

Order for Enforcement of the Act on the Sales, etc. of Financial Instruments

(Cabinet Order No. 484 of November 17, 2000)

The Cabinet hereby enacts this Cabinet Order pursuant to the provisions of Article 2, paragraph (1), item (iii), item (iv), item (xii) and item (xiii); Article 3, paragraph (2), proviso to paragraph (3) and paragraph (4), item (i); Article 8, proviso to paragraph (1) and paragraph (3) of the Act on the Sales, etc. of Financial Instruments (Act No. 101 of 2000).

(Definitions)

Article 1 The terms, "sale of financial instruments," "sale, etc. of financial instruments," "financial instruments provider, etc.," "customer," and "solicitation policy," as used in this Cabinet Order, mean, respectively, the sale of financial instruments, the sale, etc. of financial instruments, the financial instruments provider, etc., the customer, and the solicitation policy prescribed in Articles 2, paragraph (1) through (4) and Article 9, paragraph (1) of the Act on the sales of financial instruments (hereinafter referred to as the "Act").

(Requirements for a Money Trust)

Article 2 The requirement specified by Cabinet Order that is referred to in Article 2, paragraph (1), item (iii) of the Act is that the investment method for the trust property is not specified.

(Contract related to Insurance or Mutual Aid)

Article 3 The contract specified by Cabinet Order that is referred to in Article 2, paragraph (1), item (iv) of the Act is a contract related to insurance or mutual aid that does not fall under the category of a contract related to insurance or mutual aid that is entered into pursuant to the provisions of the following Acts:

- (i) Health Insurance Act (Act No. 70 of 1922);
- (ii) Forest Insurance Act (Act No. 25 of 1937);
- (iii) Mariners Insurance Act (Act No. 73 of 1939);
- (iv) Industrial Accident Compensation Insurance Act (Act No. 50 of 1947);
- (v) Trade and Investment Insurance Act (Act No. 67 of 1950);
- (vi) Small and Medium-Sized Enterprise Credit Insurance Act (Act No. 264 of 1950);
- (vii) Act on Loan Security for Small and Medium-Sized Fishery Industry (Act No. 346 of 1952);
- (viii) Private School Personnel Mutual Aid Association Act (Act No. 245 of

- 1953);
- (ix) Employees' Pension Insurance Act (Act No. 115 of 1954; excluding Article 130-2, paragraph (1); Article 136-3, paragraph (1), item (ii) (including when applied mutatis mutandis pursuant to Article 164, paragraph (3) of the same Act); and Article 159-2, paragraph (1) of the same Act);
 - (x) Housing Loan Insurance Act (Act No. 63 of 1955);
 - (xi) Act on Mutual Aid Association for Liabilities for Occupational Accident Compensation for Firefighters (Act No. 107 of 1956);
 - (xii) National Public Officers Mutual Aid Association Act (Act No. 128 of 1958);
 - (xiii) National Health Insurance Act (Act No. 192 of 1958);
 - (xiv) National Pension Act (Act No. 141 of 1959; Excluding Chapter X);
 - (xv) Small and Medium-Sized Enterprise Retirement Allowance Cooperative Act (Act No. 160 of 1959);
 - (xvi) Act on Mutual Aid Association for Retirement Allowances of Personnel of Social Welfare Facilities (Act No. 155 of 1961);
 - (xvii) Agricultural Credit Guarantee Insurance Act (Act No. 204 of 1961);
 - (xviii) Local Public Officers Mutual Aid Association Act (Act No. 152 of 1962);
 - (xix) Small Enterprise Mutual Relief Projects Act (Act No. 102 of 1965);
 - (xx) Act on the Farmers Pension Fund, Independent Administrative Agency (Act No. 127 of 2002);
 - (xxi) Deposit Insurance Act (Act No. 34 of 1971);
 - (xxii) Agricultural and Fishery Cooperation Savings Insurance Act (Act No. 53 of 1973);
 - (xxiii) Employment Insurance Act (Act No. 116 of 1974);
 - (xxiv) Act on Mutual Relief System for the Prevention of Bankruptcies of Small and Medium-Sized Enterprises (Act No. 84 of 1977);
 - (xxv) Act on the National Agency for the Advancement of Sports and Health, Independent Administrative Agency (Act No. 162 of 2002);
 - (xxvi) Long-Term Care Insurance Act (Act No. 123 of 1997);
 - (xxvii) Act on Temporary Measures concerning Special Provisions of Credit Insurance for Medium-Sized Enterprise Financed by Bankrupt Financial Institution (Act No. 151 of 1998); and
 - (xxviii) Act on Promotion of Offering of Rental Housing to Persons Requiring Special Assistance in Securing Housing (Act No. 112 of 2007).

(Transactions in Which the Parties Agree to Pay or Receive the Difference)

Article 4 Transactions specified by Cabinet Order that are referred to in Article 2, paragraph (1), item (x) of the Act are transactions in which the parties agree to pay or receive money calculated based on the difference between the figure to which the parties have agreed in advance as a figure of the interest rate, the value of currencies, or any other indicator, and the actual figure of the relevant

indicator at a fixed time in the future (excluding transactions on a commodity market prescribed in Article 2, paragraph (10) of the Commodity Derivatives Transaction Act (Act No. 239 of 1950), foreign commodity market transactions prescribed in paragraph (13) of the same Article and over-the-counter commodity derivative transactions prescribed in paragraph (14) of the same Article (hereinafter referred to as "commodity futures transactions, etc." in item (ii) of the following Article)).

(Acts that Constitute the Sale of Financial Instruments)

Article 5 Acts specified by Cabinet Order that are referred to in Article 2, paragraph (1), item (xi) of the Act are the following acts:

- (i) conclusion with the settler of a trust contract (limited to when the beneficial interest under the relevant trust contract is a right listed in Article 2, paragraph (2), item (i) or item (ii) of the Financial Instruments and Exchange Act (Act No. 25 of 1948)) involving a trust other than a money trust for which the invest method for the trust property has not been specified;
- (ii) financial derivative transactions (excluding transactions set forth in the preceding Article and commodity futures transactions, etc.) prescribed in Article 10, paragraph (2), item (xiv) of the Banking Act (Act No. 59 of 1981), or commission for the relevant transactions;

(Scope of Monetary Equivalent)

Article 6 Property other than money or rights specified by Cabinet Order that is referred to in Article 3, paragraph (3) of the Act is property other than the money or rights of a customer to be transferred upon conclusion of a trust contract prescribed in item (i) of the preceding Article.

(Act That Causes a Risk of Incurring a Loss Exceeding the Initial Principal)

Article 7 Acts specified by Cabinet Order that are referred to in Article 3, paragraph (4), item (i) of the Act are the acts listed in Article 5, item (ii) or item (iii).

(Structure of Transactions Involving the Sale of Financial Instruments)

Article 8 Matters specified by Cabinet Order that are referred to in Article 3, paragraph (5), item (vi) of the Act are the following matters:

- (i) for the act listed in Article 5, item (i), the details of the contract prescribed in the same item;
- (ii) for the act listed in Article 5, item (ii) or item (iii), the structure of the transactions prescribed in those provisions.

(Persons Excluded from Categorization as Persons That Are Not Required to Explain Important Matters)

Article 9 The person specified by Cabinet Order that is referred to in the proviso to Article 3, paragraph (6) of the Act is a person that acts on behalf of the customer as an agent in executing the sale of a financial instrument.

(Specified Customer)

Article 10 (1) The person specified by Cabinet Order that is referred to in Article 3, paragraph (7), item (i) of the Act is a financial instruments provider, etc., or a professional investor prescribed in Article 2, paragraph (31) of the Financial Instruments and Exchange Act (hereinafter referred to as a "professional investor").

(2) When a contract for the sale, etc. of financial instruments as prescribed in Article 3, paragraph (1) of the Act (hereinafter referred to as the "sale, etc. of financial instruments") falls under the category of a subject contract prescribed in Article 34-3, paragraph (2), item (ii) of the Financial Instruments and Exchange Act (including when applied mutatis mutandis pursuant to Article 34-4, paragraph (6) of the same Act (including when applied mutatis mutandis pursuant to the provisions of the Banking Act, etc.) and the Banking Act, etc.), the "professional investor" set forth in the preceding paragraph includes a person that is deemed, as regards the relevant sale, etc. of financial instruments, to be a professional investor connected with the subject contract, pursuant to the provisions of Article 34-3, paragraph (4) of the same Act (including when applied mutatis mutandis pursuant to Article 34-4, paragraph (6) of the same Act (including when applied mutatis mutandis pursuant to the provisions of the Banking Act, etc.) and the Banking Act, etc.) or Article 34-3, paragraph (6) of the same Act (including when applied mutatis mutandis pursuant to Article 34-4, paragraph (6) of the same Act), and when a contract for the sale, etc. of financial instruments falls under the category of a subject contract prescribed in Article 34-2, paragraph (2) of the same Act (including when applied mutatis mutandis pursuant to the provisions of the Banking Act, etc.), the "professional investor" set forth in the preceding paragraph excludes a person who is deemed, as regards the relevant sale, etc. of financial instruments, to be a customer other than a professional investor that is connected with the relevant subject contract, pursuant to the provisions of paragraph (5) of the same Article (including when applied mutatis mutandis pursuant to the provisions of the Banking Act, etc.) or paragraph (8).

(3) The "provisions of the Banking Act, etc." referred to in the preceding paragraph mean the following:

(i) Act on Engagement in Trust Business Activities by Financial Institutions (Act No. 43 of 1943), Article 2-2;

- (ii) Agricultural Cooperatives Act (Act No. 132 of 1947), Article 11-5 or 11-27;
- (iii) Fisheries Cooperatives Act (Act No. 242 of 1948), Article 11-9 (including when applied mutatis mutandis pursuant to Article 92, paragraph (1), Article 96, paragraph (1) or Article 100, paragraph (1) of the same Act) or Article 15-7 (including when applied mutatis mutandis pursuant to Article 96, paragraph (1) or Article 100-8, paragraph (1) of the same Act);
- (iv) Small and Medium-Sized Enterprises Cooperatives Act (Act No. 181 of 1949), Article 9-7-5, paragraph (2) (including when applied mutatis mutandis pursuant to Article 9-9, paragraph (5) or paragraph (8) of the same Act);
- (v) Act on Financial Business by Cooperatives (Act No. 183 of 1949), Article 6-5-2;
- (vi) Shinkin Bank Act (Act No. 238 of 1951), Article 89-2;
- (vii) Long-Term Credit Bank Act (Act No. 187 of 1952), Article 17-2;
- (viii) Labor Bank Act (Act No. 227 of 1953), Article 94-2;
- (ix) Banking Act, Article 13-4;
- (x) Insurance Business Act (Act No. 105 of 1995), Article 300-2;
- (xi) Norinchukin Bank Act (Act No. 93 of 2001), Article 59-3;
- (xii) Trust Business Act (Act No. 154 of 2004), Article 24-2 (including when applied mutatis mutandis pursuant to Article 99, paragraph (8) of the Insurance Business Act);
- (xiii) Shoko Chukin Bank Limited Act (Act No. 74 of 2007), Article 29.

(Persons That Are Not Required to Establish a Solicitation Policy)

Article 11 The person specified by Cabinet Order that is referred to in the proviso to Article 9, paragraph (1) of the Act is a corporation directly established pursuant to an Act or established by a special act of incorporation pursuant to a specific Act (excluding a corporation that is not subject to the application of the provisions of Article 4, paragraph (1), item (ix) of the Act for Establishment of the Ministry of Internal Affairs and Communications (Act No. 91 of 1999)) that is wholly owned by the State or a local government.

(Method for Making a Solicitation Policy Public)

Article 12 The method specified by Cabinet Order that is referred to in Article 9, paragraph (3) of the Act is the method of posting the solicitation policy in a clearly visible manner or providing the solicitation policy for public inspection at the head office or principal office of a financial instruments provider, etc. (or, if the financial instruments provider, etc. is an individual, that individual's address; hereinafter the same applies in item (i)), and, in the cases listed in each of the following items, the method specified in the relevant item:

- (i) if the financial instruments provider, etc. executes sales, etc. of financial instruments at its business office, office or any other place (excluding its

head office or principal office; hereinafter referred to as a "business office, etc." in this item): the method of posting the solicitation policy in a clearly visible manner or providing the solicitation policy for public inspection at each business office, etc. where sales, etc. of financial instruments are executed;

- (ii) if the financial instruments provider, etc. executes sales, etc. of financial instruments by implementing automatic transmission, by wireless communications or wire telecommunications, for the public to receive it directly, at the request of the public (hereinafter referred to as "automatic transmission" in this item) (excluding cases that fall under the category of cases set forth in the preceding item): the method of implementing automatic transmission of the solicitation policy.