

Act on Sales, etc. of Financial Instruments

(Act No. 101 of May 31, 2000)

(Purpose)

Article 1 The purpose of this Act is to protect customers by specifying matters which financial instrument providers, etc. should explain at the time of the sale, etc. of financial instruments and imposing liability on financial instrument providers, etc. for damages where a customer incurs any loss due to the failure of a financial instrument provider, etc. to explain said matters at the time of the sale, etc. of financial instruments, and by establishing measures to ensure the appropriateness of solicitations of sales, etc. of financial instruments by financial instrument providers, etc. , thereby contributing to the sound development of the national economy.

(Definitions)

Article 2 (1) The phrase "Sale(s) of Financial Instruments" as used in this Act means the following acts:

- (i) conclusion of a contract on acceptance of deposits, savings, installment savings, or installment deposits as prescribed in Article 2, paragraph (4) of the Banking Act (Act No. 59 of 1981) with a depositor, a person with savings, a person with installment savings or a person who makes the installment deposits prescribed in that paragraph;
- (ii) conclusion of a contract on the acceptance of contributions based on a mutual loan contract prescribed in Article 1 of the Mutual Loan Business Act (Act No. 42 of 1931) (hereinafter referred to as "Mutual Loan Contributions" in this item) with a person who makes Mutual Loan Contributions;
- (iii) conclusion of a trust contract pertaining to a monetary trust (limited to those for which the beneficial interest pertaining to the trust contract are rights listed in Article 2, paragraph (2), item (i) or (ii) of the Financial Instruments and Exchange Act (Act No. 25 of 1948)) with the settlor, which satisfies the requirement that the investment method for the trust property has not been specified and any other requirements specified by Cabinet Order,;
- (iv) conclusion of an insurance contract with policyholders or persons similar thereto in which the person engaging in the insurance business defined in Article 2, paragraph (1) of the Insurance Business Act (Act No. 105 of 1995) becomes the insurer (hereinafter referred to as an "Insurance Contract" in this item) or a contract, related to insurance or mutual aid, which is specified by Cabinet Order as being similar to an Insurance Contract;

- (v) acts giving rise to the acquisition of Securities (meaning the Securities specified in Article 2, paragraph (1) of the Financial Instruments and Exchange Act and the rights regarded as Securities pursuant to paragraph (2) of that Article, and excluding the rights listed in items (i) and (ii) of that paragraph (excluding the acts falling under the category of agency or intermediary service or the acts listed in items (viii) and (ix));
 - (vi) acts giving rise to the acquisition of the following (excluding acts falling under the category of agency or intermediary service):
 - (a) rights listed in Article 2, paragraph (2), item (i) and (ii) of the Financial Instruments and Exchange Act; and
 - (b) monetary claims indicated by negotiable certificates of deposit (excluding monetary claims that are rights indicated on the Securities specified in Article 2, paragraph (1) of the Financial Instruments and Exchange Act or rights regarded as Securities pursuant to paragraph (2) of that Article);
 - (vii) conclusion of a real estate specified joint enterprise contract defined in Article 2, paragraph (3) of the Real Estate Specified Joint Enterprise Act (Act No. 77 of 1994) (limited to a contract for which money is the subject of the contribution and for which the division of residual assets or return of contribution in cases of termination of contract is to be made by money, or a contract on the matters specified by Cabinet Order as those similar thereto);
 - (viii) market transactions involving derivatives defined in Article 2, paragraph (21) of the Financial Instruments and Exchange Act, foreign market derivative transactions defined in paragraph (23) of that Article, or brokerages for such transactions;
 - (ix) over-the-counter derivative transactions defined in Article 2, paragraph (22) of the Financial Instruments and Exchange Act or the brokerage thereof;
 - (x) transactions wherein the parties thereto promise to pay or receive money based on the difference between a figure to which the parties have agreed in advance as the interest rate, the value of currencies, or any other indicator, and the actual figure of the indicator at a fixed time in the future (excluding those falling under transactions set forth in the preceding two items) and which are specified by Cabinet Order, or the brokerage for such transactions; and
 - (xi) acts specified by Cabinet Order as being similar to those set forth in the preceding items.
- (2) The phrase "Sale(s), etc. of Financial Instruments" as used in this Act means sale(s) of financial instruments, or an agency or intermediary service therefor (including one conducted on behalf of a Customer).
- (3) The term "Financial Instruments Provider, etc." as used in this Act means a person carrying out Sales, etc. of Financial Instruments in the course of trade.
- (4) The term "Customer" as used in this Act means the counterparty to Sales of

Financial Instruments.

(Accountability of a Financial Instruments Provider, etc.)

Article 3 (1) When a Financial Instruments Provider, etc. intends to carry out Sales, etc. of Financial Instruments on a regular basis, he/she shall explain the following matters as specified below (hereinafter referred to as "Important Matters") to Customers at or before the time that the Sale of Financial Instruments, etc. is carried out:

- (i) if the relevant Sales of Financial Instruments involves the Risk of Incurring a Loss of Principal, due to fluctuations in the interest rate, the value of currencies, quotations on a Financial Instruments Market (meaning a Financial Instruments Market defined in Article 2, paragraph (14) of the Financial Instruments and Exchange Act; hereinafter the same shall apply in this Article), or any other indicator as the direct cause thereof, the following matters will be explained:
 - (a) the fact that there is a Risk of Incurring a Loss of Principal;
 - (b) the relevant indicator; and
 - (c) the important portions of the Structure of Transactions Pertaining to the Sales of Financial Instruments which generate the Risk of Incurring a Loss of Principal with fluctuations in the indicator set forth in sub-item (b) as the direct cause thereof;
- (ii) if the relevant Sales of Financial Instruments involve the Risk of Incurring a Loss Exceeding the Initial Principal with fluctuations in the interest rate, the value of currencies, quotations on a Financial Instruments Market, or any other indicator as the direct cause thereof, the following matters will be explained:
 - (a) the fact that there is a Risk of Incurring a Loss Exceeding the Initial Principal;
 - (b) the relevant indicator; and
 - (c) important portions of the Structure of Transactions Pertaining to the Sales of Financial Instruments which generate the Risk of Incurring a Loss Exceeding the Initial Principal with fluctuations in the indicator set forth in sub-item (b) as the direct cause thereof;
- (iii) if the relevant Sales of Financial Instruments involve a Risk of Incurring a Loss of Principal directly caused by changes in the status of the business or property of the person carrying out the relevant Sales of Financial Instruments or any other person, the following matters will be explained:
 - (a) the fact that there is a Risk of Incurring a Loss of Principal;
 - (b) the relevant person; and
 - (c) important aspects of the Structure of Transactions Pertaining to Sales of Financial Instruments which generate the Risk of Incurring a Loss of

- Principal directly caused by changes in the status of the business or property of the person set forth in sub-item (b);
- (iv) if the relevant Sales of Financial Instruments involve a Risk of Incurring a Loss Exceeding the Initial Principal directly caused by changes in the status of the business or property of the person carrying out the relevant Sales of Financial Instruments, or any other person with regard to Sales of Financial Instruments, the following matters will be explained:
- (a) the fact that there is a Risk of Incurring a Loss Exceeding the Initial Principal;
 - (b) the relevant person; and
 - (c) important aspects of the Structure of Transactions Pertaining to Sales of Financial Instruments which generate the Risk of Incurring a Loss Exceeding the Initial Principal directly caused by changes in the status of the business or property of the person set forth in sub-item (b);
- (v) in addition to what is listed in items (i) and (iii), if the relevant Sales of Financial Instruments involve a Risk of Incurring a Loss of Principal directly caused by grounds specified by Cabinet Order as important factors that may have an impact on the Customers' judgment as the direct cause thereof, the following matters will be explained:
- (a) the fact that there is a Risk of Incurring a Loss of Principal;
 - (b) the relevant grounds; and
 - (c) important portions of the Structure of Transactions Pertaining to the Sales of Financial Instruments which generate the Risk of Incurring a Loss of Principal, with the grounds set forth in sub-item (b) as the direct cause thereof;
- (vi) in addition to what is listed in items (ii) and (iv), if the relevant Sales of Financial Instruments involve the Risk of Incurring a Loss Exceeding the Initial Principal, caused by the grounds specified by Cabinet Order as important factors that may have an impact on the Customers' judgment as the direct cause thereof, the following matters will be explained:
- (a) the fact that there is a Risk of Incurring a Loss Exceeding the Initial Principal;
 - (b) the relevant grounds; and
 - (c) important portions of the Structure of Transactions Pertaining to the Sales of Financial Instruments which generate the Risk of Incurring a Loss Exceeding the Initial Principal, with the grounds set forth in sub-item (b) as the direct cause thereof; and
- (vii) if the period during which the rights subject to the relevant Sales of Financial Instruments can be exercised or the period during which the contract pertaining to the relevant Sales of Financial Instruments may be cancelled is limited, a statement to that effect will be provided.

- (2) The explanation prescribed in the preceding paragraph shall be provided in a manner and to the extent necessary for the Customer to understand, in light of his/her knowledge and experience or the status of his/her property or the purpose of concluding a contract on the Sales of Financial Instruments.
- (3) The phrase "Risk of Incurring a Loss of Principal" as used in paragraph (1), items (i), (iii) and (v) means a risk that the total amount of money to be paid by a Customer as a result of Sales of Financial Instruments (in cases where there is any property other than money or any right specified by Cabinet Order which is to be transferred by said Customer as a result of said Sales of Financial Instruments (hereinafter referred to as a "Monetary Equivalent" in this paragraph and Article 6, paragraph (2)), the amount will be obtained by adding to said total amount of money to be paid, the total market value of said Monetary Equivalent (in cases where there is no market value, the estimated disposal value)) would exceed the total amount of money to be received by said Customer (in cases where there is any person who is to receive any money, any property other than money, or any right, as designated by said Customer, as a result of said Sales of Financial Instruments, this shall include such person; hereinafter referred to as the "Customer, etc." in this paragraph) as a result of said Sales of Financial Instruments (in cases where there is any property other than money or any right to be acquired by said Customer, etc. as a result of said Sales of Financial Instruments, the amount will be obtained by adding the total amount of the market value of said property (in cases where there is no market value, the estimated disposal value) other than money or said right to said total amount of money to be paid).
- (4) The phrase "Risk of Incurring a Loss Exceeding the Initial Principal" as used in paragraph (1), items (ii), (iv), and (vi) means the following:
- (i) a risk that, in cases where the relevant Sales of Financial Instruments (limited to acts listed in paragraph (1), items (viii) to (x) inclusive of the preceding Article and the acts listed in item (xi) of that paragraph that are specified by Cabinet Order; hereinafter the same shall apply in this paragraph) involve a risk of incurring a loss due to fluctuations in the interest rate, the value of currencies, quotations on a Financial Instruments Market, or any other indicator, the amount of such loss would exceed the customer margin or any other security deposit to be paid by the Customer as a result of said Sales of Financial Instruments;
- (ii) a risk that, in cases where the relevant Sales of Financial Instruments involve a risk of incurring a loss due to changes in the status of the business or property of the person carrying out said Sales of Financial Instruments or any other person, the amount of such loss would exceed the customer margin or any other security deposit to be paid by the Customer as a result of said Sales of Financial Instruments;

- (iii) a risk that, in cases where the relevant Sales of Financial Instruments involve a risk of incurring a loss due to the grounds under paragraph (1), item (vi), the amount of such loss would exceed the customer margin or any other security deposit to be paid by the Customer as a result of said Sales of Financial Instruments; and
 - (iv) risks specified by Cabinet Order as being equivalent to those listed in the preceding three items.
- (5) The phrase "Structure of Transactions Pertaining to the Sales of Financial Instruments" as used in item (i), sub-item (c), item (ii), sub-item (c), item (iii), sub-item (c), item (iv), sub-item (c), item (v), sub-item (c) and item (vi), sub-item (c) of paragraph (1) means the following:
- (i) for acts listed in paragraph (1), items (i) to (iv) inclusively and item (vii) of the preceding Article, the contents of the contract provided in these provisions;
 - (ii) for acts listed in paragraph (1), item (v) of the preceding Article, details of the rights indicated on the Securities listed in Article 2, paragraph (1) of the Financial Instruments and Exchange Act or rights regarded as Securities pursuant to paragraph (2) of that Article (excluding rights listed in items (i) and (ii) of that paragraph) as prescribed in paragraph (1), item (v) of the preceding Article and the obligations to be assumed by the Customer as a result of such acts;
 - (iii) for acts listed in paragraph (1), item (vi), sub-item (a) of the preceding Article, the details of the rights provided thereby and the details of the obligations to be assumed by the Customer as a result of such acts;
 - (iv) for acts listed in paragraph (1), item (vi), sub-item (b) of the preceding Article, the details of the claims provided in said provisions and the details of the obligations to be incurred by the Customer as a result of such acts;
 - (v) for acts listed in paragraph (1), items (viii) to (x) inclusive of the preceding Article, the structure of transactions provided in these provisions; and
 - (vi) for acts specified by Cabinet Order under paragraph (1), item (xi) of the preceding Article, the matters specified by Cabinet Order.
- (6) In cases where two or more Financial Instruments Providers, etc. are to explain Important Matters for a single Sale of a Financial Instrument to a Customer pursuant to paragraph (1), when one of the Financial Instruments Providers, etc. has explained said Important Matters, notwithstanding the provisions of that paragraph, the other Financial Instruments Provider, etc. is not required to explain said Important Matters; provided, however, that this shall not apply to cases where said other Financial Instruments Provider, etc. is a person specified by Cabinet Order.
- (7) The provisions of paragraph (1) shall not apply to the following cases:
- (i) when the Customer is a person specified by Cabinet Order as a person

having expert knowledge and experience on Sales, etc. of Financial Instruments (such Customer shall be referred to as the "Specified Customer" in Article 9, paragraph (1)); and

(ii) when the Customer has manifested his/her intention not to require an explanation for the Important Matters.

(Prohibition on the Provision of Conclusive Evaluations, etc. by Financial Instruments Provider, etc.)

Article 4 When a Financial Instruments Provider, etc. intends to conduct Sales, etc. of Financial Instruments on a regular basis, he/she shall not conduct 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 with regard to the matters related to the relevant Sales of Financial Instruments (hereinafter such acts shall collectively referred to as the "Provision of Conclusive Evaluations, etc.").

(Liability for Damages of a Financial Instruments Provider, etc.)

Article 5 In cases where a Financial Instruments Provider, etc. is to give an explanation on Important Matters to the Customer pursuant to the provisions of Article 3, when he/she has failed to give an explanation on said Important Matters or has made Provisions of a Conclusive Evaluation, etc. in violation of the preceding Article, he/she shall be liable for the damages suffered by said Customer as a result thereof.

(Presumption of the Amount of Loss)

Article 6 (1) In cases where the Customer claims compensation for damages pursuant to the preceding Article, the Amount of Loss of Principal shall be presumed to be the amount of loss incurred by said Customer due to the failure of the Financial Instruments Provider, etc. to give an explanation on Important Matters or the Provisions of Conclusive Evaluation, etc. by said Financial Instruments Provider, etc.

(2) The term "Amount of Loss of Principal" as used in the preceding paragraph is the amount that remains after deducting the amount obtained by adding the total of the amount of money received and the amount of money to be received by a Customer (in cases where any person has come to acquire any money, any property other than money or any right, as designated by said Customer, as a result of Sales of Financial Instruments, this shall include such person; hereinafter collectively referred to as the "Customer, etc." in this paragraph) as a result of Sales of Financial Instruments (in cases where there is any property other than money or any right which has been acquired or any property other than money or any right to be acquired by said Customer, etc. as a result of

said Sales of Financial Instruments, the amount obtained by adding, to said total of the amount of money acquired and to be acquired, the total amount of the market value of the property other than money or right (in cases where there is no market value, its estimated disposal value)) to the total disposal value of the property other than money or rights acquired by said Customer, etc. as a result of said disposal or Sales of Financial Instruments by said Customer, etc. , from the total of the amount of money paid and the amount to be paid by the Customer, etc. as a result of the Sales of Financial Instruments (in cases where there is a Monetary Equivalent which has been transferred or a Monetary Equivalent which is to be transferred by the Customer, etc. as a result of said Sales of Financial Instruments, the amount obtained by adding, to said total of the amount of money paid and to be paid, the total amount of the market value of these Monetary Equivalents (in cases where there is no market value, their estimated disposal value)).

(Application of the Civil Code)

Article 7 In addition to the provisions of this Act, the liability for damages of the Financial Instruments Provider, etc. due to his/her failure to give an explanation on Important Matters or due to Provisions of a Conclusive Evaluation, etc. shall be subject to the provisions of the Civil Code (Act No. 89 of 1896).

(Ensuring Appropriateness of Solicitation)

Article 8 A Financial Instruments Provider, etc. shall, in making a solicitation for Sales, etc. of Financial Instruments that are conducted on a regular basis, endeavor to ensure the appropriateness thereof.

(Establishment of Solicitation Policy, etc.)

Article 9 (1) When a Financial Instruments Provider, etc. intends to make a solicitation in relation to Sales, etc. of Financial Instruments that are conducted on a regular basis, he/she shall, in advance, provide the policy for said solicitation (hereinafter referred to as the "Solicitation Policy"); provided, however, that this shall not apply to cases where the relevant Financial Instruments Provider, etc. is a national government, local government, or any other person specified by Cabinet Order as a person found unlikely to make inappropriate solicitations or a Financial Instruments Provider, etc. who has only Specified Customers as his/her Customers.

(2) The following matters shall be provided for in the Solicitation Policy:

(i) matters to be taken into consideration in light of the knowledge, experience and status of property of the person subject to the solicitation, and the purpose for the conclusion of the contract pertaining to the relevant Sales of

Financial Instruments;

(ii) matters to be taken into consideration for the person subject to the solicitation with regard to the method and time of the solicitation; and

(iii) in addition to what is listed in the preceding two items, matters for ensuring the appropriateness of the solicitation.

(3) When a Financial Instruments Provider, etc. provides a Solicitation Policy pursuant to the provisions of paragraph (1), he/she shall promptly, pursuant to the method designated by Cabinet Order, publicize such policy. The same shall apply when he/she changes the Solicitation Policy.

(Non-penal Fine)

Article 10 A Financial Instruments Provider, etc. who fails to provide a Solicitation Policy in violation of paragraph (1) of the preceding Article or who fails to publicize it in violation of paragraph (3) of the same, shall be punished by a non-penal fine of not more than 500 thousand yen.