

# Cabinet Office Order on the Regulation of Over-the-Counter Derivatives Transactions

(Cabinet Office Order No. 48 of July 11, 2012)

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## Chapter I General Provisions

- Article 1 (1) As used in this Cabinet Office Order, the terms "financial instruments business," "financial instruments business operator," "over-the-counter derivatives transactions," "financial instruments," "financial indicator," "financial instruments obligation assumption service," "financial instruments clearing organization," and "foreign financial instruments clearing organization" respectively mean financial instruments business, financial instruments business operator, over-the-counter derivatives transactions, financial instruments, financial indicator, financial instruments obligation assumption service, financial instruments clearing organization and foreign financial instruments clearing organization as defined in Article 2 of the Financial Instruments and Exchange Act (hereinafter referred to as the "Act").
- (2) In this Cabinet Office Order, the meanings of the terms set forth in the following items are as prescribed respectively in those items:
- (i) options: options as defined in Article 2, paragraph (1), item (xix) of the Act;
  - (ii) registered financial institution: a registered financial institution as defined in Article 2, paragraph (11) of the Act;
  - (iii) type I financial instruments business: type I financial instruments business as defined in Article 28, paragraph (1) of the Act;
  - (iv) financial instruments business operator, etc.: a financial instruments business operator, etc. as defined in Article 34 of the Act;
  - (v) clearing member: a clearing member as defined in Article 156-7, paragraph (2), item (iii) of the Act;
  - (vi) collaborating clearing organization, etc.: a collaborating clearing organization, etc. as defined in Article 156-20-16, paragraph (1) of the Act;
  - (vii) collaborative financial instruments obligation assumption service:

- collaborative financial instruments obligation assumption service as defined in Article 156-20-16, paragraph (1) of the Act;
- (viii) financial instruments clearing organization, etc.: a financial instruments clearing organization, etc. as defined in Article 156-63, paragraph (1) of the Act;
- (ix) data on centrally cleared trades: data on centrally cleared trades as defined in Article 156-63, paragraph (1) of the Act;
- (x) trade data: trade data as defined in Article 156-64, paragraph (1) of the Act;
- (xi) trade repository: a trade repository as defined in Article 156-64, paragraph (3) of the Act;
- (xii) designated foreign trade repository: a designated foreign trade repository as defined in Article 156-64, paragraph (3) of the Act;
- (xiii) trade repository business: trade repository business as defined in Article 156-64, paragraph (3) of the Act; and
- (xiv) contract for trade data collection: a contract for trade data collection as defined in Article 156-74, paragraph (1), item (i) of the Act.

## **Chapter II Centralization of Clearing**

(Transactions Subject to Centralization of Clearing)

- Article 2 (1) The transactions specified by Cabinet Office Order pursuant to Article 156-62, item (i) of the Act are the transactions set forth in Article 2, paragraph (22), item (vi) of the Act whose cause prescribed in the same item is either a cause pertaining to the credit statuses of multiple domestic corporations (meaning a corporation that has its head office or principal office located in Japan; hereinafter the same applies in this paragraph) or a cause prescribed in Article 20 of the Cabinet Office Order on Definitions under Article 2 of the Financial Instruments and Exchange Act (Ministry of Finance Order No. 14 of 1993) (limited to causes related to multiple domestic corporations), and which are designated by the Commissioner of the Financial Services Agency.
- (2) The transactions specified by Cabinet Office Order pursuant to Article 156-62, item (ii) of the Act are the transactions set forth in Article 2, paragraph (22), item (v) of the Act wherein the parties mutually promise that, using the amount the parties have agreed to as the principal (limited to yen-dominated principal), one of the parties will pay an amount of money (limited to the yen-dominated amount; hereinafter the same applies in this paragraph) calculated based on the interest rate agreed upon with the counterparty or the rate of change in the agreed period of the market interest rate (hereinafter referred to as the "interest rate, etc." in this paragraph), and the counterparty will pay the amount of money calculated based on the interest rate, etc. agreed upon with

the former party, and which are designated by the Commissioner of the Financial Services Agency.

(3) Notwithstanding the provisions of paragraph (1), if a transaction prescribed in that paragraph is a transaction that falls under any of the following items at the time the contract for the transaction is concluded, the transaction does not fall under the category of transaction specified by Cabinet Office Order pursuant to Article 156-62, item (i) of the Act:

(i) a transaction wherein one of the parties is a person other than a financial instruments business operator, etc.;

(ii) a transaction for which the accounting is to be settled as a transaction belonging to a trust account;

(iii) a transaction wherein the counterparty is a parent company, etc. (meaning a parent company, etc. as provided in Article 15-16, paragraph (3) of the Order for Enforcement of the Financial Instruments and Exchange Act (Cabinet Order No. 321 of 1965); hereinafter the same applies in this Article and Article 6, paragraph (2), item (vi)) or subsidiary company, etc. (meaning a subsidiary company, etc. as provided in Article 15-16, paragraph (3) of that Order; hereinafter the same applies in this Article and Article 6, paragraph (2), item (vi)) of a financial instruments business operator, etc. that conducts the transaction, or a subsidiary company, etc. of that financial instruments business operator's, etc. parent company, etc. (excluding the financial instruments business operator, etc. itself) ;

(iv) a transaction in cases other than the case in which one of the parties or, its parent company, etc. or subsidiary company, etc., and the counterparty or, its parent company, etc. or subsidiary company, etc., serve as clearing members for the transaction of the same financial instruments clearing organization, etc. that covers obligations based on the same transaction in its financial instruments obligation assumption service (this financial instruments clearing organization, etc. excludes foreign financial instruments clearing organizations, if that transaction falls under the category of a transaction prescribed in paragraph (1); the same applies in the following item) (the abovementioned cases are limited to cases in which there are reasonable grounds for either or both of the parties (including their parent companies, etc. or subsidiary companies, etc.) not serving as clearing members for the transaction); or

(v) a transaction conducted by a financial instruments business operator, etc. in cases designated by the Commissioner of the Financial Services Agency as cases in which there are special circumstances wherein it is found to be inappropriate to have the financial instruments clearing organization, etc. undertake the obligation under the transaction conducted by the financial instruments business operator, etc.

- (4) Notwithstanding the provisions of paragraph (2), if a transaction prescribed in that paragraph is a transaction that falls under any of the following items at the time the contract for the transaction is concluded, the transaction does not fall under the category of transaction specified by Cabinet Office Order pursuant to Article 156-62, item (ii) of the Act:
- (i) a transaction wherein one of the parties is a person other than a financial instruments business operator, etc.;
  - (ii) a transaction for which the accounting is to be settled as a transaction belonging to a trust account (excluding a transaction relating to the trust property for which the average total amount of notional principal for the over-the-counter derivatives transactions (limited to the transactions subject to data on centrally cleared trades or trade data) as of the end of each month during the period from April two years before the year in which the time the contract for the transaction is concluded falls to March of the year preceding the year in which that time falls (or, during the period from April of the year preceding of that in which that time falls to March of the year in which that time falls, if that time falls in December) is 300 billion yen or more);
  - (iii) a transaction wherein the counterparty is a parent company, etc. or a subsidiary company, etc. of the financial instruments business operator, etc. that conducts the transaction, or a subsidiary company, etc. of that financial instruments business operator's, etc. parent company, etc. (excluding that financial instruments business operator, etc. itself);
  - (iv) a transaction wherein either or both of the parties are any of the following persons (that transaction excludes a transaction for which the accounting is to be settled as a transaction belonging to a trust account, if either or both of the parties are the person set forth in (b)):
    - (a) a financial instruments business operator, etc. which is neither a financial instruments business operator that conducts type I financial instruments business nor a bank, Shoko Chukin Bank, Ltd., Development Bank of Japan Inc., a federation of Shinkin banks whose district is the entire nation, Norinchukin Bank, nor an insurance company (meaning the Insurance Company as defined in Article 2, paragraph (2) of the Insurance Business Act (Act No. 105 of 1995) and including the foreign insurance company, etc. as defined in paragraph (7) of that Article) that falls within the category of a registered financial institution (any of which is hereinafter referred to as a "business operator to prepare trade data"); or
    - (b) a financial instruments business operator, etc. for which the average total amount of notional principal for the over-the-counter derivatives transactions (limited to the transactions subject to data on centrally cleared trades or trade data, and excluding those for which the accounting is to be settled as transactions belonging to a trust account; the same

- applies in paragraph (1), items (i) and (ii) of the following Article) as of the end of each month during the period from April two years before the year in which the time the contract for the transaction is concluded falls to March of the year preceding the year in which that time falls (or, the period from April of the year preceding of that in which that time falls to March of the year in which that time falls if that time falls in December) is less than 300 billion yen (excluding the person set forth in (a)); and
- (v) a transaction conducted by a financial instruments business operator, etc. in cases designated by the Commissioner of the Financial Services Agency as cases in which there are special circumstances wherein it is found to be inappropriate to have the financial instruments clearing organization, etc. undertake the obligation under the transaction conducted by the financial instruments business operator, etc.

(Notification of the Size of Transactions)

Article 2-2 (1) If a financial instruments business operator, etc. (limited to a business operator to prepare trade data) falls under any of the following items, the financial instruments business operator, etc. must notify the Commissioner of the Financial Services Agency of that fact (including necessary particulars to identify the trust to which the notification under the provisions of the respective items pertains, if the financial instruments business operator, etc. falls under item (iii) or item (iv)) every year, during the period from April 1 to May 31:

- (i) that the average total amount of notional principal for the over-the-counter derivatives transactions as of the end of each month during the period from April two years before the year in question to March of the year preceding to the year in question is less than 300 billion yen, and that the average total amount of notional principal for the over-the-counter derivatives transactions as of the end of each month during the period from April of the year preceding to the year to March of the year in question is 300 billion yen or more;
- (ii) that the average total amount of notional principal for the over-the-counter derivatives transactions as of the end of each month during the period from April two years before the year in question to March of the year preceding the year in question is 300 billion yen or more, and that the average total amount of notional principal for the over-the-counter derivatives transactions as of the end of each month during the period from April of the preceding year to March of the relevant year is less than 300 billion;
- (iii) that there is any trust property for which the average total amount of notional principal for the over-the-counter derivatives transactions (limited to the transactions subject to data on centrally cleared trades or to trade

data, for which the accounting is to be settled as transactions belonging to a trust account; the same applies in the following item) as of the end of each month during the period from April two years before the relevant year to March of the preceding year is less than 300 billion yen, and the average total amount of notional principal for the over-the-counter derivatives transactions as of the end of each month during the period from April of the preceding year to March of the relevant year is 300 billion yen or more; or (iv) that there is any trust property for which the average total amount of notional principal for the over-the-counter derivatives transactions as of the end of each month during the period from April two years before the relevant year to March of the preceding year is 300 billion yen or more, and the average total amount of notional principal for the over-the-counter derivatives transactions as of the end of each month during the period from April of the preceding year to March of the relevant year is less than 300 billion yen.

(2) The Commissioner of the Financial Services Agency is to publicize, every year, the trade names or names of persons that have made a notification under the provisions of item (i) of the preceding paragraph but, since making that notification the last time, have not made a notification under the provisions of item (ii) of the same paragraph, and the trade names or names of persons that have made a notification under the provisions of item (iii) of the same paragraph but, since making that notification the last time, have not made a notification under the provisions of item (iv) of the same paragraph, as well as necessary particulars to identify the relevant trust, by posting the relevant information on the Internet for public inspection.

### **Chapter III Preservation and Reporting of Trade Data**

(Transactions Subject to Preservation and Reporting as Data on Centrally Cleared Trades by the Financial Instruments Clearing Organization)

Article 3 Transactions specified by Cabinet Office Order pursuant to Article 156-63, paragraph (1) of the Act are the transactions prescribed in the items of paragraph (1) of Article 6 (excluding the transactions set forth in the items of Article 156-62 of the Act; and excluding the transactions pertaining to the financial indicator set forth in Article 2, paragraph (25), item (ii), item (iii) and item (iv) of the Act (limited to the part related to item (ii) and item (iii) of the same paragraph), in case of the transactions set forth in paragraph (22), item (ii), item (iv) and item (v) of that Article of the Act).

(Preservation of Data on Centrally Cleared Trades by the Financial Instruments Clearing Organization,)

Article 4 (1) The particulars specified by Cabinet Office Order as regards data on centrally cleared trades pursuant to Article 156-63, paragraph (1) of the Act are the following particulars:

(i) the trade name or name, if the financial instruments business operator, etc. that is a party to a transaction is a corporation; or an indication that the financial instruments business operator, etc. in question is an individual, if that is the case;

(ii) whether it is a new contract, or a change in or cancellation of a contract;

(iii) the type of a contract;

(iv) the contract date;

(v) the date on which the transaction enters into effect;

(vi) the date on which the transaction dissolves;

(vii) the particulars set forth below for each of the following categories of transactions:

(a) transactions set forth in Article 6, paragraph (1), item (i): the following particulars:

1. the date of delivery;

2. whether the transaction is for selling or purchasing (or, in case of transactions set forth in Article 2, paragraph (22), item (ii) of the Act, whether the person is to become the party that is in the position of paying the money or the party that is in the position of receiving the money if the actual figure (meaning the actual figure as defined in item (ii) of paragraph (21) of the same Article) exceeds the agreed figure (meaning the agreed figure as defined in item (ii) of paragraph (21) of the same Article; the same applies in 3 below);

3. the agreed price or agreed figure;

(b) transactions set forth in Article 6, paragraph (1), item (ii): the following particulars:

1. whether the options are puts (meaning options whose owner acquires the position of seller upon the exercise of the right) or calls (meaning options whose owner acquires the position of purchaser upon the exercise of the right);

2. whether the person is to become the party that is in the position of granting the options or the party that is in the position of accepting the options; and

3. the consideration for the options;

(c) transactions set forth in Article 6, paragraph (1), item (iii): the following particulars:

1. the amount which the parties agreed upon as the principal and the type of its currency;

2. whether the person is to become the party that is in the position of

- paying the money or the party that is in the position of receiving the money if the interest rate, etc. (meaning the interest rate, etc. as defined in Article 2, paragraph (21), item (iv) of the Act; the same applies in 3) of the financial instruments or financial indicator agreed upon by the parties increases during the agreed period; and
3. the agreed interest rate, etc. of the financial instruments or the agreed financial indicator;
- (d) transactions set forth in Article 6, paragraph (1), item (iv): the following particulars:
1. whether the person is to become the party that is in the position of paying the money or the party that is in the position of receiving the money if a cause agreed upon by the parties in advance (meaning a cause set forth in Article 2, paragraph (22), item (vi), (a) of the Act; the same applies in 2 below) occurs; and
  2. the consideration for the right to receive money if a cause agreed upon by parties in advance occurs; and
- (viii) other particulars that the Commissioner of the Financial Services Agency finds to be necessary.
- (2) if a financial instruments clearing organization, etc. bears the obligation under a transaction covered by data on centrally cleared trades, it must prepare a record of the particulars prescribed in the preceding paragraph as regards the data on centrally cleared trades in connection with the relevant transaction by the time of submission provided for in paragraph (1) of the following Article, and must preserve that record for five years from the day prescribed in the following items for the category of transaction set forth in those items:
- (i) transactions set forth in Article 6, paragraph (1), item (i): the date of delivery;
  - (ii) transactions set forth in Article 6, paragraph (1), item (ii) and item (iv): the last day of the exercise period; and
  - (iii) transactions set forth in Article 6, paragraph (1), item (iii): the last day of the transaction period or the date of delivery, whichever comes later.
- (3) If there is any change in particulars prescribed in paragraph (1) as regards the data on centrally cleared trades that the financial instruments clearing organization, etc. preserves, the financial instruments clearing organization, etc. must make the record referred to in the preceding paragraph of that data on centrally cleared trades reflect the change in those particulars by the time of submission prescribed in paragraph (2) of the following Article (or, if the change occurs before the submission prescribed in paragraph (1) of that Article, by the time of that submission).
- (4) The record referred to in paragraph (2) must be prepared as an electronic or

magnetic record (meaning an electronic or magnetic record as provided in Article 13, paragraph (5) of the Act; the same applies in Article 7, paragraph (5) and Article 10, paragraph (4)).

(Reporting of Data on Centrally Cleared Trades by Financial Instruments Clearing Organizations)

- Article 5 (1) A financial instruments clearing organization, etc. must submit the record that it has prepared pursuant to the provisions of paragraph (2) of the preceding Article to the Commissioner of the Financial Services Agency within three business days from the day on which that financial instruments clearing organization, etc. bears the obligation under the transaction covered by data on centrally cleared trades pertaining to that record (or, if there is any change in particulars prescribed in paragraph (1) of the preceding Article as regards the data on centrally cleared trades within that three-day period, within an additional three-business-day period from the day on which that change occurs), pursuant to the provisions of Article 156-63, paragraph (2) of the Act.
- (2) If there is any change in particulars prescribed in paragraph (1) of the preceding Article as regards the data on centrally cleared trades in connection with the submission under the preceding paragraph after that submission, the financial instruments clearing organization, etc. must prepare a record of those changed particulars and submit it to the Commissioner of the Financial Services Agency within three business days from the day on which the change occurs.
- (3) The submissions referred to in the preceding two paragraphs must be made by electronic or magnetic means (meaning the means of using the electronic data processing system prescribed provided in Article 3, paragraph (1) of the Act on Use of Information and Communications Technology in Administrative Procedure (Act No. 151 of 2002); the same applies in Article 8, paragraph (3) and Article 11, paragraph (3)).

(Transactions Subject to the Preservation and Reporting of Trade Data by the Financial Instruments Business Operator)

- Article 6 (1) The transactions specified by Cabinet Office Order pursuant to Article 156-64, paragraph (1) of the Act are the following transactions (limited to transactions wherein either one or both of the parties are business operators to prepare trade data; and excluding the transactions involving the financial indicators set forth in Article 2, paragraph (25), item (ii), item (iii) or item (iv) of the Act ( item (iv) is limited to the part related to item (ii) and item (iii) of that paragraph), in case of the transactions set forth in Article 2, paragraph (22), item (ii), item (iv) and item (v)):
- (i) transactions set forth in Article 2, paragraph (22), item (i) and item (ii) of

- the Act (excluding transactions wherein the period from the contract day to the date of delivery is two business days or less);
- (ii) transactions set forth in Article 2, paragraph (22), item (iii) and item (iv) of the Act (excluding transactions wherein the exercise period is two business days or less);
  - (iii) transactions set forth in item Article 2, paragraph (22), item (v); and
  - (iv) transactions set forth in Article 2, paragraph (22), item (vi) of the Act (limited to the transactions whose cause prescribed in that item is the cause set forth in (b) of the same item).
- (2) Notwithstanding the provisions of the preceding paragraph, transactions wherein the counterparty is any of the following entities do not fall under the category of transaction specified by Cabinet Office Order pursuant to Article 156-64, paragraph (1) of the Act:
- (i) the national government;
  - (ii) local governments;
  - (iii) the Bank of Japan;
  - (iv) foreign governments and persons equivalent to those set forth in the preceding three items under laws or regulations of a foreign state;
  - (v) international organizations designated by the Commissioner of the Financial Services Agency; and
  - (vi) a parent company, etc. or a subsidiary company, etc. of the financial instruments business operator, etc. conducting the transaction, or a subsidiary company, etc. of that financial instruments business operator's, etc. parent company, etc. (excluding the financial instruments business operator, etc. itself).

(Preservation of Trade Data by Financial Instruments Business Operators)

- Article 7 (1) The matters specified by Cabinet Office Order on trade data pursuant to Article 156-64, paragraph (1) of the Act are the matters provided for in Article 4, paragraph (1).
- (2) If a financial instruments business operator, etc. conducts a transaction covered by trade data (referred to as a "transaction subject to the preparation of trade data" in paragraph (4)), it must prepare a record of the matters prescribed in the preceding paragraph as regards a trade data for that transaction by the time of submission prescribed in paragraph (1) of the following Article and must preserve that record for five years from the day of its preparation.
- (3) If there is any change in a matter prescribed in paragraph (1) as regards the trade data that a financial instruments business operator, etc. preserves, the financial instruments business operator, etc. must make the record referred to in the preceding paragraph for that trade data reflect the change in that

matter by the time of submission prescribed in paragraph (2) of the following Article (or, if the change occurs before the submission prescribed in paragraph (1) of that Article, by the time of that submission).

- (4) Notwithstanding the provisions of paragraph (2), if both of the parties to a transaction subject to the preparation of trade data are financial instruments business operators, etc. and either of them is a business operator to prepare trade data, the other party is not required to prepare the record prescribed in that paragraph; provided, however, that this does not apply if the other party is also a business operator to prepare trade data.
- (5) The record referred to in paragraph (2) must be prepared as an electronic or magnetic record.

(Reporting of Trade Data by Financial Instruments Business Operators)

Article 8 (1) A financial instruments business operator, etc. must submit for each week (meaning the seven day period from Monday to Sunday; hereinafter the same applies in this Article) the record it has prepared pursuant to the provisions of paragraph (2) of the preceding Article for the transactions covered by trade data which have been effected during the week, to the Commissioner of the Financial Services Agency, within three business days from the first business day in or after the following week onward (or, if there is any change in a matter provided for in paragraph (1) of the preceding Article as regards the trade data within that three-day period, within an additional three-business-day period from the first business day from the week following the week in which the day of that change falls, onward), pursuant to the provisions of Article 156-64, paragraph (2) of the Act.

- (2) If, following submission under the preceding paragraph, there is any change in a matter prescribed in paragraph (1) of the preceding Article as regards the trade data in connection with the submission, the financial instruments business operator, etc. must prepare a record of the changed matter and submit it to the Commissioner of the Financial Services Agency within three business days from the first business day in or after the week following the week in which the day of the change falls, onward.
- (3) The submissions referred to in the preceding two paragraphs must be made by electronic or magnetic means.
- (4) If a financial instruments business operator, etc. is unable to submit the records provided for in paragraph (1) or paragraph (2) by the date provided for in the same paragraph due to any compelling reasons, it may postpone the submission, with the approval of the Commissioner of the Financial Services Agency.
- (5) If a financial instruments business operator, etc. intends to obtain approval under the preceding paragraph, that financial instruments business operator,

etc. must submit a written application for approval with a written statement of its reasons attached to the Commissioner of the Financial Services Agency.

- (6) When an application for approval under the provisions of the preceding paragraph is filed, the Commissioner of the Financial Services Agency is to examine whether there is a reason that is found to compel the financial instruments business operator, etc. filing the application to postpone the submission under paragraph (4).

(Provision of Trade Data to a Trade Repository or Designated Foreign Trade Repository)

Article 9 (1) A financial instruments business operator, etc. that intends to provide trade data to a trade repository or designated foreign trade repository pursuant to the provisions of Article 156-64, paragraph (3) of the Act must provide the trade data to the trade repository or designated foreign trade repository within three business days from that on which the transaction covered by the trade data has been effected (or, if there is any change in a matter provided for in paragraph (1) of Article 7 as regards the trade data within that three-day period, within an additional three-business-day period from the day on which the change occurs) as prescribed by the trade repository or designated foreign trade repository.

- (2) If, after trade data is provided pursuant to the preceding paragraph, there is a change in a matter provided for in Article 7, paragraph (1) as regards the trade data in connection with the provision, the financial instruments business operator, etc. that has provided the trade data pursuant to the provisions of that paragraph must notify the trade repository or designated foreign trade repository of the changed matter or provide it with trade data that reflects the change in the matter within three business days from the day on which the change occurs, as prescribed by the trade repository or designated foreign trade repository to which it has provided that trade data.

(Preservation of Trade Data by a Trade Repository)

Article 10 (1) The matters specified by Cabinet Office Order pursuant to Article 156-65, paragraph (1) of the Act are the matters provided for in Article 4, paragraph (1).

- (2) If a financial instruments business operator, etc. is provided with trade data under the provisions of the preceding Article, it must prepare a record on the matters prescribed in the preceding paragraph as regards that trade data by the time of submission prescribed in paragraph (1) of the following Article, and must preserve that record for five years from the day prescribed in the following items for the category of transaction set forth in each item:
- (i) transactions set forth in Article 6, paragraph (1), item (i): the date of

- delivery;
- (ii) transactions set forth in Article 6, paragraph (1), items (ii) and (iv): the last day of the exercise period; and
  - (iii) transactions set forth in item Article 6, paragraph (1), item (iii): the last day of the transaction period or the date of the delivery, whichever comes later.
- (3) If a trade repository comes to know that there has been a change in a matter provided for in paragraph (1) as regards trade data that it preserves, it must make the record referred to in the preceding paragraph for that trade data reflect the change in that matter by the time of submission prescribed in paragraph (2) of the following Article (or, if it comes to know that the change has occurred before the submission prescribed in paragraph (1) of the same Article, by the time of that submission).
- (4) The record referred to in paragraph (2) must be prepared as an electronic or magnetic record.

(Reporting of Transactional Information by a Trade Repository)

- Article 11 (1) A trade repository must submit the records it has prepared pursuant to the provisions of paragraph (2) of the preceding Article to the Commissioner of the Financial Services Agency by the next business day after the day on which it has been provided with the trade data pursuant to the provisions of Article 9, paragraph (1) (or, if it comes to know that there has been a change in a matter prescribed in paragraph (1) of the preceding Article as regards the trade data in those records before that business day, by the next business day after the day on which it comes to know that the change has occurred).
- (2) If, after the submission under the preceding paragraph, a trade repository comes to know that there has been a change in a matter prescribed in paragraph (1) of the preceding Article as regards the trade data in connection with the submission, it must prepare a record of the changed matter and submit it to the Commissioner of the Financial Services Agency by the next business day after the day on which it comes to know that the change has occurred.
- (3) The submissions referred to in the preceding two paragraphs must be made by electronic or magnetic means.

## **Chapter IV Trade Repositories**

(Documents to Be Attached to a Written Application for Designation)

- Article 12 The documents specified by Cabinet Office Order pursuant to Article 156-68, paragraph (2), item (vi) of the Act are the following documents:

- (i) a document giving the name and the address or, the trade name or the name and the location of the principal office or the office of any person that holds voting rights amounting to ten percent or more of the number of voting rights held by all the shareholders, etc. (meaning the voting rights held by all the shareholders, etc. as defined in Article 29-4, paragraph (2) of the Act; the same applies in the following item) in another person that intends to obtain the designation under Article 156-67, paragraph (1) of the Act (referred to as the "applicant" in the following item and item (viii)), and the number of the person's voting rights in that other person;
- (ii) a document giving the trade name or the name, the location of the principal office or the office, and the contents of the business of a parent corporation (meaning a corporation or any other organization that holds the majority of the voting rights held by all the shareholders, etc. in the applicant) and any subsidiary corporation (meaning a corporation or any other organization in which the applicant holds the majority of voting rights held by all the shareholders, etc.) of the applicant;
- (iii) an extract of a certificate of residence of the officers (meaning the officers as defined in Article 156-67, paragraph (1), item (iv) of the Act; and including the person who is to perform the duties of the officers if the officer is a corporation; hereinafter the same applies in this item, item (iv), item (vi), and item (vii) of this Article, Article 17, paragraph (2), items (viii) through (x), and Article 20, paragraph (2), item (iii), item (c) and item (d), and paragraph (3), item (iii)) (or a certificate of registered matters of the officers, if the officer is a corporation) or any document that substitutes for these;
- (iv) a document certifying the name that an officer had before marriage if that name is stated together with the officer's current name in a written application for designation referred to in Article 156-68, paragraph (1) of the Act, and the document set forth in the preceding item does not certify the officer's name used before marriage;
- (v) a certification issued by a public agency indicating that the officers (meaning the officers as defined in Article 156-67, paragraph (1), item (iv) of the Act; hereinafter the same applies in this item of this Article, Article 14, Article 17, paragraph (2), item (iv), and Article 18, item (iv)) do not fall under Article 156-67, paragraph (1), item (iv), (a) or (b) (or, a document with which an officer pledges not to fall under (a) or (b) of that item, if that officer does not have Japanese nationality);
- (vi) resumes of the officers (or, a document describing a corporate history of an officer, if that officer is a corporation);
- (vii) a document giving the status in terms of the securement of officers and employees (hereinafter referred to as the "officer, etc.") with knowledge of and experience in trade repository business and the status in terms of the

- assignment of those officers, etc.;
- (viii) a document describing applicant's organizational structure and division of responsibilities for handling processes; and
- (ix) other documents that will serve as a reference.

(Restriction on the Concurrent Holding of Positions by Officers)

Article 13 (1) The corporations specified by Cabinet Office Order pursuant to Article 156-69 of the Act are the following corporations:

- (i) a corporation that is a financial instruments business operator, etc.; and
- (ii) a corporation equivalent to the corporation set forth in the preceding item under laws or regulations of a foreign country.

(2) The business specified by Cabinet Office Order pursuant to Article 156-69 of the Act is financial instruments business.

(Application for Authorization for the Concurrent Holding of Positions by the Officer of a Trade Repository)

Article 14 (1) A trade repository's representative or an officer engaged in its ordinary business must submit an application for authorization with the following documents attached to the Commissioner of the Financial Services Agency via that trade repository, if the representative or the officer intends to obtain authorization for assuming the position of a representative at, or for engaging in the ordinary business of, a corporation as set forth in one of items of paragraph (1) of the preceding Article (hereinafter referred to as "the other corporation" in this Article), or authorization for conducting business as prescribed in paragraph (2) of the preceding Article:

- (i) a statement of reasons;
- (ii) a resume;
- (iii) a document stating the method of processing ordinary business and the working conditions at the trade repository;
- (iv) a document stating the method of processing ordinary business at the other corporation and stating transactions and any other relations between the trade repository and the other corporation; and a document stating the details of the articles of incorporation, final operation report or business report of the other corporation; its balance sheet (including any related notes; the same applies hereinafter); its profit and loss statements (including any related notes; the same applies hereinafter); either of its surplus appropriation statement or deficit disposition statement, or its statements of changes in net assets (including any related notes); and any other document from which the status of recent activities, assets, and profit and loss of it can be ascertained, if the representative or the officer intends to engage in its ordinary business;

- (v) a document stating the type and method of a business, the recent business activities in relation to that business, assets, and profit and loss of that business, and the projected transactions and income and expenditure for one year from the day of filing the application, if the representative or the officer intends to continue to operate that business as prescribed in paragraph (2) of the preceding Article that the representative or the officer is currently operating;
  - (vi) a document stating the type and method of a business, and the projected transactions and income and expenditure for one year after the commencement of that business, if the representative or the officer intends to newly operate that business as prescribed in paragraph (2) of the preceding Article; and
  - (vii) a document stating any other matters that the Commissioner of the Financial Services Agency finds to be necessary.
- (2) When an application for approval under the preceding paragraph is filed, the Commissioner of the Financial Services Agency is to examine whether representation of the other corporation under the application by the representative of the trade repository under the application or the representative's engagement in the other corporation's ordinary business, or the representative's operation of a business is unlikely to interfere with that representative's representation of the trade repository; or is to examine whether a representation of the other corporation under the application by the officer engaged in the ordinary business of that trade repository or the officer's engagement in the other corporation's ordinary business, or the officer's operation of a business is unlikely to interfere with that officer's engagement in the ordinary business of that trade repository.

(Application for Approval for Subsidiary Business)

Article 15 (1) If a trade repository intends to obtain approval pursuant to the proviso to Article 156-72, paragraph (1) of the Act, it must submit a written application for approval stating the following matters to the Commissioner of the Financial Services Agency:

- (i) a business for which it intends to obtain approval for concurrent business (hereinafter referred to as a "concurrent business"); and
  - (ii) its scheduled date for commencing the concurrent business.
- (2) The written application set forth in the preceding paragraph must have the following documents attached to it:
- (i) a document stating the details and the method of the concurrent business;
  - (ii) a document stating the organization in charge of the concurrent business and the assignment of its personnel;
  - (iii) the rules concerning the operation of the concurrent business; and

- (iv) a document stating the projected income and expenditure of the concurrent business for three years after commencement the concurrent business.

(Notification of Discontinuance of Concurrent Business)

Article 16 If a trade repository intends to make a notification that it has discontinued the business for which it had obtained the approval referred to in the proviso to Article 156-72, paragraph (1) of the Act, pursuant to the provisions of the second sentence of paragraph (2) of that Article, it is to submit a document stating the following matters to the Commissioner of the Financial Services Agency:

- (i) the details of the discontinued business;
- (ii) the date of the discontinuance; and
- (iii) the reason for the discontinuance.

(Application for Approval for Partial Entrustment of Business)

Article 17 (1) If a trade repository intends to obtain approval pursuant to the provisions of Article 156-73, paragraph (1) of the Act, it must submit a written application for approval stating the following matters to the Commissioner of the Financial Services Agency:

- (i) the trade name or name and the address or location of the counterparty which it entrusts with the business (hereinafter referred to as the "entrusted person");
- (ii) the details and the scope of the business with which it entrusts the entrusted person; and
- (iii) the period of entrustment.

(2) A written application as set forth in the preceding paragraph must have the following documents attached to it:

- (i) a statement of reasons;
- (ii) a document stating the details of the business entrustment contract;
- (iii) a document pledging that the entrusted person complies with the same requirements as those set forth in Article 156-67, paragraph (1), item (iii) of the Act;
- (iv) a document pledging that all officers of the entrusted person comply with the same requirements as those set forth in Article 156-67, paragraph (1), item (iv) of the Act;
- (v) the articles of incorporation of the entrusted person and a certificate of registered matters of that corporation (including anything equivalent thereto);
- (vi) a document stating the method of performing the business with which it will entrust the entrusted person;
- (vii) the business report, balance sheet, and profit and loss statement for each

of the most recent three fiscal years of the entrusted person, or any document that substitutes for these:

- (viii) a document stating the names or trade names of the officers of the entrusted person;
- (ix) an extract of a certificate of residence of the officers (or a certificate of registered matters of that officer, if that officer is a corporation), or any document that substitutes for this;
- (x) resumes of the officers of the entrusted person (or a document describing a corporate history of an officer, if that officer is a corporation); and
- (xi) other documents that will serve as a reference.

(Criteria for Approval for Partial Entrustment of Business)

Article 18 If the Commissioner of the Financial Services Agency receives a written application for approval as set forth in paragraph (1) of the preceding Article and finds that the application complies with the following criteria, the Commissioner is to approve the application:

- (i) that the entrustment of the entrusted person with the business will not hinder proper and stable execution of the trade repository business;
- (ii) that the entrusted person is a corporation with social credibility, has a proper plan for the business with which it is entrusted, and can perform the business reliably;
- (iii) that the entrusted person satisfies the same requirements as those set forth in Article 156-67, paragraph (1), item (iii) of the Act;
- (iv) that officers of the entrusted person satisfies the same requirements as those set forth in Article 156-67, paragraph (1), item (iv) of the Act; and
- (v) that the trade repository is capable of taking measures to ensure the proper and stable execution of the business with which it entrusts the entrusted person.

(Matters to Be Indicated in the Operational Rules)

Article 19 The matters specified by Cabinet Office Order pursuant to Article 156-74, paragraph (1), item (viii) of the Act are the following matters:

- (i) matters concerning the hours for engaging in trade repository business and concerning non-working days;
- (ii) matters concerning the system for supervising employees;
- (iii) matters concerning provision of trade data, if the trade repository will provide trade data;
- (iv) matters concerning the provisions of the contract for trade data collection; and
- (v) other necessary matters concerning trade repository business.

(Matters of Which Notification Is to Be Filed)

- Article 20 (1) A notification under the paragraphs of Article 156-78 of the Act must be filed without delay after a reason for notification has occurred.
- (2) If a trade repository intends to file a notification under the paragraphs of Article 156-78 of the Act, it must submit a written notification with a written statement of reasons and other documents that serve as a reference (or, the document prescribed in one of the following items, in a case set forth in that item) attached, to the Commissioner of the Financial Services Agency:
- (i) the case set forth in item (i) of the following paragraph: a document stating the changed matters; and
  - (ii) the case set forth in item (ii) of the following paragraph: a document stating the following matters:
    - (a) a description of an accident; and
    - (b) remedial measures.
  - (iii) the case set forth in item (iii) of the following paragraph: the following documents:
    - (a) the document set forth in Article 156-68, paragraph (2), item (i) of the Act;
    - (b) a certificate of registered matters of a corporation (including documents equivalent thereto); and
    - (c) the documents set forth in Article 12, item (iii), item (v) and item (vi) in respect of a new person that becomes an officer; and
    - (d) a document certifying the name that a new person who becomes an officer had before marriage if that name is stated together with the person's current name in a written notification, and the extract of the certificate of residence or substitute document therefor under (c) above does not certify that name; and
  - (iv) the case set forth in item (iv) or item (v) of the following paragraph: a document stating the following matters:
    - (a) the name of the business office or office at which the act took place;
    - (b) the name or trade name and the title of the officer, etc. that conducted the act;
    - (c) a summary of the act; and
    - (d) remedial measures.
- (3) The cases specified by Cabinet Office Order pursuant to Article 156-78, paragraph (3) of the Act are the following cases:
- (i) if there is a change in a matter stated in a document set forth in Article 12, item (vii) or item (viii);
  - (ii) if any accidents in which the whole or a part of the trade repository business is suspended occur due to a breakdown of an electronic data processing system or any other accidental circumstances;

- (iii) if a new person becomes an officer of the trade repository after the submission of the written application for designation prescribed in Article 156-68, paragraph (1) of the Act;
- (iv) if the trade repository comes to know that an act violating laws or regulations or violating the trade repository's operational rules has occurred while an officer, etc. of the trade repository or that of the entity with which the trade repository has entrusted its business was conducting trade repository business (in the case of an entity entrusted with its business, this trade repository business is limited to the business with which the trade repository entrusted it); and
- (v) if the trade repository comes to know that a person that has concluded a contract for trade data collection with the trade repository or the officer, etc. of that person has conducted an act in violation of the operational rules of the trade repository.

(Submission of Reports on Business and Assets)

- Article 21 (1) The report on business and assets which is to be prepared by a trade repository pursuant to the provisions of Article 156-79, paragraph (1) of the Act must be prepared using the appended form and be submitted to the Commissioner of the Financial Services Agency within three months after the end of the business year.
- (2) The inventory of assets, the balance sheet, and either of the income and expenditure statement or profit and loss statement, or anything equivalent thereto, and other documents that will serve as a reference must be attached to the report provided in the preceding paragraph.
  - (3) If a trade repository is unable to submit the report prescribed in paragraph (1) within the period provided in the same paragraph due to any compelling reasons, it may postpone the submission, with the approval of the Commissioner of the Financial Services Agency.
  - (4) If a trade repository intends to obtain the approval under the preceding paragraph, it must submit a written application for approval to the Commissioner of the Financial Services Agency, with the statement of reasons attached.
  - (5) When an application for approval under the preceding paragraph is filed, the Commissioner of the Financial Services Agency is to examine whether there is a reason that is found to compel the trade repository filing the application to postpone the submission as under paragraph (3).

## **Chapter V Miscellaneous Provisions**

- Article 22 (1) When an application for designation, authorization or approval set

forth in the following items is filed, the Commissioner of the Financial Services Agency is to endeavor to render a disposition on that application within the period provided in the relevant item from the day on which the application arrives at the office:

- (i) the designation provided for in Article 156-67, paragraph (1) of the Act: two months;
  - (ii) the authorization prescribed in Article 156-69, Article 156-74, paragraph (1) or Article 156-82, paragraph (1), or approval prescribed in the proviso to Article 156-72, paragraph (1) or Article 156-73, paragraph (1): one month; and
  - (iii) the approval prescribed in Article 8, paragraph (4) or in paragraph (3) of the preceding Article: one month.
- (2) The periods of time prescribed in the preceding paragraph do not include the following periods of time:
- (i) any period of time required to amend the application;
  - (ii) any period of time required for the applicant to change the content of the application; and
  - (iii) any period of time required for the applicant to add materials that are found to be necessary for the examination of the application.