shall be deemed to give descriptions on the matters listed in item (ii) of paragraph (1) in the statement:
- (i) the person must have continuously filed Annual Securities Reports as specified by a Cabinet Office Ordinance during the period specified by a Cabinet Office Ordinance; and
  - (ii) the person must satisfy the criteria on the state of transactions of Securities already issued by the person in the relevant Financial Instruments Exchange Market and other matters for regarding information on the matters listed in item (ii) of paragraph (1) pertaining to the person as being widely available to the public specified by a Cabinet Office Ordinance.
- (5) The provisions of paragraph (1) to the preceding paragraph shall apply mutatis mutandis to cases where the Securities for which the notification set forth in paragraph (1) is made are Regulated Securities. In this case, the terms "excluding a Public Offering or Secondary Distribution of Securities" and "said

Securities (excluding Regulated Securities; hereinafter the same shall apply in this paragraph to paragraph (iv))" in paragraph (1) shall be deemed to be replaced with "limited to a Public Offering or Secondary Distribution of Securities" and "said Securities," respectively; the terms "Trade name of the company, financial conditions of the Corporate Group (meaning the group consisting of the company and other persons (limited to companies or other organizations specified by a Cabinet Office Ordinance) who satisfies the requirements specified by a Cabinet Office Ordinance as those for being regarded as having a close relationship with the company, including the requirement that the company holds the majority of voting rights of the person who is a company; the same shall apply hereinafter) to which the company belongs and of the company, other important matters concerning the company's business" in item (ii) of said paragraph shall be deemed to be replaced with "Financial conditions of asset investment or other similar businesses conducted by the company, other important matters concerning the company's assets"; the term "a Public Offering or Secondary Distribution of Securities" in paragraph (2) shall be deemed to be replaced with "a Public Offering or Secondary Distribution of Regulated Securities"; the term "Securities falling under any of the categories" in item (i) of said paragraph shall be deemed to be replaced with "Regulated Securities falling under any of the categories of Securities"; the term "Public Offering or Secondary Distribution of Securities" in item (ii) of said paragraph shall be deemed to be replaced with "Public Offering or Secondary Distribution of Regulated Securities"; the term "the main clause of Article 24 (1)," "Article 24-4-7 (1) or (2)," "the matters set forth in Article 24-4-7 (1)" and "the matters set forth in Article 24-5 (1)" in item (iii) of said paragraph shall be deemed to be replaced with "the main clause of Article 24 (1) as applied mutatis mutandis pursuant to Article 24 (5)," "Article 24-4-7 (1) or (2) as applied mutatis mutandis pursuant to Article 24-4-7 (3)," "the matters set forth in Article 24-4-7 (1) as applied mutatis mutandis pursuant to Article 24-4-7 (3)" and "the matters set forth in Article 24-5 (1) as applied mutatis mutandis pursuant to Article 24-5 (3) "; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

- (6) The articles of incorporation or other documents that are specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or protection of investors shall be attached to a statement set forth in paragraph (1).

(Submission of Statement and Other Related Documents to Financial Instruments Exchange, etc.)

Article 6 The Issuer of Securities set forth in the following items shall submit a copy of the statement set forth in paragraph (1) of the preceding Article and of

other documents required under paragraph (6) of the preceding Article to the entity specified in the respective items without delay after the Issuer makes notification under Article 4 (1) or (2):

- (i) Securities listed in a Financial Instruments Exchange: the Financial Instruments Exchange; and
- (ii) Securities specified by a Cabinet Order as those of which the state of distribution can be regarded as being equivalent to Securities referred to in the preceding item: the Authorized Financial Instruments Firms Association specified by the Cabinet Order.

(Voluntary Submission of Amendment)

Article 7 When there occurs any change in the important matters to be stated in a statement set forth in Article 5 (1) or in other documents required under Article 5 (6), or there occurs any other circumstance specified by a Cabinet Office Ordinance as that which requires amendment of said statement or said other documents for the public interest or protection of investors, during the period on or after the day on which the notification was made under Article 4 (1) or (2) but before the day on which the notification is to take effect, the person making the notification (or after the company is established by issuance of the Securities for which the notification was made, the company; the same shall apply hereinafter) shall submit an amendment to the Prime Minister. This shall also apply to cases where despite the lack of said change or circumstance, the person making the notification finds that the statement or any of said other documents should be amended.

(Effective Date of Notification)

- Article 8 (1) The notification made under Article 4 (1) or (2) shall come into effect on the day on which fifteen days have elapsed from the day on which the Prime Minister accepted the statement submitted under Article 5 (1) (or, if the matters referred to in the proviso to Article 5 (1) are not stated in the statement, the amendment submitted under the preceding Article in relation to said matters; hereinafter the same shall apply in the following paragraph).
- (2) With regard to the application of the preceding paragraph in cases where the amendment is submitted under the preceding Article within the period set forth in the preceding paragraph, it shall be deemed that the statement set forth in Article 5 (1) has been accepted by the Prime Minister on the day on which the Prime Minister accepts the amendment.
  - (3) When the Prime Minister believes that the statement set forth in Article 5 (1) and other documents set forth in Article 5 (6) or the preceding Article are easily understandable to the public or finds that information on the matters listed in Article 5 (1)(ii) pertaining to the person who submitted the statement

and the other documents has been widely available to the public, he/she may designate a period for the person shorter than that referred to in paragraph (1) or give the person a notice that the notification made under Article 4 (1) or (2) will come into effect immediately or on the day following the day on which he/she accepts the statement referred to in paragraph (1). In this case, the notification made under Article 4 (1) or (2) shall come into effect on the day on which the shorter period has elapsed in cases where the shorter period is designated, or shall come into effect immediately or on said following day in cases where said notice is given.

- (4) The provision of paragraph (2) shall apply *mutatis mutandis* to cases where a shorter period is designated under the preceding paragraph.

(Order to Submit Amendment by Reason of Deficiencies in Formalities, etc.)

Article 9 (1) When the Prime Minister finds any deficiencies in formalities in the statement set forth in Article 5 (1) and other documents set forth in Article 5 (6) or Article 7, or finds insufficiency of the statements on important matters to be stated therein, he/she may order the person submitting them to submit an amendment. In this case, a hearing shall be held irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act (Act No. 88 of 1993).

- (2) In cases where the disposition under the preceding paragraph is given, the notification made under Article 4 (1) or (2) shall come into effect on the day on which the period designated by the Prime Minister has elapsed, notwithstanding the preceding Article.

- (3) The provisions of paragraphs (2) to (4) of the preceding Article shall apply *mutatis mutandis* to the case referred to in the preceding paragraph.

- (4) The disposition under paragraph (1) may not be given on or after the day on which the notification made under Article 4 (1) or (2) comes into effect; provided, however, that this shall not apply to the amendment submitted under Article 7 on or after that day.

(Order to Submit Amendment by Reason of Fake Statement, etc. and Order for Suspension of the Effect of the Notification)

Article 10 (1) When the Prime Minister finds that a Securities Registration Statement contains any fake statement on important matters, or lacks a statement on important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding, he/she may at any time order the person submitting the Securities Registration Statement to submit an amendment and may, when he/she finds it necessary, order the suspension of the effect of the notification made under Article 4 (1) or (2). In this case, a hearing shall be held irrespective of the categories of procedures for hearing

- statements of opinion under Article 13 (1) of the Administrative Procedure Act.
- (2) The provisions of paragraphs (2) and (3) of the preceding Article shall apply mutatis mutandis to cases where an order to submit the amendment is given under the preceding paragraph before the notification made under Article 4 (1) or (2) comes into effect.
- (3) In cases where an order for suspension is given under paragraph (1), when an amendment is submitted as required under said paragraph and the Prime Minister finds the amendment as being appropriate, he/she shall cancel the order for suspension under said paragraph.

(Suspension of the Effect of the Notifications Made Within One Year from the Submission of Securities Registration Statement Containing Fake Statement)

Article 11 (1) In cases where a Securities Registration Statement contains any fake statements on important matters, when the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may, with regard to said Securities Registration Statement, or other statements submitted under Article 5 (1), Shelf Registration Statements submitted under Article 23-3 (1) or Shelf Registration Supplements submitted under Article 23-8 (1) by the person who submitted said Securities Registration Statement during the period within one year from the day when the person submitted said Securities Registration Statement, order the suspension of effect of the notification or of the Shelf Registration pertaining to the Shelf Registration Statement or the Shelf Registration Supplements, or extend the period stipulated in Article 8 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 23-5 (1)), for the period that he/she considers appropriate for the public interest or protection of investors. In this case, a hearing shall be held irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act.

- (2) In cases where a disposition is made under the preceding paragraph, the Prime Minister may cancel the disposition if he/she finds that the content of an amendment submitted under Article 7 or paragraph (1) of the preceding Article in relation to the fake statement referred to in the preceding paragraph is appropriate and that even if acquisition or sale of Securities issued by the person having submitted the Securities Registration Statement through Public Offering or Secondary Distribution is allowed, it would not hinder the public interest or protection of investors.

(Submission of Amendment to Financial Instruments Exchange, etc.)

Article 12 The provision of Article 6 shall apply mutatis mutandis to cases where

an amendment is submitted under Article 7, Article 9 (1) or Article 10 (1).

(Preparation of Prospectus and Prohibition of Use of Prospectus, etc.  
Containing Fake Statement)

Article 13 (1) With regard to Securities of which Public Offering or Secondary Distribution (excluding Secondary Distribution of Securities specified in Article 4 (1)(iv), but including General Solicitation for Securities Acquired by Qualified Institutional Investor (excluding those falling under the category of Secondary Distribution of Securities); hereinafter the same shall apply in this Article and paragraphs (2) to (4) and paragraph (6) of Article 15) shall be subject to the main clause of Article 4 (1) or the main clause of Article 4 (2), the Issuer of such Securities shall prepare a Prospectus for the Public Offering or Secondary Distribution. The same shall apply to an Issuer of Securities of which the Secondary Distribution (excluding that of which the total distribution price is less than 100 million yen or that falling under the categories specified by a Cabinet Office Ordinance) falls under the Case Where Disclosures Have Been Made (meaning the Case Where Disclosures Have Been Made as referred to in Article 4 (1)(ii)(a); the same shall apply hereinafter in this Chapter) (such Securities are hereinafter referred to as "Already Disclosed Securities" in this Chapter).

(2) In the Prospectus required under the preceding paragraph, according to the categories specified in the following items, the matters specified in the respective items shall be stated; provided, however, that in cases where the statement required under the main clause of Article 5 (1) has been submitted without stating the Issue Price or other matters so specified by a Cabinet Office Ordinance among the matters required to be stated under item Article 5 (1)(i) (hereinafter referred to as "Issue Price, etc." in this paragraph and Article 15 (5)) under the proviso to Article 5 (1), Issue Price, etc. shall not be required to be stated in the Prospectus, if it falls under the category specified in item (i) below:

(i) in cases where delivery of the Prospectus is required under the main clause of Article 15 (2): according to the categories of Securities specified in the following (a) and (b), the matters specified in the following (a) or (b):

(a) Securities of which Public Offering or Secondary Distribution is subject to the main clause of Article 4 (1) or the main clause of Article 4 (2): the following matters:

1. among the matters listed in the items of Article 5 (1), the matters specified by a Cabinet Office Ordinance as those that may have an extremely material influence on investors' Investment Decisions; and
2. among the matters listed in the items of Article 5 (1), the matters so specified by a Cabinet Office Ordinance.



- (b) Already Disclosed Securities: the following matters:
    1. the matters listed in (a)(i) above; and
    2. among the matters listed in the items of Article 5 (1), the matters so specified by a Cabinet Office Ordinance.
  - (ii) in cases where delivery of the Prospectus is required under Article 15 (3): according to the categories of Securities specified in the following (a) and (b), the matters specified in the following (a) or (b):
    - (a) Securities of which Public Offering or Secondary Distribution is subject to the main clause of Article 4 (1) or the main clause of Article 4 (2): the following matters:
      1. among the matters listed in the items of Article 5 (1), the matters specified by a Cabinet Office Ordinance as those that may have an extremely material influence on investors' Investment Decisions; and
      2. among the matters not listed in the items of Article 5 (1), the matters so specified by a Cabinet Office Ordinance.
    - (b) Already Disclosed Securities: the following matters:
      1. the matters listed in (a)(i) above; and
      2. among the matters not listed in the items of Article 5 (1), the matters so specified by a Cabinet Office Ordinance.
  - (iii) in cases where delivery of the Prospectus is required under the main clause of Article 15 (4): the matters stated in the amendment submitted under Article 7.
- (3) With regard to a Prospectus that falls under the category specified in item (i) or (ii) of the preceding paragraph, when the person required to prepare it has submitted a notification to which Article 5 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 5 (5); the same shall apply hereinafter) is applied or if the person required to prepare it for Already Disclosed Securities satisfies all of the requirements specified in the items of Article 5 (4), if the person states in the Prospectus to the effect that reference should be made to the Reference Documents, the Prospectus shall be deemed to contain descriptions on the matters listed in Article 5 (1)(ii).
- (4) No person shall use a Prospectus referred to in paragraph (1) which contains any fake statement or lacks any statement that should be stated, for the purpose of Public Offering or Secondary Distribution of Securities that is subject to the main clause of Article 4 (1) or the main clause of Article 4 (2) or Already Disclosed Securities.
- (5) When documents other than the Prospectus referred to in paragraph (1), drawings, sound or other materials (in cases where they are prepared as Electromagnetic Record (a record made by an electronic form, a magnetic form, or any other form not recognizable to human perception, which is used in information processing by computers; the same shall apply hereinafter),

including anything which indicates the information contained in the Electromagnetic Records; the same shall apply in Article 17) are used for the purpose of Public Offering or Secondary Distribution of Securities that is subject to the main clause of Article 4 (1) or the main clause of Article 4 (2) or Already Disclosed Securities, no false indication or misleading indication shall be made.

#### Article 14 Deleted

(Prohibition of Transaction of Securities for Which Notification has Not Yet Come into Effect, and Delivery of Prospectus)

Article 15 (1) With regard to Securities of which Public Offering or Secondary Distribution is subject to the main clause of Article 4 (1) or the main clause of Article 4 (2), its Issuer, a person who engages in Secondary Distribution of Securities, an Underwriter (including a person who, with regard to a General Solicitation for Securities Acquired by Qualified Institutional Investor (excluding in the Case Where Disclosures Have Been Made with regard to the Securities for which the general solicitation is made), carries out any of the acts specified in the items of Article 2 (6); hereinafter the same shall apply in this Chapter), a Financial Instruments Business Operator, a Registered Financial Institution, or a Financial Instruments Intermediary Service Provider shall not have another person acquire such Securities or sell such Securities to another person through Public Offering or Secondary Distribution unless the notification made under Article 4 (1) or (2) comes into effect.

(2) 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 referred to in the preceding paragraph or Already Disclosed Securities, or sells such Securities to another person, through Public Offering or Secondary Distribution, they shall deliver the Prospectus containing the matters specified in Article 13 (2)(i) to the other person in advance of, or at the same time as, having the Securities acquired or selling the Securities; provided, however, that this shall not apply to the following cases:

- (i) cases where such Securities are acquired by or sold to a Qualified Institutional Investor (excluding cases where the Qualified Institutional Investor requests the Prospectus by the time when such Securities are acquired or sold through Public Offering or Secondary Distribution); or
- (ii) cases where such Securities are acquired by or sold to a person who has consented not to receive the Prospectus (excluding cases where the consenting person requests the Prospectus by the time when such Securities

- are acquired or sold through Public Offering or Secondary Distribution), if:
- (a) the consenting person already holds the same Securities; or
  - (b) a person living together with the consenting person has already received the Prospectus or is certainly expected to receive the Prospectus.
- (3) 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 referred to in paragraph (1) (limited to those so specified by a Cabinet Order; hereinafter the same shall apply in this paragraph) or Already Disclosed Securities, or sells such Securities to another person, through Public Offering or Secondary Distribution, if the other person requests the Prospectus stating the matters specified in Article 13 (2)(ii) by the time when such Securities are acquired or sold through Public Offering or Secondary Distribution, they shall deliver the Prospectus to the other person immediately.
- (4) 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 referred to in paragraph (1) or Already Disclosed Securities, or sells such Securities to another person, through Public Offering or Secondary Distribution, if an amendment has been submitted with regard to the statement submitted for the Securities under the main clause of Article 5 (1), they shall deliver the Prospectus stating the matters specified in Article 13 (2)(iii) to the other person in advance of, or at the same time as, having the Securities acquired or selling the Securities; provided, however, that this shall not apply in the cases specified in the items of paragraph (2).
- (5) The main clause of the preceding paragraph shall not apply to cases where a Prospectus delivered under paragraph (2) states no Issue Price, etc. as permitted by the proviso to Article 13 (2) but states to the effect that the Issue Price, etc. will be announced separately and specifies the method of announcement of the Issue Price, etc. (limited to those specified by a Cabinet Office Ordinance), and the Issue Price, etc. is actually announced by said method.
- (6) The provisions of paragraph (2) to the preceding paragraph shall apply mutatis mutandis to cases where the remainder of the Securities referred to in paragraph (1) that is not acquired by any person through Public Offering or Secondary Distribution (excluding Securities that fall under any of the categories specified in Article 24 (1)(i) and (ii)) is acquired by, or sold to, someone not through Public Offering or Secondary Distribution within three months (excluding, where an order for suspension has been given under Article

10 (1) or Article 11 (1), the period from the day when the order was given to the day when the order was canceled) from the day when the notification made under Article 4 (1) or (2) for the Public Offering or Secondary Distribution came into effect.

(Liability for Damages for Violating Article 15)

Article 16 A person who has another person acquire Securities in violation of the preceding Article shall be held liable to compensate damage arisen from the violation and sustained by the person who acquires the Securities.

(Liability for Damages of Person Who Uses Prospectus Containing Fake Statement, etc.)

Article 17 With regard to a Public Offering or Secondary Distribution of Securities that is subject to the main clause of Article 4 (1) or the main clause of Article 4 (2) or Already Disclosed Securities, a person who has another person acquire the Securities using a Prospectus referred to in Article 13 (1) that contains any fake statement on important matters or lacks a statement on important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding, or a material that contains any false indication or misleading indication on important matters or lacks indication on a material fact that is necessary for avoiding misunderstanding, shall be held liable to compensate damage sustained by the other person who acquires the Securities without knowing of the existence of such fake statement, lack of such statement, the existence of such false indication or misleading indication or lack of such indication; provided, however, that this shall not apply to the cases where the person liable for such damage proves that he/she did not know of, and was not able to know of even with reasonable care, the existence of such fake statement, lack of such statement, the existence of such false indication or misleading indication or lack of such indication.

(Liability for Damages of Person Who Submits Securities Registration Statement Containing Fake Statement, etc.)

Article 18 (1) If a Securities Registration Statement contains any fake statement on important matters or lacks a statement on important matters that should be stated or is on a material fact that is necessary for avoiding misunderstanding, the person who submitted the Securities Registration Statement shall be held liable to compensate damage sustained by a person who acquires the Securities through Public Offering or Secondary Distribution; provided, however, that this shall not apply to cases where the person who acquired the Securities knew of the existence of such fake statement or lack of such statement at the time of making an offer to acquire the Securities.

(2) The preceding paragraph shall apply mutatis mutandis to cases where a Prospectus referred to in Article 13 (1) contains any fake statement on important matters or lacks a statement on important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding. In this case, the terms "the person who submitted the Securities Registration Statement" and "through the Public Offering or Secondary Distribution" in the preceding paragraph shall be deemed to be replaced with "the Issuer who prepared the Prospectus" and "through the Public Offering or Secondary Distribution after receiving the Prospectus," respectively.

(Amount of Damages Payable by Person Who Submits Securities Registration Statement Containing Fake Statement, etc.)

Article 19 (1) The amount of damages to be paid under the preceding Article shall be the amount calculated by deducting the amount specified by either of the following items from the amount paid for acquisition of the Securities by the person who is entitled to claim damages:

(i) market value of the Securities at the time when claiming damages under the preceding Article (or, where no market value exists, their estimated disposal value); or

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

(2) The person liable for damages under the preceding Article, when he/she proves that all or part of the damage sustained by the person who entitled to claim damages was caused by any reason other than the decline in value of the Securities that should arise from the fact that the Securities Registration Statement or the Prospectus contains any fake statement on important matters or lacks a statement on important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding, shall not be liable for that all or part of the damages.

(Prescription for Right to Claim Damages from the Person Who Submits Securities Registration Statement Containing Fake Statement, etc.)

Article 20 The right to claim damages under Article 18 shall be extinguished by prescription when the right is not exercised within three years from the time when the person who is entitled to claim the damages comes to know, or is able to know, that the Securities Registration Statement or the Prospectus contains any fake statement on important matters or lacks a statement on important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding. The same shall also apply when the right is not exercised within seven years (excluding, where an order for suspension has been given under Article 10 (1) or Article 11 (1), the period from the day when

the order was given to the day when the order was canceled) from the time when the notification made under Article 4 (1) or (2) for Public Offering or Secondary Distribution of the Securities comes into effect or the delivery of the Prospectus is made.

(Liability for Damages of Officers of the Company Which Submits Securities Registration Statement Containing Fake Statement and Other Persons)

Article 21 (1) When a Securities Registration Statement contains any fake statement on important matters or lacks a statement on important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding, persons specified in the following items shall be liable to compensate persons who acquire the Securities through Public Offering or Secondary Distribution for damage arising from the fake statement or lack of the required statement; provided, however, that this shall not apply to cases where the person who acquired the Securities knew of the existence of the fake statement or the lack of the required statement at the time of acquiring the Securities:

- (i) a person who, at the time of submission of the Securities Registration Statement, is an Officer (meaning a director, accounting advisor, company auditor or executive officer, or a person who can be regarded as equivalent thereto; the same shall apply hereinafter, except in Article 163 to Article 167) of the company having submitted the Securities Registration Statement, or an incorporator of the company (limited to cases where the Securities Registration Statement was submitted before the establishment of the company);
  - (ii) the holder of the Securities for which the Secondary Distribution was made (or, in cases where the holder had acquired the Securities from their previous holder by entering into a contract specifying that the Securities would be sold through Secondary Distribution, the previous holder);
  - (iii) the certified public accountant or the auditing firm who certified in the audit certification provided for the Securities Registration Statement under Article 193-2 (1) that the documents for which the audit certification was provided do not contain any fake statement or do not lack a required statement despite the existence of the fake statement or the lack of a required statement; and
  - (iv) the Financial Instruments Business Operator or Registered Financial Institution that has concluded a Wholesale Underwriting Contract with the Issuer of the Securities for which the Public Offering was made or either the person specified in item (ii).
- (2) In the case referred to in the preceding paragraph, a person falling under any of the categories specified in the following items shall not be required to

assume the liability prescribed in said paragraph, if he/she proves the facts listed in the respective items:

- (i) a person specified in item (i) or (ii) of the preceding paragraph: the fact that he/she did not know of, or was not able to know of even with reasonable care, the existence of the fake statement or the lack of the required statement;
  - (ii) a person or firm specified in item (iii) of the preceding paragraph: the fact that he/she did not provide such inappropriate certification intentionally or negligently; and
  - (iii) the business operator or institution specified in item (iv) of the preceding paragraph: the fact that it did not know of the existence of the fake statement or the lack of the required statement and was not able to know of the existence of the fake statement or the lack of the required statement despite the reasonable care that the operator or institution exercised with respect to the part other than the part pertaining to statements on finance and accounting provided for in Article 193-2 (1).
- (3) The provisions of items (i) and (ii) of paragraph (1) and item (i) of the preceding paragraph shall apply mutatis mutandis to cases where a Prospectus referred to in Article 13 (1) contains any fake statement on important matters or lacks a statement on important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding. In this case, the terms "through the Public Offering or Secondary Distribution," "the company having submitted the Securities Registration Statement," "at the time of submission" and "was submitted" in paragraph (1) shall be deemed to be replaced with "through the Public Offering or Secondary Distribution after receiving the Prospectus," "the company having submitted the Prospectus," "at the time of preparation" and "was prepared," respectively.
- (4) The term "Wholesale Underwriting Contract" as used in item (iv) of paragraph (1) means a contract concluded for a Public Offering or Secondary Distribution of Securities and falling under either of the categories specified in the following items:
- (i) a contract in which it is agreed that a party will acquire all or part of the Securities from their Issuer or holder (excluding cases where the holder is a Financial Instruments Business Operator or Registered Financial Institution; the same shall apply in the following item) for the purpose of having other persons acquire them; or
  - (ii) a contract in which it is agreed that, with regard to all or part of the Securities, a party will acquire all of the remaining Securities which are not acquired by any other person.

(Liability for Damages of Person Who Submits Document Containing Fake Statement, etc.)

- Article 21-2 (1) If any of the documents specified in the items of Article 25 (1) (excluding Article 25 (1)(v) and (ix)) (hereinafter referred to as the "Documents" in this Article) contains any fake statement on important matters or lacks a statement on important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding, the person who submitted the document shall be held liable to compensate a person who, during the period when the document was made available for public inspection as required by Article 25 (1), acquires the Securities issued by the person who submitted the document (excluding the documents specified in Article 25 (1)(xii)) or by the person whose Parent Company, etc. (meaning Parent Company, etc. as defined by Article 24-7 (1)) is the person having submitted the document (limited to the documents specified in Article 25 (1)(xii)) not through Public Offering or Secondary Distribution for damage arising from the fake statement or lack of a required statement (hereinafter collectively referred to as a "Fake Statement, etc." in this Article), to the extent not exceeding the amount calculated according to the same rule as provided in Article 19 (1); provided, however, that this shall not apply when the person who acquires the Securities had known of the existence of a Fake Statement, etc. at the time of the acquisition.
- (2) In the case referred to in the main clause of the preceding paragraph, when Public Announcement of the Fake Statement, etc. is made, with regard to a person who acquired the Securities within one year prior to the day when the Fake Statement, etc. is announced (hereinafter referred to as the "Day of Announcement" in this paragraph) and continues to hold the Securities at the Day of Announcement, the amount calculated by deducting the average market value (or, where no market value exists, their estimated disposal value; hereinafter the same shall apply in this paragraph) during one month after the Day of Announcement from the average market value during one month prior to the Day of Announcement may be presumed as the amount of damage.
- (3) The term "Public Announcement of the Fake Statement, etc." as used in the preceding paragraph means the fact that the person who submitted the document or a person who has statutory authority over the person submitting the document takes measures for making available to a large number of persons important matters pertaining to the Fake Statement, etc. that should be stated or material fact pertaining to the Fake Statement, etc. that is necessary for avoiding misunderstanding by means of making such matters or fact available for public inspection provided in Article 25 (1) or by other means.
- (4) In the case referred to in paragraph (2), when the person liable for damages proves that all or part of the damages sustained by the person who is entitled to claim damages was caused by any reason other than the decline in value of the Securities that should arise from the Fake Statement, etc. in the document,



he/she shall not be liable for that all or part of the damages.

- (5) In addition to the cases referred to in the preceding paragraph, in the case referred to in paragraph (2), when the court finds that all or part of the damage sustained by the person who is entitled to claim damages was caused by any reason other than the decline in value of the Securities that should arise from the Fake Statement, etc. in the document, but it is extremely difficult to prove the amount of the damages arising from such other reason due to its nature, the court may, based on the entire import of oral argument and the result of examination of evidence, determine a reasonable amount of the damages for which the person liable for damages is not liable.

(Prescription for Liability for Damages of Person Who Submits Document Containing Fake Statement, etc.)

Article 21-3 Article 20 shall apply mutatis mutandis to the right to claim damages under the preceding Article. In this case, the terms "Article 18," "the Securities Registration Statement or the Prospectus" and "three years" in Article 20 shall be deemed to be replaced with "Article 21-2," "any of the documents specified in the items of Article 25 (1) (excluding Article 25 (1)(v) and (ix))" and "two years," respectively; and the part "seven years (excluding, where an order for suspension has been given under Article 10 (1) or Article 11 (1), the period from the day when the order was given to the day when the order was canceled) from the time when the notification made under Article 4 (1) or (2) for Public Offering or Secondary Distribution of the Securities comes into effect or the delivery of the Prospectus is made" in Article 20 also shall be deemed to be replaced with "five years from the time when the document is submitted."

(Liability for Damages of Officers of the Company Which Submits Securities Registration Statement Containing Fake Statement, etc. and Other Persons)

- Article 22 (1) When a Securities Registration Statement contains any fake statement on important matters or lacks a statement on important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding, persons specified in Article 21 (1)(i) and (iii) shall be held liable to compensate damage sustained by persons who have acquired the Securities issued by the person submitting the Securities Registration Statement not through Public Offering or Secondary Distribution without knowing of the existence of the fake statement or lack of such statement.
- (2) Article 21 (2)(i) and (ii) shall apply mutatis mutandis to the persons liable for damages under the preceding paragraph.

(Prohibition of Presuming Veracity of Securities Registration Statement, etc.)

Article 23 (1) No person may presume, from the fact that a notification made under Article 4 (1) or (2) for Public Offering or Secondary Distribution of Securities was made and has come into effect or from the fact that an order for suspension given under Article 10 (1) or Article 11 (1) was canceled, that the Prime Minister finds that any and every statement contained in the Securities Registration Statement submitted for the notification is true and accurate and the Securities Registration Statement does not lack any statement on any important matters, or that the Prime Minister guarantees or approves the value of the Securities.

(2) No person may make any indication which violates the preceding paragraph.

(Replacement of Terms for Application of Relevant Provisions to Statements, Amendments or Prospectus Which Makes Reference to the Reference Documents)

Article 23-2 With regard to application of Article 7, Articles 9 to 11, Articles 17 to 21, Article 22 and the preceding Article in cases where a statement to which Article 5 (4) is applicable or an amendment to such a statement is submitted or a Prospectus to which Article 13 (3) is applicable is prepared, the term "the statement set forth in Article 5 (1) or in other documents required under Article 5 (6)" in Article 7 shall be deemed to be replaced with "the statement set forth in Article 5 (1) or in other documents required under Article 5 (6) (including, in the case of a statement to which Article 5 (4) (including cases where it is applied mutatis mutandis pursuant to Article 5 (5); the same shall apply in Articles 9 to 11) is applicable, Reference Documents referenced therein; the same shall apply in this Article)"; the term "the statement set forth in Article 5 (1) and other documents set forth in Article 5 (6) or the Article 7" in Article 9 (1) shall be deemed to be replaced with "the statement set forth in Article 5 (1) and other documents set forth in Article 5 (6) or Article 7 (including, in the case of a statement to which Article 5 (4) is applicable or an amendment submitted in relation to such a statement under Article 7, Reference Documents referenced therein)"; the term "Securities Registration Statement" in Article 10 (1) shall be deemed to be replaced with "Securities Registration Statement (including, in the case of a statement to which Article 5 (4) is applicable or an amendment submitted in relation to such a statement under Article 7, paragraph (1) of the preceding Article 9 or this paragraph, Reference Documents referenced therein)"; the term "amendment" in Article 10 (3) shall be deemed to be replaced with "amendment (including, in the case of an amendment submitted under Article 7 in relation to a statement to which Article 5 (4) is applicable, Reference Documents referenced therein)"; the term "a Securities Registration Statement contains" in Article 11 (1) shall be deemed to be replaced with "a Securities Registration Statement (including, in the case

of a statement to which Article 5 (4) is applicable or an amendment submitted in relation to such a statement under Article 7, Article 9 (1) or paragraph (1) of the preceding Article, Reference Documents referenced therein) contains"; the term "amendment" in Article 11 (2) shall be deemed to be replaced with "amendment (including, in the case of an amendment submitted in relation to a statement to which Article 5 (4) is applicable, Reference Documents referenced therein)"; the term "Prospectus" in Article 17 shall be deemed to be replaced with "Prospectus (including, in the case of a Prospectus to which Article 13 (3) is applicable, Reference Documents referenced therein)"; the term "a Securities Registration Statement contains" in Article 18 (1) shall be deemed to be replaced with "a Securities Registration Statement (including, in the case of a statement to which Article 5 (4) is applicable or an amendment submitted in relation to such a statement under Article 7, Article 9 (1) or Article 10 (1), Reference Documents referenced therein) contains"; the term "a Prospectus referred to in Article 13 (1) contains" in Article 18 (2) shall be deemed to be replaced with "a Prospectus referred to in Article 13 (1) (including, in the case of a Prospectus to which Article 13 (3) is applicable, the Prospectus or Reference Documents referenced therein) contains"; the terms "Securities Registration Statement" and "Prospectus" in Article 19 (2) and the first sentence of Article 20 shall be deemed to be replaced with "Securities Registration Statement (including, in the case of a statement to which Article 5 (4) is applicable or an amendment submitted in relation to such a statement under Article 7, Article 9 (1) or Article 10 (1), the statement, the amendment or Reference Documents referenced in the statement or the amendment)" and "Prospectus (including, in the case of a Prospectus to which Article 13 (3) is applicable, the Prospectus or Reference Documents referenced therein)," respectively; the term "a Securities Registration Statement contains" in Article 21 (1) shall be deemed to be replaced with "a Securities Registration Statement (including, in the case of a statement to which Article 5 (4) is applicable or an amendment submitted in relation to such a statement under Article 7, Article 9 (1) or Article 10 (1), the statement or Reference Documents referenced therein) contains"; the term "a Prospectus referred to in Article 13 (1) contains" in Article 21 (3) shall be deemed to be replaced with "a Prospectus referred to in Article 13 (1) (including, in the case of a Prospectus to which Article 13 (3) is applicable, the Prospectus or Reference Documents referenced therein) contains"; the term "a Securities Registration Statement contains" in Article 22 (1) shall be deemed to be replaced with "a Securities Registration Statement (including, in the case of a statement to which Article 5 (4) is applicable or an amendment submitted in relation to such a statement under Article 7, Article 9 (1) or Article 10 (1), the statement or Reference Documents referenced therein) contains"; and the term "Securities Registration Statement" in paragraph (1) of

the preceding Article shall be deemed to be replaced with "Securities Registration Statement (including, in the case of a statement to which Article 5 (4) is applicable or an amendment submitted in relation to such a statement under Article 7, Article 9 (1) or Article 10 (1), the statement, the amendment or Reference Documents referenced in the statement or the amendment)."

(Submission of Shelf Registration Statements)

- Article 23-3 (1) The Issuer of Securities of which Public Offerings or Secondary Distributions are planned may, if he/she satisfies requirements specified in Article 5 (4) and the total issue price or the total distribution amount of the Securities of which Public Offerings or Secondary Distributions are planned (hereinafter referred to as the "Planned Amount of Issue") is 100 million yen or more, register Public Offerings or Secondary Distributions of the Securities by submitting a document which, pursuant to the provisions of a Cabinet Office Ordinance, state the matters specified by a Cabinet Office Ordinance as those necessary and appropriate for the public interest or protection of investors, including the period in which Public Offerings or Secondary Distributions of the Securities are planned (hereinafter referred to as the "Planned Issue Period"), the kind of the Securities, the Planned Amount of Issue or the maximum amount of issue or distribution, and names of principal Financial Instruments Business Operators and/or Registered Financial Institutions which plan to underwrite the Securities (such document is hereinafter referred to as a "Shelf Registration Statement") to the Prime Minister; provided, however, that this shall not apply to cases where a second distribution is planned for the Securities of which Solicitation for Newly Issued Securities, etc. was conducted in a manner falling under the category of Solicitation Only for Qualified Institutional Investors defined in Article 23-13 (1) (limited to Solicitation Only for Qualified Institutional Investors to which the main clause of Article 23-13 (1) is applicable) (excluding the Case Where Disclosures Have Been Made with regard to the Securities) or where a second distribution is planned for the Securities of which Solicitation for Newly Issued Securities, etc. was conducted in a manner falling under the category of Solicitation for Small Number of Investors defined in Article 23-13 (3) (limited to Solicitation for Small Number of Investors to which the main clause of Article 23-13 (3) is applicable) (excluding the Case Where Disclosures Have Been Made with regard to the Securities).
- (2) The preceding paragraph shall apply only in cases where the Shelf Registration Statement submitted under the preceding paragraph states, in addition to statements on the matters specified by a Cabinet Office Ordinance set forth in the preceding paragraph, to the effect that reference should be made to the latest Reference Documents pertaining to the Issuer for the

matters listed in Article 5 (1)(ii) pursuant to the provisions of a Cabinet Office Ordinance, and are accompanied by documents that are specified by a Cabinet Order as necessary and appropriate for the public interest or protection of investors.

- (3) Article 4 (1) and (2) shall not apply to Public Offerings or Secondary Distributions of the Securities for which registration set forth in paragraph (1) (hereinafter referred to as a "Shelf Registration") has been made.
- (4) A company which is the Issuer of the Securities for which a Shelf Registration has been made may continue the submission of Annual Securities Reports required under Article 24 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 24 (5); hereinafter the same shall apply in this paragraph) and documents to be attached thereto even after the obligation to submit Annual Securities Reports under Article 24 (1) extinguishes, if their submission is necessary to satisfy the requirements of Article 5 (4).

(Submission of Amended Shelf Registration Statement)

Article 23-4 When, during the period on or after the day on which a Shelf Registration was made but before the day on which the Shelf Registration ceases to be effective, documents of the same kind as the Reference Documents referenced in the Shelf Registration Statement under paragraph (2) of the preceding Article are newly submitted, or there occurs any other circumstance which, as specified by a Cabinet Office Ordinance, requires amendment of descriptions in the Shelf Registration Statement and documents attached thereto (hereinafter collectively referred to as "Shelf Registration Documents" in this Article) for the public interest or protection of investors, the person having made the Shelf Registration (hereinafter referred to as the "Shelf Registration Holder") shall submit an Amended Shelf Registration Statement to the Prime Minister pursuant to the provisions of a Cabinet Office Ordinance. This shall also apply to cases where despite the lack of new submission of such documents or such circumstance, the Shelf Registration Holder finds that any description in the Shelf Registration Documents should be amended. In this case, however, the Shelf Registration Holder may not make any amendment to increase the Planned Amount of Issue, change the Planned Issue Period or change other matters specified by a Cabinet Office Ordinance.

(Effective Date of Shelf Registration Statement)

Article 23-5 (1) Article 8 shall apply mutatis mutandis to effectuation of a Shelf Registration Statement. In this case, the term "the statement submitted under Article 5 (1) (or, if the matters referred to in the proviso to Article 5 (1) are not stated in the statement, the amendment submitted under the preceding Article in relation to said matters; hereinafter the same shall apply in the following

paragraph)" in Article 8 (1) shall be deemed to be replaced with "Shelf Registration Statement as provided for in Article 23-3 (1) (hereinafter referred to as a "Shelf Registration Statement" in this Article to Article 23)"; the terms "the amendment is submitted under the preceding Article" and "the statement set forth Article 5 (1)" in Article 8 (2) shall be deemed to be replaced with "the Amended Shelf Registration Statement submitted under Article 23-4" and "the Shelf Registration Statement," respectively; and, the terms "the statement set forth in Article 5 (1) and other documents set forth in Article 5 (6) or the preceding Article" and "the person who submitted the statement and the other documents" in Article 8 (3) shall be deemed to be replaced with "the Amended Shelf Registration Statement submitted under Article 23-4 before the day when the Shelf Registration Statement, documents attached thereto and the Shelf Registration as defined in Article 23-3 (3) (hereinafter referred to as a "Shelf Registration" in this Article to Article 23) come into effect" and "the person who submitted these documents," respectively.

- (2) When an Amended Shelf Registration Statement is submitted under the preceding Article on or after the day when the Shelf Registration Statement comes into effect, the Prime Minister may order the suspension of the effect of the Shelf Registration for the period designated by him/her, which may not exceed 15 days, if he/she finds it is necessary and appropriate for the public interest or protection of investors.

(Planned Issue Period of Securities for Which Shelf Registration has been Made)

Article 23-6 (1) The Planned Issue Period of Securities for which a Shelf Registration has been made shall be a period specified by a Cabinet Office Ordinance which may not exceed two years from the day when the Shelf Registration comes into effect.

- (2) A Shelf Registration shall cease to be effective on the day when the Planned Issue Period under the preceding paragraph has elapsed.

(Submission of Written Withdrawal of Shelf Registration)

Article 23-7 (1) When the Public Offering or Secondary Distribution is completed for all of the Planned Amount of Issue of the Securities before the day when the Planned Issue Period set forth in paragraph (1) of the preceding Article is to elapse, the Shelf Registration Holder shall withdraw the Shelf Registration by submitting a written withdrawal of Shelf Registration stating to that effect pursuant to the provisions of a Cabinet Office Ordinance to the Prime Minister.

- (2) In the case referred to in the preceding paragraph, the Shelf Registration shall cease to be effective on the day when the Prime Minister accepts the written withdrawal of Shelf Registration, notwithstanding the provision of

paragraph (2) of the preceding Article.

(Submission of Shelf Registration Supplements)

- Article 23-8 (1) The Issuer, a person who engages in Secondary Distribution of Securities, an Underwriter, a Financial Instruments Business Operator or a Registered Financial Institution shall not have another person acquire Securities for which the Shelf Registration has been made for their Public Offerings or Secondary Distributions, or sell such Securities to another person, through Public Offerings or Secondary Distributions, unless the Shelf Registration has already come into effect and, for each Public Offering or Secondary Distribution, a document which states the total issue price or total distribution amount, conditions of issuance or distribution of the Securities or other matters specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or protection of investors (hereinafter referred to as "Shelf Registration Supplements") has been submitted to the Prime Minister pursuant to the provisions of a Cabinet Office Ordinance; provided however, that this shall not apply to Public Offerings or Secondary Distributions specified by a Cabinet Office Ordinance if the total issue price or total distribution amount of each Public Offering or Secondary Distribution is less than 100 million.
- (2) Notwithstanding the preceding paragraph, with regard to, among book-entry bonds, etc. as defined in Article 129 (1) of Act on Book-entry Transfer of Bonds, etc., short-term bonds as defined in Article 66 (i) of said Act or other book-entry bonds, etc. specified by a Cabinet Order (limited to those of which the outstanding balance is made available for public inspection by the Institution for Book-entry Transfer (meaning the Institution for Book-entry Transfer as defined by Article 2 (2) of said Act) which deals in these book-entry bonds, etc.), the Issuer, a person who engages in Secondary Distribution of Securities, an Underwriter, a Financial Instruments Business Operator or a Registered Financial Institution may have another person acquire them or sell them to another person through Public Offerings or Secondary Distributions, only if the Shelf Registration has already come into effect.
- (3) With regard to a Public Offering or Secondary Distribution of Securities to be made only to shareholders who are stated or recorded in the shareholder registry on a certain date, Shelf Registration Supplements for that Public Offering or Secondary Distribution shall be submitted by ten days prior to that certain date; provided, however, that this shall not apply to cases so specified by a Cabinet Office Ordinance in consideration of the issue price or distribution price or other circumstances.
- (4) Article 4 (4) and (5) shall apply mutatis mutandis to Public Offering or Secondary Distribution of Securities to which the proviso to paragraph (1) is

applicable. In this case, the terms "pertaining to a Specified Public Offering, etc." and "apply to the Specified Public Offering, etc." in Article 4 (4) shall be deemed to be replaced with "pertaining to such a Public Offering or Secondary Distribution" and "apply to the Public Offering or Secondary Distribution," respectively; and the parts "the Securities for which the Specified Public Offering, etc. is to be made," "of the Specified Public Offering, etc.," "the Specified Public Offering, etc. is to begin" and "the Secondary Distributions of Securities set forth in paragraph (3) which fall under the Case Where Disclosures Have Been Made and of which the total issue price is less than 100 million yen, and Public Offerings or Secondary Distributions of the Securities set forth in item (v) of paragraph (1) of which the total issue price" in Article 4 (5) shall be deemed to be replaced with "the Securities," "of the Public Offering or Secondary Distribution," "the Public Offering or Secondary Distribution is to begin," "a Public Offering or Secondary Distribution of which the total issue price," respectively.

- (5) Shelf Registration Supplements required under paragraph (1) shall state, in addition to statements on the matters specified by a Cabinet Office Ordinance set forth in said paragraph, to the effect that reference should be made to the latest Reference Documents pertaining to the Issuer for the matters listed in Article 5 (1)(ii) pursuant to the provisions of a Cabinet Office Ordinance, and shall be accompanied by documents specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or protection of investors.

(Order to Submit Amended Shelf Registration Statement by Reason of Deficiencies in Formalities, etc.)

- Article 23-9 (1) When the Prime Minister finds any deficiencies in formalities in a Shelf Registration Statement (including Reference Documents referenced therein) or the documents attached thereto, or an Amended Shelf Registration Statement submitted under Article 23-4 (including Reference Documents referenced therein), or finds insufficiency of a statement on important matters to be stated in these documents, he/she may order the person submitting these documents to submit an Amended Shelf Registration Statement. In this case, a hearing shall be held irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act.
- (2) In cases where a disposition is made under the preceding paragraph, the Shelf Registration shall come into effect on the day when the period designated by the Prime Minister has elapsed from the day when the Prime Minister accepts the Shelf Registration Statement submitted for the Shelf Registration, notwithstanding Article 8 as applied mutatis mutandis pursuant to Article 23-5 (1).
  - (3) In the case referred to in the preceding paragraph, when an Amended Shelf



Registration Statement is submitted under Article 23-4 during the period designated by the Prime Minister, it shall be deemed that the Shelf Registration Statement has been accepted by the Prime Minister on the day when the Prime Minister accepts the Amended Shelf Registration Statement.

- (4) In the case referred to in the preceding paragraph, when the Prime Minister believes that the Amended Shelf Registration Statement submitted under Article 23-4 is easily understandable to the public or finds that information on the matters listed in Article 5 (1)(ii) pertaining to the person who submitted the Amended Shelf Registration Statement has already been widely available to the public, he/she may designate a period shorter than that designated by him/her under paragraph (2). In this case, the Shelf Registration shall come into effect on the day when the shorter period has elapsed.
- (5) The provision of paragraph (3) shall apply mutatis mutandis to cases where the shorter period is designated under the preceding paragraph and an Amended Shelf Registration Statement is submitted under Article 23-4 during that shorter period.

(Order to Submit Amended Shelf Registration Statement by Reason of Fake Statement, etc.)

- Article 23-10 (1) When the Prime Minister finds that a Shelf Registration Statement (including Reference Documents referenced therein) or the documents attached thereto, an Amended Shelf Registration Statement submitted under Article 23-4 or paragraph (1) of the preceding Article (including Reference Documents referenced therein) or Shelf Registration Supplements (including Reference Documents referenced therein) or the documents attached thereto contains any fake statement on important matters, or lacks a statement on important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding, he/she may at any time order the person submitting these documents to submit an Amended Shelf Registration Statement. In this case, a hearing shall be held irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act.
- (2) Paragraphs (2) to (5) of the preceding Article shall apply mutatis mutandis to the case where an order to submit the Amended Shelf Registration Statement is given under the preceding paragraph before the day when the Shelf Registration comes into effect.
- (3) In cases where a disposition is made under paragraph (1) on or after the day when the Shelf Registration has come into effect, the Prime Minister may, when he/she finds it necessary, order the suspension of the effect of the Shelf Registration.
- (4) In cases where an order for suspension is given under the preceding

paragraph, when an Amended Shelf Registration Statement is submitted as required under paragraph (1) and the Prime Minister finds the Amended Shelf Registration Statement as being appropriate, he/she shall cancel the order for suspension given under the preceding paragraph.

- (5) The provisions of the preceding paragraphs shall apply mutatis mutandis to the case where the Prime Minister finds that an Amended Shelf Registration Statement submitted under paragraph (1) (including Reference Documents referenced therein) contains any fake statement on important matters, or lacks a statement on important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding.

(Suspension of the Effect of the Shelf Registration by Reason of Fake Statement)

Article 23-11 (1) In cases where a Shelf Registration Statement or the documents attached thereto, an Amended Shelf Registration Statement submitted under Article 23-4, Article 23-9 (1) or paragraph (1) of the preceding Article (including the cases where it is applied mutatis mutandis pursuant to Article 23-10 (5)), or Shelf Registration Supplements or the documents attached thereto, or Reference Documents referenced in any of the foregoing, contains any fake statements on important matters, if the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may, with regard to the Shelf Registration Statement or the documents attached thereto, or the Amended Shelf Registration Statement, or the Shelf Registration Supplements or the documents attached thereto (hereinafter collectively referred to as "Shelf Registration Documents" in this Article) or statements submitted under Article 5 (1), other Shelf Registration Statements or other Shelf Registration Supplements submitted by the person who submitted the Shelf Registration Documents during the period within one year from the day when the person submitted the Shelf Registration Documents, order the suspension of effect of the Shelf Registration pertaining to the Shelf Registration Documents, the suspension of effect of the notification pertaining to the statements under Article 5 (1) or the suspension of effect of the Shelf Registration pertaining to the other Shelf Registration Statements, or other Shelf Registration Supplements, or extend the period stipulated in Article 8 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 23-5 (1)), for the period that he/she considers appropriate for the public interest or protection of investors. In this case, a hearing shall be held irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act.

- (2) In cases where a disposition is made under the preceding paragraph, the Prime Minister may cancel the disposition, if he/she finds that the content of

an Amended Shelf Registration Statement submitted under Article 23-4 or paragraph (1) of the preceding Article (including the cases where it is applied mutatis mutandis pursuant to Article 23-10 (5)) in relation to the fake statement referred to in the preceding paragraph is appropriate and that even if acquisition or sale of Securities issued by the person having submitted the Shelf Registration Documents through Public Offering or Secondary Distribution is allowed, it would not hinder the public interest or protection of investors.

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

Article 23-12 (1) Article 6 shall apply mutatis mutandis to the case where a Shelf Registration Statement and the documents attached thereto, an Amended Shelf Registration Statement under Article 23-4, Article 23-9 (1) or Article 23-10 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 23-10 (5)), or Shelf Registration Supplements and the documents attached thereto are submitted.

(2) Article 13 (1) shall apply mutatis mutandis to the Issuer of Securities for which a Shelf Registration has been made, the main clause of Article 13 (2) shall apply mutatis mutandis to a Prospectus to be prepared by the Issuer of Securities for which a Shelf Registration has been made, and Article 13 (4) and (5) shall apply mutatis mutandis to a Public Offering or Secondary Distribution of Securities for which a Shelf Registration has been made. In this case, the term "according to the categories specified in the following items, the matters specified in the respective items" in the main clause of Article 13 (2) shall be deemed to be replaced with "the matters to be stated in a Shelf Registration Statement, an Amended Shelf Registration Statement submitted under Article 23-4 or Shelf Registration Supplements and the matters so specified by a Cabinet Office Ordinance."

(3) Article 15 (2) and (6) shall apply mutatis mutandis to a Public Offering or Secondary Distribution of Securities for which a Shelf Registration has been made. In this case, the term "containing the matters specified in Article 13 (2)(i)" in Article 15 (2) shall be deemed to be replaced with "referred to in Article 13 (1) as applied mutatis mutandis pursuant to Article 23-12 (2)"; and the terms "paragraph (2) to the preceding paragraph," "Article 10 (1) or Article 11 (1)" and "the notification made under Article 4 (1) or (2) for the Public Offering or Secondary Distribution came into effect" in Article 15 (6) shall be deemed to be replaced with "paragraph (2)," "Article 23-10 (3) or Article 23-11 (1)" and "the Shelf Registration Supplements relating to the Shelf Registration which was made for the Public Offering or Secondary Distribution and already came into effect are submitted," respectively.

- (4) Article 16 shall apply mutatis mutandis to a person who has another person acquire Securities in violation of Article 23-8 (1) or (2), or Article 15 (2) or (6) as applied mutatis mutandis pursuant to the preceding paragraph.
- (5) Articles 17 to 21, Article 22 and Article 23 shall apply mutatis mutandis to Public Offering or Secondary Distribution of Securities for which Shelf Registration has been made. In this case, the term "Prospectus referred to in Article 13 (1)" in Article 17 shall be deemed to be replaced with "Prospectus referred to in Article 13 (1) as applied mutatis mutandis pursuant to Article 23-12 (2) (including Reference Documents referenced therein)"; the terms "a Securities Registration Statement contains" and "the Securities Registration Statement" in Article 18 (1) shall be deemed to be replaced with "Shelf Registration Documents, an Amended Shelf Registration Statement submitted under Article 23-4, Article 23-9 (1) or Article 23-10 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 23-10 (5)) (hereinafter referred to as an "Amended Shelf Registration Statement"), or Shelf Registration Supplements or the documents attached thereto or Reference Documents referenced in any of the foregoing (hereinafter referred to as "Shelf Registration Documents, etc.") contain" and "the Shelf Registration Documents, the Amended Shelf Registration Statement or Shelf Registration Supplements or the documents attached to the foregoing," respectively; the term "a Prospectus referred to in Article 13 (1) contains" in Article 18 (2) shall be deemed to be replaced with "a Prospectus referred to in Article 13 (1) (including Reference Documents referenced therein) contains"; the terms "the Securities Registration Statement" and "the Prospectus" in Article 19 (2) shall be deemed to be replaced with "the Shelf Registration Documents" and "the Prospectus (including Reference Documents referenced therein)," respectively; the terms "the Securities Registration Statement," "the Prospectus contains" and "Article 10 (1) or Article 11 (1)" and the part "from the time when the notification made under Article 4 (1) or (2) for Public Offering or Secondary Distribution of the Securities comes into effect" in Article 20 shall be deemed to be replaced with "the Shelf Registration Documents," "the Prospectus (including Reference Documents referenced therein) contains," "Article 23-10 (3) or Article 23-11 (1)" and "from the time when the Shelf Registration Supplements relating to the Shelf Registration which was made for the Public Offering or Secondary Distribution and already came into effect are submitted," respectively; the term "a Securities Registration Statement contains" in the non-itemized part of Article 21 (1) shall be deemed to be replaced with "Shelf Registration Documents contain"; the term "the Securities Registration Statement" in item (i) and (iii) of Article 21 (1) shall be deemed to be replaced with "the Shelf Registration Documents, the Amended Shelf Registration Statement or Shelf Registration Supplements or the documents

attached to the foregoing"; the term "a Prospectus referred to in Article 13 (1) contains" of Article 21 (3) shall be deemed to be replaced with "Prospectus referred to in Article 13 (1) (including Reference Documents referenced therein)"; the terms "a Securities Registration Statement" and "the Securities Registration Statement" of Article 22 (1) shall be deemed to be replaced with "the Shelf Registration Documents contain" and "the Shelf Registration Documents, the Amended Shelf Registration Statement or Shelf Registration Supplements or the documents attached to the foregoing," respectively; the parts "a notification made under Article 4 (1) or (2) for Public Offering or Secondary Distribution of Securities was made and has come into effect," "Article 10 (1) or Article 11 (1)," "the Securities Registration Statement" and "the notification" of Article 23 shall be deemed to be replaced with "the fact that a Shelf Registration has come into effect and Shelf Registration Supplements relating thereto are submitted (in the case of Public Offering or Secondary Distribution of Securities referred to in Article 23-8 (2), the fact that the Shelf Registration therefor has come into effect)," "Article 23-10 (3) or Article 23-11 (1)," "the Shelf Registration Documents" and "the Shelf Registration," respectively.

- (6) The provisions of paragraphs (2) and (3) and Articles 17, 18(2) and 21(3) as applied mutatis mutandis pursuant to the preceding paragraph shall not apply to Securities referred to in Article 23-8 (2).

(Notification of Solicitation Only for Qualified Institutional Investors)

Article 23-13 (1) A person (limited to a person who is specified by a Cabinet Office Ordinance) shall, when he/she makes a Solicitation Only for Qualified Institutional Investors (meaning a Solicitation for Newly Issued Securities, etc. which is made to Qualified Institutional Investors who are excluded under the provision of Article 2 (3)(i) from the number of persons to which the Solicitation for Newly Issued Securities, etc. was made in cases where the Solicitation for Newly Issued Securities, etc. falls under the category of Solicitations for Acquisition specified by Article 2 (3)(i), or which falls under the category of Solicitations for Acquisition specified by Article 2 (3)(ii)(a) or Article 2-2 (4)(ii)(a); hereinafter the same shall apply in this paragraph) or makes a Solicitation for Delivery of Existing Securities, etc. which is for Securities to which a Solicitation Only for Qualified Institutional Investors was made and is exempted from application of the main clause of Article 4 (2) (collectively referred to as "Solicitation Only for Qualified Institutional Investors, etc." in the following paragraph), notify the solicited persons of the matters specified by a Cabinet Office Ordinance, including the fact that the Solicitation for Newly Issued Securities, etc. made for the Securities falls under any of the categories of Solicitation for Acquisition listed in the following

items (limited to Securities acquired by Qualified Institutional Investors who are excluded under the provision of Article 2 (3)(i) from the number of persons to which the Solicitation for Newly Issued Securities, etc. was made in cases where the Solicitation for Newly Issued Securities, etc. falls under the category of Solicitations for Acquisition specified by Article 2 (3)(i) and therefore the notification under Article 4 (1) has not been made for the Solicitation for Newly Issued Securities, etc.; provided, however, that this shall not apply to the Case Where Disclosures Have Been Made with regard to the Securities and to cases where the Solicitation Only for Qualified Institutional Investors, etc. is made for Securities of which the total issue price was or is less than the amount specified by a Cabinet Office Ordinance, which may not be more than 100 million yen:

- (i) Solicitation for Acquisition set forth in Article 2 (3)(i);
- (ii) Solicitation for Acquisition set forth in Article 2 (3)(ii)(a); or
- (iii) Procedures Relating to Securities Issuance for Reorganization set forth in Article 2-2 (4)(ii)(a).

(2) A person who makes a Solicitation Only for Qualified Institutional Investors, etc. to which the main clause of the preceding paragraph is applicable shall, when having another person acquire Securities referred to in the main clause of the preceding paragraph or sell such Securities to another person through the Solicitation Only for Qualified Institutional Investors, etc., deliver a document containing a description on the matters to be notified under the preceding paragraph to the other person in advance of, or at the same time as, having the other person acquire such Securities or selling such Securities to the other person.

(3) A person shall, when he/she makes a Solicitation for Small Number of Investors (meaning a Solicitation for Newly Issued Securities, etc. which falls under any of the categories listed in the following items for each kind of Securities set forth in the respective items (excluding those specified by a Cabinet Order); hereinafter the same shall apply in this paragraph) or makes a Solicitation for Delivery of Existing Securities, etc. which is for Securities to which a Solicitation for Small Number of Investors was made and is exempted from application of the main clause of Article 4 (1) (collectively referred to as "Solicitation for Small Number of Investors, etc." in the following paragraph), notify the solicited persons of the matters specified by a Cabinet Office Ordinance, including the fact that the Solicitation for Newly Issued Securities, etc. made for the Securities falls under any of the categories listed in the following items for each kind of Securities set forth in the respective items and therefore the notification under Article 4 (1) has not been made for the Solicitation for Newly Issued Securities, etc.; provided, however, that this shall not apply to the Case Where Disclosures Have Been Made with regard to the

Securities and to cases where the Solicitation for Small Number of Investors, etc. is made for the Securities of which the total issue price was or is less than the amount designated by a Cabinet Office Ordinance, which may not be more than 100 million yen:

(i) Paragraph (1) Securities: any of the following:

(a) Solicitation for Acquisition set forth in Article 2 (3)(ii)(b); or

(b) Procedures Relating to Securities Issuance for Reorganization set forth in Article 2-2 (4)(ii)(b).

(ii) Paragraph (2) Securities: any of the following:

(a) Solicitation for Newly Issued Securities, etc. not falling under the category of Solicitations for Acquisition set forth in Article 2 (3)(iii); or

(b) Solicitation for Newly Issued Securities, etc. not falling under the case set forth in Article 2-2 (4)(iii).

(4) A person who makes a Solicitation for Small Number of Investors, etc. to which the main clause of the preceding paragraph is applicable shall, when having another person acquire Securities referred to in the main clause of the preceding paragraph or selling such Securities to another person through the Solicitation for Small Number of Investors, etc., deliver a document containing a description on the matters to be notified under the preceding paragraph to the other person in advance of, or at the same time as, having the other person acquire such Securities or selling such Securities to the other person.

(Clear Indication of Conditions for Solicitation for Small Number of Investors for Foreign Securities)

Article 23-14 (1) With regard to Securities already-issued in a foreign State (excluding those specified by a Cabinet Order) or Securities specified by a Cabinet Order as those equivalent to such Securities, among solicitations of an application to sell or purchase such Securities, those exempted from application of the main clause of Article 4 (1) (hereinafter referred to as "Solicitation for Small Number of Investors for Foreign Securities)" in this Article) shall be made by clearly indicating that the conditions specified by a Cabinet Order as those necessary to reduce the likelihood that the Securities will be transferred from any person who purchased them to a large number of persons are imposed on sales of the Securities; provided, however, that this shall not apply to the Case Where Disclosures Have Been Made with regard to the Securities and to cases where the requirements specified by a Cabinet Office Ordinance in order to qualify sales of Securities as those which will not impair the public interest or protection of investors even if such conditions are not imposed thereon, including the requirement that the total amount of the sales of the Securities must be less than the amount specified by a Cabinet Office Ordinance, which may not be more than 100 million yen, are satisfied.

(2) A person who makes a Solicitation for Small Number of Investors for Foreign Securities to which the main clause of the preceding paragraph is applicable shall, when he/she sells Securities referred to in the main clause of the preceding paragraph to another person through the Solicitation for Small Number of Investors for Foreign Securities, deliver a document containing a description on the matters specified by a Cabinet Office Ordinance, including conditions referred to in the preceding paragraph, in advance of, or at the same time as, selling such Securities to the other person.

(Submission of Annual Securities Report)

Article 24 (1) When Securities (excluding Regulated Securities; hereinafter the same shall apply in this Article, except in the following items) issued by a company fall under any of the categories specified in the following items, the company shall submit, for each business year, a report stating the trade name of the company, financial conditions of the Corporate Group to which the company belongs and of the company, other important matters concerning the company's business and other matters specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or 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, in the case of a foreign company, within the period specified by a Cabinet Order as the period necessary and appropriate for the public interest or protection of investors) pursuant to the provisions of a Cabinet Office Ordinance; provided however, that this shall not apply to cases where 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 a Cabinet Order) and the numbers of holders of the Securities on the last day of that business year and on the respective last days of the business years that began within four years before the day on which that business year began are fewer than the number calculated pursuant to the provisions of a Cabinet Order, if the Prime Minister approves pursuant to the provisions of a Cabinet Office Ordinance that even if the company does not submit Annual Securities Reports, the public interest or protection of investors would not be impaired (limited to the company for which five years have already passed after the end of the Starting Year of the Report Submission (meaning the business year that includes the day on which the main clause of Article 4 (1) or (2) or the main clause of Article 23-8 (1) or (2) became applicable to the Public Offering or Secondary Distribution of the Securities, or, the latest one of such business years); where the Securities issued by the company fall under the category of Securities specified in item (iv) below, if the amount of the stated capital of the company is less than 500 million yen (or if, in cases where the Securities are Rights in



Securities Investment Business, etc. that shall be deemed as Securities under Article 2 (2), the amount that is specified by a Cabinet Order as the amount of the stated capital of the company is less than the amount specified by a Cabinet Order on the last day of that business year) or if the number of holders of the Securities on the last day of that business year are fewer than the number specified by a Cabinet Order; and where the Securities issued by the company fall under the category of Securities specified in item (iii) or (iv) below, if the Prime Minister approves as specified by a Cabinet Order that even if the company does not submit Annual Securities Reports, the public interest or protection of investors would not be impaired.

(i) Securities listed in a Financial Instruments Exchange;

(ii) Securities specified by a Cabinet Order as those of which the state of distribution can be regarded as being equivalent to Securities referred to in the preceding item;

(iii) Securities of which Public Offering or Secondary Distribution were subjected to the main clause of Article 4 (1) or (2) or the main clause of Article 23-8 (1) or (2) (excluding those specified in the preceding two items);  
or

(iv) Securities (limited to share certificates, Rights in Securities Investment Business, etc. that shall be deemed as Securities under Article 2 (2) and other Securities specified by a Cabinet Order) issued by the company, if the number of its holders on the last day of that business year or on the last day of any of the business years that began within four years before the day on which that business year began is not less than the number specified by a Cabinet Order (or if, in the case of Rights in Securities Investment Business, etc. that shall be deemed as Securities under Article 2 (2), the number of its holders on the last day of that business year is not less than the number specified by a Cabinet Order) (excluding those specified in the preceding three items).

(2) A company which has issued Securities falling under the category specified in item (iii) of the preceding paragraph and has submitted a statement containing descriptions on the matters specified in Article 5 (2) under Article 5 (1) for Small Amount Public Offering, etc. may state in the Annual Securities Report required by the main clause of the preceding paragraph, among the matters set forth in the main clause of Article 5 (1), only those specified by a Cabinet Office Ordinance as the matters pertaining to the company, instead of descriptions on all of the matters set forth in the main clause of Article 5 (1), unless the company falls under any of the categories of persons specified in the following items:

(i) a person who has already submitted an Annual Securities Report which contains descriptions on the matters set forth in the main clause of the

- preceding paragraph, or a Quarterly Securities Report which contains descriptions on the matters set forth in Article 24-4-7 (1) under Article 24-4-7 (1) or (2) or a Semiannual Securities Reports which contains descriptions on the matters set forth in Article 24-5 (1); and
- (ii) a person who submitted a statement under Article 5 (1) containing descriptions on the matters listed in Article 5 (1)(ii) for Public Offering or Secondary Distribution of Securities to which the main clause of Article 4 (1) or (2) has applied (excluding those specified in the preceding item).
- (3) When Securities issued by a company to which the main clause of paragraph (1) does not apply, come to fall under any of the categories specified in items (i) to (iii) of said paragraph (excluding cases specified by a Cabinet Office Ordinance), the company shall submit an Annual Securities Report pertaining to the business year immediately prior to the business year that includes the day on which the Securities came to fall under any of such categories, to the Prime Minister, pursuant to the provisions of a Cabinet Office Ordinance, without delay.
- (4) Matters necessary for calculation of the number of Securities holders set forth in item (iv) of paragraph (1) shall be specified by a Cabinet Office Ordinance.
- (5) The provisions of the preceding paragraphs shall apply mutatis mutandis to cases where Regulated Securities issued by a company fall under any of the categories specified in the items of paragraph (1). In this case, the term "excluding Regulated Securities" in the main clause of paragraph (1) shall be deemed to be replaced with "limited to Regulated Securities"; the term "the company shall" in the main clause of paragraph (1) shall be deemed to be replaced with "the company (if said Securities are so specified by a Cabinet Office Ordinance, excluding persons specified by a Cabinet Office Ordinance) shall"; the terms "the trade name of the company, financial conditions of the Corporate Group to which the company belongs and of the company, other important matters concerning the company's business" in the main clause of paragraph (1) shall be deemed to be replaced with "financial conditions of asset investment or other similar businesses conducted by the company, other important matters concerning the company's assets"; the term "for each business year" in the main clause of paragraph (1) shall be deemed to be replaced with "for each of the periods of time specified by a Cabinet Office Ordinance for the Regulated Securities (hereinafter referred to as the "Specified Period" in this Article)"; the term "that business year" in the main clause of paragraph (1) shall be deemed to be replaced with "that Specified Period"; the part "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 a Cabinet Order) and the numbers of holders of the Securities on the last day of that business year and on the last days of the

business years that began within four years before the day on which that business year began are fewer than the number calculated pursuant to the provisions of a Cabinet Order, if the Prime Minister approves pursuant to the provisions of a Cabinet Office Ordinance that even if the company does not submit Annual Securities Reports, the public interest or protection of investors would not be impaired (limited to the company for which five years have already passed after the end of the Starting Year of Report Submission (meaning the business year that includes the day on which the main clause of Article 4 (1) or (2) or the main clause of Article 23-8 (1) or (2) became applicable to the Public Offering or Secondary Distribution of the Securities, or, the latest one of such business years); where the Securities issued by the company fall under the category of Securities specified in item (iv) below" in the proviso to paragraph (1) shall be deemed to be replaced with "the Regulated Securities issued by the company fall under the category of Securities specified in item (iv) below"; the part "or if the number of holders of the Securities on the last day of that business year is fewer than the number specified by a Cabinet Order; and" in the proviso to paragraph (1) shall be deemed to be replaced with "; and"; the part "share certificates, Rights in Securities Investment Business, etc. that shall be deemed as Securities under Article 2 (2)" in item (iv) of paragraph (1) shall be deemed to be replaced with "Rights in Securities Investment Business, etc. that shall be deemed as Securities under Article 2 (2)"; the part "if the number of its holders on the last day of that business year or on the last day of any of the business years that began within four years before the day on which that business year began is not less than the number specified by a Cabinet Order (or, in case of Rights in Securities Investment Business, etc. that shall be deemed as Securities under Article 2 (2), the number of its holders on the last day of that business year is not less than the number specified by a Cabinet Order)" in item (iv) of paragraph (1) shall be deemed to be replaced with "if the number of its holders on the last day of the Specified Period is not less than the number specified by a Cabinet Order"; the term "issued Securities" in paragraph (2) shall be deemed to be replaced with "issued Regulated Securities"; the term "Securities issued" in paragraph (3) shall be deemed to be replaced with "Regulated Securities issued"; the term "a company" in paragraph (3) shall be deemed to be replaced with "a company (if said Regulated Securities are Securities so specified by a Cabinet Office Ordinance, excluding persons specified by a Cabinet Office Ordinance)"; the term "the main clause of paragraph (1)" in paragraph (3) shall be deemed to be replaced with "the main clause of paragraph (1) as applied mutatis mutandis pursuant to paragraph (5)"; the term "business year" in paragraph (3) shall be deemed to be replaced with "Specified Period"; the term "the day on which the Securities came" in

paragraph (3) shall be deemed to be replaced with "the day on which the Regulated Securities came"; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

- (6) The articles of incorporation or other documents that are specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or protection of investors shall be attached to an Annual Securities Report.
- (7) Article 6 shall apply mutatis mutandis to cases where an Annual Securities Report and the documents attached thereto are submitted under paragraph (1) to (3) (including the cases where they are applied mutatis mutandis pursuant to paragraph (5)) and the preceding paragraph.
- (8) 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 Annual Securities Reports under paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (5); hereinafter the same shall apply in this paragraph to paragraph (13)) (including foreign companies which have submitted Annual Securities Reports under Article 23-3 (4); hereinafter referred to as "Reporting Foreign Company") may submit, instead of Annual Securities Reports to be submitted under paragraph (1) and the documents to be attached thereto under paragraph (6) (hereinafter collectively referred to as "Annual Securities Reports, etc." in this Article), documents which are prepared in English and are similar to Annual Securities Reports, etc. Disclosed in a Foreign State (meaning the state of having been made available for public inspection 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 24-4-7(6) and 24-5(7)) (such documents are hereinafter referred to as "Foreign Company Reports" in this Chapter).
- (9) When Foreign Company Reports 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 the Foreign Company Report 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 the Foreign Company Report, and other documents specified by a Cabinet Office Ordinance (such documents are hereinafter collectively referred to as "Supplementary Documents" in this Article and paragraph (4) of the following Article) shall be attached to the Foreign Company Report as specified by a Cabinet Office Ordinance.
- (10) In cases where a Reporting Foreign Company submits a Foreign Company Report and Supplementary Documents thereof instead of Annual Securities

Reports, etc. under the preceding two paragraphs, the part "within three months after the end of that business year (or, in the case of a foreign company, within the period specified by a Cabinet Order as the period necessary and appropriate for the public interest or protection of investors after the end of that business year)" in paragraph (1) shall be deemed to be replaced with "within the period specified by a Cabinet Order as the period necessary and appropriate for the public interest or protection of investors,"; and the part, "the term "that business year" in the main clause of paragraph (1) shall be deemed to be replaced with "that Specified Period"" in paragraph (5) shall be deemed to be replaced with "the part "within three months after the end of that business year (or, in the case of a foreign company, within the period specified by a Cabinet Order as the period necessary and appropriate for the public interest or protection of investors after the end of that business year)" in the main clause of paragraph (1) shall be deemed to be replaced with "within the period specified by a Cabinet Order as the period necessary and appropriate for the public interest or protection of investors after the end of that business year"."

- (11) 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-4) shall apply to cases where a Reporting Foreign Company submits a Foreign Company Report and Supplementary Documents thereof under paragraphs (8) and (9), by deeming the Foreign Company Report and Supplementary Documents to be Annual Securities Reports, etc. and deeming submission of the former to be submission of the latter.
- (12) The Prime Minister shall, when he/she finds that a Reporting Foreign Company which submitted a Foreign Company Report does not satisfy the requirements for being allowed to submit a Foreign Company Report under paragraph (8), 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 (1) of the Administrative Procedure Act.
- (13) Notwithstanding the provision of paragraph (1), a Reporting Foreign Company, when receiving a notice made under the preceding paragraph, shall submit an Annual Securities Report set forth in paragraph (1) within the period specified by a Cabinet Order as the period necessary and appropriate for the public interest or protection of investors after the day on which the notice is made.
- (14) In cases where a company required to submit Annual Securities Reports under paragraph (1) (limited to cases where it is applied mutatis mutandis pursuant to paragraph (5); hereinafter the same shall apply in this Article) submits, pursuant to the provisions of a Cabinet Office Ordinance, documents containing descriptions on part of the matters specified by a Cabinet Office

Ordinance under paragraph (1) (limited to documents prepared based on laws and regulations or rules of a Financial Instruments Exchange (including those specified by a Cabinet Office Ordinance as being similar to such rules); such documents are hereinafter referred to as "Documents Substituting 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 approved by the Prime Minister as specified by a Cabinet Office Ordinance as those where the public interest or protection of investors would not be impaired, the term "other matters specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or protection of investors" in paragraph (1) shall be deemed to be replaced with "other matters specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or protection of investors (excluding matters stated in Documents Substituting Part of an Annual Securities Report defined in paragraph (14))"; and the term "among the matters set forth in the main clause of Article 5 (1)" in paragraph (2) shall be deemed to be replaced with "among the matters set forth in the main clause of Article 5 (1) (excluding matters stated in Documents Substituting Part of an Annual Securities Report defined in paragraph (14))."

(15) When Documents Substituting Part of an Annual Securities Report are submitted together with an Annual Securities Report set forth in paragraph (1) as applied by replacing certain terms under the preceding paragraph, the provisions of the Financial Instruments and Exchange Act and Related Regulations shall apply by deeming the Documents Substituting Part of an Annual Securities Report to form a part of the Annual Securities Report and deeming submission of the Documents Substituting Part of an Annual Securities Report to be submission of the Documents Substituting Part of an Annual Securities Report as a part of the Annual Securities Report.

(Application Mutatis Mutandis of Provisions Concerning Amendments)

Article 24-2 (1) Article 7, Article 9 (1) and Article 10 (1) shall apply mutatis mutandis to Annual Securities Reports and documents attached thereto. In this case, the part "a statement set forth in Article 5 (1) or in other documents required under Article 5 (6), or there occurs any other circumstance provided for by a Cabinet Office Ordinance as that which requires amendment of said statement or said other documents for the public interest or protection of investors, during the period on or after the day on which the notification was made under Article 4 (1) or (2) but before the day on which the notification is to take effect" and the terms "the person making the notification" and "an amendment" in Article 7 shall be deemed to be replaced with "an Annual Securities Report and documents attached thereto, or there occurs any other

circumstance provided for by a Cabinet Office Ordinance as that which requires amendment of an Annual Securities Report and documents attached thereto for the public interest or protection of investors," "the person submitting the Annual Securities Report" and "an amendment report," respectively; the terms "the person submitting them" and "an amendment" in Article 9 (1) shall be deemed to be replaced with "the person submitting the Annual Securities Report" and "an amendment report," respectively; and the term "the person submitting the Securities Registration Statement" and "to submit an amendment and may, when he/she finds it necessary, order the suspension of the effect of the notification made under Article 4 (1) or (2)" in Article 10 (1) shall be deemed to be replaced with "the person submitting the Securities Registration Statement" and "to submit an amendment report," respectively.

- (2) When a company which is the Issuer of Securities submits an amendment report with regard to any description on important matters stated in its Annual Securities Report under Article 7 or Article 10 (1) as applied mutatis mutandis pursuant to the preceding paragraph, it shall give a public notice to that effect pursuant to the provisions of a Cabinet Order.
- (3) Article 6 shall apply mutatis mutandis to cases where an amendment report for an Annual Securities Report or documents attached thereto is submitted under Article 7, Article 9 (1) or Article 10 (1) as applied mutatis mutandis pursuant to paragraph (1).
- (4) Paragraphs (8), (9) and (11) of the preceding Article shall apply mutatis mutandis to cases where an amendment report for a Foreign Company Report and Supplementary Documents therefor submitted by a Reporting Foreign Company are submitted under Article 7, Article 9 (1) or Article 10 (1) as applied mutatis mutandis by replacing certain terms pursuant to paragraph (1).

(Suspension of the Effect of the Notifications Made Within One Year from the Submission of Annual Securities Report Containing Fake Statement)

Article 24-3 Article 11 shall apply mutatis mutandis to statements under Article 5 (1), Shelf Registration Statements or Shelf Registration Supplements submitted by the person who submitted an Annual Securities Report (including an amendment report therefor; the same shall apply in the following Article) which contains any fake statements on important matters, during the period within one year from the day when the person submitted an amendment report regarding the fake statements under Article 7 as applied mutatis mutandis pursuant to paragraph (1) of the preceding Article or was ordered to submit such an amendment report under Article 10 (1) as applied mutatis mutandis pursuant to Article 24-2 (1).

(Liability for Damages of Officers of the Company Which Submits Annual Securities Report Containing Fake Statement and Other Persons)

Article 24-4 Article 22 shall apply mutatis mutandis to cases where an Annual Securities Report contains any fake statement on important matters or lacks a statement on important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding. In this case, the term "persons who have acquired the Securities issued by the person submitting the Securities Registration Statement not through Public Offering or Secondary Distribution" in Article 22 (1) shall be deemed to be replaced with "persons who acquire the Securities issued by the person submitting the Securities Registration Statement."

(Submission of Confirmation Letter for Annual Securities Report)

- Article 24-4-2 (1) A company which is required to submit Annual Securities Reports under Article 24 (1) (including those which have submitted Annual Securities Reports under Article 23-3 (4); the same shall apply in the following paragraph) shall, if the Securities issued by the company are those listed in Article 24 (1)(i) or the company is otherwise required by a Cabinet Order, submit, together with an Annual Securities Report (or a Foreign Company Report in cases where Foreign Company Reports are submitted instead of Annual Securities Reports, etc. defined in Article 24 (8) under Article 24 (8)), a letter confirming that, pursuant to the provisions of a Cabinet Office Ordinance, statements contained in the Annual Securities Report are appropriate under the Financial Instruments and Exchange Act and Related Regulations (hereinafter referred to as a "Confirmation Letter" in this Article and the following Article).
- (2) A company which is required to submit Annual Securities Reports under Article 24 (1) may, even if the company does not fall under the category of companies which are required under the preceding paragraph to submit a Confirmation Letter together with an Annual Securities Report (except in cases where the company falls under the category of companies specified by a Cabinet Order), submit a Confirmation Letter provided in the preceding paragraph voluntarily.
- (3) The provisions of the preceding two paragraphs shall apply mutatis mutandis to companies which, among companies required to submit Annual Securities Reports under Article 24 (1) as applied mutatis mutandis pursuant to Article 24 (5) (including companies which submitted Annual Securities Reports under Article 23-3 (4)), are specified by a Cabinet Order.
- (4) The provisions of the preceding three paragraphs shall apply mutatis mutandis to cases where an amendment report is submitted under Article 7, Article 9 (1) and Article 10 (1) as applied mutatis mutandis by replacing



certain terms pursuant to Article 24-2 (1). In this case, necessary technical replacement of terms shall be specified by a Cabinet Order.

- (5) Article 6 shall apply mutatis mutandis to cases where a Confirmation Letter is submitted under paragraph (1) or (2) (including the cases where they are applied mutatis mutandis pursuant to paragraph (3) (including the cases where it is applied mutatis mutandis pursuant to the preceding paragraph) or the preceding paragraph: hereinafter the same shall apply in this Article). In this case, necessary technical replacement of terms shall be specified by a Cabinet Order.
- (6) Article 24 (8), (9) and (11) to (13) shall apply mutatis mutandis to cases where a Reporting Foreign Company submits a Confirmation Letter under paragraph (1) or (2) of this Article (limited to cases where the Reporting Foreign Company submits a Foreign Company Report). In this case, the parts ") (including foreign companies which have submitted Annual Securities Reports under Article 23-3 (4); hereinafter referred as to "Reporting Foreign Company")," "Annual Securities Reports to be submitted under paragraph (1) and the documents to be attached thereto under paragraph (6) (hereinafter collectively referred to as "Annual Securities Reports, etc." in this Article)" and "and are similar to Annual Securities Reports, etc. Disclosed in a Foreign State (meaning the state of having been made available for public inspection under 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 24-4-7(6) and 24-5(7))" in Article 24 (8) shall be deemed to be replaced with ")," "a Confirmation Letter to be submitted under Article 24-4-2 (1) or (2) (including the cases where they are applied mutatis mutandis pursuant to Article 24-4-2 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-2 (4)) or Article 24-4-2 (4))" and "and states the matters to be stated in the Confirmation Letter," respectively; the part "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 the Foreign Company Report, and other" in Article 24 (9) shall be deemed to be replaced with "other"; the term "Annual Securities Reports, etc." in Article 24 (11) shall be deemed to be replaced with "a Confirmation Letter to be submitted under Article 24-4-2 (1) or (2) (including the cases where they are applied mutatis mutandis pursuant to Article 24-4-2 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-2 (4)) or Article 24-4-2 (4))"; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

(Submission of Amendment Confirmation Letter)

Article 24-4-3 (1) Article 7, Article 9 (1) and Article 10 (1) shall apply mutatis mutandis to a Confirmation Letter. In this case, the part "a statement set forth in Article 5 (1) or in other documents required under Article 5 (6), or there occurs any other circumstance provided for by a Cabinet Office Ordinance as that which requires amendment of said statement or said other documents for the public interest or protection of investors, during the period on or after the day on which the notification was made under Article 4 (1) or (2) but before the day on which the notification is to take effect" in Article 7 shall be deemed to be replaced with "a Confirmation Letter, or there occurs any other circumstance provided for by a Cabinet Office Ordinance as that which requires amendment of a Confirmation Letter for the public interest or protection of investors"; the terms "the person making the notification" and "an amendment" in Article 7 shall be deemed to be replaced with "the person submitting the Confirmation Letter" and "an amendment Confirmation Letter," respectively; the terms "the person submitting them" and "an amendment" in Article 9 (1) shall be deemed to be replaced with "the person submitting the Confirmation Letter" and "an amendment Confirmation Letter," respectively; the term "the person submitting the Securities Registration Statement"; and the part "to submit an amendment and may, when he/she finds it necessary, order the suspension of the effect of the notification made under Article 4 (1) or (2)" in Article 10 (1)) shall be deemed to be replaced with "the person submitting the Confirmation Letter" and "to submit an amendment Confirmation Letter," respectively; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

(2) Article 6 shall apply mutatis mutandis to cases where an amendment Confirmation Letter for a Confirmation Letter is submitted under Article 7, Article 9 (1) and Article 10 (1) as applied mutatis mutandis pursuant to the preceding paragraph. In this case, necessary technical replacement of terms shall be specified by a Cabinet Order.

(3) Article 24 (8), (9) and (11) shall apply mutatis mutandis to cases where an amendment Confirmation Letter for a Confirmation Letter submitted by a foreign company is submitted under Article 7, Article 9 (1) and Article 10 (1) as applied mutatis mutandis by replacing certain terms pursuant to paragraph (1). In this case, necessary technical replacement of terms shall be specified by a Cabinet Order.

(System for Ensuring Appropriateness of Statements on Finance and Accounting and Other Information)

Article 24-4-4 (1) A company which is required to submit Annual Securities Reports under Article 24 (1) (including companies which have submitted Annual Securities Reports under Article 23-3 (4)); the same shall apply in the

following paragraph) shall, if the Securities issued by the company are those listed in Article 24 (1)(i) or the company is otherwise required by a Cabinet Order, submit a report in which evaluation pursuant to the provisions of a Cabinet Office Ordinance is made with regard to its system specified by a Cabinet Office Ordinance as necessary for ensuring appropriateness of statements on finance and accounting and other information concerning the Corporate Group to which the company belongs and concerning the company (hereinafter referred to as an "Internal Control Report") to the Prime Minister together with an Annual Securities Report (or a Foreign Company Report in cases where Foreign Company Reports are submitted instead of Annual Securities Reports, etc. as defined in Article 24 (8) under Article 24 (8)) for each business year.

- (2) A company which is required to submit Annual Securities Reports set forth in Article 24 (1) may, even if the company is not a company which is required to submit Internal Control Reports together with Annual Securities Reports under the preceding paragraph (except those specified by a Cabinet Order), voluntarily submit Internal Control Reports provided for in the preceding paragraph.
- (3) The provisions of the preceding two paragraphs shall apply mutatis mutandis to a company which is required to submit Annual Securities Reports under Article 24 (1) as applied mutatis mutandis pursuant to Article 24 (5) (including companies which have submitted Annual Securities Reports under Article 23-3 (4)) and is specified by a Cabinet Order. In this case, the term "or the company is otherwise required by a Cabinet Order" in paragraph (1) shall be deemed to be replaced with "or the company is otherwise required by a Cabinet Order (limited to the Issuer of Regulated Securities (meaning Regulated Securities as defined in Article 5 (1); hereinafter the same shall apply in this paragraph))"; the term "business year" in paragraph (1) shall be deemed to be replaced with "Specified Period (meaning Specified Period as defined in Article 24 (1) as applied mutatis mutandis pursuant to Article 24 (5)) designated for the Regulated Securities"; the term "the Corporate Group to which the company belongs" in paragraph (1) shall be deemed to be replaced with "asset investment or other similar businesses conducted by the company"; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.
- (4) When an Internal Control Report is submitted, a document stating the matters pertaining to the system specified by a Cabinet Office Ordinance referred to in paragraph (1) and other documents specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or protection of investors shall be attached to the Internal Control Report.
- (5) Article 6 shall apply mutatis mutandis to cases where an Internal Control

Report and documents to be attached thereto are submitted under paragraph (1) or (2) (including the cases where they are applied mutatis mutandis pursuant to paragraph (3); hereinafter the same shall apply in this Article) and the preceding paragraph. In this case, necessary technical replacement of terms shall be specified by a Cabinet Order.

(6) Article 24 (8), (9) and (11) to (13) shall apply mutatis mutandis to cases where a Reporting Foreign Company submits an Internal Control Report under paragraph (1) or (2) of this Article (limited to cases where the Reporting Foreign Company submits Foreign Company Reports). In this case, the parts "(including foreign companies which have submitted Annual Securities Reports under Article 23-3 (4); hereinafter referred as to "Reporting Foreign Company")," "Annual Securities Reports to be submitted under paragraph (1) and the documents to be attached thereto under paragraph (6) (hereinafter collectively referred to as "Annual Securities Reports, etc." in this Article)" and "and are similar to Annual Securities Reports, etc. Disclosed in a Foreign State (meaning the state of having been made available for public inspection under 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 24-4-7(6) and 24-5(7))" in Article 24 (8) shall be deemed to be replaced with ")," "an Internal Control Report to be submitted under Article 24-4-4 (1) or (2) (including the cases where they are applied mutatis mutandis pursuant to Article 24-4-4 (3)) and documents to be attached under Article 24-4-4 (4) (hereinafter collectively referred to as an "Internal Control Report, etc.))" and "and states the matters to be stated in the Internal Control Report, etc.," respectively; the part "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 the Foreign Company Report, and other" in Article 24 (9) shall be deemed to be replaced with "other"; the term "Annual Securities Reports, etc." in Article 24 (11) shall be deemed to be replaced with "Internal Control Report, etc."; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

(Submission of Amendment of Internal Control Report)

Article 24-4-5 (1) Article 7, Article 9 (1) and Article 10 (1) shall apply mutatis mutandis to an Internal Control Report and documents attached thereto. In this case, the part "a statement set forth in Article 5 (1) or in other documents required under Article 5 (6), or there occurs any other circumstance provided for by a Cabinet Office Ordinance as that which requires amendment of said statement or said other documents for the public interest or protection of investors, during the period on or after the day on which the notification was

made under Article 4 (1) or (2) but before the day on which the notification is to take effect" in Article 7 shall be deemed to be replaced with "an Internal Control Report and document attached thereto, or there occurs any other circumstance provided for by a Cabinet Office Ordinance as that which requires amendment of an Internal Control Report and documents attached thereto for the public interest or protection of investors"; the terms "the person making the notification" and "an amendment" in Article 7 shall be deemed to be replaced with "the person submitting the Internal Control Report" and "an amendment report," respectively; the terms "the person submitting them" and "an amendment" in Article 9 (1) shall be deemed to be replaced with "the person submitting the Internal Control Report" and "an amendment report," respectively; the term "the person submitting the Securities Registration Statement" and the part "to submit an amendment and may, when he/she finds it necessary, order the suspension of the effect of the notification made under Article 4 (1) or (2)" in Article 10 (1)) shall be deemed to be replaced with "the person submitting the Internal Control Report" and "to submit an amendment report," respectively; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

(2) Article 6 shall apply mutatis mutandis to cases where an amendment report for an Internal Control Report or documents attached thereto is submitted under Article 7, Article 9 (1) and Article 10 (1) as applied mutatis mutandis pursuant to the preceding paragraph. In this case, necessary technical replacement of terms shall be specified by a Cabinet Order.

(3) Article 24 (8), (9) and (11) shall apply mutatis mutandis to cases where an amendment report for an Internal Control Report submitted by a foreign company is submitted under Article 7, Article 9 (1) and Article 10 (1) as applied mutatis mutandis by replacing certain terms pursuant to paragraph (1). In this case, necessary technical replacement of terms shall be specified by a Cabinet Order.

(Application Mutatis Mutandis of Provisions Concerning Liability for Damages)  
Article 24-4-6 Article 22 shall apply mutatis mutandis to cases where an Internal Control Report (including documents attached thereto) contains any fake statement on important matters or lacks a statement on important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding. In this case, the part "persons who have acquired the Securities issued by the person submitting the Securities Registration Statement not through Public Offering or Secondary Distribution" in Article 22 (1) shall be deemed to be replaced with "persons who have acquired the Securities issued by the person submitting the Internal Control Report (including amendment reports therefor)." and any other necessary technical

replacement of terms shall be specified by a Cabinet Order.

(Submission of Quarterly Securities Report)

- Article 24-4-7 (1) A company which is required to submit Annual Securities Reports set forth in Article 24 (1) (including a company which submits Annual Securities Reports under Article 23-3 (4); the same shall apply in the following paragraph) and which has issued Securities falling under the category specified in Article 24 (1)(i) or otherwise specified by a Cabinet Order (hereinafter, such a company is referred to as a "Listed Company, etc." in this paragraph and the following paragraph) shall, if its business year is longer than three months, submit, for each three-month period of its business years (excluding periods specified by a Cabinet Order; the same shall apply hereinafter), a report stating financial conditions of the Corporate Group to which the company belongs and other matters specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or protection of investors (hereinafter referred to as the "Matters to Be Stated in a Quarterly Securities Report" in this paragraph) (such a report is hereinafter referred to as a "Quarterly Securities Report") to the Prime Minister within the period designated by a Cabinet Order but not exceeding 45 days after the three-month period. In this case, a Listed Company, etc. which conducts a business specified by a Cabinet Office Ordinance shall submit a Quarterly Securities Report stating, in addition to the Matters to Be Stated in a Quarterly Securities Report, financial conditions of the company and other matters specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or protection of investors to the Prime Minister within the period specified by a Cabinet Order but not exceeding 60 days after the three-month period.
- (2) A company which is required to submit Annual Securities Reports set forth in Article 24 (1) and is a company (except those specified by a Cabinet Order) other than a Listed Company, etc. may voluntarily submit Quarterly Securities Reports.
- (3) The provisions of the preceding two paragraphs shall apply mutatis mutandis to a company which is required to submit Annual Securities Reports under Article 24 (1) as applied mutatis mutandis pursuant to Article 24 (5) (including a company which submitted Annual Securities Reports under Article 23-3 (4)) and is specified by a Cabinet Order. In this case, the term "specified by a Cabinet Order (" in paragraph (1) shall be deemed to be replaced with "specified by a Cabinet Order (limited to the Issuer of Regulated Securities (meaning Regulated Securities as defined in Article 5 (1); hereinafter the same shall apply in this paragraph));"; the term "if its business year" in paragraph (1) shall be deemed to be replaced with "if the Specified Period (meaning Specified Period as defined in Article 24 (1) as applied mutatis mutandis pursuant to

Article 24 (5); hereinafter the same shall apply in this paragraph) designated for the Securities"; the term "of its business years" in paragraph (1) shall be deemed to be replaced with "of the Specified Period"; the term "the Corporate Group to which the company belongs" in paragraph (1) shall be deemed to be replaced with "asset investment or other similar businesses conducted by the company"; the term "financial conditions of the company" in paragraph (1) shall be deemed to be replaced with "financial conditions of asset investment or other similar businesses conducted by the company"; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

(4) Articles 7, 9(1) and 10(1) shall apply mutatis mutandis to Quarterly Securities Reports, and Article 22 shall apply mutatis mutandis to cases where a Quarterly Securities Report and amendment report thereof contain fake statements on important matters or lack statements of important matters to be stated or of important matters necessary for avoiding misunderstanding. In this case, the part "the statement set forth in Article 5 (1) or in other documents required under Article 5 (6)" in Article 7 shall be deemed to be replaced with "a Quarterly Securities Report (meaning a Quarterly Securities Report set forth in Article 24-4-7 (1) or (2) (including the cases where they are applied mutatis mutandis pursuant to Article 24-4-7 (3); hereinafter the same shall apply in this Article, Article 9 (1), Article 11 (1) and Article 22)"; the part "during the period on or after the day on which the notification was made under Article 4 (1) or (2) but before the day on which the notification is to take effect," in Article 7 shall be deemed to be deleted; the term "the person making the notification" in Article 7 shall be deemed to be replaced with "the person submitting the Quarterly Securities Report"; the term "the amendment" in Article 7 shall be deemed to be replaced with "an amendment report"; the terms "the person submitting them" and "the amendment " in Article 9 (1) shall be deemed to be replaced with "the person submitting the Quarterly Securities Report" and "an amendment report," respectively; the term "the person submitting the Securities Registration Statement" in Article 10 (1) shall be deemed to be replaced with "the person submitting the Quarterly Securities Report"; the part "submit the amendment and may, when it is found necessary, order the suspension of the effect of the notification made under Article 4 (1) or (2)" in Article 10 (1) shall be deemed to be replaced with "to submit an amendment report"; the part "persons who have acquired the Securities issued by the person submitting the Securities Registration Statement not through Public Offering or Secondary Distribution" in Article 22 (1) shall be deemed to be replaced with "persons who have acquired the Securities issued by the person submitting the Quarterly Securities Report and amendment reports"; the term "the preceding paragraph" in Article 22 (2) shall be deemed to be replaced with "the preceding paragraph as applied mutatis mutandis pursuant

to Article 24-4-7 (4)"; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

- (5) Article 6 shall apply mutatis mutandis to cases where a Quarterly Securities Report is submitted under paragraph (1) or (2) (including the cases where they are applied mutatis mutandis pursuant to paragraph (3); the same shall apply in the following paragraph to paragraph (11)) and where amendment reports for a Quarterly Securities Report is submitted under Article 7, 9(1) or 10(1) as applied mutatis mutandis pursuant to the preceding paragraph. In this case, necessary technical replacement of terms shall be specified by a 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 Reporting Foreign Company required to submit Quarterly Securities Reports under paragraph (1) (including a Reporting Foreign Company which submits Quarterly Securities Reports under paragraph (2); hereinafter the same shall apply in this Article) may submit, instead of Quarterly Securities Reports to be submitted under paragraph (1), documents similar to Quarterly Securities Reports which are prepared in English and have been Disclosed in a Foreign State (such documents are hereinafter referred to as a "Foreign Company Quarterly Securities Report" in this Article).
- (7) When a Foreign Company Quarterly Securities Report is 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 the Foreign Company Quarterly Securities Report 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 the Foreign Company Quarterly Securities Report, and other documents specified by a Cabinet Office Ordinance (such documents are hereinafter collectively referred to as "Supplementary Documents" in this Article) shall be attached to the Foreign Company Quarterly Securities Report pursuant to the provisions of a Cabinet Office Ordinance.
- (8) 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 Quarterly Securities Report and Supplementary Documents thereof under the preceding two paragraphs, by deeming the Foreign Company Quarterly Securities Report and Supplementary Documents to be a Quarterly Securities Report and deeming submission of the former to be submission of the latter.
- (9) The Prime Minister shall, when he/she finds that a Reporting Foreign Company which submitted a Foreign Company Quarterly Securities Report does not satisfy the requirements for being allowed to submit a Foreign



Company Quarterly Securities Report under paragraph (6), 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 (1) of the Administrative Procedure Act.

(10) Notwithstanding the provision of paragraph (1), a Reporting Foreign Company, when receiving a notice made under the preceding paragraph, shall submit a Quarterly Securities Report set forth in paragraph (1) within the period specified by a Cabinet Order as the period necessary and appropriate for the public interest or protection of investors after the day on which the notice is made.

(11) Paragraph (6) to paragraph (8) shall apply mutatis mutandis to cases where amendment reports are submitted to amend a Foreign Company Quarterly Securities Report submitted by a Reporting Foreign Company under Article 7, 9(1) or 10(1) as applied mutatis mutandis by replacing certain terms pursuant to paragraph (4) and Supplementary Documents therefor. In this case, necessary technical replacement of terms shall be specified by a Cabinet Order.

(12) In cases where a company required to submit Quarterly Securities Reports under paragraph (1) (limited to cases where it is applied mutatis mutandis pursuant to paragraph (3); hereinafter the same shall apply in this Article)(including a company submitting Quarterly Securities Reports under paragraph (2) (limited to cases where it is applied mutatis mutandis pursuant to paragraph (3))) submits, pursuant to the provisions of a Cabinet Office Ordinance, documents containing descriptions on part of the matters specified by a Cabinet Office Ordinance under paragraph (1) (limited to documents prepared based on laws and regulations or rules of a Financial Instruments Exchange (including those specified by a Cabinet Office Ordinance as being similar to such rules); such documents are hereinafter referred to as "Documents Substituting 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 cases approved by the Prime Minister pursuant to the provisions of a Cabinet Office Ordinance as those where the public interest or protection of investors would not be impaired, the term "other matters specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or protection of investors" in paragraph (1) shall be deemed to be replaced with "other matters specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or protection of investors (excluding matters stated in Documents Substituting Part of a Quarterly Securities Report as defined in paragraph (12))."

(13) When Documents Substituting Part of a Quarterly Securities Report are submitted together with a Quarterly Securities Report set forth in paragraph

(1) as applied by replacing certain terms pursuant to the preceding paragraph, the provisions of the Financial Instruments and Exchange Act and Related Regulations shall apply by deeming the Documents Substituting Part of a Quarterly Securities Report to form a part of the Quarterly Securities Report and deeming submission of the Documents Substituting Part of a Quarterly Securities Report to be submission of the Documents Substituting Part of a Quarterly Securities Report as a part of the Quarterly Securities Report.

(Application Mutatis Mutandis of Provisions Concerning Confirmation Letter to Quarterly Securities Report)

Article 24-4-8 (1) Article 24-4-2 shall apply mutatis mutandis to cases where a Quarterly Securities Report is submitted under paragraph (1) or (2) of the preceding Article (including the cases where they are applied mutatis mutandis pursuant to Article 24-4-7 (3)) and where an amendment report is submitted under Article 7, Article 9 (1) and Article 10 (1) as applied mutatis mutandis by replacing certain terms pursuant to Article 24-4-7 (4). In this case, the terms "a Foreign Company Report," "Foreign Company Reports are submitted instead of Annual Securities Reports, etc." and "statements contained in the Annual Securities Report" in Article 24-4-2 (1) shall be deemed to be replaced with "a Foreign Company Quarterly Securities Report," "Foreign Company Quarterly Securities Reports are submitted instead of Quarterly Securities Report" and "statements contained in the Quarterly Securities Report (including amendment reports therefor; hereinafter the same shall apply in this Article)," respectively; the term "together with an Annual Securities Report" in Article 24-4-2 (2) shall be deemed to be replaced with "together with a Quarterly Securities Report"; the part "a Confirmation Letter to be submitted under Article 24-4-2 (1) or (2) (including the cases where they are applied mutatis mutandis pursuant to Article 24-4-2 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-2 (4)) or Article 24-4-2 (4))" in Article 24-4-2 (6) shall be deemed to be replaced with "a Confirmation Letter to be submitted under Article 24-4-2 (1) or (2) (including the cases where they are applied mutatis mutandis pursuant to Article 24-4-2 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-2 (4)) or Article 24-4-2 (4)) as applied mutatis mutandis by replacing certain terms pursuant to Article 24-4-8"; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

(2) Article 24-4-3 shall apply mutatis mutandis to cases where an amendment Confirmation Letter for a Confirmation Letter submitted under the preceding paragraph is submitted. In this case, necessary technical replacement of terms shall be specified by a Cabinet Order.

(Submission of Semiannual Securities Report and Extraordinary Report)

- Article 24-5 (1) A company which is required to submit Annual Securities Reports set forth in Article 24 (1) (including a company which submitted Annual Securities Reports under Article 23-3 (4); the same shall apply in paragraph (4)) and which is a company other than that required to submit Quarterly Securities Reports under Article 24-4-7 (1) (including a company which submits Quarterly Securities Reports under Article 24-4-7 (2); the same shall apply in paragraph (3)) shall, if its business year is longer than six months, submit, for each business year, a report stating financial conditions of the Corporate Group to which the company belongs and of the company, other important matters concerning the company's business and other matters specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or protection of investors pertaining to the first six months of the business year (such a report is hereinafter referred to as a "Semiannual Securities Report") pursuant to the provisions of a Cabinet Office Ordinance to the Prime Minister within three months after the end of the first six months.
- (2) A company which has submitted, or intends to submit, an Annual Securities Report containing descriptions on the matters specified in Article 24 (2) under Article 24 (1) may state in the Semiannual Securities Report required by the preceding paragraph, among the matters set forth in the preceding paragraph, only those specified by a Cabinet Office Ordinance as the matters pertaining to the company, instead of descriptions on all of the matters set forth in the preceding paragraph, unless the company falls under any of the categories of persons specified in the following items:
- (i) a person who has already submitted an Annual Securities Report containing descriptions on the matters specified in the main clause of Article 24 (1) or a Semiannual Securities Report containing descriptions on the matters specified in the preceding paragraph; and
  - (ii) a person who submitted a statement under Article 5 (1) containing descriptions on the matters listed in Article 5 (1)(ii) for Public Offering or Secondary Distribution of Securities to which the main clause of Article 4 (1) or (2) has applied (excluding those specified in the preceding item).
- (3) The provisions of the preceding two paragraphs shall apply mutatis mutandis to a company which is required to submit Annual Securities Reports set forth in Article 24 (1) as applied mutatis mutandis pursuant to Article 24 (5) (including a company which submits Annual Securities Reports under Article 23-3 (4); the same shall apply in the following paragraph and paragraph (15)) and is not required to submit Quarterly Securities Reports under Article 24-4-7 (1) as applied mutatis mutandis pursuant to Article 24-4-7 (3). In this case, the term "a company other than" in paragraph (1) shall be deemed to be replaced with "a company (limited to the Issuer of Regulated Securities (meaning

- Regulated Securities as defined in Article 5 (1); hereinafter the same shall apply in this paragraph and the following paragraph)) other than"; the term "its business year" in paragraph (1) shall be deemed to be replaced with "the Specified Period (meaning Specified Period as defined in Article 24 (1) as applied mutatis mutandis pursuant to Article 24 (5); the same shall apply hereinafter in this paragraph) designated for the Securities"; the term "for each business year" in paragraph (1) shall be deemed to be replaced with "for each Specified Period"; the part "financial conditions of the Corporate Group to which the company belongs and of the company, other important matters concerning the company's business" in paragraph (1) shall be deemed to be replaced with "financial conditions of asset investment or other similar businesses conducted by the company, other important matters concerning the company's assets"; the term "the business year" in paragraph (1) shall be deemed to be replaced with "the Specified Period"; and the term "of Securities" in paragraph (2) shall be deemed to be replaced with "of Regulated Securities."
- (4) A company required to submit Annual Securities Reports set forth in Article 24 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 24 (5)) shall, in cases where Public Offering or Secondary Distribution of Securities issued by the company is conducted in a foreign state or in other cases specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or protection of investors, submit a report stating the details thereof (hereinafter referred to as an "Extraordinary Report") pursuant to the provisions of a Cabinet Office Ordinance to the Prime Minister without delay.
- (5) Articles 7, 9(1) and 10(1) shall apply mutatis mutandis to Semiannual Securities Reports and Extraordinary Reports, and Article 22 shall apply mutatis mutandis to cases where a Semiannual Securities Report and Extraordinary Report thereof contain fake statements on important matters or lack statements of important matters or of important matters necessary for avoiding misunderstanding. In this case, the part "the statement set forth in Article 5 (1) or in other documents required under Article 5 (6)" in Article 7 shall be deemed to be replaced with "a Semiannual Securities Report (meaning a Semiannual Securities Report set forth in Article 24-5 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 24-5 (3)); hereinafter the same shall apply in this Article, Article 9 (1), Article 10 (1) and Article 22) or an Extraordinary Report (meaning an Extraordinary Report set forth in Article 24-5 (4); hereinafter the same shall apply in this Article, Article 9 (1), Article 10 (1) and Article 22)"; the part "during the period on or after the day on which the notification was made under Article 4 (1) or (2) but before the day on which the notification is to take effect," in Article 7 shall be deemed to be deleted; the term "the person making the notification" in Article 7 shall be

deemed to be replaced with "the person submitting the Semiannual Securities Report or Extraordinary Report"; the term "the amendment" in Article 7 shall be deemed to be replaced with "an amendment report"; the terms "the person submitting them" and "the amendment" in Article 9 (1) shall be deemed to be replaced with "the person submitting the Semiannual Securities Report or Extraordinary Report" and "an amendment report," respectively; the term "the person submitting the Securities Registration Statement" in Article 10 (1) shall be deemed to be replaced with "the person submitting the Semiannual Securities Report or Extraordinary Report"; the part "submit the amendment and may, when he/she finds it necessary, order the suspension of the effect of the notification made under Article 4 (1) or (2)" in Article 10 (1) shall be deemed to be replaced with "to submit an amendment report"; the part "persons who have acquired the Securities issued by the person submitting the Securities Registration Statement not through Public Offering or Secondary Distribution" in Article 22 (1) shall be deemed to be replaced with "persons who have acquired the Securities issued by the person submitting the Semiannual Securities Report or Extraordinary Report, or amendment reports therefor"; and the term "the preceding paragraph" in Article 22 (2) shall be deemed to be replaced with "the preceding paragraph as applied mutatis mutandis pursuant to Article 24-5 (5)".

- (6) Article 6 shall apply mutatis mutandis to cases where a Semiannual Securities Report or Extraordinary Report is submitted under paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (3)); the same shall apply in the following paragraph to paragraph (12)) or (4) and where an amendment report therefor is submitted under Article 7, 9(1) or 10(1) as applied mutatis mutandis pursuant to the preceding paragraph.
- (7) In the cases specified by a Cabinet Office Ordinance as cases where the public interest or protection of investors would not be impaired, a Reporting Foreign Company required to submit Semiannual Securities Reports under paragraph (1) may submit, instead of Semiannual Securities Reports to be submitted under paragraph (1), documents similar to Semiannual Securities Reports which are prepared in English and have been Disclosed in a Foreign State (such documents are hereinafter referred to as "Foreign Company Semiannual Securities Reports" in this Article).
- (8) When a Foreign Company Semiannual Securities Report is 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 the Foreign Company Semiannual Securities Report 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 the Foreign Company Semiannual Securities Report, and other documents specified by a Cabinet Office Ordinance (such documents are hereinafter collectively referred to as "Supplementary Documents" in this Article) shall be attached to the Foreign Company Semiannual Securities Report, pursuant to the provisions of a Cabinet Office Ordinance.

- (9) 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 Semiannual Securities Report and Supplementary Documents thereof under the preceding two paragraphs, by deeming the Foreign Company Semiannual Securities Report and Supplementary Documents to be a Semiannual Securities Report and deeming submission of the former to be submission of the latter.
- (10) The Prime Minister shall, when he/she finds that a Reporting Foreign Company which submitted a Foreign Company Semiannual Securities Report does not satisfy the requirements for being allowed to submit a Foreign Company Semiannual Securities Report under paragraph (7), 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 (1) of the Administrative Procedure Act.
- (11) Notwithstanding the provision of paragraph (1), a Reporting Foreign Company, when receiving a notice made under the preceding paragraph, shall submit a Semiannual Securities Report set forth in paragraph (1) within the period specified by a Cabinet Order as the period necessary and appropriate for the public interest or protection of investors after the day on which the notice is made.
- (12) Paragraph (7) to paragraph (9) shall apply mutatis mutandis to cases where amendment reports are submitted to amend a Foreign Company Semiannual Securities Report submitted by a Reporting Foreign Company under Article 7, 9(1) or 10(1) as applied mutatis mutandis by replacing certain terms pursuant to paragraph (5) and Supplementary Documents thereof.
- (13) In cases where a company required to submit Semiannual Securities Reports under paragraph (1) (limited to cases where it is applied mutatis mutandis pursuant to paragraph (3); hereinafter the same shall apply in this paragraph and following paragraph) submits, pursuant to the provisions of a Cabinet Office Ordinance, documents containing descriptions on part of the matters specified by a Cabinet Office Ordinance under paragraph (1) (limited to documents prepared based on laws and regulations or rules of a Financial Instruments Exchange (including those specified by a Cabinet Office Ordinance as being similar to such rules); such documents are hereinafter referred to as "Documents Substituting 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 paragraph (1) and (2) to cases approved by the Prime Minister pursuant to the provisions of a Cabinet Office Ordinance as those where the public interest or protection of investors would not be impaired, the term "other matters specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or protection of investors" in paragraph (1) shall be deemed to be replaced with "other matters specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or protection of investors (excluding matters stated in Documents Substituting Part of a Semiannual Securities Report as defined in paragraph (13))"; and the term "the matters set forth in the preceding paragraph" in paragraph (2) shall be deemed to be replaced with "the matters set forth in the preceding paragraph (excluding matters stated in Documents Substituting Part of a Semiannual Securities Report as defined in paragraph (13))."

(14) When Documents Substituting Part of a Semiannual Securities Report are submitted together with a Semiannual Securities Report set forth in paragraph (1) as applied by replacing certain terms pursuant to the preceding paragraph, the provisions of the Financial Instruments and Exchange Act and Related Regulations shall apply by deeming the Documents Substituting Part of a Semiannual Securities Report to form a part of the Semiannual Securities Report and deeming submission of the Documents Substituting Part of a Semiannual Securities Report to be submission of the Documents Substituting Part of a Semiannual Securities Report as a part of the Semiannual Securities Report.

(15) In cases where a company required to submit an Extraordinary Report under paragraph (4) (limited to a company which is required to submit Annual Securities Reports under Article 24 (1) as applied mutatis mutandis pursuant to Article 24 (5)) submits documents containing, pursuant to the provisions of a Cabinet Office Ordinance, descriptions on part of the matters 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 those specified by a Cabinet Office Ordinance as being similar to such rules); such documents are hereinafter referred to as "Documents Substituting 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 approved by the Prime Minister pursuant to the provisions of a Cabinet Office Ordinance as those where the public interest or protection of investors would not be impaired, the term "a report stating the details thereof" in paragraph (4) shall be deemed to be replaced with "a report stating the details thereof

(excluding the details stated in Documents Substituting Part of an Extraordinary Report as defined in paragraph (15)."

(16) When Documents Substituting Part of an Extraordinary Report are submitted together with an Extraordinary Report set forth in paragraph (4) as applied by replacing certain terms pursuant to the preceding paragraph, the provisions of the Financial Instruments and Exchange Act and Related Regulations shall apply by deeming the Documents Substituting Part of an Extraordinary Report to form a part of the Extraordinary Report and deeming submission of the Documents Substituting Part of an Extraordinary Report to be submission of the Documents Substituting Part of an Extraordinary Report as a part of the Extraordinary Report.

(Application Mutatis Mutandis of Provisions Concerning Confirmation Letter to Semiannual Securities Report)

Article 24-5-2 (1) Article 24-4-2 shall apply mutatis mutandis to cases where a Semiannual Securities Report is submitted under paragraph (1) of the preceding Article (including the cases where it is applied mutatis mutandis pursuant to Article 24-5 (3)) and where an amendment report is submitted under Article 7, Article 9 (1) and Article 10 (1) as applied mutatis mutandis by replacing certain terms pursuant to Article 24-5 (5). In this case, the terms "a Foreign Company Report," "Foreign Company Reports are submitted instead of Annual Securities Reports, etc." and "statements contained in the Annual Securities Report" in Article 24-4-2 (1) shall be deemed to be replaced with "a Foreign Company Semiannual Securities Report," "Foreign Company Semiannual Securities Reports are submitted instead of Semiannual Securities Report" and "statements contained in the Semiannual Securities Report (including amendment reports therefor; hereinafter the same shall apply in this Article)," respectively; the term "together with an Annual Securities Report" in Article 24-4-2 (2) shall be deemed to be replaced with "together with an Semiannual Securities Report"; the part "a Confirmation Letter to be submitted under Article 24-4-2 (1) or (2) (including the cases where they are applied mutatis mutandis pursuant to Article 24-4-2 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-2 (4)) or Article 24-4-2 (4))" in Article 24-4-2 (6) shall be deemed to be replaced with "a Confirmation Letter to be submitted under Article 24-4-2 (1) or (2) (including the cases where they are applied mutatis mutandis pursuant to Article 24-4-2 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-2 (4)) or Article 24-4-2 (4)) as applied mutatis mutandis by replacing certain terms pursuant to Article 24-5-2"; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

(2) Article 24-4-3 shall apply mutatis mutandis to cases where an amendment



Confirmation Letter for a Confirmation Letter submitted under the preceding paragraph is submitted. In this case, necessary technical replacement of terms shall be specified by a Cabinet Order.

(Submission of Share Buyback Report)

Article 24-6 (1) A company which has issued share certificates listed in a Financial Instruments Exchange, share certificates specified by a 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 a Cabinet Order (hereinafter collectively referred to as "Listed Share Certificates, etc." in this Article, Articles 27-22-2 to 27-22-4 and Article 167) shall, when a resolution of a shareholders meeting or board of directors' meeting set forth in Article 156 (1) of the Companies Act (including the cases where it is applied by replacing certain terms pursuant to Article 165 (3) of said Act) are made, submit a report which, pursuant to the provisions of a Cabinet Office Ordinance, states matters pertaining to the status of buyback of Listed Share Certificates, etc. issued by itself conducted based on the resolution of the shareholders meeting or board of directors' meeting (hereinafter referred to as the "Shareholders Meeting, etc." in this paragraph) during each month from the month which includes the day when the resolution of the Shareholders Meeting, etc. is made to the month which includes the day when the period set forth in Article 156 (1)(iii) of said Act is to expire (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 a 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) Article 7, Article 9 (1) and Article 10 (1) shall apply mutatis mutandis to a report submitted under the preceding paragraph (hereinafter referred to as a "Share Buyback Report"), and Article 22 shall apply mutatis mutandis to cases where a Share Buyback Report contains any fake statement on important matters or lacks a statement an important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding. In this case, the part "a statement set forth in Article 5 (1) or in other documents required under Article 5 (6), or there occurs any other circumstance provided for by a Cabinet Office Ordinance as that which requires amendment of such statement or such other documents for the public interest or protection of investors, during the period on or after the day when the notification was made under Article 4 (1) or (2) but before the day when the notification is to take effect" and the terms "the person making the notification" and "an amendment" in Article 7 shall be deemed to be replaced with "a Share Buyback Report

(meaning report to be submitted under Article 24-6 (1); hereinafter the same shall apply in this Article, Article 9 (1), Article 10 (1) and Article 22), or there occurs any other circumstance provided for by a Cabinet Office Ordinance as that which requires amendment of a Share Buyback Report for the public interest or protection of investors," "the person submitting the Share Buyback Report" and "an amendment report," respectively; the terms "the person submitting them" and "an amendment" in Article 9 (1) shall be deemed to be replaced with "the person submitting the Share Buyback Report" and "an amendment report," respectively; the terms "the person submitting the Securities Registration Statement" and "to submit an amendment and may, when he/she finds it necessary, order the suspension of the effect of the notification made under Article 4 (1) or (2)" in Article 10 (1) shall be deemed to be replaced with "the person submitting the Share Buyback Report" and "to submit an amendment report," respectively; the term "persons specified in Article 21 (1)(i) and (iii)" and the part "persons who have acquired the Securities issued by the person submitting the Securities Registration Statement not through Public Offering or Secondary Distribution" in Article 22 (1) shall be deemed to be replaced with "person who, at the time of submission of the Share Buyback Report, is an Officer of the company having submitted the Share Buyback Report" and "persons who have acquired the Securities issued by the person submitting the Share Buyback Report," respectively; the terms "Article 21 (2)(i) and (ii)" and "the preceding paragraph" in Article 22 (2) shall be deemed to be replaced with "Article 21 (2)(i)" and "the preceding paragraph as applied mutatis mutandis pursuant to Article 24-6 (2)," respectively.

- (3) Article 6 shall apply mutatis mutandis to cases where a Share Buyback Report is submitted under the preceding paragraph and cases where an amendment report for Share Buyback Report is submitted under Article 7, Article 9 (1) and Article 10 (1) as applied mutatis mutandis pursuant to the preceding paragraph.

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

Article 24-7 (1) A company which holds the majority of voting rights of another company being required to submit Annual Securities Reports under Article 24 (1) (limited to those which have issued Securities listed in Article 24 (1)(i) or (ii); such a company is referred to as "Subsidiary Company Submitting Annual Securities Reports" in paragraph (4) of this Article, paragraph (5) of the following Article and Article 27-30-10) or otherwise has a close relationship as specified by a Cabinet Order with another company being required to submit Annual Securities Reports (excluding companies which are required to submit Annual Securities Reports under Article 24 (1) (including the cases where it is

applied mutatis mutandis pursuant to Article 24 (5); the same shall apply in the items of paragraph (4) of this Article) (including those which submitted Annual Securities Reports under Article 23-3 (4) or specified by a Cabinet Office Ordinance); hereinafter referred to as a "Parent Company, etc." in this Article and paragraph (2) of the following Article, (4) and (5)) shall submit a report which, pursuant to the provisions of a Cabinet Office Ordinance, specifies matters pertaining to persons who hold shares of the Parent Company, etc. and other matters specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or protection of investors for each business year of the Parent Company, etc. (or the period specified by a Cabinet Office Ordinance in cases where the Parent Company, etc. is the Issuer of Regulated Securities; hereinafter the same shall apply in this paragraph and the following paragraph) (hereinafter referred to as the "Status Report of Parent Company, etc.") to the Prime Minister within three months after the end of each business year (or, in cases where the Parent Company, etc. is a foreign company, within the period specified by a Cabinet Order as the period necessary and appropriate for the public interest or protection of investors); provided, however, that this shall not apply to cases where the Prime Minister approves pursuant to the provisions of a Cabinet Order that even if the company does not submit Status Report of Parent Company, etc., the public interest or protection of investors would not be impaired.

- (2) When a company which has been excluded from the application of the main clause of the preceding paragraph becomes a Parent Company, etc., the company shall submit, pursuant to the provisions of a Cabinet Office Ordinance, a Status Report of Parent Company, etc. pertaining to the business year immediately prior to the business year that includes the day when the company becomes a Parent Company, etc. to the Prime Minister without delay; provided, however, that this shall not apply to cases where the Prime Minister approves pursuant to the provisions of a Cabinet Order that even if the company does not submit a Status Report of Parent Company, etc., the public interest or protection of investors would not be impaired
- (3) Article 7, Article 9 (1) and Article 10 (1) shall apply mutatis mutandis to a Status Report of Parent Company, etc. In this case, the part "a statement set forth in Article 5 (1) or in other documents required under Article 5 (6), or there occurs any other circumstance provided for by a Cabinet Office Ordinance as that which requires amendment of said statement or said other documents for the public interest or protection of investors, during the period on or after the day on which the notification was made under Article 4 (1) or (2) but before the day on which the notification is to take effect" in Article 7 shall be deemed to be replaced with "a Status Report of Parent Company, etc. (meaning Status Report of Parent Company, etc. as provided for in Article 24-7 (1); the same

shall apply hereinafter), or there occurs any other circumstance provided for by a Cabinet Office Ordinance as that which requires amendment of a Status Report of Parent Company, etc. for the public interest or protection of investors"; the terms "the person making the notification" and "an amendment" in Article 7 shall be deemed to be replaced with "the person submitting the Status Report of Parent Company, etc." and "an amendment report," respectively; the terms "the person submitting them" and "an amendment" in Article 9 (1) shall be deemed to be replaced with "the person submitting the Status Report of Parent Company, etc." and "an amendment report," respectively; the term "the person submitting the Securities Registration Statement"; and the part "to submit an amendment and may, when he/she finds necessary, order the suspension of the effect of the notification made under Article 4 (1) or (2)" in Article 10 (1)) shall be deemed to be replaced with "the person submitting the Status Report of Parent Company, etc." and "to submit an amendment report," respectively; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

- (4) A Parent Company, etc. shall, when it submits a Status Report of Parent Company, etc. under the main clause of paragraph (1) or the main clause of paragraph (2) or submits an amendment report for a Status Report of Parent Company, etc. under Article 7, Article 9 (1) and Article 10 (1) as applied mutatis mutandis pursuant to the preceding paragraph, send a copy thereof to the Subsidiary Company Submitting Annual Securities Reports without delay, and also submit a copy thereof to the exchange or association specified in the following items for each kind of Securities set forth in the respective items:
- (i) Securities falling under the category specified in Article 24 (1)(i): the Financial Instruments Exchange referred to in Article 24 (1)(i); or
  - (ii) Securities falling under the category specified in Article 24 (1)(ii): the Authorized Financial Instruments Firms Association specified by a Cabinet Order.
- (5) Article 24 (8), (9) and (11) to (13) shall apply mutatis mutandis to cases where a Parent Company, etc. which is a foreign company submits a Status Report of Parent Company, etc. In this case, the parts "a foreign company," (including foreign companies which have submitted Annual Securities Reports under Article 23-3 (4); hereinafter referred as to "Reporting Foreign Company"), and "and are similar to Annual Securities Reports, etc. Disclosed in a Foreign State (meaning the state of having been made available for public inspection under 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 24-4-7(6) and 24-5(7))" in Article 24 (8) shall be deemed to be replaced with "a Parent Company, etc. which is a foreign company (meaning Parent

Company, etc. as defined by Article 24-7 (1); hereinafter the same shall apply in this Article)," )," and "and states the matters to be stated in the Status Report of Parent Company, etc.," respectively; the part "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 the Foreign Company Report, and other" in Article 24 (9) shall be deemed to be replaced with "other"; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

- (6) The provisions of the preceding paragraphs shall apply mutatis mutandis to cases where the Parent Company, etc. is not a company. In this case, the parts "A company which holds the majority of voting rights," "otherwise has a close relationship as specified by a Cabinet Order" and "persons who hold shares of the Parent Company, etc." in paragraph (1) shall be deemed to be replaced with "A person other than company which holds the majority of voting rights," "is a person other than company who otherwise has a close relationship as specified by a Cabinet Order" and "equity investors of the Parent Company, etc. and other person," respectively; and the terms "a company" and "the company" in paragraph (2) shall be deemed to be replaced with "a person other than company" and "the person other than company," respectively; the term "which is a foreign company" in the preceding paragraph shall be deemed to be replaced with "which is a foreign person"; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

(Public Inspection of Securities Registration Statement, etc.)

- Article 25 (1) The Prime Minister shall, pursuant to the provisions of a Cabinet Office Ordinance, make documents listed in the following items available for public inspection for the period specified in the respective items from the day when he/she receives the document (for an amendment, Amended Shelf Registration Statement, amendment reports and amendment Confirmation Letter listed in the following items, the period specified in the respective items from the day when he/she receives the statements and documents attached thereto submitted under Article 5 (1) and (6), the statement and documents attached thereto to which Article 5 (4) is applicable, the Shelf Registration Statement and documents attached thereto, the Annual Securities Report and documents attached thereto, the Confirmation Letter, the Internal Control Report and documents attached thereto, the Quarterly Securities Report, the Semiannual Securities Report, the Extraordinary Report, the Share Buyback Report, or the Status Report of Parent Company, etc. for which the amendment, Amended Shelf Registration Statement, amendment reports or amendment Confirmation Letter is submitted; and for a Confirmation Letter listed in item (v) and (ix) (limited to cases where confirmation by the Confirmation Letter is

made for an amendment report submitted for an Annual Securities Report and documents attached thereto, an amendment report submitted for a Quarterly Securities Report or an amendment report submitted for a Semiannual Securities Report), the period specified in the respective items from the day when he/she receives the Annual Securities Report and documents attached thereto, the Quarterly Securities Report or the Semiannual Securities Report for which the amendment report is submitted):

- (i) a statement and documents attached thereto submitted under Article 5 (1) and (6), and an amendment submitted for any of these documents (excluding statements and documents attached thereto, and amendments submitted for any of these documents, to which Article 5 (4) is applicable): five years;
  - (ii) a statement and documents attached thereto, and an amendment submitted for any of these documents, to which Article 5 (4) is applicable: one year;
  - (iii) a Shelf Registration Statement and documents attached thereto, Shelf Registration Supplements and documents attached thereto, and an Amended Shelf Registration Statement submitted for any of these documents: until the Shelf Registration Statement ceases to be effective;
  - (iv) an Annual Securities Report and documents attached thereto, and an amendment report submitted for any of these documents: five years;
  - (v) a Confirmation Letter submitted under Article 24-4-2 and an amendment Confirmation Letter submitted therefor: five years;
  - (vi) an Internal Control Report and documents attached thereto, and an amendment report submitted for any of these documents: five years;
  - (vii) a Quarterly Securities Report and an amendment report submitted therefor: three years;
  - (viii) a Semiannual Securities Report and an amendment report submitted therefor: three years;
  - (ix) a Confirmation Letter submitted under Article 24-4-2 as applied mutatis mutandis pursuant to Article 24-4-8 or Article 24-5-2, and an amendment Confirmation Letter submitted therefor: three years;
  - (x) an Extraordinary Report and an amendment report submitted therefor: one year;
  - (xi) a Share Buyback Report and an amendment report submitted therefor: one year; and
  - (xii) a Status Report of Parent Company, etc. and an amendment report submitted therefor: five years.
- (2) The Issuer of Securities shall, when he/she submits documents listed in items (i) to (xi) of the preceding paragraph or when his/her Parent Company, etc. submits documents listed in item (xii) of the preceding paragraph, keep a copy of these documents at his/her head office and principal branch offices and make these documents available for public inspection for the period from the day

when these documents are submitted to the Prime Minister to the day when the period specified in the respective items of the preceding paragraph is elapsed, pursuant to the provisions of a Cabinet Office Ordinance.

- (3) A Financial Instruments Exchange and an Authorized Financial Instruments Firms Association specified by the Cabinet Order shall, pursuant to the provisions of a Cabinet Office Ordinance, keep copies of the documents submitted under Article 6 (including the cases where it is applied mutatis mutandis pursuant to Article 12, 23-12(1), Article 24 (7), Article 24-2 (3), Article 24-4-2 (5) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-8 (1) and Article 24-5-2 (1)), Article 24-4-3 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-8 (2) and Article 24-5-2 (2)), Article 24-4-4 (5), Article 24-4-5 (2), Article 24-4-7 (5), Article 24-5 (6) and Article 24-6 (3); the same shall apply in paragraph (5)) and paragraph (4) of the preceding Article at their office and make copies of these documents listed in the items of paragraph (1) available for public inspection for the period from the day when the copies of these documents are submitted to the day when the period specified in the respective items is elapsed.
- (4) Notwithstanding the preceding three paragraphs, when the Issuer of Securities who submits documents listed in items (i) to (xi) of paragraph (1) or the Parent Company, etc. who submits documents listed in item (xii) of said paragraph submits an application that requires exclusion of part of the documents referred to in the preceding three paragraphs from making available for public inspection by reason of necessity to keep confidentiality of a business secret to the Prime Minister and the Prime Minister approves it, the part of the documents pertaining to the application shall not be made available for public inspection.
- (5) When the Issuer of Securities or the Parent Company, etc. sends a copy of the documents listed in the items of paragraph (1) to the Subsidiary Company Submitting Annual Securities Reports or submits the copy to the Financial Instruments Exchange or an Authorized Financial Instruments Firms Association specified by a Cabinet Order under Article 6 or paragraph (4) of the preceding Article, if the Issuer of Securities or the Parent Company, etc. obtains approval under the preceding paragraph, the Issuer of Securities or the Parent Company, etc. may remove or delete the part of documents that is exempted from public inspection under the preceding paragraph from the documents to be sent or submitted.

(Order for Production of Report by Person Who Submits Securities Registration Statement, etc. and Inspection on Such Person)

Article 26 When the Prime Minister finds it necessary and appropriate for the

public interest or protection of investors, he/she may order the person who submits a Securities Registration Statement, Shelf Registration Statement, Annual Securities Report, Share Buyback Report or Status Report of Parent Company, etc. or an Underwriter of the Securities or other person concerned or witnesses to submit reports or materials that will be helpful, or have the officials inspect the books and documents or other articles held by these persons.

(Application Mutatis Mutandis of Relevant Provisions for Issuer Who is Not a Company)

Article 27 Article 2-2, Articles 5 to 13, Articles 15 to 24-5-2 and Articles 24-7 to the preceding Article shall apply mutatis mutandis to cases where the Issuer is not a company (with regard to application mutatis mutandis of Article 24 (8) to (13), Article 24-2 (4), Article 24-4-2 (6) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-8 (1) and Article 24-5-2 (1)), Article 24-4-3 (3), Article 24-4-4 (6), Article 24-4-5 (3), Article 24-4-7 (6) to (11) and Article 24-5 (7) to (12), limited to cases where the Issuer is a foreign person). In this case, "a foreign company" in Article 24 (8) shall be deemed to be replaced with "a foreign person other than foreign company"; the term "Reporting Foreign Company" in Article 24 (8), Article 24 (10) to (13), Article 24-2 (4), Article 24-4-7 (6) and (8) to (11) and Article 24-5 (7) and (9) to (12) shall be deemed to be replaced with "Reporting Foreign Person"; and any other necessary technical replacement of terms or other matters necessary for application of these provisions shall be specified by a Cabinet Order.

## **Chapter II-2 Disclosure Required for Tender Offer**

### **Section 1 Tender Offer for Share Certificates, etc. by Person Other than Issuer**

(Tender Offer for Share Certificates, etc. by Person Other than Issuer)

Article 27-2 (1) As for Shares, bonds with share option and other Securities specified by a Cabinet Order (hereinafter collectively referred to as "Share Certificates, etc." in this Chapter and Article 27-30-11 (excluding Article 27-30-11 (4))) for which their Issuer is required to submit Annual Securities Reports, Purchase, etc. (meaning purchase or other type of acceptance of transfer for value of Share Certificates, etc. and including acts specified by a Cabinet Order as being similar to such acceptance; hereinafter the same shall apply in this Section) of them shall be made by means of a Tender Offer, if the Purchase, etc. is made by a person other than the Issuer and falls under any of the categories listed in the following items; provided, however, that this shall not apply to Purchase, etc. of Share Certificates, etc. conducted as exercise of share option



by the holder thereof, Purchase, etc. of Share Certificates, etc. from Persons in Special Relationship with the person conducting Purchase, etc. of Share Certificates, etc. (limited to such persons specified in item (i) of paragraph (7) and specified by a Cabinet Office Ordinance) or other Purchase, etc. of Share Certificates, etc. so specified by a Cabinet Order:

- (i) Purchase, etc. of Share Certificates, etc. conducted outside of Financial Instruments Exchange Markets (excluding Purchase, etc. of Share Certificates, etc. conducted through transactions specified by a Cabinet Order as being equivalent to sales and purchase or the like of Securities conducted in Financial Instruments Exchange Markets and Purchase, etc. of Share Certificates, etc. which is specified by a Cabinet Order as Purchase, etc. from an extremely small number of persons) after which the Share Certificates, etc. Holding Rate of Share Certificates, etc. in possession (including cases specified by a Cabinet Order as equivalent to possession of Share Certificates, etc.; hereinafter the same shall apply in this Section) of the person who conducted the Purchase, etc. (or, in cases where there are Persons in Special Relationship with the person who conducted the Purchase, etc. (excluding Persons in Special Relationship specified in item (i) of paragraph (7) and specified by a Cabinet Office Ordinance), the Share Certificates, etc. Holding Rate calculated by adding the Share Certificates, etc. Holding Rate of the Persons in Special Relationship to that for the person who conducted the Purchase, etc.; hereinafter the same shall apply in this paragraph) exceeds five percent;
- (ii) Purchase, etc. of Share Certificates, etc. conducted outside of Financial Instruments Exchange Markets (excluding Purchase, etc. of Share Certificates, etc. conducted through transactions specified by a Cabinet Order as being equivalent to sales and purchase or the like of Securities conducted in Financial Instruments Exchange Markets; the same shall apply in paragraph (iv)) which falls under the categories of Purchase, etc. of Share Certificates, etc. which is specified by a Cabinet Order as Purchase, etc. from an extremely small number of persons and after which the Share Certificates, etc. Holding Rate of Share Certificates, etc. in possession by the person who conducted the Purchase, etc. exceeds one third;
- (iii) Sales and purchase or the like of Securities conducted at Financial Instruments Exchange Markets through sales and purchase, etc. of Share Certificates, etc. using a method that is designated by the Prime Minister as a method other than the method of auction (such sales and purchase, etc. of Share Certificates, etc. are hereinafter referred to as "Specified Sales and Purchase, etc." in this paragraph) after which the Share Certificates, etc. Holding Rate of Share Certificates, etc. in possession by the person who conducted the Purchase, etc. exceeds one third;

- (iv) Purchase, etc. of Share Certificates, etc. in cases where acquisition of Share Certificates, etc. in excess of the proportion specified by a Cabinet Order during the period specified by a Cabinet Order not exceeding six months is made by Purchase, etc. of Share Certificates, etc. or Acquisition of Newly Issued Share Certificates, etc. (meaning acquisition of Share Certificates, etc. which is newly issued by its Issuer; hereinafter the same shall apply in this item) (in cases where such acquisition of Share Certificates, etc. is made by Purchase, etc. of Share Certificates, etc., limited to Purchase, etc. of Share Certificates, etc. in excess of the proportion specified by a Cabinet Order conducted through Specified Sales and Purchase, etc. or outside of Financial Instruments Exchange Markets (excluding that conducted by a Tender Offer)) and the Share Certificates, etc. Holding Rate of Share Certificates, etc. in possession by the person who conducted the Purchase, etc. of Share Certificates, etc. exceeds one third after the Purchase, etc. of Share Certificates, etc. or the Acquisition of Newly Issued Share Certificates, etc. (excluding those listed in the preceding three items);
- (v) Purchase, etc. of Share Certificates, etc. to be made in excess of the proportion specified by a Cabinet Order during the period specified by a Cabinet Order not exceeding six months by a person other than the Issuer of the Share Certificates, etc. (limited to cases where the Share Certificates, etc. Holding Rate of Share Certificates, etc. in possession by the person exceeds one third) in cases where another person's Tender Offer is made for the Share Certificates, etc., (excluding those listed in the preceding items); and
- (vi) other Purchase, etc. of Share Certificates, etc. specified by a Cabinet Order as being equivalent to Purchase, etc. of Share Certificates, etc. listed in any of the preceding items.
- (2) Purchase, etc. of Share Certificates, etc. by means of Tender Offer required under the main clause of the preceding paragraph shall be made by setting a period for Purchase, etc. which may not exceed the period specified by a Cabinet Order.
- (3) When Purchase, etc. of Share Certificates, etc. is made by means of Tender Offer as required by the main clause of paragraph (1), the price for the Purchase, etc. (or, in cases where the Purchase, etc. is made by other type of acceptance of transfer for value than purchase, what is specified by a Cabinet Order as being equivalent to price for Purchase, etc.; hereinafter the same shall apply in this Section) shall be set on the same conditions for all offerees, pursuant to the provisions of a Cabinet Order.
- (4) When Purchase, etc. of Share Certificates, etc. is made by means of Tender Offer as required by the main clause of paragraph (1), management of Share Certificates, etc., payment for the Purchase, etc. and other affairs specified by a Cabinet Order shall be performed by a Financial Instruments Business

Operator (limited to those engaged in Type I Financial Instruments Business as defined in Article 28 (1); the same shall apply in Article 27-12 (3)) or a Bank, etc. (meaning a bank, Cooperative Structured Financial Institution or other financial institution specified by a Cabinet Order; the same shall apply in Article 27-12 (3)).

- (5) When Purchase, etc. of Share Certificates, etc. is made by means of Tender Offer as required by the main clause of paragraph (1), it shall be implemented pursuant to the conditions and methods specified by a Cabinet Order, in addition to what are prescribed in the preceding three paragraphs and other provisions of this Section.
- (6) The term "Tender Offer" as used in this Article means an act of soliciting offers for Purchase, etc. or Sales, etc. (meaning sales or other type of transfer for value; hereinafter the same shall apply in this Section) of Share Certificates, etc. from many and unspecified persons through public notice, and making Purchase, etc. of Share Certificates, etc. outside of Financial Instruments Exchange Markets.
- (7) The term "Persons in Special Relationship" as used in paragraph (1) means the following persons:
  - (i) persons having a shareholder relationship, family relationship or other special relationship specified by a Cabinet Order with the person conducting Purchase, etc. of Share Certificates, etc.; and
  - (ii) persons having agreed with the person conducting Purchase, etc. of Share Certificates, etc. to jointly acquire or transfer the Share Certificates, etc. or to jointly exercise voting rights or other rights as shareholders of the Issuer of the Share Certificates, etc., or to transfer or accept transfer of the Share Certificates, etc. between them after the Purchase, etc. of the Share Certificates, etc.
- (8) The term "Share Certificates, etc. Holding Rate" as used in paragraph (1) means either of the following:
  - (i) as for the person conducting Purchase, etc. of Share Certificates, etc., the rate obtained, pursuant to the provisions of a Cabinet Office Ordinance, by dividing the total of the number of the voting rights (meaning the number of voting rights represented by shares calculated pursuant to the provisions of a Cabinet Office Ordinance in the case of share certificates, or the number of voting rights represented by shares calculated by converting Securities other than share certificates into shares pursuant to the provisions of a Cabinet Office Ordinance in the case of Securities other than share certificates; hereinafter the same shall apply in this paragraph) pertaining to the Share Certificates, etc. in possession by that person (excluding those specified by a Cabinet Office Ordinance considering the manner of holding or other circumstances; hereinafter the same shall apply in this paragraph), by the

number obtained by adding the total number of voting rights issued by the Issuer to the number of voting rights pertaining to bonds with share option or other Securities specified by a Cabinet Order issued by the Issuer and held by that person and Persons in Special Relationship with that person; or (ii) as for Persons in Special Relationship as defined in the preceding paragraph (excluding persons who fall under the category specified in item (ii) of the preceding paragraph and conduct Purchase, etc. of any Share Certificates, etc. issued by the Issuer of the Share Certificates, etc.), the rate obtained, pursuant to the provisions of a Cabinet Office Ordinance, by dividing the total of the number of the voting rights pertaining to the Share Certificates, etc. in possession by that person, by the number obtained by adding the total number of voting rights issued by the Issuer to the number of voting rights pertaining to bonds with share option or other Securities specified by a Cabinet Order issued by the Issuer and held by that person and the person conducting the Purchase, etc. of the Share Certificates, etc. referred to in the preceding item.

(Public Notice for Commencing Tender Offer and Tender Offer Notification)

Article 27-3 (1) The person who is required under the main clause of paragraph (1) of the preceding Article to make Purchase, etc. of Share Certificates, etc. by means of Tender Offer provided for by Article 27-2 (1) (hereinafter referred to as the "Tender Offer" in this Section) shall, pursuant to the provisions of a Cabinet Order, make a public notice of the purpose of the Tender Offer, the price for Purchase, etc., the Number of Share Certificates, etc. Planned to be Purchased (meaning the number of shares in the case of share certificates, or the number of shares calculated by converting Securities other than share certificates into shares pursuant to the provisions of a Cabinet Office Ordinance in the case of Securities other than share certificates; hereinafter the same shall apply in this Section), the period of Purchase, etc. and other matters specified by a Cabinet Office Ordinance with regard to the Tender Offer. In this case, when the period of Purchase, etc. is shorter than the period specified by a Cabinet Order, to the effect that the period of Purchase, etc. may be extended under Article 27-10 (3) shall be clearly indicated in the public notice.

(2) The person who makes a public notice under the preceding paragraph (hereinafter referred to as a "Public Notice for Commencing Tender Offer" in this Section) (such a person is hereinafter referred to as a "Tender Offeror" in this Section) shall, pursuant to the provisions of a Cabinet Office Ordinance, submit a document containing the following matters and documents specified by a Cabinet Office Ordinance as those to be attached thereto (hereinafter collectively referred to as the "Tender Offer Notification" in this Section and

Articles 167, 197, 197-2) to the Prime Minister on the day when the Public Notice for Commencing Tender Offer is made; provided, however, that, if the day on which the Tender Offer Notification shall be submitted falls on a Sunday or other day specified by a Cabinet Office Ordinance, the Tender Offer Notification shall be submitted on the following day:

- (i) the price for Purchase, etc., the Number of Share Certificates, etc. Planned to be Purchased, the period of Purchase, etc. (including the statement included in the public notice under the second sentence of the preceding paragraph), the transfer and other settlement procedures and other terms of Purchase, etc. set by the Tender Offeror (hereinafter collectively referred to as the "Terms of Purchase, etc." in this Section);
  - (ii) details of the contract concluded for making Purchase, etc. of the Share Certificates, etc. pertaining to the Tender Offer not though the Tender Offer on or after the day when the Public Notice for Commencing Tender Offer is made, if any; and
  - (iii) the purpose of the Tender Offer, the matters concerning the Tender Offeror and other matters specified by a Cabinet Office Ordinance.
- (3) The Tender Offeror, Persons in Special Relationship with the Tender Offeror (meaning Persons in Special Relationship as defined in Article 27-2 (7); hereinafter the same shall apply in this Section), or other persons concerned as specified by a Cabinet Order (hereinafter collectively referred to as the "Tender Offeror, etc." in this Section) shall not conduct solicitation of offers for Sales, etc. or other acts pertaining to the Tender Offer specified by a Cabinet Order on and after the day following the day when the Public Notice for Commencing Tender Offer is made, unless the Tender Offeror submits the Tender Offer Notification to the Prime Minister.
- (4) The Tender Offeror shall, immediately after the submission of the Tender Offer Notification, send a copy of the Tender Offer Notification to the Issuer of the Share Certificates, etc. to which the Tender Offer is made (and the person who has already submitted a Tender Offer Notification with regard to any Share Certificates, etc. issued by the Issuer as of the day on which the Tender Offer Notification is submitted, if any), and, if the Share Certificates, etc. for which the Tender Offer is made falls under any of the categories listed in the following items, also send a copy of the Tender Offer Notification to the exchange or association specified in the following items for each kind of Share Certificates, etc. set forth in the respective items. In this case, matters necessary for sending of the copies shall be specified by a Cabinet Office Ordinance:
- (i) Share Certificates, etc. listed in a Financial Instruments Exchange: the Financial Instruments Exchange; and
  - (ii) Share Certificates, etc. specified by a Cabinet Order as those of which the

state of distribution can be regarded as being equivalent to Share Certificates, etc. referred to in the preceding item: the Authorized Financial Instruments Firms Association specified by a Cabinet Order.

(Purchase, etc. in Which Securities are Delivered as the Consideration Therefor)

Article 27-4 (1) In the case of a Tender Offer in which Securities are to be delivered as the consideration of Purchase, etc., if Public Offering or Secondary Distribution of the Securities is subject to the main clause of Article 4 (1) or the main clause of Article 4 (2), the Tender Offeror, etc. shall not conduct solicitation of offers for Sales, etc. or other acts pertaining to the Tender Offer specified by a Cabinet Order unless the Issuer of the Securities has made a notification to the Prime Minister as provided by these provisions concurrently with submission of the Tender Offer Notification or an amendment therefor, except in the case referred to in the following paragraph.

(2) In the case referred to in the preceding paragraph, if a Shelf Registration has been made for the Securities referred to in the preceding paragraph, the Tender Offeror, etc. shall not conduct solicitation of offers for Sales, etc. or other acts pertaining to the Tender Offer specified by a Cabinet Order unless the Shelf Registration has come into effect and the Shelf Registration Holder of the Securities has submitted the Shelf Registration Supplements to the Prime Minister concurrently with submission of the Tender Offer Notification or an amendment therefor.

(3) Notwithstanding paragraph (2) of the preceding Article, in the case of a Tender Offer in which Securities are to be delivered as the consideration of Purchase, etc., if the notification under the main clause of Article 4 (1) or the main clause of Article 4 (2) has been made or the Shelf Registration Supplements have been submitted for the Securities, part of the matters to be stated in a Tender Offer Notification and documents to be attached thereto may be omitted as specified by a Cabinet Office Ordinance in the Tender Offer Notification to be submitted for the Tender Offer.

(Prohibition of Purchase, etc. Not through Tender Offer)

Article 27-5 A Tender Offeror, etc. shall not make Purchase, etc. of any Share Certificates, etc. issued by the Issuer of the Share Certificates, etc. pertaining to his/her Tender Offer not through the Tender Offer during the Tender Offer Period (meaning the period from the day when the Public Notice for Commencing Tender Offer is made to the last day of the period for the Purchase, etc. and including the extended period, if any; hereinafter the same shall apply in this Section); provided, however, that this shall not apply to the following cases:

- (i) cases where the contract for making Purchase, etc. of Share Certificates, etc. issued by the Issuer of the Share Certificates, etc. not through the Tender Offer has been concluded before the Public Notice for Commencing Tender Offer and the existence and details of that contract are stated in the Tender Offer Notification;
- (ii) cases where a person who falls under the category of persons specified in Article 27-2 (7)(i) (excluding the cases where such a person also falls under the category of persons specified in Article 27-2 (7)(ii)) notifies the fact that he/she does not fall under the category of persons specified in Article 27-2 (7)(ii) to the Prime Minister pursuant to the provisions of a Cabinet Office Ordinance; or
- (iii) other cases so specified by a Cabinet Order.

(Changes in Terms of Purchase, etc. for Tender Offer)

Article 27-6 (1) A Tender Offeror shall not make any of the changes in the Terms of Purchase, etc. listed below:

- (i) to lower the price for Purchase, etc. (excluding those implemented in cases where the Public Notice for Commencing Tender Offer and the Tender Offer Notification states as one of the Terms of Purchase, etc. that the price for Purchase, etc. may be lowered according to standards specified by a Cabinet Office Ordinance if the Subject Company (meaning Subject Company defined in Article 27-10 (1)) conducts share split or other act specified by a Cabinet Order during the Tender Offer Period.);
  - (ii) to reduce the Number of Share Certificates, etc. Planned to be Purchased;
  - (iii) to shorten the period for Purchase, etc.; or
  - (iv) any other change in the Terms of Purchase, etc. specified by a Cabinet Order.
- (2) A Tender Offeror may make any change of the Terms of Purchase, etc. other than those specified in the items of the preceding paragraph. In this case, the Tender Offeror who intends to make such change shall give public notice of the details of the change in the Terms of Purchase, etc. (excluding the extension of the period for Purchase, etc. made under Article 27-10 (3)) and other matters specified by a Cabinet Office Ordinance during the Tender Offer Period pursuant to the provisions of a Cabinet Order.
- (3) When it is difficult to give public notice required under the preceding paragraph by the last day of the Tender Offer Period, the Tender Offeror shall publicly announce the details and the matters specified in the preceding paragraph pursuant to the provisions of a Cabinet Office Ordinance and give public notice as required under the preceding paragraph immediately after that.

(Amendment of Public Notice for Commencing Tender Offer)

- Article 27-7 (1) A Tender Offeror who makes a Public Notice for Commencing Tender Offer (including public notice given under paragraph (2) or (3) of the preceding Article and public announcement made under Article 27-6 (3); the same shall apply in the following paragraph) shall, if he/she finds any deficiencies in formalities or a statement that contravenes the actual facts in the Public Notice for Commencing Tender Offer, amend it and give public notice of or publicly announce it pursuant to the provisions of a Cabinet Office Ordinance.
- (2) The Prime Minister may, when he/she finds the necessity to amend a Public Notice for Commencing Tender Offer, order the Tender Offeror who made the Public Notice for Commencing Tender Offer to give public notice of or publicly announce the amendment pursuant to the provisions of a Cabinet Office Ordinance by setting a time limit therefor.
- (3) The disposition under the preceding paragraph may not be given after the last day of the Tender Offer Period (including the period to be extended under paragraph (8) of the following Article).

(Submission of Amendment of Tender Offer Notification)

- Article 27-8 (1) A Tender Offeror who has submitted a Tender Offer Notification (including amendment submitted therefor; hereinafter the same shall apply in this Article) shall, when he/she finds that the Tender Offer Notification contains deficiencies in formalities or a statement that contravenes the actual facts, or contains only an insufficient statement, or entirely lacks a statement on a material fact that should be stated or is necessary for avoiding misunderstanding, submit an amendment to the Prime Minister, pursuant to the provisions of a Cabinet Office Ordinance.
- (2) When there occurs any change in the Terms of Purchase, etc. (excluding the extension of the period for Purchase, etc. made under Article 27-10 (3)) or in the important matters to be stated in a Tender Offer Notification, or any other circumstance specified by a Cabinet Office Ordinance as that which requires amendment of a Tender Offer Notification, during the period on or after the day on which the Tender Offer Notification was submitted but before the last day of the Tender Offer Period, the Tender Offeror who submitted the Tender Offer Notification shall immediately submit an amendment to the Prime Minister pursuant to the provisions of a Cabinet Office Ordinance.
- (3) The Prime Minister may, when he/she believes that any of the following facts is clear, order the Tender Offeror who submitted the Tender Offer Notification to submit an amendment by setting a time limit therefor:
- (i) the fact that the Tender Offer Notification contains deficiencies in formalities;



- (ii) the fact that the Terms of Purchase, etc. stated in the Tender Offer Notification do not comply with the provisions of this Section; or
  - (iii) the fact that the change in the Terms of Purchase, etc. stated in the amendment violates Article 27-6 (1).
- (4) Except in cases where the provision of the preceding paragraph applies, the Prime Minister may, when he/she finds any of the following facts, order the Tender Offeror who submitted the Tender Offer Notification to submit an amendment by setting a time limit therefor. In this case, a hearing shall be held irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act:
- (i) the fact that the Tender Offer Notification contains any fake statement on important matters; or
  - (ii) the fact that the Tender Offer Notification lacks a statement on any important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding.
- (5) The disposition under paragraph (3) may not be given after the last day of the Tender Offer Period (including the period to be extended under paragraph (8); the same shall apply in paragraph (7)) (or, in the cases of the disposition resulting in the submission of an amendment after the last day of the Tender Offer Period, after the day when five years have elapsed from the day following the last day), and the disposition under the preceding paragraph may not be given after the day when five years have elapsed from the day following the last day.
- (6) Article 27-3 (4) shall apply mutatis mutandis to cases where an amendment is submitted under the provisions of paragraph (1) to (4).
- (7) In cases where a disposition under paragraph (3) or (4) is given during the Tender Offer Period, the Tender Offeror, etc. shall not conduct solicitation of offers for Sales, etc. or other acts pertaining to the Tender Offer specified by a Cabinet Order before the amendment required by the disposition is submitted.
- (8) In cases where an amendment is submitted under paragraph (1) or (2) or an order to submit an amendment is given under paragraph (3) or (4) during the Tender Offer Period, except in the cases specified by a Cabinet Office Ordinance, the Tender Offeror shall extend the period for Purchase, etc. for his/her Tender Offer by a period specified by a Cabinet Office Ordinance and give public notice of, or publicly announce, to that effect without delay pursuant to the provisions of a Cabinet Office Ordinance.
- (9) In cases where extension of the period for Purchase, etc. for a Tender Offer is required under the preceding paragraph, the Tender Offeror shall not make transfer of the Share Certificates, etc. pertaining to the Tender Offer or conduct other settlement procedures of the Tender Offer before the last day of the period to be extended.

- (10) Article 27-5 shall apply mutatis mutandis to the period ending on the last day of the period for Purchase, etc. of the Tender Offer to be extended under paragraph (8).
- (11) When the Tender Offeror submits an amendment under the provisions of paragraphs (1) to (4), he/she shall give public notice of the descriptions in the amendment made pertaining to those in the Tender Offer Notification pursuant to the provisions of a Cabinet Order, or publicly announce the same pursuant to the provisions of a Cabinet Office Ordinance; provided, however, that this shall not apply to the cases where public notice under Article 27-6 (2) or public notice and public announcement under Article 27-6 (3) has already been made or where the amendment is submitted under paragraph (1) and falls under the category specified by a Cabinet Office Ordinance as an amendment submitted for only a minor change.
- (12) The preceding Article shall apply mutatis mutandis to public notice or public announcement required under paragraph (8) or the preceding paragraph.

(Preparation and Delivery of Tender Offer Statement, etc.)

Article 27-9 (1) A Tender Offeror shall prepare a document that states the matters specified by a Cabinet Office Ordinance from among the matters to be stated in a Tender Offer Notification and the matters specified by a Cabinet Office Ordinance as necessary and appropriate for the public interest or protection of investors (hereinafter referred to as a "Tender Offer Statement" in this Chapter and Articles 197-2 and 200) pursuant to the provisions of a Cabinet Office Ordinance.

- (2) A Tender Offeror shall, when he/she conducts Purchase, etc. of Share Certificates, etc. by means of the Tender Offer, deliver the Tender Offer Statement to the person who intends to conduct Sales, etc. of the Share Certificates, etc., pursuant to the provisions of a Cabinet Office Ordinance.
- (3) A Tender Offeror shall, when he/she submits an amendment under the provisions of paragraph (1) to (4) inclusive of the preceding Article, amend the Tender Offer Statement without delay pursuant to the provisions of a Cabinet Office Ordinance and shall deliver the amended Tender Offer Statement to the person to which the Tender Offer Statement has already been delivered.

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

Article 27-10 (1) The Issuer of the Share Certificates, etc. for which a Tender Offer is commenced (hereinafter referred to as the "Subject Company" in this Section and Article 27-30-11 (3)) shall, pursuant to the provisions of a Cabinet Office Ordinance, submit a document which states its opinion on the Tender Offer and other matters specified by a Cabinet Office Ordinance (hereinafter

referred to as the "Subject Company's Position Statement") to the Prime Minister within a period specified by a Cabinet Order from the date when the Public Notice for Commencing Tender Offer is made.

- (2) The Subject Company may contain the following matters in the Subject Company's Position Statement in addition to its opinion on the Tender Offer:
  - (i) questions to the Tender Offeror; or
  - (ii) a request for extension of the period for Purchase, etc. indicated in the Public Notice for Commencing Tender Offer to the period specified by a Cabinet Order (limited to cases where the period for Purchase, etc. is shorter than the period specified by a Cabinet Order).
- (3) When the request set forth in item (ii) of the preceding paragraph is made in the Subject Company's Position Statement under the preceding paragraph and the Prime Minister makes the Subject Company's Position Statement available for public inspection under Article 27-14 (1), the Tender Offeror shall extend the period for Purchase, etc. to the period specified by a Cabinet Order.
- (4) When the Subject Company makes the request set forth in item (ii) of paragraph (2) in the Subject Company's Position Statement under paragraph (2), it shall, pursuant to the provisions of a Cabinet Order, give public notice of the period for Purchase, etc. after the extension under the preceding paragraph and the other matters specified by a Cabinet Office Ordinance on or before the day following the last day of the period set forth in paragraph (1).
- (5) The Subject Company who makes the public notice as provided for in the preceding paragraph (hereinafter referred to as the "Public Notice of Request for Period Extension" in the following paragraph) shall, if it finds any deficiencies in formalities or a statement that contravenes the actual facts therein, amend it and give public notice of or publicly announce it pursuant to the provisions of a Cabinet Office Ordinance.
- (6) The Prime Minister may, when he/she finds the necessity to amend the Public Notice of Request for Period Extension, order the Subject Company who makes it to give public notice of or publicly announce the amendment pursuant to the provisions of a Cabinet Office Ordinance by setting a time limit therefor.
- (7) The disposition under the preceding paragraph may not be given after the last day of the Tender Offer Period (including the period to be extended under Article 27-8 (8)).
- (8) Article 27-8 (1) to (5) inclusive (excluding Article 27-8 (3)(ii) and (iii)) shall apply mutatis mutandis to the Subject Company's Position Statement. In this case, the terms "Tender Offeror" and "amendment" in Article 27-8 (1) shall be deemed to be replaced with "the Subject Company as defined in Article 27-10 (1)" and "amendment report," respectively; the terms "change in the Terms of Purchase, etc.," "Tender Offeror" and "amendment" in Article 27-8 (2) shall be deemed to be replaced with "change in opinion on the Tender Offer," "the

Subject Company defined in Article 27-10 (1)" and "amendment report," respectively; the terms "Tender Offeror" and "amendment" in Article 27-8 (3) and (4) shall be deemed to be replaced with "the Subject Company defined in Article 27-10 (1)" and "amendment report," respectively; and the terms "The disposition under paragraph (3)," "amendment" and "the disposition under the preceding paragraph" shall be deemed to be replaced with "The disposition under paragraph (3) as applied mutatis mutandis pursuant to Article 27-10 (8)," "amendment report" and "the disposition under the preceding paragraph as applied mutatis mutandis pursuant to Article 27-10 (8)," respectively.

- (9) The Subject Company of a Tender Offer shall, immediately after the submission of the Subject Company's Position Statement, send a copy of the Subject Company's Position Statement to the Tender Offeror of the Tender Offer (and the person who has already submitted a Tender Offer Notification with regard to any Share Certificates, etc. issued by the Subject Company as of the day on which the Subject Company's Position Statement is submitted, if any), and, if the Share Certificates, etc. for which the Tender Offer is made fall under any of the categories listed in the items of Article 27-3 (4), also send a copy of the Subject Company's Position Statement to the exchange or association specified in these items for each kind of Securities set forth in the respective items.
- (10) The preceding paragraph shall apply mutatis mutandis to cases where an amendment report is submitted under Article 27-8 (1) to (4) inclusive as applied mutatis mutandis pursuant to paragraph (8).
- (11) When the Subject Company enters a question set forth in item (i) of paragraph (2) in the Subject Company's Position Statement, the Tender Offeror who receives the copy of the Subject Company's Position Statement under paragraph (9) shall, pursuant to the provisions of a Cabinet Office Ordinance, submit a document which states an answer to the question (or, if he/she finds that it is not necessary to answer the question, the reason why he/she finds so) and other matters specified by a Cabinet Office Ordinance (hereinafter referred to as the "Tender Offeror's Answer") to the Prime Minister within a period specified by a Cabinet Order from the date when he/she receives the copy of the Subject Company's Position Statement.
- (12) Article 27-8 (1) to (5) inclusive (excluding Article 27-8 (3)(ii) and (iii)) shall apply mutatis mutandis to the Tender Offeror's Answer. In this case, the term "amendment" in Article 27-8 (1) shall be deemed to be replaced with "amendment report"; the terms "change in the Terms of Purchase, etc." and "amendment" in Article 27-8 (2) shall be deemed to be replaced with "change in the answer" and "amendment report," respectively; the term "amendment" in Article 27-8 (3) and (4) shall be deemed to be replaced with "amendment report"; and the terms "The disposition under paragraph (3)," "amendment"

and "the disposition under the preceding paragraph" shall be deemed to be replaced with "The disposition under paragraph (3) as applied mutatis mutandis pursuant to Article 27-10 (12)," "amendment report" and "the disposition under the preceding paragraph as applied mutatis mutandis pursuant to Article 27-10 (12)," respectively.

- (13) The Tender Offeror shall, immediately after the submission of the Tender Offeror's Answer, send a copy of the Tender Offeror's Answer to the Subject Company (and the person who has already submitted a Tender Offer Notification with regard to any Share Certificates, etc. issued by the Subject Company as of the day on which the Tender Offeror's Answer is submitted, if any), and, if the Share Certificates, etc. for which the Tender Offer is made fall under any of the categories listed in the items of Article 27-3 (4), also send a copy of the Tender Offeror's Answer to the exchange or association specified in these items for each kind of Securities set forth in the respective items.
- (14) The preceding paragraph shall apply mutatis mutandis to cases where an amendment report is submitted under Article 27-8 (1) to (4) inclusive as applied mutatis mutandis pursuant to paragraph (12).

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

Article 27-11 (1) A Tender Offeror may not withdraw offers or cancel contracts pertaining to the Tender Offer (hereinafter collectively referred to as "Withdrawal, etc. of Tender Offer") after having once made the Public Notice for Commencing Tender Offer; provided, however, that this shall not apply in cases where the Tender Offeror states as one of the Terms of Purchase, etc. in the Public Notice for Commencing Tender Offer and Tender Offer Notification that the Tender Offer may be withdrawn if there occurs any important change in the business or property of the Issuer of the Share Certificates, etc. for which the Tender Offer is made or its Subsidiary (meaning Subsidiary as defined in Article 2 (iii) of the Companies Act) or there occurs any other circumstance that would significantly impede the achievement of the purpose of the Tender Offer (limited to those specified by a Cabinet Order), or where a decision of commencement of bankruptcy proceedings is made against the Tender Offeror or there occurs any other material change in circumstances as specified by a Cabinet Order.

- (2) The Tender Offer shall, when making Withdrawal, etc. of Tender Offer under the proviso to the preceding paragraph, give public notice of his/her intention of Withdrawal, etc. of Tender Offer, the reason thereof and other matters specified by a Cabinet Office Ordinance on or before the last day of the Tender Offer Period, pursuant to the provisions of a Cabinet Order; provided, however, that when it is difficult to give such public notice on or before the last day of

the Tender Offer Period, the Tender Offeror shall publicly announce the matters to be stated in the public notice pursuant to the provisions of a Cabinet Office Ordinance and give the public notice immediately after that.

- (3) The person who gives public notice or public announcement under the preceding paragraph shall, pursuant to the provisions of a Cabinet Office Ordinance, submit a document which states the matters to be stated in the public notice under the preceding paragraph and other matters specified by a Cabinet Office Ordinance (hereinafter referred to as the "Written Withdrawal of Tender Offer" in this Section and Articles 167, 197 and 197-2) to the Prime Minister on the day on which he/she gives the public notice or public announcement.
- (4) Article 27-3 (4) shall apply mutatis mutandis to the Written Withdrawal of Tender Offer. In this case, the term "the Issuer of the Share Certificates, etc. to which the Tender Offer is made (and the person who has already submitted a Tender Offer Notification with regard to any Share Certificates, etc. issued by the Issuer as of the day on which the Tender Offer Notification is submitted, if any)" in Article 27-3 (4) shall be deemed to be replaced with "the Issuer of the Share Certificates, etc. to which the Tender Offer is made."
- (5) Withdrawal, etc. of Tender Offer shall come into effect only when the public notice under paragraph (2) is given. In this case, the Withdrawal, etc. of Tender Offer shall come into effect at the time when the public notice is given (or at the time when the public announcement is made in cases where the public announcement and the public notice are given under the proviso to paragraph (2)).

(Cancellation of Contract by Accepting Shareholder, etc.)

Article 27-12 (1) An Accepting Shareholder, etc. (meaning a person who accepts the offer for Purchase, etc. of Share Certificates, etc. made in the Tender Offer or who makes an offer for Sales, etc. of Share Certificates, etc. for which the Tender Offer is made; hereinafter the same shall apply in this Section) may cancel the contract pertaining to the Tender Offer at any time during the Tender Offer Period (including the period to be extended under Article 27-8 (8); the same shall apply in paragraphs (1) and (4) of the following Article, 27-14(1) and 27-21(1) and (2)).

- (2) Where the Tender Offeror states as one of the Terms of Purchase, etc. in the Public Notice for Commencing Tender Offer and Tender Offer Notification that cancellation of contract pertaining to the Tender Offer shall be made by a method specified by a Cabinet Order, any cancellation of contract by an Accepting Shareholder, etc. under the preceding paragraph shall be made by that method. In this case, the cancellation of contract shall come into effect at the time specified by a Cabinet Order.

(3) Even where an Accepting Shareholder, etc. cancels the contract under paragraph (1), the Tender Offeror may not request the Accepting Shareholder, etc. to pay damages or penalty and, if the Tender Offeror has a Financial Instruments Business Operator or a Bank, etc. manage the Share Certificates, etc. Offered to Sell (meaning Share Certificates, etc. which the Accepting Shareholder, etc. make Sales, etc. in response to the Tender Offer; hereinafter the same shall apply in this Section), shall bear the cost required for return of the Share Certificates, etc. Offered to Sell.

(Public Notice of the Number of Share Certificates, etc. Offered to Sell and Submission of Tender Offer Report)

Article 27-13 (1) A Tender Offeror shall, pursuant to the provisions of a Cabinet Order, give public notice of, or publicly announce, the number of the Share Certificates, etc. Offered to Sell and other matters specified by a Cabinet Office Ordinance on the day following the last day of the Tender Offer Period; provided, however, that this shall not apply to cases where the public notice under Article 27-11 (2) has been given.

(2) A Tender Offeror who gives the public notice or public announcement under the main clause of the preceding paragraph shall, pursuant to the provisions of a Cabinet Office Ordinance, submit a document which states the matters to be stated in the public notice or public announcement under the preceding paragraph and other matters specified by a Cabinet Office Ordinance (hereinafter referred to as a "Tender Offer Report" in this Section and Articles 197 and 197-2) to the Prime Minister on the day on which he/she gives the public notice or public announcement.

(3) Article 27-3 (4) and Article 27-8 (1) to (6) inclusive shall apply mutatis mutandis to a Tender Offer Report. In this case, the part "the Issuer of the Share Certificates, etc. to which the Tender Offer is made (and the person who has already submitted a Tender Offer Notification with regard to any Share Certificates, etc. issued by the Issuer as of the day on which the Tender Offer Notification is submitted, if any)" in Article 27-3 (4) shall be deemed to be replaced with "the Issuer"; the term "amendment" in Article 27-8 (1) shall be deemed to be replaced with "amendment report"; the part "there occurs any change in the Terms of Purchase, etc. (excluding the extension of the period for Purchase, etc. made under Article 27-10 (3)) or in the important matters to be stated in a Tender Offer Notification, or any other circumstance specified for by a Cabinet Office Ordinance as that which requires amendment of a Tender Offer Notification," "submitted but before the last day of the Tender Offer Period" and the term "amendment" in Article 27-8 (2) shall be deemed to be replaced with "the number of Share Certificates, etc. of which Purchase, etc. is to be made is fixed by the Method of Proportional Distribution set forth in

Article 27-13 (5)," "submitted" and "amendment report"; the terms "amendment," "the Terms of Purchase, etc.," "the provisions of this Section," "the change in the Terms of Purchase, etc.," and "violates Article 27-6 (1)" in Article 27-8 (3) shall be deemed to be replaced with "amendment report," "delivery and other settlement methods," "Article 27-13 (4) and (5)," "the result of calculation for deciding the number of Share Certificates, etc. of which Purchase, etc. is to be made," and "contravenes the method of proportional distribution specified by a Cabinet Office Ordinance set forth in Article 27-13 (5)," respectively; the term "amendment" in Article 27-8 (4) shall be deemed to be replaced with "amendment report"; the parts "disposition under paragraph (3)" and "the last day of the Tender Offer Period (including the period to be extended under paragraph (8); the same shall apply in paragraph (7)) (or, in the cases of the disposition resulting in the submission of an amendment report after the last day of the Tender Offer Period, after the day when five years have elapsed from the day following the last day), and the disposition under the preceding paragraph may not be given after the day when five years have elapsed from the day following the last day." in Article 27-8 (5) shall be deemed to be replaced with "disposition under paragraph (3) and the preceding paragraph as applied mutatis mutandis pursuant to Article 27-13 (3)" and "the day when five years have elapsed from the day following the last day of the Tender Offer Period," respectively; and the terms "amendment" and "paragraphs (1) to (4) inclusive" in Article 27-8 (4) shall be deemed to be replaced with "amendment report" and "paragraphs (1) to (4) inclusive as applied mutatis mutandis pursuant to Article 27-13 (3)," respectively.

- (4) A Tender Offeror shall conduct transfer of Share Certificates, etc. and other settlement procedures with regard to all of the Share Certificates, etc. Offered to Sell pursuant to the Terms of Purchase, etc. stated in the Public Notice for Commencing Tender Offer and Tender Offer Notification (or, if the Terms of Purchase, etc. have been changed by the public notice under Article 27-6 (2) or the public announcement and public notice under Article 27-6 (3), the Terms of Purchase, etc. after the change), except in cases where the Tender Offeror makes Withdrawal, etc. of Tender Offer with regard to all of the Share Certificates, etc. Offered to Sell during the Tender Offer Period under the proviso to Article 27-11 (1) or where the Tender Offeror states any of the following as one of the Terms of Purchase, etc. in the Public Notice for Commencing Tender Offer and Tender Offer Notification (with regard to the term specified in item (ii), limited to cases where the Share Certificates, etc. Holding Rate (meaning Share Certificates, etc. Holding Rate as defined in Article 27-2 (8)) of Share Certificates, etc. in possession by the Tender Offeror after the Tender Offer, or, in cases where there are Persons in Special Relationship as specified in Article 27-2 (1)(i) with the Tender Offeror, the



Share Certificates, etc. Holding Rate calculated by adding the Share Certificates, etc. Holding Rate of the Persons in Special Relationship as defined in Article 27-2 (8) to that for the person who conducted the Purchase, etc.) will not exceed the rate specified by a Cabinet Order):

- (i) if the total number of Share Certificates, etc. Offered to Sell does not reach the number of Share Certificates, etc. designated in advance in the Public Notice for Commencing Tender Offer and Tender Offer Notification as the Number of Share Certificates, etc. Planned to be Purchased or a part of it, the Tender Offeror will not make Purchase, etc. of any of the Share Certificates, etc. Offered to Sell; or
  - (ii) if the total number of Share Certificates, etc. Offered to Sell exceeds the Number of Share Certificates, etc. Planned to be Purchased, the Tender Offeror will not make Purchase, etc. of the Share Certificates, etc. Offered to Sell in excess of the Number of Share Certificates, etc. Planned to be Purchased.
- (5) When the term specified in item (ii) of the preceding paragraph has been imposed, if the total number of Share Certificates, etc. Offered to Sell exceeds the Number of Share Certificates, etc. Planned to be Purchased, the Tender Offeror shall conduct transfer of Share Certificates, etc. and other settlement procedures using the method of proportional distribution as specified by a Cabinet Office Ordinance (hereinafter referred to as the "Method of Proportional Distribution" in this Section).

(Public Inspection of Tender Offer Notification, etc.)

Article 27-14 (1) The Prime Minister shall, pursuant to the provisions of a Cabinet Office Ordinance, make the Tender Offer Notification (including amendments thereof; the same shall apply in paragraph (1) of the following Article) and the Written Withdrawal of Tender Offer as well as the Tender Offer Report, the Subject Company's Position Statement and the Tender Offeror's Answer (including amendment reports thereof; the same shall apply in paragraph (1) of the following Article) available for public inspection for the period from the day when he/she accepts them to the day when five years have passed since the day following the last day of the Tender Offer Period of the Tender Offer.

- (2) The person who submits the documents referred to in the preceding paragraph shall, pursuant to the provisions of a Cabinet Office Ordinance, keep a copy of these documents at his/her head office or principal office and make them available for public inspection for the period during which these documents are made available for public inspection by the Prime Minister under the preceding paragraph.
- (3) The Financial Instruments Exchanges and the Authorized Financial

Instruments Firms Association specified by a Cabinet Order shall, pursuant to the provisions of a Cabinet Office Ordinance, keep a copy of the documents which they receive under Article 27-3 (4) (including the cases where it is applied mutatis mutandis pursuant to Articles 27-8(6), 27-11(4) and paragraph (3) of the preceding Article), Article 27-10 (9) (including the cases where it is applied mutatis mutandis pursuant to Article 27-10 (10)) and Article 27-10 (13) (including the cases where it is applied mutatis mutandis pursuant to Article 27-10 (14)) at their office and make them available for public inspection for the period during which the documents referred to in paragraph (1) are made available for public inspection by the Prime Minister under preceding paragraph (1).

(4) In addition to what is provided for in the preceding three paragraphs, matters necessary for public inspection prescribed in paragraph (1) shall be specified by a Cabinet Office Ordinance.

(Prohibition of Presuming Veracity of Tender Offer Notification, etc.)

Article 27-15 (1) No person may presume, from the fact that a Tender Offer Notification, Written Withdrawal of Tender Offer, Tender Offer Report, Subject Company's Position Statement or Tender Offeror's Answer is accepted by the Prime Minister, that the Prime Minister finds that any and every statement contained in these documents are true and accurate and these documents do not lack any statement on any important matters.

(2) The Tender Offeror, etc. and the Subject Company may not make any indication which violates the preceding paragraph.

(Liability for Damages for Violation of Relevant Provision Pertaining to Tender Offer)

Article 27-16 Article 16 shall apply mutatis mutandis to a person who conducts any act specified by the Cabinet Office Ordinance in violation of Article 27-3 (3) or 27-8(7) or conducts Purchase, etc. of Share Certificates, etc. in violation of Article 27-9 (2) or (3). In this case, the term "the person who acquires the Securities" in Article 16 shall be deemed to be replaced with "the person who makes Sales, etc. of the Share Certificates, etc. in response to the Tender Offer."

Article 27-17 (1) A Tender Offeror, etc. who makes Purchase, etc. of Share Certificates, etc. in violation of Article 27-5 (including the cases where it is applied mutatis mutandis pursuant to Article 27-8 (10); hereinafter the same shall apply in this paragraph) shall be held liable to compensate damage sustained by a person who makes Sales, etc. of the Share Certificates, etc. in response to the Tender Offer (excluding a person who makes Sales, etc. of the

Share Certificates, etc. to which Article 27-5 is applicable and a person who belongs to the part of persons referred to in paragraph (2), item (i) of the following Article).

- (2) The amount of damages to be paid under the preceding paragraph shall be the amount calculated by multiplying the difference between the price (including the provision of profit equivalent thereto; in cases where two or more prices are used for the Purchases, etc., the most favorable price) paid by the Tender Offeror, etc. for the Purchase, etc. referred to in the preceding paragraph and the Tender Offer Price (meaning the price for Purchase, etc. stated in the Public Notice for Commencing Tender Offer and Tender Offer Notification, or, if the price for Purchase, etc. is changed by public notice or public announcement under Article 27-6 (2) or (3), the price after the change; hereinafter the same shall apply in this Section), by the number of Share Certificates, etc. Offered to Sell by the person who is entitled to claim damages under the preceding paragraph (excluding those which the person cannot make Sales, etc. of as a result of the Method of Proportional Distribution; the same shall apply in paragraph (2) of the following Article and Article 27-20 (2)).

Article 27-18 (1) A person who conducts transfer or other settlement procedures for Purchase, etc. of Share Certificates, etc. by means of Tender Offer in violation of Article 27-13 (4) (hereinafter referred to as a "Tender Offer Purchaser" in this Article) shall be held liable to compensate damage sustained by the person who makes Sales, etc. of Share Certificates, etc. in response to the Tender Offer (in the case specified in item (i) of the following paragraph, excluding a person who makes Sales, etc. at a price (including the provision of profit equivalent thereto; hereinafter the same shall apply in this Article) more favorable than the Tender Offer Price; and in the case specified in item (ii) of the following paragraph, including a person who cannot make Sales, etc. of Share Certificates, etc. as a result of the Tender Offer Purchaser's use of the different method referred to in that item (ii)).

- (2) In the cases referred to in the following items, the amount of damages to be paid under the preceding paragraph shall be the amount specified by the respective items:
  - (i) in the case where the Tender Offer Purchaser makes Purchase, etc. at a price more favorable than the Tender Offer Price only from a part of persons who make Sales, etc. of the Share Certificates, etc. in response to the Tender Offer: the amount calculated by multiplying the difference between the favorable price (in cases where two or more favorable prices are used for the Purchases, etc., the most favorable price) and the Tender Offer Price by the number of Share Certificates, etc. Offered to Sell by the person entitled to claim damages under the preceding paragraph; and

(ii) in the case where the Tender Offer Purchaser makes Purchase, etc. of the Share Certificates, etc. using a method different from the method of proportional distribution stated in the Tender Offer Notification: the amount calculated by multiplying the difference between the number of the Share Certificates, etc. of which Purchase, etc. should be made by the Tender Offer Purchaser from the person entitled to claim damages under the preceding paragraph if the Tender Offer Purchaser uses the method of proportional distribution and the number of Share Certificates, etc. of which Purchase, etc. was actually made by the Tender Offer Purchaser from the person entitled to claim damages (in cases where the Tender Offer Purchaser did not make Purchase, etc. of any of Share Certificates, etc. from the person entitled to claim damages, the number of the Share Certificates, etc. of which Purchase, etc. should be made by the Tender Offer Purchaser from the person entitled to claim damages if the method of proportional distribution is used) by the difference between the Tender Offer Price (or the price paid by the Tender Offeror as specified in Article 27-17 (2) in the case where paragraph (1) of the preceding Article is also applicable, the favorable price referred to in the preceding item in the case where the preceding item is also applicable, or the more favorable one between them in the case where both Article 27-17 (1) and the preceding item are also applicable) and the market price of the Share Certificates, etc. at the time when the damages are claimed under the preceding paragraph (or estimated disposal price in the case where there is no market price for the Share Certificates, etc., or disposal price in the case where the Share Certificates, etc. was disposed of before the damages is claimed).

(Liability for Damages of Person Who Uses Tender Offer Statement Containing Fake Statement, etc.)

Article 27-19 Article 17 shall apply mutatis mutandis to a person who has another person make Sales, etc. of Share Certificates, etc. using a Tender Offer Statement that contains any fake statement on important matters or lacks an indication on any important matters that should be indicated or on a material fact that is necessary for avoiding misunderstanding, or other such indication. In this case, the term "the other person who acquires the Securities" in Article 17 shall be deemed to be replaced with "the person who makes Sales, etc. of the Share Certificates, etc. in response to the Tender Offer."

(Liability for Damages of Person Who Gives Public Notice for Commencing Tender Offer Containing Fake Statement, etc.)

Article 27-20 (1) Article 18 (1) shall apply mutatis mutandis to the following persons. In this case, both of the terms "a person who acquires the Securities

through the Public Offering or Secondary Distribution" and "the person who acquired the Securities" in Article 18 (1) shall be deemed to be replaced with "the person who makes Sales, etc. of the Share Certificates, etc. in response to the Tender Offer"; and the term "at the time of making an offer to acquire the Securities" in said provision shall be deemed to be replaced with "at the time of the Sales, etc.":

- (i) a person who gives a Public Notice for Commencing Tender Offer or public notice or public announcement under Article 27-6 (2) or (3), Article 27-7 (1) or (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27-8 (12)) or Article 27-8 (8) or (11) (hereinafter collectively referred to as "Public Notice for Commencing Tender Offer, etc." in this Article and the following Article) that contains any fake statement on important matters or lacks an indication on any important matters that should be indicated or on a material fact that is necessary for avoiding misunderstanding;
  - (ii) a person who submits a Tender Offer Notification (including amendments therefor; hereinafter the same shall apply in this Article and the following Article) that contains any fake statement on important matters or lacks a statement on any important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding;
  - (iii) a person who prepares a Tender Offer Statement (including a Tender Offer Statement amended under Article 27-9 (3); hereinafter the same shall apply in this Article and the following Article) that contains any fake statement on important matters or lacks a statement on any important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding; and
  - (iv) a person who submits a Tender Offeror's Answer (including amendment reports therefor; hereinafter the same shall apply in this Article and the following Article) that contains any fake statement on important matters or lacks a statement on any important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding.
- (2) In cases where the preceding paragraph (excluding items (i) and (iv)) is applicable, when the Tender Offeror fails to state the fact that he/she had concluded a contract for making Purchase, etc. of Share Certificates, etc. pertaining to the Tender Offer not through the Tender Offer after the last day of the Tender Offer Period and then he/she makes Purchase, etc. under the contract after the last day of the Tender Offer Period, the amount of damages to be paid to a person who makes Sales, etc. of Share Certificates, etc. in response to the Tender Offer (excluding a person who makes Sales, etc. of Share Certificates, etc. under the contract, a person who makes Sales, etc. of Share Certificates, etc. to which Article 27-5 is applicable and a person who belongs to the part of persons referred to in Article 27-18 (2)(i)) shall be the

amount calculated by multiplying the difference between the price (including the provision of profit equivalent thereto; in cases where two or more prices are used for the Purchases, etc., the most favorable price) paid by the Tender Offeror, etc. for the Purchase, etc. and the Tender Offer Price, by the number of Share Certificates, etc. Offered to Sell by the person who is entitled to claim damages under the Article 18 (1) as applied mutatis mutandis pursuant to the preceding paragraph.

- (3) Except for cases to which the preceding paragraph is applicable, persons specified in the following items shall be held jointly and severally liable for damages under paragraph (1) with the person specified in the items of paragraph (1); provided, however, that this shall not apply to the cases where the person specified in the following items proves that he/she did not know of, and was not able to know of even with reasonable care, the existence of a fake statement or lack of a required statement:
- (i) Persons in Special Relationship (limited to such a person specified in Article 27-2 (7)(ii)) with a person falling under any of the categories specified in the items of paragraph (i); and
  - (ii) in cases where the person specified in the items of paragraph (1) is a juridical person or other organization, a person who is a director, accounting advisor, company auditor or executive officer, or a person who can be regarded as equivalent thereto, of the juridical person or other organization at the time of the submission of the Public Notice for Commencing Tender Offer, etc., the Tender Offer Notification or the Tender Offeror's Answer or at the time of the preparation of the Tender Offeror Statement.

(Prescription for Liability for Damages Arisen from Violation of Provisions Relevant to Tender Offer)

Article 27-21 (1) The right to claim damages under Article 27-17 (1) or the right to claim damages under Article 27-18 (1) in cases where Article 27-18 (2) is applicable shall be extinguished by prescription when the right is not exercised within one year from the time when the person who is entitled to claim damages comes to know, or is able to know by exercising reasonable care, the violation. The same shall apply to cases where the right is not exercised within five years from the day following the last day of the Tender Offer Period of the Tender Offer.

- (2) The right to claim damages under Article 27-20 (1) in cases where paragraph (2) of the preceding Article is applicable shall be extinguished by prescription when the right is not exercised within one year from the time when the person who is entitled to claim damages comes to know, or is able to know by exercising reasonable care, the fact that the Public Notice for Commencing Tender Offer, etc., Tender Offer Notification, Tender Offer Statement or

Tender Offeror's Answer contains any fake statement or false indication on important matters or lacks a statement on any important matters that should be stated or indicated or on a material fact that is necessary for avoiding misunderstanding. The same shall apply to cases where the right is not exercised within five years from the day following the last day of the Tender Offer Period of the Tender Offer.

(Order for Production of Report by Tender Offeror and Inspection on Tender Offeror)

Article 27-22 (1) When the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may order the Tender Offeror, Persons in Special Relationship with the Tender Offeror or other persons concerned or witnesses to submit reports or materials that will be helpful, or have the officials inspect the books and documents or other articles held by these persons.

(2) When the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may order the person who submits the Subject Company's Position Statement or other persons concerned or witnesses to submit reports or materials that will be helpful, or have the officials inspect the books and documents or other articles held by these persons.

## **Section 2 Tender Offer for Share Certificates, etc. by Issuer**

(Tender Offer for Share Certificates, etc. by Issuer)

Article 27-22-2 (1) Purchase, etc. (meaning purchase or other type of acceptance of transfer for value; hereinafter the same shall apply in this Article and the following Article) of Listed Share Certificates, etc. conducted outside of Financial Instruments Exchange Markets by the Issuer thereof shall be made by means of a Tender Offer, if it falls under any of the categories listed in the following items; provided, however, that this shall not apply to Purchase, etc. of Share Certificates, etc. conducted through transactions specified by a Cabinet Order as being equivalent to sales and purchase or the like of Securities conducted in Financial Instruments Exchange Markets:

- (i) Purchase, etc. conducted under Article 159 (1) of the Companies Act (including the cases where it is applied mutatis mutandis pursuant to Article 156 (3) of said Act) (excluding cases where the Issuer gives notice under Article 158 (1) of said Act as provided in Article 160 of said Act); or
- (ii) Purchase, etc. conducted by the Issuer thereof who is a foreign company and by the method specified by a Cabinet Order as that for making available to a large number of persons the matters pertaining to the Purchase, etc.

(2) Article 27-2 (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 shall apply in paragraph (5) and Article 27-22-3 (5)), Articles 27-6 to 27-9 inclusive (excluding Article 27-8 (6), (10) and (12)), Article 27-11 to 15 inclusive (excluding Article 27-11 (4) and Article 27-13 (3) and (4)(i)), Article 27-17, Article 27-18, Article 27-21 (1) and paragraph (1) of the preceding Article shall apply mutatis mutandis to Purchase, etc. conducted under the preceding paragraph by means of Tender Offer. In this case, the term "Share Certificates, etc." in these provisions (excluding Article 27-3 (4) and the proviso to Article 27-11 (1)) shall be deemed to be replaced with "Listed Share Certificates, etc."; the term "Sales, etc. (meaning sales or other type of transfer for value; hereinafter the same shall apply in this Section)" shall be deemed to be replaced with "Sales, etc."; the term "the following matters" in Article 27-3 (2) shall be deemed to be replaced with "the matters listed in items (i) and (iii) below"; the part "period of Purchase, etc. (including the statement included in the public notice under the second sentence of the preceding paragraph)" in Article 27-3 (2)(i) shall be deemed to be replaced with "period of Purchase, etc."; the part "The Tender Offeror, Persons in Special Relationship with the Tender Offeror (meaning Persons in Special Relationship as defined in Article 27-2 (7); hereinafter the same shall apply in this Section), or other person concerned as specified by a Cabinet Order" in Article 27-3 (3) shall be deemed to be replaced with "the Tender Offeror or other person concerned as specified by a Cabinet Order"; the part "to the Issuer of the Share Certificates, etc. to which the Tender Offer is made (and the person who has already submitted a Tender Offer Notification with regard to any Share Certificates, etc. issued by the Issuer as of the day on which the Tender Offer Notification is submitted, if any), and, if the Share Certificates, etc. for which the Tender Offer is made fall under any of the categories listed in the following items, also send a copy of the Tender Offer Notification to the exchange or association specified in the following items for each kind of Share Certificates, etc. set forth in the respective items" in the first sentence of Article 27-3 (4) shall be deemed to be replaced with "to the exchange or association specified in the following items for each kind of Securities set forth in the respective items, and also send a copy of the Tender Offer Notification to the person who has already submitted a Tender Offer Notification with regard to any Share Certificates, etc. issued by the Issuer as of the day on which the Tender Offer Notification is submitted, if any"; the term "Share Certificates, etc." in the items of Article 27-3 (4) shall be deemed to be replaced with "Listed Share Certificates, etc."; the part "lower the price for Purchase, etc. (excluding those implemented in cases where the Public Notice for Commencing Tender Offer and the Tender Offer Notification state as



one of the Terms of Purchase, etc. that the price for Purchase, etc. may be lowered according to standards specified by a Cabinet Office Ordinance if the Subject Company (meaning Subject Company defined in Article 27-10 (1)) conducts share split or other act specified by a Cabinet Order.)" in Article 27-6 (1)(i) shall be deemed to be replaced with "lower the price for Purchase, etc."; the part "the details of the change in the Terms of Purchase, etc. (excluding the extension of the period for Purchase, etc. made under Article 27-10 (3))" in Article 27-6 (2) shall be deemed to be replaced with "the details of the change in the Terms of Purchase, etc."; the part "any change in the Terms of Purchase, etc. (excluding the extension of the period for Purchase, etc. made under Article 27-10 (3))" in Article 27-8 (2) shall be deemed to be replaced with "any change in the Terms of Purchase, etc."; the part "the Tender Offeror states as one of the Terms of Purchase, etc. in the Public Notice for Commencing Tender Offer and Tender Offer Notification that the Tender Offer may be withdrawn if there occurs any important change in the business or property of the Issuer of the Share Certificates, etc. for which the Tender Offer is made or its Subsidiary (meaning Subsidiary as defined in Article 2 (iii) of the Companies Act) or there occurs any other circumstance that would significantly impede the achievement of the purpose of the Tender Offer (limited to those specified by a Cabinet Order), or where a decision of commencement of bankruptcy proceedings is made against the Tender Offeror or there occurs any other material change in circumstances as specified by a Cabinet Order" in the proviso to Article 27-11 (1) shall be deemed to be replaced with "Purchase, etc. of Listed Share Certificates, etc. conducted through the Tender Offer violates other laws and regulations or where there occurs any circumstances specified by a Cabinet Order as those involving the risk of violation of other laws and regulations"; the part "states any of the following as one of the Terms of Purchase, etc. in the Public Notice for Commencing Tender Offer and Tender Offer Notification (with regard to the term specified in item (ii), limited to cases where the Share Certificates, etc. Holding Rate (meaning Share Certificates, etc. Holding Rate as defined in Article 27-2 (8)) of Share Certificates, etc. in possession by the Tender Offeror after the Tender Offer, or, in cases where there are Persons in Special Relationship as specified in Article 27-2 (1)(i) with the Tender Offeror, the Share Certificates, etc. Holding Rate calculated by adding the Share Certificates, etc. Holding Rate of the Persons in Special Relationship as defined in Article 27-2 (8) to that for the person who conducted the Purchase, etc.) will not exceed the rate specified by a Cabinet Order)" in Article 27-13 (4) shall be deemed to be replaced with "states the term specified in item (ii) below as one of the Terms of Purchase, etc. in the Public Notice for Commencing Tender Offer and Tender Offer Notification"; the part ", the Subject Company's Position Statement and the Tender Offeror's

Answer (including" in Article 27-14 (1) shall be deemed to be replaced with "(including"; the part ", Article 27-10 (9) (including the cases where it is applied mutatis mutandis pursuant to Article 27-10 (10)) and Article 27-10 (13) (including the cases where it is applied mutatis mutandis pursuant to Article 27-10 (14)) at" in Article 27-14 (3) shall be deemed to be replaced with "at"; the part ", Tender Offer Report, Subject Company's Position Statement or Tender Offeror's Answer" in Article 27-15 (1) shall be deemed to be replaced with "or Tender Offer Report"; the term "Tender Offeror, etc. and the Subject Company" in Article 27-15 (2) shall be deemed to be replaced with "Tender Offeror"; and the term "Tender Offeror, Persons in Special Relationship with the Tender Offeror" in paragraph (1) of the preceding Article shall be deemed to be replaced with "Tender Offeror."

(3) Article 27-3 (4) shall apply mutatis mutandis to cases where an amendment is submitted under Article 27-8 (1) to (4) inclusive as applied mutatis mutandis pursuant to the preceding paragraph. In this case, the part "to the Issuer of the Share Certificates, etc. to which the Tender Offer is made (and the person who has already submitted a Tender Offer Notification with regard to any Share Certificates, etc. issued by the Issuer as of the day on which the Tender Offer Notification is submitted, if any), and, if the Share Certificates, etc. for which the Tender Offer is made fall under any of the categories listed in the following items, also send a copy of the Tender Offer Notification to the exchange or association specified in the following items for each kind of Securities set forth in the respective items" in the first sentence of Article 27-3 (4) shall be deemed to be replaced with "to the exchange or association specified in the following items for each kind of Listed Share Certificates, etc. set forth in the respective items, and also send a copy of the Tender Offer Notification to the person who has already submitted a Tender Offer Notification with regard to any Share Certificates, etc. issued by the Issuer as of the day on which the amendment is submitted, if any"; and the term "Share Certificates, etc." in the items of Article 27-3 (4) shall be deemed to be replaced with "Listed Share Certificates, etc."

(4) A Tender Offeror (meaning Tender Offeror as defined in Article 27-3 (2) as applied mutatis mutandis pursuant to paragraph (2); hereinafter the same shall apply in this Section) shall, immediately after the submission of a Written Withdrawal of Tender Offer (meaning Written Withdrawal of Tender Offer as defined in Article 27-11 (3) as applied mutatis mutandis pursuant to paragraph (2); hereinafter the same shall apply in this Section) or Tender Offer Report (meaning Tender Offer Report as defined in Article 27-13 (2) as applied mutatis mutandis pursuant to paragraph (2); hereinafter the same shall apply in this Section), send a copy of the Written Withdrawal of Tender Offer or Tender Offer Report to the exchange or association specified in the following

items for each kind of Listed Share Certificates, etc. set forth in the respective items. In this case, matters necessary for sending of the copies shall be specified by a Cabinet Office Ordinance.

- (5) Article 27-5 shall apply mutatis mutandis to the period ending on the last day of the period for Purchase, etc. of the Tender Offer to be extended under Article 27-8 (8) as applied mutatis mutandis pursuant to paragraph (2). In this case, the terms "Share Certificates, etc." and "the following cases" in Article 27-5 shall be deemed to be replaced with "Listed Share Certificates, etc." and "the cases specified by a Cabinet Order," respectively.
- (6) Article 27-7 shall apply mutatis mutandis to public notice and public announcement under Article 27-8 (8) and (11) as applied mutatis mutandis pursuant to paragraph (2).
- (7) Article 27-8 (1) to (5) shall apply mutatis mutandis to a Tender Offer Report. In this case, the term "amendment" in Article 27-8 (1) shall be deemed to be replaced with "amendment report"; the part "there occurs any change in the Terms of Purchase, etc. (excluding the extension of the period for Purchase, etc. made under Article 27-10 (3)) or in the important matters to be stated in a Tender Offer Notification, or any other circumstance specified by a Cabinet Office Ordinance as that which requires amendment of a Tender Offer Notification, during the period after the day on which the Tender Offer Notification was submitted but before the last day of the Tender Offer Period" and the term "amendment" in Article 27-8 (2) shall be deemed to be replaced with "the number of Listed Share Certificates, etc. of which Purchase, etc. is to be made is fixed by the Method of Proportional Distribution set forth in Article 27-13 (5) as applied mutatis mutandis pursuant to Article 27-22-2 (2) during the period after the day on which the Tender Offer Notification was submitted" and "amendment report," respectively; the term "amendment" and the parts "the Terms of Purchase, etc. stated in the Tender Offer Notification do not comply with the provisions of this Section" and "the change in the Terms of Purchase, etc. stated in the amendment violates Article 27-6 (1)" in Article 27-8 (3) shall be deemed to be replaced with "amendment report," "the delivery and other settlement methods stated in the Tender Offer Notification do not comply with Article 27-13 (4) (excluding 27-13(4)(i)) and Article 27-13 (5) as applied mutatis mutandis pursuant to Article 27-22-2 (2)" and "the result of calculation for deciding the number of Listed Share Certificates, etc. of which Purchase, etc. is to be made stated in the amendment contravenes the method of proportional distribution specified by a Cabinet Office Ordinance set forth in Article 27-13 (5) as applied mutatis mutandis pursuant to Article 27-22-2 (2)"; the term "amendment" in Article 27-8 (4) shall be deemed to be replaced with "amendment report"; the term "disposition under paragraph (3)"; and the part "the last day of the Tender Offer Period (including the period to be extended

under paragraph (8); the same shall apply in paragraph (7)) (or, in the cases of the disposition resulting in the submission of an amendment report after the last day of the Tender Offer Period, after the day when five years have elapsed from the day following the last day), and the disposition under the preceding paragraph may not be given after the day when five years have elapsed from the day following the last day." in Article 27-8 (5) shall be deemed to be replaced with "disposition under paragraph (3) and the preceding paragraph as applied mutatis mutandis pursuant to Article 27-22 (7)" and "the day when five years have elapsed from the day following the last day of the Tender Offer Period," respectively.

- (8) Paragraph (4) shall apply mutatis mutandis to an amendment provided for in Article 27-8 (1) to (4) inclusive as applied mutatis mutandis pursuant to the preceding paragraph. In this case, the parts "Written Withdrawal of Tender Offer (meaning Written Withdrawal of Tender Offer as defined in Article 27-11 (3) as applied mutatis mutandis pursuant to paragraph (2); hereinafter the same shall apply in this Section) or Tender Offer Report (meaning Tender Offer Report as defined in Article 27-13 (2) as applied mutatis mutandis pursuant to paragraph (2); hereinafter the same shall apply in this Section)"; and "the Written Withdrawal of Tender Offer or Tender Offer Report" in Article 27-8 (4) shall be deemed to be replaced with "amendment report (meaning amendment report provided for in Article 27-8 (1) to (4) inclusive as applied mutatis mutandis pursuant to paragraph (7)" and "the amendment report," respectively.
- (9) Article 16 shall apply mutatis mutandis to a person who conducts any act specified by the Cabinet Office Ordinance in violation of Article 27-3 (3) or 27-8(7) as applied mutatis mutandis pursuant to paragraph (2) or conducts Purchase, etc. of Listed Share Certificates, etc. in violation of Article 27-9 (2) or (3) as applied mutatis mutandis pursuant to paragraph (2). In this case, the term "the person who acquires the Securities" in Article 16 shall be deemed to be replaced with "the person who makes Sales, etc. of the Listed Share Certificates, etc. in response to the Tender Offer."
- (10) Article 17 shall apply mutatis mutandis to a person who has another person make Sales, etc. of Listed Share Certificates, etc. using a Tender Offer Statement (meaning Tender Offer Statement as defined in Article 27-9 (1) as applied mutatis mutandis pursuant to paragraph (2); hereinafter the same shall apply in this Section) that contains any fake statement on important matters or lacks an indication on any important matters that should be indicated or on a material fact that is necessary for avoiding misunderstanding, or other such indication. In this case, the term "the other person who acquires the Securities" in Article 17 shall be deemed to be replaced with "the person who makes Sales, etc. of the Listed Share Certificates, etc. in response to the Tender Offer."

(11) Article 18 (1) shall apply mutatis mutandis to the following persons. In this case, both of the terms "a person who acquires the Securities through the Public Offering or Secondary Distribution" and "the person who acquired the Securities" in Article 18 (1) shall be deemed to be replaced with "the person who makes Sales, etc. of the Listed Share Certificates, etc. in response to the Tender Offer"; and the term "at the time of making an offer to acquire the Securities" in said provision shall be deemed to be replaced with "at the time of the Sales, etc.":

(i) a person who gives a Public Notice for Commencing Tender Offer as defined in Article 27-3 (2) as applied mutatis mutandis pursuant to paragraph (2) or public notice or public announcement under Article 27-6 (2) or (3), Article 27-7 (1) or (2) or Article 27-8 (8) or (11) as applied mutatis mutandis pursuant to paragraph (2) or Article 27-7 (1) or (2) as applied mutatis mutandis pursuant to paragraph (6) (collectively referred to as "Public Notice for Commencing Tender Offer, etc." in the following paragraph) that contains any fake statement on important matters or lacks an indication on any important matters that should be indicated or on a material fact that is necessary for avoiding misunderstanding;

(ii) a person who submits a Tender Offer Notification as defined in Article 27-3 (2) as applied mutatis mutandis pursuant to paragraph (2) (including amendments therefor; the same shall apply in the following paragraph) that contains any fake statement on important matters or lacks a statement on any important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding; and

(iii) a person who prepares a Tender Offer Statement (including a Tender Offer Statement amended under Article 27-9 (3) as applied mutatis mutandis pursuant to paragraph (2); hereinafter the same shall apply in this paragraph and the following paragraph) that contains any fake statement on important matters or lacks a statement on any important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding.

(12) In cases where Article 18 (1) as applied mutatis mutandis pursuant to the preceding paragraph is applicable, a person who is an Officer of the Issuer at the time of the submission of Public Notice for Commencing Tender Offer, etc. or Tender Offer Notification or at the time of the preparation of the Tender Offeror Statement shall be held jointly and severally liable for damages under the preceding paragraph with the Issuer; provided, however, that this shall not apply to the cases where the Officer proves that he/she did not know of, and was not able to know of even with reasonable care, the existence of a fake statement or lack of a required statement.

(13) In cases specified in paragraph (2), paragraph (3) and paragraphs (5) to (11),

in addition to what is provided for in these provisions, any other necessary technical replacement of terms shall be specified by a Cabinet Order.

(Publication of Material Fact Pertaining to Business or Other Matters)

- Article 27-22-3 (1) A company who intends to make Purchase, etc. of Listed Share Certificates, etc. through Tender Offer as provided for in paragraph (1) of the preceding Article shall, if there are any Material Facts (meaning Material Fact Pertaining to Business or Other Matters provided for in Article 166 (1) (excluding those specified by a Cabinet Office Ordinance); hereinafter the same shall apply in this and the following Article) pertaining to the company that has not been published as provided for in Article 166 (1), publish the Material Facts pursuant to the provisions of a Cabinet Office Ordinance before the day on which the Tender Offer Notification (meaning Tender Offer Notification as defined in Article 27-3 (2) as applied mutatis mutandis pursuant to paragraph (2) of the preceding Article; hereinafter the same shall apply in this and the following Article) is submitted.
- (2) In cases where a company makes Purchase, etc. of Listed Share Certificates, etc. through Tender Offer as a Tender Offeror as provided for in paragraph (1) of the preceding Article, if there occurs any new Material Fact pertaining to the company (including the case where it is found that there has been a Material Fact that occurred before the day on which the Tender Offer Notification is submitted and has not been published as provided for in Article 166 (1)), the company shall publish the Material Fact and notify the details of the publication to the persons who accept the offer for Purchase, etc. of Listed Share Certificates, etc. made in the Tender Offer or make an offer for Sales, etc. of Listed Share Certificates, etc. for which the Tender Offer is made and the persons who are about to make Sales, etc. of such Listed Share Certificates, etc., pursuant to the provisions of a Cabinet Office Ordinance without delay during the period from the day on which the Tender Offer Notification is submitted to the last day of the Tender Offer Period (including the period to be extended under Article 27-8 (8) as applied mutatis mutandis pursuant to paragraph (4) of this Article; the same shall apply in the following Article) as defined in Article 27-5 as applied mutatis mutandis pursuant to paragraph (2) of the preceding Article.
- (3) When the period specified by a Cabinet Order has elapsed since the publication was made as provided in the preceding two paragraphs, it shall be deemed that the publication is made as required under Article 166 (1).
- (4) Article 27-8 (8) and (9) shall apply mutatis mutandis to the publication made under paragraph (2). In this case, the part "In cases where an amendment is submitted under paragraph (1) or (2) or an order to submit an amendment is given under paragraph (3) or (4) during the Tender Offer Period, except in the

cases specified by a Cabinet Office Ordinance" in Article 27-8 (8) shall be deemed to be replaced with "In cases where the publication of a material fact is required under Article 27-22-3 (2)"; and the terms "the preceding paragraph" and "Share Certificates, etc." in Article 27-8 (9) shall be deemed to be replaced with "the preceding paragraph as applied mutatis mutandis pursuant to Article 27-22-3 (4)" and "Listed Share Certificates, etc.," respectively.

- (5) Article 27-5 shall apply mutatis mutandis to the period ending on the last day of the period for Purchase, etc. of the Tender Offer to be extended under Article 27-8 (8) as applied mutatis mutandis pursuant to the preceding paragraph. In this case, the terms "Share Certificates, etc." and "the following cases" in Article 27-5 shall be deemed to be replaced with "Listed Share Certificates, etc." and "the cases specified by a Cabinet Order," respectively.
- (6) Article 18 (1) shall apply mutatis mutandis to a company which gives public notice or public announcement under Article 27-8 (8) as applied mutatis mutandis pursuant to paragraph (4) that contains any fake statement on important matters or lacks an indication on any important matters that should be indicated or on a material fact that is necessary for avoiding misunderstanding. In this case, both of the terms "a person who acquires the Securities through the Public Offering or Secondary Distribution" and "the person who acquired the Securities" in Article 18 (1) shall be deemed to be replaced with "the person who makes Sales, etc. of the Listed Share Certificates, etc. in response to the Tender Offer"; and the term "at the time of making an offer to acquire the Securities" in said provision shall be deemed to be replaced with "at the time of the Sales, etc."
- (7) In cases where Article 18 (1) as applied mutatis mutandis pursuant to the preceding paragraph is applicable, a person who is an Officer of the company at the time of the submission of the public notice or public announcement referred to in the preceding paragraph shall be held jointly and severally liable for damages under the preceding paragraph with the company; provided, however, that this shall not apply to the cases where the Officer proves that he/she did not know of, and was not able to know of even with reasonable care, the existence of a fake statement or lack of a required statement.
- (8) Article 27-17 shall apply mutatis mutandis to cases where Purchase, etc. of Listed Share Certificates, etc. is made in violation of Article 27-5 as applied mutatis mutandis pursuant to paragraph (5). In this case, the term "Share Certificates, etc." in Article 27-17 shall be deemed to be replaced with "Listed Share Certificates, etc."; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

(Liability for Damages Arising from Failure to Make Publication, etc. or False Publication, etc.)

Article 27-22-4 (1) If a company fails to make publication or notification (hereinafter referred to as "Publication, etc." in this Article) of any Material Fact for which Publication, etc. is required under paragraph (1) or (2) of the preceding Article or makes false Publication, etc. of such Material Fact, the company shall be liable to compensate damage arising from the failure to make Publication, etc. or the false Publication, etc. sustained by a person who makes Sales, etc. of Listed Share Certificates, etc. in response to the Tender Offer; provided, however, that this shall not apply to the following cases:

- (i) in the case where the person who makes Sales, etc. of Listed Share Certificates, etc. in response to the Tender Offer knew the fact that the Material Fact occurred pertaining to the company or the fact that the Publication, etc. contains untruth; or
- (ii) in the case where the company proves that it did not know the fact that the Material Fact occurred pertaining to the company or the fact that the Publication, etc. contains untruth, and that it was not able at the Time of Tender Offer (meaning the time when the Public Notice for Commencing Tender Offer was submitted in the case of the publication required under paragraph (1) of the preceding Article, or the period on or after the day on which the Public Notice for Commencing Tender Offer was submitted and before the last day of the Tender Offer Period in the case of the publication and notification required under Article 27-22-3 (2); the same shall apply in the following paragraph) to know even with reasonable care the fact that the Material Fact occurred pertaining to the company or the fact that the Publication, etc. contains untruth.

(2) In cases where the main clause of the preceding paragraph is applicable, a person who is an Officer of the company at the Time of Tender Offer shall be held jointly and severally liable for damages under the preceding paragraph with the company; provided, however, that this shall not apply to the cases where the Officer proves that he/she did not know of, and was not able to know of even with reasonable care, the fact that the Material Fact occurred pertaining to the company or the fact that the Publication, etc. contains untruth.

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

(Submission of Reports of Possession of Large Volume)

Article 27-23 (1) A holder of the Target Securities (including the Securities listed in Article 2 (1)(xix) indicating the Options pertaining to said Target Securities (limited to the Options which cause a person who has exercised said Options to acquire a position as a buyer in the sales or purchase of the Target Securities



pertaining to said Options) and other Securities specified by a Cabinet Order as those which indicate the rights pertaining to said Target Securities) whose issuer is a juridical person which is an issuer (with regard to the Securities specified by a Cabinet Office Ordinance, a person specified by a Cabinet Office Ordinance; the same shall apply hereinafter in this Chapter and Article 27-30-11 (4), except for Article 27-30 (2)) of share certificates, bonds with share option and other Securities specified by a Cabinet Order (hereinafter referred to as the "Securities Related to Share Certificates" in this paragraph) that are listed on a Financial Instruments Exchange (including the Securities Related to Share Certificates specified by a Cabinet Order as those of which the state of distribution can be regarded as being equivalent to said Securities) (such Securities shall be hereinafter collectively referred to as the "Share Certificates, etc." in this Chapter and Article 27-30-11 (4)), and whose Holding Ratio of Share Certificates, etc. pertaining to said Share Certificates, etc. exceeds 5% (such holder shall be hereinafter referred to as a "Large Volume Holder" in this Chapter) shall, pursuant to the provisions of a Cabinet Office Ordinance, submit to the Prime Minister a report that contains the matters related to the Holding Ratio of Share Certificates, etc., matters related to the funds for the acquisition, purposes of holding and any other matters specified by a Cabinet Office Ordinance (such report shall be hereinafter referred to as "Reports of Possession of Large Volume"), within five days from the date on which such person has come to be a Large Volume Holder (Sundays and other holidays specified by a Cabinet Order shall not be included for the purpose of counting days; the same shall apply in Article 27-25 (1) and Article 27-26); provided, however, that this shall not apply to the cases where there is no increase in the total number of the Share Certificates, etc. held set forth in paragraph (4) or to any other case specified by a Cabinet Office Ordinance.

(2) The term "Target Securities" as used in the preceding paragraph means the share certificates, bonds with share option and other Securities which are specified by a Cabinet Order.

(3) The holders prescribed in paragraph (1) shall include the following persons, in addition to a person who owns Share Certificates, etc. in the name of him/herself or another person (or under a fictitious name) (including a person who holds the right to request delivery of Share Certificates, etc. under a sales and purchase contract or any other contract, or any other person specified by a Cabinet Order as being equivalent to them); provided, however, that the person listed in item (i) shall be deemed to become a holder on the day when said person comes to know that he/she is entitled to the authorities prescribed in said item, only within the scope of the Share Certificates, etc. (including the Securities listed in Article 2 (1)(xx) indicating the rights pertaining to Share Certificates, etc., and other Securities specified by a Cabinet Office Ordinance;

hereinafter the same shall apply in this paragraph and the following Article) regarding which said person comes to know that he/she is entitled to said authorities:

(i) a person who has the authority to exercise his/her voting rights or any other rights as a shareholder of 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 laws (except for a person who falls under the following item), and who aims at controlling business activities of said issuer; or

(ii) a person who has the authority necessary to make investments in Share Certificates, etc., based on a discretionary investment contract or any other contracts or the provisions of the laws.

(4) The term "Holding Ratio of Share Certificates, etc." as used in paragraph (1) means the ratio calculated by the following formula: from the total of the Number (meaning the Number of represented shares, in the case of share certificates, or meaning the Number converted into shares pursuant to the provisions of a Cabinet Office Ordinance, in the case of other securities; hereinafter the same shall apply in this Chapter) of the Share Certificates, etc. (excluding the Share Certificates, etc. specified by a Cabinet Office Ordinance by taking into consideration the manner of holding or any other circumstance; hereinafter the same shall apply in this paragraph) which are held (the term "hold" includes the cases of holding of the authorities set forth in the items of the preceding paragraph; hereinafter the same shall apply in this Chapter) by a Holder of the Share Certificates, etc. (meaning a holder set forth in paragraph (1); hereinafter the same shall apply in this Chapter), deduct the Number of Share Certificates, etc. issued by the issuer of said Share Certificates, etc. for which the holder has an obligation of delivery (excluding an obligation of delivery which the holder has against a Joint Holder) arising from transfer by way of margin transactions under Article 161-2 (1) or any other transaction methods specified by a Cabinet Office Ordinance (the Number of Share Certificates, etc. after said deduction shall be hereinafter referred to as the "Number of Share Certificates, etc. Held" in this Chapter); add the Number of Share Certificates, etc. held by the Joint Holder in relation to the Share Certificates, etc. issued by said issuer (excluding those for which a right to request delivery or any other right specified by a Cabinet Order exists between the holder and the Joint Holder) to the Number of Share Certificates, etc. Held (the Number of the Share Certificates, etc. after said addition shall hereinafter be referred to as the "Total Number of Share Certificates, etc. Held"); and divide the Total Number of Share Certificates, etc. Held, by the sum of the total Number of issued shares of the issuer and the Number of the Share Certificates, etc. held by said holder and Joint Holder (excluding the

share certificates and any other Securities specified by a Cabinet Office Ordinance).

- (5) The term "Joint Holder" as used in the preceding paragraph means another Holder of the Share Certificates, etc., in cases where a holder of Share Certificates, etc. has agreed on jointly acquiring or transferring said Share Certificates, etc., or on jointly exercising the voting right and other rights as a shareholder of said issuer, with another holder of the Share Certificates, etc. issued by the issuer of said Share Certificates, etc.
- (6) When a Holder of Share Certificates, etc., and another holder of the Share Certificates, etc. issued by the issuer of said Share Certificates, etc. have a shareholder relationship, family relationship or any other special relationship specified by a Cabinet Order, said other holder shall be deemed to fall under the Joint Holder prescribed in paragraph (4) in relation to said holder; provided, however, that this shall not apply to the cases where the Number of Share Certificates, etc. Held by either said holder or the other holder is not more than the number specified by a Cabinet Office Ordinance.

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

Article 27-24 A person listed in paragraph (3), item (ii) of the preceding Article shall, pursuant to the provisions of a Cabinet Office Ordinance, prepare a written notice that accounts for the status of holdings of relevant Share Certificates, etc. and deliver it to the customers who have authority to exercise their voting rights or any other rights as shareholders of the issuer of said Share Certificate, etc. or to give instructions as to exercising said voting rights or any other rights, at least once a month.

(Submission of Change Report Pertaining to Report of Possession of Large Volume)

Article 27-25 (1) A person who is required to submit a Report of Possession of Large Volume shall, if, after the day when the person has come to be a Large Volume Holder, the Holding Ratio of Share Certificates, etc. (meaning the Holding Ratio of Share Certificates, etc. set forth in Article 27-23 (4); hereinafter the same shall apply in this Chapter) has increased or decreased by 1% or more (excluding the case where said increase or decrease does not result in increase or decrease in the Total Number of Share Certificates, etc. Held by said person; hereinafter the same shall apply in this Chapter), or where there arises any other matters specified by a Cabinet Order as changes in important matters to be contained in the Report of Possession of Large Volume, submit to the Prime Minister a report on the changed matters (hereinafter referred to as a "Change Report") within five days from the change, pursuant to the provisions of a Cabinet Office Ordinance; provided, however, that this shall not

apply to a Change Report that reports a decrease of 1% or more in the Holding Ratio of Share Certificates, etc., in which case a Change Report reporting that the Holding Ratio of Share Certificates, etc. are 5% or less has already been submitted or to other cases specified by a Cabinet Office Ordinance.

- (2) A person who submits a Change Report due to a decrease in the Holding Ratio of Share Certificates, etc. shall, if such decrease falls under the criteria specified by a Cabinet Order as a case where a large number of Share Certificates, etc. have been transferred within a short period, also state in said Change Report the matters concerning the party to whom the Share Certificates, etc. have been transferred and the consideration received therefor, pursuant to the provisions of a Cabinet Office Ordinance.
- (3) When, by the day immediately prior to the day of submission of a Report of Possession of Large Volume or Change Report, any cause which requires a person to submit another Change Report has arisen, said Change Report shall be submitted to the Prime Minister at the same time as the submission of said documents which have not been submitted, notwithstanding the provision of the main clause of paragraph (1).
- (4) A person who has submitted a Report of Possession of Large Volume or Change Report shall, when he/she finds that the contents stated in said documents differ from the actual facts, or that the important matters to be stated or important facts necessary for prevention of misunderstanding are insufficient or lacking, submit an Amendment Report to the Prime Minister.

(Special Provisions for Report by Large Volume Holder of Share Certificates, etc. Subject to Special Provisions)

Article 27-26 (1) A Report of Possession of Large Volume pertaining to Share Certificates, etc. which are held by a Financial Instruments Business Operator (limited to those who conduct the Type I Financial Instruments Business under Article 28 (1), or who conduct the Investment Management Business under paragraph (4) of the same Article; hereinafter the same shall apply in this Article), a bank or any other person specified by a Cabinet Office Ordinance (limited to those who have notified the Reference Date specified in paragraph (3) to the Prime Minister) where the purpose of holding is not for effecting material changes in or giving material effect to the business activities of the issuer of said Share Certificates, etc., as specified by a Cabinet Order (referred to as "Act of Making Important Suggestion, etc." in paragraphs (4) and (5)) (excluding the cases where the Holding Ratio of Share Certificates, etc. exceeds the ratio specified by a Cabinet Office Ordinance, or other cases specified by a Cabinet Office Ordinance by taking into consideration the manner of holding and other circumstances), or which are held by the State, local government or other person specified by a Cabinet Office Ordinance (limited to those who

have notified the Reference Date specified in paragraph (3) to the Prime Minister) (such Share Certificates, etc. are hereinafter collectively referred to as "Share Certificates, etc. Subject to Special Provisions" in this Article) shall, notwithstanding the provision of the main clause of Article 27-23 (1), be submitted to the Prime Minister with a statement of the matters specified by a Cabinet Office Ordinance with regard to the status of holding of said Share Certificates, etc. as of the Reference Date when the Holding Ratio of Share Certificates, etc. have exceeded 5% for the first time, within five days from said Reference Date, pursuant to the provisions of a Cabinet Office Ordinance.

(2) Notwithstanding the provision of the main clause of Article 27-25 (1), a Change Report pertaining to the Share Certificates, etc. Subject to Special Provisions (excluding a Change Report pertaining to a change where the relevant Share Certificates, etc. have come to fall under those other than Share Certificates, etc. Subject to Special Provisions) shall be submitted to the Prime Minister by the date respectively provided in the following items for the categories of cases listed in those items, pursuant to the provision of a Cabinet Office Ordinance:

- (i) a case where the Holding Ratio of Share Certificates, etc. on a Reference Date that comes after the Reference Date pertaining to the Report of Possession of Large Volume set forth in the preceding paragraph increased or decreased by 1% or more from the Holding Ratio of Share Certificates, etc. that were stated in said Report of Possession of Large Volume, or where there arises any other case specified by a Cabinet Order as a change in important matters to be stated in said Report of Possession of Large Volume: within five days from the later Reference Date;
- (ii) a case where the Holding Ratio of Share Certificates, etc. on a Reference Date that comes after the Reference Date pertaining to the Change Report increased or decreased by 1% or more from the Holding Ratio of Share Certificates, etc. that were stated in said Change Report, or where there arises any other case specified by a Cabinet Order as a change of important matters to be stated in the Report of Possession of Large Volume: within five days from the later Reference Date;
- (iii) when the Holding Ratio of Share Certificates, etc. becomes less than the ratio specified by a Cabinet Office Ordinance, and the relevant Share Certificates, etc. have come to fall under the Share Certificates, etc. Subject to Special Provisions: within five days from the date when the Share Certificates, etc. have come to fall under the Share Certificates, etc. Subject to Special Provisions; and
- (iv) a case specified by a Cabinet Office Ordinance as a case equivalent to any of the preceding three items: the date specified by a Cabinet Office Ordinance.

- (3) The Reference Date set forth in the preceding two paragraphs means the date notified by a Holder of Share Certificates, etc. Subject to Special Provisions to the Prime Minister pursuant to the provisions of a Cabinet Office Ordinance, out of the combinations of two or more days of each month designated pursuant to the provisions of a Cabinet Order.
- (4) Notwithstanding the provision of paragraph (1), when a Financial Instruments Business Operator, bank or any other person specified by a Cabinet Office Ordinance which is set forth in the same paragraph intends to conduct an Act of Making Important Suggestion, etc. within a period specified by a Cabinet Order from the date when the Holding Ratio of Share Certificates, etc. have exceeded 5%, such person shall submit to the Prime Minister a Report of Possession of Large Volume prescribed in the same paragraph by five days prior to the date of such Act of Making Important Suggestions, etc., pursuant to the provisions of a Cabinet Office Ordinance.
- (5) Notwithstanding the provision of paragraph (2), when the Holding Ratio of Share Certificates, etc. of a Financial Instruments Business Operator, bank or any other person specified by a Cabinet Office Ordinance which is set forth in paragraph (1) has increased by 1% or more after the submission of the Report of Possession of Large Volume under the same paragraph or the Change Report under paragraph (2), and when any of said persons intends to conduct an Act of Making Important Suggestions, etc. within the period specified by a Cabinet Order from the date of said increase, such person shall submit to the Prime Minister a Change Report under the same paragraph by five days prior to the date of such Act of Making Important Suggestions, etc., pursuant to the provisions of a Cabinet Office Ordinance.
- (6) The provision of paragraph (4) of the preceding Article shall apply mutatis mutandis to a Report of Possession of Large Volume under paragraph (1) or (4), or a Change Report under paragraph (2) or the preceding paragraph.

(Submission of Copy of Report of Possession of Large Volume, etc. to Financial Instruments Exchange, etc.)

Article 27-27 When a Holder of Share Certificates, etc. has submitted a Report of Possession of Large Volume, Change Report, or Amendment Reports for such reports, he/she shall deliver the copies of these documents without delay to the issuer of the relevant Share Certificates, etc., and to the persons respectively listed in the following items in accordance with the categories of the Share Certificates, etc. listed in those items:

- (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 a Cabinet Order as those of which the state of distribution can be regarded as being equivalent to the Share Certificates, etc. listed in the preceding item: an Authorized Financial Instruments Firms Association as specified by a Cabinet Order.

(Public Inspection of Report of Possession of Large Volume, etc.)

- Article 27-28 (1) The Prime Minister shall, pursuant to the provisions of a Cabinet Office Ordinance, make Reports of Possession of Large Volume and Change Reports as well as Amendment Reports thereof available for public inspection for five years from the date of receipt of these documents.
- (2) A Financial Instruments Exchange and an Authorized Financial Instruments Firms Association specified by a Cabinet Order shall, pursuant to the provisions of a Cabinet Office Ordinance, keep at their respective offices the copies of the documents prescribed in the preceding paragraph which have been delivered to said persons pursuant to the provision of the preceding Article, and make such copies available for public inspection for five years from the date of receipt of such documents.
- (3) With regard to the matters concerning funds for the acquisition as stated in a Report of Possession of Large Volume or a Change Report, or Amendment Reports thereof, in cases where said fund has been borrowed from a bank, Cooperative Structured Financial Institution or any other financial institution specified by a Cabinet Order (hereinafter collectively referred to as "Banks, etc." in this paragraph) (excluding the cases specified by a Cabinet Office Ordinance), the Prime Minister shall, notwithstanding the provision of paragraph (1), not make the names of said Banks, etc. available for public inspection, and the person who has submitted these documents shall deliver the copies of these documents after deletion of the names of the Banks, etc.

(Order to Submit Amendment Report for Report of Possession of Large Volume, etc.)

- Article 27-29 (1) The provisions of Article 9 (1) and Article 10 (1) shall apply mutatis mutandis to a Report of Possession of Large Volume and Change Report. In this case, the term "to submit an amendment and may, when he/she finds it necessary, order the suspension of the effect of the notification made under Article 4 (1) or (2)" in Article 10 (1) shall be deemed to be replaced with "to submit the amendment."
- (2) The provisions of the preceding two Articles shall apply mutatis mutandis to the case where an Amendment Report concerning a Report of Possession of Large Volume or a Change Report has been submitted under the provision of Article 9 (1) or Article 10 (1), as applied mutatis mutandis pursuant to the preceding paragraph.

(Order for Production of Report and Inspection Related to Person Who Submits Report of Possession of Large Volume and Other Persons)

Article 27-30 (1) When the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may order a person who has submitted a Report of Possession of Large Volume or a Joint Holder of said person, or other parties concerned or witnesses to submit reports or materials that will be helpful, or have the officials inspect said person's books and documents and other articles.

(2) When the Prime Minister finds it necessary and appropriate for the public interest and protection of investors, he/she may order the company that has issued the Share Certificates, etc. pertaining to a Report of Possession of Large Volume or witnesses to submit reports or materials that will be helpful.

#### **Chapter II-4 Special Provisions, etc. for Procedures by Use of Electronic Data Processing System for Disclosure**

(Definition of Electronic Data Processing System 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 which links via telecommunications line the computers (including the input/output devices; hereinafter the same shall apply in this Chapter) used by the Cabinet Office, and the input/output devices used by the Financial Instruments Exchange, and the Authorized Financial Instruments Firms Association designated by a Cabinet Order as well as the input/output devices used by a person who conducts the procedures under the provisions of Article 5 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 7 (including the cases where it is applied mutatis mutandis pursuant to Article 24-2 (1), Article 24-4-3 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-8 (2) and Article 24-5-2 (2)), Article 24-4-5 (1), Article 24-4-7 (4), Article 24-5 (5) and Article 24-7 (3) (including the cases where they are applied mutatis mutandis pursuant to Article 27), Article 24-6 (2) and Article 27)), Article 9 (1) (excluding the second sentence of the same paragraph, and including the cases where it is applied mutatis mutandis pursuant to Article 24-2 (1), Article 24-4-3 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-8 (2) and Article 24-5-2 (2)), Article 24-4-5 (1), Article 24-4-7 (4), Article 24-5 (5) and Article 24-7 (3) (including the cases where they are applied mutatis mutandis pursuant to Article 27), Article 24-6 (2) and Article 27), Article 10 (1) (excluding the second sentence of the same paragraph, and including the cases where it is applied mutatis mutandis pursuant to Article 24-2 (1), Article 24-4-3 (1) (including the



cases where it is applied mutatis mutandis pursuant to Article 24-4-8 (2) and Article 24-5-2 (2)), Article 24-4-5 (1), Article 24-4-7 (4), Article 24-5 (5) and Article 24-7 (3) (including the cases where they are applied mutatis mutandis pursuant to Article 27), Article 24-6 (2) and Article 27), Article 23-3 (1) or (4) (including the cases where they are applied mutatis mutandis pursuant to Article 27), Article 23-4 (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 23-7 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 23-8 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 23-9 (1) (excluding the second sentence of the same paragraph, and including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 23-10 (1) (excluding the second sentence of the same paragraph, and including the cases where it is applied mutatis mutandis pursuant to Article 23-10 (5) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27), Article 24 (1) or (3) (including the cases where they are applied mutatis mutandis pursuant to Article 24 (5) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27), Article 24-4-2 (1) or (2) (including the cases where they are applied mutatis mutandis pursuant to Article 24-2, paragraph (3) (including the cases where it is applied mutatis mutandis pursuant to Article 24-2 (4)) and paragraph (4) (including the cases where they are applied mutatis mutandis pursuant to Article 24-4-8 (1) and Article 24-5-2 (1), and including the cases where they are applied mutatis mutandis pursuant to Article 27) and Article 27), Article 24-4-4 (1) or (2) (including the cases where they are applied mutatis mutandis pursuant to Article 24-4-4 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27), Article 24-4-7 (1) or (2) (including the cases where they are applied mutatis mutandis pursuant to Article 24-4-7 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27), Article 24-5 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 24-5, paragraph (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27) or paragraph (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 24-6 (1), Article 24-7 (1) or (2) (including the cases where it is applied mutatis mutandis pursuant to Article 24-7 (6) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27), Article 25 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 27-3 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), Article 27-8 (1) to (4) inclusive (excluding the second sentence of paragraph (4), and including the cases where they are applied mutatis mutandis pursuant to Article 27-10 (8) and(12), Article 27-13 (3) and Article 27-22-2 (2) and(7)), Article 27-10 (1) or

(11), Article 27-11 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), or Article 27-13 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), Article 27-23 (1), Article 27-25, paragraph (1), (3) or (4), each paragraph of Article 27-26, or Article 9 (11) (excluding the second sentence of the same paragraph) as applied mutatis mutandis pursuant to Article 27-29 (1), or the procedures pursuant to the provision of Article 10 (1) (excluding the second sentence of the same paragraph) (including submission of the documents to be attached in the case of submission of the documents under these procedures; hereinafter referred to as "Electronic Disclosure Procedures" in this Chapter) or the procedures under Article 4 (5) (including the cases where it is applied mutatis mutandis pursuant to Article 23-8 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27), the procedures prescribed in Article 27-5 (ii) and other procedures specified by a Cabinet Order (including submission of the documents to be attached in the case of submission of the documents under these procedures); hereinafter referred to as "Discretionary Electronic Disclosure Procedures" in this Chapter).

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

Article 27-30-3 (1) A person who conducts Electronic Disclosure Procedures shall use the Electronic Data Processing System for Disclosure for such purpose, pursuant to the provisions of a Cabinet Order.

(2) A person who conducts Discretionary Electronic Disclosure Procedures may use the Electronic Data Processing System for Disclosure for such purpose, pursuant to the provisions of a Cabinet Order.

(3) The Electronic Disclosure Procedures or Discretionary Electronic Disclosure Procedures conducted under the provisions of the preceding two paragraphs shall be deemed to have reached the Cabinet Office when they have been recorded in a file stored on the computers prescribed in the preceding Article (hereinafter simply referred to as the "File" in this Chapter).

(4) The Electronic Disclosure Procedures or Discretionary Electronic Disclosure Procedures conducted under the provisions of paragraph (1) or (2) shall be deemed to have been conducted by means of written documents prescribed in the provisions of the Laws and Regulations on Financial Instruments which requires that such procedures shall be conducted by means of written documents, and the Laws and Regulations on Financial Instruments shall apply to such procedures.

(5) The provision of Article 3 of the Act on Utilization of Information and Communications Technology in Administrative Procedure (Act No. 151 of 2002) shall not apply to the Electronic Disclosure Procedures and Discretionary

## Electronic Disclosure Procedures.

### (Special Provisions for Cases Where Electronic Data Processing System for Disclosure is Unusable)

Article 27-30-4 (1) Notwithstanding the provision of paragraph (1) of the preceding Article, a person who conducts Electronic Disclosure Procedures may, in cases where he/she is unable to conduct said Electronic Disclosure Procedures by use of the Electronic Data Processing System for Disclosure due to failure in telecommunication lines or any other cause, conduct said Electronic Disclosure Procedures by submitting a Magnetic Disk (including media which are capable of making accurate records of certain information by a method similar thereto; hereinafter the same shall apply in this Chapter), in lieu of use of the Electronic Data Processing System for Disclosure, with an approval of the Prime Minister and pursuant to the provisions of a Cabinet Order.

(2) A person who conducts Discretionary Electronic Disclosure Procedures by use of the Electronic Data Processing System for Disclosure may, in cases where he/she is unable to conduct said Discretionary Electronic Disclosure Procedures by use of the Electronic Data Processing System for Disclosure due to failure in telecommunication lines or any other cause, conduct said Discretionary Electronic Disclosure Procedures by submitting a Magnetic Disk, in lieu of use of the Electronic Data Processing System for Disclosure, with an approval of the Prime Minister and pursuant to the provisions of a Cabinet Order.

(3) The Prime Minister shall, when the Electronic Disclosure Procedures or Discretionary Electronic Disclosure Procedures have been made by submission of a Magnetic Disk under the provision of the preceding two paragraphs, immediately record the information recorded on said Magnetic Disk in the File, pursuant to the provisions of a Cabinet Office Ordinance. In this case, the information recorded on said Magnetic Disk shall be deemed to have reached the Cabinet Office at the time when said information has been stored in a File.

(4) The provision of paragraph (4) of the preceding Article shall apply mutatis mutandis to the Electronic Disclosure Procedures or Discretionary Electronic Disclosure Procedures conducted under the provisions of the preceding three paragraphs.

### (Special Provisions for Failure, etc. of Electronic Data Processing System for Disclosure)

Article 27-30-5 (1) The provision of Article 27-30-3 (1) shall not apply to cases which fall under any of the following items, if an approval thereon from the Prime Minister has been obtained:

(i) when it is found that there has been any failure in the computers prescribed

- in Article 27-30-2, or other causes specified by a Cabinet Order; or
- (ii) when it is found that conducting Electronic Disclosure Procedures by use of the Electronic Data Processing System for Disclosure is extremely difficult.
- (2) The procedures pertaining to the approval under the preceding paragraph shall be specified by a Cabinet Office Ordinance.

(Notice in lieu of Submission, etc. of Copies of Documents to Financial Instruments Exchange, etc.)

Article 27-30-6 (1) Notwithstanding the provisions of Article 6 (including the cases where it is applied mutatis mutandis pursuant to Article 12, Article 23-12 (1), Article 24 (7), Article 24-2 (3), Article 24-4-2 (5) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-8 (1) and Article 24-5-2 (1)), Article 24-4-3 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-8 (2) and Article 24-5-2 (2)), Article 24-4-4 (5), Article 24-4-5 (2), Article 24-4-7 (5) and Article 24-5 (6) (including the cases where the provisions referred to above are applied mutatis mutandis pursuant to Article 27), Article 24-6 (3) and Article 27)), Article 24-7 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 24-7 (6) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27), Article 27-3 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27-8 (6) (including the cases where it is applied mutatis mutandis pursuant to Article 27-13 (3)), Article 27-11 (4), Article 27-13 (3) and Article 27-22-2 (2) and(3)), Article 27-10, paragraph (9) (including the cases where it is applied mutatis mutandis pursuant to Article 27-10 (10)) and paragraph (13) (including the cases where it is applied mutatis mutandis pursuant to Article 27-10 (14)), Article 27-22-2 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (8)), or Article 27-27 (including the cases where it is applied mutatis mutandis pursuant to Article 27-29 (2)), a person who conducts Electronic Disclosure Procedures or Discretionary Electronic Disclosure Procedures shall, when he/she has conducted said procedures by the use of the Electronic Data Processing System for Disclosure (including the cases where he/she has conducted said procedures by submission of Magnetic Disks), in lieu of copies of the documents which shall be submitted or sent to a Financial Instruments Exchange, or Authorized Financial Instruments Firms Association specified by a Cabinet Order pursuant to the provisions referred to above, notify them of the information (excluding the parts that shall not be made available for public inspection under the provision of Article 27-28 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27-29 (2)) to be contained in the documents listed in each item of Article 25 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27) or the documents

prescribed in Article 27-14 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)) or Article 27-27 (including the cases where it is applied mutatis mutandis pursuant to Article 27-29 (2)), pertaining to the copies of said documents; provided, however, that the person may elect not to notify the part which shall not be made available for public inspection under the provision of Article 25 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27).

- (2) The notice made under the provision of the preceding paragraph shall be deemed to have been sent from a person who has conducted the Electronic Disclosure Procedures or Discretionary Electronic Disclosure Procedures set forth in the preceding paragraph when it has been recorded in the File, and shall be presumed to have reached the addressee of said notice at the time when the period of time normally required for the output thereof has elapsed after the completion of such recording.

(Public Inspection for Procedures Conducted by Use of Electronic Data Processing System for Disclosure)

Article 27-30-7 (1) When the Electronic Disclosure Procedures or the Discretionary Electronic Disclosure Procedures have been conducted by the use of the Electronic Data Processing System for Disclosure (including the cases where said procedures have been conducted by submission of Magnetic Disks), the Prime Minister shall, pursuant to the provisions of a Cabinet Order, make available for public inspections the information (excluding the parts that shall not be made available for public inspection under the provision of Article 25 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27) or Article 27-28 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27-29 (2)) recorded in the File in relation to the documents prescribed in Article 25 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 27-14 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)) or Article 27-28 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27-29 (2)), or the documents containing said information.

- (2) Article 5 of the Act on Utilization of Information and Communications Technology in Administrative Procedure shall not apply to the public inspection of the documents under the provision of the preceding paragraph.
- (3) When the information recorded in the File prescribed in paragraph (1) or the documents containing said information are made available for public inspection under the provision of paragraph (1), the Laws and Regulations on Financial Instruments shall apply to the documents prescribed in Article 25 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 27-14 (1) (including the cases where it is applied mutatis mutandis

pursuant to Article 27-22-2 (2)), or Article 27-28 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27-29 (2)), by deeming that said information or documents have been made available for public inspection under these provisions.

(Public Inspection by Financial Instruments Exchange, etc.)

Article 27-30-8 (1) The Financial Instruments Exchange, and the Authorized Financial Instruments Firms Association specified by a Cabinet Order which has been notified under the provision of Article 27-30-6 shall, pursuant to the provisions of a Cabinet Order, make available for public inspections the information (excluding the parts that shall not be made available for public inspection under the provision of Article 25 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27)) notified under the provision of Article 27-30-6 pertaining to the copies of documents prescribed in Article 25 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 27-14 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)) or Article 27-28 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27-29 (2)), or the documents containing said information.

(2) When the notified information or the documents containing said information prescribed in the preceding paragraph are made available for public inspection under the provision of said paragraph, the Laws and Regulations on Financial Instruments shall apply to the documents prescribed in Article 25 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 27-14 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)) or Article 27-28 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27-29 (2)), by deeming that said information or documents have been made available for public inspection under those provisions.

(Provision, etc. of Information Contained in Prospectus by Means of Electronic Data Processing System, etc.)

Article 27-30-9 (1) A person who is required to deliver a Prospectus under the provisions of Article 15 (2) to (4) inclusive (including the cases where it is applied mutatis mutandis pursuant to Article 15 (6) (including the cases where it is applied mutatis mutandis pursuant to Article 23-12 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27), Article 23-12-3 (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27) may, in lieu of delivering said Prospectus, provide the information contained in said Prospectus by the use of the electronic data processing system or by other means specified by a Cabinet

Office Ordinance, in the cases specified by a Cabinet Office Ordinance. In this case, the person who has provided said information shall be deemed to have delivered said Prospectus.

- (2) The provision of the preceding paragraph shall apply mutatis mutandis to the documents to be delivered under the provision of Article 23-13 (2) or (4); the documents to be delivered under the provision of Article 23-14 (2); a Tender Offer Statement (meaning the Tender Offer Statement provided for in Article 27-9 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), and also including corrections thereof) to be delivered under the provision of Article 27-9 (2) or (3) (including the cases where they are applied mutatis mutandis pursuant to Article 27-22-2 (2)); and the written notice to be delivered under the provision of Article 27-24.

(Public Inspection by Issuers, etc.)

Article 27-30-10 A Subsidiary Company Submitting Annual Securities Reports of a person who has conducted Electronic Disclosure Procedures pertaining to the documents listed in Article 25 (1), items (i) to (xi) inclusive (including the cases where it is applied mutatis mutandis pursuant to Article 27) or a Subsidiary Company Submitting Annual Securities Reports of a person who has conducted Electronic Disclosure Procedures of the documents listed in Article 25 (1)(xii) (including the cases where it is applied mutatis mutandis pursuant to Article 27), or a person who has conducted Electronic Disclosure Procedures pertaining to the document prescribed in Article 27-14 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)) may, in lieu of the copies of the documents to be made available for public inspection under the provision of Article 25 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27) or Article 27-14 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), make available for public inspections the information (excluding the parts that shall not be made public for public inspection under the provision of Article 25 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27)) to be contained in the documents listed in each item of Article 25 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27) or the documents prescribed in Article 27-14 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)) pertaining to copies of such documents by means of indicating said information on the screen of an output device or by any other methods specified by a Cabinet Office Ordinance, in the cases specified by a Cabinet Office Ordinance. In this case, the person who has made said information available for public inspection shall be deemed to have made the copies of said documents available for public inspection.

(Provision, etc. of Information to be Contained in Tender Offer Notification by Means of Electronic Data Processing System and by Other Means)

- Article 27-30-11 (1) A Tender Offeror (meaning the Tender Offeror prescribed in Article 27-3 (2); hereinafter the same shall apply in this paragraph and paragraph (3)) may, in lieu of the copies of the documents to be sent to the issuer (in cases where, as of the day when the Tender Offeror has submitted the Tender Offer Notification (meaning the Tender Offer Notification prescribed in Article 27-3 (2) and including Amendments thereof; hereinafter the same shall apply in this paragraph and paragraph (3)) pertaining to said Tender Offer, any person has already submitted the Tender Offer Notification pertaining to the Share Certificates, etc. of said issuer, including said person) of the Share Certificates, etc. pertaining to the Tender Offer (meaning the Tender Offer prescribed in Article 27-3 (1); hereinafter the same shall apply in this paragraph and paragraph (3)), under the provisions of Article 27-3 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27-8 (6) (including the cases where it is applied mutatis mutandis pursuant to Article 27-13 (3)), Article 27-11 (4) and Article 27-13 (3)) or Article 27-10 (13) (including the cases where it is applied mutatis mutandis pursuant to Article 27-10 (14)), provide the information to be contained in the Tender Offer Notification, Written Withdrawal of Tender Offer (meaning the Written Withdrawal of Tender Offer prescribed in Article 27-11 (3)), Tender Offer Report (meaning the Tender Offer Report prescribed in Article 27-13 (2) and including the Amendment Reports thereof) and the Tender Offeror's Answer pertaining to the copies of such documents, by means of the electronic data processing system or by any other methods specified by a Cabinet Office Ordinance, in the cases specified by a Cabinet Office Ordinance. In this case, said Tender Offeror shall be deemed to have sent the copies of said documents.
- (2) A Tender Offeror (meaning the Tender Offeror prescribed in Article 27-3 (2) as applied mutatis mutandis pursuant to Article 27-22-2 (2); hereinafter the same shall apply in this paragraph) may, in lieu of the copies of the documents to be sent under the provision of Article 27-3 (4) as applied mutatis mutandis pursuant to Article 27-22-2 (2) or (3) to the person who has already submitted the Tender Offer Notification (meaning the Tender Offer Notification prescribed in Article 27-3 (2)) pertaining to the Share Certificates, etc. issued by a company which is the Tender Offeror, as of the date when the Tender Offeror has submitted the Tender Offer Notification (meaning the Tender Offer Notification prescribed in Article 27-3 (2) as applied mutatis mutandis pursuant to Article 27-22-2 (2), and including Amendments thereof) pertaining to the Tender Offer (meaning the Tender Offer prescribed in Article 27-3 (1) as applied mutatis mutandis pursuant to Article 27-22-2 (2); hereinafter the same



shall apply in this paragraph), provide the information to be contained in the Tender Offer Notification (meaning the Tender Offer Notification prescribed in Article 27-3 (2) as applied mutatis mutandis to Article 27-22-2 (2), and including the Amendments thereof) pertaining to said Tender Offer by means of the electronic data processing system or by any other method specified by a Cabinet Office Ordinance, in the case specified by a Cabinet Office Ordinance. In this case, said Tender Offeror shall be deemed to have sent the copy of said documents.

(3) A Subject Company of a Tender Offer may, in lieu of the copies of the documents to be sent under the provision of Article 27-10 (9) (including the cases where it is applied mutatis mutandis pursuant to Article 27-10 (10)) to the Tender Offeror pertaining to the Tender Offer (in cases where, as of the day when the Tender Offeror has submitted the Subject Company's Position Statement (including the Amendment Reports thereof; hereinafter the same shall apply in this paragraph) pertaining to said Tender Offer, any person other than the Tender Offeror has already submitted the Tender Offer Notification relating to the Share Certificates, etc. of the issuer pertaining to said Tender Offer, including said person), provide the information to be contained in the Subject Company's Position Statement by means of the electronic data processing system or by other method specified by a Cabinet Office Ordinance, in the cases specified by a Cabinet Office Ordinance. In this case, the Subject of said Tender Offer shall be deemed to have sent the copy of said documents.

(4) A Holder of the Share Certificates, etc. may, in lieu of the documents to be sent to the company which is the issuer of the Share Certificates, etc. under the provision of Article 27-27 (including the cases where it is applied mutatis mutandis pursuant to Article 27-29 (2)), provide the information (excluding the parts which shall not be made available for public inspection under the provision of Article 27-28 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27-29 (2))) to be contained in the documents prescribed in Article 27-27 (including the cases where it is applied mutatis mutandis pursuant to Article 27-29 (2)) pertaining to the copy of said documents, by means of the electronic data processing system or by any other method specified by a Cabinet Office Ordinance, in the cases specified by a Cabinet Office Ordinance. In this case, said Holder of Share Certificates, etc. shall be deemed to have delivered the copy of said documents.

### **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, among Financial Instruments Businesses, conducting any of the following acts in the course of trade:

- (i) acts listed in Article 2 (8)(i) to (iii), (v), (viii), or (ix) with regard to Securities (excluding rights listed in the items of Article 2 (2) that shall be deemed to be Securities pursuant to the provisions of said paragraph);
- (ii) acts listed in Article 2 (8)(iv);
- (iii) acts falling under any of the following (a) to (c):
  - (a) Wholesale Underwriting of Securities that are specified by a Cabinet Order as those for which management of risks of loss is highly necessary;
  - (b) Wholesale Underwriting of Securities other than those listed in (a); or
  - (c) acts listed in Article 2 (8)(vi) that are other than Wholesale Underwriting of Securities.
- (iv) acts listed in Article 2 (8)(x); or
- (v) acts listed in Article 2 (8)(xvi) or (xvii).

(2) The term "Type II Financial Instruments Business" as used in this Chapter means, among Financial Instruments Businesses, conducting any of the following acts in the course of trade:

- (i) acts listed in Article 2 (8)(vii);
- (ii) acts listed in Article 2 (8)(i) to (iii), (v), (viii), or (ix) with regard to rights listed in the items of Article 2 (2) that shall be deemed to be Securities under the provisions of said paragraph;
- (iii) acts listed in Article 2 (8)(i) to (iii) (excluding those listed in item (i) of the preceding paragraph or the preceding item); or
- (iv) acts listed in Article 2 (8)(xviii).

(3) The term "Investment Advisory and Agency Business" as used in this Chapter means, among Financial Instruments Businesses, conducting any of the following acts in the course of trade:

- (i) acts listed in Article 2 (8)(xi); or
- (ii) acts listed in Article 2 (8)(xiii).

(4) The term "Investment Management Business" as used in this Chapter means, among Financial Instruments Businesses, conducting any of the following acts in the course of trade:

- (i) acts listed in Article 2 (8)(xii);
- (ii) acts listed in Article 2 (8)(xiv); or
- (iii) acts listed in Article 2 (8)(xv).

(5) The term "Securities, etc. Management Business" as used in this Chapter means business pertaining to acts listed in paragraph (1), item (v) among business pertaining to the Type I Financial Instruments Business.

(6) The term "Investment Advisory Business" as used in this Chapter means business pertaining to acts listed in paragraph (3), item (i) among business

pertaining to Investment Advisory and Agency Business.

(7) The term "Wholesale Underwriting of Securities" as used in this Chapter means Underwriting of Securities prescribed in Article 2 (8)(vi) that falls under any of the categories specified in the following items:

- (i) acquisition of all or part of the Securities from an Issuer or holder (excluding Financial Instruments Business Operators and Registered Financial Institutions; the same shall apply in the following item) for the purpose of having other persons acquire said Securities; or
- (ii) conclusion of a contract in which, with regard to all or part of the Securities, the underwriter promises the Issuer or holder that he/she will acquire all of the remaining Securities which are not acquired by any other person.

(8) The term "Securities-Related Business" as used in this Chapter means conducting any of the following acts in the course of trade:

- (i) sales and purchase of Securities, or intermediary, brokerage (excluding Brokerage for Clearing of Securities, etc.), or agency service therefor;
- (ii) intermediary, brokerage, or agency service for the entrustment of sales and purchase of Securities on Financial Instruments Exchange Markets or Foreign Financial Instruments Markets;
- (iii) following transactions among Market Transactions of Derivatives:
  - (a) transactions wherein the parties thereto promise to pay or receive Securities (including standardized instruments listed in Article 2 (24)(v) that pertain to Securities but except those specified by a Cabinet Order; hereinafter the same shall apply in this item) or the consideration for them at a fixed time in the future, and, when the resale or repurchase of the underlying Securities are made, settlement thereof may be made by paying or receiving the differences;
  - (b) transactions wherein the parties thereto promise to pay or receive the amount of money calculated based on the difference between the figure of a Securities Indicator to which the parties agreed in advance (hereinafter referred to as the "Agreed Figure for Securities" in this Chapter) and the Actual Figure of the Securities Indicator at a fixed time in the future (hereinafter referred to as the "Actual Figure for Securities" in this Chapter);
  - (c) transactions wherein the parties thereto promise that one of the parties thereto grants the other party an option to effect a transaction listed in the following items between the parties only by unilateral manifestation of the other party's intention, and the other party pays the consideration for such option:
    - 1. sales and purchase of Securities; and
    - 2. transactions listed in (a), (b), (d), and (e) (including transactions equivalent to transactions listed in (b) that are prescribed by the

Financial Instruments Exchange).

- (d) transactions wherein the parties mutually promise that, using the amount of money the parties agreed to as the principal, one of the parties will pay the amount of money calculated based on the rate of change in the agreed period of the interest rate, etc. of Securities or of a Securities Indicator (excluding interest rate, etc. of Securities and figures calculated based on them; the same shall apply in sub-items (d) and (e) in the following item) 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 the money rate, the interest rate, etc. of Securities, the value of currencies, or a Securities Indicator agreed with the former party (including transactions wherein the parties promise that, in addition to payment of such amounts, they will also pay or receive the amount of money or Securities that amounts to the agreed principal); and
  - (e) transactions similar to transactions listed in (a) to (d) and specified by a Cabinet Order.
- (iv) the following transactions among Over-the-Counter Transactions of Derivatives:
- (a) transactions wherein the parties thereto promise to pay or receive Securities (except those specified by a Cabinet Order; hereinafter the same shall apply in this item) or the consideration for them at a fixed time in the future, and, when the resale or repurchase of the underlying Securities or other acts specified by a Cabinet Order are made, settlement thereof may be made by paying or receiving the differences;
  - (b) transactions wherein the parties thereto promise to pay or receive the amount of money calculated based on the difference between the Agreed Figure for Securities and the Actual Figure for Securities, or transactions similar thereto;
  - (c) transactions wherein the parties thereto promise that one of the parties thereto grants the other party an option to effect a transaction listed in the following items between the parties only by unilateral manifestation of the other party's intention, and the other party pays the consideration for such option, or transactions similar thereto:
    - 1. sales and purchase of Securities; and
    - 2. transactions listed in (a), (b), (e), and (f).
  - (d) transactions wherein the parties thereto promise that one of the parties grants the other party an option to, only by unilateral manifestation of his/her intention, effect a transaction wherein the parties promise to pay or receive the amount of money calculated based on the difference between a figure which the parties have agreed in advance to use as the Agreed Figure of the Securities Indicator when such manifestation is made and the

Actual Figure of the Securities Indicator at the time of such manifestation, and the other party pays the consideration for such option, or transactions similar thereto;

- (e) transactions wherein the parties mutually promise that, using the amount the parties agreed to as the principal, one of the parties will pay the amount of money calculated based on the rate of change in the agreed period of the interest rate, etc. of Securities or of a Securities Indicator 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 the money rate, the interest rate, etc. of Securities, the value of currencies, or a Securities Indicator agreed with the former party (including transactions wherein the parties promise that, in addition to payment of such amounts, they will also pay or receive the amount of money or Securities that amounts to the agreed principal), or transactions similar thereto; and
- (f) in addition to what is listed in (a) to (e), transactions that have an economic nature similar to these and are specified by a Cabinet Order as those for which it is found necessary to secure the public interest or protection of investors.
- (v) transactions conducted in a Foreign Financial Instruments Market that are similar to transactions listed in item (iii);
- (vi) intermediary, brokerage (excluding Brokerage for Clearing of Securities, etc.), or agency service of transactions listed in the preceding three items (hereinafter referred to as "Transactions of Securities-Related Derivatives") or intermediary, brokerage, or agency service of the entrustment of transactions listed in item (iii) or the preceding item;
- (vii) acts listed in Article 2 (8)(v) that are pertaining to sales and purchase of Securities, Transactions of Securities-Related Derivatives, or other transactions specified by a Cabinet Order; or
- (viii) acts listed in Article 2 (8)(vi), (viii), or (ix).

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

(Registration)

Article 29 Any Financial Instruments Business shall be conducted only by persons registered by the Prime Minister.

(Application for Registration)

Article 29-2 (1) A person who intends to obtain registration set forth in the preceding Article shall submit a written application for registration containing the following matters to the Prime Minister. In this case, a foreign juridical person that intends to engage in the Type I Financial Instruments Business

- shall determine a Representative Person in Japan (limited to those who take charge of business at all business offices or offices that said foreign juridical person establishes in Japan so as to engage in the Type I Financial Instruments Business) and submit said written application for registration:
- (i) trade name, or name;
  - (ii) the amount of the stated capital or the total amount of contribution, for a juridical person (the amount of the stated capital or the total amount of contribution and the amount of Brought-in Capital (meaning assets corresponding to the stated capital that are brought into Japan; the same shall apply hereinafter), for a foreign juridical person which intends to engage in the Type I Financial Instruments Business);
  - (iii) names of Officers, for a juridical person (including a Representative Person in Japan for a foreign juridical person; hereinafter the same shall apply in this Chapter (excluding Article 29-4 (1)(v)(e)3) and Section 5) and the following Chapter);
  - (iv) names of employees, if there is an employee or employees specified by a Cabinet Order;
  - (v) Categories of Businesses the person intends to conduct (meaning what category of businesses the person intends to conduct among business comprising of the acts listed in Article 28 (1)(i), (ii), (iii)(a) to (c) inclusive, or item (iv), or Securities, etc. Management Business, Type II Financial Instruments Business, Investment Advisory and Agency Business or Investment Management Business);
  - (vi) name and location of the head office, and other business office or office (the head office, and the principal business office or office, or other business office or office in Japan, for a foreign juridical person);
  - (vii) the type of the person's other business(es), if any; and
  - (viii) other matters specified by a Cabinet Office Ordinance.
- (2) The following documents shall be attached to the written application for registration set forth in the preceding paragraph:
- (i) a document to pledge that the person does not fall under any of the items of Article 29-4 (1) (excluding item (i)(c) and (d) and item (v)(c));
  - (ii) a document that contains contents and methods of business specified by a Cabinet Office Ordinance and other documents specified by a Cabinet Office Ordinance; and
  - (iii) in addition to what is listed in the preceding two items, the articles of incorporation, certificate of registered matters, and other documents specified by a Cabinet Office Ordinance for a juridical person.
- (3) When attaching documents set forth in item (iii) of the preceding paragraph, Electromagnetic Records (limited to those specified by a Cabinet Office Ordinance) may be attached in place of written documents, if the articles of

incorporation are prepared in the form of an Electromagnetic Record.

(4) Calculation of Brought-in Capital shall be specified by a Cabinet Order.

(Registration in a Registry)

Article 29-3 (1) When an application for registration set forth in Article 29 has been filed, the Prime Minister shall register the following matters in a registry of Financial Instruments Business Operators, except when he/she refuses the registration under the provisions of paragraph (1) of the following Article:

- (i) matters listed in the items of paragraph (1) of the preceding Article; and
- (ii) date of registration and registration number.

(2) The Prime Minister shall make the registry of Financial Instruments Business Operators available for public inspection.

(Refusal of Registration)

Article 29-4 (1) The Prime Minister shall refuse registration when an applicant falls under any of the following items, or a written application for registration or documents or Electromagnetic Records to be attached to it contains fake statement or record, or lack statement or record about important matters:

(i) a person falling under any of the following;

(a) a person who had his/her registration under Article 29 rescinded under the provisions of Article 52 (1) or Article 53 (3), had his/her permission under Article 60 (1) rescinded under the provisions of Article 60-8 (1), or had his/her registration under Article 66 rescinded under the provisions of Article 66-20 (1), and for whom five years have not passed since the date of the rescission, or a person who had obtained registration or license of the same kind in a foreign state under the provisions of laws and regulations of said foreign state equivalent to this Act and had the registration or license (including authorization or other administrative dispositions similar to said registration or license) rescinded, and for whom five years have not passed since the date of the rescission;

(b) a person who has been punished by a fine (including a punishment under laws and regulations of a foreign state equivalent to this) for violating provisions of this Act, the Secured Debenture Trust Act (Act No. 52 of 1905), the Act on Concurrent Operation of Trust Business by a Financial Institution (Act No. 43 of 1943), the Commodity Exchange Act, the Act on Investment Trusts and Investment Corporations, the Building Lots and Buildings Transaction Business Act (Act No. 176 of 1952), the Act on Regulation of Receiving of Capital Subscription, Deposits, and Interest Rates, etc. (Act No. 195 of 1954), the Installment Sales Act (Act No. 159 of 1961), the Act on Assumption of Entrustment, etc. of Futures Trading in Foreign Commodities Market (Act No. 65 of 1982), the Act on Controls, etc.

- on Money Lending (Act No. 32 of 1983), the Act on Deposit, etc. Transaction Agreement of Specified Commodities, etc. (Act No. 62 of 1986), the Act on Regulation of Business Pertaining to Commodity Investment (Act No. 66 of 1991), the Real Estate Specified Joint Enterprise Act, the Act on the Securitization of Assets, the Act on Issuance, etc. of Bonds for Financial Corporations' Loan Business (Act No. 32 of 1999), the Trust Business Act (Act No. 154 of 2004), or other Acts specified by a Cabinet Order, or laws and regulations of a foreign state equivalent to these Acts, and for whom five years have not passed since the day when the execution of the punishment terminated or he/she became free from the execution of the punishment;
- (c) a person whose additional business is found to be against public interest; or
  - (d) a person who does not have a personnel structure sufficient to conduct Financial Instruments Business (excluding Investment Advisory and Agency Business) in an appropriate manner.
- (ii) a juridical person that has a person falling under any of the following among its Officers (including those who are found to have the same or higher authority than a director, executive officer, or any equivalent persons over the juridical person, irrespective of their titles, such as advisor, consultant, or others; hereinafter the same shall apply in this item, Article 52 (2), and Article 52-2 (2)) or its employees specified by a Cabinet Order:
- (a) a person who is an adult ward or a person under curatorship, or a person who is treated in the same manner under laws and regulations of a foreign state;
  - (b) a person who has received a decision of commencement of bankruptcy proceedings and has not obtained restoration of rights, or a person who is treated in the same manner under laws and regulations of a foreign state;
  - (c) a person who has been punished by imprisonment without work or severer punishment (including a punishment under laws and regulations of a foreign state equivalent to this), and for whom five years have not passed since the day when the execution of the punishment terminated or he/she became free from the execution of the punishment;
  - (d) when a juridical person that was a Financial Instruments Business Operator has had its registration under Article 29 rescinded under the provisions of Article 52 (1) or Article 53 (3), when a juridical person that was an Authorized Transaction-at-Exchange Operator prescribed in Article 60-4 (1) has had its permission under Article 60 (1) rescinded under the provisions of Article 60-8 (1), when a juridical person that was a Financial Instruments Intermediary Service Provider has had its registration under Article 66 rescinded under the provisions of Article 66-20 (1), or when such



- a juridical person had obtained registration or permission of the same kind in a foreign state under the provisions of laws and regulations of said foreign state equivalent to this Act and has had the registration or permission (including authorization or other administrative dispositions similar to said registration or permission) rescinded, a person who was an Officer of such juridical person within 30 days prior to the rescission, and for whom five years have not passed since the date of the rescission;
- (e) when an individual that was a Financial Instruments Business Operator has had his/her registration under Article 29 rescinded under the provisions of Article 52 (1), when an individual that was a Financial Instruments Intermediary Service Provider has had his/her registration under Article 66 rescinded under the provisions of Article 66-20 (1), or when such an individual had obtained registration of the same kind or a license of the same kind as a license under Article 60 (1) in a foreign state under the provisions of laws and regulations of said foreign state equivalent to this Act and has had the registration (including permission or other administrative dispositions similar to said registration) or the permission (including permission or other administrative dispositions similar to said permission) rescinded, a person for whom five years have not passed since the date of the rescission;
- (f) an official who was ordered for dismissal or removal under the provisions of Article 52 (2), Article 60-8 (2), or Article 66-20 (2), or an Officer who was ordered for dismissal or removal in a foreign state under the provisions of laws and regulations of said foreign state, and for whom five years have not passed since the day of the disposition; or
- (g) a person who has been punished by a fine (including a punishment under laws and regulations of a foreign state equivalent to this) for violating the provision of Acts prescribed in (b) of the preceding item, the provision of the Act on Prevention of Illegal Acts by Organized Crime Group Members (Act No. 77 of 1991) (excluding the provision of Article 31 (7) of said Act), or the provision of laws and regulations of a foreign state equivalent to these, or committing a crime specified by the Penal Code (Act No. 45 of 1907) or the Act on Punishment of Violent Act, etc. (Act No. 60, 1926), and for whom five years have not passed since the day when the execution of the punishment terminated or he/she became free from the execution of the punishment.
- (iii) an individual who falls under any of (a) to (f) or (g) (excluding the part pertaining to the provision of Acts prescribed in item (i)(b)) of the preceding item, or an individual who has an employee specified by a Cabinet Order who falls under any of (a) to (g) of the preceding item;
- (iv) when a person (excluding individuals) intends to engage in Type I

Financial Instruments Business, Type II Financial Instruments Business, or Investment Management Business, a person whose stated capital or contributions in total is less than the amount of money specified by a Cabinet Order as necessary and appropriate for the public interest or protection of investors;

- (v) when a person intends to engage in Type I Financial Instruments Business or Investment Management Business, a person who falls under any of the following; or
  - (a) a person other than a stock company (limited to those with a board of directors, company auditors, or Committees (meaning Committees prescribed in Article 2 (xii) of the Companies Act)) and a juridical person of the same kind as a company with a board of directors established in compliance with laws and regulations of a foreign state (when a person intends to engage in Type I Financial Instruments Business, limited to a person who engages in the same kind of business as Type I Financial Instruments Business in a foreign state in compliance with laws and regulations of said foreign state (including those specified by a Cabinet Order as equivalent to such person) and who has a business office or office in Japan);
  - (b) a person whose Net Assets (meaning the figure obtained by deducting the total amount of liabilities from the total amount of assets pursuant to the provisions of a Cabinet Office Ordinance) are less than the amount of money specified by a Cabinet Order as necessary and appropriate for the public interest or protection of investors;
  - (c) a person whose additional business does not fall under any of the businesses prescribed in Article 35 (1) and businesses listed in the items of Article 35 (2), and who is found to cause hindrance to the protection of investors due to difficulties in managing risks of loss pertaining to said business;
  - (d) a juridical person (excluding foreign juridical persons) that has a person falling under any of the following among its Major Shareholders (when an applicant is a Subsidiary Company of a Holding Company (meaning holding companies prescribed in Article 9 (5)(i) of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947); hereinafter the same shall apply in this item and Article 32-4), including Major Shareholders of said Holding Company; the same shall apply in (e) and (f)) that are individuals:
    - 1. a person who is an adult ward or a person under curatorship, or a person who is treated in the same manner under laws and regulations of a foreign state and whose statutory representative falls under any of (a) to (g) of item (ii); or

2. a person falling under any of (b) to (g) of item (ii).
- (e) a juridical person (excluding foreign juridical persons) that has a person falling under any of the following among its Major Shareholders that are juridical persons; or
  1. a person falling under any of (a) or (b) of item (i);
  2. a person who has been punished by a fine (including a punishment under laws and regulations of a foreign state equivalent to this) for violating the provision of Acts prescribed in (b) of item (i) or the provision of laws and regulations of a foreign state equivalent to these, and for whom five years have not passed since the day when the execution of the punishment terminated or he/she became free from the execution of the punishment; or
  3. a person who has a person falling under any of (a) to (g) of item (ii) among its Officers representing the juridical person.
- (f) a foreign juridical person for whom the Foreign Regulatory Agency (meaning a Foreign Financial Instruments Regulatory Authority defined in Article 189 (1) and other regulatory agencies specified by a Cabinet Order that enforces laws and regulations of a foreign state) has not confirmed that a person equivalent to a Major Shareholder has no risk of causing hindrance to sound and appropriate operation of Financial Instruments Business.
- (vi) when a person intends to engage in Type I Financial Instruments Business, a person falling under any of the following:
  - (a) a person whose ratio calculated under the provisions of Article 46-6 (1) is less than 120 percent; or
  - (b) a person who intends to use the same trade name another Financial Instruments Business Operator (limited to those engaged in Type I Financial Instruments Business; the same shall apply in (b)) has already used or a trade name that may be misidentified as another Financial Instruments Business Operator.
- (2) The term "Major Shareholder" as used in (d) to (f) of item (v) of the preceding paragraph means a person who holds voting rights (excluding those specified by a Cabinet Office Ordinance considering the manner of holding or other circumstances; hereinafter referred to as "Subject Voting Rights" in paragraph (4) and Article 32 (1)) exceeding 20 percent (or 15 percent when there are facts specified by a Cabinet Office Ordinance as facts estimated to have material influence on the decision of the company's financial and operational policies) of the Voting Rights Held by All the Shareholders, etc. (meaning voting rights of all shareholders, all members, all partners, or all equity investors, and in the case of a stock company, excluding the voting rights of the shares which cannot be exercised for all matters that are subject to a resolution at a general

meeting of shareholders and including the voting rights of the shares for which the shareholder shall be deemed to have voting rights under the provisions of Article 879 (3) of the Companies Act; the same shall apply hereinafter).

- (3) The term "Subsidiary Company" as used in (d) of item (v) of paragraph (1) means another company, the majority of whose Voting Rights Held by All the Shareholders, etc. are held by the company. In this case, the other company, the majority of whose Voting Rights Held by All the Shareholders, etc. are held by the company and one or more of its Subsidiary Companies or by one or more of the Subsidiary Companies of the company shall be deemed as a Subsidiary Company of said company.
- (4) With regard to the application of the provision of paragraph (2) in the cases listed in each of the following items, Subject Voting Rights prescribed in each said item shall be deemed to be held:
- (i) when 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 the provisions of a money trust contract or other contract or Act: said Subject Voting Rights; and
  - (ii) when a person having a shareholder relationship, family relationship or other special relationship specified by a Cabinet Order holds Subject Voting Rights of a juridical person: said Subject Voting Rights held by said person having a special relationship.
- (5) Matters necessary for the application of the provision of paragraph (2) and the preceding paragraph shall be specified by a Cabinet Order.

(Authorization)

- Article 30 (1) When a Financial Instruments Business Operator intends to conduct acts listed in Article 2 (8)(x) in the course of trade, it shall obtain authorization from the Prime Minister.
- (2) When the Prime Minister has granted authorization set forth in the preceding paragraph to a Financial Instruments Business Operator, he/she shall note to that effect in registration of said Financial Instruments Business Operator.

(Conditions on Authorization)

- Article 30-2 (1) The Prime Minister may attach conditions on authorization set forth in paragraph (1) of the preceding Article.
- (2) Conditions set forth in the preceding paragraph shall be the minimum necessary for the public interest or protection of investors.

(Application for Authorization)

- Article 30-3 (1) A Financial Instruments Business Operator who intends to obtain authorization set forth in Article 30 (1) shall submit a written

application for authorization containing the following matters to the Prime Minister:

- (i) trade name; and
  - (ii) date of registration and registration number.
- (2) A document that contains methods to manage risks of loss, methods to divide business, and other contents and methods of business specified by a Cabinet Office Ordinance and other documents specified by a Cabinet Office Ordinance shall be attached to a written application for authorization set forth in the preceding paragraph.

(Criteria for Authorization)

Article 30-4 When the Prime Minister intends to grant authorization set forth in Article 30 (1), he/she shall examine whether the application for approval conforms to the following criteria:

- (i) appropriate system and regulations are developed with regard to management of risks of loss;
- (ii) the amount of the stated capital exceeds the amount of money specified by a Cabinet Order as necessary and appropriate for the public interest or protection of investors;
- (iii) the amount of Net Assets exceeds the amount of money prescribed in the preceding item;
- (iv) the provision of Article 46-6 (2) is not violated; and
- (v) the applicant's price formation method, methods of transfer and other settlement, and other contents and methods of business specified by a Cabinet Office Ordinance are necessary and appropriate for the public interest or protection of investors.

(Registration of Change)

- Article 31 (1) When there are any changes in matters listed in the items (excluding item (v)) of Article 29-2 (1), a Financial Instruments Business Operator shall notify to that effect to the Prime Minister within two weeks from the day of change.
- (2) When the Prime Minister accepts a notification under the preceding paragraph, he/she shall register the notified matters in a registry of Financial Instruments Business Operators.
- (3) When there are any changes in contents and methods of business entered into documents listed in Article 29-2 (2)(ii), a Financial Instruments Business Operator shall notify to that effect to the Prime Minister without delay pursuant to the provisions of a Cabinet Office Ordinance.
- (4) When a Financial Instruments Business Operator intends to change matters listed in Article 29-2 (1)(v), he/she shall obtain registration of change

conducted by the Prime Minister pursuant to the provisions of a Cabinet Office Ordinance.

- (5) The provisions of Article 29-3 and Article 29-4 shall apply mutatis mutandis to registration of change set forth in the preceding paragraph. In this case, the term "the following matters" in Article 29-3 (1) shall be deemed to be replaced with "matters pertaining to the change," and the term "the following items" in Article 29-4 (1) shall be deemed to be replaced with "the following items (excluding item (i)(a) to (c), item (ii), and item (iii))," and any other necessary technical replacement of terms shall be specified by a Cabinet Order.
- (6) When a Financial Instruments Business Operator who has obtained authorization under Article 30 (1) intends to change the methods to manage risks of loss, price formation method, methods of transfer and other settlement, and other contents and methods of business specified by a Cabinet Office Ordinance for which he/she had obtained the authorization, he/she shall obtain an authorization from the Prime Minister, notwithstanding the provision of paragraph (3).

(Deposit for Operation)

Article 31-2 (1) A Financial Instruments Business Operator (limited to individuals who intend to engage in Type II Financial Instruments Business and persons who intend to only engage in Investment Advisory and Agency Business; hereinafter the same shall apply in this Article) shall deposit a deposit for operation to the deposit office nearest to his/her principal business office or office.

- (2) The amount of a deposit for operation set forth in the preceding paragraph shall be specified by a Cabinet Order, considering the actual conditions of a Financial Instruments Business Operator's business and the necessity of the protection of investors.
- (3) When a Financial Instruments Business Operator concludes a contract in which the operator promises that a deposit for operation required for the operator will be deposited in according with the order of the Prime Minister, and has notified to that effect to the Prime Minister, pursuant to the provisions of a Cabinet Order, he/she shall not have to deposit all or part of the deposit for operation set forth in paragraph (1) with regard to the amount of money to be deposited under said contract (hereinafter referred to as the "Contract Amount" in this Article) limited to the period during which said contract remains in force.
- (4) When the Prime Minister finds it necessary for the protection of investors, he/she may order a person who concludes a contract set forth in the preceding paragraph with a Financial Instruments Business Operator or said Financial Instruments Business Operator to deposit all or part of the amount equivalent

to the Contract Amount.

- (5) A Financial Instruments Business Operator shall not start Financial Instruments Business until he/she deposits a deposit for operation set forth in paragraph (1) (including conclusion of a contract set forth in paragraph (3)) and notifies to that effect to the Prime Minister.
- (6) A person who has concluded an Investment Advisory Contract with a Financial Instruments Business Operator, who has concluded an Investment Advisory Contract or Discretionary Investment Contract through a Financial Instruments Business Operator's agency or intermediary service of an Investment Advisory Contract or an Discretionary Investment Contract, or who has concluded a sales and purchase contract of Securities through a Financial Instruments Business Operator's sales and purchase or intermediary, brokerage, or agency service therefor shall have the right to receive, in preference over other creditors, payment with regard to claims incurred under such contracts from a deposit for operation furnished by the Financial Instruments Business Operator.
- (7) Matters necessary for the execution of the right set forth in the preceding paragraph shall be specified by a Cabinet Order.
- (8) When the amount of a deposit for operation (including the Contract Amount; the same shall apply in paragraph (10)) becomes short of the amount specified by a Cabinet Order as prescribed in paragraph (2) due to the execution of the right set forth in paragraph (6) or other reasons, a Financial Instruments Business Operator shall deposit the shortfall (including conclusion of a contract set forth in paragraph(3)) within three weeks from the day specified by a Cabinet Office Ordinance and notify to that effect to the Prime Minister without delay.
- (9) A deposit for operation to be deposited under the provisions of paragraph (1) or the preceding paragraph shall be substituted by national government bonds, municipal bonds, or other Securities specified by a Cabinet Office Ordinance.
- (10) When registration under Article 29 is rescinded under the provisions of Article 52 (1) or (4) or Article 54, when registration under Article 29 loses its effect under the provisions of Article 50-2 (2), when registration of change under paragraph (4) of the preceding Article is obtained for engaging in Financial Instruments Businesses other than Type II Financial Instruments Business (limited to cases where an individual engages in such business) or Investment Advisory and Agency Business, or when the amount of a deposit for operation exceeds the amount specified by a Cabinet Order as prescribed in paragraph (2), all or part of the deposit for operation deposited under the provisions of paragraph (1), (4) or (8) may be refunded pursuant to the provisions of a Cabinet Order.
- (11) In addition to what is prescribed in the preceding paragraphs, matters

necessary for a deposit for operation shall be specified by an Ordinance of Cabinet Office and an Ordinance of the Ministry of Justice.

(Restriction on Use of Trade Name, etc.)

Article 31-3 A person who is not a Financial Instruments Business Operator shall not use a trade name or name as a Financial Instruments Business Operator or any trade name or name confusingly similar thereto.

(Restriction on Concurrent Holding of Positions by Directors)

Article 31-4 (1) A director, accounting advisor (when the accounting advisor is a juridical person, a member who is supposed to conduct the duty), company auditor, or executive officer of a Financial Instruments Business Operator (limited to those engaged in Securities-Related Business; hereinafter the same shall apply in this Article (excluding paragraph (4)) shall not concurrently hold a position of director, accounting advisor, company auditor, or executive officer (including any equivalent person) or work as an employee for a Parent Bank, etc. of said Financial Instruments Business Operator.

(2) A director, accounting advisor, company auditor, or executive officer, or employee of a Financial Instruments Business Operator shall not concurrently hold a position of director, accounting advisor (when an accounting advisor is a juridical person, a member who is supposed to conduct the duty), company auditor, or executive officer (including any equivalent person) for a Subsidiary Bank, etc. of said Financial Instruments Business Operator.

(3) A director (an executive officer for a company with Committees) who regularly engages in the business of a Financial Instruments Business Operator shall not work as a managing director for a bank, Cooperative Structured Financial Institution, or other financial institution specified by a Cabinet Order in addition to cases where the provisions of the preceding two paragraphs are applied.

(4) When a director or executive officer of a Financial Instruments Business Operator (limited to those engaged in Type I Financial Instruments Business or Investment Management Business; hereinafter the same shall apply in this paragraph) has taken up a position of director, accounting advisor (when an accounting advisor is a juridical person, a member who is supposed to conduct the duty; hereinafter the same shall apply in this paragraph), company auditor, or executive officer for another company (including the cases where a director, accounting advisor, company auditor, or executive officer of other company came to concurrently hold a position of director or executive officer for a Financial Instruments Business Operator), or he/she resigned from a position of director, accounting advisor, company auditor, or executive officer for another company, he/she shall notify to that effect to the Prime Minister



without delay, pursuant to the provisions of a Cabinet Office Ordinance.

- (5) The term "Parent Bank, etc." as used in paragraph (1) means a person who falls under the categories of bank, Cooperative Structured Financial Institution or other financial institution specified by a Cabinet Order which also falls under the category of juridical person or other organization that satisfies the requirement that the juridical person or other organization holds the majority of the Voting Rights Held by All the Shareholders, etc. of the Financial Instruments Business Operator or other requirements specified by a Cabinet Order as those for being regarded as having close relationship with the Financial Instruments Business Operator (such juridical persons or other organizations are referred to as a "Parent Juridical Person, etc." in Article 33-3 (2)(iii) and Article 44-3).
- (6) The term "Subsidiary Bank, etc." as used in paragraph (2) means a person who falls under the categories of a bank, Cooperative Structured Financial Institution or other financial institution specified by a Cabinet Order which also falls under the category of juridical person or other organization that satisfies the requirement that the Financial Instruments Business Operator holds the majority of Voting Rights Held by All the Shareholders, etc. of the juridical person or other organization, etc. or other requirements specified by a Cabinet Order as those for being regarded as having close relationship with the Financial Instruments Business Operator (such juridical persons or other organizations are referred to as a "Subsidiary Juridical Person, etc." in Article 33-3 (2)(iii) and Article 44-3).
- (7) Matters necessary for determining whether the majority of Voting Rights Held by All the Shareholders, etc. are held or not as prescribed in paragraph (5) shall be specified by a Cabinet Office Ordinance taking into consideration a manner of holding or other circumstances.

(Eligibility, etc. of Directors, etc.)

Article 31-5 The provisions of the proviso to Article 331 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 335 (1) of the Companies Act), Article 332 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 334 (1) of said Act), Article 336 (2), and the proviso to Article 402 (5) of said Act shall not apply to Financial Instruments Business Operators (limited to those engaged in the Type I Financial Instruments Business or Investment Management Business).

### **Subsection 3 Major Shareholders**

(Submission of a Notification of Holding Subject Voting Rights)

Article 32 (1) A person who has become a Major Shareholder (meaning a Major

Shareholder prescribed in Article 29-4 (2); hereinafter the same shall apply in this Section) of a Financial Instruments Business Operator (limited to those engaged in the Type I Financial Instruments Business or Investment Management Business and excluding foreign juridical persons; hereinafter the same shall apply in this Subsection) shall submit a notification of holding Subject Voting Rights containing the Subject Voting Right Holding Rate (meaning the rate obtained by dividing the number of Subject Voting Rights held by a holder of said Subject Voting Rights by the number of Voting Rights Held by All the Shareholders, etc. of said Financial Instruments Business Operator), the purpose of holding, and other matters specified by a Cabinet Office Ordinance to the Prime Minister, without delay, pursuant to the provisions of a Cabinet Office Ordinance.

(2) A document to pledge that a person does not fall under any of Article 29-4 (1)(v)(d)1. and 2. and (e)1. to 3. and other documents specified by a Cabinet Office Ordinance shall be attached to a notification of holding Subject Voting Rights set forth in the preceding paragraph.

(Order for Action, etc. toward Major Shareholders)

Article 32-2 When a Major Shareholder of a Financial Instruments Business Operator falls under any of Article 29-4 (1)(v)(d)1. and 2. and (e)1. to 3., the Prime Minister may order said Major Shareholder to take action to resign from his/her position as Major Shareholder of said Financial Instruments Business Operator or other necessary actions, specifying a period not exceeding three months.

(Notification for Resigning from a Position of a Major Shareholder)

Article 32-3 When a Major Shareholder of a Financial Instruments Business Operator has resigned from his/her position as Major Shareholder of said Financial Instruments Business Operator, he/she shall notify to that effect to the Prime Minister without delay.

(Application Mutatis Mutandis of Provisions Concerning Major Shareholders)

Article 32-4 The provisions of the preceding three Articles shall apply mutatis mutandis to shareholders or equity investors of a Holding Company that holds a Financial Instruments Business Operator as its Subsidiary Company (meaning a Subsidiary Company prescribed in Article 29-4 (3)).

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

(Prohibition, etc. of Securities-Related Business by Financial Institutions)

Article 33 (1) Banks, Cooperative Structured Financial Institution, or other

financial institutions specified by a Cabinet Order shall not engage in the Securities-Related Business or Investment Management Business; provided, however, that with regard to Securities-Related Business, this shall not apply to cases where banks, Cooperative Structured Financial Institution, or other financial institutions specified by a Cabinet Order conduct sales or purchase of Securities or Transactions of Securities-Related Derivatives for the purpose of investment pursuant to the provisions of other Acts or on an account of a person who entrusts based on a trust contract.

(2) The provision of the main clause of the preceding paragraph shall not apply in cases where banks, Cooperative Structured Financial Institution, or other financial institutions specified by a Cabinet Order conduct Brokerage with Written Orders (meaning conducting sales and purchase of Securities or Transactions of Securities-Related Derivatives on a customer's account on receiving his/her written orders and excluding transactions conducted based on solicitation to a customer concerning said orders and transactions conducted on receiving orders from the customer concerning said financial institution's Investment Advisory Business; the same shall apply in item (i) of the following Article) or conduct acts specified in the following items with regard to Securities or transactions listed in said items:

(i) Securities listed in Article 2 (1)(i) and (ii), Securities listed in Article 2 (1)(iii) (limited to those for which the government guarantees the redemption of principals or the payment of interests, short-term commercial and industrial debentures prescribed in Article 33-2 of the Shokochukin Bank Act (Act No. 14 of 1936), short-term debentures prescribed in Article 54-4 (1) of the Shinkin Bank Act (Act No. 238 of 1951), and short-term agriculture and forestry debentures prescribed in Article 62-2 (1) of the Norinchukin Bank Act (Act No. 93 of 2001)), Securities listed in Article 2 (1)(iv), Securities listed in Article 2 (1)(v) (limited to those for which the government guarantees the redemption of principals or the payment of interests, and short-term bonds prescribed in Article 66 (1) of the Act on Transfer of Bonds, etc. or those specified by a Cabinet Order as similar to these), Securities listed in Article 2 (1)(viii), Securities listed in Article 2 (1)(xi) (limited to short-term investment corporation debentures prescribed in Article 139-12 (1) of the Act on Investment Trusts and Investment Corporations and those specified by a Cabinet Order as similar to these; referred to as "Short-Term Securities Investment Corporation Debentures, etc." in the following item), Securities listed in Article 2 (1)(xii) to (xiv), Securities listed in Article 2 (1)(xv) (limited to those for which the term between the day of issuance and the day of redemption is less than one year), Securities listed in Article 2 (1)(xvi), Securities specified by a Cabinet Order among those listed in Article 2 (1)(xvii), Securities listed in Article 2 (1)(xviii), Securities specified by a

- Cabinet Order among those listed in Article 2 (1)(xxi), and rights listed in the items of Article 2 (2) that shall be deemed to be Securities pursuant to the provisions of said paragraph (excluding rights specified by a Cabinet Order set forth in item (iv)): acts listed in Article 2 (8)(i) to (iii), (vi), (viii) and (ix);
- (ii) Securities listed in Article 2 (1)(x) and (xi) (excluding Short-Term Securities Investment Corporation Debentures, etc.): acts listed in Article 2 (8)(i) to (iii) and acts listed in Article 2 (8)(ix) (excluding dealing of a Secondary Distribution of Securities);
  - (iii) Securities listed in Article 2 (1)(xvii) that have the nature set forth in Article 2 (1)(i): the following acts:
    - (a) Market Transactions of Derivatives, Foreign Market Derivatives Transactions, and acts listed in Article 2 (8)(ii) or (iii) pertaining to these transactions;
    - (b) dealing of Private Placement; and
    - (c) acts listed in Article 2 (11)(i) to (iii) (excluding those listed in (a) and (b)) that are conducted on receiving entrustment of a Financial Instruments Business Operator (limited to those engaged in Type I Financial Instruments Business) on behalf of said Financial Instruments Business Operator.
  - (iv) Securities other than those listed in the preceding three items and rights listed in Article 2 (2)(iii) and (iv) that are deemed to be Securities under the provisions of Article 2 (2) and are specified by a Cabinet Order: the following acts:
    - (a) Dealing of Private Placement (excluding what pertains to Securities specified by a Cabinet Order); and
    - (b) acts listed in Article 2 (11)(i) to (iii) (excluding those listed in (a)) that are conducted on receiving entrustment of a Financial Instruments Business Operator (limited to those engaged in Type I Financial Instruments Business) on behalf of said Financial Instruments Business Operator.
  - (v) the following transactions: acts listed in Article 2 (8)(iv) (with regard to transactions listed in (b), excluding those in cases specified by a Cabinet Order as conducted with multiple persons as other parties under the same conditions):
    - (a) Over-the-Counter Transactions of Derivatives pertaining to Securities listed in item (i) (including indices calculated by the method agreed between the parties based on prices of two or more Securities pertaining to said Securities); and
    - (b) Over-the-Counter Transactions of Derivatives whose settlement is limited to be made by paying or receiving the differences among those pertaining to Securities listed 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).

(vi) sales and purchase of Securities, Transactions of Securities-Related Derivatives, and other transactions specified by a Cabinet Order: Broking for Clearing of Securities, etc.

(3) The provisions of Article 29 shall not apply in cases where banks, Cooperative Structured Financial Institution, or other financial institutions specified by a Cabinet Order conduct acts other than those listed in Article 28 (8)(iii) to (vi) (hereinafter referred to as "Transactions of Securities-Related Derivatives, etc.") among the following acts (hereinafter referred to as "Derivative Transactions, etc.") in the course of trade, conduct acts listed in Article 2 (8)(vii) in the course of trade, or conduct Investment Advisory and Agency Business or Securities, etc. Management Business:

(i) Market Transactions of Derivatives, etc. (meaning Market Transactions of Derivatives or acts listed in Article 2 (8)(ii) or (iii) pertaining to these);

(ii) Over-the-Counter Transactions of Derivatives, etc.; and

(iii) Foreign Market Derivatives Transactions, etc. (meaning Foreign Market Derivatives Transactions or acts listed in Article 2 (8)(ii) or (iii) pertaining to these).

(Registration of Financial Institutions)

Article 33-2 When a bank, Cooperative Structured Financial Institution, or other financial institution specified by a Cabinet Order intends to conduct any of the following acts in the course of trade, or intends to conduct Investment Advisory and Agency Business or Securities, etc. Management Business, it shall obtain registration from the Prime Minister:

(i) Brokerage with Written Orders;

(ii) acts specified in the items of paragraph (2) of the preceding Article pertaining to Securities or transactions listed in each said item (excluding those falling under the proviso to the paragraph (1) of that Article);

(iii) Derivative 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 an account of a person who entrusts based on a trust contract); or

(iv) acts listed in Article 2 (8)(vii).

(Application for Registration of Financial Institutions)

Article 33-3 (1) A person who intends to obtain registration set forth in the preceding Article shall submit a written application for registration containing the following matters to the Prime Minister:

(i) trade name or name;

- (ii) the amount of the stated capital, the total amount of Funds, or the total amount of contribution;
  - (iii) names of Officers;
  - (iv) names of accounting advisors for a company with accounting advisors;
  - (v) name and location of the head office, and other business office or office;
  - (vi) the type of the person's other business(es), if any; and
  - (vii) other matters specified by a Cabinet Office Ordinance.
- (2) The following documents shall be attached to the written application for registration set forth in the preceding paragraph:
- (i) a document to pledge that the person does not fall under Article 33-5 (1)(i) and (ii);
  - (ii) a document that contains methods to manage risks of loss, methods to divide business, and other contents and methods of business specified by a Cabinet Office Ordinance;
  - (iii) a document that contains what is specified by a Cabinet Office Ordinance as conditions of Parent Juridical Person, etc., Subsidiary Juridical Person, etc., and other affiliated companies; and
  - (iv) in addition to what is listed in the preceding three items, articles of incorporation, certificate of registered matters, balance sheet, profit and loss statement and other documents specified by a Cabinet Office Ordinance.
- (3) When attaching documents set forth in item (iv) of the preceding paragraph, an Electromagnetic Record (limited to those specified by a Cabinet Office Ordinance) may be attached in place of written documents, if the articles of incorporation or balance sheet are prepared in the form of an Electromagnetic Record or an Electromagnetic Record is prepared for a profit and loss statement in place of a written document.

(Registration in a Registry of Financial Institutions)

Article 33-4 (1) When an application for registration set forth in Article 33-2 has been filed, the Prime Minister shall register the following matters in a registry of financial institutions, except when he/she refuses the registration under the provisions of paragraph (1) of the following Article:

- (i) matters listed in the items of paragraph (1) of the preceding Article; and
  - (ii) date of registration and registration number.
- (2) The Prime Minister shall make the registry of financial institutions available for public inspection.

(Refusal etc. of Registration of Financial Institutions)

Article 33-5 (1) The Prime Minister shall refuse registration when an applicant falls under any of the following items (with regard to item (iii), excluding the cases where he/she intends to conduct only Investment Advisory and Agency

Business), or a written application for registration or documents or Electromagnetic Records to be attached to it contain fake statement or record or lack statement or record about important matters:

- (i) a person who had his/her registration under Article 33-2 rescinded under the provisions of Article 52-2 (1), had his/her registration under Article 66 rescinded under the provisions of Article 66-20 (1), and for whom five years have not passed since the date of the rescission, or a person who had obtained registration of the same kind in a foreign state under the provisions of laws and regulations of said foreign state equivalent to this Act and had the registration (including permission or other administrative dispositions similar to said registration) rescinded, and for whom five years have not passed since the date of the rescission;
  - (ii) a person who has been punished by a fine (including a punishment under laws and regulations of a foreign state equivalent to this) for violating provisions of this Act, the Secured Debenture Trust Act, the Act on Concurrent Operation of Trust Business by a Financial Institution, the Commodity Exchange Act, the Act on Investment Trusts and Investment Corporations, the Building Lots and Buildings Transaction Business Act, the Act on Regulation of Receiving of Capital Subscription, Deposits, and Interest Rates, etc., the Installment Sales Act, the Act on Assumption of Entrustment, etc. of Futures Trading in Foreign Commodities Market, the Act on Controls, etc. on Money Lending, the Act on Deposit, etc. Transaction Agreement of Specified Commodities, etc., the Act on Regulation of Business Pertaining to Commodity Investment, the Real Estate Specified Joint Enterprise Act, the Act on the Securitization of Assets, the Act on Issuance, etc. of Bonds for Financial Corporations' Loan Business, the Trust Business Act, or other Acts specified by a Cabinet Order, or laws and regulations of a foreign state equivalent to these Acts, and for whom five years have not passed since the day when the execution of the punishment terminated or he/she became free from the execution of the punishment; or
  - (iii) a person who does not have a personnel structure sufficient to conduct Registered Financial Institution Business (meaning business pertaining to registration set forth in Article 33-2; the same shall apply hereinafter) in an appropriate manner.
- (2) When the Prime Minister registers that a bank, Cooperative Structured Financial Institution, or other financial institution specified by a Cabinet Order conducts acts specified in Article 33 (2)(v) with regard to transactions listed in said item in the course of trade, he/she shall add conditions specified by a Cabinet Office Ordinance within the scope necessary for ensuring fair transactions pertaining to share certificates.

(Notification of Change)

Article 33-6 (1) When there are any changes in matters listed in the items of Article 33-3 (1), a Registered Financial Institution shall notify to that effect to the Prime Minister within two weeks from the day of change.

(2) When the Prime Minister accepts a notification under the preceding paragraph, he/she shall register the notified matters in a registry of financial institutions.

(3) When there are any changes in the contents and methods of business entered into documents listed in Article 33-3 (2)(ii), a Registered Financial Institution shall notify to that effect to the Prime Minister without delay pursuant to the provisions of a Cabinet Office Ordinance.

(Provisions for Construction)

Article 33-7 The provision of Article 33 shall not preclude the Prime Minister from granting registration under Article 29 or authorization under Article 30 (1) to a person, the majority of whose Voting Rights Held by All the Shareholders, etc. are held by a bank, Cooperative Structured Financial Institution, or other financial institution specified by a Cabinet Order.

(Special Provisions, etc. in the Case of Conducting Trust Business)

Article 33-8 (1) When applying the provisions of Article 33 (1) and (2), Article 33-2, and Article 52-2 (1)(iv) in cases where a bank, Cooperative Structured Financial Institution, or other financial institution specified by a Cabinet Order is a financial institution that has obtained authorization set forth in Article 1 (1) of the Act on Concurrent Operation of Trust Business by a Financial Institution, the term "Securities-Related Business or Investment Management Business" in Article 33 (1) shall be deemed to be replaced with "Securities-Related Business," the term "excluding transactions conducted based on solicitation to a customer concerning said orders and transactions conducted on receiving orders from the customer concerning said financial institution's Investment Advisory Business" in Article 33 (2) shall be deemed to be replaced with "excluding transactions conducted based on solicitation to a customer concerning said orders,"; the term "Investment Advisory and Agency Business or Securities, etc. Management Business" in Article 33-2 shall be deemed to be replaced with "Investment Advisory and Agency Business, Investment Management Business (excluding business to conduct acts listed in Article 2 (8)(xiv) or (xv) (limited to those conducted by holding the money under these provisions or other properties as trust property); hereinafter the same shall apply in this Chapter), or Securities, etc. Management Business,"; and the term "Investment Advisory and Agency Business" in said item shall be deemed to be replaced with "Investment Advisory and Agency Business or



Investment Management Business."

- (2) The provision of Article 29 shall not apply in cases where any person listed in the following items conducts agency service for a Registered Financial Institution and conducts business prescribed in said items (hereinafter referred to as "Specified Financial Instruments Business" in this Article) pursuant to the provisions of a Cabinet Order. In this case, the provisions of this Act shall apply to such person who conducts Specified Financial Instruments Business, deeming him/her to be an employee of the Registered Financial Institution he/she represents:
- (i) a person who conducts agency service for a Registered Financial Institution and who is specified by a Cabinet Order: business to conduct acts specified in Article 33 (2)(ii) with regard to Securities listed in said item;
  - (ii) a person who conducts agency service for a Registered Financial Institution and who is listed in the following: among transactions listed in Article 2 (22)(ii) pertaining to Financial Indicators listed in Article 2 (25)(ii), business to conduct acts wherein said Registered Financial Institution promises to receive money from the other party of transactions and in turn pays the amount of money calculated based on the difference between the Agreed Figure and the Actual Figure (limited to cases where said other party has no risk of receiving a loss exceeding the amount of money he/she had paid in advance due to fluctuation in Financial Indicators listed in Article 2 (25)(ii));
    - (a) a Casualty Insurance Agent (meaning Casualty Insurance Agents prescribed in Article 2 (21) of the Insurance Business Act; hereinafter the same shall apply in this item) that is an individual;
    - (b) an employee of a Casualty Insurance Agent that is an individual and for whom notification under the provisions of Article 302 of the Insurance Business Act has been made;
    - (c) an Officer or employee of a Casualty Insurance Agent that is a juridical person and for whom notification under the provisions of Article 302 of the Insurance Business Act has been made; and
    - (d) an Officer who holds authority of representation of a Casualty Insurance Agent that is a juridical person.
- (3) A Registered Financial Institution which receives agency service from a person who conducts Specified Financial Instruments Business shall take responsibility to compensate a damage that the person caused to a customer with regard to Specified Financial Instruments Business; provided, however, that this shall not apply to cases where said Registered Financial Institution has paid reasonable attention in appointing the person, and has endeavored to prevent the damage that the person caused to a customer with regard to Specified Financial Instruments Business.

## Subsection 5 Professional Investors

(Obligation to Notify Professional Investors)

Article 34 When a Financial Instruments Business Operator, etc. (meaning Financial Instruments Business Operators or Registered Financial Institutions; the same shall apply hereinafter) has received an application for a contract to conduct Acts of Financial Instruments Transaction (meaning acts listed in the items of Article 2 (8); the same shall apply hereinafter) with a customer as the other party or on behalf of a customer (hereinafter such contract shall be referred to as a "Contract for Financial Instruments Transaction") from a Professional Investor (limited to those listed in Article 2 (31)(iv)), and has never concluded a Contract for Financial Instruments Transaction belonging to those specified by a Cabinet Office Ordinance as the same kind as the Contract for Financial Instruments Transaction pertaining to said application (hereinafter referred to as a "Kind of Contract" in this Subsection) with said Professional Investor, he/she shall notify said Professional Investor that said Professional Investor may make a request under the provisions of paragraph (1) of the following Article by the time of concluding a Contract for Financial Instruments Transaction pertaining to said application.

(Cases Where a Professional Investor Will Be Deemed to Be a Customer Other Than Professional Investor)

Article 34-2 (1) A Professional Investor (limited to those listed in Article 2 (31)(iv)) may, for each Kind of Contract, request a Financial Instruments Business Operator, etc. to treat him/her as a customer other than a Professional Investor with regard to the Contract for Financial Instruments Transaction belonging to that Kind of Contract.

(2) When receiving a request pertaining to the provision of the preceding paragraph, a Financial Instruments Business Operator, etc. shall accept said request by the time when he/she solicits to conclude or concludes the first Contract for Financial Instruments Transaction which belongs to the Kind of Contract pertaining to said request (hereinafter referred to as a "Subject Contract" in this Article), except in cases where the provision of paragraph (10) is applied or there are other justifiable grounds.

(3) When a Financial Instruments Business Operator, etc. accepts a request under the provisions of the preceding paragraph, he/she shall deliver a document containing the following matters in advance to the Professional Investor who submitted the request under paragraph (1) (hereinafter referred to an "Applicant" in this Article). In this case, the Expiration Date provided by item (ii) shall be the day when one year has passed since the Date of

Acceptance provided by item (i) (or the day specified by a Cabinet Office Ordinance which shall not be on or later than the day when one year has passed since the Date of Acceptance):

- (i) the day to accept the request under the provisions of the preceding paragraph (referred to as the "Date of Acceptance" in the items of paragraph (5) and paragraph (9));
  - (ii) the last day of the period during which the Applicant will be treated as a customer other than Professional Investor when soliciting to conclude, or concluding a Subject Contract (hereinafter referred to as the "Expiration Date" in this Article);
  - (iii) the Kind of Contract to which the Subject Contract belongs;
  - (iv) a statement to the effect that the Applicant is to be treated as a customer other than a Professional Investor when soliciting him/her to conclude, or concluding with him/her, the Subject Contract before the Expiration Date;
  - (v) a statement to the effect that the Applicant is to be treated as a Professional Investor when soliciting him/her to conclude, or concluding with him/her, the Subject Contract after the Expiration Date; and
  - (vi) other matters specified by a Cabinet Office Ordinance.
- (4) In lieu of using a document provided by the preceding paragraph, a Financial Instruments Business Operator, etc. may, with the acknowledgement of the Applicant and pursuant to the provisions of a Cabinet Order, provide the matters to be entered into said document by a method using an electronic data processing system or other methods using information and communications technology specified by a Cabinet Office Ordinance. In this case, the Financial Instruments Business Operator, etc. shall be deemed to have delivered the document.
- (5) Where the Financial Instruments Business Operator, etc. has given the acceptance under the provisions of paragraph (2) or delivered the document under the provisions of paragraph (3), and the Applicant is a person listed in the following items, the Applicant shall be deemed to be a customer other than a Professional Investor for the purpose of application of this Act (excluding this Subsection):
- (i) the person whom the Financial Instruments Business Operator, etc. will solicit to conclude Subject Contracts during the period from the Date of Acceptance to the Expiration Date; or
  - (ii) the person with whom the Financial Instruments Business Operator, etc. will conclude Subject Contracts during the period from the Date of Acceptance to the Expiration Date.
- (6) Where the preceding paragraph applies to an Applicant with regard to the conclusion of Subject Contracts (limited to those which are concluded for the provision of agency service provided in Article 2 (8)(ii) to (iv), (x) and (xiii));

hereinafter referred to as the "Specified Subject Contracts" in this paragraph and paragraph (8)), when the Financial Instruments Business Operator, etc. concludes a Contract for Financial Instruments Transaction on behalf of the Applicant based on the Specified Subject Contract before the Date of Acceptance, the Financial Instruments Business Operator, etc. shall notify in advance the other Financial Instruments Business, etc. with whom the Contract for Financial Instruments Transaction is to be concluded (hereinafter referred to as a "Counterparty Financial Business Operator, etc." in the following paragraph and paragraph (8)) of the fact that the Applicant is to be deemed to be a customer other than Professional Investor with regard to the Contract for Financial Instruments Transaction.

- (7) Where a Financial Instruments Business Operator, etc. makes a notification under the preceding paragraph, the provision of the preceding Article shall not apply to the Counterparty Financial Business Operator, etc.
- (8) Where a Financial Instruments Business Operator, etc. who has concluded a Specified Subject Contract made a notification under the provisions of paragraph (6), with regard to a Contract for Financial Instruments Transaction that the Financial Instruments Business Operator, etc. concludes with the Counterparty Financial Business Operators, etc. on behalf of the Applicant under the Specified Subject Contract (limited to a Contract for Financial Instruments Transaction concluded before the Expiration Date), the Applicant shall be deemed to be a customer other than a Professional Investor and this Act (excluding this Subsection) shall apply to the Applicant.
- (9) Where a Financial Instruments Business Operator, etc. has received an application for a Subject Contract from an Applicant for the first time after the Expiration Date and has not received a request under paragraph (1) for the Kind of Contract to which the Subject Contract belongs (referred to as the "Request for Renewal" in the following paragraph) on or after the Date of Acceptance, he/she shall notify the Applicant that the Applicant will be treated as a Professional Investor with regard to the Subject Contract by the time when he/she concludes the Subject Contract pertaining to said application.
- (10) Where a Financial Instruments Business Operator, etc. has received a Request for Renewal from an Applicant before the Expiration Date and accepts the Request for Renewal under the provisions of paragraph (2), he/she shall accept it during the period between the Expiration Date and the time of soliciting to conclude or concluding the first Subject Contract after the Expiration Date.
- (11) Where an Applicant has newly become a Qualified Institutional Investor before the Expiration Date, the provisions of paragraph (5) to (9) shall not apply to the Applicant on or after the day when the Applicant has become a Qualified Institutional Investor.

(Cases Where a Juridical Person Who is a Customer Other than Professional Investor will be Deemed to be a Professional Investor)

Article 34-3 (1) A juridical person (excluding Professional Investor) may, for each Kind of Contract, request a Financial Instruments Business Operator, etc. to treat him/her as a Professional Investor with regard to Contract for Financial Instruments Transactions belonging to that Kind of Contract.

(2) A Financial Instruments Business Operator, etc. shall, when accepting the request submitted under the preceding paragraph, obtain written consent of the juridical person who submitted the request (hereinafter referred to as an "Applicant" in this Article) in advance, using a document containing the following matters. In this case, the Expiration Date prescribed in item (ii) shall be the day when one year has passed since the Date of Acceptance prescribed in item (i) (or the day specified by a Cabinet Office Ordinance which shall not be on or later the day when one year has passed since the Date of Acceptance):

(i) the day when the acceptance under this paragraph is to be made (referred to as the "Date of Acceptance" in the items of paragraph (4));

(ii) the last day of the period during which the Applicant will be treated as a Professional Investor when soliciting to conclude, or concluding a Contract for Financial Instruments Transaction which belongs to the Kind of Contract to which the request has been submitted (such a contract shall be referred to as a "Subject Contract" hereinafter in this Article; such a day shall be referred to as the "Expiration Date" hereinafter in this Article);

(iii) the Kind of Contract to which the Subject Contract belongs;

(iv) a statement to the effect that the Applicant understands the following matters:

(a) matters specified by a Cabinet Office Ordinance as special provisions for application of this Act for a case where a Professional Investor is solicited to conclude a Subject Contract by a Financial Instruments Business Operator, etc., or a Professional Investor makes an application for a Subject Contract to the Financial Instruments Business Operator, etc., or concludes a Subject Contract with the Financial Instruments Business Operator, etc.; and

(b) the risk of insufficient protection involved in a case where a person who, in light of his/her knowledge, experience and state of property, is deemed inappropriate to be treated as a Professional Investor with regard to Subject Contracts is treated as a Professional Investor.

(v) a statement to the effect that the Applicant is to be treated as a Professional Investor when soliciting him/her to conclude, or concluding with him/her, the Subject Contract before the Expiration Date;

(vi) a statement to the effect that the Applicant is to be treated as a customer

other than a Professional Investor when soliciting him/her to conclude, or concluding with him/her, the Subject Contract after the Expiration Date; and (vii) other matters specified by a Cabinet Office Ordinance.

- (3) In lieu of using a document provided by the preceding paragraph, a Financial Instruments Business Operator, etc. may, with the acknowledgment of the Applicant and pursuant to the provisions of a Cabinet Order, obtain the written consent under the preceding paragraph by a method using an electronic data processing system or other method using information and communications technology specified by a Cabinet Office Ordinance. In this case, the Financial Instruments Business Operator, etc. shall be deemed to have obtained the written consent.
- (4) Where the Financial Instruments Business Operator, etc. has given the acceptance under paragraph (2) and the Applicant has given the consent under said paragraph, when the Applicant is a person listed in the following items, the Applicant shall be deemed to be a Professional Investor for the purpose of application of this Act (excluding this Subsection):
- (i) the person whom the Financial Instruments Business Operator, etc. will solicit to conclude Subject Contracts during the period from the Date of Acceptance to the Expiration Date; or
  - (ii) the person with whom the Financial Instruments Business Operator, etc. will conclude Subject Contracts during the period from the Date of Acceptance to the Expiration Date.
- (5) Where the preceding paragraph applies to an Applicant with regard to the conclusion of Subject Contracts (limited to those which are concluded for provision of agency service provided in Article 2 (8)(ii) to (iv), (x) and (xiii); hereinafter referred to as the "Specified Subject Contracts" in this paragraph and the following paragraph), when the Financial Instruments Business Operator, etc. concludes a Contract for Financial Instruments Transaction on behalf of the Applicant based on the Specified Subject Contract before the Date of Acceptance, the Financial Instruments Business Operator, etc. shall notify in advance the Counterparty Financial Business Operator, etc. with whom the Contract for Financial Instruments Transaction is to be concluded (referred to as the "Counterparty Financial Business Operator, etc." in the following paragraph) of the fact that the Applicant is to be deemed to be a Professional Investor with regard to the Contract for Financial Instruments Transaction.
- (6) Where a Financial Instruments Business Operator, etc. who has concluded a Specified Subject Contract makes a notification under the preceding paragraph, with regard to a Contract for Financial Instruments Transaction that the Financial Instruments Business Operator, etc. concludes with the Counterparty Financial Business Operator, etc. on behalf of the Applicant under the Specified Subject Contract (limited to a Contract for Financial

Instruments Transaction concluded before the Expiration Date), the Applicant shall be deemed to be a Professional Investor and this Act (excluding this Subsection) shall apply to the Applicant.

- (7) A Financial Instruments Business Operator, etc., when receiving a request under paragraph (1) for the Kind of Contract to which the Subject Contract belongs from an Applicant before the Expiration Date (hereinafter, such a request shall be referred to as the "Request for Renewal" in this paragraph), shall not accept the Request for Renewal under paragraph (2) before the Expiration Date.

(Cases Where an Individual Who Is a Customer Other Than Professional Investor Will Be Deemed to Be a Professional Investor)

Article 34-4 (1) An individual listed in the following (excluding Qualified Institutional Investors) may, for each Kind of Contract, request a Financial Instruments Business Operator, etc. to treat him/her as a Professional Investor with regard to the Contract for Financial Instruments Transaction belonging to that Kind of Contract:

- (i) an individual who is a business operator that has concluded an Anonymous Partnership Agreement prescribed in Article 535 of the Commercial Code (excluding those specified by the Cabinet Office Ordinance) and other individual provided by the Cabinet Office Ordinance as those similar to this; and
  - (ii) in addition to what is listed in the preceding item, an individual who satisfies the requirements specified by the Cabinet Office Ordinance as equivalent to a Professional Investor, in light of his/her knowledge, experience and state of property.
- (2) When receiving a request under the preceding paragraph, a Financial Instruments Business Operator, etc. shall deliver a document containing matters listed in paragraph (2), item (iv), sub-item (a) and (b) of the preceding Article and (b) to an individual who submitted the request (hereinafter referred to as an "Applicant" in this Article) and shall confirm that the Applicant falls under any of those listed in the items of the preceding paragraph.
- (3) The provision of Article 34-2 (4) shall apply mutatis mutandis to the delivery of a document under the preceding paragraph.
- (4) The provisions of paragraphs (2) to (7) of the preceding Article shall apply mutatis mutandis to cases where a Financial Instruments Business Operator, etc. accepts a request under paragraph (1). In this case, the term "the juridical person who submitted the request" in Article 34-3 (2) shall be deemed to be replaced with "the Applicant under paragraph (2) of the following Article,"; the term "the acceptance under paragraph (2)" in Article 34-3 (4) shall be deemed

to be replaced with "the delivery of a document and the confirmation under paragraph (2) of the following Article and the acceptance under paragraph (2),"; and the term "paragraph (1)" in Article 34-3 (7) shall be deemed to be replaced with "paragraph (1) of the following Article."

(Delegation to Cabinet Order)

Article 34-5 In addition to what is provided in this Subsection, procedures and other necessary matters concerning the application of the provisions of this Subsection in cases where a Professional Investor shall be deemed to be a customer other than a Professional Investor or where a customer other than a Professional Investor shall be deemed to be a Professional Investor shall be specified by a Cabinet Order.

## **Section 2 Businesses**

### **Subsection 1 General Rules**

(Scope of Businesses of Persons Who Engage in Type I Financial Instruments Business or Investment Management Business)

Article 35 (1) A Financial Instruments Business Operator (limited to those who engage in Type I Financial Instruments Business or Investment Management Business; hereinafter the same shall apply in this Article) may, in addition to Financial Instruments Business, conduct the following acts in the course of trade and engage in any other business incidental to Financial Instruments Business:

- (i) lending and borrowing of Securities, or intermediary or agency service thereof;
- (ii) money loan incidental to a margin transaction prescribed in Article 156-24 (1);
- (iii) money loan secured by Securities that are deposited for safe custody from customers (limited to those specified by a Cabinet Office Ordinance);
- (iv) agency service for customers concerning Securities;
- (v) agency service of the business pertaining to payment of earnings, redemption money or cancellation money with regard to Securities listed in Article 2 (1)(x) conducted by an investment trust management company defined in Article 2 (11) of the Act on Investment Trusts and Investment Corporations;
- (vi) agency service of the business pertaining to distribution of money, distribution of refunds or residual assets or payment of interest or redemption money with regard to Securities listed in Article 2 (1)(xi) conducted by an investment corporation defined in Article 2 (12) of the Act on Investment Trusts and Investment Corporations;



- (vii) conclusion of a Contract for Cumulative Investment (meaning a contract wherein a Financial Instruments Business Operator (limited to those who engage in Securities, etc. Management Business) receives deposit money from a customer and sells Securities to that customer continuously on dates designated in advance while receiving consideration from that money) (limited to those specified by a Cabinet Office Ordinance);
  - (viii) provision of information or advice in relation to Securities (excluding acts falling under the category specified in Article 2 (8)(xi));
  - (ix) agency service of the business of any Counterparty Financial Business Operator, etc. (limited to those pertaining to Financial Instruments Business (including Registered Financial Institution Business conducted by a Registered Financial Institution) and any other business incidental to Financial Instruments Business (excluding businesses prescribed in this item), which the relevant Financial Instruments Business Operator, etc. may conduct; excluding those specified in item (v) above);
  - (x) retention of assets of a registered investment corporation defined in Article 2 (13) of the Act on Investment Trusts and Investment Corporations;
  - (xi) consultation to any other business operator with regard to a business assignment, merger, company split, share exchange or share transfer, or intermediation for these matters;
  - (xii) consultation to any other business operator with regard to management;
  - (xiii) sales and purchase of currencies and other assets specified by a Cabinet Order as being related to Derivative Transactions (excluding Transactions of Securities-Related Derivatives) or intermediary, brokerage or agency service thereof;
  - (xiv) sales and purchase of negotiable deposits and other monetary claims (excluding those that fall under the category of Securities), or intermediary, brokerage or agency service thereof; and
  - (xv) investment of Investment Property (meaning money and other property to be invested by a Financial Instruments Business Operator, etc. who engages in Investment Management Business on behalf of the Right Holder prescribed in Article 42 (1) as an investment in the following assets; the same shall apply hereinafter):
    - (a) Specified assets defined in Article 2 (1) of the Act on Investment Trusts and Investment Corporations (excluding real estate and other assets specified by a Cabinet Order); and
    - (b) in addition to what is listed in (a) above, assets specified by a Cabinet Order.
- (2) A Financial Instruments Business Operator may, in addition to Financial Instruments Business and other businesses prescribed in the preceding paragraph, engage in the following businesses:

- (i) business pertaining to transactions on a commodity market, etc. defined in Article 2 (16) of the Commodity Exchange Act;
  - (ii) business pertaining to transactions conducted by using fluctuations in commodity prices and other indicators, market gaps, etc. as specified by a Cabinet Office Ordinance (excluding the business specified in the preceding item);
  - (iii) business pertaining to money lending business defined in Article 2 (1) of the Act on Controls, etc. on Money Lending or other money loan, or intermediary service of lending and borrowing of money;
  - (iv) business pertaining to building lots and buildings transaction business defined in Article 2 (ii) of the Building Lots and Buildings Transaction Business Act or lease of building lots or buildings prescribed in item (i) of said Article;
  - (v) real estate specified joint enterprise defined in Article 2 (4) of the Real Estate Specified Joint Enterprise Act;
  - (vi) business of conducting investment of Investment Property (excluding those that fall under the category of the business of conducting the act specified in item (xv) of the preceding paragraph) as an investment in assets other than Securities or rights arising from Derivative Transactions; and
  - (vii) other business specified by a Cabinet Office Ordinance.
- (3) A Financial Instruments Business Operator shall, when starting to engage in any of the businesses listed in the items of the preceding paragraph, notify the Prime Minister to that effect without delay pursuant to the provisions of a Cabinet Office Ordinance.
- (4) A Financial Instruments Business Operator may, in addition to Financial Instruments Business and the businesses prescribed in paragraph (1) and paragraph (2), engage in a business for which approval has been obtained from the Prime Minister.
- (5) Upon receiving an application for approval set forth in the preceding paragraph, the Prime Minister may choose not to grant approval only where the implementation of the business pertaining to the application is found to go against the public interest or hinder the protection of investors due to the difficulty in management of the risks of loss arising from the business.
- (6) A Financial Instruments Business Operator shall, when having abolished the business for which notification was given under paragraph (3) or approval was obtained under paragraph (4), notify the Prime Minister to that effect without delay.
- (7) Where a Financial Instruments Business Operator engages in any of the businesses listed in the items of paragraph (1) or items of paragraph (2) or engages in a business for which approval has been obtained under paragraph (4), the provisions of paragraph (1), paragraph (2) and paragraph (4) shall not

be construed to preclude the application of Acts concerning these businesses.

(Scope of Subsidiary Businesses of 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 those who only engage in Type II Financial Instruments Business or Investment Advisory and Agency Business; the same shall apply in the following paragraph) may, in addition to Financial Instruments Business (limited to Type II Financial Instruments Business or Investment Advisory and Agency Business), also engage in any other business as a subsidiary business.

(2) Where a Financial Instruments Business Operator engages in any other business as a subsidiary business prescribed in the preceding paragraph, the provision of said paragraph shall not be construed to preclude the application of Acts concerning that business.

(Duty of Good Faith to Customers)

Article 36 A Financial Instruments Business Operator, etc. as well as Officers and employees thereof shall execute their business in good faith and fairly to customers.

(Posting of Signs)

Article 36-2 (1) A Financial Instruments Business Operator, etc. shall post a sign in the form specified by a Cabinet Office Ordinance in a place accessible to the public at each of his/her business offices or other offices.

(2) No person other than a Financial Instruments Business Operator, etc. shall post a sign prescribed in the preceding paragraph or a sign similar thereto.

(Prohibition of Name Lending)

Article 36-3 A Financial Instruments Business Operator, etc. shall not have another person engage in Financial Instruments Business (in the case of a Registered Financial Institution, Registered Financial Institution Business; hereinafter the same shall apply in this Subsection) under the name of said Financial Instruments Business Operator, etc.

(Prohibition of Administration of Bonds)

Article 36-4 (1) A Financial Instruments Business Operator (limited to those who engage in Securities-Related Business; the same shall apply in the following paragraph) may not become a bond manager prescribed in Article 702 of the Companies Act or trustee company for a trust contract defined in Article 2 (1) of the Secured Debenture Trust Act.

(2) A Financial Instruments Business Operator may, notwithstanding the provisions of other Acts, become an Underwriter.

(Regulation of Advertising, etc.)

Article 37 (1) A Financial Instruments Business Operator, etc. shall, when advertising the contents of his/her Financial Instruments Business or conducting any similar acts specified by a Cabinet Office Ordinance, indicate the following matters pursuant to the provisions of a Cabinet Office Ordinance:

- (i) the trade name or name of said Financial Instruments Business Operator, etc.;
- (ii) the fact that said Financial Instruments Business Operator, etc. is a Financial Instruments Business Operator, etc., and his/her registration number; and
- (iii) the matters concerning the contents of the Financial Instruments Business conducted by said Financial Instruments Business Operator, etc., which are specified by a Cabinet Order as important matters that may have an impact on customers' judgment.

(2) A Financial Instruments Business Operator, etc., when advertising the contents of his/her Financial Instruments Business or conducting any similar acts specified by a Cabinet Office Ordinance, may not make an indication that is significantly contradictory to facts or seriously misleading with regard to the outlook of profits from conducting an Act of Financial Instruments Transaction and other matters specified by a Cabinet Office Ordinance.

(Obligation to Clarify Conditions of Transactions in Advance)

Article 37-2 A Financial Instruments Business Operator, etc. shall, when accepting an order from a customer for sales and purchase of Securities or Over-the-Counter Transactions of Derivatives, give the customer a clear notice, in advance, regarding whether said Financial Instruments Business Operator, etc. will take charge of effecting the sales and purchase or the transaction as the other party to the customer, or will perform an intermediary, brokerage or agency service to effect the sales and purchase or the transaction.

(Delivery of Document Prior to Conclusion of Contract)

Article 37-3 (1) When a Financial Instruments Business Operator, etc. intends to conclude a Contract for Financial Instruments Transaction, he/she shall, pursuant to the provisions of a Cabinet Office Ordinance, deliver to the customer in advance a document containing the following matters; provided, however, that this shall not apply to cases where the protection of investors will not be hindered as specified by a Cabinet Office Ordinance:

- (i) the trade name or name and address of said Financial Instruments Business

- Operator, etc.;
- (ii) the fact that said Financial Instruments Business Operator, etc. is a Financial Instruments Business Operator, etc., and his/her registration number;
  - (iii) the outline of the relevant Contract for Financial Instruments Transaction;
  - (iv) the matters concerning fees, remuneration or any other consideration payable by the customer with regard to said Contract for Financial Instruments Transaction, which are specified by a Cabinet Office Ordinance;
  - (v) the risk that a loss would be incurred with regard to the customer's Act of Financial Instruments Transaction due to fluctuations in the money rate, value of currencies, quotations on the Financial Instruments Market, and other indicators, if there is any such risk;
  - (vi) the risk that the amount of the loss set forth in the preceding item would exceed the amount of a customer margin or any other security deposit specified by a Cabinet Office Ordinance payable by the customer, if there is any such risk; and
  - (vii) in addition to what is listed in the preceding items, the matters concerning the contents of the relevant Financial Instruments Business, which are specified by a Cabinet Office Ordinance as important matters that may have an impact on customers' judgment.
- (2) The provision of Article 34-2 (4) shall apply mutatis mutandis to the delivery of a document under the preceding paragraph.
- (3) A Financial Instruments Business Operator, etc. shall, before conducting a solicitation (limited to a Public Offering or Secondary Distribution, or dealing of Public Offering or Secondary Distribution specified by a Cabinet Order) of conclusion of a Contract for Financial Instruments Transaction pertaining to any of the rights listed in the items of Article 2 (2) that shall be deemed to be Securities under said paragraph, notify in advance the Prime Minister of the contents of the document set forth in paragraph (1) regarding said Contract for Financial Instruments Transaction; provided, however, that this shall not apply to cases where the protection of investors will not be hindered as specified by a Cabinet Office Ordinance.

(Delivery of Document upon Conclusion of Contract, etc.)

Article 37-4 (1) Where a Contract for Financial Instruments Transaction has been effected or on any other occasion specified by a Cabinet Office Ordinance, a Financial Instruments Business Operator, etc. shall, without delay, prepare a document and deliver it to the customer, pursuant to the provisions of a Cabinet Office Ordinance; provided, however, that this shall not apply to the cases specified by a Cabinet Office Ordinance as those it is found that, taking into consideration the contents of the Contract for Financial Instruments

Transaction and other circumstances concerned, non-delivery of the document to the customer will not hinder the public interest or protection of investors.

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

(Delivery of Document Pertaining to Receipt of Security Deposit)

Article 37-5 (1) A Financial Instruments Business Operator, etc. shall, when having received a security deposit payable by the customer (limited to those specified by a Cabinet Office Ordinance) with regard to his/her Financial Instruments Business, immediately deliver to the customer, pursuant to the provisions of a Cabinet Office Ordinance, a document stating to that effect.

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

(Cancellation by Means of Document)

Article 37-6 (1) A customer who has concluded a Contract for Financial Instruments Transaction (limited to those specified by a Cabinet Order by taking into consideration the contents of the relevant Contract for Financial Instruments Transaction and other circumstances concerned) with a Financial Instruments Business Operator, etc. may, except in cases where it is otherwise specified by a Cabinet Office Ordinance, cancel said Contract for Financial Instruments Transaction by means of a document until the number of days specified by a Cabinet Order has elapsed from the day when the customer received the document set forth in Article 37-4 (1).

(2) The cancellation of the Contract for Financial Instruments Transaction made under the preceding paragraph shall take effect at the time when a document stating the intention to cancel said Contract for Financial Instruments Transaction is issued.

(3) Where a Contract for Financial Instruments Transaction has been cancelled 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 Contract for Financial Instruments Transaction beyond the amount specified by a Cabinet Office Ordinance as the amount of fees, remuneration or any other consideration payable by the customer with regard to that Contract for Financial Instruments Transaction (referred to as a "Consideration" in the following paragraph) for the period until the cancellation of that Contract for Financial Instruments Transaction.

(4) Where a Contract for Financial Instruments Transaction has been cancelled under paragraph (1), the Financial Instruments Business Operator, etc. shall refund any Consideration paid in advance for the relevant Contract for Financial Instruments Transaction to the customer who paid it; provided,

however, that this shall not apply to the amount specified by a 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 shall be void.

(Prohibited Acts)

Article 38 A Financial Instruments Business Operator, etc. or Officers or employees thereof shall not conduct any of the following acts; provided, however, that in the case of the acts listed in items (iii) to (v) below, those specified by a Cabinet Officer Ordinance as acts that are not likely to result in insufficient protection of investors, harm the fairness of transactions or cause a loss of confidence in Financial Instruments Business shall be excluded:

- (i) an act of providing a customer with false information concerning the conclusion of a Contract for Financial Instruments Transaction or solicitation thereof;
- (ii) an act of providing a customer with conclusive evaluations on uncertain matters or with information that misleads him/her into believing the certainty of such matters, thereby soliciting him/her to conclude a Contract for Financial Instruments Transaction;
- (iii) an act of visiting or making a telephone call to a customer who has not requested solicitation of conclusion of a Contract for Financial Instruments Transaction (limited to those specified by a Cabinet Order, by taking into consideration the contents of the relevant Contract for Financial Instruments Transaction and other circumstances concerned, contracts for which protection of investors is particularly necessary), thereby soliciting him/her to conclude a Contract for Financial Instruments Transaction;
- (iv) an act of soliciting a customer to conclude a Contract for Financial Instruments Transaction (limited to those specified by a Cabinet Order, by taking into consideration the contents of the relevant Contract for Financial Instruments Transaction and other circumstances concerned, as contracts for which protection of investors is particularly necessary) without obtaining confirmation from the customer, prior to solicitation, regarding whether or not he/she has the intention to receive solicitation;
- (v) an act of continuing to solicit a customer to conclude a Contract for Financial Instruments Transaction (limited to those specified by a Cabinet Order, by taking into consideration the contents of the relevant Contract for Financial Instruments Transaction and other circumstances concerned, as contracts for which protection of investors is particularly necessary) despite the fact that the customer has, after receiving solicitation, manifested the intention not to conclude said Contract for Financial Instruments Transaction (including the intention to refuse to continue to receive

- solicitation); and
- (vi) in addition to what is listed in the preceding items, acts specified by a Cabinet Office Ordinance as those that result in insufficient protection of investors, harm the fairness of transactions or cause a loss of confidence in Financial Instruments Business.

Article 38-2 A Financial Instruments Business Operator, etc. shall not conduct any of the following acts with regard to his/her Investment Advisory and Agency Business or Investment Management Business:

- (i) an act of using fraudulent means or committing assault or intimidation with regard to the conclusion or cancellation of an Investment Advisory Contract, Discretionary Investment Contract or contract specified in Article 2 (8)(xii)(b); and
- (ii) an act of making a promise to a customer, upon soliciting him/her, that any loss that might arise will be compensated in whole or in part.

(Prohibition of Compensation of Loss, etc.)

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

- (i) an act of making an offer or promise or having a third party make an offer or promise to a customer or any person designated by a customer, with regard to sales and purchase or other transactions of Securities (excluding sales and purchase on condition of repurchase for which the repurchase price is set in advance and other transactions specified by a Cabinet Order) or Derivative Transactions (hereinafter referred to as "Sales and Purchase or Other Transaction of Securities, etc." in this Article), to the effect that if the customer (in cases where a Trust Company, etc. (meaning a trust company or a financial institution that has obtained authorization under Article 1 (1) of the Act on Concurrent Operation of Trust Business by Financial Institutions; the same shall apply hereinafter) conducts sales and purchase of Securities or Derivative Transactions for the account of the person who sets a trust under a trust contract, including such person who sets the trust; hereinafter the same shall apply in this Article) incurs any loss or shortfall in the predetermined amount of profit from the relevant Securities or Derivative Transactions (hereinafter referred to as "Securities, etc." in this Article), property benefit will be provided to the customer or such third party in order to compensate or make up for the whole or part of such loss or shortfall;
- (ii) an act of making an offer or promise or having a third party make an offer or promise to a customer or any person designated by a customer, with regard to the Sales and Purchase or Other Transaction of Securities, etc., to the effect that property benefit will be provided to the customer in order to



- compensate for the whole or part of a loss incurred by the customer from the relevant Securities, etc. or make an addition to the profit accrued to the customer from such Securities, etc.; and
- (iii) an act of providing property benefit to a customer or a third party or making a third party provide it to a customer, with regard to the Sales and Purchase or Other Transaction of Securities, etc., in order to compensate for the whole or part of a loss incurred by the customer from the relevant Securities, etc. or make an addition to the profit accrued to the customer from such Securities, etc.
- (2) A customer of a Financial Instruments Business Operator, etc. shall not conduct any of the following acts:
- (i) an act of gaining a promise set forth in item (i) of the preceding paragraph from a Financial Instruments Business Operator, etc. or a third party with regard to the Sales and Purchase or Other Transaction of Securities, etc. or making a third party gain such promise (limited to cases where such an act is conducted as a result of the request made by the customer him/herself or via a third party);
  - (ii) an act of gaining a promise set forth in item (ii) of the preceding paragraph from a Financial Instruments Business Operator, etc. or a third party with regard to the Sales and Purchase or Other Transaction of Securities, etc. or having a third party gain such promise (limited to cases where such an act is conducted as a result of the request made by the customer him/herself or via a third party); and
  - (iii) an act of receiving property benefit provided under item (iii) of the preceding paragraph by a Financial Instruments Business Operator, etc. or a third party with regard to the Sales and Purchase or Other Transaction of Securities, etc. or having a third party receive such property benefit (limited to cases where such act is conducted based on the promise set forth in either of the preceding two items that is gained as a result of the request made by the customer him/herself or via a third party, or where such provision of property benefit is conducted as a result of the request made by the customer him/herself or via a third party).
- (3) The provisions of paragraph (1) shall not apply where the application, promise or provision of property benefit prescribed in the respective items of said paragraph is made or conducted in order to compensate in whole or in part a loss incurred from a Problematic Conduct (meaning an illegal or unjust act conducted by a Financial Instruments Business Operator, etc. or Officer or employee thereof that is specified by a Cabinet Office Ordinance as a potential cause of a dispute between said Financial Instruments Business Operator, etc. and his/her customer; hereinafter the same shall apply in this Section and the following Section); provided, however, that with regard to the offer or promise

made under item (ii) of said paragraph or the provision of property benefit under item (iii) of said paragraph, this provision shall only apply in cases where said Financial Instruments Business Operator, etc. has obtained confirmation from the Prime Minister in advance to the effect that the loss to be compensated was incurred from a Problematic Conduct or other cases specified by a Cabinet Office Ordinance.

- (4) The provisions of paragraph (2) shall not apply where the promise set forth in item (i) or (ii) of said paragraph is made in order to compensate in whole or in part a loss incurred from an Problematic Conduct or where the provision of property benefit set forth in item (iii) of said paragraph is conducted in order to compensate for the whole or part of a loss incurred from a Problematic Conduct.
- (5) A person who intends to obtain confirmation prescribed in the proviso to paragraph (3) shall, pursuant to the provisions of a Cabinet Office Ordinance, submit to the Prime Minister a written application stating the fact for which confirmation is sought and other matters specified by a Cabinet Office Ordinance, with a document specified by a Cabinet Office Ordinance as a necessary document for proving such fact attached thereto.

(Principle of Suitability)

Article 40 A Financial Instruments Business Operator, etc. shall engage in his/her business in such a manner that the state of the operation of the business does not fall under any of the cases listed in the following items:

- (i) where the Financial Instruments Business Operator, etc. conducts solicitation with regard to an Act of Financial Instruments Transaction in a manner that is found to be inappropriate in light of the customer's knowledge, experience, the status of property or the purpose of concluding a Contract for Financial Instruments Transaction, which results in or is likely to result in insufficient protection of the investors; and
- (ii) in addition to what is specified in the preceding item, where the Financial Instruments Business Operator, etc. is found to have failed to take any measures to ensure appropriate handling of customer information obtained in the course of the business or where there are other circumstances specified by a Cabinet Office Ordinance where the state of the operation of the business is likely to go against the public interest or hinder the protection of investors.

(Best Execution Policy)

Article 40-2 (1) A Financial Instruments Business Operator, etc. shall, pursuant to the provisions of a Cabinet Order, establish a policy and method for executing orders from customers for sales and purchase of Securities and Derivative Transactions (except those specified by a 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. shall, pursuant to the provisions of a Cabinet Office Ordinance, announce its Best Execution Policy, etc.
- (3) A Financial Instruments Business Operator, etc. shall execute orders for Transactions of Securities, etc. in accordance with its Best Execution Policy, etc.
- (4) A Financial Instruments Business Operator, etc. shall, before accepting an order from a customer for sales and purchase of Securities listed in a Financial Instruments Exchange or Over-the-Counter Traded Securities or other transactions specified by a Cabinet Order, deliver in advance to the customer, pursuant to the provisions of a Cabinet Office Ordinance, a document stating its Best Execution Policy, etc. pertaining to the relevant transaction; provided, however, that this shall not apply where such document (in cases where its Best Execution Policy, etc. has been revised, a document stating the revised policy) has already been delivered.
- (5) A Financial Instruments Business Operator, etc. shall, when requested by a customer within a period specified by a Cabinet Office Ordinance after having executed the customer's order for a transaction of Securities, etc., deliver to the customer, pursuant to the provisions of a Cabinet Office Ordinance, a document explaining, pursuant to the provisions of a Cabinet Office Ordinance, that the order has been executed in accordance with its Best Execution Policy, etc.
- (6) The provision of Article 34-2 (4) shall apply mutatis mutandis to the delivery of a document under the preceding two paragraphs.

(Prohibition of Sales and Purchase, etc. Where Separate Management is not Ensured)

Article 40-3 With regard to the rights listed in Article 2 (2)(v) or (vi) or the Securities listed in Article 2 (1)(xxi) (limited to those specified by a Cabinet Order) or the rights listed in Article 2 (2)(vii) (limited to those specified by a Cabinet Order), a Financial Instruments Business Operator, etc. may not conduct any of the acts listed in Article 2 (8)(i), (ii) or (vii) to (ix) unless the relevant right or Securities are specified by a Cabinet Office Ordinance as those for which it is ensured by means of a contract or other juristic act pertaining to the right or Securities that the money invested or contributed for the right or Securities (including those specified by a Cabinet Order as being similar to money; hereinafter the same shall apply in this Article) is managed separately from the property that belongs to the person who conducts the

relevant business to be operated using such money, or any other property pertaining to other businesses conducted by that person.

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

(Duties to Customers)

Article 41 (1) A Financial Instruments Business Operator, etc. shall engage in Investment Advisory Business with loyalty to customers.

(2) A Financial Instruments Business Operator, etc. shall engage in Investment Advisory Business with due care of a prudent manager for customers.

(Prohibited Acts)

Article 41-2 A Financial Instruments Business Operator, etc. shall not conduct any of the following acts with regard to his/her Investment Advisory Business:

(i) giving advice intended to conduct a transaction among customers that would harm a particular customer's interests for the interest of another customer;

(ii) giving unjustifiable advice regarding a particular Financial Instrument, Financial Indicator or Option, for the purpose of securing the interest of the Financial Instruments Business Operator, etc. or a third party other than the relevant customer by using fluctuations in the price, indicator, figure or amount receivable based on the customer's transaction;

(iii) giving advice intended to conduct a transaction under terms and conditions that are different from ordinary terms and conditions and detrimental to the customer's interests (excluding those that fall within the scope of the act specified in item (i) above);

(iv) conducting Sales and Purchase or Other Transaction of Securities or Derivative Transactions (hereinafter referred to as "Sales and Purchase or Other Transactions of Securities, etc.") based on the account of the Financial Instruments Business Operator, etc. by using the information concerning the transaction conducted by the customer who has received advice;

(v) providing property benefit to a customer or a third party or having a third party provide it to the customer in order to compensate for the whole or part of a loss incurred by the customer from a transaction for which advice has been given or make an addition to the profit accrued to the customer from the transaction for which advice has been given (excluding the cases of compensating in whole or in part a loss incurred from a Problematic Conduct); and

(vi) in addition to what is listed in the preceding items, any act specified by a Cabinet Office Ordinance as resulting in insufficient protection of investors, harming the fairness of transactions or causing a loss of confidence in

## Financial Instruments Business.

(Prohibition of Sales and Purchase of Securities, etc.)

Article 41-3 A Financial Instruments Business Operator, etc., with regard to his/her Investment Advisory Business, may not conduct any of the acts listed in Article 2 (8)(i) to (iv) vis-a-vis a customer or on behalf of a customer; provided, however, that this shall not apply to cases where such act is conducted as Type I Financial Instruments Business or other cases specified by a Cabinet Order.

(Prohibition of Receiving of Deposit of Money or Securities, etc.)

Article 41-4 A Financial Instruments Business Operator, etc., with regard to his/her Investment Advisory Business, may not, for any reason, receive deposit of money or Securities from a customer or have a person specified by a Cabinet Order as a person closely related to the Financial Instruments Business Operator, etc. deposit the customer's money or Securities, except in cases where such act is conducted as Securities, etc. Management Business or other cases specified by a Cabinet Order.

(Prohibition of Loan, etc. of Money or Securities)

Article 41-5 A Financial Instruments Business Operator, etc., with regard to his/her Investment Advisory Business, may not loan money or Securities to a customer or perform an intermediary, brokerage or agency service for a customer's loan of money or Securities to a third party; provided, however, that this shall not apply to cases where a Financial Instruments Business Operator loans money or Securities to a customer in the course of a margin transaction prescribed in Article 156-24 (1) and other cases specified by a Cabinet Order.

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

(Duties to Right Holders)

Article 42 (1) A Financial Instruments Business Operator, etc. shall engage in Investment Management Business with loyalty to Right Holders (meaning the persons prescribed in the following items for the Categories of Businesses listed in the respective items; hereinafter the same shall apply in this Subsection):

(i) business of conducting the act specified in Article 2 (8)(xii): the other party to the contract set forth in (a) or (b) of said item;

(ii) business of conducting the act specified in Article 2 (8)(xiv): the person who holds rights indicated on Securities listed in said item or other rights

- specified by a Cabinet Order; and
- (iii) business of conducting the act specified in Article 2 (8)(xv): the person who holds rights listed in (a) to (c) of said item or other rights specified by a Cabinet Order as prescribed in said item.
- (2) A Financial Instruments Business Operator, etc. shall engage in Investment Management Business with due care of a prudent manager for Right Holders.

(Prohibited Acts)

Article 42-2 A Financial Instruments Business Operator, etc., with regard to his/her Investment Management Business, shall not conduct any of the following acts; provided, however, that in the case of the acts listed in item (i) and (ii) below, those specified by a Cabinet Officer Ordinance as acts that are not likely to result in insufficient protection of investors, harm the fairness of transactions or cause a loss of confidence in Financial Instruments Business shall be excluded:

- (i) making an investment intended to conduct a transaction with the Financial Instruments Business Operator, etc. or a director or executive officer thereof;
- (ii) making an investment intended to conduct a transaction between investment properties;
- (iii) making an investment intended to conduct an unjustifiable transaction regarding a particular Financial Instrument, Financial Indicator or Option, for the purpose of securing the interest of the Financial Instruments Business Operator, etc. or a third party other than the Right Holder by using fluctuations in the price, indicator, figure or amount receivable based on the transaction;
- (iv) making an investment intended to conduct a transaction under terms and conditions that are different from ordinary terms and conditions and detrimental to the Right Holder's interest;
- (v) conducting Sales and Purchase or Other Transactions of Securities, etc. based on the account of the Financial Instruments Business Operator, etc. by using the information concerning the transaction conducted as an investment;
- (vi) providing property benefit to a Right Holder or a third party or having a third party provide it to the Right Holder in order to compensate in whole or in part of a loss incurred by the Right Holder from the transaction conducted as investment of Investment Property or make an addition to the profit accrued to the Right Holder from the transaction conducted as investment of Investment Property (excluding the cases of compensating in whole or in part of a loss incurred from a Problematic Conduct); and
- (vii) in addition to what is listed in the preceding items, any act specified by a Cabinet Office Ordinance as resulting in insufficient protection of investors,

harming the fairness of transactions or causing a loss of confidence in Financial Instruments Business.

(Entrustment of Authority of Investment)

Article 42-3 (1) A Financial Instruments Business Operator, etc. may, only where the matters specified by a Cabinet Office Ordinance are set forth by means of any of the contracts or other juristic acts listed in the following items, entrust the whole or part of the authority to make investment on behalf of Right Holders to a Counterparty Financial Business Operator, etc. (limited to those who engage in Investment Management Business) or any other person specified by a Cabinet Order:

- (i) the contract listed in Article 2 (8)(xii)(a) or (b);
- (ii) the contract pertaining to the rights indicated on Securities or other rights specified by a Cabinet Order as prescribed in Article 2 (8)(xiv); and
- (iii) the contract or other juristic act pertaining to the rights listed in Article 2 (8)(xv)(a) to (c) or other rights specified by a Cabinet Order as prescribed in said item.

(2) Notwithstanding the provisions of the preceding paragraph, a Financial Instruments Business Operator, etc. shall not entrust the whole of the authority of investment with regard to all Investment Property to a person specified by a Cabinet Order as prescribed in said paragraph.

(3) With regard to the application of the provision of Article 42 (1) in cases where a Financial Instruments Business Operator, etc. has made entrustment under paragraph (1), the phrase "Financial Instruments Business Operator, etc." in Article 42 (1) shall be deemed to be replaced with "Financial Instruments Business Operator, etc. (including a person specified by a Cabinet Order as prescribed in Article 42-3 (1) who has accepted entrustment from the relevant Financial Instruments Business Operator, etc. under said paragraph; hereinafter the same shall apply in the following paragraph and the following Article)."

(Separate Management)

Article 42-4 A Financial Instruments Business Operator, etc. shall, with regard to his/her Investment Management Business (limited to the business of conducting the act specified in Article 2 (8)(xv)), manage Investment Property separately from his/her own property and other Investment Property pursuant to the provisions of a Cabinet Office Ordinance.

(Prohibition of Receiving of Deposit of Money or Securities, etc.)

Article 42-5 A Financial Instruments Business Operator, etc., with regard to his/her Investment Management Business (limited to the business of

conducting the acts specified in Article 2 (8)(xii); hereinafter the same shall apply in this Article and the following Article), may not, for any reason, receive deposit of money or Securities from a customer or have a person specified by a Cabinet Order as a person closely related to the Financial Instruments Business Operator, etc. deposit the customer's money or Securities, except in cases where such act is conducted as Securities, etc. Management Business or other cases specified by a Cabinet Order; provided, however, that this shall not apply where said Financial Instruments Business Operator, etc. conducts, with regard to his/her Investment Management Business, any of the acts listed in Article 2 (8)(i) to (iv) on behalf of a customer, and such deposit is necessary for the settlement of the transaction conducted by means of such act.

(Prohibition of Loan of Money or Securities, etc.)

Article 42-6 A Financial Instruments Business Operator, etc., with regard to his/her Investment Management Business, shall not loan money or Securities to a customer or perform an intermediary, brokerage or agency service for a customer's loan of money or Securities to a third party; provided, however, that this shall not apply to cases where a Financial Instruments Business Operator loans money or Securities to a customer in the course of a margin transaction prescribed in Article 156-24 (1) or other cases specified by a Cabinet Order.

(Delivery of Investment Report)

Article 42-7 (1) A Financial Instruments Business Operator, etc. shall, pursuant to the provisions of a Cabinet Office Ordinance, prepare an investment report with regard to Investment Property periodically and deliver it to any known Right Holders pertaining to the Investment Property; provided, however, that this shall not apply to the cases specified by a Cabinet Office Ordinance where non-delivery of an investment report to such Right Holders will not hinder protection of the Right Holders.

(2) The provision of Article 34-2 (4) shall apply mutatis mutandis to the delivery of an investment report under the preceding paragraph.

(3) A Financial Instruments Business Operator, etc. shall, when having prepared an investment report set forth in paragraph (1) with regard to his/her Investment Management Business (limited to the business of conducting the act specified in Article 2 (8)(xv)), notify the Prime Minister of this without delay; provided, however, that this shall not apply to cases where the number of Right Holders entitled to a set of Investment Property is below the number specified by a Cabinet Order or other cases where protection of investors will not be hindered as specified by a Cabinet Office Ordinance.

(Exclusion from Application of the Trust Business Act)



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

**Subsection 4 Special Provisions Concerning Securities, etc.  
Management Business**

(Duty of Due Care of Prudent Manager)

Article 43 A Financial Instruments Business Operator, etc. shall engage in Securities, etc. Management Business with due care of a prudent manager for customers.

(Separate Management)

Article 43-2 (1) A Financial Instruments Business Operator, etc. shall manage the following Securities (excluding the Securities to be managed under the following paragraph) separately from his/her own property by a method specified by a Cabinet Office Ordinance as a method for managing property in a reliable and orderly manner:

- (i) the Securities deposited to the Financial Instruments Business Operator, etc. from a customer under Article 119 (limited to those deposited with regard to Transactions of Securities-Related Derivatives) or Securities deposited to the Financial Instruments Business Operator, etc. from a customer under Article 161-2; and
- (ii) the Securities possessed by the Financial Instruments Business Operator, etc. based on the account of a customer or Securities deposited to the Financial Instruments Business Operator, etc. from a customer (excluding the Securities listed in the preceding item, Securities that a Financial Instruments Business Operator, etc. may use under a contract, and other Securities specified by a Cabinet Order), with regard to transactions pertaining to Securities-Related Business or other businesses specified by a Cabinet Office Ordinance as being incidental to Securities-Related Business (excluding Over-the-Counter Transactions of Derivatives and other transactions specified by a Cabinet Order; hereinafter referred to as "Subject Securities-Related Transactions" in item (ii) of the following paragraph and Article 79-20).

(2) A Financial Instruments Business Operator, etc. shall, with regard to the money or Securities listed in the following items, manage the amount of money calculated pursuant to the provisions of a Cabinet Office Ordinance as the amount to be refunded to the customer in the event that said Financial Instruments Business Operator, etc. has abolished his/her Financial Instruments Business (including Registered Financial Institution Business;

hereinafter the same shall apply in this paragraph) or has otherwise ceased to conduct Financial Instruments Business, separately from his/her own property, and shall set a trust with a Trust Company, etc. in Japan, pursuant to the provisions of a 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. has abolished his/her Financial Instruments Business or has otherwise ceased to conduct Financial Instruments Business:

- (i) the money deposited to the Financial Instruments Business Operator, etc. from a customer (limited to that deposited with regard to Transactions of Securities-Related Derivatives) under Article 119 or money deposited to the Financial Instruments Business Operator, etc. from a customer under Article 161-2;
  - (ii) the money belonging to the account of a customer or money deposited to the Financial Instruments Business Operator, etc. from a customer (excluding the money specified in the preceding item), with regard to a Subject Securities-Related Transactions; and
  - (iii) the Securities listed in the items of the preceding paragraph that have been furnished as security under Article 43-4 (1).
- (3) A Financial Instruments Business Operator, etc. shall, with regard to the state of management under the preceding two paragraphs, pursuant to the provisions of a Cabinet Office Ordinance, periodically undergo audit by a certified public accountant (including foreign certified public accountant prescribed in Article 16-2 (5) of the Certified Public Accountants Act (Act No. 103 of 1948); the same shall apply in Article 193-2) or audit by an audit firm.

Article 43-3 (1) A Financial Instruments Business Operator, etc. shall, with regard to his/her Derivative Transactions, etc. (excluding those that fall within the category of Transactions of Securities-Related Derivatives, etc.; the same shall apply in the following paragraph), manage the money or Securities deposited from a customer under Article 119 or other security deposit and Securities, separately from his/her own property pursuant to the provisions of a Cabinet Office Ordinance.

- (2) A Financial Instruments Business Operator, etc. shall, with regard to his/her Derivative Transactions, etc., manage the money and other property equivalent to the amount of the relevant Financial Instruments that belong to the customer's account, pursuant to the provisions of a Cabinet Office Ordinance.

(Restriction on Act of Furnishing Customer's Securities as Security)

Article 43-4 (1) A Financial Instruments Business Operator, etc. shall, when furnishing as security the Securities possessed by him/her based on a

customer's account or Securities deposited to him/her from a customer or loaning such Securities to another person, obtain written consent from the customer pursuant to the provisions of a Cabinet Office Ordinance.

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

#### **Subsection 5 Preventive Measures against Adverse Effects**

(Prohibited Acts When Engaging in Two or More Categories of Businesses)

Article 44 A Financial Instruments Business Operator, etc. or Officers or employees thereof, when engaging in two or more Categories of Businesses (meaning the Categories of Businesses prescribed in Article 29-2 (1)(v)), shall not conduct any of the following acts:

- (i) an act of soliciting Entrustment, etc. (meaning application for intermediary, brokerage or agency service; the same shall apply hereinafter) for the Sales and Purchase or Other Transactions of Securities, etc. by using the information concerning Sales and Purchase or Other Transaction of Securities, etc. conducted by a customer who has received advice pertaining to Investment Advisory Business or the information concerning the Sales and Purchase or Other Transactions of Securities, etc. conducted by such customer as investment pertaining to Investment Management Business;
- (ii) giving advice intended to conduct a transaction with regard to his/her Investment Advisory Business that is unnecessary in light of the policy of the transaction, the amount of the transaction or the market conditions, or making investment intended to conduct a transaction with regard to his/her Investment Management Business that is unnecessary in light of the policy of the investment, the amount of Investment Property or the market conditions, for the purpose of gaining profit from businesses other than Investment Advisory Business and Investment Management Business; and
- (iii) in addition to what is listed in the preceding two items, any act specified by a Cabinet Office Ordinance as resulting in insufficient protection of investors, harming the fairness of transactions or causing a loss of confidence in Financial Instruments Business.

(Prohibited Acts Pertaining to Other Businesses)

Article 44-2 (1) A Financial Instruments Business Operator, etc. or Officers or employees thereof, when engaging in businesses other than Financial Instruments Business and businesses incidental thereto (hereinafter referred to as "Other Businesses of the Financial Instruments Business Operator" in item (ii) and item (iii) below), shall not conduct any of the following acts:

- (i) act of Accepting an Entrustment, etc. (meaning accepting Entrustment, etc.;

- hereinafter the same shall apply) for sales and purchase of Securities on the condition of acceptance of a money loan or other credit granting by a method other than a margin transaction prescribed in Article 156-24 (1) (excluding those specified by a Cabinet Office Ordinance as being less likely to result in insufficient protection of investors);
- (ii) giving advice intended to conduct a transaction with regard to his/her Investment Advisory Business that is unnecessary in light of the policy of the transaction, the amount of the transaction or the market conditions, or making investment intended to conduct a transaction with regard to his/her Investment Management Business that is unnecessary in light of the policy of the investment, the amount of Investment Property or the market conditions, for the purpose of gaining profit from Other Businesses of the Financial Instruments Business Operator; and
  - (iii) in addition to what is listed in the preceding two items, any of the acts listed in the items of Article 2 (8) that are conducted in relation to Other Businesses of the Financial Instruments Business Operator and are specified by a Cabinet Office Ordinance as resulting in insufficient protection of investors, harming the fairness of transactions or causing a loss of confidence in Financial Instruments Business.
- (2) A Registered Financial Institution or Officers or employees thereof, when engaging in businesses other than Registered Financial Institution Business (hereinafter referred to as "Other Businesses of the Registered Financial Institution" in item (ii) and item (iii) below), shall not conduct any of the following acts:
- (i) act of Accepting an Entrustment, etc. for sales and purchase of Securities on the condition of acceptance of a money loan or other credit granting should be conducted (excluding those specified by a Cabinet Office Ordinance as being less likely to result in insufficient protection of investors);
  - (ii) giving advice intended to conduct a transaction with regard to its Investment Advisory Business that is unnecessary in light of the policy of the transaction, the amount of the transaction or the market conditions, or making investment intended to conduct a transaction with regard to its Investment Management Business that is unnecessary in light of the policy of the investment, the amount of Investment Property or the market conditions, for the purpose of gaining profit from Other Businesses of the Registered Financial Institution; and
  - (iii) in addition to what is listed in the preceding two items, any of the acts that are conducted in relation to Other Businesses of the Registered Financial Institution and are specified by a Cabinet Office Ordinance as resulting in insufficient protection of investors, harming the fairness of transactions or causing a loss of confidence in Financial Instruments

Business.

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

Article 44-3 (1) A Financial Instruments Business Operator, etc. or Officers or employees thereof shall not conduct any of the following acts; provided, however, that this shall not apply where approval has been obtained from the Prime Minister because it is found that the relevant act will not hinder the public interest or protection of investors:

- (i) conducting sales and purchase or other transactions of Securities or Over-the-Counter Transactions of Derivatives with the Parent Juridical Person, etc. or Subsidiary Juridical Person, etc. of the Financial Instruments Business Operator, etc. under terms and conditions that are different from ordinary terms and conditions and detrimental to the fairness of transactions;
- (ii) concluding a contract with a customer for any of the acts listed in the items of Article 2 (8), knowing that the Parent Juridical Person, etc. or Subsidiary Juridical Person, etc. of the Financial Instruments Business Operator, etc. has granted credit to the customer on the condition that said contract should be concluded with the Financial Instruments Business Operator, etc.;
- (iii) giving advice intended to conduct a transaction with regard to his/her Investment Advisory Business that is unnecessary in light of the policy of the transaction, the amount of the transaction or the market conditions, or making investment intended to conduct a transaction with regard to his/her Investment Management Business that is unnecessary in light of the policy of the investment, the amount of Investment Property or the market conditions, for the purpose of securing the interest of the Parent Juridical Person, etc. or Subsidiary Juridical Person, etc. of the Financial Instruments Business Operator, etc.; and
- (iv) in addition to what is listed in the preceding three items, any of the acts involving the Parent Juridical Person, etc. or Subsidiary Juridical Person, etc. of the Financial Instruments Business Operator, etc. that are specified by a Cabinet Office Ordinance as being likely to result in insufficient protection of investors, harm the fairness of transactions or cause a loss of confidence in Financial Instruments Business.

(2) A Registered Financial Institution or Officers or employees thereof shall not conduct any of the following acts; provided, however, that this shall not apply where approval has been obtained from the Prime Minister because it is found that the relevant act will not hinder the public interest or protection of investors:

- (i) conducting sales and purchase or other transactions of Securities or Over-

- the-Counter Transactions of Derivatives with the Parent Juridical Person, etc. or Subsidiary Juridical Person, etc. of the Registered Financial Institution under terms and conditions that are different from ordinary terms and conditions and detrimental to the fairness of transactions;
- (ii) conducting the act specified in Article 33 (2)(iv)(b) with a customer, while granting credit to the customer on the condition that a contract for any of the acts listed in the items of Article 2 (8) should be concluded with the Parent Juridical Person, etc. or Subsidiary Juridical Person, etc. of the Registered Financial Institution;
  - (iii) giving advice intended to conduct a transaction with regard to its Investment Advisory Business that is unnecessary in light of the policy of the transaction, the amount of the transaction or the market conditions, or making investment intended to conduct a transaction with regard to its Investment Management Business that is unnecessary in light of the policy of the investment, the amount of Investment Property or the market conditions, for the purpose of securing the interest of the Parent Juridical Person, etc. or Subsidiary Juridical Person, etc. of the Registered Financial Institution; and
  - (iv) in addition to what is listed in the preceding three items, any of the acts involving the Parent Juridical Person, etc. or Subsidiary Juridical Person, etc. of the Registered Financial Institution that are specified by a Cabinet Office Ordinance as being likely to result in insufficient protection of investors, harm the fairness of transactions or cause a loss of confidence in Financial Instruments Business.

(Restriction of Credit Granting by Underwriter)

Article 44-4 A Financial Instruments Business Operator who has become an Underwriter of Securities, upon selling said Securities, shall not conduct money loan or other credit granting to the purchaser of the Securities for the purchase price until six months have elapsed from the day on which the Financial Instruments Business Operator became an Underwriter.

### **Subsection 6 Miscellaneous Provisions**

Article 45 The provisions listed in the following items shall not apply where the persons specified in the respective items are Professional Investors; provided, however, that this shall not apply to the cases specified by a Cabinet Office Ordinance where the public interest or protection of Professional Investors is likely to be hindered:

- (i) Article 37, Article 38 (iii) to (v), and Article 40 (i): the other party who receives solicitation for the conclusion of a Contract for Financial

- Instruments Transaction to be conducted by a Financial Instruments Business Operator, etc.;
- (ii) Articles 37-2 to 37-6, Article 40-2 (4), and Article 43-4: the other party to a Contract for Financial Instruments Transaction for which a Financial Instruments Business Operator, etc. has received an application 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: the other party to a Discretionary Investment Contract concluded by a Financial Instruments Business Operator, etc.

### **Section 3 Accounting**

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

(Business Year)

Article 46 The business year of a Financial Instruments Business Operator (limited to those who are engaged in Type I Financial Instruments Business; hereinafter the same shall apply in this Subsection) shall be from April 1 to March 31 of the following year.

(Books and Documents Related to Business)

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

(Submission, etc. of Business Reports)

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

(2) A Financial Instruments Business Operator shall, pursuant to the provisions of a Cabinet Office Ordinance, report the status of its business or property to the Prime Minister, in addition to submission of the business report under the provision of the preceding paragraph.

(3) The Prime Minister may, when he/she finds it necessary and appropriate for the public interest or protection of investors, order the Financial Instruments Business Operator to put all or part of the business report under paragraph (1) to public notice, pursuant to the provisions of a Cabinet Order.

(Public Inspection of Explanatory Documents)

Article 46-4 A Financial Instruments Business Operator shall, for each business year, prepare explanatory documents containing the matters specified by a Cabinet Office Ordinance as the matters concerning status of business and property, and keep said explanatory documents at all of its business offices or offices and make them available for public inspection, for one year from the day on which the period specified by a Cabinet Order has elapsed from the end of each business year.

(Financial Instruments Transaction Liability Reserve)

Article 46-5 (1) A Financial Instruments Business Operator shall, pursuant to the provisions of a Cabinet Office Ordinance, set up the financial instruments transaction liability reserve in proportion to the transaction volume of the sales and purchase or other transactions of Securities or Derivative Transactions, etc.

(2) The financial instruments transaction liability reserve set forth in the preceding paragraph shall not otherwise be used except for appropriation to compensation of a loss incurred by an accident in relation to the sales and purchase or other transactions of Securities or the Derivative Transactions, etc., or for other cases specified by a Cabinet Office Ordinance.

(Capital-to-Risk Ratio)

Article 46-6 (1) A Financial Instruments Business Operator shall calculate the ratio of the total sum of the stated capital, reserve fund, and other amount specified by a Cabinet Office Ordinance after deduction of the total sum of the fixed assets and any others specified by a Cabinet Office Ordinance, to the total sum of the amount specified by a Cabinet Office Ordinance as the amount for covering possible risks which may accrue due to the fluctuation of prices of the Securities held or other reasons (hereinafter referred to as the "Capital-to-Risk Ratio"), and notify it to the Prime Minister at the end of each month and in the cases specified by a Cabinet Office Ordinance.

(2) A Financial Instruments Business Operator shall keep the Capital-to-Risk Ratio at no less than 120 percent.

(3) A Financial Instruments Business Operator shall prepare the documents containing its Capital-to-Risk Ratio as of the last day of March, June, September and December every year, and keep them at all of its business offices or offices for public inspection for three months after one month has elapsed from the last day of the relevant month.

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



(Books and Documents related to Business)

Article 47 A Financial Instruments Business Operator (excluding those who are engaged in Type I Financial Instruments Business; hereinafter the same shall apply in this Subsection) shall, pursuant to the provisions of a Cabinet Office Ordinance, prepare and preserve the books and documents related to its business.

(Submission of Business Report)

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

(Public Inspection of Explanatory Documents)

Article 47-3 A Financial Instruments Business Operator shall, pursuant to the provisions of a Cabinet Office Ordinance, prepare explanatory documents for each business year containing the matters specified by a Cabinet Office Ordinance as the matters necessary for the protection of investors from among the matters contained in the business report set forth in the preceding Article, and keep them at all of its business offices or offices for public inspection, for one year from the day on which the period specified by a Cabinet Order has elapsed from the end of each business year.

### **Subsection 3 Registered Financial Institutions**

(Books and Documents related to Business)

Article 48 A Registered Financial Institution shall, pursuant to the provisions of a Cabinet Office Ordinance, prepare and preserve the books and documents related to its business.

(Submission, etc. of Business Reports)

Article 48-2 (1) A Registered Financial Institution shall, pursuant to the provisions of a Cabinet Office Ordinance, prepare a business report for each business year and submit it to the Prime Minister within three months after the end of each business year.

(2) A Registered Financial Institution shall, pursuant to the provisions of a Cabinet Office Ordinance, report the status of its business or property to the Prime Minister, in addition to the submission of the business report under the provision of the preceding paragraph.

(3) The Prime Minister may, when he/she finds it necessary and appropriate for the public interest or protection of investors, order a Registered Financial

Institution to put all or part of the business report under paragraph (1) to public notice, pursuant to the provisions of a Cabinet Order.

(Financial Instruments Transaction Liability Reserve)

Article 48-3 (1) A Registered Financial Institution shall, pursuant to the provisions of a Cabinet Office Ordinance, set up the financial instruments transaction liability reserve in proportion to the transaction volume of the sales and purchase or other transactions of Securities or Derivative Transactions, etc.

(2) The financial instruments transaction liability reserve set forth in the preceding paragraph shall not otherwise be used except for appropriation to compensation of a loss incurred by an accident in relation to the sales and purchase or other transactions of Securities or the Derivative Transactions, etc., or for other cases specified by a Cabinet Office Ordinance.

#### **Subsection 4 Special Provisions for Foreign Juridical Persons, etc.**

(Exclusion from Application)

Article 49 Article 46 shall not apply to cases where a Financial Instruments Business Operator is a foreign juridical person.

(Special Provision for Submission, etc. of Business Report)

Article 49-2 (1) With regard to the application of Article 46-3 (1) to cases where a Financial Instruments Business Operator is a foreign juridical person, the term "each business year" in said paragraph shall be deemed to be replaced with "for each period from April 1 to March 31 of the following year,"; and the term "within three months after the end of each business year" in said paragraph shall be deemed to be replaced with "within the period specified by a Cabinet Order after elapse of said period."

(2) With regard to the application of Article 46-4 to cases where a Financial Instruments Business Operator is a foreign juridical person, the term "for each business year" in said Article shall be deemed to be replaced with "for each period from April 1 to March 31 of the following year,"; and the term "from the end of each business year" in the same Article shall be deemed to be replaced with "from the elapse of said period."

(3) With regard to the application of Article 46-6 (1) to cases where a Financial Instruments Business Operator is a foreign juridical person, the term "stated capital" in said paragraph shall be deemed to be replaced with "brought-in capital," and the term "reserve fund" in said paragraph shall be deemed to be replaced with "reserve fund set up in business offices or offices in Japan,"; and the term "fixed assets" in said paragraph shall be deemed to be replaced with

"fixed assets for business offices or offices in Japan."

- (4) With regard to the application of Article 47-2 to cases where a Financial Instruments Business Operator is a foreign juridical person or an individual domiciled in a foreign state, and the application of Article 48-2 (1) to cases where a Registered Financial Institution is a foreign juridical person, the term "within three months" in the same provisions shall be deemed to be replaced with "within the period specified by a Cabinet Order."

(Submission, etc. of Other Documents, etc.)

- Article 49-3 (1) A Financial Instruments Business Operator (limited to a foreign juridical person engaged in Type I Financial Instruments Business; hereinafter the same shall apply in this Subsection) shall, for each business year, submit to the Prime Minister the balance sheet, profit and loss statement and other documents related to financial accounting prepared in relation to all of its business as well as the documents summarizing the business of the relevant business year, within the period specified by a Cabinet Order from the end of said business year, pursuant to the provisions of a Cabinet Office Ordinance.
- (2) A Financial Instruments Business Operator shall, pursuant to the provisions of a Cabinet Office Ordinance, report the status of the business or property of said Financial Instruments Business Operator to the Prime Minister, in addition to submission of the documents under the provision of the preceding paragraph.

(Reserve for Loss)

- Article 49-4 (1) A Financial Instruments Business Operator shall, pursuant to the provisions of a Cabinet Office Ordinance, lay aside at its principal business offices or offices in Japan the reserve for loss in an amount not less than the amount obtained by multiplying the amount of profits pertaining to the business conducted at all business offices or offices which have been established within Japan for performing the Financial Instruments Business (hereinafter referred to as "All Business Offices or Offices" in the following paragraph and following Article), by the ratio specified by a Cabinet Office Ordinance within the range not exceeding one tenth, until such amount reaches the amount specified by a Cabinet Order under Article 29-4 (1)(iv).
- (2) The reserve for loss set forth in the preceding paragraph shall not otherwise be used except for appropriation to compensation of a net loss pertaining to the business of All Business Offices or Offices of said Financial Instruments Business Operator, with an approval thereon of the Prime Minister.

(Retention of Assets Within Japan)

- Article 49-5 A Financial Instruments Business Operator shall, pursuant to the

provisions of a Cabinet Office Ordinance, retain in Japan the assets equivalent to the total sum of financial instruments transaction liability reserve, reserve for loss, and the amount of liability belonging to the account of All Business Offices or Offices as specified by a Cabinet Order.

#### **Section 4 Supervision**

(Notification of Suspension, etc.)

Article 50 (1) When a Financial Instruments Business Operator, etc. has come to fall under any of the following items, he/she shall notify to that effect to the Prime Minister without delay:

- (i) when he/she has suspended business (limited to Financial Instruments Business or Registered Financial Institution Business (hereinafter referred to as "Financial Instruments Business, etc." in this Section) or resumed business (with regard to a Financial Instruments Business Operator who obtained authorization under Article 30 (1), including the cases where he/she has suspended or resumed business pertaining to said authorization);
- (ii) when he/she has abolished business pertaining to authorization set forth in Article 30 (1);
- (iii) when a juridical person that is a Financial Instruments Business Operator merged with other juridical person (excluding the cases where said juridical person that is a Financial Instruments Business Operator has extinguished upon merger), has succeeded to all or part of the other juridical person's business (limited to business pertaining to Financial Instruments Business, etc.; hereinafter the same shall apply in this item and the following Article) upon company split, or accepted all or part of the other juridical person's business;
- (iv) when a Financial Instruments Business Operator (limited to those engaged in Securities-Related Business; the same shall apply in the following item) has obtained or has come to hold the majority of Voting Rights Held by All the Shareholders, etc. of a bank, Cooperative Structured Financial Institution, or other financial institution specified by a Cabinet Order, a juridical person engaged in the same kind of business as those conducted by these persons in a foreign state, a Financial Instruments Business Operator (limited to juridical persons), a foreign juridical person engaged in Financial Instruments Business, or another juridical person specified by a Cabinet Office Ordinance (referred to as "Banks, etc." in said item and Article 56-2 (1));
- (v) when a Financial Instruments Business Operator has come to lose the majority of voting rights of all Shareholders, etc. of Banks, etc., the majority of whose Voting Rights Held by All the Shareholders, etc. said Financial

- Instruments Business Operator used to hold, or when said Banks, etc. merged, dissolved or abolished the whole of their business;
- (vi) when the majority of Voting Rights Held by All the Shareholders, etc. of a Financial Instruments Business Operator (limited to those engaged in Type I Financial Instruments Business or Investment Management Business) have come to be held by another juridical person or other organizations;
  - (vii) when an application for commencement of bankruptcy proceedings, rehabilitation proceedings, or reorganization proceedings has been filed; or
  - (viii) when falling under other cases specified by a Cabinet Office Ordinance.
- (2) Matters necessary for determining whether the majority of Voting Rights Held by All the Shareholders, etc. are held or not as prescribed in item (iv) of the preceding paragraph shall be specified by a Cabinet Office Ordinance, considering the manner of holding or other circumstances.

(Notification of Discontinuance of Business, etc.)

Article 50-2 (1) When a Financial Instruments Business Operator, etc. has come to fall under any of the following items, the person specified in the respective items shall notify to that effect to the Prime Minister within 30 days from the day:

- (i) when an individual that is a Financial Instruments Business Operator has died: the heir thereof;
  - (ii) when abolishing a Financial Instruments Business, etc.: the juridical person or individual;
  - (iii) when a juridical person that is a Financial Instruments Business Operator, etc. has extinguished upon merger: the person who was an Officer representing the juridical person;
  - (iv) when a juridical person that is a Financial Instruments Business Operator, etc. has dissolved upon decision of commencement of bankruptcy proceedings: the bankruptcy trustee thereof;
  - (v) when a juridical person that is a Financial Instruments Business Operator, etc. has dissolved due to reasons other than a merger or the decision of commencement of bankruptcy proceedings: the liquidator thereof;
  - (vi) when a juridical person that is a Financial Instruments Business Operator, etc. has had whole or part of its business succeeded to upon company split: the juridical person; or
  - (vii) when transferring whole or part of its business: the juridical person or individual.
- (2) When a Financial Instruments Business Operator, etc. has come to fall under any of the following items (in item (vi) of the preceding paragraph, limited to when a Financial Instruments Business Operator, etc. has had its whole business succeeded to upon company split, and in item (vii) of the preceding

- paragraph, limited to when a Financial Instruments Business Operator, etc. has transferred its whole business), registration of said Financial Instruments Business Operator, etc. under Article 29 or Article 33-2 shall lose its effects.
- (3) When an individual that is a Financial Instruments Business Operator (limited to those engaged in Investment Advisory Business) has died, the heir may continue to conduct Financial Instruments Business for 60 days after the death of the decedent (if registration under Article 29-4 (1) has been refused or the abolition of Financial Instruments Business (limited to Investment Advisory Business; hereinafter the same shall apply in this paragraph to paragraph (5)) has been ordered under Article 52 (1) which is applied by replacing certain terms under the provisions of the following paragraph during said period, the period up to the day when registration was refused or the abolition was ordered; hereinafter referred to as the "Continued Business Period" in this paragraph). When the heir has filed an application for registration under Article 29 (if the heir is a Financial Instruments Business Operator, when the heir has filed an application for registration of change under Article 31 (4); hereinafter the same shall apply in this paragraph) during the Continued Business Period, and when the Continued Business Period has passed, the same shall apply to the application until the registration or refusal of registration is determined.
- (4) When Financial Instruments Business is allowed to be continued under the provisions of the preceding paragraph, the heir shall be deemed to be a Financial Instruments Business Operator (limited to those engaged in Investment Advisory Business), and the provisions of Article 36 to Article 36-3, Article 37, Article 37-3, Article 37-4, Article 37-6 to Article 38-2, Article 40, Article 41 to Article 41-5, Article 44 to Article 44-3, Article 45, Article 47 to Article 47-3, Article 49-2 (4), Article 49-4, Article 49-5, Article 51, Article 52 (1) (limited to the part pertaining to item (i) or (vi) to (ix)), Article 52 (4) or (5), or Article 56-2 (limited to paragraph (1) or paragraph (3)) (including punishment pertaining to these provisions) shall apply. In this case, the term "rescind its registration under Article 29" in Article 52 (1) shall be deemed to be replaced with "order the abolition of Financial Instruments Business."
- (5) For application of the provision of Article 29-4 (1) in cases where the abolition of Financial Instruments Business has been ordered under Article 52 (1) which is applied by replacing certain terms under the provisions of the preceding paragraph, the heir who received the order of said abolition shall be deemed to be a person who has had his/her registration under Article 29 rescinded under the provisions of Article 52 (1), and the day when said abolition was ordered shall be deemed to be the day when registration under Article 29 has rescinded under the provisions of Article 52 (1).
- (6) When a Financial Instruments Business Operator, etc. intends to abolish

Financial Instruments Business, etc. (excluding Investment Advisory and Agency Business; the same shall apply in paragraph (8) and Article 56 (1)), implement a merger (limited to mergers where said Financial Instruments Business Operator, etc. extinguishes upon merger), dissolve due to reasons other than a merger or the decision of commencement of bankruptcy proceedings, have all or part of its business succeeded to upon company split, or transfer all or part of its business, he/she shall, by 30 days prior to that day, give a public notice to that effect and post a notice to that effect in a place easily seen by the public at all of its business offices or offices pursuant to the provisions of a Cabinet Office Ordinance.

- (7) When a Financial Instruments Business Operator, etc. has given a public notice under the preceding paragraph, he/she shall notify to that effect to the Prime Minister immediately.
- (8) When a Financial Instruments Business Operator, etc. has given a public notice under paragraph (6) (excluding the cases where the public notice was pertaining to succession of whole or part of its business upon merger or company split or transfer of whole or part of business), the Financial Instruments Business Operator, etc. shall promptly complete sales and purchase or other transactions of Securities and Derivative Transactions, etc. that he/she had conducted (referred to as "Customer Transactions" in Article 56) and return the property deposited by customers with regard to Financial Instruments Business, etc. and the property he/she possesses on customers' account without delay.
- (9) The provisions of Article 940 (1) (limited to the part pertaining to item (i)) and Article 940 (3) of the Companies Act shall apply mutatis mutandis to cases where a Financial Instruments Business Operator, etc. (limited to companies) gives a public notice under paragraph (6) in the form of an Electronic Public Notice (meaning an Electronic Public Notice prescribed in Article 2 (xxxiv) of said Act; the same shall apply hereinafter). In this case, necessary technical replacement of terms shall be specified by a Cabinet Order.
- (10) The provisions of Article 940 (1) (limited to the part pertaining to item (i)) and Article 940 (3), Article 941, Article 946, Article 947, Article 951 (2), Article 953, and Article 955 of the Companies Act shall apply mutatis mutandis to cases where a Financial Instruments Business Operator, etc. (limited to foreign companies) gives a public notice under paragraph (6) in the form of an Electronic Public Notice. In this case, necessary technical replacement of terms shall be specified by a Cabinet Order.

(Order to Improve Business Operation to a Financial Instruments Business Operator)

Article 51 When the Prime Minister finds it necessary and appropriate for the

public interest or protection of investors, with regard to a Financial Instruments Business Operator's business operation or the status of its property, he/she may order said Financial Instruments Business Operator to change the methods of business or take other necessary measures for improving its business operation or the status of its property, within the limit necessary.

(Order to Improve Business Operation to a Registered Financial Institution)

Article 51-2 When the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, with regard to a Registered Financial Institution's business operation, he/she may order said Registered Financial Institution to change the methods of business or take other necessary measures for improving its business operation, within the limit necessary.

(Disposition Rendered to a Financial Instruments Business Operator for the Purpose of Supervision)

Article 52 (1) In cases where a Financial Instruments Business Operator falls under any of the following items, the Prime Minister may rescind its registration under Article 29, rescind its authorization under Article 30 (1), or order suspension of all or part of its business by specifying a period not exceeding six months:

- (i) when a Financial Instruments Business Operator comes to fall under Article 29-4 (1)(i) (with regard to (a), limited to the part pertaining to the provision of laws and regulations of a foreign state equivalent to this Act), Article 29-4 (1)(ii), or Article 29-4 (1)(iii);
- (ii) when 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 (1)(iv);
- (iii) when a Financial Instruments Business Operator engaged in Type I Financial Instruments Business or Investment Management Business comes to fall under Article 29-4 (1)(v)(a) or (b);
- (iv) when a Financial Instruments Business Operator engaged in Type I Financial Instruments Business comes to fall under Article 29-4 (1)(vi)(b);
- (v) when obtaining registration under Article 29 through wrongful means;
- (vi) when violating laws and regulations (excluding Article 46-6 (2)) or disposition given by government agencies under laws and regulations pertaining to Financial Instruments Business or accompanying business;
- (vii) when there is a risk of insolvency in light of operation or the status of property;
- (viii) when there are any facts that harm the profits of investors with regard to operation of Investment Advisory and Agency Business or Investment



- Management Business;
- (ix) when a wrongful act or extremely unjust act has been conducted with regard to Financial Instruments Business, and when the circumstances are especially serious;
  - (x) when violating the conditions attached to authorization under Article 30 (1); or
  - (xi) when a Financial Instruments Business Operator who obtained authorization under Article 30 (1) becomes unable to satisfy the criteria listed in Article 30-4 (i) to (iii) or (v).
- (2) When an Officer of a Financial Instruments Business Operator (with regard to a foreign juridical person, limited to Officers stationed at business offices or offices in Japan or representative persons in Japan; hereinafter the same shall apply in this paragraph and paragraph (2) of the following Article) comes to fall under any of Article 29-4 (1)(ii)(a) to (g), is found to fall under any of (a) to (g) of said item at the time of registration under Article 29, or comes to fall under any of item (vi) or item (viii) to (x) of the preceding paragraph, the Prime Minister may order said Financial Instruments Business Operator to dismiss said Officer.
- (3) When a Financial Instruments Business Operator who has obtained authorization under Article 30 (1) comes to fall under Article 50 (1)(ii), or when registration of said Financial Instruments Business Operator under Article 29 loses its effect under the provisions of Article 50-2 (2) or is rescinded under the provisions of paragraph (1), the following paragraph, Article 53 (3) or Article 54, said authorization shall lose its effect.
- (4) When the locations of business offices or offices of a Financial Instruments Business Operator are not ascertained or the whereabouts of a Financial Instruments Business Operator (in the case of a juridical person, the whereabouts of the Officer representing the juridical person) is not ascertained, the Prime Minister shall give a public notice to that effect pursuant to the provisions of a Cabinet Office Ordinance and may rescind registration of said Financial Instruments Business Operator if no request has been submitted by said Financial Instruments Business Operator even after 30 days since the day of the public notice.
- (5) The provision of Chapter III of the Administrative Procedure Act shall not apply to disposition under the preceding paragraph.

(Disposition Rendered to a Registered Financial Institution for the Purpose of Supervision)

Article 52-2 (1) In cases where a Registered Financial Institution falls under any of the following items, the Prime Minister may rescind its registration under Article 33-2, or order suspension of all or part of its business by specifying a

period not exceeding six months:

- (i) when a Registered Financial Institution comes to fall under Article 33-5 (1)(i) (limited to the part pertaining the provision of laws and regulations of a foreign state equivalent to this Act), Article 33-5 (1)(ii), or Article 33-5 (1)(iii);
  - (ii) when obtaining registration under Article 33-2 through wrongful means;
  - (iii) when violating laws and regulations or disposition given by government agencies based on laws and regulations pertaining to a Registered Financial Institution Business or accompanying business;
  - (iv) when there are any facts that harm the profits of investors with regard to the operation of Investment Advisory and Agency Business; or
  - (v) when a wrongful act or unjust act is conducted with regard to a Registered Financial Institution Business, and when the circumstances are especially serious.
- (2) When an Officer of a Registered Financial Institution comes to fall under any of items (iii) to (v) of the preceding paragraph, the Prime Minister may order said Registered Financial Institution to dismiss said Officer.
- (3) When the locations of business offices or offices of a Registered Financial Institution are not ascertained or the whereabouts of the Officer representing the Registered Financial Institution is not ascertained, the Prime Minister shall give a public notice to that effect pursuant to the provisions of a Cabinet Office Ordinance and may rescind registration of said Registered Financial Institution if no request has been submitted by said Registered Financial Institution even after 30 days since the day of the public notice.
- (4) The provision of Chapter III of the Administrative Procedure Act shall not apply to disposition under the preceding paragraph.

(Order Concerning Capital-to-Risk Ratio)

- Article 53 (1) In cases where a Financial Instruments Business Operator (limited to those engaged in Type I Financial Instruments Business; hereinafter the same shall apply in this Article) violates the provision of Article 46-6 (2), if the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may order the change of the methods of its business, deposition of its property, or other matters necessary for supervision, within the limit necessary.
- (2) In cases where a Financial Instruments Business Operator violates the provision of Article 46-6 (2) (limited to cases where the Capital-to-Risk Ratio is less than 100 percent), if the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may order the suspension of whole or part of its business by specifying a period not exceeding three months, within the limit necessary.

(3) In cases where the Prime Minister has ordered the suspension of whole or part of its business under the provisions of the preceding paragraph, if he/she finds that the Capital-to-Risk Ratio of said Financial Instruments Business Operator on the day when three months have passed since the day of the order continues to be less than 100 percent and that the status of the Capital-to-Risk Ratio of said Financial Instruments Business Operator is not likely to recover, he/she may rescind registration of said Financial Instruments Business Operator under Article 29.

(Rescission of Registration Due to Not Resuming Business or Suspending Business)

Article 54 When a Financial Instruments Business Operator, etc. has not resumed its business within three months since the day when the Financial Instruments Business Operator was allowed to conduct Financial Instruments Business, etc. or has continued to suspend its business for three months or more without any justifiable grounds, the Prime Minister may rescind registration of said Financial Instruments Business Operator, etc. under Article 29 or Article 33-2.

(Public Notice of Supervisory Disposition)

Article 54-2 In the following cases, the Prime Minister shall give a public notice to that effect pursuant to the provisions of a Cabinet Office Ordinance:

- (i) when the Prime Minister has rescinded registration under Article 29 or Article 33-2 or authorization under Article 30 (1), or ordered the suspension of all or part of its business under the provisions of Article 52 (1) or Article 52-2 (1);
- (ii) when the Prime Minister has ordered the suspension of whole or part of its business under the provisions of Article 53 (2); or
- (iii) when the Prime Minister has rescinded registration under Article 29 or Article 33-2 under the provisions of Article 52 (4), Article 52-2 (3), Article 53 (3), or the preceding Article.

(Deletion of Registration, etc.)

Article 55 (1) When registration under Article 29 or Article 33-2 has lost its effect under the provisions of Article 50-2 (2) or the Prime Minister has rescinded registration under Article 29 or Article 33-2 under the provisions of Article 52 (1) or (4), Article 52-2 (1) or (3), Article 53 (3), or Article 54, he/she shall delete said registration.

(2) When the Prime Minister has rescinded authorization under Article 30 (1) under the provisions of Article 52 (1), or authorization under Article 30 (1) has lost its effect under the provisions of Article 52 (3), he/she shall delete the

supplementary note to the effect that he/she granted authorization prescribed in Article 30 (2).

(Completion of Remaining Business)

Article 56 (1) The provision of Article 50-2 (8) shall apply mutatis mutandis to a person who was a Financial Instruments Business Operator, etc. in cases where said Financial Instruments Business Operator, etc. has dissolved or abolished Financial Instruments Business, etc., or had its registration under Article 29 or Article 33-2 rescinded under the provisions of Article 52 (1), Article 52-2 (1), Article 53 (3), or Article 54. In this case, a person who was the Financial Instruments Business Operator, etc. shall be deemed to be a Financial Instruments Business Operator, etc. within the scope of the purpose to complete Customer Transactions.

(2) Except in cases where the provision of the preceding paragraph applies, the provision of Article 50-2 (8) shall apply mutatis mutandis to Customer Transactions pertaining to business of a Financial Instruments Business Operator in cases where said Financial Instruments Business Operator who obtained authorization under Article 30 (1) has abolished its business pertaining to said authorization, or had said authorization rescinded under the provisions of Article 52 (1). In this case, said Financial Instruments Business Operator shall be deemed to have obtained authorization under Article 30 (1) within the scope of the purpose to complete Customer Transactions pertaining to said business.

(Order for Production of Report and Inspection)

Article 56-2 (1) When the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may order a Financial Instruments Business Operator, etc., a person who conducts transactions with the Financial Instruments Business Operator, etc., a Bank, etc., the majority of whose Voting Rights Held by All the Shareholders, etc. are held by the Financial Instruments Business Operator, etc. (excluding Registered Financial Institutions) (hereinafter such a Bank, etc. shall be referred to as a "Subsidiary Specified Juridical Person" in this paragraph), a Holding Company (meaning holding companies prescribed in Article 9 (5)(i) of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade; hereinafter the same shall apply in this Article) which holds the Financial Instruments Business Operator, etc. as its Subsidiary Company (meaning subsidiary companies prescribed in Article 29-4 (3); hereinafter the same shall apply in this Article), or a person who received entrustment of business from the Financial Instruments Business Operator, etc. to submit reports or materials that will be helpful for understanding the business or property of the Financial

Instruments Business Operator, etc. (with regard to said Subsidiary Specified Juridical Person, limited to reports or materials that will be helpful for understanding the property of the Financial Instruments Business Operator, etc. (excluding Registered Financial Institutions)), or have the officials inspect the status of the business or property, or the books and documents or other articles of the Financial Instruments Business Operator, etc., the Subsidiary Specified Juridical Person, the Holding Company which holds the Financial Instruments Business Operator, etc. as its Subsidiary Company, or the person who received entrustment of business from the Financial Instruments Business Operator, etc. (with regard to the Subsidiary Specified Juridical Persons, the inspection shall be limited to what is necessary to understand the property of the Financial Instruments Business Operator, etc. (excluding Registered Financial Institutions), and with regard to the Holding Company which holds the Financial Instruments Business Operator, etc. as its Subsidiary Company, or the person who received entrustment of business from the Financial Instruments Business Operator, etc., the inspection shall be limited to what is necessary to understand the business or property of the Financial Instruments Business Operator, etc.).

- (2) When the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may order a Major Shareholder (meaning Major Shareholders prescribed in Article 29-4 (2); hereinafter the same shall apply in this paragraph) of a Financial Instruments Business Operator (limited to those engaged in Type I Financial Instruments Business or Investment Management Business and excluding foreign juridical persons; hereinafter the same shall apply in this paragraph) or a Major Shareholder of a Holding Company which holds a Financial Instruments Business Operator as its Subsidiary Company to submit notification or take action under Article 32 to Article 32-3, or submit reports or materials that will be helpful for understanding the business or property of the Financial Instruments Business Operator, or have the officials inspect documents or other articles of the Major Shareholder (the inspection shall be limited to what is necessary to understand the notification or action under Article 32 to Article 32-3 or the business or property of the Financial Instruments Business Operator, etc.).
- (3) Except for the cases specified by paragraph (1), when the Prime Minister finds it necessary and appropriate to secure the compliance with Article 31-4 (1) or (2) or Article 44-3, he/she may order a Parent Bank, etc. (meaning a Parent Bank, etc. defined in Article 31-4 (5); hereinafter the same shall apply in this paragraph) or a Subsidiary Bank, etc. (meaning a Subsidiary Bank, etc. defined in Article 31-4 (6); hereinafter the same shall apply in this paragraph) of a Financial Instruments Business Operator to submit reports or materials that will be helpful for understanding the business or property of the Financial

Instruments Business Operator and may also have the officials inspect the status of the business or property, or the books and documents or other articles of the Parent Bank, etc. or the Subsidiary Bank, etc. of the Financial Instruments Business Operator.

(Retention of Assets Within Japan)

Article 56-3 In addition to what is specified in Article 49-5, when the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may order a Financial Instruments Business Operator to retain the portion of its assets which is specified by a Cabinet Order within Japan.

(Supervision of a Financial Instruments Business Operator, etc. Who Is Not a Member, etc. of a Financial Instruments Exchange, etc.)

Article 56-4 (1) The Prime Minister shall supervise appropriately the business of a Financial Instruments Business Operator, etc. (with regard to Financial Instruments Business Operators, limited to those engaged in Type I Financial Instruments Business or Investment Management Business; hereinafter the same shall apply in this Article) who has not joined an Association (meaning an Authorized Financial Instruments Firms Association or Public Interest Corporation-Type Financial Instruments Firms Association prescribed in Article 78 (2); hereinafter the same shall apply in this Article) or who is not a member or Trading Participant (referred to as a "Member, etc." in the following paragraph) of a Financial Instruments Exchange, while considering the articles of incorporation and any other rules of the Association or Financial Instruments Exchange, so that such business does not harm the public interest or fail to sufficiently protect investors.

(2) In order to conduct supervision prescribed in the preceding paragraph, the Prime Minister may order a Financial Instruments Business Operator, etc. who has not joined an Association or who is not a Member, etc. of a Financial Instruments Exchange to prepare or change the rules which the Financial Instruments Business Operator, etc. or the Officers or employees thereof shall comply with (hereinafter referred to as "Internal Rules" in this Article), while considering the articles of incorporation and any other rules of the Association or Financial Instruments Exchange.

(3) A Financial Instruments Business Operator, etc. who is ordered to prepare or change the Internal Rules under the provisions of the preceding paragraph shall prepare or change the Internal Rules and obtain approval from the Prime Minister within 30 days.

(4) When a Financial Instruments Business Operator, etc. who has obtained approval under the preceding paragraph intends to change or abolish the

Internal Rules for which he/she had obtained said approval, he/she shall newly obtain approval from the Prime Minister.

(Hearing)

- Article 57 (1) When the Prime Minister intends to refuse registration under Article 29 or Article 33-2, authorization under Article 30 (1), or registration of change under Article 31 (4), he/she shall notify to that effect to the applicant or the Financial Instruments Business Operator, and have the officials conduct a hearing for the applicant or the Financial Instruments Business Operator.
- (2) When the Prime Minister intends to make disposition based on the provisions of Article 51, Article 51-2, Article 52 (1), Article 52-2 (1), Article 53, Article 54, or Article 56-3, he/she shall hold a hearing irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act.
- (3) When the Prime Minister has decided to grant or refuse registration under Article 29 or Article 33-2, authorization under Article 30 (1) or Article 31 (6), registration of change under Article 31 (4), approval under Article 35 (4), or approval under paragraph (3) or (4) of the preceding Article, attach conditions under the provisions of Article 30-2 (1), or make disposition based on the provisions of Article 51, Article 51-2, Article 52 (1) or (2), Article 52-2 (1) or (2), Article 53, Article 54, Article 56-3, or paragraph (2) of the preceding Article, he/she shall notify to that effect in writing to the applicant or the Financial Instruments Business Operator.

## **Section 5 Special Provisions for Foreign Business Operators**

### **Subsection 1 Foreign Securities Broker**

(Definitions)

Article 58 The term "Foreign Securities Broker" in this Section means a person other than Financial Instruments Business Operators, banks, Cooperative Structured Financial Institution and other financial institutions specified by a Cabinet Order, which is governed by the laws and regulations of a foreign state, and which engages in Securities-Related Business in a foreign state.

(Businesses Which Foreign Securities Broker May Conduct)

Article 58-2 A Foreign Securities Broker shall not conduct any acts listed in the items of Article 28 (8) to a person in Japan as the counterparty; provided, however, that this shall not apply to cases where a Foreign Securities Broker conducts said acts to a Financial Instruments Business Operator engaged in Securities-Related Business as the counterparty, or to any other cases specified by a Cabinet Order.

## Subsection 2 Permission of Part of Underwriting Business

(Permission of Part of Underwriting Business)

- Article 59 (1) Notwithstanding the provision of Article 29 and the preceding Article, a Foreign Securities Broker may, with the permission of the Prime Minister, participate in Wholesale Underwriting Contract (meaning the Wholesale Underwriting Contract prescribed in Article 21 (4); hereinafter the same shall apply in paragraph (1), item (vi), sub-item (f) of the following Article) and conduct other acts specified by a Cabinet Order in Japan, amongst its business of underwriting of Securities (hereinafter collectively referred to as the "Underwriting Business" in this Section).
- (2) The Prime Minister may attach conditions to the permission prescribed in the preceding paragraph.
- (3) The conditions under the preceding paragraph shall be within the minimum extent necessary for the public interest or protection of investors.
- (4) When the Prime Minister has decided to attach the conditions under the provision of paragraph (2), he/she shall notify to that effect to the applicant for permission in writing.

(Application of Permission for Part of Underwriting Business)

- Article 59-2 (1) A person who intends to obtain the permission set forth in paragraph (1) of the preceding Article shall submit an application for permission containing the following matters (when an applicant for permission is an individual, the matters listed in (iii) and (iv) are excluded) to the Prime Minister:
- (i) the trade name or name;
  - (ii) the address of head office or principal offices;
  - (iii) the amount of the stated capital or the total amount of contribution;
  - (iv) the title and the name of the Officer who has the authority of representation;
  - (v) the name, and the address, residence or other contact address in Japan of a person who will conduct acts pertaining to the application;
  - (vi) with regard to the Securities related to the acts pertaining to the application, the following matters which are being scheduled:
    - (a) the issuer or holder;
    - (b) the type;
    - (c) the volume and amount;
    - (d) the location for issuance or sales;
    - (e) the date of issuance or sales;
    - (f) other Managing Financial Instruments Business Operator for



Underwriting (meaning a Financial Instruments Business Operator who holds discussion with the issuer or holder of the Securities for fixing the contents of the Wholesale Underwriting Contract, upon conclusion of the Wholesale Underwriting Contract); and

- (vii) the amount to be underwritten by the applicant for permission.
- (2) The matters related to calculation of the amount of the stated capital or the total amount of contribution prescribed in item (iii) of the preceding paragraph shall be specified by a Cabinet Order.
- (3) The following documents shall be attached to the application of permission set forth in paragraph (1); provided, however, that with regard to the documents listed in item (i) or (iv), if the contents therein are the same as the attached documents submitted within one year prior to the date on which the application of permission set forth in paragraph (1) has been submitted, said documents may be substituted by a document containing the submission date of said prior documents and citing that said prior documents shall be referenced:
  - (i) documents containing the contents of business;
  - (ii) documents summarizing the Underwriting Business conducted in the latest one year;
  - (iii) a document with which the Officer having the authority of representation pledges that the applicant does not fall under any of Article 59-4 (1)(i) and (ii), and that no Officer falls under any of Article 29-4 (1)(ii)(a) to (g) inclusive (when the applicant for permission is an individual, a document with which said individual pledges that said individual does not fall under any of Article 59 -4(1)(i) and (ii) and Article 29-4 (1)(ii)(a) to (g) inclusive); and
  - (iv) the balance sheet and profit and loss statement for each business year ending on the latest one year.

(Criteria for Permission of Part of Underwriting Business)

Article 59-3 When an application for permission under Article 59 (1) is filed, the Prime Minister shall examine whether the application conforms to the criteria listed in the following:

- (i) the applicant has been continuously engaged in the same type of business as the business for which he/she intends to obtain permission, for a period longer than the period specified by a Cabinet Order in a foreign state;
- (ii) the applicant is a juridical person whose amount of the stated capital or the total amount of contribution is not less than the amount specified by a Cabinet Order as the amount necessary and appropriate for the public interests or protection of investors in light of the manner of business for which the applicant intends to obtain permission; and

(iii) the Net Assets prescribed in Article 29-4 (1)(v)(b) is not less than the amount specified by a Cabinet Order as prescribed in the preceding item.

(Refusal Requirement for Permission of Part of Underwriting Business)

Article 59-4 (1) The Prime Minister shall refuse permission when an applicant for permission falls under any of the following items, or an application for permission or documents to be attached to it contains a fake statement, or lacks a statement about important matters:

- (i) when the applicant for permission is a person who had his/her registration under Article 29 rescinded under the provision of Article 53 (3), had his/her permission under Article 59 (1) rescinded under the provision of paragraph (1) of the following Article, had his/her registration under Article 66 rescinded under the provision of Article 66-20 (1), or a person who had obtained a registration which is equivalent to the registration under Article 29 or Article 66 in the state where its head office is located (including permission and other administrative dispositions similar to such registration) and has had said registration rescinded under the laws and regulations of the foreign state which correspond to this Act, and for whom five years have not passed since the day of the rescission;
  - (ii) when the applicant for permission is a person who has been punished by a fine (including a punishment under the laws and regulations of a foreign state equivalent to this) for violating the provisions of this Act, the Act on Investment Trusts and Investment Corporations, the Commodity Exchange Act, the Act on Regulation of Business Pertaining to Commodity Investment, the Act on Controls, etc. on Money Lending or the Act on Regulation of Receiving of Capital Subscription, Deposits, and Interest Rates, etc., or the laws and regulations of a foreign state equivalent to these Acts, and for whom five years have not passed since the day when the execution of the punishment terminated or he/she became free from the execution of the punishment; and
  - (iii) when the applicant for permission is a juridical person any of whose Officers (including those who are found to have the same or higher authority than an officer over the juridical person, irrespective of their title names; hereinafter the same shall apply in paragraph (1), item (iii) of the following Article, Article 60-3 (1) and Article 60-8 (2)) or a Representative Person in Japan (meaning a representative person in Japan of a Foreign Securities Broker prescribed in Article 817 (1) of the Companies Act; hereinafter the same shall apply in this Section) falls under any of the persons listed in Article 29-4 (1)(ii)(a) to (g) inclusive.
- (2) When the Prime Minister intends to refuse permission under Article 59 (1), he/she shall notify to that effect to the applicant for permission and have the

officials conduct a hearing for the applicant for permission.

- (3) The Prime Minister shall, when he/she has decided to grant or refuse to grant permission under Article 59 (1), notify to that effect to the applicant for permission in writing.

(Rescission of Permission of Part of Underwriting Business)

Article 59-5 (1) When a Foreign Securities Broker which has obtained the permission under Article 59 (1) falls under any of the following items, the Prime Minister may rescind the permission:

- (i) when the Foreign Securities Broker comes to fall under paragraph (1), item (i) or (ii) of the preceding Article;
  - (ii) when a Foreign Securities Broker has violated laws and regulations (including the laws and regulations of a foreign state) or dispositions given by government agencies based on said laws and regulations, or the conditions attached to said permission or to the Registration, etc. granted in the state where its head office is located (meaning a registration equivalent to the registration under Article 29 (including a permission or any other administrative dispositions similar to said registration; hereinafter the same shall apply in Article 60-3 (1)(i)(b) and (g)), and when it is found necessary and appropriate for the public interest or protection of investors; or
  - (iii) when an Officer or a Representative Person in Japan of said Foreign Securities Broker (in cases where said Foreign Securities Broker is an individual, said individual) comes to fall under any of the persons listed in Article 29-4 (1)(ii)(a) to (g) or has committed any acts set forth in the preceding item, when it is found that there are risks that the acts pertaining to said permission may not be fairly conducted.
- (2) When the Prime Minister intends to rescind the permission under Article 59 (1) under the provision of the preceding paragraph, he/she shall notify to that effect in writing to the Foreign Securities Broker.
- (3) When the Prime Minister has rescinded the permission under Article 59 (1) under the provision of paragraph (1), he/she shall give public notice to that effect, pursuant to the provisions of a Cabinet Office Ordinance.

(Regulations of Underwriting Business)

Article 59-6 The provisions of Article 36, Article 36-3, Article 36-4 (1), Article 38 (limited to the parts pertaining to items (i), (ii) and (vi)) and Article 44-4 shall apply mutatis mutandis to the Underwriting Business of the Foreign Securities Broker for which the permission under Article 59 (1) has been obtained.

### **Subsection 3 Permission of Transaction-at-Exchange Operation**

(Permission of Transaction-at-Exchange Operation)

- Article 60 (1) Notwithstanding the provisions of Article 29 and Article 58-2, a Foreign Securities Broker may, with the permission of the Prime Minister, engage in sales and purchase of Securities and Market Transactions of Derivatives on a Financial Instruments Exchange (including the cases where said Foreign Securities Broker conducts these transactions on behalf of the person who provides Brokerage for Clearing of Securities, etc. (limited to those pertaining to Article 2 (27)(i); hereinafter the same shall apply in this paragraph) as the entrusting person of Brokerage for Clearing of Securities, etc.; these transactions are hereinafter collectively referred to as the "Transaction at Exchange") in the course of trade (hereinafter referred to as the "Transaction-at-Exchange Operation" in this Subsection)
- (2) The Prime Minister may attach conditions to the permission under the preceding paragraph.
- (3) The conditions set forth in the preceding paragraph shall be within the minimum extent necessary for the public interest and protection of investors.
- (4) When the Prime Minister has decided to attach the conditions under the provision of paragraph (2), he/she shall notify to that effect to the applicant of permission in writing.

(Application of Permission for Transaction-at-Exchange Operation)

- Article 60-2 (1) A person who intends to obtain permission under paragraph (1) of the preceding Article shall designate a Representative Person in Japan, and submit an application for permission containing the following matters to the Prime Minister:
- (i) the trade name and location of its head office;
- (ii) the amount of the stated capital;
- (iii) the title and name of an Officer (including a representative person in the state (excluding the state where the head office is located) where business offices or offices for Transaction-at-Exchange Operation (hereinafter referred to as the "Transaction-at-Exchange Office", and said representative person shall be hereinafter referred to as the "Representative Person in State Where Transaction-at-Exchange Office is Located" in paragraph (1), item(i), sub-item (j) of the following Article)) are located;
- (iv) the name of the Transaction-at-Exchange Office and the state and place where it is located;
- (v) the type of the person's other business(es), if any;
- (vi) the trade name or the name of the Establisher of a Foreign Financial Instruments Exchange Market (meaning the person who establishes a Foreign Financial Instruments Exchange Market; hereinafter the same shall apply in paragraph (1), item (i), sub-item (d) and item (iii) of the following),

- of which the head office and the Transaction-at-Exchange Office are members;
- (vii) the location of the office or other facilities in Japan, if any;
  - (viii) the name and address in Japan of the Representative Person in Japan;
  - (ix) the trade name or the name of a Financial Instruments Exchange in which the applicant becomes a Trading Participant; and
  - (x) other matters specified by a Cabinet Office Ordinance.
- (2) The matters related to calculation of the amount of the stated capital prescribed in item (ii) of the preceding paragraph shall be specified by a Cabinet Order.
- (3) The following documents shall be attached to the application for permission under paragraph (1):
- (i) a document to pledge that the applicant does not fall under any of the categories listed in paragraph (1), item (i), sub-items (a) to (h) inclusive, and sub-item (j) of the following Article;
  - (ii) a document containing the contents and methods of Transaction-at-Exchange Operation conducted at the Transaction-at-Exchange Office as specified by a Cabinet Office Ordinance;
  - (iii) the articles of incorporation and the certificate of registered matters of the applicant for permission (including the documents equivalent thereto), and the document containing the contents and methods of the business;
  - (iv) the certificate of registered matters 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 a Cabinet Office Ordinance.

(Refusal Requirement for Permission of Transaction-at-Exchange Operations)  
Article 60-3 (1) The Prime Minister shall refuse permission when the application for permission under the provision of paragraph (1) of the preceding Article falls under any of the following items:

- (i) when the applicant for permission falls under any of the following:
  - (a) when the applicant for permission is not a juridical person of the same type as a company with board of directors;
  - (b) when the applicant for permission has not obtained Registration, etc. in any state where its head office or Transaction-at-Exchange Offices is located;
  - (c) when the applicant for permission is a person who has not continuously conducted the business pertaining to the same type of transactions as the Transaction-at-Exchange in any of its Transaction-at-Exchange Offices, for a period longer than the period specified by a Cabinet Order (excluding the

- cases where the applicant for permission falls under the cases specified by a Cabinet Order);
- (d) when any Transaction-at-Exchange Office has not been a member of an Establisher of a Foreign Financial Instruments Exchange Market of the state where said Transaction-at-Exchange Office (limited to those which have obtained the same kind of license as the license under Article 80 (1), or the permission or other administrative dispositions similar thereto in said state; hereinafter the same shall apply in item (iii)) is located;
  - (e) when the applicant for permission is a juridical person whose amount of the stated capital prescribed in paragraph (1), item (ii) of the preceding Article is less than the amount specified by a Cabinet Order as necessary and appropriate for the public interest or protection of investors;
  - (f) when the applicant for permission is a juridical person whose Net Assets of a juridical person is less than the amount prescribed in sub-item (e);
  - (g) when the applicant for permission is a person who had his/her registration under Article 29 or Article 33-2 rescinded under the provision of Article 52 (1) or 52-2(1), had his/her permission under Article 60 (1) rescinded under the provision of Article 60-8 (1), had his/her registration under Article 66 rescinded under the provision of Article 66-20 (1), or a person who had obtained a Registration, etc. in the state where its head office or Transaction-at-Exchange Office is located and has had said Registration, etc. rescinded under laws and regulations of the foreign state which correspond to this Act, and for whom five years have not passed since the day of the rescission;
  - (h) when the applicant for permission is a person who has been punished by a fine (including a punishment under the laws and regulations of a foreign state equivalent to this) for violating provisions of the Acts prescribed in Article 59-4 (1)(ii) or laws and regulations of a foreign state equivalent thereto, and for whom five years have not passed since the day when the execution of the punishment terminated or he/she became free from the execution of the punishment;
  - (i) when the applicant for permission is a person whose other businesses are found to be against the public interest;
  - (j) when the applicant for permission is a juridical person any of whose Officers, a Representative Person in State Where Transaction-at-Exchange Office is Located or a Representative Person in Japan falls under any categories listed in of Article 29-4 (1) (ii) (a) to (g); or
  - (k) when the applicant for permission is a person who does not have a personnel structure sufficient to conduct Transaction-at-Exchange Operation in an appropriate manner.
- (ii) when the Foreign Financial Instruments Regulatory Authority set forth in

- Article 189 (1) of a state where the head office or Transaction-at-Exchange Office of the applicant for permission is located has not made the assurance prescribed in Article 189 (2)(i);
- (iii) when the Establisher of a Foreign Financial Instruments Exchange Market to which the Transaction-at-Exchange Office of the applicant for permission is a member and the Financial Instruments Exchange in which the applicant for permission becomes the Trading Participant has not concluded any agreement concerning provision of information, or in any other cases where other measures for exercising by said Financial Instruments Exchange of its authorities vested under this Act and the orders issued under this Act, or its articles of incorporation or other rules have not been taken; or
- (iv) when an application for permission or documents to be attached to it contains a fake statement, or lacks a statement about important matters.
- (2) When the Prime Minister intends to refuse permission under Article 60 (1), he/she shall notify to that effect to the applicant for permission and have the officials conduct a hearing for the applicant for permission.
- (3) The Prime Minister shall, when he/she has decided to grant or refuse to grant permission under Article 60 (1), notify to that effect to the applicant for permission in writing.

(Acting Representative Person)

- Article 60-4 (1) When there is any vacancy in the office of the Representative Person in Japan of a Foreign Securities Broker which has obtained the permission under Article 60 (1) (hereinafter referred to as an "Authorized Transaction-at-Exchange Operator"), if the Prime Minister finds it necessary, he/she may appoint a person who shall temporarily perform the duty of the Representative Person in Japan (referred to as the "Acting Representative Person" in the following paragraph). In this case, the Authorized Transaction-at-Exchange Operator shall conduct the registration for such appointment at the domicile of the Representative Person in Japan which shall be the domicile before the time when the office of the Representative Person becomes vacant.
- (2) When the Prime Minister has appointed an Acting Representative Person under the provision of the preceding paragraph, he/she may order the Authorized Transaction-at-Exchange Operator to pay a reasonable amount of remuneration to the Acting Representative Person.

(Notification, etc. of Changes of Basic Matters)

- Article 60-5 (1) When there is any change in the matters listed in the items of Article 60-2 (1), an Authorized Transaction-at-Exchange Operator shall notify to that effect to the Prime Minister within two weeks from the day of change.
- (2) When there is any change in the contents or methods of the business of the

Transaction-at-Exchange Operation contained in the documents listed in Article 60-2 (3)(ii), or in other cases specified by a Cabinet Office Ordinance, an Authorized Transaction-at-Exchange Operator shall notify to that effect to the Prime Minister without delay, pursuant to the provisions of a Cabinet Office Ordinance.

(Report, etc. on Business)

Article 60-6 The provisions of Article 46-2, Article 46-3 and Article 49-3 shall apply mutatis mutandis to the Transaction-at-Exchange Operation of Authorized Transaction-at-Exchange Operators. In this case, the term "for each business year" in Article 46-3 (1) shall be deemed to be replaced with "for every period from April 1 to March 31 of the following year" and the term "within three months after the end of each business year" in said paragraph shall be deemed to be replaced with "within a time period specified by a Cabinet Order after elapse of said time period"; and the term "for each business year" in Article 49-3 (1) shall be deemed to be replaced with "for every period from April 1 to March 31 of the following year"; and the term "relevant business year" in the same paragraph shall be deemed to be replaced with the "relevant time period".

(Effect of Permission in Case of Dissolution, etc. of Authorized Transaction-at-Exchange Operator)

Article 60-7 When an Authorized Transaction-at-Exchange Operator has been dissolved, or when the Transaction-at-Exchange Operation has been abolished, the permission under Article 60 (1) shall cease to be effective. In this case, the Representative Person in Japan or the former representative person in Japan shall notify to that effect to the Prime Minister within thirty days from the date of dissolution or abolition.

(Dispositions for Purpose of Supervision of Authorized Transaction-at-Exchange Operator)

Article 60-8 (1) When an Authorized Transaction-at-Exchange Operator falls under any of the cases specified in the following items, the Prime Minister may rescind the permission granted to said Authorized Transaction-at-Exchange Operator under Article 60 (1), order suspension of whole or part of its Transaction-at-Exchange Operation specifying a period of suspension not exceeding six months, order change of methods of the Transaction-at-Exchange Operation or other matters necessary for supervision:

(i) when an Authorized Transaction-at-Exchange Operator has come to fall under Article 60-3 (1)(i), sub-items (a) or (b), or sub-items (d) to (f) inclusive, or sub-item (g) (limited to the part pertaining to the provisions of laws and regulations of foreign states), or sub-item (h), (i) or (k), or item (ii) or (iii);



- (ii) when the Authorized Transaction-at-Exchange Operator has obtained the permission set forth in Article 60 (1) by wrongful means;
  - (iii) when an Authorized Transaction-at-Exchange Operator has violated the laws and regulations (including the laws and regulations of foreign states) or the dispositions given by government agencies based on laws and regulations, in relation to the Transaction-at-Exchange Operation or any business incidental thereto (excluding the cases where an Authorized Transaction-at-Exchange Operator has violated the provision of Article 46-6 (2));
  - (iv) when there is a risk of insolvency in light of status of the operation or property; or
  - (v) when the conditions attached to the permission under Article 60 (1) have been violated.
- (2) When the Representative Person in Japan of an Authorized Transaction-at-Exchange Operator (in cases where there is any office or other facilities in Japan, including an Officer stationed at said office) comes to fall under any of the cases set forth in Article 29-4 (1) (ii), sub-items (a) to (g) inclusive, or has conducted an act which falls under item (iii) or (v) of the preceding paragraph, the Prime Minister may order said Authorized Transaction-at-Exchange Operator to dismiss or remove the Representative Person in Japan.
- (3) When the Prime Minister has rescinded the permission granted under Article 60 (1) under the provision of paragraph (1), or has ordered suspension of all or part of business, he/she shall give public notice to that effect, pursuant to the provisions of a Cabinet Office Ordinance.
- (4) When the Prime Minister has decided to issue the dispositions pursuant to the provision of paragraph (1) or (2), he/she shall notify to that effect to the Authorized Transaction-at-Exchange Operator in writing.
- (5) When the Prime Minister intends to issue the dispositions pursuant to the provision of paragraph (1) or (2), he/she shall hold a hearing irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act.

(Rescission of Permission in Case of Suspension of Transaction-at-Exchange Operation)

Article 60-9 (1) When an Authorized Transaction-at-Exchange Operator has not resumed its business within three months since the day when the Authorized Transaction-at-Exchange Operator was permitted to conduct the Transaction-at-Exchange Operation, or has continued to suspend its business for three months or more without any justifiable grounds, the Prime Minister may rescind the permission of said Authorized Transaction-at-Exchange Operator granted under Article 60 (1).

- (2) When the Prime Minister has decided to issue the disposition pursuant to the

provision of the preceding paragraph, he/she shall notify to that effect to the Authorized Transaction-at-Exchange Operator in writing.

(Completion of the Remaining Business)

Article 60-10 Even when an Authorized Transaction-at-Exchange Operator has been dissolved or, when the Transaction-at-Exchange Operation has been abolished, said Authorized Transaction-at-Exchange Operator shall be deemed to still have been granted the permission under Article 60 (1), within the scope of the purpose to complete the Transaction-at-Exchange.

(Order for Production of Report and Inspection)

Article 60-11 When the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may order an Authorized Transaction-at-Exchange Operator, a person who conducts transactions with an Authorized Transaction-at-Exchange Operator or a person who is entrusted with certain services from the Authorized Transaction-at-Exchange Operator to submit reports or materials that will be helpful for understanding the Transaction-at-Exchange Operation or property of said Authorized Transaction-at-Exchange Operator, or have the officials inspect the status of the Transaction-at-Exchange Operation or property of said Authorized Transaction-at-Exchange Operator, or its books and documents or other articles (with regard to the person who is entrusted with the service from the Authorized Transaction-at-Exchange Operator, the inspection shall be limited to what is necessary to understand the status of the business or property of the Authorized Transaction-at-Exchange Operator).

(Request for Investigation by a Court)

Article 60-12 (1) In liquidation proceedings, bankruptcy proceedings, rehabilitation proceedings, reorganization proceedings or recognition and assistance proceedings in Japan for an Authorized Transaction-at-Exchange Operator (including those who shall be deemed to have been granted the permission under Article 60 (1), as prescribed in Article 60-10), the court may request an opinion of, or inspection or investigation by, the Prime Minister.

(2) When the Prime Minister finds it necessary, he/she may state his/her opinions to the court pertaining to the procedure prescribed in the preceding paragraph.

(3) The provision of the preceding Article shall apply mutatis mutandis to cases where the Prime Minister has received a request for inspection or investigation from the court under the provision of paragraph (1).

(Regulations on Transaction-at-Exchange Operation)

Article 60-13 The provisions of Article 36, Article 36-3, Article 38 (limited to the

part pertaining to item (vi)) and Article 40 (limited to the part pertaining to item (ii)) shall apply mutatis mutandis to the Transaction-at-Exchange Operation of an Authorized Transaction-at-Exchange Operator.

#### **Subsection 4 Person Who Conducts Investment Advisory Business or Investment Management Business in Foreign State**

- Article 61 (1) A juridical person established under the laws and regulations of a foreign state or an individual domiciled in a foreign state which is engaged in the Investment Advisory Business in a foreign state (excluding persons registered under Article 29) may, notwithstanding the provision of said Article, perform the Investment Advisory Business only for the Financial Instruments Business Operators engaged in the Investment Management Business or for other persons specified by a Cabinet Order.
- (2) A juridical person established under the laws and regulations of a foreign state which is engaged in the Investment Management Business in a foreign state (limited to the business to perform the act listed in Article 2 (8) (xii) based on the Discretionary Investment Contract; hereinafter the same shall apply in this paragraph) (excluding persons registered under Article 29), notwithstanding the provision of said Article, shall perform the Investment Management Business only for the Financial Instruments Business Operators engaged in the Investment Management Business or for other persons specified by a Cabinet Order.
- (3) A juridical person established under the laws and regulations of a foreign state which is engaged in the Investment Management Business in Japan (limited to the business to perform the act listed in Article 2 (8)(xv)) (excluding persons registered under Article 29) may, notwithstanding the provision of the same Article, perform the Investment Management Business (limited to the business specified in Article 2 (8)(xv)) only for a Financial Instruments Business Operator engaged in the Investment Management Business or for other persons specified by a Cabinet Order. In this case, the provision of Article 63 (2) shall not apply.

#### **Subsection 5 Establishment of an Institution for Collecting Information**

Article 62 (1) A Foreign Securities Broker (including those whose business is closely related to Securities-Related Business and those which are specified by a Cabinet Office Ordinance; hereinafter the same shall apply in this Article) or a person who conducts Investment Advisory Business or Investment Management Business in a foreign state (excluding persons registered under

Article 29 or Article 33-2; hereinafter the same shall apply in this Article) shall, when it intends to establish a representative office or any other institution in Japan for the purposes of collection or provision of information regarding the securities market and the market of financial indicator of the Securities, or to conduct other business related to financial instruments business, etc. which are specified by a Cabinet Office Ordinance (including the cases where said Foreign Securities Broker intends to conduct said business in the institution established for other purposes), notify the contents of said business, the location of said facility and other matters specified by a Cabinet Office Ordinance to the Prime Minister in advance.

- (2) When the Prime Minister finds it necessary and appropriate for the public interests or protection of investors, he/she may order a Foreign Securities Broker or a person who conducts Investment Advisory Business or Investment Management Business in a foreign state to submit a report or materials concerning the business set forth in the preceding paragraph.
- (3) When a Foreign Securities Broker or a person who conducts the Investment Advisory Business or Investment Management Business in a foreign state has abolished the institution or the business set forth in paragraph (1), or when it has changed the matters notified under the provisions of said paragraph, it shall notify to that effect to the Prime Minister without delay.

#### **Section 6 Special Provisions Concerning Specially Permitted Businesses for Qualified Institutional Investor, etc.**

(Specially Permitted Businesses for Qualified Institutional Investor, etc.)

Article 63 (1) Articles 29 and 33-2 shall not apply to acts listed in the following items:

- (i) a Private Placement of rights specified in Article 2 (2)(v) or (vi) from Qualified Institutional Investors, etc. (meaning persons other than Qualified Institutional Investors specified by a Cabinet Order (insofar as the number of such persons does not exceed the limit specified by the Cabinet Order) and Qualified Institutional Investors; hereinafter the same shall apply in this Article) who do not fall under any of the following (limited to Private Placement specified by a Cabinet Order as being not likely to be acquired by persons other than Qualified Institutional Investors, etc. (limited to those who do not fall under any of the following)):
  - (a) a Specific Purpose Company (meaning those provided by Article 2 (3) of the Act on Securitization of Assets), if Asset Backed Securities (meaning those provided by Article 2 (11) of said Act) issued by it are held by persons other than Qualified Institutional Investors;
  - (b) a business operator or a person intending to be a business operator of an

- Anonymous Partnership Agreement (meaning those provided by Article 535 of the Commercial Code) which involves rights specified in Article 2 (2)(v) or (vi) and whose partners include a person or persons other than Qualified Institutional Investors; and
- (c) a person who is specified by a Cabinet Office Ordinance as a person equivalent to a person listed in (a) or (b).
- (ii) an act of investing money (including that specified by a Cabinet Order as being similar to money) invested or contributed by Qualified Institutional Investors, etc. who have rights specified in Article 2 (2)(v) or (vi) (limited to rights involving Invested Businesses (meaning those provided by Article 2 (2)(v)) in which the holders of the rights are comprised exclusively of Qualified Institutional Investors, etc. (limited to those not falling under any of (a) to (c) in the preceding item)), as specified in Article 2 (8)(xv).
- (2) A person who engages in Specially Permitted Businesses for Qualified Institutional Investor, etc. (meaning performing in the course of trade any of the acts listed in the items in the preceding paragraph; the same shall apply hereinafter) (excluding Financial Instruments Business Operators, etc.) shall, in advance, notify the Prime Minister of the following matters, pursuant to the provisions of a Cabinet Office Ordinance:
- (i) the trade name or name;
- (ii) the amount of the stated capital or total amount of contribution, for a juridical person;
- (iii) the names of Officers, for a juridical person;
- (iv) the names of employees, if there is an employee or employees specified by a Cabinet Order;
- (v) the Category of Business (meaning the Category of Business in terms of the acts listed in the items of the preceding paragraph);
- (vi) the name and location of the principal business office or principal office;
- (vii) the type of the person's other business(es), if any; and
- (viii) other matters specified by a Cabinet Office Ordinance.
- (3) A person who makes notification under the preceding paragraph (hereinafter referred to as a "Specially Permitted Business Notifying Person") shall notify the Prime Minister of any change in the matters listed in the items of the preceding paragraph without delay.
- (4) When a Specially Permitted Business Notifying Person engages in a Specially Permitted Businesses for Qualified Institutional Investor, etc. the Specially Permitted Business Notifying Person shall be deemed to be a Financial Instruments Business Operator and Articles 38 (limited to the part relating to item (i) thereof) and 39 and the provisions of Chapter VIII related to these Articles shall apply to him/her.
- (5) When a Specially Permitted Business Notifying Person's business commenced

under item (ii) of paragraph (1) as a Specially Permitted Businesses for Qualified Institutional Investor, etc. has come to no longer satisfy the requirement to be regarded as a Specially Permitted Businesses for Qualified Institutional Investor, etc. (limited to cases where a person other than Qualified Institutional Investors (limited to Qualified Institutional Investors not falling under any of (a) to (c) in item (i) of said paragraph) come to hold the right prescribed in item (ii) of said paragraph; the same shall apply in the following paragraph), the Prime Minister may order the Specially Permitted Business Notifying Person to take necessary measures, designating a period which shall not be longer than three months.

(6) A Specially Permitted Business Notifying Person shall, when his/her business commenced under item (ii) of paragraph (1) as a Specially Permitted Businesses for Qualified Institutional Investor, etc. has come to no longer satisfy the requirement to be regarded as a Specially Permitted Businesses for Qualified Institutional Investor, etc., notify the Prime Minister to that effect without delay.

(7) The Prime Minister may, when he/she finds that it is particularly necessary for confirming the state of a Specially Permitted Business Notifying Person's business, require of the Specially Permitted Business Notifying Person, persons who have made a deal with the Specially Permitted Business Notifying Person or persons who have been entrusted with the business of the Specially Permitted Business Notifying Person, the submission of a report or materials that will be helpful in relation to notification under paragraph (2), within the limit necessary.

(8) The Prime Minister may, when he/she finds that it is particularly necessary for confirming the state of a Specially Permitted Business Notifying Person's business which involves an act specified under item (ii) of paragraph (1), within the limit necessary, have his/her official enter the business office, office or other establishment of the Specially Permitted Business Notifying Person or persons who have been entrusted with the business of the Specially Permitted Business Notifying Person, inquire about the notification under paragraph (2), or inspect documents or other articles (limited to those necessary in relation to the notification under said paragraph) held by the Specially Permitted Business Notifying Person.

(Succession of Specially Permitted Business Notifying Person's Position)

Article 63-2 (1) When a Specially Permitted Business Notifying Person has transferred the entire businesses pertaining to Specially Permitted Businesses for Qualified Institutional Investor, etc., or a merger, split (limited to those where the entire businesses are succeeded to) or inheritance has taken place with regard to a Specially Permitted Business Notifying Person, a person who

has accepted the entire businesses, a juridical person surviving the merger, a juridical person established upon the merger, or a juridical person or heir who has succeeded to the entire businesses upon the split (when two or more heirs and the person to succeed to said businesses have been determined through conference among them, said person) shall succeed to the Specially Permitted Business Notifying Person's position except in cases where said person is a Financial Instruments Business Operator, etc.

- (2) A person who has succeeded to a Specially Permitted Business Notifying Person's position under the provisions of the preceding paragraph shall notify the Prime Minister to that effect without delay.
- (3) When a Specially Permitted Business Notifying Person has come to fall under any of the following items, he/she shall notify the Prime Minister to that effect without delay:
  - (i) when he/she has suspended or resumed Specially Permitted Businesses for Qualified Institutional Investor, etc.;
  - (ii) when he/she has abolished Specially Permitted Businesses for Qualified Institutional Investor, etc.; or
  - (iii) when he/she falls under any other cases specified by a Cabinet Office Ordinance.
- (4) When a juridical person that is a Specially Permitted Business Notifying Person has dissolved on grounds other than a merger, the liquidator (when the dissolution has been brought about by a decision of commencement of bankruptcy proceedings, the bankruptcy trustee) shall notify the Prime Minister to that effect without delay.

(When a Financial Instruments Business Operator, etc. Engages in Specially Permitted Businesses for Qualified Institutional Investor, etc.)

Article 63-3 (1) A Financial Instruments Business Operator, etc. who engages in Specially Permitted Businesses for Qualified Institutional Investor, etc. (excluding those who have obtained registration under Article 29 or Article 33-2 for engaging in acts listed in the items of Article 63 (1) in the course of trade) shall notify the Prime Minister to that effect and of the Category of Business prescribed in Article 63 (2)(v) in advance, pursuant to the provisions of a Cabinet Office Ordinance.

- (2) The provisions of Article 63 (5) and (6) and paragraph (3) of the preceding Article shall be applied mutatis mutandis to a Financial Instruments Business Operator, etc. who made a notification under the provisions of the preceding paragraph. In this case, the term "a Specially Permitted Business Notifying Person" in these provisions shall be deemed to be replaced with "a Financial Instruments Business Operator, etc." and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

(3) When a Financial Instruments Business Operator, etc. engages in businesses listed in the following items, the provision of said respective items shall not be applied.

(i) businesses to conduct acts listed in Article 63 (1)(i): the provision of Section 2, Subsection 1 (excluding Article 38 (limited to the part pertaining to item (i)) and Article 39); and

(ii) businesses to conduct acts listed in Article 63 (1)(ii): the provision of Section 2, Subsection 1 (excluding Article 38 (limited to the part pertaining to item (i)) and Article 39) and Subsection 3.

(Delegation to Cabinet Order)

Article 63-4 In addition to what is provided in this Section, procedures of notification pertaining to Specially Permitted Businesses for Qualified Institutional Investor, etc. and other necessary matters concerning application of the provision of this Section shall be specified by a Cabinet Order.

### **Section 7 Sales Representatives**

(Registration of Sales Representatives)

Article 64 (1) A Financial Instruments Business Operator, etc. shall have persons who conduct the following acts on his/her behalf among his/her Officers and employees (hereinafter referred to as a "Sales Representative") registered in the Registry of Sales Representatives to be equipped in a place specified by a Cabinet Office Ordinance (hereinafter referred to as the "Registry"), with their names, birth dates, and other matters specified by a Cabinet Office Ordinance, irrespective of their titles such as solicitor, sales person, agent or others:

(i) the following acts pertaining to Securities (excluding rights listed in the items of Article 2 (2) that shall be deemed to be Securities under the provisions of said paragraph):

(a) acts listed in Article 2 (8)(i) to (iii), item (v), item (viii), and item (ix); and

(b) the following acts:

1. solicitation for application for sales or purchase, or intermediary, brokerage (excluding Brokerage for Clearing of Securities, etc.) or agency service thereof;
2. solicitation for application for Market Transactions of Derivatives or Foreign Market Derivatives Transactions, or intermediary, brokerage (excluding Brokerage for Clearing of Securities, etc.) or agency service thereof; and
3. solicitation for the entrustment of Market Transactions of Derivatives or Foreign Market Derivatives Transactions.

(ii) the following acts:



- (a) acts listed in Article 2 (8)(iv), (vi), and (x); and
  - (b) solicitation for application for Over-the-Counter Transactions of Derivatives, etc.
  - (iii) in addition to what is listed in the preceding two items, acts specified by a Cabinet Order.
- (2) A Financial Instruments Business Operator, etc. shall not have a person other than those registered under the preceding paragraph conduct Duties of Sales Representatives (meaning acts listed in the items of said paragraph; the same shall apply hereinafter).
- (3) A Financial Instruments Business Operator, etc. who intends to obtain registration under the provisions of paragraph (1) shall submit a written application for registration containing the following matters to the Prime Minister:
- (i) the applicant's trade name or name;
  - (ii) the name of the representative person when an applicant is a juridical person;
  - (iii) the following matters concerning a Sales Representative pertaining to the application for registration:
    - (a) the name and birth date;
    - (b) whether the person is an Officer or an employee;
    - (c) whether the person has conducted Duties of Sales Representatives, and for those who have conducted Duties of Sales Representatives, trade name or name of the Financial Instruments Business Operator, etc. or Financial Instruments Intermediary Service Provider to which they belonged and the period during which they conducted such business;
    - (d) whether the person has conducted Financial Instruments Intermediary Service, and for those who have conducted Financial Instruments Intermediary Service, the period during which they conducted such business; and
  - (iv) other matters specified by a Cabinet Office Ordinance.
- (4) The resume of the Sales Representative pertaining to the registration and other documents specified by a Cabinet Office Ordinance shall be attached to the written application for registration set forth in the preceding paragraph.
- (5) When an application for registration set forth in paragraph (3) has been filed, the Prime Minister shall immediately register the matters prescribed in paragraph (1) in the Registry, except when he/she refuses the registration under the provisions of paragraph (1) of the following Article.
- (6) When the Prime Minister has made registration under the provisions of paragraph (1), he/she shall notify the applicant to that effect in writing.

(Refusal of Registration)

- Article 64-2 (1) The Prime Minister shall refuse registration when the Sales Representative pertaining to application for the registration falls under any of the following items, or a written application for registration or documents attached thereto contains fake statement or lacks statement of material fact:
- (i) persons listed in Article 29-4 (1)(ii)(a) to (g);
  - (ii) a person who had his/her registration as a Sales Representative rescinded under the provisions of Article 64-5 (1), and for whom five years have not passed since the date of the rescission;
  - (iii) a person who has been registered as a Sales Representative belonging to a Financial Instruments Business Operator, etc. or Financial Instruments Intermediary Service Provider other than the applicant; or
  - (iv) a person who has been registered under the provisions of Article 66.
- (2) When the Prime Minister intends to refuse registration under paragraph (1) of the preceding Article, he/she shall notify the applicant and have his/her official conduct a hearing for said applicant.
- (3) When the Prime Minister has decided to refuse registration under paragraph (1) of the preceding Article, he/she shall notify the applicant to that effect in writing.

(Authority of a Sales Representative)

- Article 64-3 (1) A Sales Representative shall be deemed to have the authority to conduct any extra-judicial acts concerning acts listed in the items of Article 64 (1) on behalf of the Financial Instruments Business Operator, etc. to which he/she belongs.
- (2) The provision of the preceding paragraph shall not apply to cases where the other party had known of such authority.

(Notification of Change, etc. of Registered Matters)

- Article 64-4 When a fact falling under any of the following items emerges with regard to a Sales Representative for whom a Financial Instruments Business Operator, etc. has obtained registration under the provisions of Article 64 (1), he/she shall notify the Prime Minister to that effect without delay:
- (i) when any change has occurred in matters listed in Article 64 (3)(iii)(a) or (b);
  - (ii) when the person has come to fall under any of Article 29-4 (1)(ii)(a) to (g);  
or
  - (iii) when the person has stopped conducting Duties of Sales Representatives due to retirement or other reasons.

(Disposition Rendered to a Sales Representative for Purpose of Supervision)

- Article 64-5 (1) In cases where a registered Sales Representative falls under any

of the following items, the Prime Minister may rescind his/her registration or order suspension of his/her business by specifying a period not exceeding two years:

- (i) when the person has come to fall under any of Article 29-4 (1)(ii)(a) to (g), or is found to have already fallen under any of the items of Article 64-2 (1) at the time of registration;
  - (ii) when the person has violated laws and regulations concerning business to conduct acts listed in the items of Article 64 (1) among Financial Instruments Business (Registered Financial Institution Business for Registered Financial Institutions) and its accompanying business, or the person is found to have conducted extremely inappropriate acts concerning other Duties of Sales Representatives; or
  - (iii) when the person has had his/her registration rescinded under the provisions of item (iii) of the following Article during the last five years, and it is found that the acts he/she conducted during the period while the registration was in effect (limited to acts during said last five years) fell under the preceding item.
- (2) When the Prime Minister intends to render a disposition pursuant to the provisions of the preceding paragraph, he/she shall hold a hearing, irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act.
- (3) When the Prime Minister decides to render a disposition pursuant to the provisions of paragraph (1), he/she shall notify the applicant to that effect in writing.

(Deletion of Registration)

Article 64-6 In the following cases, the Prime Minister shall delete registration concerning a Sales Representative from the Registry:

- (i) when the Prime Minister has rescinded registration of the Sales Representative under the provisions of paragraph (1) of the preceding Article;
- (ii) when a Financial Instruments Business Operator, etc. to which the Sales Representative belongs has dissolved or abolished business to conduct acts listed in the items of Article 64 (1) among Financial Instruments Business (Registered Financial Institution Business for Registered Financial Institutions);
- (iii) when it is confirmed that the person stopped conducting Duties of Sales Representatives due to retirement or other reason; and
- (iv) in addition to what is listed in the preceding three items, cases specified by a Cabinet Office Ordinance.

(Delegation of Registration Work)

- Article 64-7 (1) The Prime Minister may have an Association (meaning Authorized Financial Instruments Firms Associations or Public Interest Corporation-Type Financial Instruments Firms Associations prescribed in Article 78 (2); hereinafter the same shall apply in this Section) conduct work concerning 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) that pertains to Sales Representatives of a Financial Instruments Business Operator, etc. belonging to said Association pursuant to the provisions of a Cabinet Office Ordinance.
- (2) The Prime Minister may designate one Association and have it conduct Registration Work (excluding work pertaining to Article 64-5) pertaining to Sales Representatives of a Financial Instruments Business Operator, etc. that does not belong to any Association pursuant to the provisions of a Cabinet Office Ordinance.
- (3) When the Prime Minister has decided to have an Association conduct Registration Work under the provisions of the preceding two paragraphs, he/she shall not conduct said Registration Work.
- (4) When an Association has decided to conduct Registration Work under the provisions of paragraph (1) or (2), it shall specify matters pertaining to registration of Sales Representatives in its articles of incorporation and obtain authorization from the Prime Minister.
- (5) When an Association that conducts Registration Work under the provisions of paragraph (1) or (2) conducts work, such as registration under Article 64 (5), change of registration pertaining to notification under Article 64-4, rendering of disposition under Article 64-5 (1) (excluding deletion of registration), or deletion of registration under the preceding Article, it shall notify the Prime Minister to that effect without delay, pursuant to the provisions of a Cabinet Office Ordinance.
- (6) When there are two or more Associations that conduct Registration Work under the provisions of paragraph (1) or (2), each Association shall promote information exchange between related Associations and endeavor to provide necessary cooperation and information to other Associations so as to ensure appropriate implementation of said Registration Work.
- (7) When a Sales Representative of a Financial Instruments Business Operator, etc. belonging to an Association that conducts Registration Work under the provisions of paragraph (1) falls under any of Article 64-5 (1)(i) to (iii) but said Association does not take any measures prescribed in said paragraph, the Prime Minister may order them to take measures prescribed in said paragraph when he/she finds it necessary and appropriate for the public interest or protection of investors.

(8) When the Prime Minister intends to render disposition pursuant to the provisions of the preceding paragraph, he/she shall conduct a hearing, irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act.

(Registration Fee)

Article 64-8 (1) A Financial Instruments Business Operator, etc. that intends to obtain registration of Sales Representatives shall pay a registration fee to the government (when registering to an Association under the provisions of paragraph (1) or (2) of the preceding Article, to the Association) pursuant to the provisions of a Cabinet Order.

(2) The fee set forth in the preceding paragraph and paid to an Association shall be the revenue of said Association.

(Application for Examination Concerning Registration Work)

Article 64-9 When a Financial Instruments Business Operator, etc. has any complaints about inaction on the application for registration filed under Article 64 (3) or rejection of registration under Article 64-2 (1) by an Association that conducts Registration Work under Article 64-7 (1) or (2), or disposition given under Article 64-5 (1) by an Association that conducts Registration Work under Article 64-7 (1), he/she may file an application for examination to the Prime Minister under the Administrative Appeal Act (Act No. 160 of 1962).

## **Section 8 Miscellaneous Provisions**

(Acting Representative Person)

Article 65 (1) When there is any vacancy in the office of the Representative Person in Japan of a Financial Instruments Business Operator, etc. (limited to a foreign juridical person; hereinafter the same shall apply in this Article), if the Prime Minister finds it necessary, he/she may appoint a person who shall temporarily perform the duty of the Representative Person in Japan (referred to as an "Acting Representative Person" in the following paragraph). In this case, the Financial Instruments Business Operator, etc. shall conduct the registration for such appointment at the address of the principal business office or principal office in Japan.

(2) When the Prime Minister has appointed an Acting Representative Person under the provision of the preceding paragraph, he/she may order the Financial Instruments Business Operator, etc. to pay a reasonable amount of remuneration to the Acting Representative Person.

(Technical Replacement of Terms, etc. for Application of Provisions of This Act)

to Foreign Juridical Person, etc.)

Article 65-2 In cases when a Financial Instruments Business Operator, etc. is a foreign juridical person or an individual domiciled in a foreign state, the technical replacement of the terms for the application of the provision of this Act and other necessary matters concerning the application of the provision of this Act to said foreign juridical person or individual shall be specified by a Cabinet Order.

(Request of Investigation by Court)

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 who shall be deemed as a Financial Instruments Business Operator under the provision of Article 56 (1)), the court may request an opinion of, or inspection or investigation by, the Prime Minister.

(2) When the Prime Minister finds it necessary, he/she may state his/her opinions to the court pertaining to the procedure prescribed in the preceding paragraph.

(3) The provision of Article 56-2 (1) shall apply mutatis mutandis to cases where the Prime Minister has received a request of inspection or investigation from the court under the provision of paragraph (1).

(Delegation to Cabinet Office Ordinance)

Article 65-4 In addition to what is prescribed in Article 34-5 and Article 63-4, the procedures and other matters necessary for enforcement of the provisions of Article 29 to the preceding Article inclusive shall be specified by a Cabinet Office Ordinance.

(Exclusion from Application)

Article 65-5 (1) Notwithstanding the provision of Article 29, a trust company (excluding the management-type trust company prescribed in Article 2 (4) of the Trust Business Act; the same shall apply in the following paragraph and paragraph (5)), a foreign trust company (excluding the management-type foreign trust company prescribed in Article 2 (7) of said Act; the same shall apply to the following paragraph and paragraph (5)), or a person registered under Article 50-2 (1) of said Act may conduct sales and purchase of rights listed in Article 2 (2)(i) or (ii) (excluding cases where said sales and purchase of rights falls under the Derivatives Transactions), or agency service or intermediary therefor (referred to as the "Sales and Purchase, etc. of Trust Beneficial Rights" in the following paragraph) listed in Article 2 (2) (i) or (ii) in the course of trade.

(2) When a trust company, a foreign trust company or a person registered under

Article 50-2 (1) of the Trust Business Act engages in the business of the Sales and Purchase, etc. of Trust Beneficial Rights in the course of trade under the provision of the preceding paragraph, these persons shall be deemed to be Financial Instruments Business Operators, and the provisions of Article 34 to Article 34-5 inclusive, Article 36, Article 36-2 (1) (limited to cases where a person registered under Article 50-2 (1) of the Trust Business Act conducts the Sales and Purchase, etc. of Trust Beneficial Rights in the course of trade), 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, Article 39, Article 40, Article 45 (i) and (ii), Article 47 to Article 47-3 inclusive, Article 51, Article 52 (1) and (2), Article 56-2 (1), Article 190 and Article 194-5 (2) (including penal provisions pertaining to these provisions) shall be applied. In this case, the term "any of the following items" in Article 52 (1) shall be deemed to be replaced with "item (vi) or (ix)"; the term "rescind its registration under Article 29, rescind its authorization under Article 30 (1), or order suspension of all or part of its business by specifying a period not exceeding six months" in said paragraph shall be deemed to be replaced with "order suspension of all or part of its business by specifying a period not exceeding six months"; and the term "was found to fall under any of (a) to (g) of said item at the time of registration under Article 29, or came to fall under any of item (vi) or item (viii) to (x) of the preceding paragraph," in Article 52 (2) shall be deemed to be replaced with "or came to fall under item (vi) or (ix) of the preceding paragraph".

- (3) Article 29 shall not apply to cases where the Independent Administrative Agency Japan Housing Finance Agency, Japan Finance Corporation for Small and Medium Enterprise or Japan Finance Corporation for Municipal Enterprises (referred to as the "Agency, etc." in the following paragraph) is engaged in sales of the rights indicated by the securities listed in Article 2 (1)(xiv) or the securities listed in Article 2 (1)(xvii) (limited to those having a nature of the securities listed in item (xiv) of said paragraph) or in sales of rights listed in Article 2 (2)(i) or (ii), pursuant to Article 22 of the Act on Independent Administrative Agency Japan Housing Finance Agency (Act No. 82 of 2005), Article 25-4 (1) of the Act on Japan Finance Corporation for Small and Medium Enterprise (Act No. 138 of 1953) or Article 26-3 (1) of the Act on Japan Finance Corporation for Municipal Enterprises (Act. No. 83 of 1957) (referred to as the "Sales of Trust Beneficial Rights" in the following paragraph).
- (4) When an Agency, etc. conducts the Sales of Trust Beneficial Rights, said Agency, etc. shall be deemed to be a Financial Instruments Business Operator, and the provisions of Article 34 to Article 34-5 inclusive, Article 36, Article 37 (excluding paragraph (1), item (ii)), Article 37-3 (excluding paragraph (1), item

(ii)), Article 37-4, Article 37-6, Article 38, Article 39, Article 40, and Article 45 (i) and (ii) (including penal provisions pertaining to those provisions) shall be applied.

(5) The provision of this Chapter shall not apply to cases where a trust company, foreign trust company, a person registered under Article 50-2 (1) of the Trust Business Act, or a person who has made a notification under Article 51 (2) of said Act or a person registered under Article 52 (1) of the Act conducts the acts listed in Article 2 (8) (xiv) or (xv) (limited to those conducted by holding the money or other assets under these provisions as the trust property).

(Respect for Voluntary Efforts of Financial Instruments Business Operator, etc.)

Article 65-6 The Prime Minister shall, in supervising Financial Instruments Business Operators, etc., Authorized Transaction-at-Exchange Operators or Foreign Securities Brokers permitted under Article 59 (1), give due consideration for respecting voluntary efforts for business operation of Financial Instruments Business Operators, etc., Authorized Transaction-at-Exchange Operators or Foreign Securities Brokers permitted under Article 59 (1).

### **Chapter III-2 Financial Instruments Intermediary Service Providers**

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

(Registration)

Article 66 A person except for a bank, Cooperative Structured Financial Institution, or other financial institutions specified by a Cabinet Order (excluding an operator of Type I Financial Instruments Business (meaning the Type I Financial Instruments Business prescribed in Article 28 (1); hereinafter the same shall apply in this Chapter) as well as Officers and employees of a Registered Financial Institution) may operate a Financial Instruments Intermediary Service with the registration granted by the Prime Minister, notwithstanding the provision of Article 29.

(Application for Registration)

Article 66-2 (1) A person who intends to obtain registration under the preceding Article shall submit a written application for registration containing the following matters to the Prime Minister:

- (i) the trade name or name;
- (ii) for a juridical person, the names of Officers;
- (iii) the name and location of business office or office at which the Financial Instruments Intermediary Service shall be conducted;



- (iv) the trade name or name of the Financial Instruments Business Operator (limited to those who are engaged in the Type I Financial Instruments Business or the Investment Management Business (meaning the Investment Management Business prescribed in Article 28 (4); the same shall apply in Article 66-14 (i)(c)) or the Registered Financial Institution, which will make entrustment (hereinafter referred to as the "Entrusting Financial Instruments Business Operators, etc." in this Chapter and the following Chapter);
  - (v) the type of the person's other business(es), if any; and
  - (vi) other matters specified by a Cabinet Office Ordinance.
- (2) The following documents shall be attached to the written application for registration set forth in the preceding paragraph:
- (i) a document to pledge that the person does not fall under item (i) or (ii) of Article 66-4;
  - (ii) a document that contains contents and methods of Financial Instruments Intermediary Service as specified by a Cabinet Office Ordinance;
  - (iii) for a juridical person, the articles of incorporation and the certificate of registered matters of the company (including the documents equivalent thereto); and
  - (iv) other documents specified by a Cabinet Office Ordinance.
- (3) When attaching documents set forth in item (iii) of the preceding paragraph, Electromagnetic Records (limited to those specified by a Cabinet Office Ordinance) may be attached in place of written documents, if the articles of incorporation are prepared in the form of an Electromagnetic Record.

(Registration in Registry)

- Article 66-3 (1) When an application for registration set forth in Article 66 has been filed, the Prime Minister shall register the following matters in a registry of Financial Instruments Intermediary Service Providers, except when he/she refuses the registration under the provisions of the following Article:
- (i) the matters listed in the items of paragraph (1) of the preceding Article; and
  - (ii) the date of registration and registration number.
- (2) The Prime Minister shall make the registry of Financial Instruments Intermediary Service Providers available for public inspection.

(Refusal of Registration)

- Article 66-4 The Prime Minister shall refuse registration when an applicant falls under any of the following items, or a written application for registration or documents or Electromagnetic Records to be attached to it contains fake statements or false records, or lacks statement or record about important matters:

- (i) when the applicant is an individual, a person who falls under any of (a) to (g) of Article 29-4 (1)(ii);
- (ii) when the applicant is a juridical person, a person who falls under any of the following:
  - (a) a person who falls under (a) or (b) of Article 29-4 (1)(i); or
  - (b) a person who has a person falling under any of (a) to (g) of Article 29-4 (1)(ii) among its Officers.
- (iii) a person whose additional business is found to be against public interest;
- (iv) a person who is found to not be knowledgeable or experienced to conduct Financial Instruments Intermediary Service in an appropriate manner;
- (v) an applicant any of whose Entrusting Financial Instruments Business Operators, etc. is not a member of the Association (meaning the Authorized Financial Instruments Firms Association or a Public Interest Corporation-Type Financial Instruments Firms Association prescribed in Article 78 (2)); or
- (vi) a Financial Instruments Business Operator (limited to an operator of Type I Financial Instruments Business).

(Notification of Change)

Article 66-5 (1) When there are any changes in the matters listed in the items of Article 66-2 (1), a Financial Instruments Intermediary Service Provider shall notify to that effect to the Prime Minister within two weeks from the day of change.

- (2) When the Prime Minister accepts a notification under the preceding paragraph, he/she shall register notified matters in a registry of Financial Instruments Intermediary Service Providers.
- (3) When there are any changes in contents or methods of business entered into documents listed in Article 66-2 (2)(ii), a Financial Instruments Intermediary Service Provider shall notify to that effect to the Prime Minister without delay, pursuant to the provisions of a Cabinet Office Ordinance.

(Restriction on Use of Trade Names, etc.)

Article 66-6 A person who is not a Financial Instruments Intermediary Service Provider shall not use a trade name or name as a Financial Instruments Intermediary Service Provider or any trade name or name confusingly similar thereto.

## **Section 2 Business**

(Duty of Good Faith to Customers)

Article 66-7 A Financial Instruments Intermediary Service Provider as well as

Officers and employees thereof shall execute their business in good faith and fairly to customers.

(Posting of Signs)

Article 66-8 (1) A Financial Instruments Intermediary Service Provider shall post a sign in the form specified by a Cabinet Office Ordinance in a place accessible to the public at each of its business offices or offices.

(2) No person other than a Financial Instruments Intermediary Service Provider shall post a sign prescribed in the preceding paragraph or a sign similar thereto.

(Prohibition of Name Lending)

Article 66-9 A Financial Instruments Intermediary Service Provider shall not have another person engage in Financial Instruments Intermediary Service under the name of said Financial Instruments Intermediary Service Provider.

(Regulation of Advertising, etc.)

Article 66-10 (1) A Financial Instruments Intermediary Service Provider shall, when advertising the contents of its Financial Instruments Intermediary Service or conducting any similar acts specified by a Cabinet Office Ordinance, indicate the following matters pursuant to the provisions of a Cabinet Office Ordinance:

(i) the trade name or name of said Financial Instruments Intermediary Service Provider;

(ii) the fact that said Financial Instruments Intermediary Service Provider is a Financial Instruments Intermediary Service Provider and its registration number; and

(iii) the matters concerning the contents of the Financial Instruments Intermediary Service conducted by said Financial Instruments Intermediary Service Provider which are specified by a Cabinet Order as important matters that may have an impact on customers' judgment.

(2) A Financial Instruments Intermediary Service Provider, when advertising the contents of its Financial Instruments Intermediary Service or conducting any similar acts specified by a Cabinet Office Ordinance, shall not make an indication that is significantly contradictory to facts or seriously misleading with regard to the outlook of profits from conducting an Act of Financial Instruments Transactions and other matters specified by a Cabinet Office Ordinance.

(Clear Indication of Trade Name, etc.)

Article 66-11 When a Financial Instruments Intermediary Service Provider

intends to conduct the acts listed in any of the items of Article 2 (11) (hereinafter referred to as the "Acts of Financial Instruments Intermediation" in this Chapter), it shall clearly indicate the following matters to customers in advance:

- (i) the trade name or the name of the Entrusting Financial Instruments Business Operator, etc.;
- (ii) the effect that the Financial Instruments Intermediary Service Provider has not been delegated the authority of representation by an Entrusting Financial Instruments Business Operator, etc.;
- (iii) the import of the provision of Article 66-13; and
- (iv) other matters specified by a Cabinet Office Ordinance.

(Limitation on Financial Instruments Intermediary Service Providers)

Article 66-12 A Financial Instruments Intermediary Service Provider (excluding a person who is a Financial Instruments Business Operator) shall not conduct any act listed in the items of Article 2 (8), except for the Acts of Financial Instruments Intermediation 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 of Deposit of Money, etc.)

Article 66-13 A Financial Instruments Intermediary Service Provider, for any reason, shall not receive from a customer any deposit of money or Securities with regard to its Financial Instruments Intermediary Service, or have the person specified by a Cabinet Order as having a close relationship with said Financial Instruments Intermediary Service Provider deposit the customer's money or Securities.

(Prohibited Acts)

Article 66-14 A Financial Instruments Intermediary Service Provider or Officers or employees thereof shall not conduct any of the following acts:

- (i) to conduct any of the following acts in relation to the Financial Instruments Intermediary Service:
  - (a) acts that fall under the category specified in Article 38 (i);
  - (b) acts that fall under any of the categories specified in Article 38 (ii) to (v) inclusive;
  - (c) when conducting an Investment Advisory Business (meaning Investment Advisory Business set forth in Article 28 (6); the same shall apply in (c)), an act of soliciting a customer by utilizing information on Sales and Purchase or Other Transaction of Securities, etc. made by another customer based on the advice provided through said Investment Advisory

Business; or when conducting the Investment Management Business, an act of soliciting a customer by utilizing information on Sales and Purchase or Other Transactions of Securities, etc. related to another customer conducted as investment pertaining to said Investment Management Business;

- (d) when conducting business other than Financial Instruments Intermediary Service, an act of soliciting by utilizing information on an Issuer of Securities learned during the course of said business (limited to undisclosed information on operation, business or properties of an Issuer of Securities which would affect customers in making their Investment Decisions related to Financial Instruments Intermediary Service); or
- (e) an act of solicitations with a condition that a Financial Instruments Intermediary Service Provider will extend money loan or otherwise grant credit (excluding those specified in a Cabinet Office Ordinance as being less likely to result in insufficient protection of investors).
- (ii) an act of Sales and Purchase or Other Transaction of Securities, etc. on the person's own account, by utilizing the ordering trends on Sales and Purchase or Other Transactions of Securities, etc. made by a customer of a Financial Instruments Intermediary Service or other special information learned during the course of the Financial Instruments Intermediary Service; and
- (iii) in addition to what is listed in the preceding two items, acts specified by a Cabinet Office Ordinance as those that result in insufficient protection of investors, harm the fairness of transactions, or cause a loss of confidence in Financial Instruments Intermediary Service.

(Applications Mutatis Mutandis of Provisions Pertaining to Financial Instruments Business Operators, etc. in Relation to Prohibition of Compensations of Loss, etc.)

Article 66-15 Article 38-2, Article 39 (1), (3), and (5) and Article 40 shall apply mutatis mutandis to Financial Instruments Intermediary Service Providers, and Article 39 (2) and (4) shall apply mutatis mutandis to customers of Financial Instruments Intermediary Service Providers. In this case, "the Financial Instruments Business Operators, etc." of Article 39 (3) shall be deemed to be replaced with "the Entrusting Financial Instruments Business Operators, etc. of the Financial Instruments Intermediary Service Provider," and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

### **Section 3 Accounting**

(Books and Documents Related to Business)

Article 66-16 A Financial Instruments Intermediary Service Provider shall, pursuant to the provisions of a Cabinet Office Ordinance, prepare and preserve the books and documents on its Financial Instruments Intermediary Service.

(Submission, etc. of Business Reports)

- Article 66-17 (1) A Financial Instruments Intermediary Service Provider shall, pursuant to the provisions of a Cabinet Office Ordinance, prepare a report on its Financial Instruments Intermediary Service for each business year, and submit the same to the Prime Minister within three months after the end of each business year.
- (2) A Financial Instruments Intermediary Service Provider shall, pursuant to the provisions of a Cabinet Office Ordinance, prepare documents containing the matters specified by a Cabinet Office Ordinance as necessary for the protection of investors among the matters prescribed in the report under the preceding paragraph, for each business year, and keep the same at all of its business offices or offices for Financial Instruments Intermediary Service and make them available for public inspection.

(Public Inspection of Explanatory Documents)

Article 66-18 A Financial Instruments Intermediary Service Provider shall, pursuant to the provisions of a Cabinet Office Ordinance, keep explanatory documents prepared by the Entrusting Financial Instruments Business Operator, etc., for each business year of said Entrusting Financial Instruments Business Operator, etc., in accordance with the provision of Article 46-4 or Article 49-3 (in cases where said Entrusting Financial Instruments Business Operator, etc., is a Registered Financial Institution, the provisions of Article 21 (1) and (2) of the Banking Act (Act No. 59 of 1981) or other provisions specified by a Cabinet Order) at all of its business offices or offices for Financial Instruments Intermediary Service and make them available for public inspection.

#### **Section 4 Supervision**

(Notification, etc. of Discontinuance, etc. of Business)

- Article 66-19 (1) When a Financial Instruments Intermediary Service Provider has come to fall under any of the following items, the person specified in the respective items shall notify to that effect to the Prime Minister within thirty days from the day:
- (i) when abolishing a Financial Instruments Intermediary Service (including cases where a Financial Instruments Intermediary Service Provider has had its whole business (limited to those pertaining to Financial Instruments

- Intermediary Service; hereinafter the same shall apply in this item) succeeded by a company split, or transferred its whole business)): the individual or the juridical person who has abolished or transferred its Financial Instruments Intermediary Service, or has its Financial Instruments Intermediary Service succeeded;
- (ii) when the individual that is a Financial Instruments Intermediary Service Provider has died: the heir thereof;
  - (iii) when a juridical person that is a Financial Instruments Intermediary Service Provider has extinguished upon merger: the person who was the Officer representing the juridical person;
  - (iv) when a decision has been made for commencement of bankruptcy proceedings for a juridical person that is a Financial Instruments Intermediary Service Provider: the bankruptcy trustee thereof; and
  - (v) when a juridical person that is a Financial Instruments Intermediary Service Provider has been dissolved due to reasons other than a merger or a decision of commencement of bankruptcy proceedings: the liquidator thereof.
- (2) When a Financial Instruments Intermediary Service Provider has come to fall under any of the items of the preceding paragraph, or has come to have no Entrusting Financial Instruments Business Operator, etc., or when the registration under Article 29 (limited to cases where the registered Financial Instruments Business Operator operates Type I Financial Instruments Business) has been granted, the registration of said Financial Instruments Intermediary Service Provider under Article 66 shall lose its effect.

(Dispositions Rendered for Purpose of Supervision)

- Article 66-20 (1) In cases where a Financial Instruments Intermediary Service Provider falls under any of the following items, the Prime Minister may rescind its registration under Article 66, order suspension of whole or part of its business by specifying a period of suspension not exceeding six months, order change of its business methods or order any other matters necessary for supervision:
- (i) when the Financial Instruments Intermediary Service Provider has come to fall under any of the items (i) to (v) of Article 66-4 (with regard to item (ii)(a), limited to the parts pertaining to the provisions of the laws and regulations of a foreign state equivalent to Article 29-4 (1)(i)(a) of this Act, and excluding item (ii)(b));
  - (ii) when obtaining registration under Article 66 through wrongful means; or
  - (iii) when violating laws and regulations or disposition given by government agencies based on laws and regulations, in relation to the Financial Instruments Intermediary Service.
- (2) When an Officer of a Financial Instruments Intermediary Service Provider

has come to fall under any of Article 29-4 (1)(ii)(a) to (g), or committed an act which falls under item (iii) of the preceding paragraph, the Prime Minister may order said Financial Instruments Intermediary Service Provider to dismiss said Officer.

(Deletion of Registration)

Article 66-21 When registration under Article 66 has lost its effect under the provisions of Article 66-19 (2), or the Prime Minister has rescinded registration under Article 66 under the provisions of paragraph (1) of the preceding Article, the Prime Minister shall delete said registration.

(Order for Production of Report and Inspection)

Article 66-22 When the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may order a Financial Instruments Intermediary Service Provider or a person who conducts transactions with said Financial Instruments Intermediary Service Provider to submit reports or materials that will be helpful for understanding the Financial Instruments Intermediary Service of said Financial Instruments Intermediary Service Provider, or have the officials inspect the status, or the documents or other articles of the Financial Instruments Intermediary Service of said Financial Instruments Intermediary Service Provider.

(Application, Mutatis Mutandis)

Article 66-23 Article 57 (1) and (3) shall apply mutatis mutandis to the registration under Article 66, and the provisions of Article 57 (2) and (3) and Article 65-6 shall apply mutatis mutandis to Financial Instruments Intermediary Service Providers. In this case, necessary technical replacement of terms shall be specified by a Cabinet Order.

## **Section 5 Miscellaneous Provisions**

(Liability for Damages of Entrusting Financial Instruments Business Operators, etc.)

Article 66-24 An Entrusting Financial Instruments Business Operator, etc., of a Financial Instruments Intermediary Service Provider shall be held liable to compensate for the damage caused to a customer with regard to the Financial Instruments Intermediary Service rendered by the Financial Instruments Intermediary Service Provider to which it entrusted said service; provided, however, that this shall not apply to cases where said Entrusting Financial Instruments Business Operator, etc. has paid reasonable attention in entrustment to said Financial Instruments Intermediary Service Provider, and



has endeavored to prevent the damage that it caused to a customer with regard to Acts of Financial Instruments Intermediation rendered by said Financial Instruments Intermediary Service Provider.

(Application, Mutatis Mutandis)

Article 66-25 Article 64 to Article 64-9 inclusive (excluding Article 64-7 (2)) shall apply mutatis mutandis to Financial Instruments Intermediary Service Providers. In this case, necessary technical replacement of terms shall be specified by a Cabinet Order.

(Delegation to Cabinet Office Ordinance)

Article 66-26 The procedures and any other matters necessary for implementation of the provisions of Article 66 to the preceding Article inclusive shall be specified by a Cabinet Office Ordinance.

## **Chapter IV Financial Instruments Firms Association**

### **Section 1 Authorized Financial Instruments Firms Association**

#### **Subsection 1 Establishment and Business**

(Purposes of 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 sales and purchase or other transactions of Securities and Derivative Transactions, etc. and to contribute to the sound development of Financial Instruments Businesses and protection of investors.

(2) An Authorized Association may establish a market where Over-the-Counter Traded Securities are traded (limited to the cases where Member Firms (meaning the members of an Authorized Association; hereinafter the same shall apply in this Section) conduct such transactions on their respective account, and the case where Member Firms provide intermediary, brokerage or agency service; the same shall apply in Article 67-11 (1)) (hereinafter referred to as the "Over-the-Counter Securities Market"), in order to facilitate distribution of Securities (limited to Securities not listed on a Financial Instruments Exchange; the same shall apply in Article 67-11 (1)), to ensure fairness of the sales and purchase or other transactions of Securities, and to contribute to the protection of investors.

(3) An Authorized Association shall be a juridical person.

(4) A person who is not an Authorized Association shall not use any term in its name that is likely to mislead people to understand that said person is an Authorized Financial Instruments Firms Association.

(Authorization of Establishment)

Article 67-2 (1) An Authorized Association may be established only by Financial Instruments Business Operators.

(2) A Financial Instruments Business Operator who intends to establish an Authorized Association shall obtain an authorization from the Prime Minister.

(3) Registered Financial Institutions shall be deemed to be Financial Instruments Business Operators with regard to application of the provisions of the preceding two paragraphs, Article 68 (1) and (2), Article 78 (1), Article 79-7 (1) and Article 79-11, within the scope of performing Registered Financial Institution Businesses.

(Submission of Application for Authorization)

Article 67-3 (1) A person who intends to obtain an authorization under paragraph (2) of the preceding Article shall submit an application for authorization containing the following matters to the Prime Minister:

- (i) the name;
- (ii) the location of office; and
- (iii) the names of Officers and names of Member Firms.

(2) The articles of incorporation and other rules as well as other documents specified by a Cabinet Office Ordinance shall be attached to the application for authorization under the preceding paragraph.

(Examination of Application for Authorization)

Article 67-4 (1) When an application for authorization under paragraph (1) of the preceding Article has been 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 to facilitate fair and smooth sales and purchase or other transactions of Securities as well as Derivative Transactions, etc., and to ensure sound development of Financial Instruments Businesses and protection of investors; and
- (ii) an Authorized Association pertaining to said application will be organized in such a manner that conforms to the provisions of this Act.

(2) When the Prime Minister finds that the application for authorization conforms to the criteria under the preceding paragraph, as a result of an examination under said paragraph, he/she shall grant the authorization of establishment, except for the cases where the application falls under any of the following items:

- (i) when the applicant for authorization is a person who has been punished by a fine under the provisions of this Act, and for whom five years have not passed since the day when the execution of the punishment terminated or

- he/she became free from execution of the punishment;
- (ii) when any of the Officers include any person who falls under any of the categories of the persons prescribed in items (a) to (g) inclusive of Article 29-4 (1)(ii); or
  - (iii) when the application for authorization or documents to be attached thereto includes fake statements on important matters.

(Hearing of Applicant for Authorization and Notification)

- Article 67-5 (1) The Prime Minister shall, when he/she has received an application for authorization under Article 67-3 (1) and finds it inappropriate to grant the authorization, notify to that effect to the applicant for authorization and have the officials conduct a hearing.
- (2) The Prime Minister shall, when he/she has decided to grant or refuse to grant an authorization under Article 67-2 (2), notify to that effect in writing to the applicant for authorization without delay.

(Rescission of Authorization)

- Article 67-6 When an Authorized Association is found to have already fallen under any of the categories specified in any of the items of Article 67-4 (2) at the time of receipt of the authorization of establishment, the Prime Minister may rescind its authorization.

(Prohibition of Pursuit of Profit)

- Article 67-7 An Authorized Association shall not conduct any business for profit.

(Matters Which Must be Stated in Articles of Incorporation)

- Article 67-8 (1) The articles of incorporation of an Authorized Association shall contain the following matters (limited to an Authorized Association that establishes an Over-the-Counter Securities Market, with regard to the matters listed in item (xiii)):
- (i) the purpose;
  - (ii) the name;
  - (iii) the location of offices;
  - (iv) matters related to Member Firms;
  - (v) matters related to general meeting;
  - (vi) matters related to Officers;
  - (vii) matters related to council and other meetings;
  - (viii) matters related to execution of business operations;
  - (ix) matters related to improvements in qualities of Officers and employees of the Member Firms, and qualities of the Financial Instruments Intermediary Service Providers (limited to the Financial Instruments Intermediary Service

Providers of which Entrusting Financial Instruments Business Operator, etc. is a Member Firm; hereinafter the same shall apply in this Section) and their Officers and employees;

- (x) matters related to preparation of rules;
  - (xi) matters related to complaint resolution filed by investors concerning the operations of the Member Firms or Financial Instruments Intermediary Service Providers and mediation as prescribed in Article 77-2;
  - (xii) matters related to sales and purchase or other transactions of Securities solicited by Member Firms or Financial Instruments Intermediary Service Providers;
  - (xiii) matters related to an Over-the-Counter Securities Market;
  - (xiv) matters related to investigation of the status of observance of laws and regulations, dispositions given by government agencies based on laws and regulations, or the articles of incorporation or other rules, or the fair and equitable principles of transactions by Member Firms and Financial Instruments Intermediary Service Providers;
  - (xv) matters related to membership fees;
  - (xvi) matters related to accounting and assets; and
  - (xvii) the methods of public notices.
- (2) If an Authorized Association intends to change its articles of incorporation, it shall obtain authorization from the Prime Minister.
- (3) When there are any changes in matters listed in Article 67-3 (1)(ii) or (iii), an Authorized Association shall notify to that effect to the Prime Minister without delay. The same shall apply to cases where rules of an Authorized Association (excluding the articles of incorporation; and with regard to an Authorized Association which establishes an Over-the-Counter Securities Market, excluding the rules set forth in Article 67-12) have been prepared, changed or abolished.

(Capacity of Representative Person, etc. to Commit Tortious Acts)

Article 67-9 An Authorized Association is liable for damage caused to others by its president or director during the course of the performance of their duties.

(Address of Authorized Association)

Article 67-10 The address of an Authorized Association shall be at the location of its principal office.

(Registration in the Registry of Over-the-Counter Traded Securities)

Article 67-11 (1) An Authorized Association which establishes an Over-the-Counter Securities Market shall register the types and issues of Securities to be sold and purchased on the relevant Over-the-Counter Securities Market in

the Registry of Over-the-Counter Traded Securities to be kept at the Authorized Association.

- (2) The Authorized Association set forth in the preceding paragraph shall keep a copy of the Registry of Over-the-Counter Traded Securities at its office and make the copy available for public inspection, pursuant to the provisions of a Cabinet Office Ordinance.

(Authorization of Regulations)

Article 67-12 When an Authorized Association intends to establish an Over-the-Counter Securities Market, it shall stipulate in its rules the following matters with regard to the registration under paragraph (1) of the preceding Article and Over-the-Counter Traded Securities, and obtain an authorization from the Prime Minister. The same shall apply to cases where the Authorized Association intends to change or abolish said rules:

- (i) criteria and methods of registration, and rescission thereof;
- (ii) matters related to report and announcement of trading price;
- (iii) methods of concluding contracts on sales and purchase or other transactions;
- (iv) methods of transfer and other settlement; and
- (v) in addition to the matters listed in each of the preceding items, necessary matters related to sales and purchase or other transactions of the Over-the-Counter Traded Securities.

(Notification of Registration, etc.)

Article 67-13 When an Authorized Association intends to conduct registration under Article 67-11 (1) or rescission of such registration, it shall notify to that effect to the Prime Minister.

(Order for Registration of Share Certificates, etc.)

Article 67-14 With respect to the Share Certificates, etc. issued by the Issuer of the Over-the-Counter Traded Securities registered by an Authorized Association (limited to the share certificates, or the securities or certificates listed in Article 2 (1)(xx) indicating the rights pertaining to share certificates (hereinafter referred to as the "Share Certificates, etc." in this Article and in Article 125)) which have not been registered by said Authorized Association under the provision of Article 67-11 (1), if the Prime Minister finds that registration by said Authorized Association of said Share Certificates, etc. under said paragraph is necessary and appropriate for the public interests or protection of investors, he/she may order said Authorized Association to register said Share Certificates, etc. under the provision of said paragraph.

(Order of Rescission of Registration, etc.)

Article 67-15 (1) When an Authorized Association intends to conduct or has conducted registrations of Securities under the provision of Article 67-11 (1), or intends to rescind or has rescinded said registrations, in violation of its rules specifying the matters prescribed in Article 67-12 (i), the Prime Minister may order said Authorized Association to rescind the registered Securities or to re-register the Securities of which registrations have been rescinded, or to take the measures necessary for rectification of the violation. In this case, a hearing shall be held irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act.

(2) With regard to the application of the provisions of Section 2, Chapter III of the Administrative Procedure Act in cases where the notice under Article 15 (1) of said Act has been provided in the hearings pertaining to the disposition under the provision of the preceding paragraph, the Issuer of the relevant Securities shall be deemed as the person who has received the notice under Article 15 (1) of said Act.

(Notification of Suspension, etc. of Sales and Purchase)

Article 67-16 With regard to the Over-the-Counter Traded Securities registered by an Authorized Association, when an Authorized Association has suspended, or cancelled suspension of, sales and purchase of said Over-the-Counter Traded Securities on the Over-the-Counter Securities Market, it shall notify to that effect to the Prime Minister without delay.

(Order of Suspension of Sales and Purchase, etc.)

Article 67-17 (1) When an issuer of the Over-the-Counter Traded Securities has violated this Act, an order given under this Act, or the rules of the Authorized Association which has registered the relevant Over-the-Counter Traded Securities, if the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may order said Authorized Association to suspend sales and purchase of, or to rescind registration of, the Over-the-Counter Traded Securities on the Over-the-Counter Securities Market established by said Authorized Association. In this case, a hearing shall be held irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act.

(2) With regard to the application of the provisions of Section 2, Chapter III of the Administrative Procedure Act in cases where the notice under Article 15 (1) of said Act has been provided in the hearings pertaining to the disposition under the provision of the preceding paragraph, the issuer specified in the preceding paragraph shall be deemed as the person who has received the notice under Article 15 (1) of said Act.

(Report to Authorized Association)

Article 67-18 A Member Firm (in cases where any of the items (i) to (iii) applies, limited to a Member Firm of an Authorized Association which establishes an Over-the-Counter Securities Market) shall report the matter listed in each of the following items in the respective case specified therein to the Authorized Association to which it belongs, pursuant to the provisions of a Cabinet Office Ordinance:

- (i) when sales and purchase of Over-the-Counter Traded Securities conducted on the Member Firm's own account, or sales and purchase of Over-the-Counter Traded Securities for which the Member Firm has provided intermediary, brokerage or agency services has been effected: the kinds, issues, prices or volumes, or other matters specified by a Cabinet Office Ordinance pertaining to the Securities for which the sales and purchase is effected;
- (ii) when a Member Firm makes an offer for sales or purchase of Over-the-Counter Traded Securities on its own account: the kinds, issues, prices or other matters specified by a Cabinet Office Ordinance pertaining to the Securities for which the offer for sales or purchase is made;
- (iii) when a Member Firm has accepted entrustment, etc. of sales and purchase of Over-the-Counter Traded Securities: the kinds, issues, prices, volumes or other matters specified by a Cabinet Office Ordinance pertaining to the Securities for which the Member Firm has accepted entrustment, etc.;
- (iv) when sales and purchase of the Tradable Securities (meaning the Share Certificates, bonds with share option or any other Securities specified by a Cabinet Office Ordinance for which solicitation of sales and purchase or other transactions has not been prohibited by said Authorized Association under its rules (excluding Securities listed on a Financial Instruments Exchange and Over-the-Counter Traded Securities; the same shall apply hereinafter) conducted on the Member Firm's own account, or sales and purchase of the Tradable Securities for which the Member Firm has provided intermediary, brokerage or agency services has been effected: the kinds, issues, prices or volumes or other matters specified by a Cabinet Office Ordinance pertaining to the Securities for which the sales and purchase is effected;
- (v) when a Member Firm makes an offer for sales or purchase of Tradable Securities on its own account: the kinds, issues, prices or other matters specified by a Cabinet Office Ordinance pertaining to the Securities for which the offer for sales or purchase is made;
- (vi) when a Member Firm has accepted entrustment, etc. of sales and purchase of Tradable Securities: the kinds, issues, prices, volumes or other matters

specified by a Cabinet Office Ordinance pertaining to the Securities for which the Member Firm has accepted entrustment, etc.;

(vii) when a sales and purchase of the Listed Share Certificates, etc. (meaning the share certificates, bonds with share option or any other Securities specified by a Cabinet Office Ordinance which are listed on a Financial Instruments Exchange; hereinafter the same shall apply in this Article to Article 78-5 inclusive) conducted outside of a Financial Instruments Exchange Market on the Member Firm's own account, or sales and purchase of Listed Share Certificates, etc. conducted outside of a Financial Instruments Exchange Market for which the Member Firm has provided intermediary, brokerage or agency services has been effected: the kinds, issues, prices or volumes or other matters specified by a Cabinet Office Ordinance pertaining to the Listed Share Certificates, etc. for which the sales and purchase is effected; or

(viii) when a Member Firm makes, outside of a Financial Instruments Exchange Market, an offer for sales or purchase of the Listed Share Certificates, etc. to a large number of persons simultaneously, or in other cases specified by a Cabinet Office Ordinance: the kinds, issues, prices or other matters specified by a Cabinet Office Ordinance pertaining to the Securities for which the offer for sales or purchase is made.

(Notices, etc. of Trading Volume, Price, etc.)

Article 67-19 An Authorized Association shall, pursuant to the provisions of a Cabinet Office Ordinance and based on the reports made pursuant to the provision of the preceding Article, notify its Member Firms and also publicize the daily trading volume, and highest price, lowest price, closing price and any other matters for each day and for each issue in relation to sales and purchase of Over-the-Counter Traded Securities on the Over-the-Counter Securities Market established by said Authorized Association, sales and purchase of the Tradable Securities, and sales and purchase of the Listed Share Certificates, etc. conducted outside of a Financial Instruments Exchange Market (limited to those which a Member Firm conducts on its own account, and those for which a Member Firm provides intermediary, brokerage or agency services; hereinafter the same shall apply in the following Article).

(Report of Trading Volume, Price, etc.)

Article 67-20 An Authorized Association shall, pursuant to the provisions of a Cabinet Office Ordinance, report to the Prime Minister the daily trading volume, and highest price, lowest price, closing price and any other matters for each day and for each issue in relation to sales and purchase of Over-the-Counter Traded Securities on the Over-the-Counter Securities Market



established by said Authorized Association, sales and purchase of the Tradable Securities, and sales and purchase of the Listed Share Certificates, etc. conducted outside of a Financial Instruments Exchange Market.

### **Subsection 2 Member Firms**

(Qualification of Member Firms and Restriction on Membership of Authorized Association)

Article 68 (1) Member Firms of an Authorized Association shall be limited to Financial Instruments Business Operators.

(2) An Authorized Association shall stipulate in its articles of incorporation that any Financial Instruments Business Operator is eligible for membership as a Member Firm, excluding the cases set forth in paragraph (5); provided, however, that this shall not apply to cases where a membership is restricted due to reasons of geographic conditions or types of the business of the Financial Instruments Business Operator.

(3) An Authorized Association shall stipulate in its articles of incorporation that it shall endeavor to prevent fraudulent acts, market manipulation or collection of unreasonable fees or expenses and other acts of unfair profiting by Member Firms and Financial Instruments Intermediary Service Providers, as well as to promote the fair and equitable principles of transactions.

(4) An Authorized Association shall stipulate in its articles of incorporation that it shall endeavor to prevent acts in violation of laws and regulations or its articles of incorporation or other rules and to ensure confidence of investors, by having Member Firms establish the internal rules and control systems of said Member Firms and Financial Instruments Intermediary Service Providers whose Entrusting Financial Instruments Business Operator, etc. is said Member Firm for the purpose of observance of the laws and regulations and the Authorized Association's articles of incorporation and other regulations.

(5) An Authorized Association may stipulate in its articles of incorporation that the Authorized Association may refuse the admission as a Member Firm if an applicant has been ordered to suspend sales and purchase or other transactions of Securities or Derivative Transactions, etc. or has been expelled from membership of, or has had qualification for trading rescinded by, an Authorized Association or a Financial Instruments Exchange, on account of having violated laws and regulations, dispositions issued by government agencies based on laws and regulations, or the articles of incorporation or other rules of the Authorized Association or a Financial Instrument Exchange, or of having conducted acts contrary to the fair and equitable principles of transactions.

(6) An Authorized Association shall make a list of Member Firms available for

public inspection.

(Dispositions, etc. Rendered to Member Firms)

Article 68-2 An Authorized Association shall stipulate in its articles of incorporation that, when a Member Firm or a Financial Instruments Intermediary Service Provider whose Entrusting Financial Instruments Business Operators, etc. is the Member Firm has violated laws and regulations, dispositions rendered by government agencies based on laws and regulations, or the Authorized Association's articles of incorporation or other rules, or has violated the fair and equitable principles of transactions, the Authorized Association shall impose a fine for default, order said Member Firm to suspend or limit the rights of a Member Firm under the articles of incorporation or shall expel said Member Firm from the Authorized Association.

### **Subsection 3 Management**

(Appointment of Officers and Their Authorities)

Article 69 (1) An Authorized Association shall appoint one president, two or more directors and two or more auditors as its Officers.

(2) The president shall represent the Authorized Association and preside over its affairs.

(3) The directors shall, pursuant to the provisions of the articles of incorporation, represent the Authorized Association, administer the affairs of the Authorized Association assisting the president, perform the duties of the president in his/her place when the president is unable to attend to his/her duties, and perform the duties of the president when the post is vacant.

(4) The auditors shall audit the affairs of an Authorized Association.

(5) An Officer shall lose the position when he/she comes to fall under any of the items (a) to (g) of Article 29-4 (1)(ii).

(Order to Dismiss Officers)

Article 70 When the Prime Minister discovers that a person has become an Officer of an Authorized Association by wrongful means, or when an Officer of an Authorized Association has violated laws and regulations, a disposition issued by government agencies based on laws and regulations or its articles of incorporation, he/she may order the Authorized Association to dismiss said officer.

(Provisional Directors or Provisional Auditor)

Article 71 The Prime Minister may, when there is no person to perform the duties of a director or auditor and if he/she finds it necessary, appoint a

provisional director or provisional auditor.

(Obligation of Confidentiality, etc. of Officers and Employees)

Article 72 (1) Officers or employees, or a person who was formerly in such position of an Authorized Association shall not divulge to another person or misappropriate any confidential information learned during the course of his/her duties.

(2) Officers or employees, or a person who was formerly in such position of an Authorized Association shall not use any information learned during the course of his/her duties for purposes other than providing for use in relation to the business of the Authorized Association.

#### **Subsection 4 Supervision**

(Order for Change of Articles of Incorporation, Operational Rules, etc.)

Article 73 When the Prime Minister finds it necessary and appropriate, with regard to an Authorized Association's articles of incorporation or any other rules or trade practice, or its business operation or the status of its property, for the public interest or protection of investors, he/she may order the Authorized Association to change its articles of incorporation or any other rules or trade practice, or to take other necessary measures for supervision, within the limit necessary. In this case, a hearing shall be held irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act.

(Rescission of Authorization, Suspension of Business, Dismissal of Officers, etc.

Due to Violation of Laws and Regulations, etc.)

Article 74 (1) When an Authorized Association has violated laws and regulations, a disposition given by government agencies based on laws and regulations, or its articles of incorporation or any other rules (hereinafter referred to as the "Laws and Regulations, etc." in this Article); or, despite the fact that a Member Firm, a Financial Instruments Intermediary Service Provider, or an issuer of Over-the-Counter Traded Securities or Tradable Securities has violated the Laws and Regulations, etc., or has committed an act contrary to the fair and equitable principles of transactions specified in the articles of incorporation or any other rules, the Authorized Association has failed to exercise its powers vested under this Act, an order given under this Act, or its articles of incorporation or any other rules, or to take any other necessary measures, for having such persons observe the Laws and Regulations, etc. or the fair and equitable principles of transactions, if the Prime Minister finds it necessary and appropriate for the public interest and protection of investors, he/she may

rescind the authorization of its establishment, issue an order of suspension of all or part of its business, specifying a period of suspension not exceeding one year, issue an order of change of its business methods or of prohibition of a part of its business, issue an order of dismissal of its Officers, or issue an order to take necessary measures specified in the articles of incorporation or any other rules.

(2) When the Prime Minister intends to issue an order of suspension of all or part of business, an order of change of business methods or of prohibition of a part of business, or an order to take necessary measures specified in the articles of incorporation or any other rules under the provisions of the preceding paragraph, he/she shall hold a hearing irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act.

(Order for Production of Reports and Inspection)

Article 75 When the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may order an Authorized Association, an issuer of Over-the-Counter Traded Securities or Tradable Securities or a person who received entrustment of business from said Authorized Association to submit reports or materials that will be helpful for understanding the business or property of said Authorized Association, or have the officials inspect the status of the business or property, or the books and documents or other articles of said Authorized Association or the person who received entrustment of business from said Authorized Association (with regard to the person who received entrustment of business from said Authorized Association, the inspection shall be limited to what is necessary to understand the business or property of said 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 date of the commencement of each business year:

- (i) the business summary report for the previous business year and the business plan for the current business year;
- (ii) the inventory of property as of the end of the previous business year; and
- (iii) the statement on settlement of accounts for the previous business year and the budget statements for the current business year.

### **Subsection 5 Miscellaneous Provisions**

(Response, etc. to Complaints from Investors)

- Article 77 (1) When an investor files an application for resolution of a complaint concerning the business carried out by a Member Firm or a Financial Instruments Intermediary Service Provider, an Authorized Association shall respond to a request for consultation, provide necessary advice to the applicant, investigate the circumstances pertaining to such complaint and notify said Member Firm or Financial Instruments Intermediary Service Provider of the substance and content of such complaint and demand that said Member Firm or Financial Instruments Intermediary Service Provider should process the complaint expeditiously.
- (2) When an Authorized Association finds it necessary for resolving the complaint pertaining to an application under the preceding paragraph, it may demand that the relevant Member Firm or Financial Instruments Intermediary Service Provider should provide a written or oral explanation or submit materials.
- (3) When there has been a demand under the preceding paragraph from an Authorized Association, a Member Firm or Financial Instruments Intermediary Service Provider shall not refuse the demand without justifiable grounds.
- (4) An Authorized Association shall fully inform its Member Firms or Financial Instruments Intermediary Service Providers about any applications under paragraph (1), circumstances pertaining to said complaints and the outcome of any resolution.

(Mediation by Authorized Association)

- Article 77-2 (1) When there is a dispute pertaining to sales and purchase or other transactions of Securities or Derivative Transactions, etc. conducted by a Member Firm or a Financial Instruments Intermediary Service Provider, any party to the above transactions may file an application for mediation with an Authorized Association, for the purpose of resolving such dispute.
- (2) When an application under the preceding paragraph has been filed, an Authorized Association shall appoint a mediator who has relevant knowledge and experience and who has no special interest in the parties involved in the dispute pertaining to said filing (hereinafter referred to as the "Case" in this Article) and refer the Case to mediation of said mediator; provided, however, that a mediator shall not conduct mediation when he/she finds that mediation is not suitable for a Case in light of its nature, or that the party concerned has filed an application for mediation for unjust purposes and without due course.
- (3) A mediator may hear opinions of the parties or witnesses, request said persons to submit reports, or request the parties to submit books and documents and other articles that will be helpful; and may prepare a mediation plan necessary for resolution of the Case and recommend the parties to accept said plan, as he/she deems appropriate.

- (4) In the case of the preceding three paragraphs, when a Financial Instruments Intermediary Service Provider is a party concerned, its Entrusting Financial Instruments Business Operators, etc. shall also be deemed the parties thereto.
- (5) When there has been a demand under the provision of paragraph (3), a Member Firm or a Financial Instruments Intermediary Service Provider shall not refuse the demand without justifiable grounds.
- (6) An Authorized Association shall be entitled to collect from the parties all or part of the expenses incurred in relation to mediation.
- (7) A mediator or a former mediator shall not divulge to another person or misappropriate any confidential information learned during the course of his/her duties.
- (8) A mediator or a former mediator shall not use any information learned during the course of his/her duties for purposes other than providing for use in relation to the business of an Authorized Association.

(Entrustment of Mediation Service to Third Parties)

Article 77-3 (1) An Authorized Association may entrust the complaint resolution service prescribed in Article 77 (1) and the mediation service prescribed in paragraph (1) of the preceding Article to a person who has the financial basis and personnel structure required for conducting these services in an appropriate manner.

- (2) Notwithstanding the provision of the preceding paragraph, an Authorized Association may not entrust the complaint resolution service and the mediation service referred to in said paragraph to a person who falls under any of the following items:
  - (i) a person who was sentenced under any provision of this Act, if a period of two years has not yet elapsed since the day on which the person served out the sentence or was exempted from the execution of the sentence;
  - (ii) a person whose authorization was rescinded under Article 74 (1), if a period of two years has not yet elapsed from the date of rescission; or
  - (iii) a person, any of whose Officers in charge of its business fall under any of the following conditions:
    - (a) a person who was sentenced to imprisonment or a heavier punishment or was sentenced under any provision of this Act, if a period of two years has not yet elapsed since the day on which the person served out the sentence or was exempted from the execution of the sentence; or
    - (b) a person who was an Officer of an Authorized Association whose authorization was rescinded under Article 74 (1), if the person was an Officer of the Authorized Association within at least 30 days before the rescission and a period of two years has not yet elapsed from the date of rescission.

- (3) A person who is entrusted with the services under paragraph (1) may not entrust the entrusted services to another person.
- (4) The provisions of the preceding two Articles shall apply mutatis mutandis to the services entrusted by an Authorized Association under paragraph (1).

(Enlightenment Campaigns Carried Out by Authorized Association, etc.)

Article 77-4 An Authorized Association shall endeavor to promote sound development of Financial Instruments Business and protection of investors by dissemination of financial knowledge, enlightenment campaigns and publicity campaigns.

(Registration of Association)

- Article 77-5 (1) An Authorized Association shall be registered pursuant to the provision of a Cabinet Order.
- (2) An Authorized Association shall be established by registering its establishment at the location of its principal office.
  - (3) The matters that require registration under the provision of paragraph (1) may not be duly asserted against a third party until after the registration.

(Causes for Dissolution, etc. of Association)

Article 77-6 (1) An Authorized Association shall be dissolved based on the following grounds:

- (i) the occurrence of causes specified by the articles of incorporation;
  - (ii) a resolution of a general meeting;
  - (iii) the number of Member Firms has become 5 or less;
  - (iv) a decision of commencement of bankruptcy proceedings; or
  - (v) the rescission of authorization of establishment of an Authorized Association.
- (2) A resolution of a general meeting concerning dissolution of an Authorized Association shall not come into effect unless the authorization of the Prime Minister thereon has been obtained.
  - (3) When an Authorized Association has been dissolved under the provision of item (i) or (iii) of paragraph (1), the former representative person shall notify to that effect to the Prime Minister without delay.
  - (4) With respect to an Authorized Association, when a decision of commencement of bankruptcy proceedings or of conclusion of bankruptcy proceedings has been rendered, or when a rescission of a decision of commencement of bankruptcy proceedings or a decision of earlier termination of bankruptcy proceedings has become final and binding, a court clerk shall notify the Prime Minister to that effect.
  - (5) In addition to what is provided for in the preceding paragraphs, necessary

matters concerning the dissolution of Authorized Association shall be specified by a Cabinet Order.

(Delegation to Cabinet Office Ordinance)

Article 77-7 The procedures for implementation of the provisions of Article 67 to the preceding Article inclusive and any other matters necessary for enforcement thereof shall be specified by a Cabinet Office Ordinance.

## **Section 2 Public Interest Corporation-Type Financial Instruments Firms Associations**

### **Subsection 1 (Recognition and Activities)**

(Recognition of Public Interest Corporation-Type Financial Instruments Firms Associations)

Article 78 (1) The Prime Minister may, upon an application and pursuant to the provisions of a Cabinet Order, grant recognition for conducting the activities listed in the following paragraph to a juridical person which has been established by Financial Instruments Business Operators under Article 34 of the Civil Code and is found to satisfy the following requirements:

- (i) the juridical person shall aim at ensuring fair and smooth transaction of Securities, including sales and purchase or other transactions of Securities, and Derivative Transactions, etc. as well as contributing to sound development of Financial Instruments Businesses and protection of investors;
  - (ii) the juridical person's articles of incorporation shall include a provision to the effect that its members shall be Financial Instruments Business Operators;
  - (iii) the juridical person shall have established the method for carrying out its operations necessary for conducting the activities listed in the following paragraph appropriately and certainly; and
  - (iv) the juridical person shall have the knowledge, ability and financial basis necessary for conducting the activities listed in the following paragraph appropriately and certainly.
- (2) A juridical person recognized under the preceding paragraph (hereinafter referred to as a "Public Interest Corporation-Type Financial Instruments Firms Association" in this paragraph and the following Article) shall conduct the following activities:
- (i) to provide its members and Financial Instruments Intermediary Service Providers (limited to those whose Entrusting Financial Instruments Business Operators, etc. include its members; hereinafter the same shall apply in this Section) with guidance and recommendation and to conduct



other activities, for the purpose of having them observe the provisions of this Act and other laws and regulations in the course of conducting Financial Instruments Business:

- (ii) to conduct investigations, to provide guidance and recommendation and to conduct other activities necessary for ensuring appropriateness in contracts and asset investment and for otherwise protecting investors with regard to Financial Instruments Business conducted by its members and Financial Instruments Intermediary Service Providers;
- (iii) to investigate the status of observance of this Act, orders given thereunder, a disposition made under this Act or under such an order, its articles of incorporation or other rules, or the fair and equitable principles of transactions by its members and Financial Instruments Intermediary Service Providers;
- (iv) to resolve complaints filed by investors with regard to Financial Instruments Business conducted by its members and Financial Instruments Intermediary Service Providers;
- (v) to mediate in the case of disputes arisen from the Financial Instruments Business conducted by its members and Financial Instruments Intermediary Service Providers;
- (vi) to carry out Registration Work under Article 64-7 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 66-25) or Article 64-7 (2);
- (vii) to establish rules or conduct other activities necessary for ensuring appropriateness in solicitation for sales and purchase or other transactions of Securities conducted by its members and Financial Instruments Intermediary Service Providers;
- (viii) to conduct publicity towards investors or other activities necessary for achieving purposes of the Public Interest Corporation-Type Financial Instruments Firms Association; and
- (ix) in addition to what is listed in the preceding items, activities that would contribute to the sound development of Financial Instruments Businesses and protection of investors.

(Promotion of Investors Protection)

- Article 78-2 (1) A Public Interest Corporation-Type Financial Instruments Firms Association (hereinafter referred to as a "Public Interest-Type Association" in this Chapter) shall endeavor to promote sound development of Financial Instruments Businesses and protection of investors by dissemination of financial knowledge, enlightenment campaigns and publicity campaigns, in addition to what is listed in the items of paragraph (2) of the preceding Article.
- (2) A Public Interest-Type Association shall make the membership list available

for public inspection.

- (3) No person other than a Public Interest-Type Association shall use in its name any term which is likely to mislead people to understand that the person is a Public Interest-Type Association.

(Report to Public Interest-Type Association)

Article 78-3 A member of a Public Interest-Type Association shall report the matters listed in each of the following items in the respective case specified therein to the Public Interest-Type Association, pursuant to the provisions of a Cabinet Office Ordinance:

- (i) in cases where the member effects, outside of Financial Instruments Exchange Markets, sales and purchase of Listed Share Certificates, etc. on its own account, or where sales and purchase of Listed Share Certificates, etc. for which the member serves as the intermediary, introducing broker or agency is effected outside of Financial Instruments Exchange Markets: the kinds, issues, prices, or volumes, or other matters specified by a Cabinet Office Ordinance pertaining to the Listed Share Certificates, etc. for which the sales and purchase is effected; and
- (ii) in cases where the member makes, outside of Financial Instruments Exchange Markets, an offer for sales and purchase of Listed Share Certificates, etc. to a large number of persons simultaneously, or in other cases specified by a Cabinet Office Ordinance: the kinds, issues, prices, or volumes, or other matters specified by a Cabinet Office Ordinance pertaining to the Listed Share Certificates, etc. for which the offer for sales and purchase is made.

(Notification of Trading Volume, Prices, etc.)

Article 78-4 Based on reports received under the provision of the preceding Article, a Public Interest-Type Association shall notify to its member, and also make public, the trading volume, highest price, lowest price, closing price and other matters concerning sales and purchase of Listed Share Certificates, etc. conducted outside of Financial Instruments Exchange Markets (limited to those conducted by its member on their own account, or those for which its member provides intermediary, brokerage or agency service; the same shall apply in the following Article) for each day and for each issue of the Listed Share Certificates, etc., pursuant to the provisions of a Cabinet Office Ordinance.

(Report of Trading Volume, Prices or Other Matters)

Article 78-5 A Public Interest-Type Association shall report the trading volume, highest price, lowest price, closing price and other matters concerning sales

and purchase of Listed Share Certificates, etc. conducted outside of Financial Instruments Exchange Markets for each day and for each issue of the Listed Share Certificates, etc. to the Prime Minister, pursuant to the provisions of a Cabinet Office Ordinance.

(Response to Complaints Filed by Investors)

Article 78-6 Article 77 shall apply mutatis mutandis to resolution of investors' complaints by a Public Interest-Type Association. In this case, the term "Member Firm" in said Article shall be deemed to be replaced with "member."

(Mediation by Public Interest-Type Association)

Article 78-7 Article 77-2 shall apply mutatis mutandis to mediation conducted by a Public Interest-Type Association. In this case, the term "Member Firm" in paragraphs (1) and (5) of said Article shall be deemed to be replaced with "member."

(Entrustment of Mediation Service to Third Party)

Article 78-8 (1) A Public Interest-Type Association may entrust the complaint resolution service prescribed in Article 77 (1) as applied mutatis mutandis pursuant to Article 78-6 and the mediation service prescribed in Article 77-2 (1) as applied mutatis mutandis pursuant to the preceding Article to a person who has the financial basis and personnel structure required for conducting these services in an appropriate manner.

(2) Notwithstanding the provision of the preceding paragraph, the complaint resolution service and the mediation service referred to in said paragraph may not be entrusted to a person who falls under any of the following items:

- (i) a person who was sentenced under any provision of this Act, if a period of two years has not yet elapsed since the day on which the person served out the sentence or was exempted from the execution of the sentence;
- (ii) a person whose permission for the establishment was rescinded under Article 71 of the Civil Code, if a period of two years has not yet elapsed from the date of rescission; or
- (iii) a person, any of whose Officers in charge of its business fall under any of the following conditions:
  - (a) a person who was sentenced to imprisonment or a heavier punishment or was sentenced under any provision of this Act, if a period of two years has not yet elapsed since the day on which the person served out the sentence or was exempted from the execution of the sentence; or
  - (b) a person who was an Officer of a juridical person whose permission for the establishment was rescinded under Article 71 of the Civil Code, if the person was an Officer of the juridical person within at least 30 days before

the rescission and a period of two years has not yet elapsed from the date of rescission.

- (3) A person who is entrusted with the services under paragraph (1) may not entrust the entrusted services to another person.
- (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 shall apply to operations of the person who is entrusted with the services from a Public Interest-Type Association under paragraph (1).

(Obligation of Confidentiality of Officers and Employees and Other Matters)

Article 79 The provisions of Article 72 shall apply to Officers and employees of a Public Interest-Type Association and a person who was formerly in such position.

### **Subsection 2 Supervision**

(Matters Which must be Stated in Articles of Incorporation)

Article 79-2 A Public Interest-Type Association shall stipulate in its articles of incorporation that in the event that its member violates this Act, an order given thereunder, a disposition made under this Act or under such an order, or the articles of incorporation or other rules of the Public Interest-Type Association, or if a member commits an act contrary to the fair and equitable principles of transactions, the Public Interest-Type Association will impose a fine for default on the member, suspend or restrain the rights granted to the member under the articles of incorporation, or expel the member from the Public Interest-Type Association.

(Operational Rules)

Article 79-3 (1) A Public Interest-Type Association shall establish rules concerning the following matters and shall obtain authorization for it from the Prime Minister. The same shall apply to cases where the Public Interest-Type Association intends to change the rules:

- (i) matters pertaining to the duty prescribed in Article 78 (2); and
- (ii) matters pertaining to kinds of share certificates, bonds with share option or other types of Securities specified by a Cabinet Office Ordinance (excluding Securities listed in a Financial Instruments Exchange and Over-the-Counter Traded Securities) for which solicitation for sales and purchase or for other transactions is not prohibited.

(2) A Public Interest-Type Association shall notify any change among its Officers or members to the Prime Minister without delay.

(Order for Production of Report and On-Site Inspection)

Article 79-4 When the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may order a Public Interest-Type Association or a person who is entrusted with certain services from a Public Interest-Type Association to submit reports or materials that will be helpful for understanding their business or property, or have the officials enter the office of said Public Interest-Type Association or said person to inspect the status of their service or their property, or their books and documents or other articles (with regard to the person who is entrusted with the service from the Public Interest-Type Association, the inspection shall be limited to what is necessary to understand the status of the service entrusted from, or the property of, the Public Interest-Type Association) or to inquire of the person concerned (with regard to the person who is entrusted with the service from the Public Interest-Type Association, the inquiry shall be limited to what is necessary to understand the status of the service entrusted from, or the property of, the Public Interest-Type Association).

(Cooperation with the Prime Minister)

Article 79-5 For the purpose of promoting smooth implementation of the provisions of this Section, the Prime Minister may, pursuant to the provisions of a Cabinet Office Ordinance, have a Public Interest-Type Association submit materials or make notification as prescribed in the relevant provision of this Section, or provide cooperation with regard to other necessary matters.

(Supervisory Order to Public Interest-Type Association)

Article 79-6 (1) When the Prime Minister finds it necessary to improve operations of a Public Interest-Type Association's services, he/she may, only to the extent necessary for implementation of the provisions of this Section, order the Public Interest-Type Association to take necessary measures for improving its operations.

(2) When the Prime Minister finds operations of services conducted by a Public Interest-Type Association are in violation of this Act or an order given thereunder, or a disposition made under this Act or under such an order, he/she may rescind the recognition granted to it, or order suspension of all or part of its operations by specifying a period not exceeding six months.

### **Section 3 Certified Investor Protection Organization**

(Purpose and Business of Certified Investor Protection Organization)

Article 79-7 (1) A juridical person (including an organization without judicial personality for which the representative person or administrator has been

designated, and excluding Authorized Association and Public Interest-type Association; hereinafter the same shall apply in item (iii), sub-item (b) of the following Article) which intends to engage in the businesses listed in each of the following items, with the purpose of ensuring fair and smooth sales and purchase or other transactions of Securities and Derivative Transactions, etc. and of contributing to the sound development of Financial Instruments Businesses and protection of investors may obtain a certification from the Prime Minister:

- (i) to resolve complaints filed with regard to Financial Instruments Business conducted by a Financial Instruments Business Operator or a Financial Instruments Intermediary Service Provider;
  - (ii) to mediate in the case of disputes arisen from Financial Instruments Business conducted by a Financial Instruments Business Operator or a Financial Instruments Intermediary Service Provider; and
  - (iii) in addition to what is listed in the preceding two items, activities that would contribute to the sound development of Financial Instruments Businesses and protection of investors.
- (2) A person who intends to obtain a certification under the preceding paragraph shall submit an application to the Prime Minister, pursuant to the provisions of a Cabinet Order.
- (3) When the Prime Minister has granted a certification under paragraph (1), he/she shall make a public notice to that effect.

(Causes for Disqualification)

Article 79-8 A person who falls under any of the following items may not obtain the certification under paragraph (1) of the preceding Article:

- (i) a person who was sentenced under any provision of this Act, if a period of two years has not yet elapsed since the day on which the person served out the sentence or was exempted from the execution of the sentence;
- (ii) a person whose certification was rescinded under Article 79-19 (1), if a period of two years has not yet elapsed from the date of rescission; or
- (iii) a person, any of whose Officers in charge of its business (including an organization without judicial personality for which the representative person or administrator has been designated; hereinafter the same shall apply in this Article) falls under any of the following conditions:
  - (a) a person who was sentenced to imprisonment or a heavier punishment or was sentenced under any provision of this Act, if a period of two years has not yet elapsed since the day on which the person served out the sentence or was exempted from the execution of the sentence; or
  - (b) a person who was an Officer of a juridical person whose certification was rescinded under Article 79-19 (1), if the person was an officer of the

juridical person within at least 30 days before the rescission and a period of two years has not yet elapsed from the date of rescission.

(Criteria for Certification)

Article 79-9 The Prime Minister shall not grant a certification, unless he/she finds that an application under Article 79-7 (2) conforms to all of the following items:

- (i) the applicant shall have established the method for carrying out its operations necessary for conducting the activities listed in the respective items of Article 79-7 (1) appropriately and certainly;
- (ii) the applicant shall have the knowledge, ability and financial accounting basis necessary for conducting the activities listed in the respective item of Article 79-7 (1) appropriately and certainly; and
- (iii) when a person conducts any business other than those listed in the respective items of Article 79-7 (1), the execution of said business involves no risk of causing unfairness in any of the businesses listed in the respective items.

(Notification of Abolition of Business)

Article 79-10 (1) When a person who has been granted a certification under Article 79-7 (1) (hereinafter referred to as the "Certified Investor Protection Organization" in the following Article, paragraph (1)) intends to abolish the certified business (hereinafter referred to as the "Certified Businesses" in this Section), he/she shall, in advance, notify to that effect to the Prime Minister, pursuant to the provisions of a Cabinet Order.

(2) When the notification under the provision of the preceding paragraph has been filed, the Prime Minister shall make a public notice to that effect.

(Target Business Operators)

Article 79-11 (1) The Certified Investor Protection Organization (hereinafter referred to as the "Certified Organization" in this Section) shall have Financial Instruments Business Operators or Financial Instruments Intermediary Service Providers which are members of said Certified Organization, or Financial Instruments Business Operators or Financial Instruments Intermediary Service Providers which have agreed to be subject to the Certified Businesses, or any other person specified by a Cabinet Office Ordinance become its Target Business Operators (meaning Financial Instruments Business Operators, Financial Instruments Intermediary Service Providers, or any other person specified by a Cabinet Office Ordinance that are subject to businesses of said Certified Organization; hereinafter the same shall apply in this Section).

(2) A Certified Organization shall make the list of the Target Business Operators available for public inspection.

(Processing of Complaints by Certified Organization)

Article 79-12 Article 77 shall apply mutatis mutandis to the cases where a Certified Organization resolves complaints filed by investors (limited to those concerning the Target Business Operators). In this case, the term "Member Firm or Financial Instruments Intermediary Service Provider" in said Article, shall be deemed to be replaced with "the Target Business Operators prescribed in Article 79-11 (1)."

(Mediation by Certified Organization)

Article 79-13 Article 77-2, paragraphs (1) to (3) inclusive and paragraphs (5) to (8) inclusive shall apply mutatis mutandis to the cases where a Certified Organization conducts mediations (limited to those concerning the Target Business Operators). In this case, the term "Member Firm or a Financial Instruments Intermediary Service Provider" in paragraph (1) of said Article shall be deemed to be replaced with "the Target Business Operators prescribed in Article 79-11 (1)"; the term "Derivative Transactions, etc." in said paragraph shall be deemed to be replaced with "Derivative Transactions, etc. (including transactions incidental to these transactions and other transactions specified by a Cabinet Office Ordinance),"; and the term "Member Firm or a Financial Instruments Intermediary Service Provider" in paragraph (5) of said Article shall be deemed to be replaced with "the Target Business Operators prescribed in Article 79-11 (1)."

(Application, Mutatis Mutandis, of Obligation of Confidentiality, etc. of Officers and Employees)

Article 79-14 Article 72 shall apply mutatis mutandis to Officers or employees, or a person who was formerly in such position of a Certified Organization.

(Restriction on Use of Names)

Article 79-15 A person who is not a Certified Organization shall not use a name as a Certified Investor Protection Organization or any name confusingly similar thereto.

(Order for Production of Reports)

Article 79-16 The Prime Minister may, within the limit necessary for implementing the provisions in this Section, have a Certified Organization submit a report on its Certified Businesses.



(Investor Protection Guidelines)

Article 79-17 (1) A Certified Organization shall endeavor to prepare and publicize guidelines in line with the purport of the provisions of this Act, with regard to the contents of a contract of Financial Instruments Transactions conducted by the Target Business Operators, the nature of asset investment conducted by the Target Business Operators and other matters necessary for achieving protection of investors (hereinafter referred to as "Investor Protection Guidelines"), in order to ensure sound development of Financial Instruments Businesses and protection of investors.

(2) When a Certified Organization has published the Investor Protection Guidelines under the preceding paragraph, it shall endeavor to provide the Target Business Operators with guidance, recommendations and other measures necessary for having the Target Business Operators comply with the Investor Protection Guidelines.

(3) A Certified Organization shall endeavor to promote sound development of Financial Instruments Businesses and protection of investors through dissemination of financial knowledge, enlightenment campaigns and publicity campaigns.

(Order)

Article 79-18 The Prime Minister may, within the limit necessary for implementing the provisions in this Section, order a Certified Organization to improve execution methods of Certified Businesses, to change the Investor Protection Guidelines and to take any other necessary measures.

(Rescission of Certification)

Article 79-19 (1) When a Certified Organization falls under any of the following items, the Prime Minister may rescind its certification:

(i) when a Certified Organization has come to fall under item (i) or (iii) of Article 79-8;

(ii) when a Certified Organization no longer conforms to any item of Article 79-9;

(iii) when a Certified Organization has failed to comply with an order issued under the provision of the preceding Article; or

(iv) when a Certified Organization has obtained a certification under Article 79-7 (1) by wrongful means.

(2) When the Prime Minister has rescinded a certification under the provisions of the preceding paragraph, he/she shall make a public notice to that effect.

## **Chapter IV-2 Investor Protection Fund**

### **Section 1 General Provisions**

(General Customers, etc.)

Article 79-20 (1) The term "General Customer" as used in this Chapter means a customer of the head office, or other business office or office in Japan (with regard to a Financial Instruments Business Operator which is a foreign judicial person, its business office or office in Japan) of a Financial Instruments Business Operator (limited to a Financial Instruments Business Operator that conducts Securities-Related Business prescribed in Article 28 (8); hereinafter the same shall apply in this Chapter) that conducts Subject Securities-Related Transactions with said Financial Instruments Business Operator (excluding Qualified Institutional Investors, states, local governments and other persons specified by a Cabinet Order).

(2) Notwithstanding the provision of the preceding paragraph, the provisions of this Chapter shall apply to cases where a Financial Instruments Business Operator conducts a Subject Securities-Related Transactions with another Financial Instruments Business Operator for the account of a General Customer, by deeming said Financial Instruments Business Operator to be a General Customer of said other Financial Instruments Business Operator.

(3) The term "Customer Assets" as used in this Chapter means the following:

(i) the money or Securities deposited to a Financial Instruments Business Operator from a General Customer under the provisions of Article 119 (limited to that deposited with regard to Transactions of Securities-Related Derivatives) or money or Securities deposited to a Financial Instruments Business Operator from a General Customer under the provisions of Article 161-2;

(ii) the money belonging to the account of a General Customer or money deposited to a Financial Instruments Business Operator from a General Customer (excluding the money prescribed in the preceding item), with regard to a transaction (excluding Over-the-Counter Transactions of Derivatives or other transactions specified by a Cabinet Order; the same shall apply in the following item) pertaining to Financial Instruments Business (limited to Securities-Related Business prescribed in Article 28 (8); hereinafter the same shall apply in this Chapter);

(iii) the Securities belonging to the account of a General Customer or Securities deposited to a Financial Instruments Business Operator from a General Customer (excluding Securities prescribed in item (i), Securities that a Financial Instruments Business Operator may use under a contract, and other Securities specified by a Cabinet Order), with regard to a transaction pertaining to Financial Instruments Business; and

(iv) in addition to what is listed in the preceding three items, those specified by a 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 aim at the protection of investors through payment to General Customers under the provision of Article 79-56 (1) or other business, thereby maintaining the credibility of transactions of securities.

(Juridical Personality and Address)

Article 79-22 (1) A Fund shall be a juridical person.

(2) The address of a Fund shall be the location of its principal office.

(Name)

Article 79-23 (1) A Fund shall use in its name the term "Investor Protection Fund."

(2) No person other than a Fund shall use in its name the term "Investor Protection Fund."

(Registration)

Article 79-24 (1) A Fund shall make a registration pursuant to the provisions of a Cabinet Order.

(2) Matters that shall be registered under the provisions of the preceding paragraph may not be asserted against a third party until their registration.

(Capacity to Commit Tortious Acts, etc.)

Article 79-25 A Fund shall assume liability for damages caused to others by its president or directors during the course of the performance of their duties.

## **Section 2 Members**

(Qualification for Members)

Article 79-26 (1) A person qualified as a member of a Fund shall be limited to Financial Instruments Business Operators.

(2) When a Financial Instruments Business Operator intends to join a Fund, the Fund shall neither refuse it nor attach unreasonable conditions thereto except in cases where its joining is restricted for a special cause concerning the type of the business or any other justifiable cause.

(Obligation to Join, etc.)

Article 79-27 (1) A Financial Instruments Business Operator (excluding those specified by a Cabinet Order) shall join any one of the Funds as a member.

- (2) A person who intends to conduct Financial Instruments Business with registration set forth in Article 29 or registration of change set forth in Article 31 (4) (excluding those specified by a Cabinet Order) shall take procedures to join any one of the Funds at the same time as the filing of an application for the registration or registration of change.
- (3) A person who has taken procedures to join a Fund under the provisions of the preceding paragraph shall become a member of said Fund at the time when he/she obtains registration or registration of change set forth in said paragraph.
- (4) When a Financial Instruments Business Operator has joined a Fund or changed a Fund to which it belongs, it shall notify to that effect to the Prime Minister without delay.

(Withdrawal, etc.)

Article 79-28 (1) A Financial Instruments Business Operator which is a member of a Fund shall automatically withdraw the Fund to which it belongs due to the following causes:

- (i) abolition of its Financial Instruments Business (with regard to a Financial Instruments Business Operator which has obtained registration of change set forth in Article 31 (4) to the effect that it stops conducting Securities-Related Business or which is a foreign juridical person, including abolition of its Financial Instruments Business at all business offices or offices established in Japan) or dissolution of the Financial Instruments Business Operator (with regard to a Financial Instruments Business Operator which is a foreign juridical person, including commencement of liquidation of a business office or office established in Japan); or
  - (ii) rescission of registration set forth in Article 29 under the provisions of Article 52 (1) or (4) or Article 53 (3) or Article 54.
- (2) A Financial Instruments Business Operator which has withdrawn from a Fund under the provisions of the preceding paragraph shall be deemed, for the purpose of application of Articles 79-52 to 79-61, to be a Financial Instruments Business Operator which is a member of said Fund.
  - (3) A Financial Instruments Business Operator may not withdraw from a Fund to which it belongs except in cases where the withdrawal is for a cause listed in any of the items of paragraph (1) or when the Financial Instruments Business Operator becomes a member of another Fund with approval of the Prime Minister and the Minister of Finance.
  - (4) Even when a Financial Instruments Business Operator has withdrawn from a Fund to which it has belonged (excluding the case of withdrawal under the provisions of paragraph (1)), it shall have the obligation to pay as a Burden Charge an amount calculated by said Fund pursuant to the provisions of the operational rules as an amount of the costs that should be borne by said

withdrawn Financial Instruments Business Operator out of the amount of the costs required for the business conducted by said Fund for the Financial Instruments Business Operator pertaining to a notice under the provision of Article 79-53 (1) or (3) to (5), which said Fund has received before said Financial Instruments Business Operator withdrew from said Fund.

- (5) Upon receiving an application for approval set forth in paragraph (3), the Prime Minister and the Minister of Finance shall not grant the approval unless the following requirements are satisfied:
- (i) said Financial Instruments Business Operator has repaid in full the obligation it has borne as a member to a Fund from which it intends to withdraw, by the time of filing an application for approval, and is expected to certainly perform the obligation prescribed in the preceding paragraph; and
  - (ii) said Financial Instruments Business Operator has taken procedures to join another Fund as a member.

### **Section 3 Establishment**

(Requirements for Establishment)

- Article 79-29 (1) In order to establish a Fund, 20 or more Financial Instruments Business Operators which intend to become its members shall become the founders.
- (2) After preparing the articles of incorporation and operational rules, the founders shall invite persons who intend to become members, and hold an organizational meeting by giving a public notice of said 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 on any other necessary matters for the establishment of a Fund shall be made by a resolution of an organizational meeting.
- (4) The articles of incorporation and operational rules may be revised at an organizational meeting.
- (5) A decision at an organizational meeting set forth in paragraph (3) shall be made by at least two-thirds of the voting rights of those present when at least half of the Financial Instruments Business Operators which have proposed themselves to the founders to become members before the opening of the meeting (hereinafter referred to as "Expected Members" in this Article) and the founders are present.
- (6) Notwithstanding the provision of Article 79-42 (1), any necessary matters for the operation of the business in the business year which includes the day of establishment of a Fund (including the budget and financial plan) may be decided by a resolution of an organizational meeting.

- (7) The provision of Article 79-43 shall apply mutatis mutandis to decisions at an organizational meeting set forth in the preceding paragraph. In this case, the term "all members" in said Article shall be deemed to be replaced with "Financial Instruments Business Operators which have proposed themselves to the founders to become members before the opening of the meeting and the founders."
- (8) The voting right of each Expected Member shall be equal.
- (9) An Expected Member not attending an organizational meeting may vote in writing or by proxy.
- (10) The provision of the preceding two paragraphs shall not apply to cases where it is otherwise provided in the articles of incorporation.
- (11) When voting on a relationship between a Fund and a particular Expected Member, such Expected Member shall not have a voting right of an organizational meeting.

(Application for Authorization)

Article 79-30 (1) Founders shall obtain authorization for establishment by submitting to the Prime Minister and the Minister of Finance a written application for authorization containing the following matters after the completion of an organizational meeting without delay:

- (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 a Cabinet Office Ordinance and Ordinance of the Ministry of Finance shall be attached to a written application for authorization set forth in the preceding paragraph.

(Criteria for Examination for Authorization)

Article 79-31 (1) Upon receiving an application for 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 establishment and the content of the articles of incorporation and operational rules conform to laws and regulations;
- (ii) a written application for authorization, the articles of incorporation and operational rules do not contain fake statements;
- (iii) Officers do not include a person falling under any of (a) to (g) of Article 29-4 (1)(ii);
- (iv) a Fund pertaining to said application is found to have necessary assets to conduct its business or it is found that the Fund will certainly have such

- assets;
- (v) it is found that the operation of the business will be certainly conducted in an appropriate manner; and
  - (vi) the organization of a Fund pertaining to said application conforms to the provisions of this Act.
- (2) The Prime Minister and the Minister of Finance shall, when they find as a result of examination under the provisions of the preceding paragraph that the application conforms to the criteria set forth in said paragraph, grant authorization for establishment.
- (3) The Prime Minister and the Minister of Finance shall, when they have received an application for authorization under the provision of paragraph (1) of the preceding Article and find it inappropriate to grant the authorization, notify to that effect to the Applicant for authorization and have the officials conduct a hearing.
- (4) The Prime Minister and the Minister of Finance shall, when having decided to grant authorization for establishment or not to grant such authorization, notify to that effect to the Applicant for authorization in document without delay.

(Succession of Affairs to President)

Article 79-32 When authorization for establishment is granted, founders shall have their affairs succeeded to a person who should become the president without delay.

(Registration)

Article 79-33 (1) A Fund shall be established by registering its establishment at the location of its principal office.

(2) A Fund shall, when having made a registration of establishment set forth in the preceding paragraph, notify to that effect to the Prime Minister and the Minister of Finance without delay.

## **Section 4 Management**

(Matters Which must be Stated in Articles of Incorporation)

Article 79-34 (1) The articles of incorporation of a Fund shall contain the following matters:

- (i) the purpose;
- (ii) the name;
- (iii) the location of the office;
- (iv) matters concerning members (in the case of restricting membership based on a special cause, etc. concerning the type of the business, including the

- special cause, etc.);
  - (v) matters concerning the general meeting;
  - (vi) matters concerning Officers;
  - (vii) matters concerning the governing council;
  - (viii) matters concerning business and its execution;
  - (ix) matters concerning the Burden Charge;
  - (x) matters concerning finance and accounting;
  - (xi) matters concerning amendment of the articles of incorporation;
  - (xii) matters concerning dissolution; and
  - (xiii) the method of public notice.
- (2) An amendment of the articles of incorporation shall not come into effect without the authorization of the Prime Minister and the Minister of Finance.
- (3) When there are any changes in the matters listed in Article 79-30 (1)(ii) or (iii), a Fund shall notify to that effect to the Prime Minister and the Minister of Finance without delay.

(Officers)

- Article 79-35 (1) One president, two or more directors and one or more auditors shall be placed at a Fund as Officers.
- (2) The business of a Fund shall be decided by a majority of the president and directors, unless otherwise provided for in laws and regulations or the articles of incorporation.

(Authority of an Officer)

- Article 79-36 (1) The president shall represent the Fund and preside over its business.
- (2) The directors shall, pursuant to the provisions of the articles of incorporation, represent the Fund, administer the business of the Fund assisting the president, perform the duties of the president in his/her place when the president is unable to attend to his/her duties, and perform the duties of the president when the post is vacant.
- (3) The auditors shall audit the business of the Fund.
- (4) The auditors may submit their opinions to the president or the Prime Minister and the Minister of Finance based on the results of audit when they find it necessary.
- (5) When an Officer comes to fall under any of (a) to (g) of Article 29-4 (1)(ii), he/she shall lose his/her position.

(Appointment, Term of Office and Dismissal of Officers)

- Article 79-37 (1) Officers shall be appointed or dismissed at a general meeting pursuant to the provisions of the articles of incorporation; provided, however,



that the Officers at the time of establishment shall be appointed at the organizational meeting.

- (2) The appointment (excluding appointment of the Officers at the time of establishment) and dismissal of Officers of a Fund under the provisions of the preceding paragraph shall not come into effect without the authorization of the Prime Minister and the Minister of Finance.
- (3) The term of office of an Officer shall be a period specified by the articles of incorporation not exceeding two years.
- (4) Officers may be reappointed.
- (5) When an Officer has been found to have become an Officer by way of wrongful means or when an Officer has violated laws and regulations, a disposition by government agencies based on laws and regulations or the articles of incorporation, the Prime Minister and the Minister of Finance may order the Fund to dismiss said Officer.

(Concurrent Holding of Positions by Auditors)

Article 79-38 Auditors shall not concurrently hold a position of president, director, member of the governing council, or employee of the Fund.

(Restriction on the Authority of Representation)

Article 79-39 With regard to matters for which the interests of the Fund and the president or directors conflict with each other, these persons shall not have the authority of representation. In this case, an auditor shall represent the Fund.

(Provisional Director or Provisional Auditor)

Article 79-40 The Prime Minister and the Minister of Finance may, when there is no person to perform the duties of a director or an auditor, appoint a provisional director or provisional auditor when they find it necessary.

(General Meeting)

- Article 79-41 (1) The president shall call an ordinary general meeting once in every business year pursuant to the provisions of the articles of incorporation.
- (2) The president shall, when he/she finds it necessary, call an extraordinary general meeting.
  - (3) A Fund shall report resolutions of the general meeting to the Prime Minister and the Minister of Finance.
  - (4) The Prime Minister and the Minister of Finance may have the officials attend the general meeting and state their opinions.

(Matters that Require a Resolution of a General Meeting)

Article 79-42 (1) In addition to what is prescribed in this Chapter, the following

matters shall require a resolution of a general meeting:

(i) amendment of the articles of incorporation;

(ii) decision on or change of the budget and financial plan;

(iii) change of the operational rules;

(iv) settlement of account;

(v) dissolution; and

(vi) in addition to what is listed in the preceding items, important matters specified by the articles of incorporation.

(2) A general meeting may request an auditor to audit the business of the Fund and report the results of the audit.

(Decision of a General Meeting)

Article 79-43 A decision of a general meeting shall be made by a majority of voting rights of those present when at least half of all members are present, and by the chairperson in the case of a tie; provided, however, that a decision on any of the matters set forth in paragraph (1)(i), (iii) and (v) of the preceding Article shall be made by at least two-thirds of voting rights of those present.

(Extraordinary General Meeting)

Article 79-44 When the calling of a general meeting has been requested by at least one-fifth of all members by presenting the subject matter of the meeting, the directors shall call an extraordinary general meeting; provided, however, that a proportion different from one-fifth of all members may be specified by the articles of incorporation.

(Calling of a General Meeting)

Article 79-44-2 A notice of calling of a general meeting shall be given by presenting the subject matter of the meeting in accordance with the method specified by the articles of incorporation by at least five days prior to the day of the meeting.

(Matters that Require a Resolution of a General Meeting)

Article 79-44-3 Only the matters that have been notified in advance pursuant to the provisions of the preceding Article may be resolved at a general meeting; provided, however, that, this shall not apply to cases where it is otherwise provided for in the articles of incorporation.

(Voting Rights of Members)

Article 79-44-4 (1) The voting right of each member shall be equal.

(2) A member not attending a general meeting may vote in writing or by proxy.

(3) The provision of the preceding two paragraphs shall not apply to cases where

it is otherwise provided for in the articles of incorporation.

(Case of No Voting Right)

Article 79-44-5 When voting on a relationship between a Fund and a particular member, the member shall not have a voting right.

(Governing Council)

Article 79-45 (1) A governing council (hereinafter referred to as the "Council") shall be established at a Fund in order to achieve appropriate operation of the business of the Fund.

(2) In the following cases, the president shall hear the opinions of the Council in advance:

- (i) when granting recognition under the provisions of Article 79-54;
- (ii) when specifying the matters that should be specified under the provisions of Article 79-55 (1);
- (iii) when making a decision on whether to provide a loan under the provision of Article 79-59; and
- (iv) other cases specified by the articles of incorporation as when other important matters concerning the operation of the business of the Fund are decided.

(3) The Council shall be organized not exceeding eight members.

(4) The members shall be appointed by the president from those who have the necessary knowledge and experience for appropriate operation of the business of the Fund, with the authorization of the Prime Minister and the Minister of Finance.

(5) The provision of Article 79-41 (4) shall apply mutatis mutandis to the Council.

(Appointment of Employees)

Article 79-46 The employees of a Fund shall be appointed by the president.

(Obligation of Confidentiality of Officers and Employees, etc.)

Article 79-47 (1) An Officer or employee of a Fund or a member of the Council, or a person who was formerly in such position shall neither divulge nor misappropriate any secret he/she has learned during the course of his/her duties.

(2) An Officer or employee of a Fund or a member of the Council, or a person who was formerly in such position shall not utilize information he/she has learned during the course of his/her duties for a purpose other than for the business of the Fund.

(Position of Officers and Employees)

Article 79-48 With regard to the application of the Penal Code and other penal provisions, Officers and employees of a Fund and members of the Council shall be deemed to be officials engaged in public service under laws and regulations.

### **Section 5 Business**

(Scope of Business)

Article 79-49 A Fund shall conduct the following business in order to achieve the purpose prescribed in Article 79-21:

- (i) payment to General Customers under the provision of Article 79-56 (1);
- (ii) loan of Funds under the provision of Article 79-59 (1);
- (iii) judicial or extra-judicial acts prescribed in Article 79-60 (1);
- (iv) business for contributing to expeditious refund of Customer Assets prescribed in Article 79-61;
- (v) collection and management of a Burden Charge (meaning the Burden Charge prescribed in Article 79-28 (4) and Article 79-64 (1); the same shall apply in Article 79-51 (1));
- (vi) submission of a customer list under the provision of Chapter IV, Section 5, Chapter V, Section 3 and Chapter VI, Section 3 of the Act on Special Measures Concerning Reorganization Proceedings of Financial Institutions, etc. (Act No. 95 of 1996) and other business under these provisions; and
- (vii) business incidental to business listed in the preceding items.

(Entrustment of Business)

Article 79-50 (1) A Fund may entrust part of its business to a Financial Instruments Firms Association (meaning an Authorized Financial Instruments Firms Association or Public Interest Corporation-Type Financial Instruments Firms Association prescribed in Article 78 (2); the same shall apply in the following paragraph) or a Financial Instruments Business Operator with the authorization of the Prime Minister and the Minister of Finance in advance.

(2) When authorization prescribed in the preceding paragraph is granted, the Financial Instruments Firms Association or Financial Instruments Business Operator may accept entrustment of business pertaining to said authorization and conduct said business, notwithstanding the provisions of this Act or other laws and regulations.

(Operational Rules)

Article 79-51 (1) The operational rules of a Fund shall state matters concerning payment to General Customers under the provision of Article 79-56 (1), matters concerning the method of calculation of a Burden Charge and payment thereof and other matters specified by a Cabinet Office Ordinance and

Ordinance of the Ministry of Finance.

- (2) When a Fund intends to change its operational rules, it shall obtain authorization from the Prime Minister and the Minister of Finance.

(Submission of Reports or Materials)

Article 79-52 (1) When it is necessary for conducting its business, a Fund may request a Financial Instruments Business Operator which is its member to submit reports or materials that will be helpful for understanding the status of business or property of said Financial Instruments Business Operator.

(2) A Financial Instruments Business Operator which has been requested for submission of reports or materials that will be helpful for understanding the status of its business or property under the provisions of the preceding paragraph shall submit the reports or materials without delay.

(3) Upon receiving a request from a Fund, the Prime Minister may, when he/she finds that it is particularly necessary for the Fund to conduct its business, issue materials to the Fund or have the Fund inspect them.

(Notice to a Fund)

Article 79-53 (1) When falling under any of the following items, a Financial Instruments Business Operator which is a member of a Fund shall immediately notify to that effect to the Fund to which it belongs:

(i) when registration set forth in Article 29 is rescinded under the provisions of Article 52 (1), Article 53 (3) or Article 54;

(ii) when the Financial Instruments Business Operator files an application for commencement of bankruptcy proceedings, rehabilitation proceedings, reorganization proceedings, or special liquidation proceedings (with regard to a Financial Instruments Business Operator which has obtained registration of change set forth in Article 31 (4) to the effect that it stops conducting Securities-Related Business or which is a foreign juridical person, when it files an application for commencement of bankruptcy proceedings, rehabilitation proceedings, reorganization proceedings, or special liquidation proceedings in Japan, or when it files an application of the same kind in a state where its head office is located based on the laws and regulations of said state);

(iii) when the Financial Instruments Business Operator abolishes its Financial Instruments Business (with regard to a Financial Instruments Business Operator which is a foreign juridical person, including abolition of Financial Instruments Business at all business offices or offices established in Japan; hereinafter the same shall apply in this item) or dissolved (with regard to a Financial Instruments Business Operator which is a foreign juridical person, including commencement of liquidation of business offices or offices

- established in Japan) or when the Financial Instruments Business Operator gives a public notice of abolition or dissolution of its Financial Instruments Business, etc. under the provision of Article 50-2 (6); or
- (iv) when the Financial Instruments Business Operator receives an order for suspension of whole or part of its business under the provision of Article 52 (1) (limited to the case falling under item (vii) of said paragraph).
- (2) A Fund shall, when having received a notice under the provision of the preceding paragraph, immediately report to that effect to the Prime Minister and the Minister of Finance.
- (3) The Prime Minister shall, when having taken any of the following dispositions 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:
- (i) the rescission of registration set forth in Article 29 under the provision of Article 52 (1) or (4), Article 53 (3) or Article 54; or
  - (ii) an order for suspension of whole or part of its business under the provision of Article 52 (1) (limited to cases falling under item (vii) of said paragraph).
- (4) The Prime Minister shall, when having filed an application for commencement of bankruptcy proceedings under the provision of Article 490 (1) of the Act on Special Measures Concerning Reorganization Proceedings of Financial Institutions, etc. 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) The Prime Minister shall, when having received a notice under the provision of Article 379 (2), Article 448 (2) or Article 492 of the Act on Special Measures Concerning Reorganization Proceedings of Financial Institutions, etc. or other notice concerning special liquidation proceedings 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.

(Recognition of Difficulty in Payment)

Article 79-54 When a Fund has received a notice under the provision of paragraph (1) or paragraphs (3) to (5) of the preceding Article, it shall grant recognition of whether it is difficult for a Financial Instruments Business Operator pertaining to said notice (hereinafter referred to as a "Notifying Financial Instruments Business Operator") to smoothly perform the obligation pertaining to refund of Customer Assets without delay, except when it is found that there is obviously no risk of insufficient protection of investors.

(Public Notice of Recognition)

- Article 79-55 (1) When a Fund has granted, under the provisions of the preceding Article, recognition to the effect that it is difficult for a Notifying Financial Instruments Business Operator to smoothly perform the obligation pertaining to refund of Customer Assets, it shall promptly specify the period and place of notification set forth in paragraph (1) of the following Article and other matters specified by a Cabinet Order and give a public notice thereof.
- (2) When a public notice under the provision of Article 197 (1) of the Bankruptcy Act (Act No. 75 of 2004) (including the cases where it is applied mutatis mutandis pursuant to Article 209 (3) of said Act) or a notice under the provision of paragraph (5) has been given or when any other cause specified by a Cabinet Order has occurred with regard to a Financial Instruments Business Operator pertaining to recognition set forth in the preceding paragraph (hereinafter referred to as a "Recognized Financial Instruments Business Operator") after a Fund's giving a public notice under the provisions of the preceding paragraph, the Fund may change the period of notification for which a public notice was given under the provisions of the preceding paragraph.
- (3) When a Fund has changed the period of notification under the provisions of the preceding paragraph, it shall give a public notice of the matters pertaining to the change without delay.
- (4) When a Fund has specified the matters prescribed in paragraph (1) or has changed the period of notification under the provisions of paragraph (2), it shall immediately report to that effect to the Prime Minister and the Minister of Finance.
- (5) When a bankruptcy trustee has made a notice under the provision of Article 197 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 209 (3) of the Bankruptcy Act) or Article 204 (2) of the Bankruptcy Act or when a bankruptcy trustee has received a permission under the provision of Article 208 (1) of said Act in the bankruptcy proceedings of a Recognized Financial Instruments Business Operator, he/she shall notify to that effect to the relevant Fund.

(Payment of Claims Subject to Compensation)

- Article 79-56 (1) Based on a request by a General Customer of a Recognized Financial Instruments Business Operator, a Fund shall make payment of an amount calculated pursuant to the provisions of a Cabinet Office Ordinance and Ordinance of the Ministry of Finance with regard to the claims which said General Customer had held against said Recognized Financial Instruments Business Operator on the day a public notice was given under the provisions of paragraph (1) of the preceding Article (limited to those pertaining to Customer

Assets of said General Customer), which the Fund finds it difficult for said Recognized Financial Instruments Business Operator to smoothly pay pursuant to the provisions of a Cabinet Order (hereinafter referred to as "Claims Subject to Compensation").

- (2) Notwithstanding the provision of the preceding paragraph, a Fund shall not make the payment set forth in said paragraph to an Officer of a Recognized Financial Instruments Business Operator or any other person specified by a Cabinet Order.
- (3) A request set forth in paragraph (1) may only be made within the period of notification for which a public notice was given under the provisions of paragraph (1) or (3) of the preceding Article; provided, however, that this shall not apply to the cases of a natural disaster or cases where the Fund finds compelling reason regarding its failure to make a request within the period of notification.

(Amount of Payment, etc.)

Article 79-57 (1) In cases where a General Customer of a Recognized Financial Instruments Business Operator who has made a request set forth in paragraph (1) of the preceding Article falls under the following items, the amount to be paid by the Fund under the provisions of said paragraph shall be an amount equivalent to the amount calculated by deducting the amount prescribed respectively in said items from the amount under the provision of said paragraph, notwithstanding the provision of said paragraph:

- (i) where the General Customer provides all or part of his/her Customer Assets pertaining to Claims Subject to Compensation as the subject matter of security interest: the amount of all or part of the Customer Assets provided as the subject matter of the security interest which is estimated pursuant to the provisions of a Cabinet Office Ordinance and Ordinance of the Ministry of Finance (where said amount exceeds the amount of secured claim pertaining to said security interest, the amount of secured claim pertaining to said security interest);
- (ii) where the General Customer assumes obligation to said Recognized Financial Instruments Business Operator: the amount of the obligation (where the General Customer falls under the preceding item with regard to said obligation, the amount calculated by deducting the amount prescribed in said item); or
- (iii) where the Customer Assets pertaining to Claims Subject to Compensation include Claims Subject to Compensation prescribed in Article 60 (1) of the Act on Transfer of Bonds, etc.: the amount of Customer Assets equivalent to the Claims Subject to Compensation set forth in said paragraph which is estimated pursuant to the provisions of a Cabinet Office Ordinance and



Ordinance of the Ministry of Finance (where the provision of paragraph (5) of said Article is applied to said Customer Assets, the amount calculated by deducting the amount of payment reduced under the provisions of said paragraph from said amount).

- (2) With regard to the application of paragraph (1) of the preceding Article and the preceding paragraph to cases where a Financial Instruments Business Operator shall be deemed to be a General Customer under the provision of Article 79-20 (2), each General Customer of said Financial Instruments Business Operator causing said Financial Instruments Business Operator to be deemed to be said General Customer shall have the position of a General Customer.
- (3) When the amount to be paid under the provisions of paragraph (1) of the preceding Article and paragraph (1) exceeds the amount specified by a Cabinet Order, the amount specified by said Cabinet Order shall be the amount to be paid.
- (4) A Fund shall, when having made a payment set forth in paragraph (1) of the preceding Article, acquire a Claim Subject to Compensation pertaining to said payment in accordance with the amount paid, pursuant to the provisions of a Cabinet Order.

(Application of the Income Tax Act, etc.)

- Article 79-58 (1) When an individual who is a General Customer has received a payment set forth in Article 79-56 (1) pertaining to Claims Subject to Compensation that he/she holds against a Recognized Financial Instruments Business Operator (limited to those pertaining to Securities; hereinafter the same shall apply in this paragraph), the provision of the Income Tax Act (Act No. 33 of 1965) and other laws and regulations concerning income tax shall apply by deeming that Securities pertaining to Claims Subject to Compensation (limited to part of said Claims Subject to Compensation which said Fund acquired by said payment) pertaining to said payment was transferred from said individual to the Fund which made said payment by the amount paid at the time of receipt of the payment.
- (2) Matters necessary for 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) to cases where the provision of the preceding paragraph is applied shall be specified by a Cabinet Order.

(Loan of Funds for Refund)

- Article 79-59 (1) Based on an application from a Notifying Financial Instruments Business Operator (excluding a Recognized Financial Instruments Business Operator) or an agent for a beneficiary of a trust prescribed in Article

43-2 (2) pertaining to a Notifying Financial Instruments Business Operator, a Fund may loan necessary Funds for expeditious performance of the obligation pertaining to the refund of Customer Assets (hereinafter referred to as a "Loan of Funds for Refund") to such a person within the scope of the amount that is found to be necessary.

- (2) A person who files an application for a Loan of Funds for Refund shall obtain recognition from the Prime Minister with regard to the fact that he/she satisfies all of the following requirements concerning said Loan of Funds for Refund (hereinafter referred to as "Recognition of Eligibility" in this Article) by the time of filing said application:
  - (i) the provision of a Loan of Funds for Refund is found to be necessary for expeditious performance of the obligation pertaining to refund of Customer Assets; and
  - (ii) it is found that the loaned money through a Loan of Funds for Refund will certainly be used for expeditious performance of the obligation pertaining to the refund of Customer Assets.
- (3) The Prime Minister shall, when having granted Recognition of Eligibility, notify to that effect to the Minister of Finance and a Fund to which the Financial Instruments Business Operator that has obtained said Recognition of Eligibility (in cases where an agent for a beneficiary of a trust prescribed in Article 43-2 (2) pertaining to a Financial Instruments Business Operator has obtained such a recognition, said Financial Instruments Business Operator) belongs.
- (4) Upon receiving an application for a Loan of Funds for Refund, a Fund shall make a decision on whether to grant a Loan of Funds for Refund pertaining to said application.
- (5) A Fund shall, when having made a decision set forth in the preceding paragraph, immediately report matters pertaining to the decision to the Prime Minister and the Minister of Finance.

(Preservation of Claims of General Customers)

- Article 79-60 (1) In addition to conducting acts under the provision of the Act on Special Measures Concerning Reorganization Proceedings of Financial Institutions, etc., a Fund shall, when the Fund finds it necessary for preserving realization of claims which a General Customer holds against a Notifying Financial Instruments Business Operator (limited to those pertaining to Customer Assets of said General Customer), have the authority to conduct any and all judicial or extra-judicial acts that are necessary to preserve realization of said claims on behalf of said General Customer within the limit necessary.
- (2) A Fund shall conduct acts set forth in the preceding paragraph in a fair and sincere manner on behalf of General Customers.

- (3) A Fund shall conduct acts set forth in paragraph (1) for General Customers with the due care of a prudent manager.
- (4) A Fund shall, when it conducts a judicial act under the provisions of paragraph (1), notify, in advance, the content of said act to a General Customer for whom the Fund represents in said act.
- (5) A General Customer who has received a notice under the provision of the preceding paragraph may conduct a judicial act pertaining to said notice by him/herself by extinguishing the authority of representation of the Fund through a notice to the Fund to the effect that he/she extinguishes said authority of representation.

(Business for Contributing to Expeditious Payment)

Article 79-61 A Fund may, under entrustment by a Financial Instruments Business Operator which is its member, conduct business as an agent for a beneficiary of a trust prescribed in Article 43-2 (2) pertaining to said Financial Instruments Business Operator or other business for contributing to expeditious refund of Customer Assets.

(Delegation to a Cabinet Office Ordinance, etc.)

Article 79-62 Procedures for enforcing the provisions of this Section and other necessary matters shall be specified by a Cabinet Office Ordinance or an Ordinance of Cabinet Office and the Ministry of Finance.

## **Section 6 Burden Charge**

(Funds for Investor Protection)

Article 79-63 (1) A Fund shall establish Funds to be allocated for costs that are required for the business listed in the items of Article 79-49 (hereinafter referred to as "Funds for Investor Protection").

(2) Funds for Investor Protection shall not be used unless they are allocated for costs that are required for the business listed in the items of Article 79-49.

(Burden Charge)

Article 79-64 (1) A Financial Instruments Business Operator shall, pursuant to the provisions of operational rules, pay a Burden Charge to a Fund to which it belongs, for the purpose of allocating it to Funds for Investor Protection.

(2) Notwithstanding the provision of the preceding paragraph, a Fund may, pursuant to the provisions of the articles of incorporation, remit the Burden Charge of a Notifying Financial Instruments Business Operator.

(Method of Calculation of the Amount of a Burden Charge)

Article 79-65 (1) The amount of a Burden Charge set forth in paragraph (1) of the preceding Article shall be the amount calculated by a method of calculation specified by the operational rules.

(2) The method of calculation of a Burden Charge set forth in the preceding paragraph shall be specified so as to conform to the criteria listed in the following:

(i) the finance of a Fund will be balanced in the long term in light of the estimated amount of the payment set forth in Article 79-56 (1) and the costs that are required for the business pertaining to Funds for Investor Protection; and

(ii) discriminatory treatment is not provided for a particular Financial Instruments Business Operator.

(3) The provision of the preceding paragraph shall not be construed as precluding temporarily specifying a method of calculation of a Burden Charge that does not conform to said criteria when the sound management of a Financial Instruments Business Operator which is a member will not be maintained due to the payment of a Burden Charge if the method of calculation of a Burden Charge is to be specified so as to conform to the criterion specified in item (i) of said paragraph.

(Delinquent Charge)

Article 79-66 (1) When a Financial Instruments Business Operator fails to pay a Burden Charge by the time limit for payment specified by the operational rules, it shall pay a delinquent charge to a Fund to which it belongs.

(2) The amount of a delinquent charge shall be the amount calculated by multiplying the amount of an unpaid Burden Charge by an annual rate of 14.5 percent according to the number of days from the day following the time limit for payment until the day of the payment.

(Delegation to a Cabinet Office Ordinance and Ordinance of the Ministry of Finance)

Article 79-67 Procedures for enforcing the provisions of this Section and other necessary matters shall be specified by a Cabinet Office Ordinance and Ordinance of the Ministry of Finance.

## **Section 7 Finance and Accounting**

(Business Year)

Article 79-68 The business year of a Fund shall be from April 1 to March 31 of the following year; provided, however, that the business year including the day of establishment of a Fund shall be from the day of establishment to the

following March 31.

(Submission of Budget and Financial Plan)

Article 79-69 A Fund shall prepare the budget and a financial plan 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 including the day of establishment of a Fund, after establishment of the Fund without delay). The same shall apply when a Fund has changed the budget or a financial plan.

(Submission of Financial Statements, etc.)

Article 79-70 (1) A fund shall, within three months from the day of commencement of a business year (excluding the business year including the day of establishment of a Fund), submit to the Prime Minister and the Minister of Finance a balance sheet and profit and loss statement, an inventory of assets and business report, and statement of accounts according to the classification of budget (hereinafter collectively referred to as "Financial Statements, etc." in this Article) for the previous business year and obtain their approval.

(2) A Fund shall, when submitting Financial Statements, etc. to the Prime Minister and the Minister of Finance under the provisions of the preceding paragraph, attach thereto a written opinion of an auditor concerning the Financial Statements, etc.

(3) A Fund shall keep Financial Statements, etc. approved by the Prime Minister and the Minister of Finance under the provision of paragraph (1) at its office and make them available for public inspection.

(Reserve Funds)

Article 79-71 (1) A Fund shall lay aside all of the surplus in every business year as reserve funds.

(2) The reserve funds set forth in the preceding paragraph may be allocated to compensate the deficit carried over from the previous business year or be transferred to Funds for Investor Protection.

(3) The reserve funds set forth in paragraph (1) shall not be broken into except for the cases specified by the preceding paragraph.

(Borrowing of Funds)

Article 79-72 A Fund may, when the Fund finds it necessary for conducting the business listed in items (i) to (iv) and (vi) of Article 79-49, borrow (including refinancing) funds from a Financial Institution, etc. (meaning a bank, Financial Instruments Business Operator or other person specified by a Cabinet Office Ordinance and Ordinance of the Ministry of Finance) with the

authorization of the Prime Minister and the Minister of Finance, within the scope of the amount specified by a Cabinet Order.

(Restriction on Fund Investment)

Article 79-73 A Fund shall not invest any surplus funds that have arisen in the course of business and Funds for Investor Protection except by the following methods:

- (i) holding national government bonds or other Securities designated by the Prime Minister and the Minister of Finance;
- (ii) depositing in a financial institution designated by the Prime Minister and the Minister of Finance; or
- (iii) other methods specified by a Cabinet Office Ordinance and Ordinance of the Ministry of Finance.

(Delegation to a Cabinet Office Ordinance and Ordinance of the Ministry of Finance)

Article 79-74 In addition to what is provided for in this Act, matters necessary for the finance and accounting of a Fund shall be specified by a Cabinet Office Ordinance and Ordinance of the Ministry of Finance.

## **Section 8 Supervision**

(Order to Improve Business Operation)

Article 79-75 When the Prime Minister and the Minister of Finance find it necessary and appropriate for the public interest or protection of investors, they may give a Fund an order to change its articles of incorporation or operational rules or any other order concerning its business that is necessary for supervision. In this case, they shall hold a hearing irrespective of the categories of procedures for hearing statements of opinion under the provision of Article 13 (1) of the Administrative Procedure Act.

(Rescission of Authorization)

Article 79-76 Where a Fund has violated laws and regulations, a disposition by government agencies based on laws and regulations or its articles of incorporation or operational rules, or where continuation of the Fund's business is found to be difficult based on the status of its business or property, the Prime Minister and the Minister of Finance may, when they find it necessary and appropriate for the public interest or protection of investors, rescind the authorization for the establishment of the Fund. In this case, they shall hold a hearing irrespective of the categories of procedures for hearing statements of opinion under the provision of Article 13 (1) of the

Administrative Procedure Act.

(Order for Production of Report and On-Site Inspection)

Article 79-77 When the Prime Minister and the Minister of Finance find it necessary and appropriate for the public interest or protection of investors, they may order a Fund or a person who has been entrusted with business from said Fund to submit reports or materials that will be helpful for understanding the business or property of said Fund, or have the officials enter the office of a Fund or a person who has been entrusted with business from said Fund to inspect books and documents or other articles (with regard to the person who has been entrusted with business from said Fund, the inspection shall be limited to what is necessary to understand the status of the business entrusted from, or the property of, said Fund).

### **Section 9 Dissolution**

(Causes for Dissolution)

Article 79-78 (1) A Fund shall be dissolved due to the following causes:

- (i) a resolution of a general meeting; or
- (ii) rescission of authorization for establishment.

(2) Dissolution due to the reason specified in item (i) of the preceding paragraph shall not come into effect without authorization from the Prime Minister and the Minister of Finance.

(Appointment of a Liquidator)

Article 79-79 In the case of a dissolution under the provision of paragraph (1)(i) of the preceding Article, a liquidator shall be appointed at a general meeting. In the case of a dissolution under the provision of item (ii) of said paragraph, a Liquidator shall be appointed by the Prime Minister and the Minister of Finance.

(Disposal of Residual Assets)

Article 79-80 (1) When there are still residual assets after the payment of the obligation of a Fund, a liquidator shall, pursuant to the provisions of a Cabinet Office Ordinance and Ordinance of the Ministry of Finance, have said residual assets belong to other Funds which each member will join respectively.

(2) In addition to what is provided in the preceding paragraph, measures required for dissolution of a Fund may be specified by a Cabinet Order within the scope that is determined to be reasonably necessary.

## **Chapter V Financial Instruments Exchange**

## Section 1 General Provisions

(License)

Article 80 (1) No person other than an Authorized Financial Instruments Firms Association may establish a Financial Instruments Market unless said person has obtained a license from the Prime Minister.

(2) The provision of the preceding paragraph shall not apply to the cases where a Financial Instruments Business Operator, etc. or a Financial Instruments Intermediary Service Provider conducts sales and purchase of Securities or Market Transactions of Derivatives (excluding transactions conducted outside the Financial Instruments Exchange Markets), or intermediary, brokerage or agency services for these transactions pursuant to the provisions of this Act.

(Application for License)

Article 81 (1) A person who intends to obtain a license under paragraph (1) of the preceding Article shall submit an application for license containing the following matters to the Prime Minister:

(i) the name or trade name;

(ii) the location of office, head office, branch office and any other business office; and

(iii) the names of Officers, and trade names or names of members or Trading Participants (hereinafter referred to as the "Member, etc.").

(2) The articles of incorporation, the operational rules, the brokerage contract rules, and other documents specified by a Cabinet Office Ordinance shall be attached to the application for license under the preceding paragraph.

(3) When attaching documents set forth in the preceding paragraph, Electromagnetic Records (limited to those specified by a Cabinet Office Ordinance) may be attached in place of written documents, if the articles of incorporation are prepared in the form of an Electromagnetic Record.

(Criteria for Examination of License)

Article 82 (1) When an application for license under paragraph (1) of the preceding Article has been filed, the Prime Minister shall examine whether the application conforms to the criteria listed in the following:

(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 achieving fair and smooth sales and purchase of Securities and Market Transactions of Derivatives on the Financial Instruments Exchange Market, as well as for protection of investors;

(ii) the applicant for license has a personnel structure sufficient for appropriately operating the Financial Instruments Exchange Market; or



- (iii) the applicant for license will be organized as a Financial Instruments Exchange in such a manner that conforms to the provisions of this Act.
- (2) When the Prime Minister finds that the application conforms to the criteria under the preceding paragraph as a result of examination under that paragraph, he/she shall grant the license, except for the cases where the application falls under any of the following items:
- (i) when the applicant for license is a person who has been punished by a fine (including a punishment under laws and regulations of a foreign state equivalent to this) for violating the provision of this Act or laws and regulations of a foreign state equivalent to this Act, and for whom five years have not passed since the day when the execution of the punishment terminated or he/she became free from the execution of the punishment;
  - (ii) when the applicant for license is a person who had its license rescinded under the provisions of Article 148, Article 152 (1), Article 156-17 (1) or (2), Article 148 as applied mutatis mutandis pursuant to Article 156-26, or Article 156-32 (1), had its registration rescinded under the provisions of Article 52 (1), Article 53 (3) or Article 66-20 (1), had its authorization rescinded under the provisions of Article 106-7 (1), Article 106-21 (1) or Article 106-28 (1), or a person who has obtained license or registration (including permission or other administrative dispositions similar to said license or registration) of the same kind in a foreign state under the provision of laws and regulations of said foreign state equivalent to this Act and has had the license or registration rescinded, and for whom five years have not passed since the date of the rescission;
  - (iii) when the applicant for license is a person any of whose Officers falls under any categories of the persons set forth in following sub-items (a) to (f) inclusive:
    - (a) a person listed in Article 29-4 (1)(ii)(a) to (g) inclusive;
    - (b) when a Financial Instruments Exchange has had its license rescinded under the provision of Article 148 or Article 152 (1), when a Financial Instruments Clearing Organization has had its license rescinded under the provision of Article 156-17 (1) or (2), when a Securities Finance Company has had its license rescinded under the provision of Article 156-32 (1), when a Foreign Financial Instruments Exchange has had its authorization rescinded under the provision of Article 155-10 (1), or when such person had obtained license or authorization of the same kind in a foreign state under the provisions of laws and regulations of said foreign state equivalent to this Act and has had the license or authorization (including permission or other administrative dispositions similar to said license or authorization) rescinded, a person who was an Officer of such juridical person (in the case where said person is a Foreign Financial Instruments

Exchange, including its Representative Person in Japan; hereinafter the same shall apply in sub-item(e)) within 30 days prior to the date of rescission, and for whom five years have not passed since the date of the rescission;

- (c) when a person who has obtained the authorization under Article 106-3 (1) or the authorization under Article 106-17 (1) (hereinafter referred to as the "Major Shareholders" in this item) has had its authorization rescinded under the provision of Article 106-7 (1) or Article 106-21 (1), or when a Financial Instruments Exchange Holding Company has had its authorization rescinded under the provision of Article 106-28 (1), a person who was said Major Shareholders or an Officer of Financial Instruments Exchange Holding Company within 30 days prior to the date of rescission, and for whom five years have not passed since the date of the rescission;
  - (d) a person any of whose Major Shareholders has had the authorization rescinded under the provision of Article 106-7 (1) or Article 106-21 (1) and for whom five years have not passed from the date of such rescission;
  - (e) an Officer for whom dismissal has been ordered under the provisions of Article 150, Article 152 (1), Article 155-10 (2), Article 156-14 (3), Article 156-17 (2) or Article 156-31 (3) and for whom five years have not passed since the day of such disposition; or
  - (f) an Officer for whom dismissal has been ordered under the provision of Article 106-28 (2) and for whom five years have not passed since the day of such disposition.
- (iv) when the application for license, or the documents or Electromagnetic Records to be attached thereto includes any fake statement or false record on important matters.

(Refusal, etc. of License)

Article 83 (1) The Prime Minister shall, when he/she has received an application for license under the provision of Article 81 (1) and finds it inappropriate to grant the license, notify to that effect to the Applicant for license and have the officials conduct a hearing.

(2) The Prime Minister shall, when he/she has decided to grant or refuse to grant a license under the provision of Article 80 (1), notify to that effect in writing to the Applicant for license without delay.

(Juridical Person Eligible for Financial Instrument Exchange)

Article 83-2 A Financial Instruments Exchange shall be a Financial Instruments Membership Corporation, or a stock company of which the amount of the stated capital is not less than the amount specified by a Cabinet Order and which has the following organs:

- (i) a board of directors;
- (ii) a board of company auditors or committee(s); and
- (iii) accounting auditor(s).

(Self-Regulation Related Services)

Article 84 (1) A Financial Instruments Exchange shall properly conduct the Self-Regulation Related Services in accordance with this Act, its articles of incorporation and other rules in order to ensure fair sales and purchase of Securities and Market Transactions of Derivatives on the Financial Instruments Exchange Market, as well as to protect investors.

(2) The term "Self-Regulation Related Services" set forth in the preceding paragraph shall mean the following services conducted in relation to a Financial Instruments Exchange:

- (i) business related to listing and delisting of financial instruments, Financial Indicators and Options (hereinafter referred to as "Financial Instruments, etc." in this Chapter) (excluding those specified by a Cabinet Office Ordinance);
- (ii) investigation of the status of observance by the Member, etc. of the laws and regulations, dispositions given by government agencies based on laws and regulations, or the articles of incorporation or other rules, or the fair and equitable principles of transactions; and
- (iii) other business specified by a Cabinet Office Ordinance as that which may be necessary for ensuring fairness in transactions on a Financial Instruments Exchange Market.

(Entrustment of Self-Regulation Related Services)

Article 85 (1) A Financial Instruments Exchange may, with an authorization of the Prime Minister, entrust all or part of the Self-Regulation Related Services related to said Financial Instruments Exchange to a Self-Regulation Organization (meaning a juridical person established pursuant to the provisions of Subsection 1-2 of the following Section for the purpose of conducting Self-Regulation Related Services (which means Self-Regulation Related Services prescribed in paragraph (2) of the preceding Article; hereinafter the same shall apply in this Chapter); hereinafter the same shall apply in this Chapter).

- (2) The Prime Minister may attach conditions to the authorization under the preceding paragraph.
- (3) The conditions set forth in the preceding paragraph shall be the minimum necessary in light of the purpose of the authorization, or for securing implementation of the matters related to the authorization.

(Submission of Application for Authorization)

Article 85-2 (1) A Financial Instrument Exchange who intends to obtain the authorization under paragraph (1) of the preceding Article shall submit an application for authorization containing the following matters to the Prime Minister:

- (i) the name;
  - (ii) the name of the Self-Regulation Organization to be entrusted (hereinafter referred to as an "Entrusted Self-Regulation Organization" in this Chapter);
  - (iii) contents of the Self-Regulation Related Services to be entrusted; and
  - (iv) other matters specified by a Cabinet Office Ordinance.
- (2) Documents containing the contents of the entrustment agreement and other documents specified by a Cabinet Office Ordinance shall be attached to the application for authorization under the preceding paragraph.
- (3) The provision of Article 81 (3) shall apply mutatis mutandis to the case of an application for authorization under paragraph (1). In this case, the term "the articles of incorporation" shall be deemed to be replaced with "the documents containing the contents of the entrustment agreement."

(Criteria for Authorization)

Article 85-3 When an application for authorization under the provision of paragraph (1) of the preceding Article has been filed, the Prime Minister shall examine whether the application conforms to the following criteria:

- (i) the Entrusted Self-Regulation Organization has obtained an authorization under Article 120-14;
- (ii) the entrustment agreement appropriately and clearly specifies the calculation method of the cost of said entrustment in a manner such that a Self-Regulation Organization may conduct the entrusted Self-Regulation Related Services;
- (iii) the entrustment agreement provides that the Entrusted Self-Regulation Organization shall not use any information learned in relation to the Self-Regulation Related Services so entrusted for a purpose other than for the Self-Regulation Related Services; and
- (iv) in addition to what is provided for in the preceding three items, the content of the entrustment agreement is sufficient to ensure proper implementation of the Self-Regulation Related Services of the Entrusted Self-Regulation Organization.

(Hearing in Case of Refusal of Authorization)

Article 85-4 (1) The Prime Minister shall, when he/she has received an application for authorization under the provision of Article 85-2 (1) and finds it inappropriate to grant the authorization, notify to that effect to the applicant

for authorization and have the officials conduct a hearing.

- (2) The Prime Minister shall, when he/she has decided to grant or refuse to grant an authorization under the provision of Article 85 (1), he/she shall notify to that effect in writing to the applicant for authorization without delay.

(Trade Name or Name)

Article 86 (1) A Financial Instruments Exchange shall use the term "Torihikijo" (which means "exchange") in its name or trade name.

- (2) No person other than a Financial Instruments Exchange shall use in its name or trade name any term which is likely to mislead people to understand that the person is a Financial Instruments Exchange.

(Disposition Rendered to Member, etc.)

Article 87 A Financial Instruments Exchange shall stipulate in its articles of incorporation that the Member, etc. shall observe the laws and regulations, dispositions given by a government agency based on the 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 fair and equitable principles of transactions, and that in the event that a Member, etc. violates the laws and regulations, dispositions given by a government agency based on the laws and regulations or the Rules, or in the event that the Member, etc. commits an act contrary to the fair and equitable principles of transactions, the Financial Instruments Exchange will impose a fine for default on said Member, etc., or order suspension or restriction of sales and purchase of Securities or Market Transactions of Derivatives on the Financial Instruments Exchange Market or entrustment of Broking for Clearing of Securities, etc. for these transactions, or expel said Member, etc. from the Financial Instruments Exchange (or to rescind the Qualification for Trading, with regard to a Trading Participant).

(Scope of Businesses)

Article 87-2 A Financial Instruments Exchange may not engage in any business other than establishment of a Financial Instruments Exchange Market and the businesses incidental thereto.

(Scope of Subsidiary Company)

Article 87-3 (1) A Financial Instruments Exchange shall not hold as its Subsidiary Company a company other than a company which carries out establishment of a Financial Instruments Exchange Market and other businesses incidental thereto; provided, however, that in cases where an

authorization from the Prime Minister has been obtained, it may hold as its Subsidiary Company a company which conducts a business related to the establishment of Financial Instruments Exchange Markets.

- (2) The term a "Subsidiary Company" as used in the preceding paragraph means the company, the majority of whose Voting Rights Held by All the Shareholders, etc. are held by a Financial Instruments Exchange. In this case, the company, the majority of whose Voting Rights Held by All the Shareholders, etc. are held by the Financial Instruments Exchange and its Subsidiary Company or Subsidiary Companies, or by the Financial Instruments Exchange's Subsidiary Company or Subsidiary Companies is deemed as a Subsidiary Company of the Financial Instruments Exchange.
- (3) Notwithstanding the provision of paragraph (1), a Financial Instruments Exchange may establish a Self-Regulation Organization with an authorization from the Prime Minister.

(Application Mutatis Mutandis of Provisions Related to Hearing)

Article 87-4 The provisions of Article 85-4 shall apply mutatis mutandis to an authorization set forth in the proviso to paragraph (1), and paragraph (3) of the preceding Article.

(Officers)

Article 87-5 An Officer of a Financial Instruments Exchange shall not hold a position of an Officer of more than one Financial Instruments Exchange.

(Provisional Board Members and Provisional Directors, etc.)

Article 87-6 (1) The Prime Minister may, when there is no person to perform the duties of a board member or auditor of a Financial Instruments Membership Corporation which establishes a Financial Instruments Exchange Market (hereinafter referred to as the "Membership-Type Financial Instruments Exchange") and if he/she finds it necessary, appoint a provisional board member or a provisional auditor.

- (2) The Prime Minister may, when there is no person to perform duties of a director, accounting advisor, company auditor, representative director, executive officer or representative executive officer of a stock company which establishes a Financial Instruments Exchange Market (hereinafter referred to as the "Stock Company-Type Financial Instruments Exchange") and if he/she finds it necessary, appoint a provisional director, provisional accounting advisor, provisional company auditor, provisional representative director, provisional executive office or a provisional representative executive officer.
- (3) The provisions of Article 346 (2), Article 351 (2) and Article 401 (3) of the Companies Act (including the cases where it is applied mutatis mutandis

pursuant to Article 403 (3) and Article 420 (3) of that Act) shall not apply to a Stock Company-Type Financial Instruments Exchange.

(Registration by Request of the Prime Minister)

Article 87-7 (1) When the Prime Minister has appointed a provisional director, provisional accounting advisor, provisional company auditor, provisional representative director, provisional executive officer or a provisional representative executive officer under the provisions of paragraph (2) of the preceding Article, he/she shall request the registration to that effect to the registry office in the district of the location of the head office of the Stock Company-Type Financial Instruments Exchange.

(2) When the Prime Minister requests registration under the provisions of the preceding paragraph, he/she shall attach to the request form a document proving that he/she has given a disposition pertaining to the circumstances that caused said registration.

(Obligation of Confidentiality)

Article 87-8 An Officer (in cases where the officer is a juridical person, a person who performs duties of officers) or employee of a Financial Instruments Exchange, or a board member, auditor or employee of a Self-Regulation Organization or a person who was formerly in such position shall not divulge to another person or misappropriate any confidential information which he/she has learned during the course of his/her duties.

(Prohibition of Discriminatory Treatment)

Article 87-9 A Financial Instruments Exchange shall not provide unjust discriminatory treatment to a particular Member, etc. or a particular Issuer of Securities.

**Section 2 Financial Instruments Membership Corporation and Self-Regulation Organization; and Stock Company Which Establishes Financial Instruments Exchange Market**

**Subsection 1 Financial Instruments Membership Corporation**

**Division 1 Establishment**

(Juridical Personality)

Article 88 (1) A Financial Instruments Membership Corporation shall be a juridical person.

(2) A Financial Instruments Membership Corporation shall use the term "Kaiinsei Hojin" (which means "membership corporation") in its name.

(3) No person other than a Financial Instruments Membership Corporation shall

use in its name any term which is likely to mislead people to understand that the person is a Financial Instruments Membership Corporation.

(Founder)

- Article 88-2 (1) No person other than a Financial Instruments Business Operator, etc. may establish a Financial Instruments Membership Corporation.
- (2) In order to establish a Financial Instruments Membership Corporation, the Financial Instruments Business Operators, etc. who intend to become its members shall be the founders.

(Articles of Incorporation)

- Article 88-3 (1) In order to establish a Financial Instruments Membership Corporation, the founders shall prepare articles of incorporation, and all founders shall sign or affix their names and seals thereto.
- (2) The following matters shall be contained or recorded in the articles of incorporation of a Financial Instruments Membership Corporation:
- (i) the purpose;
  - (ii) the name;
  - (iii) the office address;
  - (iv) matters regarding funds and contribution;
  - (v) matters regarding the Member, etc.;
  - (vi) matters related to investigation of the status of observance by the Member, etc. of the laws and regulations, the dispositions given by a government agency based on laws and regulations or the articles of incorporation or other rules, or the fair and equitable principles of transactions;
  - (vii) matters pertaining to guarantee funds;
  - (viii) matters pertaining to allocation of costs;
  - (ix) matters pertaining to Officers;
  - (x) matters pertaining to meetings;
  - (xi) matters pertaining to execution of business;
  - (xii) matters pertaining to preparation of rules;
  - (xiii) matters pertaining to the Financial Instruments Exchange Markets;
  - (xiv) matters pertaining to accounting; and
  - (xv) method of public notice (meaning the method by which a Financial Instruments Membership Corporation gives public notices (excluding those which shall be given by the method of publication in the Official Gazette under the provisions of this Act); the same shall apply in Article 89-2 (2) (ix)).
- (3) The provisions of Article 30 (1) of the Companies Act shall apply mutatis mutandis to the articles of incorporation set forth in paragraph (1).

(Organizational Meeting)



Article 88-4 (1) The founders shall, after creating the articles of incorporation, solicit persons to become members, and hold an organizational meeting by giving a public notice of said articles of incorporation, together with the time and place of the meeting, by two weeks prior to the day of the meeting.

(2) A person who intends to become a member of a Financial Instruments Membership Corporation to be established (hereinafter referred to as the "Prospective Member" in this Article, the following Article and Article 88-6) shall pay the full amount of contribution before the opening of the organizational meeting.

(3) Approval of the articles of incorporation and decisions on other matters necessary for the establishment shall be adopted by a resolution of an organizational meeting.

(4) The articles of incorporation may be amended at the organizational meeting.

(5) A decision at an organizational meeting under paragraph (3) shall be adopted by at least a two-thirds majority of the voting rights of those present, when at least half of the Prospective Members who, by the opening of said meeting, have completed full payment of the contribution are present.

(6) A Prospective Member who has not completed the payment of the full amount of the contribution by the time of the establishment of a Financial Instruments Membership Corporation shall be deemed to have rescinded his/her application for membership at the time of the establishment of the Financial Instruments Membership Corporation.

(Voting Rights of Prospective Members)

Article 88-5 (1) The voting right of each Prospective Member to be exercised at an organizational meeting shall be of equal value.

(2) A Prospective Member who is not present at an organizational meeting may vote in writing or by proxy.

(3) The provisions of the preceding two paragraphs shall not apply to the case where it is otherwise provided in the articles of incorporation.

(No Voting Rights)

Article 88-6 When making any resolution on a relationship between a Financial Instruments Membership Corporation and a particular Prospective Member at an organizational meeting, such Prospective Member shall not have a voting right.

(Handing Over of Affairs to President)

Article 88-7 Founders shall hand over their affairs to a person who becomes the president without delay after completion of an organizational meeting.

(Change of Articles of Incorporation)

Article 88-8 The articles of incorporation may be changed only if the consent of at least three-fourths of all members has been obtained: provided, however, that this shall not apply to the cases where it is otherwise provided in the articles of incorporation.

(Capacity to Commit Tortious Act, etc.)

Article 88-9 A Financial Instruments Membership Corporation shall be liable for the damage caused to others by its president or board members during the course of performance of their duties.

(Address)

Article 88-10 The address of a Financial Instruments Membership Corporation shall be at the location of its principal office.

(Inventory of Assets and Directory of Members)

Article 88-11 (1) A Financial Instruments Membership Corporation shall prepare its inventory of assets at the time of establishment and at any time between January and March every year, and shall keep it at its principal office at all times; provided, however, that in cases where a Financial Instruments Membership Corporation establishes any specific business year, it shall prepare the inventory of assets at the time of its establishment and at the end of its respective business year.

(2) A Financial Instruments Membership Corporation shall keep its directory of members and make necessary changes whenever there is any change in the members.

(Restrictions on Authority of Representation of Board Members)

Article 88-12 Restrictions on the authority of representation of the president or board members may not be asserted against a third party without knowledge of such limitations.

(Conflicts-of-Interest)

Article 88-13 A president or a board member shall have no authority of representation as to any matters involving a conflict of interest between the Financial Instruments Membership Corporation, and such president or board member. In this case, the court shall, at the request of any interested person or a public prosecutor, appoint a special agent.

(Ordinary General Meetings)

Article 88-14 Board members of a Financial Instruments Membership

Corporation shall convene an ordinary general meeting of members at least once a year.

(Extraordinary General Meeting)

Article 88-15 (1) The directors of a Financial Instruments Membership Corporation may, whenever he/she finds it necessary, convene an extraordinary general meeting.

(2) The board members shall convene an extraordinary general meeting if one-fifth or more of all members make a request by specifying the matters which are the purposes of the meeting; provided, however, that a proportion other than one-fifth of all members may be stipulated by the articles of incorporation.

(Convocation of General Meetings)

Article 88-16 A notice of the convocation of a general meeting shall be given at least five days prior to the scheduled day of the meeting in the manner provided for in the articles of incorporation, by specifying the matters which are the purposes of the meeting.

(Execution of Business)

Article 88-17 All business of the Financial Instruments Membership Corporation shall be carried out under the resolution of the general meeting, except those delegated to the board members or other Officers by the articles of incorporation.

(Matters for Resolution of General Meeting)

Article 88-18 A general meeting may adopt a resolution only with regard to any matters which is notified in advance under the provision of Article 88-16; provided, however, that, this shall not apply where it is otherwise provided in the articles of incorporation.

(Voting Rights of Members)

Article 88-19 (1) The voting right of each member shall be of equal value.  
(2) A member who is not present at the general meeting may vote in writing or by proxy.  
(3) The provisions of the preceding two paragraphs shall not apply to the cases where it is otherwise provided in the articles of incorporation.

(No Voting Rights)

Article 88-20 When making any resolution on a relationship between a Financial Instruments Membership Corporation and a particular member, such member shall not have a voting right.

(Jurisdiction over Appointment of Special Agent)

Article 88-21 Appointment of a special agent shall fall under the jurisdiction of a district court in the district where the principal office of a Financial Instruments Membership Corporation is located.

(Application Mutatis Mutandis of Companies Act)

Article 88-22 The provisions of Article 828, paragraph (1) (limited to the part pertaining to item (i)) and paragraph (2) (limited to the part pertaining to item (i)), Article 834 (limited to the part pertaining to item (i)), Article 835 (1), Article 836 (1) and (3), Article 837 to Article 839 inclusive and Article 846 of the Companies Act shall apply mutatis mutandis to an action seeking invalidation of the establishment of a Financial Instruments Membership Corporation. In this case, the term "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 Committees, it means a shareholder, director, executive officer, or liquidator); hereinafter the same shall apply in this Section) of the incorporated Stock Company or a Partner, etc. (meaning a partner or liquidator; hereinafter the same shall apply in this paragraph) of the incorporated Membership Company" in Article 828 (2)(i) of that Act shall be deemed to be replaced with "members, president and board members, auditors or liquidators," and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

## **Division 2 Registration**

(Establishment)

Article 89 (1) A Financial Instruments Membership Corporation shall be established by registering its establishment in the district of the location of its principal office.

(2) Except for cases prescribed in the preceding paragraph, the matters to be registered under the provisions of this Act may not be asserted against a third party until after they have been registered.

(Registration)

Article 89-2 (1) Registration of establishment of a Financial Instruments Membership Corporation shall be made within two weeks from the day of completion of its organizational meeting.

(2) The registration prescribed in the preceding paragraph shall contain the following matters:

(i) the purpose;

- (ii) the name;
  - (iii) the office address;
  - (iv) if the term of existence or the grounds for dissolution have been specified, such term or grounds;
  - (v) the funds and the amount of contribution paid;
  - (vi) the unit amount of contribution and the method of its payment;
  - (vii) the name, address and qualification of the person who has the authority of representation;
  - (viii) if there are any provisions regarding the scope and limitation on the authority of representation, such provisions; and
  - (ix) the method of public notice.
- (3) A Financial Instruments Membership Corporation shall file registration of the matters listed in the preceding paragraph in the district of the location of its secondary office, within two weeks from the registration of its establishment.

(Registration in District of Location of Secondary Offices)

Article 89-3 (1) In the event that a secondary office is established after a Financial Instruments Membership Corporation is established, such establishment of a secondary office shall be registered in the district of the location of the principal office within two weeks, the matters listed in the paragraph (2) of the preceding Article shall be registered in the district of the location of such secondary office within three weeks, and the establishment of such secondary office shall be registered in the districts of locations of other secondary offices within the same period.

- (2) When a secondary office has been newly established within the jurisdictional district of the registry office having jurisdiction over the location of the principal office or secondary office, it shall be sufficient to register the fact of establishment of such new secondary office.

(Registration of Relocation of Office)

Article 89-4 (1) When a Financial Instruments Membership Corporation has relocated its principal office, it shall, within two weeks, file registration of such relocation in the district of the old location and registration of the matters listed in Article 89-2 (2) in the district of the new location. When a Financial Instruments Membership Corporation has relocated its secondary office, it shall file registration of the relocation in the district of the old location within three weeks, and shall file registration of the matters listed in that paragraph in the district of the new location within four weeks.

- (2) When a principal office or secondary office has been relocated within the jurisdictional district of the same registry office, it is sufficient to register the

fact of such relocation.

(Registration of Change)

- Article 89-5 (1) When there is any change in any matters listed in Article 89-2 (2), a Financial Instruments Membership Corporation shall file registration of the change within two weeks in the district of the location of its principal office, and within three weeks in the district of the locations of its secondary offices.
- (2) Notwithstanding the provisions of the preceding paragraph, registration of change in matters listed in Article 89-2 (2)(v) may be filed as of the last day of each business year, within four weeks from such last day in the district of the location of its principal office, and within five weeks from such last day in the district of the locations of its secondary offices.

(Registration of Provisional Disposition to Suspend Execution of Duties, etc.)

- Article 89-6 When an order for a provisional disposition to suspend the execution of duties of the president or a board member representing a Financial Instruments Membership Corporation or to appoint a person acting for said person has been issued, or when a decision has been made to change or rescind such provisional disposition, the Financial Instruments Membership Corporation shall file registration to that effect in the district of the locations of the principal office and the secondary offices.

(Jurisdiction of Registration)

- Article 89-7 (1) The legal affairs bureau or the district legal affairs bureau, or the branch office or the sub-branch offices of such bureaus (hereinafter simply referred to as the "Registry Office") having jurisdiction over the address of the office of the Financial Instruments Membership Corporation shall be the competent Registry Office for registration of the Financial Instruments Membership Corporation.
- (2) A registry of Financial Instruments Membership Corporation shall be kept at a Registry Office.

(Application for Registration of Establishment)

- Article 89-8 The articles of incorporation, and documents proving the payment of contribution and the qualification of the person who has the authority of representation shall be attached to an application for registration of establishment of a Financial Instruments Membership Corporation.

(Documents to be Attached to Application for Registration of Change)

- Article 89-9 The documents proving the establishment of a secondary office or changes in registered matters shall be attached to an application of

establishment of secondary offices, relocation of principal office or secondary offices or of changes in other matters listed in Article 89-2 (2) with regard to a Financial Instruments Membership Corporation.

(Application Mutatis Mutandis of Commercial Registration Act, etc.)

Article 90 The provisions of Articles 2 to 5 inclusive, 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 (1), Articles 48 to 53 inclusive, and Articles 132 to 148 inclusive of the Commercial Registration Act (Act No. 125 of 1963), and Article 937 (1) (limited to the part pertaining to item (i)(a)) of the Companies Act shall apply mutatis mutandis to registrations regarding Financial Instruments Membership Corporations. In this case, the term "trade name and the head office" in Article 17 (2)(i) of the Commercial Registration Act shall be deemed to be replaced with "name and the principal office," and the term "the branch office" in Article 48, Article 49 (1), Article 50 (2) and (4), and Article 138 (1) and (2) of that Act shall be deemed to be replaced with "the secondary office,;" the term "the branch office of the company" in Article 17 (3) and Article 20 (3) of that Act shall be deemed to be replaced with "the secondary office of the Financial Instruments Membership Corporation,;" the term "the head office" in Article 25 (3), Article 48 (1), Article 49 (1) and (3), Article 50 (1) to (3) inclusive, Article 51 (1), Article 53 and Article 138 (1) of that Act shall be deemed to be replaced with "the principal office,;" the term "the respective item of Article 930 (2) of the Companies Act" in Article 48 (2) of that Act shall be deemed to be replaced with "the respective item of Article 89-2 (2) of the Financial Instruments and Exchange Act,;" the term "in the case of registration in the district of new location" in Article 53 of that Act shall be deemed to be replaced with "in the case of registration of the matters listed in the respective item of Article 89-2 (2) of the Financial Instruments and Exchange Act in the district of the new location,;" the term "the head office (in the case prescribed in item (i)(g) where the matters listed in the respective item of Article 930 (2) have been registered according to said resolution, the head office, and the branch office pertaining to said registration)" in Article 937 (1) of the Companies Act shall be deemed to be replaced with "the principal office and secondary office", and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

### **Division 3 Members**

(Qualification of Members)

Article 91 Members of a Financial Instruments Membership Corporation shall be limited to Financial Instruments Business Operators, etc.

(Contribution and Liability)

Article 92 (1) A member shall make contribution pursuant to provisions of the articles of incorporation.

(2) A member shall bear liability against a Financial Instruments Membership Corporation within the limit of amount of the contribution, in addition to the liability for expenses prescribed in its articles of incorporation and the liability for damages which said member has caused to the Financial Instruments Membership Corporation.

(Transfer of Equity)

Article 93 A member may transfer his/her equity only when said member intends to withdraw from the membership with an approval of the Financial Instruments Membership Corporation, pursuant to the provisions of the articles of incorporation.

(Voluntary Withdrawal)

Article 94 A member may withdraw from the membership with an approval of the Financial Instruments Membership Corporation, pursuant to the provisions of the articles of incorporation.

(Statutory Withdrawal)

Article 95 In addition to the cases prescribed in the preceding Article, a member shall withdraw from the membership based on the following grounds:

- (i) the member comes to no longer fall under the category of the Financial Instruments Business Operator, etc.;
- (ii) dissolution; or
- (iii) expulsion.

(Refund of Equity)

Article 96 When a member has withdrawn from the membership, a Financial Instruments Membership Corporation shall refund such member's equity, pursuant to the provisions of the articles of corporation.

#### **Division 4 Administration**

(Restriction on Business)

Article 97 A Financial Instruments Membership Corporation shall not conduct the business for profit.

(Appointment of Officers, etc.)



Article 98 (1) A Financial Instruments Membership Corporation shall appoint one president, two or more board members and two or more auditors as its Officers.

(2) The board members and auditors shall, except for the board members appointed under the following paragraph, be elected by the members pursuant to the provisions of the articles of incorporation, and the president shall be elected by the board members (excluding the board member appointed under that paragraph), pursuant to the provisions of the articles of incorporation.

(3) Where special provisions exist in the articles of incorporation, the president shall appoint the number of board members specified by the articles of incorporation, with the consent of a majority of the board members.

(4) A person who falls under any category of the persons prescribed in Article 29-4 (1)(ii)(a) to (g) inclusive of this Act or Article 331 (1)(iii) of the Companies Act may not become an Officer.

(5) If an Officer comes to fall under any category of the persons prescribed in the preceding paragraph, he/she shall lose the position.

(Duties of Officers)

Article 99 (1) The president shall represent the Financial Instruments Membership Corporation and preside over its affairs.

(2) The board member shall, pursuant to the provisions of the articles of incorporation, represent the Financial Instruments Membership Corporation, administer the affairs of the Financial Instruments Membership Corporation assisting the president, perform the duties of the president in his/her place when the president is unable to attend to his/her duties, and perform the duties of the president when the post is vacant.

(3) The auditors shall audit the affairs of the Financial Instruments Membership Corporation.

### **Division 5 Dissolution**

(Causes for Dissolution)

Article 100 (1) A Financial Instruments Membership Corporation shall be dissolved based on the following grounds:

(i) the occurrence of a cause for dissolution as prescribed in the articles of incorporation;

(ii) a resolution of a general meeting;

(iii) merger (limited to the case where the Financial Instruments Membership Corporation has been extinguished as a result of a merger);

(iv) the number of members has become 5 or less;

(v) decision of the commencement of bankruptcy proceedings;

- (vi) failure to file an application for license under the provision of Article 80 (1), within six months from the day of its establishment;
- (vii) decision of the Prime Minister not to grant the license under Article 80 (1);
- or
- (viii) rescission or expiration of the license under Article 81 (1).

(2) A Financial Instruments Membership Corporation shall not adopt a resolution for dissolution without the affirmative votes of three-fourths or more of all members; provided, however, that this shall not apply to the cases where 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 Membership Corporation shall be distributed equally among its members, unless otherwise stipulated by the articles of incorporation or resolution of a general meeting.

(Period of Registration of Dissolution)

Article 100-3 When a Financial Instruments Membership Corporation has been dissolved, the dissolution shall be registered in the district of the location of its principal office within two weeks, and in the district of the location of its secondary offices within three weeks, except for the case of a dissolution based on a merger and a decision of commencement of bankruptcy proceedings.

(Registration of Completion of Liquidation)

Article 100-4 When liquidation of a Financial Instruments Membership Corporation has been completed, the completion of liquidation shall be registered in the district of the location of the principal office within two weeks, and in the district of the location of the secondary offices within three weeks, from the time when the approval under Article 507 (3) of the Companies Act as applied mutatis mutandis pursuant to Article 100-17 (1) has been obtained.

(Documents to be Attached to Application for Registration of Dissolution)

Article 100-5 (1) The document proving the grounds for the dissolution, and when the president or the board member representing the Financial Instruments Membership Corporation is not the liquidator, a document proving that the liquidator is the one representing the Financial Instruments Membership Corporation shall be attached to the application for registration of dissolution of a Financial Instruments Membership Corporation.

(2) When a Financial Instruments Membership Corporation is dissolved due to a disposition to rescind the license under Article 80 (1), the registration of the dissolution shall be made upon the request of the Prime Minister.

(Documents to be Attached to Application for Registration of Completion of Liquidation)

Article 100-6 The document proving that the liquidator has obtained the approval under Article 507 (3) of the Companies Act as applied mutatis mutandis pursuant to Article 100-17 (1) shall be attached to the application for registration under the provision of Article 100-4.

(Commencement of Bankruptcy Proceedings)

Article 100-7 (1) When a Financial Instruments Membership Corporation is unable to pay its obligations in full out of its property, the court shall, upon the filing of the president and the board members or the creditors, or by its own authority, grant a decision for commencement of bankruptcy proceedings.

(2) In the case prescribed in the preceding paragraph, the president and the board member shall immediately file a petition for commencement of bankruptcy proceedings.

(Financial Instruments Membership Corporation in Liquidation)

Article 100-8 A dissolved Financial Instruments Membership Corporation is deemed to still continue to exist to the extent of the purpose of the liquidation, until the completion of the liquidation.

(Appointment of Liquidator by Court)

Article 100-9 When there is no person to become a liquidator under the provisions of Article 647 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 100-17 (1), or if any damage is likely to occur due to the vacancy in the office of a liquidator, the court may appoint a liquidator at the request of any interested person or a public prosecutor, or by its own authority.

(Dismissal of Liquidators)

Article 100-10 The court may, upon a request made by an interested person or a public prosecutor, or by its own authority, dismiss the liquidator when there are material grounds to do so.

(Duties and Authority of Liquidator)

Article 100-11 (1) A liquidator shall perform the following duties:

- (i) conclusion of current business;
- (ii) collection of debts and performance of obligations; and
- (iii) delivery of residual assets.

(2) A liquidator may conduct any and all acts necessary to fulfill the duties prescribed in the respective items of the preceding paragraph.

(Request, etc. for Filing of Claims)

Article 100-12 (1) Within two months from the day when a liquidator takes office, the liquidator shall require the relevant creditors, by releasing a public notice on at least three occasions, to file their claims within a specified period. In this case, such notice period may not be less than two months.

(2) The public notice set forth in the preceding paragraph shall include a supplementary note stating that any claim of a creditor shall be excluded from the liquidation process unless he/she submits his/her claim within the notified period; provided, however, that the liquidator may not exclude any known creditor.

(3) The liquidator shall require the filing of the claim to each of the known creditors.

(4) The public notice under paragraph (1) shall be made by method of publication in the Official Gazette.

(Filing of Claims after Lapse of Period)

Article 100-13 Any creditor who submits its claim after the lapse of the period prescribed in paragraph (1) of the preceding Article shall be entitled to make its claim only to the assets which, after all debts of the Financial Instruments Membership Corporation have been fully paid, are not yet delivered to the person with vested rights.

(Commencement of Bankruptcy Proceedings of Financial Instruments Membership Corporations in Liquidation)

Article 100-14 (1) When it has become apparent during the liquidation process that the properties of a Financial Instruments Membership Corporation are not sufficient to fully pay its debts, a liquidator shall immediately file a petition for the commencement of bankruptcy proceedings and shall make a public notice to that effect.

(2) When a Financial Instruments Membership Corporation in liquidation has become subject to the decision of the commencement of bankruptcy proceedings, if the administration of the relevant procedure has been transferred to a bankruptcy trustee, it is deemed that the liquidator has completed his/her duties.

(3) In the case prescribed in the preceding paragraph, if a Financial Instruments Membership Corporation in liquidation has already paid any money to the creditors, or has delivered any asset to the person with vested rights, the bankruptcy trustee may retrieve such money or asset.

(4) The public notice under the provision of paragraph (1) shall be made in the Official Gazette.

(Supervision by Court)

Article 100-15 (1) Dissolution and liquidation of a Financial Instruments Membership Corporation shall be subject to the supervision of the court.

(2) The court may, by its own authority, conduct any inspection which may be necessary for the supervision set forth in the preceding paragraph.

(Filing of Completion of Liquidation)

Article 100-16 When the liquidation process has been completed, the liquidator shall notify to that effect to the Prime Minister.

(Application Mutatis Mutandis of Companies Act)

Article 100-17 (1) The provisions of Article 492 (1) and (3), Article 507 (excluding paragraph (2)), Article 644 (excluding item (iii)), Article 647 (1) and (4), Article 650 (2), Article 655 (1) to (5) inclusive, and Articles 662 to 664 inclusive of the Companies Act shall apply mutatis mutandis to a dissolution and liquidation of a Financial Instruments Membership Corporation. In this case, the term "liquidators (or, for Companies with Board of liquidators, liquidators listed in each item of paragraph (7) of Article 489)" in Article 492 (1) of that Act shall be deemed to be replaced with "A liquidator"; the term "Ordinance of the Ministry of Justice" in that paragraph and Article 507 (1) of that Act shall be deemed to be replaced with "Cabinet Office Ordinance"; the term "shareholders meeting" in Article 492 (3) and Article 507 (3) of the that Act shall be deemed to be replaced with "general meeting"; the term "item (v) of Article 641" in Article 644 (i) of the that Act shall be deemed to be replaced with "Article 100 (1)(iii) of the Financial Instruments and Exchange Act,"; the term "A partner who executes the operations" in Article 647 (1)(i) of that Act shall be deemed to be replaced with "A president and a board member"; the term "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)" in item (iii) of that paragraph shall be deemed to be replaced with "appointed by the resolution of a general meeting"; the term "from among themselves" in Article 655 (3) of that Act shall be deemed to be replaced with "from among themselves or based on a resolution of a general meeting"; and the term "partners who execute the operations" in paragraph (4) of that Article shall be deemed to be replaced with "president or board members,"; the term "if the partners that represent the Membership Company are already prescribed" in paragraph (4) of that Article shall be deemed to be replaced with "if the president or the board members that represent the Membership Company are already prescribed in the articles of incorporation,"; and the term "such partners that represent" shall be 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 shall be specified by a Cabinet Order.

(2) The provisions of Article 868 (1), Article 871, Article 874 (limited to the part pertaining to item (i)), Article 875 and Article 876 of the Companies Act shall apply mutatis mutandis to the liquidation of a Financial Instruments Membership Corporation. In this case, any other necessary technical replacement of terms shall be specified by a Cabinet Order.

(Jurisdiction of Cases Regarding Liquidators)

Article 100-18 The district court in the district of the location of the principal office of the Financial Instruments Membership Corporation shall have the jurisdiction over cases concerning a liquidator of a Financial Instruments Membership Corporation.

(Appeal on Judicial Decision for Appointment of Liquidators)

Article 100-19 No appeal may be filed with regard to the judicial decision of appointment of a liquidator of a Financial Instruments Membership Corporation.

(Remuneration of Liquidators)

Article 100-20 When the court has appointed a liquidator of a Financial Instruments Membership Corporation under the provision of Article 100-9, the court may order the Financial Instruments Membership Corporation to pay the remuneration. The amount of remuneration to be paid to a liquidator shall be determined by the court, after conducting a hearing of statement from said liquidator and an auditor.

(Dismissal of Liquidator)

Article 100-21 An immediate appeal against the judicial decision of the dismissal of a liquidator of a Financial Instruments Membership Corporation and the judicial decisions prescribed in the provision of the preceding Article may be filed.

(Appointment of Inspector)

Article 100-22 (1) The court may appoint an inspector to conduct necessary inspections for supervision of dissolution and liquidation of a Financial Instruments Membership Corporation.

(2) The provisions of the preceding three Articles shall apply mutatis mutandis to the cases where the court has appointed an inspector under the provision of the

preceding paragraph.

(Request for Investigation, etc. by Court)

Article 100-23 (1) A court supervising the dissolution and liquidation of a Financial Instruments Membership Corporation may seek an opinion of, or investigation by, the Prime Minister.

(2) The Prime Minister may state his/her opinion to the court prescribed in the preceding paragraph.

(Capacity of Liquidators to Commit Tortious Acts)

Article 100-24 The provisions of Article 88-9, and Article 88-12 to Article 88-15 inclusive shall apply mutatis mutandis to a case where a liquidator performs his/her duties.

(Application Mutatis Mutandis of Commercial Registration Act)

Article 100-25 The provisions of Article 71 (1) of the Commercial Registration Act shall apply mutatis mutandis to a registration of dissolution of a Financial Instruments Membership Corporation under this Act.

## **Division 6 Entity Conversion**

(Entity Conversion from Membership-Type Financial Instruments Exchange into Stock Company-Type Financial Instruments Exchange)

Article 101 A Membership-Type Financial Instruments Exchange may become a Stock Company-Type Financial Instruments Exchange through Entity Conversion.

(Entity Conversion Plan)

Article 101-2 (1) In order to implement the entity conversion set forth in the preceding Article (hereinafter referred to as the "Entity Conversion" in this Division), a Membership-Type Financial Instruments Exchange shall prepare an entity conversion plan and obtain an approval thereon by a resolution of a general meeting.

(2) A Membership-Type Financial Instruments Exchange may not adopt a resolution for Entity Conversion without the affirmative votes of three-fourths or more of all the members; provided, however, that this shall not apply in cases where it is otherwise provided for in the articles of incorporation.

(3) A general meeting set forth in paragraph (1) shall be convened by presenting an outline of the entity conversion plan and the articles of incorporation of the stock company after the entry conversion (hereinafter referred to as the "Stock Company-Type Financial Instruments Exchange after Entity Conversion" in

this Division), in addition to the subject matter of the meeting, by at least five days prior to the day of the meeting.

- (4) When a Membership-Type Financial Instruments Exchange implements Entity Conversion, said Membership-Type Financial Instruments Exchange shall specify the following matters in the entity conversion plan:
- (i) the purpose, trade name, the location of the head office and the total number of authorized shares of the Stock Company-Type Financial Instruments Exchange after Entity Conversion;
  - (ii) in addition to the matters listed in the preceding item, the matters specified by the articles of incorporation of the Stock Company-Type Financial Instruments Exchange after Entity Conversion;
  - (iii) the names of directors and name of accounting auditor of the Stock Company-Type Financial Instruments Exchange after Entity Conversion;
  - (iv) the matters prescribed in the following item (a) or (b), in accordance with the categories of cases listed in the respective item:
    - (a) when a Stock Company-Type Financial Instruments Exchange after Entity Conversion is a company with accounting advisors: the names of accounting advisors of the Stock Company-Type Financial Instruments Exchange after Entity Conversion; or
    - (b) when a Stock Company-Type Financial Instruments Exchange after Entity Conversion is a company with company auditors: the names of company auditors of the Stock Company-Type Financial Instruments Exchange after Entity Conversion.
  - (v) the number of shares of the Stock Company-Type Financial Instruments Exchange after Entity Conversion which the members of the Membership-Type Financial Instruments Exchange implementing Entity Conversion shall acquire upon Entity Conversion (in cases where the Stock Company-Type Financial Instruments Exchange after Entity Conversion is a company with class shares, the classes of shares and the number of shares for each class) or the method of calculating such number;
  - (vi) matters regarding the allotment of the shares set forth in the preceding item to members of the Membership-Type Financial Instruments Exchange implementing Entity Conversion;
  - (vii) when a Stock Company-Type Financial Instruments Exchange after Entity Conversion, upon implementation of Entity Conversion, delivers money to the members of the Membership-Type Financial Instruments Exchange implementing Entity Conversion, the amount of such money or the method of calculating such amount;
  - (viii) in the case prescribed in the preceding item, matters concerning the allotment of money under that item to the members of the Membership-Type Financial Instruments Exchange implementing Entity Conversion;



- (ix) matters concerning the amount of the stated capital and reserve fund of the Stock Company-Type Financial Instruments Exchange after Entity Conversion; and
- (x) the day on which the Entity Conversion will become effective (hereinafter referred to as the "Effective Date" in this Division) and other matters specified by a Cabinet Office Ordinance.

(Keeping and Inspection, etc. of Documents, etc. Concerning Entity Conversion Plan)

Article 101-3 (1) A Membership-Type Financial Instruments Exchange implementing Entity Conversion shall, during the period from five days prior to the day of a general meeting set forth in paragraph (1) of the preceding Article until the day immediately before the Effective Date, keep at its principal office the documents or electromagnetic records containing or recording the contents of the entity conversion plan and other matters specified by a Cabinet Office Ordinance.

- (2) A member and a creditor of a Membership-Type Financial Instruments Exchange implementing Entity Conversion may make the following requests to the Membership-Type Financial Instruments Exchange at any time during the business hours; provided, however, that in order to make the request listed in item (ii) or (iv), such person shall pay the cost determined by the Membership-Type Financial Instruments Exchange:
- (i) a request for inspection of the documents set forth in the preceding paragraph;
  - (ii) a request for delivery of the transcripts or the extracts of the documents set forth in the preceding paragraph;
  - (iii) a request for inspection of information recorded in the electromagnetic record set forth in the preceding paragraph, which are indicated by a method specified by a Cabinet Office Ordinance; and
  - (iv) a request for provision of information recorded in the electromagnetic record set forth in the preceding paragraph by the electromagnetic device which is specified by a Cabinet Office Ordinance, or a request for delivery of the documents containing such information.

(Objection by Creditors)

Article 101-4 (1) A creditor of a Membership-Type Financial Instruments Exchange implementing Entity Conversion may make an objection with regard to the Entity Conversion against the Membership-Type Financial Instruments Exchange.

- (2) A Membership-Type Financial Instruments Exchange implementing Entity Conversion shall give public notice of the following matters in the Official

Gazette and send a demand on such matters individually to known creditors; provided, however, that the period set forth in item (ii) may not be less than one month:

- (i) the fact that Entity Conversion will be implemented; and
  - (ii) the fact that a creditor may make an objection within a specified period.
- (3) When a creditor does not make an objection within the period set forth in item (ii) of the preceding paragraph, said creditor shall be deemed to have approved said Entity Conversion.
- (4) When a creditor makes an objection within the period set forth in item (ii) of paragraph (2), a Membership-Type Financial Instruments Exchange implementing Entity Conversion shall make payment or provide reasonable security to said creditor, or deposit reasonable property with a trust company, etc., for the purpose of having such creditor receive the payment; provided, however, that this shall not apply to the cases where said Entity Conversion is not likely to harm said creditor.

(Keeping and Inspection, etc. of Documents, etc. on Progress, etc. of Entity Conversion Procedures)

Article 101-5 (1) A Stock Company-Type Financial Instruments Exchange after Entity Conversion shall, during the period of six months from the Effective Date, keep at its head office the documents or electromagnetic records set forth in Article 101-3 (1), and the documents or the electromagnetic records containing or recording the progress of the procedures prescribed in the preceding Article and other matters specified by a Cabinet Office Ordinance as the matters concerning Entity Conversion.

(2) A shareholder and a creditor of a Stock Company-Type Financial Instruments Exchange after Entity Conversion may make the following request to the Stock Company-Type Financial Instruments Exchange after Entity Conversion at any time during the business hours; provided, however, that in order to make the request listed in item (ii) or (iv), such person shall pay a cost determined by the Membership-Type Financial Instruments Exchange after Entity Conversion:

- (i) a request for inspection of the documents set forth in the preceding paragraph;
- (ii) a request for delivery of the transcripts or the extracts of the documents set forth in the preceding paragraph;
- (iii) a request for inspection of information recorded in the electromagnetic records set forth in the preceding paragraph which are indicated by a method specified by a Cabinet Office Ordinance; and
- (iv) a request for provision of information recorded in the electromagnetic records set forth in the preceding paragraph by the electromagnetic device

which is specified by a Cabinet Office Ordinance, or a request for delivery of the documents containing such information.

(Allotment of Shares to Member)

Article 101-6 (1) A member of a Membership-Type Financial Instruments Exchange shall be allotted shares of the Stock Company-Type Financial Instruments Exchange after Entity Conversion or money, in accordance with the entity conversion plan.

(2) The provisions of Article 234, paragraph (1) (excluding each item) and paragraphs (2) to (5) inclusive, Article 868 (1), Article 869, Article 871, Article 874 (limited to the part pertaining to item (iv)), Article 875 and Article 876 of the Companies Act shall apply mutatis mutandis to the cases where shares or money are allotted to a member under the provisions of the preceding paragraph. In this case, any necessary technical replacement of terms shall be specified by a Cabinet Order.

(Amount to Be Included in Stated Capital)

Article 101-7 The amount that should be included in the stated capital of a Stock Company-Type Financial Instruments Exchange after Entity Conversion shall be specified by a Cabinet Office Ordinance.

(Amount to Be Included in Capital Reserve, etc.)

Article 101-8 The amount that should be included in the capital reserve at the time of Entity Conversion and other necessary matters concerning the accounting in relation to Entity Conversion shall be specified by a Cabinet Office Ordinance.

(Issuance of Shares upon Entity Conversion)

Article 101-9 A Membership-Type Financial Instruments Exchange may, at the time of Entity Conversion, issue shares of the Stock Company-Type Financial Instruments Exchange after Entity Conversion, in addition to allotting shares prescribed in Article 101-6 (1). In this case, the following matters shall be specified in the entity conversion plan:

- (i) the number of shares issued under the provisions of this Article (hereinafter referred to as the "Shares Issued upon Entity Conversion" in this Division) (in the case where a Stock Company-Type Financial Instruments Exchange after Entity Conversion is a company with class shares, the classes and the number of the Shares Issued upon Entity Conversion);
- (ii) the amount to be paid for the Shares Issued upon Entity Conversion (which means the amount of money to be paid or property other than money to be delivered, in exchange for one Share Issued upon Entity Conversion) or the

- method of calculation of such amount;
- (iii) when property other than money will be the subject of contribution, a statement to that effect and the description and value of said property;
- (iv) the date of payment of money or delivery of the property set forth in the preceding item, which is to be made in exchange for the Shares Issued upon Entity Conversion; and
- (v) matters concerning the stated capital or capital reserve to be increased.

(Application, etc. for Shares Issued upon Entity Conversion)

Article 101-10 (1) A Membership-Type Financial Instruments Exchange shall notify the following matters to a person who intends to make an application of subscription for the Shares Issued upon Entity Conversion:

- (i) the trade name of the Stock Company-Type Financial Instruments Exchange after Entity Conversion;
  - (ii) the matters listed in the respective item of the preceding Article;
  - (iii) when money is to be paid, the place for handling of the payment; and
  - (iv) in addition to what is listed in the preceding three items, the matters specified by a Cabinet Office Ordinance.
- (2) A person who makes an application of subscription for the Shares Issued upon Entity Conversion shall deliver a document containing the following matters to the Membership-Type Financial Instruments Exchange:
- (i) the name and address of the person who makes the application; and
  - (ii) the number of the Shares Issued upon Entity Conversion for which the person intends to subscribe.
- (3) The person who makes an application set forth in the preceding paragraph may, in lieu of delivery of the document set forth in that paragraph, provide information that should be contained in the document under that paragraph by an electromagnetic device, with the approval of the Membership-Type Financial Instruments Exchange and pursuant to the provisions of a Cabinet Order. In this case, the person who has made the application shall be deemed to have delivered the document set forth in that paragraph.
- (4) When there is any change in the matters listed in the respective item of paragraph (1), a Membership-Type Financial Instruments Exchange shall immediately notify the person who made an application under paragraph (2) (hereinafter referred to as an "Applicant" in this Division) of the fact of the change and the matters that have been changed.
- (5) With regard to a notice or demand to be given to an Applicant by a Membership-Type Financial Instruments Exchange, it is sufficient to send such notice or demand to the address set forth in item (i) of paragraph (2) (in the case where said Applicant has notified the Membership-Type Financial Instruments Exchange of another place or contact address for receiving notices

or demands, such place or contact address).

- (6) The notice or demand set forth in the preceding paragraph shall be deemed to have arrived at the time when such notice or demand should normally have arrived.

(Allotment of Shares Issued upon Entity Conversion)

Article 101-11 (1) A Membership-Type Financial Instruments Exchange shall decide the persons to whom the Shares Issued upon Entity Conversion will be allotted from among the Applicants, and decide the number of the Shares Issued upon Entity Conversion to be allotted to such persons. In this case, the Membership-Type Financial Instruments Exchange may reduce the number of the Shares Issued upon Entity Conversion to be allotted to such Applicants below the number set forth in item (ii), paragraph (2) of the preceding Article.

- (2) A Membership-Type Financial Instruments Exchange shall notify the Applicants of the number of the Shares Issued upon Entity Conversion to be allotted to said Applicant, by the day immediately preceding the date set forth in Article 101-9 (iv).

(Subscription for Shares Issued upon Entity Conversion)

Article 101-12 An Applicant shall become a subscriber for the Shares Issued upon Entity Conversion with regard to the number of the Shares Issued upon Entity Conversion allotted by a Membership-Type Financial Instruments Exchange.

(Performance of Contribution)

Article 101-13 (1) A subscriber for the Shares Issued upon Entity Conversion (excluding a person who delivers the property set forth in Article 101-9 (iii) (hereinafter referred to as the "Property Contributed in Kind" in this Division)) shall, on the date set forth in item (iv) of that Article, pay the full amount to be paid for the respective Shares Issued upon Entity Conversion for which the subscribers respectively subscribed, at the place for handling of the payment such as at Banks (which means the Banks, Etc., prescribed in Article 34 (2) of the Companies Act) specified by the Membership-Type Financial Instruments Exchange.

- (2) A subscriber for the Shares Issued upon Entity Conversion (limited to a person who delivers the Property Contributed in Kind) shall, on the date set forth in Article 101-9 (iv), deliver the Property Contributed in Kind equivalent in value to the entire amount to be paid for the Shares Issued upon Entity Conversion for which the subscribers respectively subscribed.
- (3) A subscriber for the Shares Issued upon Entity Conversion shall not set off the subscriber's obligation to make the payment set forth in paragraph (1) or

the delivery under the provisions of the preceding paragraph (hereinafter referred to as the "Performance of Contribution" in this Division) against the claims they have against the Membership-Type Financial Instruments Exchange.

- (4) Transfer of the right to become a shareholder of the Shares Issued upon Entity Conversion by effecting the Performance of Contribution may not be asserted against the Stock Company-Type Financial Instruments Exchange after Entity Conversion.
- (5) If a subscriber for the Shares Issued upon Entity Conversion fails to effect the Performance of Contribution, such subscriber shall lose the right to become a shareholder of the Shares Issued upon Entity Conversion by effecting the Performance of Contribution.

(Timing of Shareholder Status)

Article 101-14 A subscriber for the Shares Issued upon Entity Conversion shall become a shareholder of the Shares Issued upon Entity Conversion for which the subscriber has effected the Performance of Contribution, on the Effective Date.

(Restriction on Invalidation or Rescission of Subscription)

Article 101-15 (1) The provisions of the proviso to Article 93 and Article 94 (1) of the Civil Code shall not apply to a manifestation of intention concerning an application of subscription for the Shares Issued upon Entity Conversion and the allotment of such shares.

- (2) After one year has passed from the Effective Date, or after exercise of the rights with regard to shares, a subscriber for the Shares Issued upon Entity Conversion may not assert invalidity of the subscription for the Shares Issued upon Entity Conversion on the grounds of mistake, or rescind the subscription for the Shares Issued upon Entity Conversion on the ground of a fraud or duress.

(Contribution of Property Other than Money)

Article 101-16 (1) When there is any share that has not been subscribed for after the registration of establishment under Article 101-20 (1), the president and board members of the Membership-Type Financial Instruments Exchange as of the time of the resolution of the general meeting prescribed in Article 101-2 (1), and the directors of a Stock Company-Type Financial Instruments Exchange as of the Effective Date shall be deemed to have jointly subscribed for said shares. The same shall apply to the cases where an application for subscription for shares has been rescinded.

- (2) When there is any share that has not been paid for after the registration of

the establishment under Article 101-20 (1), the president and board members of the Membership-Type Financial Instruments Exchange as of the time of the resolution of the general meeting prescribed in Article 101-2 (1), and the directors of the Stock Company-Type Financial Instruments Exchange as of the Effective Date shall have the joint and several obligation to make payment therefor.

- (3) The provisions of Article 207, Article 212 (excluding item (i), paragraph (1)), Article 213 (excluding items (i) and (iii) of paragraph (1)), Article 868 (1), Article 870 (limited to the part pertaining to items (ii) and (vii)), Article 871, Article 872 (limited to the part pertaining to item (iv)), Article 874 (limited to the part pertaining to item (i)), Article 875 and Article 876 of the Companies Act shall apply mutatis mutandis to a case where property other than money will be subject to contribution as prescribed in Article 101-9 (iii). In this case, the term "Article 199 (1)(iii)" in Article 207, paragraph (1) and (7) and items (ii) to (v) inclusive of paragraph (9) and Article 212 (1)(ii) and (2) of that Act shall be deemed to be replaced with "Article 101-9 (iii) of the Financial Instruments and Exchange Act,"; the term "Ordinance of the Ministry of Justice" in Article 207 (4), (6) and (9)(iii) and Article 213 (1)(ii) of that Act shall be deemed to be replaced with "a Cabinet Office Ordinance,"; the term "his/her applications for subscription for Shares for Subscription, or his/her manifestation of intention relating to the contract provided for in Article 205" in Article 207 (8) and Article 212 (2) of that Act shall be deemed to be replaced with "his/her manifestation of intention relating to an application for subscription for Shares for Subscription,"; the term "A director, an accounting advisor, a company auditor or executive officer," in Article 207 (10)(i) of that Act shall be deemed to be replaced with "a president, a board member or an auditor of a Membership-Type Financial Instruments Exchange,"; the term "Article 209" in Article 212 (1)(ii) of that Act shall be deemed to be replaced with "Article 101-14 of the Financial Instruments and Exchange Act"; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

(Authorization for Entity Conversion)

- Article 101-17 (1) An entity conversion shall not come into effect unless the authorization of the Prime Minister thereon has been obtained.
- (2) A person who intends to obtain the authorization under the preceding paragraph shall submit to the Prime Minister an application for entity conversion containing the following matters with regard to the Stock Company-Type Financial Instruments Exchange after Entity Conversion:
- (i) the trade name;
  - (ii) the locations of the head office, branch offices and any other business

offices; and

(iii) the names of Officers, and names or trade names of Trading Participants.

(3) The documents containing the contents of the entity conversion plan, and the articles of incorporation, the operational rules and the brokerage contract rules of the Stock Company-Type Financial Instruments Exchange after Entity Conversion as well as other documents specified by a Cabinet Office Ordinance shall be attached to the application for entity conversion set forth in the preceding paragraph.

(Criteria for Authorization)

Article 101-18 (1) When an application for authorization under paragraph (2) of the preceding Article has been filed, the Prime Minister shall examine whether the application conforms to the criteria listed in the following:

(i) the provisions of the articles of incorporation, the operational rules and the brokerage contract rules of the Stock Company-Type Financial Instruments Exchange after Entity Conversion conform to laws and regulations, and are sufficient for achieving fair and smooth sales and purchase of Securities and Market Transactions of Derivatives on the Financial Instruments Exchange Market, as well as for protection of investors;

(ii) the Stock Company-Type Financial Instruments Exchange after Entity Conversion has a personnel structure sufficient for appropriately operating the Financial Instruments Exchange Markets; and

(iii) the Stock Company-Type Financial Instruments Exchange after Entity Conversion will be organized as a Financial Instrument Exchange in such a way as to conform to the provisions of this Act.

(2) When the Prime Minister finds that the application conforms to the criteria under the preceding paragraph as a result of examination under the provision of that paragraph, he/she shall grant authorization on entity conversion, except for the cases where the application falls under any of the following items:

(i) when any of the Officers of the Stock Company-Type Financial Instruments Exchange after Entity Conversion falls under any category of the persons specified in Article 29-4 (1)(ii)(a) to (g) of this Act, or Article 331 (1)(iii) of the Companies Act; or

(ii) when the application for authorization of Entity Conversion or the documents to be attached thereto includes any fake statement on important matters.

(Coming into Effect of Entity Conversion)

Article 101-19 (1) A Membership-Type Financial Instruments Exchange implementing Entity Conversion shall become a Stock Company-Type Financial Instruments Exchange on the Effective Date.



- (2) A member of a Membership-Type Financial Instruments Exchange implementing Entity Conversion shall become a shareholder of the shares set forth in Article 101-2 (4)(v), in accordance with the provisions on the matters listed in item (iv) of that paragraph on the day on the Effective Date.
- (3) The provisions of the preceding two paragraphs shall not apply to the case where the procedure prescribed in Article 101-4 has not been completed or the case where Entity Conversion has been suspended.

(Registration)

- Article 101-20 (1) When a Membership-Type Financial Instruments Exchange has implemented Entity Conversion, it shall file the registration of dissolution with regard to the Membership-Type Financial Instruments Exchange implementing Entity Conversion, the registration of establishment with regard to the head office of the Stock Company-Type Financial Instruments Exchange after Entity Conversion and the registration of the matters listed in the respective item of Article 930 (2) of the Companies Act with regard to the branch offices of the Stock Company-Type Financial Instruments Exchange after Entity Conversion, within two weeks from the Effective Date in the district of the location of the principal office and the head office, and within three weeks from the Effective Date in the districts of the location of the secondary offices and branch offices.
- (2) In addition to the documents specified in Article 18, Article 19 and Article 46 of the Commercial Registration Act, the following documents shall be attached to the application for registration of establishment set forth in the preceding paragraph:
    - (i) the entity conversion plan;
    - (ii) the articles of incorporation;
    - (iii) the minutes of a general meeting concerning Entity Conversion of the Membership-Type Financial Instruments Exchange implementing Entity Conversion;
    - (iv) documents proving that the public notice and demand under the provision of Article 101-4 (2) has been provided, and if a creditor has made an objection, the fact that the payment has been made or reasonable security has been provided to said creditor or reasonable property has been deposited in trust for the purpose of having said creditor receive the payment, or the fact that said Entity Conversion is not likely to harm said creditor;
    - (v) a document proving the amount of net assets existing in the Membership-Type Financial Instruments Exchange implementing Entity Conversion as of the Effective Date;
    - (vi) a document proving that the directors of the Stock Company-Type Financial Instruments Exchange after Entity Conversion (if the Stock

- Company-Type Financial Instruments Exchange after Entity Conversion is a company with company auditors, the directors and the company auditors) have accepted their respective office;
- (vii) if an accounting advisor or accounting auditor has been appointed for the Stock Company-Type Financial Instruments Exchange after Entity Conversion, the documents listed in the respective item of Article 54 (2) of the Commercial Registration Act;
  - (viii) if an administrator of the shareholder registry has been appointed, a document proving the contract with such person;
  - (ix) if shares have been issued upon Entity Conversion under the provision of Article 101-9, the following documents:
    - (a) a document proving that the applications of subscription for shares have been made;
    - (b) if money will be the subject of contribution, a document proving that the payment prescribed in Article 101-13 (1) has been made; and
    - (c) if property other than money will be the subject of contribution, the following documents:
      - 1. if an inspector has been appointed, a document containing the investigation report by the inspector and the documents attached thereto;
      - 2. in the case set forth in Article 207 (9)(iii) of the Companies Act as applied mutatis mutandis pursuant to Article 101-16 (3), the document proving the market price of Securities;
      - 3. in the case set forth in Article 207 (9)(iv) of the Companies Act as applied mutatis mutandis pursuant to Article 101-16 (3), the document containing the verification prescribed in that item and the documents attached thereto; and
      - 4. in the case set forth in Article 207 (9)(v) of the Companies Act as applied mutatis mutandis pursuant to Article 101-16 (3), the account book stating the money claim prescribed in that item; and
    - (d) when a judicial decision on a report by an inspector is made, a transcript of such judicial decision.
- (3) The provisions of Article 76 and 78 of the Commercial Registration Act shall apply mutatis mutandis to the cases set forth in paragraph (1).

(Action Seeking Invalidation of Entity Conversion)

Article 102 (1) The provisions of Articles 828(1) (limited to the part pertaining to item (vi)) and paragraph (2) (limited to the part pertaining to item (vi)), Article 834 (limited to the part pertaining to item (vi)), Article 835 (1), Articles 836 to 839 inclusive, Article 846 and Article 937 (3) (limited to the part pertaining to item (i)) of the Companies Act shall apply mutatis mutandis to an action

seeking invalidation of Entity Conversion of a Membership-Type Financial Instruments Exchange. In this case, the term "shareholders, etc. or members, etc. of the company implementing entity conversion" in Article 828 (2)(vi) of the that Act shall be deemed to be replaced with "Member, etc. (meaning members, president, board members, auditors or liquidators) of a Membership-Type Financial Instruments Exchange implementing entity conversion"; and the term "shareholders, etc., members, etc. of the company after Entity Conversion" in that item of the same Act shall be deemed to be replaced with "shareholders, etc. (meaning shareholders, directors or liquidators (with regard to a company with board of company auditors, meaning shareholders, directors, company auditors or liquidators; and with regard to a company with committees, meaning shareholders, directors, executive officers or liquidators)) of a Membership-Type Financial Instruments Exchange after Entity Conversion,"; the term "the head office of each company" in Article 937 (3) of that Act shall be deemed to be replaced with "the head office and branch offices of and the principal office and secondary offices of the Financial Instruments Exchange,"; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

- (2) The provision of Article 840 of the Companies Act shall apply mutatis mutandis to an action seeking invalidation of Entity Conversion prescribed in Article 828 (1) of the same Act (limited to the part pertaining to item (vi)) as applied mutatis mutandis pursuant to the provision of the preceding paragraph in the case where the Shares Issued upon Entity Conversion are issued under the provision of Article 101-9; and the provisions of Article 868 (1), the main clause of Article 871, Article 872 (limited to the part pertaining to item (ii)), the main clause of Article 873, Articles 875 to 877 inclusive and Article 878 (1) of that Act shall apply mutatis mutandis to a petition under Article 840 (2) of that Act as applied mutatis mutandis pursuant to this paragraph. In this case, the necessary technical replacement of terms shall be specified by a Cabinet Order.

### **Subsection 1-2 Self-Regulation Organization**

#### **Division 1 Establishment**

(Juridical Personality)

- Article 102-2 (1) A Self-Regulation Organization shall be a juridical person.
- (2) A Self-Regulation Organization shall use the term "Jishu Kisei Hojin" (which means "Self-Regulation Organization") in its name.
- (3) No person other than a Self-Regulation Organization shall use in its name any term which is likely to mislead people to understand that the person is a Self-Regulation Organization.

(Founder)

Article 102-3 (1) No person other than a Financial Instruments Exchange or a Financial Instruments Exchange Holding Company may establish a Self-Regulation Organization.

(2) In order to establish a Self-Regulation Organization, a Financial Instrument Exchange or a Financial Instruments Exchange Holding Company which intends to become a member shall be the founder.

(Articles of Incorporation)

Article 102-4 (1) In order to establish a Self-Regulation Organization, the founders shall prepare articles of incorporation, and all founders shall sign or affix their names and seals thereto.

(2) The following matters shall be stated or recorded in the articles of incorporation of a Self-Regulation Organization:

(i) the purpose;

(ii) the name;

(iii) the office address;

(iv) matters regarding funds and contribution;

(v) matters regarding members;

(vi) matters regarding allocation of costs;

(vii) matters regarding Officers;

(viii) matter regarding meetings;

(ix) matters regarding execution of business;

(x) matters regarding preparation of rules;

(xi) matters regarding the Self-Regulation Related Services to be performed based on entrustment;

(xii) matters regarding accounting; and

(xiii) the method of public notice (meaning the method by which a Self-Regulation Organization gives public notices (excluding those which shall be given by the method of publication in the Official Gazette under the provisions of this Act); the same shall apply in Article 102-9 (2)(ix)).

(3) The provision of Article 30 (1) of the Companies Act shall apply mutatis mutandis to the articles of incorporation set forth in paragraph (1).

(Organizational Meeting)

Article 102-5 (1) Founders shall, after preparing the articles of incorporation, solicit persons to become members, and hold an organizational meeting by giving a public notice of said 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 who intends to become a member of a Self-Regulation Organization

to be established (hereinafter referred to as an "Expected Member" in this Article) shall pay the full amount of contribution before the opening of the organizational meeting.

- (3) Approval of the articles of incorporation and decisions on other matters necessary for the establishment shall be adopted by a resolution of an organizational meeting.
- (4) The articles of incorporation may be amended at an organizational meeting.
- (5) A decision at an organizational meeting under paragraph (3) shall be adopted by at least a two-thirds majority of the voting rights of those present, when at least half of the Expected Members who, by the opening of said meeting, have completed full payment of the contribution are present.
- (6) An Expected Member who has not completed payment of the full amount of the contribution by the time of the establishment of a Self-Regulation Organization shall be deemed to have rescinded his/her application for membership at the time of the establishment of the Self-Regulation Organization.

(Provisions Applied Mutatis Mutandis)

Article 102-6 The provisions of Articles 88-5 to 88-21 inclusive shall apply mutatis mutandis to the establishment of a Self-Regulation Organization.

(Application Mutatis Mutandis of Companies Act)

Article 102-7 The provisions of Article 828, paragraph (1) (limited to the part pertaining to item (i)) and paragraph (2) (limited to the part pertaining to item (i)), Article 834 (limited to the part pertaining to item (i)), Article 835 (1), Article 836 (1) and (3), Article 837 to Article 839 inclusive and Article 846 of the Companies Act shall apply mutatis mutandis to an action seeking invalidation of the establishment of a Self-Regulation Organization. In this case, the term "shareholders etc. (meaning shareholders, directors or liquidators (with regard to a company with auditors, meaning shareholders, directors, auditors or liquidators; and with regard to a company with committees, shareholders, directors, executive officers, or liquidators); hereinafter the same shall apply in this Section), or members, etc. of a membership company to be established (meaning members or liquidators; hereinafter the same shall apply in this paragraph)" in Article 828 (2)(i) of that Act shall be deemed to be replaced with "members, president and board members, auditors or liquidators"; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

## **Division 2 Registration**

(Establishment)

- Article 102-8 (1) A Self-Regulation Organization shall be established by registering its establishment in the district of the location of its principal office.
- (2) Except for the case prescribed in the preceding paragraph, the matters to be registered under the provisions of this Act may not be asserted against a third party until after they have been registered.

(Registration)

- Article 102-9 (1) Registration of establishment of a Self-Regulation Organization shall be made within two weeks from the day of completion of its organizational meeting.
- (2) The registration prescribed in the preceding paragraph shall contain the following matters:
- (i) the purpose;
  - (ii) the name;
  - (iii) the office address;
  - (iv) if the term of existence or the grounds for dissolution have been specified, such term or grounds;
  - (v) funds and the amount of contribution paid;
  - (vi) the unit amount of contribution and the method of its payment;
  - (vii) the name, address and qualification of the person who has the authority of representation;
  - (viii) if there are any provisions regarding the scope and limitation on the authority of representation, such provisions; and
  - (ix) the method of public notice.
- (3) A Self-Regulation Organization shall file registration of the matters listed in the preceding paragraph in the district of the location of its secondary office, within two weeks from the registration of its establishment.

(Application Mutatis Mutandis of Provisions Regarding Registration Procedures)

Article 102-10 The provisions of Articles 89-3 to 89-9 inclusive shall apply mutatis mutandis to a Self-Regulation Organization. In this case, the term "Article 89-2 (2)" in Article 89-4, Article 89-5 and Article 89-9 shall be deemed to be replaced with "Article 102-9 (2)" and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

(Application Mutatis Mutandis of Commercial Registration Act, etc.)

Article 102-11 The provisions of Articles 2 to 5 inclusive, 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 (1), Articles 48 to 53 inclusive, and

Articles 132 to 148 inclusive of the Commercial Registration Act, and Article 937 (1) (limited to the part pertaining to item (i)(a)) of the Companies Act shall apply mutatis mutandis to registrations regarding Self-Regulation Organizations. In this case, the term "trade name and the head office" in Article 17 (2)(i) of the Commercial Registration Act shall be deemed to be replaced with "name and the principal office,"; and the term "the branch office" in Article 48, Article 49 (1), Article 50 (2) and (4), and Article 138 (1) and (2) of that Act shall be deemed to be replaced with "the secondary office,"; the term "the branch office of the company" in Article 17 (3) and Article 20 (3) of that Act shall be deemed to be replaced with "the secondary office of the Self-Regulation Organization,"; the term "the head office" in Article 25 (3), Article 48 (1), Article 49 (1) and (3), Article 50 (1) to (3) inclusive, Article 51 (1), Article 53 and Article 138 (1) of that Act shall be deemed to be replaced with "the principal office,"; the term "the respective item of Article 930 (2) of the Companies Act" in Article 48 (2) of that Act shall be deemed to be replaced with "the respective item of Article 102-9 (2) of the Financial Instruments and Exchange Act,"; the term "in the case of registration in the district of the new location" in Article 53 of that Act shall be deemed to be replaced with "in the case of registration of the matters listed in the respective item of Article 102-9 (2) of the Financial Instruments and Exchange Act in the district of the new location,"; the term "the head office (in the case prescribed in item (i)(g) where the matters listed in the respective item of Article 930 (2) have been registered according to said resolution, the head office, and the branch office pertaining to said registration)" in Article 937 (1) of the Companies Act shall be deemed to be replaced with "the principal office and secondary office"; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

### **Division 3 Membership**

(Qualification of Members)

Article 102-12 Members of a Self-Regulation Organization shall be limited to Financial Instruments Exchanges and Financial Instruments Exchange Holding Companies.

(Provisions Applied Mutatis Mutandis)

Article 102-13 The provisions of Article 92 to 96 inclusive shall apply mutatis mutandis to the members of a Self-Regulation Organization.

### **Division 4 Self-Regulation Related Services**

(Self-Regulation Related Services by Self-Regulation Organization)

Article 102-14 When a Self-Regulation Organization intends to perform Self-Regulation Related Services, it shall obtain authorization from the Prime Minister.

(Application for Authorization)

Article 102-15 (1) A Self-Regulation Organization which intends to obtain the authorization under the preceding Article shall submit an application for authorization containing the following matters to the Prime Minister:

- (i) the name;
  - (ii) the locations of offices; and
  - (iii) the names of Officers, and trade names or names of members.
- (2) The articles of incorporation, the operational rules and other documents specified by a Cabinet Office Ordinance shall be attached to the application for authorization under the preceding paragraph.
- (3) The provision of Article 81 (3) shall apply mutatis mutandis to an application for authorization under paragraph (1).

(Criteria for Authorization)

Article 102-16 (1) When an application for authorization under the provision of paragraph (1) of the preceding Article has been filed, the Prime Minister shall examine whether the application conforms to the criteria listed in the following:

- (i) the provisions of the articles of incorporation and the operational rules conform to the laws and regulations, and are sufficient for appropriately operating the Self-Regulation Related Services;
  - (ii) the applicant for authorization has a personnel structure sufficient for appropriately operating the Self-Regulation Related Services; and
  - (iii) the applicant for an authorization will be organized as a Self-Regulation Related Organization in such a manner that conforms to the provisions of this Act.
- (2) The provision of Article 82 (2) shall apply mutatis mutandis to the application for authorization under the preceding paragraph. In this case, the term "Article 106-21 (1) or Article 106-28 (1)" in item (ii), paragraph (2) of that Article shall be deemed to be replaced with "Article 106-21 (1), Article 106-28 (1), or Article 148 or Article 152 (1) as applied mutatis mutandis pursuant to Article 153-4 (1),"; the term "has had its license rescinded under the provision of Article 148 or Article 152 (1)" in sub-item (b), item (iii) of that paragraph shall be deemed to be replaced with "has had its license rescinded under the provision of Article 148 or Article 152 (1) or has had its authorization rescinded under the provision of Article 148 or Article 152 (1) as applied mutatis mutandis pursuant to the provision of Article 153-4,"; the term "Article 150,



Article 152 (1)" in sub-item (e) of that item shall be deemed to be replaced with "Article 150 or Article 152 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 153-4)"; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

(Application Mutatis Mutandis of Provision Concerning Hearing)

Article 102-17 The provision of Article 85-4 shall apply mutatis mutandis to the authorization under Article 102-14.

(Entrusted Services)

Article 102-18 A Self-Regulation Organization shall carry out Self-Regulation Related Services concerning a Financial Instruments Exchange, based on the entrustment by said Financial Instruments Exchange.

(Prohibition of Re-entrustment)

Article 102-19 A Self-Regulation Organization which has been entrusted with Self-Regulation Related Services under the provision of the preceding Article shall not entrust another person with the Self-Regulation Related Services so entrusted.

(Termination of Entrustment Relations)

Article 102-20 The Self-Regulation Related Services conducted by a Self-Regulation Organization based on entrustment from a Financial Instrument Exchange shall terminate when said Self-Regulation Organization has been dissolved based on the grounds listed in the respective item of Article 102-35 (1). In this case, the entrusted Self-Regulation Related Services shall be carried out by the Entrusting Financial Instruments Exchange (meaning the Financial Instrument Exchange that has entrusted the Self-Regulation Related Services; hereinafter the same shall apply in this Chapter).

## **Division 5 Administration**

(Restriction on Services)

Article 102-21 A Self-Regulation Organization shall not conduct services for profit.

(Scope of Services)

Article 102-22 A Self-Regulation Organization may not engage in any service other than Self-Regulation Related Services and the services incidental thereto.

(Appointment of Officers, etc.)

Article 102-23 (1) A Self-Regulation Organization shall appoint one president, three or more board members and two or more auditors as its Officer.

(2) Board members and auditors shall be appointed by resolution of a general meeting.

(3) The majority of board members shall be Outside Board Members (meaning board members elected from among persons who are not directors, board members or executive officers, or managers or other employees of an Entrusting Financial Instruments Exchange or its Subsidiary Company (meaning a Subsidiary Company prescribed in Article 87-3 (2): hereinafter the same shall apply in this paragraph, Article 122, Article 124 (1)(iv), (2)(i) and (3)(ii) and Article 151) and who 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 shall apply in this Division).

(4) A person who falls under any of the categories prescribed in Article 29-4 (1)(i)(a) to (g) inclusive of this Act, or Article 331 (1)(iii) of the Companies Act may not become an Officer.

(5) If an Officer comes to fall under any category of the persons prescribed in the preceding paragraph, said officer shall lose his/her position.

(6) The president shall be elected from Outside Board Members, based on mutual election of the board members.

(Duties, etc. of Officers)

Article 102-24 (1) The president shall represent the Self-Regulation Organization and preside over its affairs.

(2) The board member shall, pursuant to the provisions of the articles of incorporation, represent the Self-Regulation Organization, administer the affairs of the Self-Regulation Organization assisting the president, perform the duties of the president in his/her place when the president is unable to attend to his/her duties, and perform the duties of the president when the post is vacant.

(3) The auditor shall audit the affairs of the Self-Regulation Organization.

(Term of Office, etc. of Board Members)

Article 102-25 (1) The term of office of board members shall continue until the conclusion of the general meeting for the last business year which ends within two years from the time of their election.

(2) A board member may be reappointed only up to twice.

(3) A board member shall not be dismissed unless it is agreed upon at the general meeting by the resolution of at least four-fifth majority of the members present, when the majority of the members are present.

(Attendance at Board of Directors Meetings by Board Members)

Article 102-26 A board member may, when he/she finds it necessary, attend the meeting of the board of directors or the council meeting of the Entrusting Financial Instruments Exchange to state his/her opinions.

(Holding of Council)

Article 102-27 (1) A council meeting of a Self-Regulation Organization (hereinafter referred to as the "Council" in this Subsection) shall be held at least once every three months.

(2) A Council shall be convened by the president.

(Request for Convocation of Council by Board Members)

Article 102-28 A board member may demand that the president convene a Council, by presenting the subject matter of the Council and the reasons for the convocation.

(Convocation Procedures of Council)

Article 102-29 (1) A person who convenes a Council shall dispatch notice thereof to each board member no later than one week prior to the day of the Council (if a shorter period has been specified by the Council, such period).

(2) Notwithstanding the provisions of the preceding paragraph, the Council may be held without the convocation procedures, if the consent of all board members has been obtained.

(Resolution of Council)

Article 102-30 (1) A resolution of a Council shall be adopted by a majority of the board members present and by a majority of Outside Board Members present, when a majority of board members who are entitled to exercise voting rights are present.

(2) A board member with special interest in the resolution under the preceding paragraph shall not be entitled to vote.

(3) With regard to the business of the Council, minutes shall be prepared pursuant to the provisions of a Cabinet Office Ordinance, and if the minutes are prepared in writing, the board members present at the meeting shall sign or affix their names and seals to it.

(4) With regard to the matters recorded in electromagnetic records in cases where the minutes under the preceding paragraph are prepared in the form of electromagnetic records, the measures in lieu of the signing or the affixing of names and seals specified by a Cabinet Office Ordinance shall be taken.

(Minutes)

- Article 102-31 (1) A Self-Regulation Organization shall keep the minutes set forth in paragraph (3) of the preceding Article at its principal office for ten years from the day of a Council.
- (2) A member of the Self-Regulation Organization may, when it is necessary in order to exercise its rights, request inspection or copying of the following documents with regard to the minutes prescribed in the preceding paragraph, with permission of the court:
- (i) when the minutes prescribed in the preceding paragraph are prepared in writing, such written document; and
  - (ii) when the minutes prescribed in the preceding paragraph are prepared in the form of electromagnetic records, anything which indicates information recorded in such electromagnetic records in a manner specified by a Cabinet Office Ordinance.
- (3) The permission under the preceding paragraph may not be granted when the court finds that inspection or copying pertaining to the request under the preceding paragraph is likely to cause substantial detriment to said Entrusting Financial Instruments Exchange, the Financial Instruments Exchange Holding Company which has said Entrusting Financial Instruments Exchanges as its Subsidiary Company (meaning another company, the majority of whose voting rights of all shareholders or all members are held by the company. In this case, another company, the majority of whose voting rights of all shareholders or all members are held by the company and its Subsidiary Company or Subsidiary Companies or by the company's Subsidiary Company or Subsidiary Companies is deemed as a Subsidiary Company of the company) or to a Subsidiary Company of said Entrusting Financial Instruments Exchange (meaning a Subsidiary Company prescribed by Article 87-3 (2)).
- (4) The provisions of Article 868 (1), Article 869, Article 870 (limited to the part pertaining to item (i)), the main clause of Article 871, Article 872 (limited to the part pertaining to item (iv)), the main clause of Article 873, Article 875, and Article 876 of the Companies Act shall apply mutatis mutandis to permission under paragraph (2). In this case, necessary technical replacement of terms shall be specified by a Cabinet Order.

(Treatment of Change in Operational Rules, etc.)

Article 102-32 When an Entrusting Financial Instruments Exchange intends to change or abolish the matters prescribed in the operational rules or other rules of said Financial Instruments Exchange which are specified by a Cabinet Office Ordinance as those related to the Self-Regulation Related Services, it shall obtain the consent of the Entrusted Self-Regulation Organization.

(Advice on Necessary Measures by Council)

Article 102-33 (1) The Council may, when it finds necessary, give advice to an Entrusting Financial Instruments Exchange on necessary measures to be taken in order to achieve the fair and smooth sales and purchase of Securities and Market Transactions of Derivatives on the Financial Instruments Exchange Market established by such Entrusting Financial Instruments Exchange, and to contribute to the sound development of Financial Instruments Businesses and protection of investors.

(2) When the council has given the advice under the preceding paragraph, if the Entrusting Financial Instruments Exchange which received the advice has taken, or not taken, any measure in accordance with said advice, it shall report to the Council the contents of the measures taken or the fact that it has not taken any measures.

(Report on Business to Council)

Article 102-34 (1) An Entrusting Financial Instruments Exchange shall periodically report to the Council pertaining to the status of business executions, pursuant to the provisions of a Cabinet Office Ordinance.

(2) The Council may request the president, directors and executive officers, and managers and other employees of the Entrusting Financial Instruments Exchange to report the matters concerning execution of their duties.

## **Division 6 Dissolution**

(Causes for Dissolution of Self-Regulation Organization)

Article 102-35 (1) A Self-Regulation Organization shall be dissolved based on the following grounds:

- (i) the occurrence of grounds for dissolution specified by the articles of incorporation;
- (ii) a resolution of a general meeting;
- (iii) when the Self-Regulation Organization comes to have no member;
- (iv) decision of commencement of bankruptcy proceedings;
- (v) the failure to file an application for authorization under the provision of Article 102-15 (1) within six months from the day of establishment;
- (vi) decision of the Prime Minister not to grant the authorization under Article 102-14; or
- (vii) rescission of the authorization under Article 102-14.

(2) A Self-Regulation Organization shall not adopt a resolution for dissolution without the affirmative votes of three-fourths or more of all members; provided, however, that this shall not apply to the cases where it is otherwise provided in the articles of incorporation.

(Application Mutatis Mutandis of Provisions Regarding Dissolution Procedures)

Article 102-36 The provisions of Article 100-2 to 16 inclusive and Article 100-18 to 23 inclusive shall apply mutatis mutandis to a Self-Regulation Organization. In this case, the term "dissolution based on a merger and a decision of commencement of bankruptcy proceedings" in Article 100-3 shall be deemed to be replaced with "dissolution based on a decision of commencement of bankruptcy,"; the term "Article-100-17(1)" in Article 100-4, Article 100-6 and Article 100-9 shall be deemed to be replaced with "Article 102-37 (1)"; the term "to rescind the license under Article 80 (1)" in Article 100-5 (2) shall be deemed to be replaced with "to rescind the authorization under Article 102-14"; the term "Article 100-4" in Article 100-6 shall be 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 shall be specified by a Cabinet Order.

(Application Mutatis Mutandis of Companies Act)

Article 102-37 (1) The provisions of Article 492 (1) and (3), Article 507 (excluding paragraph (2)), Article 644 (excluding item (iii)), Article 647 (1) and (4), Article 650 (2), Article 655 (1) to (5) inclusive, and Articles 662 to 664 inclusive of the Companies Act shall apply mutatis mutandis to a dissolution and liquidation of a Self-Regulation Organization. In this case, the term "liquidators (or, for Companies with Board of liquidators, liquidators listed in each item of paragraph (7) of Article 489)" in Article 492 (1) of that Act shall be deemed to be replaced with "A liquidator"; the term "Ordinance of the Ministry of Justice" in that paragraph and Article 507 (1) of that Act shall be deemed to be replaced with "Cabinet Office Ordinance"; the term "shareholders meeting" in Article 492 (3) and Article 507 (3) of that Act shall be deemed to be replaced with "general meeting,"; the term "excluding the cases where Membership Companies have dissolved on the grounds listed in item (v) of Article 641 and cases where Membership Companies have dissolved as a result of a ruling for commencement of bankruptcy procedures and such bankruptcy procedures have not ended" in Article 644 (i) of the Act shall be deemed to be replaced with "excluding the cases where Membership Companies have dissolved as a result of a ruling for commencement of bankruptcy procedures and such bankruptcy procedures have not ended,"; the term "A partner who executes the operations" in Article 647 (1)(i) of the that Act shall be deemed to be replaced with "A president and a board member"; the term "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)" in item (iii) of that

paragraph shall be deemed to be replaced with "appointed by the resolution of a general meeting"; the term "from among themselves" in Article 655 (3) of that Act shall be deemed to be replaced with "from among themselves or based on a resolution of a general meeting"; and the term "partners who execute the operations" in paragraph (4) of that Article shall be deemed to be replaced with "the president or board members,"; the term "if the partners that represent the Membership Company are already prescribed" in paragraph (4) of that Article shall be deemed to be replaced with "if the president or the board members that represent the Membership Company are already prescribed in the articles of incorporation,"; and the term "such partners that represent" shall be 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 shall be specified by a Cabinet Order.

- (2) The provisions of Article 868 (1), Article 871, Article 874 (limited to the part pertaining to item (i)), Article 875 and Article 876 of the Companies Act shall apply mutatis mutandis to the liquidation of a Self-Regulation Organization. In this case, any other necessary technical replacement of terms shall be specified by a Cabinet Order.

(Capacity of Liquidators to Commit Tortious Acts, etc.)

Article 102-38 The provisions of Article 88-9, Articles 88-12 to 88-15 inclusive and Article 100-23 shall apply mutatis mutandis to the cases where a liquidator of a Self-Regulation Organization performs his/her duties. In this case, any other necessary technical replacement of terms shall be specified by a Cabinet Order.

(Application Mutatis Mutandis of Commercial Registration Act)

Article 102-39 The provisions of Article 71 (1) of the Commercial Registration Act shall apply mutatis mutandis to a registration of dissolution of a Self-Regulation Organization under this Act.

**Subsection 2 Stock Company Which Establishes Financial Instruments  
Exchange Markets  
Division 1 General Provisions**

(Articles of Incorporation)

Article 103 In addition to the matters listed in the respective item of Article 27 of the Companies Act, the following matters shall be contained or recorded in the articles of incorporation of a Stock Company-Type Financial Instruments Exchange:

- (i) matters related to investigation of the status of observance by the Trading Participants of the laws and regulations, dispositions given by a government agency based on laws and regulations or articles of incorporation or other rules, or the fair and equitable principles of transactions;
- (ii) matters regarding preparation of rules;
- (iii) matters regarding Financial Instruments Exchange Markets; and
- (iv) in the case where a Self-Regulating Committee is to be established, the fact to that effect.

(Restrictions on Holdings of Voting Rights)

- Article 103-2 (1) No person shall acquire or hold voting rights (excluding the voting rights specified by a Cabinet Office Ordinance taking into consideration the manner of acquisition or holding and any other circumstance; hereinafter referred to as the "Subject Voting Rights" in this Chapter) not less than 20 percent (or 15 percent, when there are facts specified by a Cabinet Office Ordinance as facts estimated to have material influence on the decision of the financial and operational policies; hereinafter referred to as the "Holding Ratio Threshold" in this Chapter) of the voting rights of all shareholders of a Stock Company-Type Financial Instruments Exchange; provided, however, that this shall not apply to the cases where an Authorized Financial Instruments Firms Association, a Financial Instruments Exchange or a Financial Instruments Exchange Holding Company acquires or holds the Subject Voting Rights.
- (2) The provisions of the main clause of the preceding paragraph shall not apply to acquisition or holding of the Subject Voting Rights of a Stock Company-Type Financial Instruments Exchange not less than the Holding Ratio Threshold of the voting rights of all shareholders, in the case where there is no increase in the number of the Subject Voting Rights held or in any other case specified by a Cabinet Office Ordinance.
- (3) In the case prescribed in the preceding paragraph, a person who has come to acquire or hold the Subject Voting Rights not less than the Holding Ratio Threshold of the voting rights of all shareholders of a Stock Company-Type Financial Instruments Exchange (hereinafter referred to as a "Specified Holder" in this Article) shall notify the Prime Minister without delay of the fact that said person has become a Specified Holder and any other matters specified by a Cabinet Office Ordinance.
- (4) In the case prescribed in paragraph (2), a Specified Holder shall take necessary measures to become a holder of the Subject Voting Rights of a Stock Company-Type Financial Instruments Exchange less than the Holding Ratio Threshold within three months from the day when said person has become a Specified Holder; provided, however, that this shall not apply to the cases where said Specified Holder is the Local Government, etc. prescribed in Article



106-3 (1) and said Local Government, etc. has obtained an authorization of the Prime Minister under the provisions of that paragraph.

- (5) With regard to the application of the provisions of each of the preceding paragraphs to the cases respectively listed in following items, the Subject Voting Rights prescribed in the respective item shall be deemed to have been acquired or held:
- (i) when a person has or will have the authority to exercise the Subject Voting Rights of a Stock Company-Type Financial Instruments Exchange or the authority to give instructions on exercise of such voting rights, pursuant to the provisions of a money trust contract or other contracts or the laws: the Subject Voting Rights; and
  - (ii) when a person who has a shareholder relationship, family relationship or any other special relationship specified by a Cabinet Order acquires or holds the Subject Voting Rights of a Stock Company-Type Financial Instruments Exchange: the Subject Voting Rights acquired or held by said person who has a special relationship.
- (6) The matters necessary for the application of the provisions of each of the preceding paragraphs shall be specified by a Cabinet Order.

(Submission of Notification of Holding Subject Voting Rights)

- Article 103-3 (1) A person who has become a holder of the Subject Voting Rights exceeding five percent of the voting rights of all shareholders of a Stock Company-Type Financial Instruments Exchange (hereinafter referred to as the "Holder of Subject Voting Rights" in this paragraph) shall submit a Notification of Holding Subject Voting Rights containing the Subject Voting Rights Holding Ratio (meaning the ratio obtained by dividing the number of the Subject Voting Rights held by the Holder of Subject Voting Rights by the number of voting rights of all shareholders of the Stock Company-Type Financial Instruments Exchange), the purpose of the holding and other matters specified by a Cabinet Office Ordinance to the Prime Minister without delay, pursuant to the provisions of a Cabinet Office Ordinance.
- (2) The provision of paragraph (5) of the preceding Article shall apply mutatis mutandis to the cases where the provision of the preceding paragraph is applied.

(Order for Production of Report and Inspection for Person Who Submits Notification of Holding Subject Voting Rights)

- Article 103-4 The Prime Minister may, when he/she finds a possibility that there is a fake statement or a lack of statement to be contained in the Notification of Holding Subject Voting Rights under paragraph (1) of the preceding Article, order the person who has submitted said Notification of Holding Subject Voting

Rights to submit reports or materials that will be helpful, or have the officials inspect the documents and other articles of said person (limited to the inspection necessary in relation to the statements contained in said Notification of Holding Subject Voting Rights).

(Public Inspection of Total Number of Issued Shares, etc.)

Article 104 A Stock Company-Type Financial Instruments Exchange shall make available for public inspection its total number of issued shares, the number of voting rights of all shareholders and other matters specified by a Cabinet Office Ordinance, pursuant to the provisions of a Cabinet Office Ordinance.

(Eligibility, etc. of Directors, etc.)

Article 104-2 The provisions of the proviso to paragraph (2) of Article 331 of the Companies Act (including the cases where it is applied mutatis mutandis pursuant to Article 335 (1) of that Act), Article 332 (2) of that Act (including the case where it is applied mutatis mutandis pursuant to Article 334 (1) of that Act), Article 336 (2) and the proviso to Article 402 (5) of that Act shall not apply to a Stock Company-Type Financial Instruments Exchange.

(Authorization for Reduction of Capital, etc.)

Article 105 (1) When a Stock Company-Type Financial Instruments Exchange intends to reduce the amount of its stated capital, it shall obtain an authorization from the Prime Minister.

(2) When a Stock Company-Type Financial Instruments Exchange intends to increase the amount of its stated capital, it shall notify to that effect to the Prime Minister, pursuant to the provisions of a Cabinet Office Ordinance.

(Special Provisions for Officers)

Article 105-2 The provisions of Article 98 (4) and (5) shall apply mutatis mutandis to the Officers of a Stock Company-Type Financial Instruments Exchange.

(Request for Investigation by Court)

Article 105-3 (1) In liquidation proceedings, bankruptcy proceedings, rehabilitation proceedings, reorganization proceedings or recognition and assistance proceedings for a Stock Company-Type Financial Instruments Exchange, the court may request an opinion of, or inspection or investigation by, the Prime Minister.

(2) When the Prime Minister finds it necessary, he/she may state his/her opinions to the court pertaining to the procedure prescribed in the preceding paragraph.

## Division 2 Self-Regulating Committee

(Authority, etc.)

- Article 105-4 (1) A Stock Company-Type Financial Instruments Exchange may establish a Self-Regulating Committee pursuant to the provisions of its articles of incorporation, except for the cases where Self-Regulation Related Services are entrusted to a Self-Regulation Organization.
- (2) A Self-Regulating Committee shall determine the matters concerning the Self-Regulation Related Services of a Stock Company-Type Financial Instruments Exchange which establishes said Self-Regulating Committee (hereinafter referred to as a "Specified Stock Company-Type Financial Instruments Exchange" in this Division).
- (3) A Self-Regulating Committee shall be deemed to have been delegated by the board of directors the decisions on matters regarding Self-Regulation Related Services.
- (4) A Self-Regulating Committee of a Specified Stock Company-Type Financial Instruments Exchange shall not delegate to executive officers or directors the decisions on matters regarding Self-Regulation Related Services, and appointment of members of Self-Regulating Committee prescribed in paragraph (2) of the following Article or removal of the members of the Self-Regulating Committee prescribed in Article 105-7 (1), notwithstanding the provisions of Article 362 (4) and Article 416 (4) of the Companies Act.

(Organization)

- Article 105-5 (1) A Self-Regulating Committee shall be composed of three or more members of the Self-Regulating Committee, and the majority of a Self-Regulating Committee shall be composed of outside directors.
- (2) Members of the Self-Regulating Committee shall be appointed from directors of a Specified Stock Company-Type Financial Instruments Exchange by a resolution of a meeting of the board of directors.
- (3) The resolution prescribed in the preceding paragraph shall be adopted by a majority (in cases where a higher proportion is provided for in the articles of incorporation, such proportion or more) of the directors present at the meeting and by a majority of outside directors present, when the majority (in cases where a higher proportion is provided for in the articles of incorporation, such proportion or more) of the directors entitled to participate in the vote are present.
- (4) The Self-Regulating Committee shall have a chairperson of the Self-Regulation Committee, who shall be elected from the outside directors based upon the mutual vote of the members of the Self-Regulating Committee.
- (5) The chairperson of the Self-Regulating Committee shall preside over the

affairs of the Self-Regulating Committee.

- (6) The Self-Regulating Committee shall, in advance, designate from among the members of the Self-Regulating Committee a person who performs the duties of the chairperson of the Self-Regulating Committee in the event that the chairperson is not able to perform his/her duties.

(Term of Office)

Article 105-6 (1) The term of office of the members of the Self-Regulating Committee shall continue until the conclusion of the annual shareholders meeting for the last business year which ends within one year from the time of their election.

- (2) The members of the Self-Regulating Committee may be reappointed only up to four terms.

(Removal from Positions, etc.)

Article 105-7 (1) The members of the Self-Regulating Committee may be removed by a resolution of the meeting of the board of directors of the Specified Stock Company-Type Financial Instruments Exchange.

- (2) The resolution prescribed in the preceding paragraph shall be adopted by a majority (in cases where a higher proportion is provided for in the articles of incorporation, such proportion or more) of the directors present at the meeting and by a majority of the members of the Self-Regulating Committee present, when the majority (in cases where a higher proportion is provided for in the articles of incorporation, such proportion or more) of the directors entitled to participate in the vote are present.
- (3) Where there is a vacancy which results in a shortfall in the number of the members of the Self-Regulating Committee prescribed in Article 105-5 (1), a member of the Self-Regulating Committee who retired from office due to expiration of his/her term of office or resignation shall continue to have the rights and obligations of a member of the Self-Regulating Committee until a newly appointed member of the Self-Regulating Committee (including a person who is to temporarily perform the duties of a member of the Self-Regulating Committee under the following paragraph) assumes his/her office.
- (4) In the case prescribed in the preceding paragraph, if the court finds it necessary, it may, in response to a petition by an interested person, appoint a person who is to temporarily perform the duties of a member of the Self-Regulating Committee.
- (5) In cases where the court has appointed a person who is to temporarily perform the duties of a member of the Self-Regulating Committee as prescribed in the preceding paragraph, the court may prescribe the amount of the remuneration that the Specified Stock Company-Type Financial Instruments

Exchange shall pay to that person.

- (6) The provisions of Article 868 (1), Article 870 (limited to the part pertaining to item (ii)), Article 871, Article 872 (limited to the part pertaining to item (iv)), Article 874 (limited to the part pertaining to item (i)), Article 875 and Article 876 of the Companies Act shall apply mutatis mutandis to the cases where a petition under paragraph (4) has been filed. In this case, any necessary technical replacement of terms shall be specified by a Cabinet Order.

(Election and Dismissal of Directors)

Article 105-8 The provision of Article 105-5 (3) shall apply mutatis mutandis to the cases where a Specified Stock Company-Type Financial Instruments Exchange which is a company with board of company auditors makes a decision on the contents of proposals regarding the election and dismissal of directors to be submitted to a shareholders meeting.

(Handling of Emergent Cases)

Article 105-9 (1) Notwithstanding the provisions of Article 105-4 (2) and (3), when a representative director or a representative executive officer of a Specified Stock Company-Type Financial Instruments Exchange finds it particularly necessary for achieving public interest or protection of investors and that there is an urgent necessity in light of the circumstances, he/she may make decisions on delisting and other matters related to Self-Regulation Related Services as specified by a Cabinet Office Ordinance.

- (2) When a Specified Stock Company-Type Financial Instruments Exchange has made a decision on delisting and other matters related to Self-Regulation Related Services as specified by a Cabinet Office Ordinance under the provision of the preceding paragraph, the representative director or the representative executive officer of said Specified Stock Company-Type Financial Instruments Exchange shall promptly report to that effect to the Self-Regulating Committee.

(Enjoinment of Acts of Executive Officers or Directors)

Article 105-10 (1) In cases where an executive officer or a director of a Specified Stock Company-Type Financial Instruments Exchange engages in, or is likely to engage in, any act in violation of a decision of a Self-Regulating Committee with regard to Self-Regulation Related Services, and if such acts are likely to cause substantial detriment to appropriate operation of the Self-Regulation Related Services, the member of the Self-Regulating Committee may demand such executive officer or director to cease such act.

- (2) In the cases prescribed in the preceding paragraph, if the court orders the executive officer or the director prescribed in the preceding paragraph to cease

such act by a provisional disposition, the court shall not require the security.

(Treatment of Change in Operational Rules, etc.)

Article 105-11 When a Specified Stock Company-Type Financial Instruments Exchange intends to change or abolish the matters prescribed in the operational rules or other rules of said Stock Company-Type Financial Instruments Exchange which are specified by a Cabinet Office Ordinance as those related to the Self-Regulation Related Services, it shall obtain the consent of the Self-Regulating Committee.

(Convenor)

Article 105-12 The Self-Regulating Committee shall be convened by the chairperson of the Self-Regulating Committee prescribed in Article 105-5 (iv) (in the case where the chairperson of the Self-Regulating Committee is unable to attend to his/her duties, by a person who performs the duties of the chairperson of the Self-Regulating Committee in his/her place as prescribed in Article 105-5 (6); the same shall apply to the following Article and Article 105-14).

(Request for Convocation)

Article 105-13 A member of the Self-Regulating Committee may demand that the chairperson of the Self-Regulating Committee convene a Self-Regulating Committee, by presenting the subject matter of the Self-Regulating Committee and the reasons for the convocation.

(Convocation Procedures)

Article 105-14 (1) In order to convene a Self-Regulating Committee, the chairperson of the Self-Regulating Committee shall dispatch a notice thereof to each member of the Self-Regulating Committee, no later than one week (or if a shorter period of time is specified by the Self-Regulating Committee, such shorter period of time) prior to the day of the convocation of the Self-Regulating Committee.

(2) Notwithstanding the provisions of the preceding paragraph, the Self-Regulating Committee may be held without the convocation procedures, if the consent of all members of the Self-Regulating Committee has been obtained.

(3) In cases where an executive officer, a director, an accounting advisor or an accounting auditor of a Specified Stock Company-Type Financial Instruments Exchange has been requested by the Self-Regulating Committee, he/she shall attend the Self-Regulating Committee and provide explanations on the matters as requested by the Self-Regulating Committee.

(Resolution)

- Article 105-15 (1) A resolution of a Self-Regulating Committee shall be adopted by a majority of the members of the Self-Regulating Committee and by the majority of the members of the Self-Regulating Committee who are the outside directors present, when a majority of the members of the Self-Regulating Committee who are entitled to exercise vote are present.
- (2) A member of the Self-Regulating Committee who has a special interest in the resolution prescribed in the preceding paragraph shall not be entitled to vote.
- (3) With regard to the business of the Self-Regulating Committee, minutes shall be prepared pursuant to the provisions of a Cabinet Office Ordinance, and if the minutes are prepared in writing, the members of the Self-Regulating Committee present at the meeting shall sign or affix their names and seals to it.
- (4) A member of a Self-Regulating Committee appointed by the Self-Regulating Committee shall, without delay after the resolution prescribed in paragraph (1) has been made, report the content of such resolution to the board of directors.
- (5) With regard to the matters recorded in electromagnetic records in cases where the minutes prescribed in the paragraph (3) are prepared in the form of electromagnetic records, an action in lieu of the signing or the affixing of names and seals specified by a Cabinet Office Ordinance shall be taken.
- (6) In addition to what is provided for in each of the preceding paragraphs, the procedures of the meeting and any other matters necessary for operation of the Self-Regulating Committee shall be specified by the Self-Regulating Committee.

(Minutes)

- Article 105-16 (1) A Specified Stock Company-Type Financial Instruments Exchange shall keep the minutes set forth in paragraph (3) of the preceding Article at its head office for ten years from the day of a meeting of the Self-Regulating Committee.
- (2) The directors of the Stock Company-Type Financial Instruments Exchange may inspect or copy the following:
- (i) when the minutes prescribed in the preceding paragraph are prepared in writing, such documents; and
  - (ii) when the minutes prescribed in the preceding paragraph are prepared in the form of electromagnetic records, anything which indicates information recorded in such electromagnetic records in a manner specified by a Cabinet Office Ordinance.
- (3) If it is necessary for the purpose of exercising the rights of a shareholder, a shareholder of the Stock Company-Type Financial Instruments Exchange may, with the permission of the court, make requests for inspection or copying of the matters set forth in each item of the preceding paragraph with regard to the

minutes prescribed in paragraph (1).

- (4) The provisions of the preceding paragraph shall apply mutatis mutandis to the cases where it is necessary for the purpose of pursuing the liability of members of the Self-Regulating Committee by a creditor of the Stock Company-Type Financial Instruments Exchange, and to the cases where it is necessary for the purpose of exercising the rights of a member of a Financial Instruments Exchange Holding Company which has said Stock Company-Type Financial Instruments Exchange as its Subsidiary Company (meaning another company, the majority of whose voting rights of all shareholders or all members are held by the company. In this case, the other company, the majority of whose voting rights of all shareholders or all members are held by the company and its Subsidiary Company or Subsidiary Companies, or by the company's Subsidiary Company or Subsidiary Companies is deemed as a Subsidiary Company of the company; hereinafter the same shall apply in this Article, Division 4 and Article 124 (1)(ii)).
- (5) The permission under paragraph (3) (including the cases where it is applied mutatis mutandis pursuant to the provision of the preceding paragraph; hereinafter the same shall apply in this paragraph and the following paragraph) may not be granted, when the court finds that inspection or copying pertaining to the request under that paragraph is likely to cause substantial detriment to the Stock Company-Type Financial Instruments Exchange, a Financial Instruments Exchange Holding Company which has said Stock Company-Type Financial Instruments Exchange as its Subsidiary Company, or to a Subsidiary Company of said Stock Company-Type Financial Instruments Exchange.
- (6) The provisions of Article 868 (1), Article 869, Article 870 (limited to the part pertaining to item (i)), the main clause of Article 871, Article 872 (limited to the part pertaining to item (iv)), the main clause of Article 873, Article 875, and Article 876 of the Companies Act shall apply mutatis mutandis to a permission under paragraph (3). In this case, any necessary technical replacement of terms shall be specified by a Cabinet Order.

(Omission of Report)

Article 105-17 In cases where an executive officer, a director, an accounting advisor or an accounting auditor of a Specified Stock Company-Type Financial Instruments Exchange has notified all members of the Self-Regulating Committee of the matters to be reported to the Self-Regulating Committee, it shall be unnecessary to report such matters to the Self-Regulating Committee.

(Public Inspection)

Article 105-18 A Specified Stock Company-Type Financial Instruments



Exchange shall make the directory of the members of the Self-Regulating Committee available for public inspection.

(Decisions on Execution of Duties of Self-Regulating Committee)

Article 106 The board of directors of a Specified Stock Company-Type Financial Instruments Exchange shall decide the matters specified by a Cabinet Office Ordinance as those necessary for execution of duties of the Self-Regulating Committee.

(Attendance of Company Auditors, etc.)

Article 106-2 A company auditor of a Specified Stock Company-Type Financial Instruments Exchange which is a company with board of company auditors, or an audit committee member appointed by the audit committee of a Specified Stock Company-Type Financial Instruments Exchange which is a company with committees may, if he/she finds it necessary, attend the Self-Regulating Committee of the Specified Stock Company-Type Financial Instruments Exchange to state his/her opinions.

### **Division 3 Major Shareholders**

(Authorization, etc.)

Article 106-3 (1) Notwithstanding the provisions of Article 103-2 (1), the local government or any other person specified by a Cabinet Order (hereinafter referred to as the "Local Government, etc." in this Article, Article 106-14 and Article 106-17) may, with an authorization of the Prime Minister, acquire or hold the Subject Voting Rights not less than the Holding Ratio Threshold but not more than 50 percent of the Holding Ratio Threshold of the voting rights of all shareholders of a Stock Company-Type Financial Instruments Exchange, pursuant to the provisions of a Cabinet Office Ordinance.

(2) Notwithstanding the provisions of the preceding paragraph and Article 103-2 (1), the Local Government, etc. which has obtained the authorization under the preceding paragraph may acquire or hold the Subject Voting Rights exceeding 50 percent of the voting rights of all shareholders of a Stock Company-Type Financial Instruments Exchange, in cases where there is no increase in the number of the Subject Voting Rights held or in other cases specified by a Cabinet Office Ordinance.

(3) In the case prescribed in the preceding paragraph, the Local Government, etc. which has come to acquire or hold the Subject Voting Rights exceeding 50 percent of the voting rights of all shareholders of a Stock Company-Type Financial Instruments Exchange (hereinafter referred to as a "Specified Holding Entity, etc." in this Article) shall notify the Prime Minister without

delay of the fact that said entity has become a Specified Holding Entity, etc. and any other matters specified by a Cabinet Office Ordinance.

- (4) In the case prescribed in paragraph (2), a Specified Holding Entity, etc. shall take necessary measures to become a holder of the Subject Voting Rights not more than 50 percent of the voting rights of all shareholders of a Stock Company-Type Financial Instruments Exchange, within three months from the day when said entity has become a Specified Holding Entity, etc.
- (5) When a Specified Holding Entity, etc. has become a holder of the Subject Voting Rights not more than 50 percent of the voting rights of all shareholders of a Stock Company-Type Financial Instruments Exchange under the provision of the preceding paragraph, it shall notify to the Prime Minister of that effect without delay.

(Criteria for Authorization)

- Article 106-4 (1) When an application for authorization under paragraph (1) of the preceding Article has been filed, the Prime Minister shall examine whether the application conforms to the criteria listed in the following:
- (i) exercising of the Subject Voting Rights by the applicant for authorization is not likely to impair sound and appropriate operation of the business of the Stock Company-Type Financial Instruments Exchange; and
  - (ii) the applicant for authorization has sufficient understanding with regard to the public nature of businesses of a Financial Instruments Exchange.
- (2) The provision of Article 82 (2) shall apply mutatis mutandis to the authorization under paragraph (1) of the preceding Article. In this case, the term "the preceding paragraph" in Article 82 (2) shall be deemed to be replaced with "Article 106-4 (1)"; and the term "or Article 106-28 (1)" in that paragraph shall be deemed to be replaced with ", Article 106-28 (1) or Article 155-10 (1)."

(Application Mutatis Mutandis of Provisions Regarding Refusal, etc. of Authorization)

- Article 106-5 The provision of Article 85-4 shall apply mutatis mutandis to the authorization under Article 106-3 (1).

(Order for Production of Report and Inspection)

- Article 106-6 When the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may order a Major Shareholder of a Stock Company-Type Financial Instruments Exchange (meaning a Major Shareholder who has obtained authorization under Article 106-3 (1); hereinafter the same shall apply in this Division) to submit reports or materials that will be helpful for understanding the business or property of said Stock Company-Type Financial Instruments Exchange, or have the

officials inspect the documents and other articles of said Major Shareholder (limited to the inspection necessary in relation to the business or property of said Stock Company-Type Financial Instruments Exchange).

(Disposition for Supervision)

Article 106-7 (1) When a Major Shareholder of a Stock Company-Type Financial Instruments Exchange has violated the laws and regulations, or when it is found that an act of a Major Shareholder is likely to impair sound and appropriate operation of the business of a Stock Company-Type Financial Instruments Exchange, the Prime Minister may rescind the authorization granted to the Major Shareholder under Article 106-3 (1), or order said Major Shareholder to take necessary measures for supervision.

(2) A person whose authorization under Article 106-3 (1) has been rescinded under the provision of the preceding paragraph shall take necessary measures to become a holder of the Subject Voting Rights of a Stock Company-Type Financial Instruments Exchange less than the Holding Ratio Threshold, within three months from the date of the rescission of the authorization.

(3) When the Prime Minister intends to order to take necessary measures under the provisions of paragraph (1), he/she shall hold a hearing irrespective of the categories of procedures for hearing statements of opinions under Article 13 (1) of the Administrative Procedure Act.

(4) The provisions of paragraph (1) and the preceding paragraph shall apply mutatis mutandis to an Authorized Financial Instruments Firms Association and a Financial Instruments Exchange that holds the Subject Voting Rights of a Stock Company-Type Financial Instruments Exchange not less than the Holding Ratio Threshold.

(Lapse of Authorization)

Article 106-8 (1) When a Major Shareholder of a Stock Company-Type Financial Instruments Exchange comes to fall under any of the following items, the authorization under Article 106-3 (1) shall cease to be effective:

(i) when the Major Shareholder fails to become a holder of the Subject Voting Rights not less than the Holding Ratio Threshold within six months from the date when the Major Shareholder has obtained the authorization;

(ii) when the Major Shareholder becomes a holder of the Subject Voting Rights less than the Holding Ratio Threshold; or

(iii) when the Major Shareholder has become a Financial Instruments Exchange Holding Company.

(2) When the authorization has ceased to be effective under the provision of the preceding paragraph (excluding item (iii)), the person who was formerly a Major Shareholder shall notify to that effect to the Prime Minister without

delay.

(Application Mutatis Mutandis of Provisions Regarding Subject Voting Rights)  
Article 106-9 The provision of Article 103-2 (5) shall apply mutatis mutandis to the cases where the provisions of Article 106-3, Article 106-4 (1), Article 106-7 (2) and (4), and paragraph (1) of the preceding Article are applied.

#### **Division 4 Financial Instruments Exchange Holding Company**

(Authorization, etc.)

Article 106-10 (1) A person who intends to hold a Stock Company-Type Financial Instruments Exchange as its Subsidiary Company, or a person who intends to establish a company which has a Stock Company-Type Financial Instruments Exchange as its Subsidiary Company shall obtain an authorization of the Prime Minister in advance.

(2) The provision of the preceding paragraph shall not apply when the person will have a Stock Company-Type Financial Instruments Exchange as its Subsidiary Company, in cases where there is no increase in the number of the Subject Voting Rights held or in other cases specified by Cabinet Office Ordinance.

(3) In the case prescribed in the preceding paragraph, a company which has come to hold a Stock Company-Type Financial Instruments Exchange as its Subsidiary Company (hereinafter referred to as a "Specified Holding Company" in this Article) shall take necessary measures that it will cease to be a company which holds the Stock Company-Type Financial Instruments Exchange as its Subsidiary Company, within three months from the day when said company has become a Specified Holding Company; provided, however, that this shall not apply to the cases where said Specified Holding Company has obtained an authorization to become a company which holds the Stock Company-Type Financial Instruments Exchange as its Subsidiary Company from the Prime Minister.

(4) The provisions of Article 106-3 (3) and (5) shall apply mutatis mutandis to a Specified Holding Company. In this case, the term "the preceding paragraph" in paragraph (3) of that Article shall be deemed to be replaced with "Article 106-10 (2),"; and the term "has become a holder of the Subject Voting Rights not more than 50 percent of the voting rights of all shareholders of a Stock Company-Type Financial Instruments Exchange" shall be deemed to be replaced with "has ceased to be a company which holds a Stock Company-Type Financial Instruments Exchange as its Subsidiary Company."

(Application for Authorization)

Article 106-11 (1) A person who intends to obtain the authorization under

paragraph (1) or the proviso to paragraph (3) of the preceding Article shall submit an application for authorization containing the following matters to the Prime Minister:

- (i) the trade name;
  - (ii) the amount of the stated capital;
  - (iii) the names of directors and company auditors (with regard to a company with committees, directors and executive officers);
  - (iv) in the case of a company with accounting advisors, names of accounting advisors; and
  - (v) the names and addresses of head office and other business offices.
- (2) The articles of incorporation and other documents specified by a Cabinet Office Ordinance shall be attached to the application for authorization set forth in the preceding paragraph.
- (3) The provisions of Article 81 (3) shall apply mutatis mutandis to the articles of incorporation set forth in the preceding paragraph.

(Criteria for Examination for Authorization)

Article 106-12 (1) When an application for authorization under the provision of paragraph (1) of the preceding Article has been filed, the Prime Minister shall examine whether the application conforms to the criteria listed in the following:

- (i) the applicant for authorization is a person whose sole purpose is the holding of a Stock Company-Type Financial Instruments Exchange as its Subsidiary Company;
  - (ii) the applicant for authorization and the Stock Company-Type Financial Instruments Exchange which is to become its Subsidiary Company have good prospects for the income and expenditure of the business;
  - (iii) in light of the personnel structure, the applicant for authorization has knowledge and experience for accurately and fairly performing business administration of a Stock Company-Type Financial Instruments Exchange which is to become its Subsidiary Company; and
  - (iv) an applicant for authorization has sufficient social credibility.
- (2) When the Prime Minister finds that the application conforms to the criteria under the preceding paragraph as a result of examination under the provision of that paragraph, he/she shall grant authorization, except for the cases where the application falls under any of the following items:
- (i) when the applicant for authorization is not a stock company (limited to the stock company with the following organs):
    - (a) the board of directors; and
    - (b) a company auditor or a committee.
  - (ii) when the applicant for authorization is a person who has been punished by

- a fine (including a punishment under laws and regulations of a foreign state equivalent to this) for violating the provision of this Act or laws and regulations of a foreign state equivalent to this Act, and for whom five years have not passed since the day when the execution of the punishment terminated or he/she became free from the execution of the punishment;
- (iii) when the applicant for authorization is a person who has had its license rescinded under the provision of Article 148, Article 152 (1), Article 156-17 (1) or (2), Article 148 as applied mutatis mutandis under Article 156-26, or Article 156-32 (1), has had its registration rescinded under the provision of Article 52 (1), Article 53 (3) or Article 66-20 (1), has had its authorization rescinded under the provisions of Article 106-7 (1), Article 106-21 (1) or Article 106-28 (1), or a person who had obtained license or registration (including permission or other administrative dispositions similar to said license or registration) of the same kind in a foreign state under the provision of laws and regulations of said foreign state equivalent to this Act and has had the license or registration rescinded, and for whom five years have not passed since the date of the rescission;
- (iv) when the applicant for authorization is a person any of whose Officers falls under any categories of the persons set forth in Article 82 (2)(iii)(a) to (f) inclusive; or
- (v) when the application for authorization, or the documents or Electromagnetic Records to be attached thereto includes any fake statement or false record on important matters.

(Application Mutatis Mutandis of Provisions Regarding Refusal, etc. of Authorization)

Article 106-13 The provision of Article 85-4 shall apply mutatis mutandis to the authorization under paragraph (1) and the proviso to paragraph (3) of Article 106-10.

(Limitation on Holding of Voting Rights)

Article 106-14 (1) No person shall acquire or hold Subject Voting Rights not less than the Holding Ratio Threshold of the voting rights of all shareholders of a Financial Instruments Exchange Holding Company; provided, however, that this shall not apply to the cases where an Authorized Financial Instruments Firms Association or a Financial Instruments Exchange acquires or holds the Subject Voting Rights.

(2) The provisions of the main clause of the preceding paragraph shall not apply to acquisition or holding of the Subject Voting Rights not less than the Holding Ratio Threshold of the voting rights of all shareholders of a Financial Instruments Exchange Holding Company, in the case where there is no

increase in the number of the Subject Voting Rights held or in any other case specified by a Cabinet Office Ordinance.

- (3) In the case prescribed in the preceding paragraph, a person who has come to acquire or hold Subject Voting Rights not less than the Holding Ratio Threshold of the voting rights of all shareholders of a Financial Instruments Exchange Holding Company (hereinafter referred to as a "Specified Holder" in this Article) shall notify the Prime Minister without delay of the fact that said person has become a Specified Holder and any other matters specified by a Cabinet Office Ordinance.
- (4) In the case prescribed in paragraph (2), a Specified Holder shall take necessary measures to become a holder of the Subject Voting Rights of a Financial Instruments Exchange Holding Company less than the Holding Ratio Threshold, within three months from the day when said person has become a Specified Holder; provided, however, that this shall not apply to the cases where said Specified Holder is the Local Government, etc. and said Local Government, etc. has obtained an authorization of the Prime Minister under the provisions of Article 106-17 (1).
- (5) The matters necessary for the application of the provisions of each of the preceding paragraphs shall be specified by a Cabinet Order.

(Submission of Notification of Holding Subject Voting Rights)

Article 106-15 A person who has become a holder of the Subject Voting Rights exceeding five percent of voting rights of all shareholders of a Financial Instruments Exchange Holding Company (hereinafter referred to as the "Holder of Subject Voting Rights" in this Article) shall submit a Notification of Holding Subject Voting Rights containing the Subject Voting Rights Holding Ratio (meaning the ratio obtained by dividing the number of the Subject Voting Rights held by a Holder of Subject Voting Rights by the number of voting rights of all shareholders of the Financial Instruments Exchange Holding Company), the purpose of the holding and other matters specified by a Cabinet Office Ordinance to the Prime Minister without delay, pursuant to the provisions of a Cabinet Office Ordinance.

(Order for Production of Report and Inspection for Person Who Submits Notification of Holding Subject Voting Rights)

Article 106-16 The Prime Minister may, when he/she finds a possibility that there is a fake statement or a lack of statement to be contained in the Notification of Holding Subject Voting Rights under the preceding Article, order the person who has submitted said Notification of Holding Subject Voting Rights to submit reports or materials that will be helpful, or have the officials inspect the documents and other articles of said person (limited to the

inspection necessary in relation to the statements contained in said Notification of Holding Subject Voting Rights).

(Authorization, etc. Pertaining to Major Shareholders)

Article 106-17 (1) Notwithstanding the provisions of Article 106-14 (1), the Local Government, etc. may, with an authorization of the Prime Minister, acquire or hold the Subject Voting Rights not less than the Holding Ratio Threshold, but not more than 50 percent of the Holding Ratio Threshold of the voting rights of all shareholders of a Financial Instruments Exchange Holding Company, pursuant to the provisions of a Cabinet Office Ordinance.

(2) Notwithstanding the provisions of the preceding paragraph and Article 106-14 (1), the Local Government, etc. which has obtained the authorization under the preceding paragraph may acquire or hold the Subject Voting Rights exceeding 50 percent of the voting rights of all shareholders of a Financial Instruments Exchange Holding Company, in cases where there is no increase in the number of the Subject Voting Rights held or in other cases specified by a Cabinet Office Ordinance.

(3) In the case of the preceding paragraph, the Local Government, etc. which has come to acquire or hold the Subject Voting Rights exceeding 50 percent of the voting rights of all shareholders of a Financial Instruments Exchange Holding Company (hereinafter referred to as the "Specified Holding Entity, etc." in this Article) shall, within three months from the day when said person has become a Specified Holding Entity, etc., take necessary measures to become a holder of the Subject Voting Rights not more than 50 percent of the voting rights of all shareholders of a Financial Instruments Exchange Holding Company.

(4) The provisions of Article 106-3 (3) and (5) shall apply mutatis mutandis to a Specified Holding Entity, etc. In this case, the term "the preceding paragraph" in paragraph (3) of that Article shall be deemed to be replaced with "Article 106-17 (2)."

(Criteria for Authorization Concerning Major Shareholders)

Article 106-18 (1) When an application for authorization under paragraph (1) of the preceding Article has been filed, the Prime Minister shall examine whether the application conforms to the criteria listed in the following:

- (i) exercising of the Subject Voting Rights by the applicant for authorization is not likely to impair sound and appropriate operation of the business of the Stock Company-Type Financial Instruments Exchange which is a Subsidiary Company of a Financial Instruments Exchange Holding Company; and
- (ii) the applicant for authorization has sufficient understanding with regard to the public nature of business of a Financial Instruments Exchange.

(2) The provision of Article 82 (2) shall apply mutatis mutandis to the



authorization under paragraph (1) of the preceding Article. In this case, the term "the preceding paragraph" in Article 82 (2) shall be deemed to be replaced with "Article 106-18 (1)"; and the term "or Article 106-28 (1)" in that paragraph shall be deemed to be replaced with ", Article 106-28 (1) or Article 155-10 (1)"; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

(Application Mutatis Mutandis of Provisions Regarding Refusal, etc. of Authorization)

Article 106-19 The provision of Article 85-4 shall apply mutatis mutandis to the authorization under Article 106-17 (1).

(Order for Production of Report and Inspection for Major Shareholders)

Article 106-20 When the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may order a Major Shareholder of a Financial Instruments Exchange Holding Company (meaning a person who has obtained the authorization under Article 106-17 (1); hereinafter the same shall apply in this Division) to submit reports or materials that will be helpful for understanding the business or property of said Financial Instruments Exchange Holding Company or said Stock Company-Type Financial Instruments Exchange which is its Subsidiary Company, or have the officials inspect the documents and other articles of said Major Shareholder (limited to the inspection necessary in relation to the business or property of said Financial Instruments Exchange Holding Company or a Stock Company-Type Financial Instruments Exchange which is its Subsidiary Company).

(Dispositions Rendered to Major Shareholders for Purpose of Supervision)

Article 106-21 (1) When a Major Shareholder of a Financial Instruments Exchange Holding Company has violated laws and regulations, or when it is found that an act of a Major Shareholder is likely to impair sound and appropriate operation of the business of a Stock Company-Type Financial Instruments Exchange which is a Subsidiary Company of said Financial Instruments Exchange Holding Company, the Prime Minister may rescind the authorization granted to the Major Shareholder under Article 106-17 (1), or order said Major Shareholder to take necessary measures for supervision.

(2) A person whose authorization under Article 106-17 (1) has been rescinded under the provision of the preceding paragraph shall take necessary measures to become a holder of the Subject Voting Rights of a Financial Instruments Exchange Holding Company less than the Holding Ratio Threshold, within three months from the date of the rescission of the authorization.

- (3) When the Prime Minister intends to order to take necessary measures under the provisions of paragraph (1), he/she shall hold a hearing irrespective of the categories of procedure for hearing statement of opinions under Article 13 (1) of the Administrative Procedure Act.
- (4) The provisions of paragraph (1) and the preceding paragraph shall apply mutatis mutandis to an Authorized Financial Instruments Firms Association and a Financial Instruments Exchange that holds the Subject Voting Rights of a Financial Instruments Exchange Holding Company not less than the Holding Ratio Threshold.

(Loss of Authorization Regarding Major Shareholders)

Article 106-22 (1) When a Major Shareholder of a Financial Instruments Exchange Holding Company falls under any of the following items, the authorization under Article 106-17 (1) shall cease to be effective:

- (i) when the Major Shareholder fails to become a holder of the Subject Voting Rights not less than the Holding Ratio Threshold within six months from the date when the Major Shareholder has obtained the authorization; or
- (ii) when the Major Shareholder becomes a holder of the Subject Voting Rights less than the Holding Ratio Threshold.
- (2) The provision of Article 106-8 (2) shall apply mutatis mutandis to the case where the authorization has ceased to be effective under the provisions of the preceding paragraph.

(Scope of Business)

Article 106-23 (1) A Financial Instruments Exchange Holding Company shall not conduct any business other than business administration of the Stock Company-Type Financial Instruments Exchange which is its Subsidiary Company and other businesses incidental thereto.

- (2) A Financial Instruments Exchange Holding Company shall, when performing its businesses, give due consideration to the public nature of the businesses of the Stock Company-Type Financial Instruments Exchange which is its Subsidiary Company, and shall endeavor to ensure sound and appropriate operations of its business.

(Scope of Subsidiary Company)

Article 106-24 A Financial Instruments Exchange Holding Company shall not have any Subsidiary Company other than a company which carries out establishments of a Financial Instruments Exchange Market and other businesses incidental thereto; provided, however, that in cases where an authorization from the Prime Minister has been obtained, it may hold a Subsidiary Company which conducts a business related to establishment of a

## Financial Instruments Exchange Markets.

### (Application Mutatis Mutandis of Provisions Regarding Refusal, etc. of Authorization)

Article 106-25 The provision of Article 85-4 shall apply mutatis mutandis to the authorization under the proviso to the preceding Article.

### (Rescission of Authorization)

Article 106-26 When a Financial Instruments Exchange Holding Company is found to have already fallen under any of the categories specified in each item of Article 106-12 (2) at the time of receipt of the authorization, the Prime Minister may rescind its authorization.

### (Order for Production of Report and Inspection)

Article 106-27 When the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may order a Financial Instruments Exchange Holding Company or its Subsidiary Company to submit reports or materials that will be helpful for understanding the business or property of said Financial Instruments Exchange Holding Company, or have the officials inspect the status of business or property, or books and documents and other articles of said Financial Instruments Exchange Holding Company or said Subsidiary Company (with regard to said Subsidiary Company, the inspection shall be limited to those which are necessary in relation to the business or property of said Financial Instruments Exchange Holding Company).

### (Dispositions Rendered for Purpose of Supervision)

Article 106-28 (1) When a Financial Instruments Exchange Holding Company has violated the laws and regulations, or when it is found that an act of a Financial Instruments Exchange Holding Company is likely to impair sound and appropriate operation of the business of a Stock Company-Type Financial Instruments Exchange which is its Subsidiary Company, the Prime Minister may rescind the authorization granted to the Financial Instruments Exchange Holding Company under Article 106-10 (1) or the proviso to paragraph (3), or order said Financial Instruments Exchange Holding Company to take necessary measures for supervision.

(2) When a director, an accounting advisor, a company auditor or an executive officer of a Financial Instruments Exchange Holding Company has violated laws and regulations or dispositions given by government agencies based on laws and regulations, the Prime Minister may order said Financial Instruments Exchange Holding Company to dismiss said director, accounting

advisor, company auditor or executive officer.

- (3) A Financial Instruments Exchange Holding Company whose authorization under Article 106-10, paragraph (1) or the proviso to paragraph (3) has been rescinded under the provision of paragraph (1) shall promptly take necessary measures such that it will cease to be a company which holds a Stock Company-Type Financial Instruments Exchange as its Subsidiary Company.
- (4) In the case where the measures under the preceding paragraph have been taken, if a person who has taken such measures remains a holder of the Subject Voting Rights of a Stock Company-Type Financial Instruments Exchange not less than the Holding Ratio Threshold, the provisions of Article 103-2 (3) shall be applied by deeming the date when said company has ceased to become a person who has said Stock Company-Type Financial Instruments Exchange as its Subsidiary Company as the date when said person has become a Specified Holder under that paragraph.
- (5) When the Prime Minister intends to order to take necessary measures under the provisions of paragraph (1), he/she shall hold a hearing irrespective of the categories of procedure for hearing statement of opinions under Article 13 (1) of the Administrative Procedure Act.

(Loss of Authorization)

- Article 107 (1) When a Financial Instruments Exchange Holding Company comes to fall under any of the following items, the authorization under Article 106-10 (1) and the proviso to paragraph (3) shall cease to be effective:
- (i) when a Financial Instruments Exchange Holding Company has ceased to be a company which has a Stock Company-Type Financial Instruments Exchange as its Subsidiary Company (excluding the cases specified by a Cabinet Office Ordinance by taking into consideration the manner of acquisition or holding of the voting rights of said Stock Company-Type Financial Instruments Exchange, or any other relevant circumstances);
  - (ii) when a Financial Instruments Exchange Holding Company has been dissolved;
  - (iii) when a court judgment invalidating establishment, merger (limited to the cases where the company established upon said merger is a Financial Instrument Exchange Holding Company) or an incorporation-type split (limited to the cases where the company established upon said incorporation-type split is a Financial Instrument Exchange Holding Company) has become final and binding; or
  - (iv) when a Financial Instruments Exchange Holding Company fails to become a company which has a Stock Company-Type Financial Instruments Exchanges as its Subsidiary Company, within six months from the date when authorization has been obtained.

(2) The provision of Article 106-8 (2) shall apply mutatis mutandis to the cases where the authorization has ceased to be effective under the provision of the preceding paragraph.

(Application Mutatis Mutandis of Provisions Regarding Subject Voting Rights)  
Article 108 The provision of Article 103-2 (5) shall apply mutatis mutandis to the cases where Article 106-14, Article 106-15, Article 106-17 (1) to (3) inclusive, Article 106-3 (5) as applied mutatis mutandis pursuant to paragraph (4) of that Article, Article 106-18 (1), Article 106-21 (2) and (4), Article 106-22 (1) and Article 106-28 (4) are applied.

(Application Mutatis Mutandis of Provisions Regarding Dispositions Rendered for Purpose of Supervision)  
Article 109 The provisions of Article 106-23 (2) and Article 106-28 (1) and (5) shall apply mutatis mutandis to an Authorized Financial Instruments Firms Association and a Financial Instruments Exchange which have a Stock Company-Type Financial Instruments Exchange as its Subsidiary Company, and an Authorized Financial Instruments Firms Association and a Financial Instruments Exchange which have a Financial Instruments Exchange Holding Company as its Subsidiary Company.

### **Section 3 (Sales and Purchase of Securities, etc. in Financial Instruments Exchange Market)**

(Purpose of Operation)  
Article 110 A Financial Instruments Exchange Market shall be operated so as to achieve the fair and smooth sales and purchase of Securities and Market Transactions of Derivatives, as well as to contribute to the protection of investors.

(Persons Allowed to Conduct Financial Instruments Transaction at Financial Instruments Exchange)  
Article 111 (1) Only the Member, etc. of the Financial Instruments Exchange which has established the Financial Instruments Exchange Market may conduct sales and purchase of Securities and Market Transactions of Derivatives in said Financial Instruments Exchange Market.  
(2) The provision of the preceding paragraph shall not apply in cases where a Clearing Participant prescribed in Article 156-7 (2)(iii), pursuant to the entrustment of Brokerage for Clearing of Securities, etc. by the Member, etc. set forth in the preceding paragraph, conducts the transactions provided by a Cabinet Office Ordinance.

(Trading Participant in Membership-Type Financial Instruments Exchange)  
Article 112 (1) A Membership-Type Financial Instruments Exchange may, in accordance with the articles of incorporation, grant to the persons listed in the following (limited to the persons who are not members) the qualification for trading for conducting sales and purchase of Securities and Market Transactions of Derivatives in the Financial Instruments Exchange Market established by said Membership-Type Financial Instruments Exchange (with regard to the person listed in item (ii), limited to the transactions pertaining to the Registered Financial Institution Business):

- (i) Financial Instruments Business Operator and Authorized Transaction-at-Exchange Operator; and
- (ii) Registered Financial Institution.

(2) The provisions of Articles 94 and 95 shall apply mutatis mutandis to the persons who have been granted the qualification for trading under the provision of the preceding paragraph. In this case, the term "Financial Instruments Membership Corporation" in Article 94 shall be deemed to be replaced with "Membership-Type Financial Instruments Exchange,;" the term "withdraw" in said Article shall be deemed to be replaced with "relinquish the qualification for trading,;" the term "withdraw" in Article 95 shall be deemed to be replaced with "lose the qualification for trading,;" the term "Financial Instruments Business Operator, etc." in Article 95 (i) shall be deemed to be replaced with "the person listed in any of the items of Article 112 (1),;" and the term "expulsion" in Article 95 (iii) shall be deemed to be replaced with "rescission of the qualification for trading."

(Trading Participant in Stock Company-Type Financial Instruments Exchange)  
Article 113 (1) A Stock Company-Type Financial Instruments Exchange may, in accordance with the operational rules, grant to the persons listed in the following the qualification for trading for conducting sales and purchase of Securities and Market Transactions of Derivatives in the Financial Instruments Exchange Market established by said Stock Company-Type Financial Instruments Exchange (with regard to the person listed in item (ii), limited to the transactions pertaining to the Registered Financial Institution Business):

- (i) Financial Instruments Business Operator and Authorized Transaction-at-Exchange Operator; and
- (ii) Registered Financial Institution.

(2) The provisions of Articles 94 and 95 shall apply mutatis mutandis to the persons who have been granted the qualification for trading under the provision of the preceding paragraph. In this case, the term "the articles of

incorporation" in Article 94 shall be deemed to be replaced with "the operational rules,"; the term "Financial Instruments Membership Corporation" in said Article shall be deemed to be replaced with "Stock-Company-Type Financial Instruments Exchange,"; the term "withdraw" in said Article shall be deemed to be replaced with "relinquish the qualification for trading,"; the term "withdraw" in Article 95 shall be deemed to be replaced with "lose the qualification for trading,"; the term "financial business operator, etc." in Article 95 (i) shall be deemed to be replaced with "the person listed in any of the items of Article 113 (1),"; and the term "expulsion" in Article 95 (iii) shall be deemed to be replaced with "rescission of the qualification for trading."

(Guarantee Funds)

- Article 114 (1) A Member, etc. shall, in accordance with the articles of incorporation (or the operational rules, with regard to a Stock Company-Type Financial Instruments Exchange; hereinafter the same shall apply in the following paragraph and paragraph (3) of this Article, paragraph (1) of the following Article (including the cases where it is applied mutatis mutandis pursuant to Article 119 (6)), Article 116 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 132), and Article 119 (1)), deposit with a Financial Instruments Exchange guarantee funds.
- (2) Securities may, in accordance with the articles of incorporation, be deposited instead of the guarantee funds.
- (3) A Financial Instruments Exchange shall specify the method of utilization of guarantee funds in its articles of incorporation.
- (4) A person who has entrusted sales and purchase of Securities or Market Transactions of Derivatives in a Financial Instruments Exchange Market to a Member, etc. shall have the right to receive, in preference over other creditors, payment with regard to claims incurred under such entrustment from the guarantee funds of the Member, etc.

(Damages due to Default)

- Article 115 (1) When a Member, etc. has caused damage to another Member, etc., a Financial Instruments Exchange or a Financial Instruments Clearing Organization (limited to those specified in the articles of incorporation of the Financial Instruments Exchange) as a result of default arising from sales and purchase of Securities or Market Transactions of Derivatives in the Financial Instruments Exchange Market, the Member, etc., Financial Instruments Exchange or Financial Instruments Clearing Organization which suffered damage shall have the right to receive, in preference over other creditors, payment from the guarantee funds of the Member, etc. who has caused the damage.

- (2) The priority of a person who entrusted sales and purchase of Securities or Market Transactions of Derivatives in a Financial Instruments Exchange Market under paragraph (4) of the preceding Article shall prevail over the priority under the preceding paragraph.

(Completion of Transactions Incidental to Loss of Qualification for Trading, etc.)

Article 116 (1) When a Member, etc. has withdrawn from a Financial Instruments Exchange (for a Trading Participant, when it has lost qualification for trading), the Financial Instruments Exchange shall, in accordance with the articles of incorporation, have the former Member, etc. or its general successor or another Member, etc. complete the sales and purchase of Securities and Market Transactions of Derivatives conducted by the former Member, etc. in the Financial Instruments Exchange Market. In this case, the former Member, etc. or its general successor shall be deemed as a Member, etc. within the scope of the purpose to complete the transactions.

- (2) When a Financial Instruments Exchange has another Member, etc. complete the transactions prescribed in the preceding paragraph under the provisions of said paragraph, it shall be deemed that a contract of mandate has been established between the former Member, etc. or its general successor, and said other Member, etc.

(Matters to Be Stated in Operational Rules)

Article 117 A Financial Instruments Exchange shall specify in its operational rules the detailed regulations on the following matters concerning said Financial Instruments Exchange Market, for each Financial Instruments Exchange Market established by said Financial Instruments Exchange (excluding items (i) and (ii), with regard to a Membership-Type Financial Instruments Exchange):

- (i) matters pertaining to Trading Participants;
- (ii) matters pertaining to guarantee funds;
- (iii) matters pertaining to clearing margins;
- (iv) standards and methods for listing and delisting of Securities subject to sales and purchase of Securities;
- (v) the kind and period of sales and purchase of Securities or Market Transactions of Derivatives;
- (vi) the starting, ending and suspension of sales and purchase of Securities or Market Transactions of Derivatives;
- (vii) the methods of conclusion of a contract for sales and purchase of Securities or Market Transactions of Derivatives;
- (viii) the method of transfer and other settlement for sales and purchase of



Securities or Market Transactions of Derivatives; and  
(ix) in addition to the matters listed in each of the preceding items, the matters necessary for sales and purchase of Securities or Market Transactions of Derivatives.

(Standardized Instruments)

Article 118 (1) A Financial Instruments Exchange may, in accordance with the articles of incorporation, create the standardized instruments listed in Article 2 (24)(v) for the purpose of Market Transactions of Derivatives.

(2) In the case of the preceding paragraph, a Financial Instruments Exchange shall specify in its operational rules the conditions of the standardized instruments and other matters necessary for transactions of standardized instruments.

(Deposit of Clearing Margin)

Article 119 (1) A Financial Instruments Exchange (in cases where it is specified in the articles of incorporation that said Financial Instruments Exchange shall have another Financial Instruments Clearing Organization conduct Financial Instruments Obligation Assumption Service with regard to whole or part of the Market Transactions of Derivatives in said Financial Instruments Exchange Market (excluding those designated by the Prime Minister; hereinafter the same shall apply in this Article), the Financial Instruments Clearing Organization which conducts Financial Instruments Obligation Assumption Service with regard to the Market Transactions of Derivatives; hereinafter the same shall apply in paragraph (4)) shall, pursuant to the provisions of a Cabinet Office Ordinance, receive deposit of clearing margin for Market Transactions of Derivatives from the persons prescribed in the following items for the categories listed in the respective items:

(i) when a Member, etc. conducts Market Transactions of Derivatives on its own account; or a Member, etc. conducts Market Transactions of Derivatives for which it has accepted entrustment, by receiving the deposit of customer margin under paragraph (3): the Member, etc.;

(ii) when a Member, etc. conducts Market Transactions of Derivatives for which it has accepted entrustment (excluding Market Transactions of Derivatives for which the Member, etc. has accepted entrustment from the person (hereinafter referred to as a "Broker" in this Article) who accepted brokerage of entrustment of Market Transactions of Derivatives to said Member, etc. (hereinafter referred to as the "Brokered Market Derivative Transaction" in this Article; hereinafter the same shall apply in this item), excluding the case specified in the preceding item: the Entrusting Person of said Market Transactions of Derivatives (meaning a person who has

- entrusted Market Transactions of Derivatives to a Member, etc. and is not a Broker; hereinafter the same shall apply in paragraph (3));
- (iii) when a Member, etc. conducts Brokered Market Derivative Transaction for which it has accepted entrustment by the Broker who has received deposit of brokerage margin under the provision of the following paragraph (excluding the case specified in item (i)): the Broker; or
- (iv) when a Member, etc. conducts Brokered Market Derivative Transaction (excluding the cases specified in items (i) and the preceding item): the person who made the application for broking of entrustment of said Brokered Market Derivative Transaction (hereinafter referred to as an "Applicant" in this Article).
- (2) A Broker may, pursuant to the provisions of a Cabinet Office Ordinance, have an Applicant deposit with said Broker the brokerage margin for acceptance of brokerage of entrustment of Market Transactions of Derivatives.
- (3) A Member, etc. may, pursuant to the provisions of a Cabinet Office Ordinance, have the Entrusting Person of Transactions of Derivatives or the Broker (or the Applicant, in cases where the Market Transactions of Derivatives fall under the Brokered Market Derivative Transaction entrusted by a Broker who has not received from the Applicant the deposit of the broking margin under the preceding paragraph) deposit with said Member, etc. the customer margin for acceptance of entrustment of Market Transactions of Derivatives.
- (4) A Financial Instruments Exchange shall, pursuant to the provisions of a Cabinet Office Ordinance, manage the clearing margin for which it accepted deposit under the provision of paragraph (1).
- (5) Securities or other instruments prescribed by a Cabinet Office Ordinance may, pursuant to the provisions of a Cabinet Office Order, be deposited instead of the clearing margin under paragraph (1), broking margin under paragraph (2) and customer margin under paragraph (3).
- (6) Article 115 (1) shall apply mutatis mutandis to the clearing margin under paragraph (1) (limited to those specified by a Cabinet Office Ordinance). In this case, the term "sales and purchase of Securities or Market Transactions of Derivatives" in Article 115 (1) shall be deemed to be replaced with "Market Transactions of Derivatives".

(Notification of Extraordinary Start, etc. of Financial Instruments Transaction at Financial Instruments Exchange)

Article 120 When a Financial Instruments Exchange has extraordinarily started or ended, or suspended sales and purchase of Securities or Market Transactions of Derivatives or cancelled such suspension, it shall notify to that effect to the Prime Minister, for each Financial Instruments Exchange Market established by said Financial Instruments Exchange, without delay.

(Notification, etc. of Listing)

Article 121 When a Financial Instruments Exchange intends to list Securities for sales and purchase, or to list Financial Instruments, etc. for Market Transactions of Derivatives, it shall, for each Financial Instruments Exchange Market subject to said listing, notify to that effect to the Prime Minister.

(Approval of Listing)

Article 122 (1) When a Financial Instruments Exchange intends to list the Securities issued by said Financial Instruments Exchange for the purpose of sales and purchase, or to list said Securities, Financial Indicators pertaining thereto or Options pertaining thereto for the purpose of Market Transactions of Derivatives, on the Financial Instruments Exchange Market or any other market specified by a Cabinet Order (excluding the Financial Instruments Exchange Market established by said Financial Instruments Exchange (including the Financial Instruments Exchange which is its Subsidiary Company) and by the Financial Instruments Exchange which holds the subject voting rights exceeding 50% of the voting rights of all shareholders of said Financial Instruments Exchange), it shall obtain approval on such listing from the Prime Minister, for each Financial Instruments Exchange Market or any other market prescribed by a Cabinet Order subject to said listing; provided, however, that this shall not apply to the cases where such listing is made based on the order given under the provision of Article 125.

(2) When an application for approval set forth in the preceding paragraph is filed, if the Prime Minister finds that the listing pertaining to the application is likely to impair sound and appropriate operation of the business of the Financial Instruments Exchange, or the Financial Instruments Exchange which is its Subsidiary Company, he/she shall not grant the approval under said paragraph.

(Application Mutatis Mutandis to Financial Instruments Exchange Holding Company)

Article 123 The provisions of the preceding Article shall apply mutatis mutandis to a Financial Instruments Exchange Holding Company. In this case, the term "established by said Financial Instruments Exchange (including the Financial Instruments Exchange which is its Subsidiary Company) and by the Financial Instruments Exchange which holds the subject voting rights exceeding 50% of the voting rights of all shareholders of said Financial Instruments Exchange" in Article 122 (1) shall be deemed to be replaced with "established by the Financial Instruments Exchange which is the Subsidiary Company (meaning the Subsidiary Company prescribed in Article 105-16 (4) of said Financial

Instruments Exchange Holding Company; hereinafter the same shall apply in the following paragraph) and by the Financial Instruments Exchange which holds the subject voting rights exceeding 50% of the voting rights of all shareholders of said Financial Instruments Exchange Holding Company,"; and the term "the Financial Instruments Exchange, or the Financial Instruments Exchange which is its Subsidiary Company" in Article 122 (2) shall be deemed to be replaced with "the Financial Instruments Exchange which is its Subsidiary Company."

(Approval of Financial Instruments Exchange's Listing on Financial Instruments Exchange Market Established by Itself)

Article 124 (1) Notwithstanding the provision of Article 121, if a Financial Instruments Exchange intends to list on the Financial Instruments Exchange Market established by itself the Securities issued by any person listed in the following for the purpose of sales and purchase, or said Securities, the Financial Indicators pertaining thereto or the Options pertaining thereto for the purpose of Market Transactions of Derivatives, it shall obtain approval on such listing from the Prime Minister, on each occasion and for each Financial Instruments Exchange Market subject to said listing; provided, however, that this shall not apply to cases where such listing is made based on the order given under the provision of the following Article:

- (i) the Financial Instruments Exchange;
- (ii) the Financial Instruments Exchange Holding Company which holds the Financial Instruments Exchange as its Subsidiary Company;
- (iii) the Stock Company-Type Financial Instruments Exchange which holds the subject voting rights exceeding 50% of the voting rights of all shareholders of the Financial Instruments Exchange; or
- (iv) the Financial Instruments Exchange which is the Subsidiary Company of the Financial Instruments Exchange or the Financial Instruments Exchange Holding Company.

(2) When an application for approval set forth in the preceding paragraph is filed, if the Prime Minister finds that the application falls under any of the cases specified in the following items, he/she shall not grant the approval under said paragraph:

- (i) the listing pertaining to the application is likely to impair sound and appropriate operation of the business of the Financial Instruments Exchange, or the Financial Instruments Exchange which is its Subsidiary Company, or the Stock Company-Type Financial Instruments Exchange which holds the subject voting rights exceeding 50% of the voting rights of all shareholders of said Financial Instruments Exchange; or
- (ii) with regard to the listing pertaining to the application, fairness in

transactions on the Financial Instruments Exchange Market has not been secured.

- (3) Notwithstanding the provision of Article 121, when a Financial Instruments Exchange intends to list on the Financial Instruments Exchange established by itself the Securities issued by the persons listed in the following for the purpose of sales and purchase, or to list said Securities, Financial Indicators pertaining thereto or Options pertaining thereto for the purpose of Market Transactions of Derivatives, it shall obtain approval on such listing from the Prime Minister, for each occasion and for each Financial Instruments Exchange Market subject to said listing; provided, however, that this shall not apply to cases where such listing is made based on the order given under the provision of the following Article:
- (i) the Major Shareholders of the Financial Instruments Exchange (meaning the person granted authorization under Article 106-3 (1) or 106-17(1)); or
  - (ii) the Subsidiary Company of the Financial Instruments Exchange (excluding cases where said Subsidiary Company is a Financial Instruments Exchange or Financial Instruments Exchange Holding Company).
- (4) When an application for approval set forth in the preceding paragraph is filed, if the Prime Minister finds that, with regard to the listing pertaining to said application, fairness in transactions on the Financial Instruments Exchange Market has not been secured, he/she shall not grant the approval under said paragraph.

(Order to List Share Certificates, etc.)

Article 125 The Prime Minister may, when he/she finds that listing by a Financial Instruments Exchange of the Share Certificates, etc. issued by the Issuer of the Share Certificates, etc. listed by the Financial Instruments Exchange which has not been listed by said Financial Instruments Exchange is necessary and proper for the public interest or protection of investors, order said Financial Instruments Exchange to list said Share Certificates, etc.

(Notification of Delisting, etc.)

- Article 126 (1) When a Financial Instruments Exchange intends to delist the Securities listed for the purpose of sales and purchase or the Financial Instruments, etc. listed for the purpose of Market Transactions of Derivatives, it shall notify to that effect to the Prime Minister, for each Financial Instruments Exchange Market subject to said delisting.
- (2) Notwithstanding the provision of the preceding paragraph, when a Financial Instruments Exchange has listed on the Financial Instruments Exchange Market established by itself the Securities specified in Article 124 (1) for the purpose of sales and purchase; or the Securities, Financial Indicators or

Options under said paragraph for the purpose of Market Transactions of Derivatives, if a Financial Instruments Exchange intends to delist said Securities, Financial Indicators or Options, it shall obtain approval on said delisting from the Prime Minister, for each Financial Instruments Exchange Market subject to said delisting; provided, however, that this shall not apply to cases where such delisting is made based on the order given under Article 129 (1).

(Order of Delisting, etc.)

Article 127 (1) When a Financial Instruments Exchange intends to list or delist, or has listed or delisted Financial Instruments, etc. in violation of its operational rules, the Prime Minister may order said Financial Instruments Exchange to delist the Listed Financial Instruments, etc. or to re-list the delisted Financial Instruments, etc., or to take the measures necessary for rectification of the violation. In this case, a hearing shall be held irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act.

(2) With regard to the application of the provisions of Section 2, Chapter III of the Administrative Procedure Act in cases where the notice under Article 15 (1) of said Act has been provided in the hearings pertaining to the disposition under the preceding paragraph, the Issuer of Securities, from among the Financial Instruments set forth in the preceding paragraph, shall be deemed as the person who has received the notice under Article 15 (1) of said Act.

(Notification of Suspension, etc. of Sales and Purchase)

Article 128 With regard to the Financial Instruments, etc. listed by a Financial Instruments Exchange, if the Financial Instruments Exchange has suspended, or cancelled suspension of, sales and purchase of Securities or Market Transactions of Derivatives on said Financial Instruments Exchange Market, it shall notify to that effect to the Prime Minister without delay, for each Financial Instruments Exchange Market established by said Financial Instruments Exchange.

(Order of Suspension, etc. of Sales and Purchase)

Article 129 (1) When an Issuer of the Securities listed by a Financial Instruments Exchange has violated this Act, an order given under this Act, or the rules of the Financial Instruments Exchange which lists said Securities, if the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may order said Financial Instruments Exchange to suspend sales and purchase of the Securities on the Financial Instruments Exchange Market or to delist said Securities. In this case, a hearing shall be

held irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act.

(2) With regard to the application of the provisions of Section 2, Chapter III of the Administrative Procedure Act in cases where the notice under Article 15 (1) of said Act has been provided in the hearings pertaining to the disposition under the provision of the preceding paragraph, the Issuer specified in the preceding paragraph shall be deemed as the person who has received the notice under Article 15 (1) of said Act.

(Notification, etc. of Total Transaction Volume, Price, etc.)

Article 130 A Financial Instruments Exchange shall, notify its Member, etc. and also publicize the daily total transaction volume of the Financial Instruments Exchange Market established by said Financial Instruments Exchange, highest price, lowest price, closing price, Agreed Figure, and amount received for each day, for each issue of the Financial Instruments, etc. listed by said Financial Instruments Exchange and any other matters, pursuant to the provisions of a Cabinet Office Ordinance.

(Report on Total Transaction Volume, Price, etc.)

Article 131 A Financial Instruments Exchange shall, report to the Prime Minister the daily total transaction volume for the Financial Instruments Exchange Market established by said Financial Instruments Exchange, highest price, lowest price, closing price, Agreed Figure, and amount received for each day and for each issue of the Financial Instruments, etc. listed by said Financial Instruments Exchange, and any other matters, pursuant to the provisions of a Cabinet Office Ordinance.

(Application Mutatis Mutandis of Provisions Concerning Completion of Transactions Incidental to Loss of Qualification for Trading)

Article 132 The provision of Article 116 shall apply mutatis mutandis to cases where the sales and purchase of Securities or Market Transactions of Derivatives of a Member, etc. on the Financial Instruments Exchange Market has been suspended pursuant to the provisions of this Act or the articles of incorporation of the Financial Instruments Exchange.

(Brokerage Contract Rules and Matters to Be Stated Therein)

Article 133 (1) With regard to acceptance of entrustment of sales and purchase of Securities or Market Transactions of Derivatives in the Financial Instruments Exchange Market (excluding Broking for Clearing of Securities, etc.), a Member, etc. shall comply with the brokerage contract rules prescribed by the Financial Instruments Exchange to which it belongs.

- (2) A Financial Instruments Exchange shall specify in its brokerage contract rules the detailed regulations on the following matters concerning the Financial Instruments Exchange Market, for each Financial Instruments Exchange Market established by said Financial Instruments Exchange:
- (i) the conditions for acceptance of entrustment of sales and purchase of Securities or Market Transactions of Derivatives;
  - (ii) the method of transfer and other settlement of sales and purchase of Securities or Market Transactions of Derivatives;
  - (iii) matters concerning credit granting for acceptance of entrustment of sales and purchase of Securities; and
  - (iv) in addition to the matters listed in the preceding three items, the matters necessary for acceptance of entrustment of sales and purchase of Securities or Market Transactions of Derivatives.

**Section 4 Dissolution, etc. of Financial Instruments Exchange**  
**Subsection 1 Dissolution**

(Loss of License)

Article 134 (1) When a Financial Instruments Exchange falls under any of the cases specified in the following items, the license granted under Article 80 (1) shall cease to be effective:

- (i) when the number of the Trading Participants becomes 5 or less (limited to the case of a Stock Company-Type Financial Instruments Exchange);
  - (ii) when a Financial Instruments Exchange has closed all of its Financial Instruments Exchange Markets;
  - (iii) when a Financial Instruments Exchange has been dissolved;
  - (iv) when a judgment invalidating establishment, merger (limited to cases where the person established by said merger is a Financial Instruments Exchange) or a incorporation-type split (limited to cases where the person established by said incorporation-type split is said Financial Instruments Exchange) has become final and binding; or
  - (v) when a Financial Instruments Exchange has not established the Financial Instruments Exchange Market within six months from the date of receipt of the license (excluding cases where there is any compelling reason, and where the approval thereon has been obtained from the Prime Minister in advance).
- (2) When the license has ceased to be effective under item (i) or (iv) of the preceding paragraph, the representative person or the former representative person of the Financial Instruments Exchange shall notify to that effect to the Prime Minister without delay.

(Authorization of Dissolution)



- Article 135 (1) The following matters shall not come into effect unless the authorization of the Prime Minister thereon has been obtained:
- (i) a resolution of a general meeting with regard to dissolution of a Financial Instruments Exchange; and
  - (ii) merger where Financial Instruments Exchanges are all or part of the parties thereto (excluding the merger under Article 140 (1)).
- (2) When a Financial Instruments Exchange has been dissolved on the ground of any cause listed in the following, its former representative person shall notify to that effect to the Prime Minister without delay:
- (i) the occurrence of any cause of dissolution specified in the articles of incorporation;
  - (ii) that the number of the members becomes 5 or less; or
  - (iii) a juridical decision ordering dissolution.

**Subsection 2 Merger**  
**Division 1 General Rules**

- Article 136 (1) A Membership-Type Financial Instruments Exchange may merge with another Membership-Type Financial Instruments Exchange or a Stock Company-Type Financial Instruments Exchange. In this case, the Financial Instruments Exchange implementing the merger shall conclude a merger agreement.
- (2) In the case of the preceding paragraph, when a Membership-Type Financial Instruments Exchange implements an Absorption-Type Merger (meaning a merger of a Financial Instruments Exchange with another Financial Instruments Exchange where a 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 extinguished as a result of the merger (hereinafter referred to as the "Financial Instruments Exchange Extinguished upon an Absorption-Type Merger" in this Subsection); the same shall apply hereinafter), or a Consolidation-Type Merger (meaning a merger between two or more Financial Instruments Exchanges where a Financial Instruments Exchange established by the merger (hereinafter referred to as the "Financial Instruments Exchange Established by a Consolidation-Type Merger" in this Subsection) succeeds to all of the rights and obligations of the Financial Instruments Exchange extinguished as a result of the merger (hereinafter referred to as the "Financial Instruments Exchange Extinguished upon Consolidation-Type Merger" in this Subsection); the same shall apply hereinafter), the Financial Instruments Exchange Surviving an Absorption-Type Merger or the Financial Instruments Exchange

Established by a Consolidation-Type Merger shall be the person prescribed in the following items for the categories of cases set forth respectively therein:

- (i) in the case of a merger between a Membership-Type Financial Instruments Exchange and a Membership-Type Financial Instruments Exchange: a Membership-Type Financial Instruments Exchange; or
- (ii) in the case of a merger between a Membership-Type Financial Instruments Exchange and a Stock Company-Type Financial Instruments Exchange: a Stock Company-Type Financial Instruments Exchange.

### **Division 2 Merger between Membership-Type Financial Instruments Exchange and Membership-Type Financial Instruments Exchange**

(Absorption-Type Merger Agreement between Membership-Type Financial Instruments Exchange and Membership-Type Financial Instruments Exchange)

Article 137 When a Membership-Type Financial Instruments Exchange and a Membership-Type Financial Instruments Exchange implement an Absorption-Type Merger, the following matters shall be specified in the Absorption-Type Merger agreement:

- (i) the names and addresses of the Membership-Type Financial Instruments Exchange that survives the Absorption-Type Merger (hereinafter referred to as the "Membership-Type Financial Instruments Exchange Surviving an Absorption-Type Merger" in this Subsection) and the Membership-Type Financial Instruments Exchange that extinguishes upon the Absorption-Type Merger (hereinafter referred to as the "Membership-Type Financial Instruments Exchange Extinguished upon an 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 a Cabinet Office Ordinance.

(Consolidation-Type Merger Agreement between Membership-Type Financial Instruments Exchange and Membership-Type Financial Instruments Exchange)

Article 138 When a Membership-Type Financial Instruments Exchange and a Membership-Type Financial Instruments Exchange implement a Consolidation-Type Merger, the following matters shall be specified in the Consolidation-Type Merger agreement:

- (i) the name and address of the Membership-Type Financial Instruments Exchange that extinguishes upon the Consolidation-Type Merger (hereinafter referred to as the "Membership-Type Financial Instruments

Exchange Extinguished upon a Consolidation-Type Merger" in this Subsection);

- (ii) the purposes, name and the location of the principal office of the Membership-Type Financial Instruments Exchange that is established by the Consolidation-Type Merger (hereinafter referred to as the "Membership-Type Financial Instruments Exchange that is established by the Consolidation-Type Merger" in this Subsection);
- (iii) in addition to the matters listed in the preceding item, the matters specified by the articles of incorporation of the Membership-Type Financial Instruments Exchange Established by a Consolidation-Type Merger; and
- (iv) the names of the persons who become the president, board members and auditors at the time of the establishment of the Membership-Type Financial Instruments Exchange Established by a Consolidation-Type Merger and other matters specified by a Cabinet Office Ordinance.

### **Division 3 Merger between Membership-Type Financial Instruments Exchange and Stock Company-Type Financial Instruments Exchange**

(Absorption-Type Merger Agreement between Membership-Type Financial Instruments Exchange and Stock Company-Type Financial Instruments Exchange)

Article 139 When a Membership-Type Financial Instruments Exchange and a Stock Company-Type Financial Instruments Exchange implement an Absorption-Type Merger, the following matters shall be specified in the Absorption-Type Merger agreement:

- (i) the trade name and address of the Stock Company-Type Financial Instruments Exchange that survives the Absorption-Type Merger (hereinafter referred to as the "Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger" in this Subsection), and the name and address of the Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger;
- (ii) when a Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger delivers to members of the Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger Shares, etc. (meaning shares or money; the same shall apply hereinafter) in lieu of the equity of such members, at the time of the Absorption-Type Merger, the following matters concerning said Shares, etc.:
  - (a) when the Shares, etc. are the shares of the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger, the number of said shares (in the case of a company with class shares, the

- classes of shares and the number of shares for each class) or the method of calculating such number, and matters concerning the amount of the stated capital and reserve funds of the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger; and
- (b) when the Shares, etc. are money, the amount of said money or the method of calculating such amount.
- (iii) in the case prescribed in the preceding item, matters concerning allotment of Shares, etc. set forth in said item to members of a Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger; and
- (iv) the Effective Date and other matters specified by a Cabinet Office Ordinance.

(Consolidation-Type Merger Agreement between Membership-Type Financial Instruments Exchange and Stock Company-Type Financial Instruments Exchange)

Article 139-2 (1) When a Membership-Type Financial Instruments Exchange and a Stock Company-Type Financial Instruments Exchange implement a Consolidation-Type Merger, the following matters shall be specified in the Consolidation-Type Merger agreement:

- (i) the name and address of the Membership-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger, and the trade name and address of the Stock Company-Type Financial Instruments Exchange to be extinguished upon a Consolidation-Type Merger (hereinafter referred to as the "Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger" in this Subsection);
- (ii) the purposes, trade name, location of the head office and total number of authorized shares of the Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger (hereinafter referred to as the "Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger" in this Subsection);
- (iii) in addition to the matters listed in the preceding item, the matters specified in the articles of incorporation of the Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger;
- (iv) the names of the persons who become directors at the time of the establishment of the Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger, and the name of the persons who become accounting auditors at the time of its establishment;
- (v) matters prescribed in the following (a) and (b) for the categories of cases set forth respectively therein:

- (a) when a Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger is a company with accounting advisors: the names of the persons who become accounting advisors at the time of the establishment of the Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger; or
- (b) when a Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger is a company with company auditors: the names of the persons who become company auditors at the time of the establishment of the Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger.
- (vi) the number of shares of a Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger (in the case of a company with class shares, the classes of shares and the number of shares for each class) which said Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger delivers to members of the Membership-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger or shareholders of the Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger in lieu of their equity or shares, at the time of the Consolidation-Type Merger, or the method of calculating such number; and the matters concerning the amount of the stated capital and reserve funds of the Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger;
- (vii) matters concerning the allotment of the shares set forth in the preceding item to members of the Membership-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger or shareholders of the Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger (excluding the Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger);
- (viii) when a Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger has issued share options, the following matters with regard to the share options of the Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger or the money which said Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger delivers, at the time of the Consolidation-Type Merger, to the holders of the share options in lieu of said share options: and
  - (a) when delivering the share options of the Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger to the holders of the share options of the Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger,

- the features and number of the share options or the method of calculating such number;
- (b) in the case prescribed in (a), if the share options of the Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger set forth in (a) are share options attached to bonds with share options, the fact that the Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger will succeed to the obligations pertaining to the bonds with regard to said bonds with share options; and the classes of the bonds pertaining to the succession, and the total amount of the bonds for each class or the method of calculating such amount; and
  - (c) when delivering money to holders of share options of the Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger, the amount of said money or the method of calculating said amount.
- (ix) in the case prescribed in the preceding item, matters concerning allotment of share options of the Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger or the money set forth in said item to the holders of the share options of the Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger.
- (2) In the case prescribed in the preceding paragraph, if whole or part of the Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger is a company with class shares, the following matters may be specified as the matters listed in item (vii) of said paragraph (limited to matters pertaining to shareholders of the Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger; the same shall apply in the following paragraph) in accordance with the features of the class shares issued by the Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger:
- (i) if not allotting shares of the Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger to shareholders of certain classes of shares, such fact and said classes of shares; and
  - (ii) in addition to the matters listed in the preceding item, if treating allotment of shares of the Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger differently by class of shares, such fact and the contents of such differing treatment.
- (3) In the case prescribed in paragraph (1), the provisions on the matters listed in item (vii) of said paragraph shall prescribe that shares of the Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger shall be delivered in accordance with the number of shares (if provisions on the matters set forth in item (ii) of the preceding

paragraph exist, the number of shares for each class) held by shareholders of the Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger (excluding the Financial Instruments Exchanges Extinguished upon a Consolidation-Type Merger and shareholders of the class of shares set forth in item (i) of the preceding paragraph).

#### **Division 4 Merger Procedures of Membership-Type Financial Instruments Exchange**

(Procedures of Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger)

Article 139-3 (1) A Membership-Type Financial Instruments Exchange

Extinguished upon an Absorption-Type Merger shall, during the period from 5 days prior to the day of the general meeting of members set forth in paragraph (3) until the Effective Date, keep at its principal office the documents or Electromagnetic Records containing or recording the contents of the Absorption-Type Merger agreement and other matters specified by a Cabinet Office Ordinance.

(2) A member and a creditor of a Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger may make the following requests to the Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger at any time during its business hours; provided, however, that in order to make the request set forth in item (ii) or (iv), such person shall pay the cost determined by the Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger:

- (i) a request for inspection of the documents set forth in the preceding paragraph;
- (ii) a request for delivery of the transcripts or extracts of the documents set forth in the preceding paragraph;
- (iii) a request for inspection of the matters recorded in the Electromagnetic Records set forth in the preceding paragraph which are indicated by the methods specified by a Cabinet Office Ordinance; and
- (iv) a request for provision of the information recorded in the Electromagnetic Records set forth in the preceding paragraph by the electromagnetic method which is specified by a Cabinet Office Ordinance, or a request for delivery of the documents containing such information.

(3) A Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger shall obtain approval for an Absorption-Type Merger agreement by a resolution of a general meeting of members, by the day immediately preceding the Effective Date.

- (4) A Membership-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger may not adopt a resolution on approval of an Absorption-Type Merger agreement, unless the approval by at least three quarters majority of all members has been obtained; provided, however, that this shall not apply to cases where the articles of incorporation prescribe otherwise.
- (5) Article 101-4 shall apply mutatis mutandis to a Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger.
- (6) When a Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger gives the public notice prescribed in Article 101-4 (2) as applied mutatis mutandis pursuant to the preceding paragraph not only in the Official Gazette but also by the Methods of Public Notice (meaning the methods by which the Membership-Type Financial Instruments Exchange gives public notice (excluding those which shall be given by the method of publication in the Official Gazette under the provisions of this Act); hereinafter the same shall apply in this Division) set forth in Article 939 (1)(ii) of the Companies Act, in accordance with the provisions of the articles of incorporation prescribed in Article 939 (1) of the Companies Act as applied mutatis mutandis pursuant to the following paragraph, the Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger shall not be required to give the individual notice prescribed in Article 101-4 (2) as applied mutatis mutandis pursuant to the preceding paragraph.
- (7) The provision of Article 939 (1) (limited to the parts pertaining to items (i) and (ii)) of the Companies Act shall apply mutatis mutandis to the public notice under the preceding paragraph.
- (8) A Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger may change the Effective Date by an agreement with the Financial Instruments Exchange Surviving an Absorption-Type Merger.
- (9) In the case of the preceding paragraph, the Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger shall give a public notice of the new Effective Date by the day immediately preceding the Effective Date before the change (if the new Effective Date comes before the Effective Date before the change, said new Effective Date instead of the Effective Date before the change).
- (10) When the Effective Date has been changed pursuant to the provisions of paragraph (8), the provisions of this Subsection shall be applied by deeming the new Effective Date to be the Effective Date.

(Procedures of Membership-Type Financial Instruments Exchange Surviving Absorption-Type Merger)

Article 139-4 (1) A Membership-Type Financial Instruments Exchange Surviving



an Absorption-Type Merger shall, during the period from 5 days prior to the day of the general meeting of members set forth in the following paragraph until the day on which six months have passed from the Effective Date, keep at its principal office the documents or Electromagnetic Records containing or recording the contents of the Absorption-Type Merger agreement and other matters specified by a Cabinet Office Ordinance.

(2) A Membership-Type Financial Instruments Exchange Surviving an Absorption-Type Merger shall obtain approval for an Absorption-Type Merger agreement by a resolution of a general meeting of members, by the day immediately preceding the Effective Date.

(3) A Membership-Type Financial Instruments Exchange Surviving an Absorption-Type Merger may not adopt a resolution on approval of an Absorption-Type Merger agreement, unless the approval by at least three quarters majority of all members has been obtained; provided, however, that this shall not apply to cases where the articles of incorporation prescribe otherwise.

(4) The provisions of Article 101-4 shall apply mutatis mutandis to a Membership-Type Financial Instruments Exchange Surviving an Absorption-Type Merger.

(5) When a Membership-Type Financial Instruments Exchange Surviving an Absorption-Type Merger gives the public notice prescribed in the Article 101-4 (2) as applied mutatis mutandis pursuant to the preceding paragraph not only in the Official Gazette but also by the Methods of Public Notice set forth in Article 939 (1)(ii) of the Companies Act, in accordance with the provisions of the articles of incorporation prescribed in Article 939 (1) of the Companies Act as applied mutatis mutandis pursuant to the following paragraph, the Membership-Type Financial Instruments Exchange Surviving an Absorption-Type Merger shall not be required to give the individual notice prescribed in Article 101-4 (2) as applied mutatis mutandis pursuant to the preceding paragraph.

(6) The provision of Article 939 (1) (limited to the parts pertaining to items (i) and (ii)) of the Companies Act shall apply mutatis mutandis to the public notice under the preceding paragraph.

(7) A Membership-Type Financial Instruments Exchange Surviving an Absorption-Type Merger shall prepare the documents or Electromagnetic Records containing or recording the matters related to the rights and obligations of the Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger succeeded by the Membership-Type Financial Instruments Exchange Surviving an Absorption-Type Merger as a result of the Absorption-Type Merger and other matters specified by a Cabinet Office Ordinance as matters concerning an Absorption-Type Merger,

without delay after the Effective Date.

- (8) A Membership-Type Financial Instruments Exchange Surviving an Absorption-Type Merger shall, during the period of six months from the Effective Date, keep at its principal office the documents or Electromagnetic Records set forth in the preceding paragraph.
- (9) A member and a creditor of a Membership-Type Financial Instruments Exchange Surviving an Absorption-Type Merger may make the following requests to the Membership-Type Financial Instruments Exchange Surviving an Absorption-Type Merger at any time during its business hours; provided, however, that in order to make the request set forth in item (ii) or (iv), such person shall pay the cost determined by the Membership-Type Financial Instruments Exchange Surviving an Absorption-Type Merger:
- (i) a request for inspection of the documents set forth in paragraph (1) or the preceding paragraph;
  - (ii) a request for delivery of the transcripts or extracts of the documents set forth in paragraph (1) or the preceding paragraph;
  - (iii) a request for inspection of the matters recorded in the Electromagnetic Records set forth in paragraph (1) or the preceding paragraph which are indicated by the methods specified by a Cabinet Office Ordinance; and
  - (iv) a request for provision of the matters recorded in the Electromagnetic Records set forth in paragraph (1) or the preceding paragraph by the electromagnetic method which is specified by a Cabinet Office Ordinance, or a request for delivery of the documents containing such matters.

(Procedures of Membership-Type Financial Instruments Exchange Extinguished upon Consolidation-Type Merger)

- Article 139-5 (1) A Membership-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger shall, during the period from 10 days prior to the day of the general meeting of members set forth in paragraph (3) until the day of the establishment of the Financial Instruments Exchange Established by a Consolidation-Type Merger, keep at its principal office the documents or Electromagnetic Records containing or recording the contents of the Consolidation-Type Merger agreement and other matters specified by a Cabinet Office Ordinance.
- (2) A member and a creditor of a Membership-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger may make the following requests to the Membership-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger at any time during its business hours; provided, however, that in order to make the request set forth in item (ii) or (iv), such person shall pay the cost determined by the Membership-Type Financial Instruments Exchange Extinguished upon a

Consolidation-Type Merger:

- (i) a request for inspection of the documents set forth in the preceding paragraph;
  - (ii) a request for delivery of the transcripts or extracts of the documents set forth in the preceding paragraph;
  - (iii) a request for inspection of the matters recorded in the Electromagnetic Records set forth in the preceding paragraph which are indicated by the methods specified by a Cabinet Office Ordinance; and
  - (iv) a request for provision of the matters recorded in the Electromagnetic Records set forth in the preceding paragraph by the electromagnetic method which is specified by a Cabinet Office Ordinance, or a request for delivery of the documents containing such matters.
- (3) A Membership-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger shall obtain approval for a Consolidation-Type Merger agreement by a resolution of a general meeting of members, by the day immediately preceding the Effective Date.
- (4) A Membership-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger may not adopt a resolution on approval of an Absorption-Type Merger agreement, unless the approval by at least three-quarters majority of all members has been obtained; provided, however, that this shall not apply to cases where the articles of incorporation prescribe otherwise.
- (5) The provisions of Article 101-4 shall apply mutatis mutandis to a Membership-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger.
- (6) When a Membership-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger gives the public notice prescribed in Article 101-4 (2) as applied mutatis mutandis pursuant to the preceding paragraph not only in the Official Gazette but also by the Methods of Public Notice set forth in Article 939 (1)(ii) of the Companies Act, in accordance with the provisions of the articles of incorporation prescribed in Article 939 (1) of the Companies Act as applied mutatis mutandis pursuant to the following paragraph, the Membership-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger shall not be required to give the individual notice prescribed in Article 101-4 (2) as applied mutatis mutandis pursuant to the preceding paragraph.
- (7) Article 939 (1) (limited to the parts pertaining to items (i) and (ii)) of the Companies Act shall apply mutatis mutandis to the public notice under the preceding paragraph.

(Procedures of a Membership-Type Financial Instruments Exchange

Established by Consolidation-Type Merger)

Article 139-6 (1) Article 88-3 (1) and (3), 88-4 and 88-22 shall not apply to establishment of a Membership-Type Financial Instruments Exchange Established by a Consolidation-Type Merger.

(2) Articles of incorporation of a Membership-Type Financial Instruments Exchange Established by a Consolidation-Type Merger shall be prepared by the Membership-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger.

(3) A Membership-Type Financial Instruments Exchange Established by the Consolidation-Type Merger shall prepare the documents or the Electromagnetic Records containing or recording matters related to the rights and obligations of the Membership-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger succeeded by the Membership-Type Financial Instruments Exchange Established by a Consolidation-Type Merger as a result of the Consolidation-Type Merger and other matters specified by a Cabinet Office Ordinance as matters concerning a Consolidation-Type Merger, without delay after the day of its establishment.

(4) A Membership-Type Financial Instruments Exchange Established by a Consolidation-Type Merger shall, during the period of six months from its establishment, keep at its principal office the documents or Electromagnetic Records set forth in the preceding paragraph, and the documents or Electromagnetic Records containing or recording the contents of the Consolidation-Type Merger agreement and other matters specified by a Cabinet Office Ordinance.

(5) A member and a creditor of a Membership-Type Financial Instruments Exchange Established by a Consolidation-Type Merger may make the following requests to the Membership-Type Financial Instruments Exchange Established by a Consolidation-Type Merger at any time during its business hours;

provided, however, that in order to make the request set forth in item (ii) or

(iv), such person shall pay the cost determined by the Membership-Type

Financial Instruments Exchange Established by a Consolidation-Type Merger:

(i) a request for inspection of the documents set forth in the preceding paragraph;

(ii) a request for delivery of the transcripts or extracts of the documents set forth in the preceding paragraph;

(iii) a request for inspection of the matters recorded in the Electromagnetic Records set forth in the preceding paragraph which are indicated by the methods specified by a Cabinet Office Ordinance; and

(iv) a request for provision of the matters recorded in the Electromagnetic Records set forth in the preceding paragraph by the electromagnetic method which is specified by a Cabinet Office Ordinance, or a request for delivery of

the documents containing such matters.

### **Division 5 Merger Procedures of Stock Company-Type Financial Instruments Exchange**

(Keeping and Inspection, etc. of Documents, etc. Concerning Absorption-Type Merger Agreement)

Article 139-7 (1) A Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger (limited to the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger in an Absorption-Type Merger between a Membership-Type Financial Instruments Exchange and a Stock Company-Type Financial Instruments Exchange; hereinafter the same shall apply in this Division) shall, during the period from any of the following days, whichever comes the earliest, until the day on which six months have passed from the Effective Date, keep at its head office the documents or Electromagnetic Records containing or recording the contents of the Absorption-Type Merger agreement and other matters specified by a Cabinet Office Ordinance:

- (i) when approval for an Absorption-Type Merger agreement requires approval by a resolution of a shareholders meeting (including a class shareholders meeting; hereinafter the same shall apply in this item): the day two weeks prior to the day of said shareholders meeting;
- (ii) the day of the notice under Article 139-10 (1) or the day of the public notice under 139-10(2), whichever comes earlier; or
- (iii) when the procedures under Article 139-12 are required: the day of the public notice under Article 139-12 (2) or the day of the notice set forth in said paragraph, whichever comes earlier.

(2) A shareholder and a creditor of a Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger may make the following requests to the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger at any time during its business hours; provided, however, that in order to make the request set forth in item (ii) or (iv), such person shall pay the cost determined by the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger:

- (i) a request for inspection of the documents set forth in the preceding paragraph;
- (ii) a request for delivery of the transcripts or extracts of the documents set forth in the preceding paragraph;
- (iii) a request for inspection of the matters recorded in the Electromagnetic Records set forth in the preceding paragraph which are indicated by the methods specified by a Cabinet Office Ordinance; and

(iv) a request for provision of the matters recorded in the Electromagnetic Records set forth in the preceding paragraph by the electromagnetic method which is specified by a Cabinet Office Ordinance, or a request for delivery of the documents containing such matters.

(Approval, etc. of Absorption-Type Merger Agreement)

Article 139-8 (1) A Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger shall obtain approval for the Absorption-Type Merger agreement by a resolution of a shareholders meeting, by the day immediately preceding the Effective Date.

(2) If the assets of the Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger to be succeeded include the shares of the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger, the directors shall provide explanation for the matters concerning said shares at the shareholders meeting set forth in the preceding paragraph.

(3) In cases where a Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger is a company with class shares, if the Shares, etc. delivered to members of the Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger are shares of the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger, the Absorption-Type Merger shall not come into effect without a resolution of a class shareholders meeting consisting of class shareholders of class shares set forth in Article 139 (ii)(a) (limited to shares with restriction on transfer for which the provisions of the articles of incorporation set forth in Article 199 (4) of the Companies Act do not exist) (if there are two or more classes of shares pertaining to such class shareholders, the respective class shareholders meeting consisting of class shareholders categorized by each class of said two or more classes of shares); provided, however, that this shall not apply to cases where there are no shareholders who are entitled to exercise their voting rights at said class shareholders meeting.

(4) A resolution of a shareholders meeting set forth in paragraph (1) shall be adopted by at least a two-thirds majority (in cases where a higher proportion is provided for in the articles of incorporation, such proportion or more) of voting rights of the shareholders present when Shareholders holding a majority (if a proportion of one-third or more has been specified by articles of incorporation, at least such proportion) of the voting rights of Shareholders who are entitled to exercise voting rights at said shareholders meeting are present. In this case, the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger shall not be precluded from prescribing in its articles

of incorporation a requirement to obtain the consent of a certain number or more of shareholders or other requirements in addition to the requirement for such resolution.

- (5) The provisions of the preceding paragraph shall apply mutatis mutandis to the class shareholders meeting set forth in paragraph (3).

(Cases in Which Approval for Absorption-Type Merger Agreement, etc. is Not Required, etc.)

Article 139-9 (1) The provisions of paragraphs (1) and (2) of the preceding Article shall not apply to cases where the proportion of the amount set forth in item (i) to the amount set forth in item (ii) does not exceed one-fifth (or, if a smaller proportion is prescribed in the articles of incorporation of the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger, such proportion); provided, however, that this shall not apply to cases where all or part of the Shares, etc. delivered to members of a Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger are shares with restriction on transfer of the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger and where the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger is not a Public Company (meaning a Public Company prescribed in Article 2 (v) of the Companies Act; the same shall apply in paragraph (2), item (i) of the following Article and 139-15(3)):

(i) the total of the amount listed in the following:

(a) the amount obtained by multiplying the number of shares of the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger to be delivered to members of the Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger by the Amount of Net Assets per Share (meaning the Amount of Net Assets per Share prescribed in Article 141 (2) of the Companies Act); and

(b) the total amount of the money to be delivered to members of the Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger.

(ii) the amount calculated by the methods specified by a Cabinet Office Ordinance as the amount of Net Assets of the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger.

- (2) In the case prescribed in the main clause of the preceding paragraph, if a shareholder holding the number of shares specified by a Cabinet Office Ordinance (limited to those of which voting rights may be exercised at the shareholders meeting set forth in paragraph (1) of the preceding Article) notifies the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger of his/her dissent from the Absorption-Type Merger,

within two weeks from the day of the notice set forth in paragraph (1) of the following Article or from the day of the public notice set forth in paragraph (2) of said Article, the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger shall obtain the approval for the Absorption-Type Merger agreement by a resolution of a shareholders meeting, by the day immediately preceding the Effective Date.

(Notice to Shareholders, etc.)

- Article 139-10 (1) A Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger shall notify its shareholders and holders of share options that an Absorption-Type Merger is to take place and the name and address of the Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger (including the matters concerning shares set forth in Article 139-8 (2), in the case prescribed in said paragraph), by 20 days prior to the Effective Date.
- (2) In the following cases, the notice set forth in the preceding paragraph may be substituted by a public notice:
- (i) when the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger is a Public Company; or
  - (ii) when the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger has obtained approval for the Absorption-Type Merger agreement by the resolution of a shareholders meeting set forth in Article 139-8 (1).
- (3) The provisions of Article 940, paragraph (1) (limited to the part pertaining to item (i)) and paragraph (3) of the Companies Act shall apply mutatis mutandis to cases where the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger gives the public notice set forth in the preceding paragraph by means of Electronic Public Notice. In this case, any necessary technical replacement of terms shall be specified by a Cabinet Order.

(Request for Purchase of Share)

- Article 139-11 (1) In the case of an Absorption-Type Merger, the shareholders listed in any of the following items in the respective case may request the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger to purchase their shares at a fair price:
- (i) in the case requiring a resolution of a shareholders meeting (including a class shareholders meeting) for implementing the Absorption-Type Merger: the following shareholders:
    - (a) a shareholder who has notified the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger of his/her dissent from the Absorption-Type Merger prior to said shareholders



- meeting and who has dissented from the Absorption-Type Merger at said shareholders meeting (limited to those who are entitled to exercise their voting rights at said shareholders meeting); or
- (b) a shareholder who is not entitled to exercise the voting rights at said shareholders meeting.
- (ii) in cases other than the case prescribed in the preceding item: all shareholders.
- (2) The provisions of Article 797, paragraphs (5) to (7) inclusive, Article 798, Article 868 (1), Article 870 (limited to the part pertaining to item (iv)), the main clause of Article 871, Article 872 (limited to the part pertaining to item (iv)), the main clause of Article 873, Article 875 and Article 876 of the Companies Act shall apply mutatis mutandis to the request under the preceding paragraph. In this case, any necessary technical replacement of terms shall be specified by a Cabinet Order.

(Objection of Creditors)

- Article 139-12 (1) A creditor of a Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger may make an objection with regard to the Absorption-Type Merger against the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger.
- (2) A Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger shall give the public notice of the following matters in the Official Gazette and notify such matters individually to each of the known creditors (including the bond manager under Article 702 of the Companies Act (simply referred to as the "Bond Manager" in paragraph (8)), in the case that the Bond Manager exists); provided, however, that the period set forth in item (iv) may not be less than one month:
- (i) the fact that an Absorption-Type Merger will take place;
- (ii) the name and address of the Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger;
- (iii) matters specified by a Cabinet Office Ordinance as the matters concerning financial statements of a Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger; and
- (iv) the fact that creditors may make objections within a specified period.
- (3) Notwithstanding the provisions of the preceding paragraph, when a Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger gives the public notice prescribed in said paragraph not only in the Official Gazette but also by the Methods of Public Notice set forth in Article 939 (1)(ii) of the Companies Act (meaning the Methods of Public Notice under Article 2 (xxxiii) of said Act) or by means of Electronic Public Notice, in accordance with the provisions of the articles of incorporation prescribed in

Article 939 (1) of said Act, the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger shall not be required to give the individual notice prescribed in the preceding paragraph.

- (4) When a creditor does not make an objection within the period set forth in paragraph (2), item (iv), said creditor shall be deemed to have approved said Absorption-Type Merger.
- (5) When a creditor makes an objection within the period set forth in paragraph (2), item (iv), a Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger shall make payment or provide reasonable security to said creditor, or deposit reasonable property to a Trust Company, etc. for the purpose of making such creditors receive the payment; provided, however, that this shall not apply to cases where said Absorption-Type Merger is not likely to harm said creditor.
- (6) The provisions of Article 940, paragraph (1) (limited to the part pertaining to item (iii)) and paragraph (3) of the Companies Act shall apply mutatis mutandis to cases where a Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger gives the public notice set forth in paragraph (2) by means of Electronic Public Notice. In this case, any necessary technical replacement of terms shall be specified by a Cabinet Order.
- (7) In order for a bondholder to make an objection under the provisions of paragraph (1), such objection shall be raised by a resolution of a bondholders meeting. In this case, a court may extend the period for making objections on behalf of the bondholder, upon the filing of a petition by an interested person.
- (8) Notwithstanding the provisions of the preceding paragraph, a Bond Manager may make an objection on behalf of a bondholder; provided, however, that this shall not apply to cases where special provisions exist in the contract pertaining to entrustment under Article 702 of the Companies Act.
- (9) Article 868 (3), Article 870 (limited to the part pertaining to item (xi)), the main clause of Article 871, Article 872 (limited to the part pertaining to item (iv)), Article 875 and Article 876 of the Companies Act shall apply mutatis mutandis to the cases pertaining to the petition under paragraph (7).

(Keeping and Inspection, etc. of Documents, etc. Concerning Absorption-Type Merger, etc.)

Article 139-13 (1) A Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger shall prepare the documents or Electromagnetic Records containing or recording the matters relating to the rights and obligations of the Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger succeeded by the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger as a result of the Absorption-Type Merger and other

matters specified by a Cabinet Office Ordinance as the matters concerning an Absorption-Type Merger, without delay after the Effective Date.

- (2) A Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger shall, during the period of six months from the Effective Date, keep at its head office the documents or Electromagnetic Records set forth in the preceding paragraph.
- (3) A shareholder and creditor of a Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger may make the following requests to the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger at any time during its business hours; provided, however, that in order to make the request set forth in item (ii) or (iv), such person shall pay the cost determined by the Stock Company-Type Financial Instruments Exchange Surviving an Absorption-Type Merger:
  - (i) a request for inspection of the documents set forth in the preceding paragraph;
  - (ii) a request for delivery of the transcripts or extracts of the documents set forth in the preceding paragraph;
  - (iii) a request for inspection of the matters recorded in the Electromagnetic Records set forth in the preceding paragraph which are indicated by the methods specified by a Cabinet Office Ordinance; and
  - (iv) a request for provision of the matters recorded in the Electromagnetic Records set forth in the preceding paragraph by the electromagnetic method which is specified by a Cabinet Office Ordinance, or a request for delivery of the documents containing such matters.

(Keeping and Inspection, etc. of Documents, etc. Concerning Consolidation-Type Merger Agreement, etc.)

Article 139-14 (1) A Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger (limited to the Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger in the case of Consolidation-Type Merger between a Membership-Type Financial Instruments Exchange and a Stock Company-Type Financial Instruments Exchange; hereinafter the same shall apply in this Division) shall, during the period from two weeks prior to the day of the shareholders meeting set forth in the paragraph (1) of the following Article until the day of the establishment of the Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger, keep at its head office the documents or Electromagnetic Records containing or recording the contents of the Consolidation-Type Merger agreement and other matters specified by a Cabinet Office Ordinance.

- (2) A shareholder and creditor of a Stock Company-Type Financial Instruments

Exchange Extinguished upon a Consolidation-Type Merger may make the following requests to the Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger at any time during its business hours; provided, however, that in order to make the request set forth in item (ii) or (iv), such person shall pay the cost determined by the Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger:

- (i) a request for inspection of the documents set forth in the preceding paragraph;
- (ii) a request for delivery of the transcripts or extracts of the documents set forth in the preceding paragraph;
- (iii) a request for inspection of the matters recorded in the Electromagnetic Records set forth in the preceding paragraph which are indicated by the methods specified by a Cabinet Office Ordinance; and
- (iv) a request for provision of the matters recorded in the Electromagnetic Records set forth in the preceding paragraph by the electromagnetic method which is specified by a Cabinet Office Ordinance, or a request for delivery of the documents containing such matters.

(Approval of Consolidation-Type Merger Agreement)

Article 139-15 (1) A Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger shall obtain approval for the Consolidation-Type Merger agreement by a resolution of a shareholders meeting.

- (2) The resolution of the shareholders meeting set forth in the preceding paragraph shall be adopted by at least a two-thirds majority (in cases where a higher proportion is provided for in the articles of incorporation, such proportion) of voting rights of the shareholders present when shareholders holding a majority (if a proportion of one-third or more has been specified by the articles of incorporation, at least such proportion) of the voting rights of shareholders who are entitled to exercise voting rights at said shareholders meeting are present. In this case, the Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger shall not be precluded from prescribing in its articles of incorporation a requirement to obtain the consent of a certain number or more of shareholders or other requirements in addition to the requirement for such resolution.
- (3) Notwithstanding the provisions of the preceding paragraph, in cases where the Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger is a Public Company, if all or part of the shares of the Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger to be delivered to the shareholders of the Stock

Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger are shares with restriction on transfer, the resolution of a shareholders meeting set forth in paragraph (1) (excluding a shareholders meeting of a company with class shares) shall be the resolution in accordance with Article 309 (3) of the Companies Act.

(4) In cases where a Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger is a company with class shares, if all or part of shares of the Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger to be delivered to shareholders of the Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger are shares with restriction on transfer, the Consolidation-Type Merger shall not come into effect without a resolution of a class shareholders meeting consisting of class shareholders of the class of shares subject to the allotment of the shares with restriction on transfer (excluding the shares with restriction on transfer) (if there are two or more classes of shares pertaining to such class shareholders, the respective class shareholders meeting consisting of class shareholders categorized by each class of said two or more classes of shares); provided, however, that this shall not apply to cases where there are no shareholders who are entitled to exercise their voting rights at said class shareholders meeting.

(5) A resolution of a class shareholders meeting set forth in the preceding paragraph shall be adopted by a majority vote of at least a half (in cases where a higher proportion is provided for in the articles of incorporation, such proportion or more) of the number of shareholders entitled to exercise voting rights at said class shareholders meeting and with at least two-thirds (in cases where a higher proportion is provided for in the articles of incorporation, such proportion) of the voting rights of such shareholders.

(Notice to Shareholders, etc.)

Article 139-16 (1) A Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger shall notify its shareholders and registered pledgees of shares as well as holders of share options and registered pledgees of share options of the fact that a Consolidation-Type Merger will take place and the names or trade names and addresses of the other Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger and the Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger, within two weeks from the day of the resolution of the shareholders meeting set forth in paragraph (1) of the preceding Article.

(2) The notice set forth in the preceding paragraph may be substituted by a

public notice.

- (3) The provisions of Article 940, paragraph (1) (limited to the part pertaining to item (i)) and paragraph (3) of the Companies Act shall apply mutatis mutandis to cases where the Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger gives the public notice set forth in the preceding paragraph by means of Electronic Public Notice. In this case, any necessary technical replacement of terms shall be specified by a Cabinet Order.

(Request for Purchase of Share)

Article 139-17 (1) In the case of a Consolidation-Type Merger, the following shareholders may request the Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger to purchase their shares at a fair price:

- (i) a shareholder who has notified the Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger of his/her dissent from the Consolidation-Type Merger prior to a shareholders meeting (including a class shareholders meeting) for approving the Consolidation-Type Merger agreement and who has dissented from the Consolidation-Type Merger at said shareholders meeting (limited to those who are entitled to exercise their voting rights at said shareholders meeting); and
- (ii) a shareholder who is not entitled to exercise the voting rights at said shareholders meeting.

- (2) Article 806, paragraphs (5) to (7) inclusive, Article 807, Article 868 (1), Article 870 (limited to the part pertaining to item (iv)), the main clause of Article 871, Article 872 (limited to the part pertaining to item (iv)), the main clause of Article 873, Article 875 and Article 876 of the Companies Act shall apply mutatis mutandis to the request prescribed in the preceding paragraph. In this case, any necessary technical replacement of terms shall be specified by a Cabinet Order.

(Request for Purchase of Share Options)

Article 139-18 (1) In the case of a Consolidation-Type Merger, a holder of share options of the Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger may request the Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger to purchase their share options at a fair price.

- (2) Article 808, paragraphs (5) to (7) inclusive, Article 809, Article 868 (1), Article 870 (limited to the part pertaining to item (iv)), the main clause of Article 871, Article 872 (limited to the part pertaining to item (iv)), the main clause of

Article 873, Article 875 and Article 876 of the Companies Act shall apply mutatis mutandis to the request prescribed in the preceding paragraph. In this case, any necessary technical replacement of terms shall be specified by a Cabinet Order.

(Provisions Applied Mutatis Mutandis)

Article 139-19 Article 139-12 shall apply mutatis mutandis to a Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger.

(Special Provisions on Establishment of Stock Company-Type Financial Instruments Exchange)

Article 139-20 (1) The provisions of Part II, Chapter I (excluding Article 27 (excluding items (iv) and (v)), Article 29, Article 31, Article 39, Section 6 and Article 49) of the Companies Act shall not apply to the establishment of a Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger.

(2) The articles of incorporation of a Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger shall be prepared by the Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger.

(Keeping and Inspection, etc. of Documents, etc. Concerning Consolidation-Type Merger Agreement)

Article 139-21 (1) A Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger shall prepare the documents or Electromagnetic Records containing or recording the matters related to the rights and obligations of the Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger succeeded by the Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger as a result of the Consolidation-Type Merger and other matters specified by a Cabinet Office Ordinance as matters concerning a Consolidation-Type Merger, without delay after the day of its establishment.

(2) A Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger shall, during the period of six months from the day of its establishment, keep at its head office the documents or Electromagnetic Records set forth in the preceding paragraph.

(3) A shareholder and creditor of a Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger may make the following requests to the Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger at any time during its business

hours; provided, however, that in order to make the request set forth in item (ii) or (iv), such person shall pay the cost determined by the Stock Company-Type Financial Instruments Exchange Established by a Consolidation-Type Merger:

- (i) a request for inspection of the documents set forth in the preceding paragraph;
- (ii) a request for delivery of the transcripts or extracts of the documents set forth in the preceding paragraph;
- (iii) a request for inspection of the matters recorded in the Electromagnetic Records set forth in the preceding paragraph which are indicated by the methods specified by a Cabinet Office Ordinance; and
- (iv) a request for provision of the matters recorded in the Electromagnetic Records set forth in the preceding paragraph by the electromagnetic method which is specified by a Cabinet Office Ordinance, or a request for delivery of the documents containing such matters.

#### **Division 6 Effectuation, etc. of Merger**

(Authorization of Merger)

Article 140 (1) A merger where Financial Instruments Exchanges are all or part of the parties thereto (limited to a merger where the person surviving the merger or the person established by the merger is a Financial Instruments Exchange) shall not come into effect unless the authorization of the Prime Minister has been obtained.

(2) A person who intends to obtain the authorization under the preceding paragraph shall submit to the Prime Minister a written application for authorization of merger containing the following matters with regard to the Financial Instruments Exchange surviving the merger or the Financial Instruments Exchange established by the merger (hereinafter collectively referred to as the "Financial Instruments Exchange Resulting from a Merger" in this Division):

- (i) the name or trade name;
- (ii) the locations of the offices, head office, branch offices and any other business offices; and
- (iii) the names of Officers, and trade names or names of Member, etc.

(3) The documents or Electromagnetic Records containing or recording the contents of the merger agreement (limited to those specified by a Cabinet Office Ordinance; hereinafter the same shall apply in this paragraph), and the articles of incorporation, operational rules, brokerage contract rules and other documents or Electromagnetic Records specified by a Cabinet Office Ordinance with regard to the Financial Instruments Exchange Resulting from a Merger



shall be attached to the written application for authorization of merger under the preceding paragraph.

(Criteria for Authorization)

Article 141 (1) When an application for authorization under paragraph (2) of the preceding Article has been filed, the Prime Minister shall examine whether the application conforms to the criteria listed in the following:

- (i) the provisions of the articles of incorporation, operational rules and brokerage contract rules of the Financial Instruments Exchange Resulting from a Merger conform to laws and regulations, and are sufficient for achieving fair and smooth sales and purchase of Securities and Market Transactions of Derivatives on the Financial Instruments Exchange Market, as well as for the protection of investors;
- (ii) the Financial Instruments Exchange Resulting from a Merger has a personnel structure sufficient for appropriately operating the Financial Instruments Exchange Market;
- (iii) the Financial Instruments Exchange Resulting from a Merger will be organized as a Financial Instruments Exchange in such a manner that conforms to the provisions of this Act; and
- (iv) it is fully expected that the Financial Instruments Exchange Resulting from a Merger will smoothly and appropriately succeed to the business concerning sales and purchase of Securities and Market Transactions of Derivatives on the Financial Instruments Exchange Market established by the Financial Instruments Exchanges dissolved as a result of the merger.

(2) When the Prime Minister finds that the application conforms to the criteria under the preceding paragraph as a result of examination under said paragraph, he/she shall grant authorization on merger except for cases where the application falls under any of the following items:

- (i) if the Officers include any person who falls under any category of the persons in Article 29-4 (1)(ii)(a) to (g) inclusive of this Act or Article 331 (1)(iii) of the Companies Act; or
- (ii) if the written application for authorization of merger or the documents or Electromagnetic Records to be attached thereto include any false statement or record on important matters.

(Deemed License, etc.)

Article 142 (1) A Financial Instruments Exchange which has been established under the authorization pursuant to Article 140 (1) shall be deemed to have obtained the license under Article 80 (1) at the time of said establishment.

(2) A Financial Instruments Exchange Surviving an Absorption-Type Merger shall succeed to the rights and obligations of the Financial Instruments

Exchanges Extinguished upon an Absorption-Type Merger (including the rights and obligations which said Financial Instruments Exchanges Extinguished upon an Absorption-Type Merger have in relation to their businesses, under authorization or any other disposition given by government agencies) on the Effective Date.

- (3) Dissolution as a result of an Absorption-Type Merger of a Financial Instruments Exchange Extinguished upon an 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 Established by a Consolidation-Type Merger shall succeed to the rights and obligations of the Financial Instruments Exchanges Extinguished upon a Consolidation-Type Merger on the day of its establishment (including the rights and obligations which said Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger has in relation to its businesses, under authorization or any other disposition given by government agencies.).
- (5) In the cases prescribed in the provisions set forth in the following items, members of a Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger or Membership-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger, or shareholders of a Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger shall become the shareholders of the shares under the provisions set forth in the following items, in accordance with the matters set forth respectively in those items:
  - (i) Article 139 (ii)(a): matters listed in item (iii) of said Article; and
  - (ii) Article 139-2 (1)(vi): matters listed in item (vii) of said paragraph.
- (6) Share options of a Stock Company-Type Financial Instruments Exchange extinguished as a result of a merger shall be extinguished on the Effective Date.
- (7) The sales and purchase of Securities and Market Transactions of Derivatives closed on a Financial Instruments Exchange Market established by a Financial Instruments Exchange extinguished as a result of a merger of which settlements have not been completed shall be deemed to have been closed on the Financial Instruments Exchange Market established by the Financial Instruments Exchange Resulting from a Merger under the same conditions.
- (8) The provisions of each of the preceding paragraphs shall not apply to the cases listed in the following:
  - (i) in cases where the procedures under Article 101-4, as applied mutatis mutandis pursuant to Article 139-3 (5) or 139-4(4), or the procedures under Article 139-12 (including the cases where it is applied mutatis mutandis pursuant to Article 139-19) have not been completed; or

(ii) in cases where the Absorption-Type Merger has been suspended.

(Processing of any Fraction Less than One, etc.)

Article 143 (1) The provisions of Article 234, paragraphs (1) to (5) inclusive, Article 868 (1), Article 869, Article 871, Article 874 (limited to the part pertaining to item (iv)), Article 875 and Article 876 of the Companies Act shall apply mutatis mutandis to cases where there arises a fraction less than one unit of contribution or one share as a result of the merger under Article 136 (1). In this case, any necessary technical replacement of terms shall be specified by a Cabinet Order.

(2) The amounts that should be included in the capital reserve at the time of a merger and other matters necessary concerning the accounting at the time of a merger shall be specified by a Cabinet Office Ordinance.

(Submission of Share Certificates, etc.)

Article 144 (1) The provisions of Article 219, paragraph (1) (limited to the part pertaining to item (vi)), paragraph (2) and paragraph (3), Article 220 and Article 293, paragraph (1) (limited to the part pertaining to item (iii)) and paragraphs (2) to (4) inclusive of the Companies Act shall apply mutatis mutandis to a Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger. In this case, any necessary technical replacement of terms shall be specified by a Cabinet Order.

(2) The provisions of Article 940, paragraph (1) (limited to the part pertaining to item (i)) and paragraph (3) of the Companies Act shall apply mutatis mutandis to cases where a Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger gives the public notice by means of Electronic Public Notice, under Article 219 (1) or Article 293 (1) of said Act as applied mutatis mutandis pursuant to the preceding paragraph; and the provisions of Article 940, paragraph (1) (limited to the part pertaining to item (iii)) and paragraph (3) of said Act shall apply mutatis mutandis to cases where a Stock Company-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger gives public notice by means of Electronic Public Notice, under Article 220 (1) of said Act as applied mutatis mutandis pursuant to the preceding paragraph (including cases where it is applied mutatis mutandis pursuant to Article 293 (4) of said Act, as applied mutatis mutandis pursuant to the preceding paragraph). In this case, any necessary technical replacement of terms shall be specified by a Cabinet Order.

(Application Mutatis Mutandis of Commercial Registration Act)

Article 145 (1) The provisions of Article 79, Article 80 (excluding items (ii), (vi), (ix) and (x)), Article 81 (excluding items (iii), (vi), (ix) and (x)), Article 82 and

Article 83 of the Commercial Registration Act shall apply mutatis mutandis to the registration of a Membership-Type Financial Instruments Exchange upon a merger in the case set forth in Article 136 (2)(i). In this case, the term "trade name and the head office" in Article 79 of said Act shall be deemed to be replaced with "name and the principal office,"; the term "daily newspaper or Electronic Public Notice" in Article 80 (iii) and (viii), and Article 81 (viii) of said Act shall be deemed to be replaced with "daily newspaper,"; the term "amount of the stated capital" in Article 80 (iv) of said Act shall be deemed to be replaced with "total amount of contribution,"; the term "head office" in Articles 80(v) and 81(v) of said Act shall be deemed to be replaced with "office,"; the term "when a Company Absorbed in an Absorption-Type Merger is a membership company, the document proving the consent of all members (if special provisions exist in the articles of incorporation, the procedures under such provisions)" in Article 80 (vii) of said Act shall be deemed to be replaced with "minutes of a general meeting of members concerning a merger of a Membership-Type Financial Instruments Exchange implementing an Absorption-Type Merger,"; the term "stock company or limited liability company" in Article 80 (viii) and Article 81 (viii) of said Act shall be deemed to be replaced with "Membership-Type Financial Instruments Exchange,"; the term "the following documents" in said Article shall be deemed to be replaced with "the following documents and the documents proving the qualification of the person having the authority of representation,"; the term "when a company extinguished upon a Consolidation-Type Merger is a membership company, the document proving the consent of all members (if special provisions exist in the articles of incorporation, the procedures under such provisions)" in Article 81 (vii) shall be deemed to be replaced with "minutes of a general meeting of members concerning a merger of a Membership-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger,"; the term "the head office" in Article 82, paragraphs (2) to (4) inclusive and Article 83 of said Act shall be deemed to be replaced with "the principal office," and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

(2) The provisions of Article 79, Article 80 (excluding items (vi), (ix) and (x)) and Articles 81 to 83 inclusive of the Commercial Registration Act shall apply mutatis mutandis to the registration of the Membership-Type Financial Instruments Exchange and Stock Company-Type Financial Instruments Exchange upon a merger in the case set forth in Article 136 (2)(ii). In this case, the term "trade name and the head office" in Article 79 of said Act shall be deemed to be replaced with "the name or trade name, and the principal office or head office,"; the term "head office" in Article 80 (v) of said Act shall be deemed to be replaced with "office,"; the term "when a Company Absorbed in an Absorption-Type Merger is a membership company, the document proving the

consent of all members (if special provisions exist in the articles of incorporation, the procedures under such provisions)" in Article 80 (vii) shall be deemed to be replaced with "minutes of a general meeting of members concerning merger of a Membership-Type Financial Instruments Exchange Extinguished upon an Absorption-Type Merger,"; the term "daily newspaper or Electronic Public Notice" in Article 80 (viii) of said Act shall be deemed to be replaced with "daily newspaper,"; the term "stock company or limited liability company" in Article 80 (viii) of said Act shall be deemed to be replaced with "Membership-Type Financial Instruments Exchange,"; the term "head office" in Article 81 (v) of said Act shall be deemed to be replaced with "the office or head office,"; the term "when a company extinguished upon a Consolidation-Type Merger is a membership company, the documents proving the consent of all members (if special provisions exist in the articles of incorporation, the procedures under such provisions)" in Article 81 (vii) shall be deemed to be replaced with "minutes of a general meeting of members concerning a merger of a Membership-Type Financial Instruments Exchange Extinguished upon a Consolidation-Type Merger,"; the term "stock company or limited liability company" in Article 81 (viii) of said Act shall be deemed to be replaced with "Membership-Type Financial Instruments Exchange or Stock Company-Type Financial Instruments Exchange,"; and the term "the head office of the company extinguished upon Consolidation-Type Merger" in Article 83 (2) of said Act shall be deemed to be replaced with "the principal office and head office of the Financial Instruments Exchange Extinguished upon Consolidation-Type Merger,"; and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

(Action Seeking Invalidation of Merger)

Article 146 The provisions of Article 828, paragraph (1) (limited to the parts pertaining to item (vii) and item (viii)) and paragraph (2) (limited to the parts pertaining to item (vii) and item (viii)), Article 834 (limited to the parts pertaining to item (vii) and item (viii)), Article 835 (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 parts pertaining to item (ii) and item (iii)) and paragraph (4) of the Companies Act shall apply mutatis mutandis to an action seeking invalidation of merger under Article 136 (1); and the provisions of Article 868 (5), Article 870 (limited to the parts pertaining to item (xv)), the main clause of Article 871, Article 872 (limited to the part pertaining to item (iv)), the main clause of Article 873, Article 875 and Article 876 of said Act shall apply mutatis mutandis to filing of the motion under Article 843 (4) of said Act as applied mutatis mutandis pursuant to this Article. In this case, the term "Shareholders,

etc. or Members, etc." in Article 828 (2)(vii) of the Companies Act shall be deemed to be replaced with "Member, etc. (meaning members, presidents, directors, auditors or liquidators; hereinafter the same shall apply in this item); the term "Shareholders, etc., Members, etc." in said item shall be deemed to be replaced with "Member, etc., Shareholders, etc. (meaning shareholders, directors or liquidators (with regard to a company with auditors, meaning shareholders, directors, auditors or liquidators; and with regard to a company with Committees, meaning shareholders, directors, executive officers or liquidators)); the term "Shareholders, etc. or Members, etc." in Article 828 (2)(viii) shall be deemed to be replaced with "Member, etc. (meaning members, presidents, directors, auditors or liquidators; hereinafter the same shall apply in this item) or Shareholders, etc. (meaning shareholders, directors or liquidators (with regard to a company with auditors, meaning shareholders, directors, auditors or liquidators; and with regard to a company with Committees, shareholders, directors, executive officers or liquidators; hereinafter the same shall apply in this item); and the term "Shareholders, etc., Members, etc." in said item shall be deemed to be replaced with "Member, etc., Shareholders, etc."; and the term "the head office" in Article 937 (3) of said Act shall be deemed to be replaced with "the head office (with regard to a Membership-Type Financial Instruments Exchange, the principal office and secondary offices); and any other necessary technical replacement of terms shall be specified by a Cabinet Order.

(Application of Act on Prohibition of Private Monopolization and Maintenance of Fair Trade)

Article 147 (1) When a Membership-Type Financial Instruments Exchange and a Stock Company-Type Financial Instruments Exchange implement merger, the Membership-Type Financial Instruments Exchange shall be 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 said Act related to said Article shall be applied.

(2) When a Stock Company-Type Financial Instruments Exchange accepts assignment by a Membership-Type Financial Instruments Exchange of all or part of its business, the Membership-Type Financial Instruments Exchange shall be deemed to be a company, and Article 467 of the Companies Act and the provisions of said Act related to said Article, and Article 16 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade and the provisions of said Article related to said Act shall be applied.

## **Section 5 Supervision**

(Rescission of License)

Article 148 When a Financial Instruments Exchange is found to have already fallen under any of the categories specified in the items of Article 82 (2) at the time of receipt of the license, the Prime Minister may rescind its license.

(Authorization, etc. of Amendment of Articles of Incorporation, etc.)

Article 149 (1) When a Financial Instruments Exchange intends to amend its articles of incorporation, operational rules or brokerage contract rules, it shall obtain authorization from the Prime Minister.

(2) When there are any amendments of the matters listed in Article 81 (1)(ii) or (iii), a Financial Instruments Exchange shall notify to that effect to the Prime Minister without delay. The same shall apply to cases where rules of a Financial Instruments Exchange (excluding articles of incorporation, operational rules and brokerage contract rules, and business rules pertaining to Financial Instruments Obligation Assumption Service to be provided under the approval set forth in Article 156-19) have been prepared, amended or abolished.

(Dismissal of Officers)

Article 150 (1) When the Prime Minister discovers that a person has become an Officer of a Financial Instruments Exchange by wrongful means, or when an Officer of a Financial Instruments Exchange has violated laws and regulations, its articles of incorporation, or a disposition given by government agencies based on laws and regulations, he/she may order the Financial Instruments Exchange to dismiss the Officer.

(2) The provision of the preceding paragraph shall apply mutatis mutandis to self-regulation organizations' Officers and members of self-regulating committees.

(Order for Production of Report and Inspection)

Article 151 When the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may order a Financial Instruments Exchange, its Subsidiary Company, an Issuer of Securities listed in said Financial Instruments Exchange or a person who received entrustment of business from said Financial Instruments Exchange to submit reports or materials that will be helpful for understanding the business or property of said Financial Instruments Exchange or said Subsidiary Company, or have the officials inspect the status of the business or property, or the book and documents or other articles of said Financial Instruments Exchange, Subsidiary Company or the person who received entrustment of business from said Financial Instruments Exchange (with regard to said Subsidiary Company

or the person who received entrustment of business from said Financial Instruments Exchange, the inspection shall be limited to what is necessary to understand the business or property of said Financial Instruments Exchange).

(Disposition Rendered to a Financial Instruments Exchange for Purpose of Supervision)

Article 152 (1) When a Financial Instruments Exchange falls under any of the cases specified in the following items, if the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may render the dispositions specified in the respective items:

- (i) when the Financial Instruments Exchange violates laws and regulations, a disposition given by government agencies based on laws and regulations, or the articles of incorporation or any other rules; or, despite the fact that a Member, etc. or an Issuer of Securities listed in a Financial Instruments Exchange has violated laws and regulations, a disposition given by government agencies under laws and regulations, 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 committed an act contrary to the fair and equitable principles of transactions specified in the articles of incorporation or any other rules, the Financial Instruments Exchange has failed to exercise its powers vested under this Act, an order given under this Act, or its articles of incorporation or any other rules, or to take any other necessary measures, for having such persons observe the Laws and Regulations, etc. or the fair and equitable principles of transactions: Rescission of the license granted under Article 80 (1), issuance of an order of suspension of all or part of its business, specifying a period of suspension not exceeding one year, issuance of an order of change of its business or of prohibition of a part of its business, issuance of an order of dismissal of its Officers, or issuance of an order to take necessary measures specified in the articles of incorporation or any other rules; or
- (ii) when an act of the Financial Instruments Exchange, or the status of sales and purchase of Securities or Market Transactions of Derivatives conducted in the Financial Instruments Exchange Market established by the Financial Instruments Exchange, is found to be harmful for the public interest or protection of investors: Issuance of an order for suspension of all or part of sales and purchase of Securities or Market Transactions of Derivatives in the Financial Instruments Exchange Market, specifying a period of suspension not exceeding ten days, or, subject to a cabinet decision, issuance of an order for suspension of all or part of business, specifying a period of suspension not exceeding three months.



- (2) When the Prime Minister intends to issue an order of suspension of all or part of business, an order of change of business or of prohibition of a part of business, or an order to take necessary measures specified in the articles of incorporation or any other rules under item (i) of the preceding paragraph, he/she shall hold a hearing irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act.
- (3) No appeal under the Administrative Appeal Act may be entered against the dispositions taken under the provisions of item (ii), paragraph (1) of this Article.

(Order to Improve Business Operation)

Article 153 When the Prime Minister finds it necessary and appropriate with regard to a Financial Instruments Exchange's articles of incorporation, operational rules, brokerage contract rules or any other rules or trade practice, of a Financial Instruments Exchange or its business operation or the status of its property for the public interest or protection of investors, he/she may order the Financial Instruments Exchange to change its articles of incorporation, operational rules, brokerage contract rules or any other rules or trade practice, or to take other necessary measures for supervision, within the limit necessary. In this case, a hearing shall be held irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act.

(Rescission of Authorization)

Article 153-2 When self-regulating related services entrusted by a Financial Instruments Exchange with the authorization given under Article 85 (1) fall under any of the following items, the Prime Minister may rescind the authorization given to the Financial Instruments Exchange under Article 85 (1), order the Financial Instruments Exchange to change the method of entrustment or prohibit part or all of the entrustment, or order the Financial Instruments Exchange to take other measures necessary for supervision:

- (i) when it has been found that the entrustment contract is insufficient for ensuring appropriate implementation of self-regulation related services by the Entrusted Self-Regulation Organization; or
- (ii) in other cases where the self-regulation related services provided by the Entrusted Self-Regulation Organization are not found to be appropriate as the status of performance of self-regulation services.

(Change of Entrustment Contract, etc.)

Article 153-3 A Financial Instruments Exchange who has been granted the

authorization under Article 85 (1) shall, when there are any changes in the matters listed in Article 85-2 (1)(iii), notify to that effect to the Prime Minister without delay. The same shall apply to cases where there are any changes in the entrustment contract with the Entrusted Self-Regulation Organization.

(Application of Supervisory Provisions to Self-Regulation Organization)

Article 153-4 The provisions of Articles 148, 149 and 150(1), and Articles 151 to 153 inclusive shall apply mutatis mutandis to the supervision of a self-regulation organization which provides self-regulation related services to a Financial Instruments Exchange pursuant to the entrustment by the Financial Instruments Exchange under the authorization given under Article 85 (1). In this case, any necessary technical replacement of terms shall be specified by a Cabinet Order.

## **Section 6 Miscellaneous Provisions**

(Notice of Commencement of Bankruptcy Proceedings, etc.)

Article 154 With respect to a Financial Instruments Exchange, when a decision of commencement of bankruptcy proceedings or of conclusion of bankruptcy proceedings has been rendered or when a rescission of a decision of commencement of bankruptcy proceedings, or a decision of earlier termination of bankruptcy proceedings has become final and binding, a court clerk shall notify the Prime Minister to that effect.

(Delegation to a Cabinet Office Ordinance)

Article 154-2 The procedures and any other matters necessary for the implementation of the provisions of Articles 80 to the preceding Article inclusive shall be specified by a Cabinet Office Ordinance.

## **Chapter V-2 Foreign Financial Instruments Exchange**

### **Section 1 General Provisions**

(Authorization)

Article 155 (1) Notwithstanding the provisions of Article 29 and Article 80 (1), an operator of a Foreign Financial Instruments Market may, with an authorization from the Prime Minister, have the persons listed in the following items conduct sales and purchase of Securities and Foreign Market Derivatives Transactions on the Foreign Financial Instruments Market (with regard to the person listed in item (ii), limited to the transactions related to the Registered Financial Institution Business) by connecting its electronic data processing system to the input/output device used by the persons listed in the following

items (hereinafter referred to as the "Input/Output Device for Foreign Financial Instruments Exchange"):

- (i) a Financial Instruments Business Operator; and
- (ii) a Registered Financial Institution.

(2) The provision of Article 30-2 shall apply mutatis mutandis to the authorization under the preceding paragraph.

(Application for Authorization)

Article 155-2 (1) A person who intends to obtain the authorization under paragraph (1) of the preceding Article shall designate a Representative Person in Japan and submit a written application for authorization containing the following matters to the Prime Minister:

- (i) the trade name or name;
- (ii) the location of the head office or principle office;
- (iii) the location of the office in Japan, if any;
- (iv) the titles and names of the Officers;
- (v) the name and address in Japan of the representative person in Japan;
- (vi) the types and names of the Foreign Financial Instruments Market in which the Participants of Foreign Financial Instruments Exchange (meaning a person who conducts sales and purchase of Securities and Foreign Market Derivatives Transactions on a Foreign Financial Instruments Market, using the Input/Output Device for Foreign Financial Instruments Exchange (hereinafter referred to as the "Foreign Market Transactions"; the same shall apply hereinafter)) conduct Foreign Market Transactions;
- (vii) the trade names or names of Participants of Foreign Financial Instruments Exchange; and
- (viii) other matters specified by a Cabinet Office Ordinance.

(2) The following documents shall be attached to the written application for authorization set forth in the preceding paragraph:

- (i) articles of incorporation, as well as the operational rules and brokerage contract rules pertaining to Foreign Market Transactions (including those equivalent to the above; hereinafter collectively referred to as the "Operational Regulations" in this Chapter);
- (ii) documents that contain the matters specified by a Cabinet Office Ordinance as the contents and method of the business pertaining to Foreign Market Transactions; and
- (iii) other documents specified by a Cabinet Office Ordinance.

(Criteria for Authorization)

Article 155-3 (1) When an application for authorization under paragraph (1) of the preceding Article has been filed, the Prime Minister shall examine whether

the application conforms to the criteria listed in the following:

- (i) the Applicant for authorization has been granted the same type of license as prescribed in Article 80 (1) or a permission or other administrative dispositions similar to such license in the state where its head office or principle office is located;
  - (ii) the Applicant for authorization is able to take necessary measures for having Participants of Foreign Financial Instruments Exchange which have violated laws and regulations or dispositions given by a government agency based on laws and regulations (hereinafter referred to as the "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 achieving the fair and smooth Foreign Market Transactions conducted by a Participants of Foreign Financial Instruments Exchange and for the protection of investors.
- (2) When the Prime Minister finds that the application conforms to the criteria under the preceding paragraph as a result of examination under said paragraph, he/she shall grant an authorization except for cases where the application falls under any of the following items:
- (i) when the Applicant for authorization is a person for which the period specified by a Cabinet Order has not elapsed from the establishment of a Foreign Financial Instruments Market in which Participants of Foreign Financial Instruments Exchange conduct Foreign Market Transactions (excluding the cases falling under the cases specified by a Cabinet Order);
  - (ii) when the Applicant for authorization is a person who has been punished by a fine (including a punishment under laws and regulations of a foreign state equivalent to this) for violating the provision of this Act or laws and regulations of a foreign state equivalent to this Act, and for whom five years have not passed since the day when the execution of the punishment terminated or he/she became free from the execution of the punishment;
  - (iii) when the Applicant for authorization is a person who has had his/her authorization granted under Article 155 (1) rescinded under the provisions of Article 155-10 (1), has had his/her registration made under Article 29 or 33-2 rescinded under the provisions of Article 52 (1) or (4), Article 52-2 (1) or (3), Article 53 (3) or Article 54, has had his/her permission granted under Article 60 (1) rescinded under the provisions of Article 60-8 (1) or Article 60-9 (1), or had his/her registration made under Article 66 rescinded under the provisions of Article 66-20 (1), or a person who had obtained a registration or license (including permission or any other administrative dispositions similar to said registration or license) which is equivalent to either the

- registration under Article 29 or Article 66 or the license under Article 80 (1), Article 156-2 or Article 156-24 (1) in the state where its head office or principle office is located, and has had said registration or license rescinded and for whom five years have not passed since the date of the rescission;
- (iv) when any of the Officers or representative persons in Japan of an Applicant for authorization include any person who falls under any categories of the persons set forth in Article 82 (2)(iii)(a), (b), or (e);
- (v) in cases where there is no assurance under Article 189 (2)(i) made by the authority responsible for enforcement of the laws and regulations of the state where the head office or principal office of the Applicant for authorization is located which correspond to this Act, or any others found to be equivalent to such assurance; and
- (vi) in cases where the application for authorization or documents to be attached thereto includes any fake statement on important matters.

(Refusal, etc. of Authorization)

- Article 155-4 (1) The Prime Minister shall, when he/she has received an application for authorization under the provision of Article 155-2 (1) and finds it inappropriate to grant the authorization, notify to that effect to the Applicant for authorization and have the officials conduct a hearing.
- (2) The Prime Minister shall, when he/she has decided to grant or refuse to grant an authorization under the provision of Article 155 (1), notify to that effect in writing to the Applicant for authorization without delay.

(Submission of Business Report)

- Article 155-5 A Foreign Financial Instruments Exchange shall, pursuant to the provisions of a Cabinet Office Ordinance, prepare a business report on Foreign Market Transactions conducted for 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 expiration of said period.

## **Section 2 Supervision**

(Rescission of Authorization)

- Article 155-6 When a Foreign Financial Instruments Exchange is found to have already fallen under any of the categories specified in the items of Article 155-3 (2) at the time of receipt of the authorization under Article 155 (1), the Prime Minister may rescind its authorization.

(Notification of Change)

- Article 155-7 When there are any changes in the matters listed in any of the

items in Article 155-2 (1) or the contents or methods of business set forth in the documents listed in Article 155-2 (2)(ii) or any important changes in its Operational Regulations, or in other cases specified by a Cabinet Office Ordinance, a Foreign Financial Instruments Exchange shall notify to that effect to the Prime Minister within two weeks from the day of change.

(Loss of Authorization)

Article 155-8 (1) When a Foreign Financial Instruments Exchange falls under any of the cases specified in the following items, the authorization granted under Article 155 (1) shall cease to be effective:

- (i) when a Foreign Financial Instruments Exchange comes to have no Participants of Foreign Financial Instruments Exchange which conducts Foreign Market Transactions;
- (ii) when a Foreign Financial Instruments Exchange has closed all its Foreign Financial Instruments Markets in which to conduct Foreign Market Transactions; and
- (iii) when a Foreign Financial Instruments Exchange has been dissolved.

(2) When the authorization has ceased to be effective under the provisions of the preceding paragraph, the Representative Person in Japan or the former Representative Person in Japan of the Foreign Financial Instruments Exchange shall notify to that effect to the Prime Minister without delay.

(Order for Production of Report and Inspection)

Article 155-9 When the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may order a Foreign Financial Instruments Exchange, Participants of Foreign Financial Instruments Exchange or a person who accepted entrustment of business from said Foreign Financial Instruments Exchange to submit reports or materials that will be helpful for understanding the Foreign Market Transactions, or have the officials inspect the status of the business or documents or other articles of said Foreign Financial Instruments Exchange in relation to Foreign Market Transactions.

(Dispositions for the Purpose of Supervision of Foreign Financial Instruments Exchange)

Article 155-10 (1) When a Foreign Financial Instruments Exchange falls under any of the cases specified in the following items, if the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may rescind the authorization granted to said Foreign Financial Instruments Exchange under Article 155 (1), order suspension of all or part of Foreign Market Transactions specifying a period of suspension not exceeding

six months, or order change of business of Foreign Market Transactions or prohibit a part of business of Foreign Market Transactions:

- (i) when a Foreign Financial Instruments Exchange has become unable to satisfy the criteria listed in the items of Article 155-3 (1);
  - (ii) when a Foreign Financial Instruments Exchange has come to fall under Article 155-3 (2)(ii) to (v) inclusive;
  - (iii) when a Foreign Financial Instruments Exchange violates the conditions attached to the authorization;
  - (iv) when a Foreign Financial Instruments Exchange violates laws and regulations, etc. or the Operational Regulations, or, despite the fact that a Participants of Foreign Financial Instruments Exchange has violated laws and regulations, etc. or the Operational Regulations, the Foreign Financial Instruments Exchange has failed to exercise the powers vested to said Foreign Financial Instruments Exchange or to take any other necessary measures, for having said Participants of Foreign Financial Instruments Exchange observe the Laws and Regulations, etc. or the Operational Regulations; or
  - (v) when an act of a Foreign Financial Instruments Exchange or the status of Foreign Market Transactions conducted in the Foreign Financial Instruments Market established by the Foreign Financial Instruments Exchange is found to be harmful for the public interest or protection of investors.
- (2) When a Representative Person in Japan of a Foreign Financial Instruments Exchange (including Officers stationed in an office in Japan, if any; hereinafter the same shall apply in this paragraph) has violated Laws and Regulations, etc., the Prime Minister may order the Foreign Financial Instruments Exchange to dismiss the Representative Person in Japan.
- (3) When the Prime Minister intends to issue an order of suspension of all or part of Foreign Market Transactions, or an order of change of business or of prohibition of a part of business related to Foreign Market Transactions, under paragraph (1), he/she shall hold a hearing irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act.

### **Section 3 Miscellaneous Provision**

Article 156 The procedures and any other matters necessary for implementation of the provisions of Article 155 to the preceding Article inclusive shall be specified by a Cabinet Office Ordinance.

### **Chapter V-3 Financial Instruments Clearing Organization, etc.**

## Section 1 Financial Instruments Clearing Organization

(License)

Article 156-2 Financial Instruments Obligation Assumption Service shall be conducted only by persons who have obtained a license from the Prime Minister.

(Application for License)

Article 156-3 (1) A person who intends to obtain a license set forth in the preceding Article shall submit to the Prime Minister a written application for a license containing the following matters:

- (i) the trade name;
- (ii) the amount of the stated capital;
- (iii) the names and locations of the head office and other business offices;
- (iv) the names of directors and company auditors (directors and executive officers for a company with Committees);
- (v) names of accounting advisors for a company with accounting advisors; and
- (vi) where the person conducts business other than Financial Instruments Obligation Assumption Service, service set forth in Article 156-6 (1) (hereinafter referred to as the "Financial Instruments Obligation Assumption Service, etc.") and business incidental thereto, the contents of the business.

(2) The following documents shall be attached to the written application for a license:

- (i) a document to pledge that the person does not satisfy the requirements listed in paragraph (2)(ii) to (iv) of the following Article;
- (ii) the articles of incorporation;
- (iii) a certificate of registered matters of a company;
- (iv) the business rules;
- (v) the balance sheet and profit and loss statement;
- (vi) documents stating the expected income and expenditure; and
- (vii) in addition to what is listed in the preceding items, documents specified by a Cabinet Office Ordinance.

(3) In the case referred to in the preceding paragraph, an Electromagnetic Record (limited to those specified by a Cabinet Office Ordinance) may be attached in place of written documents if the articles of incorporation or a balance sheet are prepared in the form of an Electromagnetic Record or an Electromagnetic Record is prepared for a profit and loss statement in place of a written document.

(Criteria for License Examination)



Article 156-4 (1) The Prime Minister shall, when having received an application for a license under the provision of paragraph (1) of the preceding Article, 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 conduct Financial Instruments Obligation Assumption Service appropriately and certainly;
  - (ii) the Applicant has sufficient financial basis for soundly conducting Financial Instruments Obligation Assumption Service and the expected income and expenditure pertaining to Financial Instruments Obligation Assumption Service is favorable; and
  - (iii) in light of personnel structure, the Applicant has sufficient knowledge and experience for conducting Financial Instruments Obligation Assumption Service appropriately and certainly and has sufficient social credibility.
- (2) The Prime Minister shall, when he/she finds as a result of examination under the provisions of the preceding paragraph that the application conforms to the criteria set forth in said paragraph, grant a license except when the Applicant falls under any of the following items:
- (i) when the Applicant for a license is not a stock company (limited to those with the following organs):
    - (a) a board of directors; or
    - (b) company auditors or Committees.
  - (ii) when the Applicant for a license is a company which has been punished by a fine (including a punishment under laws and regulations of a foreign state equivalent to this) for violating the provision of this Act or laws and regulations of a foreign state equivalent to this Act, and for whom five years have not passed since the day when the execution of the punishment terminated or he/she became free from the execution of the punishment;
  - (iii) when the Applicant for a license is a company which has had its license rescinded under the provisions of Article 148, Article 152 (1), Article 156-17 (1) or (2), Article 148 as applied mutatis mutandis pursuant to Article 156-26 or Article 156-32 (1) or has had its registration rescinded under the provisions of Article 52 (1), Article 53 (3) or Article 66-20 (1), or a company which had obtained license or registration (including permission or other administrative dispositions similar to said license or registration) of the same kind in a foreign state under the provisions of laws and regulations of said foreign state equivalent to this Act and has had the license or registration rescinded, and for whom five years have not passed since the date of the rescission;
  - (iv) when the Applicant for a license is a company which has a person falling under any of (a), (b) and (e) of Article 82 (2)(iii) among its directors, accounting advisors, company auditors or executive officers; or

(v) when the written application for a license or documents or Electromagnetic Records to be attached to it contains a fake statement or false record on important matters.

(Refusal to Grant a License, etc.)

Article 156-5 (1) The Prime Minister shall, when he/she has received an application for a license under the provision of Article 156-3 (1) and finds it inappropriate to grant the license, notify to that effect to the Applicant for a license and have the officials conduct a hearing.

(2) The Prime Minister shall, when he/she has decided to grant or refuse to grant a license under the provision of Article 156-2, notify to that effect in writing to the Applicant for a license without delay.

(Restriction on Business)

Article 156-6 (1) A Financial Instruments Clearing Organization may conduct, pursuant to the provisions of its business rules, assumption of obligations arisen from a Subject Transaction (meaning Subject Transaction prescribed in Article 2 (28); hereinafter the same shall apply in this Chapter) conducted by a person other than Business Operators Covered by Financial Instruments Obligation Assumption Service (meaning Business Operators Covered by Financial Instruments Obligation Assumption Service prescribed in Article 2 (28); hereinafter the same shall apply in this paragraph) with a person other than Business Operators Covered by Financial Instruments Obligation Assumption Service as the other party, in the course of trade.

(2) A Financial Instruments Clearing Organization (excluding the cases where the Financial Instruments Clearing Organization is a Financial Instruments Exchange; hereinafter the same shall apply in this Article, Article 156-13, Article 156-14 and Article 156-17 (1)) may not conduct business other than Financial Instruments Obligation Assumption Service, etc. and business incidental thereto; provided, however, that this shall not apply to cases where the Financial Instruments Clearing Organization has obtained approval from the Prime Minister, pursuant to the provisions of a Cabinet Office Ordinance, with regard to business related to Financial Instruments Obligation Assumption Service which is found to have no risk of hindering said Financial Instruments Clearing Organization from conducting Financial Instruments Obligation Assumption Service appropriately and certainly.

(3) A Financial Instruments Clearing Organization shall, when having abolished business for which approval set forth in the proviso to the preceding paragraph has been obtained, notify to that effect to the Prime Minister pursuant to the provisions of a Cabinet Office Ordinance.

(Business Rules)

Article 156-7 (1) A Financial Instruments Clearing Organization shall conduct its business pursuant to the provisions of its business rules.

(2) The business rules shall specify the following matters:

(i) in the case of conducting the business set forth in paragraph (1) of the preceding Article, that effect;

(ii) transactions causing obligations subject to Financial Instruments Obligation Assumption Service (in the case of conducting the business set forth in paragraph (1) of the preceding Article, Financial Instruments Obligation Assumption Service, etc.; hereinafter the same shall apply in this paragraph and Article 156-10) and kind of Financial Instruments subject to said transaction;

(iii) matters concerning the requirements for a person who is the other party to Financial Instruments Obligation Assumption Service (hereinafter referred to as a "Clearing Participant");

(iv) matters concerning assumption of obligations conducted as Financial Instruments Obligation Assumption Service and performance thereof;

(v) matters concerning securing of performance of obligations of a Clearing Participant;

(vi) matters concerning Brokerage for Clearing of Securities, etc.; and

(vii) other matters specified by a Cabinet Office Ordinance.

(Obligation of Confidentiality)

Article 156-8 (1) An Officer (when an Officer is a juridical person, a person who should conduct its duties) or employee of a Financial Instruments Clearing Organization, or a person who was formerly in such position shall neither divulge nor misappropriate any secret which he/she has learned during the course of the business.

(2) An Officer (when an Officer is a juridical person, a person who should conduct its duties) or employee of a Financial Instruments Clearing Organization, or a person who was formerly in such position shall not utilize information which he/she has learned during the course of his/her duties for a purpose other than for the business of the Financial Instruments Clearing Organization.

(Prohibition of Unjust Discriminatory Treatment)

Article 156-9 A Financial Instruments Clearing Organization shall not give unjust discriminatory treatment to a particular Clearing Participant.

(Measures for Securing the Appropriate Provision of Financial Instruments Obligation Assumption Service)

Article 156-10 A Financial Instruments Clearing Organization shall stipulate in

its business rules that when a loss has been incurred due to Financial Instruments Obligation Assumption Service, a Clearing Participant shall bear all of said loss, and/or take other measures for securing the appropriate provision of Financial Instruments Obligation Assumption Service.

(Clearing Deposit)

Article 156-11 Where a Financial Instruments Clearing Organization stipulates, in its business rules, a Clearing Deposit (meaning money or other property(limited to those specified by a Cabinet Office Ordinance) deposited by a Clearing Participant for securing performance of obligations to a Financial Instruments Clearing Organization; hereinafter the same shall apply in this Article), when a Clearing Participant has caused damage to the Financial Instruments Clearing Organization due to its default, the Financial Instruments Clearing Organization which has incurred the damage shall have the right to receive payment from a Clearing Deposit, deposited by the Clearing Participant which caused the damage in preference over other creditors

(Procedures, etc. Taken at the Time of Commencement of the Special Liquidation Proceedings, etc.)

Article 156-11-2 (1) Where a Financial Instruments Clearing Organization stipulates, in its business rules, a method of deduction, a method of appropriating security and other methods of settlement with regard to Unsettled Obligations, etc. (meaning obligations arisen from a Subject Transaction conducted by a Clearing Participant which was assumed from the other party to said Subject Transaction as Financial Instruments Obligation Assumption Service, claims (limited to those having the same contents as said obligations) on said Clearing Participant which has been acquired as consideration for assuming obligations arisen from said Subject Transaction from said Clearing Participant, and security; hereinafter the same shall apply in this paragraph), when special liquidation proceedings, bankruptcy proceedings, rehabilitation proceedings or reorganization proceedings has been commenced for a Clearing Participant, in relation to these proceedings, calculation of the amount of claims which the Financial Instruments Clearing Organization or said Clearing Participant has with regard to the Unsettled Obligations, etc. and other methods of settlement shall be in accordance with the provision of said business rules.

(2) In bankruptcy proceedings, rehabilitation proceedings or reorganization proceedings, the claims prescribed in the preceding paragraph which a Financial Instruments Clearing Organization has shall be bankruptcy claims, rehabilitation claims, or reorganization claims, and the claims prescribed in

said paragraph which a Clearing Participant has shall be the property that belongs to 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 of Amendment of the Articles of Incorporation or Business Rules)

Article 156-12 When a Financial Instruments Clearing Organization intends to amend the articles of incorporation or business rules, it shall obtain authorization from the Prime Minister.

(Notification of Change of Amount of the Stated Capital, etc.)

Article 156-13 When there is a change in any of the matters listed in items (ii) to (v) of Article 156-3 (1), a Financial Instruments Clearing Organization shall notify to that effect to the Prime Minister, pursuant to the provisions of a Cabinet Office Ordinance, with a document specified in paragraph (2)(i) or (iii) of said Article.

(Causes for Disqualification of an Officer, etc.)

Article 156-14 (1) A person falling under any of (a), (b) and (e) of Article 82 (2)(iii) may not become a director, accounting advisor, company auditor or executive officer of a Financial Instruments Clearing Organization.

(2) When a director, accounting advisor, company auditor or executive officer of a Financial Instruments Clearing Organization comes to fall under a person prescribed in the preceding paragraph, he/she shall lose his/her position.

(3) When a director, accounting advisor, company auditor or executive officer of a Financial Instruments Clearing Organization has been found to have become a director, accounting advisor, company auditor or executive officer by way of wrongful means or when a director, accounting advisor, company auditor or executive officer of a Financial Instruments Clearing Organization has violated laws and regulations or a disposition by government agencies based on laws and regulations, the Prime Minister may order said Financial Instruments Clearing Organization to dismiss said director, accounting advisor, company auditor or executive officer.

(4) The provision of the proviso to Article 331 (2) (including the cases where it is applied mutatis mutandis under Article 335 (1) of the Companies Act), Article 332 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 334 (1) of said Act), Article 336 (2) and the proviso to Article 402 (5) of said Act shall not apply to Financial Instruments Clearing Organizations.

(Order for Production of Report and On-Site Inspection)

Article 156-15 When the Prime Minister finds it necessary for appropriate and certain provision of Financial Instruments Obligation Assumption Service, he/she may order a Financial Instruments Clearing Organization or a person who has been entrusted with business from said Financial Instruments Clearing Organization to submit reports or materials concerning the business or property of said Financial Instruments Clearing Organization, or have the officials enter the business office or office of a Financial Instruments Clearing Organization or a person who has been entrusted with business from said Financial Instruments Clearing Organization to inspect the status of the business or property, or the books and documents or other articles of said Financial Instruments Clearing Organization or the person who has been entrusted with business from said Financial Instruments Clearing Organization (with regard to the person who has been entrusted with business from said Financial Instruments Clearing Organization, the inspection shall be limited to what is necessary to understand the status of the business entrusted from, or the property of, said Financial Instruments Clearing Organization) or question the person concerned (with regard to the person concerned for the person who has been entrusted with business from said Financial Instruments Clearing Organization, the questioning shall be limited to what is necessary to understand the status of the business entrusted from, or the property of, said Financial Instruments Clearing Organization).

(Order to Improve Business Operation)

Article 156-16 When the Prime Minister finds it necessary for appropriate and certain provision of Financial Instruments Obligation Assumption Service, he/she may order a Financial Instruments Clearing Organization to take necessary measures for improving its business operation or the status of its property, within the limit necessary.

(Rescission of License, etc.)

Article 156-17 (1) When a Financial Instruments Clearing Organization has been found to have fallen under any of the items of Article 156-4 (2) at the time of obtaining a license, the Prime Minister may rescind the license.

(2) When a Financial Instruments Clearing Organization has violated laws and regulations or a disposition by government agencies based on laws and regulations, the Prime Minister may rescind the license set forth in Article 156-2 or the approval set forth in the proviso to Article 156-6 (2) or Article 156-19, or order suspension of all or part of its business by specifying a period not exceeding six months or dismissal of its Officers.

(Authorization of Dissolution, etc.)

Article 156-18 A resolution of abolition or dissolution of Financial Instruments Obligation Assumption Service of a Financial Instruments Clearing Organization shall not come into effect without authorization from the Prime Minister.

(Financial Instruments Obligation Assumption Service by a Financial Instruments Exchange)

Article 156-19 Notwithstanding the provision of Articles 87-2 and 156-2, a Financial Instruments Exchange may, pursuant to the provisions of a Cabinet Office Ordinance, conduct Financial Instruments Obligation Assumption Service, etc. and business incidental thereto with the approval from the Prime Minister.

(Rescission of Approval for Financial Instruments Obligation Assumption Service of a Financial Instruments Exchange)

Article 156-20 When a Financial Instruments Exchange that has obtained the approval set forth in the preceding Article falls under any of the following items, the Prime Minister may rescind the approval:

- (i) where the Financial Instruments Exchange has obtained the approval set forth in the preceding Article by way of wrongful means;
- (ii) where the license set forth in Article 80 (1) has been rescinded; or
- (iii) where the Financial Instruments Exchange falls under any of the items of Article 134 (1).

## **Section 2 Miscellaneous Provisions**

(Application to Brokerage for Clearing of Securities, etc.)

Article 156-21 (1) The provisions of Article 116 (including the cases where it is applied mutatis mutandis pursuant to Article 132) and Article 119 (1) to (3) shall apply to Brokerage for Clearing of Securities, etc. by deeming a customer who has entrusted the Brokerage for Clearing of Securities, etc. to be a person who conducts a Subject Transaction pertaining to said Brokerage for Clearing of Securities, etc.

(2) The provisions of Article 119 (1) to (3) shall apply to broking for entrustment of Brokerage for Clearing of Securities, etc. pertaining to Market Transactions of Derivatives by deeming a customer who has entrusted the Brokerage for Clearing of Securities, etc. to be a person who conducts broking for said Market Transactions of Derivatives.

(Delegation to a Cabinet Office Ordinance)

Article 156-22 Procedures for enforcing the provisions of Articles 156-2 to the

preceding Article and other necessary matters shall be specified by a Cabinet Office Ordinance.

#### **Chapter V-4 Securities Finance Company**

(Minimum Amount of the Stated Capital)

Article 156-23 A Securities Finance Company shall be a stock company whose amount of the stated capital exceeds the amount specified by a Cabinet Order as necessary and appropriate for execution of the business prescribed in paragraph (1) of the immediately following Article.

(License and Application of License)

Article 156-24 (1) A person who intends to engage in the business of lending money or Securities as necessary for settlement of sales and purchase or other transactions of Securities conducted by a Financial Instruments Business Operator with credit granting to customers (hereinafter referred to as a "Margin Transaction") or other transactions specified by a Cabinet Order to a Member, etc. of a Financial Instruments Exchange or a Member Firm of an Authorized Financial Instruments Firms Association, by utilizing clearing systems of a Financial Instruments Exchange Market established by said Financial Instruments Exchange or clearing systems of the Over-the-Counter Securities Market established by said Authorized Financial Instruments Firms Association shall obtain a license from the Prime Minister.

(2) A stock company which intends to obtain a license under the preceding paragraph shall submit an application containing the following matters to the Prime Minister:

(i) the trade name and the amount of the stated capital;

(ii) the names and addresses of the head office, branch office and other business offices; and

(iii) the names of the Officers.

(3) The articles of incorporation, documents stating the contents and methods of business, and other documents specified by a Cabinet Office Ordinance shall be attached to the application set forth in the immediately preceding paragraph.

(4) The provision of Article 81 (3) shall apply mutatis mutandis to the articles of incorporation set forth in the preceding paragraph.

(Criteria for Examination for License)

Article 156-25 (1) When an application under the provision of paragraph (2) of the preceding Article has been filed, the Prime Minister shall examine whether the applicant has eligibility sufficient for conducting the business of a Securities Finance Company in light of its personnel structure, credit status



and capacity for fund procurement.

- (2) When the Prime Minister finds that the application conforms to the criteria under the preceding paragraph as a result of examination under said paragraph, he/she shall grant license, except for the cases where the application falls under any of the following items:
- (i) when the applicant for license is not a stock company with an amount of the stated capital exceeding the amount specified by a Cabinet Order as set forth in Article 156-23;
  - (ii) when the applicant for license is not a stock company (limited to a stock company which has following organs):
    - (a) a board of directors; or
    - (b) a company auditor or a committee.
  - (iii) when the applicant for license is a person who falls under Article 29-4 (1)(i)(b);
  - (iv) when the applicant for a license is a company which has had its license under Article 80 (1) rescinded under the provision of Article 148 or Article 152 (1), has had its license under Article 156-2 rescinded under the provisions of Article 156-17 (1) or (2), has had its license under paragraph (1) of the preceding Article rescinded under the provisions of Article 148 or 156-32(1) as applied mutatis mutandis pursuant to the following Article, has had its registration under Article 29 rescinded under the provision of Article 52 (1), Article 53 (3) or Article 54, has had its registration under Article 66 rescinded under the provision of Article 66-20 (1), or a company which had obtained license or registration (including permission or other administrative dispositions similar to said license or registration) of the same kind in a foreign state under the provision of laws and regulations of said foreign state equivalent to this Act and has had the license or registration rescinded, and for whom five years have not passed since the date of the rescission;
  - (v) when the applicant for a license is a company which has a person falling under any of (a), (b) and (e) of Article 82 (2)(iii) among its directors, accounting advisors, company auditors or executive officers; or
  - (vi) when the application for a license or documents or electromagnetic records to be attached thereto contains a fake statement or false record on important matters.

(Application, Mutatis Mutandis of Provision for Refusal of License, etc.)

Article 156-26 The provisions of Article 83 and Article 148 shall apply mutatis mutandis to license of a Securities Finance Company. In this case, "any of the categories specified in the items of Article 82 (2)" in Article 148 shall be deemed to be replaced with "any of the categories specified in the items of Article 156-25 (2)."

(Restriction on Subsidiary Business)

Article 156-27 (1) A Securities Finance Company may conduct the following businesses in addition to the businesses prescribed in Article 156-24 (1), to the extent that such additional businesses do not obstruct implementation of businesses prescribed in the same paragraph:

- (i) leasing of Securities (excluding the businesses prescribed in Article 156-24 (1)), or intermediary or agency service for leasing Securities;
- (ii) money loan to Financial Instruments Business Operators (excluding the businesses prescribed in Article 156-24 (1));
- (iii) money loan to customers of Financial Instruments Business Operators;
- and
- (iv) other businesses specified by a Cabinet Office Ordinance.

(2) When a Securities Finance Company intends to conduct the business prescribed in each item of the preceding paragraph, it shall notify to that effect to the Prime Minister, pursuant to the provisions of a Cabinet Office Ordinance.

(3) A Securities Finance Company may conduct the businesses approved by the Prime Minister, in addition to the businesses prescribed in paragraph (1) of this Article and Article 156-24 (1).

(4) When a Securities Finance Company intends to obtain the approval under the preceding paragraph, if the Prime Minister finds that execution by said Securities Finance Company of the subsidiary business for which it intends to obtain approval would be harmful for execution of the business set forth in Article 156-24 (1), he/she may, after having the official conduct a hearing upon notifying said Securities Finance Company, refuse to grant the approval under the preceding paragraph.

(Authorization, etc. of Changes of Contents of Business, etc.)

Article 156-28 (1) When a Securities Finance Company intends to make changes in the contents or methods of its business prescribed in Article 156-24 (1), or to reduce the amount of its stated capital, it shall obtain an authorization from the Prime Minister.

(2) When a Securities Finance Company intends to determine or change the conditions for lending money or Securities (limited to those pertaining to the businesses prescribed in Article 156-24 (1)), to increase the amount of its stated capital or to make changes in the trade name, it shall notify to that effect to the Prime Minister, pursuant to the provisions of a Cabinet Office Ordinance.

(3) When a Securities Finance Company comes to fall under any of the following items, it shall notify to that effect to the Prime Minister without delay, pursuant to the provisions of a Cabinet Office Ordinance:

- (i) when there is any change in the matters listed in Article 156-24 (2)(ii) or (iii);
- (ii) when the businesses pertaining to the notification under paragraph (2) of the preceding Article have been abolished; or
- (iii) when the businesses pertaining to the approval under paragraph (3) of the preceding Article have been abolished.

(Order for Changes, etc. of Methods of Business, etc.)

Article 156-29 The Prime Minister may issue an order to change the methods or conditions under which a Securities Finance Company lends money or Securities (limited to those pertaining to the business prescribed in Article 156-24 (1)), when it is deemed that said methods or conditions have become inappropriate in light of general economic conditions, or when there is an unsound tendency of transactions in a Financial Instruments Exchange Market or the Over-the-Counter Securities Market, and if he/she finds it especially necessary for facilitating fair sales and purchase in a Financial Instruments Exchange Market or an Over-the-Counter Securities Market as well as for achieving smooth distribution of Securities. In this case, a hearing shall be held irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act.

(Eligibility, etc. of Representative Director and Others)

Article 156-30 (1) A representative director or a representative executive officer of a Securities Finance Company shall be persons other than Officers and employees of a Financial Instruments Business Operator.

(2) The proviso to Article 331 (2) of the Companies Act (including the cases where it is applied mutatis mutandis pursuant to Article 335 (1) of said Act), and the provisions of Article 332 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 334 (1) of said Act), Article 336 (2) and the proviso to Article 402 (5) of the same Act shall not apply to a Securities Finance Company.

(Restriction on Concurrent Holding of Positions, etc. by Directors, etc.)

Article 156-31 (1) A person who falls under any of the categories prescribed in items (iii) (a), (b) or (e) of Article 82 (2) may not become a director, an accounting advisor, a company auditor or an executive officer of a Securities Finance Company.

(2) When the Officer of a Securities Finance Company comes to fall under any of the categories of person prescribed in the preceding paragraph, he/she shall lose the position.

(3) When the Prime Minister discovers that a person has become an Officer of a

Securities Finance Company by wrongful means, or when a Securities Finance Company or its officers has violated laws and regulations or a disposition given by government agencies under laws and regulations, he/she may order the Securities Finance Company to dismiss said officer.

(Supervisory Dispositions, etc.)

Article 156-32 (1) When a Securities Finance Company has violated laws and regulations or the dispositions given by government agencies under laws and regulations, the Prime Minister may rescind its license, or order suspension of all or part of its business by specifying a period not exceeding six months.

(2) When the Prime Minister intends to order suspension of business pursuant to the provision of the preceding paragraph, he/she shall hold a hearing, irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act.

(Order to Improve Business Operation etc.)

Article 156-33 (1) In addition to the order to be issued under Article 156-29, when the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, with regard to a Securities Finance Company's business operation or the status of its property, he/she may order said Securities Finance Company to change the contents or methods of its business or to take other necessary measures for improving its business operation or the status of its property, within the limit necessary.

(2) When the Prime Minister intends to issue an order under the provision of the preceding paragraph, he/she shall hold a hearing, irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act.

(Order for Production of Report and Inspection)

Article 156-34 When the Prime Minister finds it necessary and appropriate for the public interest or protection of investors, he/she may order a Securities Finance Company or a person who received entrustment of business from said Securities Finance Company to submit reports or materials that will be helpful for understanding the business or property of said Securities Finance Company, or have the officials inspect the status of the business or property, or the books and documents or other articles of said Securities Finance Company or the person who received entrustment of business from said Securities Finance Company (with regard to the person who received entrustment of business from said Securities Finance Company, the inspection shall be limited to what is necessary to understand the business or property of said Securities Finance Company).

(Submission of Business Report)

Article 156-35 A Securities Finance Company shall, pursuant to the provisions of a Cabinet Office Ordinance, prepare a business report for each business year, and submit the same to the Prime Minister within three months after the end of each business year.

(Authorization for Discontinuance of Business, etc.)

Article 156-36 The following matters shall not become effective unless an authorization from the Prime Minister has been obtained:

- (i) a resolution to abolish business of a Securities Finance Company (limited to the business prescribed in Article 156-24 (1)), or resolution to dissolve a Securities Finance Company; and
- (ii) a merger, company split, or transfer or acceptance of all or part of business, of which a Securities Finance Company is the party thereto.

(Delegation to Cabinet Office Ordinance)

Article 156-37 The procedures and other necessary matters for implementing the provisions of Article 156-23 to the preceding Article inclusive shall be specified by a Cabinet Office Ordinance.

## **Chapter VI Regulations on Transactions, etc. of Securities**

(Prohibition of Wrongful Acts)

Article 157 No person shall conduct the following acts:

- (i) to use wrongful means, schemes or techniques with regard to Sales and Purchase or Other Transactions of Securities or Derivative Transactions, etc.;
- (ii) to acquire money or other property, using a document or other indication which contains false indication on important matters, or lacks indication about important matters necessary for avoiding misunderstanding, with regard to Sales and Purchase or Other Transactions of Securities or Derivative Transactions, etc.; or
- (iii) to use false quotations in order to induce Sales and Purchase or Other Transactions of Securities or Derivative Transactions, etc.

(Prohibition of Spreading Rumor, Using Fraudulent Means, Committing Assault or Intimidation)

Article 158 No person shall spread rumor, use fraudulent means, or commit assault or intimidation for the purpose of carrying out a Public Offering, Secondary Distribution, Sales and Purchase or Other Transaction of Securities

or Derivative Transactions, etc. or causing a fluctuation of quotations on Securities, etc. (meaning Securities, Options, or Financial Instruments (excluding Securities) or Financial Indicator pertaining to derivatives; the same shall apply in Articles 168(1), 173(1) and 197(2)).

(Prohibition of Market Manipulation, etc.)

Article 159 (1) No person shall commit the following acts for the purpose of misleading other persons into believing sales and purchase of Securities (limited to sales and purchase of Securities listed in a Financial Instruments Exchange, Over-the-Counter Traded Securities or Tradable Securities; hereinafter the same shall apply in this Article), Market Transactions of Derivatives or Over-the-Counter Transactions of Derivatives (limited to those pertaining to Financial Instruments listed in a Financial Instruments Exchange, Over-the-Counter Traded Securities or Tradable Securities (including Financial Indicators calculated based on prices or interest rates thereof) or Financial Indicators listed in a Financial Instruments Exchange; hereinafter the same shall apply in this Article) are thriving or otherwise misleading other persons about state of these transactions:

- (i) to conduct fake sales and purchase of Securities, fake Market Transactions of Derivatives (limited to those specified in Article 2 (21)(i)) or fake Over-the-Counter Transactions of Derivatives (limited to those specified in Article 2 (22)(i)) without purpose of transfer of right;
- (ii) to conduct fake Market Transactions of Derivatives (limited to those specified in Article 2 (21)(ii), (iv) and (v)) or fake Over-the-Counter Transactions of Derivatives (limited to those specified in Article 2 (22)(ii), (v) and (vi)) without the purpose of paying or receiving money;
- (iii) to conduct fake Market Transactions of Derivatives (limited to those specified in Article 2 (21)(iii)) or fake Over-the-Counter Transactions of Derivatives (limited to those specified in Article 2 (22)(iii) and (iv)) without the purpose of granting or acquiring of Options;
- (iv) to sell Financial Instruments (limited to sales conducted through transaction specified in Article 2 (21)(i) or 2(22)(i) in the case of Financial Instruments other than Securities) based on collusion made in advance with another party in which the other party promises to purchase the Financial Instruments at the same price and around the same time the seller sells them (limited to purchase conducted through transaction specified in Article 2 (21)(i) or 2(22)(i) in the case of Financial Instruments other than Securities);
- (v) to purchase Financial Instruments (limited to purchase conducted through transaction specified in Article 2 (21)(i) or 2(22)(i) in the case of Financial Instruments other than Securities) based on collusion made in advance with

- another party in which the other party promises to sell the Financial Instruments at the same price and around the same time as the purchaser purchases them (limited to sales conducted through transaction specified in Article 2 (21)(i) or 2(22)(i) in the case of Financial Instruments other than Securities);
- (vi) to make an offer for Market Transactions of Derivatives (limited to those specified in Article 2 (21)(ii)) or Over-the-Counter Transactions of Derivatives (limited to those specified in Article 2 (22)(ii)) based on collusion made in advance with another party in which the other party promises to accept the offer around the same time as the offer is made and at the same Agreed Figure as offered in the offered transaction;
  - (vii) to make an offer for Market Transactions of Derivatives (limited to those specified in Article 2 (21)(iii)) or Over-the-Counter Transactions of Derivatives (limited to those specified in Article 2 (22)(iii) and (iv)) based on collusion made in advance with another party in which the other party promises to accept the offer around the same time as the offer is made and at the same amount of consideration as offered for the offered transaction;
  - (viii) to make an offer for Market Transactions of Derivatives (limited to those specified in Article 2 (21)(iv) and (v)) or Over-the-Counter Transactions of Derivatives (limited to those specified in Article 2 (22)(v) and (vi)) based on collusion made in advance with another party in which the other party promises to accept the offer around the same time as the offer is made and at the same conditions as set in the offered transaction; or
  - (ix) to making Entrustment, etc. or Accepting an Entrustment, etc. of acts listed in the preceding items.
- (2) No person shall commit any of the following acts for the purpose of inducing sales and purchase of Securities, Market Transactions of Derivatives or Over-the-Counter Transactions of Derivatives (hereinafter referred to "Sales and Purchase of Securities, etc." in this Article):
- (i) to conduct a series of Sales and Purchase of Securities, etc. or make an offer, Entrustment, etc. or Accepting an Entrustment, etc. therefor that would mislead other persons into believing that Sales and Purchase of Securities, etc. are thriving or would cause fluctuations in prices of Listed Financial Instruments, etc. (meaning Financial Instruments, Financial Indicators or Options listed in Financial Instruments Exchange Market; hereinafter the same shall apply in this Article) in a Financial Instruments Exchange Market or prices of Over-the-Counter Traded Securities in an Over-the-Counter Securities Market;
  - (ii) to spread a rumor to the effect that prices of Listed Financial Instruments, etc. in a Financial Instruments Exchange Market or prices of Over-the-Counter Traded Securities in an Over-the-Counter Securities Market would

fluctuate by his/her own or other party's market manipulation: or  
(iii) to intentionally make a false indication or an indication that would  
mislead other parties with regard to important matters when making Sales  
and Purchase of Securities, etc.

(3) No person shall conduct a series of Sales and Purchase of Securities, etc. or  
make offer, Entrustment, etc. or Accepting an Entrustment, etc. therefor in  
violation of a Cabinet Order for the purpose of pegging, fixing or stabilizing  
prices of Listed Financial Instruments, etc. in a Financial Instruments  
Exchange Market or prices of Over-the-Counter Traded Securities in an Over-  
the-Counter Securities Market.

(Liability for Damages by Market Manipulation, etc.)

Article 160 (1) A person who has violated the provisions of the preceding Article  
shall be liable for the damages suffered by any person who conducted, or  
entrusted another person with, sales and purchase of the Securities in a  
Financial Instruments Exchange Market, Market Transactions of Derivatives,  
sales and purchase of Securities in an Over-the-Counter Securities Market or  
sales and purchase of Tradable Securities (hereinafter referred to "Sales and  
Purchase of Securities, etc. in a Financial Instruments Exchange Market, etc."  
in this paragraph) for the Financial Instruments, Financial Indicators or  
Options whose prices, Agreed Figures or amounts of compensations were  
formed by said violation, at the so-formed prices, Agreed Figures or amounts of  
compensations, from the Sales and Purchase of Securities, etc. in a Financial  
Instruments Exchange Market, etc. or the entrustment thereof.

(2) The right to claim damages under the preceding paragraph shall be  
extinguished by prescription when such right is not exercised within one year  
from the time the person who is entitled to claim damages learns that an act in  
violation of the provisions of the preceding Article has been committed or  
within three years from the performance of such act.

(Restriction on Transactions Conducted by Financial Instruments Business  
Operators for Their Own Account)

Article 161 (1) The Prime Minister may specify the matters in a Cabinet Office  
Ordinance, which are found to be necessary and appropriate to secure the  
public interest or protection of investors, in order to restrict sales and purchase  
of the Securities to be conducted by a Financial Instruments Business Operator,  
etc. or Authorized Transaction-at-Exchange Operator for its own account, or  
restrict excessive volumes of sales and purchases to be conducted by a  
Financial Instruments Business Operator, etc. or Authorized Transaction-at-  
Exchange Operator if such sales and purchase are found to disturb the order of  
a Financial Instruments Exchange Market or an 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.

(Deposit of Money for Margin Transaction)

Article 161-2 (1) When making a margin transaction or other transaction specified by a Cabinet Office Ordinance, a Financial Instruments Business Operator shall, pursuant to the provisions of a Cabinet Office Ordinance, receive from customers a deposit of an amount of money not less than the amount calculated by multiplying the market value of the Securities for which the transaction is to be made by the rate decided by the Prime Minister, while giving due consideration for securing fairness in sales and purchase or other transactions of Securities.

- (2) Securities may, pursuant to the provisions of a Cabinet Office Ordinance, be deposited instead of the amount of money required under the preceding paragraph.

(Prohibition of Short Selling and Stop Order)

Article 162 (1) No person shall conduct the following acts in violation of a Cabinet Order:

- (i) to sell Securities despite not having the Securities by him/herself or by borrowing the Securities (including cases specified by a Cabinet Order as being equivalent thereto), or to make Entrustment, etc. or Accepting an Entrustment, etc., for such sales of Securities; or
- (ii) to make Entrustment, etc. in which the entrusted person is entrusted to, as soon as their price rises from that at the time of the entrustment and reaches the limit given in the entrustment or higher, purchase the Securities, or to, as soon as their price falls from that at the time of the entrustment and reaches the limit given in the entrustment or lower, sell the Securities.
- (2) The provision of item (ii) of the preceding paragraph shall apply mutatis mutandis to transactions specified in Article 2 (21)(ii) or (iii). In this case, with regard to the transaction defined in Article 2 (21)(ii), the terms "their price," "rises," "purchase the Securities" "falls" and "sell the Securities" in item (ii) of the preceding paragraph shall be deemed to be replaced with "Agreed Figure," "goes up," "make a transaction promising that the entrusting person would receive money if the Actual Figure exceeds the Agreed Figure," "goes down" and "make a transaction promising that the entrusting person would receive money if the Actual Figure falls below the Agreed Figure," respectively, and with regard to the transaction defined in Article 2 (21)(iii); the terms "their price" "purchase the Securities" and "sell the Securities" in item (ii) of the

preceding paragraph shall be deemed to be replaced with "the price of the option," "make a transaction promising that the entrusting party would acquire the option" and "make a transaction promising that the entrusting party would grant the option," respectively.

(Regulation on Sales and Purchase of Listed or Over-the-Counter Traded Shares by the Company Issuing These Shares)

Article 162-2 With regard to sales and purchase of share certificates listed in a Financial Instruments Exchange or shares certificates falling under the category of Over-the-Counter Traded Securities (hereinafter these shares are collectively referred to as "Listed or Over-the-Counter Traded Shares" in this Article) or Entrustment, etc. thereof to be conducted by the company having issued these Listed or Over-the-Counter Traded Shares under Article 156 (1) of the Companies Act (including the cases where it is applied by replacing certain terms under the provisions of Article 163 or Article 165 (3) of said Act) or Article 199 (1) of said Act (limited to cases where the company intends to solicit persons to subscribe for treasury shares it disposes of) or laws and regulations of a foreign state equivalent to these provisions (limited to cases where the company is a foreign company), Entrustment, etc. of these transactions to be conducted by a Trust Company, etc. based on a trust contract and for the account of the company having issued these Listed or Over-the-Counter Traded Shares, Accepting an Entrustment, etc. of these transaction by a Financial Instruments Business Operator or Authorized Transaction-at-Exchange Operator, or other acts prescribed by a Cabinet Office Ordinance, the Prime Minister, for the purpose of preventing manipulation of prices of Listed or Over-the-Counter Traded Shares in a Financial Instruments Exchange Market or Over-the-Counter Securities Market, may stipulate the matters in a Cabinet Office Ordinance which are found to be necessary and appropriate to secure the fairness in transactions of Listed or Over-the-Counter Trade Shares.

(Submission of Reports on Sales and Purchases of Regulated Securities, etc. by Officers, etc. of Listed Companies, etc.)

Article 163 (1) When an Officer or a Major Shareholder (meaning a shareholder who holds voting rights (excluding those specified by a 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) of the Issuer of Securities specified in Article 2 (1)(v), (vii) or (ix) which are listed in a Financial Instruments Exchange or falling under the category of

Over-the-Counter Traded Securities or Securities Handled (except those specified by a Cabinet Order) or of Securities designated by a Cabinet Order (hereinafter the Issuer is referred to as a "Listed Company, etc." in this Article to Article 166) makes Purchase, etc. of Securities issued by the Listed Company, etc. which fall under any of the categories of Securities specified in Article 2 (1)(v), (vii) or (ix) (excluding those specified by a Cabinet Order) or other Securities specified by a Cabinet Order (hereinafter such Securities are referred to as "Specified Securities" in this Article to Article 166) or Securities specified in Article 2 (1)(xix) which indicate Options pertaining to Specified Securities of the Listed Company, etc. or other Securities specified by a 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) and other transaction specified by a 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 a Cabinet Order; hereinafter the same shall apply in this Article to Article 165-2), for 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 a Cabinet Office Ordinance; hereinafter the same shall apply in this Article and the following Article), said Officer or said Major Shareholder shall submit, pursuant to the provisions of a 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 or 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 a Cabinet Office Ordinance in consideration of the manner of the Purchase, etc. or Sales, etc. or other circumstances.

- (2) When the Officer or Major Shareholder prescribed in the preceding paragraph makes the Purchase, etc. or Sales, etc. of Specified Securities, etc. of the Listed Company, etc. by making Entrustment, etc. to a Financial Instruments Business Operator, etc. or Authorized Transaction-at-Exchange Operator, the report required under the preceding paragraph shall be submitted via the Financial Instruments Business Operator, etc. or Authorized Transaction-at-Exchange Operator. The same shall apply to cases where the other party to the Purchase, etc. or Sales, etc. is a Financial Instruments Business Operator, etc. or Authorized Transaction-at-Exchange Operator.

(Restitution by Officer, etc. of Listed Company, etc. of Profits Arising from Sales and Purchases Conducted in a Short Term)

- Article 164 (1) For the purpose of preventing wrongful use by Officers or Major Shareholders of a Listed Company, etc. of secret information they have obtained in the course of their duty or by virtue of their position, a Listed Company, etc. may request its Officer or Major Shareholder who makes Sales, etc. of Specified Securities, etc. of the Listed Company, etc. within six months after having made Purchase, etc. of them for his/her own account, or makes Purchase, etc. of Specified Securities, etc. of the Listed Company, etc. within six months after having made Sales, etc. of them for his/her own account, to provide the Listed Company, etc. with profits earned by such Sales, etc. and Purchase, etc.
- (2) Where a Listed Company, etc. fails to make a request under the preceding paragraph within 60 days from the day when a shareholder (including a member who is an insurance policy holder, or an Equity Investor; hereinafter the same shall apply in this paragraph) of the Listed Company, etc. has requested the Listed Company, etc. to 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 request to an Officer or Major Shareholder of a Listed Company, etc. under the preceding two paragraphs shall be extinguished by prescription when such right is not exercised within two years from the time the claimant has obtained the right.
- (4) When it is found from the report provided in the preceding Article that an Officer or Major Shareholder of a Listed Company, etc. has gained profits as specified in paragraph (1), the Prime Minister shall send a copy of the portion of the report pertaining to the profits (hereinafter referred to as a "Document Relating to Profit" in this Article) to the Officer or Major Shareholder, and if no application under the following paragraph is filed within the period specified therein with regard to the Document Relating to Profit, then the Prime Minister shall send a copy of the Document Relating to Profit to the Listed Company, etc.; provided, however, that this shall not apply to cases where the Prime Minister becomes aware of the fact that profits referred to in paragraph (1) have already been provided to the Listed Company, etc. before a copy of the Document Relating to Profit is sent to the Officer or Major Shareholder or the Listed Company, etc.
- (5) Where a copy of the Document Relating to Profit is sent to an Officer or Major Shareholder of the Listed Company, etc. under the main clause of the preceding paragraph, if the Officer or Major Shareholder finds that he/she has not made the Sales and Purchase, etc. as stated in the copy of the Document Relating to Profit, he/she may file an application to that effect to the Prime

Minister within a period not exceeding 20 days from the day he/she receives the copy of the Document Relating to Profit.

- (6) When an application to the effect that the Officer or Major Shareholder has not made the Sales and Purchase, etc. as stated in the copy of the Document Relating to Profit is filed by the Officer or Major Shareholder under the preceding paragraph, the portion pertaining to the application shall be deemed, for the purpose of application of the main clause of paragraph (4), to be not included in the report submitted to the Prime Minister under paragraph (1) of the preceding Article.
- (7) When a copy of the Document Relating to Profit has been sent to the Listed Company, etc. under paragraph (4), the Prime Minister shall make the copy of the Document Relating to Profit available for public inspection for the period starting from the day on which 30 days have elapsed from the day the copy is sent and ending on the day the right to request under paragraph (3) is extinguished (or the day the Prime Minister becomes aware of the fact that the profits referred to in paragraph have already been provided to the Listed Company, etc., if he/she becomes aware of the fact before extinguishment of the right to request); provided, however, that this shall not apply to cases where the Prime Minister becomes aware of the fact that the profits referred to in paragraph (1) have already been provided to the Listed Company, etc. before making the copy of the Document Relating to Profit available for public inspection.
- (8) The provisions to the preceding paragraphs shall not apply to cases where the Major Shareholder is not a Major Shareholder either at the time when he/she has made the Purchase, etc. or at the time he/she has made the Sales, etc., or to cases so specified by a Cabinet Office Ordinance in consideration of the manner of Purchase, etc. or Sales, etc. conducted by an Officer or Major Shareholder or other circumstances.
- (9) In the case that the Prime Minister, under paragraph (4), finds that an Officer or Major Shareholder of Listed Company, etc. gained profits as provided in paragraph (1), the method to be used for calculating the profits shall be specified by a Cabinet Office Ordinance.

(Prohibited Acts of Officers, etc. of Listed Companies, etc.)

Article 165 Officers or Major Shareholders of a Listed Company, etc. shall not commit the following acts:

- (i) to make sales of Specified Securities, etc. of the Listed Company, etc. or other transactions specified by a Cabinet Order (hereinafter referred to as "Specified Transactions" in this Article and paragraph (15) of the following Article), if the amount of Specified Securities traded in the Specified Transactions (meaning the amount of Specified Securities sold in the case of

sales of Specified Securities, or the amount specified by a Cabinet Office Ordinance in the case of other transaction) exceeds the amount specified by a Cabinet Office Ordinance as the amount for the same kind of Specified Securities as the Specified Securities of the Listed Company, etc. held by the Officer or Major Shareholder; or

- (ii) to make Sales, etc. of Specified Securities, etc. of the Listed Company, etc. (excluding Specified Transactions), if the volume of the Specified Securities, etc. specified by a Cabinet Office Ordinance as the basis to be used for calculating the amount paid or received in the Sales, etc. exceeds the volume specified by a Cabinet Office Ordinance as the volume for the same kind of Specified Securities as the Specified Securities of the Listed Company, etc. held by the Officer or Major Shareholder.

(Specified Securities etc. Belonging to Assets of Specified Partnerships, etc.)

Article 165-2 (1) With regard to Partnerships, etc. (meaning partnerships established based on partnership contract provided in Article 667 (1) of the Civil Code, Investment LPS provided in Article 2 (2) of the Limited Partnership Act for Investment (hereinafter referred to as "Investment LPS" in this Article) or a Limited Liability Partnership provided in Article 2 of the Limited Liability Partnership Act (hereinafter referred to as "Limited Liability Partnership" in this Article), or other similar organizations specified by a Cabinet Order; hereinafter the same shall apply in this Article) whose assets includes shares of a Listed Company, etc. which represent voting rights equal to or greater than 10 percent of the Voting Rights held by All of its Shareholders, etc. (hereinafter referred to as "Specified Partnerships, etc." in this Article), when one of the partners of Specified Partnerships, etc. (including persons specified by a Cabinet Office Ordinance as similar to a partner of Specified Partnerships, etc. under a Cabinet Office Ordinance; hereinafter the same shall apply in this Article) makes Purchase, etc. or Sales, etc. of Specified Securities, etc. of the Listed Company, etc. in relation to the assets of the Specified Partnerships, etc. (including the cases where the trustee of a trust of which all of the partners of the Specified Partnerships, etc. are the settlor or beneficiary makes Purchase, etc. or Sales, etc. of Specified Securities, etc. of the Listed Company, etc. as specified by a Cabinet Office Ordinance; hereinafter the same shall apply in this Article), the partner having executed the Purchase, etc. or Sales, etc. (including a partner specified by a Cabinet Office Ordinance as equivalent to such a partner specified by a Cabinet Office Ordinance; hereinafter the same shall apply in this Article) shall submit, pursuant to the provisions of a Cabinet Office Ordinance, a report on the Sales and Purchase, etc. to the Prime Minister on or before the 15th day of the month following the month which includes the day of the Sales and Purchase,

etc.; provided, however, that this shall not apply to the cases so specified by a Cabinet Office Ordinance in consideration of the manner of the Purchase, etc. or Sales, etc. or other circumstances.

- (2) When the partner of the Specified Partnerships, etc. in the preceding paragraph makes the Purchase, etc. or Sales, etc. of Specified Securities, etc. of the Listed Company, etc. in relation to the assets of the Specified Partnerships, etc. by making Entrustment, etc. to a Financial Instruments Business Operator, etc. or Authorized Transaction-at-Exchange Operator, the report required under the preceding paragraph shall be submitted via the Financial Instruments Business Operator, etc. or Authorized Transaction-at-Exchange Operator. The same shall apply to cases where the other party to the Purchase, etc. or Sales, etc. is a Financial Instruments Business Operator, etc. or Authorized Transaction-at-Exchange Operator.
- (3) For the purpose of preventing wrongful use by partners of the Specified Partnerships, etc. of secret information they have obtained by virtue of their position, a Listed Company, etc. may request a partner of a Specified Partnerships, etc. who, in relation to the assets of the Specified Partnerships, etc., makes Sales, etc. of Specified Securities, etc. of the Listed Company, etc. within six months after having made Purchase, etc. of them, or makes Purchase, etc. of Specified Securities, etc. of the Listed Company, etc. within six months after having made Sales, etc. of them, to provide the Listed Company, etc. with profits earned by such Sales, etc. and Purchase, etc. from the assets of the Specified Partnerships, etc.
- (4) Where the Listed Company, etc. makes a request under the preceding paragraph, and only if the debt arising from said request or other debt of the Specified Partnerships, etc. cannot be repaid in full by the assets of the Specified Partnerships, etc., the Listed Company, etc. may request each person who was a partner of the Specified Partnerships, etc., at the time when the profits referred to in said paragraph have accrued (excluding limited partners of Investment LPS and partners of Limited Liability Partnership and persons specified by a Cabinet Office Ordinance as similar to these persons), to provide the Listed Company, etc. with the profits (to the extent of the amount that remains after deducting the amount of the profits already provided to the Listed Company, etc. under said paragraph) in proportion to the liability of each partner for the debt of the Specified Partnerships, etc.
- (5) In the cases provided for in the preceding paragraph, the provision of the preceding paragraph shall apply to cases where compulsory execution against the assets of the Specified Partnerships, etc. fails.
- (6) The preceding paragraph shall not apply to cases where a person who is a partner of the Specified Partnerships, etc. at the time when the profits referred to in paragraph (3) accrued proves that the Specified Partnerships, etc. has

- sufficient assets against which compulsory execution may be easily made.
- (7) Where the Listed Company, etc. fails to make a request under paragraphs (3) to (5) within 60 days from the day when a shareholder (including a member who is an insurance policy holder, or an Equity Investor; hereinafter the same shall apply in this paragraph) of the Listed Company, etc. has requested the Listed Company, etc. to make the request under these paragraphs, the shareholder may make the request in subrogation of the Listed Company, etc.
- (8) The right to request restitution of profits under paragraphs (3) to (5) or the preceding paragraph shall be extinguished by prescription when such right is not exercised within two years from the time the profits accrued to the assets of the Specified Partnerships, etc.
- (9) When it is found from the report provided in paragraph (1) that the profits referred to in paragraph (3) have accrued to the assets of the Specified Partnerships, etc., the Prime Minister shall send a copy of the portion of the report pertaining to the profits (hereinafter referred to as a "Document Relating to Partnership's Profit" in this Article) to the Reporting Partner (meaning the partner who submitted the report (limited to one pertaining to the latest Purchase, etc. or Sales, etc.) under paragraph (1)), and if no application under the following paragraph is filed by the Reporting Partner within the period specified therein with regard to the Document Relating to Partnership's Profit, the Prime Minister shall send a copy of the Document Relating to Partnership's Profit to the Listed Company, etc.; provided, however, that this shall not apply to cases where the Prime Minister becomes aware of the fact that profits referred to in paragraph (3) have already been provided to the Listed Company, etc. before the copy of the Document Relating to Partnership's Profit is sent to the Reporting Partner or the Listed Company, etc.
- (10) Where a copy of the Document Relating to Partnership's Profit is sent to the Reporting Partner under the main clause of the preceding paragraph, if the Reporting Partner finds that he/she has not made the Sales and Purchase, etc. as stated in the copy of the Document Relating to Partnership's Profit, he/she may file an application to that effect to the Prime Minister within a period not exceeding 20 days from the day he/she receives the copy of the Document Relating to Partnership's Profit.
- (11) When an application to the effect that the Reporting Partner has not made the Sales and Purchase, etc. as stated in the copy of the Document Relating to Partnership's Profit is filed by the Reporting Partner under the preceding paragraph, the portion pertaining to the application shall be deemed, for the purpose of application of the main clause of paragraph (9), to be not included in the report submitted to the Prime Minister under paragraph (1).
- (12) When a copy of the Document Relating to Partnership's Profit has been sent



to the Listed Company, etc. under paragraph (9), the Prime Minister shall make the copy of the Document Relating to Partnership's Profit available for public inspection for the period starting from the day on which 30 days have elapsed from the day the copy is sent and ending on the day the right to request under paragraph (8) is extinguished (or the day the Prime Minister becomes aware of the fact that the profits referred to in paragraph (3) have already been provided to the Listed Company, etc., if he/she becomes aware of the fact before extinguishment of the right to request); provided, however, that this shall not apply to cases where the Prime Minister becomes aware of the fact that the profits referred to in paragraph (3) have already been provided to the Listed Company, etc. before making the copy of the Document Relating to Partnership's Profit available for public inspection.

- (13) The provisions of paragraph (3) to the preceding paragraph shall not apply to cases where the Specified Partnerships, etc. is not a Specified Partnerships, etc. either at the time when the Purchase, etc. has been made in relation to the assets of the Specified Partnerships, etc. or at the time the Sales, etc. has been made in relation to the assets of the Specified Partnerships, etc., or to cases so specified by a Cabinet Office Ordinance in consideration of the manner of Purchase, etc. or Sales, etc. conducted in relation to assets of the Specified Partnerships, etc. or other circumstances.
- (14) In the case that the Prime Minister, under paragraph (9), finds that any profits accrued to the assets of the Specified Partnerships, etc. as provided in paragraph (3), the method to be used for calculating the profits shall be specified by a Cabinet Office Ordinance.
- (15) A partner of the Specified Partnerships, etc. shall not commit the following acts:
- (i) to make Specified Transactions, if the Amount of Specified Securities Traded in the Specified Transactions (meaning the amount of Specified Securities sold in the case of sales of Specified Securities, or the amount specified by a Cabinet Office Ordinance in the case of other transaction) exceeds the amount specified by a Cabinet Office Ordinance as the amount for the same kind of Specified Securities as the Specified Securities of the Listed Company, etc. held by the partner; or
  - (ii) to make Sales, etc. of Specified Securities, etc. of the Listed Company, etc. (excluding Specified Transactions), if the volume of the Specified Securities, etc. specified by a Cabinet Office Ordinance as the basis to be used for calculating the amount paid or received in the Sales, etc. exceeds the volume specified by a Cabinet Office Ordinance as the volume for the same kind of Specified Securities as the Specified Securities of the Listed Company, etc. held by the partner.
- (16) The preceding three Articles shall not apply to a Major Shareholder who

comes to fall under the category of Major Shareholder of a Listed Company, etc. as a result of obtaining shares of the Listed Company, etc. as a part of the assets of partnership, etc.

(Prohibited Acts of Corporate Insiders)

Article 166 (1) A person listed in any of the following items (hereinafter referred to as a "Corporate Insider" in this Article) who has come to know a Material Fact Pertaining to Business or Other Matters of a Listed Company, etc. (in the case of a Corporate Insider pertaining to a Subsidiary Company of the Listed Company, etc. (excluding a person who falls under the category of Corporate Insider pertaining to the Listed Company, etc.), limited to any Material Fact Pertaining to Business or Other Matters of the Subsidiary Company that are listed in items (5) to (8) of the following paragraph; the same shall apply hereinafter) in a manner as prescribed in the respective items shall not make sales or purchase, other types of transfer for value or acceptance of such transfer for value, or Derivative Transactions (hereinafter referred to as "Sales and Purchase, etc." in this Article) of Specified Securities, etc. pertaining to the Listed Company, etc. before the material facts pertaining to business or other matters are Publicized. The same shall apply for one year to a Corporate Insider who comes to know a Material Fact Pertaining to Business or Other Matters of the Listed Company, etc. in a manner as prescribed in any of the following items even after he/she ceased to be a Corporate Insider listed in the items:

- (i) an Officer (in cases where the accounting advisor is a juridical person, a member of the accounting advisor), agent, employee or other worker (hereinafter referred to as "Officers, etc." in this and the following Article) of the Listed Company, etc. (including its Parent Company and Subsidiary Companies; hereinafter the same shall apply in this paragraph): where such Officers, etc. has come to know a material fact in the course of his/her duty;
- (ii) a shareholder who has the right prescribed in Article 433 (1) of the Companies Act, an ordinary equity investor prescribed in the Act on Preferred Equity Investment who is specified by a Cabinet Office Ordinance as being deemed to have the right similar to said right, or a member who has the right prescribed in Article 433 (3) of said Act of the Listed Company, etc. (including an Officer, etc. of such a shareholder, ordinary equity investor or member in cases where such a shareholder, ordinary equity investor or member is a juridical person (including an organization without judicial personality for which the representative person or administrator has been designated; hereinafter the same shall apply in this Article and the following Article), and an agent or employee of such a shareholder, ordinary equity investor or member in cases where such a shareholder, ordinary equity

- investor or member is a person other than a juridical person): where such a shareholder, ordinary equity investor or member has come to know a material fact in the course of exercise of the right;
- (iii) a person who has statutory authority over the Listed Company, etc.: where such a person has come to know a material fact in the course of exercise of the authority;
- (iv) a person other than an Officer, etc. of the Listed Company, etc. who has concluded, or is in negotiation to conclude, a contract with the Listed Company, etc. (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 a juridical person): where such a person has come to know a material fact in the course of conclusion of, negotiation for, or performance of the contract; and
- (v) an Officer, etc. of a person listed in item (ii) or the preceding item who is a juridical person (limited to the Officer, etc. of the juridical person in cases where other Officer, etc. of the juridical person, for which said Officer, etc. works, comes to know a Material Fact Pertaining to Business or Other Matters of a Listed Company, etc. as prescribed in item (ii) or the preceding item): where such an Officer, etc. has come to know a material fact in the course of his/her duty.
- (2) The term "Material Fact Pertaining to Business or Other Matters" as used in the preceding paragraph means any of the following facts (excluding a fact which is regarded under the criteria specified by a Cabinet Office Ordinance as one that may have only minor influence on investors' Investment Decisions with regard to item (i), (ii), (v) and (vi)):
- (i) a decision 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. 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) solicitation of persons who subscribe for shares issued or treasury shares disposed of by a stock company (including persons who subscribe for preferred equity investment issued by a Cooperative Structured Financial Institution) as prescribed in Article 199 (1) of the Companies Act (including solicitation to be made under laws and regulations in a foreign state equivalent to that provision of the Companies Act (limited to cases where the Listed Company, etc. is a foreign company; hereinafter the same shall apply in this Article) in the case of solicitation for persons who subscribe for treasury shares), or solicitation of persons who subscribe for Share Options for Subscription as prescribed in Article 238 (1) of said Act;
- (b) reduction of the amount of the stated capital;

- (c) reduction of the amount of capital reserve or retained earnings reserve;
- (d) acquisition of its own shares by the Listed Company, etc. as prescribed in Article 156 (1) of the Companies Act (including the cases where it is applied by replacing certain terms under the provisions of Articles 163 and 165 (3) of said Act) or under laws and regulations in a foreign state equivalent to these provisions of said Act (limited to cases where the Listed Company, etc. is a foreign company; hereinafter the same shall apply in this Article);
- (e) allotment of share without contribution;
- (f) share split (including split of preferred equity investment prescribed in the Act on Preferred Equity Investment);
- (g) dividend of surplus;
- (h) share exchange;
- (i) share transfer;
- (j) merger;
- (k) company split;
- (l) transfer or acquisition of transfer of whole or part of its business;
- (m) dissolution (excluding dissolution as a result of merger);
- (n) commercialization of new products or new technology; or
- (o) business alliance or other matters specified by a Cabinet Order as those equivalent to the matters listed in (a) to (n).
- (ii) the 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) any change of its Major Shareholders;
  - (c) facts that may be a ground for delisting or recession of registration of Regulated Securities or Options pertaining thereto; or
  - (d) matters specified by a Cabinet Order as those equivalent to the matters listed in (a) to (c).
- (iii) existence of difference (limited to that which is regarded under the criteria specified by a 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 year in the case of lack of such forecasts) of net sales, current profits or net income (hereinafter referred to as "Net Sales, etc." in this Article) or of the dividend prescribed in (g) of item (i) of the Listed Company, etc. or of Sales, etc. of the Corporate Group to which the Listed Company, etc. belongs, and, on the other hand, new forecasts thereof newly prepared by the Listed Company, etc. or the results in the settlement of account for the business year of the Listed Company, etc.;
- (iv) in addition to the facts specified in the preceding three items, material facts concerning operation, business or property of the Listed Company, etc.

- that may have a significant influence on investors' Investment Decisions;
- (v) a decision by the organ of a Subsidiary Company of the Listed Company, etc. which is responsible for making decisions on the execution of the operations of the Subsidiary Company to have the Subsidiary Company carry out any of the following matters, or a decision by said organ not to have the Subsidiary 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) share exchange;
    - (b) share transfer;
    - (c) merger;
    - (d) company split;
    - (e) transfer or acquisition of transfer of whole or part of its business;
    - (f) dissolution (excluding dissolution as a result of merger);
    - (g) commercialization of new products or new technology; or
    - (h) business alliance or other matters specified by a Cabinet Order as those equivalent to the matters listed in (a) to (g).
  - (vi) occurrence of any of the following facts in a Subsidiary Company of the Listed Company, etc.:
    - (a) damage arising from disaster or in the course of performing operations; or
    - (b) any of the matters specified by a Cabinet Order as those equivalent to the matter specified in (a).
  - (vii) existence of difference (limited to that which is regarded under the criteria specified by a 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 year in the case of lack of such forecasts) of Net Sales, etc. of a Subsidiary Company (limited to a Subsidiary Company which has issued Securities specified in Article 2 (1)(v), (vii) or (ix) and listed in a Financial Instruments Exchange or other Subsidiary Company specified by a Cabinet Office Ordinance) of the Listed Company, etc., and, on the other hand, new forecasts thereof newly prepared by the Subsidiary Company or the results in the settlement of account for the business year of the Subsidiary Company; or
  - (viii) in addition to the facts specified in the preceding three items, material facts concerning operation, business or property of a Subsidiary Company of the Listed Company, etc. that may have a significant influence on investors' Investment Decisions.
- (3) A person who has received from a Corporate Insider (including a Corporate Insider prescribed in the second sentence of paragraph (1); hereinafter the same shall apply in this paragraph) information on a Material Fact Pertaining to Business or Other Matters referred to in paragraph (1) that the Corporate

Insider has come to know in a manner as prescribed in any of the items of said paragraph (excluding a person who is listed in any of the items of said paragraph and has come to know the Material Fact Pertaining to Business or Other Matters in a manner as prescribed in the respective items of said paragraph), or other Officer, etc. of a juridical person who comes to know such a Material Fact Pertaining to Business or Other Matters in relation to the duty of a person who also belongs to the juridical person and has received information on the Material Fact Pertaining to Business or Other Matters in the course of his/her duty, shall not make sales or purchases, etc. of Regulated Securities, etc. of the Listed Company, etc. before the Material Fact Pertaining to Business or Other Matters is Publicized.

- (4) The term "Publicized" as used in paragraph (1), items (i), (iii), (v) and (vii) of paragraph (2) and the preceding paragraph means taking, by the Listed Company, etc. or the Subsidiary Company of the Listed Company, etc., of measures specified by a Cabinet Order as those for making information available to a large number of persons with regard to the Material Fact Pertaining to Business or Other Matters referred to in paragraph (1) of the Listed Company, etc., the decision 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., Net Sales, etc. or the dividend prescribed in (g) of item (i) of paragraph (2) of the Listed Company, etc., 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. (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; hereinafter the same shall apply in this paragraph), or making documents specified in Article 25 (1) (excluding documents specified in Article 25 (1)(xi)) submitted by the Listed Company, etc. or the Subsidiary Company of Listed Company, etc. available for public inspection under Article 25 (1) in cases where the above-mentioned matters are stated in these documents.
- (5) The term "Parent Company" as used in paragraph (1) and the following Article means a company which falls under the category of company specified by a Cabinet Order as that have a control of another company (including a Cooperative Structured Financial Institution; hereinafter the same shall apply in this paragraph) as specified by a Cabinet Order, and the term "Subsidiary Company" as used in this Article means a company stated as a company which

belongs to the Corporate Group to which another company belongs in the latest statement prescribed in Article 5 (1), the latest Annual Securities Report prescribed in Article 24 (1), the latest Quarterly Securities Report prescribed in Article 24-4-7 (1) or (2), or the latest Semiannual Securities Report prescribed in Article 24-5 (1) submitted by the other company which have been made available for public inspection under Article 25 (1).

(6) The provisions of paragraphs (1) and (3) shall not apply to the following cases:

(i) where a person who has the right prescribed in Article 202 (1)(i) of the Companies Act (including the right to receive an allotment of preferred equity investment prescribed in the Act on Preferred Equity Investment) acquires share certificates (including preferred equity investment certificates prescribed in the Act on Preferred Equity Investment) by exercising said right;

(ii) where a person who has a share option acquires share certificates by exercising said share option;

(ii)-2 a person who has acquired an option pertaining to Regulated Securities, etc. makes Sales and Purchase, etc. of Regulated Securities, etc. by exercising the option;

(iii) where purchase of shares is demanded under Articles 116(1), 469(1), 785(1), 797(1) or 806(1) of the Companies Act or sales or purchases, etc. is made under statutory obligations;

(iv) where purchase (or acquisition, in case of an option; the same shall apply in the following item) or other type of acceptance of transfer for value of Regulated Securities, etc. of the Listed Company, etc. or an option pertaining to sales and purchase thereof (limited to an option of which exercise will place the person exercising it in the position of the buyer in the transaction to be conducted based on it) is made in response to a request made by a decision of the board of directors of the Listed Company, etc. (including a request made by a decision of an executive officer, in the case of a company with Committees) in order to cope with a Tender Offer for Share Certificates, etc. (meaning Share Certificates, etc. as defined in Article 27-2 (1)) of the Listed Company, etc. launched under Article 27-2 (1) (limited to cases where the main clause of Article 27-2 (1) applies) or other act specified as one equivalent to such a Tender Offer in a Cabinet Order;

(iv)-2 where, after resolution of a shareholder meeting or board of directors of the Listed Company, etc. (including a decision of an executive officer in the case of a company with Committees) (limited to resolution on the matters listed in any of the items of Article 156 (1) of Companies Act) made under Article 156 (1) of said Act (including the cases where it is applied by replacing certain terms under the provisions of Articles 163 and 165(3) of said Act; hereinafter the same shall apply in this item) or resolution or other

similar decision of the Listed Company, etc. made under laws and regulations of a foreign state equivalent to these provisions with regard to acquisition of own shares provided in Article 156 (1) of said 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 by 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 by paragraph (1) before the Resolution of Shareholder Meeting, etc. is made), purchase of share certificates of said own shares, Securities indicating the rights pertaining to such share certificates specified in Article 2 (1)(xx) or other Securities specified by a 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 of which exercise will place the person exercising it in the position of the buyer in the transaction to be conducted based on it; 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 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 said paragraph (excluding the cases where purchase of Share Certificates, etc. of said own shares or an option pertaining to such Share Certificates, etc. is made pursuant to this item with regard to acquisition of own shares under Article 156 (1) of said Act or laws and regulations of a foreign state equivalent thereto other than acquisition of said own shares));

(v) where Sales and Purchase, etc. is made pursuant to the provisions of a Cabinet Order referred to in Article 159 (3);

(vi) where Sales and Purchase, etc. of bonds (excluding bond with share option) or other Securities specified by a Cabinet Order is made (excluding cases designated in a Cabinet Office Ordinance);

(vii) where Sales and Purchase, etc. is made between persons falling under any of the categories specified in paragraph (1) or (3) through neither a Financial Instruments Exchange Market nor an Over-the-Counter Securities Market (excluding the cases where both parties in the Sales and Purchase, etc. recognize that Sales and Purchase, etc. of Regulated Securities, etc. pertaining to the Sales and Purchase, etc. is to be made further in violation of the provision of paragraph (1) or (3)); or



(viii) where Sales and Purchase, etc. is made as performance of a contract for Sales and Purchase, etc. of Regulated Securities, etc. of the Listed Company, etc. concluded before coming to know a Material Fact Pertaining to Business or Other Matters prescribed in paragraph (1) of the Listed Company, etc. or as implementation of a plan for Sales and Purchase, etc. of Regulated Securities, etc. of the Listed Company, etc. decided before coming to know a Material Fact Pertaining to Business or Other Matters of the Listed Company, etc., or where Sales and Purchase, etc. that is obviously based on other special circumstances equivalent to these cases is made (limited to cases specified by a Cabinet Office Ordinance).

(Prohibited Acts of Persons Concerned with Tender Offeror, etc.)

Article 167 (1) A person listed in any of the following items (hereinafter referred to as a "Person Concerned with Tender Offeror, etc." in this Article) who comes to know a Fact Concerning Launch of a Tender Offer, etc. (as defined below) by a person who intends to launch a Tender Offer under Article 27-2 (1) (limited to cases where the main clause of said provision applies) or an act specified as equivalent thereto by a Cabinet Order or intends to launch a Tender Offer under Article 27-22-2 (1) (hereinafter there are referred to as "Tender Offer, etc." in this Article) for Share Certificates, etc. provided in Article 27-2 (1) that are listed in a Financial Instruments Exchange or 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 "Tender Offeror, etc." in this Article) or a Fact Concerning Suspension of Tender Offer, etc. by such Tender Offeror, etc. in a manner as prescribed in the respective items shall not make Purchase, etc. (meaning purchase of Regulated Share Certificates, etc. as defined below and Related Share Certificates, etc. as defined below (hereinafter referred to as "Share Certificates, etc." in this Article) and other transactions designated by a Cabinet Order; hereinafter the same shall apply in this Article) of Listed or Other Share Certificates, etc. pertaining to the Tender Offer, etc. or share certificates or bonds with share option issued by a company issuing such Listed or Other Share Certificates, etc. or other Securities specified by a Cabinet Order (hereinafter referred to as "Regulated Share Certificates, etc." in this Article) or Securities specified in Article 2 (1)(xix) that indicate Options pertaining to Regulated Share Certificates, etc. or other Securities specified by a Cabinet Order (hereinafter referred to as "Related Share Certificates, etc." in this paragraph) in cases where he/she comes to know a Fact Concerning Launch of a Tender Offer, etc., and shall not make Sales, etc. (meaning sales of Share Certificates, etc. and other transactions specified by a Cabinet Order; hereinafter the same shall apply in this Article) of Share Certificates, etc.

pertaining to the Tender Offer, etc., in cases where he/she comes to know a Fact Concerning Suspension of a Tender Offer, etc., before the Fact Concerning Launch of a Tender Offer, etc. or the Fact Concerning Suspension of a Tender Offer, etc. is Publicized. The same shall apply for one year to a Person Concerned with Tender Offeror, etc. who comes to know a Fact Concerning Launch of a Tender Offer, etc. or a Fact Concerning Suspension of a Tender Offer, etc. in a manner as prescribed in any of the following items even after he/she ceased to be a Person Concerned with Tender Offeror, etc. listed in the items:

- (i) an Officer, etc. (or agent or employee in cases where the Tender Offeror, etc. is a person other than a juridical person) of the Tender Offeror, etc. (including its Parent Company in cases where Tender Offeror, etc. is a juridical person; hereinafter the same shall apply in this paragraph): where such an Officers, etc. has come to know the fact in the course of his/her duty;
- (ii) a shareholder of the Tender Offeror, etc. who has the right prescribed in Article 433 (1) of the Companies Act or a member of the Tender Offeror, etc. who has the right prescribed in Article 433 (3) of said Act (including an Officer, etc. of such a shareholder or member in cases where such a shareholder or member is a juridical person, and an agent or employee of such a shareholder or member in cases where such a shareholder or member is a person other than a juridical person): where such a shareholder or member has come to know the fact in the course of exercise of the right;
- (iii) a person who has statutory authority over the Tender Offeror, etc.: where such a person has come to know the fact in the course of exercise of the authority;
- (iv) a person who has concluded, or is in negotiation to conclude, a contract with the Tender Offeror, etc. (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) and is a person other than an Officer, etc. of the Tender Offeror, etc. in cases where the Tender Offeror, etc. is a juridical person or is a person other than an agent or employee of the Tender Offeror, etc. in cases where the Tender Offeror, etc. is a person other than a juridical person: where such a person has come to know the fact in the course of conclusion of, negotiation for, or performance of the contract; or
- (v) an Officer, etc. of a person listed in item (ii) or the preceding item who is a juridical person (limited to the Officer, etc. of the juridical person in the case where other Officer, etc. of the juridical person, for which said Officer, etc. works, comes to know a Fact Concerning Launch of a Tender Offer, etc. or a Fact Concerning Suspension of a Tender Offer, etc. by the Tender Offeror, etc. as prescribed in item (ii) or the preceding item): where such an Officer, etc.

- has come to know the fact in the course of his/her duty.
- (2) The term a "Fact Concerning Launch of a Tender Offer, etc." or a "Fact Concerning Suspension of a Tender Offer, etc." as used in the preceding paragraph means a fact that Tender Offeror, etc. (or the organ of the Tender Offeror, etc. which is responsible for making decisions on the execution of the operations of the Tender Offeror, etc. in cases where the Tender Offeror, etc. is a juridical person; hereinafter the same shall apply in this paragraph) decides to launch the Tender Offer, etc. or not to launch the Tender Offer, etc. that is decided to be launched in such a decision (limited to acts that have already been Publicized); provided, however, that this shall not apply to such a fact as is regarded under the criteria specified by a Cabinet Office Ordinance as one that may have only minor influence on investors' Investment Decisions.
- (3) A person who has received from the Persons Concerned with Tender Offeror, etc. (including a person prescribed in the second sentence of paragraph (1); hereinafter the same shall apply in this paragraph) information on a Fact Concerning Launch of a Tender Offer, etc. or a Fact Concerning Suspension of a Tender Offer, etc. (hereinafter referred as to a "Fact Concerning Tender Offer, etc." in this Article) referred to in said paragraph that the Persons Concerned with Tender Offeror, etc. has come to know in a manner as prescribed in any of the items of said paragraph (excluding a person who is listed in any of the items of paragraph (1) and has come to know the Fact Concerning Tender Offer, etc. in a manner as prescribed in the respective item of said paragraph), or other Officer, etc. of a juridical person who comes to know the Fact Concerning Tender Offer, etc. in relation to the duty of a person who also belongs to the juridical person and has received information on the Fact Concerning Tender Offer, etc. in the course of his/her duty, shall not make Purchase, etc. of the Share Certificates, etc. pertaining to the Tender Offer, etc. in the case of having received information on a Fact Concerning Launch of a Tender Offer, etc. prescribed in said paragraph, or shall not make Sales, etc. of the Share Certificates, etc. pertaining to the Tender Offer, etc. in the case of having received information on a Fact Concerning Suspension of a Tender Offer, etc. prescribed in said paragraph, before the Fact Concerning Tender Offer, etc. is Publicized.
- (4) The term "Publicized" as used in paragraph (1) to the preceding paragraph means the taking by the Tender Offeror, etc. of measures specified by a 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 (1) (including the cases where it is applied *mutatis mutandis* pursuant to Article 27-22-2 (2)) or public notice or public announcement under Article 27-11 (2) (including the cases where it is applied *mutatis mutandis* pursuant to Article 27-22-2 (2)), or the making of a Tender

Offer Notification or Written Withdrawal of Tender Offer prescribed in Article 27-14 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2); hereinafter the same shall apply in this paragraph) available for public inspection under Article 27-14 (1).

- (5) The provisions of paragraphs (1) and (3) shall not apply to the following cases:
- (i) where a person who has the right prescribed in Article 202 (1)(i) of the Companies Act acquires share certificates by exercising said right;
  - (ii) where a person who has a share option acquires share certificates by exercising said share option;
  - (ii)-2 where a person who has acquired an option pertaining to Share Certificates, etc. makes Purchase, etc. or Sales, etc. of Share Certificates, etc. by exercising said option;
  - (iii) where purchase of shares is demanded under Articles 116(1), 469(1), 785(1), 797(1) or 806(1) of the Companies Act or Purchase, etc. or Sales, etc. of Share Certificates, etc. is made under statutory obligations;
  - (iv) where Purchase, etc. of Listed or Other Share Certificates, etc. pertaining to the Tender Offer, etc. (including an option pertaining to sales and purchase of the Listed or Other Share Certificates, etc.; hereinafter the same shall apply in this item) is made in response to a request made by the Tender Offeror, etc. (limited to a request made by a decision of the board of directors of the Tender Offeror, etc. in cases where the Tender Offeror, etc. is a company (including a request made by a decision of an executive officer in the case of a company with Committees)) (limited to cases where Purchase, etc. of the Listed or Other Share Certificates, etc. is made for the purpose of making Sales, etc. of the Listed or Other Share Certificates, etc. to the Tender Offeror, etc.);
  - (v) where Purchase, etc. of Listed or Other Share Certificates, etc. pertaining to the Tender Offer, etc. (including an option pertaining to sales and purchase of the Listed or Other Share Certificates, etc.) is made in response to a request made by a decision of the board of directors of the company issuing the Listed or Other Share Certificates, etc. (including a request made by a decision of an executive officer, in the case of a company with Committees) in order to cope with the Tender Offer, etc.;
  - (vi) where Purchase, etc. or Sales, etc. of Share Certificates, etc. is made pursuant to the provisions of a Cabinet Order referred to in Article 159 (3);
  - (vii) where a person who comes to know a Fact Concerning Launch of a Tender Offer, etc. prescribed in paragraph (1) makes Purchase, etc. from another person who knows the Fact Concerning Launch of the Tender Offer, etc. through neither a Financial Instruments Exchange Market nor a Over-the-Counter Securities Market, or where a person who comes to know a Fact Concerning Suspension of a Tender Offer, etc. prescribed in paragraph (1)

makes Sales, etc. to another person who knows the Fact Concerning Suspension of the Tender Offer, etc. through neither a Financial Instruments Exchange Market nor a Over-the-Counter Securities Market (excluding the cases where both parties in the Sales, etc. recognize that Sales, etc. of Share Certificates, etc. pertaining to the Sales, etc. is to be made further in violation of the provision of paragraph (1) or (3)); or

(viii) where Purchase, etc. or Sales, etc. is made as performance of a contract for Purchase, etc. or Sales, etc. of Share Certificates, etc. pertaining to a Tender Offer, etc. concluded before coming to know the Fact Concerning Tender Offer, etc. by the Tender Offeror, etc. or as implementation of a plan for Purchase, etc. or Sales, etc. of Share Certificates, etc. pertaining to a Tender Offer, etc. decided before coming to know the Fact Concerning Tender Offer, etc. by the Tender Offeror, etc., or where Purchase, etc. or Sales, etc. that is obviously based on other special circumstances equivalent to these cases is made (limited to cases specified by a Cabinet Office Ordinance).

(Prohibition of Transactions in an Unlicensed Market)

Article 167-2 No person shall conduct the following transactions in a Financial Instruments Market established in violation of Article 80 (1):

- (i) sales and purchase of Securities; or
- (ii) Market Transactions of Derivatives.

(Prohibition of Public Notice, etc. of False Quotations)

Article 168 (1) No person shall publicly notify false quotations on market prices of Securities, etc., or prepare or distribute documents that contain false quotations on market prices of Securities, etc. for the purpose of publicly notifying or distributing the documents.

(2) No person shall, in response to a request of an Issuer, a person engaged in Secondary Distribution of Securities, an Underwriter or Financial Instruments Business Operator, etc., prepare or distribute documents that contain fake statement on any important matters pertaining to Securities issued by, apportioned to or dealt by such persons for the purpose of publicly notifying or distributing the documents.

(3) No Issuer, person engaged in Secondary Distribution of Securities, Underwriter or Financial Instruments Business Operator, etc. shall make a request referred to in the preceding paragraph.

(Restriction on Expression of Opinion in Newspaper, etc.)

Article 169 When a person publishes in a newspaper or a magazine, or indicates by means of documents, broadcasting, motion picture or other means to the public, his/her opinion which would convey his/her decision regarding

investment on Securities, Issuers or Tender Offerors prescribed in Article 27-3 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), in exchange for consideration received from or under a promise to receive consideration from any Issuer, person engaged in Secondary Distribution of Securities, Underwriter, Financial Instruments Business Operator, etc. or Tender Offeror, etc. prescribed in Article 27-3 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), such a person shall indicate, together with the opinion, that the opinion is published or indicated in exchange for consideration received or under a promise to receive consideration; provided, however, that this shall not apply to cases where a person who has received or is promised to receive advertisement fees indicates such an opinion as an advertisement made in exchange for the advertisement fees.

(Prohibition of Indication of Advantageous Purchase, etc.)

Article 170 Upon making solicitation of an application to acquire newly issued Securities or solicitation of an application to sell or purchase already-issued Securities to many and unspecified persons (referred to as "Solicitation of Securities to Many and Unspecified Persons" in the following Article), no person shall make an indication to many and unspecified persons to the effect that the person or other person will purchase the Securities acquired by members of said many and unspecified persons at a predetermined price (including a price calculated from a predetermined amount using a certain standard; hereinafter the same shall apply in this Article) or higher or will make an arrangement for selling such Securities at a predetermined price or higher, or shall make an indication that is likely to be understood as meaning to that effect; provided, however, that this shall not apply to cases where such solicitation is made for Securities listed in Article 2 (1)(i) to (vi) or other Securities specified by a Cabinet Office Ordinance.

(Prohibition of Indication of a Fixed Amount of Dividend etc.)

Article 171 Upon making Solicitation of Securities to Many and Unspecified Persons (excluding such solicitation to be made for Securities listed in Article 2 (1)(i) to (vi) or other Securities specified by a Cabinet Office Ordinance; hereinafter the same shall apply in this Article), any person who makes Solicitation of Securities to Many and Unspecified Persons, or Officers, advisors, consultants, others at a position equivalent to these persons, agents, employees or other workers of such a person shall not make a indication to many and unspecified persons to the effect that a fixed amount (including an amount that may be calculated in advance by using a certain standard; hereinafter the same shall apply in this Article) or higher amount of money

(including things that would bring about a fixed amount or higher amount of money by disposing of them) will be provided for the Securities so solicited after a certain period (including a indication that is likely to be understood as meaning to that effect), irrespective of how such money is called, including dividend of profits or distribution of profits; provided however, that this shall not apply to cases where it is clearly indicated that such a indication only indicates an expectation.

## **Chapter VI-2 Administrative Monetary Penalty**

### **Section 1 Payment Order**

(Administrative Monetary Penalty Payment Order against an Issuer, etc., Who Submitted Offering Disclosure Documents Containing Fake Statement)

- Article 172 (1) When an Issuer who has submitted any Offering Disclosure Document containing a fake statement on important matters had Securities acquired or sold Securities through Public Offering or Secondary Distribution (meaning the Secondary Distribution of Securities under Article 4 (3); hereinafter the same shall apply in this Chapter) (limited to Secondary Distribution of Securities owned by said Issuer) based on such Offering Disclosure Documents, the Prime Minister shall, in accordance with the procedures prescribed in the following Section, order said Issuer 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 such items (in cases where the Issuer falls under both of the following items, the total of the amount specified in each of the items):
- (i) when an Issuer has had Securities acquired through public offering based on the Offering Disclosure Documents: one percent of the total issue price of the Securities acquired (two percent, in cases where said Securities are the Share Certificates, etc. (meaning share certificates, preferred equity investment certificates under the Act on Preferred Equity Investment and other Securities specified by a Cabinet Order as being equivalent to these securities; hereinafter the same shall apply in the following item and the following paragraph)); and
  - (ii) when the Issuer has sold Securities owned by said Issuer through secondary distribution based on the Offering Disclosure Documents: one percent of the total distribution price of the sold Securities (two percent, in cases where said Securities are the Share Certificates, etc.).
- (2) If an Officer, etc. (meaning an officer, agent, employee and other worker of said Issuer; hereinafter the same shall apply in paragraph (5)) of an Issuer which has submitted Offering Disclosure Documents containing a fake statement on important matters who has been involved in submission of said

Offering Disclosure Documents with knowledge of the fact that said Offering Disclosure Documents contain any misstatement has sold Securities owned by said Officer, etc. through secondary distribution based on said Offering Disclosure Documents, the Prime Minister shall, in accordance with the procedures prescribed in the following Section, order said Officer, etc., to pay to the national treasury an administrative monetary penalty equivalent to one percent of the total distribution price of the sold Securities (two percent, in cases where such Securities are the Share Certificates, etc.).

- (3) The "Offering Disclosure Documents" referred to in the preceding two paragraphs means the statements, etc. (including the Reference Documents pertaining to said statements, in the case of a statement where the provisions of Article 5 (4) applies) prescribed in Article 5 (including the cases where it is applied mutatis mutandis pursuant to Article 27), Amendments (including the Reference documents pertaining to said Amendments) prescribed in Article 7, Article 9 (1) and Article 10 (1) (including the cases where they are applied mutatis mutandis pursuant to Article 27), Shelf Registration Statements (including the Reference documents pertaining to said Shelf Registration Statement) prescribed in Article 23-3 (1) and (2) (including the cases where they are applied mutatis mutandis pursuant to Article 27) as well as the documents to be attached thereto, Amended Shelf Registration Statements (including the Reference Documents pertaining to said Amended Shelf Registration Statement) prescribed in Article 23-4, Article 23-9 (1) or Article 23-10 (1), or Article 23-10 (1) as applied mutatis mutandis pursuant to Article 23-10 (5) (including the cases where they are applied mutatis mutandis pursuant to Article 27), or Shelf Registration Supplementary Documents (including the Reference Documents pertaining to said Shelf Registration Supplementary Document) prescribed in Article 23-8 (1) and (5) (including the cases where they are applied mutatis mutandis pursuant to Article 27) as well as the documents to be attached thereto.
- (4) The provision of paragraph (1) (excluding item (i)) shall apply mutatis mutandis to the cases where an Issuer who has used a prospectus (limited to the prospectus pertaining to the secondary distribution of the Already Disclosed Securities defined in Article 13 (1); hereinafter the same shall apply in the following paragraph) which contains a misstatement on important matters (limited to the important matters pertaining to those listed in the respective items of Article 5 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27); hereinafter the same shall apply in the following paragraph) has sold Securities owned by said Issuer through secondary distribution pertaining to said prospectus.
- (5) The provision of paragraph (2) shall apply mutatis mutandis to the cases where any of the Officers, etc., of an Issuer which has used a prospectus



containing a misstatement on important matters who has participated in preparation of said prospectus with knowledge of the fact that the prospectus contained a misstatement has sold Securities owned by said Officer, etc., through secondary distribution pertaining to said prospectus.

(Administrative Monetary Penalty Payment Order against Issuer Who Has Submitted Annual Securities Reports, etc., Containing Fake Statement)

Article 172-2 (1) When an Issuer has submitted an Annual Securities Reports, etc. containing a misstatement on important matters (which means the Annual Securities Report and documents attached thereto prescribed in Article 24 (1) or (3) (including the cases where they are applied mutatis mutandis pursuant to Article 24 (5) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and pursuant to Article 27) and Article 24 (6) (including the cases where it is applied mutatis mutandis pursuant to Article 27), or Amendments prescribed in Article 7, Article 9 (1) or Article 10 (1) as applied mutatis mutandis pursuant to Article 24-2 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27); hereinafter the same shall apply in Article 178 (5) and Article 185-7 (2) and (3)), the Prime Minister shall, in accordance with the procedures prescribed in the following Section, order said Issuer to pay to the national treasury an administrative monetary penalty equivalent to the amount listed in item (i) (when the amount listed in item (ii) exceeds the amount listed in item (i), the amount listed in item (ii)); provided, however, that in cases where the period of a business year of an Issuer (if said Issuer is an Issuer of the Regulated Securities prescribed in Article 24 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27), the Specified Period pertaining to the Regulated Securities set forth in Article 24 (1) as applied mutatis mutandis pursuant to Article 24 (5); hereinafter the same shall apply in this paragraph and Article 185-7 (19)) is not one year, the Prime Minister shall order said Issuer to pay to the national treasury an administrative monetary penalty equivalent to the amount obtained by the following: dividing the number of months of said business year by 12, and then multiplying such number by the above amount:

(i) three million yen; or

(ii) the amount obtained by multiplying the amount listed in (a) by the number listed in (b):

(a) total amount of 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 a Cabinet Order as being equivalent thereto; hereinafter the same shall apply in this item) issued by the Issuer, as calculated pursuant to the provisions of a Cabinet Office Ordinance (if there is no market value for said Index

Securities for Calculation or if said Issuer has not issued any Index Security for Calculation, the amount calculated pursuant to the methods specified by a Cabinet Order as those for calculation of the amount equivalent thereto); and

(b) three in 100,000.

- (2) When an Issuer has submitted a Quarterly Securities Report, Semiannual Securities Report or Extraordinary Securities Report, etc. (referring to a Quarterly Securities Report under Article 24-4-7 (1) or (2) (including the cases where they are applied mutatis mutandis pursuant to Article 24-4-7 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27), or Semiannual Securities Report or Extraordinary Securities Report under Article 24-5, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to Article 24-5 (3)) or paragraph (4) (including the cases where they are applied mutatis mutandis pursuant to Article 27), or Amendments under Article 7, Article 9 (1) or Article 10 (1) as applied mutatis mutandis pursuant to Article 24-4-7 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 24-5 (5) (including the cases where it is applied mutatis mutandis pursuant to Article 27); hereinafter the same shall apply in Article 178 (5) and Article 185-7 (2) and (3)) which contains any misstatement on important matters, the Prime Minister shall, in accordance with the procedures set forth in the following Section, order said Issuer to pay to the national treasury an administrative monetary penalty equivalent to half of the amount listed in item (i) of the preceding paragraph (when the amount listed in item (ii) of said paragraph exceeds the amount listed in item (i) of said paragraph, the amount listed in item (ii) of said paragraph). In this case, the proviso to the preceding paragraph shall apply mutatis mutandis.
- (3) The number of months referred to in the proviso to paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to the second sentence of the preceding paragraph) shall be calculated in accordance with the calendar, and if there arises a fraction of less than one month, such fraction shall be counted as one month.

(Administrative Monetary Penalty Payment Order against Person Who has Caused Fluctuation of Market Prices by Disseminating Unfounded Rumors, etc.)

Article 173 (1) When a person, in violation of the provision of Article 158, has caused a fluctuation of market prices of Securities, etc. by disseminating unfounded rumors or trading by fraudulent means (hereinafter referred to as the "Act of Violation" in this paragraph), and if said person, based on the market prices so fluctuated, has had the Securities acquired through public

offering pertaining to said Securities, etc., or has conducted sales and purchase or other transactions of Securities in relation to said Securities, etc. or Derivative Transactions pertaining to said Securities, etc., on his/her own account and within one month from the date of the Act of Violation, the Prime Minister shall, in accordance with the procedures set forth in the following Section, order said person to pay to the national treasury an administrative monetary penalty equivalent to the amount prescribed in the following items in accordance with the categories listed in such items (in cases where said person falls under all of the following items, the total of the amount specified in each of the relevant items):

(i) when the person has caused a rise or increase in market prices of Securities, etc. (including financial indicators pertaining to Over-the-Counter Transactions of Derivatives said Securities, etc.; the same shall apply in the following item) by an Act of Violation and conducted Sales, etc. of Securities pertaining to said Securities, etc. (limited to those conducted within one month from date of the Act of Violation; hereinafter the same shall apply in this item) based on the market price so risen or increased: the amount obtained by deducting the amount listed in the following sub-item (b) from the amount listed in the following sub-item (a):

(a) with regard to the Sales, etc. of Securities, the total amount obtained by multiplying the price for each Sales, etc. of Securities by the volume of said Sales, etc. of Securities.

(b) with regard to the Sales, etc. of Securities, the amount obtained by multiplying the price specified by a Cabinet Order as the price immediately before an Act of Violation (hereinafter referred to as the "Price Before Starting of Act of Violation" in sub-item (a) of the following item) by the volume of the Sales, etc. of Securities.

(ii) when a person has caused a fall or decline in market prices of Securities, etc. by an Act of Violation, and has conducted Purchase, etc. of Securities pertaining to said Securities, etc. (limited to those conducted within one month from the date of the Act of Violation; hereinafter the same shall apply in this item) based on the market price so fallen or declined: the amount obtained by deducting the amount listed in the following sub-item (b) from the following sub-item (a).

(a) with regard to the Purchase, etc. of Securities, the amount obtained by multiplying the Price Before Starting of the Act of Violation by the volume of the Purchase, etc. of Securities.

(b) with regard to the Purchase, etc. of Securities, the total amount obtained by multiplying the price of each Purchase, etc. of Securities by the volume of said Purchase, etc. of Securities.

(2) The term "Sales, etc. of Securities" as used in the preceding paragraph means

- issuance of Securities, sales of Securities, the transaction set forth in Article 2 (21)(ii) (limited to the transaction under which the person becomes a party paying money when the Actual Figure exceeds the Agreed Figure), the transaction set forth in Article 2 (21)(iii) (limited to the transaction under which the person becomes a party granting Options) and other transactions specified by a Cabinet Order, which are conducted on the person's own account.
- (3) The term "Purchase, etc. of Securities" as used in paragraph (1) means purchase of Securities, the transaction set forth in Article 2 (21)(ii) (limited to the transaction under which the person becomes a party receiving money when the Actual Figure exceeds the Agreed Figure), the transaction set forth in Article 2 (21)(iii) (limited to the transaction under which the person becomes a party acquiring Options) and other transactions specified by a Cabinet Order, which are conducted on the person's own account.
- (4) In addition to what is prescribed in the preceding two paragraphs, the prices and volumes in cases where Sales, etc. of Securities or Purchase, etc. of Securities set forth in paragraph (1) falls under the transaction listed in Article 2 (21)(ii), and other matters necessary for the calculation of an administrative monetary penalty under the same paragraph shall be specified by a Cabinet Order.

(Administrative Monetary Penalty Payment Order against a Person Who has Conducted Series of Sales and Purchase, etc. of Securities that would Cause Fluctuation in Market Price)

Article 174 (1) When a person (hereinafter referred to as a "Violator" in this Article) has committed an Act of Violation on his/her own account (meaning a series of Sales and Purchase, etc. of Securities (which means the Sales and Purchase, etc. of Securities set forth in Article 159 (2)) or making of an offer or entrustment therefor conducted in violation of Article 159 (2)(i), that would fluctuate market prices of Listed Financial Instruments, etc. (meaning the Listed Financial Instruments, etc. in the same item; hereinafter the same shall apply in this Article) in a Financial Instruments Exchange Market or of Over-the-Counter Traded Securities in an Over-the-Counter Securities Market; hereinafter the same shall apply in this Article), the Prime Minister shall, in accordance with the procedures prescribed in the following Section, order said Violator to pay to the national treasury an administrative monetary penalty of an amount equivalent to the sum of the amount specified in each of the following items:

- (i) the amount obtained by deducting the amount listed in the following sub-item (b) from the amount listed in the following sub-item (a):
- (a) the Price of Sales, etc. of Securities (limited to those pertaining to a Matching Volume of Sales and Purchase pertaining to said Act of

- Violation).
- (b) the Price of Purchase, etc. of Securities (limited to those pertaining to an Matching Volume of Sales and Purchase related to said Act of Violation).
- (ii) the amount listed in the following (a) or (b), in accordance with the categories of the cases listed respectively in those sub-items:
- (a) when the volume of Sales, etc. of Securities pertaining to said Act of Violation exceeds the volume of Purchase, etc. of Securities pertaining to said Act of Violation: the amount obtained by deducting the amount listed in the following 2. from the amount listed in the following 1:
    1. the Price for Sales, etc. of Securities pertaining to said exceeding volume (limited to those in relation to the Matching Volume of Sales, etc. pertaining to said Act of Violation).
    2. the Price for the Purchase, etc. of Securities pertaining to Listed Financial Instruments, etc. or Over-the-Counter Traded Securities related to said Act of Violation conducted within one month after the day of terminating said Act of Violation (limited to those in relation to the Opposing Volume of Sales, etc. pertaining to said Act of Violation).
  - (b) when the volume of Purchase, etc. of Securities pertaining to said Act of Violation exceeds the volume of Sales, etc. of Securities pertaining to said Act of Violation: the amount obtained by deducting the amount listed in the following sub-item 2 from the amount listed in the following sub-item 1:
    1. the Price for the Sales, etc. of Securities pertaining to Listed Financial Instruments, etc. or Over-the-Counter Traded Securities related to said Act of Violation conducted within one month after the day of terminating said Act of Violation (limited to those in relation to the Opposing Volume of Purchase, etc. pertaining to said Act of Violation).
    2. the Price for the Purchase, etc. of Securities pertaining to said exceeding volume (limited to those in relation to the Opposing Volume of Purchase, etc. pertaining to said Act of Violation).
- (2) The term "Sale, etc. of Securities" as used in the preceding paragraph means sales of Securities, the transaction set forth in Article 2 (21)(ii) (limited to the transaction under which the person becomes a party paying money when the Actual Figure exceeds the Agreed Figure), the transaction set forth in Article 2 (21)(iii) (limited to the transaction under which the person becomes a party granting Options) and other transactions specified by a Cabinet Order, which are conducted on the person's own account.
- (3) The term "Purchase, etc. of Securities" as used in paragraph (1) means purchase of Securities, the transaction set forth in Article 2 (21)(ii) (limited to the transactions under which the person becomes a party receiving money when the Actual Figure exceeds the Agreed Figure), the transaction set forth in

Article 2 (21)(iii) (limited to the transactions under which the person becomes a party acquiring Options) and other transactions specified by a Cabinet Order, which are conducted on the person's own account.

- (4) The term "Opposing Volume of Sales and Purchase" as used in paragraph (1), item (i) means either the volume of Sales, etc. of Securities (meaning the Sales, etc. of Securities set forth in said paragraph; hereinafter the same shall apply in this Article) pertaining to an Act of Violation, or the volume of the Purchase, etc. of Securities (meaning the Purchase, etc. of Securities set forth in said paragraph; hereinafter the same shall apply in this Article) pertaining to said Act of Violation, whichever is smaller.
- (5) The term "Opposing Volume of Sales, etc." as used in paragraph (1), item (ii), sub-item (a) means either the exceeding volume of Sales, etc. of Securities when the volume of Sales, etc. of Securities pertaining to an Act of Violation exceeds the volume of Purchase, etc. of Securities pertaining to said Act of Violation, or the volume of Purchase, etc. of Securities related to the Listed Financial Instruments, etc. or Over-the-Counter Traded Securities pertaining to said Act of Violation conducted within one month after the date of termination of the Act of Violation, whichever is smaller.
- (6) The term "Opposing Volume of Purchase, etc." as used in paragraph (1), item (ii), sub-item (b) means either the exceeding volume of Purchase, etc. of Securities when the volume of Purchase, etc. of Securities pertaining to an Act of Violation exceeds the volume of Sales, etc. of Securities pertaining to said Act of Violation, or the volume of Sales, etc. of Securities related to the Listed Financial Instruments, etc. or Over-the-Counter Traded Securities pertaining to said Act of Violation conducted within one month after the date of termination of the Act of Violation, whichever is smaller.
- (7) The term "Price" as used in paragraph (1) means the amount obtained by multiplying the Price of the Sales, etc. of Securities or the Price of Purchase, etc. of Securities, by the volume of each Sales, etc. of Securities or Purchase, etc. of Securities.
- (8) When a Violator, on his/her own account, has conducted Sales, etc. of Securities pertaining to an Act of Violation without possessing the securities pertaining to said Act of Violation at the time of the start of said Act of Violation, or when the Violator, on his/her own account, has entered into an agreement for transaction specified in Article 2 (21)(ii) (limited to the transactions of Securities pertaining to said Act of Violation) under which said person is obligated to pay if the Actual Figure exceeds the Agreed Figure, and in any other cases specified by a Cabinet Order, for the purposes of calculating the amount listed in each item of paragraph (1), said Violator shall be deemed to have conducted, on his/her own account, Sales, etc. of Securities pertaining to said Act of Violation at the time of the start of said Act of Violation and at

the price as of said point of time.

- (9) When a Violator owns the Securities pertaining to the Act of Violation at the time of the start of said Act of Violation, or when the Violator, on his/her own account, has entered into an agreement for transaction specified in Article 2 (21)(ii) (limited to the transactions of Securities pertaining to said Act of Violation) under which said person will receive money when the Actual Figure exceeds the Agreed Figure, and in any other cases specified by a Cabinet Order, for the purposes of calculating the amount listed in each item of paragraph (1), said Violator shall be deemed to have conducted, on his/her own account, Purchase, etc. of Securities pertaining to said Act of Violation at the time of the start of said Act of Violation and at the price as of said point of time.
- (10) The amount listed in each item of paragraph (1) shall be calculated for each issue.
- (11) With regard to any amount specified in each item of paragraph (1) pertaining to one issue, if there remains an amount which cannot be fully deducted, the total amount specified in the same paragraph shall be the amount obtained by deducting said non-deductible amount from the amount specified in another item pertaining to the same issue.
- (12) When there are two or more issues pertaining to an Act of Violation, with regard to one of said issues, if there remains a non-deductible amount even after the deduction under the provision of the preceding paragraph, said non-deductible amount shall be deducted from the total amount set forth in paragraph (1) pertaining to other issues.
- (13) With regard to the cases where a transaction listed in Article 2 (21)(ii) has been settled by payment and receipt of money based on an Actual Figure, the cases where the Options pertaining to a transaction listed in Article 2 (21)(iii) have been extinguished without being exercised and other cases specified by a Cabinet Order as being similar to these cases, the matters necessary for calculation of an administrative monetary penalty set forth in paragraph (1) shall be specified by a Cabinet Order.
- (14) In addition to what is provided in paragraph (2) to the preceding paragraph inclusive, the matters necessary for calculation of prices for Sales, etc. of Securities and the prices for Purchase, etc. of Securities set forth in paragraph (1) and any other matters necessary for calculation of an administrative monetary penalty set forth in said paragraph shall be specified by a Cabinet Order.

(Administrative Monetary Penalty Payment Order against a Person Who has Committed Acts in Violation of Prohibited Acts, etc. of Corporate Insiders)  
Article 175 (1) When a person has conducted, on his/her own account, Sales and Purchase, etc. set forth in Article 166 (1) in violation of the provisions of

Article 166 (1) or (3), the Prime Minister shall, in accordance with the procedures set forth in the following Section, order said person to pay to the national treasury an administrative monetary penalty equivalent to the amount prescribed in the following items in accordance with the categories listed in such items:

- (i) when a person has conducted, on his/her own account, Sales, etc. of Securities (limited to those conducted within six months prior to the date of publication of a Material Fact Pertaining to Business or Other Matters set forth in Article 166 (1); hereinafter the same shall apply in this item) in violation of the provision of Article 166 (1) or (3): the amount obtained by deducting the amount listed in the following sub-item (b) from the following sub-item (a):
  - (a) with regard to the Sales, etc. of Securities, the amount obtained by multiplying the price for said Sales, etc. of Securities, by the volumes of said Sales, etc. of Securities.
  - (b) with regard to the Sales, etc. of Securities, the amount obtained by multiplying the Price After the Publication of a Material Fact Pertaining to Business or Other Matters, by the volumes of said Sales, etc. of Securities.
- (ii) when a person has conducted, on his/her own account, Purchase, etc. of Securities in violation of the provisions of Article 166 (1) or (3) (limited to those conducted within six month prior to the date of publication of a Material Fact Pertaining to Business or Other Matters set forth in Article 166 (1); hereinafter the same shall apply in this item): the amount obtained by deducting the amount listed in the following sub-item (b) from the following sub-item (a):
  - (a) with regard to the Purchase, etc. of Securities, the amount obtained by multiplying the Price After the Publication of a Material Fact Pertaining to Business or Other Matters by the volumes of said Purchase, etc. of Securities.
  - (b) with regard to the Purchase, etc. of Securities, the amount obtained by multiplying the price for said Purchase, etc. of Securities, by the volumes of said Purchase, etc., of Securities.
- (2) When a person has conducted, on his/her own account, purchase, etc. related to the Regulated Share Certificates, etc. or Related Share Certificates, etc. under Article 167 (1) or Sales, etc. related to the Share Certificates, etc. under said paragraph, in violation of the provisions of Article 167 (1) or (3), the Prime Minister shall, in accordance with the procedures set forth in the following Section, order said person to pay to the national treasury an administrative monetary penalty equivalent to the amount prescribed in the following items in accordance with the categories listed in such items:
  - (i) when a person has conducted, on his/her own account, Sales, etc. of



- Securities in violation of the provisions of Article 167 (1) or (3) (limited to those conducted within six months prior to the date of publication of a Fact Concerning Launch of a Tender Offer, etc. or of a Fact Concerning Suspension of Tender Offer, etc. set forth in Article 167 (1); hereinafter the same shall apply in this item): the amount obtained by deducting the amount listed in the following sub-item (b) from the amount listed in the following sub-item (a):
- (a) with regard to the Sales, etc. of Securities, the amount obtained by multiplying the price for said Sales, etc. of Securities, by the volumes of said Sales, etc. of Securities.
  - (b) with regard to the Sales, etc. of Securities, the amount obtained by multiplying the Price after the Publication of a Fact Concerning Launch of a Tender Offer, etc. or of a Fact Concerning Suspension of Tender Offer, etc. for said Sales, etc. of Securities by the volumes of said Sales, etc. of Securities.
- (ii) when a person has conducted, on his/her own account, Purchase, etc. of Securities in violation of the provisions of Article 167 (1) or (3) (limited to those conducted within six months prior to the date of publication of a Fact Concerning Launch of a Tender Offer, etc. or of a Fact Concerning Suspension of Tender Offer, etc. set forth in Article 167 (1); hereinafter the same shall apply in this item): the amount obtained by deducting the amount listed in the following sub-item (b) from the following sub-item (a):
- (a) with regard to the Purchase, etc. of Securities, the amount obtained by multiplying the price after the publication of a Fact Concerning Launch of Tender Offer, etc. or of a Fact Concerning Suspension of Tender Offer, etc. by the volumes of said Purchase, etc. of Securities.
  - (b) with regard to the Purchase, etc. of Securities, the amount obtained by multiplying the price for said Purchase, etc. of Securities, by the volumes of said Purchase, etc. of Securities.
- (3) The term "Sales, etc. of Securities" as used in the preceding two paragraphs means sales of Securities, the transaction set forth in Article 2 (21)(ii) (limited to the transaction under which the person becomes a party paying money when the Actual Figure exceeds the Agreed Figure), the transaction set forth in Article 2 (21)(iii) (limited to the transactions under which the person becomes a party granting Options) and other transactions specified by a Cabinet Order.
- (4) The term "Purchase, etc. of Securities" as used in paragraph (1) and (2) means purchase of Securities, the transaction set forth in Article 2 (21)(ii) (limited to the transaction under which the person becomes a party receiving money when the Actual Figure exceeds the Agreed Figure), the transaction set forth in Article 2 (21)(iii) (limited to the transactions under which the person becomes a party acquiring Options) and other transactions specified by a Cabinet Order.

- (5) The term "Price after the Publication of a Material Fact Pertaining to Business or Other Matters" as used in paragraph (1) means the closing price set forth in Article 67-19 or Article 130 as of the date immediately following the date of publication of a Material Fact Pertaining to Business or Other Matters prescribed in Article 166 (1) (if there is no such price, the price equivalent thereto as specified by a Cabinet Office Ordinance).
- (6) The term "the Price after the Publication of a Fact Concerning Launch of a Tender Offer, etc. or of a Fact Concerning Suspension of Tender Offer, etc." as used in paragraph (2) means the closing price prescribed in Article 67-19 or Article 130 as of the date immediately following the date of the publication of a Fact Concerning Launch of a Tender Offer, etc. or of a Fact Concerning Suspension of Tender Offer, etc. prescribed in Article 167 (1) (if there is no such price, the price equivalent thereto as specified by a Cabinet Office Ordinance).
- (7) The provision of paragraph (1) shall apply mutatis mutandis to the case where an Officer, etc. specified in Article 166 (1)(i) of a Listed Company, etc. (meaning a Listed Company, etc. set forth in Article 163 (1), or a Parent Company or Subsidiary Company set forth in Article 166 (1)(i)) has, on said company's account, conducted Sales and Purchase, etc. set forth in Article 166 (1) in violation of the provision of Article 166 (1) or (3). In this case, the term "said person" as used in paragraph (1) shall be deemed to be replaced with "said Listed Company, etc.,"; and the term "on his/her own account" in the respective items of the same paragraph shall be deemed to be replaced with "based on the account of a Listed Company, etc."
- (8) In addition to what is prescribed in paragraphs (3) to (6) inclusive, when the Sales, etc. of Securities or the Purchase, etc. of Securities set forth in paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to the preceding paragraph; hereinafter the same shall apply in this paragraph) and paragraph (2) falls under the transaction listed in Article 2 (21)(ii), the price and volume and any other matters necessary for calculation of an administrative monetary penalty set forth in paragraph (1) or (2) shall be specified by a Cabinet Order.

(Calculation of Fractions, etc. of Amount of Administrative Monetary Penalty)  
Article 176 (1) Payment of surcharge shall not be ordered if the amount of the administrative monetary penalty calculated under the provisions of Articles 172 to the preceding Article inclusive is less than ten thousand yen.

- (2) When the amount of the administrative monetary penalty calculated under the provisions of Article 172 to the preceding Article inclusive contains a fraction less than ten thousand yen, such fraction shall be rounded down.
- (3) A person who has received an order under the provisions of Article 172 to the

preceding Article inclusive shall pay the administrative monetary penalty under the relevant provisions.

- (4) When an Issuer prescribed in Article 172 (1) or (4), an Issuer prescribed in Article 172-2 (1) or (2), a person prescribed in Article 173 (1), a Violator prescribed in Article 174 (1), a person prescribed in paragraph (1) of the preceding Article, a person prescribed in paragraph (2) of said Article, or a Listed Company, etc. prescribed in paragraph (7) of said Article is a juridical person, and when said juridical person has been extinguished by a merger, the provisions of Article 172 to the preceding Article inclusive and the preceding three paragraphs shall be applied by deeming the acts conducted by said extinguished juridical person to be the acts conducted by a juridical person that has survived the merger or by a juridical person established upon the merger.

(Order for Production of Reports and On-Site Inspection)

Article 177 The Prime Minister may have the officials conduct the following dispositions in order to carry out an investigation necessary for a case concerning the administrative monetary penalty under Article 173 (1), Article 174 (1) or Article 175, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to Article 175 (7)) or paragraph (2):

- (i) to question persons concerned with a case or witnesses, or to have these persons submit their opinions or reports; and
- (ii) to enter any business office of the persons concerned with a case and other necessary sites to inspect books and documents and other articles.

## **Section 2 Trial Procedures**

(Decision on Commencement of Trial Procedures)

Article 178 (1) When the Prime Minister finds any of the following facts, he/she shall issue a decision on commencement of trial procedures for the case pertaining to said facts:

- (i) the fact which falls under Article 172, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (4) of said Article) or paragraph (2) (including the cases where it is applied mutatis mutandis pursuant to paragraph (5) of said Article);
- (ii) the fact which falls under Article 172-2 (1) or (2);
- (iii) the fact which falls under Article 173 (1);
- (iv) the fact which falls under Article 174 (1); or
- (v) the fact which falls under Article 175, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (7) of the same Article) or paragraph (2).

- (2) When the Prime Minister has issued a decision on commencement of trial procedures, he/she may not issue a decision on commencement of trial procedures on the ground that any of the facts listed in the respective items of the preceding paragraph pertaining to said decision also falls under the facts listed in another items of said provision.
- (3) When three years have passed from the day of the submission of Offering Disclosure Documents under Article 172 (3) which contain any misstatement on important matters, the Prime Minister may not issue a decision on commencement of trial procedures concerning the facts listed in paragraph (1), item (i) relating to said Offering Disclosure Documents.
- (4) When three years have passed from the day of the commencement of secondary distribution pertaining to a prospectus under Article 172 (4) which contains a misstatement on important matters set forth in the same paragraph, the Prime Minister may not issue a decision on commencement of trial procedures concerning the facts listed in paragraph (1), item (i) relating to said prospectus.
- (5) When three years have passed from the day of the submission of Ongoing Disclosure Documents (meaning an Annual Securities Report, etc., Quarterly Securities Report, Semiannual Securities Report and Extraordinary Securities Report, etc.; hereinafter the same shall apply in this paragraph and Article 185-7 (2), (3) and (19)) which contains any misstatement on important matters, the Prime Minister may not issue a decision on commencement of trial procedures concerning the facts listed in paragraph (1), item (ii) relating to said Ongoing Disclosure Documents.
- (6) When three years have passed from the day when an Act of Violation under Article 173 (1) was committed, the Prime Minister may not issue a decision on commencement of trial procedures concerning the facts listed in paragraph (1), item (iii) relating to said Act of Violation.
- (7) When three years have passed from the day when an Act of Violation under Article 174 (1) was terminated, the Prime Minister may not make a decision on commencement of trial procedures concerning the facts listed in paragraph (1), item (iv) relating to said Act of Violation.
- (8) When three years have passed from the day when Sales and Purchase, etc. under Article 166 (1) was conducted, the Prime Minister may not issue a decision on commencement of trial procedures concerning the facts listed in paragraph (1), item (v) relating to said Sales and Purchase, etc.
- (9) When three years have passed from the date of Purchase, etc. of Specified Share Certificates, etc. or the Related Share Certificates, etc. under Article 167 (1) or of Sales, etc. of the Share Certificates, etc. under the same paragraph, the Prime Minister may not issue a decision on commencement of trial procedures concerning the facts listed in paragraph (1), item (v) relating to the

Purchase, etc. of said Regulated Share Certificates, etc. or Related Share Certificates, etc., or Sales, etc. of Share Certificates, etc.

(Written Decision on Commencement of Trial Procedures)

Article 179 (1) A decision on commencement of trial procedures shall be made in writing.

(2) A written decision on commencement of trial procedures (hereinafter referred to as the "Written Decision on Commencement of Trial Procedures" in the following paragraph and Article 183) shall contain the date and place of the trial, the facts pertaining to the administrative monetary penalty listed in the respective items of paragraph (1) of the preceding Article, the amount of the administrative monetary penalty to be paid, and the basis for computation.

(3) The trial procedures shall be commenced by serving a transcript of a Written Decision on Commencement of Trial Procedures upon the person who is to be ordered to pay an administrative monetary penalty (hereinafter referred to as the "Respondent" in this Section).

(4) A Respondent shall be notified to appear on the date of the trial.

(Trial Procedures)

Article 180 (1) The trial procedures (excluding the decision on commencement of trial procedure and a decision under Article 185-7 (7)) shall be conducted by a panel comprising three trial examiners; provided, however, that a trial for a simple case shall be conducted by a single trial examiner.

(2) The Prime Minister shall, for each trial case, designate trial examiners constituting a panel under the main clause of the preceding paragraph, or one trial examiner under the proviso to the same paragraph.

(3) When the Prime Minister has decided to have a panel conduct trial procedures, he/she shall designate one chief trial examiner, out of the trial examiners designated under the provision of the preceding paragraph.

(4) The Prime Minister shall not designate a person who has participated in the investigation of the case as a trial examiner.

(Counsel, etc. of Respondent)

Article 181 (1) A Respondent may appoint an attorney-at-law, legal professional corporation, or any appropriate person who has been approved by the Prime Minister as his/her counsel.

(2) The Prime Minister may have the officials as he/she designates (referred to as the "Designated Official" in the following paragraph) participate in the trial procedures.

(3) A Designated Official may attend the trial, offer evidence and conduct other necessary acts.

(Trials Open to Public)

Article 182 A trial shall be open to the public; provided, however, that this shall not apply to the case where it is found necessary for the public interest.

(Written Answer)

Article 183 (1) When a Respondent has been served a transcript of a Written Decision on Commencement of Trial Procedures, he/she shall produce a written answer therefor to trial examiners without delay.

(2) When a Respondent has submitted a written answer to the effect that he/she admits the facts pertaining to the administrative monetary penalty listed in the respective items of Article 178 (1) and the amount of the administrative monetary penalty to be paid, before the trial date specified in the Written Decision on Commencement of Trial Procedures, the trial date of the trial shall not be required to be held.

(Statement of Opinions)

Article 184 (1) A Respondent may state his/her opinion upon appearing on a trial date.

(2) When trial examiners find it necessary, they may request a Respondent to state his/her opinion.

(Hearing of Witness)

Article 185 (1) Trial examiners may, upon the filing of a petition by a Respondent or ex officio, order witnesses to appear so as to conduct a hearing. In this case, a Respondent may also question the witnesses.

(2) The provisions of Article 190, Article 191, Article 196, Article 197 and Article 201 (1) to (4) inclusive of the Code of Civil Procedure (Act No. 109 of 1996) shall apply mutatis mutandis to hearing procedures for witnesses under the provisions of the preceding paragraph.

(Hearing of Respondent)

Article 185-2 Trial examiners may, upon the filing of a petition by a Respondent or ex officio, conduct a hearing of a Respondent.

(Production of Documentary Evidence, etc.)

Article 185-3 (1) A Respondent may produce documentary evidence or articles of evidence during the course of a trial; provided, however, that when trial examiners have designated a reasonable time limit for the production of documentary evidence or articles of evidence, such production shall be made within the designated period.

(2) Trial examiners may, upon the filing of a petition by a Respondent or ex officio, order the holder of a document or other articles to produce such articles and retain the produced articles.

(Order to Present Expert Opinion to be Issued to Person with Relevant Knowledge and Experience)

Article 185-4 (1) Trial examiners may, upon the filing of a petition by a Respondent or ex officio, order a person with relevant knowledge and experience to present his/her expert opinion.

(2) When trial examiners order an expert witness to appear so as to conduct a hearing, the Respondent may also question said expert witness.

(3) The provisions of Article 191, Article 197, Article 201 (1) and Article 212 of the Code of Civil Procedure shall apply mutatis mutandis to the procedures where an order to present an expert opinion is given to an expert witness under paragraph (1).

(On-Site Inspection)

Article 185-5 Trial examiners may, upon the filing of a petition by a Respondent or ex officio, enter any business office of the persons concerned with a case and other necessary sites to inspect books and documents and other articles.

(Production of Draft Decision)

Article 185-6 Trial examiners shall, after having conducted trial procedures, prepare a draft decision on the relevant trial case and submit the draft decision to the Prime Minister.

(Decision, etc. of Administrative Monetary Penalty Payment Order)

Article 185-7 (1) When the Prime Minister, after having conducted trial procedures, has found any of the facts listed in any item of Article 178 (1), he/she shall issue a decision to a Respondent ordering to pay to the national treasury an administrative monetary penalty under the provisions of Article 172, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (4) of said Article) or paragraph (2) (including the cases where it is applied mutatis mutandis pursuant to paragraph (5) of said Article), Article 172-2 (1) or (2), Article 173 (1), Article 174 (1) or Article 175, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (7) of said Article; the same shall apply in paragraph (5)) or paragraph (2).

(2) When the Prime Minister is required to issue a decision under the preceding paragraph in relation to the submission of two or more Ongoing Disclosure Documents covering the same Business Year Subject to Disclosure (limited to a

decision pertaining to Article 178 (1)(ii)), if the sum of the amounts calculated under Article 172-2 (1) or (2) with regard to the fact pertaining to each decision (hereinafter referred to as the "Surcharge Amount Calculated for Respective Decision" in this paragraph to paragraph (4) inclusive) exceeds the amount specified in either of the following items, whichever is higher, the Prime Minister shall, in lieu of the amount set forth in paragraph (1) or (2) of said Article, issue an order to pay to the national treasury an administrative monetary penalty equivalent to the amount derived by prorating said higher amount in proportion to the Surcharge Amount Calculated for Respective Decision pursuant to the provisions of a Cabinet Office Ordinance:

(i) the highest amount calculated under the provision of Article 172-2 (1) in relation to the fact pertaining to the decision, with regard to respective Annual Securities Reports, etc.;

(ii) the highest amount obtained by multiplying the amount calculated under the provision of Article 172-2 (2) in relation to the fact pertaining to the decision, with regard to the respective Quarterly Securities Report, Semiannual Securities Report, Extraordinary Securities Report, etc. by two.

(3) When the Prime Minister is required to issue a decision under paragraph (1) (limited to the decision pertaining to Article 178 (1)(ii)) or a decision under the preceding paragraph, if he/she needs to issue one or more decisions (hereinafter referred to as the "New Decision" in this paragraph) in relation to the Ongoing Disclosure Documents for the same Business Year Subject to Disclosure as the Business Year Subject to Disclosure for the Ongoing Disclosure Documents pertaining to the one or more decisions already issued under paragraph (1) or the preceding paragraph (hereinafter referred to as the "Prior Decision" in this paragraph), he/she shall, with regard to said New Decision, issue an order to pay to the national treasury an administrative monetary penalty equivalent to the amount derived by the following: deducting the amount specified in item (ii) from the amount specified in item (i), and then prorating such amount after deduction in proportion to the Surcharge Amount Calculated for Respective Decision in relation to the fact pertaining to the respective New Decision pursuant to the provisions of a Cabinet Office Ordinance, in lieu of the amount set forth in Article 172-2 (1) or (2) or the preceding paragraph; provided, however, that when the amount listed in item (i) does not exceed the amount listed in item (ii), he/she may not issue an administrative monetary penalty payment order under Article 172-2 (1) or (2) or the preceding paragraph:

(i) the sum of the Surcharge Amount Calculated for Respective Decision in relation to the facts pertaining to the respective Prior Decision and New Decision (if such amount exceeds either the amount listed in the following sub-item (a) or (b), whichever is higher, such higher amount):



- (a) the highest amount calculated under the provision of Article 172-2 (1) in relation to the fact pertaining to the Prior Decision or the New Decision, with regard to the respective Annual Securities Reports, etc.; or
  - (b) the highest amount obtained by multiplying the amount calculated under the provision of Article 172-2 (2) in relation to the fact pertaining to the Prior Decision or the New Decision, with regard to the respective Quarterly Securities Report, Semiannual Securities Report, Extraordinary Securities Report, etc. by two.
  - (ii) the sum of the amount of the administrative monetary penalties under Article 172-2 (1) or (2) or the preceding paragraph pertaining to the Prior Decision.
- (4) When the Prime Minister is required to issue one or more decisions under paragraph (1) (limited to the cases where any fact specified in Article 178 (1)(ii) has been found) or under preceding two paragraphs, if there is a final and binding court decision on the same case imposing a fine on a Respondent, he/she shall, in lieu of the amount specified in Article 172-2 (1) or (2) or the preceding two paragraphs, issue an order to pay to the national treasury an administrative monetary penalty equivalent to the amount derived by the following: deducting the amount specified in item (ii) from the amount specified in item (i), and then prorating the amount after said deduction in proportion to the Surcharge Amount Calculated for Respective Decision in relation to each fact pertaining to said one or more decisions, pursuant to the provisions of a Cabinet Office Ordinance; provided, however, that when the amount listed in item (i) does not exceed the amount listed in item (ii), the Prime Minister may not issue an administrative monetary penalty payment order under Article 172-2 (1) or (2) or the preceding two paragraphs:
- (i) the sum of the amount calculated under the provision of Article 172-2 (1) or (2) or the preceding two paragraphs, in relation to the fact pertaining to said one or more decisions.
  - (ii) the amount of the fine imposed.
- (5) In the case of paragraph (1) (limited to the cases where any fact specified in Article 178 (1), item (iii) to (v) inclusive has been found), if there is a final and binding court decision on the same case which orders a Respondent confiscation of the properties listed in each item of Article 198-2 (1), or collection of equivalent value of the properties listed in each item of Article 198-2 (1), the Prime Minister shall, in lieu of the amount set forth in Article 173 (1), Article 174 (1), or Article 175 (1) or (2), issue an order to pay to the national treasury an administrative monetary penalty equivalent to the amount obtained by deducting the amount equivalent to the properties listed in each item of Article 198-2 (1) for which confiscation was ordered pursuant to said court decision or the amount equivalent to the values of the properties

- listed in each item of Article 198-2 (1) for which collection of equivalent value was ordered pursuant to said court decision (in cases where confiscation of the properties listed in each item of Article 198-2 (1) and collection of equivalent value of the properties listed in each item of Article 198-2 (1) were ordered pursuant to said court decision, the sum of the amount equivalent to the properties listed in each item of Article 198-2 (1) for which confiscation was ordered pursuant to said court decision and the amount equivalent to the values of the properties listed in each item of Article 198-2 (1) for which collection of equivalent value was ordered pursuant to said court decision; hereinafter referred to as the "Amount Equivalent to Confiscated Properties, etc." in this paragraph), from the amount to be paid pursuant to paragraph (1); provided, however, that if the amount set forth in Article 173 (1), Article 174 (1) or Article 175 (1) or (2) does not exceed the Amount Equivalent to Confiscated Properties, etc., the Prime Minister may not issue an administrative monetary penalty payment order under such provisions.
- (6) When the Prime Minister, after having conducted trial procedures, has found that there is no fact which falls under any item of Article 178 (1), or in cases where the proviso to paragraph (3), the proviso to paragraph (4) or the proviso to the preceding paragraph applies, he/she shall make a decision to clarify to that effect.
- (7) A decision under each of the preceding paragraphs shall be made in writing based on the draft decision submitted by trial examiners under the provision of the preceding Article.
- (8) A written decision pertaining to the decision set forth in the preceding paragraph shall contain the facts found by the Prime Minister and the application of laws and regulations to said facts (including the basis for computation of administrative monetary penalties and the time limit for payment, in the case of the decisions under paragraphs (1) to (5) inclusive).
- (9) The time limit for payment under the preceding paragraph shall be the day on which two months have passed from the date of issuance of the transcript of the decision set forth in the same paragraph (limited to those pertaining to the decision under paragraphs (1) to (5) inclusive).
- (10) The decision set forth in paragraph (7) shall come into effect by serving a transcript of the written decision pertaining to said decision upon a Respondent.
- (11) Notwithstanding the provision of the preceding paragraph, with regard to the decision under paragraph (1) (limited to the decision pertaining to Article 178 (1)(ii)), paragraph (2) and paragraph (3), if prosecution has been instituted for the same case and if said case is pending in the court at the time of issuance of said decision, such decision shall come into effect when the court decision on the same case has become final and binding; provided, however,

- that when there is a final and binding court decision on the same case imposing a fine on the recipient of said decision, such decision shall come into effect when a transcript of documents pertaining to the disposition of change under the provisions of paragraph (6) of the following Article has been served.
- (12) Notwithstanding the provision of paragraph (10), with regard to the decision under paragraph (1) (limited to the decision pertaining to Article 178 (1), items (iii) to (v) inclusive), if prosecution is instituted for the same case and if said case is pending in the court at the time of issuance of said decision, such decision shall come into effect when the court decision on the same case becomes final and binding; provided, however, that when there is a final and binding court decision on the same case which orders the recipient of said decision confiscation of the properties listed in each item of Article 198-2 (1) or collection of equivalent values of the properties listed in each item of Article 198-2 (1), the decision shall come into effect when a transcript of documents pertaining to the disposition of change under paragraph (7) of the following Article has been served.
- (13) The provisions of the main clause of paragraph (11) and the main clause of the preceding paragraph shall not apply to the cases where a transcript of a written decision pertaining to the decisions under paragraphs (1) to (3) inclusive has not been served at the time when the court decision on the same case becomes final and binding.
- (14) The provision of the proviso to paragraph (11) shall not apply to the cases where a transcript of written decision pertaining to a decision under paragraph (1) (limited to those pertaining to Article 178 (1)(ii)), paragraph (2) or paragraph (3) has not been served at the time when a transcript of documents pertaining to a disposition of change under paragraph (6) of the following Article has been served.
- (15) The provision of the proviso to paragraph (12) shall not apply to the case where a transcript of written decision pertaining to the decision under paragraph (1) (limited to the decision pertaining to Article 178 (1), items (iii) to (v) inclusive) has not been served at the time when a transcript of documents pertaining to the disposition of change under paragraph (7) of the following Article has been served.
- (16) Notwithstanding the provision of paragraph (9), in cases where the main clause of paragraph (11) or the main clause of paragraph (12) applies, the time limit for payment of an administrative monetary penalty shall be the day when two months have passed from the day when a court decision on the case has become final and binding.
- (17) Notwithstanding the provision of paragraph (9), in cases where the proviso to paragraph (11) or the proviso to paragraph (12) applies, the time limit for payment of an administrative monetary penalty shall be the day when two

months have passed from the day when a transcript of documents pertaining to the disposition of change under the provision of paragraph (6) or (7) of the following Article has been dispatched.

- (18) When the amount of the administrative monetary penalty computed under the provisions of paragraphs (2) to (4) inclusive includes a fraction of less than one yen, such fraction shall be rounded down.
- (19) The term "Business Year Subject to Disclosure" as used in paragraph (2) and (3) means the business year specified in each of the following items in accordance with the categories of the Ongoing Disclosure Documents listed in each of the following items:
- (i) an Annual Securities Report, its attached documents and Amendment Reports under Article 24 (1) or (3) (including the cases where they are applied mutatis mutandis pursuant to paragraph (5) of said Article (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27), Article 24 (6) (including the cases where it is applied mutatis mutandis pursuant to Article 27), and Article 7, Article 9 (1) or Article 10 (1) as applied mutatis mutandis pursuant to Article 24-2 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27): the business year pertaining to said Annual Securities Report and its attached documents;
  - (ii) a Quarterly Annual Securities Report and its Amendment Report under Article 24-4-7 (1) or (2) (including the cases where they are applied mutatis mutandis pursuant to paragraph (3) of said Article (including the case where it is applied mutatis mutandis pursuant to Article 27) and Article 27), and Article 7, Article 9 (1), or Article 10 (1) as applied mutatis mutandis pursuant to Article 24-4-7 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27): the business year to which the period for said Quarterly Securities Report belongs;
  - (iii) a Semiannual Securities Report and its Amendment Report under Article 24-5 (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (3) of said Article (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27), and Article 7, Article 9 (1) or Article 10 (1) as applied mutatis mutandis pursuant to Article 24-5 (5) (including the cases where it is applied mutatis mutandis pursuant to Article 27): the business year to which the period for said Semiannual Securities Report belongs; and
  - (iv) an Extraordinary Securities Report and its Amendment Report under Article 24-5 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 7, Article 9 (1) or Article 10 (1) as applied mutatis mutandis pursuant to Article 24-5 (5) (including the cases where it is applied mutatis mutandis pursuant to Article 27): the business year to which

the day of the submission of said Extraordinary Securities Report belongs.

(Suspension of Effect of Decision)

Article 185-8 (1) After the decision under paragraph (1) of the preceding Article (limited to the decision pertaining to Article 178 (1), items (ii) to (v) inclusive; hereinafter the same shall apply in paragraphs (4), (5), (8), and (11)) or the decision under paragraph (2) or (3) of the preceding Article has been issued, when prosecution regarding the same case has been instituted against the recipient of such decision before the time limit for payment pertaining to said decision, the Prime Minister shall suspend the effect of said decision until a court decision on the same case becomes final and binding; provided, however, that this shall not apply to the cases where the administrative monetary penalty pertaining to said decision has already been paid in full.

(2) When the effect of decision under paragraph (1) of the preceding paragraph (limited to the decision pertaining to Article 178 (1)(ii); hereinafter the same shall apply in paragraph (6)) or the effect of decision under paragraph (2) or (3) of the preceding Article has been suspended under the main clause of the preceding paragraph, when there is a final and binding court decision on said case imposing a fine to the recipient of said decision, the Prime Minister shall suspend the effect of said decision until a transcript of the documents pertaining to the disposition of change under paragraph (6) has been served.

(3) When the effect of decision under paragraph (1) of the preceding Article (limited to the decision pertaining to Article 178 (1), items (iii) to (v) inclusive; hereinafter the same shall apply in paragraph (7)) has been suspended under the main clause of paragraph (1), if there is a final and binding court decision on said case which orders the recipient of said decision confiscation of the properties as listed in each item of Article 198-2 (1) or collection of equivalent value of the properties listed in each item of Article 198-2 (1), the Prime Minister shall suspend the effect of said decision until a transcript of the documents pertaining to the disposition of change under paragraph (7) has been served.

(4) When the effect of decisions under paragraphs (1) to (3) inclusive of the preceding Article has been suspended under the provisions of paragraph (1), the time limit for the administrative monetary penalty payment shall be the day on which two months have passed from the day when a court decision on the case has become final and binding, notwithstanding the provision of paragraph (9) of said Article.

(5) When the effect of decisions under paragraphs (1) to (3) inclusive of the preceding Article has been suspended under the provisions of paragraph (2) or (3), the time limit for the administrative monetary penalty payment shall be the day on which two months have passed from the day when a transcript of

the document pertaining to the disposition of change under the following paragraph or paragraph (7) has been dispatched, notwithstanding the provision of paragraph (9) of said Article and preceding paragraph.

- (6) After issuance of a decision under paragraph (1) of the preceding Article or a decision under paragraph (2) or (3) of said Article, if there is a final and binding court decision on the same case imposing a fine on the recipient of said decision, the Prime Minister shall amend the amount of the administrative monetary penalty pertaining to said decision calculated under these provisions to the amount equivalent to those obtained as follows: deducting the amount listed in item (ii) from the amount listed in item (i), and then prorating the amount after said deduction in proportion to the amount of the administrative monetary penalty pertaining to the decision pursuant to the provisions of a Cabinet Office Ordinance; provided however, that this shall not apply if the amount listed in item (i) does not exceed the amount listed in item (ii):
- (i) the sum of the administrative monetary penalties pertaining to said decision.
  - (ii) the amount of said fine.
- (7) After issuance of a decision under paragraph (1) of the preceding Article, if there is a final and binding court decision on the same case which orders the recipient of said decision confiscation of the properties listed in each item of Article 198-2 (1) or collection of equivalent value of properties listed in each item of Article 198-2 (1), the Prime Minister shall amend the amount of the administrative monetary penalty pertaining to the decision under paragraph (1) of the preceding Article to the amount obtained by deducting the amount listed in item (ii) from the amount listed in item (i); provided, however, this shall not apply if the amount listed in item (i) does not exceed the amount listed in item (ii):
- (i) the amount specified in the provisions of Article 173 (1), Article 174 (1) or Article 175, paragraph (1) (including the cases where it is applied *mutatis mutandis* pursuant to paragraph (7) of said Article), or paragraph (2).
  - (ii) the amount equivalent to the properties listed in each item of Article 198-2 (1) for which confiscation was ordered pursuant to said court decision, or the amount equivalent to the values of the properties listed in each item of Article 198-2 (1) for which collection of equivalent value was ordered pursuant to said court decision (in cases where confiscation of the properties listed in each item of Article 198-2 (1) and collection of equivalent value of the properties listed in each item of Article 198-2 (1) were ordered pursuant to said court decision, the sum of the amount equivalent to the properties listed in each item of Article 198-2 (1) for which confiscation was ordered pursuant to said court decision and the amount equivalent to the values of the properties listed in each item of Article 198-2 (1) for which collection of equivalent value was ordered pursuant to said court decision).

- (8) In cases where the proviso to paragraph (6) or the proviso to the preceding paragraph applies, the Prime Minister shall rescind the decision under paragraphs (1) to (3) inclusive of the preceding Article.
- (9) A disposition of change under paragraph (6) or (7) shall be made in writing.
- (10) A disposition of change under paragraph (6) or (7) shall come into effect by serving a transcript of documents pertaining to said disposition.
- (11) Prescription of a claim pertaining to the administrative monetary penalty shall not run while the effect of decision under paragraphs (1) to (3) inclusive of the preceding Article has been suspended under the provisions of paragraph (1) to (3) inclusive.
- (12) When the amount of the administrative monetary penalty computed under the provision of paragraph (6) includes a fraction of less than one yen, such fraction shall be rounded down.

(Documents to be Served)

Article 185-9 In addition to those prescribed in this Section, the documents to be served shall be specified by a Cabinet Office Ordinance.

(Application Mutatis Mutandis of Code of Civil Procedure)

Article 185-10 The provisions of Article 99, Articles 101 to 103 inclusive, Article 105, Article 106, Article 107, paragraph (1) (excluding items (ii) and (iii)) and paragraph (3), Article 108 and Article 109 of the Code of Civil Procedure shall apply mutatis mutandis to service of documents. In this case, the term "court execution officer" in Article 99 (1) of said Code and the term "the court clerk" in Article 107 (1) of said Code shall be deemed to be replaced with "an official of the Financial Services Agency"; the term "a presiding judge" in Article 108 of said Code shall be deemed to be replaced with "the Prime Minister or the chief trial examiner (the trial examiner, in cases where the proviso to Article 180 (1) of the Financial Instruments and Exchange Act applies)"; and the term "the court" in Article 109 of the same Code shall be deemed to be replaced with "the Prime Minister or the trial examiner."

(Service by Publication)

Article 185-11 (1) The Prime Minister or the trial examiner may conduct service by publication in the following cases:

- (i) when the domicile, residence, or other place where service is made of the person that is to receive the service is unknown;
- (ii) when service may not be made under the provision of Article 107 (1) of the Code of Civil Procedure (excluding items (ii) and (iii)) as applied mutatis mutandis pursuant to the preceding Article;
- (iii) when, with regard to service to be made in foreign states, the provisions of

Article 108 of the Code of Civil Procedure as applied mutatis mutandis pursuant to the preceding Article may not be applied, or it is recognized that service may not be made based on said provisions; or

- (iv) when, after the lapse of six months from the date when a foreign competent authority was commissioned to conduct service under the provisions of Article 108 of the Code of Civil Procedure as applied mutatis mutandis pursuant to the preceding Article, documents certifying the service are not received.
- (2) Service by publication shall be made through posting on the notice board of the Financial Services Agency to the effect that the documents to be served shall be at any time delivered to the person that is to receive the service.
- (3) Service by publication shall take effect after the lapse of two weeks from the date when the posting was commenced under the provisions of the preceding paragraph.
- (4) Regarding service by publication pertaining to service to be made in foreign states, the time period set forth in the preceding paragraph shall be six weeks.

(Use of Electronic Data Processing System for Notice of Disposition, etc.)

Article 185-12 (1) Notices of disposition, etc. as prescribed in item (vii) of Article 2 of the Act on Utilization of Information and Communications Technology in Administrative Procedure, etc., which are to be made by service of documents pursuant to the provisions of this Section or a Cabinet Office Ordinance, may not be made using an electronic data processing system if the recipient of said notice of dispositions, etc. has given no indication via the method specified by a Cabinet Office Ordinance of receiving the service, notwithstanding the provision of Article 4 (1) of said Act.

- (2) The officials of the Financial Services Agency shall, when performing affairs related to the notice of dispositions, etc. prescribed in the preceding paragraph using an electronic data processing system, record matters related to 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 stored on a computer (including input and output devices) used by the Financial Services Agency via an electronic data processing system instead of preparing and producing a document that states those matters.

(Inspection, etc. of Case Records)

Article 185-13 An interested person may, after the decision on commencement of trial procedures has been issued, request the Prime Minister for inspection or copy of the case records, or for delivery of a transcript of the written decision pertaining to the decisions prescribed in Article 185-7 (7) or an extract thereof.



(Demand for Payment)

Article 185-14 (1) When a person fails to pay the administrative monetary penalty by the time limit for payment, the Prime Minister shall demand payment of said administrative monetary penalty by specifying the time limit in a written demand.

(2) When the Prime Minister has demanded the payment under the provision of the preceding paragraph, he/she may collect a delinquent charge at a rate of 14.5% per annum accrued on the amount of the administrative monetary penalty under the same paragraph, calculated based upon the number of the days from the day immediately following the time limit for payment to the day when said administrative monetary penalty has been paid; provided, however, that this shall not apply to the cases where the amount of delinquent charge is less than one thousand yen.

(3) When the amount of the delinquent charge computed under the provisions of the preceding paragraph includes a fraction of less than one hundred yen, such fraction shall be rounded down.

(Execution of Administrative Monetary Penalty Payment Order)

Article 185-15 (1) When a person who has received a demand under paragraph (1) of the preceding Article fails to pay the amount to be paid within the designated time limit, the decisions under Article 185-7, paragraphs (1) to (5) inclusive (including the decisions after amendment as prescribed in Article 185-8 (6) or (7); hereinafter referred to as an "Administrative Monetary Penalty Payment Order" in this Article and the following Article) shall be executed based upon the order of the Prime Minister. Said order shall have the same effect as that of an enforceable title of obligation.

(2) An execution of an Administrative Monetary Penalty Payment Order shall be conducted 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) The Prime Minister, when he/she finds it necessary for the execution of an Administrative Monetary Penalty Payment Order, may inquire to public offices, or public and private organizations and request these parties to submit reports on necessary matters.

(Claim for Administrative Monetary Penalty, etc.)

Article 185-16 With regard to the application of the provisions of the Bankruptcy Act, the Civil Rehabilitation Act (Act No. 225 of 1999), the Corporate Reorganization Act (Act No. 154 of 2002) and the Act on Special Measures Concerning Reorganization Proceedings of Financial Institutions, etc., the claim for administrative monetary penalty pertaining to the Administrative Monetary Penalty Payment Order and the claim for delinquent charge under

Article 185-14 (2) shall be deemed to be the claim for a non-penal fine.

(Delegation to Cabinet Office Ordinance)

Article 185-17 In addition to what is specified in this Section, the matters necessary for trial procedures shall be specified by a Cabinet Office Ordinance.

### **Section 3 Lawsuit**

Article 185-18 (1) A lawsuit for rescission of the decision under Article 185-7, paragraphs (1) to (5) inclusive shall be filed within 30 days from the day on which such decision comes into effect.

(2) The period set forth in the preceding paragraph shall be an unextendable period.

### **Section 4 Miscellaneous Provisions**

(Claim for Travel Expenses, etc. Incurred by Witnesses, etc.)

Article 185-19 A witness or an expert witness who has been ordered to appear or to present an expert opinion under the provisions of Article 185 (1) or Article 185-4 (1) may claim for travel expenses and allowance, pursuant to the provisions of a 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 shall not apply to the decisions and other dispositions issued by the Prime Minister under the provisions of Section 1 or Section 2 (including the dispositions issued by trial examiners under the provisions of the same Sections).

(Appeal)

Article 185-21 No appeal may be entered under the Administrative Appeal Act against the decisions and other dispositions issued by the Prime Minister under the provisions of Section 1 or Section 2 (including the dispositions issued by trial examiners under the provisions of the same Sections).

### **Chapter VII Miscellaneous Provisions**

(Procedures for Hearings)

Article 186 (1) When the Prime Minister or the Prime Minister and Minister of Finance intends to have the officials conduct a hearing under the provisions of this Act, if the person subject to the hearing fails to respond to the hearing

without justifiable grounds, the Prime Minister or the Prime Minister and Minister of Finance may take the dispositions prescribed in the relevant provision without conducting a hearing.

- (2) When the Prime Minister or the Prime Minister and Minister of Finance gives a notice to the person to be heard by the officials, the Prime Minister or the Prime Minister and Minister of Finance shall expressly indicate the subject matters and date of hearing in the notice.
- (3) Hearings shall be open to the public; provided, however, that this shall not apply to cases where the person subject to a hearing requests that the hearing be closed to the public (limited to cases where reasonable grounds for having the hearing held closed to the public have been found), or cases where it is found necessary for the public interest.
- (4) When the Prime Minister or the Prime Minister and Minister of Finance have had the officials conduct a hearing under the provisions of this Act, the Prime Minister or the Prime Minister and Minister of Finance shall prepare records thereof and preserve said records for ten years.

(Hearings Open to Public)

Article 186-2 Hearings pertaining to the dispositions to be taken under the provisions of this Act shall be open to the public; provided, however, that this shall not apply to cases where the person subject to a hearing requests that the hearing be closed to the public (limited to cases where reasonable grounds for having the hearing held closed to the public have been found), or cases where it is found necessary for the public interest.

(Dispositions for Investigation Concerning Hearing, etc.)

Article 187 The Prime Minister or the Prime Minister and Minister of Finance may have the officials take the dispositions listed in the following for the purpose of conducting investigation necessary for a hearing under the provisions of this Act, a hearing pertaining to the dispositions taken under the provisions of this Act or for a petition under the provisions of Article 192:

- (i) to order a person concerned or a witness to appear so as to hear his/her opinions, or to have said person submit a written opinion or a written report;
- (ii) to order an expert witness to appear so as to have him/her present an expert opinion;
- (iii) to order a person concerned to submit books and documents or other articles, or to retain the submitted articles; and
- (iv) to inspect the status of business or property, or the books and documents or other articles of a person concerned.

(Obligation of Preparation, Preservation and Report of Documents Related to

Business of Financial Instruments Business Operators, etc.)

Article 188 In addition to the cases prescribed in this Act, a Financial Instruments Business Operator, etc., Financial Instruments Intermediary Service Provider, Authorized Financial Instruments Firms Association, Public Interest Corporation-Type Financial Instruments Firms Association under Article 78 (2), Investor Protection Fund, Financial Instruments Exchange or its Member, etc., self-regulation organization under Article 85 (1), Financial Instruments Exchange Holding Company, Foreign Financial Instruments Exchange or the Participants of Foreign Financial Instruments Exchange, Financial Instruments Clearing Organization or its Clearing Participants, or a Securities Finance Company shall, pursuant to the provisions of a Cabinet Office Ordinance (with regard to an Investor Protection Fund, a Cabinet Office Ordinance and Ordinance of the Ministry of Finance), prepare and preserve the books, statements, correspondences, vouchers and other documents concerning its business, or submit report on its business.

(Cooperation in Investigation of Foreign Financial Instruments Regulatory Authority)

Article 189 (1) The Prime Minister may, when he/she receives a request for cooperation from a foreign authority responsible for enforcement of the laws and regulations of the foreign state corresponding to this Act (hereinafter referred to as the "Foreign Financial Instruments Regulatory Authority" in this Article) concerning its administrative investigation conducted for enforcement of such laws and regulations under its jurisdiction and finds it appropriate to respond to the request, order persons who conduct sales and purchase or other transactions of Securities or Derivative Transactions with a person residing in the foreign state, or other persons concerned or witnesses, to submit reports or materials that will be helpful for that purpose to the extent necessary and appropriate for responding to the request.

(2) The Prime Minister may not take the disposition referred to in the preceding paragraph in any case of the following items:

- (i) the Foreign Financial Instruments Regulatory Authority has not made the assurance that the authority will respond to similar requests from Japan;
- (ii) it is found that if such disposition is made based on the request by the Foreign Financial Instruments Regulatory Authority, there are risks that adverse material impacts will be made on the capital market or the national interest of Japan will be otherwise impaired; or
- (iii) it is found that there are risks that the report or materials submitted under the disposition referred to in the preceding paragraph will be used by the Foreign Financial Instruments Regulatory Authority for a purpose other than helping the authority execute their duties.

- (3) In cases where the request for cooperation referred to in paragraph (1) is made for the purpose of administrative disposition (limited to that which would restrict any right of the person to which the disposition is ordered or that which would impose any duty on such person) by the Foreign Financial Instruments Regulatory Authority based on laws and regulations of the foreign state corresponding to this Act, the Prime Minister shall consult with the Minister of Foreign Affairs before responding to the request.
- (4) Regarding the report or materials submitted under the disposition referred to in paragraph (1), appropriate measures shall be taken to ensure that they will not be used for criminal procedures conducted by a court or a judge in the foreign state.
- (5) Matters necessary for the application of the provision of the preceding paragraphs shall be specified by a Cabinet Order.

(Carrying of Identification Cards by Inspection Officials)

- Article 190 (1) A hearing examiner or official who conducts inspection under the provisions of Article 26 (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 27-22, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)) or paragraph (2), Article 27-30 (1), Article 56-2, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to Article 65-3 (3)) to paragraph (3) inclusive, Article 60-11, Article 63 (8), Article 66-22, Article 75, Article 79-4, Article 79-77, Article 103-4, Article 106-6, Article 106-16, Article 106-20, Article 106-27, Article 151 (including the cases where it is applied mutatis mutandis pursuant to Article 153-4), Article 155-9, Article 156-15, Article 156-34, Article 177 (ii), Article 185-5 or Article 187 (iv) shall carry his/her identification card and present the same to the person subject to inspection.
- (2) The authorities of inspection under each provision specified in the preceding paragraph shall not be construed to have been vested for the purpose of crime investigation.

(Claim for Expenses Incurred by Witnesses or Expert Witnesses)

- Article 191 A witness or an expert witness who has been ordered to appear or to present expert opinions under Article 187 (i) or (ii) may claim travel and other expenses pursuant to the provisions of a Cabinet Office Ordinance, or a Cabinet Office Ordinance and Ordinance of the Ministry of Finance.

(Prohibition Order or Order for Suspension Issued by Court)

- Article 192 (1) When a court finds that there is an urgent necessity and that it is necessary and appropriate for the public interest and protection of investors, it may give an order to a person who has conducted or will conduct any act in

violation of this Act or orders issued under this Act for prohibition or suspension of such act, subject to filing of a petition by the Prime Minister or by the Prime Minister and Minister of Finance.

- (2) A court may rescind or change the order issued under the provisions of preceding paragraph.
- (3) The district court governing the domicile of the respondent shall have the jurisdiction over the cases set forth in the preceding two paragraphs.
- (4) The judicial decision under paragraphs (1) and (2) shall be governed by the Non-Contentious Cases Procedure Act (Act No. 14 of 1898).

(Terms, Forms and Preparation Methods of Financial Statements)

Article 193 The balance sheet, profit and loss statement and other statements of finance and accounting to be submitted under the provisions of this Act shall be prepared in conformity with the terms, forms and preparation methods which the Prime Minister prescribes in a Cabinet Office Ordinance in accordance with the manner generally accepted fair and proper.

(Audit Certification by Certified Public Accountants or Audit Firm)

Article 193-2 (1) A balance sheet, profit and loss statement and other statements on finance and accounting as specified by a Cabinet Office Ordinance which shall be submitted under the provisions of this Act by an issuer company of Securities listed on a Financial Instruments Exchange or any other person specified by a Cabinet Order shall require an audit certification by a certified public accountant or audit firm that has no special interest in said company or person; provided, however, that this shall not apply to cases where said company or person has obtained an approval from the Prime Minister pursuant to the provisions of a Cabinet Office Ordinance as cases where omission of an audit certification will not impair the public interest or protection of investors.

- (2) An Internal Control Report which shall be submitted pursuant to the provisions of Article 24-4-4 by an issuer company of Securities listed on a Financial Instruments Exchange or any other person specified by a Cabinet Order shall require an audit certification by a certified public accountant or audit firm that has no special interest in said company or person; provided, however, that this shall not apply to cases where said company or person has obtained an approval from the Prime Minister pursuant to the provisions of a Cabinet Office Ordinance as cases where omission of an audit certification will not impair the public interest or protection of investors.
- (3) The special interests referred to in the preceding two paragraphs shall mean those which the Prime Minister specifies in a Cabinet Office Ordinance as he/she finds necessary and proper for the public interest or protection of investors, from among the relationships which a certified public accountant or

audit firm has in connection with a person submitting a balance sheet, profit and loss statement or other statements on finance and accounting and an Internal Control Report under said two paragraphs, as set forth in Article 24 of the Certified Public Accountants Act (including the cases where it is applied mutatis mutandis pursuant to Article 16-2 (6) of said Act), Article 24-2 of the same Act (including the cases where it is applied mutatis mutandis pursuant to Article 16-2 (6) and Article 34-11-2 of said Act), Article 24-3 of said Act (including the cases where it is applied mutatis mutandis pursuant to Article 16-2 (6) of said Act) or Article 34-11 (1) of the same Act, and the relationships as a shareholder or an Equity Investor which a certified public accountant or audit firm has in connection with said person, or the relationships which a certified public accountant or audit firm has in connection with said person's business or property accounting.

- (4) The audit certification under paragraph (1) and (2) shall be made in accordance with the criteria and procedures specified by a Cabinet Office Ordinance.
- (5) The Prime Minister may, when he/she finds it necessary and proper for the public interest or protection of investors, order the certified public accountant or audit firm which has made the audit certification under paragraphs (1) and (2) to submit reports or materials that would be helpful.
- (6) When a certified public accountant or audit firm has made an audit certification for the statements on finance and accounting set forth in paragraph (1) and for the Internal Control Reports set forth in paragraph (2), if said audit certification falls under the provision of Article 30 or Article 34-21 (2)(i) or (ii) of the Certified Public Accountants Act, or is otherwise wrongful, the Prime Minister may issue a decision not to accept whole or part of the Securities Registration Statements, Annual Securities Reports (including amendment reports thereof) or Internal Control Reports (including amendment reports thereof) with the audit certification made by said certified public accountant or audit firm to be submitted within a period not exceeding one year specified by the Prime Minister. In this case, a hearing shall be held irrespective of the categories of procedures for hearing statements of opinion under Article 13 (1) of the Administrative Procedure Act.
- (7) When the Prime Minister has issued the decision under the preceding paragraph, he/she shall notify to that effect to the certified public accountant or audit firm and shall publicize said decision.

(Prohibition on Solicitation of Exercising Voting Rights of Listed Share by Proxy)

Article 194 No person shall conduct solicitation for having said person or a third party exercise by proxy the voting rights pertaining to the shares of the

company which issues the shares listed on a Financial Instruments Exchange, in violation of the provisions of a Cabinet Order.

(Application of This Act to Transactions on Foreign Financial Instruments Market)

Article 194-2 The technical replacement of terms in cases where the provisions of this Act are applied to sales and purchase of Securities or intermediary, introducing brokerage or agency services for entrustment of Foreign Market Derivatives Transactions conducted in a Foreign Financial Instruments Market, and any other necessary matters concerning application of the provisions of this Act to said transactions conducted in a Foreign Financial Instruments Market shall be specified by a Cabinet Order.

(Consultation with Minister of Finance)

Article 194-3 When the Prime Minister finds that giving of the dispositions listed in the following to a Financial Instruments Business Operator (limited to an operator of the Type I Financial Instruments Business set forth in Article 28 (1)), Registered Financial Institution, Authorized Transaction-at-Exchange Operator, Authorized Financial Instruments Firms Association, Financial Instruments Exchange, Foreign Financial Instruments Exchange, Financial Instruments Clearing Organization or a Securities Finance Company is likely to give material influence on distribution of Securities or Market Transactions of Derivatives, he/she shall consult in advance with the Minister of Finance about measures necessary for achieving smooth distribution of Securities or Market Transactions of Derivatives:

- (i) issuance of an order for suspension of whole or part of its business under the provisions of Article 52 (1), 52-2(1) or 53(2);
- (ii) rescission of the registration conducted under Article 29, under the provisions of Article 52 (1) or Article 53 (3);
- (iii) rescission of the registration conducted under Article 33-2, under the provisions of Article 52-2 (1);
- (iv) issuance of an order for suspension of whole or part of its business under the provisions of Article 60-8 (1);
- (v) rescission of the permission granted under Article 60 (1), under the provisions of Article 60-8 (1);
- (vi) rescission of the authorization granted under Article 67-2 (2), under the provisions of Article 67-6 or Article 74 (1);
- (vii) issuance of an order for suspension of whole or part of its business under the provisions of Article 74 (1);
- (viii) rescission of the license granted under Article 80 (1), under the provisions of Article 148 or Article 152 (1)(i);



- (ix) issuance of an order for suspension of whole or part of its business under the provisions of Article 152 (1)(i);
- (x) issuance of an order under the provisions of Article 152 (1)(ii);
- (xi) rescission of the authorization granted under Article 155 (1), under the provisions of Article 155-6 or Article 155-10 (1);
- (xii) issuance of an order for suspension of whole or part of Foreign Market Transactions under Article 155-10 (1);
- (xiii) rescission of the license granted under Article 156-2, under the provisions of Article 156-17 (1) or (2); or rescission of the approval granted under Article 156-19, under the provisions of Article 156-17 (2) or Article 156-20;
- (xiv) issuance of an order for suspension of whole or part of its business under the provisions of Article 156-17 (2);
- (xv) rescission of the license granted under Article 156-24 (1), under the provisions of Article 148 as applied mutatis mutandis pursuant to Article 156-26, or Article 156-32 (1); or
- (xvi) issuance of an order for suspension of whole or part of its business under the provisions of Article 156-32 (1).

(Notice to Minister of Finance)

Article 194-4 (1) When the Prime Minister has taken the dispositions listed in the following, he/she shall promptly notify to that effect to the Minister of Finance; provided, however, that this shall not apply to cases where the Prime Minister has given a notice to the Minister of Finance under the provisions of Article 79-53 (3):

- (i) registration under the provisions of Article 29 or Article 33-2 (with regard to registration under Article 29, limited to cases where a Financial Instruments Exchange Business Operator which has been registered conducts the Type I Financial Instruments Business (meaning the Type I Financial Instruments Business set forth in Article 28 (1); hereinafter the same shall apply in this item)), or registration of change under Article 31 (4) (limited to the registration of change to the effect that a person other than an operator of the Type I Financial Instruments Business becomes an operator of the Type I Financial Instruments Business, and the registration of change to the effect that an operator of the Type I Financial Instruments Business conducts only business other than the Type I Financial Instruments Business);
- (ii) authorization under the provisions of Article 30 (1);
- (iii) issuance of an order under the provisions of Article 52 (1), Article 52-2 (1), or Article 53 (1) or (2);
- (iv) rescission of the registration conducted under Article 29, under the provisions of Article 52 (1) or (4), Article 53 (3) or Article 54;
- (v) rescission of the registration conducted under Article 33-2, under the

- provisions of Article 52-2 (1) or (3) or Article 54;
- (vi) rescission of the authorization granted under Article 30 (1), under the provisions of Article 52 (1);
- (vii) granting of permission under the provisions of Article 60 (1);
- (viii) issuance of an order under the provisions of Article 60-8 (1);
- (ix) rescission of the permission granted under Article 60 (1), under the provisions of Article 60-8 (1) or Article 60-9;
- (x) authorization under the provisions of Article 67-2 (2);
- (xi) rescission of the authorization granted under Article 67-2 (2), under the provisions of Article 67-6 or Article 74 (1);
- (xii) authorization on amendment of the articles of incorporation pertaining to the matters listed in Article 67-8 (1)(xiii) (limited to those pertaining to establishment or closure of Over-the-Counter Securities Market), under the provisions of Article 67-8 (2);
- (xiii) issuance of an order for suspension of all or part of its business, change of the methods of its business or for prohibition of a part of its business, under the provisions of Article 74 (1);
- (xiv) authorization under the provisions of Article 77-6 (2);
- (xv) granting of a license under the provisions of Article 80 (1);
- (xvi) authorization under the provisions of Article 106-3 (1);
- (xvii) issuance of an order under the provisions of Article 106-7 (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (4) of said Article);
- (xviii) rescission of the authorization granted under Article 106-3 (1), under the provisions of Article 106-7 (1);
- (xix) authorization under the provisions of Article 106-10 (1) or the proviso to paragraph (3);
- (xx) authorization under the provisions of Article 106-17 (1);
- (xxi) issuance of an order under the provisions of Article 106-21 (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (4) of said Article);
- (xxii) rescission of the authorization granted under Article 106-17 (1), under the provisions of Article 106-21 (1);
- (xxiii) rescission of the authorization granted under Article 106-10 (1) or the proviso to paragraph (3), under the provisions of Article 106-26;
- (xxiv) issuance of an order under the provisions of Article 106-28 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 109);
- (xxv) rescission of the authorization granted under Article 106-10 (1) or the proviso to paragraph (3), under the provisions of Article 106-28 (1);
- (xxvi) authorization under the provisions of Article 135 (1);
- (xxvii) authorization under the provisions of Article 140 (1);

- (xxviii) rescission of the license granted under Article 80 (1), under the provisions of Article 148 or 152(1)(i);
  - (xxix) authorization under the provisions of Article 149 (1) (limited to those related to closure of all Financial Instruments Exchange Markets);
  - (xxx) issuance of an order for suspension of all or part of its business, change of its business or prohibition of a part of its business, under the provisions of Article 152 (1)(i);
  - (xxxi) issuance of an order under the provisions of Article 152 (1)(ii);
  - (xxxii) authorization under the provisions of Article 155 (1);
  - (xxxiii) rescission of the authorization granted under Article 155 (1), under the provisions of Article 155-6 or 155-10(1);
  - (xxxiv) issuance of an order under the provisions of Article 155-10 (1);
  - (xxxv) granting of a license under the provisions of Article 156-2 or an approval under the provisions of Article 156-19;
  - (xxxvi) rescission of the license granted under Article 156-2, under the provisions of Article 156-17 (1) or (2); or rescission of the approval granted under Article 156-19, under the provisions of Article 156-17 (2) or 156-20;
  - (xxxvii) issuance of an order for suspension of whole or part of its business under the provisions of Article 156-17 (2);
  - (xxxviii) authorization under the provisions of Article 156-18;
  - (xxxix) granting of a license under the provisions of Article 156-24 (1);
  - (xl) rescission of the license granted under Article 156-24 (1), under the provisions of Article 148 as applied mutatis mutandis pursuant to Article 156-26, or the provision of Article 156-32 (1);
  - (xli) issuance of an order for suspension of whole or part of its business under the provisions of Article 156-32 (1); or
  - (xlii) authorization under the provisions of Article 156-36.
- (2) When the Prime Minister has accepted the notifications listed in the following, he/she shall promptly notify to that effect to the Minister of Finance:
- (i) a notification under the provisions of Article 50-2 (1) or (7);
  - (ii) a notification under the provisions of Article 60-7;
  - (iii) a notification under the provisions of Article 67-16 (limited to the notification on suspension of all sales and purchase of Over-the-Counter Traded Securities registered by an Authorized Financial Instruments Firms Association, or on cancellation of such suspension);
  - (iv) a notification under the provisions of Article 77-6 (3);
  - (v) a notification under the provisions of Article 106-8 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 106-22 (2) and Article 107 (2);
  - (vi) a notification under the provisions of Article 120;
  - (vii) a notification under the provisions of Article 128 (limited to the

notification on suspension of all sales and purchase of Securities or Market Transactions of Derivatives for each Financial Instruments Exchange Market, or on cancellation of such suspension);

(viii) a notification under the provisions of Article 134 (2) or Article 135 (2); or  
(ix) a notification under the provisions of Article 155-8 (2).

(3) When the Prime Minister has received notices concerning an Authorized Financial Instruments Firms Association or Financial Instruments Exchange under the provisions of Article 77-6 (4) or Article 154, he/she shall promptly notify to that effect to the Minister of Finance.

(Submission of Materials, etc. to Minister of Finance)

Article 194-5 (1) When the Minister of Finance finds it necessary for planning or drafting systems for Financial Instruments Transactions, in relation to a system for disposal of failed financial institutions and financial risk management under his/her jurisdiction, he/she may request the Prime Minister to provide necessary materials and explanation therefor.

(2) When the Minister of Finance finds it particularly necessary for planning or drafting systems for Financial Instruments Transactions, in relation to a system for disposal of failed financial institutions and financial risk management under his/her jurisdiction, he/she may, within the limit necessary, request a Financial Instruments Business Operator, etc., Authorized Transaction-at-Exchange Operator, Financial Instruments Intermediary Service Provider, Authorized Financial Instruments Firms Association, Public Interest Corporation-Type Financial Instruments Firms Association (meaning a Public Interest Corporation-Type Financial Instruments Firms Association set forth in Article 78 (2); the same shall apply in Article 194-7 (2)(v)), Financial Instruments Exchange, Self-Regulation Organization under Article 85 (1), Financial Instruments Exchange Holding Company, Foreign Financial Instruments Exchange, Financial Instruments Clearing Organization, Securities Finance Company or other persons concerned to provide materials or explanation or any other cooperation.

(Consultation, etc. with Minister of Agriculture, Forestry and Fisheries and Minister of Economy, Trade and Industry)

Article 194-6 (1) The matters related to consultation between the Prime Minister and the Minister of Agriculture, Forestry and Fisheries or the Minister of Economy, Trade and Industry, notices to be given to the Minister of Agriculture, Forestry and Fisheries and the Minister of Economy, Trade and Industry and other procedures in cases where, under the provisions of this Act, the Prime Minister establishes a Cabinet Office Ordinance (limited to those specified by a Cabinet Order) or issues an order or other disposition (limited to

those specified by a Cabinet Order), or where a notification (limited to those specified by a Cabinet Order) or application for registration has been filed with the Prime Minister, with respect to the business to conduct the following acts in relation to the rights which fall under any of the categories specified in Article 2 (2)(i), (ii), (v) or (vi) and also fall under the categories of rights specified by a Cabinet Order as rights in a commodity investment defined by Article 2 (1) of the Act on Control for Business Pertaining to Commodity Investment or rights in investment to be conducted by way of acquisition (including production), transfer or use of the goods which have substantial price volatility or the goods for which estimation of profit generated from the use thereof is difficult or by way of having such goods used, shall be specified by a Cabinet Order:

- (i) sales and purchase, or intermediary, brokerage or agency therefor;
- (ii) Public Offering or Private Placement;
- (iii) Secondary Distribution; or
- (iv) dealing in Public Offering or Secondary Distribution, or dealing in Private Placement.

(2) With respect to a person who intends to conduct the acts listed in each of the following items in the course of trade, when the Prime Minister has conducted the registrations under Article 29 or Article 33-2, or has accepted the notifications under Article 31 (1) or Article 33-6 (1), he/she shall notify the matters listed in Article 29-2 (1) or Article 33-3 (1) pertaining to said person to the Minister of Economy, Trade and Industry:

- (i) acts specified in Article 2 (8)(vii) (limited to the act pertaining to the rights under a limited partnership agreement for investment set forth in Article 3 (1) of the Limited Partnership Act for Investment, which fall under Article 2 (2)(v) of this Act (hereinafter referred to as the "Rights Concerning Investment Limited Partnership" in this Article)); or
- (ii) acts specified in Article 2 (8)(xv) (limited to the acts pertaining to the Rights Concerning Investment Limited Partnership).

(3) When the Prime Minister has accepted the notifications made pursuant to the provisions of Article 63 (2) in relation to the person who intends to conduct the acts listed in each of the following items in the course of trade, the Prime Minister shall notify the matters listed in the respective item of the same paragraph relevant to said persons to the Minister of Economy, Trade and Industry:

- (i) acts specified in Article 63 (1)(i) (limited to the acts pertaining to the Rights Concerning Investment Limited Partnership); and
- (ii) acts specified in Article 63 (1)(ii) (limited to the acts pertaining to the Rights Concerning Investment Limited Partnership).

(Delegation of Authorities to Commissioner of Financial Services Agency)

Article 194-7 (1) The Prime Minister shall delegate to the Commissioner of the Financial Services Agency the authorities vested under this Act (except those specified by a Cabinet Order).

(2) The Commissioner of the Financial Services Agency shall delegate to the Securities and Exchange Surveillance Commission (hereinafter referred to as the "Commission" in this Article and the following Article) the authorities listed in the following, from among the authorities delegated under the provisions of the preceding paragraph; provided, however, that the foregoing sentence shall not preclude the Commissioner of the Financial Services Agency from exercising his/her authorities to issue an order of submission of reports or materials:

- (i) authorities vested under the provisions of Article 56-2, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to Article 65-3 (3) or paragraph (3) (limited to the authorities related to provisions specified by a Cabinet Order as those for securing the fairness in sales and purchase or other transactions of Securities or in Derivative Transactions, etc.);
- (ii) authorities vested under the provisions of Article 60-11 (limited to the authorities related to the provisions specified by a Cabinet Order as those for securing the fairness in sales and purchase or other transactions of Securities or in Derivative Transactions, etc.);
- (iii) authorities vested under the provisions of Article 66-22 (limited to the authorities related to the provisions specified by a Cabinet Order as those for securing fairness in acts listed in Article 2 (11)(i) to (iii) inclusive);
- (iv) authorities vested under the provisions of Article 75 (limited to the authorities related to the business specified by a Cabinet Order as the business of an Authorized Financial Instruments Firms Association pertaining to securing the fairness in sales and purchase or other transactions of Securities and in Derivative Transactions, etc.);
- (v) authorities vested under the provisions of Article 79-4 (limited to the authorities related to the business specified by a Cabinet Order as the business of a Public Interest Corporation-Type Financial Instruments Firms Association pertaining to securing the fairness in sales and purchase or other transactions of Securities and in Derivative Transactions, etc.);
- (vi) authorities vested under the provisions of Article 151 (including the cases where it is applied mutatis mutandis pursuant to Article 153-4) (limited to the authorities related to the business specified by a Cabinet Order as the business of a Financial Instruments Exchange or a Self-Regulation Organization set forth in Article 85 (1), pertaining to securing the fairness in sales and purchase of Securities and Market Transactions of Derivatives in a

- Financial Instruments Exchange);
- (vii) authorities vested under the provisions of Article 155-9 (limited to the authorities related to the business specified by a Cabinet Order as the business of a Foreign Financial Instruments Exchange pertaining to securing the fairness in Foreign Market Transactions);
  - (viii) authorities vested under the provisions of Article 177; and
  - (ix) other authorities specified by a Cabinet Order.
- (3) The Commissioner of the Financial Services Agency may, pursuant to the provisions of a Cabinet Order, delegate to the Commission the authorities vested under Article 26 (including the cases where it is applied *mutatis mutandis* pursuant to Article 27), Article 27-22, paragraph (1) (including the cases where it is applied *mutatis mutandis* pursuant to Article 27-22-2 (2)) and paragraph (2), Article 27-30, Article 56-2, paragraph (1) (including the cases where it is applied *mutatis mutandis* pursuant to Article 65-3 (3)) to paragraph (3) inclusive, Article 60-11, Article 63 (7) and (8), Article 66-22, Article 75, Article 79-4, Article 79-77, Article 103-4, Article 106-6, Article 106-16, Article 106-20, Article 106-27, Article 151 (including the cases where it is applied *mutatis mutandis* pursuant to Article 153-4), Article 155-9, Article 156-15, Article 156-34 and Article 193-2 (5), from among the authorities delegated under the provisions of paragraph (1) (excluding the authorities delegated to the Commission under the provisions of the preceding paragraph).
- (4) When the Commission has exercised the authorities delegated under the provisions of the preceding paragraph, it shall promptly report the results of such exercising to the Commissioner of the Financial Services Agency.
- (5) The Commissioner of the Financial Services Agency may, pursuant to the provisions of a Cabinet Order, delegate to a commissioner of a finance bureau or a commissioner of local finance branch bureau a part of the authorities delegated under the provisions of paragraph (1) (excluding the authorities delegated to the Commission under the provisions of paragraphs (2) and (3)).
- (6) The Commission may, pursuant to the provisions of a Cabinet Order, delegate to a commissioner of a finance bureau or a commissioner of a local finance branch bureau a part of the authorities delegated under the provisions of paragraphs (2) and (3).
- (7) With respect to the affairs pertaining to the authorities delegated to a commissioner of a finance bureau or a commissioner of a local finance branch bureau under the provisions of the preceding paragraph, the Commission shall control and supervise the commissioner of a finance bureau or the commissioner of a local finance branch bureau.

(Filing of Appeal against Commission)

Article 195 An appeal under the Administrative Appeal Act concerning an order

for submission of reports or materials issued by the Commission under paragraph (2) or (3) of the preceding Article (including the cases where an order is issued by a commissioner of a finance bureau or a commissioner of a local finance branch bureau under the provisions of paragraph (6) of said Article) may be filed only against the Commission.

(Provisions Effected by Voidance)

Article 196 Even in cases where any provision of this Act is held to be void, such voidance shall not affect any other provision of this Act.

(Transitional Measures)

Article 196-2 In cases where an order is established, revised or abolished based on the provision of this Act, transitional measures necessary (including transitional measures concerning penal provisions) may be prescribed in said order, to the extent considered reasonably necessary for establishment, revision or abolition of said order.

## **Chapter VIII Penal Provisions**

Article 197 (1) Any person who falls under any of the following items shall be punished by imprisonment with work for not more than ten years or by a fine of not more than ten million yen, or both.

(i) a person who has submitted any of the following documents containing misstatement on any important matters; statement and other related documents to be submitted under Article 5 (including the cases where it is applied mutatis mutandis pursuant to Article 27) (in the case of a statement to which the provision of Article 5 (4) is applied, including Reference Documents pertaining to said statement), amendment under Article 7, Article 9 (1) or Article 10 (1) (including the cases where they are applied mutatis mutandis pursuant to Article 27) (including Reference Documents pertaining to said amendment), Shelf Registration Statement under Article 23-3 (1) and (2) (including the cases where they are applied mutatis mutandis pursuant to Article 27) (including reference document pertaining to said Shelf Registration Statement) and documents attached thereto, Amended Shelf Registration Statement under Article 23-4, Article 23-9 (1) or Article 23-10 (1), or Article 23-10 (1) as applied mutatis mutandis pursuant to paragraph (5) of said Article (including the cases where they are applied mutatis mutandis pursuant to Article 27) (including reference document pertaining to said Amended Shelf Registration Statement), Shelf Registration Supplements under Article 23-8 (1) and (5) (including the cases where they are applied mutatis mutandis pursuant to Article 27) (including



- Reference Documents pertaining to said Shelf Registration Supplements) and documents attached thereto, Annual Securities Reports and amendment reports thereof under Article 24 (1) or (3) (including the cases where they are applied mutatis mutandis pursuant to Article 24 (5) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27) or Article 24-2 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27);
- (ii) a person who has used false indication on important matters when making a public notice or public announcement under Article 27-3 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), Article 27-6 (2) or (3) (including the cases where they are applied mutatis mutandis pursuant to Article 27-22-2 (2)), Article 27-7 (1) or (2) (including the cases where they are applied mutatis mutandis pursuant to Article 27-8 (12) and Article 27-22-2 (2) and (6)), Article 27-8 (8) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2) and Article 27-22-3 (4)), Article 27-8 (11) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), Article 27-10 (4) to (6), Article 27-11 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), or Article 27-13 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2));
  - (iii) a person who has submitted any of the following documents containing misstatement on important matters; Tender Offer Notification under Article 27-3 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), amendment under Article 27-8 (1) to (4) (including the cases where they are applied mutatis mutandis pursuant to Article 27-22-2 (2)), Written Withdrawal of Tender Offer under Article 27-11 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), Tender Offer Report under Article 27-13 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), or amendment reports under Article 27-8 (1) to (4) which are applied mutatis mutandis pursuant to Article 27-13 (3) and Article 27-22-2 (7);
  - (iv) a person who has failed to make a public announcement under Article 27-22-3 (1) or (2), or who has made a false public announcement; or
  - (v) a person who has violated the provisions of Article 157, Article 158, or Article 159.
- (2) A person who has, for the purpose of gaining property benefit, committed crimes set forth in item (v) of the preceding paragraph and fluctuated, pegged, fixed, or stabilized the market price of Securities, etc., or conducted sales and purchase or other transactions of Securities or Derivative Transactions, etc. pertaining to said Securities, etc. with said fluctuated, pegged, fixed, or stabilized market price shall be punished by imprisonment with work for not

more than ten years or by a fine of not more than thirty million yen.

Article 197-2 A person who falls under any of the following items 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:

- (i) a person who has conducted a Public Offering or Secondary Distribution of Securities for which a notification under Article 4 (1) is required, or conducted a General Solicitation for Securities Acquired by Qualified Institutional Investor for which a notification under Article 4 (2) is required, or dealt with these, although such required notifications have not been accepted;
- (ii) a person who has, in submitting or sending copies of statement and other related documents under Article 6 (including the cases where it is applied mutatis mutandis pursuant to Article 12, Article 23-12 (1), Article 24 (7), Article 24-2 (3), Article 24-4-4 (5), Article 24-4-5 (2), Article 24-4-7 (5), Article 24-5 (6), and Article 24-6 (3) and these provisions (excluding Article 24-6 (3)) are applied mutatis mutandis pursuant to Article 27), Article 24-7 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 24-7 (6) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27), Article 27-3 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27-8 (6) (including the cases where it is applied mutatis mutandis pursuant to Article 27-13 (3)), Article 27-11 (4), Article 27-13 (3), and Article 27-22-2 (2) and (3)), or Article 27-22-2 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (8)), submitted or sent statement and other related documents containing misstatement on important matters and different contents from those in the original documents as the copies thereof;
- (iii) a person who has violated the provisions of Article 15 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 23-8 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 27-3 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), Article 27-8 (7) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), Article 27-8 (9) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2) and Article 27-22-3 (4));
- (iv) a person who has failed to make a public notice under Article 27-3 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)) or Article 27-10 (4);
- (v) a person who has failed to submit Annual Securities Reports under Article 24 (1) or (3) (including the cases where they are applied mutatis mutandis pursuant to Article 24 (5) (including the cases where it is applied mutatis

mutandis pursuant to Article 27) and Article 27) or Article 24 (6) (including the cases where it is applied mutatis mutandis pursuant to Article 27) or documents attached thereto, amendment reports under Article 10 (1) as applied mutatis mutandis pursuant to Article 24-2 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27), Internal Control Reports under Article 24-4-4 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-4 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27) or Article 24-4-4 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27) or documents attached thereto, amendment reports under Article 10 (1) as applied mutatis mutandis pursuant to Article 24-4-5 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27), Tender Offer Notification under Article 27-3 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), Written Withdrawal of Tender Offer under Article 27-11 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), Tender Offer Report under Article 27-13 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), Report of Possession of Large Volume under Article 27-23 (1) or Article 27-26 (1), or Change Report under Article 27-25 (1) or Article 27-26 (2);

(vi) a person who has submitted any of the following documents containing misstatement on important matters; attached documents, Internal Control Reports or documents attached thereto, Quarterly Securities Reports, Semiannual Securities Reports, Extraordinary Reports, or amendment reports thereof under Article 24 (6) or Article 24-2 (1) (including the cases where they are applied mutatis mutandis pursuant to Article 27), Article 24-4-4 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-4 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27), Article 24-4-4 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 24-4-5 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 24-4-7 (1) or (2) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-7 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27), Article 24-4-7 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 24-5 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 24-5 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27), or Article 24-5 (4) or (5) (including the cases where they are applied mutatis mutandis pursuant to Article 27), Share Buyback Report under Article 24-6 (1) or (2) or amendment reports thereof, Status Report of Parent Company, etc. under

- Article 7, Article 9 (1) or Article 10 (1) which are applied mutatis mutandis pursuant to Article 24-7 (1) or (2) (including the cases where they are applied mutatis mutandis pursuant to Article 24-7 (6) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27) or Article 24-7 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 24-7 (6) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27) or amendment reports thereof, reports of statement of opinions under Article 27-10 (1), amendment reports under Article 27-8 (1) to (4) which are applied mutatis mutandis pursuant to Article 27-10 (8), Subject Company's Position Statement under Article 27-10 (11), amendment reports under Article 27-8 (1) to (4) which are applied mutatis mutandis pursuant to Article 27-10 (12), Report of Possession of Large Volume under Article 27-23 (1) or Article 27-26 (1), or Change Report under Article 27-25 (1) or Article 27-26 (2), or amendment reports under Article 9 (1) or Article 10 (1) which are applied mutatis mutandis pursuant to Article 27-25 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27-26 (6)) or Article 27-29 (1);
- (vii) a person who has, in making copies of documents under Article 25 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27) (excluding documents listed in Article 25 (1)(v) and (ix)) available for public inspection, made documents containing misstatement on important matters and different contents from those in the original documents available for public inspection as the copies thereof;
- (viii) a person who has delivered Tender Offer Statement under Article 27-9 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), or Tender Offer Statement amended under Article 27-9 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), that contain misstatement on important matters;
- (ix) a person who has, in violation of Article 27-6 (1), made a public notice to the effect that he/she would change the Terms of Purchase, etc. of Tender Offer, or who has made a public notice to the effect that he/she would make a Withdrawal, etc. of Tender Offer under the main clause of Article 27-11 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)) in spite of not falling under the proviso to Article 27-11 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2));
- (x) a person who has failed to make a notice under Article 27-22-3 (2), or made a false notice;
- (xi) an Officer of a Membership-Type Financial Instruments Exchange (including a provisional director and provisional auditor; the same shall apply in the following item) or an employee of a Membership-Type Financial

- Instruments Exchange that received delegation for certain kinds or specified items concerning the business who has uttered Prospectus containing misstatement on important matters or advertisement and other documents concerning said recruitment, in soliciting persons to subscribe for shares to be issued under the provisions of Article 101-9 (including private placement; hereinafter the same shall apply in this item);
- (xii) an Officer of a Membership-Type Financial Instruments Exchange or an employee of a Membership-Type Financial Instruments Exchange that received delegation for certain kinds or specified items concerning the business, who has borrowed and deposited money for disguising the payment of shares to be issued under the provisions of Article 101-9, or a person who has participated in said disguise by borrowing and depositing money; or
  - (xiii) a person who has violated the provisions of Article 166 (1) or (3) or Article 167 (1) or (3).

Article 198 A person who falls under any of the following items shall be punished by imprisonment with work for not more than three years or by a fine of not more than three million yen, or both:

- (i) a person who has, in violation of Article 29, conducted Financial Instruments Business without obtaining registration from the Prime Minister;
- (ii) a person who has obtained registration under Article 29 or Article 66, registration of change under Article 31 (4), or permission under Article 59 (1) or Article 60 (1) through wrongful means;
- (iii) a person who has, in violation of Article 36-3 or Article 66-9, made other persons conduct Financial Instruments Business, Registered Financial Institution Business, or Financial Instruments Intermediary Service;
- (iii)-2 a person who has, in violation of Article 59 (1) or Article 60 (1), conducted businesses prescribed in Article 59 (1) or Article 60 (1) without obtaining permission from the Prime Minister;
- (iii)-3 a person who has, in violation of Article 36-3 as applied mutatis mutandis pursuant to Article 59-6 or Article 60-13, made other persons conduct businesses prescribed in Article 59 (1) or Article 60 (1);
- (iv) a person who has, in violation of Article 80 (1) or Article 155 (1), established a Financial Instruments Market, or made other persons conduct transactions on a Foreign Financial Instruments Market;
- (iv)-2 a person who has, in violation of Article 102-14, provided self-regulation related services prescribed in Article 84 (2) without obtaining an authorization from the Prime Minister;
- (v) an Officer (including a provisional director and provisional auditor) or an auditor of a Membership-Type Financial Instruments Exchange or a person

to become a director or auditor of a Stock Company-Type Financial Instruments Exchange who has made a misstatement to or suppressed a fact against the Prime Minister, the court or a general meeting of members with regard to the subscription or payment of the entire shares to be issued under the provisions of Article 101-9, the delivery of property other than money, or the matters listed in Article 101-9 (iii);

- (vi) a person who has, in violation of Article 156-2, conducted Financial Instruments Obligation Assumption Service;
- (vii) a person who has, in violation of Article 156-24 (1), conducted businesses prescribed in said paragraph without obtaining a license from the Prime Minister; or
- (viii) a person who has violated orders from the court under Article 192 (1) or (2).

Article 198-2 (1) The following property shall be confiscated; provided, however, that in cases where it is not appropriate to confiscate whole or part of said property in light of the situation of its acquisition, progress in performance of the obligation to pay damages, and other circumstances, such property may be exempted from confiscation:

- (i) property gained through criminal acts set forth in Article 197 (1)(v) or (2) or Article 197-2 (xiii); and
  - (ii) property gained in exchange for property set forth in the preceding item, or in cases where property set forth in the preceding item is an option or other rights, property gained through exercising said rights.
- (2) When the property is to be confiscated under the provisions of the preceding paragraph and if it is impossible to confiscate it, the value thereof shall be collected from the offender.

Article 198-3 In the cases of violations of Article 38-2 or Article 39 (1) (including the cases where they are applied mutatis mutandis pursuant to Article 66-15), Article 41-2 (ii) or (v), or Article 42-2 (i), (iii), or (vi), a representative person, agent, employee or other worker of a Financial Instruments Business Operator or a Financial Instruments Intermediary Service Provider, or a Financial Instruments Business Operator or a Financial Instruments Intermediary Service Provider that has committed such violation shall be punished by imprisonment with work for not more than three years or by a fine of not more than three million yen, or both.

Article 198-4 A person who has violated the provisions of Article 106-10 (1) or (3) shall be punished by imprisonment with work for not more than two years or by a fine of not more than three million yen, or both.

Article 198-5 In the case of act of violation set forth in any of the following items, a representative person, agent, employee or other worker of a Financial Instruments Business Operator, etc., Authorized Transaction-at-Exchange Operator, Financial Instruments Intermediary Service Provider, Authorized Financial Instruments Firms Association or Public Interest Corporation-Type Financial Instruments Firms Association prescribed in Article 78 (2), Financial Instruments Exchange, Self-Regulation Organization prescribed in Article 85 (1), Financial Instruments Exchange Holding Company, Foreign Financial Instruments Exchange, Financial Instruments Clearing Organization, or Securities Finance Company, or a Financial Instruments Business Operator or Financial Instruments Intermediary Service Provider that has committed such act shall be punished by imprisonment with work for not more than two years or by a fine of not more than three million yen, or both:

- (i) act of violating the provisions of Article 42-4, Article 43-2 (1) or (2), or Article 43-3;
- (ii) act of violating the disposition of the suspension of business under Article 52 (1), Article 53 (2), Article 60-8 (1) or Article 66-20 (1) (excluding the disposition of the suspension of business pertaining to authorization under Article 30 (1));
- (iii) act of violating the disposition of the suspension, change, prohibition, or measures (excluding the order of dismissal of Officers) under Article 74 (1), the suspension or measures under Article 79-6, the suspension, change, prohibition, or measures under Article 152 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 153-4), the change, prohibition, or measures under Article 153-2, the suspension, change, or prohibition under Article 155-10 (1), the suspension under Article 156-17 (2), or the suspension under Article 156-32 (1); or
- (iv) act of violating the provision of Article 106-28 (3).

Article 198-6 Any person who falls under any of the following items shall be punished by imprisonment with work for not more than one year or by a fine of not more than three million yen, or both:

- (i) a person who has entered a misstatement or record into written applications or documents to be attached thereto or Electromagnetic Records under Article 29-2 (1) to (3), Article 33-3, Article 59-2 (1) or (3), Article 60-2 (1) or (3), Article 66-2, Article 67-3, Article 81, Article 102-15, Article 106-11, Article 155-2, Article 156-3, or Article 156-24 (2) to (4) and submitted them;
- (ii) a person who has violated the provisions of Article 38 (i) or Article 66-14 (i)(a);
- (iii) a person who has failed to prepare or preserve documents under Article 46-

- 2 (including the cases where it is applied mutatis mutandis pursuant to Article 60-6), Article 47, Article 48, Article 66-16, or Article 188, or prepared false documents;
- (iv) a person who has failed to submit reports, documents or written documents under Article 46-3 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 60-6), Article 47-2, Article 48-2 (1), Article 49-3 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 60-6), Article 66-17 (1), Article 155-5, or Article 156-35, or submitted reports, documents or written documents containing misstatement;
  - (v) a person who has failed to make a report under Article 46-3 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 60-6), Article 48-2 (2), or Article 49-3 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 60-6), or who has made a false report;
  - (vi) a person who has failed to make explanatory documents or written documents under Article 46-4, Article 46-6 (3), Article 47-3, Article 66-17 (2), or Article 66-18 available for public inspection, or placed such explanatory documents or written documents containing misstatement under public inspection;
  - (vii) a person who has failed to make a notification under Article 46-6 (1), Article 63 (2) or (6) (including the cases where it is applied mutatis mutandis pursuant to Article 63-3 (2)), or Article 63-3 (1), or made a false notification;
  - (viii) a person who has failed to make a notification under Article 50-2 (1) or (7) or Article 60-7, or made a false notification;
  - (ix) a person who has failed to make a public notice under Article 50-2 (6), or made a false public notice;
  - (x) a person who has failed to make a report or submitted materials under Article 56-2, Article 60-11, Article 63 (7), Article 66-22, Article 103-4, Article 106-6, Article 106-16, or Article 106-20, or made a false report or submitted false materials;
  - (xi) a person who has refused, hindered, or avoided inspections under Article 56-2, Article 60-11, Article 63 (8), Article 66-22, Article 75, Article 79-4, Article 103-4, Article 106-6, Article 106-16, Article 106-20, Article 106-27, Article 151 (including the cases where it is applied mutatis mutandis pursuant to Article 153-4), Article 155-9, Article 156-15, Article 156-34, Article 185-5 or Article 187 (iv);
  - (xii) a person who has failed to make a report or submitted materials under Article 60-11 as applied mutatis mutandis pursuant to Article 60-12 (3) or Article 56-2 (1) as applied mutatis mutandis pursuant to Article 65-3 (3), or made a false report or submitted false materials;
  - (xiii) a person who has refused, hindered, or avoided inspections under Article 60-11 as applied mutatis mutandis pursuant to Article 60-12 (3) or Article



- 56-2 (1) as applied mutatis mutandis pursuant to Article 65-3 (3);
- (xiv) a person who has violated orders under Article 63 (5) (including the cases where it is applied mutatis mutandis pursuant to Article 63-3 (2)); or
- (xv) a person who has failed to make a report under Article 188, or made a false report.

Article 199 In the case of failure to make a report or submit materials under Article 75, Article 79-4, Article 106-27, Article 151 (including the cases where it is applied mutatis mutandis pursuant to Article 153-4), Article 155-9, Article 156-15, or Article 156-34, or making a false report or submitting false materials, a representative person, agent, employee, other worker, or a person who received entrustment of business of an Authorized Financial Instruments Firms Association, Public Interest Corporation-Type Financial Instruments Firms Association prescribed in Article 78 (2), Financial Instruments Exchange, Self-Regulation Organization prescribed in Article 85 (1), Financial Instruments Exchange Holding Company, Foreign Financial Instruments Exchange, Financial Instruments Clearing Organization, Securities Finance Company, Subsidiary Company of Financial Instruments Exchange (meaning Subsidiary Companies prescribed in Article 87-3 (2)), Subsidiary Company of Financial Instruments Exchange Holding Company (meaning Subsidiary Companies prescribed in Article 106-10 (1)), Issuer of Securities listed in a Financial Instruments Exchange or Over-the-Counter Traded Securities, or Participants of Foreign Financial Instruments Exchange that has committed such act shall be punished by imprisonment with work for not more than one year or by a fine of not more than three million yen, or both.

Article 200 Any person who falls under any of the following items shall be punished by imprisonment with work for not more than one year or by a fine of not more than one million yen, or both:

- (i) a person who has failed to submit or send copies of statement and other related documents under Article 6 (including the cases where it is applied mutatis mutandis pursuant to Article 12, Article 23-12 (1), Article 24 (7), Article 24-2 (3), Article 24-4-4 (5), Article 24-4-5 (2), Article 24-4-7 (5), Article 24-5 (6), and Article 24-6 (3) and these provisions (excluding Article 24-6 (3)) are applied mutatis mutandis pursuant to Article 27), Article 24-7 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 24-7 (6) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27), Article 27-3 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27-8 (6) (including the cases where it is applied mutatis mutandis pursuant to Article 27-13 (3)), Article 27-11 (4), Article 27-13 (3), and Article 27-22-2 (2) and (3), or Article

- 27-22-2 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (8));
- (ii) a person who has failed to submit amendment under the first sentence of Article 7, Article 9 (1), or Article 10 (1) (including the cases where they are applied mutatis mutandis pursuant to Article 27);
  - (iii) a person who has violated the provisions of Article 15 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 23-12 (3) and these provisions are applied mutatis mutandis pursuant to Article 27), Article 15 (3) or (4) (including the cases where they are applied mutatis mutandis pursuant to Article 27), Article 27-5 (including the cases where it is applied mutatis mutandis pursuant to Article 27-8 (10), Article 27-22-2 (2) and (5), and Article 27-22-3 (5)), or Article 27-13 (4) or (5) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2));
  - (iv) a person who has failed to submit Amended Shelf Registration Statement under the first sentence of Article 23-4, Article 23-9 (1), or Article 23-10 (1), or Article 23-10 (1) as applied mutatis mutandis pursuant to paragraph (5) of said Article (including the cases where they are applied mutatis mutandis pursuant to Article 27);
  - (v) a person who has failed to submit amendment reports, Quarterly Securities Reports, Semiannual Securities Reports, Extraordinary Reports, Status Report of Parent Company, etc., or Share Buyback Reports under Article 9 (1) as applied mutatis mutandis pursuant to Article 24-2 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 9 (1) as applied mutatis mutandis pursuant to Article 24-4-5 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 24-4-7 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-7 (3) and these provisions are applied mutatis mutandis pursuant to Article 27), Article 9 (1) or Article 10 (1) which are applied mutatis mutandis pursuant to Article 24-4-7 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 24-5 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 24-5 (3) and these provisions are applied mutatis mutandis pursuant to Article 27), Article 24-5 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 9 (1) or Article 10 (1) which are applied mutatis mutandis pursuant to Article 24-5 (5) (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 24-6 (1), Article 9 (1) or Article 10 (1) which are applied mutatis mutandis pursuant to Article 24-6 (2), Article 9 (1) or Article 10 (1) which are applied mutatis mutandis pursuant to Article 24-7 (1) or (2) (including the cases where they are applied mutatis mutandis pursuant to Article 24-7 (6) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and

- Article 27) or Article 24-7 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 24-7 (6) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27);
- (vi) a person who has, in violation of Article 25 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27) or Article 27-14 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), failed to make copies of documents (excluding documents listed in Article 25 (1) (v) and (ix)) available for public inspection;
- (vii) a person who has failed to make a public notice or public announcement under Article 27-7 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27-8 (12) and Article 27-22-2 (2) and (6)), Article 27-8 (8) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2) and Article 27-22-3 (4)), Article 27-8 (11) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), Article 27-10 (6), or Article 27-13 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2));
- (viii) a person who has failed to submit amendment under Article 27-8 (2) to (4) (including the cases where they are applied mutatis mutandis pursuant to Article 27-22-2 (2)) or amendments under Article 27-8 (2) to (4) as applied mutatis mutandis pursuant to Article 27-13 (3) and Article 27-22-2 (7);
- (ix) a person who has, in violation of Article 27-9 (2) or (3) (including the cases where they are applied mutatis mutandis pursuant to Article 27-22-2 (2)), failed to deliver Tender Offer Statement or amended Tender Offer Statement;
- (x) a person who has failed to submit Subject Company's Position Statement under Article 27-10 (1) or Tender Offeror's Answer under Article 27-10 (11);
- (xi) a person who has, in sending copies of documents under Article 27-10 (9) (including the cases where it is applied mutatis mutandis pursuant to Article 27-10 (10)), Article 27-10 (13) (including the cases where it is applied mutatis mutandis pursuant to Article 27-10 (14)), or Article 27-27 (including the cases where it is applied mutatis mutandis pursuant to Article 27-29 (2)), sent documents containing misstatement on important matters and different contents from those in the original documents as the copies thereof;
- (xii) a person who has failed to submit amendment reports under Article 9 (1) or Article 10 (1) which are applied mutatis mutandis pursuant to Article 27-29 (1);
- (xiii) a person who has violated orders under Article 32-2 (including the cases where it is applied mutatis mutandis pursuant to Article 32-4);
- (xiv) a person who has violated the provision of Article 39 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 66-15);
- (xv) a person who has entered a misstatement into written applications or

- documents under Article 39 (5) (including the cases where it is applied mutatis mutandis pursuant to Article 66-15) and has submitted them;
- (xvi) a person who has violated the provisions of Article 103-2 (1) or (4), or Article 106-14 (1) or (4);
- (xvii) a person who has violated the provisions of Article 106-3 (1) or (4), Article 106-7 (2), Article 106-17 (1) or (3), or Article 106-21 (2);
- (xviii) a person who has violated orders under Article 106-7 (1) or Article 106-21 (1);
- (xix) a person who has violated the provision of Article 167-2;
- (xx) a person who has violated the provision of Article 168; and
- (xxi) a person who has, in violation of Article 170 or Article 171, made a indication prohibited by Article 170 or Article 171.

Article 200-2 In the case of item (xiv) of the preceding Article, property benefit received by the offender or a third party who knows the circumstances shall be confiscated. When whole or part of the property benefits are unable to be confiscated, then the value equivalent to the benefits shall be collected.

Article 200-3 (1) When a witness or expert witness who had sworn under the provisions of Article 201 (1) of the Code of Civil Procedure as applied mutatis mutandis pursuant to Article 185 (2) or Article 185-4 (3), has made a misstatement or presented a false expert opinion, he/she shall be punished by imprisonment with work for not less than three months or but not more than ten years.

(2) When a person who committed crimes set forth in the preceding paragraph, has made a voluntary confess prior to the completion of trial procedures and before the revelation of such crime, the punishment may be reduced or remitted.

Article 201 In the case of act of violation set forth in any of the following items, a representative person, agent, employee or other worker of a Financial Instruments Business Operator, etc., person who obtained permission under Article 59, Authorized Transaction-at-Exchange Operator, Financial Instruments Intermediary Service Provider, Authorized Financial Instruments Firms Association, Financial Instruments Exchange, Self-Regulation Organization prescribed in Article 85 (1), Financial Instruments Exchange Holding Company, Foreign Financial Instruments Exchange, or Securities Finance Company, or a Financial Instruments Business Operator or Financial Instruments Intermediary Service Provider that has committed such act shall be punished by imprisonment with work for not more than one year or by a fine of not more than one million yen, or both:

- (i) conducting businesses prescribed in Article 30 (1) without obtaining authorization under said paragraph;
- (ii) violating conditions attached under the provisions of Article 30-2 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 155 (2)), Article 59 (2), Article 60 (2), or Article 85 (2);
- (iii) violating the provision of Article 31 (6);
- (iv) violating the provisions of Article 31-2 (5), Article 33 (1), Article 33-2, Article 41-3 to 41-5, Article 42-5, Article 42-6, or Article 66-13;
- (v) conducting Financial Instruments Business, businesses prescribed in Article 35 (1), and businesses other than those listed in the items of Article 35 (2) without obtaining approval under Article 35 (4);
- (vi) violating the disposition of the suspension of business under Article 52 (1) (limited to those pertaining to the authorization under Article 30 (1)) or Article 52-2 (1);
- (vii) making other persons conduct duties of Sales Representative in violation of Article 64 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 66-25);
- (viii) violating the provisions of Article 67-7, Article 97, or Article 102-21;
- (ix) entrusting Self-Regulating Related Services prescribed in Article 84 (2) to a Self-Regulation Organization prescribed in said paragraph without obtaining authorization from the Prime Minister in violation of Article 85 (1);
- (x) violating orders under Article 106-7 (1) as applied mutatis mutandis pursuant to Article 106-7 (4), or Article 106-21 (1) as applied mutatis mutandis pursuant to Article 106-21 (4);
- (xi) violating an order under Article 106-28 (1) (including where it is applied mutatis mutandis pursuant to Article 109);
- (xii) carrying out businesses other than those prescribed in Article 156-24 (1) and the items of Article 156-27 (1) without obtaining approval under Article 156-27 (3); and
- (xiii) conducting acts that are allowed only under authorization of the Prime Minister referred to in Article 156-28 (1), without obtaining said authorization.

Article 202 (1) A person who has conducted acts for the purpose of paying or receiving the differences by using 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) instead of through a Financial Instruments Exchange Market shall be punished by imprisonment with work for not more than one year or by a fine of not more than one million yen, or both; provided, however, that this shall not preclude the application of the provision of Article 186 of the

Penal Code.

- (2) The provision of the preceding paragraph shall not apply to the following transactions:
- (i) Over-the-Counter Transactions of Derivatives where one of the parties is a Financial Instruments Business Operator (limited to those who engage in Type I Financial Instruments Business prescribed in Article 28 (1); hereinafter the same shall apply in this paragraph) or a bank, Cooperative Structured Financial Institution, or other financial institution specified by a Cabinet Order prescribed in Article 33 (1); and
  - (ii) Over-the-Counter Transactions of Derivatives where a Financial Instruments Business Operator or a bank, Cooperative Structured Financial Institution, or other financial institution specified by a Cabinet Order prescribed in Article 33 (1) conducts intermediary, brokerage or agency service.

Article 203 (1) In cases where an Officer or official of a Financial Instruments Business Operator (in cases where said Financial Instruments Business Operator is a foreign juridical person, an Officer refers to a Representative Person in Japan and an Officer who is stationed at a business office or office established in Japan; hereinafter the same shall apply in this paragraph), an Officer or official of an Authorized Financial Instruments Firms Association, Public Interest Corporation-Type Financial Instruments Firms Association prescribed in Article 78 (2), or Financial Instruments Exchange (an Officer includes a provisional director, provisional auditor, and provisional executive officer), or a representative person (including, in cases where there is an office in Japan, an Officer stationed at said office) or official in Japan of a Foreign Financial Instruments Exchange has accepted, requested or promised bribes with regard to his/her duties (in the case of an Officer or official of a Financial Instruments Business Operator, limited to duties pertaining to businesses of a Financial Instruments Business Operator that received entrustment of an Investor Protection Funds under the provisions of Article 79-50 (1)), he/she shall be punished by imprisonment with work for not more than five years.

(2) In the case referred to in the preceding paragraph, accepted bribes shall be confiscated. When whole or part of it cannot be confiscated, the value equivalent to the bribe shall be collected.

(3) A person who has provided bribes set forth in the paragraph (1) or who has requested it or promised it shall be punished by imprisonment with work for not more than three years or by a fine of not more than three million yen.

Article 203-2 (1) The crimes set forth in paragraph (1) of the preceding Article shall also apply to a person who has committed these crimes outside Japan.

(2) The crimes set forth in paragraph (3) of the preceding Article shall be dealt with according to the provisions of Article 2 of the Penal Code.

Article 204 A person who has violated the provisions of Article 72 (including the cases where it is applied mutatis mutandis pursuant to Article 79 or Article 79-14), Article 77-2 (7) or (8) (including the cases where they are applied mutatis mutandis pursuant to Article 77-3 (4), Article 78-7, or Article 78-8 (4)), Article 79-47, Article 87-8, or Article 156-8 shall be punished by imprisonment with work for not more than one year or by a fine of not more than 500 thousand yen.

Article 205 A person who falls under any of the following items shall be punished by imprisonment with work for not more than six months or by a fine of not more than 500 thousand yen, or both:

- (i) a person who has violated the provisions of Article 4 (3), Article 4 (5) (including the cases where it is applied mutatis mutandis pursuant to Article 23-8 (4), Article 13 (4) or (5) (including the cases where they are applied mutatis mutandis pursuant to Article 23-12 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27) and Article 27), Article 15 (2) to (4) which are applied mutatis mutandis pursuant to Article 15 (6) (including the cases where it is applied mutatis mutandis pursuant to Article 23-12 (3) and these provisions are applied mutatis mutandis pursuant to Article 27), Article 23 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 23-12 (5) and these provisions are applied mutatis mutandis pursuant to Article 27), Article 23-8 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 27), or Article 24-2 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27);
- (ii) a person who has failed to submit amendment reports under Article 27-8 (2) to (4) which are applied mutatis mutandis pursuant to Article 27-10 (8) or Article 27-8 (2) to (4) which are applied mutatis mutandis pursuant to Article 27-10 (12);
- (iii) a person who has failed to send copies of documents under Article 27-10 (9) (including the cases where it is applied mutatis mutandis pursuant to Article 27-10 (10)), Article 27-10 (13) (including the cases where it is applied mutatis mutandis pursuant to Article 27-10 (14)), or Article 27-27 (including the cases where it is applied mutatis mutandis pursuant to Article 27-29 (2));
- (iv) a person who has violated the provision of Article 27-15 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2));
- (v) a person who has failed to make a report or submit materials under Article 26 (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 27-22 (1) (including the cases where it is applied mutatis

- mutandis pursuant to Article 27-22-2 (2)), Article 27-22 (2), Article 27-30, or Article 193-2 (5), or made a false report or submitted false materials;
- (vi) a person who has refused, hindered, or avoided an inspection under Article 26 (including the cases where it is applied mutatis mutandis pursuant to Article 27), Article 27-22 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27-22-2 (2)), Article 27-22 (2), Article 27-30 (1), or Article 177 (ii);
  - (vii) a person who has entered a misstatement into written applications or documents to be attached to them under Article 30-3, Article 64 (3) or (4) (including the cases where they are applied mutatis mutandis pursuant to Article 66-25), or Article 85-2 (1) or (2) and submitted them;
  - (viii) a person who has, in violation of Article 31-2 (8), failed to make deposits;
  - (ix) a person who has failed to submit notifications or attached documents under Article 32 (including the cases where it is applied mutatis mutandis pursuant to Article 32-4), or submitted false notifications or attached documents;
  - (x) a person who has failed to indicate matters prescribed in Article 37 (1) or Article 66-10 (1), or made false indication;
  - (xi) a person who has violated the provisions of Article 37 (2) or Article 66-10 (2);
  - (xii) a person who has, in violation of Article 37-3 (1), Article 37-4 (1), or Article 37-5 (1), failed to issue written documents or issued written documents that do not contain matters prescribed in these provisions or written documents that contain misstatement, or provided documents lacking in said matters or provided false matters by way of methods prescribed in Article 34-2 (4) as applied mutatis mutandis pursuant to Article 37-3 (2), Article 37-4 (2), or Article 37-5 (2);
  - (xiii) a person who has failed to make a notification under Article 37-3 (3), Article 42-7 (3), Article 103-2 (3), Article 106-3 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 106-10 (4) and Article 106-17 (4)), or made a false notification;
  - (xiv) a person who has, in violation of Article 42-7 (1), failed to issue reports, or has issued reports that do not contain matters prescribed in said paragraph or reports that contain misstatement, or provided reports lacking in said matters or provided false matters by way of methods prescribed in Article 34-2 (4) as applied mutatis mutandis pursuant to Article 42-7 (2);
  - (xv) a person who has, in violation of Article 67-18, made false reports;
  - (xvi) a person who has violated the provision of Article 86 (2);
  - (xvii) a person who has failed to submit notification of holding subject voting rights under Article 103-3 (1) or Article 106-15, or submitted notification of holding subject voting rights containing misstatement;



- (xviii) a person who has violated a Cabinet Office Ordinance under Article 161 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 161 (2));
- (xix) a person who has, in violation of Article 163 or Article 165-2 (1) or (2), failed to submit written reports or submitted written reports containing misstatement, or filed false applications in filing applications under Article 164 (5) or Article 165-2 (10); or
- (xx) a person who has violated the provisions of Article 165, Article 165-2 (15), or Article 169.

Article 205-2 A person who falls under any of the following items shall be punished by a fine of not more than 300 thousand yen:

- (i) a person who has failed to make a notification under Article 31 (1) or (3), Article 32-3 (including the cases where it is applied mutatis mutandis pursuant to Article 32-4), Article 33-6 (1) or (3), Article 35 (3) or (6), Article 50 (1), Article 60-5, Article 63 (3), Article 63-2 (2), Article 63-2 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 63-3 (2)) or Article 63-2 (4), Article 64-4 (including the cases where it is applied mutatis mutandis pursuant to Article 66-25), Article 66-5 (1) or (3), Article 66-19 (1), Article 79-27 (4), or Article 106-3 (5) (including the cases where it is applied mutatis mutandis pursuant to Article 106-10 (4) and Article 106-17 (4)), or given a false notification;
- (ii) a person who has violated the provisions of Article 31-3, Article 43-4 (1), Article 66-6, or Article 194;
- (iii) a person who has violated the provisions of Article 31-4 (1) to (3);
- (iv) a person who has violated the provisions of Article 36-2 (1) or Article 66-8 (1);
- (v) a person who has, in violation of Article 36-2 (2) or Article 66-8 (2), posted signs under Article 36-2 (1) or Article 66-8 (1) or signs similar to these;
- (vi) a person who has violated orders under Article 46-3 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 60-6) or Article 48-2 (3);
- (vii) a person who has, in violation of Article 955 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 50-2 (10), failed to enter or record matters specified by an Ordinance of the Ministry of Justice with regard to Electronic Public Notice investigations under said paragraph in Investigation Record Book, etc. (meaning Investigation Record Book, etc. prescribed in said paragraph; hereinafter the same shall apply in this item), or entered or recorded a misstatement, or who has, in violation of said paragraph, failed to preserve Investigation Record Book, etc.;
- (viii) a person who has violated the provisions of Article 56-4 (3) or (4);

- (ix) a person who has violated the provision of the second sentence of Article 79-3 (1);
- (x) a person who has failed to make a report under Article 79-16, or made a false report;
- (xi) a person who has entered a misstatement in written applications or attached documents under Article 79-30 and submitted them;
- (xii) a person who has failed to make a report or submit materials under Article 79-52 (2), or made a false report or submitted false materials;
- (xiii) a person who has, in violation of Article 79-53 (1), failed to make a notice, or made a false notice;
- (xiv) a person who has failed to make a report or submit materials under Article 79-77, or made a false report or submitted false materials; or
- (xv) a person who has refused, hindered, or avoided inspections under Article 79-77.

Article 205-3 A person who falls under any of the following items shall be punished by a fine of not more than 200 thousand yen:

- (i) a person who has, in violation of the disposition for persons concerned with a case or witnesses under Article 177 (i), failed to make a statement or made a misstatement, or failed to make a report or made a false report;
- (ii) a person who has, in violation of the disposition for witnesses under Article 185 (1), failed to appear or make a statement, or made a misstatement;
- (iii) a person who has failed to swear, in violation of orders for witnesses or expert witnesses under Article 201 (1) of the Code of Civil Procedure as applied mutatis mutandis pursuant to Article 185 (2) or Article 185-4 (3);
- (iv) a person who has failed to submit articles, in violation of the disposition for possessors of articles under Article 185-3 (2); or
- (v) a person who has, in violation of the disposition for expert witnesses under Article 185-4 (1), failed to present expert opinions, or presented false expert opinions.

Article 206 In the case of violations set forth in any of the following items, a representative person, agent, employee or other worker of an Authorized Financial Instruments Firms Association, Public Interest Corporation-Type Financial Instruments Firms Association prescribed in Article 78 (2), Investor Protection Fund, Financial Instruments Exchange, Self-Regulation Organization prescribed in Article 85 (1), Financial Instruments Exchange Holding Company, Foreign Financial Instruments Exchange, Financial Instruments Clearing Organization, or Securities Finance Company that has committed such act shall be punished by a fine of not more than 300 thousand yen:

- (i) violating the provisions of Article 64-7 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 66-25), Article 67-8 (2), Article 67-12, Article 87-3 (1), Article 105 (1), Article 106-24, or Article 149 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 153-4);
- (ii) failure to make a notification under the first sentence of Article 67-8 (3), Article 67 (13), Article 121, Article 126 (1), the first sentence of Article 149 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 153-4), Article 153-3, or Article 155-7, or made a false notification;
- (iii) violating orders under Article 67-14 or Article 125;
- (iv) violating an order under Article 67-15 (1), Article 67-17 (1), Article 127 (1), or Article 129 (1);
- (v) failure to make a report, in violation of Article 79-55 (4) or Article 79-59 (5), or act of making a false report;
- (vi) listing Securities, in violation of Article 122 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 123) or Article 124 (1) or (3);
- (vii) delisting Securities, in violation of Article 126 (2);
- (viii) failure to make a notification under Article 156-6 (3) or Article 156-13, or act of making a false notification;
- (ix) violating the provision of Article 156-12; and
- (x) failure to make a notification under Article 156-27 (2), or Article 156-28 (2) or (3), or act of making a false notification.

Article 207 (1) Where the representative person of a juridical person (including organizations without judicial personality for which the representative persons or administrators have been designated; hereinafter the same shall apply in this paragraph and the following paragraph) or a agent, employee, or other worker of a juridical person or individual has, with regard to the business or property of the juridical person or individual, violated any of the provisions set forth in the following items, not only shall the offender be punished but also said juridical person shall be punished by the fine prescribed in the respective items and said individual shall be punished by the fine prescribed in the provisions referred to in the respective items:

- (i) Article 197: a fine of not more than 700 million yen;
- (ii) Article 197-2 (excluding item (xi) and (xii)): a fine of not more than 500 million yen;
- (iii) Article 198-3 to Article 198-5: a fine of not more than 300 million yen;
- (iv) Article 198-6 (excluding items (viii), (ix), (xii) and (xiii)) or Article 199: a fine of not more than 200 million yen;
- (v) Article 200 (excluding item (xvii) and (xix)) or Article 201 (i), (ii), (iv), (vi),

or (ix) to (xi): a fine of not more than 100 million yen; and  
(vi) Article 198 (excluding items (v) and (viii)), Article 198-6 (viii), (ix), (xii), or (xiii), Article 200 (xvii) or (xix), Article 201 (excluding items (i), (ii), (iv), (vi), (ix) to (xi)), Article 205, Article 205-2 (excluding items (xiv) and (xv)), or the preceding Article (excluding item (v)): the fine prescribed in the respective Articles.

- (2) The period of prescription in cases where a juridical person or individual has been punished by a fine due to a violation set forth in Article 197 or Article 197-2 (excluding the items (xi) and (xii)) under the provisions of the preceding paragraph, shall depend on the period of prescription for the crimes set forth in these provisions.
- (3) In cases where an organization without judicial personality is punished under the provisions of paragraph (1), the representative person or administrator thereof shall represent the organization with regard to the procedural act, and the provisions of Acts concerning criminal procedures where a juridical person is the defendant or a suspect shall apply *mutatis mutandis*.

Article 207-2 Where the person prescribed in Article 197-2 (xii), Article 198 (v), or Article 203 (1) is a juridical person, these provisions shall apply to the director or executive officer, or Officer or manager executing the operation who has committed such act.

Article 207-3 An Officer (including a provisional director, provisional auditor, provisional accounting advisor, and provisional executive officer) of an Authorized Financial Instruments Firms Association, Financial Instruments Exchange, Self-Regulation Organization prescribed in Article 85 (1), or Financial Instruments Exchange Holding Company shall be punished by a non-penal fine of not more than one million yen in the following cases:

- (i) when having violated orders under Article 73 or Article 153 (including the cases where it is applied *mutatis mutandis* pursuant to Article 153-4);
- (ii) when not having recorded the amount of capital reserve under Article 101-8;
- (iii) when not having made a notice under Article 101-10 (1) or (4);
- (iv) when having failed to make a registration under Article 101-20 (1);
- (v) when not having kept minutes, in violation of Article 102-31 (1) or Article 105-16 (1);
- (vi) when not having appointed the majority of members of the self-regulating committee as outside directors, in violation of Article 105-5 (1); or
- (vii) when having failed to make a list of names under Article 105-18 available for public inspection.

Article 207-4 A person who falls under any of the following items shall be punished by a non-penal fine of not more than one million yen:

- (i) a person who has, in violation of Article 941 of the Companies Act as applied mutatis mutandis pursuant to Article 50-2 (10), failed to request investigation under said Article;
- (ii) a person who has, in violation of Article 946 (3) of the Companies Act as applied mutatis mutandis pursuant to Article 50-2 (10), failed to make a report or has made a false report;
- (iii) a person who has refused requests set forth in the respective items of Article 951 (2) or Article 955 (2) of the Companies Act which are applied mutatis mutandis pursuant to Article 50-2 (10), without justifiable grounds;  
or
- (iv) a person who has refused inspection or copy under Article 102-31 (2) or Article 105-16 (2) or (3) (including the cases where it is applied mutatis mutandis pursuant to Article 105-16 (4)), without justifiable grounds.

Article 208 An Issuer of Securities, a representative person or Officer of a Financial Instruments Business Operator or Financial Instruments Intermediary Service Provider, a Financial Instruments Business Operator or Financial Instruments Intermediary Service Provider, a Financial Instruments Business Operator which is a foreign juridical person, a person who has received permission under Article 59 or representative person of an Authorized Transaction-at-Exchange Operator in Japan, an Officer (including a provisional director) or person who used to be a representative person of an Authorized Financial Instruments Firms Association or Public Interest Corporation-Type Financial Instruments Firms Association prescribed in Article 78 (2), an Officer (including a provisional director and provisional auditor) or liquidator of an Investor Protection Fund, an Officer (including a provisional director and provisional executive officer), person who used to be a representative person, or liquidator of a Financial Instruments Exchange or self-regulation organization prescribed in Article 85 (1), a representative person or person who used to be a representative person of a Foreign Financial Instruments Exchange in Japan, a representative person or Officer of a Financial Instruments Clearing Organization, or a representative person or Officer of a Securities Finance Company shall be punished by a non-penal fine of not more than 300 thousand yen in the following cases:

- (i) when having violated the provisions of Article 4 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 23-8 (4)), Article 44-4 (including the cases where it is applied mutatis mutandis pursuant to Article 59-6), Article 79-26 (2), Article 79-73, Article 119 (1) or (4), or Article 161-2 (1);

- (ii) when not having submitted Confirmation Letter under Article 24-4-2 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-2 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-2 (4)) and Article 24-4-2 (4) and these provisions are applied mutatis mutandis pursuant to Article 27) or amendment Confirmation Letter under Article 9 (1) or Article 10 (1) which are applied mutatis mutandis by replacing certain terms pursuant to Article 24-4-3 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27);
- (iii) when not having deposited, in violation of orders under Article 31-2 (4);
- (iv) when having failed to make a notification, in violation of Article 31-4 (4), Article 64-7 (5) (including the cases where it is applied mutatis mutandis pursuant to Article 66-25), the second sentence of Article 67-8 (3), Article 67-16, Article 77-6 (3), Article 105 (2), Article 120, Article 128, Article 134 (2), Article 135 (2), the second sentence of Article 149 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 153-4), or Article 155-8 (2), failed to make a notification;
- (v) when not having issued written documents, in violation of Article 40-2 (4) or (5);
- (vi) when not having set up reserve funds, in violation of Article 46-5, Article 48-3, or Article 49-4 or having used them;
- (vii) when not possessing assets in Japan, in violation of Article 49-5 or orders under Article 56-3;
- (viii) when having violated orders under Article 51, Article 51-2, Article 53 (1), Article 60-8 (1), Article 66-20 (1), Article 79-37 (5), Article 79-75, Article 156-16 or Article 156-33 (1) (in the case of orders under Article 60-8 (1) or Article 66-20 (1), excluding disposition of the suspension of business);
- (ix) when having failed to make a report, in violation of Article 67-18 or Article 78-3;
- (x) when having made a notice, in violation of Article 67-19, Article 78-4, or Article 130, or having failed to make a public announcement;
- (xi) when having failed to make a report, in violation of Article 67-20, Article 78-5, Article 79-41 (3), Article 79-53 (2), or Article 131, or having made a false report;
- (xii) when having failed to make a list of names set forth in Article 68 (6) or Article 78-2 (2) available for public inspection;
- (xiii) when not having obtained authorization in cases where authorization shall be obtained from the Prime Minister and the Minister of Finance under the provisions of Chapter IV-2;
- (xiv) when not having made a notification under Article 79-34 (3) or made a false notification;
- (xv) when having conducted businesses other than those prescribed in Article

- 79-49;
- (xvi) when not having submitted documents under Article 79-70 (1) or (2), or submitted false documents;
  - (xvii) when having conducted accounting, in violation of Article 79-71;
  - (xviii) when having disposed residual assets of an Investor Protection Fund, in violation of Article 79-80 (1);
  - (xix) when having made a misstatement to or suppressed a fact from an organizational meeting or general meeting of members of a Financial Instruments Membership Corporation;
  - (xx) when, in violation of Article 88-11 (including the cases where it is applied mutatis mutandis pursuant to Article 102-6), Article 101-3 (1), Article 101-5 (1), Article 139-3 (1), Article 139-4 (1) or (8), Article 139-5 (1), Article 139-6 (4), Article 139-7 (1), Article 139-13 (2), Article 139-14 (1), or Article 139-21 (2), not having kept documents, written documents or Electromagnetic Records prescribed in these provisions, or entered or recorded a misstatement in them;
  - (xxi) when having failed to make a public notice or notice, in violation of Article 100-12 (1) or (2) (including the cases where they are applied mutatis mutandis pursuant to Article 102-36), Article 100-14 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 102-36), Article 101-4 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 139-3 (5), Article 139-4 (4), or Article 139-5 (5)), Article 139-3 (9), Article 139-10 (1), Article 139-12 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 139-19), or Article 139-16 (1), or the provisions of the Companies Act which are applied mutatis mutandis pursuant to this Act, or having made a false public notice or notice;
  - (xxii) when having failed to file an application for the commencement of bankruptcy proceedings, in violation of Article 100-7 (2) or Article 100-14 (1) (including the cases where they are applied mutatis mutandis pursuant to Article 102-36);
  - (xxiii) when having distributed properties of a Financial Instruments Membership Corporation, in violation of Article 664 of the Companies Act as applied mutatis mutandis pursuant to Article 100-17 (1);
  - (xxiv) when having taken procedures for entity conversion, in violation of Article 101-2;
  - (xxv) when, in violation of Article 101-3 (2), Article 101-5 (2), Article 139-3 (2), Article 139-4 (9), Article 139-5 (2), Article 139-6 (5), Article 139-7 (2), Article 139-13 (3), Article 139-14 (2), or Article 139-21 (3), having refused a request for inspection or issuance of transcripts or extracts of indication of matters recorded in written documents or Electromagnetic Records by way of means specified by a Cabinet Office Ordinance, for provision of matters recorded in

Electromagnetic Records by way of electromagnetic means, or for issuance of written documents containing such matters, without justifiable grounds; (xxvi) when having conducted entity conversion or merger of Membership-Type Financial Instruments Exchanges, in violation of Article 101-4 (including the cases where it is applied mutatis mutandis pursuant to Article 139-3 (5), Article 139-4 (4), and Article 139-5 (5)), or Article 139-12 (including the cases where it is applied mutatis mutandis pursuant to Article 139-19); or (xxvii) when having failed to make a registration (excluding those under Article 101-20 (1)) provided by this Act.

Article 208-2 Any person who falls under any of the following items shall be punished by a non-penal fine of not more than 300 thousand yen:

- (i) a person who has violated the provision of Article 79-23 (2);
- (ii) a person who has violated the provision of Article 162 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 162 (2)); or
- (iii) a person who has violated a Cabinet Office Ordinance under Article 162-2.

Article 208-3 A person who has violated the provision of Article 88 (3) shall be punished by a non-penal fine of not more than 200 thousand yen.

Article 209 Any person who falls under any of the following items shall be punished by a non-penal fine of not more than 100 thousand yen:

- (i) a person who has violated the provision of Article 23-13 (1) or (3) or Article 23-14 (1) (including the cases where they are applied mutatis mutandis pursuant to Article 27);
- (ii) a person who has failed to issue written documents, in violation of Article 23-13 (2) or (4), or Article 23-14 (2) (including the cases where they are applied mutatis mutandis pursuant to Article 27);
- (iii) a person who has failed to submit copies of Confirmation Letter under Article 6 as applied mutatis mutandis pursuant to Article 24-4-2 (5) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-8 (1) and Article 24-5-2 (1) and these provisions are applied mutatis mutandis pursuant to Article 27) or copies of amendment Confirmation Letter under Article 6 as applied mutatis mutandis pursuant to Article 24-4-3 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-8 (2) and Article 24-5-2 (2) and these provisions are applied mutatis mutandis pursuant to Article 27);
- (iv) a person who has failed to submit Confirmation Letter under Article 24-4-2 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-2 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 24-4-2 (4)) and Article 24-4-2 (4) and these provisions are



- applied mutatis mutandis pursuant to Article 27) as applied mutatis mutandis pursuant to Article 24-4-8 (1) or Article 24-5-2 (1) (including the cases where they are applied mutatis mutandis pursuant to Article 27) or amendment Confirmation Letter under Article 9 (1) or Article 10 (1) which are applied mutatis mutandis by replacing certain terms pursuant to Article 24-4-3 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 27) as applied mutatis mutandis pursuant to Article 24-4-8 (2) or Article 24-5-2 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27);
- (v) a person who has, in violation of Article 25 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 27), failed to make copies of documents (limited to documents listed in Article 25 (1)(v) and (ix)) available for public inspection;
  - (vi) a person who has, in violation of Article 27-24, failed to issue written notices, or issued written notices that do not contain matters prescribed in said Article or contain misstatement;
  - (vii) a person who has violated orders under Article 60-4 (2) or Article 65 (2);
  - (viii) a person who has failed to make a notification under Article 62 (1) or (3) or Article 79-10 (1), or made a false notification;
  - (ix) a person who has failed to make a report or submitted materials under Article 62 (2) or Article 189 (1), or made a false report or submitted false materials;
  - (x) a person who has violated the provision of Article 79-15;
  - (xi) a person who has, in violation of the disposition for persons concerned with a case or witnesses under Article 187 (i), failed to appear or make a statement or made a misstatement, or failed to make a report or made a false report;
  - (xii) a person who has, in violation of the disposition for expert witnesses under Article 187 (ii), failed to appear or present expert opinions, or presented false expert opinions; or
  - (xiii) a person who has failed to submit articles, in violation of the disposition for possessors of articles under Article 187 (iii).

### **Chapter IX Investigation into a Criminal Case, etc.**

(Questioning, Inspection, or Retention etc.)

Article 210 (1) An official of the Securities and Exchange Surveillance Commission (hereinafter referred to as the "Commission" in this Chapter) (hereinafter such an official shall be referred to as a "Commission Official" in this Chapter) may, when it is necessary for investigating a Criminal Case (meaning criminal cases among crimes set forth in the preceding Chapter that

pertain to what are specified by a Cabinet Order as crimes that harm the fairness of sales and purchase or other transactions of Securities or Derivative Transactions, etc.; hereinafter the same shall apply in this Chapter), request a suspect or witness of the Criminal Case (hereinafter referred to as a "Criminal Case Suspect, etc." in this paragraph) to appear, question a Criminal Case Suspect, etc., inspect articles that a Criminal Case Suspect, etc. possesses or has left, or retain articles that a Criminal Case Suspect, etc. has voluntarily submitted or left.

- (2) A Commission Official may, inquire public agencies or public or private organizations about the investigation into a Criminal Case and request them to report necessary matters.

(Official Inspection, Search, or Seizure)

Article 211 (1) A Commission Official may, when it is necessary for an inspection into a Criminal Case, execute official inspection, search, or seizure with a Permit which was issued in advance by a judge of a district court or summary court which has jurisdiction over the location of the Commission.

- (2) In case of urgency in the case set forth in the preceding paragraph, a Commission Official may take dispositions set forth in said paragraph with a Permit which was issued in advance by a judge of a district court or summary court which has jurisdiction over the location of the place to officially inspect, the place, body or article to search, or the article to seize.
- (3) A Commission Official shall, when requesting a Permit set forth in paragraph (1) or the preceding paragraph (hereinafter referred to as a "Permit" in this Chapter), submit materials to prove the existence of a Criminal Case.
- (4) When a request set forth in the preceding paragraph has been filed, a judge of a district court or summary court shall issue to a Commission Official a Permit containing the place to officially inspect, the place, body or article to search, or the article to seize, the government position and name of the requester, the valid period, the fact that after the valid period has elapsed, the execution shall not be started and the Permit shall be returned, the date of the issuance and the name of the court, with the judge's name and seal affixed on it. In this case, when the name of a Criminal Case Suspect or the fact of a criminal offense is clear, these matters shall also be entered in the Permit.
- (5) A Commission Official may issue a Permit to another Commission Official and have him/her execute official inspection, search, or seizure.

(Seizure for a Person Engaged in Communications Business)

Article 211-2 (1) A Commission Official may, when it is necessary for an inspection into a Criminal Case, obtain the issuance of a Permit and seize documents concerning postal items, correspondence items, or telegrams sent

from or addressed to a Criminal Case Suspect that are stored or possessed by a person engaged in communications business based on the provisions of laws and regulations.

(2) A Commission Official may, with regard to documents concerning postal items, correspondence items, or telegrams that do not fall under the preceding paragraph and are stored or possessed by a person engaged in communications business based on the provisions of laws and regulations, obtain the issuance of a Permit and seize only those with circumstances that are enough to prove the relations to the Criminal Case.

(3) A Commission Official shall, when he/she has taken dispositions set forth in the preceding two paragraphs, make a notice to that effect to the sender or receiver of those items; provided, however, that this shall not apply to cases where such notice may hinder the inspection into the Criminal Case.

(Restriction on Night-time Execution of Official Inspection, Search, or Seizure)

Article 212 (1) Official inspection, search, or seizure shall not be executed between sunset and sunrise unless a Permit states entry to the effect that official inspection, search, or seizure may be executed during the nighttime.

(2) Official inspection, search, or seizure that has been started before sunset may, when it is found necessary, be continued after sunset.

(Showing of a Permit)

Article 213 A Permit for official inspection, search, or seizure shall be shown to a person who receives such dispositions.

(Proof of the Status)

Article 214 A Commission Official shall, in executing questioning, inspection, retention, official inspection, search, or seizure under the provisions of this Chapter, carry an identification card to prove his/her status and show it when requested by any person concerned.

(Necessary Dispositions upon Official Inspection, Search, or Seizure)

Article 215 (1) A Commission Official may, when it is necessary for official inspection, search, or seizure, release a lock or open a seal, or take other necessary dispositions.

(2) Dispositions set forth in the preceding paragraph may also be taken for retained articles or seized articles.

(Prohibition of Entrance and Exit during a Disposition)

Article 216 A Commission Official may, while executing questioning, inspection, retention, official inspection, search, or seizure under the provisions of this

Chapter, prohibit any person from entering or exiting the place without obtaining permission.

(Attendance of a Responsible Person, etc.)

- Article 217 (1) A Commission Official shall, in executing official inspection, search, or seizure at a dwelling house of a person, a residence, building or other place a person guards, have the owner or manager thereof (including such person's representative, agent, or other person in lieu of them) or their employee or adult relative living together attend the execution.
- (2) In the case of the preceding paragraph, when it is impossible to have any of the persons prescribed in said paragraph attend, a Commission Official shall have an adult neighbor thereof or other police official or official of the local government attend the execution.
- (3) When searching a female's body, a Commission Official shall have an adult female attend the execution; provided, however, that this shall not apply in case of urgency.

(Assistance of Police Officials)

Article 218 A Commission Official may, when it is necessary for official inspection, search, or seizure, request assistance of police officials.

(Preparation of a Record)

Article 219 A Commission Official shall, when he/she has executed questioning, inspection, retention, official inspection, search, or seizure under the provisions of this Chapter, prepare a record, show it to a person he/she questioned or an observer, affix a signature and seal on it, and make such persons affix a signature and seal on it; provided, however, that, when the person he/she questioned or an observer does not or cannot affix a signature and seal on the record, it would be sufficient to append a note to that effect.

(Retention List or Seizure List)

Article 220 A Commission Official shall, when he/she has executed retention or seizure, prepare a list thereof and issue the transcript of the list to the owner or holder of the retained article or seized article or other person in lieu of them.

(Dispositions of Retained Articles or Seized Articles)

Article 221 Retained articles or seized articles inconvenient to transport or store may be arranged to be stored by a person who the owner or holder thereof or a Commission Official considers appropriate, by obtaining the consent of such person and asking for a storage certificate.

(Return, etc. of Retained Articles or Seized Articles)

Article 222 (1) The Commission shall, when it has become unnecessary to keep retained articles or seized articles, return them to a person who is to receive them.

(2) The Commission shall, when it cannot return retained articles or seized articles because the address or residence of a person who is to receive them set forth in the preceding paragraph is unknown or due to other reasons, make a public notice to that effect.

(3) When there has been no request for the return of retained articles or seized articles pertaining to a public notice set forth in the preceding paragraph after six months has elapsed since the day of the public notice, these articles shall belong to the national treasury.

(Report to the Commission)

Article 223 A Commission Official shall, when he/she has completed the investigation of a Criminal Case, report the results of the investigation to the Commission.

(Investigation into a Criminal Case by Officials of a Finance Bureau, etc.)

Article 224 (1) The commissioner of a finance bureau or local finance branch bureau shall designate persons in charge of an investigation of a Criminal Case among officials of the finance bureau or local finance branch bureau, by obtaining approval from the Commission.

(2) Persons designated by the commissioner of a finance bureau or local finance branch bureau under the provisions of the preceding paragraph (hereinafter referred to as "Official of a Finance Bureau, etc." in this Chapter) shall be deemed to be Commission Officials, and the provisions of Article 210 to the preceding Article shall apply. In this case, the term "the Commission" in Article 211 shall be deemed to be replaced with "the finance bureau or local finance branch bureau to which they belong,"; and the term "the Commission" in the preceding two Articles shall be deemed to be replaced with "the commissioner of a finance bureau or local finance branch bureau."

(3) When the commissioner of a finance bureau or local finance branch bureau has received a report from Officials of a Finance Bureau, etc. under the provisions of the preceding Article which is applied by replacing the term in the preceding paragraph, he/she shall report the contents to the Commission.

(4) With regard to the investigation of a Criminal Case, the Commission shall control and supervise the commissioner of a finance bureau or local finance branch bureau.

(5) The Commission may, when it finds it necessary for an investigation of a Criminal Case, directly control or supervise Officials of a Finance Bureau, etc.

(Execution of Duties Outside the Jurisdictional District)

Article 225 Officials of a Finance Bureau, etc. may, when it is necessary for an investigation of a Criminal Case, execute their duties outside the jurisdictional district of the finance bureau or local finance branch bureau to which they belong.

(Accusation, etc. by the Commission)

Article 226 (1) The Commission shall, when it has become convinced of a Criminal Case through investigation, make an accusation, and in case there are any retained articles or seized articles, it shall take them over with a retention list or seizure list.

(2) When the retained articles or seized articles set forth in the preceding paragraph pertain to storage under Article 221, the Commission shall take them over with a storage certificate under said Article and notify to the custodian under said Article to that effect.

(3) When retained articles or seized articles have been taken over under the preceding two paragraphs, said articles shall be deemed to have been seized under the provisions of the Code of Criminal Procedure (Act No. 131 of 1948).

(Restriction on Appeal)

Article 227 Based on the provisions of this Chapter, appeal under the Administrative Appeal Act may not be filed with regard to dispositions taken by the Commission, a Commission Official, the commissioner of a finance bureau or local finance branch bureau, or Officials of a Finance Bureau, etc.